

**TOWN OF RYE – BOARD of ADJUSTMENT  
MEETING**

**Wednesday, March 14, 2018**

**7:00 p.m. – Rye Town Hall**

***Members Present:* Chair Patricia Weathersby, Vice-Chair Shawn Crapo, Clerk Burt Dibble, Patrick Driscoll, Tim Durkin and Alternate Charles Hoyt**

***Others Present:* Planning Administrator Kimberly Reed**

**I. Call to Order and Pledge of Allegiance**

Chair Weathersby called the meeting to order at 7:05 p.m. and led the Pledge of Allegiance.

**II. Election of Officers (Chair, Vice-Chair and Clerk)**

**Motion by Burt Dibble to nominate Patricia Weathersby as chair. Seconded by Shawn Crapo.  
Vote: 4-0-1 Abstained: Patricia Weathersby**

**Motion by Burt Dibble to nominate Shawn Crapo as vice-chair. Seconded by Patrick Driscoll.  
Vote: 4-0-1 Abstained: Shawn Crapo**

**Motion by Shawn Crapo to nominate Burt Dibble as clerk. Seconded by Tim Durkin.  
Vote: 4-0-1 Abstained: Burt Dibble**

**III. Baybutt vs. Town of Rye – meeting with counsel**

The meeting was scheduled for Tuesday, April 3, 2018, 6:00 p.m. pending the availability of Attorney Donovan.

**Motion by Shawn Crapo to continue the application of Alice M Lavoie to the April meeting.  
Seconded by Burt Dibble. All in favor.**

**Motion by Shawn Crapo to continue the application of Tom & Tracy Degnan to the April meeting.  
Seconded by Tim Durkin. All in favor.**

**IV. Approval of Minutes: January 3, 2018**

**Motion by Burt Dibble to approve the minutes of January 3, 2018 as revised. Seconded by Shawn Crapo. All in favor.**

## V. Applications:

**Note:** Charles Hoyt was seated for Tim Durkin for the following application.

**Members Seated:** Patricia Weathersby, Shawn Crapo, Burt Dibble, Patrick Driscoll and Charles Hoyt

1. **Timothy J. & Pamela S. Potter for property owned and located at 16 Myrica Ave, Tax Map 5.2, Lot 100-01** request Variances from Section 603.1 for expansion of a non-conforming structure; from Section 204.3C for an addition in the front setback 18' +/- where 30' is required; from Section 204.3B for an addition in the side setback 10'9" and 18' +/- where 20' is required and for a covered seating 0' from side setback where 20' is required; from Section 204.3 A for construction in the rear setback 14'8" where 30' is required and for an outdoor shower 0' from rear setback where 30' is required; from Section 304.5 for dwelling coverage of 16.25% where 15% is allowed and from lot coverage over the allowed 30%; from Section 500.2 for relief from two parking spaces and from Section 500.3 for parking spaces within the front yard. **Property is in the General Residence and Coastal Overlay Districts. Case #02-2018.**

Chair Weathersby explained that at the previous meeting the Board continued the application so the applicant could provide an accurate plan of all intended improvements and distances to the property boundaries.

Mr. Potter noted that the a/c condenser has been moved to the rear setback of the house. The pergola roof will be 1ft from the lot line and the base will be 2ft from the lot line. The pergola patio is being changed to a pervious surface, which will reduce the impervious coverage to 15.93%. He also noted that he submitted a sketch showing the front, rear and side setbacks. The outdoor shower from the original plan has been removed.

The Board reviewed the plan and new information submitted by the applicant.

Zoning Administrator Reed noted that an email has been submitted from Ken and Judy Santorelli who were concerned at the previous meeting about the location of the a/c condenser. They have reviewed the revised plan and are okay with the changes.

Chair Weathersby re-opened the public hearing at 7:40 p.m., (application was continued from the previous meeting in closed session), to read the email from **Ken and Judith Santorelli, 20 Myrica Ave** stating that they have no issues with the revised plans. She asked if there was anyone present from the public who wished to speak to the application. Hearing no comments, she closed the public hearing at 7:41 p.m.

Vice-Chair Crapo stated it is a tight area; however, there is already a tent in the proposed pergola area. The neighbors had concerns about the possible encroachment but that seems to have been alleviated. The changes are reasonable. Getting rid of 1sf of pervious jumps the percentage quite a bit. It is a sensitive number when trying to do something on such a small lot.

Speaking to Member Driscoll, Chair Weathersby noted that he had a number of concerns about the pergola.

Member Driscoll stated he is okay with it now that the main structure is 2ft and the roofline is 1ft. That alleviates some concerns.

Chair Weathersby stated she is good with the proposal. She appreciates the clarity. What is being requested is reasonable. She likes that they are using the existing structure. That alleviates a number of issues regarding fill and grade changes. The Board will be voting on this proposal as presented with the existing house footprint.

Chair Weathersby called for a vote on variances to Sections;

- **603.1 – expansion to the existing house of a second story over the first floor;**
- **204.3 A – rear yard setback of 1ft for the shed;**
- **204.3 B – side yard setback of 1ft for the shed;**
- **204.3 C – front yard setback of 14ft for front entry;**
- **204.3 A – rear yard setback of 10ft for the air conditioning unit;**
- **204.3 B – side yard setback of 16ft to accommodate the porch and eaves for new second floor porch roof and an 8ft setback to accommodate the eaves and gutters;**
- **204.3 B – side yard setback of 2ft for the pergola structure and 1ft for the pergola roofline;**
- **304.5 – dwelling coverage of 16.25% where 15% is allowed; and**
- **500.3 – two parking spaces within the front yard setback.**

**1. Granting the variances would not be contrary to the public interest?**

Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**3. Substantial justice is done?**

Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**6. There is no fair and substantial relationship between the general purpose of the ordinance provisions and the specific application of those provisions to the property?**

Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**8. Therefore, literal enforcement of the ordinances would result an unnecessary hardship?**

Shawn Crapo – Yes  
Patrick Driscoll – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**Motion by Patrick Driscoll to grant the application of Timothy J. and Pamela S. Potter for property owned and located at 16 Myrica Ave for requested variances from Section 603.1 for expansion of a non-conforming structure; from Section 204.3C for an addition in the front setback of 14' where 30' is required; from Section 204.3B for an addition in the side setback of 8' and 16' where 20' is required and for a covered seating area 1' from side setback where 20' is required; from Section 204.3 A for construction in the rear setback 10' where 30' is required; from Section 204.3 A and 204.3 B for rear and side yard setbacks of 1' for the shed; from Section 304.5 for dwelling coverage of 16.25% where 15% is allowed and from lot coverage of 33% where 30% is allowed; and from**



**Section 500.3 for parking spaces within the front yard setback. Seconded by Shawn Crapo. All in favor.**

2. **Lavoie Alice M Rev Trust, Alice M Lavoie Trustee of Epping NH for property owned and located at 0 Richard Road, Tax Map 5.2, Lot 156** requests Variances from Section 601 to build on a non-conforming vacant lot; from Section 304.3 for construction in a non-conforming vacant lot in the Coastal District; from Section 204.3 F for lot of size of 8,395 SF where 44,000 SF is required and from Section 204.3C for a walkway within the 30' front yard setback. **Property in the General and Coastal Overlay Districts. Case #47-2017. Request to be continued to April.**

- **Continued to the MAY meeting at the request of the applicant.**

**Note:** Charles Hoyt was unseated and Tim Durkin was seated for the following application.  
**Members Seated:** Patricia Weathersby, Shawn Crapo, Burt Dibble, Patrick Driscoll and Tim Durkin

3. **Brian & Carrie-Ann Carlson of 690 Lancaster Ave., Lunenburg, MA for property owned and located at 24 Glendale Road, Tax Map 20.2, Lot 129** request Variances from Section 603.2 for replacement of a nonconforming structure with another nonconforming structure; from Section 204.3 C for a building 16.5', a deck 13.7' and a walkway +/- 3' in the front setback where 30' is required; from Section 204.3B for a house 11.8' and a shed +/-3' in the left side setback where 20' is required; from Section 204.3C for a house 14.2' and a deck 7.9' in the right side setback where 20' is required; from Section 500.3 for 2 parking spaces in the front yard setback and for Building Code Relief from Section 7.9.2.5 for a septic 10' from the side setback where 20' is required. **Property is in the General Residence, Coastal Overlay District. Case #03-2018.**

**Attorney Tim Phoenix, representing the applicants,** presented the proposal to the Board. He noted that the property is located on Glendale Ave on a triangular shaped lot. It has a fairly good front and left side distance but is very short on the right side yard. The Shepards own the house directly behind, which is about 8ft from the property line. (He read a letter he received from James Shepard in support of the proposal.) He continued that parking has traditionally been in the right-of-way between the lot line and the travelled portion of the road. The engineer has designed two parking spaces on the property but they are in the front setback and they are asking for relief from 500.3.

There was review of the location of the parking spaces.

Attorney Phoenix continued that the lot is 6,658sf. There is an old functionally obsolete single family home that exists on the lot. The proposal is to tear down the existing home and replace with a new home. The applicant has worked hard to try to center the house so it will fit in as best as possible on the lot. The house is basically on the same site as the old house but it is a little bigger. The specific relief needed is for 204.3, for the front yard setback of 16.5ft to the dripedge, where 30ft is required. The deck and entry is 13.5ft. The left side will be 11.8ft to the dripedge, where 20ft is required. He noted that there are not many locations on the property where the septic can go. The proposal is for the septic to be 10ft from the lot line, where it is currently at 11ft. Relief is also needed from 603.2 for replacing a non-conforming structure with another non-conforming structure.

**Corey Colwell, MSC Engineering**, pointed out that they are allowed lot coverage of 30% and the proposal will be 19.9%. Part of that is due to the patio and deck being made permeable.

Attorney Phoenix commented that the distance from the rear lot line to the house is about 38ft, where 30ft is required. A question could be asked why the house was not moved back. The reason this was not done was to keep the house more centered on the lot. The visual setback in the front is at 30ft. Also, the Shepard house is only 8ft from the rear lot line so they did not want to crowd that house.

Mr. Colwell spoke in regards to the new septic system and its location. He noted that the proposal is for a traditional enviro-septic system. There is no indication that soils are bad, which would warrant a special system. The existing system is inadequate. It is not large enough and is too close to the property line. The reason the system has not failed is because the home has not been used very often up to this point. The State will let a system be located up to 10ft from the property line. There is no other location on the property that the system could be located.

Attorney Phoenix reviewed the criteria for granting the variances.

Chair Weathersby asked about the shed.

Attorney Phoenix noted that the existing shed is being removed and will not be replaced with another shed.

Chair Weathersby asked if the air conditioner is going to need relief.

Mr. Cowell commented that the a/c is 9ft from the property line. This was missed in the relief being requested.

Member Driscoll asked about the plans for the stormwater runoff.

Mr. Cowell reviewed the direction of the flow and the proposal to handle the runoff. He noted that the Building Inspector will require a stormwater management plan prior to the building permit being issued.

Chair Weathersby opened to the public for comments or questions.

**Brian Carlson, property owner**, stated that the current house is pretty much unlivable. The frame and heating system of the current house is old and needs to be replaced. The new home will provide a more updated home for his family that will be used for years to come.

**Jan Olmsted, abutter**, representing the condo association across the street, spoke in regards to their concerns on the location of the proposed septic and leachfield as it relates to the condominium's septic and leachfield. She also spoke on the concerns for the management of stormwater and surface water as the proposed septic and leachfield location collects a lot of water. The condominium association would like to have the opportunity to have an engineer of their choice look at the proposal for the leachfield and the plan for the management of stormwater. She noted that she is concerned about the health of a willow tree planted in that area. The willow was planted there to help with the management of water in that location.

Attorney Phoenix noted that the purpose of the stormwater management plan is to demonstrate that no more stormwater will be leaving the site post-construction from pre-construction. That is a plan that would be required before a building permit is issued. The septic system has to be approved by the State and the Town. He commented that the Carlsons do not have any issue with submitting plans to Ms.

Olmstead; however, they would like to proceed with the project as they are permitted to. The willow tree is on the condominium's property. The proposed deck is about 8ft away from the property line. The corner of the actual building is another 15ft away. He pointed out that the existing home is closer to the lot line than what is being proposed.

Chair Weathersby asked for clarification on the lot coverage.

Mr. Colwell noted that it is 19.9%, where the ordinance requires less than 30%. Presently, the lot coverage is 22%.

Ms. Olmstead asked if this includes the two parking spaces in front.

Mr. Colwell explained it does not include the spaces in front. This is the area that two spaces could fit on the lot. If the parking spaces have to be constructed, they would need to be added to the impervious coverage but it would be miniscule. It would probably be about 20%.

Referring to the proposed parking spaces, Member Driscoll pointed out that it is grass area now. He asked if more stormwater will be going into Glendale Road if that is not a permeable surface.

Mr. Colwell replied that they cannot add more into Glendale. As part of the stormwater management plan they have to prove there is no increase in stormwater over the property line. He commented it will produce more stormwater but managing it on this site is not going to be difficult. The permeable coverage is actually being reduce from what is there now.

Member Driscoll commented that this is not on the lot. It is in the right-of-way.

Mr. Colwell explained that the same principles apply. There cannot be an increase onto the State right-of-way. That will be looked at by the Building Inspector. He commented that he will make sure the parking is included in the stormwater management plan.

Hearing no further questions or comments from the public, Chair Weathersby closed the public hearing at 8:39 p.m.

Member Driscoll stated the proposal is reasonable. He likes where the house is positioned on the lot. It is not a massive house. They have put thought into the stormwater management plan. The plans for the house are reasonable. The concerns of the abutters are reasonable as well. However, the Town has stops in place to help protect abutters. He is in favor of the proposal.

Vice-Chair Crapo stated they have addressed quite a few issues. Replacing the septic will replace the soils and allow it to leach, which appears to be not leaching now. That would be a benefit.

Member Dibble commented that it is clear in his mind that this is going to enhance the property values in the neighborhood.

Chair Weathersby stated it is certainly going to improve the environmental conditions. This is very close to Wallis State Beach and there have been some issues. A new to code septic system that meets requirements will be good. She is for the proposal.

Member Durkin agreed. He thinks the scale is reasonable given the configuration of the lot. The applicant has done a good job trying to balance the size of the structure with the challenges of the lot configuration.

Chair Weathersby called for a vote for variances requested to Sections 603.2, non-conforming structure, 204.3 C, front yard setback (16.5ft for the building, 13.5ft for the deck and 3ft for walkway), 204.3 B, left side setback (11.8ft for building and 9ft for a/c unit), 204.3 B, right side setback (14.2ft for house and 7.9ft for deck) and 500.3, parking within the setback.

**1. Granting the variances would not be contrary to the public interest?**

Shawn Crapo – Yes  
Tim Durkin - Yes  
Patrick Driscoll – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Tim Durkin - Yes  
Patrick Driscoll – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**3. Substantial justice is done?**

Shawn Crapo – Yes  
Tim Durkin - Yes  
Patrick Driscoll – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Tim Durkin – Yes  
Patrick Driscoll – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Tim Durkin - Yes  
Patrick Driscoll – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

- 6. There is no fair and substantial relationship between the general purpose of the ordinance provisions and the specific application of those provisions to the property?**

Shawn Crapo – Yes  
Tim Durkin - Yes  
Patrick Driscoll – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Tim Durkin - Yes  
Patrick Driscoll – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

- 8. Therefore, literal enforcement of the ordinances would result an unnecessary hardship?**

Shawn Crapo – Yes  
Tim Durkin - Yes  
Patrick Driscoll – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**Motion by Shawn Crapo to grant the variance relief requested as read by Chair Weathersby prior to the vote of the Board; with the condition that a stormwater management plan be provided to the condominium association prior to the application for a building permit. Seconded by Patrick Driscoll. All in favor.**

Chair Weathersby called for a vote on building code waiver to 7.9.2.5:

- **Would enforcement of building code 7.9.2.5 do manifest injustice and would be contrary to the spirit of the building code and public interest?**

Crapo – Yes, Durkin – Yes, Driscoll – Yes, Dibble – Yes, Weathersby - Yes

**Motion by Shawn Crapo to grant relief from Building Code Section 7.9.2.5. Seconded by Tim Durkin. All in favor.**

**Note: Charles Hoyt was seated for Patrick Driscoll.**

**Members Seated: Patricia Weathersby, Shawn Crapo, Burt Dibble, Tim Durkin and Charles Hoyt**

- 4. Ryan & Cathleen Rickarby for property owned and located at 22 Myrica Ave, Tax Map 5.2, Lot 101** requests Variances from Section 603.1 for expansion of nonconforming structure; from Section 204.3A for construction in the rear setback of 5.32 ft for an open deck, 9.49' for a garage where 15ft is required (1/4 of lot depth); from Section 204.3B for construction in the right side setback of 14.13 ft for dripline, 15.13 ft for wall and on the left side 5.75 ft for garage dripline and 6.75 ft for garage wall where 20' if required; from Section 204.3C for construction in the

front setback of 15.19ft for stairs, 16.51ft for porch dripline and 17.05 ft for porch wall where 18.2 ft is required (average of homes either side) from Section 304.5 for dwelling coverage of 32.6% where 15% is allowed and from overall coverage of 34.9% where 30% is permitted and from Section 500.2 and 500.3 for 2 parking spaces within the front setback. **Property is in the General Residence, Coastal Overlay District. Case # 05-2018.**

**Attorney Tim Phoenix, representing the applicants,** presented to the Board. He explained that it is a small lot at 4,232sf with 70.6ft of frontage. The existing one story cottage is covering 1,027sf with a total overall coverage of 1,891sf or 44.7%. This is one of the original Myrica by the Sea Subdivision lots and had been in its existing size for decades. The proposal is to remove the roof on the existing home and add a second story. The basic shape of the building will not change. A narrow covered porch will be added in the front. The shed on the site will be removed and a one car garage will be added. There will also be a small deck to the rear of the home. The porch is about 4.25x20ft with some access stairs. The porch in the rear is about 5x10ft roughly the same distance from the lot line as an existing bulkhead. The garage is a one car garage because the lot did not allow for a two car garage. Mrs. Rickarby suffers from Parkinson's and it is important for her to be able to park undercover with close access to the house. Having the garage would be very helpful to their lives. Right now, the rear yard setback is 5.61ft to the bulkhead, where 15ft is required. It is about 8ft to the dripline and 10ft to the wall. The proposal is for 5.32ft and about 9.5ft to the closest portion of the garage in the rear. The right side setback requirement is 20ft. The existing wall is 15.13ft. The proposal is to keep it at 15.13ft; however, the dripline will be a little closer because the new roof will have a 1ft overhang. The left side is .03ft to the shed, about 11ft to the deck and about 19ft to the wall of the home. The proposal is for about 6.7ft to the wall of the garage. The front yard requirement is 18.2ft, which is the average of homes on either side. Right now, it is 15.81ft to the stairs and the proposal is for 15.19ft. It is now 19.69ft to the dripline and it will be 16.51ft to the porch. It is now 21.17ft to the wall and the proposal is for 17ft to the porch wall. He noted that while they are asking for relief from the setback, the visual setback is roughly another 20ft. Presently, the parking is one car on the lot but fully in the setbacks and one partly on the lot and partly off. Both of the parking spaces will be on the lot but within the setback so relief from 500.3 is needed. The coverage permitted is 15%. Right now, it is 24.3% and the request is for 32.6%. The primary reason for the increase is because of the addition of the one story garage. The applicants have agreed to remove the impermeable driveway and walkway on the site and replace it with permeable. That will decrease the overall lot coverage from 44.7% to 34.9%. He noted that letters of support have been received from:

- **Margaret McCue, 15 Myrica;**
- **T.J. Potter, 16 Myrica;**
- **Pam Potter, 16 Myrica;**
- **Ken & Judy Santorelli, 20 Myrica;**
- **Rosemarie Roach, 24 Myrica;**
- **Anne Collins, 26 Myrica; and**
- **Leanne and Jim Gonzales, 31 Myrica**

**Ryan Rickarby, property owner,** stated that they have been living in the house for two years. They hope the project is reasonable for the neighborhood. They are not trying to build too much more than what everyone else has done in the neighborhood. He noted that the Santorellis stated in their letter how they were in favor the project with the garage, which is on their side of the property.

Attorney Phoenix reviewed the criteria for granting the variances.

Chair Weathersby asked if there were any FEMA issues.



**Alex Ross, Ross Engineering**, noted that the site is not in a flood zone. There will be a stormwater management plan. The area is relatively flat with a little bit of a depression on the lot so it receives stormwater from other areas. The small garage with the permeable pavers will be an improvement.

Chair Weathersby opened to the public.

**T.J. Potter, 16 Myrica Ave**, spoke in favor of the proposal.

Hearing no further comments, Chair Weathersby closed the public hearing at 9:18 p.m.

Member Hoyt stated it is a modest solution to a very challenging and small site. He does not have any problems with the application.

Member Durkin agreed.

Chair Weathersby stated that what she particularly likes is the actual reduction in impervious coverage.

Vice-Chair Crapo stated this is not one of the “hot spots” in that neighborhood for water and runoff. It is modest request. The applicants have done their pencil sharpening to put forward the best possible solution.

Chair Weathersby called for a vote on requested variances to Sections 204.3 A, (rear yard 5.32ft for the deck and 9.49ft for the garage), 204.3 B (right side 14.13ft and 15.13ft for the wall. Left side 5.75ft and 6.75ft for dripline), 204.3 C, (front yard 15.19ft from the stairs, 16.51ft from dripline and 17.05ft for porch wall), 304.5, coverage, 500.3, parking within the front setback and 603.1, expansion of a non-conforming structure:

**1. Granting the variances would not be contrary to the public interest?**

Shawn Crapo – Yes  
Tim Durkin - Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Tim Durkin - Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**3. Substantial justice is done?**

Shawn Crapo – Yes  
Tim Durkin - Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes

Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Tim Durkin – Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

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

Shawn Crapo – Yes  
Tim Durkin - Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**6. There is no fair and substantial relationship between the general purpose of the ordinance provisions and the specific application of those provisions to the property?**

Shawn Crapo – Yes  
Tim Durkin - Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

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

Shawn Crapo – Yes  
Tim Durkin - Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby - Yes

**8. Therefore, literal enforcement of the ordinances would result an unnecessary hardship?**

Shawn Crapo – Yes  
Tim Durkin - Yes  
Charles Hoyt – Yes  
Burt Dibble – Yes  
Patricia Weathersby – Yes

**Motion by Burt Dibble to grant the relief requested by Ryan and Cathleen Rickarby for property owned and located at 22 Myrica Avenue as advertised, with the exception of the relief to Section 500.2. Seconded by Tim Durkin. All in favor.**



5. **Degnan Family Revocable Trust, Tom & Tracy Degnan for property owned and located at 41 Park Ridge Road, Tax Map 19.4, Lot 20** request Variances from Section 603.1 for expansion of nonconforming structure; from Section 204.3A for construction in the rear setback where 15.6' exists, 11.7' is proposed and 30' is required; from Section 204.3B for construction in the side setback where 17.9' exists, 12.09' is proposed and 20' is required; from Section 305.5 for dwelling coverage greater than 15% where 1241sq. ft exists, 1273 sq. ft is proposed and 1267 sq. ft is allowed. **Property is in the General Residence, Coastal Overlay District. Case # 06-2018.**

- Continued to the April meeting as requested by the applicants.

**Note:** Charles Hoyt was unseated and Patrick Driscoll was seated for the following petitions and application.

**Seated Members:** Patricia Weathersby, Shawn Crapo, Burt Dibble, Patrick Driscoll and Tim Durkin

- Petition by Hoefle, Phoenix, Gormley & Roberts, PA on behalf of Joel & Lauren Feid for a Rehearing and Reconsideration of the Rye Board of Adjustment's December 6, 2017 denial of the Feid's Variance requests for the property located at 0 Brackett Road, Tax Map 17, Lot 34-2, Case #44-2017. **Public hearing closed during Board discussion on the request –**

Speaking to the Board, Chair Weathersby asked if they have read and understand the petition for Motion for Rehearing.

The Board confirmed.

Chair Weathersby stated that the Board has the opinion of counsel. RSA 677:33 allows the Board to grant or deny a request for a rehearing within 30 days or suspend the order of decision pending further consideration. Her preference would be that they suspend the order of decision on the December 6<sup>th</sup> denial pending further consideration. The Board can make a decision to grant, deny or suspend.

Vice-Chair Crapo stated that given the new application may have a bearing on the case at hand it would make sense to suspend the decision.

The other members agreed.

**Motion by Shawn Crapo to suspend the Board's order of decision of December 6, 2017, on Case 44-2017, pending further consideration. Seconded by Burt Dibble. All in favor.**

- Motion for dismissal for lack of standing and lack of jurisdiction – Submitted by Richard Snierison, 711 Brackett Road**

Chair Weathersby noted that the Board has the Feids' objection and Mr. Snierison's reply. The Board has letters from Attorney Donovan from March 5<sup>th</sup> and February 2<sup>nd</sup>. Based on the information, it would be her suggestion that they deny the Motion to dismiss for lack of standing and lack of jurisdiction based on the reason set forth in town counsel's memo.

Member Driscoll asked what Attorney Donovan means when he said that he recommends the request be placed on file and not acted upon.

Chair Weathersby explained there was a request for dismissal from Mr. Snierison and that was addressed in the February 2<sup>nd</sup> letter. There was a new motion submitted for lack of standing and lack of jurisdiction and that was addressed in the March 5<sup>th</sup> letter.

Vice-Chair Crapo commented that the February 2<sup>nd</sup> refers to the January 26<sup>th</sup> request and the March 5<sup>th</sup> letter refers to the February 27<sup>th</sup> request. That is the one that Chair Weathersby is recommending be denied.

**Motion by Shawn Crapo to deny the request for Motion to Dismiss for the lack of standing and lack of jurisdiction, dated February 27, 2018. Seconded by Burt Dibble. All in favor.**

- **Petition to postpone 2<sup>nd</sup> appeal while 1<sup>st</sup> appeal is still pending – Submitted by Richard Snierison, 711 Brackett Road**

Chair Weathersby noted that the request is dated February 27, 2018. The Board has Mr. Snierison's motion and the applicants' objection. Mr. Snierison has asked the Board to postpone the new application as he believes there should not be two cases for the same property before Board at the same time. There were other grounds that the Board had not heard from the Conservation Commission. She noted that because of the Board's delay the application has gone before the Conservation Commission and they have weighed in on the project. The Board has Attorney Donovan's recommendation in his letter dated March 5, 2018.

Member Durkin asked if the first application has been withdrawn.

Chair Weathersby explained the first application came before the Board and the variances were denied. The applicants asked the Board for a rehearing. The Board has not acted on that motion for rehearing other than to just now suspend the decision of December 6, 2017.

Member Durkin commented that there is now another application.

Chair Weathersby confirmed.

Member Durkin stated that there will now be two applications for the same property.

Member Driscoll stated that Attorney Donovan stated that he cannot find a reason why this can't be done.

Chair Weathersby explained that if the new application is heard the Board will need to decide if the application is materially different. If it is materially similar it can't be taken up. The Board will start with that question. She continued that Mr. Snierison has asked the Board to postpone the second application until the first application is dealt with.

Member Durkin stated that he does not see any basis for postponement based on everything that he has read. There is nothing preventing the Board from hearing the second application while the first one is suspended.

Vice-Chair Crapo stated that if the application is materially different it could have a different outcome. He sees no reason to not move forward.

**Motion by Shawn Crapo to deny the abutter's motion to postpone the second application while the first appeal is pending, dated February 27, 2018.**

Member Driscoll stated that the applicant has a request for rehearing but what would they be gaining by postponing this until the first one is heard?

Chair Weathersby stated that if the new application is postponed and the application is reheard, it would be scheduled for the next month. The Board would make a decision on that. If that was denied, the new application would be before the Board in May at the earliest, if it is materially different.

**Burt Dibble seconded the motion on the floor to deny the motion to postpone the second application while the first application is pending. All in favor.**

**Motion by Shawn Crapo to continue the application of Komersik to the April meeting. Seconded by Burt Dibble. All in favor.**

6. **Joel & Lauren Feid of 7 Skyview Drive, Greenland NH for property owned by Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely of 216 Caney Court, Prince Frederick, MD and located at 0 Brackett Road, Tax Map 17, Lot 34-2 requests Variances from Section 301.8A.2 and Section 301.8 B(1), 5.b and (7) to allow for surface alteration and cutting of trees greater than 4 ½ inches in diameter within wetland buffer and requests relief from the Building Code Section 7.9.3.2 for bottom of the effluent disposal system 2' above the seasonal high water table where 4' is required. Property is in the Single Residence District. Case # 07-2018.**

Chair Weathersby stated that before the Board takes up any merits of the application she would like to hear from the applicant how they feel it is materially different.

**Attorney Phoenix, representing the applicants**, presented to the Board. In regards to the two pending matters, he stated that if the second appeal is granted the first appeal would be withdrawn. Until it is found by the Board that this meets the requirements for a second application, he cannot withdraw that because if a court found differently there would be nothing because it is gone. He continued that the applicable case law is Fischer v. Dover, which is cited in his March 5<sup>th</sup> objection to the motion to postpone. The Fischer v. Dover case was a 1980 case which said there must be a material change in circumstances or that the application material differences differs in nature and degree from its predecessor. This application has to be found to be materially different enough that the Board can allow it to go forward, even though the first one was denied. A second reason came forward in the Hillgrant Living Trust v. Kearsarge in 2009, which says the Fischer restriction does not apply to a subsequent application explicably or implicitly invited by the ZBA and modified to address its concerns. When the variances were denied back in the December, the primary concern of Member Durkin was why the home could not be located entirely outside the buffer. Member Driscoll stated that he might be able to get behind the project but there was no stormwater management plan and there was little information about the tree cutting. There were also concerns about the septic system being in the front and the groundwater. Member Dibble's comments were more in relation to the effect on groundwater and what was going on. He continued that the applicant and his team took those comments to heart. What has been done is both materially different and addresses those concerns expressed by the Board. The entire home is now outside the 75ft wetland buffer. The entire patio is outside the 75ft wetland buffer. The shed that was in the side line previously has been removed. The trees to be cut are down to 12 trees. There is now a stormwater management plan showing how the stormwater will be treated. The clean solutions septic system has been moved from the front to the back. It is outside the buffer with one corner being about 2ft to 2.5ft above the water table. Any concerns from the Board about whether the system will cause any danger to the groundwater can be addressed at this meeting. The type of septic system that is being proposed meets the requirements and recommendations of the type of system that should go in a sensitive

area. He noted that the December application needed wetland buffer relief for the house, disturbance to create a yard, patio and shed. This application only needs relief for surface alteration to allow for the cutting of the trees and to allow the septic system 2ft, or more, from seasonal high water, where 4ft is required. He pointed out this meets the State requirement. He reiterated that this is one of those types of systems that is recommended here. For all of those reasons, this application is materially different because it requires significantly less relief and it addresses the concerns of the Board from the last time. He noted that this application went before the Conservation Commission at their last meeting. They conducted a site walk and a letter has been sent to the ZBA. He stated that given this is a valid house lot and people have the right to build on their house lots. The Board has to weigh the taking of several hundred thousand dollars of property from someone, and the right of someone to live on it, against the relief that is being requested. When those things are balanced, he thinks it is fair and makes perfect sense, and would be violating the law, to not let the applicant proceed on this second application. Particularly, when he has said the first one will go away when this one is final.

Member Driscoll asked about the trees being cut.

Attorney Phoenix explained that trees can be cut that are less than 4.5 inches in diameter that are up to 4ft high. There are 12 trees that are 4.5 inches or more in total. There were a few more but the applicant had reduced the number on his own and at the request of the Conservation Commission he has reduced it even more. Mr. Feid is willing to abide by all the recommendations of the Conservation Commission.

Chair Weathersby opened to the public for comments on the application being materially different.

**Richard Snierison, 711 Brackett Road**, stated that he lives right next door to the property. They share a common boundary of 486ft. He continued that he thinks *there is* (sic) a material difference in that it is the same use. A single family residence on the same lot. In the Fischer v. Dover case they weren't changing the use. There were minor changes. Here, he does not think under the law it is a material change. It is true there is some language in the other case about the applicant making changes in his plan due to the suggestion of the Board; however, there are still the same problems. They are still trying to intrude into the wetlands. When this was approved for a house in the back there was a 50ft buffer. The applicant seems to feel they are entitled to that. It is clear that there is no entitlement to that 50ft buffer by the applicant or the Ceelys. That was long ago. In one of the letters the Town Attorney said that the lot is subject to all the zoning and land use regulations in existence now. In that sense, that is not a material change because they are still trying to get into the wetlands buffer, cut trees, dig out the roots and make changes. That is a substantial intrusion into the wetlands buffer.

Vice-Chair Crapo asked if his interpretation of the threshold for material change is if there is any similarities there is no material change. He pointed out that all the similarities were just listed. The Board is trying to decide on how it is materially different. What he is hearing is that because it has similarities it can't be materially different.

Mr. Sneirson stated that he does not think the differences outweigh the similarities.

Chair Weathersby stated that the first reason that was given was that this is the same use on the same lot. It was a single family home the first time and they are back with another single family home, therefore it is not different. She asked Mr. Sneirson if he thinks this holds true in all cases where there is a lot and someone comes in with a proposal that is just not going to fly. The proposal goes before the Board and they say it is asking for too much. They go away, maybe the same applicant comes back, maybe it's someone different, maybe it is ten years later, but they already tried it once and the same variances for the property were denied. Then a second project comes in that is much smaller, located in a different spot or maybe it is this lot and the house is located in the back. Speaking the Mr. Sneirson, she stated that under

his analysis if the house was moved to the back, it would be the same use on the same lot. She asked if he is saying that the Board could not hear that either.

Mr. Sneirson stated that this question came up in a different way last time. Originally, his interpretation of the Planning Board's approval was that the only buildable area was in the back. He has come to see that this would not be a good idea, even though he still believes the Planning Board approved the back and not the front. It would not be a good idea with a 75ft buffer because of the fact that 300ft of the driveway would have to be in the buffer. On one side the water line would have to go in 4, 5 or 6ft deep on the cross line and on the other side the electric and other utilities would be separate. He continued that he does not think the lot should be built on in either place. They have reconfigured the house a little bit but they still need variances and relief from the building code. Also, there is a Land Development Regulation (LDR), which he will get into later. He noted that it is clear that the building inspector enforces the Land Development Regulations. He knows this Board does not like to get into the Land Development Regulations because it can't grant subdivisions and the Planning Board cannot grant variances. However, the zoning board is the supervisory authority over the building inspector. The building inspector is charged with enforcing the Land Development Regulations to the extent that he has to make sure the property complies with the Zoning Ordinance and the Rye Building Code; also, with the Land Development Regulations in the sense that sometimes there are area requirements. In getting back to this case, sure they have reconfigured things and "shoehorned" things even more to get it out of them out of the wetland, but it is asking way too much and way too little. In that sense, it is not a big difference. That is why it is not a material difference.

Chair Weathersby opened to other comments on the material difference of the application.

**Jaci Grote, representing the Conservation Commission**, stated that the new plan is different in that it addresses the concerns of the Conservation Commission in regards to the placement of the home and the septic system. It is a different design and addresses the concerns the commission had originally. Actually, it has addressed all of them.

Attorney Phoenix stated that a material difference is they now have the support of the Conservation Commission. He commented that the ZBA does not deal with LDR's. That is the Planning Board. He continued the use argument is a red herring at best because this is a residential lot. Any use on that lot is going to be a home. He thinks they have met the concerns of the Conservation Commission and the concerns stated by the ZBA. The changes make the overall application materially different. While there are some similarities, on an overall basis it is materially different and he hopes the Board will let them move forward. He reiterated that if this is successful the more impactful proposal will go away.

Mr. Sneirson stated that while the Rye Conservation Commission did come back with a better letter the third time then they did with their first or second letter, it says that they still have the concerns in their prior letters, especially from their first letter where they talk about transformation and related concepts. As he read the second later, even though it wasn't said directly, they felt the building in the front was the lesser of two evils, as compared to the back, but this does not necessarily make it proper. In the third letter, they do say they still have some of those concerns regarding the water table and other things.

Attorney Phoenix read from the Rye Conservation letter;

***"In summary, the Rye Conservation Commission is in favor of the current plan with the following recommendations..."***

He noted that the Feid's are willing to implement those recommendations.

Chair Weathersby closed to the public, on the application being materially different, at 10:22 p.m.



Member Dibble stated that Attorney Phoenix has clearly stated that the intrusions into the 75ft setback are no longer present. Where there was a question about lot line encroachment with the shed, the shed is now gone. There was a concern about the placement of the septic system and that issue has been resolved in the new plan. It looks like there are significant meaningful differences.

Vice-Chair Crapo pointed out the shed was in the buffer, not an encroachment on someone else's property. He continued they have moved the septic to the rear, adjusted the building and taken away its intrusion. They are still requesting variances for the impacted area. His boiled down interpretation of Fischer v. Dover is it's an attempt to not waste the Board's time with someone coming in with an application for a house, the Board denies it and they shave off 10% or take off a window. The general purpose is to not keep minimalizing something, changing it slightly and keep coming in. Here, the proposal has definitely changed. None of this application is looking at the rear. The arguments about the Planning Board saying the only location is in the rear, the Board has already heard testimony before that **only** was not a factor in that. It was a possible location. He does not think any of that rules this out. Obviously, under Fischer v. Dover, they are not going to force someone to come in with a completely different use. He thinks he can draw a conclusion that it is materially different. None of the Board's requirements make them have to come to a threshold of 5% or 80% difference. "Materially" is kind of ambiguous. This application addresses many of his concerns and reasons behind his denial previously.

Member Driscoll stated he thinks it is substantially different.

Member Durkin stated he thinks it is materially different; although, he still thinks the variance request for the disposal system being 2ft above the seasonal high water table is a significant issue.

Chair Weathersby pointed out the 2ft request is similar but the septic is in a different location.

Member Durkin stated that overall in his mind the proposal is materially different.

Chair Weathersby agreed. The house is in a different location. The septic is in a different location. There will be more information with a stormwater management plan that the Board did not have before. There is information about the trees being cut, which was not available before. In her mind, this is materially a very different application and should be taken up in its merits.

Vice-Chair Crapo commented that he could buy the argument that some of the Board's comments with the other case was an invitation to change it and come back.

Chair Weathersby stated that she would not go that far.

Member Dibble stated that it seems fair enough that if the Board has a discussion about a project and they voice concerns about it that leads to a denial it becomes a matter of public record. It doesn't necessarily mean that the Board is trying to help anyone out or endorse anything. There has been testimony from Attorney Phoenix that he operated off his memory of the hearing and the minutes. That is the public record and he brought the case before the Board based on the public record.

Chair Weathersby stated that she does not think they said "hey if you do x, y and z we would really get behind this application". That is not what the Board does. The applicant listened to the Board's concerns and came back with a proposal.

Chair Weathersby called for a poll of the Board on if they felt the application was materially different:

- Shawn Crapo – Yes
- Burt Dibble – Yes
- Tim Durkin – Yes
- Patrick Driscoll - Yes
- Patricia Weathersby - Yes

**Motion by Tim Durkin to proceed with the second application, as the Board has found the second application to be materially different from the first application. Seconded by Burt Dibble. All in favor.**

Chair Weathersby opened up to the applicant for their presentation.

Attorney Phoenix stated that he is going to be brief because he has already explained verbally what changes they have made. He is going to turn the presentation over to Corey Colwell, who will explained the details of the changes, the stormwater and tree cutting. Gary Spaulding will explain the septic system; the difference between it being located in the front versus the back, how it operates and why it is a reasonable system at 2ft given the way the system functions. After those presentations, he will deal with the variance requirements.

**Corey Colwell, MSC Engineering**, stated that the project has been before the Conservation Commission three times. The biggest thing that the Conservation Commission said, and he believes this Board said, was that the buffer impact had impervious features that they did not like in the buffer. He continued that they have reduced the size of the home and the patio, and then pulled them out of the 75ft buffer, such that what is proposed now has not 1sf of impervious area in the 75ft buffer. That is the biggest difference. The only activity will be some tree cutting and associated with that, will be some stumping, therefore some grading in that area. Additionally, the driveway was revised. In the previous plan, the garage was on the south side of the house and the driveway was on the north side. The driveway went straight in. He noted that they have added a loop (turnaround) and made the driveway longer so the grade could be reduced. Part of the problem before was the lot slopes towards Brackett Road. With the longer driveway, the grade from Bracket up to the garage has been reduced. The shed previously in the side yard setback has been pulled out of the setback and added to the other side of the garage. The septic system has also been relocated from the front to the back of the house.

Mr. Colwell noted that the Board has a copy of the Stormwater Management Plan in their packets, which did not previously exist. (He pointed out on the plan the high point of the lot at elevation 21 – 22). He stated that the contours are such that everything drains from the high point towards the wetland and towards Brackett Road. The plan is to not have the stormwater going towards the wetlands and have it go the other way with some treatment before it gets to the wetlands. (He pointed out the impermeable area on the plan that is designed to capture all the roof runoff in the back of the garage. He also pointed out the half of the house where the runoff goes into the permeable patio, which allows for infiltration of the stormwater. There will be a swale created at the back of the home to capture the water from the high point and the roof, which will be diverted around the home and into a raingarden. There will also be another impermeable walkway to help infiltrate some of the stormwater coming off the garage. He pointed out the swale at the side of the patio, inside the buffer, which will divert runoff around the side of the house into Brackett Road where there is a natural drain flow going south to north.) He stated that they are not increasing runoff from the site. The runoff will now be treated much more than it was in the past. (He pointed out the location on the plan for the septic system. He also pointed out the location of the septic on the first plan.) He noted that the septic test pits on the front and back of the lot were very similar. When the house was moved down it cramped the front area and the septic system has to be moved to the back. He stated that Gary Spaulding will explained the details of the septic system.

Member Driscoll asked for clarification on the buffer plantings and any restrictions that may be proposed for lawn fertilization.

Mr. Colwell explained that back when the house was in the buffer, they proposed a 10ft native planting along the 50ft buffer. When the house was pulled back, that was withdrawn; however, the Conservation Commission has recommended a 10ft planting along the 50ft buffer but it only needs a third of the plants that were originally proposed. That is in the letter for recommendation from the Conservation Commission and the applicant has agreed. He pointed out what is not shown on the plan is the 10ft native planting buffer that the applicant has agreed to. The native plantings will provide more treatment to the runoff to the buffer.

Vice-Chair Crapo noted that the house has been pulled back. There will be some digging for the foundation and there will be some disturbance into the buffer, which is a reason for the variance. He asked if this is right at the buffer or is there some setback to mitigate some of the overdig.

Referring to the Stormwater Management Plan, Mr. Colwell pointed out the contours. He explained there is some slight grading that has to happen in order to get the stormwater to work. That will be the biggest buffer impact. There will be some slight grade changes in order to improve the stormwater. The grading goes as much as 20ft into the buffer; however, it is necessary to get the stormwater to flow correctly.

Referring to the plan, Member Driscoll asked about the trees that will be removed.

Mr. Colwell stated that the trees that will be removed are shown on the Tree Sketch Plan. The red circle means the trees will be staying. There are 19 trees that are shown on the plan. The trees without the circle will be cut.

Chair Weathersby asked if 12 trees are being removed or 11 trees. The Conservation Commission's letter references 11 trees.

Mr. Colwell replied that there are 19 on the Tree Sketch Plan with 7 to be saved. There are 12 trees being removed. There are 2 trees really close together near Brackett Road, which could be the confusion.

Attorney Phoenix pointed out the Fieds have agreed to no mulch in the buffer, no irrigation and fertilizer has been limited to organic treatment. Also, the relocation of a stonewall has been eliminated from the plan and will remain as it is. Mr. Feid has agreed with all the recommendations of the Conservation Commission. The purpose of the buffer is to protect the wetland. The Conservation Commission has agreed, the wetland scientist has agreed, and they hope the Board will agree, the wetlands are going to be protected.

**Gary Spaulding, Spaulding Design Consultants**, explained that the original design that was proposed for the front, was always designed to be a Clean Solutions System. One thing about the original design, anything that goes into the distribution box goes into a leachfield. When it goes into the distribution box there could be five or six lines that go out of the distribution box, like fingers, into the leachfield. What happens in that case, is the effluent goes in and typically only goes down 3 or 4ft, down the length of the line, before it percolates into the soil. The front of the system is being overloaded. All the studies that have been done say 3 to 4ft because of the high impact at the front of the field. An average use per day is about 300 gallons for a four bedroom home with 600 gallons on the weekends. If the leachfield is being loaded in the first 2 or 3ft, the front of it is being overloaded and a higher separation may be needed. He continued that in this case, they are proposing a Clean Solution out back which will be designed with a GeoMat leaching system, which is a pressurized system. (He submitted a diagram showing how the Clean Solutions system works and reviewed for the Board. He also submitted information on the GeoMat



system and explained how the system will work on the property.) He noted that the GeoMat leachfield is a very thin leachfield. Also, the fabric that is on the outside is a wicking fabric. When effluent is loaded onto the fabric it will go right into the soil. The capillary action between the soil and fabric spreads it out. In a tradition system, the effluent goes into the front and drops out in the first 2 to 3ft. With a pressurized system, there are four runs that range from 19 to 25ft long that are pumping to the leachfield. Each one of the runs will get the same amount of effluent and will disperse it throughout the whole system. The effluent is no longer being loaded into the field. There is a higher effluent to soil content, which means it is a greater treatment system. He continued that with a conventional gravity system water goes in and then into the ground. Here, the system has been designed with a pump with a timed system. Once the flow goes up, the pump will send a signal to the panel and it will dose the field at micro doses spread out through the day. (He reviewed sample test results of effluent going through a Clean Solutions and GeoMat system.) He summarized that pressure distribution gives a high level of treatment because the effluent is being spread out over a larger area with equal dosing timed throughout the day. The other reason for this system is that most systems have a bottom of the bed 24 inches below the grade. There is less oxygen to the soil at 24 inches. There is less oxygen to break down and treat the waste water. This system can be within 8 inches of the surface. Keeping the system up in the soil gives a high level of treatment just based on oxygen level in the soil. Along with that, there is vegetation that takes up the nutrients in the soil which provides a better treatment level to the waste water.

Member Durkin asked why the system is being designed to be just 2ft about the seasonal high water table. He asked why they did not design a system that conforms to the 4ft requirement.

Mr. Spaulding explained that they are using a technology that allows a higher level of treatment. Even if they went to the 4ft and used conventional waste water, the front of the field would be overloaded and the treatment would be less. Having better technology that spreads it out over the system to have a higher level of treatment is what should be done.

Member Driscoll asked if this system at 2ft is better than using a 4ft system.

Mr. Spaulding replied yes. If there is 600 gallons of effluent per day and it is sent out to the leachfield, it is only going 1 or 2ft into the sand. That is putting 600 gallons of effluent into an area that is only 40sf. In this case, the effluent would be put into an area that is 270sf. It is a higher level of treatment.

Member Durkin asked who asked if it is the building inspector that looks at the septic design and says that the design will compensate for the reduction in the seasonal high from 4 to 2ft.

Member Driscoll commented that Rye hires Dennis Plante as a consultant.

Chair Weathersby explained there is no independent engineer that inspects every septic design on behalf of the Town. It is up to the Board to decide. Dennis Plante reviews the plans.

Member Driscoll asked how many Clean Solutions systems have been installed in Rye.

Mr. Spaulding noted that they have installed and maintain 80 or 90 systems in Rye. He explained that his company supplies the product from different designers. Dennis Plante has reviewed those 80 or 90 systems, which have been approved and are functioning in the Town. Looking at the conventional systems, there is no oversight. There is no one inspecting those systems to make sure they are even working properly or that the owner is maintaining the system. He stated that the whole idea of 2ft, based on the Parsons Creek Report, if property owners are going to a higher level of treatment the tradeoff and relief would be closer to the water table. This system far meets the expectations in the report.

Chair Weathersby noted that the report states a system can go 2ft if certain specifications are met.

Mr. Spaulding agreed. (He read from table 4 of the report, Performance Requirements.) Under the table it says 2 to 3ft of separation if a treatment performance can be brought down to ten to twenty thousand CFU's per 100ml. He noted that this system is below 1,000. In looking at the efficiency level for the removal of fecal it is 99.97%.

Attorney Phoenix noted that they start out with much cleaner effluent leaving the tanks than with a conventional system. A conventional system is at 4ft and no one is minding the store. These systems have to have a maintenance agreement. He continued that the 4ft requirement in Rye was likely passed when there were only conventional systems. Because of the way they work and everything loading the front, the extra distance was needed properly treat the more dirty water going into the leachfield. Now, there is cleaner water going into the system, with a system that treats much better, so the 2ft would be much better than 4ft with a conventional system. He noted that he has been before the Board and has had variances granted for less than 4ft.

Vice-chair Crapo asked if there would be a benefit to moving the system to the State required 10ft setback, versus the Town's 20ft, to create more setback for the buffer.

Mr. Colwell stated that if they moved it there would be 85ft to the buffer. Is there a benefit to having 85ft versus 75ft?

Mr. Spaulding replied that treatment wise there would not be any benefit.

Member Driscoll asked how much overdig there will be with the installation of the system.

Mr. Spaulding noted they will be out roughly 5ft just to do the contour but that is just the fill.

Chair Weathersby asked if is mandatory for the property owner to have a maintenance contract on the septic.

Mr. Spaulding replied yes.

Chair Weathersby asked how that is enforced.

Mr. Spaulding replied that the Town's Building Inspector is right on top of this. Every year his company will send out a notice listing the homeowners who have forgotten about this maintenance. The Building Inspector will contact those owners and they contact his company to follow up on the inspections. He noted that the Clean Solutions system has been used in New Hampshire since 1995. The original owner of the company sold him the rights to the company. Another owner would take over in the case of retirement. The systems have been in use for a long time. There are 2200 systems in New Hampshire that his company maintains.

Member Dibble commented there is a great deal of pressure in the Town to do something about Parson's Creek. He does not think the Town is going to give up and forget about these systems.

Chair Weathersby stated that if the application is granted the Board could put a condition on the approval that says a service contract must be in place for the system.

Mr. Spaulding noted that in order to get the systems approved by the State the property owners have to sign a maintenance agreement, which is kept on record with the State. It is up to his company and the property owner to notify the State of the inspection. Owners who do not keep up with the inspections are notified and sent certified letters. He commented that his company has an interest in making sure the systems are maintained and working properly.

Vice-Chair Crapo asked about the system in the event of a power outage.

Mr. Spaulding explained that he is not sure if this applicant is proposing a generator or not. Typically, the systems can run three or four days without air in it before it will be impacted. With this system, there is an effluent pump. If they don't have a generator backup and they continue to use water, they will need to get the system pumped before turning it back on so there are safe guards in place.

Attorney Phoenix noted that in the application is a brochure from Mr. Spaulding's company and their requirements for maintaining the system. The applicants are fine with the stipulation to maintain the system. He continued that they have addressed the concerns of the Conservation Commission. They have recommended it with the conditions submitted to the Board and the Feids have agreed. The only real issues are the surface alterations to build the house and cut some trees to have a yard and the 2ft. The reason for the buffer is to protect the wetland. All the structures have been moved out of the wetland. The water will be diverted in a different direction to help protect the wetland. The septic system will have very clean effluent going into the disbursement field as compared to a standard septic. The groundwater is highly unlikely to be negatively affected because everything is caught in the three tanks and eventually pumped out. He thinks they have met the underlying purpose of the wetland buffer ordinance to protect the wetland. He reviewed the criteria for granting the variances:

- **Variances are not contrary to the public interest and the spirit of the ordinance is observed** – Malachy Glenn says “would granting the variances unduly, and in a marked degree conflict with the ordinance such that it violates the zoning objectives”. Rye objectives, under Section 102 are:
    - Lessen congestion in the streets - It is a single family house lot that has been approved and it will have a single family house on it.
    - Secure safety from fire panic and other dangers - It is a home.
    - Promote general welfare - There is no conflict with that. The Clean Solutions System takes care of that.
    - Promote adequate light and air - Side line and coverage variances are not needed.
    - Prevent the overcrowding of land - It is a very large lot and a very small home.
    - Avoid undue concentration of population - One family, one family home on a large lot.
    - Facilitate adequate provision of transportation, solid waste, water, sewerage, schools and recreation facilities – The primary one is sewerage and the effect on water. The system and the other changes that have been proposed adequately facilitate those issues.
    - Ensure proper use of natural resources – The changes in the latest petition does protect the resource. The Conservation Commission who was charged with giving recommendations to effect have agreed.
- The overall test for the first two requirements; public interest and spirit of the ordinance, are whether the variance would alter the essential character of the locality. Once the temporary disturbance is done, there will be a house with a

yard. That will not affect the locality. The septic system in the ground and is better than a conventional system, even if it is mounded at 4ft.

- Threat to public health, safety and welfare – For all the reasons discussed, it is clear that this will not happen.
- **The variances will not diminish surrounding property values –**  
The house itself is permitted and is in a permitted location. The issue is whether or not the Clean Solutions System, properly installed and used, will diminish property values. Or will allowing the cutting of a few trees, at 4.5 inches or greater in someone's back yard, harm property values? The answer to that question is no.
- **Special conditions exist that distinguish it from other properties in the area –**  
This is very large lot with a seasonal stream through it. There are wetlands on either side. The location of the home is limited. As has been discussed, it was approved at the back far corner but that would be a worse place for the home today because of the increase in buffer requirements from 50 to 75ft. It is limited as to where the house can be located. If this is not allowed to go in it would be a valueless piece of land. It is clear that special conditions exist.
- **No fair and substantial relationship between the public purposes of the ordinance and this application –** In this instance, because the Clean Solutions System is being used and because the applicant is complying with the Conservation Commission's recommendations to limit the tree cutting even more, put in native plantings, limit fertilizers, not use an irrigation system and leave the stonewall, there is just no reason for the Board to prohibit them from creating a yard in the back and have the necessary disturbance to create the house in the first place.
- **The proposed use is reasonable –** A residential use in a residential zone is deemed reasonable. Beyond that, the entire proposal, which substantially changed from last time, is reasonable.
- **Substantial justice will be done –** If the variances are denied the lot can't be built upon. The Feids will lose out on having a nice location for a home to raise their family. The Ceeleys will lose out on a property that is probably worth several hundred thousand dollars and it would be worth zero. The public is not harmed by a Clean Solutions System and some tree cutting. However, the Feids, as applicants, and Ceeleys, as owners, are greatly harmed by the denial.

Chair Weathersby opened to the public in favor of the proposal.

**Patricia Anderson, Washington Road, abutter**, spoke in favor of the proposal. She has reviewed the changes and does not have a problem with the plan. She thinks they have done a wonderful job of addressing people's concerns.

Chair Weathersby noted that letters of support have been received from:

- **Pat Quinn, 158 Clark Rd;**
- **Catherine Errecart, 11 Forest Green;**
- **John and Lynn Meehan, 15 Pulpit Rock Rd;**
- **Frank Hwang, 18 Old Parish,**
- **Sam Biddle, 152 Washington Rd;**
- **Pat Ritter, Brackett Rd; and**
- **Rye Conservation Commission**

**Jaci Grote, Rye Conservation Commission**, stated that the Conservation Commission prefers the Clean Solutions system because it is a higher performing system and removes a lot of the bacteria for the effluent. The Commission only becomes involved when the wetlands are in danger and they repeatedly ask for that system. For the applicant to propose that system on his own makes the Commission happy. She continued that the Commission spent an hour looking at tree after tree on the site walk. The trees that the Commission wanted to keep were the healthiest trees. In a couple of the cases, the trees that are being taken down are not healthy anyways. The Commission is very supportive. She stated that they have asked for a very stringent buffer. The plants were chosen on their ecological value and hardiness. The Commission is confident that the applicant is going to plant the materials in an effective way to protect the buffer. Usually, the Commission comes to the ZBA with issues. In this case, the applicant has addressed the Conservation's concerns and has been very willing to work with them.

Speaking to Mrs. Grote, Member Durkin asked what system they would recommend if someone came to them that needed to replace their septic system.

Mrs. Grote explained that if someone's system fails that is within the buffer, or close to the buffer, the Commission recommends this system.

Hearing no further comments in favor of the application, Chair Weathersby opened to the public in opposition.

**Richard Snierison, 711 Brackett Road**, noted that the letters of support seem to be from the applicants' friends who live quite a distance away. He stated that the documents that were presented to the Building Inspector, which he denied and an appeal was filed, says that the house is in the Single Residence District. It down plays that it is in the wetlands district.

Vice-Chair Crapo commented there is no wetlands district.

Mr. Snierison stated he thinks it would have to say Wetlands Conservation District. The plan does not show the requirements for the Wetlands Conservation District. There are requirements for that. He hopes the Board takes that into account. (He submitted a chart showing the requirements that have to be met.)

Referring to the chart, Chair Weathersby stated that other than 202.13, these seem to reference Land Development Regulations, which is not something that the Zoning Board is dealing with.

Mr. Snierison stated that he respectfully disagrees. (He submitted a chart showing information that was taken from the plan that was submitted to the building inspector. He reviewed the information for the Board.) He commented that the plan is constantly changing. He stated that the septic system that was presented by Gary Spaulding sounds terrific. None of that was submitted to the Building Inspector. That is something that is brand new that has just come out the last few days.

Speaking to Mr. Snierison, Chair Weathersby asked if there are concerns with the septic system.

Mr. Snierison replied that he does but before tonight he did not know anything about it. It was not part of the plan that was submitted to the Building Inspector or sent to the Board.

Referring to Mr. Snierison's handout, Vice-Chair Crapo stated that when the chart was handed out to the Board, it was stated that the information came from what was submitted to the Building Inspector. Right on it, in the notes from its submittal, it says proposed Clean Solutions Septic System suitable leaching area 150sf, with a line right to the system.



Mr. Snierson stated that the GeoMat is something different. It was not part of the application before. Referring to the design notes #3, he stated that it says all trees, top soil roots and organic matter must be removed from the area to be filled, out to and including the area under fill extension and side slopes. To him that would be having to go across the line into the buffer. He continued that as he reads the regulations, there are supposed to be two test pits 30ft apart. He noted that Dennis Plante's report shows that they only did one test pit not the two that are required.

Chair Weathersby commented that she thinks they did test pits in the front and test pits in the back. The test pits were equal so they wanted to go in the front originally. She asked if they did some in the front and some in the back.

Mr. Snierson replied not on that day. He reiterated that the regulations are for two test pits 30ft apart. In looking at the minutes from the December 6<sup>th</sup> hearing, (page 23), it is indicated that questions were asked by members of the Board to the applicants' representative. The septic system was located in the front in the driveway because that was the best soil, that is where they got the best results and that was the best place for the septic. A question was asked about putting the septic in the back. The answer was no it would be better in the front.

Referring to a document, Member Dibble stated that it seems there were four charges for test pits.

Mr. Snierson submitted an aerial photo of the area dated 2015. (He reviewed the photo for the Board. He also submitted an article regarding rising sea levels to the Board.) He stated the groundwater levels are going to be rising and that is why the Board should not grant a variance for the 2ft level being requested.

Chair Weathersby called for a pause in presentation.

**Motion by Tim Durkin to continue the application. Seconded by Burt Dibble.**

There was discussion on continuing the application to a date certain or continuing the case with four board members, as Tim Durkin needed to be excused from the meeting.

The Board agreed to hear the application to Tuesday, April 3<sup>rd</sup>.

**Motion by Tim Durkin to continue the application to April 3<sup>rd</sup>. Seconded by Burt Dibble. All in favor.**

7. **Scott & Amy Komisarek of 38 Fieldstone Lane, Candia NH for property owned and located at 80 Baker Ave, Tax Map 5.2, Lot 134 request Variances from Section 603.1 for expansion of nonconforming structure; from Section 204.3B for deck, pergola, AC unit and rinsing station in the side setback of 5' where 20' is required. Property is in the General Residence, Coastal Overlay District. Case #08-2018.**

- **Continued to the April meeting.**

**Adjournment**

**Motion by Burt Dibble to adjourn at 11:52 p.m. Seconded by Tim Durkin. All in favor.**

Respectfully Submitted, Dyana F. Ledger

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant/ Owner:** Brian & Carrie-Ann Carlson of 690 Lancaster Ave, Lunenburg, MA

**Property:** 24 Glendale Road, Tax Map 20.2 Lot 129  
Property is in General Residence District and Coastal Overlay

**Application case:** Cases # 03-2018 )

**Date of decision:** March 14, 2018 )

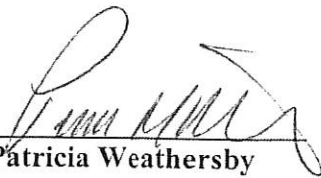
**Decision:** The Board voted 5-0 to grant the applicants variances from the following sections of the Zoning Ordinance:

- Section 603.2 for replacement of nonconforming structure;
- Section 204.3C for a building 16.5', deck 13.7' and walkway +/- 3' from front boundary;
- Section 204.3B a house 11.8' from the left side boundary;
- Section 204.3C for a house 14.2' and a deck 7.9' from the right-side boundary; and
- Section 500.3 for parking in the front setback.

The Board Voted 5-0 to grant the applicants relief from the following section of the Building Code

- Section 7.9.2.5 for a septic system 10' from the side boundary.

All variances and building code relief is conditioned upon the applicant providing the stormwater management plan for the property to the Ocean Sands Condominium Association prior to applying for a building permit. (Certification of same shall be provided to the Board's Administrator.)

  
**Patricia Weathersby**  
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:**

Lavoie Alice M. Rev. Trust, Alice M. Lavoie Trustee  
of Epping NH

**Property:**

0 Richard Road, Tax Map 5.2, Lot 156  
Property is in General Residence District and Coastal Overlay

**Application case:**

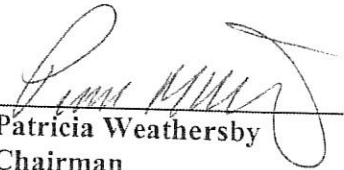
Cases # 47-2017

**Date of decision:**

March 14, 2018

**Decision:**

The Board Voted 5-0 to continue the Applicant's request for variances to  
its April, 2018 meeting.

  
**Patricia Weathersby**  
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:

Degnan Family Revocable Trust  
Tom & Tracy Degnan

Property:

41 Park Ridge Road, Tax Map 19.4, Lot 20  
Property is in General Residence District and Coastal Overlay

Application case:

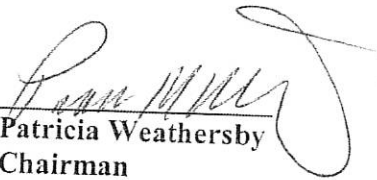
Cases # 06-2018

Date of decision:

March 14, 2018

Decision:

The Board Voted 5-0 to continue the Applicant's request for variances to its April, 2018 meeting.



Patricia Weathersby  
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

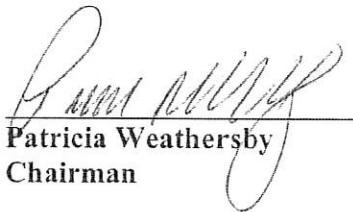
**Applicant/Owner:** Scott & Amy Komisarek of 38 Fieldstone Lane, Candia NH

**Property:** 80 Baker Ave, Tax Map 5.2, Lot 134  
Property is in General Residence, coastal Overlay District

**Application case:** Cases # 08-2018

**Date of decision:** March 14, 2018

**Decision:** The Board voted 5-0 to continue the Applicant's requests for variances to its April 4, 2018 meeting.



Patricia Weathersby  
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:**

Joel & Lauren Feid of 7 Skyview Drive, Greenland NH

**Owner:**

Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely  
of 216 Caney Court, Prince Frederick, MD

**Property:**

0 Brackett Road, Tax Map 17, Lot 34-2  
Property is in Single Residence District

**Application case:**

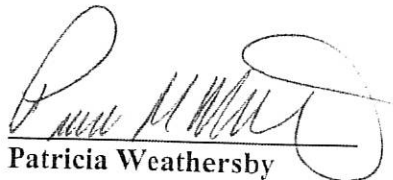
Cases # 07-2018

**Date of decision:**

March 14, 2018

**Decision:**

The Board voted 5-0 to deny the "Motion to Postpone Second Appeal While First Appeal is Still Pending" filed by Richard and Alexandria Snieron. The reasons are as set forth in the meeting minutes and include the following: (1) the Board is not prohibited from considering a new application while an application for the same property is pending; and (2) the Applicant has met with the Rye Conservation Commission as required under the Board's rules.



Patricia Weathersby  
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:** Joel & Lauren Feid of 7 Skyview Drive, Greenland NH

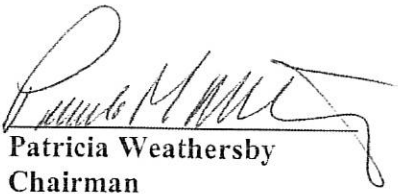
**Owner:** Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely  
of 216 Caney Court, Prince Frederick, MD

**Property:** 0 Brackett Road, Tax Map 17, Lot 34-2  
Property is in Single Residence District

**Application case:** Cases # 07-2018

**Date of decision:** March 14, 2018

**Decision:** The Board Voted 5-0 to deny the Abutter's Motion to Dismiss for Lack of Standing and for Lack of Jurisdiction dated February 27, 2018 for the reasons set forth in the memorandum of Michael Donovan, Esq. to the Zoning Board of Adjustment (Shawn Crapo, Vice-Chair) dated February 2, 2018 (copy attached.)



Patricia Weathersby  
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:** Petition by Hoefle, Phoenix, Gormley & Roberts, PA on behalf  
Joel & Lauren Feid of 7 Skyview Drive, Greenland NH


**Owner:** Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely  
of 216 Caney Court, Prince Frederick, MD

**Property:** 0 Brackett Road, Tax Map 17, Lot 34-2  
Property is in Single Residence District

**Application case:** Cases # 44-2017

**Date of decision:** March 14, 2018

**Decision:** The Board voted 5-0 to suspend its December 6, 2017 Decision denying  
the applicants variance and building code relief.



Patricia Weathersby  
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:**

Joel & Lauren Feid of 7 Skyview Drive, Greenland NH

**Owner:**

Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely  
of 216 Caney Court, Prince Frederick, MD

**Property:**

0 Brackett Road, Tax Map 17, Lot 34-2  
Property is in Single Residence District

**Application case:**

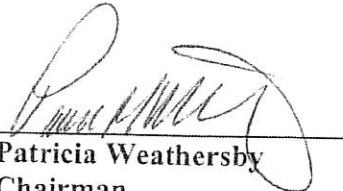
Cases # 07-2018

**Date of decision:**

March 14, 2018

**Decision:**

The Board Voted 5-0 to continue the Applicants' requests for variances and building code relief to its April 3, 2018 meeting.



Patricia Weathersby  
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:**

Timothy J. & Pamela S. Potter

**Property:**

16 Myrica Ave, Tax Map 5.2, Lot 100-01  
Property is in General Residence District and Coastal Area District

**Application case:**

Cases # 02-2018

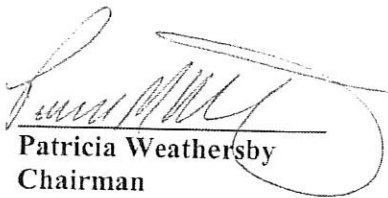
**Date of decision:**

March 14, 2018

**Decision:**

The Board Voted 5-0 to grant the applicants variances from the following sections of the Zoning Ordinance:

- Section 603.1 for an expansion of a non-conforming structure;
- Section 204.3A for a shed 1' from rear boundary;
- Section 204.3B for a shed 1' from right side boundary;
- Section 204.3C for front entry 14' from front boundary;
- Section 204.3A for AC unit 10' from rear boundary;
- Section 204.3B for second floor porch roof eve 16' from left side boundary and 8' from right side boundary;
- Section 204.3B for pergola post 2' and pergola roof 1' from side boundary;
- Section 304.5% for dwelling coverage of 16.25%, lot coverage of 32.18% and
- Section 500.3 for parking in the front setback.



Patricia Weathersby  
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: Ryan & Cathleen Rickarby

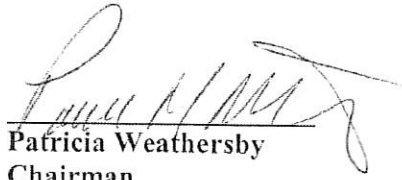
Property: 22 Myrica Ave, Tax Map 5.2, Lot 101  
Property is in General Residence District and Coastal Area District

Application case: Cases # 05-2018

Date of decision: March 14, 2018

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

- Section 603.1 for the expansion of a nonconforming structure;
- Section 204.3A for a deck 5.32' and garage 9.49' from the rear boundary;
- Section 204.3B for construction in the right-side setback-14.13' for dripline, 15.13' for wall
- Section 204.3B for construction in the left side setback - 5.75' for garage dripline and 6.75' for garage wall;
- Section 204.3C for construction in the front setback-15.19' for stairs, 16.51' for porch dripline and 17.05' for porch wall ;
- Section 304.5 for dwelling coverage of 32.6% and overall coverage of 34.9%; and
- Section 500.3 for parking in the front setback.

  
Patricia Weathersby  
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.