

TOWN OF RYE CONSERVATION COMMISSION

Thursday, February 8, 2024

6:30 p.m.

Rye Public Library

Commission Present: Chair Suzanne McFarland, Vice-Chair Sally King, Clerk Susan Shepcaro, Karen Oliver, Mike Garvan, Joe Tucker, Danna Truslow, and Alternates Paula Mahoney and Jeff Gardner

I. CALL TO ORDER AND PELDGE OF ALLEGIANCE

Chair McFarland called the meeting to order at 6:33 p.m. and led the Pledge of Allegiance.

II. SEATING OF ALTERNATES

None

III. APPROVAL OF MINUTES

- **January 11, 2024**

The following corrections were noted:

- Page 1, the date should read: **Thursday, January 11, 2024**
- Page 1, under approval of minutes: **The date should be December 14, 2023**
- Page 2, 2nd to last paragraph, it should be noted that Mr. Thiel's property abuts land that is owned by the Town; however, it is not conservation land. It should also be noted that Mr. Thiel has a conservation easement on his property, but his land does not abut conservation property.
- Page 4, under 306 Pioneer Road, 4th sentence should read: **The property owner has consulted with three tree services to try to save the trees, as he feels it's going to change the character of the property.**
- Page 5, it should be noted that Jay Lord should be **Jaye Lord**.

**Motion by Mike Garvan to approve the minutes of January 11, 2024 as amended.
Seconded by Susan Shepcaro. All in favor.**

IV. WETLANDS

1. **2231 Ocean Boulevard, Tax Map 5.3, Lot 11**

Owner: Tom Burkardt

TF Moran

Variance: §190-3.1.H.2(a): 75' Freshwater Wetland Buffer

Construct a new 2nd story addition to replace an existing deck over a patio with area below to be enclosed and a new 2nd story deck over existing patio with stairs.

Corey Colwell, TF Moran, presented the proposal to the Commission for property located at 2231 Ocean Boulevard. The property is located on the corner of Ocean Boulevard and Baker Avenue. The parcel is just over 37,000 sq. ft. in size with about 184 ft. of frontage on Ocean Boulevard and 241 ft. of frontage on Baker Avenue. The property has an existing three-story home with an on-grade garage. In the front yard there's a pool with surrounding deck. There's also a slate patio and a deck. The applicant intends to construct a new second story addition over an existing deck. There would also be a second story addition, which would be over the one-story portion of the home. A new deck is proposed in front of the second story addition. The entirety of the construction is going over existing impervious surfaces. To the north of the property is a wetland that requires a 75 ft. buffer, which goes right through the middle of the lot. Excavation within the buffer for the construction is going to be required, so a variance will be needed for the surface alteration. There is no construction activity occurring beyond the previously impacted buffer. The existing building coverage is 7%, which will be increased to 8.2% where 15% is allowed.

- **Site walk scheduled for Tuesday, February 13th, 12:30 p.m.**

Motion by Karen Oliver to move 30 Straw's Point out of posted agenda order. Seconded by Susan Shepcaro. All in favor.

2. 30 Straw's Point Road, Tax Map 8.4, Lot 93

Owner: Peter and Mary Lou LeSaffre

TF Moran

Variance: §190-3.1.H.2(a): 100' Tidal Wetland Buffer

Removal of the existing home and construction of a new home and related improvements

Tree Plan, Planting Plan, Irrigation Plan, Infiltration Tests

Chair McFarland noted that the application for 30 Straw's Point was before the ZBA at their February meeting. The application was continued for more information. RCC's jurisdiction is the 100 ft. buffer. The ZBA was concerned with fill outside of the 100 ft. buffer and stormwater management, because of the recent storms. A neighbor sent the ZBA and RCC photos showing the area after the recent storm events.

Corey Colwell, TF Moran, noted that submitted in the RCC packets is a landscape plan prepared by Jeff Fritz. There is also an irrigation plan and planting plan list. There's more landscaping proposed post construction than what exists on site today.

The Commission reviewed the landscape plan and list of plants proposed.

Mr. Colwell addressed questions previously proposed with regard to the infiltration testing that was performed on the property. He reviewed a revision to the plan showing the intent to provide more treatment to the stormwater runoff, while taking into consideration the rapid infiltration rates. He also addressed other questions raised by the Commission.

After review, Member Shepcaro agreed to follow up with a recommendation letter to the ZBA.

3. 57 West Atlantic Avenue, Tax Map 84, Lot 23

Owner: Russell and Amy Hughes

Millenium Engineering

Mark West, Wetland Scientist

Variance: §190-3.1.H.2(a): 100' Vernal Pool Wetland Buffer

Demolish existing building for new construction. Demolish and move shed location for a new one.

Henry Boyd, Millennium Engineering, presented the proposal for 57 West Atlantic Avenue for the demolition of the existing building and construction of a new home. A variance is being requested from the ZBA for the 100 ft. vernal pool wetland buffer. The lot is 7,127 sq. ft. with 17.8% existing lot coverage. The roofline for the new structure will be 89 ft. from the vernal pool. The proposed shed, which will be located to the rear of the property, is also 89 ft. from the vernal pool. It is outside the 75 ft. wetland buffer. The proposed home is 903 sq. ft., which is a modest, small home and is only 246 sq. ft. larger than the existing cottage. The lot coverage is only increasing to 18.2% and is well below the 30% allowable coverage.

Chair McFarland asked why the proposed home is being moved 11 ft. closer to the vernal pool.

Mr. Boyd explained that if the home is pushed out any further, more relief from side setbacks would be needed. The intent is to provide more distance from the abutter. He thinks that the roof runoff can be treated and there will be plenty of distance before the runoff gets to the wetland. It's also pretty flat, so there will not be a tremendous amount of water running toward that area. Anything coming off the roof can be infiltrated into the ground.

Vice-Chair King asked if they have spoken to the neighbors about forgiving more of the side setback. The Commission's protection is regarding vernal pools and the wetlands.

Russel Hughes, applicant, noted that he has spoken to the neighbor in the rear, but not the neighbors to the side of the property.

Mr. Boyd noted that Attorney Phoenix felt that what is proposed would be a good compromise. The proposal meets almost all of what is required and it's just 11 ft. shy. If it's pulled back, the area will be congested. He also noted that they can add plantings on the edge for enhancement and to add more habitat value.

There was some discussion about the possibility of moving the shed away from the vernal pool or leaving it in its current location.

- **Site walk scheduled Tuesday, February 13th, 11:30 a.m.**

4. 1264 and 1266 Ocean Boulevard, Tax Map 17.3, Lots 55 and 57

Owner: Ocean Mustang Trust and Viking Realty Trust, Donna M. Miller, Trustee
Ambit Engineering

Variance: §190-3.1.H.2(a)(b): 100' Tidal Wetland Buffer

Merge two lots, demolish two existing residential structures, construct single residential structure with new driveway and new septic system.

Planting Plan

Steve Riker, Ambit Engineering, noted that he was before the Commission in July of 2023. This application went before the ZBA and received all the variances needed. He is now before the Commission because he has a wetland application prepared, which has been submitted to NH DES. Part of the recommendation from the Commission that went to ZBA, which was outstanding, was to provide two planting areas. Mr. Riker reviewed the proposed planting plan for the Commission.

The Commission agreed to the planting plan. Member Shepcaro will prepare a letter for DES.

5. 106 Old Beach Road, Tax Map 84, Lot 123

Owner: Paul and Deborah Meyer

Ambit Engineering

Variance: §190-3.1.H.2(a): 100' Tidal Wetland Buffer

Replacement of existing stone steps to the beach

Steve Riker, Ambit Engineering, presented the proposal to replace the existing stone steps through the revetment, which provides access to the beach at 106 Old Beach Road. There are currently five steps. The intent is to make the steps safer by decreasing the riser height from what currently exists. The five steps will be replaced with eight stone steps in a similar location to what is there now. He noted this would be an expedited application to NH DES, if the Commission agrees to sign.

- **Site walk scheduled for Tuesday, February 13th, 1:00 p.m.**

6. 50 Brackett Road, Tax Map 22, Lot 91

Owner: Victory Bastable

Marc Jacobs, Wetland Scientist

Variance: §190-3.1.H.2(a): 100' Berry's Brook Watershed Wetland Buffer

Lay stone wall on north and south side of driveway

Victory Bastable, applicant, spoke to the Commission about the proposal to lay a stone wall between the property and Brackett Road. The buffer slightly touches the south side of the wall and encompasses most of the north side of the wall in the proposed location. The intent of the stone wall is to create a barrier between the property and the road. The application for the wall included a request for a site survey and wetland delineation, which has been completed.

Mrs. Bastable noted that an area of the property was cleared that is in the buffer zone, as she and her husband did not know where the buffers were on the property. Mark Jacobs delineated the wetlands for the stone wall project and they realized that area should not have been cleared. She asked the Commission what the next step would be in correcting the situation.

The Commission suggested that she speak with a wetland scientist about restoration, which would be plantings and trees.

- **Site walk scheduled for Tuesday, February 13th, 1:30 p.m.**

V. PENDING SITE WALKS AND REVIEWS

1. 117 Washington Road – Padi Anderson

Chair McFarland noted that when the property owner went in front of the ZBA, she kept moving the building. She was given explicit directions to decide where it would be located and how big it's going to be. Ms. Anderson has submitted information to the Commission. RCC needs to schedule a site walk. At that site walk, the location needs to be marked and the information on the size is needed. ZBA also wants a firm plan that is not going to change.

- **Site walk tentatively scheduled for Wednesday, February 14th, 10:30 a.m. or Thursday, February 15th, 1:00 p.m., pending confirmation with property owner.**

2. 640 Long John Road

Chair McFarland reported that she spoke with the owner of 640 Long John Road, who had a packet ready to come before the Commission for the dock, platform, and shed. However, it was noticed that it's within the easement. In the easement language, it specifically says that no structures are allowed within the easement. The property owner said he's just taking them out, as he wants to comply with the easement.

VI. OTHER BUSINESS

1. ZBA review

Chair McFarland reported that 125 Wentworth Road went before the ZBA and everything was fine. There was some discussion by the ZBA during the 125 Wentworth Road application about making the mulching wording better, not just straight from DES. Chair McFarland noted that the

recommendation letter started with “all invasives will be taken off the property.” She pointed out that they could say “best management practices” or “attempt,” but she thinks the language “all” needs to be changed a bit. She noted that “all” seems like a strong word and the ZBA Chair had made a comment about it too.

The ZBA started 30 Straw’s Point just before 10:00 p.m., but it was continued until their March meeting.

2. Cedar Run water issue by bridge, Yellow trail work

Member Truslow noted that Chair McFarland asked her to think about whether an additional permit is needed to increase the size of the bridge at the beginning of Cedar Run, because it’s mucky from runoff coming from the adjacent area. She pointed out that she would not reroute the stream, but would add some more bridge. Member Truslow continued that in looking for the initial bridge permit, it doesn’t seem that there’s ever been an official permit. The work for the permit was done, but there’s no paper or electronic copy. She is going to reach out to DES to make sure that RCC gets a copy of the permit. She’s also going to let them know that RCC will be adding more to the bridge. As far as she can see, there’s nothing that restricts the size.

There was some discussion about whether lengthening the bridge would block access for fire vehicles. There was also discussion about the addition not being as wide as what’s already there.

Chair McFarland reported that she and Member Garvan have almost finished both directions of the yellow trail. She thanked Member Garvan and Alternate Gardner for clearing the trees that were blown down and opening up the trail.

3. Whitehorse water issue on trails and by 18 Whitehorse

The Commission agreed to keep an eye on the trails at Whitehorse, as there’s a history of water problems in this area.

4. Tree Stands and Blinds

Member Garvan spoke about the change that Fish and Game has made with regard to portable tree stands and blinds. The dates for when they can go up and when they need to come down has changed. He pointed out the rules now also say that there has to be identification. He also pointed out that Fish and Game is in charge of enforcement. The property owner can contact Fish and Game and they will remove it. Member Garvan commented that he will draft something that mirrors the recent Fish and Game changes. RCC can put this on the agenda for the next meeting and hunters can come to that meeting. He noted that the stands that are up now will have to come down by June 1st. There are three stands on Cedar and one on Seavey. There may be some on Airfield, as well.

5. Mulch wording for investigatory letters

Member Truslow stated that one of the concerns, from the ZBA, regarding mulch wording in RCC's investigatory letters is that RCC is citing one of DES requirements that is for repairing temporary impacts to wetlands. She suggested that they keep straw, saltmarsh hay, and composted mulch, preferably free of weed seeds.

6. Pervious paving – professional opinion

Member Truslow reported that she researched pervious paving and there wasn't any recommendation not to use it in places where there is parking, because it's used for parking all the time. In speaking to a local professional, he didn't think using pervious paving was a problem for a driveway.

7. Gifted land – planning board

No update at this time.

8. Junkins Family Conservation Land

Member Garvan stated that he thought the public meeting was somewhat raucous at times, but a very productive meeting. He thought a lot of the concerns were valid. The Commission needs to reassure the public as to what is going to be done with the land. The public shouldn't have to wait another month until the next meeting.

Mike Garvan moved a statement that reads: In consideration of the very high conservation values of the land and water resources on the Junkins Family Conservation Land, 0 Pioneer Road, Map 22, Lot 73, as well as concerns about over use of the resource and public safety, the Conservation Commission will not pursue development of a parking area on the property. Seconded by Joe Tucker.

Member Shepcaro asked if this would preclude the Commission from doing habitat for wildlife restoration.

Member Garvan pointed out this just talks about a parking area, as that's what people were worried about.

Member Tucker pointed out that the wildlife will come back if they are not being driven out.

Member Garvan noted that this doesn't talk about other uses on the land or other enhancements. The public convinced him that RCC might not have been focusing enough on conservation values and too much on access. He thinks the public deserves to know right away how the Commission feels.

Chair McFarland stated that she is not personally prepared to do anything about this tonight.

Member Oliver agreed there were a lot of valid conservation issues raised. She thinks it's a very small and sensitive piece of property. She also thinks there are other ways to access it, other than building a parking area. The meeting changed her mind, as well. She thinks the conservation piece is more important than anything else.

Alternate Gardner agreed. Hearing all the concerns, he felt a lot of good points were made, although some not in the nicest way. He commented that it can always be revisited at another time, or not, because it's just saying that RCC is going to stop pursuing it.

Vice-Chair King suggested amending it to state a time period. She pointed out that Mr. Keefe could move and another owner might not be okay with providing access.

Member Garvan commented that would give RCC a reason to revisit it. That's why he didn't want to state "in perpetuity." He pointed out that RCC has to put a plaque that has been donated to the family on the property. RCC will continue to manage the land as they are supposed to and be good stewards of the land. He thinks adding "at this time" weakens the statement.

Vice-Chair King stated that right now, this makes a lot of sense, as people did have good points and it's a very fragile piece of land. She thinks that if the situation changes and access is cut off, RCC could change their minds and she wants to be sure that they can legally.

Member Oliver pointed out that the RCC heard a lot from everyone who was opposed to the parking area. However, they have not heard from people who want access.

Vice-Chair King commented that this could also be put on a warrant article to let the people decide. Personally, she thinks the points people made and the fragility of the land trumps the over use. She agrees with the motion, as long as it doesn't tie it up forever. If the situation changes, she would like to be able to figure out a way in that people could access. She pointed out it's not just for the neighbors.

Member Garvan noted that he doesn't think they're trying to restrict access. There's a fairly open area and it's quite easy to get to the water from the opening in the stone wall.

Member Oliver stated that it sounds like everyone is in agreement, by consensus of the group, that the statement is an accurate reflection of the Commission's actions at this point.

Vice-Chair King stated that the Commission has to keep in mind that every time a parcel is purchased by RCC, the surrounding neighbors are concerned about access, in a way that's not surprising. Just know that when a property is purchased and access is offered, where appropriate, there will be complaints and there will be the same situation, now that people have decided it works.

After discussion, it was agreed that the Commission is in favor of the motion, but would like a legal opinion before voting.

Mike Garvan withdrew his motion pending legal review.

Member Oliver clarified that the reason the Commission is concerned about the legality isn't so that when everything calms down, RCC go back around to try to do it anyway. However, if circumstances change, RCC wouldn't want this to prevent them from doing something.

Chair McFarland also clarified that she doesn't want to bind future commission's hands in the future.

VII. CORRESPONDENCE

1. 2024.01.14 1180 Ocean Blvd, Tax Map 19.4, Lot 96, NHDES Emergency repair-VERIFY_EA-2024232922
2. 2024.01.16 161 Harbor Road, Tax Map 9.2, Lot 23 Emergency Permit-VERIFY_EA-2024232922
3. 2024.01.17 15 F Street, Tax Map 5.3, Lot 57, NHDES Emergency permit-VERIFY_EA-2024232971
4. 2024.01.17 100 Harbor Road, Tax Map 9.2, Lot 07, NHDES Emergency permit-VERIFY_EA-2024232832
5. 2024.01.17 800 Ocean Blvd, Tax Map 231, Lot 29, The Breakers, NHDES Emergency permit-VERIFY_EA-2024232970
6. 2024.01.17 1196 Ocean Blvd, Tax Map 17.3, Lot 035-002, NHDES Emergency permit-VERIFY_EA-2024232960
7. 2024.01.17 1200 Ocean Blvd, Tax Map 17.3, Lot 35, NHDES Emergency permit-VERIFY_EA-2024232961
8. 2024.01.18 24 Straw's Point, Tax Map 9.1, Lot 14, NHDES Emergency permit-VERIFY_EA-2024232988
9. 2024.01.18 60 Straw' Point, Tax Map 084, Lot 095, NHDES Emergency permit-VERIFY_EA-2024233006
10. 2024.01.18 1182 Ocean Blvd, Tax Map 17.3, Lot 032-003, NHDES Emergency permit-VERIFY_EA-2024232977
11. 2024.01.19 68-74 Old Beach Road, Tax Map 84, Lot 116/115, NHDES Emergency permit-VERIFY_EA-2024233046

12. 2024.01.19 1734 Ocean Blvd, Tax Map 13, Lot 56, DES Approved, needs signature
13. 2024.01.19 1215 Ocean Blvd, Tax Map Lot 173-006, DES Shoreland Permit Extension – needs signature
14. 2024.01.19 1215 Ocean Blvd, Tax Map Lot 173-006, DES Wetlands Permit Extension – needs signature
15. 2024.01.22 169 Harbor Road, Tax Map 092, Lot 022-001, NHDES Emergency permit-VERIFY_EA-2024233082
16. 2024.01.24 21 Carbee Drive, Tax Map 84, Lot 104, NHDES Emergency permit-VERIFY_EA-2024233123
17. 2024.01.24 2266 Ocean Blvd, Tax Map 53, Lot 74, NHDES Emergency permit-VERIFY_EA-2024233126
18. 2024.01.26 1314 Ocean Blvd, Tax Map 174, Lot 038, Army NHDES Emergency permit-VERIFY_EA-2024233192
19. 2024.01.30 1264-1266 Ocean Blvd, Tax Map 17.3, Lot 17.3, Lots 55 and 57 DES App Received
20. 2024.01.30 1264-1266 Ocean Blvd, Tax Map 17.3, Lot 17.3, Lots 55 and 57 DES App Complete
21. 2024.01.30 1264-1266 Ocean Blvd, Tax Map 17.3, Lots 55 and 57 DES App Complete
22. 2024.01.31 Harbor Road, Tax Map 09, DPW-NHDES Emergency permit-VERIFY_EA-2024233291
23. 2024.01.31 11 F Street, Tax Map 53, Lot 58, NHDES Emergency permit-VERIFY_EA-2024233289
24. 2024.02.01 19 F Street, Tax Map 053, Lot 056, NHDES Emergency permit-VEFIFY_EA-2024233326
25. 2024.02.01 1232 Ocean Blvd, Tax Map 173, Lot 042, NHDES Emergency permit-VERIFY_EA-2024233323
26. 2024.02.02 1310 Ocean Blvd, Tax Map 173, Lot 042, NHDES Emergency permit-VERIFY_EA-2024233346

27. Thank you note from Joe Milardo with regard to 0 Jenness
Read to the Commission by Chair McFarland.
28. ZBA Abutter Letter for 267 Brackett Road
29. 2024.02.06 Harbor Road, Tax Map 9 DPW-NHDES Emergency Permit-VERIFY_EA-2024233451
30. PB Abutter Notification – 53 Spring Road Driveway

VIII. BILLS

- \$395.00 – Voss Signs

Motion by Karen Oliver to pay the invoice to Voss Signs. Seconded by Danna Truslow. All in favor.

IX. NON-PUBLIC SESSION (1) per RSA 91-A:3, II (d) Acquisition (2) per RSA 91-A:3, II (e) Legal

No non-public session held.

ADJOURNMENT

Motion by Sally King to adjourn at 8:55 p.m. Seconded by Mike Garvan. All in favor.

Respectfully Submitted,
Dyana F Ledger

1/25/24

DEAR RLC MEMBERS,
ON BEHALF OF MYSELF AND
MANY NEIGHBORS, WE
THANK YOU FOR THE
MANY HOURS OF HARD WORK
YOU PUT IN TOWARDS
THE PREVENTION OF
DEVELOPMENT OF
O JENNESS AVE. I
REALIZE MANY OF YOU
ARE AS DISAPPOINTED
AS WE ARE WITH THE
RECENT DECISION, BUT
IT WAS A GOOD FIGHT
AND GOT NOTICED BY
THE TOWN MANAGERS

AND MANY RESIDENTS.
I BELIEVE THAT THROUGH
THIS PARTICULAR CASE
AND THE MANY OTHERS
YOU ALL WORK ON, MINDS
OPEN UP TO SEEING THE
OTHER SIDE TO DEVELOPMENT.
ANYWAY, YOU ALL DID AN
AMAZING JOB, AND IT
IS VERY MUCH APPRECIATED.
THANK YOU ALL AGAIN —
JOE MILARDO