

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

**Tuesday, April 3, 2018
6:00 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**

Seated for the following case: Shawn Crapo, Burt Dibble, Patrick Driscoll, Tim Durkin and Charles Hoyt

- I. Response to Superior Court Remand Order in *Baybutt v. Town of Rye* (appeal of variances granted to Thomas Aspinwall for property at 236 Sagamore Rd.) (Not a public hearing)**

Acting Chair Crapo reconvened the public meeting at 6:25 p.m. He noted that the remanded order has been discussed with Town Counsel who felt the judge had four questions for the Board to answer. He read the four questions and responses the Board has prepared in working with Town Counsel. (Please see attached)

Motion by Tim Durkin to provide the answers as stated to Judge Anderson. Seconded by Burt Dibble. All in favor.

- II. Call to Order**

Chair Weathersby called the meeting to order at 6:35 p.m. and led the Pledge of Allegiance.

Seated for the following case: Patricia Weathersby, Shawn Crapo, Burt Dibble, Patrick Driscoll and Tim Durkin

- III. Continuation of 0 Brackett Rd from the March 14th meeting.**

- **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 301.3B(1), 5.b and (7) to allow for surface alteration and cutting of trees greater than 4.5 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 noted that Attorney Tim Phoenix, on behalf of the applicant, has already presented his case. She opened to Richard Snierston who was giving his presentation to the Board when the case was continued in March.

Richard Snierston, stated that there are people who are present who wish to speak to the application. He would like to give them a chance to speak first.

Chair Weathersby agreed. She opened to the public who would like to speak to the application.

Tom Clifford, 95 Washington Road, stated he is not an abutter to the property in question. He is an abutter to Mr. Snierston; however, the property affects his property because of the stream that drains through that property. As he has said before, he needs some guarantee that the flow through the stream will be maintained by the property owner. If the stream backs up, the water level rises, floods his property and will eventually flood his cellar. The other concern is the cutting of trees in the wetlands buffer, which opens up a whole canopy of trees to storm damage. When the forest is opened up, the trees are now exposed and start falling over into the wetlands. The trees will fall into that stream and will block the stream. Along with that, a septic system bottom only 2ft higher versus 4ft, if the stream is blocked all that water will start rising within the property. He has severe doubts this is good for his property.

Speaking to Mr. Clifford, Vice-Chair Crapo noted there was a lengthy presentation at the previous meeting on the septic system, which is supposed to be one of the most advanced systems. This could address the septic questions.

Mr. Clifford stated if the stream is blocked it will raise the water on the property. If the septic is only 2ft above now, what will it be when the stream backs up? That is his concern. He noted that he is a water district commissioner and has heard a lot of presentations about septic systems. He is yet to be convinced that the systems are all that they claim they are going to be.

Richard Snierston, 711 Brackett Road, reviewed his exhibits submitted to the Board.

- Exhibit AA – (Blowup of area where house is to be located)
- BB – (Rockingham Planning Commission Aerial Map)
- CC – (Chart)
- DD - (25 years of satellite data that shows sea levels are rising) Article
- EE – (Sheet showing test pits of 2017)
- FF – (enlargements regarding the current proposed septic system)

Referring to the previous meeting, Mr. Snierston stated that Member Dibble pointed out that in Exhibit EE it mentioned there was only one test pit where the town ordinance and regulations require two test pits be done 30ft apart. Member Dibble pointed out that the cost is \$35 per test pit and the total cost was \$70. He talked to Dennis Plante and found out that he has a minimum fee of \$70. Exhibit EE shows the data under the heading 'Test Pit #1'. Mr. Plante stated it

shows that one legitimate test pit was done on that day. He cannot recall why that would have been. Mr. Plante cannot remember if the evaluator Nancy Ramsdell, MSC Engineering, stopped at one test pit or if a second test pit was done. They may have dug elsewhere and found ledge or water close to the surface, which would show a high-water table. According to Dennis, those would not be legitimate test pits and he would not log them. He does not log test pits that fail. He only logs test pits that pass because that is where the system will go. He continued that Member Driscoll had asked about Dennis Plante reviewing the septic plans. He called Mr. Plante about the review of the septic plans. Mr. Plante stated he reviews the plans before they go to Concord to see if they meet the town requirements for setbacks, etc. He stated he asked Mr. Plante if he reviewed the newer type systems. Mr. Plante said he does not check the technology or the design. He just checks to see if it meets town requirements and setbacks.

Member Dibble stated that it was stated at the last meeting that Dennis clearly does not do that.

Mr. Snierson stated this is why he checked this out. He did not think he did. He continued that at the last meeting it was also mentioned that the State has a 2ft minimum for the distance from the bottom of the leach bed to the seasonal high-water table. He read through the DES regulations and found Section 1014.08, Distance Above Seasonal High-Water Table, which says it is 4ft except for certain sections. He called and confirmed the information with the administrator of the Subsurface Systems Bureau. The DES standard rule is 4ft stone and pipe and concrete chambers; the traditional type systems. There are exceptions, such as replacement systems. There is also an exception under ENVWQ 1025 for the newer type systems. The Clean Solutions tank, with a 3900 disposal area, is allowed to be by DES 2ft above seasonal high-water table, assuming that all the other requirements are met. He pointed out that he thinks there are other reasons why the 2ft should not be allowed at this particular location.

Chair Weathersby thanked Mr. Snierson for the clarification and asked what zoning issues he would like to address.

Mr. Snierson stated they are dealing with a rising sea level and water problems. (He submitted the Town of Rye 2017 Annual Report as Exhibit GG.) On the inside cover it mentions that Rye is 70% water and wetland with large aquifers lying beneath. Water is an increasingly precious resource and it is threatened by contamination. On pages 21 and 22 of the Annual Report, there are two pages on water quality in Rye. A discussion on Parsons' Creek and the water quality in that area. (He submitted Exhibit HH, new Chapter 3 from the Rye Master Plan, which talks about the Parson's Creek Watershed area.) Page 3-11 talks about rising groundwater levels due to changes in sea level and saltwater intrusion. Rising groundwater and increased precipitation could compromise the function of individual septic systems. He stated it has been proven when sea levels rise the water table comes up, especially near the coast. That is part of the reason he opposes a variance for a 2ft distance between the bottom of the septic system and the seasonal high-water table. No matter how good that system is, the water table is going to be rising. (He submitted Exhibit II, an article on the Arctic ice melt. He submitted Exhibit JJ, NH Coastal Risks and Hazards Recommendations. He also submitted Exhibit KK, Tech Advisory Summary 2016.)

Chair Weathersby stated there is a lot of great information submitted concerning sea level rise. Unless there is something new, the documents can all be submitted and the Board can look at them. She continued that she believes they can all agree that sea levels are rising.

(Mr. Snierison submitted Exhibit LL, State of Our Estuaries Report 2018 and Exhibit MM, an article on climate by Piscataqua Region Estuary Partnership.)

Vice-Chair Crapo asked how all the information on sea level rise should preclude someone from looking for a waiver from groundwater levels.

Mr. Snierison stated it is right in the new Chapter 3 from the Rye Master Plan that there is a correlation. When sea levels rise, groundwater levels rise.

Chair Weathersby clarified that Mr. Snierison believes the scientific literature that says as the sea-level rises the groundwater rises, particularly near the coast.

Mr. Snierison confirmed. He continued this property is three-tenths of a mile to the high-water mark. The water table is going to rise close to the ocean sooner.

Member Dibble stated that he agrees with this observation. He is not understanding how that information is going to be used to predict what is going to happen on this particular property in the near term and how it all relates to the zoning ordinances the Board is being asked to consider.

Mr. Snierison stated that in the Motion for Rehearing in the prior case it said the Board had taken into account things in the future. Zoning is all about the future. People do not go to all the trouble of doing these things for the past. They are trying to make things better for the future. When there is a situation that is already "iffy" it shouldn't be made worse.

Vice-Chair Crapo stated the Town's regulation is 4ft. That was based on old technology and it has not been updated. By not updating it, it causes a review of more systems than not, knowing there is a remedy to allow for a waiver to go to the State standard of 2ft. Last month, the Board sat through the presentation that the proposed system works to an even less depth of the systems that the State has passed the 2ft regulations for. He does not know of any State law or regulation that says that the Board has to make sure that anything that is passed has to last a week, 10 years or 40 years. He understands that sea water will rise but by this correlation almost everyone in the coastal plain would need to cease and desist in using their systems because they might flood.

Mr. Snierison stated that he is saying for new systems they should not go below the 4ft. It was enacted by the Town at town meeting for a reason. While the State does allow this type of system at 2ft, it is only if other factors are there. Here is it already by a wetland and it is taking a chance as to what might happen in the future.

Vice-Chair Crapo asked if he is saying that there are other State standards that the system won't meet.

Mr. Snierison replied that he is not sure.

Vice-Chair Crapo explained that if the Board was to pass and allow the system to be at 2ft, they still need a State approved permit. If the State finds there are criteria that they do not meet, then it will fail and the Board's variances are not worth anything to them. However, they cannot get to that process without the variances.

Mr. Snierson stated that he has not read through all the State standards or understands all of them. However, he believes there are some town standards that they cannot meet. (He submitted an article from the Washington Post, Exhibit NN. He also submitted Exhibit OO, Parson's Creek Handout and Exhibit PP, Parson's Creek Watershed Restoration.)

Member Driscoll stated there are a lot of exhibits that have been passed out that he has glanced over quickly. He still does not know what argument they are supporting. He asked for a summary of the argument that these are all supporting. He would like to keep this relevant in what is trying to be done here, which is looking at the application and seeing if there is a justified reason for the Board to grant or deny the variance.

Mr. Snierson explained the variance this would go to is lowering the 4ft town requirement to 2ft. It is his feeling and position that this is not the location to do that for a variety of reasons. One, is that is close to the wetlands. They are just outside the 75ft buffer. He continued the water is flowing downhill. The bottom of the septic is at 20ft. The stream is at 14ft above sea level. Some of what is coming out of that system, even after it is "purified", is going to get down into that stream. The stream goes under Brackett Road and down into the marsh.

Chair Weathersby stated this is a different argument than what was being made with the exhibits. With the exhibits the argument was sea level rise and water table rise.

Mr. Snierson stated as sea level rises there will be more water in "Stinky Creek". This is not the location to go down in any regulations that is any less than what is required. If the Town wants to change things, then it should be presented at the town meeting. (He submitted a guide to citizens for dog ownership, 'Scoop the Poop'.)

Chair Weathersby asked how this is relevant to this application.

Mr. Snierson commented that Parson's Creek has a bacterial problem.

Chair Weathersby stated the Board has received a lot of information about the property, Town and Parson's Creek but not all of it is relevant to this application. Everything will be part of the record and the Board will decide how much weight to give each submission.

Vice-Chair Crapo pointed out there is one building code and one variance request. That is all that is before the Board.

Mr. Snierson commented the Master Plan and what is in it is relevant. In reading cases decided by the N.H. Supreme Court, he saw that they take into account what is in the master plan. He would refer the Board to Chapter 4 of the Master Plan, Future Land Use, and Chapter 7, Natural Resources, in addition to the new Chapter 3, Climate Change.

Chair Weathersby noted the Master Plan shapes the zoning ordinances. This Board's jurisdiction is the zoning ordinance and the building code.

Regarding the 75ft buffer, Mr. Snierston stated he looked into some other towns. What Rye has is not a precedent. Many others have 75ft. Some have more.

Member Dibble stated the project being asked for is outside the 75ft buffer.

Mr. Snierston noted there is going to be cutting and filling within the 75ft. He continued that there is a provision in the LDR.

Chair Weathersby stated that she is going to stop him. They are not going to get into the Land Development Regulations or subdivision regulations. This is an existing lot. That is totally outside the Board's jurisdiction. The Board does not have the authority to say this is not a valid subdivision. Stick with the zoning ordinance and building code.

Mr. Snierston stated that when he said before that this was an invalid subdivided lot, he was not saying that the boundaries were not good. The boundaries are good on this lot. They have to be because the Ceeley's sold lot 1. There can be no merger. He is not saying the subdivision should be undone.

Chair Weathersby stated they are not going to get into substantial completion or improvements. It is a lot of record.

Mr. Snierston stated it is a lot of record; however, the front was not screened for building and certain area setback requirements. There is a difference between the subdivision and certain area setback requirements that are in the Land Development Regulations, which could just as well be in the zoning ordinance. In taking the area where they want to build now, in the front, and the square footage is calculated in that area, it comes out to over a little over 10,000sf. That land is going to slip through the cracks if it isn't taken into account because it was not screened for that building in the front.

Chair Weathersby stated what the Board is doing today is "screening" for the building in the front. The Board is deciding on the house and the septic in that location. The Planning Board process is irrelevant to what is going on right now.

Vice-Chair Crapo explained an applicant can own a large piece of property and only develop part of it. The entire parcel is calculated in their calculations.

(Mr. Snierston submitted Exhibit SS, Section 603.2 from the LDR and Exhibit TT, Section 603.3A.2.a from the LDR.) He stated in the February 2nd letter from Town Counsel, it says that the lot has to comply with all zoning and land use regulations. Land use regulations take into account the LDR. The letter said that the subdivision was not an issue and it is a lot. He agrees that it is clearly a lot of record. However, there is a question of whether it can be built upon.

Vice-Chair Crapo stated they are asking for relief from a section of the building code but it is not the section that was just quoted.

Mr. Snierison read from Building Code Section 2.25 and Section 3.33.

Chair Weathersby stated that if this is about Land Development Regulations they are not going there. She does not agree that this is what should be before the Board. She stated they are considering variances concerning the wetland buffer, surface alteration, cutting of 12 trees and the building code for the septic system at 2ft. She asked Mr. Snierison to talk about trees and surface alterations in the wetlands buffer.

Mr. Snierison stated that he noticed sometimes in the minutes the person transcribing them sometimes just says Mr. so-and-so discussed the five factors but that is the meat of the whole thing. He would ask that for this hearing, not only what Attorney Phoenix says, but what he says on the five factors be transcribed on record.

Vice-Chair Crapo asked if he is asking for the minutes to be verbatim.

Chair Weathersby stated he has made a request for it to be on the record. The minutes are not verbatim.

Mr. Snierison reviewed the criteria for granting the variances.

- **The variance will not be contrary to the public interest** – He feels it is contrary to the public interest because it is wetlands involved here. There is a 75ft wetlands buffer. They are building right up to the edge of the wetlands buffer. They are going to have some disruption from the construction of the wetlands buffer. Especially from the trees they are going to be taking down. The roots are going to go into the buffer.
- **The spirit of the ordinance is observed** – He does not feel it is observing the spirit of the ordinance to give these variances. The purposes are in the Rye Zoning Ordinance and Rye Building Code. There is also an RSA that states the purposes of zoning, including health, safety, welfare, etc. There is a Wetlands Overlay District and there is a State statute, RSA 676:14, as well as in the Rye Zoning Ordinance Section 300 and Section 301.8, that all say when there are two different districts set of regulations that apply, the stricter rules apply. This has to be looked at as an intrusion and is what the Wetlands Overlay District, in the Town of Rye, has provided. Granting these variances is not going to give substantial justice because the problems that exist as shown in general regarding water, the rising seasonal high-water table and in particular the problems in the Parsons' Creek area where the Town has spent a lot of money and is continuing to spend money to clean that up. That also goes down into estuaries and the beach. There have been warnings in the summertime that along the Wallis Sands strip, the area that used to be called the Pirate's Cove Restaurant through to Concord's Point, there are high levels of bacteria there. That is an important factor.

Vice-Chair Crapo stated that it sounded like it was being said that they weren't looking at the variances under the right overlay district. The variances that are requested are from Section 301, which is under the Wetland Overlay District. That is what the Building Inspector analyzed and denied. In the denial letter it was said that was what they were in violation of and that is what they are requesting variances for. The ones that they have been told they are in violation of, per their application, is in the wetland section and that is what they are asking for variances from. He believes that it is being argued that the wetland ordinance is stricter and that is what they are being analyzed against.

Mr. Snierson thanked him for the clarification. He continued review of the criteria.

- **Values of surrounding properties are not diminished** – He is not sure that is the case. He knows a real estate person, who has done appraisals and is now a real estate broker, tell him that the house, way over in the corner of that lot, is not going to help his value.

Chair Weathersby asked if he has anything in writing regarding this.

Mr. Snierson replied no. He continued the review of criteria.

- He stated the property is not substantially different from other properties in Rye or in the near location of it. Attached to Attorney Phoenix's letter received on February 10th is Exhibit #4. Lot #1 can be seen from which Lot #2 was carved from. It can be seen from the symbols that most of Lot #1 is wetland.

Member Dibble asked how this relates to Lot #2.

Mr. Snierson explained Lot #2 is not substantially different from other land in the area. There is wetland on Lot #2 with a stream that goes through it. Also, there is a lot across the street, below the grade of Brackett Road, where the stream flows through it. The stream goes under in the culvert under Brackett Road and goes down eventually into the marsh. That lot is below the pavement of the grade level. That lot is wetland. As it is said in the Town report, 70% of Rye is water or wetland. The Rye Conservation Commission says that two-thirds of Rye is wetlands. It would set a bad precedent if the Board allowed these variances to occur on this plan; lowering the 4ft to the 2ft and allowing the cutting, grading and filling in the wetlands buffer. How does the Board draw the line in the sand and stop doing this in the future? It is totally different when someone has a house that was built in the 1890's or 1930's, pre-zoning and pre-wetlands, with a septic that is bad. There is now a wetland there and there is already an intrusion. The State allows people to replace those systems. It is a totally different situation when it is new construction on natural land, as far as granting a variance.

- **Literal enforcement of the ordinance provisions would result in unnecessary hardship** – Mr. Feid does not own the land. He has a purchase and sale agreement for him to purchase the land subject to him getting the variances and all the approvals needed to build on the land. He then will buy the land but he does not have to buy it. It is not a hardship on him if he does not get these variances. Mr. Snierson continued there is also a doctrine in the law about self-imposed or self-created hardships. In fact, that is what the Ceeley Brothers had done by carving out this lot. In retrospect, it really should have been sold with the farmhouse and the

rest of the land. This potential purchaser stands in the shoes of the Ceeley Brothers. They are the ones that created the problem with what they did with this lot in the wetlands and wetlands buffer. He commented the property can be used. It is not totally worthless, as Attorney Phoenix has suggested. A smaller house can be built on that section of "upland" without invading into the buffer. It may not be a four bedroom house and might not have a two car garage with all the amenities that they want; however, a smaller house can be built on that piece of land without having to request any variances.

Member Dibble commented they are requesting variances for the tree cutting and the septic, not the size of the house.

Mr. Snierson stated one of the factors that the Board has to vote on from RSA 674:33 is that there are special conditions on the property that distinguish it from other properties in the area and the property cannot be used in strict conformance with the ordinance. A variance would therefore be necessary to enable a reasonable use of it. He continued that he is saying there can be a reasonable use of that property with a smaller house on there.

Vice-Chair Crapo asked how a septic would be achieved.

Mr. Snierson explained that everything else would be smaller. In going back to the minutes of the December 6th meeting, an administrative board can take notice of its own records. He would ask the chair to take notice of the final minutes of the December 6th hearing. There are several places in there, pages 22 and 23, where Member Durkin asked about having a septic in the back. The answer was they had the test pit in the back but the soil tested out much better in the front. He commented that having the septic in the back is not a good idea and that is another factor why the variances should not be granted here. He reiterated that a smaller house can be built and there would not be a need to cut the 4.5 inch trees in the wetland buffer nor cut the smaller trees and vegetation. There would not be a need to grade and fill in that buffer. The buffer is basically the yard for the house because there is no room for a yard. The building and driveway goes right to the edge of the buffer and the septic is on the edge of the buffer.

Mr. Snierson finished his presentation.

No other questions for Mr. Snierson were heard from the Board.

Attorney Tim Phoenix, representing the applicants, stated the Land Development Regulations do not apply. Unless the Board has questions about those he is not going to address them, except for two things. One, the lot does meet the LDR requirements for contiguous lot area. There is 40 some odd thousand on the other side of the wetland and there is 30 some odd thousand on this side. Mr. Snierson's 10,000 omits all the rest on the other side that is upland. Secondly, Mr. Snierson's comment about 100ft from a water course is also under the Land Development Regulations. That applies to a land development issue. This is not a land development issue. This is a zoning issue.

Member Durkin asked if he is referring to the 'Additional Setback Requirements' (submitted by Mr. Snierison).

Attorney Phoenix stated that 603.3 of the regulations says it only applies if the applicant is before the planning board for a land development. He reiterated they are not before the Board for a land development. As far as rising water in the future due to climate change, if the sea-level rises enough to inundate the Clean Solutions Septic System, some 1500ft from the ocean, the Town of Rye has a whole lot bigger problem than what happens to this particular septic system. He pointed out this system is Clean Solutions because the effluent leaving the tanks and into the disbursement field is much cleaner than what goes into a typical septic system. If there is sea level rise, the big problem will be with the standard septic systems, like Mr. Snierison's, not Clean Solutions where everything that is really bad is in tanks. Mr. Snierison admitted that the State allows the 2ft systems if all the requirements are met. He asked if this meets all the requirements and the answer was yes. (He submitted a Parson's Creek Watershed document.) He noted the article talks about what a Town should do when they have these situations where there are high water tables. One of the solutions is to increase the depth to the water table. He noted that the 4ft separation was implemented when there weren't these new systems and there were only the standard systems. He stated the depth could be increased or the treatment of bacteria could be increased within the system. That is exactly what is being done here. This is meeting the recommendations and addressing the issues of the Parson's Creek Watershed by this Clean Solutions System. As for the location, in the front previously and the back now, he thinks the soils may have been a little bit better in the front but at that point the house was pushed back. Once the house was moved forward there was no place in the front to put it. He stated he does not think he did a very good job at the December hearing of explaining the Clean Solutions System and why it is reasonable in this circumstance because the Board is comparing what is the effect of all of this on the wetland versus property rights.

Attorney Phoenix summarized that everything but the lawn has been moved outside the buffer. The number of 4.5 inch trees that are going to be cut have been reduced greatly. The Clean Solutions System meets the Parson's Creek Watershed suggestions on how to deal with a situation like this. Most importantly, Jaci Grote from the Conservation Commission stood up and strongly endorsed it. She said this is exactly the system that is needed and the commission was okay with the whole presentation, including the septic system. Jaci Grote took the time to come to the meeting and stood up and state how satisfied they were with this circumstance. He stated the applicant has agreed to comply with all the recommendations. (He submitted a rendering showing the proposed house and the native plantings.)

Referring to the March 13th letter from the Rye Conservation Commission, Member Durkin asked if the client has agreed to all the recommendations listed on the second page.

Attorney Phoenix confirmed.

Referring to the renderings, Chair Weathersby stated it is a different house than is being proposed.

Joel Feid, applicant, stated there are limits to the software that is used. It is only for demonstration purposes. It gives placement and concept. It shows privacy and addresses separation concerns that some people may have.

Member Driscoll asked about the trees on the renderings.

Mr. Feid explained the rendering shows where the trees are located and the trees that will be kept. It shows the native plantings the RCC requested and the raingarden that was part of the stormwater plan. The house on the rendering shows where the house would sit.

Referring to Mr. Clifford, Attorney Phoenix stated he understands his concerns but he is two lots away. He is not an actual abutter. He would think Mr. Clifford would be more concerned with the stream on Mr. Snierson's property because that could get clogged as well. Interestingly, Mr. Feid has said that he would be a good neighbor. If there was something on his lot that was causing an issue on another he would probably take care of it; however, he does not want a neighbor to tell him "you have to do this or that". Ironically, if this lot is not built upon, it is more likely that Mr. Clifford's property has a bigger problem because there will be no one living there to take care of it for him.

Attorney Phoenix stated that some of the things that Mr. Snierson has brought up tonight are hard to properly respond to when they are 50, 60 and 70 pages and this is the first time that they are being seen. He continued Mr. Snierson talked about diminishing property values. That should be totally discounted because there was nothing from a realtor. It is hearsay and it should have no weight whatsoever. He noted that it is not the effect of a new house on property values, it is the effect of granting the variances. Since the variances being requested are primarily related to protecting the wetland, and steps have been taken to do that with the location of the house, type of septic system, native plantings, lack of fertilizer and lack of an irrigation system, the Conservation Commission agrees that the wetlands are adequately protected. Granting the variances is not going to diminish property values.

In terms of hardship and special conditions, Attorney Phoenix noted that Mr. Snierson mentioned that there are wetlands on other properties. He does not think that is the test. The question is "Are there special conditions with respect to this property?" It is very clear that an intermittent stream runs through essentially the middle of it. That creates the need for the wetland buffer, which was increased in the past number of years from 50 to 75ft. That limits where a home can be located. In 2010, when the subdivision was done, the house that was outback did not need any buffer relief because it was then 50ft. Today, there would be more of a buffer effect if that house was built there than it is here. There is a much shorter road and the only intrusion into the buffer is creating a lawn; cutting some trees and grading. He continued that the case law is clear that a hardship test applies to an applicant, as well as to an owner. The Feid's would suffer a hardship if these variances were denied because they will not have this nice location to build a home and raise their family. It can't be argued that the Ceeleys, the owners, don't have a hardship because if this is denied they cannot sell the lot. He disagrees with Mr. Snierson that if something can't be built on this lot, it may not be valueless but it is not worth several hundred thousand dollars. Maybe it can be added to someone's land and have some value; however,

standing alone it is nearly valueless. He noted that he is not planning to address the climate change issues because it does not relate to this particular property and this particular request.

Attorney Phoenix reviewed the criteria for granting the variances.

- **Variances are not contrary to the public interest and the spirit of the ordinance is observed** – The underlying test, is whether the variances would alter the essential characters of the locality. There are many homes in the area that have been cleared. Some of them have wetland buffer effect. Some of them don't. There are plenty of homes that have Clean Solutions Systems. One of the benefits of the Clean Solutions System is not only is there a three year Parson's Creek pump, the applicant has to have a maintenance agreement with the company, which is done every two years. That is a one-third greater review for the Town with the Clean Solutions System. Do these variances change the essential character of the locality? No. Do they threaten the public health, safety or welfare? It has been explained, and the Conservation Commission agrees, that it doesn't with respect to the wetland. It has been explained in great detail that it doesn't with respect to the Clean Solutions System that meets the State requirements. In fact, the Conservation Commission said this is what they like to see. They were very happy that Mr. Feid offered this to begin with and it wasn't a concession to a recommendation of the Conservation Commission.
- **Granting the variances will not diminish surrounding property values** – That has been addressed.
- **Denial of the variances is a hardship.**
- **Special conditions has been talked about.** There is an intermittent stream. The result of 75ft on either side of it cuts through essentially the middle of the property. There may be others in the area where this happens but not the majority of others in the area. So, there are special conditions.
- **No fair and substantial relationship between the general public purposes of the ordinance and its specific application in this instance** – The public purpose of the wetland buffer is to protect the wetland and that has been done. The public purpose of the distance above groundwater is to protect the groundwater and that has been done. Better than with a standard type system, even in a mound. Particularly, if something happens in the future because the treatment remains in the tank giving nearly clean water.
- **The proposed use is reasonable** – It is a residential use in a residential zone. Mr. Feid has made many concessions to get to this point. It is reasonable.
- **Substantial justice will be done by granting the variance** – The test is if there is no benefit to the public that would outweigh the hardship to the applicant, this factor is satisfied. The hardship to the applicant and to the owner is that if it is denied a house cannot be built. At least not a house with a septic system and a half-way decent yard in the back. If it is turned around to ask what the benefit to the public would be if it was denied, given the status of climate change in the future, when balancing everything, including the type and location of septic system, against people's property rights to own and live in a home with their family, there is not any comparison. There is not benefit to the public that outweighs the hardship to the applicant.

Speaking to the Board, Attorney Phoenix asked if they had any questions for him about climate change or sea level rise and how it applies to variances. He thought by the nature of the questions from the Board, and Mr. Snierston's explanation, they are really not relevant to this particular application. They are more of a town, State, coastline and global issue.

Chair Weathersby asked if he is aware of any engineering studies or projections for the Rye coastline with any global sea level rise that show the affects on groundwater.

Attorney Phoenix replied that he is not aware of any. He did not look into it because he did not think it was relative.

Corey Colwell, MSC Engineering, stated he does not know of anything on groundwater.

Attorney Phoenix stated the bigger issue that Mr. Snierston brought up is the saltwater getting into the groundwater, not what is going to happen to one Clean Solutions Septic System where all the effluent is in the tank.

Member Dibble stated it seems that a system that is 14ft above the ocean water level, and the fact this is really wetland because there is water coming down the hill, not water going up the hill, it is a speculative matter, far into the future, about sea rise.

Mr. Colwell explained the important thing to remember about the study is it is sea rise with storm surge. In other words, it said by 2050 the sea level could rise to elevation 13.1 with storm surge. That storm surge being the 100 year storm. That means once every 100 years, by today's statistics, it will rise to that level and then it will recede. It is not going to stay at that level. By 2100, they say it could rise to elevation 14 to 17 with that 100 year storm surge. If it goes to elevation 17 once every 100 years, the top of the septic system is at elevation 22, 5ft above that projected storm surge and the elevation of the house is at elevation 20, 3ft above the surge. It is not that this would be oceanfront property. With storm surge, this level comes in and then recedes back. It is not going to come in and stay. It is once ever 100 years that it could rise to that elevation.

Chair Weathersby clarified that even with the storm surge the house and septic system are still above the elevation of the storm surge, even in 2100.

Mr. Colwell confirmed.

Vice-Chair Crapo asked the elevation of the bed bottom.

Gary Spaulding, Advanced On-site Solutions, explained the bed bottom is set at 20ft.

Referring to the outdoor shower, Chair Weathersby asked if it is still in the plan and if it was included in the Stormwater Management Plan.

Mr. Colwell replied that it is still there. It will be located by the shed on the backside of the garage. It will be a spicket with a shower head about 6ft off the ground. Typically, there is a

removable enclosure on a removable wooden platform. It was included in the stormwater plan. It was analyzed as impervious.

Chair Weathersby asked if the waste water is plumbed or goes out into the yard.

Mr. Colwell replied there were no plans for it to be plumbed. If the water gets into the pipe and doesn't drain it will freeze and crack the pipe. It is typically used to rinse the sand off your feet.

Chair Weathersby asked if there is a tree plan that shows the edge of the work area.

Vice-Chair Crapo commented there was one that showed the silt fence and Mr. Colwell stated they were going to adjust it.

Mr. Colwell pointed out that S-3 shows the limits of the grading. He commented that Vice-Chair Crapo had a good point last month to put the silt fence on the other side of the tree plantings.

Mr. Snierston asked how close the grading goes to the edge of the wetlands.

Mr. Colwell noted the closest edge to the wetland is approximately 60 to 65ft.

Referring to S-3, Chair Weathersby asked if the silt fence is about the edge of the work area. He continued that Vice-Chair Crapo suggested to move the silt sock to the wetland side of the tree planting. Where it is shown now is on the upland side of the tree planting. The silt sock will be moved back about 10ft but the grading wouldn't change.

Attorney Phoenix stated if this is approved there could be a stipulation that the silt fence be placed on the far side of the plantings recommended by the Conservation Commission.

Mr. Colwell explained that S-3 shows the limits of the work area, except the landscape patch that the Conservation Commission suggested. Beyond the work area there would be an area that would be landscaped.

Chair Weathersby asked if there will be some plantings on the other side of the silt fence.

Mr. Colwell confirmed.

Member Driscoll stated this encroaches about 10 or 15ft from the wetlands setback.

Mr. Colwell confirmed.

Member Driscoll asked if there is anything that can be done with the fill to make sure the fill in the wetlands buffer doesn't have certain seeds. He asked if there is a cleaner fill that can be used that does not have any seedlings from invasive species.

Mr. Cowell explained that all the fill will become lawn. It is in the owner's best interest to maintain no invasive species there but grass.

Referring to the underground propane tank, Member Durkin asked about the setback requirement.

Attorney Phoenix replied that they are excluded from the setback.

Mr. Snierson stated he looked it up under the National Fire Protection Association (NFPA). It has to be 10ft from the boundary line and 10ft from the building, with a maximum size of 2000 gallons.

Member Durkin commented it seems like those requirements are being met.

Attorney Phoenix commented the Building Inspector will review those issues for the permit application.

Mr. Snierson stated his septic is 6ft above the ledge. He would have preferred it to be in the backyard instead of the side but it was too wet in the back. Regarding the area where they are going to be putting the yard in the wetlands buffer, when it was originally a 25ft swath across the entire parcel it was 5,375sf of buffer they were affecting. Now, it is apparently half the risk. It would be about 2,700sf of buffer that is being taken over and being used as the yard. Assuming that one or more of the variances are granted, he would ask that a condition regarding the septic system components and equipment that make noise be located in the basement, garage or underground. He asked if there could be a commitment regarding the hedgerow that is shown on the plans along the property line. He commented the hedge should be deer resistant, 5 or 6ft tall and close together.

Attorney Phoenix stated that Mr. Spaulding has confirmed the compressor for the septic will be located in the basement. Mr. Feid does intend to put up a hedge and a fence; however, he would rather not be forced to do anything in particular. He wants the privacy as much as Mr. Snierson. Nothing stops Mr. Snierson from planting anything he wants on his side. He continued that he found it interesting that Mr. Snierson's lot was too wet to put the septic system in the back. Also, Mr. Snierson needed a lot line adjustment in order to put in the septic system, which the Ceeleys conceded and gave him.

Mr. Snierson stated that is not true. He had no lot line adjustment with the Ceeleys. The prior owners of his house lot bought 50ft from the Ceeleys a couple of years before he bought the lot.

Chair Weathersby closed the public hearing at 8:47 p.m.

Vice-Chair Crapo stated that Mr. Snierson had said the Ceeleys are the owners of the property. The Feid's have certain rights, as the applicants, have certain rights to apply for variances. Those variances would actually belong to the Ceeleys as the current owners. There was indication that there was a self-imposed hardship. He believes this is mitigated by the fact that the zoning changed in the meantime. When the lot was subdivided it was a 50ft buffer and the zoning changed. It was not anything they brought upon themselves by having to adhere to a 75ft buffer. He does not think there is any self-imposed hardship.

Chair Weathersby stated it was an approved building lot at the time it was created. To the contrary, there is a hardship being that they were given approval for a building lot. There would be a hardship if they were not allowed to use it as a building lot.

Member Dibble stated they also heard testimony that considering the length of the driveway, it probably has less impact on the land with the location of the house in this proposal.

Vice-Chair Crapo stated this current relief should not be precluded by saying it is a self-imposed hardship. He continued there has been two long meetings on this. There is the knowledge of the prior hearing. The Board ruled this is materially different. The Board has been discussing and analyzing this property over several meetings. He thinks the current application takes into effect the adjustments that seem to make sense by pulling it out of the buffer. The edge of the house is right at the buffer but that is where they are allowed to use up to. He feels that with the septic system technology that has been shown it does make sense to waive the Town's stricter 4ft requirement to the State's 2ft requirement. He feels the house satisfies the criteria for granting the variances, the mitigating circumstances that make it unique and a less impactful project.

Member Durkin stated the applicant has made several changes to the footprint of the property to address concerns that he had brought up early on. He certainly appreciates the accommodations that have been made. It was also helpful that the Conservation Commission had the time to do a more thorough site walk and made recommendations that the applicant has agreed to do with respect to limiting the cutting and keeping some of the larger trees. He thinks the proposal has come a very long way. He appreciates the applicant taking a constructive approach to this. He is in favor of the design with the recommendations listed in the Rye Conservation Commission letter dated March 13, 2018.

Member Driscoll stated that in answer to the question as to why Town's zoning and building codes do not address the new septic, it is because the technology is moving so fast. The State and boards have the ability to see that technology and address whether it works or not. This is a testament to what is in place here for the septic makes sense to him. He is fine with the new technology and septic. Looking at the lot plan and the proposed conditions, he expects it will be accurate as the plan goes forward. He sees a proposed hedgerow on the plan. They say they do not want to be tied to anything there but if it is on the proposed conditions he expects there will be an effort made to have about that size and those number of hedges, which are to protect the properties. Everything in the plan has been inspected pretty carefully by the Board. He would like to see what is proposed to be followed through. He continued that he liked seeing that the applicant was willing to abide by everything listed by the Conservation Commission. There were steps made to make this a more conforming lot. He would hope that they would keep that same approach through construction and occupancy, in regards to watching out for this immediate land and the Town in general.

Member Dibble stated in the first project the building intruded into the setback. He is pleased the building was drawn back and is outside of the setback. He was impressed that the Conservation Commission came here three times and looked at it very closely. He was impressed that they had a favorable opinion on what was presented. He was further impressed by the proposed owner that he made some improvements over and above what the Conservation Commission

proposed. He is convinced by the applicant's sincerity to make this project properly protected. He is impressed that the Town has worked hard to do something about the Parson's Creek Watershed and has approved these systems. In regards to the use of some of the wetlands setback for the yard of the property, the hardship that would accrue to the owner of the property exceeds any advantage the Town might experience by precluding him from doing that. He cannot hold up the project on that basis alone.

Speaking to Mr. Colwell and referring to the Stormwater Management Plan, Chair Weathersby stated it shows some kind of plantings along the boundary with the Sniersons. She asked if this is part of the plan and is necessary to help with the water direction.

Mr. Colwell replied that it has nothing to do with stormwater. He noted that it is shown differently on the Stormwater Management Plan as it is on the proposed conditions plan.

Chair Weathersby stated her feelings are similar to what has been said. She is pleased the house is completely outside the wetlands buffer. The intrusions into the buffer of fill, grading, plantings and tree cutting are fairly minimal. She appreciates that the grading is such that the runoff will not be towards the wetland. Even with the fill, and everything that is added and the slopes, it will not cause water to be diverted towards the wetland. The area will be graded as such so that run off comes around the house on either side. She is often very concerned about wetland buffers and protecting them; however, she has a hard time seeing how the cutting of 12 trees and the fill and grading is going to have any impact at all on the wetland itself. She is very pleased with the Stormwater Management Plan. It was a big issue with her on the first application. Regarding the septic, it currently complies with State of New Hampshire regulations, it is the most advanced system out there and it is the one that is recommended by the Conservation Commission. If there is any system at all for this lot, that would be the system. It might be better in the front of the lot, perhaps, but then the house would be in the back and that would have a worse effect on the wetland buffers. With all things considered, this is a good location and it is an appropriate system. Concerning sea level rise and some of Mr. Snierson's concerns, he did not present an engineering study or anything that showed that water was going to come and groundwater was going to rise to the point it would affect this system. It was heard from the applicant that the studies with the stormwater surge, even with worse conditions in 2100, it will still not get to the groundwater level of the system. She does not have concerns about sea level rise affecting this system. As far as the trees, the ones that have been chosen have been reviewed by the Conservation Commission as the appropriate trees to come down. The plantings that will go in are good. She would like to review some conditions.

Chair Weathersby noted they have the Rye Conservation Conditions, as set forth on page 2 of their March 13, 2018 letter. The conditions are;

- The applicant is removing 12 (11 were stated in the letter but 12 were agreed to) within the wetlands buffer, between 50 and 75ft. Seven (7) trees will be kept to provide adequate filtration.
- The applicant will install a border of native plants. The number of plants that are shown on the applicants' plan are adequate according to the Rye Conservation Commission. The commission has listed plantings they think should be there.

- No mulch will be used in the buffer.
- No irrigation system.
- Fertilizers will be limited and only organic treatments.

Chair Weathersby asked if they want to include herbicides.

Vice-Chair Crapo commented there are very few organic herbicides that can be applied that work. In the past, the Board has referred to industry best practices. DES has regulations on what can and can't be used in proximity to waterways and wetlands.

Chair Weathersby commented the stonewall is also going to stay. She continued that the Board discussed;

- Maintenance contract with Advanced Onsite Systems, or other approved maintenance vendor, for the Clean Solutions System.
- The silt fence will be on the wetlands side of the plantings.
- Compressor of the septic system to be located in the basement of the house.

She asked if they want to include a condition that the conditions as set forth in the Stormwater Management Plan be maintained.

Member Dibble stated he thinks the building inspector polices that as a matter of course. If someone doesn't adhere to the conditions it is the building inspector's responsibility to make an inquiry.

Member Driscoll stated he is going to side with the chair on this one for a couple of reasons. One, the current building inspector is not always going to be here. The Board cannot have the same faith in an inspector that they do not know yet. It is also a lot to ask of someone. He continued the applicant has shown a lot of interest in making sure this property is well taken care of and adding a stipulation like that will only help.

It was agreed to leave that in.

Chair Weathersby asked the Board about the hedgerow. It sounds like they are willing to put something in. She would be reluctant to say it has to be a certain kind of plant and a certain height.

Member Driscoll pointed out it is in the packet and on what they submitted. He thinks that will cover it.

After some discussion, it was agreed to not make the hedgerow a condition.

In regards to Mr. Clifford's comments, Member Durkin asked if there should be something that says the streambed will not be altered in a way that would negatively impact the flow of water.

It was agreed to add that condition.

Chair Weathersby reviewed the conditions:

1. **Compliance with the recommendations of the Rye Conservation Commission, as set forth in its letter dated March 13, 2018, with the exception that a total of 12 trees may be removed (rather than 11);**
2. **A maintenance contract for the septic system be maintained with Advanced Onsite Solutions, or other approved maintenance contractor;**
3. **Silt fence to be located on the wetland side of the new plantings;**
4. **The compressor for the septic system be located in the basement of the home;**
5. **Conditions of the Stormwater Management Plan be maintained; and**
6. **Stream bed not be altered in a way that negatively impacts the water flow.**

It was agreed to go through the vote and finalize the Notice of Decision at the May meeting.

Chair Weathersby called for a vote on Sections 301.8B (5), for the cutting of twelve (12) trees greater than 4.5 inches in diameter in the wetlands buffer:

Vice-Chair Crapo stated he feels he can pass the criteria on this because the Conservation Commission's review and what was presented show that this select cutting of trees won't have an overall detrimental affect and is being off-set with the commission's recommendations.

1. Granting the variance 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 provision and the specific application of that provision 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 ordinance would result an unnecessary hardship?

Shawn Crapo – Yes
Tim Durkin – Yes
Patrick Driscoll – Yes

Burt Dibble - Yes
Patricia Weathersby – Yes

Chair Weathersby called for a vote on Sections 301.8B (1) and (7), for the addition of fill and surface alteration within the buffer:

Vice-Chair Crapo stated the plans and all the analysis does not show the actions that are proposed are going to be detrimental versus not allowing it.

Chair Weathersby agreed. The proposal is still 60 to 65ft away from the wetland itself.

Vice-Chair Crapo commented there will be an initial disturbance for equipment and construction. There will then be landscaping and the Stormwater Management Plan kicks in and manages it per the new grading. The whole package meets the criteria.

Chair Weathersby commented it does not increase water towards the wetland.

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 provision 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 ordinance would result an unnecessary hardship?

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

Chair Weathersby called for a vote for Building Code relief to Section 7.9.3.2, for the bottom of the effluent disposal system 2ft above the high-water table:

Vice-Chair Crapo stated that because of the presentation of the Clean Solutions System, the state-of-the-art technology and the discussion of its affect and its ability to operate within the tight tolerances, he feels the 2ft difference is not detrimental and will not have a harmful affect.

Chair Weathersby agreed. She stated there was no evidence presented that said the groundwater is likely to get to this elevation in the next 200 years.

- **Would enforcement of 7.9.3.2 do manifest injustice and be contrary to the spirit and the purpose of the Building Code and public interest?**

Shawn Crapo – Yes

Tim Durkin – Yes

Patrick Driscoll – Yes

Burt Dibble - Yes

Patricia Weathersby – Yes

Motion by Shawn Crapo to grant the variances as voted upon with the conditions as agreed, with the Notice of Decision being deferred for Town Counsel and Board review. Seconded by Burt Dibble. All in favor.

- Consideration of reinstatement of decision to deny application 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 request 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.**

Motion by Shawn Crapo to postpone the consideration of reinstatement of decision to deny the Fied's application of December 6, 2017 to the June 2018 meeting. Seconded by Burt Dibble. All in favor.

Adjournment

Motion by Shawn Crapo to adjourn at 9:30 p.m. Seconded by Burt Dibble. All in favor.

Respectfully Submitted,
Dyana F. Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Thomas J. Aspinwall

Property: 236 Sagamore Road, Tax Map 22, Lot 53
Property is in the Single Residence District

Application case: Case # 24-2017

Date of decision: April 3, 2018

Decision: The board met on April 3, 2018 in public session and board voted to provide the following responses to the questions posed by the Superior Court's Remand Order. The board did not hear any further testimony or legal argument relative to this response. The response is based on the facts in the record as filed with the court.

Q 1: Is the size and location of the barn the only basis for the board's determination of unnecessary hardship? If there are other reasons, what are they.

Response.

The board found that the special conditions which exist that distinguish the property from others in the area are the size and location of the barn. This is only part of the variance analysis.

The board found no fair and substantial relationship exists between the public purposes of the ordinance and its specific application in this case because the primary business activities on the property are limited to communications, record keeping and storage, all within the barn. There are no disturbances to the neighborhood or the environment or impacts contrary to the public purposes of the ordinance as set forth in Section 102 (C.R. 114).

For similar reasons, the board also believed the use to be reasonable

Q.2: Did the board determine that, whether or not the pest control business presence on the property increased over time, the presence does not diminish the residential character of the neighborhood?

Response. The board determined that the current business presence on the property does not alter the essential character of the residential neighborhood. It based its determination on board members' knowledge of the neighborhood (Sagamore Road is one of the most heavily traveled roads in Rye and board members frequently pass by the site); site visits by three board members, Crapo

and Driscoll, (C.R. 99, 100) and also Dibble; the favorable testimony of abutter Jeff Pollock, (C.R. 98); the favorable testimony of abutter John Belcher, (C.R. 99, 103); and Ms. Baybutt's own statement that the business operations have had little adverse effect on the neighborhood, (C.R. 89, 99).

In order to assure that the current pest control business would continue to not alter the essential residential character of the neighborhood the board placed several conditions on it.

Q. 3: Does the board disagree on a factual basis with Ms. Baybutt's characterization that GSC's growth and business presence have caused a loss of residential character in the neighborhood?

Response. Yes. The board disagrees. See response to Q. 2.

Q. 4: Was the determination that the variance would not diminish neighboring property values based on the market analysis provided by the applicant?

Response. The board's determination that the variance would not diminish neighboring property values was based on the market analysis provided by the applicant and on the board members' own knowledge of the neighborhood. The acting chair of the board, Mr. Crapo, is a licensed real estate agent (currently on inactive status). The board reviewed the assertion of Ms. Baybutt's July 31, 2017 letter about a neighbor's alleged problems selling her house but found the market analysis and their own personal knowledge more convincing.


Shawn Crapo
Vice-Chairman

RYE CONSERVATION COMMISSION

Site Walk Minutes
Sunday, March 11, 2018

Meeting was called to order by Chair King at 4:30 pm

4:30 pm: 0 Brackett Road, Tax Map 17 Lot 34-2, Owners, Gary A. Ceely, George B. Ceely and the Estate of Glen F. Ceely of 216 Caney Court Prince Frederick, MD, Joel and Lauren Feid, 7 Skyview Drive, Greenland, NH.

RCC members present: Chair King, Vice Chair Suzanne McFarland, Members Jeff Gardner, Jaci Grote, Heather Reed and Mike Garvan. Present: Joel Feid, applicant; Richard Snierston, abutter.

The Rye Conservation Commission (RCC) conducted a site walk at 0 Brackett Road to assess a new plan for building a house on the lot. The new plan was presented at the March 8, 2018 meeting of the commission. The RCC has visited this site on three previous occasions and the applicant's plan has changed after each visit.

The current plan calls for the home, garage, patio, septic and leach field to be located just outside of the 75 ft. wetland buffer. The driveway is also sited outside the 75 ft. buffer. Some disturbance and grading will occur in the area between the 50 ft. buffer and the 75 ft. wetland buffer. The septic has been moved from the front of the house to the back. It is a Clean Solutions pretreatment septic system with a GEOMAT leaching system. The applicant is asking relief from the 4 ft. separation from the water table requirement to a 2 ft. separation.

There are 18 trees greater than 4.5 inches in diameter in the proposed work area between the 50 ft. and the 75 ft. buffer. Of the 18 trees, four were 5 inches in diameter and the rest ranged from 8 inches to 28 inches in diameter. Mr. Feid proposed to remove 14 of these trees and keep 4 trees. Nine of these trees were on or within a couple of feet of the 75 foot buffer and would greatly impede the work on the house and septic. Additionally, Mr. Feid felt that some of the 14 trees were leaning or in poor shape and posed a threat to his house. Mr. Feid planned to leave the largest of the 14 trees, a 28 inch maple on the western edge of the work area. The RCC members present felt it was reasonable to remove 7 of the 8 trees along the 75 ft. buffer. A vigorous discussion followed about keeping a 26 inch maple near the septic as well as a tree by tree consideration of the other trees in the area between the 75ft and 50 ft. buffer. Two of the trees were clearly a hazard.

Member Garvan commented that although the 75 ft. buffer ordinance requires that trees greater than 4.5 inches in diameter be kept to protect the wetland, the Shoreland Protection Act has a scoring grid based on tree diameter which in a zone comparable to the Feid work zone requires at least 25% of the natural cover to remain. Based on such a scoring system, the western half of the work zone would meet criteria if the two 26" maples were left. The eastern half would barely meet SPA criteria and it would be better to leave either the 14" or 20" maple rather than cut them. It must be stated that SPA criteria is being referenced only as a guide to what might be a reasonable way to address a compromise between protecting the resource and allowing some flexibility for the project. Mr. Feid and the commission agreed to leave a 5 inch maple that he had proposed cutting in exchange for cutting a larger tree next to it thereby leaving a younger, healthier tree in that area. It was then agreed to leave the 26 inch maple on the western end. There was further discussion among the members about what would constitute a reasonable number of trees to be removed.

Member Garvan added that in the first 50 ft. of buffer from the seasonal stream, the tree cover is thick with many large trees. That area will remain undisturbed so it should continue to perform its filtering and water uptake functions. This is the more critical area for stream and groundwater protection.

In the previous recommendation from the RCC, the commission requested a planting of native vegetation along the edge of the lawn area to absorb and filter storm water runoff and to uptake water where existing vegetation had been removed. Mr. Feid had a planting plan created but the RCC had not seen it at the time of the site walk. Mr. Feid said he would send us a copy that evening. He commented that it seemed to be both extensive and expensive and the members commented that the plan may be more than we would require. The commission will comment further upon receipt of the plan.

Mr. Snierston spoke in opposition to the project, as he had at previous site walks and RCC meetings. He spoke specifically to septic regulations and was skeptical about the efficacy of the proposed septic system.

The RCC was generally in favor of the project since all the buildings and septic had been relocated outside the 75 ft. wetland buffer. It recognized this improvement to previous plans but still had some concerns about the disturbance and number of trees to be removed in the 50 ft. to 75 ft. buffer area. The commission also had some reservations about an extensive lawn in the work zone but allowed that a sound planting plan might mitigate that. The RCC will issue its recommendation letter after seeing the planting plan.

Motion to adjourn made by Member Gardner and seconded by Member Grote. Motion passed.

Meeting adjourned 5:35 pm.

Respectfully submitted,

Francis P. (Mike) Garvan II, Clerk