

# BOARD OF ADJUSTMENT

## -Rye, New Hampshire-

### NOTICE OF DECISION

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

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

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

**Date of decision:** January 2, 2019

**Decision:**

**Relief Granted:**

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

- Section 301.8 B (1)(2) and (7) for surface alterations for and the installation of a septic tank 50' from tidal wetlands and for a leach field 60.6' from tidal wetlands and 44.6' from freshwater wetlands; and
- Section 301.5 A for the cutting of shrubs and the herbaceous layer within the border zone of the tidal marsh for the installation the proposed septic system.

The Board voted 5-0 to grant Building Code relief from the following sections of the Building Code for a septic tank 50' from tidal wetlands and for a leach field 60.6' from tidal wetlands and 44.6' from freshwater wetlands:

- Section 7.9.2.2
- Section 7.9.4.1
- Section 7.9.4.2

The above Zoning Ordinance variances and Building Code relief were each granted upon continued compliance with the condition that the dwelling located on the property be occupied for no more than nine (9) continuous months per year.

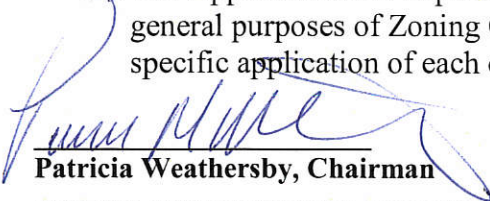
**Relief Denied:**

The Board voted 4-1 to deny variances from the following sections of the Zoning Ordinance:

- Sections 603.1 and 603.2 for expansion and/or rebuilding of a non-conforming structure on a non-conforming lot;
- Sections 301.8 B (1) for surface alterations within the freshwater and tidal wetland buffers and 301.8 B (7) for the expansion and relocation and/or rebuilding of the seasonal dwelling 22.4' from the freshwater wetland and 22.9' from the tidal wetland and entirely within the wetlands buffer.

The Board denied the above variances as the requests failed to satisfy the criteria for granting variances – the specific reasons include:

1. The relocation and expansion of the existing dwelling and related construction activities less than twenty-three feet from both freshwater and tidal waters and entirely within the protective buffer zones for such waters are contrary to the public interest.
2. The relocation and expansion of the existing dwelling and related construction activities less than twenty-three feet from both freshwater and tidal waters and entirely within the protective buffer zones for such waters violate the spirit of Rye's zoning ordinance.
3. The proposed larger home, together with the approved septic system, overburdens the approximately 15,000 SF of uplands on the property, all of which are located in the wetlands buffer.
4. The proposed dwelling, enlarged by approximately 200%-300%, would result in too great an intensification of the use of the property.
5. Denying the variances does not create an unnecessary hardship to the applicant; the applicant may continue to use the dwelling presently located on the non-conforming lot.
6. The Applicant failed to prove that values of the surrounding properties, particularly the abutting property of the Miller's, will not be diminished if the variances were to be granted. The Miller's testimony that they would not have purchased their property had they known of the proposed construction and of the effects the proposed dwelling will likely have on their use and enjoyment of their property indicate a likely property value affect. While the appraisal by the Stanhope Group concluded that the market values of properties in the neighborhood generally would not be affected, it did not specifically evaluate the effects on properties of any abutter, including the closest abutter, the Millers.
7. There are no special conditions of the subject property that distinguish it from other properties in that area. Many homes in that area are affected by wetland restrictions.
8. The relocation and expansion of the existing dwelling is not a reasonable use of the property given its proximity to freshwater and tidal wetlands.
9. The loss to the applicant by denying the variances (unable to have a larger home) is not outweighed by the gain to the general public of protecting its wetlands.
10. Granting the variances would threaten the public welfare.
11. The Applicant failed to prove that there is no fair and substantial relationship between the general purposes of Zoning Ordinance section 603.1, 603.2, 301.8B (1) or 301.8B (7) and the specific application of each of these sections to the subject property.



**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