

**RYE ZONING BOARD of ADJUSTMENT  
Meeting**

**Wednesday, December 5, 2018, 6:30 p.m.  
Rye Town Hall**

*Members Present: Acting Chair Shawn Crapo, Patrick Driscoll, Tim Durkin, Alternates Gregg Mikolaities and Charles Hoyt.*

*Others Present: Zoning & Planning Administrator Kimberly Reed.*

Note: *Shawn Crapo sitting as chair for Patricia Weathersby*

**I. Call to Order**

Acting Chair Crapo called the meeting to order at 6:30 p.m. and led the Pledge of Allegiance.

**II. Approval of Minutes**

- November 7, 2018

Motion by Patrick Driscoll to accept the minutes of November 7, 2018 as presented.

Seconded by Charles Hoyt.

Vote: 3-0-2 Abstained: Gregg Mikolaities and Tim Durkin

- July 27, 2018

Motion by Patrick Driscoll to approve the minutes of July 27, 2018. Seconded by Shawn Crapo. All in favor.

- September 27, 2018

Motion by Tim Durkin to approve the minutes of September 27, 2018. Seconded by Patrick Driscoll. All in favor.

**Request for continuance:**

Motion by Patrick Driscoll to continue the applications of Donald K. Laing Revocable Trust and Ray's Seafood Restaurant to the January 2, 2019 ZBA Hearing. Seconded by Tim Durkin. All in favor.

### III. Applications:

1. **Carey & Giampa Realty Trust for property owned and located at 655 Wallis Road, Tax Map 16, Lot 22**, requests a special exception from Section 202.10 for installation of a septic system on a non-residential lot which will require tree cutting within the 50' residential boundary. **Property is in the Commercial and Single Residence District and Aquifer Wellhead Protection District. Case #47-2018.**
2. **Carey & Gaimpa Realty Trust for property owned and located at 655 Wallis Road, Tax Map 16, Lot 22**, requests a variance from Section 202.10 for installation of a septic system on a non-residential lot which will require tree cutting within the 50' residential boundary. **Property is in the Commercial and Single Residence District and Aquifer Wellhead Protection District. Case #48-2018.**

**Henry Boyd, Millennium Engineering**, presented to the Board. The request is to continue the cutting of the tree line as it currently exists. There isn't a 50' vegetative buffer on the sides. There is in the rear of the property; however, the proposed location is the only place on the lot the septic can be located because of ledge and other constraints. The request is to cut the buffer down to about 24' and to plant some arborvitaes to provide additional screening. He explained that the lot was created illegally. There was no stormwater approval from the State for subdivision. There has been a shared septic system between the office building and the residential structure next door. The current system lies close to the property line. The new modern system is designed to accommodate the use that it should and will take the stress off the existing system, which will only serve the residential structure in the future. He noted that there is a new addition that has been built onto the office building. The installation of the septic system is the last piece needed for upgrade to the property.

Acting Chair Crapo commented that the application was before the Board once before and the septic was approved at that time. He asked if this is a follow up from the discovery of the amount of trees that need to be cut and their location.

Mr. Boyd replied that this was just an oversight. The relief for the septic was granted and this should have been asked for at that time as well.

Acting Chair Crapo opened to the public for comments. Hearing none, he closed the public hearing at 6:50 p.m.

Member Hoyt stated that he is fine with the applicant's request to cut the trees down and plant a row of arborvitaes.

There was some discussion on a variance not being needed if the special exception is granted.

After reviewing the ordinance, Acting Chair Crapo stated that if the buffer area was developed it would need a special exception. To him, the buffer area is still the woods so a variance would be needed. Right now, the disturbance is up to the edge of the pavement.

Member Driscoll agreed.

Speaking to the applicant, Acting Chair Crapo asked if they would be comfortable moving forward with a variance.

The applicant confirmed.

Member Driscoll stated that as long as the septic is still the same as the application that came before the Board, he is okay. The applicant had a good plan for the stormwater on the lot already. At the last meeting, the abutters came and wanted to learn more about the application and seemed generally in favor of the proposal. If it is the same application and it is adding in something the Board overlooked as well, then he thinks it is a good solution. The arborvitaes will serve a purpose because if nothing is done there it will be a drastic change. There will be a better septic system on the lot. It seems the proposal will solve more problems than it causes.

Acting Chair Crapo commented it will keep vehicle headlights from disturbing the neighbors in the rear. He called for a vote on relief for ***Section 202.10:***

**1) The variance is not contrary to the public interest?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**2) The spirit of the ordinance is observed?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**3) Substantial justice is done?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**4) The values of surrounding properties are not diminished?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**5) There are special conditions of the property that distinguish it from other properties in the area?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**6) There is no fair and substantial relationship between the general purposes of the ordinance provision and the specific application of that provision to the property?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**7) The proposed use is a reasonable one?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**8) Therefore, literal enforcement of the ordinance would result in unnecessary hardship?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes



**Motion by Charles Hoyt to grant the request of Carey and Giampa Realty Trust for property owned and located at 655 Wallis Road for a variance to section 202.10 for installation of a septic system on a non-residential lot which will require tree cutting in the 50' residential boundary. Seconded by Tim Durkin. All in favor.**

*The applicant withdrew the application for a special exception for property located at 655 Wallis Road without prejudice.*

- 3. Donald K. Laing Revocable Trust, T. Beaton & Scott Laing, Trustees of 21 Whippoorwill Drive, Newton, NH for property owned and located at 140 Harbor Road, Tax Map 9.2, Lot 17, request variances from Section 603.1 and 603.2 for an expansion of a non-conforming structure on a non-conforming lot; from Section 203.3F for lot area where 50,516sf exists, 50,516sf is proposed and 66,000sf is required and lot frontage where 0' exists, 0' is proposed and 150' is required; from Section 301.8B (1) (2) & (7) for construction in the wetlands buffer where 14.8' exists from tidal water to cottage, 22.9' is proposed and 100' is the required tidal buffer, where 19.6' exists from freshwater to cottage, 22.4' is proposed and 75' is the required freshwater buffer, where a privy is located in the tidal wetland resource, a septic tank is proposed 50' from tidal water where 100' is required, a leachfield is proposed 60.6' from tidal water where 100' is required and leachfield is proposed 44.6' from fresh water where 75' is required; from Section 301.5A for disturbance in the 50' buffer; and relief from the Building Code Sections 7.9.2.2, 7.9.4.1, and 7.9.4.2 for septic tank 50' tidal, leachfield 60.6' tidal and 44.6' freshwater where 75' is required. **Property is in the Single Residence District, Coastal Overlay and SFHA, Zone AE. Case #44-2018. Request continuance to the January 2, 2019 ZBA Hearing.****
- 4. Ray's Seafood Restaurant, Inc. for property at 1677 Ocean Blvd, Tax Map 13, Lot 12, requests an administrative appeal from the 8-30-2018 Notice of Violation by the building inspector. Case #45-2018. Request continuance to the January 2, 2019, ZBA Hearing.**

Acting Chair Crapo made a proposal to take the application for 234 Washington Road out of posted agenda order. Applicant Jesse Durkin agreed.

**Motion by Charles Hoyt to modify the posted agenda to hear the application for 234 Washington Road. Seconded by Tim Durkin. All in favor.**

- 5. John Murtaugh for Jessica and Paul McNicholl for property owned and located at 234 Washington Road, Tax Map 16, Lot 175, requests a variance from Section 203.3B to install a generator 9' from the side property line where 20' is required. Property is in the Single Residence District. Case #52-2018.**

**John Murtaugh, representing the applicants,** presented the proposal for a variance to install a generator 9' from the property line at 234 Washington Road. The proposed location is directly behind the house close to the stonewall, where the driveways and the shed are currently located. The abutter has agreed to the location and they have agreed to screening for the generator. The footprint for the generator is approximately 2x4 and is a 14kw. Mr. Murtaugh reviewed the proposed location for the generator and propane tank with pictures submitted to the Board. Acting Chair Crapo opened to the public for comments. Hearing none, he closed the public hearing at 7:01 p.m.

The members did not have any issues or concerns with the proposal.

Acting Chair Crapo called for a vote for relief to *Section 203.3B*:

- 1) The variance is not contrary to the public interest?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

- 2) The spirit of the ordinance is observed?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

- 3) Substantial justice is done?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**4) The values of surrounding properties are not diminished?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**5) There are special conditions of the property that distinguish it from other properties in the area?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**6) There is no fair and substantial relationship between the general purposes of the ordinance provision and the specific application of that provision to the property?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**7) The proposed use is a reasonable one?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**8) Therefore, literal enforcement of the ordinance would result in unnecessary hardship?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**Motion by Charles Hoyt to grant to Jessica and Paul McNicholl, for property owned and located at 234 Washington Road, a variance to section 203.3B to install a generator 9' from the property line where 20' is required. Seconded by Tim Durkin. All in favor.**

6. **Jesse Durkin of 1564 Vineyard Drive, Los Altos, CA, for property owned and located at 395 Washington Road, Tax Map 16, Lot 117,** requests a special exception from Section 301.7B for a driveway within 100' of vernal pool and wetlands setbacks and buffer. **Property is in the Single Residence District. Case #46a-2018.**
7. **Jesse Durkin of 1564 Vineyard Drive, Los Altos, CA, for property owned and located at 395 Washington Road, Tax Map 16, Lot 117,** requests variances from Section 202.;5 for a septic system 15.5' +/- from the side property line where 20' is required; from Section 202.13 for total upland soils of 27,970sf all of which is contiguous where 44,000sf of total upland soils and 30,000sf of contiguous upland soils is required; from Section 203.3C for a house with a front yard setback of 14' where 40' is required; from Section 203.F for lot area of 52, 270sf where 66,000sf is required and for 149' +/- of frontage where 200' is required; from Sections 301.8B (1) (2) & (7) for surface alteration, septic system, tree cutting, and construction of dwelling 48' +/- from the vernal pool where 100' is required and 22' +/- from a wetland 1 acre or larger where 75' is required; from Section 601 for a building on a vacant non-conforming lot; from Section 500.3 for one parking space in the front yard setback. Applicant also requests relief from Building Code Section 7.9.2.2 for an effluent disposal system 85'+/- to vernal pool and 50' to wetland where 75' is required and from Section 7.9.2.5 for an effluent disposal system 15.5' +/- of side boundary where 20' is required. **Property is in the Single Residence District. Case #46b-2018.**

***Note: Member Gregg Mikolaities noted that he lives two lots over from this property but is not a direct abutter.***

***Acting Chair Crapo stated that if he felt that he could not be impartial in carrying out his zoning board duties, he should recuse himself.***

***Member Mikolaities confirmed that he could be impartial and just wanted to disclose it for the applicant.***

***Member Tim Durkin noted for the record he is not related to the applicant.***

**Attorney David Brown, representing the applicant,** presented to the Board. He noted that the lot was created in 1972. In 1976, the big lot was subdivide again, which created the lot behind the property. It started out as one lot, then it became four and then five. He continued that it is a lot of record. It meets the definition in Section 601. It was created in 1972 through a subdivision that the Planning Board approved. All of the other lots have been built on. Mr. Durkin has not built on his lot. The Conservation Commission has given approval. He met with them and discussed the proposal. The commission conducted a site walk. It is very significant that their letter concludes that with certain conditions, they approve of the proposal. The Conservation Commission approved it because they like the plan that Eric Weinrieb designed, which had a goal of minimizing the intrusion and maximizing the balancing of creating a house,

while protecting the environment. The commission was also influenced by the lot of record status.

Acting Chair Crapo pointed out that the Conservation Commission has listed several conditions. It is not an outright approval.

Attorney Brown noted that the letter ends with their approval with the conditions. The applicant is happy to meet those conditions. He stated that all these lots were vacant at one time. This is the last lot. Section 601 protects the applicant and creates the savings clause so he can wait and still have a buildable lot. What Mr. Weinrieb has designed is a reasonable balance of all the concerns. There is no way to use the lot without relief. He reiterated this is a lot of record. Section 601 calls it a buildable lot. Section 601 is a savings clause and gives special status to the lot. There are abutters on both sides and to the rear who have all built on their lots. He pointed out that when the rear lot was created it was done with only 20' of frontage. The predecessors got significant relief to create that lot. The existence of these plans puts all of the abutters on notice that Mr. Durkin's lot has protected status under 601. They know it was created at the same time and he has rights to build on it when the time comes.

Acting Chair Crapo stated that just because a lot was created does not mean it is buildable.

Attorney Brown explained that at the time the lot was created in 1972, the frontage and lot size requirements were less. Mr. Durkin's lot meets the definition to become a buildable lot of record. In looking at the neighborhood, all of the abutters have assessed values of \$660,000 and up. Mr. Durkin would have zero value without relief. The lot is assessed at \$300,000 as a buildable lot. The family has paid taxes on this lot for 30 or 40 years.

Acting Chair Crapo noted that 601 only covers frontage area and depth. It does not get into wetlands or other issues.

Attorney Brown stated that the spirit of that section is obviously a savings clause for a buildable lot. He continued that it requires a balance of property rights and fairness. If the relief is not granted, Mr. Durkin's property is essentially taken from him. Under case law, it gives him protection where reasonable relief should be granted to avoid a complete loss of value. He understands that people do not like change. Mr. Weinrieb's photos will show that the abutters have been encroaching onto Mr. Durkin's lot, which is infringing on his rights and also affecting the vernal pool. That is not fair to the applicant and it should end. On the plan in the upper left, there is a notation of EOP (Edge of Pavement). This shows pavement that actually encroaches across the property line. That creates title issues for both parties. He noted that the applicant just wants a small modest house to enjoy his property like everybody else is doing. He pointed out that 97% of the lot will not change. Near the vernal pool and all the way to the back will stay as is.

**Jesse Durkin, applicant**, spoke to the Board in regards to the history of his families ownership of the property. He noted that he has agreed to build a home with a small footprint and will follow the ecological guidelines that are provided.

**Eric Weinrieb, Altus Engineering**, noted that Joe Noel has mapped the wetlands on the property. There are a lot of competing constraints on the parcel. There is a 40' front setback and a 20' side setback. There is also a 100' vernal pool setback. This eliminates all the developable area by right without any zoning relief. There is also a 75' poorly drained soil setback. In looking at siting the septic system, they looked at meeting the local criteria as best as possible. That could not be done when it came to meeting the side setback. It could only be 15.5' from the side yard. That is because it meets all the State criteria. The criteria from side yards, seasonal high water table and 50' to the wetland line have been met. That puts the septic into a tight little area. There is a minor opportunity of moving the septic system closer to the house; however, that would require a waiver from the State to go to a 2 to 1 slope from a 3 to 1. He continued that there is 54" to seasonal high water table on the site. There is exceptional soil on the site with granule sandy soil. The vernal pool was probably created by an over excavation of the granule materials on the site. He stated that the entire driveway will be created out of permeable material. All the water coming off the roof section and in front will be infiltrated. A drainage report has been completed for the property that shows there will be no adverse impacts.

Acting Chair Crapo asked if they are proposing to move the septic closer.

Mr. Weinrieb explained that if the system was moved it would be raised up higher and would force a slope waiver from the State. Where it is being proposed, is really the best location. He pointed out that the abutter has a garden that is partially on Mr. Durkin's property. The proximity of that garden to the septic system could create contamination. He further explained that the groundwater is not going to go perpendicular to the septic system. It will actually go perpendicular to the grades and go down towards the wetlands. Also, it is an advanced treatment system so it is a higher quality of effluent. (Mr. Weinrieb submitted photos to the Board showing the debris and yard waste that has encroached onto the property.) He thinks the abutters viewed this as an open area because it has not been active by the owner. Coming from the Jones' property, they have been dumping their yard waste actively in the wetlands. The Bartleys have a path and have also been dumping their yard waste. He noted that the property has been unoccupied. When someone lives here, it will not likely continue to happen and the applicant is going to clean it up. The debris will be removed to recreate the buffer and protect the property.

Mr. Weinrieb stated that a driveway permit has been issued from Dennis McCarthy. To minimize the grading, there will be a retaining wall going to the back of the building with a walkout basement; however, there will be no clearing. Also, wetland placards will be put up to make sure it stays as a natural area in perpetuity. He stated that the drainage study shows there will be no increases in runoff from the property in all storms analyzed.

**Joe Noel, Wetland and Soil Scientist**, stated that he delineated the wetland boundary back in April, as well as documented breeding amphibians (wood frogs) in the vernal pool. The retaining wall is critical to create a buffer for the vernal pool to remain in its natural state. The adult amphibians use the vernal pool for breeding. They spend ninety-nine percent of their time in areas around the vernal pool. Keeping the uplands in this area undisturbed will maintain the viability of the pool. The retaining wall will limit the area where development is to occur. He noted that there is old farm debris and metal around the edge of the pool. There are some tires



and pallets in the pool. If that debris was removed, there are some plantings that could be done in that area to further enhance the remaining buffer towards the house.

Member Driscoll asked what effect the oils from the driveway and shingles from the roof would have on the buffer area.

Mr. Noel explained there will not be any direct runoff going to the vernal pool. There would not be contaminated surface water going into the pool.

Member Driscoll asked how the animals and life would be affected that are in the buffer.

Mr. Noel stated that the runoff would be typical. If it were allowed to be lawn down to the vernal pool, there would not be a vernal pool once the area around is disturbed. Keeping the area around it intact will allow it to remain a viable vernal pool system. He noted that there is a wetland system to the north with habitat that will remain relatively undisturbed by this project. From the retaining wall north, it will all be left intact. He has high confidence that it will remain a viable vernal pool habitat despite a home being on the lot.

Member Driscoll asked about the time during construction when the retaining wall is being built with fill going into that area.

Mr. Noel stated that it should be left as sacred ground. It shouldn't be used as a stock piling area. They are going to have to make efforts to keep out of that area.

Mr. Weinrieb noted that they would identify that area as the "no cut buffer". First, placards would be put up. Also, construction fencing (silt fence) would be put up as a barrier to show the construction limits.

Acting Chair Crapo commented there will be an initial dig for the footing towards the vernal pool.

Mr. Weinrieb commented it will only be a couple of feet deep.

Member Mikolaities stated that the existing grade that runs through the house is 46. It is being brought up to 53. The retaining wall is a 6 or 7' high wall and it is a 32' house. He asked how the grades were set. He is struggling with all the slope. It is forcing the fill and retaining wall.

Mr. Weinrieb explained that he didn't want to come down too steep off the road. The road grade drove the grades of the garage.

Member Mikolaities stated that he is trying to envision what the wall is going to look like down Washington Road. It seems like it could have been brought down 4 to 6' easily. He reiterated that he is struggling with the flat plateau being created with a wall right behind it.

Mr. Weinrieb replied that he did not want to over slope. He did not want more than 2.5 percent in front of the driveway so it was kept fairly flat. There is a step up for the house.

Acting Chair Crapo commented that the retaining wall is a true retaining wall close to the house. It is retaining pretty much the full weight of the house on a hillside. Sometimes the numbers do not work. Part of the Board's job is to look at this to make sure it is not set up for failure.

Mr. Weinrieb explained that what also drives it is the small footprint.

Member Mikolaities commented that it is 50' across. That is a large footprint.

Mr. Weinrieb replied that the house is 30x28' and then there is the garage. He continued that what also drives it is the grade for the walkout so more space is created in that area.

Acting Chair Crapo pointed out that the walkout creates activity. Any activity should be mitigated in the vernal pool area. Having a walkout almost invites people to use that area.

Mr. Weinrieb noted that there are no patios in that area. He also noted that the retaining wall is over 4' so the plan will need to be stamped by a structural engineer. The wall is about 6' and varies in height with 2' down into the ground.

Member Hoyt commented it is an 8' wall.

Mr. Weinrieb pointed out that not all of it is exposed.

Acting Chair Crapo asked how it will be reinforced. He asked if there are extra provisions or footings in the walkout part of the house to help support the house (the wall of the basement holding up the whole structure on the hillside).

Mr. Weinrieb stated that it is no different than any other walkout.

Referring to the plan, Member Durkin noted that the end of the driveway shows 51.8' to the right. He asked if this is existing grade.

Mr. Weinrieb replied that is proposed. That shows the grade pitching away from the garage, going to a low point and then back up.

Member Durkin asked if this means that a lot of fill will be put in to get it up to grade.

Mr. Weinrieb confirmed. He stated that they could have disturbed more area and more of the buffer, not built the wall and had it slope down. This reduces the amount of fill and creates a larger buffer.

Member Durkin asked if they looked at a plan with cars entering from the side and straight in from the road.

Mr. Weinrieb explained that because the house is right up close to the street, there would potentially be parking in the street and the turnaround would be in the right-of-way.



Acting Chair Crapo asked why there has to be a turnaround. He asked if there is a requirement in new construction that requires someone to drive out forward.

Mr. Weinrieb stated that he does not know if there is something in Rye's zoning or building code. However, he does not think it is a good design on Washington Road. It is a good idea to have vehicles turnaround before they leave the property.

**Chuck Marsden, Building Inspector**, stated that backing out onto a roadway is frowned upon by the police department. He does not believe it is allowed on a State road at all.

Member Driscoll stated that the application states that a variance for one parking space is requested.

Mr. Weinrieb explained it is for one parking space in the setback. There is parking in the garage.

Acting Chair Crapo stated that there has to be two off-street parking spots.

Member Driscoll noted that there are two spots in the garage with one half in the setback.

Mr. Marsden stated that based on the information that was provided, it was a proposal for a single family home with an attached one car garage, construction of a new driveway within the front setback and off street parking for two automobiles. This would put the parking for one vehicle in the 3' front yard.

Member Driscoll commented it needs to be amended for two.

Speaking to Mr. Weinrieb, Member Hoyt asked him to speak to the concern the neighbor has with increase of water drainage onto their property.

Mr. Weinrieb spoke in regards to the drainage report to address the neighbor's concerns.

Acting Chair Crapo opened to the public in support of the proposal.

**Shawn Durkin, from Hampton**, spoke in support of his nephew's proposal.

Acting Chair Crapo opened to the public in opposition.

**Stan Jurus, 371 Washington Road (Acorn Acres road frontage)**, expressed his concerns about water being pushed onto his property, as he is the rear abutter. He also expressed concerns about fill being added to the property and the disturbance to the wetland.

**Mark MacDonald, 21 Acorn Acres**, also expressed his concerns in regards to the water in that area becoming worse and where it is going to be pushed.

**James Bartley, 401 Washington Road**, noted that he is not keen about a septic system being within 15' of this property line.

Mr. Jurus noted that **Marlene Jones, 385 Washington Road**, is present and is opposed to the proposal but does not want to speak.

Speaking to Mrs. Jones, Acting Chair Crapo asked if she concurs with that sentiment.

Mrs. Jones confirmed.

Acting Chair Crapo read a letter in opposition from;

- Stanley & Patricia Jurus;
- James & Elizabeth Bartley; and
- Marlene Jones

He also read a letter in opposition from;

- James & Elizabeth Bartley (only)

Mr. Marsden requested clarification on the proposed building height, as they may need a variance. He is looking at existing grade of 48' at the center of the front of the house and it is being raised to 53'. With those calculations, it looks like it will be above 35'. Going back to the indoor parking in the garage, the thought process was that the spot would be 10'x18'. With the outside dimensions of the garage, minus the 8" for the foundation, there will not be 20' inside for two cars.

Acting Chair Crapo stated that setback wise, whether the car is parked in the garage or up close in the driveway, it is the same distance from the road. Both spaces are in the setback.

Mr. Marsden stated that if the house is allowed then the indoor parking would be allowed.

In regards to the front setback, Mr. Weinrieb explained they are allowed the average of two properties. If they are averaging Mrs. Jones' property, it would be pretty close. It is not going to be that far out of place because it is consistent with the Jones home. The Bartley property is so far back that it would be greater than 40'. When this is constructed, it is going to be consistent with the other home that is there. As far as runoff, this is modeled so there is no increase in runoff from the property at this point. Having the fill on the site, will infiltrate and mitigate the runoff. The septic system meets and exceeds the State criteria. The only reason there is a 20' setback is because the Town views the leachfield as a structure. There is no environmental reasoning as to why it needs to meet the side setback.

Member Mikolaities asked the total square footage with the garage. He noted that he got 3000sf for the living space and 400sf for the garage.

Member Driscoll agreed.

Member Hoyt commented that 3400sf is a lot of house.

Acting Chair Crapo noted that there is a bonus room in the attic with dormers. Essentially, with the walkout, it is a four story home.

Referring to the living space, Mr. Weinrieb stated that he calculated 2900sf.

Attorney Brown spoke to the special exception and variances.

Special exception for the driveway:

- As discussed, and shown on the plan, it meets the test because no other alternative route is feasible. It keeps the intrusion to the lot at the minimal level. The driveway is essential to productive use. It would have minimal detrimental impact because it is placed in the front corner. It will be constructed of porous material and will be as short as possible.
- Economic advantage is not the only reason. The applicant is not trying to do more than a modest house.
- Wetlands crossings are allowed by special exception.
- It would also not be injurious or detrimental to the neighborhood.
- Because it will support a residential use, in a residential zone, it would meet the general purpose of zoning.

Variance criteria:

This is a lot of record and the applicant needs relief to have some value. The Conservation Commission supported the application with conditions that the applicant is willing to follow.

- This would not be contrary to the public interest. That test is met because it is a residential use in a residential zone. It is a lot of record which has special status.
- The variances would be consistent with the spirit of the ordinance because essentially no change is being made to the character of the neighborhood. It is residential now, it would be residential use and would carry out the original 1972 plan, allowing the applicant to do what others on the plan have done, which is to have a house of value.
- There would be substantial justice by granting relief because it is a lot of record deemed buildable under the ordinance. It would be an injustice to deprive the applicant of all value. He would have total loss and there would be no gain to the public.
- The surrounding property values would not be diminished. A realtor's letter has been submitted to the Board providing that opinion. He has never heard of a new house reducing property values to the abutters.
- This property has very special conditions because of the vernal pool location on the property and where the best buildable area on the site would be.
- There is no fair and substantial relationship between the general purpose of the ordinance and its application. There would be no harm to anyone else. It is a reasonable use to build a residential home. It is a lot of record. A buildable lot under 601. Ninety-seven percent of the lot would not be affected and left in its natural state.
- Nothing can be done without relief. Strict conformance denies any use and this use is reasonable.

Attorney Brown stated that this is a challenging case for the Board. Mr. Weinrieb and Mr. Noel have spoken about all their efforts to minimize the impact. The Conservation Commission's

approval has been received. Mr. Durkin will do all the steps to mitigate. By doing that mitigation, he would actually clean up the vernal pool, protect it and it would be better. He hopes the Board will agree and grant the relief.

Acting Chair Crapo stated that considering the rationale that this is a lot of record and that means it is buildable, is only when there are no other variables at play. There is a vernal pool right in the middle of the building envelope. Therefore, what is before the Board is a proposal where "ninety-seven percent of the lot is unaffected". That is because somewhere around ninety-five percent of this project is all in the front setback. Only a small portion of it is in the building envelope of this large lot that is impacted by a vernal pool. The vernal pool has been there for years. He continued that "lot of record" would refer to the building envelope and there were setbacks way back then. Why should this apply to a project that is eighty percent in the setback.

Mr. Weinrieb noted that back in 1972, they did not look at vernal pools and wetlands. They just looked at the lot. When this lot was developed, Mr. Durkin would have been able to build on this property. He would have been able to build right up to the wetland because there were no wetland buffers. The ordinance for wetland buffer when this lot was created did not exist. That is creating the hardship. It was subdivided as a lot. The wetland buffer is a newer restriction that forces this into a tighter situation. He noted that they are doing everything they can to protect that and actually make it better by being stewards of the land.

Acting Chair Crapo stated that when 601 was adopted, it didn't deal with wetland buffers but they existed. That section only deals with future changes for area, frontage or depth. He feels there is an argument that wetlands and setbacks could make something non-buildable.

Attorney Brown stated that it is perhaps a little ambiguous but the focus is on the intent and purpose. The intent and purpose are to protect people who have lots that are on plans that were planning board approved. This is a "savings clause" so the lot can be developed later on. If the applicant is doing something that is not harmful and allows a reasonable use, it should be permitted; otherwise, the property is taken and there is no value left. The cases say that relief should be granted through the safety valve of variances so that property is not confiscated.

Member Durkin asked about the need for a height variance.

Mr. Durkin stated that it will not need a height variance. If it is not within the height variance, he promises that they will go back to make sure it is well within.

Acting Chair Crapo pointed out that if other variances are needed, the applicant will have to come back. He closed the public hearing at 7:42 p.m.

Member Driscoll stated that he would like to address the concern of the abutters. He looks at the look and sees that the natural pitch comes from the road. He does not think that any more water is going to be brought onto to abutting lots because of the amount of fill on the lot. He does not think it is being diverted drastically in any way that is going to change the left or right lots. There is also enough natural space and it is not going to add to the amount of water onto those lots. His issue with this application is that it is almost completely in the front yard setback with a

large footprint and a large disturbance in that setback. It is also completely in the wetlands (vernal pool) setback. He does not feel he needs to go into whether it is a buildable lot or not because there is no consideration to the front or wetland setback with the size of the house. The size of the footprint is a great amount to put into that front yard. That is his big concern and why he is not in favor of this application. If something came back with a smaller house, which may or may not have a garage attached to it, with front yard changes and is a bit more efficient as to how it all ties together, it might be a different story for him. The way this has been presented is too much in the front yard and wetland setback. It is too much change in the front yard for him to vote in favor of the application.

Member Hoyt stated that he sympathizes with the applicant in weighing his rights as a property owner. He does not think this will have a negative impact on the neighbors. The science behind what the professionals are able to do will not adversely affect the neighbors. He thinks the applicant would be a good steward to the property and would be a good thing to develop the property. However, he is struggling with the size of the project. It is a large footprint. It is a big building for such a small lot. He thinks that even a smaller house would set a precedent for no buildable area. However, he goes back to the rights and the fact that the family has paid taxes on this property for so long. There has to be something that can be agreed to but he does not think it is this footprint.

Member Mikolaities agreed. He stated that the front is going from property line to property line and 125' is being wiped out. This is a four-bedroom house with 3000sf, a bonus room on top and a walkout on the bottom. It's a lot. Imagining 125' long and 40' high, the whole frontage would be gone. It is a four-bedroom house. That is not a modest house.

Member Durkin stated that he would like to add to Attorney Brown's proposal that this is not contrary to the public interest and surrounding property values would not be diminished. He takes issue to that with respect to 401 Washington Road. If someone lives downhill from this structure and is looking up at it, a strong argument could be made that their property value could be diminished by having a septic system that close to the side of the lot. There are four abutters who have expressed their concerns about that. It raises the question of whose public interest they are speaking to. Town residents have expressed their opposition to that. He goes back to the size of this structure and trying to do so much in such a limited area. This raises concerns. For those reasons, it is difficult for him to support the application.

Acting Chair Crapo allowed Attorney Brown to comment.

Attorney Brown asked if he could continue or withdraw.

Acting Chair Crapo explained that if the application is continued, it would be the same application and the public hearing is finished. There is nothing to continue. The applicant can withdraw without prejudice because the Board has not voted.

Attorney Brown requested to withdraw the application.

The Board allowed the withdrawal.



8. **Jay and Karen Longtin of 258 Buckminster Way, Portsmouth, NH, for property owned and located at 361 Central Road, Tax Map 7, Lot 89,** request a variance from Section 203.3C for an addition 33 +/- from the front property line where 40' is required. **Property is in the Single Residence District. Case #53-2018.**

**Jay Longtin, applicant**, spoke to the Board. He stated that his family's plan is to renovate the home and move in. They are planning to keep the farmhouse charm intact but modernize it for their family. He noted that he has already poured the foundation for a new addition that is 40' from the property line. The addition plan calls for a wraparound porch that encroaches about 6' into the front yard setback. The encroaching section is an open-air farmer's porch. The request is for a variance to the 40' setback. The proposed addition compliments the original 1849 architecture. The way the historic home sits on the road gives way to its credence to its authenticity. He does not want to change this but wants to celebrate what exists and maintain the historic nature of the property. It is a 170 year old farmhouse with barn that sits close to the road as it is now. This is part of what makes it unique. Without a front farmer's porch, the outside focus will only be on the back yard. The setback variance gives the opportunity to give life to the front yard and keep a traditional farmhouse element on a main road in Rye.

Acting Chair Crapo asked if 33.7 is to the drip edge of the farmer's porch.

Mr. Longtin explained that he measured to the edge of the porch. The drip edge is probably 6" more.

Acting Chair Crapo noted that the original request was for 33.7; however, this does not allow for the drip edge. It should be 33' +/- . He asked if the porch was going to have one step-up.

Mr. Longtin replied that it is about an 8" step-up. There may be a granite step.

Mr. Marsden noted that a new septic is needed because of the bulk of the building.

Mr. Longtin pointed out that the plan has been submitted to the State.

Member Driscoll asked if the new septic will fit within the setbacks.

Mr. Longtin confirmed. He noted that the new septic will be installed.

Acting Chair Crapo opened to the public for comments.

Speaking to the applicant, Member Driscoll asked if he has talked to the neighbors about the proposal.

Mr. Longtin confirmed. There have been no objections.

Hearing no comments from the public, Acting Chair Crapo closed the public hearing at 9:10 p.m.

The Board had no objections to the proposal.

Acting Chair Crapo called for a vote for relief to *Section 203.3C*:

**1) The variance is not contrary to the public interest?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**2) The spirit of the ordinance is observed?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**3) Substantial justice is done?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**4) The values of surrounding properties are not diminished?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**5) There are special conditions of the property that distinguish it from other properties in the area?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

- 6) **There is no fair and substantial relationship between the general purposes of the ordinance provision and the specific application of that provision to the property?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

- 7) **The proposed use is a reasonable one?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

- 8) **Therefore, literal enforcement of the ordinance would result in unnecessary hardship?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**Motion by Tim Durkin to grant to Jay and Karen Longtin of 258 Buckminster Way, Portsmouth, NH, for property owned and located at 361 Central Road, a variance to Section 203.3C for an addition 33' +/- from the front property line where 40' is required. Seconded by Charles Hoyt. All in favor.**

**Note: Member Patrick Driscoll noted that he has a working relationship with Amy Dutton who did the drawings for the next application. This will not sway his decision one way or the other.**

9. **Terrence Sullivan & Leslie Sullivan-Stacey for property owned and located at 393 Brackett Road, Tax Map 19, Lot 35, request variances from Section 603.1 for expansion of a non-conforming structure; Section 204.3F for lot area per family where 18,595sf exists, 18,597sf is proposed and 88,000sf is required and from frontage where 124.7' exists, 124.7' is proposed and 200' is required; from Section 202.4 for expansion of a building where prohibited; from Section 204.3A for a garage 13', a dormer 13' and a deck 8.7' in the rear yard setback where 30' is required. **Property is in the General Residence, Coastal Overlay District. Case #54-2018.****



**Attorney Tim Phoenix, representing the applicant,** presented the application to the Board. He stated that the septic design that has been in-the ground since 2012, was designed with this intention in mind. It was designed to cover a two bedroom main house and apartment over the garage. Relief for the septic is not needed because it exists. Some of the relief he questioned whether it was needed; however, he went by what the building inspector found. He continued that the lot is 18,597sf. The main house is around 800sf. The main house and everything that is being done to it is virtually within the building envelope. The garage violates the rear setback now. The garage is existing and is not going to change. He noted that the 13' is to the building, not to the drip edge; however, it is not changing in any way. The dormer is probably more than 13' because it is setback from the corner of the building. (Attorney Phoenix presented photos of the existing home to the Board.) He noted that the house is a modest cape around 800sf. There is a garage in the back. The house needs some attention and the owners are finally in a position to do that. The existing home covers 4.4% of the lot with impervious coverage of 20.3%. Pavement will be removed from the property and replaced with pervious material. The total impervious coverage will be reduced to 18.9%. The garage will remain as a two car garage but will be renovated for an apartment above. The relief being requested is very minor for setback and dimensional requirements. A variance is being requested for two dwellings on one lot because Rye's ordinance only allows ADU's in attached dwellings. He noted that there are many old carriage houses and garages in Rye that have received relief for a small apartment. The State has recently passed the ADU statute. They are encouraged to have these smaller, less expensive living units in all the towns within the State. It functions as an ADU but they cannot get an ADU because it is detached; therefore, full zoning relief is needed. He continued that it was the building inspector's opinion that 88,000sf is needed for lot area, instead of 44,000sf. That is why that request was made. The lot and frontage cannot change in size. By allowing this unit, it will still look like a garage and someone will not be able to tell there is an extra house.

Attorney Phoenix stated that relief is needed from 603.1 for expansion. He noted that the only real expansion that causes a need for relief is a portion of the dormer that will be in the setback and the deck. Everything else is within the four corners of the building envelope. He noted that if they were expanding the main house with a garage and unit over, they would not need the 88,000sf because it would be permitted and would be grandfathered. However, since they are adding the living unit, the 88,000sf relief is needed. It was the building inspector's opinion that now that there are two dwellings the 200ft of frontage has to be met. There is only 124.7ft currently. Relief is being requested for 202.4 and 202.4A, which are the sections that say only one principal home is allowed on a lot. Finally, the deck is getting a little closer to the rear yard line. The deck is 8.7ft from the lot line and the dormer is further away than the existing four corners of the building. He noted that behind the house is conservation land owned by the Catinos. (He submitted letters from abutters with one of the letters being from the Catinos in support. Letters of support were also received from Kerry and Peter Kane, 412 Brackett Road; Pat Spaulding, 441 Brackett Road; Pat Nicolino, 461 Brackett Road; Stacey Brooks, 429 Brackett Road; and Travis and Elizabeth Billingham, 400 Brackett Road.)

Attorney Phoenix stated that they see this as a lot that has been this way for many years. The applicants just want to modify the house because it is pretty small. They are going to make the main house a two bedroom from three bedrooms and build an apartment in the garage, which the septic system covers. What is not permitted is a second unit on the lot and the setbacks.

Acting Chair Crapo noted that the notice has the fence at 14'. The denial letter does not mention the fence. The fence request is not needed. He stated that the denial letter does say there are no permits for the screen house at the rear of the property in the files. That appears on the proposed site as staying.

Attorney Phoenix stated that the screen house was there when they purchased the property. It looks like it has been there for decades. It was a hen house. It is rustic and there is nothing in it. He does not think it is relevant to this request. He reviewed the requirements for the granting of the variances.

- Variance is not contrary to the public interest and the spirit of the ordinance is observed. The test is whether the variance would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives, mere conflict is not enough. To determine whether basic objectives are violated, will the variances alter the central character of the locality? Will they threaten the public health, safety or welfare? The septic system was designed for this proposal. Environmentally, it is fine. There is no threat to the public health, safety or welfare. The central character of the locality isn't going to change. The only change the public will see is the addition of the dormer on the front of the garage. The dormer can be put on the building now because it meets all the setbacks. The variances are very minor and do not alter the essential character of the locality and do not threaten the public health, safety or welfare. Allowing this very small unit in a building that is already there, neither alters the essential character of the locality, nor threatens the public health, safety and welfare.
- Granting the variance will not diminish surrounding properties values. The plans are very tasteful and modest. It fits in with what is already there.
- Special conditions exist that distinguish the property from others in the area. The lot is what it is and where it is. The relief is needed because the lot is too small to have the second unit and the garage already violates the rear setback.
- No fair and substantial relationship between the public purposes of the ordinance and its application in this instance. The prohibition of expansion of non-conforming structures is intended to stop over bulking, over massing, using too much of the lot and infringing on the neighbors. Given that nothing is really changing, does not violate the expansion of non-conforming structures requirement. Larger lot sizes for multiple dwellings is intended to maintain reasonable densities. The underlying intent is to look at two full size homes on a lot. Here, there is a building that already exists with a small unit in it. It is not violating the larger lot size requirement for multiple family dwellings.
- The proposed use is reasonable. It is a single family residence now and will be a single family residence with a small additional unit.
- Substantial justice will be done by granting the variances. If there is no benefit to the public that would outweigh the benefit to the applicant, this factor is satisfied. Any loss to the applicant not outweighed by any gain to the public is an injustice. All renovations are to existing structures in their existing locations. The esthetics are being improved and there is already a septic system that can handle the requirements of the two bedroom home and separate apartment. The public is not

benefited in any way by denying these variances. Yet the applicant will be harmed if they are not granted because it will deprive them of a reasonable request for a small living unit where it is needed.

Attorney Phoenix spoke in regards to the parking.

Acting Chair Crapo opened to the public for comments.

**Pat Nicolino, 461 Brackett Road**, spoke in support of the proposal.

Mr. Marsden noted that the original plan did not show enough parking. He asked that the plan be updated to show the parking and the impervious coverage.

Hearing no further comments, Acting Chair Crapo closed the public hearing at 10:10 p.m.

The Board discussed possible conditions;

1. Three bedrooms maximum between the two dwelling units;
2. No rentals shorter than three months; and
3. The plan shall be revised to show the parking spaces and will be approved by the building department.

The Board agreed that a variance for the fence was not needed.

Acting Chair Crapo called for a vote for relief to *Sections 603.1, 204.3F and 202.4A*:

**1) The variances are not contrary to the public interest?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**2) The spirit of the ordinance is observed?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**3) Substantial justice is done?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**4) The values of surrounding properties are not diminished?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**5) There are special conditions of the property that distinguish it from other properties in the area?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**6) There is no fair and substantial relationship between the general purposes of the ordinance provision and the specific application of that provision to the property?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**7) The proposed use is a reasonable one?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

- 8) **Therefore, literal enforcement of the ordinance would result in unnecessary hardship?**

Patrick Driscoll – Yes  
Tim Durkin – Yes  
Gregg Mikolaities – Yes  
Charles Hoyt – Yes  
Shawn Crapo – Yes

**Motion by Patrick Driscoll to approve the application of Terrence Sullivan and Leslie Sullivan-Stacey for property owned and located at 393 Brackett Road for variances from Section 603.1 for expansion of a non-conforming structure; Section 204.3F for lot area per family where 18,595sf exists, 18,597sf is proposed and 88,000sf is required and from frontage where 124.7' exists, 124.7' is proposed and 200' is required; from Section 202.4A for expansion of a building where prohibited; from Section 204.3A for a garage 13', a dormer 13' and a deck 8.7' in the rear yard setback where 30' is required with the conditions that (1) rentals shall be for a term greater than three months; (2) a plan showing four parking spaces approved by the building department; and (3) a limit of three bedrooms between the two units. Seconded by Tim Durkin. All in favor.**

**Motion by Tim Durkin to continue the applications for Fardideh Namazi and Massood V. Sammii to the February 6, 2019 meeting. Seconded by Charles Hoyt. All in favor.**

- 10. Fadrideh Namazi & Massood V. Sammii, Trustees of the 29 Parson Road Realty Trust for properties owned and located at 27/29 Parsons Road request variances from Section 603.1 for expansion of a non-conforming structure, Section 204.3B for an addition 13.68' in the side setback where 20' is required; from Section 204.3C for an addition 22.25' in the front setback where 26' is required; from Section 204.3F for lot area 15,769sf where 88,000 is required and frontage of 91.66' where 150' is required; from Section 202.5 for septic pipe setback of 18.2' where 20' is required; from Section 301.8B (1) (2) & (7) for septic tank in the setback 19.54' where 75' is required; and from Sections 500.1 and 500.3 for parking in the front setback. Relief from the Building Code Section 7.9.2.5 for a septic pipe 18.20' in the setback where 20' is required; from Section 7.9.2.5 and Section 7.9.4.1 for septic tank 19.54' in the wetland buffer where 75' is required. Property is in the General Residence and Coastal Overlay District. Case #55a-2018. Continued**

- 11. Farideh Namazi & Massood V. Sammii, Trustees of the 29 Parsons Road Realty Trust for properties owned and located at 27/29 Parsons Road request a special exception from Section 301.7B and 301.8B (6) for placement of a porous driveway 75' within the 100' buffer. Property is in the General Residence and Coastal Overlay. Case #55b-2018. Continued**

**IV. Other Business**

- **The Planning Board would like input from the Zoning Board on generators and sheds for proposed zoning amendments.**

**Adjournment**

**Motion by Shawn Crapo to adjourn at 10:25 p.m. Seconded by Patrick Driscoll. All in favor.**

*\*All corresponding files and documents may be viewed at the Building Department, Rye Town Hall.*

Respectfully Submitted,  
Dyana F. Ledger



# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/ Owner:** Jay and Karen Longtin of 258 Buckminster Way, Portsmouth

**Property:** 361 Central Road, Tax Map 7, Lot 89  
Property is in the Single Residence District

**Application case:** Cases #53-2018

**Date of decision:** December 5, 2018

**Decision:** The Board voted 5-0 to grant the variance from the following section of the Zoning Ordinance:

- Section 203.3 C for an addition 33 +/- from the front boundary.



**Shawn Crapo,  
Vice-Chairman**

**Note:** This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/ Owner:** John & Carole Murtagh for Jessica and Paul McNicholl

**Property:** 234 Washington Road, Tax Map 16, Lot 175  
Single Residence

**Application case:** Case #52-2018.

**Date of decision:** December 5, 2018

**Decision:** The Board voted 5-0 to grant the variance from the following section of the Zoning Ordinance:

- Section 203.3B for a generator 9' from the side property line.



**Shawn Crapo,**  
**Vice-Chairman**

**Note:** This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.



# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION


**Applicant/ Owner:** Jesse Durkin of 1564 Vineyard Drive, Los Altos, CA

**Property:** 395 Washington Road, Tax Map 16, Lot 117  
Property is in the Single Residence District

**Application case:** Cases #46a-2018 and 46b-2018

**Date of decision:** December 5, 2018

**Decision:** The Board did not vote. The applicant withdrew without prejudice.

  
**Shawn Crapo,**  
**Vice-Chairman**

**Note:** This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/ Owner:** Donald K. Laing Revocable Trust, T. Beaton & Scott Laing, Trustees of  
21 Whippoorwill Drive, Newton, NH

**Property:** 140 Harbor Rd, Tax Map 9.2, Lot 17  
Property is in the Single Residence District, Coastal Overlay and SFHA,  
Zone AE.

**Application case:** Case #44-2018

**Date of decision:** December 5, 2018

**Decision:** The Board voted 5-0 to continue the application to January 2, 2019.



**Shawn Crapo,  
Vice-Chairman**

**Note:** This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/ Owner:** Ray's Seafood Restaurant, Inc.

**Property:** 1677 Ocean Blvd. Tax Map 13, Lot 12  
Property is in the commercial and coastal overlay districts and SFHA.

**Application case:** Case #45-2018

**Date of decision:** December 5, 2018

**Decision:** The Board voted 5-0 to continue the application to January 2, 2018 meeting.

  
**Shawn Crapo,**  
**Vice-Chairman**

**Note:** This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/ Owner:** Terrence Sullivan & Leslie Sullivan-Stacy

**Property:** 393 Brackett Rd, Tax Map 19, Lot 35  
Property is in the General Residence and Coastal Overlay District

**Application case:** Cases #54-2018

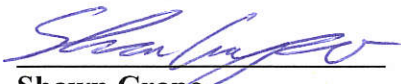
**Date of decision:** December 5, 2018

**Decision:** The Board voted 5-0 to grant variances from the following sections of the Zoning Ordinance:

- Section 204.3 F for lot area of 18,597 s.f.;
- Section 204.3 F for frontage of 124.7';
- Section 202.4 A for a second dwelling in the expanded garage; and
- Section 204.3 A for a garage dormer 13' and a deck 8.7' in the rear boundary.

Each variance was granted upon the following conditions:

1. There shall be a 3-bedroom maximum between the 2 units;
2. There shall be no rentals for a term shorter than 3 months; and
3. Revised plans showing the parking be submitted to the Building Office.

  
**Shawn Crapo,  
Vice-Chairman**

**Note:** This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.



# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/ Owner:**

Carey & Giampa Realty Trust

**Property:**

655 Wallis Road, Tax Map 16, Lot 22

Property is in the Commercial and Single Residence District and Aquifer Wellhead Protection District

**Application case:**

Cases #47-2018 and 48-2018

**Date of decision:**

December 5, 2018

**Decision:**

The Board voted 5-0 to grant a variance from the following section of the Zoning Ordinance:

- Section 202.10 for installation of a septic system on a non-residential lot which will require tree cutting within the 50' residential boundary.

The applicant withdrew without the special exception from section 202.10 for installation of a septic system on a non-residential lot which will require tree cutting within the 50' residential boundary.



**Shawn Crapo,  
Vice-Chairman**

**Note:** This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/ Owner:** Farideth Namazi & Massood V. Sammii, Trustees of  
29 Parson Road Realty Trust

**Property:** 27/29 Parsons Road, Tax Map 20.2, Lot 48  
Property is in the general residence and coastal overlay districts

**Application case:** Cases #55a-2018 and 55b-2018

**Date of decision:** December 5, 2018

**Decision:** The Board voted 5-0 to continue the application to February 6, 2019.

  
**Shawn Crapo,**  
**Vice-Chairman**

**Note:** This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.