

**TOWN OF RYE – PLANNING BOARD
MEETING**

**Tuesday, January 12, 2021
6:00 p.m. – via ZOOM**

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

***Others Present:* Planning/Zoning Administrator Kim Reed, Attorney Michael Donovan**

Chair Losik called the meeting to order 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
ID #889 9085 2536 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 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:

- Katy Sherman
- Steve Carter
- Jim Finn
- Nicole Paul
- Bill Epperson
- JM Lord
- Jeffrey Quinn
- Bill Macleod
- Patricia Losik

I. Approval of meeting minutes

- **December 8, 2020**
Moved to 'Other Business'

II. Public Hearing on Applications:

- **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.**

Chair Losik noted that the Board has received a request from Attorney Tim Phoenix, on behalf of the applicant, to continue this application to the February meeting.

Attorney Tim Phoenix explained that this request has been made as a result of his conversation with Attorney Donovan. Attorney Donovan asked if a continuance would be considered because a fair amount of information came in within the last few days and there are some issues with Steve Harding addressing the water issues that have been raised. Attorney Phoenix noted that his clients have agreed to a continuance, so those issues can be reviewed and addressed.

Attorney Donovan commented that it might be helpful to have Steve Harding and the applicants' engineer meet with TRC and review some of the technical aspects. The committee could report to the Planning Board before the next meeting. He continued there are several technical issues. However, the one that is a concern for several board members deals with the first 150' of the entrance road with the low point and proximity of the base to ground water, which will require a waiver. It might be good to have the engineers talk through those concerns.

Attorney Phoenix agreed this would be a good idea. He noted that TF Moran is working on a plan with some proposed changes that will help with tree cutting, and rain gardens. If the TRC meeting could be set for two weeks out, there should be more information available from TF Moran addressing the concerns that have been raised.

Members of the Technical Review Committee (TRC) agreed to a meeting on January 27th.
(Time to be determined)

Members of TRC: JM Lord, Jim Finn and Bill Macleod.

Motion by JM Lord to continue the application of Jak Nadeau Revocable Trust to the February 9th 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.

- **Voluntary Lot Merger 1 Cable Road and 3 Cable Road**

Chair Losik noted that Attorney Phoenix has requested that the Board address the lot merger for 1 Cable Road and 3 Cable Road next. As a lot merger, it is not subject to a public hearing. She asked Attorney Phoenix to bring the Board up to date.

Attorney Tim Phoenix, representing the property owners, presented the plan on the screen for the Board's review. He noted that the plan shows the two lots at the end of Cable Road. The larger house on the plan is the existing Tierney home. A couple of years ago, the Tierneys bought the lot next door, which had a smaller cottage on it. The cottage has been removed and the Tierneys are proposing an addition to the main house. The addition will be a 2.5-car garage with living space above. All zoning relief has been received to proceed with the plan. The Tierneys have the right to merge the lots and its purpose is because the lots are going to be treated like one. Attorney Phoenix stated that he did not realize till today that there is a mortgage on one of these lots. It is a line of credit with nothing out on it, but the statute says that the mortgage holder is supposed to approve. This should have been done before the application to the Board was filed. He asked the Board to consider a conditional approval subject to documentation showing compliance with the mortgage restrictions per RSA 674:39-a II.

Attorney Donovan noted that he does not have any issues with the lot merger or the request that Attorney Phoenix has made.

Motion by JM Lord to approve the voluntary lot merger of 1 Cable Road and 3 Cable Road with the condition of documentation proving compliance with the mortgage restrictions per RSA 674:39-a II. 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 Hearing on Proposed Zoning Amendments:

Zoning:

1. Z Amendment 2021-03: 190-4.6(E)(2)(b) mailings

RYE PLANNING BOARD 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.

Hearing no questions from the Board, Chair Losik opened to the public for comments. Hearing none, she closed the public hearing at 6:23 p.m.

Motion by Bill Epperson to move Proposed Zoning Amendment 2021-03 amending Section 190-5.9(E)(2)(b) to the Town Warrant. 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.

2. Z Amendment 2021-06: Map change for the Breakers from Business to Single Residence District

**RYE PLANNING BOARD
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.

Chair Losik noted that the Board received a letter from Attorney Phoenix, condo documents and the declaration of the condominium, which is dated 1980. She asked Attorney Phoenix to speak in regards to his submitted information.

Attorney Tim Phoenix, spoke on behalf of the Breakers Condo Association and the individual owners, who unanimously approved the request that the Board not move forward with this recommendation. He noted that in the minutes from the previous meeting, Steve Borne in one sentence echoed the sentiments of the condo association that *"this does not seem to be necessary at this time"*. Attorney Phoenix commented if it is not broken why fix it? He continued that this may have been placed in the business zone as early as the 50's. It has been there for decades, and maybe even as long as zoning has been around, without a zoning related problem as the result of it being in the business zone. So, they do not see any reason to change it. In addition, the condominium declarations are pretty clear about residential use. Anyone who wanted to put in some retail use is going to have a very difficult time doing that. The protections that the Board thinks would be gained by converting this to a residential zone are already in place. Residential uses are permitted in the business zone, so the Breakers is in compliance with the use. He pointed out that some of the condo owners regularly lease their properties out and operate it as some sort of business. He is not sure if this falls exactly into place, but that is their position. The real issue is that by putting this in a residential zone, it will be creating a non-conformity. Under 190-2.2 it states that in any residential zone, there can only one principal building on a lot, where there are 12 or 13 on this property. That may be why the property is in the business zone to begin with. It does not make sense to change the zoning, if by doing so it creates a greater non-conformity.

Attorney Phoenix noted that one of the owners, Sally Sheehan, had a home that violated the 30' setback. She received relief from the ZBA to remove that house and rebuild. The house was moved back, as it was over by about a 1', so it is now compliant with the front setback. The front setback in the residential zone is 40', so by approving this change, it would create a non-

conformity. He continued that there are a couple of properties by the Harbor that were moved to the warrant. One is the Rye Beach Motel property. That was converted into two-single family lots, so that makes sense. He noted that the Wallis Sands Condominiums is still in the business zone. There are other properties along the beach that are still in the business zone, notably the old 'Joseph's Rye on the Rocks' at the end of Washington Road. Also, some of the homes near the Breakers heading south towards Wallis Sands, appear to be residences and are in the business zone. For all these reasons, and primarily the desire of the people who live there who would like it to be left alone because the protections are already in place, they are asking the Board to consider their request.

Nancy Riley, 788 Ocean Blvd #1, spoke in support of keeping the property in the business zone. This would behoove her, as she rents out her property sometimes.

Jeff Feuer, 820 Ocean Blvd #1, noted that possibly all the owners are participating in the meeting tonight. He commented that they all share the same sentiments that they are hoping the property can remain in the business zone.

Andrew Perchlik, 792 Ocean Blvd, commented that Attorney Phoenix's letter laid it out very well. He would also like to voice his request that the Board dismisses this motion and leave well enough alone. It is going to cause more problems for the owners than it is going to create benefits.

Carlos Dominguez, 784 Ocean Blvd #4, stated that he and his wife recently purchased a unit at the Breakers. They live in what is referred to as a quadplex. It is a unique piece of property, as most of the dwellings on the property are single-family or two-family. For that reason alone, he does not think there is any zoning allowance in the Single District that would conform with the four units in one building. He continued that everything Attorney Phoenix has articulated and has put into writing is right on point. Any change would be more restrictive to the unit owners. The impact on the residents of the Town of Rye is much less than the impact it would have on the owners at the Breakers. There would be absolutely no gain to the Town. He read from the purpose section of the zoning ordinance, which sets out certain factors that would be considered by the Board in making any changes to zoning:

To lessen congestion in the streets, secure safety from fire, panic and dangers, promote health and general welfare, promote adequate light and air, prevent the overcrowding of land, avoid undue concentration of population, facilitate adequate provisions of transportation, solid waste, water, sewage, school and recreation facilities, and to ensure proper use of natural resource and other public requirements.

Mr. Dominguez stated that he sees nothing in this zoning change that would promote those purposes, which are basically the preamble to the zoning provisions within the town code. He respectfully requests that the Board consider not changing the zoning from the present business zone.

Chair Losik asked if other owners have comments. Hearing none, she opened to other members of the public.

Steven Borne, 431 Wallis Road, commented that he supports the owners of the Breakers. He would question whether the statements that Attorney Phoenix made would apply to the other property being changed. He would like to see both of those proposed amendments removed.

No other comments from the public were heard. Chair Losik asked Attorney Donovan his thoughts.

Attorney Donovan commented this is an effort to clean up the zoning map, which is something the Board should be trying to do as a general policy. Many of these business zones that were zoned in 1953 are no longer business uses. He believes this is sound planning. With that being said, Attorney Phoenix has raised some good points. The most important one is #5 of his memo with respect to creating non-conformities due to the one building one lot rule. Attorney Donovan stated this is one he overlooked and it is an important point. Point #6, with respect to Sally Sheehan's unit, is not really valid. Zoning in the General Residence requires a front yard setback of 30' not 40'. Based on point #5 and the fact the Board has heard from a lot of people, it may be worth just letting this one go.

Referring to point #5, Chair Losik asked if this is saying that in the case of the four-plex it would automatically be non-conforming.

Attorney Donovan explained they would all become non-conforming because of the one-building one-lot rule.

Referring to the special exceptions uses in the Business District, Chair Losik stated that it would be a reach to think of some of the conversions. It would be fairly impossible. However, what has not been impossible on the coast is a membership club. Speaking to Attorney Donovan, she asked if he had any concept that this would be an issue in the future.

Attorney Donovan stated the point about the declaration is a valid one, except to the extent that the owners can get together and change the declarations. The declaration now limits things to a residential use and this would probably take care of a membership club. Then again, it only takes the vote of the owners to change the declarations. It is possible it could change down the road to allow certain types of business uses and membership club could be one of them.

Chair Losik asked the board members their thoughts.

Member Sherman did not have any questions or concerns.

Member Carter did not have any concerns.

Member Finn stated that some of the members of the condo association are concerned about renting their properties as a business use. He thinks that for residential in general, one is allowed to do that. He asked Attorney Donovan if this is correct.

Attorney Donovan confirmed. He noted there are a lot of issues surrounding 'Air bnb' that the Board has chosen not to get into at this time. Other municipalities are getting into zoning as a way of regulating those type of uses. Right now, in Rye, homeowners can rent out their house.

Member Finn noted that he does not have any issues with the proposed amendment one way or the other.

Member Paul concurred with Member Finn.

Selectmen's Rep Epperson stated he is all for cleaning up the zoning. However, this has been there since 1953 and has not presented a problem in any way. He would rather let "sleeping dogs lie" and leave it alone.

Member Lord commented he has no problem one way or the other.

Alternate Quinn commented he has no concerns.

Alternate Macleod stated that hearing the concerns of the owners and Attorney Phoenix's presentation, he is of the opinion that it should not be rezoned. He certainly does not think that if there is a unanimous consensus of the current property owners that the Town should rezone their land against their wishes if there are no issues.

Motion by Bill Epperson to withdraw Proposed Zoning Amendment 2021-06 to amend the ZONING MAP TOWN OF RYE to change Tax Map 23.1/Parcel 29 from Business (B) District to General Residence (GR) District. 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.

3. Z Amendment 2021-08: Section 190-5.0A parking size

RYE PLANNING BOARD 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.

Selectmen's Rep Epperson asked if they tried this amendment before.

Planning Administrator Reed explained they tried this twice. Once, it was approved and sent to the ballot; however, somehow it failed to get on the ballot. The second time it was put on the ballot it was voted down.

Referring to the minutes of the last meeting, Chair Losik referenced Alternate Macleod's comments; *"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".*

Alternate Quinn asked if they would enhance the possibility of the amendment being passed if they were to add to the explanation that it concurs with current engineering standards.

Speaking to Attorney Donovan, Chair Losik asked if a change can be made to the explanation at this point.

Attorney Donovan confirmed. This is not changing the substance of the amendment itself.

Alternate Quinn suggested adding to the explanation that it is consistent with other towns and current engineering practices.

Member Sherman agreed. She suggested also adding the point that there is going to be more pavement.

Member Quinn suggested the wording of "reduction of impervious surfaces".

After some discussion, the Board agreed the explanation should say;

To make the parking size requirements consistent with surrounding towns size limits, compliant with industry standards, and minimize impervious paved surfaces.

Chair Losik opened to the public for comments.

Mr. Borne commented the he believes the one that failed had the wrong number.

Hearing no further comments, Chair Losik closed the public hearing at 6:52 p.m.

Motion by Jim Finn to move Proposed Zoning Amendment 2021-08, relating to the size of parking spaces, to the warrant. Seconded by Nicole Paul.

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.

4. Z Amendment 2021-09: Section 190.3.1 Disputes about the location of wetlands boundaries

**RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2021-09**

Amend Section 190-3.1,C as follows (Note: New language *emboldened and italicized*. Deleted language ~~struck through~~).

Disputes about the location of wetlands boundaries as ~~determined by the Building Inspector or the Planning Board~~ may be appealed *in the first instance to the Planning Board which may retain and independent Certified Soils Scientist to report his or her findings on the boundary to the Planning Board. The expense of such an investigation shall be paid by the party questioning the boundary. Decisions of the planning board may be appealed* to the Zoning Board of Adjustment as an administrative appeal pursuant to ~~Section 701:1~~ *Article VII* of this ordinance. ~~The zoning board of adjustment may call upon the services of an independent NH Certified Wetlands Scientist to examine said area and report his or her findings to the Board for their determination of the boundary. NH Certified Wetlands Scientist is interpreted to mean a person qualified in wetlands delineation and who is licensed by the State of New Hampshire.~~

Explanation

The amendment would require disputes about wetlands boundaries to be taken first to the planning board before being appealed to the Zoning Board of Adjustment.

Chair Losik noted that the changes were recommended by Soil Scientist Mike Cuomo. The board had discussions with regards to 2021-09, 10 and 11 last month. These were drafted by Attorney Donovan based on the recommendations of Mr. Cuomo. The Rules and Regulations Committee asked Mr. Cuomo to look for recommendations in the language between the zoning and the LDR. She asked the board members if they had any questions. Hearing none, she opened to the public for comment. No comments from the public were heard. Chair Losik closed the public hearing at 6:55 p.m.

Motion by JM Lord to move Proposed Zoning Amendment 2021-09 that amends Section 190-3.1,C regarding disputes about wetland boundaries, to the warrant.

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.

5. Z Amendment 2021-10: Section 190.3.1.B delineation of wetlands

RYE PLANNING BOARD

PROPOSED ZONING ORDINANCE AMENDMENT 2021-10

Amend Section 190-3.1,B to add the following new Subparagraph (3) as follows. (Note: New language ***emboldened and italicized***. Deleted language ~~struck-through~~).

- (1) The precise location of wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils and wetlands hydrology in accordance with the techniques outlined in the *Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January 1987*. The hydric soils component of delineations shall be determined in accordance with the manual *Field Indicators for Identifying Hydric Soils in New England* (Version 3, April 2004), published by the New England Interstate Water Pollution Control Commission.
- (2) Vernal pools shall be delineated based on the characteristics listed in the definition of vernal pools found in ~~Appendix A §190-11.1~~.
- (3) ***Wetlands and vernal pools shall be identified by a Certified Wetlands Scientist based on field investigation conducted within 10 years of the application being reviewed.***

Explanation

The amendment requires wetlands and vernal pool delineations to be within 10 years because of both wetland boundaries and professional standards of practice change over time.

Chair Losik opened to the Board for comments. None were heard. She opened to the public. Hearing no comments or questions, she closed the public hearing at 6:55 p.m.

Motion by JM Lord to move Proposed Zoning Amendment 2021-10, which amends Section 190-3.1, B regarding the delineation of wetlands, to the Town Warrant.

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.

6. Z Amendment 2021-11: Section 190-11.1 amend the definition of wetlands

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2021-10

(Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

I. Amend the Definition of Wetlands found at §190-11.1 as follows:

WETLANDS: ~~An~~ ***Those*** areas that ~~is~~ ***are*** inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions ~~does~~ ***do*** support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

Explanation

The present language of the definition matches the NH statutory definition at RSA 482-A:2, X. The amendment would make the language match the federal definition at §33 CFR 328.3.

II. Amend the Definition of Vernal Pool found at §190-11.1 as follows:

VERNAL POOL: A surface water or wetland which provides breeding habitat for amphibians and invertebrates that have adapted to the unique environments provided by such pools and which typically has the following characteristics: (1) cycles annually from flooded to dry conditions, although the hydroperiod, size, and shape of the pool might vary from year to year; (2) forms in a shallow depression or basin; (3) has no permanently flowing outlet; (4) holds water for at least 2 continuous months following spring ice-out; (5) lacks a viable fish population; and (6) supports one or more primary vernal pool indicators, or 3 or more secondary vernal pool indicators as described in *Identification and Documentation of Vernal Pools in New Hampshire*, 2nd 3rd Ed., 2004 ***2016*** published by the NH Fish and Game Department.

Explanation

The amendment updates the reference to a technical publication.

III. Amend §190-11.1 190-3.1, B.(1)

The precise location of wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils and wetlands hydrology in accordance with the techniques outlined in the ***Regional Supplement to the Corps of Engineers Wetlands Delineation***

~~Manual; Northcentral and Northeast Region Technical Report Y-87-1, January 1987.~~
The hydric soils component of delineations shall be determined in accordance with the manual *Field Indicators for Identifying Hydric Soils in New England* (Version 3.4, April 2004 ~~2019~~), published by the New England Interstate Water Pollution Control Commission.

Explanation

The amendment updates the reference to technical publications.

Chair Losik opened to the Board for comments. None were heard. She opened to the public. Hearing no comments or questions, she closed the public hearing at 7:00 p.m.

Motion by JM Lord to move Proposed Zoning Amendment 2021-11 regarding wetlands, which amends the definition of wetlands found at §190-11.1; amends the definition of vernal pools found at §190-11.1; and amends §190-11.1190-3.1, B.(1), to the March ballot. 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.

Building Code:

1. BC Amendment 2021-01

RYE PLANNING BOARD
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 ties 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.

Chair Losik opened to the Board for questions. None were heard. She opened to the public for comments. Hearing none, she closed the public hearing at 7:02 p.m.

Motion by JM Lord to move Proposed Building Code Amendment 2021-01 that amends §35-16 regarding mobile homes to the March ballot.

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.

Land Development Regs:

1. LDR Amendment 2021-04: Section 202.1.13 impervious and pervious definitions

**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 opened to the Board for comments or questions.

Referring to the word “maintained”, Selectmen’s Rep Epperson asked if there is a definition or standard associated with that word in regard to pervious coverage.

Chair Losik replied there are standards. When the Board is considering pervious in subdivision, the notes are recorded and the maintenance instructions are made available. She opened to the public for comments. Hearing none, she closed the public hearing at 7:06 p.m.

Motion by JM Lord to adopt Proposed Land Development Regulation Amendment 2021-04 regarding pervious and impervious surfaces.

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.

2. LDR Amendment 2021-05: Waivers

Rye Planning Board LDR Amendment 2021-05

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) **(1)**, and RSA 674:44, III(e) **(1)**.

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.

Chair Losik noted there is an inconsistency in the Land Development Regulations. She read from the current General Waiver Authority; *The Planning Board may 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.* In the Town's waiver forms that standard exists as number 1 and it is followed by a second standard, number 2; *or specific circumstances relative to the site plan or condition of the land in such indicates that the waiver will properly carryout the spirit and intent of the regulations because...*

Attorney Donovan explained that statutes say the Board may put into the Land Development Regulations provisions for a waiver and it sets out these two reasons that a waiver could be granted. In the old Land Development Regulations, it was clear that the only reason a waiver could be granted is 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.* He noted that somehow, both reasons ended up on the application form, which is really a separate issue from this amendment. This just clarifies subsection A so it is not interpreted as wrapping in both reasons. He commented that the waiver form should have been changed a few years ago.

The Board did not have any questions. No questions or comments were heard from the public. Chair Losik closed the public hearing at 7:12 p.m.

Motion by JM Lord to adopt Proposed Land Development Regulation Amendment 2021-05 regarding waivers. 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.

IV. New Business

- **2021 Town Election Status**

Attorney Donovan explained that in terms of the warrant, nothing has changed. The warrant has to be posted by January 25th. His understanding is that the Selectmen have set the Deliberative Session for February 6th; however, there are two things in place. One is that the Legislature may enact a statute that allows towns that have March town meeting and deliberative session thirty days before, to have them as late as June or July. That is still pending in the Legislature, so it may or may not happen. He further explained there was legislation enacted in 2019 that allows the moderator, if there is an emergency, to postpone the deliberative session by seventy-two hours and also postpone the town ballot meeting by the same process. His understanding is that the Selectmen and the Moderator are going to use that provision, if the Legislation does not come up with alternate procedures. This was done last year by some towns as a way of dealing with the Covid-19 situation.

It was noted that the Selectmen and Moderator are considering the dates of June 5th for the Deliberative Session and July 13th for the Town vote.

- **Voluntary Lot Merger 1 Cable Road and 3 Cable Road**
Taken out of posted agenda order (Please see above)

V. Old Business/Other

- **Stoneleigh Subdivision**

Vice-Chair Lord reported that on Lot 3, there was an issue with some tall Pines that were in the fall zone of the home. Two of those trees were allowed to come down, as long as the roots were not taken up and they be replaced similar to other areas in the subdivision by Stratham Circle Nursery. There is an addition to the garage on Lot 4 that has come to the town engineer. It seems that it meets the criteria, but that is still in the works. Some of the trees have been planted between Lots 9 and 10, and between 10 and 11. There have been some questions from the Rye Conservation Commission regarding access between Lots 11 and 12. There was never any access provided for that and it was determined it would be off Autumn Drive instead. There is a new plaque in the 20' easement area that goes to the Atlantic White Cedar area. Vice-Chair Lord continued that on Lot 12 there has been a proposal to add a two-car garage, as well. There has been a lot of movement on all the lots and they continue to grow. However, based upon the town engineer's review, they are still within the limits that were originally set by the Planning Board.

There was some discussion in regards to access to the conservation land.

Chair Losik commented that they have seen the involvement of Steve Harding from Sebago and his follow up on issues the Board had raised last spring, which has been a lot of work on his part.

It has also been a process where the developer has stayed in the game. Their responsiveness has been impressive.

Vice-Chair Lord agreed. He noted that Joe Falzone has done a great job stepping up and responding to every issue the Board has raised to get it corrected.

- **Goss Lane**

Chair Losik noted that the Board received an update from Steve Harding in regards to Goss Lane. It looks pretty good. She appreciates Steve Harding's work and the other experts who continue to make these projects adhere to the Planning Board approvals.

Speaking to Selectmen's Rep Epperson, Planning Administrator Reed asked about the status of Mike Garepy's request for Goss Lane to become a town road.

Selectmen's Rep Epperson explained that it has not yet been resolved. They are waiting to get all the requests in one package before the Selectmen and it will be addressed next month.

- **Nitrate-based fertilizers**

Planning Administrator Reed noted that Danna Truslow would like to meet with the TRC to speak about nitrate-based fertilizers. She will invite Mrs. Truslow to the Jan. 27th meeting.

- **Status of Zoom meetings**

Alternate Quinn stated that he finds the meetings on Zoom to be particularly effective for him in looking at drawings and hearing the comments. Having attendance virtually unlimited, having meeting space and negotiating that space, seems to be challenges that are taken off the table. He does not know what the legal ramifications are. Every meeting begins with an expression of a public emergency. He is saying to take it out of that realm. There may need to be some discussions with Attorney Donovan as to how this affects ramifications with the other boards that meet in town. The Board has nearly a year of meeting like this under their belt. He can't think of a great deal of negativity that has been brought on by this way of meeting. Perhaps this is something for Rules and Regs to consider.

Chair Losik noted that the Board has its rules of procedure. It is not specific to location. It is more about how they conduct and the rules around access, public notice and attendance, etc. She agrees the meetings have worked really well considering the circumstances. The more meetings the Board held, the more fluid they became. There has also been participants who may not have otherwise been able to participate.

Planning Administrator Reed will reach out to Attorney Donovan to ask the questions.

- **Stormwater management**

Alternate Macleod stated that based on his observations over the last few months, and maybe it was triggered by the Long John Road project, he has thought about the requirement for meeting the stormwater management guidelines 100% percent even for small projects. In Massachusetts, subdivisions of less than five lots do not have to comply with the stormwater management guidelines. From five to ten, the guidelines have to be met to the greatest extent practicable. Over ten, it has to comply 100%. He saw so much tree clearing on Long John in order to comply with stormwater guidelines for basically adding two houses. Sometime in the future, if the Board is looking at the Land Development Regulations, there may be some consideration given to not requiring such stringent adherence on minor projects, such as a couple of lots. The concerns about tree clearing may not be as great if they were not chasing “tablespoons of water”.

Chair Losik replied this is a great point. Right now, she is frustrated by the stormwater management language in the Land Development Regulations and much goes to the heart of what was just said.

Planning Administrator Reed commented that with the new LDR's this has become a little over the top. Maybe the TRC (JM Lord, Jim Finn, Bill Macleod) could put together an amendment to the LDR, agreeable with Dennis McCarthy, based on this consideration. She thanked Alternate Macleod for bringing this up because it has been a problem with the new LDR's.

Member Paul respectfully disagreed. There are certain roads in town that are religiously under water and have drainage issues because Rye has a highwater table and is a coastal community. She is not sure it would be fruitful to have a cap of only five and above. There are not many large parcels of land left to begin with. There are not many subdivisions that are going to have ten plus lots anymore. Also, the drainage issue is going to be huge going forward. They need to find ways to address it.

Chair Losik stated that on the coastal plain the drainage issue doesn't go away. There is no place for the water to go. With the floodplains coming in and changing January 29th, it's going to become even more problematic. In regards to drainage onto adjacent properties, that is a critical component of small communities, as you can't give someone your water. She thinks they can come up with smart remedies and still keep what the Town needs.

Vice-Chair Lord stated there are only a couple of large pieces of property left in town. Most of the subdivisions will be three or four lot subdivisions. He thinks they have to be cautious of having no regulations under five lots because there will be no retention any place. In looking at what Attorney Donovan said in his memo, he believes that TF Moran may be overthinking what the Town's Land Development Regulations say and they are basically over designing. He thinks it will be good to get TRC involved and take a look at what they are trying to do. They could probably cut down on what they are doing without having all those retention ponds in place. He agrees with Attorney Donovan that they might be overthinking and overbuilding.

Member Carter agreed.

Member Sherman agreed with Vice-Chair Lord and Member Paul.

- **Minutes – December 8th**

The following corrections were noted:

- Page 8, 2nd paragraph from bottom, 1st sentence should read: **Speaking to Attorney Donovan, Chair Losik stated that regarding the comments that have been made,**
- Page 9, second to last paragraph, last sentence should read: **While there may be a preference for rectangular lots, it's not required.**
- Page 13, 2nd paragraph from the bottom, 2nd sentence should read: **She is concerned about 4, which covers two lots.**
- Page 15, middle of first paragraph should read: **If retention basin #1 was pulled up towards the house more, a very good tree border could be left along Long John Road, to make this some sort of similar to the rest of Long John Road.**
- Page 18, paragraph in the middle, 2nd to last sentence should read: **The Board is seeing more and more of this type of proposal coming through.**
- Page 22, under item C it should say: **pedestrian sidewalk, and awning cover**
- Page 23, last paragraph, 2nd to last line should read: **He noted that this was sent to Sebago Technics and they concurred with the analysis that on a 110-acre site, this is a small addition of impervious area.**
- Page 30, 5th paragraph, 4th sentence from bottom should read: **The post office certifies that it has been mailed and put into the mailbox of the recipient:**

Motion by JM Lord to approve the minutes of December 8th 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.

VI. Escrows
None

Adjournment

Motion by JM Lord to adjourn at 8:05 p.m. 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.

Respectfully Submitted, Dyana F. Ledger

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgrlaw.com

January 11, 2021

Via Email

Patricia Losik, Chair
Rye Planning Board
10 Central Road
Rye NH 03870

Re: Breakers Condominium Association/Owners
Opposition to Proposal to Rezone from Business (B) to Single Residence (SR)
Map 23.1 Lot 29

Dear Chair Losik and Planning Board Members:

Please accept my apology to the Board and thanks to Chair Losik for bringing to my attention an error in my January 5, 2021 letter to the Board on behalf of the Breakers Condominium Association and its owners, requesting that the Planning Board not seek to rezone the property. My error was in stating that the consideration was to rezone from Business (B) to Single Residence (SR); the actual consideration is a rezone from Business to General Residence (GR).

All of the points in my January 5, 2021 letter applied to a rezone to GR, just as they did to SR, including number 6 relating to a rezoning creating a nonconformity for Sally Sheehan's home which was approved at a compliant 30 foot setback but would be noncompliant in the GR zone which carries a 40 foot front setback.

I will be on the Zoom call tomorrow night to discuss these issues.

Respectfully submitted,



R. Timothy Phoenix

RTP:pcb

cc Kimberly Reed
Breakers Condominium Association
Gene Fisk
Michael Donovan, Esq.

| | | | |
|---------------------|----------------------------|----------------------|-----------------|
| DANIEL C. HOEFLE | R. PETER TAYLOR | GREGORY D. ROBBINS | DUNCAN A. EDGAR |
| R. TIMOTHY PHOENIX | JOHN AHLGREN | MONICA E. KIESER | OF COUNSEL: |
| LAWRENCE B. GORMLEY | KIMBERLY J.H. MEMMESHEIMER | SAMUEL HARKINSON | SAMUEL R. REID |
| STEPHEN H. ROBERTS | KEVIN M. BAUM | JACOB J.B. MARVELLEY | |



Nancy Riley <nriley25@gmail.com>

Planning Board meeting Jan 12, 2021 re: Z Amendment 2021006: Map change for Breakers from Business to Single Residence District

1 message

Nancy Riley <nriley25@gmail.com>

Mon, Jan 11, 2021 at 8:08 AM

To: kreed@town.rye.us

Ms. Reed:

Please present to the Rye planning board meeting on Tuesday, Jan 12, 2021 **my objection** to: *Z Amendment 2021-06: Map change for the Breakers from Business to single Residence District.*

Thank you,
submitted by Nancy Riley, 788 Ocean Blvd. Rye NH 1/11/2021

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Nancy Riley

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

ATTORNEYS AT LAW

127 Parrott Avenue, P.O. Box 4480 | Portsmouth, NH, 03802-4480
Telephone: 603.436.0666 | Facsimile: 603.431.0879 | www.hpgirlaw.com

January 5, 2021

Via Email and Hand Delivery

Patricia Losik, Chair
Rye Planning Board
10 Central Road
Rye NH 03870

Re: Breakers Condominium Association/Owners
Opposition to Proposal to Rezone from Business (B) to Single Residence (SR)
Map 23.1 Lot 29

Dear Chair Losik and Planning Board Members:

On behalf of the Breakers Condominium Association and with the unanimous consent of each homeowner within the Association, we respectfully request that the Planning Board withdraw its consideration of placing upon the 2021 Rye Town Meeting Warrant a proposal to change the zoning for Map 23.1, Lot 29 from Business (B) to Single Residence (SR). Upon information and belief, the land comprising the Breakers Condominium may have been placed in a Business Zone at about the time Rye's zoning ordinance was first enacted in 1953. We understand that this land together with other land in town which then held businesses was each individually zoned as business. Thus, the land in question has been in the Business Zone for as many as 68 years and certainly since 1980 when the Breakers Condominium was formed. The following is offered in support of this request:

1. The land has been owned and operated in a Business Zone for up to 68 years without, to the best of the knowledge of the current owners, any zoning related problems as a result of being in the Business Zone. Thus there is no driving reason to change the zoning.
2. Article VII.1 of the Breakers Condominium Declaration provides that each unit is intended for residential use. **(Exhibit 1)** That section contains further restrictions to protect residential use. Any attempt by an owner to operate the sort of business that would be inconsistent with the ownership and operation of residential property would be highly unlikely to receive Association approval.

| | | | |
|---------------------|----------------------------|----------------------|-----------------|
| DANIEL C. HOEFLE | R. PETER TAYLOR | GREGORY D. ROBBINS | DUNCAN A. EDGAR |
| R. TIMOTHY PHOENIX | JOHN AHLGREN | MONICA F. KIESER | OF COUNSEL: |
| LAWRENCE B. GORMLEY | KIMBERLY J.H. MEMMESHEIMER | SAMUEL HARKINSON | SAMUEL R. REID |
| STEPHEN H. ROBERTS | KEVIN M. BAUM | JACOB J.B. MARVELLEY | |

3. Residential use is permitted in the Business Zone. All current owners bought their properties with knowledge of and comfort with the business zoning.
4. Some of the condominium owners regularly lease or rent their properties, thus do in fact operate their properties as a business.
5. Rye Zoning Ordinance Section 190-2. 2. Applicability of Use District Regulations provides that “in the Single Residence and General Residence District only, there shall be no more than one principal building on one lot.” Because the Breakers Condominium units are not in the Single or General Residence District, the Breakers presently do not violate that requirement. Changing the zone from Business to Single Residence would unnecessarily and unreasonably create a new nonconformity where one does not presently exist. This alone is reason enough to leave the lot zoned Business. Additionally, the Breakers presently have identification signs at the Ocean Boulevard connections. RZO section 190-5.1.A. (1) provides that in a Residential District no signs larger than 4 s.f. are permitted. Pursuant to subsection (2) in a Business District signs of 16 s.f. are permitted. Again, conversion of the instant business zone to a residential zone would create a sign nonconformity.
6. In 2020, unit owner Sally Sheehan received relief from the Zoning Board of Adjustment and Planning Board to raze her existing home, nonconforming with respect to the Business Zone 30 foot front setback (RZO §190-2.10.C(3)), in favor of a new home complying with existing front setback. A change to Single Residence would leave the Sheehan home nonconforming with respect to its 40 foot front setback requirement. (RZO §190-2.3.C(3))
7. While the Planning Board has approved converting other properties which were at one time businesses to residential, some of those properties, notably the location of the former Rye Beach Motel, are markedly different as they are now single-family lots. The change of other lots from Business to Residential also may not have had the effect of creating nonconformity as is the case here. At least one other condominium complex, the Wallis Sand Condominiums across from the State Beach parking lot appears to remain in the Business District. The zoning map depicts numerous other lots zoned as Business but which, via a drive-by, appear to be Residential (for example, the home formerly Rye on the Rocks Restaurant at the corner of Washington Road and Ocean Boulevard). The conversion of the Breakers property to SR does not resolve the stated intent to “clean up” the ordinance with respect to residential uses in Business Zones.

In summary, a comparison of the permitted uses in SR (§190-2.3) and B (§190-2.10) reveals that virtually all permitted uses in the SR Zone are permitted in the B Zone. The B Zone, however, permits retail grocery, other retail, food service, hotels, offices, all of which are prohibited by the Condominium Declaration. Accordingly, changing the zone essentially provides no greater “residential” protection than now exists, while leaving the lot zoned Business avoids the aforementioned creation of dwellings per lot and setback nonconformities. Additional

protection for nearby residentially zoned properties exists by virtue of RZO §190-2.2D(2), which prohibits any expansion of the structures on the lot absent a variance. All of the protection intended by the SR Zone are presently in place so there is no reason to convert this lot to SR.

For all of the foregoing reasons, the Breakers Condominium Association and each of its owners individually respectfully request that the Planning Board withdraw or dismiss the effort to rezone this long-standing business property to a residential zone.

Respectfully submitted,



R. Timothy Phoenix

RTP:pcb
Enclosure

cc Kimberly Reed
 Breakers Condominium Association
 Gene Fisk
 Michael Donovan, Esq.

BK2367 P0825

EXHIBIT

1

DECLARATION OF CONDOMINIUM

OF

THE BREAKERS CONDOMINIUMS

WHEREAS, CONSULTANTS INTERNATIONAL, INC., a New Hampshire corporation with its principal place of business at 36 High Street, Hampton, County of Rockingham and State of New Hampshire, is the sole owner of lands and buildings to be described herein located in Rye, County of Rockingham and State of New Hampshire it hereby declares its intent to submit the lands herein described and the improvements thereon to the condominium form of ownership and use in the manner provided by New Hampshire Revised Statutes Annotated, Chapter 356-B, Condominium Act. The owner shall henceforth be called "Declarant" for purposes of this Declaration, and said term shall apply to the owner, its successors and assigns.

I. DEFINITIONS

The terms herein shall have the meaning stated in the Condominium Act, and as follows, unless the context otherwise requires.

1. Association means the association of the unit owners of THE BREAKERS CONDOMINIUMS and its successors.
2. Common Area means the areas and facilities specifically set forth as common areas on Plan entitled Plan of Land Rye, New Hampshire, Robert W. Hotin to CONSULTANTS INTERNATIONAL, INC. d/b/a THE BREAKERS CONDOMINIUMS, hereinafter referred to as the Plan which is to be recorded as Appendix "A" hereto.
3. Common Expenses includes expenses of administration, expenses of maintenance, operation, repair or replacement of the Common Areas and

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JAN 18 9 04 AM '80
Rockingham County
Registry of Deeds

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V. DESCRIPTION OF ALL COMMON AREAS NOT WITHIN THE BOUNDARIES OF ANY CONVERTIBLE LAND which may subsequently be assigned as Limited Common Areas.

There are no common areas which may be subsequently converted or assigned as limited Common Areas.

VI. ALLOCATION TO EACH UNIT OF AN UNDIVIDED INTEREST IN THE COMMON AREAS IN ACCORDANCE WITH R.S.A. 356-B: 17.

The value of the property of each unit and the percentage of undivided interest in the common areas and facilities pertaining to each unit and each owner for all purposes including voting is herewith set out in Schedule A attached to this declaration.

VII. STATEMENT OF PURPOSES, USE AND RESTRICTIONS, AS REQUIRED BY NEW HAMPSHIRE R.S.A. 356-B: 16 (h).

The units and the common areas shall be occupied subject to the following restrictions:

1. Each unit is intended for residential use only by the owner, the owner's family, the owner's lessee or guests. No units shall, except as herein provided, be used for any commercial, professional or other purpose which does not comply with the provisions of the Declaration.

2. The Declarant shall have the right to transact any business on the Condominium property necessary to consummate sales of Condominium units, including, but not limited to the right to maintain models, having signs identifying units, maintaining employees in the offices, use of the Common Areas and facilities on the Condominium property, and to show units for sale. All furniture and furnishings and equipment in the model units, signs

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and all items pertaining to sales shall not be considered Common Areas and facilities and shall remain the property of the Declarant. In the event there are unsold condominium units, Declarant's right as the Owner of said unsold units shall be the same as all other unit owners in the condominium and the Declarant as the owner of the condominium units, shall contribute to the common expenses in the same manner as other condominium units owner and shall have a vote in the Association for each unsold condominium unit,

3. There shall be no obstructions of the common area or limited common area. Nothing shall be stored or moved in or onto the common area without the prior consent of the Board of Directors.

4. Nothing shall be done or kept in any unit or in the common areas without the prior written consent of the Board of Directors. No owner shall permit anything to be done or kept in his unit or in the common areas which will result in the cancellation of insurance or any unit or any part of the common areas or which would be in violation of any law. No waste will be permitted in the common areas.

5. No sign of any kind shall be displayed to the public view on or from any unit without the prior consent of the Board of Directors.

6. No animals, livestock or poultry of any kind including cats, dogs or other household pets shall be kept in any unit or in the common area without the express written permission of the Declarant, the Board of Directors or Manager, as the case may be.

7. No noxious or offensive activities shall be carried on in any unit or in the common areas, nor shall anything be done therein which may become an annoyance or nuisance to the other unit owners.

BK2367 P0834

- 10 -

8. Nothing shall be altered or constructed or removed from the common area except upon the written consent of the Board of Directors.

9. There shall be no violation of the rules of the use of the units of common areas, including the beach area, as adopted by the Declarant or the Board of Directors and furnished in writing to the owners, and the Declarant or the Board of Directors are authorized to adopt such rules.

10. Insofar as may be necessary, the Declarant and persons that he may select shall have the right of ingress and egress over, upon, across and through the common areas and the right to store materials thereon and to make such other use thereof as may be reasonably necessary and incident to construction and development of the said Condominium, but the Declarant and the persons to whom he has granted this permission shall not unduly interfere with the unit owners or persons living in the units and their rights to use the common areas and facilities.

11. An owner shall not paint or otherwise decorate or change the appearance or the type of exterior siding of any portion of the exterior of any of the buildings without the prior consent of the Board of Directors.

VIII AGENT FOR SERVICE OF PROCESS

Until such time as the Declarant transfers the right and responsibility to elect a Board of Directors to the owners as provided in the By-Laws, the name and address of the person in Rockingham County, State of New Hampshire, for the service of process in matters pertaining to the property is Gary W. Holmes, 36 High Street, Hampton, New Hampshire; thereafter the person to receive service of process shall be any member of the Board of Directors or Manager residing in Rockingham County State of New Hampshire. If no member of the Board of Directors or Manager resides in Rockingham County, the person to receive service of process shall be designated by formal amendment to this Declaration as herein provided.



Nancy Riley <nriley25@gmail.com>

Planning Board meeting Jan 12, 2021 re: Z Amendment 2021006: Map change for Breakers from Business to Single Residence District

1 message

Nancy Riley <nriley25@gmail.com>

Mon, Jan 11, 2021 at 8:08 AM

To: kreed@town.rye.us

Ms. Reed:

Please present to the Rye planning board meeting on Tuesday, Jan 12, 2021 **my objection** to: *Z Amendment 2021-06: Map change for the Breakers from Business to single Residence District.*

Thank you,
submitted by Nancy Riley, 788 Ocean Blvd. Rye NH 1/11/2021

--
Nancy Riley

RYE PLANNING BOARD

10 Central Road Rye, NH 03870 (603) 964-9800

Notice of Decision

Applicant/Owner: Jak Nadeau Revocable Trust, Jay and Karen Nadeau Trustees

Property: 711 Long John Road, Tax Map 16, Lot 136
Property is in the Single Residence District

Case: Case #07-2020

Application: 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

Date of Decision: Tuesday January 12, 2021

Decision: The Board voted to continue the application to the February 9, 2021 meeting with TRC to meet on Wednesday January 27, 2021 to review some technical issues.

1-13-2021
Date


Patricia Losik, Chairman
Rye Planning Board

RYE PLANNING BOARD

10 Central Road Rye, NH 03870 (603) 964-9800

Notice of Decision

Applicant/Owner: Lawrence L. Tierney & Mary R. Tierney Revocable Trust
Lawrence & Mary Tierney, Trustees

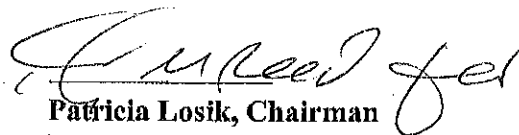
Property: 1 & 3 Cable Rd, Rye NH Tax Map 5.3, Lot 43 and 44
Property is in the Single Residence District, Coastal Overlay District
and the SFHA, Zone AO +1

Application: Voluntary Lot Merger of pre-existing lots pursuant to RSA 674:39-a.

Date of Decision: Tuesday January 12, 2021

Decision: The Board voted to unanimously to grant the voluntary lot merger
with the condition that the there is written consent by mortgage
company approval or the property is in the same ownership, written
documentation.

1-13-2021
Date


Patricia Losik, Chairman
Rye Planning Board