

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

**Wednesday, May 2, 2018
7:00 p.m. – Rye Town Hall**

Members Present: Chair Patricia Weathersby, Clerk Burt Dibble, Patrick Driscoll and Tim Durkin

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. Approval of Minutes

- April 3, 2018

Motion by Tim Durkin to approve the minutes of April 3, 2018 as amended. Seconded by Burt Dibble. All in favor.

- April 4, 2018

Motion by Burt Dibble to approve the minutes of April 4, 2018 as amended. Seconded by Patrick Driscoll. Vote: 3-0-1 Abstained: Tim Durkin.

- III. Vote on the Notice of Decision from the April 3, 2018 meeting on the 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 Casey 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. Public hearing closed during Board discussion on the request.****

The Board reviewed the draft Notice of Decision for Joel and Lauren Feid for property located at 0 Brackett Road.

Chair Weathersby recommended the following changes to the NOD:

- Date change to 5/02/18
- #4 should be Advanced Onsite Solutions
- #8 should state “locating the home and septic from their proposed locations”.
- #9 cross off “thus”.
- #11 should be two paragraphs.
- #12 should be two paragraphs.

Chair Weathersby noted that the NOD has been reviewed by Attorney Donovan.

The Board agreed with Chair Weathersby’s changes.

Motion by Tim Durkin to approve and issue the Notice of Decision as amended. Seconded by Patrick Driscoll. Vote: 4-0-0

IV. Rob Patten request to be an Alternate on the ZBA

Rob Patten spoke to the Board in regards to his interest in being an alternate on the ZBA.

Motion by Patricia Weathersby to accept Rob Patten’s request to be an alternate on the Zoning Board of Adjustment. Seconded by Tim Driscoll. All in favor.

V. APPLICATIONS:

Chair Weathersby noted that the Board will be a four member board for this meeting. Anyone wishing to have a five member board may request to move to the June meeting.

No objections were heard from the applicants.

- 1. Osprey Unlimited Industries, Inc., of Scarborough, ME and Euphoria LLC for property owned by Fifty Lafayette Rye Real Estate and located at 50-52 Lafayette Road, Tax Map 14, Lot 017, requests Variances from Section 501.1C for a sign greater than 25sf, from Section 501.3 for three (3) signs and from Section 501.4 for an electronic message sign. Property is in the Commercial District. Case #12-2018.**

Jim Van Fleet, applicant, presented to the Board. He submitted pictures showing what the previous business had for signs at the property. He noted that the previous business had a sign that was 48sf. The ordinance says that by Special Exception there can be a sign up to 64sf. The balance of the bottom of the sign is 50sf. He continued that he is proposing to use the same stanchion that is existing. The proposal is to expand the top sign with a slightly different orientation but still within the 64sf. He would also like to add an electronic message sign within the same stanchion. The electronic message board would not move, blink, flutter or flash. He

summarized that he is requesting the top sign at 64sf, the existing sign is 48sf. The signs down below are 50sf currently and the proposal is for 50sf. The orientation of the sign will change and there will be an addition of an electronic message board on the top with five other signs below.

Member Dibble asked if the lighted sign will be on all night.

Mr. Van Fleet replied that they would prefer to have it on all night; however, it could be on a timer.

Chair Weathersby asked if the signs are double sided.

Mr. Van Fleet confirmed.

Member Dibble asked if there have been any discussions with sign designers or law enforcement agencies about the brightness of the sign and the potential for driver distraction.

Mr. Van Fleet stated that the reason the electronic sign is a muted yellow is that it addresses that very issue. The idea is to not have the bright light be eye catching but the words be the substance.

Chair Weathersby asked how the signs are lit.

Mr. Van Fleet replied that it is LED lighting. He continued that he would like to replace the existing sign and lights that are on the building with a backlit logo. It would stay within the exact square footage of the sign that is there now.

Member Durkin asked if a variance is needed for that sign.

Mr. Van Fleet replied no.

Chair Weathersby explained that the property is allowed three signs and more can be allowed with the Board's permission.

Mr. Van Fleet pointed out there are three signs currently there. He thought they were replacing it with two signs. He commented that he was instructed that as long as the signs stay within the confines that this orientation is fine. The Building Inspector has said that the signs need to stay within the existing posts. Also, if it is the same number of signs or less than what currently exists, there should not be a problem.

Member Durkin asked how many signs are being proposed.

Chair Weathersby commented it is seven signs.

Mr. Van Fleet stated that he was counting the road sign as one sign.

Member Durkin pointed out that if that is one sign it would be greater than 64sf.

Chair Weathersby noted that variances were requested for the signs.

Mr. Van Fleet stated that this is what he was instructed to do by the Building Inspector.

Chair Weathersby explained that the 64sf is allowed under a different procedure called a Special Exception. The application does not ask for a Special Exception. It is a much lesser standard than a variance. (After review of the ordinance), she stated that he is allowed up to three signs on this property advertising this business. He can get a larger sign of 64sf by Special Exception. He can also get more than three signs by Special Exception.

Member Dibble commented that he wonders if the signs that are related to other businesses are considered his signs.

Chair Weathersby stated that it seems that each business is entitled to one sign. She continued there still cannot be more than three signs total except by Special Exception. The applicant is asking for seven signs.

Member Driscoll asked how many business spaces are on the property.

Mr. Van Fleet replied that currently there are three businesses operating on the property.

Member Driscoll asked if he had done research on the other signs on Lafayette.

Mr. Van Fleet stated that he was mostly looking at the electronic signs because he didn't want to have the first electronic sign in Rye. With respect to the 'Mainely Tubs' sign, he was instructed that the sign was already there and he could use the same stanchion.

Chair Weathersby opened to the public to speak to the application. Hearing no comments, she closed the public hearing at 8:03 p.m.

Speaking to the Board, Chair Weathersby explained they can vote on the variances as requested. A Special Exception is a lesser hurdle. She commented the notice is adequate and it would be the same relief. She pointed out that the Building Inspector's letter refers to variances. The Board could vote on the variances and if it is approved he is all set. If it is denied, he could come back and ask for a Special Exception.

Member Durkin stated that he is okay with going ahead given that it meets the Special Exception test. He would be comfortable voting on the application as presented.

Member Dibble stated it is substantially the same as what is there. He thinks it meets the requirements to pass by Special Exception.

Speaking to Member Driscoll, Chair Weathersby asked if he is okay with going the Special Exception route.

Member Driscoll confirmed.

Chair Weathersby explained that the request of 64sf is for the 'Mainely Tubs' sign at the top of the posts. If he meets the test for a Special Exception the Board can allow up to 64sf. If the sign was to be larger than that, he would have to ask for a variance. (She reviewed the requirements for a Special Exception under Section 701.3.) She stated she does not have a problem with granting a Special Exception for the 64sf sign on top. She does not find that it is detrimental or injurious to the neighborhood. It is consistent with the other signs. The Special Exception is easier.

Member Driscoll asked if she feels this way because there is already a sign there. He asked if she would still feel the same if it was for a new sign.

Chair Weathersby replied that she would still feel the same. The 64sf is allowed if the other criteria are found. In this neighborhood, on Route 1 in a commercial district, she does not find a nicely done sign of 64sf injurious or detrimental to the neighborhood. The fact that there is a similar sign there now, and has been for several years, certainly helps. She continued that the property is allowed one sign advertising a single business. There are three businesses. He is allowed one for each business. He is asking for those three plus the electronic message center with three product signs, the main on the door and one on the side. It will be a total of eight signs.

There was discussion on the number of signs and whether a Special Exception was needed.

It was the consensus of the Board that a Special Exception was needed for the electronic message center and three of the signs below (three being used to promote products).

Chair Weathersby noted that one of the signs in the stanchion is illuminated (electronic message center). The sign will not move, blink or flash. She stated that the Board will discuss the Special Exception for the message center, the three other signs (below message center) and the two on the building. The Board needs to determine if any of those signs are detrimental or injurious to the neighborhood, if granting the Special Exception would be in harmony with the general purpose and intent of the zoning ordinance and in accordance with the general and specific rules contained therein.

Member Dibble commented he is on board with the proposal.

Member Durkin agreed. It is consistent with what is there.

Member Driscoll agreed that it is consistent with what is there. He stated that it is a unique part of the town. He does not want to see signs enlarging all down that corridor; however, he does

not see that happening. Part of him wishes that the applicant wasn't trying to make the massive 'Honda' sign even larger but overall, he has never had an issue with the sign. The one proposed is at least a little shorter.

Chair Weathersby commented that she wishes she had heard information as to how these got put up originally and whether they were grandfathered. It carries some weight on her mind that the sign is already there and what is being proposed is similar to what is there.

Member Driscoll commented that looking at it that way he has no problem with it but someone could say that they want to do the same exact thing on their property. There are other lots on that stretch that are developable.

Member Dibble stated that maybe the safe refuge is the argument that what is there is already there. That is different than someone wanting to put in something new.

Member Durkin agreed.

Chair Weathersby polled the Board on the Special Exception for the 64sf sign:

- **Would granting the Special Exception be neither injurious nor detrimental to the neighborhood?**

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

- **Is it in harmony with the general purpose and intent of the zoning ordinance and in accordance with the general and specific rules contained within the zoning ordinance?**

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

Chair Weathersby polled the Board on the Special Exception for the sign above the main entrance, which is 45sf and is backlit (size allowed by Special Exception):

- **Would granting the Special Exception be neither injurious nor detrimental to the neighborhood?**

Patrick Driscoll – Yes
Burt Dibble – Yes

Tim Durkin – Yes
Patricia Weathersby – Yes

- **Is it in harmony with the general purpose and intent of the zoning ordinance and in accordance with the general and specific rules contained within the zoning ordinance?**

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

Member Driscoll stated that he would like the backlights of the signs to go off at some time after dusk.

Member Durkin asked if there are other lit signs along Route 1 in the commercial zone.

Zoning Administrator Reed commented that there are none.

There was discussion on whether to require the signs to be turned off at night.

Member Driscoll stated that the Board was talking about the reason this is justified is because there is already a sign there. In looking at the Depot Honda sign, even though it is not a backlit sign, it is a lamppost sign right at the entrance; so that one sure. However, they are replacing a sign with one that is backlit. The sign that is already there is not lit. He would like the sign to be shut off at night. He pointed out that one of the signs is already getting bigger. They are also asking for a sign increase for the one on the road so that should be off by 11:00 p.m. also. His proposal is to have all lights off by 11:00 p.m. until 5:00 a.m.

Chair Weathersby stated that this can be made a condition. She would also like to consider a condition that the electronic message board not be changed more than once per day.

The Board agreed that once per day was reasonable.

Referring to the sign on the side of the building, Chair Weathersby asked the applicant why he needs that sign.

Mr. Van Fleet explained that when someone is looking at the building it is a quick and easy view of what products are offered. That is better than what is out at the road.

Chair Weathersby polled the Board on the Special Exception for the sign on the side, which is 50sf and is backlit (size can be granted by Special Exception):

- **Would granting the Special Exception be neither injurious nor detrimental to the neighborhood?**

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

- **Is it in harmony with the general purpose and intent of the zoning ordinance and in accordance with the general and specific rules contained within the zoning ordinance?**

Patrick Driscoll – Yes
Burt Dibble – Yes
Tim Durkin – Yes
Patricia Weathersby – No

Chair Weathersby polled the Board on the Special Exception for the sign out front with the electronic message board and three of the five signs below:

- **Would granting the Special Exception be neither injurious nor detrimental to the neighborhood?**

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

- **Is it in harmony with the general purpose and intent of the zoning ordinance and in accordance with the general and specific rules contained within the zoning ordinance?**

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

Chair Weathersby noted that there are a lot of cumulative signs on this property and they are lit. There are a lot of lit up signs and it is too much when the products are being advertised out front.

Motion by Burt Dibble to grant the Special Exception for the 64sf ‘Mainely Tubs’ sign in the front all lighted signage be turned off daily between 11:00 p.m. and 5:00 a.m.

Seconded by Tim Durkin. Vote: 4-0-0

Motion by Burt Dibble to grant the Special Exception for the 45sf backlit sign over the front door with the condition that all lighted signage be turned off daily between 11:00 p.m. and 5:00 a.m. Seconded by Tim Durkin. Vote: 4-0-0

Motion by Burt Dibble to grant the Special Exception for the 50sf backlit product sign on the wall with the condition that all lighted signage be turned off daily between 11:00 p.m. and 5:00 a.m. Seconded by Tim Durkin. Vote: 3-1-0 Opposed: Patricia Weathersby

Motion by Burt Dibble to grant the Special Exception for the electronic message board and the three (3) product signs below with the conditions that all lighted signage be turned off daily between 11:00 p.m. and 5:00 a.m. and the message on the electronic message sign may change no more than once per day. Seconded by Tim Durkin. Vote: 4-0-0

~~2. Lavioe Alice M. Rev. Trust, Alice M. Lavioe 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 required and from Section 204.3C for a walkway within the 30' front yard setback. Property is in the General and Coastal Overlay Districts. Case #47-2018.~~

- **Withdrawn by applicant.**

Note: *Charles Hoyt was seated for Patrick Driscoll who recused himself for the following case.*

3. Charles & Judith Sampson of Portsmouth, NH, for property owned and located at 300 Pioneer Road, Tax Map 24, Lot 11, request Variances from Section 301.8 B (1) & (7) for a garage and breezeway 31' within tidal wetlands buffer where 100' is required and for a 12'x14' three season room deck with stairs within the 100' tidal wetlands buffer. Property is in the Single Residence District. Case #26-2017.

Attorney Tim Phoenix, representing the applicant, presented to the Board. He stated that Mr. Sampson filed the original application last summer. Working with the Rye Conservation Commission and working on other issues, it has been continued a couple of times. He continued that the lot is pretty large for Rye standards. It is 61,542sf. There are a lot of wetlands on the property. Only the lower right corner is outside the wetlands or the buffer. On the lot is an existing home and a shed that was recently built. Mr. Sampson bought the property about two years ago. The house, shed and existing improvements were all there, including a drainage feature. (He pointed out the proposed location for the garage on the plan.) He noted that the area is already heavily disturbed (this is also mentioned in the Conservation Commission letter.) The area is packed with gravel and cars have been parking there for years. The proposal is to build a garage with a connector to the house. This is the only location that the garage can really

go in order to be tied in with the house. The garage is 22x22 with a 7x7 breezeway connecting to the house. Also, in the back of the house is a very small deck that the applicant would like to replace with an uncovered deck that is 12x24. The applicant has been before the Conservation Commission a couple of times and they made some recommendations. The Conservation Commission's letter in January listed what they wanted to have done and it noted that a recommendation would be made once those things were done. He noted that all of those things are done and the application has not gone back before the Commission; however, the chair of the Commission was sent a copy of the plans that went to the State so they did have knowledge of the changes. After looking at this a couple of time, the Conservation Commission recognized that the whole lot, except for the front corner, is either in the wetlands or buffer and all the improvements are in the buffer. In the January 24th letter, the Commission made some recommendations of what they would like to see happen on the site:

- Native plantings around the building.
- Prohibit grass in the undisturbed buffer.
- Change the deck expansion from what was proposed (which was a covered deck) to an open deck.
- Reroute the existing PVC foundation drain. (It has been rerouted to run from the house to the dripedge behind the garage.)
- The driveway is going to be changed to porous pavement, (which will change the overall impervious coverage from 6.4% to 3.2%).

Attorney Phoenix stated that the garage is about 30ft from the wetland at its closest point. This replaces an already impervious heavily compacted area, upon which cars park, with a garage which will benefit them by parking out of the snow. It is also a great improvement to have the native plantings, the rerouting of the drainage and the porous pavement. The existing deck is about 52ft. They are requesting 48.9ft. There is a generator that was moved at the request of the Conservation Commission. The generator and propane tanks are located as far from the wetlands as they could reasonably be located. He stated that Mr. Sampson has tried to work in harmony with the lot and in compliance with the concerns and recommendations of the Conservation Commission.

Member Durkin asked if the plan is consistent with the recommendations that were made by the Conservation Commission.

Attorney Phoenix confirmed.

Steve Riker, Ambit Engineering, noted that the house is already surrounded on the northwest and southeast side with stone drip aprons. He believes the Conservation Commission did not see those because they were covered with snow. There is not a need to address number 5 of their recommendations. The second part of number 5 involves the foundation drain, which will be redirected to the stone drip apron that will be constructed along with the proposed garage.

Member Durkin asked if they are meeting the recommendation.

Mr. Riker confirmed.

Attorney Phoenix reviewed the criteria for granting the variances:

- **The variances are not contrary to the public interest and the spirit of the ordinance is observed** – The issue is whether the variances would unduly and to a marked degree conflict with the ordinance such that it violates the basic zoning objectives. The case law on how to apply that asks “is it violating the basic zoning objectives”. Is it altering the essential character of the locality? He would suggest that this garage with these improvements, as recommended by the Conservation Commission, are not changing the characteristics of the locality. The second question is whether it threatens the public health, safety or welfare. This is an improvement over what is there, given the compacted surface the garage is going on top of. The public health is in no way harmed.
- **Granting the variances will not diminish surrounding property values** – This property will be enhanced in value because of the garage and its connection to the house. The property will be enhanced because of the environmental changes that the owner is willing to do at the recommendation of the Conservation Commission. As a result, surrounding property values will not be diminished.
- **The denial of the variances would result in an unnecessary hardship – Special conditions exist that distinguish the property from others in the area.** No structures can be located outside the wetland or the buffer. That factor makes a special condition because there is no place to put the improvements without being in the buffer. **There is no fair and substantial relationship between the public purposes of the ordinance and its application in this instance.** The purpose of the ordinance is to protect the wetland. The wetland is not all that well protected by existing conditions. The improvements are protecting the wetlands at least as well, maybe even better, so there is no reason to apply the strict test.
- **The proposed use is reasonable** – It is a residential use and this is reasonable.
- **Substantial justice will be done by granting the variances – There is no benefit to the public that would outweigh the hardship to the applicant.** Any loss to the applicant not outweighed by any gain to the public is an injustice. The public is not benefited in any way by denying the variances. If the variances are denied, the applicant will not have a garage and a larger more useable deck. The town will not get the benefit by cutting the impervious surface by 50%, along with the other protections of the dripedge and native plantings.

Referring to the Conservation Commission’s letter, Member Hoyt noted that they recommended a raingarden in conjunction with the native plantings.

Chuck Sampson, applicant, stated it is not proposed because they went to the native plantings. The plantings basically took the place of the raingarden. The Conservation Commission was on site two or three times discussing what would be best for moving forward with the project.

Attorney Phoenix noted that the letter seems to say both. He continued that his understanding was because of what was running out of the pipe, they could either have a raingarden or the pipe could be rerouted.

Mr. Riker confirmed. Rerouting the pipe into the stone apron takes care of the issue with their concern of water flowing towards the wetlands.

Chair Weathersby asked if a Stormwater Management Plan has been done for the property.

Mr. Riker explained that due to the DES rules it is not required because there is a reduction in impervious coverage.

Chair Weathersby asked why the shed is staying when there is a garage.

Attorney Phoenix explained that the applicant wants the shed for storage and it is already there.

Mr. Sampson noted the garage will be completely within the footprint of the gravel area and would need to be much bigger than what is now being proposed.

Referring to the Conservation Commission letter, Member Durkin asked where the undisturbed buffer starts.

Mr. Sampson pointed out that it is behind the garage.

Mr. Riker stated that the Conservation Commission does not like lawns directly next to the wetlands because of fertilizers and mowing. That statement was made because they did not want grass to be planted there. He assumed it to mean between the structures and the wetland boundary.

Chair Weathersby opened to the public for comments.

Hugh Lee, 220 Pioneer Road, stated that this is something the Board should approve. It is not detrimental to the neighborhood in any way. He does not think that anyone objects to this. It is a reasonable use to have a garage with a very nice house. He speaks highly in favor of this project.

Member Hoyt asked if other abutters have been notified.

Mr. Sampson stated that the neighbor across the street knows about the proposal. The other neighbors were notified by abutters' notices.

Attorney Phoenix stated that this is a little different because the shed is already there. In adding it all up and looking at what the Conservation Commission wanted which applicant has agreed to do, the benefits provided, including the reduction in impervious surface, should carry the day for him.

Hearing no further comments in favor or in opposition to the proposal, Chair Weathersby closed the public hearing at 9:16 p.m.

Member Hoyt stated that he does not have a problem with any of it. The applicants are making a modest request. He thinks that as a landowner they should be allowed a garage and a deck to enjoy their property. The proper paperwork has been filled out and the proper channels have been followed to get it to pertinent bodies. He has looked at the application and does not have any problem with it whatsoever.

Member Dibble stated that it seems to him that to take away the shed would not do anything to be a benefit to the town and would be a disadvantage to the property owner. He does not feel strongly about the shed.

Member Durkin stated he always has concerns about structures that are built within the wetlands or tidal buffer. The key issue for him is what is already there and the nature of the additional structure. The fact that this is a garage built on a slab without any meaningful disturbance of the existing conditions which has some improvement in the reduction of impervious surface. The concern he has is that the Conservation Commission is saying no planting grass and plant native species. There is no enforcement mechanism. Essentially, the Board is relying on the applicant to comply. He thinks that subject to meeting all the conditions in the Conservation Commission's letter, he would be okay with the proposal.

Chair Weathersby stated that she remembers the house and the old cabin that were there. When that owner died, the house was torn down and a house was built in that same spot with a shed in the same spot as the cabin (roadside stand). She understands that because it was the same places and most of it is in the 75ft buffer. Now they want to add more in the buffer and she is having trouble. If nothing was there and they wanted to add both, the Board would probably say no because it is too much stuff in the buffer. That is where she gets hung up. She does not mind the garage but it does add another structure in the buffer. That is what she is struggling with. It will be another structure with more runoff, people coming and going from the buildings, cars and a lawnmower going in and out. The concern is for the wetlands. If the shed was being removed, she would get "on board" with this. She commented the deck is 24ft long, which is a pretty big deck. It is a little much for her.

The Board discussed possible conditions.

- Compliance with the recommendations in the January 24, 2018 Conservation Commission letter.

Chair Weathersby called for a vote on Sections 301.8B (1) and (7), for open deck:

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

Charles Hoyt – Yes

Burt Dibble – Yes
Tim Durkin - Yes
Patricia Weathersby – Yes

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

Charles Hoyt – Yes
Burt Dibble – Yes
Tim Durkin - 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?

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

7. The proposed use is a reasonable one?

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

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

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

Chair Weathersby called for a vote on Sections 301.8B (1) and (7), for garage and breezeway:

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

Charles Hoyt – Yes
Burt Dibble – Yes
Tim Durkin - 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?

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

7. The proposed use is a reasonable one?

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

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

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

Chair Weathersby called for a vote on Sections 301.8B (1) and (7), for the propane tank & generator:

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

Charles Hoyt – Yes
Burt Dibble – Yes
Tim Durkin - 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?

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

7. The proposed use is a reasonable one?

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

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

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

Motion by Burt Dibble to grant the variance applications for Charles and Judith Sampson for property owned and located at 300 Pioneer Road to Section 301.8 B (1) & (7) for a garage and breezeway, propane tank and generator, and deck as proposed conditioned upon on-going compliance with the Rye Conservation Commission's January 24, 2018 recommendations. Seconded by Charles Hoyt. Vote: 4-0-0

Note: Patrick Driscoll was reseated for the remainder of the meeting and Charles Hoyt was unseated.

- 4. Gary Densen for property owned by John & Elaine Lampron and located at 14 Fairhill Ave., Tax Map 20.2, Lot 144, request Variances from 603.2 to demolish existing structure and replace with new; from Section 204.3C for construction 24.7' in the front yard setback where 30' is required; from Section 204.3A for construction 25.5' in the rear setback where 26.2' is required; from Section 204.3B for construction 17.6' and 15.6' in the side setbacks where 20' is required; from Section 304.5 to allow 15.4% lot coverage where only 15% is permitted; from Section 500.3 to allow parking within the required front yard setback of 40' from Section 301.8 B(1), (2) and (7) to allow surface alteration in the wetlands buffer and to allow a septic system in the wetland buffer; from Rye Building Code Section 7.9.2.5 to allow the septic system within the 20' side setback; from Rye Building Code 7.9.2.2 to allow the septic system within the 75' of a contiguous wetland; from Rye Building Code Section 7.10.2 and 7.10.3 to allow less than 2 test pits and located closer than 30 feet apart; from Rye Building Code Section 7.9.3.1 which requires the bottom of the proposed effluent disposal system to be a minimum of 6' above the top of any**

bedrock or impermeable substratus. **Property is in the General and Coastal Overlay District. Case #13-2018.**

Dennis Quintal, Civil Engineer, representing the applicant, spoke to the Board. He explained the lot was created in 1921 and the house was built before zoning requirements. The existing conditions plan shows the building envelope with the setback requirements. The existing building is not located on the lot according to the building setbacks that are required now, since it was built long before the zoning. He continued that they have identified and flagged the edge of poorly drained soil. The lot corners are identified clearly by monuments. There is a stonewall across the back. The septic tank and the leaching area are on the westerly side of the house and within 11ft of the edge of wetlands. The Conservation Commission visited the property for a site walk and it was one of the rainiest days last month. The Commission was able to view the property under really wet conditions. It is clear that the leaching field is close to or at the water table. He continued that he has calculated the impervious area for the building and pavement which is 15.5% of the lot. Zoning requires 15%. The building itself is slightly above the zoning requirements. Adding the pervious surface with the patio, shower, and propane tank it ends up being 26.1% of the lot, where the lot coverage maximum is 30%. He stated that he tried to create another building envelope with the same setbacks as on the existing conditions plan. (He reviewed the building envelope on the proposed conditions plan.) He noted that the tried to rotate the building slightly and keep within the setback lines. In looking at the front to the proposed garage, there is a distance of 24.7ft to the drip edge of the garage, which is slightly more than the existing. On the easterly side, there is a distance of 15.6ft to the drip edge, which is greater than the existing conditions. To the rear of the lot, the distance is 25.5ft, which is more than the existing conditions. On the westerly side, the distance is 17.7ft, which is greater than the existing condition of 16.8ft. The setback to the wetland is 21.1ft, which is greater than the 20.5ft under the existing conditions. In regards to the septic system, the furthest location from the wetland is in the north easterly corner. They are proposing to try and meet the State requirements as best as possible. The whole lot is within 75ft of the wetlands so the setbacks cannot be met. There is a dimension line that goes right in front of the garage of 56ft. That is the best they could do with keeping 10ft off to the easterly property line and 10ft off the front property line, which is what the State requirement is. The tank being proposed is a 1250 gallon septic tank with 140 linear feet of leaching area, which is required for a three bedroom home. He continued the building is going to be a little bit less impervious at 15.4%. The proposed impervious area includes the building, deck area, propane tank and HVAC unit. He stated the other requirement is two test pits no closer than 30ft of each other. A test pit was done right where the septic tank is and they could not get a second one that was 30ft away without going off the property or into the wetlands. They tried to keep the leachfield as high as possible with a 4ft separation to the refusal area. The other thing they tried to do is mitigate stormwater by having the pervious areas for the driveway and walkway. The total proposed impervious is 16%, which is significantly less than the existing conditions of 26%. The roof runoff will be taken from the buildings and put into crushed stone right along the drip edges of the garage and dwelling. He noted that they met with the Conservation Commission. They want to protect the wetlands as much as possible. The Commission suggested to not have the grass on the westerly side and have it mulched. They also said a walkway around the building would be okay, as long as it was

pervious, crushed stone or patio blocks. They had also suggested some tree plantings. He also noted that there will not be a full cellar. It will be a crawl space. The crawl space will be just above the water table; however, there will be sump pump and crushed stone discharge pit on the easterly side in case there is some water levels that are higher in a storm situation. He commented that it is a small lot and it was a challenge to try to do something there. He thinks with the old building that is there, it would be an advantage to have a new building. They have tried to make it better than what it is.

Attorney John Radding, representing the applicants, stated there are a lot of variance applications. They are really all driven by the dimensional and setback aspects of the zoning ordinance. He reviewed the criteria for granting the variances:

- **The request is not contrary to the public interest** because it is not going to alter the essentially character of the neighborhood or threaten the public health, safety and welfare. This is the replacement of a home that is built on wooden piers with a home that will have fewer impacts dimensionally on the lot and will be a much better living circumstance for the applicants.
- **The spirit of the ordinance will be observed.** Having fewer impacts is consistent with the objectives of the ordinance. It will not alter the character of the neighborhood or threaten the public health, safety or welfare.
- **Substantial justice will be done** because these changes will present a gain to the general public because it is making a situation that is not ideal a little bit better. With respect to the septic system, it is being made much better because it is being moved further away from the wetlands.
- If the variance is denied, it **creates a hardship** to the property owner because they are dealing with a property that really needs to be replaced. Basically, the whole home needs to be taken down and a functioning slab needs to be put underneath.
- They have submitted a letter from a local real estate agent who has said that the **surrounding properties values will not be diminished** if granted. Replacing an aging and somewhat dysfunctional structure with a new structure that will have less dimensional impacts will have a good effect on property values.
- The hardship exists because **there are special conditions that distinguish it from other properties in the area.** The lots across the street do not have these wetland issues. The lot to the right-hand side is not impacted by wetlands to the same extent as this property. While there might be other properties in the neighborhood with the same wetland challenges, the wetlands really dramatically impact this property as compared to some of the others. The other special condition is the building foundation which is rotted and needs to be replaced. Those are special conditions that create a hardship. The property owners should be able to replace their home with a structure that has fewer impacts. That is a reasonable application.

Member Driscoll noted that there is a future proposed garage on the site plans. In the building plans the garage is not shown.

Mr. Quintal explained the intent is to put a garage on the property but not right now.

Member Driscoll clarified that the garage will be within the next two years and the variance is being requested tonight.

Mr. Quintal confirmed.

Member Durkin asked what will be in the location of the future proposed garage.

Mr. Quintal explained that it will be grass for now.

The Board reviewed the proposed plans.

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

Paul Connolly, Civil Engineer, representing Jim and Ned Hogan, abutters across the street and landowner to adjacent land, spoke to the Board. He stated that the Hogan's are very supportive of what is being proposed. In all regards, the building that is proposed is more conforming with the zoning ordinance than what exists there today. Even more importantly, the septic system is much more conforming to setbacks from adjacent wetlands and height above seasonal high water. The system today is about 11 ft from the jurisdictional wetland and for a good portion of the year, it is at or below seasonal high water tables. The proposed system is about as good as it can be. The only element of concern, identified by the Hogan's, is the stormwater drainage on the site. Although a letter describing the Stormwater Management Plan has been submitted, a more detailed representation is required. He pointed out that in the Rye Building Ordinance there is a requirement that a Stormwater Management Plan be submitted for the Building Inspector's review and approval. It is his experience the plan must also include stormwater drainage calculations to prove the proposed development does not exceed the pre-development runoff. He continued that there is a 4 inch PVC drainage pipe that runs from the wetland into a catch basin in the left rear corner of the subject premises. A 4 inch drain is not adequate. Furthermore, that drain at times is underwater and needs to work better. On the north side of the property is an open swale that is full of water right now. That runs up through a pipe, across the Jarvis' property, to a catch basin, and back through the 4 inch PVC pipe in the wetlands. This is a good opportunity to have better drainage for the water in that 4 inch pipe. The pipe should be made at least a 12 inch pipe that would better drain stormwater runoff and also have the capacity of being better maintained. He stated that they are asking that this be made a condition or that the Board recommend to the Building Inspector that he take a closer look.

Referring to the drainage pipe, Chair Weathersby asked who holds the easement.

Mr. Quintal stated that it is there as a drain. From his understanding, that it is for the benefit of the abutters and crosses this property. He does not believe is a recorded deed. His experience with wetlands is that they are jurisdiction of the State. Certainly, the Conservation Commission

has input. If any changes to pipe were to take place, he is not sure the State or Conservation would see this as a good thing to drain the wetland. Wetland resources are protected and they want to maintain that status. It would be easier to maintain a bigger pipe; however, that is going to drain the water and effect the resource.

Member Durkin asked where the 4 inch PVC pipe goes after it crosses the property.

Mr. Lampron, applicant, stated that it flows across the 14 Fairhill Ave property to a catch basin located on the abutters' land. He believes it then goes into a drainage ditch on State property on the westward side of Route 1A and drains from that ditch into the Atlantic Ocean.

Mr. Connolly stated that at times that pipe is underwater. While the site is ripped up, they would like to see a new pipe put in that is no higher or lower than the existing pipe and let it do its job.

Member Durkin stated that without some type of plan, they do not know what the impact of installing a larger pipe may be. He asked how there could be any conclusion that installing a larger diameter pipe is going to improve the drainage if it is done only for this property.

Chair Weathersby commented that it will go down to a 4 inch pipe on either side.

Member Durkin noted that he does not think anything is going to be solved by having a condition to replace the pipe with something larger.

Hearing no further comments or questions, Chair Weathersby closed the public hearing at 10:30 p.m.

Member Driscoll stated there are a couple of things missing from this application that he would like to see. He would like to see the garage space, where it is going to be located and where the water would go. He would also like to see what the Conservation Commission's recommendations are. Other than that, it seems like a really reasonable house. It seems like they are trying to keep everything as close to scale as to what is there now. It is a tough lot but they have a right to build a house. If the garage is what he expects it to be, it will be quite reasonable and he can get behind it.

Chair Weathersby commented that the garage is a one story single car garage. It can only be a single bay plus storage.

Member Durkin asked if the driveway is going to end where the proposed garage begins. Whether or not that garage is built now or a year from now, it is not going to have any impact on the grade of the new driveway or the diversion swale, correct?

Mr. Quintal explained the grade would match the grade of the house.

Member Durkin agreed with Member Driscoll. He would like to hear what the Rye Conservation Commission has to say. It would also be helpful to have a rendering of the garage. The Board may need to decide if they should ask the applicant to come back if he decides to build the garage.

Chair Weathersby stated that she agrees it would be helpful to have a letter from the Rye Conservation Commission. However, what has been represented to the Board as their recommendations certainly seem to be very likely.

Member Durkin asked if the applicant would be willing to conform to the recommendations of the Conservation Commission when they are presented in a letter form.

The applicant agreed.

Chair Weathersby asked for thoughts on the drainage. She would argue that the Hogan family should raise these issues with the Town of Rye and ask Mrs. Reed to forward their letter to the Public Works Director to make him aware of the situation. She does not feel it is the Board's role to get in the middle of this issue. She would be reluctant to open this up without more information. She would encourage the neighbors and the Hogan's to work with the Town of Rye and State of N.H. to try and address this. She continued that it is a reasonable house. They have made extra effort to keep it roughly in the same footprint. The septic is much better and the garage is a reasonable size. They are not over reaching at all. The reduction in impervious surfaces is impressive. She reiterated that what they are asking for is reasonable.

Review of condition:

- The applicant shall comply with the recommendations of the Rye Conservation Commission letter, which when issued shall be appended to the decision.

Chair Weathersby called for a vote on variances to 603.2, 204.3C, 204.3A, 204.3B, 304.5, 500.3 and 301.8 B (1)(2) and (7):

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

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

2. The spirit of the ordinance is observed?

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

3. Substantial justice is done?

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

4. The values of surrounding properties are not diminished?

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

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

Patrick Driscoll – Yes
Burt Dibble – Yes
Tim Durkin - 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?

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

7. The proposed use is a reasonable one?

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

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

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

Chair Weathersby called for a vote for Building Code relief from 7.9.2.5, 7.9.2.2, 7.10.2, 7.10.3 and 7.9.3.1:

- **Would enforcement of those provisions of the Rye Building Code do manifest injustice and would be contrary to the spirit and purpose of the building code and the public?**

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

Motion by Patrick Driscoll to approve the application as submitted with the condition that the applicant will adhere to the recommendations of the Rye Conservation Commission as set forth in a to-be-issued letter, a copy of which will be appended to this notice of decision. Seconded by Tim Durkin. Vote: 4-0-0

- 5. Splitrock Cove Limited Partnership & James P. Nadeau, Jr. of 507 State Street, Portsmouth NH for property owned at 135 Wentworth Road, Tax Map 24, Lot 30 and 30-1 along with The McKenna Revocable Trust of 2004 from property owned and located at 139 Wentworth Road, Tax Map 24, Lot 32 request variances from Section 203.3B side yard setback and from Section 203.3F lot area per family due to an application for a lot line adjustment between the properties by reducing parcel 30 from 2.526 acres to 2.403 acres and increasing parcel 32 from 0.438 acres to 0.560 acres and which has a mixture of some nonconformities becoming less nonconforming but other nonconformities becoming more nonconforming. Parcel 24-32 does not have street frontage and parcel 24-30 does not meet side yard setbacks. **Property is in the Single Residence District. Case #14-2018.****

Motion by Burt Dibble to continue the application of Splitrock Cove Limited Partnership and James P. Nadeau Jr. to the June meeting. Seconded by Tim Durkin. All in favor.

- 6. Susan & Kevin Dupli sea for property owned and located at 31 Parson Road, Tax Map 20.2, Lot 47 request a Variances from Section 204.3C for 30' x 26' garage 18' in front setback and from Section 301.8B (1)(2) & (7) for a 30' x 26' garage 10' +/- within 75' buffer. **Property is in the General Residence and Coastal Overlay District. Case #15-2018.****

Motion by Burt Dibble to continue the application of Susan and Kevin Dupli sea to the June meeting. Seconded by Tim Durkin. All in favor.

7. New Business

• Rules of Procedure and posting of the sign for notice

The Board discussed the posting of signs for notice on properties before the Zoning Board of Adjustment. It was agreed that the signature page of the application should say “The Board may not hear the application” with regards to if a sign is not posted. Zoning Administrator Reed will make that change.

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

Respectfully Submitted, Dyana F. Ledger

BOARD OF ADJUSTMENT

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Charles & Judith Sampson of Portsmouth, NH

Property:

300 Pioneer Road, Tax Map 24, Lot 11
Property is in the Single Residence District

Application case:

Case # 26-2017

Date of decision:

May 2, 2018

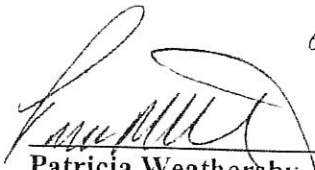
Decision:

The Board voted 4-0 to grant variances from the following sections of the Zoning Ordinance:

- Section 301.8 B (1) & (7) for a garage and breezeway 31' within tidal wetlands buffer and in the freshwater wetlands buffer;
- Section 301.8 B (1) & (7) for a deck 48.9' within the tidal wetlands buffer and in the freshwater wetlands buffer;
- Section 301.8 B (1) & (7) for a generator 26' within the tidal wetlands buffer and in the freshwater wetlands buffer; and
- Section 301.8 B (1) & (7) for a propane tank 30' within the tidal wetlands buffer and in the freshwater wetlands buffer.

Each of the above variances was granted conditioned upon on-going compliance with the following Rye Conservation Commission's January 24, 2018 recommendations:

1. *The generator and propane tanks be located between the shed and the garage to keep them out of the undisturbed buffer;*
2. *Native plantings be installed and maintained to a depth of five feet behind the garage (the side nearest the undisturbed southern buffer);*
3. *Planting of grass in the undisturbed buffer behind the garage and home is prohibited;*
4. *The deck is limited to an open deck only;*
5. *The pvc pipe for the basement drain now in the buffer be relocated so it drains into the area behind the garage near new plantings; and*
6. *The current impervious driveway be converted to a pervious driveway surface.*


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:

May 2, 2018

Decision:

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

- Section 301.8B (5) for the cutting of twelve (12) trees greater than 4 ½ inches in diameter in the wetlands buffer; and
- Sections 301.8B (1) and (7) for the addition of fill and surface alteration within the buffer.

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

- Section 7.9.3.2 for bottom of the effluent disposal system 2' above the seasonal high-water table:

All variances and building code relief were granted upon the following 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 (rather than 11) trees may be removed;
2. Site conditions as set forth in the Applicant's Stormwater Management Plan be maintained;
3. The stream bed on the site not be altered in a way that negatively impacts stream flow; and
4. A maintenance contract for the effluent disposal system be maintained with Advanced Onsite Solutions, LLC or another approved maintenance contractor;
5. The compressor for the waste disposal system be located in the basement of the home (or other location inside the home); and
6. The silt fence be located on the wetland side of the new plantings while work is being conducted in the wetlands buffer.

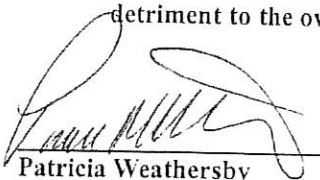
Reference is made to the following Plans by MSC/TFM:

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.

Stormwater management plan dated February 7, 2018 by MSC (S-3)
Proposed Conditions Plan dated September 7, 2018, last amended 3/7/18 (S-2)
Zoning Relief Plan dated September 7, 2017, last amended 2/7/18 (S-2)

The reasons for the Board's approval of variances and building code relief include the following:

1. The intrusion into the wetlands buffer is minimal. The house and effluent disposal system are located entirely outside the wetlands buffer. The grading and fill in the buffer is not extensive and is at least 60' from the wetlands.
2. The first 60+' of the wetlands buffer and its extensive tree cover and vegetation will remain undisturbed and continue to perform its filtering and water uptake functions.
3. A border of native plants will be installed to offset the loss of the 12 trees and native groundcover.
4. The stormwater management plan demonstrates that all site changes will not cause additional water flowage off the site or towards the wetland;
5. The proposed effluent disposal system is a "state of the art" system and will not result in contamination of the groundwater if properly maintained.
6. The State of NH requires only 2' of separation from high water table. The proposed effluent disposal system is the type recommended to be installed in areas with high water tables, including the Parsons Creek watershed.
7. No evidence was presented that demonstrated that the projected sea level rise will cause a rise in the water table such that it would reach the base of the proposed effluent disposal system. Indeed, the Applicant's engineer read from a report of the Rockingham County Planning Commission's Tide to Storms Report that indicated that even during storm surge events in 2100, there will continue to be separation between ground water and the proposed system.
8. Locating the home and septic system in their proposed locations rather than on the uplands at the northeast portion of the lot will have less impact upon the wetlands and wetland buffer.
9. The variance will not alter the essential character of the neighborhood or adversely affect the public health safety and welfare or be contrary to the purposes of the zoning ordinance.
10. No credible evidence was presented that demonstrated that granting the variances and building code relief would result in a diminution of the value of surrounding properties. Board members applied their own knowledge of the neighborhood in rejecting assertions that there would be a diminution of surrounding property values.
11. The special condition of the property from which hardship arises is the seasonal stream with runs through the property. The lot was created in 2010 when the wetlands buffer was only 50 ft., as opposed to 75 ft. now.
12. For reasons stated above, 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 and the proposed use is a reasonable one.
13. Denying the variances and building code relief would result in a hardship to the property owner and likely a significant loss of property value as the property would be unable to support a modern home of a size typical for the area.
14. With the conditions imposed by the board, there is no benefit to the public which outweighs the detriment to the owner if the variance is denied.



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:

Gary Densen for property owned by John & Elaine Lampron

Property:

14 Fairhill Ave, Tax Map 20.2, Lot 144
Property is in the General and Coastal Overlay Districts

Application case:

Case # 13-2018

Date of decision:

May 2, 2018

Decision:

The Board voted 4-0 to grant variances from the following sections of the Zoning Ordinance:

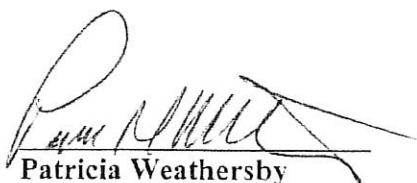
- Section 603.2 to demolish the existing structure and replace with new;
- Section 204.3C for construction 24.7' in the front yard boundary;
- Section 204.3A for construction 25.5' in the rear yard boundary;
- Section 204.3B for construction 17.6' and 15.6' in the side yard boundaries;
- Section 304.5 for lot coverage 15.4%;
- Section 500.3 to allow for parking within the front yard; and
- Section 301.8B (1)(2) & (7) for surface alteration within the wetland buffer.

The Board voted 4-0 to grant Building Code Relief from the following sections:

- Section 7.9.2.5 for septic system within the side yard boundary;
- Section 7.9.2.2 for septic within 75' of wetlands;
- Section 7.10.2 and Section 7.10.3 for 1 test pit; and
- Section 7.9.3.1 for bottom of effluent disposal system;

Each variance and building code relief was granted upon compliance with the following condition:

The applicant will adhere to the recommendations of the Rye Conservation Commission as set forth in a to-be-issued letter, a copy of which will be appended to this notice of decision.



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:

Osprey Unlimited Industries, Inc of Scarborough ME
Euphoria LLC

Property:

Fifty Lafayette Road Real Estate
50 Lafayette Road, Tax Map 14, Lot 17
Property is in the Commercial District

Application case:

Case # 12-2018

Date of decision:

May 2, 2018

Decision:

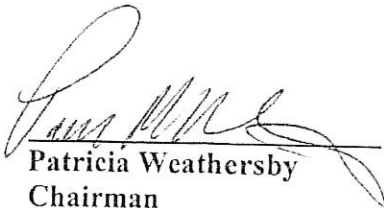
The Board voted 4-0 to grant Special Exceptions from the following sections of the Zoning Ordinance:

1. Section 501.1C for a top sign near roadway with a size of 64sq. ft.,
2. Section 501.1C for sign affixed above the building entry with a size of 45 sq. ft.,
3. Section 501.3 for a static electronic message sign and three (3) small product signs located below, all near roadway, in addition to the signs referenced in 1-2 above.

The Board voted 3 to 1 to grant a Special Exception from Section 501.1C of the Zoning Ordinance for a sign affixed to the side of the building with a size of 50 sq. ft.

All special exceptions were granted upon compliance with the following conditions:

- (1) *All lighted signage is to be turned off daily between the hours of 11:00pm and 5:00am; and*
- (2) *The message on the electronic message sign may change no more than once per day.*



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: Splitrock Cove Limited Partnership & James P. Nadeau, Jr. of 507 State Street, Portsmouth NH

Property: 135 Wentworth Road, Tax Map 24, Lot 30 and 30-1

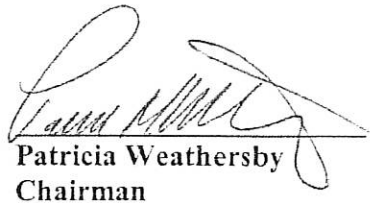
Applicant/Owner: McKenna Revocable Trust of 2004

Property: 139 Wentworth Road, Tax Map 24, Lot 32

Application case: Cases # 14-2018

Date of decision: May 2, 2018

Decision: The Board voted 4-0 to continue the application to the June 6, 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:

Susan & Kevin Duplisea

Property:

31 Parsons Road, Tax Map 20.2, Lot 47

Application case:


Cases # 14-2018

Date of decision:

May 2, 2018

Decision:

The Board voted 4-0 to continue the application to the June 6, 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.