

**TOWN OF RYE – PLANNING BOARD
MEETING**

**Tuesday, October 12, 2021
6:00 p.m. – Rye Public Library**

***Members Present:* Chair Patricia Losik, Vice-Chair JM Lord, Kevin Brandon, Katy Sherman, Alternates Bill MacLeod and Kathryn Garcia, and Selectmen’s Rep Bill Epperson**

***Present on behalf of the Town:* Planning/Zoning Administrator Kimberly Reed**

1. Call to Order

Chair Losik called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

Alternate Bill MacLeod was seated for Jim Finn. Alternate Kathryn Garcia was seated for Steve Carter.

2. Public Hearing on LDR Amendment: Amend Section 202-4.4 Conditional Approvals

Chair Losik read the amendment to Section 202-4.4.

Chair Losik opened to the public at 6:04 p.m. Hearing no comments or questions, the public hearing was closed.

Motion by Bill Epperson to accept the amendment to Section 202-4.4.

Seconded by Bill MacLeod. Vote: 6-0 motion passed.

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

- a. Lot Line Adjustment** for properties owned by Joel Feid and located at 705 Brackett Road, Tax Map 17, Lot 34-2, and by Christopher Reaney 691 Brackett Road, Tax Map 17, Lot 34 to relocate the common boundary. **Properties are in the Single Residence District. Case #16-2021.**

Motion by JM Lord to accept the application by Joel Feid and Christopher Reaney as complete. Seconded by Bill MacLeod. Vote: 6-0 motion passed.

- b. Amendment to Major Site Development Plan and Condo Conversion** by Judy Smith for properties owned and located at 733 Ocean Blvd, Tax Map 23, Lots 6-01 to allow for an expansion of the patio and landscaping. **Property is in the Business, General Residence and Coastal Overlay Districts. Case #17-2021.**

**Motion by JM Lord to accept the application by Judy Smith as complete.
Seconded by Bill MacLeod. Vote: 6-0 motion passed.**

- c. Major Subdivision and Conditional Use Permit for a Condominium Conversion** for property owned by Arthur & Sharon Pierce Rev. Trust, Arthur & Susan Pierce, Trustees for property located at 251-279 Pioneer Road, Tax Map 24, Lot 117 to convert 8 dwelling units in 4 duplex structures into 8 condominium units. **Property is in the Single Residence District. Case #13-2021.**

Vice-Chair Lord stated that it seems they've gone before the ZBA and received a variance from §190-5.3.C(2) and §190-5.3.C(7), along with a special exception from §190-5.3.A. However, in looking at Attorney Donovan's August 3rd letter, he recommends that the Planning Board not take jurisdiction because this requires DES subdivision approval and some of the submittal requirements for the LDR's are missing. It looks like the application is incomplete.

Note: *Katy Sherman arrived at 6:10 p.m.*

Planning Administrator Reed explained that Attorney Donovan determined that the variances were not needed for this application. The Zoning Board of Adjustment voted that the variances were not needed. The applicant received a special exception and that information was submitted to the Board.

Attorney Bernie Pelech, representing the applicant, noted that the special exception was received last month, after Attorney Donovan's August 3rd letter.

Chair Losik pointed out that the special exception allows for the conversion. Reading from the ZBA Notice of Decision, "The Board voted 5 to 0 that the variances requested from zoning §190-5.3.C(2) for a condominium conversion of 4 units having 580sq.ft., 580sq.ft, 530sq.ft. and 530sq.ft. where each is required to have a minimum of 600sq.ft. of floor area and from §190-5.3.C(7) as the amount of land designated as common area is less than 90% of the area of parcel not designated for buildings and individual unit owner's vehicles and does not meet the minimum lot area and frontage requirements were not necessary. The Board voted 5 to 0 to approve a special exception per the Rye Zoning Ordinance §190-5.3.A for 8 apartments in existing 4 buildings to become condominiums with conditions from Rye Conservation Commission's October 5, 2021 letter."

Chair Losik stated that from a zoning perspective, the special exception to allow the 8 apartments to become condominiums is there. The Planning Board is dealing with the major subdivision under the Land Development Regulations (LDR). With that respect, the information in Attorney

Donovan's August 3rd letter, #7, seems to have some relevance. There are items in the LDR that are not clear. One of the areas of concern is the flood risk information in 202-6.9.C which would require the applicant to show sea-level rise projects at 1.74' and 6.3'. Further, the Board cannot ascertain whether the applicant has met the standard for new septic systems. In 6.9, if there is a sea-level concern, the floor of the leaching pit shall be a minimum of 4' above seasonal high-water table. Additionally, a landscaping plan and lighting plan are needed. It appears that information is lacking. In terms of a waiver, there is a one-page summary of waiver request. The Board needs to formulate an opinion on the basis of information. The basis is generally written as no changes.

Attorney Pelech stated that the application was submitted back in June. Attorney Donovan had reviewed the application. The applicant has provided new septic plans. The applicant has also provided an opinion from a septic engineer that the existing systems are functional, which was provided with the original application. There is nothing changing on the site. There are no changes to the building or the site. There are no changes to the landscaping, the drainage or utilities. Everything is staying as is. The only change is the form of ownership. The Supreme Court has said if there is no change in use and the only change is a change in the form of ownership then RSA 356:B controls. That's why the 600sq.ft. minimum requirement, lot area and frontage requirement, were superseded by state statute. He noted that the waiver request is for final street and utility plans because nothing is changing. The utilities and street are shown on the submitted plan. As far as stormwater management, there is no change whatsoever to the existing stormwater management and that is why a waiver was requested. Likewise with erosion control, thus a waiver was requested. As far as site impact analysis, there's no change to the site. The site is as it has been for the last 40 years. There is no change to the use intensity, so a waiver was requested for the use intensity statement. In terms of the final topo and soils plan, there is no change and a waiver was requested. For the erosion control plan, a waiver was requested because there is no change. Final elevation drawings have been submitted. The floor plans have been submitted, along with the condominium site plan. The deeds and condo documents have also been submitted in the package.

Attorney Pelech noted that if the Board accepts the application as being not complete, he would like a very specific statement as to what is needed.

Chair Losik asked about the septic.

Attorney Pelech explained that they have a design for proposed replacement systems, which is a state requirement. The systems are all out of the 100' buffer. If any of the existing septic systems failed, the new system would be put in place. It was not anticipated that new septic systems would be put in at this time. Attorney Donovan said that a design for replacement systems was needed, in the event the existing systems were to fail. Engineer Alex Ross was hired to design replacement systems for the units, in the event the existing systems were to fail.

Chair Losik stated that where the systems may need some additional review is LDR 202-6.9, Standards for Site Plan Review, existing and proposed conditions plan shall reference a tides to storms vulnerability assessment and shall depict the extent of three sea-level rise projects; 1.7ft., 4.0ft., and 6.3ft. She continued that when she did the modeling it looked like there may be a concern. Chair Losik stated that on the plans there are notes as to what the seasonal high is and notes that indicate that the bottom of the bed are 30". In looking at the plans, it seems they may need to go higher. This is a discussion that would have to be taken up. She noted that if this is not going to be current work, the Board could make this a condition of the approval.

Attorney Pelech replied that would not be a problem. He believes the septic plans are compliant with 6.9. If the plans are not compliant, they will amend the plan. He reiterated that the existing septic systems that are on site and have been for many years, are functioning well and they have been inspected.

Chair Losik noted that the town has a robust landscape maintenance plan requirement in Article 11. She thinks the easiest thing to do would be to incorporate the recommendations of the ZBA which came from RCC into a memorandum (150 Lafayette). Chair Losik commented that the application can be accepted as complete and sent to the public hearing for discussion.

Motion by Bill MacLeod to accept the application by Arthur & Sharon Pierce Rev Trust as complete. Seconded by Bill Epperson.

Vote: 7-0 motion passed.

4. Public Hearings on Applications:

- a. Lot Line Adjustment** for properties owned by Joel Feid and located at 705 Brackett Road, Tax Map 17, Lot 34-2 and by Christopher Reaney 691 Brackett Road, Tax Map 17, Lot 34 to relocated the common boundary. **Properties are in the Single Residence District. Case #16-2021.**

Brenda Kolbow, TF Moran, spoke to the Board. She explained that the Feids live at 705 Brackett Road, which is map 17, lot 34-2, and the Reaneys live 690 Brackett Road, map 17, lot 34. The lots are located on the north side of Brackett Road and are in the Single Residence District. The purpose of adjusting the lot line is to create a lot line more representative of how the properties are used today and may be used in the future. The proposal is to adjust the common boundary line. There is a seasonal stream with wetlands that runs between the two properties. Neither property owner really has a reason to cross over this area. The Reaneys are contemplating some property improvements which includes vehicular access to the back of their barn. The location of the current lot line prevents that from happening without an easement. Moving the lot line closer to the wetlands and streams gives the Reaneys more space around their house and barn. It removes the space from the Feids who really don't need or want this area. The new boundary line generally follows the stonewall, except for one section in the middle in order to keep the Feid lot 66,000sq.ft. to comply with the regulations. The new lot line will

eliminate the well radius easement that is currently on the Feid property. Both proposed lots meet the minimum frontage and area requirements, so variances are not needed. Also, waivers are not being requested.

Katy Sherman asked why this is being done.

Joel Feid, applicant, explained there is a potential for a financial exchange. Also, the lot was initially subdivided in the early 2000's. The original proposal for his lot was to have a lot in the rear. They gave about 75ft off the stonewall to offer a driveway to the rear of the property. He continued that visually, it looks like it's the Reaneys property, but it is essentially his property. However, he does not use this property because it's on the other side of the stonewall. He and the Reaneys thought it would be logical to do a lot line adjustment that would visually appear to be the lot line along the stonewall.

Member Sherman asked if the neighbors intend to put another house in the back. She asked if that would even be possible with all the wetlands.

Mr. Feid stated it is his understanding the only improvement to be done is to the barn. There is no intention to land was initially subdivided. The intent is to stop that from happening. He thinks they might be open to a stipulation that it not be developed. He reiterated that is not the intention.

Ms. Kolbow commented that if that were to be subdivided it would have to come back before the Board.

Selectman Epperson commented that it seems straightforward. If the two residents can agree this is the right thing to do for their properties, far be it for him to disagree.

Referring to the frontage on Lot 34-2, Chair Losik asked for clarification on the frontage.

Ms. Kolbow reviewed the frontage for the Board.

Member Sherman asked if the lots could be subdivided into two lots.

Chair Losik replied that she doesn't feel this is something the Board could, or should, answer.

Alternate MacLeod commented they comply with frontage and area. To him, this is logical.

Planning Administrator Reed noted the Board has to look at the application that is before them tonight. If they wanted to subdivide, it would have to come back to the Board.

Member Brandon stated that they can't speculate on what they might, or might not, want to do. This is pretty straightforward. It's just making sure they understand how much frontage each lot has on Brackett Road, so there is no post-lot line dispute.

Chair Losik opened to the public for comments or questions. Hearing none, she closed the public hearing at 6:37 p.m.

Motion by JM Lord to approve the lot line adjustment for properties located at 705 Brackett Road, Tax Map 17, Lot 34-2, and 691 Brackett Road, Tax Map 17, Lot 34.

Seconded by Katy Sherman.

Vote: 7-0 motion passed.

- b. Amendment to Major Site Development Plan and Condo Conversion** by Judy Smith for properties owned and located at 733 Ocean Blvd, Tax Map 23, Lots 6-01 to allow for an expansion of the patio and landscaping. **Property is in the Business, General Residence and Coastal Overlay Districts. Case #17-2021.**

Judy Smith, applicant, addressed the Board. Her application is to replace the existing patio with new pavers and do some landscaping, along with putting in a gas grill and gas fireplace.

Chair Losik stated that in looking at the application, it seems the current patio is about 420sq.ft. The proposed looks to be about 700+/- . She asked if there is a minor encroachment on the limited common area (LCA). She asked about the western boundary of the driveway.

Ms. Smith replied it does not exceed the driveway. It's in the same location and just extending to the left to the edge of the house.

The Board reviewed the plans from the packet.

Referring to the February 13, 2018 plan, Chair Losik noted there is a box around units 1 and 2 showing the limit of the area. She asked if the expansion is going beyond the line.

Ms. Smith replied the half moon is going beyond that line.

Chair Losik stated there is a minor encroachment on the LCA. She asked if the proposed plantings are native plants, as the property is about 200ft from the riparian buffer to the estuary. The question is whether the plants will survive in this area.

Ms. Smith confirmed.

Planning Administrator Reed noted that she asked the building inspector to revise his denial letter. The application does not need variances. The only reason the applicant is before the Board is because it is a condo conversion and is changing the scope and encroaching a bit on the LCA. She pointed out that the waivers are needed because it's an amendment.

Chair Losik stated that she thinks they should add a waiver to 202.11 for the landscaping chapter for clarity.

Vice-Chair Lord stated that it looks like the end of the driveway might be the common area.

Chair Losik commented that it looks like it might not encroach on the LCA.

Referring to the 2018 plan, Alternate MacLeod stated that the LCA is everything outside the square. The area is limited to the use for unit 1, so it's for her limited use. He is not sure what the box is that surrounds the house, as both are labeled Condo Unit 1.

Referring to the minutes of February 13, 2018 meeting minutes, Chair Losik stated that it says a gentleman from Doucet Survey, Stephen Michaud, represented the applicant to deal with the garage. *"The condominium needed to be revised to allow for an expansion of the garage. They decided it would be better to reconfigure the condominium unit boundaries, so it is no longer the face of the building but rather a box around the buildings that encompasses some of the land adjacent to allow for potential future expansion."* She commented that it sounds like they did that because they were already dealing with a garage issue and this would further clarify what was available.

Alternate MacLeod stated this was so they could build an addition to a building and not be in the LCA. In the LCA, people typically do things like decks, steps, walks and driveways. He doesn't think there is an issue with her going into the LCA because it's already her LCA.

Vice-Chair Lord stated that it looks like they could put any building in the small box. The whole envelope goes to the LCA and the condo common area is to the rear.

Chair Losik opened to the public. Hearing no questions or comments, the public hearing was closed at 6:49 p.m.

Motion by JM Lord to approve the waivers to 202.3.1, 202.3.5 and 202.11 as strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

Seconded by Bill Epperson. Vote: 7-0 motion passed.

Motion by JM Lord to accept the amendment to a Major Site Development Plan and Condo Conversion by Judy Smith for property located at 733 Ocean Boulevard.

Seconded by Bill Epperson. Vote: 7-0 motion passed.

Note: *The following application was taken out of posted agenda order.*

- **Major Subdivision and Conditional Use Permit for a Condominium Conversion** for property owned by Arthur & Sharon Pierce Rev. Trust, Arthur & Susan Pierce, Trustees for property located at 251-279 Pioneer Road, Tax Map 24, Lot 117 to convert 8 dwelling units in 4 duplex structures into 8 condominium units. **Property is in the Single Residence District. Case #13-2021.**

Chair Losik stated the Board has language for the waivers. The Board had some discussion about what the conditions might be in regards to having a landscape plan and subject to septic review for compliance with 6.9. Those would be the two conditions.

Vice-Chair Lord stated that in Attorney Donovan's August 3rd letter it says that DES Subdivision approval is required. He doesn't see an application in the packet for DES.

Member Sherman commented that as of August 3rd, the application had not been filed. She asked Attorney Pelech if this has been filed.

Attorney Pelech replied that he believes it has.

Member Sherman stated that there were some concerns about the roots growing into the septic systems. She asked how long ago the systems were put in.

Attorney Pelech replied that the systems were put in 30 or 40 years ago. All of them have been inspected by a certified inspector and are functional.

Member Sherman asked if the systems will be replaced.

Attorney Pelech replied if there is a failure; yes. Right now, the systems are all operating fine. Attorney Donovan said that replacement systems should be designed and submitted, which has been done. He believes the application to DES for the replacement systems, as well as the Shoreland Permit application, have been filed. If not, this can certainly be a condition.

Chair Losik commented there are two situations with the septic as presented. One is the DES approval and the other is whether it meets the separation requirement to seasonal high-water table addressed in LDR 6.9. Her concern is that this may trigger some surface water issues and then it will fall under 195.7 in the zoning. If the current surface water flows are lower than the post septic installation flows, it can be an issue.

Alternate MacLeod stated that a condominium conversion isn't done unless there is DES Subdivision approval. The standard is that the systems have to have been approved in the last 20 years. These systems are 30 to 40 years old. He doesn't think DES will grant subdivision approval unless they condition it on the septic systems. However, Rye may have more stringent standards on the new septic systems than DES.

Chair Losik commented that she wondered if the engineer had designed the systems for DES, but what Rye has in 6.9 is a little different.

Alternate MacLeod stated that they should have their DES subdivision approval first, as the it may entail revised plans. The engineer should be more cognizant of the LDR's in doing the designs that are finally approved by DES.

Speaking to Attorney Pelech, Chair Losik asked if he's okay with the application being continued until DES approval is received.

Attorney Pelech agreed.

Chair Losik asked for a poll from the Board on a continuance.

Sherman – Yes; Garcia – Yes; Lord – Yes; Epperson – Yes; MacLeod – Yes; Brandon - Yes

Motion by JM Lord to continue the Major Subdivision and Condominium Conversion application by Arthur & Sharon Pierce Rev Trust for property located at 251-279 Pioneer Road, Case #13-2021, to the November 9, 2021 meeting. Seconded by Bill Epperson. Vote: 7-0 motion passed.

- c. Major Residential Site Development Plan** and BSL Rye Investors, LLC and Special Use Permit for property owned by BSL Rye Investors, LLC and located at 295 Lafayette Road, Tax Map 10, Lot 3 for construction of a 78 bed assisted living complex. **Property is in the Commercial District and the Aquifer and Wellhead Protection District. Case #14-2021.**

Joe Coronati, Jones and Beach Engineering, presented to the Board. He introduced Eric Gardner from Benchmark and Landscape Architect Jeff Highland from Ironwood Design.

Chair Losik stated that tonight they would like to talk about the changes in the landscaping plans and any changes that may have happened with architecture. The site walk minutes were received. The Board discussed going back out to the property to look at trees that would be identified for retention. She would like to think about a date for that site walk.

Mr. Coronati noted that the application was on the agenda for the ZBA October meeting. The case was 11th and 12th on the agenda and was not heard due to the length of the meeting. The application for variances was continued to the meeting on November 3rd. He pointed out that if the variances are denied, there may be other redesigns that will have to happen. He continued that the key element to what trees will remain on site is to get an answer in regards to the connector road. Attorney Donovan brought up the connector road at the site walk and the question came up about whether it's needed at all. If the connector is not needed, the trees in that area could be saved. Once it's known whether the connector road is needed or not, the trees being saved between the two projects can be marked. He commented this seems to be the main area of concern between the sites.

Mr. Coronati noted that Sebago's comments were received. There were a few more changes, which will be completed. An application has been submitted to the DES Alteration of Terrain Bureau on September 10th. It is anticipated a permit will be issued within a couple of months. He would also like to hear any additional comments and questions from the Board.

Chair Losik asked about the DOT middle lane striping.

Mr. Coronati explained the DOT striping change will happen by Dow Lane. There has not been a definitive answer from DOT. He will follow up with DOT District #6.

In regards to the emergency access, Chair Losik stated that the information from the department heads was probably based on their visits to the site this summer. There's a department head review sheet from the Fire Department, which talks about minimum road width, cul-de-sac radius, fire hydrants, fire alarms and sprinkler systems. She suggested having the Fire Chief and Police Chief Walsh weigh-in on the idea of the emergency access going away.

Planning Administrator Reed commented that this was discussed at the site walk, but it was just a discussion. She was waiting until this meeting to get more direction from the Board.

Mike Garrepy, Developer, stated that he believes the department head reviews came in prior to the discussion about adding the connection. He thinks both plans were reviewed independently without that connection. They didn't raise any issues with respect to needing a connection. He believes it was Attorney Donovan who suggested the connection.

Chair Losik pointed out that the site walk minutes show there was discussion about making sure it goes back before the Fire Chief for review in regards to fire apparatus accessing the site. She thinks they might be concerned about having enough space for three trucks on the site.

Vice-Chair Lord commented that Attorney Donovan brought up generally the question of whether it was needed. He thinks there was some discussion about wanting to save some trees for more buffer. It would be hard for the Board to speculate about what the fire and police chiefs think of the plans. It should probably go back to them. He does not think they need a paved road between the two projects. A gravel and sand all-purpose road could probably be done. He commented that not as many trees would need to be cut.

Member Brandon stated that there was also discussion about how human nature would dictate that people leaving the parking lot might find it easier to cut through the condominium neighborhood. He pointed out that one of the nice things about living on the cul-de-sac is that the children can play without the prospect of cars coming through.

Alternate MacLeod stated that each project should stand on its own. However, the Board should get input from the fire and police chiefs. He continued that the Board has been looking at this plan with an emergency connection. He asked if it's going to be gated.

Mr. Coronati confirmed.

Alternate MacLeod noted it will not be used by the occupants of either site. It's gated for emergency purposes. The Board should make sure that it's absolutely not necessary because there are benefits to not having it. The Board needs the chiefs' input to make a decision on whether it should be required or not. It may be beneficial not to have it to maintain additional vegetation and

trees to provide an area on the Hector's side for passive recreation. That may a good location for it. The chiefs should weigh-in with the data.

Vice-Chair Lord agreed with Alternate MacLeod. If they really do need a way to get through, do they really need a paved access? There could probably be an access through there that they could use anytime in an emergency, but for the most part would visibly go away.

Referring to the minutes of the site walk, Chair Losik noted that Attorney Donovan commented *"they should consider the balance between the objective of tree retention and having the second access road. He wonders if the road is really needed"*. She stated this is when the group was looking at the trees. There is quite a good amount of substantial and healthy trees. Everyone was contemplating what that big wide-open space would do.

Mr. Coronati stated there was a couple of things brought up during that discussion. The way the site is being developed, there's not going to be a lot of tall mature trees within the development. There will be new trees planted. There are no trees currently until the area just past the first seven units. That was part of the discussion also. It's not a tightly wooded neighborhood where trees can fall across the road. The trees will be cut back to the edges and there are buffers that will be saved. It's not a site with 100' tall pine trees right next to the road that could fall during a storm once the project is developed and built. He continued that Attorney Donovan brought up that the Falzone project, which is 20 units, didn't require a second access. On the 40-unit development there was a second way out and this project is right in the middle with 30-units. He thinks the reference that Attorney Donovan was referring to was from the subdivision regulations regarding a second egress for 10 lots or more.

Chair Losik stated the width of the opening is about 40' or 50'. It's a big opening. That is a building of size on the Benchmark property. When the trees are all cut and at night, it gives a whole different approach. She commented there's a wonderful landscape plan in place for both properties, but it's going to take a while.

Mr. Coronati commented that the preference is to not have the access; however, they are fine if the Board decides to keep it.

Selectman Epperson asked what would happen if there was an emergency at the end, near Dow Lane, with another emergency in the rear of the property and the front access is blocked. He thinks there needs to be some access so the Fire Department and ambulance can get to the further part of this development. He thinks it should be done.

Planning Administrator Reed noted that she would like to bring this plan to the Fire Chief and Police Chief. Perhaps, a joint meeting can be scheduled with Mr. Coronati to talk through the issues. She knows the Fire Chief had concerns with the radii on the Benchmark property. These issues could be flushed out prior to the next meeting.

Chair Losik agreed. She asked the applicant to review landscaping. She referred to the trees at the front of the Benchmark property.

Jeff Highland, Ironwood Design, stated that he looked at where those trees currently exist and there may be some potential to preserve them; although, it's hard to tell because those aren't surveyed. It's known generally where they lie because there's existing edge of pavement. He commented there are two oak trees that have the potential of remaining. (He pointed out the location of the trees on the plan.)

Referring to the landscaping plan, Mr. Highland stated there are relatively minor changes since the last meeting. Following the site walk, a few additional evergreen shrubs were added along the edge to help fill in. The trees existing trees in that area are fairly high limbed, so there is a bit of missing buffer in the intermediate range. He continued that the last time, there were Sugar Maples along the front. It's always a bit of a concern to have a monoculture of plants all in a row along a corridor. He noted that the trees have been divided up into groupings; Red Oak, Elm and Sugar Maple. Diseases and pests do come up and this will help prevent everything being wiped out. He stated that other than that, things have been tightened and cleaned up. As the engineering drawings evolve, additional survey information is received and additional site visits are done, the landscape plans get enhanced and updated.

Chair Losik asked if it will eventually evolve to a maintenance landscape plan.

Mr. Highland confirmed. He noted that they will go out and flag the existing trees once there is a bit more agreement on the access road.

Speaking to the Board, Mr. Coronati asked if they are good with landscape, traffic and architecture, at this time.

Chair Losik asked about the color of the siding.

Eric Gardner, Benchmark, replied that a color has not yet been chosen.

No further questions were heard from the Board.

Chair Losik opened to the public for comments. No comments were heard and the public session was closed at 7:35 p.m.

Motion by Bill MacLeod to continue the application by BSL Rye Investors, LLC to the November 9, 2021 meeting. Seconded by JM Lord. Vote: 7-0 motion passed.

- d. Major Site Development Plan and Special Use Permit Application** by Jones & Beach Engineers, Inc. for property owned by Malcolm E. Smith, III and located at Tax Map 10, Lot 1 to construct 30 2-bedroom residential condominium tri-plex units. **Property is in the Commercial, Multi-Family Overlay District and Aquifer & Wellhead District. Case #11-2021.**

Joe Coronati, Jones and Beach Engineers, introduced Mike Garrepy, the applicant, Jeff Highland from Ironwood Designs and Architect Wendy Welton from Artform Home Plans. He noted that the plan for this meeting was to talk about the architecture and the offsite wetland. He explained there is an offsite wetland in Greenland on the landfill property. They have been holding a 75' setback to that wetland. It was brought up that it's located in the Berry's Brook Watershed and a setback is required if the wetland is greater than an acre. Jim Gove went out to the site and determined that the wetland is not smaller than an acre. Mr. Coronati noted that by the time this information was received, there was not enough time to change the plans. The plans in front of the Board show the 100' setback and what is located within that setback.

Chair Losik asked if there is any issue on the south side of the property near the North Hampton lot line.

Mr. Coronati replied that setback is already at 100'. Referring to the plan, he noted that everything will have to be pulled forward a smidge and tightened up. There were generous gaps between the buildings. Basically, the plan will lose 25' to meet the setback. The side decks might have to move to the rear. He assumes the 25' separation between buildings includes decks.

Chair Losik confirmed.

Mr. Coronati pointed out that they were previously maintaining 25' to the decks and the decks are 10' in depth. Most likely, it's going to be just the units on the left side of the road. They would end up being 5' closer. Instead of the buildings being 35' apart, they might be 30'.

Vice-Chair Lord commented this is diminishing the quality of life for 25' on the wetland. If this was a ledgy, rocky, miscellaneous wetland, he might have a different thought. However, this is like pure sand and the wetland is 15' or 20' below the property. He's very much into wetland buffers, but he questions this case and whether the extra 25' is worth the impact on this project.

Member Brandon agreed.

Mr. Garrepy stated that in looking at the statutes on land effected by municipal boundaries, it would be looking at Greenland's regulations as it applies to their wetlands.

In looking at future impacts, Vice-Chair Lord stated that he thinks what is happening here is probably more than adequate protection to what was probably a gravel pit at one time.

Chair Losik commented that the back area to the west is just lovely as it is. She agrees that it would be good if the applicant could find a way to not have to move things forward, as it already feels tight in the front.

Mr. Garrepy noted that the issue is the time that it takes to get on the zoning board agenda because that board is so busy. It could take four months to get on the agenda. He doesn't think they have the time to take a chance that the variance might not be approved. He commented that moving the decks to the back might help. It may be more challenging, but it might be the route to take.

Planning Administrator Reed noted that the application wouldn't necessarily have to go to the building inspector for a denial letter, if the Planning Board issues a notice of decision stating what they believe is needed for relief. This was done for a couple of other cases.

Vice-Chair Lord asked the setback to the wetlands for Greenland.

Mr. Coronati replied it's 50' and 75'.

Vice-Chair Lord commented this is imposing a greater setback on protection of wetlands that are located in Greenland than the Town of Greenland would even do themselves.

Mr. Garrepy stated that statute 674:53, Land Affected by Municipal Boundaries, might be what the board would look to for the answer.

Speaking to Mr. Garrepy, Chair Losik asked if this has been discussed with Attorney Phoenix.

Mr. Garrepy replied no, but they can. He asked if it would be appropriate to ask Attorney Phoenix to converse with Attorney Donovan.

The Board agreed this would be fine with the Planning Administrator being copied on any correspondence.

Wendy Welton, Architect, stated that it would be better if the buildings are not pushed closer together, in order to keep the option to have the decks spaced the way they are for privacy. Referring to the architectural renderings, Ms. Welton explained that the concept still holds. The side facing the main road will have architectural detail. The buildings were designed to separate the outdoor space. The middle unit is wider than the two end units because the end units have the benefit of windows on the side for the bedrooms. The idea for the outdoor deck was to keep them completely separated so they didn't rely on privacy screens. She commented that if the deck has to move to the back, it's not going to be a problem, as they will still be well separated. There is also patio space on the ground level.

Member Sherman asked if all the decks would be moved to the rear on all of the buildings.

Mr. Coronati replied that maybe not the ones on the right side of the development, but on the left side.

Ms. Welton noted that this may be a choice the final builder makes to have them all be the same.

Jeff Highland, Ironwood Design, stated that based on the Planning Board's request at the last meeting, he looked at developing some representative examples of the patios and landscaping for the individual units. From the landscape standpoint, the biggest issues are the sun and shade. (He pointed out on the plan the buildings that will have more shade and the ones that will have more sun.) He continued that the middle unit has a patio to the rear. The end units have patios off to the side. The patios are 9'x12' with a 3'x4' landing coming out of the doorway. The plantings are specified for shade or sun, but can be moved around or modified. A concrete unit paver has been suggested, so it will be a nice residential patio. There will be plenty of space for a table, chairs and a grill. He continued the plantings are designed for privacy and seasonal color. There will be a mix of evergreens and perennials. Mr. Highland stated that another issue they thought about was snow coming off the roofs. The plants within the snow landing zone will be able to withstand that environment. He commented that he hopes the buildings don't move too much. As the buildings get closer together, the opportunities are reduced a bit. As it stands now, it works pretty well.

Mr. Highland stated that based on the site walk, there are a few changes. Some trees have been added along the frontage. The Birch trees are now shown on the landscaping plan as being preserved. He noted that birches can be sensitive to construction impacts but he believes there's enough space. (He pointed out on the plan the plantings that have been further extended to the north.)

Chair Losik commented that she saw the addition of 13 trees, which is appreciated.

Mr. Highland pointed out on the plan an inset space at the rear of the property and commented about what could happen in that space if the access road disappears. There's a path that could meander through that space. It could be a pocket park for passive recreation.

Alternate Garcia asked about the location of the pocket park.

Mr. Highland pointed out the location on the plan. He continued there is a pocket park in the center of the round-a-bout. There's also a sidewalk meandering through the space to create a community loop.

Chair Losik asked if some of that space would be used for snow storage in the winter.

Mr. Highland stated that it probably isn't necessary for snow storage. For the most part, the snow around the cul-de-sac will just be pushed around the edge.

Alternate Garcia stated that at one time there was discussion about the possibility of a play area.

Mr. Highland stated there's stormwater treatment in that area, so it's not a flat area. He continued there was some discussion about the playground and how the team felt about it. In general, it's felt that the people who may be enticed to live here are going to be people who are downsizing. It isn't

anticipated that there will be a lot of children in the development. The desire was to not invest in a playground until it's known who will actually be living in the development.

Alternate Garcia asked where the playground could be located if that were to come about.

Mr. Highland replied that they can look at a placeholder. He noted that one of the challenges with a playground is that no one really wants to live next to one. (He pointed out an area on the plan where a playground could go.)

Chair Losik asked about workforce housing. She noted that the workforce housing units are all middle units in the front of the development.

Mr. Garrepy pointed out the location for the workforce housing units. He commented that a couple of the units could be moved to the back of the development. The idea was to have the workforce units look very similar to the market units on the outside, but potentially be a bit smaller. The middle units are wider but smaller in square footage. He reiterated that the units could be moved to other buildings, in order to be more evenly distributed throughout the development.

Referring to the development at 1244 Washington, Chair Losik stated that the workforce housing units were disbursed amongst the buildings. The allocation was for two 2-bedroom units, one 3-bedroom unit and one 2-bedroom with a den. The workforce housing units participated in the slightly larger units in that development.

Planning Administrator Reed suggested that this may be an issue for Attorney Donovan and Attorney Phoenix to discuss. The units cannot be designated from the onset as to which ones are going to be workforce housing. The units need to be identical and located throughout the development. She noted that there can be variety; such as, the number of bedrooms. However, they can't all be the middle unit.

After some discussion about workforce housing, Mr. Garrepy agreed to do some research and make some modifications to the plans.

The Board had no further questions.

Chair Losik opened to the public for comments. Hearing none, she closed the public session at 8:19 p.m.

**Motion by JM Lord to continue the application by Jones and Beach Engineers, Inc. for property owned by Malcolm E. Smith, III to the November 9, 2021 meeting.
Seconded by Kevin Brandon. Voted: 7-0 motion passed.**

- e. **Major Subdivision and Conditional Use Permit for a Condominium Conversion** for property owned by Arthur & Sharon Pierce Rev. Trust, Arthur & Susan Pierce, Trustees for property located at 251-279 Pioneer Road, Tax Map 24, Lot 117 to convert 8 dwelling units in 4 duplex structures into 8 condominium units. **Property is in the Single Residence District. Case #13-2021.**
 - *Addressed earlier in meeting (see minutes above).*

5. New Business

- **Request Exemption from Planning Board**

A request for an exemption to LDR §202-2.1.B(4), Exempt Activities, was received from The Grail Zone located at 6 Airfield Drive. The Board agreed the request meets the criteria for exempt status, as the use intensity will be less and there are no external changes proposed.

Conditions of Exempt Status under LDR §202-2.1.B(4)

1. There are no additions to the aggregate coverage of existing structure or buildings or additions to the existing parking, loading and unloading areas, and driveway areas.
2. There is no surfacing of existing unsurfaced parking areas, driveways, loading and unloading areas and walkways.
3. There is no change in use (including use intensification) involving expansion of a building or construction on the lot. Further:
 - a. No additional off-street parking is required
 - b. No increase in the impact of existing septic system
 - c. No adverse impacts will occur beyond the site development boundariesIncluding:
 - i. Increased traffic hazards
 - ii. Groundwater and drainage
 - iii. Sanitary and solid waste disposal
 - iv. Lighting
 - v. Noise pollution
 - vi. Air pollution
4. If a change of use is determined, a change of use permit must be obtained from the Building Department prior to the opening of Grail Zone business.
5. Hours of operation will not exceed 5:00 a.m. – 9:00 p.m., 7 days per week.
6. All activities will take place within the building.
7. The occupancy load will not exceed 1042 occupants.

Motion by JM Lord to approve the exemption to LDR §202-2.1.B(4) for The Grail Zone for property located at 6 Airfield Drive. Seconded by Bill Epperson.

Vote: 7-0 motion passed.

6. Committees

- **Long Range Planning** – Visioning Session November 10, 2021

The Long Range Planning Committee is grateful to everyone who filled out the municipal and community surveys. The Committee will be holding an in-person visioning session on Wednesday, November 10th, 6:30 to 8:00 p.m. It was decided to hold the visioning session in person by a vote of the Committee. All necessary precautions are being taken to meet the CDC Guidelines. All planning board members are encouraged to attend.

Chair Losik noted that the Committee has done a wonderful job. She thanked the members and Julie LaBranche.

The next meeting of the Long Range Planning Committee will be held on October 19th.

- **Rules and Regulations** – update

The Rules and Regulations Committee has been looking at detached accessory dwelling units (DADU). There has also been some consideration given to multi-family and whether any changes are needed. These things tie into density and the concerns about the various resources in the community. It is not likely that there will be a warrant for DADUs for next spring.

Driveways is another area that was brought up for Rules and Regulations to look at. There are driveway regulations in the Land Development Regulations, but it's fairly silent in the zoning. The Committee is considering what could be put into zoning.

The Committee is looking at structures; namely, playground sets in setbacks and buffers. They are also looking at adding retaining walls and talking about how structures relate to the wetland buffer. This is an area that Attorney Donovan is helping the Committee with. Attorney Donovan will also be doing a comprehensive review of the LDRs. He will be looking at areas that may need more clarity and addressing areas where there are loopholes. The Housing Appeals Board is another area that is being discussed and worked on by the Committee. The Committee will be looking at fertilizers based on the work and information provided by Danna Truslow. Discussions will continue in regards to piers and fill.

- **TRC** – update on existing subdivisions

Vice-Chair Lord reported that it seems that they were preparing to pave Autumn Lane; however, it's being pushed back to next year.

Planning Administrator Reed noted that an important LDR deadline was missed. The deadline for putting down the base is October 1st. The final course is November. She suggested revisiting the deadlines, as climate change has made it possible to push out the deadlines a bit.

It is anticipated that an application is going to be submitted from one of the homeowners at the Goss Farm Subdivision for a violation of a condition of approval of the subdivision, which involves a deck in the buffer.

Vice-Chair Lord noted that the development at 1244 Washington Road is moving along and will probably be ready for occupancy permits in the spring. There may be a need to visit the site to look at the trees that have been relocated, as they might need to be replaced.

7. Other Business

f. Minutes – September 14, 2021

The following corrections were noted:

- Page 14, middle of 1st paragraph it should read: **The one refinement that was that was made to the plan is that the finished grade plane, relative to the finished floor elevation, is now shown.**
- Page 15, last paragraph, last sentence should read: **It will be done with a native palette of plants in a way that looks natural.**
- Page 16, 1st paragraph, 1st sentence should read: **The buffer on the 30-unit side of the property will complement the buffer on the opposite side.**
- Page 17, 6th sentence from the bottom should read: **Alternate Wright asked how tall a maple tree would be going in with a caliper of 3” to 3.5”.**

Motion by JM Lord to approve the minutes of September 14, 2021 as amended. Seconded by Katy Sherman. Vote: 6-0 (Kathryn Garcia not present for vote)

g. Escrows

None for this meeting.

8. Communications

- Attorney Donovan has submitted a memorandum to the Board regarding swingsets (playsets) in the yard setbacks and wetland buffer.
- The Moorings at Rye Harbor Report was received.

Adjournment

Motion by JM Lord to adjourn at 9:08 p.m. Seconded by Katy Sherman. All in favor.

Respectfully Submitted, Dyana F. Ledger