

**TOWN OF RYE – PLANNING BOARD  
MEETING  
Tuesday, December 8, 2020  
6:00 p.m. – via ZOOM**

***Members Present:* Chair Patricia Losik, Vice-Chair JM Lord, Steve Carter, Katy Sherman, Jim Finn, Nicole Paul, Selectmen’s Rep Bill Epperson, and Alternates Jeffrey Quinn and Bill MacLeod**

***Others Present for the Town:* Planning/Zoning Administrator Kim Reed and Attorney Michael Donovan (joined meeting at 6:30 p.m.)**

**Call to Order**

Chair Losik called the meeting to order via Zoom teleconferencing at 6:00 p.m.

**Statement by Patricia Losik:**

As chair of the Rye Planning Board, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically.

Please note that there is no physical location to observe and listen contemporaneously to this meeting, which was authorized pursuant to the Governor’s Emergency Order. However, in accordance with the Emergency Order, I am confirming that we are providing public access to the meeting by telephone, with additional access possibilities by video and other electronic means. We are utilizing Zoom for this electronic meeting. All members of the board have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and, if necessary, participate in this meeting by clicking on the following website address: [www.zoom.com](http://www.zoom.com)  
ID #835-9967-0907 Password: 123456

Public notice has been provided to the public for the necessary information for accessing the meeting, including how to access the meeting using Zoom telephonically. Instructions have also been provided on the website of the board at: [town.rye.nh.us](http://town.rye.nh.us) go to the Planning Board page and click on the agenda for this meeting.

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled. Please note that all votes that are taken during this meeting shall be done by roll call vote.

Roll call attendance:

1. Member Katy Sherman
2. Member Steve Carter
3. Member Jim Finn
4. Member Nicole Paul
5. Selectmen's Rep Bill Epperson
6. Vice-Chair JM Lord
7. Alternate Jeffrey Quinn
8. Alternate Bill MacLeod
9. Chair Patricia Losik

**I. Approval of the November 10, 2020 meeting minutes**

*\*Tabled to end of meeting.*

**II. Submittal of applications for Determination of Completeness: Not a public hearing, if complete public hearing will immediately follow: - Action Required:**

- a. **Conditional Use Permit by South Salem Buffalo Rye Trust, June & John Williamson, Trustees** for property owned and located at 400 Washington Road, Tax Map 16, Lot 193 for an Accessory Dwelling Unit per Section 190-5.6 of the Rye Town Code. **Property is in the Single Residence District, Aquifer & Wellhead Protection District. Case #10-2020.**

Vice-Chair Lord noted he has reviewed the application and believes it is ready to move to a public hearing.

**Motion by JM Lord to move the application for 400 Washington Road to a public hearing. Seconded by Bill Epperson.**

**Roll Call: Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Katy Sherman – Yes; Patricia Losik – Yes**

**Motion passed.**

- b. **Major Site Development Plan by the Wentworth by the Sea Country Club** for property owned by WBTSCC Limited Partnership and located at 60 Wentworth Road, Tax Map 24, Lot 61-26 for an addition to the existing patio, pedestrian sidewalk, an awing cover over a portion of the patio, and relocation of existing practice/putting green, landscaping and a paver apron. **Property is in the Single Residence District. Case #11-2020.**

Vice-Chair Lord noted he has reviewed the application and believes it is ready to move to a public hearing.

**Motion by JM Lord to move the application for 400 Washington Road to a public hearing. Seconded by Bill Epperson.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes  
Motion passed.**

### **III. Public Hearings on Applications:**

- A. Minor 3-lot subdivision by Jak Nadeau Revocable Trust** for property owned and located at 711 Long John Road, Tax Map 16, Lot 136 to subdivide the existing lot into three single family residential lots with access via a 50'-wide right of way. **Property is in the Single Residence District. Case #07-2020.**

**Corey Colwell, TF Moran**, introduced the applicants Jay and Karen Nadeau, Hannah Giovannucci from TF Moran and Attorney Tim Phoenix. He noted they first met with the Board and presented the plan this past summer. Since that meeting, there was a site walk held on July 27<sup>th</sup>. Also, there were three rounds of comments from Attorney Donovan and Sebago Technics. Review comments and a report were also received from Mike Cuomo, of the Rockingham County Conservation District, relative to the DLA's and test pits associated with this application. Since the last meeting in July, there has essentially been five changes to this set of plans of relevance. (The plan was presented on the screen for review.) He explained that since the last meeting they received many comments. There were five important comments that resulted in some changes.

He continued that the roadway profile coming in from Long John Road includes a downward slope from Long John Road. This creates a low point at about 50' into the new roadway. The purpose is to eliminate roadway runoff onto Long John Road. Previously, there wasn't a low point. This was done because of a review comment. It is provided to prevent all the runoff from the new road from going onto Long John Road. It is now captured onsite into the swales and bio-retention. (He pointed out the low point on the plan.) The second change is that the grading and stormwater management design has been revised. There are now five bioretention areas where there were three previously. There is a new bioretention area at the westerly side of the new road where it intersects with Long John Road. There is also a new bioretention area to the east of the existing home. (He pointed out the two new bioretention areas on the plan.) These new stormwater improvements have been added to provide additional stormwater attenuation and treatment. The third change is that the driveways have been revised for Lots B and C, in coordination with the Department of Public Works, to ensure the driveways are not in snow storage areas, nor within the hammerhead of the right-of-way. Previously, there were driveways extending off the elongated portion of the hammerhead. They no longer come from that hammerhead and are now completely contained in the other frontage of the new right-of-way.

Mr. Colwell noted that the fourth change is a revision to the shape and location of the DLA to Lot A to address one of Attorney Donovan's comments. Additional test holes to determine ledge depth were done within the last month. As a result, the shape of the DLA was slightly adjusted. Attorney Donovan correctly opined that there was a small portion of that DLA that was close to exposed ledge. As a result, that has been revised to ensure that the DLA is proposing an area

where there is no ledge within 2' of the surface. Mr. Cuomo has also reviewed the last ledge holes and opined that the DLA is satisfactory based on the plans and ledge pits provided. Fifth, the lot line between Lots A, B and C were revised to reduce and eliminate any lot irregularities. As a result, Lots B and C are more rectangular in shape. The only irregularity that exists is due to the existing lot lines of the 5-acre piece as it exists today and the hammerhead.

Mr. Colwell stated that while other minor revisions have been made to address Sebago Technic's and Attorney Donovan's comments, these minor changes do not alter the design of the road or the lot layout. Most had to do with the stormwater management report and they were very slight modifications. He noted that there are some comments that are left for Board discussion, as indicated in their letters.

Mr. Colwell read from Attorney Donovan's memorandum; ***“Lots B and C have been reconfigured in an effort to address the concerns stated in my October 16, 2020 memorandum. Lot B is arguably less irregular in shape. Lot C is arguably more irregular in shape. A waiver is still required. It should be made clear that this is a waiver from the requirements of both LDR 202-6.2(A)(1) and (A)(1)(b). The hammerhead is necessary to carve three lots out of the 5.8-acre parcel. It is my opinion the desire to carve three lots out of the 5.8-acre parcel, which has inherent development constraints, is what results in the need for a waiver to these sections and not the hammerhead per se.”***

Mr. Colwell responded that the hammerhead is allowed in the Land Development Regulations. It's also the preferred method, per discussions with the Department of Public Works. It reduces the impervious area. It reduces stormwater and reduces the length of utilities necessary to run to these lots. It also reduces tree clearing and allows for the preservation of more natural features of the lot. This is a preferred alternative for turning at the end of a new roadway too. The cul-de-sac is more of a long sweeping curve, which is difficult for buses, plow trucks and emergency vehicles. The hammerhead allows for those vehicles to pull in, back up and turn out, while reducing pavement and impervious area. Because of its T-shape, lots cannot be rectangular. This 5.8-acre lot has no wetlands or wetlands buffer. It is somewhat odd shaped due to past conveyances. Any lot irregularities are due only to the existing lot shape and the result of the T-shape hammerhead. It is agreed there may be some irregularities in the shape of Lot C; however, it is clearly not grossly irregular. It adequately contains the existing home, utilities, ample yard space and it complies with all zoning requirements. There is no need for variances with this lot. If these lots satisfy all of the Land Development Regulations and all the zoning requirements, the applicant maintains a waiver is not necessary. If the Board disagrees, the waiver has been applied for. In either case, the regulations say that square lots are preferred; however, there is no language in the LDR that suggests they are required. These lot shapes do not have any grossly irregular angles or narrow portions. Based on these facts, if the Board deems a waiver is necessary, it is felt that the waiver is justified.

Mr. Colwell continued that the second point Attorney Donovan leaves for discussion with this Board is reducing the road pavement with to 20'. Attorney Donovan suggested this and the applicant is okay with it. It will reduce the impervious area. It reduces, to some degree, the

number of trees that need to be cleared. It's a better alternative. They would like to maintain the stormwater system that is there because it adequately provides for a 20' or a 24' wide paved road in the event the road should ever need to change in the future. Mr. Colwell reiterated that the applicants are onboard and concur, if the Board finds this road is adequate at 20' in width. He continued the third point left for discussion with this Board is in regards to the drainage and flowage easements that will be required for review. Attorney Donovan says that drainage easements are necessary. The applicants concur and will provide draft deeds of those drainage easements. The only question is whether an additional easement is necessary on the back of Lot B, where there are bioretention areas just for the drainage of that lot. The bioretention area on the back of Lot B does not hold any stormwater from the proposed road. It is just for Lot B itself. Since this bioretention area is just for private development, the applicants do not feel an easement to the Town is necessary. Attorney Donovan has left it to the Board to opine and discuss.

Mr. Colwell stated that Attorney Donovan felt the home on Lot B could be moved south and about 100' closer to the road, to reduce grading and filling. It is agreed this is a possibility. However, the proposed home has been placed to provide the maximum separation between the homes on Lot B and Lot C. The homes on Lots A and B are shown just to demonstrate that a house can fit on these lots. This is not the only place on the lots that a house can fit. The purpose is to show a driveway and that the lots are adequately sized and shaped to maintain homes. It is believed the placement of the homes should be up to the new land owners, provided it complies with all applicable zoning, Land Development Regulations and State regulations. Attorney Donovan also left for discussion with this Board, the reduction of woodlands and impervious surfaces. The applicants have already agreed to reduce the impervious surface to a 20'-width for the new roadway. Notes 4 and 5 have been added to Sheet 6, together with a zoning table, which lists both the impervious areas and the undisturbed woodlands for each lot. Attorney Donovan opined that the note seems adequate to him. However, he suggests that the Planning Board Engineer and/or Building Inspector should review to be sure they provide clear guidance. Mr. Colwell commented they defer to this Board whether any further information regarding impervious areas or woodland retention is warranted.

Mr. Colwell noted there are a couple of points from the Sebago Technics letter that they have left for discussion. In summary, those comments have been addressed, as well as Attorney Donovan's comments, except for the following two which are left for Board review. First, Sebago said that some conceptual phase lines were provided. It was also noted that the actual build-out could be accomplished in one phase. Sebago Technics questions the benefits of phasing. Mr. Colwell explained the phase lines have been provided only to ensure that any and all phases must be surrounded by erosion controls. In other words, if the lot is built-out all at once, for both the road construction and the homes, erosion control measures are in place. If the subdivision is built-out with just the road and the houses are years later, erosion control measures have been put in place. That is the only reason the phase lines were provided. It's to give the contractor and the applicant some flexibility to not make them have to build everything out all at once.

He continued that lastly, the comment that Sebago Technics left for this Board to discuss is in regards to the two bioretention areas proposed for Lots B and C. Those are in the back of both lots. These are not included in the town easements. These areas do not treat stormwater from the new town road. They are there just to treat stormwater from runoff as a result from the private homes and/or private driveways. He stated that easements are not necessary to do this. However, Sebago Technics ask the Board to review this and opine whether they feel easements to the Town are necessary.

Mr. Colwell stated that in conclusion, they have made many revisions. They have addressed three rounds of comments from Sebago Technics and Attorney Donovan. They have addressed comments from the Rockingham Country Conservation District and the Department of Public Works. He maintains these plans comply with the Land Development Regulations, except where waivers have been requested. These waivers do not in any way alter the layout or the buildability of the lots or create a substandard condition. On the contrary, most of the waivers are sought to prevent unnecessary environmental impacts.

**Attorney Tim Phoenix, representing the applicants,** stated he has some comments that relate to the irregularity of the lots. He would be happy to address that now; however, Mr. Colwell did a good job of explaining their position and why. It may make sense to hear from the Board before comments.

Speaking to Attorney Donovan, Chair Losik stated the issue was raised in his memorandum of October 16<sup>th</sup> and again on December 1<sup>st</sup>. She asked Attorney Donovan to share his thoughts with the Board and the applicants.

Attorney Donovan stated that the proposition he disagrees with is where Mr. Colwell asserts that any lot with a hammerhead is going to have these same irregularities. That is just not the case. Irregularities come from a combination of factors, which includes the other development constraints on this lot; the shape of the lot and the owners' desire to carve three lots out. He thinks it remains an irregularly shaped lot. The requirements are two-fold; the one that he suggested they were trying to avoid was the basic language of 202-6.2 itself, which says; *"The layout of lot lines and arrangements of lots in a subdivision shall be orderly and harmonious and not be contrary to establish principles of subdivision design."* He noted that those established principles are generally rectangular shaped lots. He thinks they were just trying to focus the Board on subsection 1b, which is "grossly irregular angles or narrow portions". He thinks it is both of those requirements for which a waiver is required. He would suggest there are still narrow portions of the lots, which make them grossly irregular. One is on Lot B, the first 50' coming in to the jog around the hammerhead, which is a narrow portion of that lot. On Lot C, they have tried to incorporate most of the bioretention basin into that lot and created another narrow section of roughly 25' squeezed in-between the lot line of Lot B and the right-of-way to the hammerhead. He thinks those are two things which require a waiver. It is up to the Board to decide whether a waiver should be granted or not and whether the waiver criteria is met, as well as just the overall shape of the lots themselves, (which is the first part of 202-6.2). He pointed

out that to just say the cul-de-sac requires it and the cul-de-sac is a good idea, in his opinion, may not be enough but that is up to the Board.

Referring to the October 28<sup>th</sup> comment letter from TF Moran, Chair Losik noted that on page 2 the last paragraph says; *“The narrow front of Lot B could be eliminated by flipping the westerly prong of the hammerhead to the east side of the proposed street. This would reduce the area of Lot C to less than 66,000.”* Another option that would eliminate the narrow front part of Lot B would be to move the boundary between Lot B and Lot A about 122’ further south at the proposed street line.

Attorney Donovan stated he talked to Mr. Colwell about that. If they moved it further down another 50’ and skewed it up to where it now intersects the boundary of the conservation land, it would open up about 100’ around there and would eliminate any argument, in his opinion, that it was too narrow. He believes they did not do that because it would infringe upon the DLA of Lot A, which again is another development constraint that prohibits them from doing what would have addressed the lot configuration of Lot B.

Chair Losik pointed out that in the original plans it was moved closer to the boundary between Lot A and Lot B.

Attorney Donovan further explained that if the boundary between Lot A and Lot B were further towards Long John Road by another 50’, that would create about another 100’ of frontage before even getting to the hammerhead and would eliminate the concern that the lot is too narrow. He believes the reason they did not do that is because it would then make Lot A non-conforming with respect to DLA because Lot A is very tight, in terms of the DLA.

Mr. Colwell commented that’s correct.

Chair Losik asked other board members to weigh-in.

Vice-Chair Lord stated the Board has worked on a lot of subdivisions recently. He has to say that Lots B and C are probably the most two irregular shaped lots that he has seen on any subdivision. There are a lot of constraints on this property that are leading to these irregular shaped parcels. These two lots are very irregular. If they start to go down the road of saying these are not irregular, then every subdivision from here on out is going to look at this as the example of what could possibly be done. He has some concern of setting precedent that these are not irregularly shaped lots.

Member Sherman commented that out of the waivers, this is her biggest concern. Since she has been sitting on the Board, they have said “no” to other parcels that have wanted to be subdivided; so much so, that one owner had to give ownership of his pool to subdivide his property to make it more rectangular. As it stands right now, she sees these as irregular and she would have a hard time granting this waiver based on the decisions the Board has made in the past.

Member Carter agreed. He certainly thinks Lot C is quite irregular. It has a narrow spot at the end of the road where the driveway is located. He agrees with Attorney Donovan that if they were to take the boundary between Lots A and B and move the bottom of the line over and parallel to the property line on the other side, it makes it more regular and there would be more frontage. There may be a need for a waiver for the DLA because it is going to be within the setback. It would be right up against the property line.

Member Finn stated he agrees with the other board members. Because of the irregularity and the size of the lot, maybe the developer is trying to squeeze three lots into what should really be configured for two lots. He thinks it is a tough thing to achieve. He is not convinced the site can absorb three separate lots.

Member Paul stated she agrees with what has been said. They are trying to configure three lots onto a parcel that should probably just be two.

Selectmen's Rep Epperson stated what resonates with him is the Fern Avenue example, where the Board tried very hard to approve that subdivision without harming the applicant. He would be significantly more amendable to giving a waiver to the DLA, as opposed to an irregular lot.

Alternate Quinn agreed with what has been said.

Alternate MacLeod stated he believes Lot A is not irregularly shaped. He is not too concerned about Lot B. Personally, from an engineering point of view, he thinks the lot line between Lots A and B is better in its location now than it would be if the lot line was skewed further to the south, which would reduce the DLA on Lot A. He thinks it is better to have a larger DLA on Lot A. Typically, lot lines are not seen as someone is driving down the street, unless the yards have been fenced. This is starting off with an irregularly shaped parcel to begin with. He does not see how anybody could develop this site without having some irregularly shaped lot. The tolerance for the irregularity is a subjective point of view. If the lots comply with zoning, he feels that should be sufficient. No matter what is done on Lot C, its going to be irregularly shaped. He pointed out that the narrow portion of Lot B is being utilized by a driveway. It is an efficient use of that portion between the hammerhead. He agrees with Mr. Cowell's position that no matter what is done on the hammerhead end of a street, there will end up being some kind of an irregularly shaped lot. He commented that being new on the Board, he does not have the experience with the prior approvals. He can certainly see all the work that has been done to minimize any irregularities on the lot.

Speaking to Attorney Donovan, Chair Losik stated that to the comments that have been made, particularly with respect to Alternate MacLeod's note that he feels the lot line between Lots A and B is better where it is currently depicted, rather than changing it and reducing the DLA area, what is your sense?

Attorney Donovan replied it is really a choice for the Board to make. He thinks he heard two members say they would rather not see the DLA requirements waived, rather than the lot line.

His point is that, as seen in other circumstances, when there are too many development constraints on a piece of land being subdivided, there ends up being all these waiver requests. If that becomes the factor driving the need for the waivers, one way or the other something has to be waived because of the constraints. In the case of the boundary, if it is moved, the DLA requirements may need to be waived for Lot A. If it is not moved, in his opinion, it is too narrow. With respect to Member MacLeod's observations about the narrowness of Lot C, the portion that he was questioning as being too narrow is the area that is 40' wide in the location of the retention basin. To him, that is the narrow part of the lot that should be avoided. He pointed out that this has been changed since the last rendition of this plan.

Mr. Colwell presented the June 19<sup>th</sup> plan on the screen for review.

Attorney Donovan pointed out that in that plan, his only critique with the shape of the lots was with respect to Lot B. Lot C has a nice long frontage. The bioretention area is in the corner of the hammerhead and was part of Lot B. They have eliminated that narrow portion of Lot B, where the bioretention basin is stuck in the corner, and kind of split it and made it part of Lot C. In his opinion, that is what creates a grossly irregular narrow section on Lot C.

Chair Losik stated that what she has experienced is that the Board has generally not budged in the size of the DLA. The most recent case the Board had regarding an irregular lot was the one on Fern Avenue. The Board struggled mightily with that.

Attorney Donovan commented that each board members have now expressed their opinion on this matter and the applicant is aware of those opinions. If a waiver is denied, the Board has to give the reasons for denial. The Board could ask counsel to prepare a suggested motion denying it for consideration at the next meeting, but also the applicant having heard the discussion, could go and make changes to address the Board's concerns, as there is another month to do that.

Speaking to Mr. Colwell, Chair Losik asked if the comments from the Board are providing any feedback for ideas of other possibilities.

Mr. Colwell replied no. They have looked at these lots and come up with about 12 different shapes. They have presented what they feel are the two best. Having listened to the comments, the only comment he doesn't understand is having to do with lot constraints. There are no wetlands on this property. There are no buffers on this property. The only development constraint on this property is the existing lot lines and the fact that the Land Development Regulations require roads to be at a certain radius with a turnaround. He would respectfully request that the Board to opine and share their opinions on development constraints because he does not see them on this lot.

Attorney Phoenix stated that 202-6.2.A talks about the subdivision being orderly and harmonious, not contrary to establish principals of subdivision design. While there may be a preference for rectangular lots, its not required. That takes it into whether these are grossly irregular angles or narrow portions. The narrow portion is caused by the hammerhead. There

was discussion about flipping the hammerhead; however, there is ledge in that area. He does not think it is in the best interest for the environment or neighborhood to be blasting or cutting out ledge there. He continued that the existing lot is irregular, but it is not grossly irregular, in his opinion. That irregularity is caused in part by previous subdivisions that were granted, which left these irregular lot lines. He pointed out that it meets all the zoning requirements and that cannot be overlooked. He does not agree with Attorney Donovan that the lot is too narrow. There are some narrow areas, narrower than the minimum frontage requirement, but the overall lot meets lot width because it meets the subdivision requirements for frontage. The irregularities in this lot are the exterior parameters and the cul-de-sac. With respect to the orderly and harmonious portion of the subdivision design standards, the question is how to figure that out. The purpose under 202-1.3 is that the subdivision regulations are intended to promote health, safety, general welfare and prosperity in a manner consistent with the authority granted by the planning and zoning enabling legislation. He has looked at that legislation and there is nothing in there that talks about how lot lines are configured. These grossly irregular lot lines are designed primarily to avoid gerrymandering. The lot itself, the ledge on it and its shape, is what creates the problem. He stated that he does not believe they need a waiver at all. However, to the extent that the Board thinks a waiver is necessary, turning to 202-1.9.B which says; *“The Planning Board may grant a waiver if it finds by majority that strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations.”* He noted that spirit and intent goes back to purpose. He asked how the Town’s public health, safety and general welfare are harmed, if the waiver were to be granted. It is not harmed in any way. However, to the applicant, there is significant hardship to them because they will be losing a potential lot that is worth hundred of thousands of dollars. In reality, no one is going to go out there and say these are really irregularly shaped lots. The only people who are going to know are the people who live there. He stated that there is no reasonable reason that he can conceive of that the Planning Board should prohibit these three lots, when it meets all zoning, to the harm of the Nadeau Family of several hundred thousand dollars.

Speaking to Attorney Donovan, Member Paul stated that her understanding of unnecessary hardship is that it does not include financial hardship. She asked if this was correct.

Attorney Donovan replied yes. He continued that he and Attorney Phoenix, on the Tuck Realty Subdivision, had an extensive exchange of legal memoranda on exactly what the unnecessary hardship standard for a waiver is. He noted that Attorney Phoenix will say that the unnecessary hardship standard in the waiver provisions of the subdivision regulations is not the same as the unnecessary hardship for zoning variances, which is true to a point. He commented that he and Attorney Phoenix are likely to disagree on what the unnecessary hardship standard is here. There was a legislative change to the subdivision waiver statute that directly resulted from a case he won about 15 years ago. The Supreme Court ruled that a waiver had to be overturned because there was no unnecessary hardship. The legislative tried to change the statute to try to get around the Supreme Court’s decision. There is a long history to what is and what is not unnecessary hardship. If the Board agrees with his suggestion on how to proceed from here, in addition to

him drafting a sample notice of decision, he can provide the Board with confidential information about this whole issue of hardship.

Referring to the Tuck Realty Subdivision, Attorney Phoenix stated that the reason he felt it was different is because unnecessary hardship for the variances is defined as to what it means. Here it is not. It just says unnecessary hardship. The word without further definition should be construed to include financial hardship.

Chair Losik noted that she would like to address the width of the pavement. Mr. Colwell said that the applicant is willing to reduce the width to 20'. She asked the Board if they had any comments about this.

Alternate Macleod commented that the 20' width is more than adequate for three lots. To reduce impervious coverage, it should be done.

The rest of the board members were in agreement.

Chair Losik commented there are some areas in the LDR that give her concern because of the picture showing a significant amount of the forest removed to accomplish, which is necessary, five bioretention areas, which seems significant. This just looks like it has development constraints by the feature of resources that are now in play. Referring to 202-6.8.A(1), she read; *"The land developer shall identify and take suitable steps as required by the Planning Board to preserve and protect significant existing features."* The attributes are listed in that section and trees is one of them. In looking at the existing conditions plan, it reflects a significant tree canopy, except for the driveway and the Nadeau's home and lawn area. The July 27<sup>th</sup> site walk reflected the same. Although, there was work in the forest that had been done in obtaining the test pit information. The proposed development, including building envelopes and five drainage facilities, will result in a significant disturbed area, which in part contributes to the loss of trees. Per the plan sheet 12, note #7, says of 5.8-acres, 2.3-acres remain untouched, so the area of disturbance is 3.5-acres (60%). She continued that TFM's June 19<sup>th</sup> letter on behalf of the Nadeau's states *"spatial and visual impacts to abutting residential properties and Long John Road have been taken into consideration as part of the proposed design and further, the existing vegetation has been maintained along the abutting property lines to the greatest extent possible"*. She sees the location of the retention ponds on the backsides of Lots B and C as impactful to the abutters on Map 16, Lot 136-1. It appears largely due to the tree clearing to accommodate the drainage facilities required on Lots B and C. It is about 130' along that shared border. On the site walk in July, there was discussion about the border with Map 16, Lot 136-1 and there was note of a deed restriction on that lot, which is described as 15' wide and approximately 500' long which aggregates 7,500sf or over 17% of 1-acre of "no structures and no natural growth removed". When she looks at the design now, with respect to the line with the abutter, they are looking at two bioretention ponds where the tree cuts exceed 15' from the border. She questions whether that represents what 202-6.8 is trying to accomplish. She pointed out that as the plans have progressed, there is a sizable difference in the tree cut areas shown on the grading and drainage plans.

Chair Losik asked if adequate steps have been taken to balance the proposed development while preserving and protecting trees, which are clearly a feature of this parcel. She would like to see incorporated into the plans and the lot development plans, definitions of limits of clearing, cutting restrictions and remediation for overcut areas, should there be any, for current and abutting properties. She thinks they should talk about no disturbed buffers. She noted they are not seeing the forested and landscaped areas in color right now, which is LDR 202-3.1.17 and the buffer between B and C and Map 16, Lot 136-1.

Referring to the first question, Mr. Colwell stated that this ties into how there are more trees being cut now than what was shown on the initial plan. He explained that as they have received comments from Sebago Technics regarding drainage, the plans have been revised. The increase in the number of bioretention areas is a result of trying to address engineering comments. In doing so, a tree line has been put on the plan and the amount of protected forested land has been listed in the note on Sheet C-6. He continued that they felt that having addressed Sebago Technic's comments and introducing more drainage measures, which does require more tree clearing, it is still preserving 40% of the forested trees on this site. They would like to protect more; however, in doing so, it would mean that they would not be able to comply with Sebago's comments. On the one hand, it is trying to preserve the trees. On the other hand, it is trying to improve the drainage. He pointed out that one thing that may have a positive effect is reducing the road to 20'. It could allow for one or two of the bioretention areas to be shrunk, so fewer trees would need to be cut.

In regards to the land development plans, Mr. Colwell noted those are typically done once the subdivision is approved and recorded. The building inspector requires a residential plot plan before the houses can be built and that is when that work is done. What is shown on these plans is a possible home location. The home on Lot B could be moved closer to the front to reduce tree clearing, which would require less fill. Screening could be done between Lots C and B to further reduce tree clearing. In doing so, it might allow closer to 50% of the lot being preserved.

Chair Losik asked if there could be screening between Lots A and B.

Mr. Colwell confirmed.

Chair Losik stated that when she looks at the landscape plan, there is a huge cut area that is more than half of the lot. On the landscape plan there are 12 canopy trees. The canopy trees are trees that are going to grow between 30' and 70'. There are two species that are shown on C-14. Most of the replacement plants are going to be shrubs and small understory type growths. She understands that people have rights as to what they want to do with their land, but when developing the land and bringing the plan before the Town, the Board wants to look at it in the context of the regulations.

**Karen Nadeau, applicant,** stated there is no intention of selling the land. There is no developer. If it was up to her, she would keep every tree. She has asked Mr. Colwell why there has to be so

many small growths set up for bioretention. That is not what they want to live with or near at all. She commented she is passionate about the privacy and keeping as many trees as possible.

Referring to RSA 674:36, Attorney Donovan stated this is the statute that empowers the enactment of subdivision regulations. The second purpose of subdivision regulations is “To provide for the harmonious development of the municipality and its environs.” When he was listening to the discussion about the land clearing being needed to provide five bioretention areas, he started thinking about whether the Board is going to be going down a path where now every lot will be allowed to have its own bioretention area and its own drainage pond, as opposed to the typical, harmonious development of a subdivision where there are one or two retention ponds for entire development. He pointed out that Stoneleigh Subdivision was probably the most difficult site the board has faced and even that has only two bioretention ponds, one for each street. When thinking about harmonious development and the constraints of this particular parcel of land, that becomes a factor. The applicants’ representatives have tried to say that the Town should not be concerned about the maintenance of those bioretention areas because they’re on private lots. What happens if they don’t work? If the bioretention area is for the whole subdivision, the whole homeowner’s association is responsible.

Mr. Nadeau noted that Sebago had suggested that extra bioretention ponds be added and that is what was done in order to be compliant.

Attorney Phoenix stated if anyone representing the applicant had said that the Town shouldn’t make sure they work; he does not remember hearing this. In regards to the comment about the homeowner’s association being responsible if there was only one, the association could still be responsible for all of them. A condition could be that it is the responsibility of all the owners to take care of them.

Attorney Donovan pointed out that a homeowner’s association has not been proposed.

Attorney Phoenix commented no, but they could.

Chair Losik commented that it might be something to think about. She is concerned about #4, which covers two lots. They have been at these low impact development facilities for a while now. Some of them are working very well and some are fairly neglected. The bioretention ponds are there to help with drainage. It is unfortunate that the two that are on Lots B and C require cutting almost right to the property line.

Attorney Donovan stated that this ties into the concern about the grading and filling required for this particular house site on Lot B. If the house site was moved to the south more, it might be possible to eliminate or pull back that retention basin that is right on the property line. If the house site were pulled south on Lot B, would the drainage then flow into Fire Trail Lane and the bioretention in that area?

Member Sherman stated she is assuming the five bioretention areas are necessary because of the lot configuration and this being subdivided into three lots.

Mr. Colwell replied the bioretention areas are necessary to capture and treat stormwater. These bioretention areas are a result of two things; a much wider paved roadway and comments received from Sebago Technics. He thinks there is opportunity when the roadway width is reduced, to perhaps reduce a bioretention area. Attorney Donovan's suggestion of pulling Lot B bioretention pond and house forward, eliminates a tremendous amount of tree clearing. If bioretention #4 could be eliminated, this would eliminate a tremendous amount of tree clearing. Providing screening between B and C, and B and A, would increase the trees.

Member Sherman asked if any of the bioretention areas would be altered if the width of Fire Trail Lane is changed.

Mr. Colwell replied that perhaps bioretention area #2 could shrink. Bioretention area #3 could be pulled significantly closer to the south. This does two things; reduces the amount of fill, which in turn reduces grading which in turn reduces the elimination of trees. If the house were brought forward another 100', it would reduce a tremendous amount of tree clearing. He noted they could even add trees on the lot line to provide screening.

Member Sherman commented that sounds more attractive to her. It sounds like this is going to change a lot with the width of the lane.

Referring to bioretention area #5, Chair Losik asked for clarification on the functionality of that pond.

Mr. Colwell explained that this bioretention area was not on the plans back in July. That was added as a result of Sebago Technics comments. Their concern was runoff going into Long John Road and they suggested that bioretention area be added. During a storm event, it would prevent runoff from going onto Long John Road, as it infiltrates. He noted that there is standing water today around the location of the intersection with Long John Road. This is to help alleviate that.

Selectmen's Rep Epperson asked what the highest elevation is on this property.

Mr. Colwell replied about 63.

Selectmen's Rep Epperson stated that it seems like five retention ponds on this particular property, which is relatively flat with the exception of Long John Road, seems like a lot. The suggestion of moving things around resonates with him significantly.

Vice-Chair Lord stated that the high point of this development is basically the center line of the hammerhead. Only a little amount of pavement is going to be reduced that goes to both of those bioretention areas. He does not see how they can be reduced or eliminated with that minimal amount of pavement that is suggested to be removed. The property owner has said that the intent

is to keep as many trees as they can. The intent of what they're doing isn't shown on these plans. These plans show clearing on basin #4 and #3 taking it right to the property line. There is a tremendous impact on both Lots C and B and the adjoining property owner with how this is laid out right now. In regards to bioretention #1, there is going to be a whole strip of land with trees that are vacant and only a few trees coming back. This is a totally wooded area now that is going to be basically gone back up to another 100' or so. There isn't anything like that on Long John Road. If detention basin #1 was pulled up towards the house more, a very good tree border could be left along Long John Road, to give this some sort of similes of what the rest of Long John Road looks like. There would be an opening coming in to a set of trees with a development behind it. He stated that he keeps coming back to this is an irregular shaped lot and it's ending up with irregular shaped parcels. He thinks they are trying to shoehorn in a lot of issues here to try to make three lots work. There are a lot of issues here that have to be addressed. This parcel is probably more suited for two lots. What is trying to be done here really doesn't fit into this area. It could be much better if there was less development that required less impact on this property. In regards to the LDP's, if there is going to be some sort of approval on this, it needs to be really narrowed down as to what is being looked at.

Chair Losik agreed. She continued there are a lot of constraining resources that are impactful to each lot as to how the lot is set up. In regards to the infrastructure that has been set up, there is an awful lot that has been set up but for it to work and have functionality, it would seem that lot development plans would be needed.

Alternate Macleod stated that he clearly feels that on Lot 2, the house could be brought 100' closer to the road. That would significantly reduce tree clearing on that lot and would provide some buffer to the neighbors. He does not see that bioretention #1 will change much, or can be moved at all, because it is at the low point of the road and that is where it needs to be. Although, he does agree that cutting the road in that area is going to provide for a saturated road base. He thinks the way to handle it is to get the roadway up and have it pitch up from the road, in order to accept the minimal amount of pavement drainage onto Long John Road from the new road. If it means installing catch basins to pick up the runoff from the road to send it to bioretention #1, it will be better off. Right now, the entire driveway is pitching onto Long John Road, which will not be drainage onto the road. There has got to be some way to refigure bioretention area #4 that is on the existing house lot, such that it does provide buffer to the neighbor. He pointed out that the land cannot be developed without cutting down some trees. He noted there are areas on the plan where some trees can be retained, specifically on the lot line between the most southerly lot and the second lot in, as well as trees towards the hammerhead.

Speaking to Mr. Colwell, Alternate Macleod asked what triggered requiring bioretention #4.

Mr. Colwell replied the driveway from Fire Trail Lane.

Alternate Macleod asked if the portion of Fire Trail Lane near the hammerhead is draining into bioretention #4.

Mr. Colwell explained the new Land Development Regulations say that any new impervious areas have to be infiltrated. The only way to infiltrate those is through raingardens, bioretention areas and swales that require tree clearing. Most of bioretention #4 is a result of the driveway and the terminus of Fire Trail Lane. With that said, there is opportunity to pull that bioretention area up and make it smaller. He commented that he has circled four areas on the plan where tree clearing could be reduced by reducing some of the size of these bioretention areas.

**Hannah Giovannucci, TF Moran**, read from LDR Section 202-9.3; General Performance Criteria for Stormwater Management Plan. She stated that if they could get a waiver to be able to reduce those bioretention areas then they would be able to give back a lot of that tree cutting area. The other reason why a lot of trees need to be cut to accommodate all these areas, is so there will be positive drainage flow to the stormwater areas. There were comments from Sebago Technics that mentioned a lot of the runoff from the proposed roofs were not actually getting to the bioretention basin areas. A lot of the tree line area had to be carved out so the water could go to those areas. If that was not done, the stormwater would be heading over onto other people's property.

Alternate Quinn stated he is going to defer to the engineers on most of this. There are two things that concern him a bit. One is in regards to the irregularity of the lot. His only objection to the boundary irregularity issue is what it does in terms of the precedent that is being set. As far as this lot is concerned, he does not want to back the Board into a corner where they will have to justify every move that has been made to accommodate an irregularity, as is suggested here. The other concern is the location of the house on Lot B. He wonders how locked in the new homeowner will be in terms of the location of that house. If the homeowner wanted to bring the house 100' forward, as has been suggested, or do something different, are they going to encounter pushback from the abutters? Will they have the luxury of placing the house where engineering allows them to put it?

Mr. Colwell explained that bringing the house forward is going to significantly reduce the amount of tree clearing. That can go in the notes in the zoning table. Also, to prevent the building from going back where it is today, there can be a restriction on that portion of the lot, which would be recorded with the deed when it the lot is conveyed. There are ways to police that before a homeowner buys the lot. It is a good point that if the house is moved forward on these plans and a homeowner wants to move the house back, there would be nothing preventing them from doing so.

Planning Administrator Reed asked if the restrictions would prevent someone from getting variances to put the house wherever they want.

Mr. Colwell replied yes. The restrictions run with the land and once it is put on, it runs forever. In his opinion, these restrictions are the same as easements and are in perpetuity.

Attorney Phoenix stated that if there is a restriction imposed it should be recorded on the subdivision plans, or elsewhere, so it is known by anyone wanting to build a home on the lot that the restriction applies.

Attorney Donovan explained that the Planning Board has the authority to condition the location of houses. The ZBA does not have the authority to let a subsequent property owner go around those Planning Board restrictions. He believes the new regulations expressly say that the Planning Board has the right to condition the location of homes in a subdivision. He continued that with respect to the comment that areas were cleared so the houses can drain to the retention facilities, he wonders if the Board has considered imposing drip edges on these homes in this subdivision so the flow of roof drainage goes into the ground in the drip edge. There are traffic engineering standards that would say that subdivisions with this amount of traffic only needs to have an 18' wide street. In picking up on Mr. Colwell's feeling that reducing the width of the street would help to significantly reduce tree cutting, he wonders if that is something that the Board would be open minded to. He reiterated that 18' works for this amount of traffic.

Chair Losik asked the applicant if they have further comments.

Mr. Colwell stated that the comments are very insightful and it is helping to make a better plan. There are two things that he just thought of that could potentially help. Bioretention #4 seems to be a bone-of-contention because it proposed tree clearing right up close to the abutters. Bioretention area #4 is primarily for the new driveway that goes to the existing home. If Fire Trail Lane is reduced to 20' and the driveway is made pervious, bioretention area #4 could be completely eliminated. He noted that the applicants are also willing to put a 10' no-cut buffer right against that lot line. The abutters currently have a 15' no-cut buffer, so this would make a 25' no-cut buffer in total.

Referring to the retention area that sits in the corner of the hammerhead, Vice-Chair Lord asked if that was pushed out, if the driveway could be brought into that side of the hammerhead with the westerly side remaining forested.

Mr. Colwell explained that going on the northerly side does not help a car getting into and out of the garage. Right now, the driveway comes in really tight with the garage. For snow storage, DPW requested that the driveway for Lot C be off the south side of Fire Trail Lane, not off the north or the terminus.

Vice-Chair Lord asked if there is anyway to redesign this to keep a good portion of the trees.

Attorney Donovan commented that he thought the original proposal brought the driveway in right off the end of Fire Trail Lane.

Mr. Colwell confirmed.

Attorney Donovan explained that if forebay #3 and bioretention #2 are pushed it even further onto Lot B, then the driveway could come in on that side and accomplish quite a bit of tree preservation and reduce drainage. He doesn't remember the DPW Director saying he didn't want it coming off that other side, just not off the end because that is where snow is going to be pushed.

Mr. Colwell explained that the DPW Director did not want a driveway in that area.

Vice-Chair Lord commented this might be able to be reinvestigated.

Mr. Colwell agreed that he would revisit this with the DPW Director.

Chair Losik opened to the public for comments.

**Christian and Julie Derderian, 655 Long John Road**, addressed the Board. Mr. Derderian stated that he wanted to confirm that interested parties and the Board have received and reviewed their letter from October 13<sup>th</sup>. He continued that they feel the parcel is only suitable for two homes; one for the existing homes and proposed Lot A. They heard earlier that there is a potential to add a 10' buffer and they appreciate that. He hopes that buffer extends the entire length of the property line, not just proposed Lot C. They put their trust in the Board to do what is best to ensure the spirit of the neighborhood.

**Steve Borne, 431 Wallis Road**, stated that he thinks it would be helpful for property owners, developers and the Board, if the LDR had something in it that says enough is enough. When a property has to go through this much to make something work, it's too much. It would save everyone a lot of time and effort if that is what it said. The Board is seeing more and more of this type of proposals coming through. It would save everyone a lot of time and effort if the Board could say enough is enough.

Chair Losik commented it would be hard to say enough is enough, as property rights are important and key. People invest in property. In saying enough is enough, and possibly infringing on property rights, that is not a direction for the Town. She continued that in regards to enough is enough and the constraints on the property, look back at the 1985 Master Plan, which Attorney Donovan was largely responsible for. In that master plan is a wide discussion about the land that was undeveloped at that time. The planning board members are now working on, with landowners, the land that was undeveloped at that time. The Master Plan speaks to the issues of property. She thinks that helps to reset a framework. There are areas that they know are difficult. It doesn't mean that they get to say "no".

Hearing no further comments from the public, Chair Losik closed the public hearing at 8:13 p.m. She asked the applicant if they have any other thoughts they would like to share.

Mr. Nadeau stated that Mr. Derderian had made a request that the no-cut buffer go across Lot C and Lot B. He noted that he and his wife have no objection to that.

Chair Losik noted that is approximately 500 linear feet.

Mr. Nadeau agreed.

Mr. Colwell thanked the Board for their professionalism, the comments and the attempts to make this a better development. They have heard a lot of feedback and have gained a lot of ground. He requested that the applicants be allowed to come back in January addressing some of these changes.

Chair Losik asked the Board for additional comments.

Member Sherman commented the only other concern she had is with the protective radius for the wells on Lot C and Lot A. If they are redoing the plans, she wants to be sure they are addressing all the concerns that have been presented in the past.

Mr. Colwell explained there are two wells on the property. One is on Lot C and one is off the property with the radius extending onto Lot A. Protective well radii have been shown on the plans for both of those, which is allowed to go into the right-of-way per State regulations. It can go up to the center line of the right-of-way. He noted the well radius does comply. It is entirely on the lot with just a small portion within the right-of-way of Fire Trail Lane. Regarding the well off the property, this does exist but does not belong to the applicants. He believes it is for a residential home. There is a 75' protective well radius there and that has been honored. He pointed out there is no deed restriction. In New Hampshire, wells are not supposed to be located such that they extend over a property line without an easement. This well happened many years ago and an easement was not gathered; however, they realize that it exists. Therefore, nothing has been proposed within that well radius easement and the intent is to honor it.

Member Sherman noted that at the site walk, Mr. Nadeau had said that the Conservation Commission had come out to the site and had approved of the proposal. It would be great to have that in writing, if possible.

Chair Losik asked Planning Administrator Reed if she would reach out to Conservation.

Planning Administrator Reed agreed.

Referring to the property line between Lots B and C, Member Carter asked why it could not be moved to the west to the end of the hammerhead.

Mr. Colwell explained that they looked at that and it did not give Lot B enough frontage.

Attorney Donovan commented that the line between Lots B and A could be adjusted a bit to get the frontage.

Mr. Colwell explained that lot lines have to be no more than 30 degrees radial from a curve on Fire Trail Lane. That would make the lot line more than 30 degrees off radial.

Attorney Donovan commented that may be one of the least innocuous waiver requests.

Chair Losik agreed.

Mr. Colwell commented it would make Lots B and C squarer.

Attorney Donovan pointed out it goes a long way towards regularity on both those lots.

Member Finn stated there are a lot of challenges here and a lot of compromises required. It is definitely a more challenging lot, in terms of being able to potentially put three sites on there, as opposed to two. He thinks there is a lot of homework to be done to make this feasible.

Member Paul stated she appreciates all the effort the applicant is doing to try to make this happen. However, she still keeps going back to three lots being stuffed onto the parcel with everything being jerry-rigged to try and get it in.

Vice-Chair Lord agreed with Member Paul that they are really trying to make this work by tweaking everything possible. He thinks they are still going to end up with a lot of irregularities in a lot of tough places.

Alternate Quinn stated that in terms of capitalizing on an asset, he thinks they should do what they can to help the Nadeaus achieve what they can reasonably do. He is still hung-up a bit on the irregularity of the lot. Perhaps some redrawing of the plans and discussion with DPW can help resolve some of the issues. He feels they have made some progress tonight and he looks forward to seeing what they come up with.

Alternate Macleod stated he does not think they are trying to cram too much in here. He thinks their challenges are regulatory and are not challenges associated with the land. The only challenge associated with the land is that it starts with an irregular configuration. He thinks the location of the lot lines are fine where they are. Any modification to them is not going to make any difference, but if it eases the irregular burden, they should go with that. It is apparent the Nadeaus are doing their best to ameliorate any concerns of the abutters. There is work to be done on the plan with revisions. It can be an improvement over what is before the Board now. He thinks they should see what they come forth with at the next meeting.

Chair Losik stated she appreciates the wealth of information and ideas that have been exchanged through this discussion. She agrees with Member Finn that it is a more challenging lot. She also agrees, to a certain degree, with Member Paul and Vice-Chair Lord, about the skepticism as to how far this can go. However, she also heard in the last hour, a team that demonstrates innovative thinking. It is clear listening to the Nadeaus that they both have passion for the natural environment they currently enjoy. She thinks they have demonstrated a strong

graciousness toward extending the 10' of buffer along the 500' that abuts the Derderians. She is not going to take a position either way at this time. She is going to remain hopeful that some solutions can be found.

Attorney Donovan commented this has been a very good discussion.

**Motion by JM Lord to continue the application of Jak Nadeau Revocable Trust to the January 12, 2021 meeting. Seconded by Katy Sherman.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

**B. Conditional Use Permit by South Salem Buffalo Rye Trust, John & June Williamson, Trustees** for property owned and located at 400 Washington Road, Tax Map 16, Lot 193 for an Accessory Dwelling Unit (ADU) per Section 190-5.6 of the Rye Town Code. **Property is in the Single Residence District, Aquifer & Wellhead Protection District. Case #10-2020.**

**John Williamson, applicant,** explained that there is a 1930's garage on the property that is falling down. That was going to be replaced, but times change. They thought it would be nice to have a spot above the garage to have a place for family members to stay. They took a look at the requirements for an ADU and worked with an architecture. Before the Board is a plan to replace the garage with 600sf above for use.

Chair Losik clarified that the Fire Chief has looked at the plans and approved the access and egress. On final they would need his approval.

Mr. Williamson agreed.

Chair Losik opened to the Board for questions.

Member Sherman asked if the current septic system allows for this expansion.

Mr. Williamson pointed out that they have a state approved new septic that is part of the project.

Member Sherman commented she loves the design and the plans are easy to visualize what is being done. She has no concerns.

Selectmen's Rep Epperson stated he looked at the checklist to make sure it is accurate and is being fulfilled in the spirit of the ordinance. In looking at the plans, he does not have any further questions.

The other board members did not have any questions or concerns.

Chair Losik noted that the property is in the Parsons Creek Watershed. Under 126-4, it says that septic tanks need to be pumped out at least once every three years.

Planning Administrator Reed replied that is correct. She noted that people in this neighborhood are aware of that. She does not think anyone has asked for a waiver from the pump-out ordinance.

Chair Losik noted the wavier could be requested if the property is occupied by two or fewer persons. She assumes that would probably not be the case because someone would be in the main house and someone in the ADU.

Planning Administrator Reed explained it is a health ordinance by the Selectmen, so it is really not the Board's jurisdiction.

Chair Losik asked if this should be put into the conditions.

Attorney Donovan commented that if the Board thought it was appropriate, they could put compliance with the pump-out ordinance as a condition of approval.

Chair Losik opened to the public for comments.

Planning Administrator Reed stated that she spoke with the neighbor across the street, Liz Bartley, who wanted to know what is being done. Ms. Bartley thought it was a great idea.

Chair Losik closed the public session at 8:50 p.m.

**Motion by JM Lord to approve the Conditional Use Permit by South Salem Buffalo Rye Trust, June & John Williamson, Trustees for property owned and located at 400 Washington Road, Tax Map 16, Lot 193 for an Accessory Dwelling Unit (ADU) per Section 190-5.6 of the Rye Town Code, property is in the Single Residence District, Aquifer & Wellhead Protection District; on the condition that the septic tank be pumped every three years. Seconded by Bill Epperson.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

- C. Major Site Development Plan by the Wentworth by the Sea Country Club for property owned by WBTSCC Limited Partnership and located at 60 Wentworth Road, Tax Map 24, Lot 61-26 for an addition to the existing outdoor patio, pedestrian sidewalk, an awing cover over a portion of the patio, and relocation of existing practice/putting green, landscaping and a paver apron. **Property is in the Single Residence District. Case #11-2020.****

**Corey Colwell, TF Moran**, presented to the Board. He introduced Justin Macek from TF Moran, WBTSCC General Manager Bob Diodati, WBTSCC Superintendent Jason Bastille and WBTSCC Food and Beverage Director Chad Mitchell. He stated that with the recent pandemic, golf, as an outside sport, is popular, as is outside dining. The country club does offer outside dining on its 1400 square foot patio; however, the demand for outside dining has significantly increased. The existing patio cannot meet the demand; therefore, the club is before this Board seeking to expand that patio to provide adequate table spacing. The club, in an effort to accommodate their member and guests, wants to do a couple of things with the expansion. The patio would get bigger. It would go from about 1400sf to 4075sf. It would provide a 20 x 60 aluminum awning, which covers approximately 1500sf of the patio. The club would also like to add a walkway to get pedestrians from the sidewalk to the tent pad area, relocate the putting green and add some landscaping. (The plans were presented on the screen for review. Mr. Colwell pointed out the existing patio and putting green and also reviewed the expansion location.) He noted that what exists there today is the patio and putting green. As that patio expands, the putting green would be relocated to an area a little closer to Heather Drive. The patio is graded slightly away from the building, so stormwater will run off away from the building. There are existing yard drains at the edge of the patio. Those yard drains would get relocated to the current edge of the patio. The yard drains tie into other yard drains, which is simply a much smaller form of a catch basin. That stormwater then gets carried out to the irrigation pond.

Mr. Colwell stated that in addition to the patio, along Heather Drive, they are also proposing a decorative paver walkway. This is to facilitate pedestrians getting to and from the tent pad site from the existing paved parking. People who are going to a function in the tent would use this walkway which would end at a paved apron that points toward the tent pad. The apron is provided because future planning may have a paved walkway between the tent site and that apron. But for this application, the walkway ends at the apron.

Mr. Colwell pointed out the areas on the drawing where they are proposing landscaping and reviewed the plantings being proposed. He also reviewed each sheet of the design plan set. He stated that in summary the application is relatively minor. However, it does qualify, per the Town's regulations, as a Major Site Development for the expansion of a nonbuilding accessory structure of more than 400sf. Also submitted with the application are three waiver requests and a Use Intensity Statement. A waiver is being requested to a final stormwater management plan. All stormwater management is being handled by those yard drains that exist. They are being relocated to capture any runoff from the patio. There is very little impervious area being proposed, as compared to the size of the site. Existing drainage patterns remain unaltered and drainage is still directed to the drainage pond. The pond is controlled by an outlet pipe and a manual pump. Stormwater from the pond does eventually flow into Sagamore Creek via an outlet pipe and can manually be pumped into Witch Creek. Both of these creeks are more than adequate to handle the minor additional flows generated within the project vicinity. He noted that this was sent to Sebago Technics and they concurred with the analysis that on a 110-acre site, this is such a small addition of impervious area. Sebago did not feel a stormwater management plan really improved anything.

Mr. Colwell stated that a waiver was also requested to 202-3.5.A.6 for onsite disposal plan. The patio expansion does not impact any flows to the existing disposal system. The design does not propose any change to the existing septic tanks, leachfields or any additional components of the septic system. The main purpose is to provide diners with some separation by putting tables outside. The final waiver being requested is for elevation drawings; 202.3.3.B.8. This patio does not propose the expansion or construction of any new buildings. Building elevations are not applicable to this type of project. Mr. Colwell concluded his presentation.

Chair Losik opened to the Board for comments or questions.

Member Finn commented that it looks like it is a relatively small amount of square footage of impervious, compared to the overall square footage of the parking lot. The drainage seems to be taken care of adequately.

Selectmen's Rep Epperson stated he is familiar enough with the property to not have any objections. He assumes the awning will be in character with the clubhouse and be as nonobtrusive as possible.

**Robert Diodati, WBTSCC General Manger**, explained the plan for the awning is a metal frame coming off the building with a canvas cover that would be replaced every few years. It would be a fixed awning, not retractable.

Member Carter asked if the awning is removed in the winter.

Mr. Diodati replied that the plan is to leave it up all winter and replace the material every two or three years. The awning will come off the edge of the roof and slope downward. The club may have to clear snow off of it in the winter, but they will do that as necessary.

Chair Losik asked about the base of the awning.

Mr. Diodati explained it will have a fabricated metal frame welded and will be anchored to the building with posts down the side along the front. The posts are approximately 15' and are 6" x 6".

Chair Losik asked about wind speeds.

Mr. Diodati noted that engineering is working on that now. The contractor is Atlantic Awning and they have an engineering team that does the work.

Vice-Chair Lord stated that it seems like a dedicated sidewalk area is being created from the tent area, around the seating area and to the parking lot, which kind of protects that greenery so people do not walk through. He asked if there is any thought of that with a crosswalk going into the parking lot.

Mr. Diodati explained that people do not walk through the patio and putting green area now. They are now walking directly on the pavement of Heather Drive. By creating the walkway, it will get them off the pavement and make it safer. Across the parking area where the guests come from, a crosswalk would be a nice addition.

Alternate Quinn applauded Mr. Colwell for presenting the colored drawings, as everything popped right out to him and made sense. He thinks everything is great.

Alternate Macleod commented that he has no problems with anything. He agrees that a drainage study should not be required. He asked if it is new vegetation that is being proposed along Heather Drive and into the parking lot.

Mr. Colwell replied it is new vegetation.

Alternate Macleod asked if there are going to be any issues with site distances coming around that corner.

Mr. Colwell explained that is why the hedge row is angled out towards the parking lot, in order to help facilitate site distance.

Alternate Macleod asked if it is one-way traffic going in.

Mr. Colwell replied it is one-way traffic going into the parking lot. Coming in from Heather Drive, the driver turns right and circles around the parking lot to come out the southerly terminus.

Attorney Donovan commented that he has one suggestion with respect to the concern about pedestrian flow towards the new sidewalk on Heather Drive. Referring to Sheet C-10, he asked if it would be advisable in the location of the crosshatched crosswalk (shown in the middle of the parking lot to the main entrance of the club) to paint a crosswalk down the side of the parking lot to the new pavers. If people are going to try to get to the parking lot to the sidewalk on Heather Drive, they will not be walking directly behind the parking spots, which is hazardous, and then trying to cross. Instead, they will cross over on the crosswalk in the middle and then down the backside of the parking lot. He noted that the Land Development Regulations talk about proper separation of pedestrian traffic from parking. People should not be haphazardly walking behind the eleven or twelve parking spaces. They should be walking as far away as possible, which would be just marking the pavement alongside the north edge of the parking lot.

Mr. Colwell clarified this would be from the end of the existing crosswalk near the clubhouse leading down to the new sidewalk.

Attorney Donovan confirmed.

Mr. Diodati agreed with the suggestion.

Chair Losik agreed it is a good idea. After a bit more discussion about Attorney Donovan's suggestion, she opened to the public for comments. Hearing none, she closed the public hearing at 9:15 p.m.

**Bill Epperson moved to grant the waiver requested to 202-3.5.B.1(a) of the Land Development Regulations, as strict conformity would pose an unnecessary hardship and the waiver would not be contrary to the spirit and intent of the regulation because the proposed development is part of a 110-acre lot and the applicant is only improving one-third of an acre. The Site Development Plans show the existing proposed drainage system within the project vicinity which discharges to a nearby existing stormwater pond depicted on the final Topo and Soils Plan.**

**Seconded by Jim Finn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

**Bill Epperson moved to grant the waiver requested to 202-3.5.A.6(i) of the Land Development Regulations, as strict conformity would pose an unnecessary hardship and the waiver would not be contrary to the spirit and intent of the regulations because the proposed patio expansion does not propose any connection to the existing septic system and therefore, does not impact peak flows to the existing disposal system.**

**Seconded by Jim Finn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

**Bill Epperson moved to grant the waiver requested to 202-3.3.B.8 of the Land Development Regulations, as strict conformity would pose an unnecessary hardship and the waiver would not be contrary to the spirit and intent of the regulations because the proposed patio expansion does not propose the construction of any new buildings; therefore, building elevation are not applicable to this project.**

**Seconded by Jim Finn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

**Motion by JM Lord to approve the Major Site Development Plan by the Wentworth by the Sea Country Club for property owned by WBTSCC Limited Partnership and located at 60 Wentworth Road, Tax Map 24, Lot 61-26, for an addition to the existing outdoor patio, pedestrian sidewalk, an awning cover over a portion of the patio, and relocation of existing practice/putting green, landscaping and a paver apron, property is in the Single Residence District, Case #11-2020; with the condition that Sheet C-10 shows the painted crosswalk on the north side of the parking lot, between the existing painted crosswalk and the new pavers. Seconded by Bill Epperson.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes  
Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes  
Motion passed.**

Bob Diodati gave a quick update to the Board in regards to a previous proposal before the Board for netting, at a height of approximately 90', on the golf course near the location of The Ice House. He noted that the owner of The Ice House is very happy with the outcome of the project, as the netting looks very nice and their customers feel safe, as golf balls are no longer falling onto the property. He also noted that there have been no problems with the netting or birds being caught in the netting.

**D. Conditional Use Permit Application by Cellco Partnership d/b/a/ Verizon Wireless for property owned by Dolores F. Lintz and located at 120 Brackett Road, Tax Map 22, Lot 95-A to install a 125' monopine wireless telecommunications facility which shall include twelve (12) panel antennas, six (6) remote radio heads, one (1) junction box, and ground-based equipment to be housed within a 30' x 40' enclosure. Property is in the Single Residence District. Case #03-2018. *Requests to be continued to 3/31/2021.***

**Bill Epperson moved to continue the application of Cellco Partnership d/b/a Verizon Wireless for property owned by Dolores F. Lintz at 120 Brackett Road to March 31, 2021. Seconded by JM Lord.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes  
Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes  
Motion passed.**

**Kathy McCabe, 135 Brackett Road,** asked if Verizon has agreed to the shot clock extension.

Planning Administrator Reed noted that Verizon has agreed.

Ms. McCabe commented they have been acting in good faith, but not a written agreement, with Verizon to withdraw this application contingent upon breaking ground at the Port Way site. She asked if there are any barriers foreseen with that.

Selectmen's Rep Epperson stated his understanding is Verizon will withdraw this application as soon as their building permit for Port Way is approved.

Planning Administrator Reed confirmed.

Attorney Donovan noted that Chip Fredette (Verizon Rep) reported that they are just waiting for the go ahead from the higher ups to file for the building permit application.

There were no other public comments regarding the continuance of Verizon's application.

#### IV. Proposed Hearings on Proposed Amendments:

- a. **Z Amendment 2021-01 Changes to HDC to match the Demo**  
*Not moving forward at this time.*

Chair Losik thanked Alex Herlihy for his email of November 25<sup>th</sup>. The Historic District Commission discussed this and felt it was premature, given the Town Center Committee will continue on its work. They felt no changes should be made at this time.

- b. **Z Amendment 2021-02 Demo Review**

##### PROPOSED ZONING ORDINANCE AMENDMENT 2021-02

Amend Section 190-5.9 (C) Demolition Review as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

190-5.9 C Demolition subject to review. Any demolition within the Town of Rye, ***excluding the Historic District***, shall be subject to the requirements of this section where:

- (1) The demolition is:
- (a) A building or part of a building greater than 500 square feet of gross floor area; or
  - (b) A monument, statue, or memorial; or
  - (c) An accessory building less than 500 square feet of historical or architectural interest;
- and

##### ***Explanation***

To be consistent with the Demolition review language as contained in the Historic

At 9:33 p.m., Chair Losik opened to the public for comments on Proposed Zoning Amendment 2021-02 regarding Demolition Review.

**Steven Borne, 431 Wallis Road**, stated that as of last night, the agenda for this was not posted. He was not able to push it in the Civic News because what was posted in the Herald just listed what was going to be heard, not that there was going to be a public hearing.

Chair Losik noted that on the Planning Board page on the Town's website, there is a tab for 2021 Zoning Amendments. She commented that others have seen the posted agenda on the website; however, she will note his concern.

Hearing no further comments, Chair Losik closed the public hearing at 9:36 p.m.

Attorney Donovan commented that it is ironic that Mr. Choate is proposing an amendment that eliminates a lot of provisions that he has relied on in his lawsuit against the Town.

**David Choate, Washington Road, Demolition Review Committee Chair**, stated that all he is doing is cleaning this up so there is not duplicate effort, as the Historic District Commission normally has review over demolition.

Attorney Donovan stated it is certainly a wise step to take. He will stand by his comment in regards to the litigation.

No other comments were heard.

**Motion by Bill Epperson to move Proposed Zoning Amendment 2021-02 to the Town Warrant. Seconded by JM Lord.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes  
Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

**c. Z Amendment 2021-03 Demo Review abutter mailings**

PROPOSED ZONING ORDINANCE AMENDMENT 2021-03

Amend Section 190-5.9 (E)(2)(b) Demolition Review as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

190-5.9 (E)(2)(b) If the Demolition Review Committee determines that the building is potentially significant, it shall schedule a public hearing within 12 business days of making that determination, and within three days of making that determination notify the Building Inspector of it. Notice of the public hearing shall be posted in two public places and published at least five days prior to the hearing, not including the day of the hearing or the day of posting. ***Notice to abutters shall be made by certificate of mailing to all abutters not less than five calendar days before the date of the hearing.***

**Explanation**

To allow abutter notice when the Demolition Committee deems a building to be potentially significant and its demolition is subject to a public hearing.

At 9:40 p.m., Chair Losik opened the public hearing on Proposed Zoning Amendment 2021-03 regarding Demolition Review.

Attorney Donovan stated that he has a concern that the revision may not be consistent with the public notice that was published. The public notice says it would amend sections to require certified mailings of hearings. He is hearing that this is not what is before the Board now.

Planning Administrator Reed replied it is not. The Board should continue this to re-notice.

Attorney Donovan agreed.

Mr. Choate asked for an explanation on the difference between certified mailing versus a certified letter.

Alternate Macleod explained that certified mail return receipt is a form of mail that could be expensive for some applicants. Certified mail means the recipient does not get it unless they sign for it. If they are not home, they will get a notice in the mailbox and will have to go to the post office to pick it up. A lot of times, people do not get notification because they are getting it by certified mail. A certificate of mailing is proof that it has been mailed. The post office certifies that it has been mailed and put into the mailbox of the receipt; however, a signature is not required. There is proof that at least it was mailed and everyone gets noticed because it does not require a signature within a required period of time. There is proof that it was mailed, but it is not a more cumbersome process.

Chair Losik commented that the Rules and Regulations Committee discussed this on November 16<sup>th</sup> and agreed.

**Motion by JM Lord to continue Proposed Zoning Amendment 2021-03 to the January 12<sup>th</sup> meeting. Seconded by Steve Carter.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes**

**Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

**d. Z Amendment 2021-04 – Limited Liability with RBVD**  
*Not moving forward at this time.*

**e. Z Amendment 2021-05 rezoning**

#### PROPOSED ZONING AMENDMENT 2021-05

Re: Zoning Map Changes: Business Districts in Rye Harbor Area

Amend the ZONING MAP TOWN OF RYE to change the following parcels from Business (B) District to Single Residence (SR) District: Tax Map 9.2/Parcels 22, 22-1; Tax Map 8/Parcel 56; Tax Map 8/Parcels 73, 73-1.

Explanation

These parcels, which are all in the vicinity of Rye Harbor, were once the sites of businesses: Saunders Restaurant; Pilot House (later Hemmingway's) Restaurant; Rye Beach Motel. The parcels have been redeveloped for residential use in recent years. Thus, the planning board believes residential zoning more appropriately represents the current uses and the goals of the Master Plan.

Attorney Donovan explained that these properties have all gone to residential use in recent years. If they stay business zoned, there is always a possibility that someone could try to convert one of these properties to a mix-used type structure or even a business use type structure, which would really be incompatible with the surrounding residential areas. That is why he suggested cleaning up the zoning map on these three properties. Within the last five or six years, a change in the statute says that when a zoning map changes like this, the Town has to mail notice to each effected property owner. He noted that this has been done by Planning Administrator Reed. In addition to the typical public hearing notices, each property owner involved in these changes received a specific written notice.

At 9:48 p.m., Chair Losik opened to the public for comments regarding Proposed Zoning Amendment 2021-05. Hearing no comments, she closed the public hearing.

**Motion by JM Lord to move Proposed Zoning Amendment 2021-05 to the Town Warrant. Seconded by Bill Epperson.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes  
Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

**f. Z Amendment 2021-06 the Breakers**

PROPOSED ZONING AMENDMENT 2021-06

Re: Zoning Map Changes: “Breakers” Development

Amend the ZONING MAP TOWN OF RYE to change Tax Map 23.1/Parcel 29 from Business (B) District to General Residence (GR) District.

Explanation

The “Breakers” is a residential condominium development of several dwellings. It is not a business land use. The planning board believes residential zoning more appropriately represents the current use and the goals of the Master Plan.

It was noted that Planning Administrator Reed sent the appropriate notices to each property owner effected by this zoning change.

Planning Administrator Reed stated that she spoke with the chair of The Breakers Homeowners' Association. He said that he was going to be on tonight's call to talk to the Board.

**Jeff Feuer, 820 Ocean Blvd #1**, President of The Breakers Condo Association, stated that they first received notification of this on Saturday. They have not had any time to look into the ramifications of this. He is hoping there could be a continuance to the next meeting.

**Andrew Foss, 780 Ocean Blvd**, asked what the motivation is behind the change. There are multi-unit shared buildings. They are not running shop fronts, but they are not really single residential either.

Attorney Donovan explained that he and Planning Administrator Reed tried to research how this came to be zoned Business in the first place and that could not be determined. If it is reverted to General Residence, then the two-family dwellings are allowed uses. Those dwellings would not become non-conforming. However, the property owner would not be able to have a mixed-use property. Under the Business Zoning District, there could be small retail shops or offices. There could be a mixed-use structure in one of these buildings, which is not really compatible with the residential environment, which is what The Breakers is now.

Mr. Foss stated that many years ago, in order to accommodate a condo, it had to be Business, not Residential. He noted that there is also a four-plex in this complex. He has personally had the experience of having the replacement of a door being rejected by the Building Inspector because he said it was in the Single-Family Residential District, but this was wrong. He worries about having difficulties like that. He thinks The Breakers needs time to look at this to try and understand it.

Attorney Donovan stated that he suspects what was said about the history is probably true. Back when this condo was approved, the Planning Board probably mistakenly thought that the only way it could be approved was through a Business Zoning; however, that is not the case. It would remain a legal use with the exception of the four-plex. The four-plex would be a non-conforming use right now because only duplexes are allowed in Residential. The four-plex would be a lawful non-conforming use under any scenario.

Mr. Foss commented they look at the property as a whole. As time has evolved, they have racked up so many non-conforming uses that it is becoming hard to get things done. He thinks a continuance to give time to better understand this is worthwhile. He does not think anyone is likely to open a shop here ever. That cannot just be done, despite the zoning. It would still have to be asked for.

Attorney Donovan commented a continuance for this amendment would be appropriate.

There was some discussion on the deadlines for moving this to the warrant, if it is to move forward.

**Steven Borne, 431 Wallis Road**, commented that it does not sound like anything is pressing this. He asked why they would not drop it and let the people who live there decide if they want to bring this back.

Chair Losik commented that the ramifications of not doing this leaves them unprotected. She closed the public hearing at 10:01 p.m.

**Motion by JM Lord to continue Proposed Zoning Amendment 2021-06 to the January 12<sup>th</sup> meeting. Seconded by Bill Epperson.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes  
Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

**g. Z Amendment 2021-07 Pervious**

PROPOSED ZONING AMENDMENT 2021-07

Re: Pervious

Add to Section §190-11.1 Definitions Review as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

***PERVIOUS COVERAGE OR PERVIOUS***

***Any surface, whether natural, man-made, or modified, that can effectively absorb or infiltrate water including, but not limited to, vegetated surface, such as woodlands, planted beds, and lawns, and those pavements specifically designed and maintained to effectively absorb and infiltrate water. (From NH RSA 483-B:4, Shoreland Water Quality Protection Act.)***

*Explanation*

Add the definition of pervious coverage or pervious which is consistent with NH RSA 483-B:4, Shoreland Water Quality Protection Act.

At 10:02 p.m., Chair Losik opened the public hearing on Proposed Zoning Amendment 2021-07. Hearing no comments, she closed the public hearing.

**Motion by JM Lord to move Proposed Zoning Amendment 2021-07 to the Town Warrant. Seconded by Bill Epperson.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes  
Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

**h. Z Amendment 2021-08 Parking Space Sizes**

PROPOSED ZONING ORDINANCE AMENDMENT 2021-08

Amend Section 190-5.0 A. **Off-street parking and loading** as follows (Note: New language *emboldened and italicized*. Deleted language ~~struck through~~).

190-5.0 A. Size of parking spaces. All parking spaces required herein shall have a minimum size of ***9 feet*** ~~10 feet~~ in width by 18 feet in length.

**Explanation**

To make the parking size requirements consistent with surrounding towns size limits.

Planning Administrator Reed explained that the Planning Board tried to put this on the ballot a number of years ago, but somehow it did not make it onto the ballot. The following year, it was legally noticed and made it to the ballot but was voted down. It is being brought back for another try.

**Steven Borne, 431 Wallis Road**, commented that he believes the amendment was written wrong on the ballot, the year it was voted down.

Chair Losik asked the Board their thoughts on the amendment.

Member Sherman commented she is confused that they are making parking spaces smaller, as car sizes are getting larger.

Alternate Macleod noted that back in the 60's, the cars required 10' wide and 20' long parking spaces. Accepted engineering practices is for 9' x 18'. Asking for a larger space is just forcing people to build more pavement (10% more) to accommodate a parking space. The 9' x 18' space is the industry standard and it accommodates an average of cars.

**Motion by JM Lord to move Proposed Zoning Amendment 2021-08 to a public hearing at the January 12<sup>th</sup> meeting. Seconded by Bill Epperson.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes  
Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

**i. Z Amendment 2021-09 Wetland Boundary Disputes**  
*Addressed below*

**j. Z Amendment 2021-10 Delineation of Wetlands**  
*Addressed below*

**k. Z Amendment 2021-11 Definition of Wetlands**

Planning Administrator Reed explained that Zoning Amendments 2021-09, 2021-10 and 2021-11 were drafted by Attorney Donovan based on the recommendations by Mike Cuomo. She noted that the proposed amendments and the letter from Mr. Cuomo are in the board members' packets.

Chair Losik explained the Rules and Regulations Committee had a nice session with Mike Cuomo, who was very helpful. He was initially asked to look at both the Land Development Regulations and the zoning to make sure there was consistency with language. Mr. Cuomo made these suggestions as a result of his review.

Chair Losik opened to the public at 10:09 p.m.

**Steven Borne, 431 Wallis**, asked about the posting of the amendments.

Attorney Donovan explained that these do not need to be posted, as the Board is just considering whether to have a public hearing on them next month, which is when they will be posted and everyone will have a chance to see them.

**Motion by JM Lord to move Z Amendments 2021-09, 2021-10 and 2021-11 to a public hearing at the January 12<sup>th</sup> meeting. Seconded by Bill Epperson.**  
**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes**  
**Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**  
**Motion passed.**

**l. BC Amendment 2021-01**

PROPOSED BUILDING CODE AMENDMENT 2021-01

Amend Section 35-16. ***Mobile Homes*** as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

**§ 35-16. Mobile homes.**

- A.** All mobile homes ~~within Zone A on the Flood Hazard Boundary Maps shall be anchored to resist flotation, collapse, or lateral movement by providing over the top and frame times to ground anchors. Specific requirements shall be that:~~

- ~~(1) Over the top ties be provided at each of the four corners of the mobile home with two additional ties per side at intermediate locations and mobile homes less than 50 feet long requiring one additional tie per side;~~
  - ~~(2) Frame ties be provided at each corner of the home with five additional ties per side at intermediate points and mobile homes less than 50 feet long requiring four additional ties per side;~~
  - ~~(3) All components of the anchoring system be capable of carrying a force of 4,800 pounds; and~~
  - ~~(4) Any additions to the mobile home be similarly anchored.~~
- This section intentionally deleted.*

**B.** See also Chapter, 60, Floodplain Management, for any additional requirements

Explanation

*Delete Section A. It is redundant and already covered in the Floodplain Ordinance Section 60 of the Rye Code.*

**Motion by Bill Epperson to move Building Code Amendment 2021-01 to a public hearing at the January 12<sup>th</sup> meeting. Seconded by JM Lord.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes**

**Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

***Note: The Land Development Regulations Amendments do not go on the Town Warrant. If the Planning Board votes to adopt the amendment, it will become effective once they are certified.***

**m. LDR Amendment 2020-01**

**PROPOSED LAND DEVELOPMENT REGULATIONS AMENDMENT 2020-01**

Amend Section 202-6.11. ***Special provisions for flood hazard areas*** as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

**§ 202-6.11** Special provisions for flood hazard areas

Land developments located in flood hazard areas shall comply with all requirements of the Town of Rye Floodplain Development and Building Ordinance ***as well as the following requirements:***

- A. The Planning Board shall review the proposed land development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.*
- B. The Planning Board shall require the applicant to submit sufficient evidence (construction drawings, grading and land treatment plans) so as to allow a determination that:*
- (i) all such proposals are consistent with the need to minimize flood damage;*
  - (ii) all public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage; and,*
  - (iii) adequate drainage is provided so as to reduce exposure to flood hazards.*

*Explanation*

These provisions which are needed or participation in the National Floodplain Insurance Program (NFIP) are compliant with the required floodplain regulations in connection with the adoption of the new floodplain maps (FIRM's) and the FIS Study as of 1-29-2021.

Chair Losik opened to the public for comments.

**Steven Borne, 431 Wallis Road,** asked what these amendments mean to residents. How are people impacted by this?

Planning Administrator Reed explained the Floodplain Management and Floodplain Ordinances are available on the Geographical Information System (GIS). Anyone building in the Special Flood Hazard Zone has to build to a certain standard. The new maps are now coming out and some of the zones are going to be changing. Special provisions had to be made, as they were mandated by OSI, in the Special Flood Hazard areas in the Flood Ordinance. All it means is that there are new maps coming out. People should make sure that when they are constructing, they are doing it in a safe way that meets the requirements of the special flood hazard zone that they live in.

The public hearing was closed at 10:18 p.m.

**Motion by JM Lord to adopt Land Development Regulations Amendment 2020-01.  
Seconded by Steve Carter.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes  
Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes  
Motion passed.**

**n. LDR Amendment 2020-02**

Rye Planning Board LDR Amendment 2020-02  
Re: Subdivision Design Standards

Amend the Subdivision Design Standards of § 202-6.2 (A) (1) as follows: (Note. New Language ***emboldened and italicized.***)

§ 202-6.2 Subdivision Design Standards.

A. Lots. Lot configurations, the layout of lot lines and the arrangement of lots in a subdivision shall be orderly and harmonious and shall not be contrary to established principles of subdivision design.

(1) Lot configuration. Except on cul-de-sacs, rectangularly shaped lots having side lot lines perpendicular to straight streets or radial to curved streets are preferred for buildable lots less than three acres in size.

(a) Lot lines intersecting the street shall not vary more than 30° from the perpendicular or radial. Intersecting property lines at street intersections shall be joined by a curve of at least twenty-foot radius.

***(b) Lot shapes shall not be grossly irregular.***

~~(b)~~ (c) Lot shapes shall not have grossly irregular angles or narrow portions.

~~(e)~~ ***(d) Lot lines shall not be gerrymandered to obtain required frontage, depth, yard space or lot area.***

(e) All front setback measurements shall begin at the right-of-way line of the street.

Explanation

*The amendment adds two standards for subdivision design which were part of the Land Development Regulations (LDR's) which the board adopted in 1988 and used for +30 years. However, they were not included in the revised LDR's adopted in January 2020. These standards are important to good subdivision design. The board overlooked their omission in its review of the new LDR's.*

Attorney Donovan explained that it was discovered that in the process of adopting the new LDR's, this had been changed to eliminate some of the provisions. This amendment would put it back the way it was in the old LDR's. The new regs weakened these provisions and this would put the strength back in.

Chair Losik opened to the public for comments. Hearing none, she closed the public hearing at 10:23 p.m.

**Motion by JM Lord to adopt Land Development Regulations Amendment 2020-02.  
Seconded by Bill Epperson.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes  
Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes  
Motion passed.**

**o. LDR Amendment 2020-03**

Rye Planning Board LDR Amendment 2020-03  
Re: Typical Street Cross Section

Amend the Subdivision Design Standards of § 202-6.2 (B) to replace the Typical Street Cross Section Diagram with the attached diagram.

*Explanation*

*The publisher of the new Town Code was erroneously provided the wrong Typical Street Cross Section, which conflicts with the Street Construction Standards of LDR § 202-6.4. The amendment corrects this error by replacing the Typical Street Cross Section Diagram with the correct diagram.*

Chair Losik opened to the public for comments at 10:25 p.m. Hearing none, she closed the public hearing.

**Motion by JM Lord to adopt Land Development Regulations Amendment 2020-03.  
Seconded by Jim Finn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes  
Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes  
Motion passed.**

**p. LDR Amendment 2020-04**

RYE PLANNING BOARD  
PROPOSED LAND DEVELOPMENT REGULATIONS 2020-04

Re: Pervious and Impervious

Add to Section §202—1.13 Definitions as follows (Note: New language *emboldened and italicized*. Deleted language ~~struck through~~).

**IMPERVIOUS COVER, *IMPERVIOUS COVERAGE, OR IMPERVIOUS***- Any modified surface that cannot effectively absorb or infiltrate water and from which water runs off. **Examples of impervious surfaces include, but are not limited to, roofs and, unless designed to effectively absorb or infiltrate water, decks, patios, and paved, gravel, or crushed stone driveways, parking areas, and walkways, storage areas, compacted gravel, including drives and parking areas, oiled or compacted earthen materials, stone, concrete or composite pavers and wood.** (From NH RSA 483-B:4, Shoreland Water Quality Protection Act.)

***PERVIOUS COVERAGE OR PERVIOUS***

***Any surface, whether natural, man-made, or modified, that can effectively absorb or infiltrate water including, but not limited to, vegetated surface, such as woodlands, planted beds, and lawns, and those pavements specifically designed and maintained to effectively absorb and infiltrate water.*** (From NH RSA 483-B:4, Shoreland Water Quality Protection Act.)

*Explanation*

Add the definition of pervious coverage or pervious which is consistent with NH RSA 483-B:4, Shoreland Water Quality Protection Act.

Chair Losik explained that “impervious cover” was in the Land Development Regs, as they were changed and adopted. The intent is to expand the definition because pervious and impervious are key to a lot of the Board’s decision making. Impervious cover was expanded to include, where it is already in the LDR, adding the language of “impervious coverage” or “impervious”. The definition of “pervious coverage” or “pervious” was added to indicate the opposite, which is consistent with NH RSA 483B:4; Shoreland Water Quality Protection Act.

Hearing no questions from the Board, Chair Losik opened to the public at 10:28 p.m. No comments were heard, so the public hearing was closed.

**Motion by JM Lord to move LDR Amendment 2020-04 to the January 12<sup>th</sup> meeting for a public hearing. Seconded by Jim Finn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes**

**Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

**q. LDR Amendment 2020-05**

Rye Planning Board LDR Amendment 2020-05

Re: Waivers

Amend 202-1.9 General Waiver Authority as follows. (Note: New language underlined, italicized and emboldened).

A. The Planning Board may waive requirements of these regulations in accordance with RSA 674:36, II(n) *(I)*, and RSA 674:44, III(e) *(I)*.

B. RSA 674:36, II(n), for subdivision applications and RSA 674:44, III(e), for site plan review applications require that the basis for any waiver granted by the Planning Board shall be recorded in the minutes of the Board. The Planning Board may only grant a waiver if the Board finds, by majority vote, that strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of these regulations. Requests for waivers shall be submitted in writing at least 10 days before the meeting at which the Board considers the waiver request. A written waiver request shall describe how compliance with the regulations for which a waiver is requested would pose an unnecessary hardship to the applicant and why the waiver would not be contrary to the spirit and intent of the regulations.

Explanation

The amendment removes a potential conflict in the regulations arising in the newly adopted LDR's. Per the statutes a planning board may include two justifications for a waiver in its land development regulations. See 674:36, II (n) (1) & (2), and RSA 674:44, III (e) (1) & (2). The Rye Planning Board LDR's have only allowed waivers if the Board finds, by majority vote, that strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of these regulations.

Attorney Donovan explained this amendment puts the LDR's back to what they were before the new LDR's were adopted. The statutes give two reasons for granting a waiver; "Strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations" or "Specific circumstances relative to the site plan or conditions of the land indicate that the waiver would probably carry out the spirit and intent of the regulations". This change reverts it to what the LDR's were so it will be tougher to get a waiver because the only standard would be the unnecessary hardship standard. This became important in a couple of the more controversial subdivision; such as, Stoneleigh, where the Board denied some waiver requests based on the lack of unnecessary hardship and the applicant probably could've satisfied the second criteria "spirit and intent". The statutes do not require towns to have both of these options for waivers. If the Board wants to revert to what the old LDR's were, with respect to waivers, which makes it tougher to get a waiver, this amendment should at least move forward for a public hearing. Attorney Donovan read from RSA 674:44, Subdivision Regulations.

Chair Losik opened to the public at 10:36 p.m. No comments were heard and the public session was closed.

**Motion by JM Lord to move Land Development Regulations Amendment 2020-05 to the January 12<sup>th</sup> meeting for a public hearing. Seconded by Bill Epperson.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes  
Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

- **Z Amendment - Cupola height**

Planning Administrator Reed noted that cupola height came from the Zoning Board. They made a decision that if a cupola is decorative, it did not need to meet the height requirements. The Zoning Board Chair asked for a zoning Amendment to be put together, which was sent out for Attorney Donovan's review. She noted that she emailed all Board members the draft.

Vice-Chair Lord asked if there is a definition of "decorative".

Member Sherman commented that she is worried that people are going to argue that it is decorative, but it is actually also functional. She noted that she drove around town looking at cupolas and saw some large ones.

Chair Losik stated her concern is square footage, as some are getting to be beyond decorative.

Alternate Quinn noted that it seems arbitrary calling something "decorative" without any guidelines. "Not to exceed" language should be placed in there somehow.

Selectmen's Rep Epperson agreed. He commented that it is loosely defined, as to what a cupola is or isn't. He thinks it needs to be tightened up a bit.

Chair Losik agreed.

Attorney Donovan suggested working on this for next year.

Planning Administrator Reed will follow up with the Zoning Board Chair.

## V. Other

- **Minutes of November 10<sup>th</sup>**

The following corrections were noted:

- Page 1, under others present, it should read: **Attorney Eric Maher**
- Page 5, 2<sup>nd</sup> paragraph, 6<sup>th</sup> sentence should read: **Within that easement, the Town, acting through the Library Trustees, would have the authority to enter the land for the purpose of maintaining and repairing the sidewalk.**
- Page 8, last sentence should read: **Speaking to Attorney Donovan, Alternate Quinn asked if he has any concern.**
- Page 8, last paragraph, 3<sup>rd</sup> sentence should read: **He indicated that he was checking with the Trustees again and that was an absolute no.**
- Page 9, last paragraph should read: **Attorney Donovan replied Mr. Philbrick is amenable to retaining the healthy ones.**

- Page 10, 2<sup>nd</sup> paragraph, 5<sup>th</sup> sentence should read: **If they are not healthy, he would get rid of the ones that are not healthy and put a total of four in; two on each side.**
- Page 11, 2<sup>nd</sup> paragraph, 1<sup>st</sup> sentence should read: **Member Sherman stated she is sure another concern people are having is about those last three spots that are going to be allotted to this property.**
- Page 11, it should be noted that Chair Losik opened to the public before Jeff Ross, Library Board Chair, spoke.
- Page 12, 3<sup>rd</sup> paragraph 3<sup>rd</sup> sentence should read: **As he said in one of the recent communications to the Board, it's not within the purview of the Planning Board to make a decision as to whether the Library Trustees' assertion that the library control statue precludes a subdivision from going forward.**
- Page 13, last paragraph, 1<sup>st</sup> sentence should read: **Karen Stewart, 546 Washington Road, stated that the Rye Town Center Committee, of which she was chair, has been discussed a lot in recent weeks and at this meeting tonight.**
- Page 15, last paragraph, last sentence should read: **He hopes the Planning Board looks at the whole property and really understands the needs of the Library before boxing them into a corner they may never recover from.**
- Page 16, 2<sup>nd</sup> sentence should read: **He would also love to see the Town invest in planning leadership because the boards do too much.**
- Page 16, 3<sup>rd</sup> paragraph, 3<sup>rd</sup> sentence should read: **Right now, this is a Board that is driven to look and look and look again at Plan C; the three pages and the attendant attributes of Plan C.**
- Page 18, 3<sup>rd</sup> paragraph, 3<sup>rd</sup> sentence should read: **He would also say there is no legal precedent for that.**
- Page 25, 2<sup>nd</sup> paragraph, 4<sup>th</sup> sentence should read: **The Board has to look at what is before them.**
- Page 28, it should be noted that Selectman Phil Winslow was not present at the time of the Selectmen's motion to adjourn.
- Page 31, 2<sup>nd</sup> paragraph from bottom, second sentence should read: **He was not in favor of bringing this forward.**

**Motion by JM Lord to accept the minutes of November 10, 2020 as amended. Seconded by Jim Finn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**

**Motion passed.**

- **Request for reduction in credit for Stoneleigh Subdivision by Joe Falzone**

**Motion by Bill Epperson to approve the request for reduction in credit for Stoneleigh Subdivision in the amount of \$18,401.39. Seconded JM Lord.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes;**

**Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**  
**Motion passed.**

- **Mr. Gemmett** – (Article to Portsmouth Herald regarding the Parsonage)

**Motion by Patricia Losik to place Mr. Gemmett’s article about the Parsonage, which was shared with the Board, on file. Seconded by JM Lord.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**  
**Motion passed.**

**Motion by Patricia Losik to acknowledge the letter from Dominique Winebaum, which was shared with the Board, and to place it on file. Seconded by Jim Finn.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**  
**Motion passed.**

## **VI. Old Business**

*\* None*

## **VII. Escrows**

*\*None*

## **Adjournment**

**Motion by JM Lord to adjourn at 10:57 p.m. Seconded by Steve Carter.**

**Roll Call: Katy Sherman – Yes; Steve Carter – Yes; Jim Finn – Yes; Nicole Paul – Yes; Bill Epperson – Yes; JM Lord – Yes; Patricia Losik – Yes**  
**Motion passed.**

Respectfully Submitted,  
Dyana F. Ledger