

# BOARD OF ADJUSTMENT

-Rye, New Hampshire-

## NOTICE OF DECISION

**Applicant:** Rehearing Request by Derek Durbin, Esq on behalf of Pauline and Todor Simeonov.

**Property:** 720 Brackett Road, Tax Map 17, Lot 65

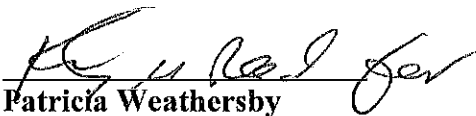
**Application case:** Case # 01-2020

**Date of decision:** April 1, 2020

**Decision:** The Board voted 5-0 to deny the request for rehearing and to uphold the Board of Adjustment's Decision of February 5, 2020 granting the Administrative Appeal applied for by Matt and Natasha Goyette of 750 Brackett Road.

The reasons for the decision include:

1. The Board did not act unreasonably or unlawfully in ruling that the building permit violated Zoning Ordinance sections 301.8B(1) and (7) when the appeal referenced only a violation of section 301.3. The Board may "step into the shoes" of the building inspector and "...may modify the requirement, decision or determination appealed from and may make such order or decision as ought to be made and, to that end, shall have all the power of the administrative official from whom the appeal is taken." RSA 674:33II; RTC Code s.190-7.1(D) (formerly RZO s. 701.7) The Board made a decision that should have been made by the building inspector by determining that variances are required for a stone wall to be constructed in the wetlands buffer.
2. The Board did not act unreasonably or unlawfully when it considered sections of the Zoning Ordinance other than section 301.3 and defined terms such as "fill", "fence" and "disturbance". The Board found it necessary to review and define such terms to determine whether the permit, issued for a "fence" when a stone wall in the wetlands buffer was intended, was properly issued. Interpreting the terms of the zoning ordinance is one of the basic functions of the zoning board of adjustment in New Hampshire and no error was made the Board made such interpretations.

  
Patricia Weathersby  
Chairman