

**TOWN OF RYE – PLANNING BOARD
MEETING**

Tuesday, April 13, 2021

6:00 p.m. – via ZOOM

***Members Present:* Chair Patricia Losik, Vice-Chair JM Lord, Clerk Steve Carter, Jim Finn, Nicole Paul, Katy Sherman, Alternates Bill MacLeod, Robert Wright and Kathryn Garcia**

***Present on behalf of the Town:* Planning/Zoning Administrator Kimberly Reed, and Attorney Michael Donovan**

I. Call to Order

Chair Losik called the meeting to order at 6:01 p.m. via Zoom teleconferencing.

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 dialing in to the following phone number: 646-558-8656 or by clicking on the following website address: www.zoom.com ID #858 6268 5912 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 Zoning Board of Adjustment at: town.rye.nh.us go to the Board of Adjustment page and click on the agenda for this meeting. If anyone has a problem, please call 603-379-0801 or email: Kim Reed at KReed@town.rye.nh.us.

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 of members:

1. Steve Carter
2. Jim Finn
3. Nicole Paul
4. JM Lord
5. Bill Macleod
6. Kathryn Garcia
7. Patricia Losik
8. Katy Sherman
9. Robert Wright

Note: Unless otherwise noted above, members confirmed they were alone in the room for the meeting.

II. Approval of March 9, 2021 Meeting Minutes

- *Moved to end of meeting.*

III. To Review Applications to determine if they are complete:

- a. **Major 4 lot subdivision** by Jones & Beach Engineers, Inc. for Michael Fecteau for property located at 850 Washington Road, Tax Map 11, Lot 130, to subdivide the existing lot into four residential lots with a road. **Property is in the Single Residence District and Aquifer & Wellhead District. Case #01-2021.**
 - *Request a continuance to the May 11, 2021 Planning Board meeting.*

Motion by JM Lord to continue the application for property at 850 Washington Road to the May 11, 2021 Planning Board meeting. Seconded by Jim Finn.

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

Motion passed

- b. **Application by Eversource** to trim and remove trees and brush adjacent to and beneath some of its power lines within the Town of Rye. All roads have been designated a scenic road by the Rye Town Meeting. The work is necessary to ensure the safe distribution of power and to improve the reliability of electric service for and part of their Capital Improvement Project. The work to be done will occur throughout the entire Town of Rye. **Case #05-2021.**

Motion by JM Lord to accept the application by Eversource as complete. Seconded by Katy Sherman.

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

Motion passed

- c. **Minor Non-Residential Site Development** application by Rye Place Realty, LLC for property at 150 Lafayette Road, Tax Map 10, Lot 14 to convert gravel unstriped parking area to paved parking area with striping per Section 202.1.B(1)(b) and Section 202.2.1.B(2)(c). **Property is in the Commercial District, Aquifer Protection District. Case #06-2021.**

**Motion by JM Lord to accept the application of Rye Place Realty, LLC as complete.
Seconded by Jim Finn.**

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

Motion passed

IV. Public Hearings on Applications:

- A. **Major 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.**

Attorney Tim Phoenix, representing the applicants, spoke to the Board. He introduced the applicants Jay and Karen Nadeau. He also introduced Corey Colwell and Hannah Giovannucci from TF Moran Engineering. He stated that last month, when they were before the Board, Attorney Donovan had issued some conditions of approval. He and Attorney Donovan worked through the conditions. There are three or four portions of the conditions of approval that he would like to address. He asked Corey Colwell to address paragraph 1c, which has to do with how the raingardens/bio-retention areas are going to be planted.

Corey Colwell, TF Moran, stated that item 1c was a condition that they had not come to full agreement with. Plans have been submitted to the Board, as to what those bio-retention areas should be planted with. The Board sought the opinion of Danna Truslow who wrote some recommendations. He continued that although they agree with the majority of Ms. Truslow's suggestions, in his opinion, the best practice, as concluded by U.N.H Stormwater Center, is to design these bio-retention areas as grass rather than planted with woody vegetation for a couple of reasons. First, grass bio-retention areas offer overall better water quality treatment and infiltration over time than the planted bio-retention areas. Secondly, Ms. Truslow suggested the bio-retention areas be planted with woody vegetation to offer wildlife habitat. He maintains that the bio-retention areas should not be designed to encourage wildlife habitat, since the stormwater area is not fit for amphibious nor terrestrial species, due to these varying environments that are mostly dry and occasionally pond water for a few days. Guidance from U.N.H. Stormwater Center recommends that animal burrows also be removed and filled in these bio-retention areas. For those two reasons, he maintains the best practice is grassed bio-retention area swales; although, he defers to the Board for the final determination.

Referring to conditions #9 and #10, Attorney Phoenix commented these are regarding the escrow. The Nadeaus would like to know sooner rather than later the amount for #9 and where they stand on this for outstanding invoices. He continued that #10 says that the applicant shall

sign an escrow agreement. He asked if this could be changed because it is probable that the Nadeaus are not going to be the ones doing these two lots and building the road. It is going to be someone who buys the lots to build on or sell. He suggested it say "the applicant for building permit". Referring to condition #20, Attorney Phoenix noted that it says; "Lot C shall be connected to the water line not later than the date of water line connection to the other two lots". He had asked Attorney Donovan if that could be "water line connection to the latter of the other two lots", so they have to connect when the final lot is connected. He believes that Attorney Donovan was fine with that.

Attorney Phoenix continued that the Board should have a waiver request from him. The State law vests for five years, as long as substantial construction begins within two years. The Nadeaus original plan was not to do this until five years. He came up with the idea of buying them a little more time if the Board can see fit to grant them a waiver to the 18-month expiration and make it coterminous with the State law for construction. This would allow for some additional time. He thinks Attorney Donovan is okay with this as long as the Board is.

Referring to the discussion on the proposed raingarden, Chair Losik reminded the Board that this was the subject that Danna Truslow took up in her letter of March 2, 2021 responding to the Board's questions. She asked the Board if they have any comments or concerns.

The Board did not have any comments.

Attorney Donovan stated that he does not have any comments on this. The Board has Danna Truslow's recommendations and Corey Colwell's response. Referring to Ms. Truslow's March 2nd memo, he understands that the only change would be to the first bullet. Ms. Truslow has already said that bio-retention areas 1 and 3 should be planted with grasses. Basically, this is whether bio-retention areas 2, 4 and 5 should be grasses or herbaceous plants and shrubs. He commented it is up to the Board to make the decision.

Chair Losik stated that one of Ms. Truslow's main differential arguments was in regards to providing quality filtration, as through the grasses, but with the functionality from a habitat perspective. Attorney Donovan is correct that it is the first bullet in the memo. She continued the application is suggesting that it could easily be changed. Bullet #1 would be taken out. (She read through the bullets that would remain from Ms. Truslow's memo.) She asked the Board if there were any concerns.

The Board agreed that they did not have a problem with grass for the bio-retention areas.

Attorney Donovan suggested the condition be worded; "Plans and Stormwater Maintenance and Inspection Report should be changed to address the last four bulleted recommendations of Truslow Resource Consulting March 2, 2021 report. All 5 bio-retention areas shall be grassed".

Referring to condition #9 regarding the amount outstanding for escrow, Chair Losik asked Planning Administrator Reed if she has that number.

Planning Administrator Reed noted that she sent a memo to the Board members this week. The outstanding invoices are the final one from Sebago Technics and the remaining work by Attorney Donovan. She pointed out that she cannot determine the final amount for Attorney Donovan because he will be doing more work on the application. It could be estimated; however, it would not be a final amount.

Chair Losik noted that the outstanding amounts thus far are for Sebago in the amount of \$704.25 and Attorney Donovan in the amount of \$810.16 for a total of \$1,514.41. There will be additional continuing work from Attorney Donovan.

Attorney Donovan noted that this condition runs through the chair's signing of the plan. The only thing that is left is his time at this meeting for this application and the finalization of the conditions of approval. That is all this condition applies to. The work of reviewing the declarations and easements does not have to be provided for at this time.

It was agreed that Planning Administrator Reed would be in touch with the applicants and Attorney Phoenix as to the final amount to close out the escrow. It was also agreed that condition #9 could stay as worded.

Referring to condition #10, Attorney Phoenix suggested the wording "the building permit or construction applicant shall sign".

Attorney Donovan stated that the building permit applicant may not necessarily be the person building the road. The Planning Board's engineer is going to be monitoring the road and drainage construction. He suggested "the applicant or successor developer".

Planning Administrator Reed asked if that has to be established before the plans can be recorded.

Attorney Donovan replied that is the way it is set up here and he is not sure what the objection is. Normally, that is posted before the plan is signed.

Attorney Phoenix explained the Nadeaus are not developers. When they are ready to transfer these lots to someone else to be developed, they would like it to be clear. They felt uncomfortable with it relating only to them when it could be someone else doing all of this. He thinks "applicant or successor developer" is fine.

Attorney Donovan replied this is fine, but it still has to be done before the chair signs the plan.

Planning Administrator Reed noted that the lot cannot be sold if it is not recorded.

Attorney Phoenix replied that an agreement for another developer can be determined. He explained that whoever is going to be developing the lots will need to pay into an escrow for development. He reiterated that they were just concerned with it saying "applicant" when it might not be the applicant developing these lots.

Attorney Donovan commented that just two of the lots cannot be sold without their being a subdivision.

Attorney Phoenix noted that an escrow can be established before that happens by whoever is going to do it.

Vice-Chair Lord asked if the condition could stay the way it is now with the escrow just being assigned to the developer.

Attorney Donovan stated that is the way it has happened with other developments. The responsibility just passes on to the successor.

Attorney Phoenix commented that he thinks they all understand what the Nadeaus' concern is. He is comfortable with leaving the condition as is.

It was agreed to leave conditions #9 and #10 as written.

Referring to condition #20, Chair Losik commented it was suggested to say "Lot C shall be connected to the water line not later than the date of water line connection to the latter of the other two lots".

Attorney Donovan agreed with that change.

Attorney Phoenix pointed out there is a waiver request regarding condition #24. He explained that Attorney Donovan has made the change, but the Board has to approve the waiver request for that to stay 24 months.

Chair Losik noted this will be addressed by the Board. She opened to the public for comments. Hearing none, she closed the public hearing at 6:37 p.m.

Speaking to the Board, Chair Losik noted that they should have the waiver submitted by Attorney Kieser on behalf of the Nadeaus. They are requesting a waiver from Article 4, Section 4.4.

Motion by JM Lord to approve the applicant's request for a waiver to the Rye Land Development Regulations Section 202-4.4 for the expiration of a conditional approval for two years (24 months). The reasons for granting are: (1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; and (2) Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations. Seconded by Steve Carter.

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

Motion passed

Motion by JM Lord to conditionally approve the 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, Case #07-2020, with the following conditions of approval;

- 1. The February 19, 2021 plans shall be revised as follows:**
 - a. Change waiver table on cover sheet to indicate date of approval of waivers. Same for Sheet C-6. See Sebago 2/28/2021 letter.**
 - b. February 2021 Stormwater Management Report should be signed by a PE and submitted along with its supporting calculations as one complete document as a record of the final stormwater report. See Sebago 2/28/2021 letter.**
 - c. Plans and Stormwater Maintenance and Inspection Report should be changed to address the last four bulleted recommendations of the Truslow Resource Consulting March 2, 2021 report. All 5 bio-retention areas shall be grassed.**
 - d. In order to be consistent with Zoning Table Note 3 on Sht. C-6, where the drawings indicated "Prop. Treeline, typ." That should be changed to "Prop. Treeline, typ – i.e Undisturbed Woodland Area. See Zoning Table Note 3, Sht. 6." Additionally, there should be several more locations of the tree line so labeled on Sht. C-6 and all sheets which depict the tree line.**
 - e. Add a note to Sht. C-6 indicating that the driveway, house and bio-retention area located on Lot B shall be generally located as depicted and in no case closer to the northerly and westerly property lines than depicted.**
 - f. Note 2 on Shts. C-13 and C-7 shall be changed to indicate that the homeowner's association will be responsible for maintaining all bio-retention areas and all other drainage facilities.**
 - g. A note shall be added to Sht. C-3 describing the 10 ft. wide tree cutting restrictions as prohibiting the cutting of live trees greater than 4 ½ inches diameter measured at a height of 4 ½ feet above ground level. This restriction shall be placed in the Declaration.**
 - h. Add a note to Sht. C-6 indicating that the build out of Lots A and B shall be generally as depicted on the plan and in accordance with the note referenced in 1f of these conditions. Impervious coverage and undisturbed woodlands shall not exceed the amounts indicated in the Zoning Table and Notes 2 and 3. Wording of note to be approved by town counsel.**
- 2. A homeowner's association ("HOA") shall be created for the subdivision. The HOA shall own the private right-of-way ("ROW") and all drainage facilities within the ROW as depicted on the approved plans and shall be responsible for the maintenance and repair of same. Additionally, the HOA shall be responsible for the maintenance and repair of the bio-retention areas and swales or parts thereof located on Lots A, B and C.**
- 3. Town counsel shall review and approve the Declaration, Bylaws and other HOA instruments and any other legal instruments required to form the HOA. Town counsel's review shall be limited to assuring that the HOA instruments are consistent with the approved plans and the board's conditions of approval.**

4. The applicant shall grant the town an easement relative to maintenance and repair of the bio-retention ponds, forebays and drainage swales. The easement shall: (1) require the applicant/homeowner's association to be responsible for maintenance and repair of the drainage facilities; and (2) provide that, if the applicant or association fails to maintain or repair the facilities, the town, after notice, shall have the right, but not the obligation, to do so. In such case, the association shall be responsible for reimbursing the town for its expenses. If the town has to commence a legal action to obtain payment, the town shall be entitled to its costs and reasonable attorney's fees. This easement shall be reviewed and approved by town counsel.
5. There shall be a drainage and flowage easement over Lot B granted to the HOA and Lot C for the swale located on Lot B. This easement shall be reviewed and approved by town counsel.
6. There shall be a drainage and flowage easement over Lots A and B granted to the HOA association for the swales located on said lots. This easement shall be reviewed and approved by town counsel.
7. Compliance with the Stormwater Inspection and Maintenance Plan approved by the planning board engineer shall be the responsibility of the HOA. Said responsibility to be set forth in the Declaration.
8. Surety in the amount of \$365,444 and in the form of a self-calling letter of credit and/or cash escrow shall be posted to guarantee the completion of the private drive, all drainage facilities, water lines and landscaping. Surety to be approved by town counsel.
9. Sufficient funds shall be placed in escrow with the planning board to pay final statements of planning board engineer and town counsel.
10. Applicant shall sign an Escrow Agreement and post escrow for planning board engineer's monitoring of site improvements. Amount to be determined by planning board engineer.
11. NH DES subdivision approval shall be obtained.
12. Street name to be approved by building inspector per town procedures and added to plans (if different than Fire Trail Lane).
13. Planning board chair may sign plans when foregoing conditions Nos. 1-12 are met.
14. The easements required by Conditions Nos. 4, 5 and 6 shall be recorded with the subdivision plan.
15. The Declaration, Bylaws and other legal instruments required to form the HOA shall be recorded with the subdivision plan.
16. The building inspector shall require a lot development plan prior to issuance of a building permit. Building permits (and certificate of occupancy) shall not be issued for any development which does not comply with the approved subdivision plan and Condition No. 1h above. If necessary, the building inspector may retain the planning board engineer to assist in determine compliance with these conditions, at the expense of the building permit applicant.
17. The build out of the development shall comply with the Growth Management Ordinance.
18. The homeowner's association shall retain one qualified contractor to inspect and maintain all of the bio-retention areas and other drainage facilities in accordance

with the Stormwater Inspection and Maintenance Plan. The Declaration shall include this requirement.

19. Water lines, hydrants and appurtenances thereto shall be constructed in accordance with Rye Water District requirements.
20. Lot C shall be connected to the water line not later than the date of water line connection to the latter of the other two lots.
21. Monumentation shall be installed as required by the *Land Development Regulations* for the 3.64-acre parcel. A Certificate of Monumentation shall be provided to the planning board and building inspector prior to the first occupancy permit being issued. Grading of lots shall not disturb installed monumentation. If development disturbs or covers monuments, the monuments shall be reestablished by a surveyor and a new Certificate of Monumentation provided.
22. For the purposes of RSA 674:39 "Active and Substantial Development or Building" shall be commencement of excavation for street construction.
23. As-built plans for all site improvements shall be submitted to the planning board (3 sets).
24. Per LDR §202-4.4, this conditional approval shall expire in 24 months if the chair has not signed the plan as a result of the applicant's failure to meet those conditions necessary to permit the chair to sign the plan.
25. The executed conditions of approval shall be appended to and recorded with the HOA Declaration.

Seconded by Steve Carter.

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

JM Lord – Yes; Patricia Losik – Yes;

Motion passed

- B. **Major Site Development Plan** by Bluestone Properties of Rye, LLC for property located at 33 Sagamore Road, Tax Map 24, Lot 6 to construct a new 3,496sf farmstead building and provide associated parking and driveways. Property serviced by the City of Portsmouth municipal water and sewer. **Property in the Business District. Case #02-2021.**

Eric Weinrieb, Altus Engineering, presented to the Board. He introduced the property owner Mike Labrie and Ben Auger the contractor. He noted that they were at the March 9th meeting and were continued to this meeting. At that point, there were not many items that were outstanding. The Board wanted additional information on the traffic. Steve Pernaw has generated a traffic memorandum. There is also a clean letter from Sebago with a couple of housekeeping items. He continued that they received draft conditions of approval from Attorney Donovan. The only condition that he has a concern with is item #9 where it references the Rye Water District for water lines and sewer connections, as Portsmouth water and sewer are the controlling entities on that. He commented that other than those items he does not have any real changes.

The Board did not have any questions.

Speaking to Mr. Weinrieb, Chair Losik asked about the landscape maintenance plan.

Mr. Weinrieb stated that was submitted this afternoon. He noted that when he reviewed the plans, he did not see anything that the Labries don't do already.

Mike Labrie, Bluestone Properties, confirmed that he was fine with the landscape maintenance plan.

Attorney Donovan pointed out that the requirement for a landscape maintenance plan is something that is new in the LDR's. When he did his initial review a couple of months ago, he picked up on the fact that one was not submitted. It is something that the Board should be requiring now of all site plan review applicants, unless a waiver is requested. He commented that this plan is very complete and well done. It is something the Board should be expecting on all future site plan reviews.

Chair Losik opened to the public for comments. Hearing no comments, she closed the public hearing at 7:00 p.m.

Motion by JM Lord to approve the Major Site Development Plan by Bluestone Properties of Rye, LLC for property located at 33 Sagamore Road, Tax Map 24, Lot 6 to construct a new 3,496 sf farmstead building and provide associated parking and driveways; property is serviced by the City of Portsmouth municipal water and sewer, Case #02-2021, with the following conditions of approval:

1. **The March 24, 2021 plan set shall be revised as follows:**
 - a. **Architectural elevation drawings should show lighting fixtures attached to building.**
 - b. **Remove Note 4 from Sht. D-3, as recommended by Sebago.**
2. **A complete stamped version of the drainage report with supporting calculations should be submitted for the planning board's records, as recommended by Sebago.**
3. **Sufficient funds shall be placed in escrow with the planning board to pay final statements of planning board engineer and town counsel.**
4. **Applicant shall sign an Escrow Agreement and post escrow for planning board engineer's monitoring of site improvements. Amount to be determined by planning board engineer.**
5. **City of Portsmouth approval of water and sewer connections shall be obtained.**
6. **Demolition permit shall be obtained.**
7. **Planning board chair may sign plans when foregoing conditions Nos. 1-6 are met.**
8. **The *Foye's Farmstead Landscape Maintenance Plan* shall be attached to these conditions and followed.**
9. **Water lines and appurtenances and sewer connections shall be constructed in accordance with Portsmouth Water and Sewer Department requirements.**
10. **For the purposes of RSA 674:39 "Active and Substantial Development or Building" shall be completion of demolition of the existing building.**
11. **As-built plans for all site improvements shall be submitted to the planning board (3 sets).**

12. **Per Section 303.7 of the *Land Development Regulations*, this conditional approval shall expire in 18 months if the chair has not signed the plan as the result of the applicant's failure to meet those conditions necessary to permit the chair to sign the plan.**

Seconded by Jim Finn.

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

Motion passed

- C. **Application** by Eversource to trim and remove trees and brush adjacent to and beneath some of its power lines within the Town of Rye. All roads have been designated a scenic road by the Rye Town Meeting. The work is necessary to ensure the safe distribution of power and to improve the reliability of electric service for and part of their Capital Improvement Project. The work to be done will occur throughout the entire Town of Rye. **Case #05-2021.**

Chair Losik noted that she and Planning Administrator Reed had a chance to participate on Eversource's public Zoom last week, which was very informative. She also pointed out that Ms. Reed shared the slides from the Zoom with the Board. She has also pulled some information from the RSA's (231:172) and shared that with the Board. She opened to Eversource for their presentation.

Ian Farley, Eversource Energy, explained that what they have proposed for Rye this year is just over 40 miles of maintenance trimming. During the introduction, he believes there was some mention of capital improvements. He noted that this trimming does not have anything to do with system upgrade. It is just a normal maintenance tree trimming, which is done every four to five years. He explained that as they come through every four to five years, they trim back the minimum clearance between the primary conductor and vegetation to get through the next four to five years. In most cases, all that is being trimmed back are the resprouts, which is the vegetation that has grown in overtime since the last trim cycle. He further explained that as they are trimming, they will also be identifying any dead wood or branches that may have been compromised during past wind events. As the circuits are evaluated, if there are hazard trees that are prone to failure, they will be reaching out to that individual property owner to try to get signed permission to have the tree removed. As far as state law, a tree cannot be removed without prior property owner permission.

Mr. Farley continued the tree trimming notification will be sent out by mail. They have not sent out any notices yet, as they are waiting to hear the decision of the Board before moving forward. The process would be a 45-day mailer. The property owner would then have the opportunity to check that they accept the trimming or send it back requesting a private consult. At that point, one of Eversource's arborists would meet with the property owner to discuss proposed trimming. If any hazard trees are identified on the property that would be a different discussion with the property owner. Eversource would need signed permission to remove any trees. He noted that by state law, with the 45-day mailers that are sent to the individual property owners, if

Eversource does not hear back from them within 45- days then consent is implied. Maintenance trimming would move forward on that property. He pointed out that a hazard tree cannot be removed without having contact with the owner and receiving signed permission. He stated that Eversource understands the expectations. They are hoping that the community of Rye will welcome them back in. The contractor is a different contractor from what they used last time for Rye. They will be using Northern Tree Service. The work is anticipated to start some time mid to late August and they will be working throughout the community till the end of the year.

Mr. Farley stated there has been some discussion between himself and the Planning Board in regards to setting up a communication vector for citizens who may have a concern. They are going to be able to reach out to him and directly to his team, including Regional Arborist Robert Berner. The Planning Board will be provided with an email address that residents can have access to. The email will be sent to his cell phone almost immediately.

Chair Losik commented that she heard at Eversource's Zoom meeting last week that in addition to the communication vector, a data base is maintained of those customers with whom Eversource has had written permission. It was mentioned that if the Planning Board wanted that document, it could be shared with the Planning/Zoning Administrator.

Mr. Farley confirmed. He continued that the planning of this trimming and removal work is extremely tedious. They systematically go through the 45-day permission phase for the trimming. On top of that they are meeting with individual property owners and getting signed permission. The crew that is out in the field has an instructive status record for work identified for each pole on the system. He noted that they are very serious about keeping that information accurate. He does not see any issue with sharing that information with the town planning board; however, it is not something that would be made public, as it has personal information.

Chair Losik noted there was discussion about the items that are out of the scope of trimming. She asked Mr. Farley to also speak in regards to the scenic road conditions. This is something that the Planning Board has required additional steps. Since the 1973 warrant, all of Rye's roads were approved to be scenic roads. Scenic roads have different attributes and limitations due to size of trees.

Mr. Farley explained that both Eversource and Northern Tree appreciate scenic roads. What they are proposing is the normal maintenance of the system. They have no intention to dramatically change the appearance and historical quality of these roads. They are just trying to push the vegetation back and create a zone of clearance to get through to the next cycle, which is four to five years from now. The only thing that would be above and beyond that would be the hazardous tree removal. He noted that they plan on doing a full assessment of the entire system in the Town of Rye. The plan is to come in to do the trimming to get the minimum clearances that are required for this cycle. They will work with the property owners and the Town of Rye to get down hazardous trees that could potentially affect the system. He believes they are doing the community a service by doing a professional assessment of the roadside trees. This not only ensures that the trees are not going to fall on the lines, but there is also a public safety aspect for this work.

Chair Losik opened to the Board for questions.

Vice-Chair Lord asked how Eversource handles emergencies. He asked if permission is needed.

Mr. Farley explained that under emergency conditions, Eversource's mission is to get the power restored to the community. If there was a private property tree that had failed and was laying on the line, it would be cleared from the line under emergency conditions.

Member Sherman stated that the last time Eversource did this they tied the blue and white ribbons around the trees that were being taken out. She asked if this is general practice.

Mr. Farley replied that Eversource adapted to the blue and white checkered ribbon, which is special ordered. That will be paired up with the documentation that the crews have. He continued that all of Northern Tree's crews will be working in the Town of Rye all at once. There will not only be a heavy focus on the work from Northern Tree Service, but also internally with Eversource. He and Robert Berner will be out in the field weekly checking on the cleanliness, quality of the work and safety.

Member Sherman asked if there is a standard time frame between putting up the blue and white ribbon to the removal of the tree.

Mr. Farley replied that it fluctuates. If it is considered an emergency tree, he would expect it to be down within a week. It is rare, but there have been instances where a tree has been up for several months. This reflects back on the condition of the tree and the equipment that is needed. He reiterated that if the tree is viewed as a threat, it would be taken down within a one week.

Member Finn commented that he assumes the trees that are going over the wires that are going through a property, away from the road, would be addressed as well.

Mr. Farley explained as part of Eversource's system wide vegetation management program, they do not trim the customer's service. The responsibility of Eversource's trimming program ends at the transformer. If there is a situation where there is so much growth it is impacting a customer's service and is actually damaging equipment, Eversource will come out and do an assessment. There is an opportunity, at no cost to the homeowner, to have the line department do a planned outage in order for the homeowner to bring in a local tree company to do the trimming.

Referring to the blue and white ribbons, Chair Losik clarified that is not for the maintenance trimming. She asked if those are used for trees that are going to be taken down.

Mr. Farley confirmed. The blue and white ribbon indicates that they have met with the private property owner and have come to an agreement to remove the tree.

Chair Losik asked what happens to the vegetation.

Mr. Farley noted that Northern Tree has a larger chipper. If the customer doesn't want any of the wood or debris, all that can be chipped shall be chipped. Northern Trees is also set up with

two full time log trucks. If trees are removed and after discussion with the property owner it is determined that the wood shall be hauled by Northern, they will wait until they have one or two days of scheduled work and will remove the wood from those properties. He does not see any issues with cleanliness or wood being left behind.

Chair Losik clarified the chips are going to be taken off site.

Mr. Farley confirmed.

Chair Losik opened to the public.

Jen Hordon, 15 Elwyn Road, asked when it is anticipated that the mailers will go out. She asked if the mailers are based off a current customer list.

Mr. Farley stated that if the trimming is approved tonight, they will allow Northern Tree to start planning the work. It is expected that mailers will go out early to mid-May and they will be meeting with property owners throughout the community. It is an intricate process over several months before the work begins in August. If there was an outstanding hazardous tree that is currently tagged, they would be going back through to reaffirm that something has not changed, such as ownership. He continued they will be using a combination of the Town's tax records and Eversource's customer records to identify property owners. They do their best to use every resource possible to make sure the appropriate person gets the 45-day notification.

Hearing no further comments or questions from the public, Chair Losik closed the public hearing at 7:30 p.m.

Motion by JM Lord to approve the application by Eversource to trim and remove trees and brush adjacent to and beneath some of its power lines within the Town of Rye. All roads have been designated a scenic road by the Rye Town Meeting. The work is necessary to ensure the safe distribution of power and to improve the reliability of electric services for and part of their Capital Improvement Project. The work to be done will occur throughout the entire Town of Rye. Case #05-2021. Following conditions shall apply:

- 1. Eversource shall mail all property owners subject to scheduled maintenance trimming a standard notice and consent form per RSA 231:172. A property owner may request a consultation within 45 days of the mailing date by returning the card to Eversource by pre-paid postage. If the property owner does not respond within 45 days, they have presumed to have consented.**
- 2. For all activities occurring on scenic roads other than scheduled maintenance trimming, such as pole replacement, system upgrades and/or hazardous tree removal, Eversource or their subcontractor Northern Tree must consult with and obtain the property owner's signature in advance and provide Planning/Zoning Administrator Kim Reed a data sheet of all written approvals.**

Seconded by Jim Finn.

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

JM Lord – Yes; Patricia Losik – Yes

Motion passed

- D. Minor Non-Residential Site Development** application by Rye Place Realty, LLC for property at 150 Lafayette Road, Tax Map 10, Lot 14 to convert gravel unstriped parking are to paved parking are with striping per Section 202-2.1.B(1)(b) and Section 202-2.1.B(2)(c). Property is in the Commercial District and Aquifer Protection District. **Case #06-2021.**

John Chagnon, representing the applicant, spoke to the Board. He explained the application is before the Board because there will be more than 100sf of surface that will be paved. The project does not change the building footprint at all. The site is being renovated. Rye Place Realty has been doing work to bring this property back to a very well-managed condition for the next fifty years. As part of the work, the septic system will be replaced. The septic system is going to require a change in the location of the parking in the back. The intent is to take that parking and turn it into a more solidly, durable, non-erosive, paved surface. The parking will be moved closer to the building, at the same time they do the renovation of the septic system. (Mr. Chagnon shared the plans for the project on the screen.)

Mr. Chagnon explained the property is located on the Route 1 corridor and close to the Greenland town line. The property is adjacent to Airfield Drive. The existing conditions consist of an access off Airfield Drive; two access from Lafayette Road, parking area on the northeast side and another parking area on the southwest side. The buildings consist of a long skinny building, which goes to the northeast. That is a 27-unit motel and has been for quite some time. There is a building to the south which is a mix of retail and small dining. There are also some offices in the last building, which used to be a residence quite some time ago. There is a paved access way around the north side of the building that goes to a very informal parking area on the rear of the building. The grade changes so that the motel units are accessed in the front and the lower units are accessed in the back. For the units on the lower floor, people park in the back. The business access is also in the northeast corner of the larger retail building. (The parking site plan was presented on the screen.) Mr. Chagnon noted that the areas shown in grey on the plan are the areas that will be changed and updated by this proposal, which consists of paving and striping the parking spaces. The grey area shown below the parking improvements is the revised septic system location.

Referring to the grading and drainage plan, Mr. Chagnon stated that as part of this project, stormwater treatment will be provided where there is none now. A treatment system is being put in just northeast of the septic field. It is a proprietary advanced treatment system called a FocalPoint Biofiltration Treatment System. It is a vertical treatment system where the first flush of stormwater will come down and flow through a filter media. The clean water will then be discharged. There is an area on the site just north of that FocalPoint System that is not going to drain to the system. However, a level lip spreader will be provided to slow the water down and provide some sedimentation in that area. The upper parking lot drains to the rear through a pipe that runs underneath the building. That will run to this area now, which will provide some sedimentation relief through a stone berm level-spreader. He noted that when there are larger storms, water will exit the FocalPoint Treatment System in an emergency spillway and go into the area where there is a level lip spreader to spread out the flow. There is a wetland on this property to the east of this proposed design area. However, all the work is in the upland and there is no wetland impact. He pointed out there will be some buffer work. (He pointed out on

the plan the impervious area impact and vegetative impact of the work.) He noted that the net result is a reduction in impervious surface in the buffer area. There is also a net decrease in impervious surface across the entire lot with this proposal.

Mr. Chagnon continued there is an existing dumpster that will have a screening enclosure. He noted the detail sheet identifies the landscape schedule and the plantings that will be planted at the surface of this treatment area. (He presented a brochure on the screen addressing the FocalPoint Biofiltration System.) He stated that the system is a vast improvement from the existing gravel surface that just runs off into the adjacent area. Mr. Chagnon commented that information has been submitted showing that the site design complies with Section 202-6.3. The natural features of the site are being preserved, as the septic system is being located in a more suitable area and will be raised so it is above the water table. He pointed out that the plans detail all the erosion control measures that will be employed during the construction. The buffer and screening are not going to be impacted significantly. There are some woods to the south of the construction area. An exhibit that has been submitted shows the adjacent wetland that goes for a good distance in that direction. There will be some cutting to the north, but that will be allowed to grow back so there will be more of a buffer there in the future. The work is in the rear of the property so it is screened from public view and cannot be seen from Route 1. He pointed out there is sufficient parking and circulation. The plan shows a calculation for parking that would be required. That was submitted to give the Board the overall scope and to show that the existing parking is appropriate. With the mixed use of retail and motel, there should be plenty of parking available, due to the peak time differences between the uses. There are loading areas in the back. The site impervious will be decreased. There will be no revisions to utility services, except for underground power feeds to the relocated parking light and septic pump stations. No change to signage is proposed. He thinks the visual impact of the property has been improved under the new ownership. No off-site improvements are needed and no portion of the site is within a high-risk flood or sea-level rise area. He noted that a drainage analysis has also been submitted, which shows the property does not increase stormwater runoff to adjacent properties. It also shows the design provides the necessary design values for the treatment system, which will treat the water quality volume.

Referring to Sheet C-3, Chair Losik asked if the unlabeled symbols near the parking area are lighting bollards.

Mr. Chagnon noted that there are six pole lights there now and the plan is to just relocate those lights. The lights will actually be moved further away from the adjacent properties.

Chair Losik commented the minimum number of parking spaces required is 117. The note on Sheet C-3 is that 102 have been provided. It is noted in the report that the site provides sufficient parking when considering the time of use variation between daytime and night activities. She noted that zoning says; "Planning Board shall not allow fewer parking spaces than required by the table".

Mr. Chagnon replied that they believe it is pre-existing nonconforming. The table was provided to show that even though there isn't striped parking now, the parking that is being provided is very close to what there would be if the ordinance was met.

Referring to Sheet D-3, Chair Losik pointed out this sheet lists the maintenance for the FocalPoint System, which is quarterly inspections during the first year of operation and yearly thereafter. There seems to be some additional requirements of removal of debris and mulch. She asked if those could be a standard condition of approval.

Mr. Chagnon confirmed. He explained the company that provides the product is going to assist in the construction and provide the first year of inspections, as part of the purchase of the system.

Member Finn asked if there is impervious surface at the rear of the building right now.

Mr. Chagnon replied they are counting the existing gravel that is parked on and tamped down as impervious surface.

Member Finn asked if they are proposing anything for the septic system.

Mr. Chagnon pointed out the project involves replacing the septic system with a brand new system. (He pointed out the new location.)

Referring to the septic system, Member Paul asked if it is a system that will have a leaching field. She also asked where the location would be.

Mr. Chagnon pointed out on the plan the location of the leaching field. He noted that currently there are tanks for the motel for every three units. (He explained how the flow will connect to the new septic field.)

Chair Losik asked if this is a separate application to the building department and DES.

Mr. Chagnon confirmed. An application has been filed for the septic system with the Town. The Town has signed off for DES review and the application is now at the State.

Member Sherman commented the plan looks great and is an overall improvement to the property.

Vice-Chair Lord stated he is looking at this as minor redevelopment of this property, as new pavement is going in and a new septic. He is surprised they didn't see plans for the septic system. It seems this will be outside of this Board's purview and will be in the hands of the building department. He thinks a variance from the ZBA is probably needed for parking. If it is a nonconforming condition, he thinks they should draw the line where it is right now and have them get a variance.

Alternate MacLeod asked if there is an encroachment of pavement over the boundary line on the south edge of the property.

Mr. Chagnon confirmed. He explained there is an easement for a driveway, which goes back to the earlier development of the property. (He pointed out the easement line on the plan.) He

continued the pavement encroachment is minor because there is an easement for some of that. He reiterated the driveway has been there for a very long time.

Alternate MacLeod asked if there have been any discussions with the neighbor that it is encroaching on.

Mr. Chagnon pointed out that the property next door changed hands and the applicant was going to reach out.

Alternate MacLeod commented that the plan shows there will be grading outside of the easement.

Mr. Chagnon explained the road has to be replaced in order to provide a proper approach to the parking.

Alternate MacLeod stated this is a question for Attorney Donovan about what the Planning Board's position should be about approving a plan for work outside of the boundary, whether it be an easement or property line, that the applicant doesn't have title to.

Chair Losik agreed. She stated they should also ask Attorney Donovan about the variance. She continued that another question for Attorney Donovan is in regards to the stormwater management. She assumes they could put a stamped version with the calculations as a condition of approval. The question for Attorney Donovan is whether there should be any additional steps that should be taken with respect to the small stormwater facility that is being incorporated into the management. Referring to the vegetative practices on Sheet D-1, she stated they have heard a lot from Truslow Resource Consulting on other plans recently. The Board might just reach out to Ms. Truslow who might reduce the amount of lining and fertilizing, which may be beneficial to the owner.

In regards to the variance, Mr. Chagnon stated that the property is a mall and its uses are subject to change over. Every step of the way, the owner has gotten the proper permits for the fit-outs of the different spaces as they change over. The parking calculations are a point in time. Leaving it to the building department for when a tenant moves out and a tenant moves in, is something that should be done as time goes on with this site.

Chair Losik opened to the public. Hearing no comments, she closed the public hearing at 8:00 p.m. Chair Losik asked Attorney Donovan to weigh-in on the parking.

Attorney Donovan stated that he has only looked at the application for about 15 minutes this afternoon. He only has PDF's on his computer and can barely read the drawings. He is not really in a position to advise on any of these issues, except he agrees with Member Lord and wonders why the septic plan is not being reviewed as part of this application. In terms of stormwater, it is a minor site development application but this is a fairly extensive stormwater design and drainage calculations. It would seem to him that the Planning Board would want to have Sebago review. He continued that he had a question as to whether some of this work encroached upon the wetlands buffer and if a variance from that is needed. He commented that

he was a little confused with the drawings. Speaking to Mr. Chagnon, he asked if relief from the ZBA is needed for the wetlands buffer.

Mr. Chagnon replied that he is not sure.

Attorney Donovan commented that it appears that two of the drawings conflicted. One seemed to show nothing happening in the buffer. The other showed a portion of the new leachfield and some of the parking area within the buffer.

Mr. Chagnon stated there are sections of the ordinance that talk about maintenance of existing work that is in buffers. He thinks it is an open issue. The impervious is being reduced within the buffer. The work is to provide buffer enhancements. It's in the normal course of bringing this parking area up to today's design standards.

Attorney Donovan asked if town staff has said this does not go to the ZBA.

Planning Administrator Reed commented that she has not. She is not sure if the building inspector has.

Attorney Donovan stated that he thinks it does need to go to the ZBA. However, he would like to reserve judgement until he has a full-size set of drawings to review. In terms of the parking variance, normally there is a grey area when someone is redeveloping or renovating a site, as to at what point the zoning ordinance is retrofitted onto the project. It tends to be a balance of how much work is being done. He tends to think it probably does not need a parking variance. He reiterated that he would like to understand the project a bit more before finalizing that opinion.

Regarding the stormwater management, Chair Losik stated she is not sure if it qualifies under 202-9.5 redevelopment, because that's a calculation triggered by the capital costs of improvements with the fair market value. She commented this may be something to look at. She thinks they need to understand where this stormwater piece sits. That triggers a portion of stormwater requirements and doesn't trigger other parts.

Vice-Chair Lord pointed out that Alternate MacLeod brought up a very interesting about building on another person's property that he wanted Attorney Donovan to respond to.

Mr. Chagnon noted that the owner's representative has texted him that they are meeting with the neighbor this week.

Attorney Donovan stated that as he understands, there is an existing access with gravel driveway, which is going to be reconstructed and paved. This will encroach outside of the easement. There may or may not be adverse possession on the part of the old South Wind property, but that is not something the Planning Board can adjudicate. His advice to the Planning Board would be to not approve a plan that shows a new driveway being built on someone else's property.

Referring to the septic system, Mr. Chagnon stated the owner would like to do that work, regardless of what happens with the plan to pave the driveway. He explained the property goes

back to a subdivision that happened in 1972. At that time, the property was the South Wind dining room and motel. There were four septic systems that existed on the property at that time.

Vice-Chair Lord asked if those have changed.

Mr. Chagnon replied they have changed somewhat over the years. He commented they are in the water table, most likely, because the system has to be raised to get the proper clearances. The existing systems don't meet the 4ft rule. A system will be provided that meets the requirements. He further explained there was a plan from the 80's when the restaurant was changed to retail. At that time, they consolidated some leachfields. However, from that plan, it is not sure exactly what was going on. He does not believe that plan was fully implemented by the prior owner.

Chair Losik stated that she thinks a site visit is important. It would make sense to establish an escrow because there are some expenses for Attorney Donovan, Sebago Technics and perhaps, Truslow Resource Consulting in regards to the fertilizer issue, as it is in the Aquifer and Wellhead Protection District.

Chair Losik summarized there are issues for Attorney Donovan to consider; parking, stormwater, septic and the issue raised in regards to the encroachment. Sebago should look at the plan and Danna Truslow.

Attorney Donovan suggested \$2,500 for escrow.

Mr. Chagnon agreed to escrow.

Chair Losik noted that for the site walk the Board would like to have the stormwater laid out. The Board would also like to see the location of the buffer, corners of the septic and edges of pavement for the eastern parking. She asked Mr. Chagnon if he could also mark the encroachment.

Mr. Chagnon agreed. He asked if the applicant is allowed to move forward with the replacement of the septic system.

Attorney Donovan replied this is one of the things he wanted to look at. He needs to speak with the building inspector. He thinks it is in the buffer. Even though it is clear it is improving an overall bad situation, septic systems are prohibited in the wetland buffer. It is not clear from the drawings whether the old septic systems are within the buffer. Replacing three antiquated systems outside the buffer with one that is within the buffer, may still require relief from the ZBA.

Chair Losik asked if there have been discussions with DES.

Mr. Chagnon noted that the application is at DES. It has been signed off by the building inspector. (He presented the existing conditions site plan on the screen. He reviewed the location for the existing leachfield and the septic flows.) He commented that this is why he believes this qualifies as replacing the system.

After some review of the plan, it was agreed that Attorney Donovan should speak with the building inspector to determine if the septic system needs to be part of the plan.

Motion by JM Lord to continue the application to the May 11, 2021 meeting. Seconded by Katy Sherman.

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

Motion passed

- **Site walk scheduled for April 21st, 4:00 p.m.**

E. Major 4 lot subdivision by Jones & Beach Engineers, Inc. for Michael Fecteau for property located at 850 Washington Road, Tax map 11, Lot 130 to subdivide the existing lot line into four residential lots with a road. Property is in the Single Residence and Aquifer & Wellhead District. **Case #01-2021.**

- *Request a continuance to the May 11, 2021 Planning Board meeting.*

Motion by JM Lord to continue the application for property at 850 Washington Road to the May 11, 2021 Planning Board meeting. Seconded by Jim Finn.

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

V. New Business:

- **Conceptual Consultation** by Tuck Realty Corporation and Malcolm E. Smith III for property owned and located at 0 Lafayette Road, Tax Map 10, Lot 1 for a 30 unit two-bedroom residential condominium development. **Property is in the Commercial District and Aquifer & Wellhead District.**
- **Conceptual Consultation** by BSL Rye Benchmark, LLC and Malcom E. Smith III for property owned and located at 295 Lafayette Road, Tax Map 10, Lot 1 & 3 to expand the existing memory care facility to add an assisted living use to the property and a lot line adjustment to enlarge the parcel. **Property is in the Commercial District and Aquifer & Wellhead District.**

Mike Garrepy, Tuck Realty Corporation, noted these are two separate applicants with two separate applications. They are before the Board to go over both projects. He continued that Tax Map 10 Lot 1 is under contract for purchase. He is also working with Benchmark to transfer a portion of that parcel to the Evolve property. A different plan was presented to the Board the first time. It was a 40-unit multi-family project, under a similar conceptual pre-application. He commented that they received some good feedback from Board. Since that time, the project has taken several turns and they have started to work with Benchmark. (He presented the conceptual

on the screen for review.) He stated the application they are advancing conceptually this evening, is for a 30-unit townhouse style multi-family project with a triplex configuration. The roadway is approximately 425ft to the cul-de-sac and about 300ft around the cul-de-sac. The access point is set up to intersect directly across from Dow Lane, which is the DOT preferred alignment for the new roadway entrance to the project. The end units of each of the buildings are approximately 1900sf finished. The middle units are slightly smaller at 1600sf to 1700sf finished. The units will have a single car garage with two parking spaces in front of each unit. There will also be twelve visitor spaces in total. He noted that comments from the Planning Board from the first meeting were taken into the design consideration. One of the comments was that a five-unit building was not preferred and a four-unit building was okay. He feels the three-unit configuration works well as far as the massing for this project. (He presented an architectural rendering showing the buildings and floor layout.) Mr. Garrepy stated this is in the multi-family dwelling overlay district and in the commercial district. This requires 20% workforce housing. These are proposed to be for sale units. The development will require six units to be workforce. The intent is to distribute equally those units equally about the project in separate buildings.

Mr. Garrepy stated there will be a lot line adjustment for the remainder of the parcel; right off the Evolve property where Benchmark will be permitting their expansion. Attorney Donovan's initial review comments were received. He does not have a lot of questions in regards to those comments, except for the buffering requirements. He understands a traffic study will be needed. Most of the traffic analysis has been done with Steve Pernaw who is in attendance at this meeting. Joe Coronati from Jones and Beach Engineering and Attorney Kevin Baum are also in attendance if there are questions from the Board.

Chair Losik asked Attorney Donovan to speak about the buffer, particularly in regards to the 50ft buffer.

Attorney Donovan stated this is the same buffer requirement that the Board dealt with on The Housing Partnership proposal a couple of years ago. He pointed out the buffer requirement falls under §190-2.2(J). He explained that the Washington Road project's neighbor, Mr. Sherwin, petitioned onto the ballot the first part of that buffer requirement, which required, adjacent to residential districts of non-residential uses of land, a 50ft buffer. That was proposed back in 1995. It was a petitioned zoning amendment that went on the ballot. At that time, the Planning Board thought it was somewhat confusing and didn't address all the situations where a buffer between non-residential uses and residential uses may be required. Subsection 2 was added by the Planning Board. What applies here is if a new residential development abuts a non-residential development or non-residential zoning district, a 50ft buffer is required on the residential development tract. He believes that applies here to the border adjacent to the North Hampton town line. The adjacent district in North Hampton is essentially a non-residential zoning district. He continued that some might say this only applies to zoning districts in Rye. That is really not the case. In this situation, it's trying to protect the residential use, which is in Rye, from the adjacent non-residential zoning district. He noted that the Planning Board has already gone through what can and cannot be done in that buffer with The Housing Partnership. It was established that there cannot be parking areas or streets. It has to be either natural open space or landscaped open space. He also noted this is a conceptual consultation and everything

said here is non-binding. However, he thinks it is an appropriate point to raise at a conceptual consultation.

Mr. Garrepy stated they are in agreement that the residential use is going to be abutting a different type of residential use, being the assisted living facility, so the buffer really isn't required there. It's really along the North Hampton/Rye line. In his opinion, the town line doesn't really matter. He continued they certainly respect the 50ft buffer and it is provided in the area approximate to the North Hampton lot. He pointed out that the North Hampton developed lot is residential only. It is a seven-unit apartment development. It may have been an office or mixed use of some sort at one time. However, he believes it is solely residentially used. This has not been confirmed with the Town of North Hampton, but that is the intent. He stated the area where there is a small pinch point is approximate to units 18 and 19, where it's about 30ft off the property line. He pointed out there is a wetland located on the North Hampton lot. North Hampton has a 100ft setback to wetlands, so none of that area is buildable. The zoning for that portion of North Hampton is industrial business residential. It allows for single-family, duplexes and multi-family by special exception, which is already there. He contends that this development is residential against residential on all sides.

Referring to the LDR's, Attorney Donovan noted that he is referring to Subsection J.2(a)(1); New residential building or development shall provide such abutter from existing non-residential use not permitted by right in a residential district or the boundary of an abutting non-residential district. He continued that even if it is not an office, it is still a non-residential zoning district all along the boundary of the former Hector's parcel. The North Hampton parcel is in the industrial business/residential district. It's stated purpose right in the North Hampton Ordinance is to encourage business growth and industrial installation in a campus like arrangement in the vicinity of important highways and other key locations. He pointed out that most of the Lafayette Road frontage in North Hampton is that district. Its purpose is clearly a business and industrial district, even though it does allow residential uses. This is why he suggested the buffer is required.

Attorney Kevin Baum, representing the applicant, stated that he disagrees with Attorney Donovan's interpretation. It may be something that could be discussed further outside of the meeting, since this is just conceptual. He does not agree this is a non-residential zoning district in North Hampton. It explicitly permits residential uses; single family, duplexes and multi-family by special exception. He does not think it is a fair interpretation to just focus on the purpose, which is usually a limited description of what the uses are. In this case, the more specific uses include residential by right.

Mr. Garrepy stated that if this is the interpretation that Attorney Donovan recommends to the Board, he is not going to argue the issue. He thinks they have the ability to make some adjustments to the layout, as this is just a concept plan. He suggested they may also need to talk about the issue with respect to the single access, which was brought up by Attorney Donovan in his memo. He would like to have this discussion, as it might involve some coordination between the two projects.

Attorney Donovan stated this was discussed briefly at the first conceptual consultation. He believes the original concept was for a smaller commercial development and a 40-unit project. He thinks there was an opportunity to tie the access to the two parcels together. The minutes of that meeting show that Mr. Epperson brought up the question of whether the access can be connected. He continued that The Housing Partnership proposal had some similar issues. Originally, there were two street systems proposed. Each street system was going to serve 20 of the 40 units. One of the street systems, which was later on the application as 'Driveway B', had only a single access point off Airfield Drive. The Board was concerned that there were too many units, for public safety reasons, to be accessed by the one drive. The concern being that if the one drive was blocked, then 20 homes would be isolated from emergency access. The plan approved by the Board for The Housing Partnership required an emergency access drive connecting the two street systems, so there would be an alternative access in the event the single access point, 'Driveway B', was blocked. He noted this is a concern here. There are two land developments that are quite large with each one being accessed at a single point.

Mr. Garrepy stated that they have been following the Washington Road multi-family development project as it has gone through the approval process. He knows that the Washington Road project is only 20-units, but it only has one point of access. He commented they were sort of using that as a model; however, alternatives could be considered. The first step may be to talk to the Fire Department about life safety issues they may have before looking at alternative designs. He thinks the cul-de-sac idea is attractive. He would like to keep the design similar to what is being proposed.

Referring to Attorney Donovan's memo, Chair Losik commented they talked about the 50ft buffer. The other buffers are the rear buffer and the northerly buffer. She asked if there are any questions about the buffer to the rear of the property.

Mr. Garrepy replied he thinks they have more than adequate buffer there.

Chair Losik asked if there are any questions about the zoning considerations; the permits required and the SUP required for multi-family housing.

Mr. Garrepy stated he knows they will need to file for a special use permit for the actual use of the multi-family in this zone.

Attorney Donovan commented that he knows that the intent is to keep these as two applications. He suggests that the hydrogeologic study be for both uses combined. It seems that both projects will be impacting the aquifer.

Mr. Garrepy replied that they will hire one hydrogeologist who will work with Ms. Truslow. The exact same team is being used for both projects, except for the architects.

Member Carter asked where the septic systems would be located. He asked if there is enough room for the designated leaching areas. It does not look to be a lot of empty space around the buildings.

Joe Coronati, Jones and Beach Engineering, noted that the property is in the Aquifer Wellhead Protection Area, so pretreatment is needed for every system. The intent is to do individual septic per three-unit building. Because of the pretreatment system, the square footage of the leachfield is reduced by about 80%. There is room for a field behind each of the buildings. There is even room between the building because the leachfields are so small. The site soils are excellent and are probably the best soils that exist in the State. The site has excellent draining sands and gravels. He reiterated there will be room for all the systems without a problem.

Member Carter asked if the smaller leachfields require a variance of any sort.

Mr. Coronati explained that the State rules allow any field that has a pretreatment system to have a reduction in the leachfield size. He noted that they use SeptiTech quite a bit. Their systems treat nitrates and all of the different chemicals in leachfields. The effluent coming out of the SeptiTech is pretty clean so the field size is not as important as with a normal system.

Mr. Garrepy pointed out that the ordinance requires the pretreatment system in the Aquifer Protection District.

Attorney Donovan asked if the leachfields will be able to be located outside the 50ft buffer if the Board determines that is needed along the boundary.

Mr. Coronati replied that the fields can be moved around if they need to. They don't have to be right behind the building. There is some flexibility with this site. Also, there is the luxury of having excellent soils.

Referring to the Washington Road development, Member Finn noted that one of the comments for that project was that the development was the first one seen coming into Rye. The end units that are closest to Lafayette Road were treated a bit differently architecturally, so the ends of the buildings won't look like gables. He commented this might be something to consider for the units closest to Lafayette Road.

Mr. Garrepy presented his architectural renderings showing the sides of the buildings that will be closest to Lafayette Road. He noted that the units will sit 60+ feet back from Lafayette Road. He pointed out the landscaped areas on the plan, as they will be working with a landscape designer to create a buffer from Lafayette Road.

Member Paul pointed out that the applicant's letter says the site is going to be served by municipal sewer.

Mr. Garrepy noted this was a typo. There will be onsite septic and it will be served by municipal water.

Mr. Coronati stated that Aquarion Water services the building next door at 224 Lafayette in North Hampton. He believes this will be Aquarion, just over the border.

Member Paul asked the height of the buildings, as they seem to be 3.5 stories.

Mr. Garrepy replied the buildings are just three stories and are under the height requirement.

Mr. Coronati noted the height is 35ft.

Member Paul stated that she knows that DOT said that's where they wanted the curb-cut. She noted that it is already a "nightmare" to pull out of Dow Lane to head south. If a condo complex is going in with 30-units across from that, she thinks it is just going to be "accident central". She thinks that is going to be a tough area. That is her concern with having so many units in that one spot. She suggested they might want to come up with a good way of solving that issue.

Mr. Garrepy pointed out this is one of the comments that Attorney Donovan raised in his memo. He continued that Steve Pernaw has been asked to look at it. This is DOT controlled, as it is in their jurisdiction. This doesn't mean they can't look at life safety issues, as well. He is sure that Sebago will review Steve Pernaw's findings. He suggests letting the experts look at the issue and they will come back to the Board with the findings. He agrees that the Dow Lane intersection is problematic and the alignment is tricky.

Regarding the water service, Attorney Donovan asked if Aquarion is being proposed for both land developments or is it being considered. He asked if there are going to be legal complexities with Aquarion coming into Rye in this location. He asked if intermunicipal agreements would be needed. He asked why Rye Water District is not being considered without even thinking about Aquarion. Aquarion Water's infrastructure is a lot older than Rye Water's infrastructure. He thinks that Rye may have some problems down the road with those areas that are already served with old Aquarion lines.

Mr. Garrepy stated that he had some initial discussions with Arik Jones from the Rye Water District. Mr. Jones was the one who said that Aquarion may be an option for one of these two development projects. Mr. Garrepy commented he is happy to consider what makes the most sense for the Rye Water District. He pointed out there is a fairly new water line running right across the front of this whole property.

Mr. Coronati explained there is a line that runs on this development's side and comes across from Dow. He pointed out that the property has quite a bit of frontage. If there are two options, they will go with whatever the Town wants. The other building will be serviced off their existing service to Evolve. Evolve is already serviced by Rye Water and it will branch off that line to the new expanded building.

Mr. Garrepy noted that he will reach out to Rye Water District to start the discussion before getting into design mode.

Chair Losik asked Member Paul if she had other questions.

Member Paul stated that with the Washington Road property, the Board spent a lot of time looking at the back porches, even though they fronted on Lafayette Road. She thinks just having

the “stick” look for the deck support is not eye pleasing. With the Washington Road property, they “beefed it up” to make it look a little more esthetically pleasing. She suggests this be considered.

In regards to the wetland on the lot in North Hampton, Member Sherman asked if there is enough of a buffer in that area.

Mr. Garrepy stated that the 100ft setback might trickle a little bit over the line.

Mr. Coronati explained that Rye’s setback is 75ft and North Hampton’s is 100ft. The 100ft setback barely goes over the lot line. The deck of unit 18 is 115ft from the wetland. He commented that only a 75ft setback would apply in Rye, so that is met.

Member Sherman asked how many feet are between unit 10 and the property line.

Mr. Coronati replied that there is only about 21ft, but that is the common lot line with Benchmark. The buffer does not apply on that side of the property.

Member Sherman stated that over the last several years, the people from Dow Lane are always looking to the Town for help with that road. She would request that the people at the end of Dow Lane are made aware of this project, as they may have some thoughts. She thinks it would be important to let them know. She asked if there will be a school bus stop.

Mr. Coronati replied that they certainly can create one, as there is plenty of room. He assumes the bus is going to stop right on Route 1. He is not sure if a town bus will pull into private developments.

Member Sherman commented this is something to think about. She continued that the outlet seems so narrow for 30 homes. She would see that as a concern with the number of homes. It would be great to see this with two outlets.

Vice-Chair Lord stated that based upon what he sees being built on Lafayette Road in North Hampton, he thinks the area south of the Rye/North Hampton line is really commercial industrial. He would certainly heavily consider the 50ft buffer along the North Hampton/Rye line. It may be residential there today; however, it could easily go to some other commercial use. He thinks a buffer should be put in to help protect the future residents of Rye. He continued that they approved two developments in Rye, one on Airfield Drive and one on Washington Road, and limited those developments to 20-units, based on safety and concerns about access. This project is 30-units right across from Dow Lane on Lafayette Road. It is an extremely dangerous intersection. If there are going to be 30-residences here, he thinks they should look at another egress moving forward.

Alternate MacLeod agreed there should be some kind of interconnection from a traffic point of view. From the visual point when looking at the building, he would suggest a landscape berm in the 60ft front yard setback. There could be some height on the berm with tall trees. The top of

the berm may considerably shield the development from the street. It may also provide a noise barrier between Route 1 and the proposed dwellings.

Chair Losik noted this is a great comment about the berm. She commented that Member Sherman prepared a visual of the two proposals together. In looking at the two, the 60ft area that Alternate MacLeod is speaking about, is very open. When looking at the residences of the 30-unit development, units 1, 2, 3, 29 and 30 are going to look right across to the other facility. She thinks a berm is a great idea. Chair Losik continued that 1244 Washington was talked about as being used as a benchmark. She reminded Mr. Garrepy that this was done under the old LDR's. These LDR's are more substantive in various areas. Referring to 202-11.1.A(1)(2), she asked if they are thinking they would retain the existing vegetation between 10-1 and 10-3 in that side boundary.

Mr. Garrepy explained the idea is to maintain the fairly significant tree buffer to the rear of the property on the Greenland side. In regards to the boundary being shared with the assisted living, there will be an opportunity to save some trees. That line will probably have to be augmented with new vegetation and buffering.

Chair Losik commented this is important for both uses. In looking at a 20ft width on each side, 40ft is not a lot.

Mr. Garrepy agreed there needs to be some buffering, whether it be hardscape, fencing and some evergreen plantings, to help fill in out front and on both sides. In the rear, he thinks they can maintain a pretty healthy existing tree buffer. He noted that a landscaping plan will be presented to the Board.

Hearing no further comments, Chair Losik opened discussion for the Benchmark conceptual.

Attorney Tim Phoenix, representing BSL Rye Benchmark, introduced Bill Cook from Benchmark, Traffic Engineer Steve Pernaw, Engineer Joe Coronati and Architect Robin Tufts. He stated that Mr. Garrepy's project is going to own and occupy approximately 50% of the old Hector's lot. Benchmark will get a little less than 50%. The Evolve Memory Care Facility is right next door and that is owned by Benchmark. The idea is to now do a 70-room addition for assisted living, which would be 91 beds. When the project is done, there will be a total of 155 beds. He noted that the proposal was before the Zoning Board of Adjustment last week for a special exception, which was received. He turned the discussion over to Joe Coronati to review the concept.

Mr. Coronati shared the plan on the screen. He pointed out the existing Evolve building, and the existing driveway and parking on the site. He pointed out on the plan the proposed addition with the connections to Evolve. He noted that one thing Benchmark wanted to do was to centralize access into the buildings. The proposal is to no longer have cars drive through the portico at Evolve and have the centralized access in the new expansion. All visitors would come in to one centralized location, so they can keep track of all visitors, guests, patients and emergency vehicles. Everything would be handled from one administrative office in the front. As people come in, they would head to the assisted living care addition or to the right to Evolve, which is

memory care. The proposal is to also add a bit of parking in the front parking field. A staff parking lot is also proposed out back. The circular access will still be maintained for the staff and deliveries. The back of the building is basically for deliveries for food service. Everything they need comes into the back of the building so it is kept out of sight. The dumpsters will be kept in the rear of the site. The goal was to have one main access, so the existing curb cut will remain. This will allow them to control security and be able to see who is coming and going easier. The new building will have its own separate septic system. Most likely located under the parking lot or off the edge of the parking in the rear. Water service would be connected from the line that already serves Evolve. Stormwater for both of these projects has to go through both the AOT and Town's review.

Referring to the design plans on the screen, **Robin Tufts, JSA Design**, noted that the entry will be transferred to an area between both buildings, so there will be a secured check-in. There won't be double entries with one being at the existing Evolve building and one for the new addition. This is being done for clarity for security, emergency, police and fire. In the new entry area, there is a lot of public space with offices, dining and entertainment areas. That will be the area for the public and residents to use. Off that public space area, there will be a service area for the back of the house; such as, a kitchen. The connection to the existing Evolve building will happen through that corridor to service the facility. She pointed out that most of the public spaces are on the first floor in the middle of the addition. The second floor is almost entirely residents' rooms and service. There is one large wellness center for a doctor's office and exam room, which will act as a basic wellness suite for the building. She commented that the look of the facility has been designed to stay with the character of Rye with the New England farmhouse look.

Speaking to Attorney Donovan, Chair Losik asked if he has any questions.

Attorney Donovan replied he does not. He thinks they have touched on the subject matter in his memorandum already. The only other point that relates to this is the point about interconnecting the two sites to provide an alternate access for each.

Attorney Phoenix stated that they will look into that. One of the reasons there is a similar team for each project is so they can put their heads together to make some common decisions.

Bill Cook, Benchmark, stated that in terms of interconnecting the site, they are thinking from an emergency access point only. They are not looking at the access as something that would be for overflow or a shortcut. It would certainly be a controlled access point through some type of barrier that is acceptable.

Note: *Nicole Paul recused herself from discussion for the BSL Rye Benchmark application, as she acted as local counsel for the applicant. Chair Losik seated Alternate Bill MacLeod.*

Chair Losik opened to the board members for comments.

Member Carter stated he assumes that because this is assisted living, the parking may have different requirements.

Mr. Coronati explained that the parking requirement is one space per two beds. There is a total of 155 beds between the two buildings and there are 78 parking spaces shown on the plans. The parking is split between the staff parking and the front field.

Ms. Tufts stated that in reality, typically no resident has a car.

Member Finn commented he was going to comment on the parking as well. It is a bit unclear as to the visitor parking in the front and if there are adequate spaces. With expanding the number of rooms, there will be more visitors. This is something they can review at a later date.

Mr. Cook stated that he believes the requirement takes into account the overall of the property; visitors, staff and residents. The site should be sufficient with what is proposed.

Member Sherman asked if there is going to be any outdoor space or any paths around the facility.

Mr. Cook replied there will definitely be some outdoor space. (He pointed out on the plan the area being proposed as a courtyard.) He noted that they find outdoor space to be extremely important. It will be a combination of seating areas, paths, pergolas and walking paths. He continued they typically also have walking paths around the building.

Ms. Tufts commented that in addition to the very large outdoor space, there's also a little captured garden between the existing building and the first floor of the new addition. This is a very nice protected outside area.

Ms. Sherman asked if there will be any generators.

Mr. Cook confirmed. He pointed out there is one already at the current Evolve site and one will be added for the new addition.

Ms. Sherman suggested keeping the generators and lighting in mind and consider the residences that are going in on the abutting property.

Alternate MacLeod noted there are two leachfields shown on the northerly portion of the site. He asked if those are existing.

Mr. Coronati confirmed. He further explained that the new addition will have a separate leachfield.

Alternate MacLeod asked if they are required to have pretreatment.

Mr. Coronati confirmed.

Referring to the parking, Attorney Donovan pointed out the zoning ordinance has a half parking space per dwelling unit for elderly housing. For hospitals and nursing homes, it has one per two beds. At some point, someone will have to analyze how each of those requirements apply to this proposal.

Attorney Donovan reminded the applicant that the Board's position has been that an application isn't considered complete if it requires the Aquifer Protection SUP and hydrogeological study and it is not submitted.

No further comments or questions were brought before the Board.

VI. Committees

• Update from Long Range Planning on Visioning Session

Member Carter noted that the Long Range Planning Committee met on Thursday, April 8th to work on planning for the town visioning session later this year; possibly, late September or early October. So far, they have contracted with Julie LaBranche from Rockingham Planning Commission for \$8,000 to help with the planning. Planning Administrator Reed has also submitted a grant proposal to Piscataqua Region Environmental Planning Assessment for a \$10,000 grant to help with the funding of the visioning exercise and report. On Thursday, they decided to task Ms. LaBranche with three items: 1) a time table for the visioning endeavor; 2) a survey for town committees and commissions; and 3) a survey for all town residents. Scott Marion and Stacey Smith, town residents, will consult with Ms. LaBranche on the development of the two surveys. He and Ms. Reed will also be in the loop on the development. Once the draft surveys are ready, they will be presented to the LRP Committee for approval. It is anticipated that the committee and the commission survey will be ready first, in May or early June. Once approved, the surveys will be sent out in June with the intentions that they will be completed by July by the committee and commissions. The residents' survey will likely be completed by the middle of June and can be sent out to be completed in July and August. This will be an online survey. The Rockingham Planning Commission will set up a website to host the survey and information related to the whole visioning exercise. The compilation of the surveys will be done by RPC. From the surveys, LRP Committee will develop questions for the visioning session to be held in late September or early October. After the visioning session, a draft of results will be prepared and following that a visioning chapter can be created.

Member Carter continued that at the LRP meeting, it was also decided to expand the LRP Committee slightly and invite two individuals to join the Long Range Planning Visioning Planning Committee. The invitees are Dominique Winebaum and Kathryn Garcia. LRP is seeking Planning Board approval tonight to add these two members to the Long Range Planning Visioning Planning Committee as ad hoc members. He and Ms. Reed will be updating the Select Board on the proposed timeline and survey process on Monday, April 18th.

Motion by JM Lord to approve the addition of Dominique Winebaum and Kathryn Garcia, as ad hoc members, to the LRP Visioning Planning Committee. Seconded by Jim Finn.

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

Motion passed

Chair Losik thanked Kim Reed who presented on March 22nd, on behalf of the Board, the contract for RPC for approval and got the funding in place. They are now waiting to hear about the PREPA Grant. She asked Ms. Reed the expected date for the response.

Ms. Reed explained that Piscataqua Estuaries has already reached out to the members of their group. They are now reviewing all the applications. Hopefully, by the 28th of April there should be some word.

Chair Losik opened to the public for comments or questions about the LRP endeavor.

Steve Borne, 431 Wallis Road, noted that the Civic League did a survey with 122 responses. He suggested that the Board look at this. It went out with the Civic Newsletter. They have not had a chance to do some qualitative analysis, but they are working on it and the Board should certainly look at that.

- **Technical Review Committee**

JM Lord reported that they have walked lots 1, 2, 3, 4 and 5 at Stoneleigh. TRC's comments have been given to Steve Harding at Sebago Technics. Mr. Harding is going to work with Christian Smith to pull together a plan for Lot 5. He continued the next change really came with Lot 13. They are putting in a large retaining wall on that property. He thinks it falls within the approved Land Development Plans, so it should be all set.

VII. Correspondence

- Chair Losik noted that information has been received from Danna Truslow regarding fertilizers. A collaborative effort between Rye Conservation Commission and DPW will be held on May 3rd at 6:30 for the first 'Fertilizer BMP' online workshop.

VIII. Other Business

- Chair Losik welcomed all new board members. She suggested to members that they take a look at Planning Board Rules of Procedures; in particular, ex parte communication rules. She noted that a couple of years ago some knew language was added and everyone should be familiar with that. She continued that in 2019, Attorney Donovan did a course for the town and volunteers regarding right-to-know. When he advised in regards to the quasi-judicial capacity, there were a few comments. These are applications where a person's rights are being determined; such as, the right to develop or build upon one's land. This is where the Board is weighing and considering evidence and arguments. It doesn't include decisions; such as, planning board deliberations on zoning amendments, master plan, CIP's, and subdivision regulations. Attorney Donovan's note was to avoid ex parte discussion, conferences, and phone calls. It's a good rule for those representing applicants in buffers, as well.

Chair Losik noted there is so much information that comes into direct emails to planning board members, etc. All correspondence and messages will be aggregated within the planning board staff; in this case that means Kim Reed. The Board is going to continue to request that if members of the public want to get something to the Planning Board to send it to Kim Reed. All correspondence and messages regarding questions about planning board members should go to Mrs. Reed, so they can be addressed and shared publicly. She pointed out that they do not want to have silo conversations, as the Board is bound by disclosing to the public.

- **Approval of March 9th meeting minutes**

The following corrections were noted:

- Page 4, 5th paragraph, 1st sentence should read: **Mr. Garrepy pointed out that is typically not an item that would preclude the Board from accepting the application as complete.**
- Page 8, middle paragraph, 8th sentence from bottom should read: **For these reasons, he stands behind the design and maintains that they would like to stay with grassed raingardens.**
- Page 14, 3rd paragraph, 8th line down should read: **She thinks that staying away from the shrubby plants makes sense so a root mat is not created that is going to be problematic.**
- Page 18, last paragraph, 6th sentence from bottom should read: **Following that meeting, revised plans were submitted to Sebago, as an interim set of plans for their comments.**
- Page 17, 2nd paragraph, middle of paragraph it should read: **From the throat of the cul-de-sac through the roundabout, there is 180' looking left.**
- Page 30, last paragraph, 2nd sentence should read: **The plan is to solicit input from the various committees to develop the focus questions for the actual vision session(s), which will probably occur in late August or early fall.**

Motion by JM Lord to approve the minutes of March 9, 2021 as amended.

Seconded by Jim Finn.

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

JM Lord – Yes; Patricia Losik – Yes

Motion passed

IX. Escrows

Motion by JM Lord to approve the following escrows:

- 1. 711 Long John Road**
 - **Sebago Technics - \$794.25**
 - **Attorney Donovan - \$810.16**
 - **Sebago Technics – \$196.50**
- 2. 850 Washington Road**
 - **Sebago Technics – \$1,490.25**

- Attorney Donovan - \$354.60
- 3. 33 Sagamore Road
 - Sebago Technics - \$1,490.25
 - Attorney Donovan - \$1,418.40
- 4. Stoneleigh Subdivision
 - Sebago Technics – \$1,015.25
- 5. 144 Washington Road
 - Sebago Technics - \$457.18
- 6. 243 Central Road
 - Return refund for umbrella account - \$5,000.00
 - Close out construction monitoring - \$2,544.76
- 7. Goss Farm
 - Peer review and construction monitoring account - \$923.91

Seconded by Jim Finn.

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

JM Lord – Yes; Patricia Losik – Yes

Motion passed

Adjournment

Motion by Nicole Paul to adjourn at 10:11 p.m. Seconded by Katy Sherman.

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

JM Lord – Yes; Patricia Losik – Yes

Motion passed

Respectfully Submitted,
Dyana F. Ledger

RYE PLANNING BOARD

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

Notice of Decision.

Applicant/Owner: Bluestone Properties of Rye, LLC

Property: 33 Sagamore Road, Tax Map 24, Lot 6
Property is in the Business District

Case: Case #02-2021

Application: Major Site Development Plan by Bluestone Properties of Rye, LLC for property located at 33 Sagamore Road, Tax Map 24, Lot 6 to construct a new 3,496 sf farmstead building and provide associated parking and driveways. Property serviced by the City of Portsmouth municipal water and sewer. Property in the Business District. Case #02-2021.

Date of Decision: Tuesday April 13, 2021

Decision: **The Board voted 6-0-0 to conditionally approve the Major Site Development Plan.**

CONDITIONS OF APPROVAL

1. The March 24, 2021 plan set shall be revised as follows:
 - a. Architectural elevation drawings should show lighting fixtures attached to building.
 - b. Remove Note 4 from Sht. D-3, as recommended by Sebago.
2. A complete stamped version of the drainage report with supporting calculations should be submitted for the planning board's records, as recommended by Sebago.
3. Sufficient funds shall be placed in escrow with the planning board to pay final statements of planning board engineer and town counsel.
4. Applicant shall sign an Escrow Agreement and post escrow for planning board engineer's monitoring of site improvements. Amount to be determined by planning board engineer.
5. City of Portsmouth approval of water and sewer connections shall be obtained.
6. Demolition permit shall be obtained.
7. Planning board chair may sign plans when foregoing conditions Nos. 1-6 are met.
8. The *Foye's Farmstead Landscape Maintenance Plan* shall be attached to these conditions and followed.

❖ *Planning Board Approvals do not include building permits; please check with the Building Inspector's office before any and all construction.*

9. Water lines and appurtenances and sewer connections shall be constructed in accordance with Portsmouth Water and Sewer Department requirements.
10. For the purposes of RSA 674:39 "Active and Substantial Development or Building" shall be completion of demolition of the existing building.
11. As-built plans for all site improvements shall be submitted to the planning board (3 sets).
12. Per Section 303.7 of the *Land Development Regulations*, this conditional approval shall expire in 18 months if the chair has not signed the plan as the result of the applicant's failure to meet those conditions necessary to permit the chair to sign the plan.

4-16-21

Date

Patricia A. Losik

Patricia Losik, Chairman
Rye Planning Board

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 April 13, 2021

Decision: **The Board voted 6-0-0 to conditionally approve the subdivision.**

CONDITIONS OF APPROVAL

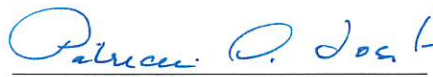
1. The February 19, 2021 plans shall be revised as follows:
 - a. Change waiver table on cover sheet to indicate date of approval of waivers. Same for Sheet C-6. See Sebago 2/28/2021 letter.
 - b. February 2021 Stormwater Management Report should be signed by a PE and submitted along with its supporting calculations as one complete document as a record of the final stormwater report. See Sebago 2/28/2021 letter.
 - c. Plans and Stormwater Maintenance and Inspection Report should be changed to address the last four bulleted recommendations of Truslow Resource Consulting March 2, 2021 report. All 5 bio-retention areas shall be grassed.
 - d. In order to be consistent with Zoning Table Note 3 on Sht. C-6, where the drawings indicate "Prop. Treeline, typ." that should be changed to "Prop. Treeline, typ. – i.e. Undisturbed Woodland Area. See Zoning Table Note 3, Sht. 6." Additionally, there should be several more locations of the tree line so labeled on Sht. C-6 and all sheets which depict the tree line.
 - e. Add a note to Sht. C-6 indicating that the driveway, house and bio-retention area located on Lot B shall be generally located as depicted and in no case closer to the northerly and westerly property lines than depicted.

- f. Note 2 on Shts. C-13 and C-7 shall be changed to indicate that the homeowner's association will be responsible for maintaining all bio-retention areas and all other drainage facilities.
 - g. A note shall be added to Sht. C-3 describing the 10 ft. wide tree cutting restriction as prohibiting the cutting of live trees greater than 4 ½ inches diameter measured at a height of 4 ½ feet above ground level. This restriction shall be placed in the Declaration.
 - h. Add a note to Sht. C-6 indicating that the build out of Lots A and B shall be generally as depicted on the plan and in accordance with the note referenced in 1f of these conditions. Impervious coverage and undisturbed woodlands shall not exceed the amounts indicated in the Zoning Table and Notes 2 and 3. Wording of note to be approved by town counsel.
- 2. A homeowners association ("HOA") shall be created for the subdivision. The HOA shall own the private right-of-way ("ROW") and all drainage facilities within the ROW as depicted on the approved plans and shall be responsible for the maintenance and repair of same. Additionally, the HOA shall be responsible for the maintenance and repair of the bio-retention areas and swales or parts thereof located on Lots A, B and C.
 - 3. Town counsel shall review and approve the Declaration, Bylaws and other HOA instruments and any other legal instruments required to form the HOA. Town counsel's review shall be limited to assuring that the HOA instruments are consistent with the approved plans and the board's conditions of approval.
 - 4. The applicant shall grant the town an easement relative to maintenance and repair of the bio-retention ponds, forebays and drainage swales. The easement shall: (1) require the applicant/homeowners association to be responsible for maintenance and repair of the drainage facilities; and (2) provide that, if the applicant or association fails to maintain or repair the facilities, the town, after notice, shall have the right, but not the obligation, to do so. In such case the association shall be responsible for reimbursing the town for its expenses. If the town has to commence a legal action to obtain payment, the town shall be entitled to its costs and reasonable attorney's fees. This easement shall be reviewed and approved by town counsel.

5. There shall be a drainage and flowage easement over Lot B granted to the HOA and Lot C for the swale located on Lot B. This easement shall be reviewed and approved by town counsel.
6. There shall be a drainage and flowage easement over Lots A and B granted to the HOA association for the swales located on said lots. This easement shall be reviewed and approved by town counsel.
7. Compliance with the Stormwater Inspection and Maintenance Plan approved by the planning board engineer shall be the responsibility of the HOA. Said responsibility to be set forth in the Declaration.
8. Surety in the amount of \$ 365,444 and in the form of a self-calling letter of credit and/or cash escrow shall be posted to guarantee the completion of the private drive, all drainage facilities, water lines and landscaping. Surety to be approved by town counsel.
9. Sufficient funds shall be placed in escrow with the planning board to pay final statements of planning board engineer and town counsel.
10. Applicant shall sign an Escrow Agreement and post escrow for planning board engineer's monitoring of site improvements. Amount to be determined by planning board engineer.
11. NH DES subdivision approval shall be obtained.
12. Street name to be approved by building inspector per town procedures and added to plans (if different than Fire Trail Lane).
13. Planning board chair may sign plans when foregoing conditions Nos. 1-12 are met.
14. The easements required by Conditions Nos. 4, 5 and 6 shall be recorded with the subdivision plan.
15. The Declaration, Bylaws and other legal instruments required to form the HOA shall be recorded with the subdivision plan.
16. The building inspector shall require a lot development plan prior to issuance of a building permit. Building permits (and certificate of occupancy) shall not be issued for any development which does not comply with the approved subdivision plan and Condition No. 1.h above. If necessary, the building inspector may retain the planning board engineer to assist in determine compliance with these conditions, at the expense of the building permit applicant.
17. The build out of the development shall comply with the Growth Management Ordinance.

18. The homeowners association shall retain one qualified contractor to inspect and maintain all of the bio-retention areas and other drainage facilities in accordance with the Stormwater Inspection and Maintenance Plan. The Declaration shall include this requirement.
19. Water lines, hydrants and appurtenances thereto shall be constructed in accordance with Rye Water District requirements.
20. Lot C shall be connected to the water line not later than the date of water line connection to the latter of the other two lots.
21. Monumentation shall be installed as required by the *Land Development Regulations* for the 3.64 acre parcel. A certificate of Monumentation shall be provided to the Planning Board and Building Inspector prior to the first occupancy permit being issued. Grading of lots shall not disturb installed monumentation. If development disturbs or covers monuments, the monuments shall be reestablished by a surveyor and a new Certificate of Monumentation provided.
22. For the purposes of RSA 674:39 "Active and Substantial Development or Building" shall be commencement of excavation for street construction.
23. As-built plans for all site improvements shall be submitted to the planning board (3 sets).
24. Per LDR § 202-4.4, this conditional approval shall expire in 24 months if the chair has not signed the plan as the result of the applicant's failure to meet those conditions necessary to permit the chair to sign the plan.
25. The executed conditions of approval shall be appended to and recorded with the HOA Declaration.

4-14-21
Date


Patricia Losik, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant: Eversource

Case: Case #05-2021

Application: Application by Eversource to trim and remove trees and brush adjacent to and beneath some of its power lines within the Town of Rye. All roads have been designated a scenic road by the Rye Town Meeting. The work is necessary to ensure the safe distribution of power and to improve the reliability of electric service for and part of their Capital Improvement Project. The work to be done will occur throughout the entire Town of Rye. Case #05-2021.

Date of Decision: Tuesday April 13, 2021

Decision:

| | |
|-------------------------------------|-------------------------|
| <input type="checkbox"/> | Approved |
| <input checked="" type="checkbox"/> | Conditionally Approved. |
| <input type="checkbox"/> | Denied |

The Planning Board 6-0-0 to approve the vegetation maintenance trimming plan:

1. Eversource must mail all property owners subject to scheduled maintenance trimming (SMT) a standard Notice & Consent Form per RSA 231:172. A property owner may request a personal consultation within 45 days of the mailing date by returning the card to Eversource by prepaid postage. If the property owner does not respond within 45 days, they are presumed to have consented.
2. For all activities occurring on scenic roads other than scheduled maintenance trimming (SMT) such as pole replacement, system upgrades, and/or hazardous tree removal, Eversource or their subcontractor, Northern Tree, must consult with and obtain the property owner's signature in advance. Eversource will provide Planning and Zoning Administrator Kim Reed a data sheet of all written approvals.

4-16-21
Date


Patricia Losik, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant: Rye Place Realty, LLC

Case: Case #06-2021

Application: Minor Non-Residential Site Development application by Rye Place Realty, LLC for property 150 Lafayette Road, Tax Map 10, Lot 14 to convert gravel unstriped parking area to paved parking area with striping per Section 202-2.1.B(1)(b) and Section 202-2.1.B(2)(c). Property is in the Commercial District, Aquifer Protection District. Case #06-2021.

Date of Decision: Tuesday April 13, 2021

Decision:

| | |
|-------------------------------------|-------------------------|
| <input type="checkbox"/> | Approved |
| <input checked="" type="checkbox"/> | Continued |
| <input type="checkbox"/> | Conditionally Approved. |
| <input type="checkbox"/> | Denied |

The Planning Board 6-0-0 to continue the application to the May 11, 2021 meeting.

4-16-21
Date

Patricia A. Losik
Patricia Losik, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision on waivers

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 April 13, 2021

Decision:

Motion by JM Lord, seconded by Pat Losik to accept the applicant's request for a waiver to the Rye Land Development Regulations Section 202-4.4 for the expiration of a conditional approval for two years (24 months). The reasons for granting are: (1) Strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations; and (2) Specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out the spirit and intent of the regulations. Motion passed 6-0-0.

4-14-21

Date



Patricia Losik, Chairman
Rye Planning Board

**LAND DEVELOPMENT REGULATIONS
2020 ATTACHEMENT 2**

APPENDIX B

**APPLICATION FOR WAIVER OF SUBDIVISION/SITE PLAN REVIEW
REQUIREMENT**

(Complete one form for each waiver request)

To the Chairman and Members of the Rye Planning Board:

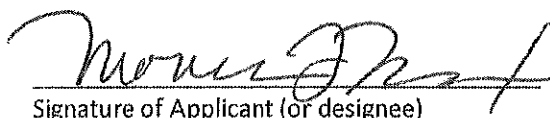
On February 19, 2021, I submit a plan for (subdivision/site plan review) approval to the Board,
entitled Proposed 3-Lot Subdivision - 711 Long John Road prepared by
TFMoran and hereby request a waiver from Article IV
Section 4.4 of the Rye Land Development Regulations.

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 for Wavler Request: LDR 4.4 requires the expiration of a conditional approval after 18 months.
When Nadeaus originally began this process, they intended to complete the subdivision process in several years. Given the
time and expense involved with addressing the next phase of the project, the bond requirement, and the two year
period permitted by RSA 674:39 I(a), an 18-month expiration presents an unnecessary hardship. Nadeaus requests a
24 month expiration for their conditional approval. This will allow them to move the project forward in the short term
while allowing sufficient time to market the subdivision.

The purpose of the regulation is to both protect the Applicant from subsequent regulatory changes and
to guard against projects that may begin but languish, or are built to outdated and substandard regulations. The
additional 6 months will not undermine these purposes, but will afford Nadeaus the necessary breathing room to
sustainably move forward with the Project.


Signature of Applicant (or designee)

R. Timothy Phoenix

4/7/2021
Date

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Michael Fecteau and Mike Gerrapy

Property: 850 Washington Road, Tax Map 11, Lot 130
Property is in the Single Residence District and Aquifer and Wellhead District

Case: Case #01-2021

Application: Major 4 lot subdivision by Jones & Beach, Engineers, Inc. for Michael Fecteau for property located at 850 Washington Road, Tax Map 11, Lot 130 to subdivide the existing lot into four residential lots with a road. Property is in the Single Residence District and Aquifer & Wellhead District. Case #01-2021.

Date of Decision: Tuesday April 13, 2021

Decision: The Board voted 6-0-0 that the application was incomplete and to continue the application to the May 11, 2021 meeting.

4-16-21

Date

Patricia D. Losik

Patricia Losik, Chairman
Rye Planning Board