

**TOWN OF RYE – PLANNING BOARD  
MEETING**

**Tuesday, August 13, 2019  
6:00 p.m. – Rye Town Hall**

*Selectmen Present: Acting-Chair JM Lord, Clerk Steve Carter, Jerry Gittlein, Tim Durkin, and Alternates Katy Sherman and James Finn.*

*Others Present: Planning Administrator Kim Reed*

**I. Call to Order**

Acting-Chair JM Lord called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

Alternate Katy Sherman was seated for Jeffrey Quinn. Alternate James Finn was seated for Patricia Losik.

**II. Approval of minutes – July 9, 2019**

The following corrections were noted:

- Page 5, 4<sup>th</sup> paragraph from bottom, 3<sup>rd</sup> sentence should read: **There is an intent for The Housing Partnership to help the developer on the covenant and condo documents.**
- Page 6, 3<sup>rd</sup> paragraph, 4<sup>th</sup> sentence should read: **It was discovered that the past surveyor set the line about a foot inside the fence line.**
- Page 7, 6<sup>th</sup> paragraph from bottom, in parenthesis it should read: **(referring to the intersection at Route 1)**
- Page 9, 8<sup>th</sup> paragraph, 3<sup>rd</sup> sentence should read: **He would like to re-echo the fact that there is a rigorous process and whatever is conditioned is met.**
- Page 10, 2<sup>nd</sup> paragraph, 4<sup>th</sup> sentence should read: **As a major site development, all of LDR 611 applies.**
- Page 10, 2<sup>nd</sup> paragraph, 6<sup>th</sup> sentence should read: **He is not sure if 300ft means on the road off which the driveway is located or all of the property's frontage.**
- Page 13, 3<sup>rd</sup> paragraph, 1<sup>st</sup> sentence should read: **Attorney Phoenix stated that the new buildings will slightly be in the buffer but a good distance farther from the marsh than what they are today.**
- Page 15, 6<sup>th</sup> paragraph, 5<sup>th</sup> sentence should read: **The design then goes on to say there is a water supply multiplier of 2.0.**
- Page 15, 5<sup>th</sup> paragraph from bottom should read: **Chair Losik asked Mr. Weinrieb if he would like to opine.**

**Motion by James Finn to approve the minutes of July 9, 2019 as amended. Seconded by Steve Carter. All in favor.**

### **III. Submittal of Applications for Determination of Completeness. Not a public hearing.**

#### **Actions Required:**

- a. Conditional Use Permit Application by Keith Routhier for property owned by Ralph Trefethen and located at 161 Clark Road, Tax Map 19, Lot 75, for an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. **Property is in the Single Residence District. Case #11-2019.**

**Motion by Katy Sherman to accept the application for 161 Clark Road as complete. Seconded by Steve Carter. All in favor.**

- b. Amendment to the Breakers Condominiums approved by the Planning Board in January 1980, recorded at the RCRD D-9440 on April 18, 1980 for Sally Sheehan of 824 Ocean Blvd, Tax Map 23.1, Lot 29-01, to raze the building and construct new within the same footprint. **Property is in the Business, Coastal Overlay District. Case #12-2019.**

**Motion by Tim Durkin to accept the application for 824 Ocean Blvd as complete. Seconded by Jerry Gittlein. All in favor.**

### **IV. Public Hearings on Applications if they are complete and/or have been continued:**

- a. Conditional Use Permit Application by Keith Routhier for property owned by Ralph Trefethen and located at 161 Clark Road, Tax Map 19, Lot 75, for an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. **Property is in the Single Residence District. Case #11-2019.**

**Keith Routhier, representing Ralph Trefethen,** explained that the proposal is to add on the back of the existing garage to create an accessory apartment.

Planning/Zoning Administrator Kim Reed noted that the application must meet the performance standards. She has attached a project summary (in the Board's packets), along with the accessory dwelling checklist (prepared by the applicant), so the Board can determine if the standards have been met.

Member Carter asked if the addition will still meet the side setback.

Mr. Routhier confirmed.

Planning/Zoning Administrator Reed noted the proposal went before the ZBA two years ago for a Special Use Permit. It is no longer a Special Use Permit. It is a Conditional Use Permit with the Planning Board. She continued that two years ago, the application did not meet the square footage performance standard. That has since been changed and it now meets the square footage requirement. The minimum square footage is 600 (maximum of 1200sf) and the proposal is for 984sf.

Referring to the layout of the first floor, Acting-Chair Lord commented it seems there is an access from the porch. He asked if the access was going to stay.

Mr. Routhier confirmed.

Acting-Chair Lord stated it looks like the existing building has two bedrooms, not three. He asked if there are three bedrooms in the main house.

Mr. Routhier confirmed.

Acting-Chair Lord stated the septic application says three with an additional one for the apartment; however, he only saw two on the plans. He continued the master bedroom in the existing home shows a door going into the family room, which is the second floor of the garage. Technically, he thinks it meets the requirement to have an access into the main dwelling. He is not sure if the porch would constitute that because it seems to be an outside entrance.

Mrs. Reed stated she spoke with Jeff DiBartholomew (Rye Fire Department) and he confirmed it technically meets the requirements for having an access door per the RSA for the town's performance standards.

Acting-Chair Lord opened to the public for comments. Hearing none, he closed the public hearing at 6:16 p.m.

Acting-Chair Lord read the performance standards and requirements for an accessory dwelling unit; Sections 506.3 A-I and 506.4 A-F. (All requirements and standards have been met.) He suggested a condition of having the new septic system installed.

**Motion by JM Lord to approve the Conditional Use Permit application by Keith Routhier for property owned by Ralph Trefethen and located at 161 Clark Road, Tax Map 19, Lot 75, for an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance; property is in the Single Residence District, case #11-2019; with a condition that the septic be installed within six (6) months. Seconded by Tim Durkin. All in favor.**

**Note:** *The following items were taken out of posted agenda order (as shown in minutes).*

**V. Pay Escrows**

- Samonas, 1215 Ocean Blvd – Attorney Donovan - \$568.83
- Falzone, 1244 Washington Rd – Attorney Donovan - \$241.32 & Sebago Technics - \$476.00
- Falzone, 421 South Rd – Sebago Technics - \$1359.68
- Tuck Realty, Goss Property – Attorney Donovan - \$879.11 & Sebago Technics - \$548.30
- Goss Farm Lane construction monitoring – Sebago Technics \$1780.12

**Motion by Katy Sherman to pay the invoices as discussed and amended. Seconded by Tim Durkin. All in favor.**

Mrs. Reed stated that the Long Range Planning Commission had a meeting with Julie LaBranche, from the Rockingham Planning Commission, in regards to update of the Land Development Regulations. There is a section that is getting close to being ready for approval. The public forum date has been set and the committee is moving along with the edits. She continued that Appendix B pertains to the Department of Public Works and the Stormwater MS-4 Permitting, which is an EPA requirement. The Director of Public Works, Dennis McCarthy, attended the meeting to go over Appendix B with the committee. Ms. LaBranche recommends that the Planning Board schedule it for a public hearing in September and adopt it,

even though the full LDR is not going to be adoptable until probably late November or December, because this is an EPA requirement.

Member Carter noted the town is already several months behind with regards to the MS-4 Permit requirements and it really needs to be approved. He continued that DPW and the building inspector will be taking care of these inspections. The town already requires most of the things required by the permit. This will formalize it and put the town in line with what the EPA expects to be done.

**Motion by Steve Carter to put Appendix B on the September 10<sup>th</sup> Planning Board meeting agenda. Seconded by Tim Durkin. All in favor.**

- a. Amendment to the Breakers Condominiums approved by the Planning Board in January 1980, recorded at the RCRD D-9440 on April 18, 1980 for Sally Sheehan of 824 Ocean Blvd, Tax Map 23.1, Lot 29-01, to raze the building and construct new within the same footprint. **Property is in the Business, Coastal Overlay District. Case #12-2019. (Addressed below.)**
- b. **Major Subdivision and Condominium Development Plan** by Harbor Street Limited Partnership for property located at 1244 Washington Road, Tax Map 10, Lot 82, for a 20-unit residential town houses which will comprise of 5 4-unit buildings. **Property is in the Single Residence District, Multi-Family Dwelling District, Aquifer and Wellhead Protection District and Rye Landfill Groundwater Management (RL-GMZ) District. Case #06a-2019. Request to continue to the September 10, 2019 meeting and to reschedule the work session.**

**Motion by Tim Durkin to continue the applications for Harbor Street Limited Partnership to the September 10<sup>th</sup> Planning Board meeting. Seconded by Jerry Gittlein. All in favor.**

- c. Special Use Permits for the Multi-Family dwellings, per Section 307.3 and Section 402 and for the Aquifer Wellhead Protection District by Harbor Street Limited Partnership for property located at 1244 Washington Road, Tax Map 10, Lot 82, for a 20-unit residential town houses which will comprise of 5 4-unit buildings. **Property is in the Single Residence District, Multi-Family Dwelling District, Aquifer and Wellhead Protection District and Rye Landfill Groundwater Management (RL-GMZ) District. Case #06b-2019. Request to continue to the September 10, 2019 meeting and to reschedule the work session. (Motion to continue above)**

The Planning Board discussed a date for the work session. It was agreed to hold the work session on Tuesday, September 3<sup>rd</sup>, 6:00 – 8:00 p.m.

**Motion by Tim Durkin to hold a work session for 1244 Washington Road on Tuesday, September 3, 2019. Seconded by James Finn. All in favor.**

- Planning/Zoning Administrator Reed noted that she received an email from Attorney Tim Phoenix requesting a continuance for the Samonas application at 1215 Ocean Boulevard to the October Planning Board meeting.

**Motion by JM Lord to continue the applications for the Samonas Developments for 1215 Ocean Blvd. to the October meeting. Seconded by Katy Sherman. All in favor.**

- Amendment to the Breakers Condominiums approved by the Planning Board in January 1980, recorded at the RCRD D-9440 on April 18, 1980 for Sally Sheehan of 824 Ocean Blvd, Tax Map 23.1, Lot 29-01, to raze the building and construct new within the same footprint. **Property is in the Business, Coastal Overlay District. Case #12-2019.**

The Board reviewed the packet submitted by the applicant.

Member Sherman asked why these changes are being made now.

Planning/Zoning Administrator Reed stated that the new owner wants to tear it down and make the structure FEMA compliant. It only needs one variance for a side setback. It is going to meet the height requirement. Based on information from TMS Architects, the applicant is just looking to make it FEMA compliant. The existing structure will be razed. The new home will be in the same footprint and will remain two bedrooms. The impervious coverage will actually be reduced from what is existing.

**Note:** *The applicant's architect arrived at the meeting to present the proposal. (6:35 p.m.)*

**Retta Fitch, TMS Architects**, spoke to the Board. (She submitted copies of an updated AO-2, which included the setbacks for the proposed deck.) She stated this proposal is for a dwelling at the Breaker's Condominiums. It is for the house that is at the end of the development, unit 1. The house has a small footprint. It is in the AO Zone right now. The proposal is to demolish the house and rebuild with the new structure being raised up to the VE Zone, which is 2ft higher. The footprint will remain the same.

Member Finn noted that a second floor is being added.

Ms. Fitch confirmed. She commented that it is being kept under the 28ft height restriction.

Member Sherman pointed out there are some amendments to the condo documents. She asked why there are changes.

Ms. Fitch stated that as she understands the only reason the proposal is before the Planning Board is to show that the house is part of this condominium complex. There is also a letter from the condo association stating that they are okay with proposal. She is not really sure the condo docs have any other information.

Member Carter pointed out that the Board is not voting on those anyways. He asked if the proposed deck will be the same footprint as the existing deck.

Ms. Fitch showed the existing deck on the plans for the Board. She stated they are pulling back the new deck so it is within the 20ft setback but will remain somewhat in the existing footprint.

Member Carter asked if the width of the deck is changing.

Ms. Fitch replied that she does not believe so, other than the stairs. She pointed out that 68sf of the existing deck is non-conforming. The proposed deck has 48sf of non-conforming with 6sf for the stairs. The non-conformance for the proposed deck is less.

Acting-Chair Lord asked the elevation of the deck.

Ms. Fitch explained it will be at the first floor, which is raised up.

Member Finn clarified there will be a second deck on the second floor.

Ms. Fitch confirmed.

Member Sherman asked if there was any condition that the condos could not be expanded when the condominium project was approved.

Planning/Zoning Administrator Reed replied no. She noted that the house is being built legally within the zoning height and it is staying within the footprint. The only reason it has to go to the ZBA is for the one side setback. She stated that she was at a FEMA meeting and they were happy to hear this house was being brought into FEMA compliance, as the Breakers is a property that repeatedly floods. She also noted the house is being built to VE standards so it has to be on pilings with breakaway walls and no basement.

Member Carter asked if the proposal will have any implications on the septic system for the condo complex.

Ms. Fitch explained that each house has its own separate system.

Member Carter stated the house is going from one bedroom to three bedrooms. He asked if it will need a new septic system.

Ms. Fitch replied that she does not know about the design of the existing septic. The system is pumped once every three years and is working fine. The tank is located under the adjacent neighbor's deck and the leachfield is located in the lawn on the water side.

Member Durkin stated he would like to see the septic design. Usually, with this type of plan, there is a septic design because it is being expanded from a one bedroom to a three bedroom.

Acting-Chair Lord commented it is a small lot also.

Member Finn stated it is a big jump in the size of the building. It is a little out of character with the size of the other buildings. It is quite a big jump on the ocean side of 1A.

Member Carter stated he assumes it is designed to stay under the 28ft but still have a second floor.

Ms. Fitch confirmed.

Member Carter commented it is a little out of character for what is along that stretch of Ocean Boulevard.

Member Finn commented he thinks they are trying to squeeze too much into that lot.

Member Sherman stated she has been in one of the condos and they are one bedroom, almost like an efficiency. This is doubling the size of what is there. She would imagine a new septic system would be needed.

Referring to the plans, Acting-Chair Lord commented that when he looks at the grade level, it looks like there is an enclosed storage area, which might have breakaway walls; however, it does not look like that. It looks like there is a permanent wall structure in place. He asked if this would be adding square footage.

Ms. Fitch explained there going to be breakaway walls to meet the VE Zone.

The Board agreed the septic is a concern. Acting-Chair Lord asked to see more details on the storage area also. He opened to the public for comments.

**Attorney Kerry Houlihan, representing Andrew and Diana Bates of 825 Ocean Blvd**, spoke to the Board. She noted that one of the reasons the building permit was denied was because they needed more information on the septic. It may require more variances based on that information. They would need relief from building code section 7.9.6, new construction standard, and also from the flooding standard, 7.9.2.4. Referring to the condo docs (section 9.3), she noted that it talks about reconstruction of a building. It says that it requires any reconstruction to be identical to the design of the original unit. This is not the case with this proposal, as it has two additional floors and is not to the design of the original unit. She continued the condo docs can be amended by a vote of twelve unit owners. However, if it is an amendment specific to section 9.3, it requires approval of all unit owners and also an approval from any mortgage holder on any of the units. If they want to amend the condo docs to take out the provision that requires the unit be in the same existing dimensions and style as the original unit, they would need approval from all owners and any mortgage holder.

Mrs. Reed asked Attorney Houlihan if she is certain that they did not get all the votes of the condo association.

Attorney Houlihan replied she is not certain.

Member Durkin asked if dimensions would also include square footage.

Member Carter noted that the condo docs say, "Any reconstruction or repair shall be identical to the previous design and dimensions of the original unit".

Member Sherman commented the Board received a letter stating that the condo association approves the project.

Acting-Chair Lord pointed out that it states "the office of the board of directors". Looking at this specifically, it seems that every owner should have had a vote.

Member Sherman commented that it sounds like it needs to be 100%.

The Board agreed the application needs more work.

Planning/Zoning Administrator Reed stated that according to the letter from Chuck Marsden, Assistant Building Inspector, it was denied for two issues. However, there are a lot of "ifs" and "mays" in the letter. She read; "the septic system shall meet the requirements of section 7.9.6, new construction standards. Septic application, including plans and specifications, which meet new construction standards shall be required, unless a valid construction and operating approval exists. No information has been

provided.” Mrs. Reed pointed out that it is not denied but the building department does not have the information. The only denial is for the front setback and for abandonment/discontinuance (603.2).

Member Durkin asked if the grade is being changed.

Ms. Fitch noted it is not changing.

The Board agreed that clarification on the vote is needed.

**Diane Bates, 825 Ocean Blvd**, stated that they bought their house in 1999. The owner of that condominium changed shortly after they purchased their house. That owner attempted to put in a car port with a dormer above. That was stopped because of that declaration in the condominium documents. She understands that the change would have to be recorded at the Registry of Deeds as well. She commented the carport was denied by the Planning Board in 2002 because of this provision in the condo docs.

**Andrew Bates** spoke about the views from his property, as this house is going from a 15ft building to 28ft. (It was noted that the Bates do not have a view easement.)

Planning/Zoning Administrator Reed explained to the Board that by law, if it is being built under 28ft they are entitled to do that, unless there is a view easement.

Ms. Fitch clarified that the bedroom count is not changing from what is there now. It is a two bedroom now and will remain two bedrooms.

Acting-Chair Lord closed the public hearing at 7:15 p.m. He stated that the application is certainly not complete in his estimation. This is adding two stories and it will be about 1040sf, which is about twice the size. It says the proposed building is 524sf, which is a little disingenuous to what is there today because it is only a single story. He would like to see some detail on the storage because it looks like it is attached to the columns that hold up the house. He would like information on how the breakaway feature would work. He would also like to see the existing floor plan of the house. It has been said that it is a two bedroom but there is no information that says this is the case. From that information, the Board would need to make an assessment on the septic system.

Member Durkin added there needs to be clarification on the condo association approval and the procedure on the vote outlined in the condo documents.

The Board agreed.

Member Finn commented there should be clarification on the septic and if it can handle what is being proposed.

Member Sherman commented there needs to be clarification about the condo docs stating that reconstruction needs to be identical. She also noted that the location of the leachfield should also be known.

The Board agreed that more information is needed and the applicant should ask for a continuance.

Ms. Fitch agreed to a continuance.



**Motion by Katy Sherman to continue the application to the September meeting. Seconded by Jerry Gittlein. All in favor.**

**Adjournment**

**Motion by Tim Durkin to adjourn at 7:20 p.m. Seconded by Steve Carter. All in favor.**

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

**Respectfully Submitted,  
Dyana F. Ledger**