

**TOWN OF RYE – PLANNING BOARD
MEETING**

**Tuesday, December 14, 2021
6:00 p.m. – Rye Public Library**

***Members Present:* Chair Patricia Losik, Steve Carter, Jim Finn, Katy Sherman, Selectmen's Rep Bill Epperson, Alternates Kathryn Garcia and Rob Wright**

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

1. Call to Order

Chair Losik called the meeting to order at 6:05 p.m.

Alternate Kathryn Garcia was seated for JM Lord. Alternate Rob Wright was seated for Kevin Brandon.

2. Public Hearing on Zoning Amendments:

- **2022-01 amends §190-4.2.C(4)** to reduce the number of dwelling units allowed in a multi-family dwelling from eight to five.

At 6:06 p.m., Chair Losik opened the public hearing for Proposed Zoning Amendment 2022-01.

Selectman Epperson asked the reason for the change.

Chair Losik explained that if it's not changed, they could see massing double of what is seen at 1244 Washington, which would be eight.

No other questions were heard from the Board.

Steven Borne, 431 Wallis Road, asked why it could not be less than five.

Chair Losik noted this is by statute.

Attorney Michael Donovan explained the Workforce Housing Statute requires communities to provide reasonable opportunities in their zoning for multi-family dwelling housing. It defines multi-family housing as being units of five.

Mike Thiel, 34 Brackett Road, asked if there has been any consideration given to having different rules for different parts of town. He doesn't think anyone would have any objection to having more than five units in a building along Route 1.

Attorney Donovan noted there has been a conceptual proposal for most of the Ciborowski land, which is most of the remaining land left on Route 1. That proposal is based on triplexes. The demand in Rye seems to be for the triplexes.

Mr. Borne stated that a number of years ago, there was a warrant article to allocate certain parts of town for workforce housing. He asked if the five-unit buildings are limited to the areas that were designated by that warrant article.

Attorney Donovan replied yes. It's an overlay district on the commercial district along Route 1. Other commercial districts in Rye are not eligible for workforce housing. It's just the commercial property along Route 1.

Hearing no further comments, Chair Losik closed the public hearing at 6:11 p.m.

Motion by Bill Epperson to move Proposed Zoning Amendment 2022-01 to the town warrant. Seconded by Katy Sherman. All in favor.

- **2022-06 amends sections of the Zoning Ordinance** to indicate that appeals may be taken to the Housing Appeals Board, in addition to the Superior Court.

At 6:13 p.m., Chair Losik opened the public hearing for Proposed Zoning Amendment 2022-06.

Alternate Wright asked if the town still has an avenue to appeal any decision by the Appeals Board.

Attorney Donovan confirmed that there can be an appeal to the N.H. Supreme Court. The caveat is that because the Housing Appeals Board is an administrative board, whether or not the Supreme Court accepts the appeal is discretionary. Whereas, if it's a Superior Court decision, the Supreme Court has to accept the appeal.

Hearing no further comments from the Board or public, Chair Losik closed the public hearing at 6:14 p.m.

Motion by Jim Finn to move Proposed Zoning Amendment 2022-06 to the town warrant. Seconded by Steve Carter. All in favor.

- **2022-7 amends §190-11.1** to notify users of the ordinance that driveways are regulated by the Land Development Regulations and that a driveway may not be located within 10ft of an abutting property line.

At 6:15 p.m., Chair Losik opened the public hearing for Proposed Zoning Amendment 2022-07.

Chair Losik explained that this came up because of a zoning case. An email was received from Rye Resident Dominique Winebaum through the chair of the ZBA.

Steve Borne, 431 Wallis Road, asked if the Land Development Regulations are just another name for the zoning ordinances.

Chair Losik replied no.

Mr. Borne pointed out there are also the Land Use Regulations for major site developments.

Chair Losik explained there are the building codes, which encompasses a great deal of various codes. The town's zoning falls to the purview of the building inspector. He is also involved in projects that are approved and come out of the Planning Board via the Land Development Regulations.

Attorney Donovan explained the core of the Land Development Regulations, Chapter 202 of the Town Code, encompass both subdivision and site plan review regulations. Those are under the umbrella of the Planning Board Land Development Regulations. With respect to driveways, the State Statute specifically says it's the Planning Board that issues driveway permits. The Driveway Regulations are an appendix to the Land Development Regulations.

Mike Theil, Brackett Road, asked if this is an attempt to prevent development of land that has small frontage on a public road.

Chair Losik stated that it's making sure there is an awareness that a driveway cannot exist within 10ft of an abutting line.

Attorney Donovan explained there was a case before the Zoning Board where the driveway was within 10ft of the property line and no one realized that this was in violation of the driveway permits. All this amendment does is put language into the zoning ordinance which makes readers aware that a driveway needs a permit from the Planning Board. As far as the 10ft separation goes, it has nothing to do with narrow frontage lots. It's just to have reasonable separation from the neighbor's property line to the driveway.

Corey Colwell, TF Moran, noted that a lot of projects in Rye put before the Zoning Board that have driveways within 10ft of the property line, but the driveway is being altered. The pavement might be proposed to be removed but it is still within 10ft. He asked if that alteration requires Planning Board approval.

Attorney Donovan commented that if the driveway is being moved, it would have to comply. If it's being rebuilt, it would be up to the building inspector and the town attorney would have to weigh-in.

Member Carter commented that if just the driveway material is changing it would be okay. However, if the driveway is being moved, but still within 10ft, it would have to go before the Planning Board.

Attorney Donovan explained that at some level of renovation or upgrading of a property a person has to back-in to compliance with the regulations.

Chair Losik closed the public hearing at 6:30 p.m.

Motion by Jim Finn to move Proposed Zoning Amendment 2022-7 to the town warrant. Seconded by Steve Carter. All in favor.

- **2022-010 amends §190-3.1.B(1)** to correct an incorrect reference to 190-11.1.

At 6:30 p.m., Chair Losik opened to the public for Proposed Amendment 2022-010.

No comments were heard from the Board or public. Chair Losik closed the public hearing at 6:32 p.m.

Motion by Rob Wright to amend §190-3.1.B(1) to correct an incorrect reference to 190-11.1. Seconded by Bill Epperson. All in favor.

- **2022-02 amends §190-4.2.C(8)** to increase the required building spacing from 25ft to 35ft.

Chair Losik noted that Alternate Bill MacLeod sent his thoughts to the Board by email. He felt strongly about a couple of them. Chair Losik continued that they have found that in developments when the buildings are spaced a little more apart, even a third more, it seems to make a difference. Bill MacLeod's concern at the November meeting was that he didn't feel it was right to make parking structures and accessory buildings subject to additional 10ft. He suggested building spacing be revised to "all buildings shall be separated by at least 35ft". He notes; "by including parking structures and accessory buildings we are forcing parking in garage areas to be further away from the primary residential building. This is very restrictive from a design point of view. We should also consider hazardous winter conditions with longer walks from parking areas and garages to the residential structure."

Attorney Donovan stated that if the Board wants to use what Bill MacLeod has suggested, a way to do this would be to use the word "dwellings". "All dwellings shall be separated by at least 35ft". He continued that he understands Bill MacLeod's point about garage structures. He noted that everyone has seen multi-family dwellings where the units have a garage space in a long-covered structure. He suggests that those still need to be separated somewhat from dwellings for fire protection reasons. The Board may want to think about whether those type of large structures should be separated by some amount from dwellings.

Alternate Wright stated that he tends to support Bill MacLeod's notion. He agrees that the Board doesn't know what the designs are going to be for developments like this. Typically, if there is a parking garage that is separate, it would be separated by a driveway or parking area. He understands that they are trying to avoid the appearance of very densely massed structures. He

feels like it puts a burden on the developer that doesn't necessarily need to be there. It also puts a burden on the residents who have to walk a long distance to their garage. He supports the language that Bill MacLeod has proposed, as amended by Attorney Donovan; "all dwellings".

Chair Losik pointed out that in zoning the definition of garage is "an accessory building joined or attached or entirely separate from the dwelling or principal building it serves and having a garage style door. The primary use is the storage or parking of not more than three motor vehicles. If the garage is used in connection with a multi-unit dwelling, the number of bays shall not exceed the number of units".

Member Finn commented that he tends to agree with Bill MacLeod and Rob Wright.

Member Carter stated that he worries about something like Airfield Drive where the garages are attached to the buildings. Is that part of the dwelling?

Attorney Donovan stated that if the garage was attached to the dwelling, the 35ft would then apply to the whole building. The attached garage would have to be 35ft from the next dwelling or attached garage. The attached garage would really be considered part of the dwelling.

Member Carter stated he would be in favor of using the word "dwelling".

Selectman Epperson commented he supports "dwelling" also.

Chair Losik agreed. She opened to the public.

Steve Borne, 431 Wallis Road, stated that he would like to see more space between buildings. Bigger buildings will block the sound of the ocean for people who live near the ocean. He would like to see as much space between buildings as possible.

Corey Colwell asked if "dwelling" prohibits commercial buildings. Commercial buildings could theoretically be closer.

Planning Administrator Kim Reed pointed out this is under multi-family developments, not all residences.

Motion by Rob Wright to amend 190-4.2.C(8) to increase the required building spacing from 25ft to 35ft with the word "building" changed to "dwelling" and to move to a public hearing on January 11, 2022.

Seconded by Jim Finn. All in favor.

- **2022-08 amend §190-11.1** to clarify that bio-retention ponds and similar drainage facilities are structures.

Chair Losik stated that the Board debated this at the last meeting. Some members felt very strongly that they didn't belong in setbacks. Bill MacLeod has noted his thoughts; "I cannot agree that bioretention ponds, raingardens, etc. are structures and should be subject to current dimensional requirements; i.e., setbacks from lot lots. As I mentioned at an earlier meeting, the raingarden at The Atlantic Grill would not comply with this amendment. Perhaps we can look more closely at the problem we are trying to fix."

Attorney Donovan stated that since this was proposed, Benchmark applied to the ZBA for an administrative appeal. The ZBA upheld the position that these are structures that have to honor the setbacks. After that decision, they went on and gave a variance to Benchmark. One could take the position that this doesn't really need clarification anymore because the ZBA has made a ruling on it. That ruling was not appealed by Benchmark because they got the variances. One option is to just table this and debate another year on whether they should be removed from the setbacks or not. This is not about whether they can be in setbacks or not. It's just clarification that they are not supposed to be in setbacks; notwithstanding the fact that the Board has approved a couple that have been in the setbacks in the past.

Chair Losik asked the Board if they should move this to another time period and not make a change now.

Member Finn stated that agrees with Bill MacLeod's point. Raingardens and ponds are more permanent features than structures.

Chair Losik stated that she would like to see this go back to the Rules and Regulations Committee. There have been some bio-retention facilities that have fit in better than some others.

The Board agreed to send it back to Rules and Regulations for more work.

- **2022-09 amend §190-11.1** the definition of "structure"

Chair Losik stated that this came to Rules and Regulations from the Building Department. It crops up because retaining walls are not really subject to the dimensional requirements and there's been oversight. Sometimes retaining walls are significant in structure and are in setbacks. Both Steve Harding and Bill MacLeod weighed in on this. Bill MacLeod suggested looking at retaining walls in a differentiated fashion; setting retaining walls 8ft in height or less as not subject from the dimensional setbacks; exempt. With retaining walls over 8ft considered as structures. She continued that when Rules and Regs looked at other communities, 6ft is often used.

Selectman Epperson commented that he tends to agree with Bill MacLeod. Maybe it could be that 6ft or less would not be subject to dimensional requirements.

Member Finn agreed. He thinks 8ft is getting a bit high. He would be more comfortable with 4ft to 6ft.

Member Sherman commented she would agree with 4ft to 6ft.

Member Carter agreed with 4ft to 6ft.

Alternate Wright stated that when he thinks of a retaining wall going uphill, it may need something substantial. It's usually a case where the topography is unusual where someone would need relief. He thinks there are a lot of 4ft high retaining walls that happen in side setbacks to keep the grade from running off to the neighboring property. He thinks under 5ft would be his preference.

It was the consensus of the Board to make the change to 6ft. The Board worked on the language in 190-11.1. They also worked on changes to language in 190-5.10.

Motion by Rob Wright to adopt the changes to amend Section 190-11.1 and 190-5.10 as discussed and move to a public hearing at the January 11, 2022 meeting. Seconded by Jim Finn. All in favor.

3. Applications to determine if complete:

- a. Oxland Builders for property owned by Anne Decker located at 6 Goss Farm Lane, Tax Map 8, Lot 59 for violations to the conditions (10, 14, 15 and 30g and 31h) of approval of the May 14, 20219 Major Subdivision by Tuck Realty Corp. Case #11-2018 for construction of a deck in the wetlands buffer. Property is in the Single Residence District. Case #18-2021.**

Chair Losik pointed out that she would have liked to have had some photos in order to see the buffer.

Motion by Katy Sherman to declare the application for 6 Goss Farm Lane as complete. Seconded by Bill Epperson. All in favor.

- b. Major Site Development Plan by the Wentworth by the Sea Country Club for property owned by WBTSCC Limited Partnership and located at 60 Wentworth Road, Tax Map 24, Lot 61-26 to replace the existing weekly tent with a seasonal 48' x 108' canopy located on the north side of the clubhouse on an existing paver pad. Property is in the Single Residence District. Case #19-2021.**

Motion by Bill Epperson to declare the application by Wentworth by the Sea Country Club as complete. Seconded by Jim Finn. All in favor.

4. Public Hearings on Applications:

- a. Major Subdivision 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 noted that Attorney Christopher Mulligan, on behalf of the applicants, has requested a continuance to the January 11th meeting. Planning Administrator Reed has also mentioned the need for an escrow.

Attorney Mulligan was present at the meeting and agreed to a \$5,000 escrow on behalf of his clients.

Motion by Bill Epperson to continue Case #13-2021 to January 11, 2022. Seconded by Rob Wright. All in favor.

- b. 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 Wellhead Protection District. **Case #14-2021.**

Attorney Tim Phoenix, representing Benchmark, spoke to the Board. He introduced Benchmark Director Eric Gardner, Joe Coronati from Jones & Beach Engineering, Architect Mark Moeller and Hydrogeologist Dave Maclean from GeoInsight. He also introduced Mike Garrepy from Tuck Realty, who is the developer for the abutting parcel at the old Hector's site. He noted that the Board has received draft conditions of approval for the site plan review and draft conditions of C.U.P. approval for the assisted living facility. He continued there are only a few issues to discuss in regards to the conditions of approval.

Attorney Donovan noted that the Board had a work session and went through the conditions for the Tuck development. The Board is familiar with the Tuck conditions for the most part. However, the Board has not gone through the conditions for Benchmark. The Board may want to take the time to go through each condition to be sure they are comfortable with them.

Chair Losik asked Attorney Phoenix to give an overview on the emergency access and the water service.

Referring to the emergency access road, Attorney Phoenix explained that both Benchmark and Tuck are fully supportive of the emergency access. He continued that he spoke with Attorney Donovan last week about the Tuck proposal and there was a question of when the road had to be done by, whether it be before building permits are issued or certificates of occupancy. He spoke with Attorney Donovan about the proposal that the road has to be done once a certain number of units are built. After receiving the conditions of approval, he spoke with Attorney Donovan this afternoon about Benchmark and the effect on them. He reiterated that both parties are perfectly willing to build the emergency access on both sides. From a practical point of view, what happens if one of these projects is delayed or does not go forward at all? Attorney Phoenix noted that he provided Attorney Donovan with some proposals for the language. (Copies were submitted to the Board.)

Attorney Donovan noted this affects #17 and #18 of the Major Land Development Conditions of Approval.

Attorney Phoenix stated that the language he proposed basically says that whoever proceeds first will be required to build the portion that connects to the neighboring property line. When the neighboring property builds, they will have to complete the road. He noted that both of the projects are a “go” at this point and there is no reason to believe that anything is going to happen to keep the projects from moving forward. Both projects are anticipated to begin in the spring or summer.

Attorney Donovan stated that what Attorney Phoenix is proposing is reasonable. The problem is if one of the projects doesn't go forward, they will have to come back to the Board for relief for the condition regarding the emergency access road. If Benchmark doesn't go forward, the question will be what will happen to the Tuck emergency access. However, they can still work out the access to the existing perimeter drive, which is only another 150. Attorney Donovan continued that he never thought of the emergency drive as being anything other than beneficial to the Tuck condominium project. The Fire Chief seems to think Benchmark should have an emergency access road as well. Attorney Donovan noted that if the Tuck condominium project didn't go through and the Benchmark expansion did, there isn't really a major problem. In looking at the existing conditions plan for Benchmark, there is a paved area which is only about 40ft from the emergency drive. He pointed out that the fire trucks would be able to have relatively quick access to the site by just going on the existing paved area, which would still exist.

The Board reviewed the conditions of approval for Tuck Realty (#31-#33).

Referring to condition #31, Attorney Donovan explained that he left the problem with the two parties to work out. It's not really specified whether it's the construction of the driveway with the assisted living facility expansion in place or construction of a driveway without the assisted living facility expansion in place. For Tuck to get its occupancy permits, there has to be an emergency drive connected, either as shown on the Benchmark plan or to the existing perimeter drive if the expansion of Benchmark doesn't move forward. That's what conditions #31 and #32

do. He pointed out that with condition #33, it has to be worked out before the Tuck proposal gets occupancy permits for more than 20 units. He noted that the reason 20 units was used is because the Board approved 1244 Washington Road with 20 units with only one entrance. Attorney Donovan reiterated that since everyone is sure that both projects are going to be built, Attorney Phoenix's proposal is not unreasonable.

Mike Garrepy, Tuck Realty, noted that Benchmark and Tuck have agreed, if need be, each parcel could grant the other a temporary access easement to provide temporary emergency access should the other one not have started or completed their project.

Attorney Phoenix stated that the parties have agreed to temporary easement, if necessary, which he thought was overly complicated. The simplest route is to allow them to move forward and build to the property line. Whoever builds second would have to build the road to completion. The issue is no one knows when that time will be.

Mr. Garrepy commented that the Fire Chief thinks the emergency access is important, but it's not something that needs to happen on Day 1.

Attorney Donovan stated that it seems like if there's a problem down the road, they are going to be able to resolve it. If Benchmark doesn't move forward with the expansion, it sounds like Tuck is still going to be able to get an easement out to the existing perimeter road. It could be a bit more problematic if Tuck doesn't go forward. However, it's only about 50ft from the Lafayette Road pavement to the perimeter drive and the trees are spaced 40ft apart. The fire trucks could get to the paved driveway without too much of an issue. He thinks either scenario would work out.

Speaking to Attorney Donovan, Chair Losik clarified that it sounds like he agrees with Attorney Phoenix's language for condition #17, except it would be subject to a written agreement between Tax Map 10, Lot 3, and Tax Map 10, Lot 1.

Attorney Donovan confirmed. He noted the written agreement ought to be something that is provided before the chair signs the certificate of site plan review (condition #8). Referring to Benchmark's conditions for major land development approval, Attorney Donovan stated that #17 would be Attorney Phoenix's language and #18 would be deleted. Before condition #8, an agreement between Tuck and Benchmark relative to the temporary emergency access would need to be added. Attorney Donovan pointed out that he and the chair discussed a condition regarding certification in writing from the Rye Water District that these plans are acceptable to them, which should be done before the Planning Board Chair signs.

Referring to Sheet C-4, Attorney Donovan noted this was left hanging at the work session. He asked the applicant to explain the water service proposal for Benchmark.

Joe Coronati, Jones & Beach Engineering, stated that at the work session on November 30th, it was felt that there was a solution to how the water line would be extended and connected

between the two municipalities. After that, there was another meeting with Rye Water and they had a different idea of how this connection should happen. He continued that Sheet C-4 has been modified to show the plan that was discussed at the November 30th meeting. Currently, Aquarion Water has a water line on the west side of Route 1 almost up to the Evolve site, as they used to supply water to a former motel in that area. The water line hasn't been used in years. When Evolve went in, they connected a new water line to Rye Water District at the northern side of the property. Rye Water District also has a line on the west side of Route 1 at the Evolve site, which crosses Route 1 and travels down the east side of Route 1. The plan is to connect the end of the Aquarion line to where the forty-five-degree angle is of the Rye Water District line. That will connect the two water systems and Route 1 does not have to be crossed at the Dow Lane intersection. It will all be done on the west side of the road out of the main travelled way of asphalt. Mr. Coronati continued that an easement will still be provided on the Tuck property by the North Hampton Town Line. The area has been made larger, so there is more room for the valving station.

Chair Losik clarified the plan is that domestic water would come from Rye Water. The valve mechanism would give flow from Aquarion for fire suppression, if needed.

Mr. Garrepy stated that he had a recent meeting with the Fire Chief and Arik Jones from Rye Water. Mr. Garrepy continued that he was a little concerned about the language in the conditions of approval because none of that "is in stone" and it may never come to fruition. He noted that Rye Water would like to purchase the Aquarion line that is in Rye. He and Mr. Gardner have agreed to help facilitate that purchase, if it were to happen. They have also agreed to grant an easement for the valve station, if it were to happen. The ultimate goal is to have that interconnectivity occur. The Rye Water District line would join with the Aquarion line and it would all become part of the Rye Water District. He reiterated it may not happen. Mr. Garrepy stated that he'd like to remove any reference to the Aquarion system and have both conditions of approval just reference that the plans have been revised to show the latest water service plan approved by the Rye Water District and the Fire Chief. He noted that Rye Water District has already given both project letters to serve for both potable water and fire suppression. There shouldn't be any concern that there's not enough water to fight a fire. There are just issues at certain times of year when there's a lot of draw from irrigation systems and there's a draw down in the wells. He pointed out that being able to pull from Aquarion would help in that instance when there are those periods of time.

Selectman Epperson stated that what he understands is there is plenty of water for domestic use. The issue always has been what happens in the middle of July when the town is down on water and there's a fire in that area. That is why the Aquarion connection was being discussed.

Mr. Garrepy stated that the plan is to continue to pursue that idea. He just doesn't want to tie these two projects to something that may not happen. He is happy to help facilitate the plan and help with the purchase of the line. The Fire Chief is not too openly concerned about what happens when both projects are built out because all the buildings are sprinkled.

Selectman Epperson asked when the plan for the water will be finalized.

Mr. Garrepy explained that the Water District does not know when all this will happen because Aquarion has to get a signoff to sell their line. There may not be a final water plan for two months. He commented that if the Aquarion purchase doesn't go forward, they may be coming back with a final plan that is not what is shown today.

Chair Losik asked where the Tuck project water is going to come from if the interconnect does not happen.

Mr. Garrepy explained that the water will come from Rye Water by a directional drill under Route 1 at Dow Lane.

Member Sherman stated that at the beginning of the two applications, this was going to be separate. Now, the water is interconnecting the two projects. She would rather they be separate, if possible. She asked if Aquarion can provide the 30-units with domestic water and fire suppression if needed.

Mr. Garrepy replied it is still going to be up to the Rye Water District to determine how to connect.

Mr. Coronati explained the water connections are separate. The two developments are not connected to each other at all. It's just a matter of the 30-unit development connecting to Aquarion, if they have the right to do so. Mr. Coronati commented that he is not sure about the complexity of Aquarion getting a license to add services in that area.

Mr. Garrepy reiterated that the Fire Chief is not overly concerned with either of these projects once they are sprinkled. The 30-units will be sprinkled, as well as Benchmark.

Selectman Epperson commented that he thinks that's an accurate statement. The Fire Chief was talking about sprinklers that are sequential and don't go off at the same time. However, there's a global concern about the amount of water that could possibly be used if there was a fire in that area of significance.

Member Sherman asked if Benchmark has to access the emergency valve if there is a fire.

Mr. Garrepy explained if Aquarion and Rye Water are connected and there's a valve station, that whole area of Rye will have the ability to draw from that connection.

Member Sherman stated that she needs a more concrete plan. This seems really "iffy" to her. She would like to see a more specific water plan.

Mr. Garrepy stated that's exactly what the proposed conditions of approval are. There will be a final plan from the Fire Chief and the Rye Water District. There are still a few things that need to be added to the plans. The conditions of approval will still require plan finality with revisions.

Alternate Wright stated that what's troubling to him is the language that Chief Cotreau used in his letter. He talked about risks from a fire that started from an aerial source or some other disaster, which would not just be problematic but a threat to the town's domestic water supply. Even though that might be highly unlikely, he agrees with Member Sherman that the Board ought to know what the plan is. If there can be conditions of approval that would include mapping this out to everyone's satisfaction, then maybe they can move ahead; however, that's a big gap.

Attorney Donovan stated that he wonders if the Board really wants to delegate what is an important decision to the Fire Chief and the Water District for approval. He is thinking of the approval for the Samonas Development when certain things were delegated. The court said that this shouldn't have happened because they aren't really administrative decisions. They're discretionary decisions. He would suggest this needs to be further resolved before the Board acts on conditions of approval. It's too important an issue and it shouldn't be passed off.

Chair Losik commented that she's not sure the plans are far enough developed. She asked the board members their thoughts.

Alternate Garcia stated the big question is what Aquarion can do. She has concerns.

Member Finn stated it would be helpful to get further along and get a real resolution.

Member Carter agreed.

Selectman Epperson stated that any conversation he has had about water included Aquarion. It seems like Aquarion didn't have a reluctance to provide water in that area, it seems they have a PUC problem. He agrees that the plans need to be "hammered out" and everyone be on the same page.

Attorney Phoenix stated that the applicant doesn't have the power to control what Aquarion and the Town do with each other. If there have been discussions over months, who knows how long it will take. He is unclear about the consensus of the Board of what needs to be answered.

Member Sherman stated that she wants to know what's going to happen in July if a fire happens. Where is the emergency water going to come from? The Board doesn't have that answer right now.

Attorney Phoenix noted that the applicant has property rights to develop its property. It's the town's obligation to provide water and fire services.

Mr. Garrepy commented that the conditions of approval are fairly vague because it says; “written approval from the Fire Chief shall be obtained. This shall include addressing the adequacy of emergency access drive and water for fire suppression.” Mr. Garrepy pointed out there will have to be a plan that the Fire Chief approves, but it’s still not known what it is going to be. That is a proposed condition of approval, which was discussed at the work session. There are things in here that address the water service; such as, “include notes on how this will work”. There will have to be discussions with the Water District about how that will happen. There will have to be a final plan that will be approved by both department heads and ultimately signed by the chair.

Selectman Epperson stated that he thought there was a verbal agreement with Aquarion that someone would provide this valving that could be remotely activated in case of fire. That seemed like a very viable solution.

Mr. Garrepy commented it very well may be something that is going to happen; however, there are no assurances that it’s going to happen. He commented that if it happens, they are going to provide easements and are going to purchase the line.

Selectman Epperson stated that what they really need to do is have a work shop with Aquarion and Rye Water to clarify the plan.

Attorney Phoenix stated that he was involved with the Samonas project. He thinks Attorney Donovan’s concern is who can approve.

Attorney Donovan stated that the issue is that the Board needs to have a better handle on the plan. In regards to the comment that the property owner has land development rights and it’s up to the town to figure out how to provide the water, that is not the case. These are proposals for two parcels of land with very significant types of building projects. It’s up to the applicants to figure out how to get the water. It isn’t the town’s responsibility to figure out how to get the water. It’s the Board’s responsibility to make sure the water supply protects the public health, safety and welfare. The applicant hasn’t met their burden.

Mr. Garrepy reiterated that the Water District has given both projects a commitment to serve. The Fire Chief has expressed a desire to connect for the benefit of the town. He reiterated that they are willing to provide everything they can to make it happen with the plan. The Water District has already given a commitment to provide the water. How those final lines are laid are not known at this time. They have been put on the plan the way the Water District has asked. There may be another revision to the plan if they ask for more changes. Ultimately, the plan will come back to the Planning Board. Again, the Fire Chief is not concerned about these buildings once they are sprinkled. The Fire Chief has more of a global concern about the area in general.

Chair Losik commented that the communication was strong from the Fire Chief to the Planning Board.

Mr. Garrepy stated that the Board asked for a written letter from the Fire Chief confirming that he's comfortable with both plans.

Chair Losik noted that they are still working on the conditions. When she saw the Fire Chief's letter, she wrote to Attorney Donovan about the need to talk about the water. At that point, she thought it was an interconnect. She felt the conditions of approval did not do service to what was going to happen. She felt that stronger language was needed. She knows that the conversation about who the supplier is going to be has been going back and forth for a long time.

Mr. Coronati commented it has certainly been an evolving scenario. Aquarion wasn't even sure if they had lines in this area. There have been test pits done to figure out the size of the lines. This has been going on for quite a while. The key is that the connection isn't solely because of these two developments. It's all coming together at this point and applicants will provide the easements and connection to help. He pointed out they already have commitments to serve from Rye Water District for both developments. The applicants will be providing the easement to put in the valve station and will provide the money to buy the water line, which will be under the ownership of Rye Water District. The commitments to serve have been sent to NH DES for state subdivision permits.

Chair Losik commented that they appreciate the connection. However, water is critical for safety and welfare, for both fire suppression and to make sure the domestic water service is what the applicants want for their projects. She doesn't feel it's far enough along for the Planning Board to feel comfortable enough to write language for a condition they will be happy with.

Mr. Garrepy suggested the approvals of conditions that aren't administrative in nature come back to the Board for a compliance hearing for each project. They could come back to discuss exactly what's being done for fire suppression and emergency access with the Fire Chief and Arik Jones present at the meeting. That may be a way to proceed with an approval for each project.

Selectman Epperson stated that he would rather see a more comprehensive plan. The reason he is sitting on the Board as a selectman is to protect the welfare and health of the town. The last thing he would want to see happen is for something to be approved that doesn't come to fruition or would harm the town in some way. He won't let that happen. He would like to see a plan. There's too much ambiguity.

Mr. Garrepy commented that the compliance hearing that he suggested doesn't take the control out of the Board's hands. It brings it back to the Board, so it's not just letting the Fire Chief and the Water District make the decision on the final plan.

Member Sherman commented she is not comfortable with that.

Selectman Epperson agreed with Member Sherman.

Attorney Donovan stated that a compliance hearing is certainly an option, but it's really up to the Board. If the Board is more comfortable with continuing this to a work session and dealing with the conditions all at once, that would work. There's not a whole difference in continuing this to another month or a work session. He commented that it seems like the Fire Chief and Arik Jones should be at the meeting.

Attorney Phoenix noted that they understand the Board's position and agree the core issues should be resolved.

It was agreed that a work session should be scheduled, along with the Fire Chief and Arik Jones from the Water District. Aquarion will also be asked to attend the meeting.

Referring to Sheet C-4, Attorney Donovan asked about note #32 and the fire suppression line.

Mr. Coronati explained there are two lines to the Benchmark buildings. The buildings are connected by the two wings; however, they are two separate buildings. They have separate water lines, separate sewer systems and separate electrical connections. There's a water line on the north side of the existing Benchmark building that breaks off for fire and domestic in the back. There's a new proposed water line on the south side of the addition that comes into the building that breaks off for fire and domestic. If there is no agreement with Aquarion, the line would run under Route 1 and connect to the line on the other side of Lafayette Road. This would be done for both projects.

- **Work session scheduled for January 6th, 10:00 a.m., Rye Town Hall**

Chair Losik opened to the public for questions.

Steve Borne, 431 Wallis Road, stated that when North Hampton looked at cluster developments, they said that if the units were going to have one or two kids, they would have to sell for \$650,000. If not, it was going to cost the town more than they would get back in taxes. It would be nice if Rye could know that information. In talking about water for fire and drinking, he is more concerned with the septic and runoff. These are just two developments on Route 1. He doesn't think it's in the best interest of the town to try to solve the issues on these properties without solving what's going to happen on all of Route 1. It should be figured out all at once. In regards to the access road, he suggested the road be built first.

Hearing no further comments, Chair Losik closed the public hearing at 8:40 p.m.

Motion by Bill Epperson to continue the Benchmark application to a work session on January 6, 2022. Seconded by Jim Finn. All in favor.

Motion by Katy Sherman to continued the Benchmark application to the January 11, 2022 Planning Board meeting. Seconded by Jim Finn. All in favor.

- c. **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 & Beach Engineering, noted that a signoff from the town's engineer has been received. One of the septic systems has been relocated towards the cul-de-sac. A signoff from Danna Truslow has also been received. He thinks they are done with the local reviews, except for the water. Jeff Hyland, the landscape architect, has submitted a colored rendering as requested.

Chair Losik commented there were some questions at the work session in regards to the subsidy lien mechanisms. Marty Chapman graciously agreed to come to this meeting to address those questions. She asked Mr. Chapman to give the Board an overview of the functionality of the subsidy lien and the restrictive covenant.

Marty Chapman, The Housing Partnership Executive Director, noted that The Housing Partnership is a non-profit developer for workforce housing. They are the designated agent for the Airfield Drive development and also Washington Green. He pointed out that they have not been retained to be the agent on this development, although that plan is on the table. In terms of the municipal lien document (subsidy lien), the one for Airfield Drive and Washington Green are essentially the same. The subsidy lien for this project will probably be substantially the same as the original two. He continued that the job of designated agent is to do whatever is asked in the subsidy lien, which is in two basic areas. One is to qualify households by income according to the income limits cited in both the town's ordinance and the State statute. The second thing is to determine the sale price of the home that is being sold at below market value.

Mr. Chapman stated that when the properties are offered for sale, it's a fundamental calculation. An appraisal is done on the units to determine the fair market value. From that value, the number that is determined by the State to be the amount that a household with area median income can afford is subtracted. The difference will be the subsidy lien at the beginning. When there is a resale, it comes down to those two basic numbers again; the resale price and the household income to afford it. In the subsidy agreement, #3.4 is really just describing the process of determining the maximum resale price. In the case of the second sale, the formula essentially flips. An appraisal is done and the subsidy lien is subtracted. The number that is left is the maximum sale price that the original owner can sell their home for. That price is held up next to the current income limit and the hope is that they match. There is an issue if the two numbers don't line up. The issue is how is the town going to preserve the affordability of that unit. There are four remedies in a subsidy lien. The Housing Partnership has the right to buy the unit as a non-profit to try to resell it as affordable housing. A second remedy is if the seller, in good faith after 128 days, isn't able to sell the property, the town can decide, on a recommendation from the agent, that the seller can sell it to anyone with any income. This means the deed restrictions on the property will remain and the property will remain affordable,

but the buyer does not have to meet the income qualifications. The third mechanism is one in which the town, at its own discretion, will use its affordable housing funds to offset the difference from the retail price and what someone at the income limit can afford. The subsidy lien would be increased so that the sale price would then lower the maximum sale price. The next option is that the town can just decide to let the unit go at market. The subsidy lien funds would be repaid to the town and would go in the affordable housing fund. The intent is that at some point in time in the future, the town would use that money to incentivize another developer to create a unit to replace the one that has been lost to market.

Mr. Chapman commented the basic concept is to begin with affordability and over time try to maintain that affordability. However, because of the variables in household income, variables in housing and variables in interest rates, if the maximum sale price and affordability at any future time don't match up, the town has these remedies to try work it out as best as possible.

Mr. Chapman pointed out that the concept of affordable home ownership is still relatively new. He also pointed out there's no subsidy in essence. The subsidy is the developer's revenue potential on those market units that they have agreed to surrender in exchange for a density bonus to build more units. There's no "cash" coming into the project to help offset that gap.

Chair Losik asked if The Housing Partnership could be the owner and rent the housing.

Mr. Chapman pointed out that some of the condo docs have limitations about renting. He believes they would have the ability to rent within those limitations. However, the intent is not for The Housing Partnership to take over the unit to be a landlord.

Member Finn asked if there is a limit on the capital gain.

Mr. Chapman explained that if the subsidy lien amount goes below a certain percentage of the maximum resale price, the town has the ability to say that they are going to amend the subsidy lien to a higher amount, so they don't cash out as much. The seller would have to make a payment to the town out of the proceeds.

Member Finn commented that if someone invests in a workforce house, they are investing for a "roof over their heads".

Mr. Chapman explained they are not getting the same appreciation that the market would bring. The idea is they are entering a contract by choice.

Alternate Garcia asked how many other non-profits, like The Housing Partnership, are in operation in New Hampshire.

Mr. Chapman replied there are five that he's aware of.

Chair Losik asked if there is information that people could look at if they want to know more.

Mr. Chapman replied that he would read the town's ordinance and the state statute. He pointed out that NH Housing has a wonderful website with great resources regarding workforce housing.

Chair Losik pointed out that there's a dialogue in regards to workforce housing in the July 10, 2018 meeting minutes and the August 14, 2018 meeting minutes.

Attorney Donovan noted that one of the board members at the last meeting had a question about the fee being paid on refinancing.

Mr. Chapman explained that refinancing is like a sale from the homeowner to themselves. In that case, there won't be any income qualifications because the owners are not changing. However, the owner would want to make sure they don't enter into a refinance that exceeds whatever the maximum sale price is at that point. Also, someone shouldn't be taking more equity out of their property than they're entitled to under the subsidy lien. It's required that the homeowner notifies The Housing Partnership. If it's a refinance, a maximum recalculation would be done.

Alternate Wright asked if there would be a cap on the amount that could be refinanced.

Mr. Chapman explained that they would state for the owner's and lender's benefit what the value of the property would be under the subsidy.

Member Finn asked if the homeowner could rent out their property under this program.

Mr. Chapman stated that he believes it's required to be a primary residence.

Chair Losik opened to the public for questions.

Steve Borne, 431 Wallis Road, asked who will be doing the work for the town. Who is keeping track of this for the town? He pointed out that the town doesn't have a department for workforce housing.

Chair Losik stated there was a lot written in 2018 from Peter Crawford. She suggested looking at the 2018 minutes because they're fairly exhaustive. They discuss the rules of the municipality and the roles of the agent who comes in to manage the property. She also suggested looking at the sources that Mr. Chapman mentioned. She continued that the agreement is a very complicated document that spells out the rights and responsibilities of all the parties. Some of it falls to the municipality and some falls to the oversight manager.

Hearing no further questions, Chair Losik closed to the public at 9:06 p.m.

Motion by Bill Epperson to accept the Workforce Housing Subsidy Lien and Restrictive Covenant Document as written. Seconded by Katy Sherman. Vote: 7-0 All in favor.

Motion by Bill Epperson to approve the Workforce Housing Monitoring Agreement as presented to the Planning Board on December 14, 2021. Seconded by Jim Finn. Vote: 7-0 All in favor.

Motion by Bill Epperson to continue the application (Case #11-2021) to the work session on January 6, 2022. Seconded by Jim Finn. Vote: 7-0 All in favor.

Motion by Bill Epperson to continue the application (Case #11-2021) to the Planning Board Meeting of January 11, 2022. Seconded by Jim Finn. Vote: 7-0 All in favor.

- d. Oxland Builders for property owned by Anne Decker located at 6 Goss Farm Lane, Tax Map 8, Lot 59** for violations to the conditions (10, 14, 15 and 30g and 31h) of approval of the May 14, 2019 Major Subdivision by Tuck Realty Corp. Case #11-2018 for construction of a deck in the wetlands buffer. Property is in the Single Residence District. **Case #18-2021.**

Brad Sawler, Oxland Builders, spoke to the Board. He noted that a mistake was made in building the deck of .39' and .68'.

Chair Losik noted it's about 20sf of encroachment.

Mr. Sawler submitted photos to the Board for review.

Selectman Epperson asked if this involves any other building in the subdivision.

Mr. Sawler replied no.

Chair Losik noted that there was a voluntary buffer but it was supposed to be left in its natural state. One of her questions is, should it be grassed? It should not have been touched.

The Board reviewed the original conditions of approval.

Chair Losik asked the maintenance needs of the deck.

Mr. Sawler explained It's made out of a pretty pervious material. The homeowners could do nothing or coat it on a yearly basis. He would recommend that the owners do nothing with the deck.

Chair Losik asked if there is any other structure in the buffer.

Mr. Sawler replied no.

Chair Losik read from RZO 190-3.1.D(2).

Selectman Epperson asked how this was noticed.

Mr. Sawler replied that it was determined from the as-built.

Selectman Epperson stated that the Board makes these decisions based on fact and how the town wants to see the wetlands and environment protected. He thinks the Board should probably forgive the mistake and put a stipulation on it that nothing can be put on the deck, as far as treatment, because it will leach off into the wetland.

Member Sherman stated that she came to the meeting thinking the deck would need to be redone because it's in the buffer. The Board was very clear with the conditions for this application. She thinks the deck needs to be fixed.

Alternate Garcia stated that if it's not fixed there has to be remedies. Along with no chemicals for the deck, she would like to see some kind of native plantings to restore the gravel area.

Member Finn commented that if the Board "rolls over", then everyone is going to come in and make a "mistake". It's a relatively minor one, but there has to be some kind of price to pay; whether it be ripping out the existing deck or some other less disruptive one.

Member Carter stated the deck should be fixed.

Alternate Wright stated that he would like some elaboration on what it would take to fix it.

Mr. Sawler noted that all the handrail assembly would have to come off and a lot of the deck boards would have to come off. The framing would have to be cut back and the deck put back together.

Alternate Wright asked if they would have to re-excavate.

Mr. Sawler replied no.

Alternate Wright stated that he agrees that the deck should be fixed.

After discussion, the Board agreed to have the Technical Review Committee (TRC) go out to the site to take a look at the deck.

Motion by Bill Epperson to continue the application (Case #18-2021) to the January 11, 2021 Planning Board Meeting, pending TRC inspection. Seconded by Jim Finn.

Vote: 7-0 All in favor.

Note: *Rob Wright recused himself for the following application.*

- e. **Major Site Development Plan by Wentworth by the Sea Country Club for property owned by WBTSCC Limited Partnership and located at 60 Wentworth Road, Tax Map 24, Lot 61-26** to replace the existing weekly tent with a seasonal 48' x 108' canopy located on the north side of the clubhouse on an existing paver pad. Property is in the Single Residence District. **Case #19-2021.**

Justin Macek, TF Moran, presented to the Board. He introduced Corey Colwell from TF Moran, and representatives from WBTSCC Jason Bastille, Bob Diodati and Chad Mitchell. The project is proposed for the property located at 60 Wentworth Road. The subject property is 110-acres in size and is bordered by Little Harbor to the east, Witch Creek to the south and residential properties to the north and west. The lot is owned by Wentworth by the Sea Country Club and contains a country club, golf course, sports complex, banquet room and maintenance facility. The property is located in a single residential zone. The site review application is a Major Non-Residential Development and it was submitted on November 22nd to the town. As part of the application, a site development plan set was included. The applicant is proposing a 5ft wide paver walkway that extends 165ft to the east side of Heather Drive. This will provide pedestrian access to a proposed 17' x 30' stone wedding platform. Two seasonal arbors are proposed in this area. The first of which is being positioned along the walkway. The second will be located on top of the stone wedding platform. On the west side of Heather Drive, the applicant is proposing to replace a green paver tent pad with bluestone pavers to match the adjacent outdoor dining area. An expansion of the tent pad is also proposed where the pad will be widened 4ft to the north and 20ft to the east. The additional patio area would be used during events to provide additional space. An 8ft wide paver walkway is being proposed from Heather Drive to the east. This would provide pedestrian access off the roadway and will prevent guests from having to walk through the grassed area to the patio and tent area. The applicant is proposing the installation of a seasonal wedding tent over the existing tent pad, which would stay up during the months of May to October. The dimensions of the tent pad are 48' x 108'. The new tent would prevent the country club from having to set up and take down the wedding tent every weekend, which is the current operation during event season. The tent would come down during the winter months.

Selectman Epperson asked the height of the tent.

Mr. Macek replied it's a story to a story and a half tall.

Selectman Epperson asked if this is the same height as the current tent.

Bob Diodati, WBTSCC General Manager, stated that the center pole of the weekly tent is actually higher than the frame tent. The frame tent spreads out, so it's higher than the pole tent at the edges.

Member Finn commented that about a year and a half ago, WBTSCC made a proposal for a permanent structure. He asked if they are going forward with the permanent structure.

Mr. Diodati explained this is actually an identical proposal to last time, but WBTSCC didn't follow through with that proposal. The tent is in the exact same location as the tent that goes up every week. The reason the tent will be changed is because the one that is there is green and out of place with the patio/dining area. That will be changed to match the new walkways with bluestone pavers, which will be more congruous with the member dining area. The reason it will be 4ft wider is because the frame tent requires a slightly wider platform than is there now. The frame tent is a little shorter than the pole tent that goes up weekly, but it's 3ft wider. The size of the permanent tent would limit the number of people that can be served for a wedding, but it would be easier than having the tent going up and down every weekend.

Member Finn asked if the permanent structure idea has been abandoned.

Mr. Diodati noted that there was a permanent ballroom proposed at one time for that area. There were a number of pavilions proposed for that area. WBTSCC is under agreement with the abutters that provides for a tent. It would have taken a revision of that agreement to build a permanent structure, so WBTSCC is going with a tent.

Mr. Macek noted that the applicant is requesting three different waivers from the Land Development Regulations. The request for waivers was included in the application. The first waiver is for the final stormwater management plan. The main reason for this request is that the proposed development is part of a 110-acre lot and the applicant is proposing only 2,650sf of new impervious area. This is equal to .06% of the property. The new impervious area consists of the two pedestrian paver walkways, expansion of the existing tent pad and a rock platform for ceremonies. None of these areas are used throughout the entire year. They're all seasonal use and none will be treated for snow and ice removal. The proposed improvements do not cause any change to the existing stormwater pad that's on site. There is no stormwater increase or runoff onto adjacent properties.

Mr. Macek continued that the second waiver being requested is for the NH DES approval for onsite disposal. The reason for this request is that the proposed development does not require any connection to the existing system on site; therefore, there is no impact to the peak flow rates. Additionally, these improvements do not propose any changes to the existing septic tanks, leach fields or other components of the septic system on site. The third waiver being requested is in regards to the landscaping requirements along the proposed walkways. The reasoning for this waiver request is that there is existing landscaping present within the project vicinity. Where the walkways are being proposed on the west side of Heather Drive, there is a hedge row to the north of the existing club house which provides a buffer along the southern edge of the existing tent pad and proposed walkway. On the east side of Heather Drive a series of mulched landscaped islands exist north of the proposed walkway leading to the proposed wedding platform. In addition, an existing landscaped wall area is also located to the south of the proposed walkway, which provides a buffer to the property to the south. These existing vegetative landscaped features are to be retained post construction conditions.

Referring to the agreement with the abutters in regards to the tent, Selectman Epperson asked if there is anything that specifies that the tent will be put up and taken down.

Mr. Diodati replied no.

Selectman Epperson asked if there are any letters from the abutters.

Planning Administrator Reed noted that no letters have been received; however, an abutter is present.

Mr. Diodati explained that the agreement specifies the hours of operation for the tent, but there are no changes to that being proposed.

Corey Colwell, TF Moran, stated that the document says; “WBTSCC will not develop, build any structure or houses. The land will be subject to open space and any restrictions will be listed on the mylar.” At the bottom it says “WBTSCC may install and operate a tent and barbeque area adjacent to but not more than 100ft from the northerly side of the present or future clubhouse.” He pointed out that it limits the tent to within 100ft of the clubhouse, but it’s in the recorded document that the tent is allowed.

Selectman Epperson asked about the view issue.

Mr. Colwell explained it’s in the view easement. However, within that view easement they are allowed a tent and barbeque area.

Selectman Epperson asked if the spirit was that the tent would be put up and taken down.

Mr. Diodati replied that had nothing to do with the agreement. The tent being put up and taken down was a factor of what was available in terms of the type of tent. Early on in the years, it was more infrequently used than it is now. Over the past ten years, the tent has gone up and down every weekend, which has become a cumbersome project. The availability of the frame tent, which has been used in venues like WBTSCC seasonally, is a viable option for the club’s business model.

Mr. Macek submitted photos of the tent to the Board.

Chair Losik asked about the wind speeds that the tent will support.

Mr. Diodati explained that the exact tent being proposed is up at the Castle Port Inn in Newport, Rhode Island. That is the same type of setting as WBTSCC.

Chair Losik asked if the arbors are permanent.

Mr. Colwell noted that the two arbors are intended to also come down in the fall.

Member Sherman asked if it's within the wetland buffer.

Mr. Colwell replied no. It's beyond the 250ft shoreland buffer.

Chair Losik noted that there was an earlier project at WBTSCC that involved an awning. She believes it was changed because of a wind issue.

Mr. Colwell stated there was a concern with the awning because typically there's no support at the end. It's fastened to the building and it extends out without support. With the tent, there are good sized timbers to support the outside perimeter of the tent, as well as the ceiling. There is more structural support with this tent than an awning.

Member Sherman asked how the tent is anchored.

Mr. Colwell explained there's a tent pad and there would be ropes coming from the timbers for additional support. He pointed out that the tent fabric would come down in October. The timbers will stay.

Alternate Garcia asked how it will look in the winter with just the timbers.

Mr. Colwell explained they are next to a structure on an existing tent pad. It's going to look like a timber frame with the back of the clubhouse behind it. It's not out in the course. It's very close to the clubhouse. It will blend with the clubhouse from the view on Wentworth Road. Mr. Colwell continued that the tent is used in Newport, Rhode Island, at an oceanfront setting. It's a tent that's designed to withstand that windy environment.

Chair Losik asked how people will get from their cars to the tent area.

Mr. Diodati noted that WBTSCC does approximately 25 weddings a year and 22 to 23 of the weddings are on the site. Those people will park and walk across the parking lot to the front of the parking lot. They will walk a few feet along the roadway and right to the wedding ceremony site. He noted that there is staff that manages the traffic when guests are arriving. At the beginning of the ceremony, the traffic is stopped so the wedding party can cross. At the conclusion of the ceremony, the traffic is stopped so the guests can cross the street and come up the walkway to the tent reception area.

Chair Losik opened to the public.

Rob Van Sciver, 11 Heather Drive, stated that he thinks it's a great idea. It will be very attractive. It's a shame to see the staff working so hard to put the tent up and take it down. He fully supports the proposal.

Chair Losik asked where his property is in relation to the tent.

Mr. Van Sciver stated that his property is on the far side of the Heather Drive circle. He is not looking at the structure, but he certainly sees the wedding parties.

Attorney Chris Mulligan, representing the Holloway Family, 71 Wentworth Road, and Bryan Family, 51 Wentworth Road, stated that his clients have two concerns. The agreement that has been in place between the country club and the abutters has been that the hours of operation will be between 8 a.m. and 10 p.m. The way that's worked is that the lights are out at 10 p.m. They tend to wrap up the events around 9 p.m. and start breaking down. This has been in place for many years and his clients have been happy with how that has worked out. His clients would just like that to be a condition of approval for this project, if it is approved. There was some reference to an agreement that was recorded at the registry. He thinks that condition is in that agreement as well. In any event, he thinks it's an appropriate condition of approval.

Attorney Mulligan stated that the other issue his clients have is that this is advertised as a seasonal canopy. The representation is that the fabric will come down in October and go up in May. However, the timber frame structure, which was characterized as "good sized timber" for this fairly elaborate one and a half story structure, will remain in place. His clients aren't supportive of that and would like to see it come down with the rest of the canopy because of the esthetics involved. It's probably a good idea for it to come down in this location. Leaving the timber exposed to the weather all year round is probably not the best thing for the structure. He has not seen the plan, but it doesn't sound like there are real elaborate specs on how high and how massive the proposed permanent structure is proposed to be. He thinks there's a good possibility that if what's being proposed remains up all year long, even with the canopy coming down, it will essentially be an esthetically an unpleasing eyesore that's left there year-round when not in use.

Chair Losik asked the applicant to address the concerns regarding the timbers.

Mr. Colwell stated that from what he understands, in Newport it's left up year-round. From what he's been told, it's complicated to take down and put back up. This is the reason it's been requested to stay up.

Selectman Epperson asked if the rafters are there as well.

Mr. Colwell confirmed. He pointed out that it's not an easy assembly and disassembly. It's labor intensive and expensive. That's why the proposal includes leaving it up from May through October.

Steve Borne, 431 Wallis Road, stated that he has heard over the years a lot of variances that have been granted for that property. He thinks it would be helpful to have a "birds-eye view" of everything that has been granted and waived for that property. He thinks there needs to be a better understanding of total capacity and the impacts. He pointed out that they are asking for a waiver for the water runoff and that's a major issue in that area. In looking at the Rye Water reports, WBTSCC is a massive consumer of water, especially during droughts.

Member Sherman agreed. It seems like the Wentworth comes back pretty regularly. She would rather have seen the patio with this plan, so the Board could see the comprehensive plan.

Mr. Colwell stated that the aerial photo shows the patio under construction in relation to the tent pad. Everything that has been proposed in the last year is showing on the aerial. It doesn't show the existing pavilion; however, that is shown on the existing features plan. He reminded the Board that this is a 110-acre site. It is rather large. In terms of seating, the purpose of the porch was for separation and social distancing. The capacity did not change. There is also a parking calculation shown on the plans. There is a maximum occupancy for the building, as well as the course. This will only hold however many parking spaces are available. When the parking lot is full, there is no other capacity. He noted that the parking calculation is included on Sheet C-06. The total existing parking spaces is 196 for the whole 110-acre site; which includes, the clubhouse, pool, golf course, and sports complex, as well as the 19th hole building. He also pointed out that there is a maximum capacity for the clubhouse.

Mr. Diodati commented that they are never anywhere near the capacity that is allowed. He continued that the claim that the patio approval wouldn't affect the capacity was not disingenuous. This has proved true in the time since the patio has been opened. There are 80 seats on the patio. With the porch, there will be 40 seats on the patio and 40 seats on the porch. Nothing changes with the capacity since the patio was built to the last approval of the porch. The number of people dining fluctuates more with the level of membership than the number of seats put out. The idea that every member is going to bring in three guests is not realistic. They have to make a reservation anyways. If there is not a table, there's not a table.

Chair Losik stated that there was a mention of the deed restrictions that Wentworth will not "develop or build any structures". They may "install a tent and barbeque". Chair Losik pointed out that in looking at "structure" in Rye Zoning it says; "any permanent or temporary constructed or erected placed material, or combination of materials, in or upon the ground". She commented that she's struggling with the concept of the timber.

Mr. Colwell noted that the restriction is only for the 'Land Subject to Open Space View Restrictions'. This area is shown on the plans. (He pointed out the area on the plan subject to no structures.) He pointed out that it says that "Wentworth may install and operate a tent and barbeque area adjacent to but not more than 100ft from the northerly side of the present or future clubhouse". It talks about the area for no structures, but it goes on to say that a tent and barbeque is allowed in this area.

Chair Losik stated that she sees it as a tent for part of the year. However, she's not sure how she sees it for the remainder of the year.

Mr. Diodati commented that it's a structure by the town's definition of a structure. The agreement with the abutters says that Wentworth may not install a structure but may install a tent.

Chair Losik pointed out it's a tent from May to October.

Mr. Diodati stated that the agreement doesn't allow Wentworth to install any kind of a structure, except a tent. That's why the ballroom idea for that area was abandoned. Now what is proposed for that area is a tent. The agreement allows for a tent. Whether the Planning Board considers it a structure or not, it's still a tent.

Selectman Epperson asked if it's possible to take it down at the end of the season.

Mr. Diodati replied that he believes it can be, but he doesn't know for sure. He knows that Newport leaves theirs up all year. It's been designed so it can stay up. It's hard to believe that it can't be taken down.

Chair Losik asked if other tents have been considered.

Mr. Diodati stated this is the only one that they became aware of. They are focused on this one tent. They have spoken at length with the management at Castle Hill Inn and they love it. They use it probably 40 times a summer. They are on their fifth or sixth year with it. He noted that the cloth canopy has to come down every year to be cleaned and stored. It also has to be replaced every five years, so it's an expensive proposal. There was a lot to consider. However, with regard to putting up and taking down the existing tent every weekend, with the truck traffic and staffing issues over the past few years, it takes twice as long to put the tent up and take it down as it used to. It's a difficult project and there are concerns about the safety of the workers. That's another reason to move to a seasonal tent.

Chair Losik asked if he would accept a condition of taking the timber structure down.

Mr. Diodati stated it is not his preferred outcome because he doesn't know if the timbers have been designed in such a way to go up and down every year. If that is a condition, he would have to speak with Sperry Tents to see if the frame could be designed in such a way that would make it possible. He commented that the worst-case scenario is that approval would include that condition which may preclude them from having the tent.

Selectman Epperson stated that it's correct that Wentworth has been before the Board for numerous projects. The projects have been executed the way that Wentworth has said that they are going to be executed. The Board has done a lot of work on Wentworth's behalf; for example, the nets. He's satisfied that Wentworth will do whatever they have to do to make it right. He agrees with Attorney Mulligan's clients that the frame is a different structure. This is going to back the Wentworth into a corner with a structure and it will open up an incredible amount of work. He continued that if that could come down, he would support this project. He agrees that it will look like a barn that's under construction.

Member Carter commented it's a beautiful tent. As long as it's a tent, it's beautiful. Once it comes down, it's a skeleton. The people who live in that area are looking at that.

Member Sherman agreed it should come down.

Speaking to Mr. Borne, Chair Losik noted that when there's an application that warrants absolute to the "T" with the Land Development Regulations, especially with stormwater, the Board is not ever going to walk away. These applications have been very, very minor.

Hearing no further comments, Chair Losik closed the public hearing at 10:27 p.m.

Motion by Steve Carter to grant the waiver from Article III, Section 202-3.5.B.1(a) of the Land Development Regulations because strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of these regulations. The proposed development is part of a 110-acre lot and the applicant is only proposing 2,650sf., .061-acres, of new impervious area or .055% of the property. The total disturbed area associated with this project is 11,280sf.; however, approximately one half of this area, 5,670sf., is related to the replacement of an existing impervious tent pad with new bluestone pavers. The replacement of this tent pad does not create any new impervious area. Proposed impervious area consists of two pedestrian paver walkways and expansion of existing tent pad and an open area rock platform for ceremonies. These areas are seasonal, operating only six months out of the year, and will not be used or treated for snow removal or deicing during snow storm events. The proposed improvements will not result in any change to existing stormwater practices on site and will not create additional stormwater runoff onto adjacent properties. Stormwater will continue to drain to an existing drainage pond located approximately 500ft to the southwest. The pond is controlled by an outlet pipe and manual pump. Stormwater from this pond flows into Sagamore Creek via an outlet pipe and can also be pumped manually to Witch Creek. Both creeks are more than adequate to handle post-construction flows generated within the project vicinity. Stormwater runoff generated east of Heather Road within the project vicinity will continue to flow over grassed area for approximately 1,000ft before discharging into the Piscataqua River.

Seconded by Bill Epperson.

Vote: 6-0 All in favor.

Motion by Steve Carter to grant the waiver from Article III, Section 202-3.5.A.6(i) of the Land Development Regulations because strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of these regulations. The proposed tent pad, wedding platform and walkway do not propose a connection to the existing septic system and therefore, does not impact peak flows to the existing septic system.

Seconded by Jim Finn.

Vote: 6-0 All in favor.

Motion by Steve Carter to grant a waiver from Article XI, Section 202-11.1.A.5 of the Land Development Regulations because strict conformity would pose an unnecessary hardship to

the applicant and the waiver would not be contrary to the spirit and intent of these regulations. Existing landscape is present within the project vicinity, where walkways are being proposed. An existing hedge row is present along the north side of the existing clubhouse and patio area, which provides a landscape buffer along the southern edge of the existing tent pad and the proposed westerly pedestrian paver access. A series of existing mulched landscaped islands are located to the north of the proposed easterly pedestrian paver walkway leading to the proposed wedding platform. In addition, an existing wall and landscaped area is located to the south of the proposed easterly walkway providing a buffer from the abutters' property to the south. The existing vegetative landscaped features are to be retained.

Seconded by Bill Epperson.

Vote: 6-0 All in favor.

Motion by Bill Epperson to approve the Major Site Development Plan by Wentworth by the Sea Country Club for property owned by WBTSCC Limited Partnership and located at 60 Wentworth Road, Tax Map 24, Lot 61-26 to replace the existing weekly tent with a seasonal 48' x 108' tent located on the north side of the clubhouse on an existing paver pad, property is in the Single Residence District, Case #19-2021, with the conditions that the tent canopy can be up May through October and the frame will be removed no later than November 15th.

Seconded by Jim Finn.

Vote: 6-0 All in favor.

5. New Business:

Note: *Alternate Rob Wright was reseated for the remainder of the meeting.*

a. Conceptual Consultation 15 Sagamore Road, Tax Map 14, Lot 22

Mixed residential and business, tear down existing and expand the commercial and rebuild three single family.

Mike Garrepy, Developer, spoke to the Board. He noted that they were in front of the Board once before for this property. He introduced Joe Coronati, Jones & Beach Engineering, and Architect Mick Khavari. The previous conceptual that was presented showed three duplex buildings in the back of the property with two commercial buildings. The feedback from this Board was that the project was a little too dense and certain buffer setbacks to the adjacent commercial uses were not being met. He continued that they presented a plan to the ZBA with four single-family homes in the back with two commercial buildings and a courtyard. The access road to the single-family homes in the back loops around the commercial buildings. He noted that per the zoning ordinance, the zoning line between commercial and residential was going to be changed within 50ft. The ZBA really thought that the residential homes should be located in the residential zone with the commercial zone being maximized. The variance requests were withdrawn at the ZBA, except for one variance. The one request was basically to scrape the entire site and relocate things in the appropriate zone. The ZBA granted relief to locate the three single-family homes in the residential zone. The homes don't have to be the

same size or be in the same location as the homes that are there now. They just have to meet the setbacks and coverage requirements of the single residential zone.

Mr. Garrepy noted that the application to change the zone line was withdrawn. The zone line has not changed. One of the single-family homes has been relocated and the other three are in the approximate location they were with appropriate commercial buffer to the south. There is certainly enough buffer to the north adjacent to Seaport Fish. The ZBA determined that the project didn't have to maintain any internal buffering between the property's two uses on the lot, between the commercial and residential zones. With the re-design, an additional twelve parking spaces have been added. Dumpsters were originally proposed on the south side of the property. Those have been moved to a more appropriate spot towards the northern part of the property. The proposal is still the same with respect to the look of the buildings. La Mulita will still be occupying Building B. They are hoping to expand their business into some of the other space within the building to expand their indoor retail space, have an outdoor seating area and a separate coffee roasting area.

In regards to the ZBA saying that the buffer between the residential and non-residential zones wasn't required, Chair Losik stated that the ZBA meeting minutes show that the ZBA Chair commented that wasn't required; however, it's not part of the vote.

Mr. Garrepy stated it wasn't put into the notice of decision. He asked for clarification towards the end of the ZBA meeting. That variance request was withdrawn, along with a couple of others.

Chair Losik stated she would like some clarification. She still has the same concern that was discussed before in regards to the location of the 50ft between commercial and residential.

Mr. Garrepy noted that the travelled way is 20ft. There is a significant buffer provided between the commercial buildings and the residential. He believes it was the consensus of the ZBA that the variance was not needed.

Member Sherman asked if this property is going to be attached to sewer.

Mr. Garrepy explained that right now the property is septic. The proposal is to tie everything into sewer.

Member Carter asked if the residential units are condos.

Mr. Garrepy stated the three family homes are condominium units. They would have limited common area associated with each one. Each commercial space will be condominiums as well.

Member Sherman asked about the impervious coverage.

Mr. Garrepy noted that the project meets the impervious coverages.

Chair Losik pointed out that ZBA Member Gregg Mikolaities called out the drainage problems in that area. The project might meet the impervious coverage; however, it seems like there's a lot of ledge. She asked about the stormwater drainage report.

Mr. Garrepy stated that right now, he does not know. There has been very little engineering of the site. Some additional exploring has to be done. There may be other areas on the site that will need drainage.

Member Carter asked if the commercial buildings and residential buildings are on slabs.

Mr. Garrepy stated that the intent was for the commercial buildings to be slab on grade. The three residential units will have at least partial basements.

Member Carter commented that there seems to be a lot of ledge.

Mr. Garrepy agreed.

Member Sherman pointed out that Seaport Fish had shared their concerns about the smells from their establishment. Vice-Chair Crapo had mentioned something about a condition for the development near Rye Harbor.

Mr. Garrepy noted that he has done subdivisions next to farms and language has been put into deeds in regards to the smells from the working farm. He is happy to put language right in the covenants that say there will be roasting coffee smells and fish smells.

Chair Losik questioned the employee parking near the lot line between commercial and residential. She asked if there is 10ft from the zone line.

Mr. Garrepy replied that there is not 10ft from the zone line, but they can get that if it's required.

Member Carter asked if the homes have enough room to park two cars outside the garage.

Mr. Garrepy confirmed.

Architect Mick Khavari noted that the garage itself is a single bay tandem garage.

Member Finn asked about the size of the residential homes.

Mr. Khavari noted that the footprint of each house is about 1650sf. There are two stories with a total of about 2250sf. The homes will have three bedrooms and two and a half baths. The garage is approximately 560sf.

Member Sherman asked about the space for emergency vehicle access.

Mr. Garrepy replied they believe there is enough room; however, they have not started that discussion. He noted that the property is on Portsmouth water. They will be verifying that there is adequate water for fire protection. He also noted that they will be meeting with the Fire Chief.

There were no further questions from the Board regarding the conceptual.

6. Committees

➤ Long Range Planning – Visioning Session for January 12, 2022

Member Carter announced that the visioning session that was scheduled for January 12th at the Rye Congregational Church has been cancelled due to Covid concerns. N.H. is leading the nation in the number of Covid cases and it is felt that an in-person session is not appropriate at this time. People may still participate with their thoughts on the Master Plan by requesting a survey (questionnaire) sheet from the Planning Administrator's Office. Anyone who has registered for the January 12th visioning session will be sent a copy of the survey. Residents may drop off their completed surveys at the Town Hall or send in by email.

The Long Range Planning Committee is currently in the process of gathering the data received at the last visioning work session. They will continue to correlate and review the information received.

7. Other Business

Chair Losik thanked the board members for their service and dedication to the Board during 2021. She also thanked Planning Administrator Kim Reed for her hard work over the past year. Mrs. Reed was responsible for coordinating fifty planning board events, along with her work with the ZBA and other committees/commissions.

Adjournment

Motion by Bill Epperson to adjourn at 11:10 p.m. Seconded by Steve Carter. All in favor.

Respectfully Submitted,
Dyana F. Ledger