

## **TOWN OF RYE – PLANNING BOARD MEETING**

**Tuesday, April 12, 2022  
6:00 p.m. – Rye Public Library**

***Members Present:* Chair Patricia Losik, Vice-Chair JM Lord, Clerk Steve Carter, Kevin Brandon, Rob Wright, Selectmen's Rep Bill Epperson, Alternate Bill MacLeod and Alternate Kathryn Garcia**

### **1. Call to Order**

Chair Losik called the meeting to order at 6:03 p.m. and led the pledge of allegiance.

Note: *The agenda items were taken out of posted agenda order (as shown in minutes).*

- **Street names and house numbering**

Selectmen's Rep Epperson explained that the issue has been that there is a big delay in street names and also the numbering of the street, especially in subdivisions. What is happening now, is the subdivision is being approved and the name of the street is to be adjudicated between the different departments for one to be picked. The problem has been in getting the street numbered. When this is not done, building permits cannot be issued and assessing can't be done. He noted that they are looking at a program that is used by several towns in N.H. This process would be kicked back to the Planning Department, Kim Reed specifically, to handle the names and the street numbers. When a subdivision is approved, there will be a street name and numbers which will go to the Assessing and Building Departments all at one time.

Chair Losik pointed out there is already a piece in place in Chapter 38 of the Town Ordinance that passed in March 1989, which deals with the numbering side but not the name side; however, it doesn't clearly say who does what. She explained there will be an addition to Chapter 38 and the language will also be incorporated in the Land Development Regulations, so the Planning Administrator will have clarity about the process. It will go from planning out to the various departments to make sure E911 is captured.

Selectman Epperson noted that this all came about because of the 9-11 numbering. There was a policy in place, but it really wasn't formulated specifically.

Member Wright asked if the names have to be approved by someone else.

Selectman Epperson replied that the Police Chief and the Fire Chief have to review the names, so they are not similar to other streets in town. He pointed out that when the Planning Board takes jurisdiction over an application it will have the street name. The numbers will come after that.

**2. Submittal of Application for Determination of Completeness. Not a public hearing. If complete, public hearing will immediately follow – Action Required:**

- a. Minor Site Development Plan** by RJ Joyce for the property The Carriage House Restaurant located at 2263 Ocean Blvd, Tax Map 5.3, Lot 53-03 for seasonal outdoor dining. Property is in the Business District, Coastal Overlay District. **Case #07-2022**

**Attorney Tim Phoenix, representing the applicant,** explained that a plan was submitted to the Planning Board that shows where the outdoor seating will be located. It's in the same area that was done over the last two seasons during Covid; however, those emergency allowances have now been lifted. The applicant is asking to continue to offer outdoor dining. He pointed out that a letter of opposition has been received from an abutter to the right. Other than that letter, for the entire time that they've had the extra seating, there have been no complaints and no issues with the parking. Mr. Joyce thinks that one of the concerns of the abutter is that for the past two years, they had a contactless pick-up table on the right side of the building. People would park their cars for a minute and pick up take-out, and there may be more than one person waiting. The contactless pick-up is now gone. He pointed out that the owners of The Carriage House lease parking spaces from the Dunes Motel.

**RJ Joyce, applicant,** explained that on a yearly basis, they lease spaces for every employee during the summer months, which is roughly fifteen spaces.

Attorney Phoenix commented that they don't have to have their employees park off site, but they do that to open up parking. He pointed out that the parking that's available on The Carriage House site probably wouldn't meet requirements, but it has been that way for many years. In addition, the applicant's have also spoken to the owner of the Dunes Motel about leasing an additional five spaces. The point is that five spaces will be given up at the restaurant and five spaces will be added a couple of blocks down. Attorney Phoenix noted that the Fire Chief has approved the proposal. The Police Chief has said he would support it, as long as the seating won't change. To code, they are allowed up to 90 seats in the restaurant. If they have 30 people outside, they won't have those 30 inside. The total seating will remain the same whether they are inside or outside. It is very rare that there are more than 70 people in the restaurant at one time. In light of the comment from the neighbor, they will also agree to double the efforts to monitor the parking and look out on Brown Court to be sure people aren't blocking the way for residents.

Member Wright asked how many parking spaces are on the property now.

Mr. Joyce replied 19.

Member Wright asked about the number of employees.

Mr. Joyce replied that at this time there are about 11 employees and it goes up to about 15 in the summer.

Attorney Phoenix noted letters of support were received from:

- Jeff Ford and Ally Blais, 2310 Ocean Blvd
- Jeff Ford Sr., 2256/2254 Ocean Blvd
- Tucker and Melissa Ford, 2263 Ocean Blvd
- David Frolio and Janine Quinn, 66 Big Rock Road
- Christian and Julie Derderian at 655 Long John Road
- Kelly Lewis, 30 Sea Road
- Bryan and Lindsay Pappas, 1178 Ocean Road
- Tiffany McCann, 10 Laurence Lane
- Jane and Melvin Master, 130 Perkins Road
- Shauna and Troy Mark, 919 Ocean Blvd
- Jeff and Linda LaPorte, Straw's Point
- Caper and Andrea Connell, Washington Road
- Ryan Fitzsimons and Kathleen Wharfe, 2290 Ocean Blvd
- Nathan Dunn
- James Holland
- Amy Byrne

Attorney Phoenix continued that the outdoor dining has become really popular in the summer. Mr. Joyce would like to extend outdoor dining at least through this year. The efforts The Carriage House owners will undertake to have their employees park somewhere else, which they have already done, with the additional 5 spaces to replace these spaces, and to monitor the parking, should create no problems. It's important to note that the applicants haven't gotten any complaints, until they got this letter from the neighbor.

Attorney Phoenix stated that he saw that the chair inquired whether or not this is exempt from site review regulations. One of the underlying questions was whether there was any adverse impact beyond site development. The Fire Chief felt there wasn't. Police Chief Kevin Walsh didn't mention it but said to keep the seats the same. (Attorney Phoenix received the site review regulations.)

Chair Losik noted that the Planning Board is also in receipt of a letters from Miriam Bryant, Liam Donaher, and Brother Andrew Thornton who have issues of concern. She continued that Chief Walsh sent comments back to the Board stating that the noise issue has not been tested outside because the majority of Covid time The Carriage House was closed. Therefore, the test of the neighborhood can't be said. She pointed out this goes to the query of whether there had been indications of dissatisfaction with those matters in the ordinance.

Mr. Joyce stated this would be the only thing he would question. The Town has allowed outside dining over the last few summers. The Carriage House was only closed six weeks total during Covid. There was outside dining during 2020 and 2021 per the Covid relief purview. His rebuttal would be that perhaps it was tested because there was dining outside.

Chair Losik commented she can't know anymore than what was stated. She is also wondering if the perspective is that post-Covid it would be busier.

Mr. Joyce commented that they are fortunate to be busy. They can't be busier than they are in the summer. That's the limiting factor. There is no way for them to be busier in the summer, as there is no room for more people.

Chair Losik clarified that it's basically at capacity.

Mr. Joyce confirmed.

Chair Losik stated that the concern she has is that there was a functional operating plan that worked during Covid and it was allowed. Now, moving away from that, it doesn't exist. She thinks they have to "tackle" what's in the ordinance. One question that came up when looking at the LDR was parking. There is a plan, but she's not sure it meets the regulations. She knows there is a solid two years of experience. So, some of these things may be able to be handled.

Member Wright asked what a normal seating number would be.

Mr. Joyce explained that on a typical Tuesday night, inside there will be about 60 seats open, but those won't be filled. He further explained that on a Saturday night, which is the busiest night of the week, it's about 80. That would be opening the upstairs back dining room. He reiterated that they are approved for 90.

Member Wright asked if the outside request is for 54 seats.

Mr. Joyce stated that would be every table maximized for 6 guests. It would really be about 30. That number would correspond with people inside, based on the restaurant's ability to take care of a guest. He pointed out that on an average night there were about 9 tables outside. There will always be a mix of tables with 2 to 6 guests.

Member Wright asked if there is bar seating.

Mr. Joyce replied there are 8 seats at the bar and those are part of the number that he has given.

Member Wright stated that there is somewhere between 60 to 90 guests indoors. There would need to be 1 parking space per 3 people, which would be 20 to 30 spaces. There would also need to be somewhere between 11 and 15 spaces for employees with another 4 for the bar seats.

There would need to be close to 40 parking spaces to be compliant with the ordinance as it is right now and there's 19 spaces.

Member Brandon asked how many people are seated in an evening.

Mr. Joyce replied that right now they are at about 110 people at most for the night.

Member Brandon asked how this compares to pre-Covid, during Covid and now with the pick-up business. It was indicated that contactless pick-up was being terminated, but presumably there will be someone bringing it to people outside. He asked if there is a dedicated parking spot for that.

Mr. Joyce explained that right now it's back to pre-Covid take-out. The restaurant only does about 2 orders per night, as an average. During Covid times, there were 20 plus orders a night. Right now, people will call in the order and come into the restaurant to pick it up.

Member Carter asked if the plan is to have 9 tables.

Mr. Joyce confirmed.

Member Carter asked about the hours of operation.

Mr. Joyce replied that they seat from 4:30 p.m. through 8:30 p.m. The restaurant is usually closed down by 10:30 p.m. with everyone being out the door by 11:00 p.m. On a weekend night, everyone will be out by 9:30 p.m.

Vice-Chair Lord stated that it seems like it has worked well for the last couple of years. That was under a Covid situation. Right now, the Planning Board has to go back to what they can rule on. It looks like they have some good plans moving forward. This is actually an existing grandfathered use. It has non-conforming parking and the Board is being asked to make it more non-conforming. He doesn't believe this Board has the ability to do that. He thinks that has to be the ZBA. Once they get that, it can come back to the Planning Board and they can assess what's going on. He thinks they need to go to the ZBA to get that relief. He did hear that they are going to look at more parking from the Dunes, but that begs the question of the parking situation at the Dunes.

Vice-Chair Lord stated that he looks at the Fire Chief's May 22, 2020 letter in regards to the proposed plan layout. He thinks they will need a much more defined plan. He personally doesn't think the application is complete based upon an incomplete site plan. There are a number of things that could easily be added. From everything he has heard, a scheduled site walk would really help the Board to come to a decision when the application comes back.

Alternate MacLeod commented that he doesn't think there was enough parking to begin with. If there wasn't outdoor dining, there would still be people going inside the restaurant. He honestly

just doesn't think there's enough parking now. He's all for outdoor dining and it seemed to work. However, he also doesn't live on Brown Court. He doesn't know what the impact is to people who live on Brown Court. It's a difficult decision, but losing the parking is an issue.

Selectman Epperson stated that The Carriage House has been there for 91 years and there has never been enough parking. However, people will park over at Jenness or park on Ocean Blvd. With Covid and the downturn of business, the Board shouldn't be making decisions that make it hard for people to do business. He doesn't have an issue at all with the proposal.

Chair Losik commented that she agrees with the concerns about the parking. When she looks at the RZO it really gets to the point where this is a change. She thinks the right process is for this to go to the Board of Adjustment for the parking. That will put the applicant in a position to be able to go through the proper areas of the Land Development Regulations. She struggles with whether they really have a site plan where they could look back at the package 5 years from now and say that was good work by the Board. She doesn't think so. She doesn't think there's a lot that needs to change. This is an existing condition. She noted that an engineer could put the parking calculations on the site plan. It will have an engineer stamp and a place for the chair to sign. She thinks there's information that needs to go on the site plan to be reflective of the proposal. Chair Losik continued that looking at LDR 6.9, this is in the floodplain. The Board doesn't know if there is on site storage for stuff that needs to be put away or what the plan is. Those pieces are important. She thinks everyone is on the same page to incorporate the Fire Chief's ideas for fire safety. Those actually fit into land development areas. She suggested going through 6.1A as there are some things to pull out. There's not a lot that applies because this is a minor site plan. However, she thinks this information can be given to the Board.

Attorney Phoenix stated that he thinks the applicants' thinking process was that they have been doing this for two years during Covid and there have never been any problems. At some point, there is a balance with the business as to how much time and expense they want to go through. It may take two months to go through the ZBA which would take it to the middle of the summer and then it would have to go back to the Planning Board. He continued that the only letter that had any concerns was from a neighbor on Brown Court. He also saw a letter from Ms. Blaisdell asking for information. However, he doesn't know what anyone's position is. He would like to know what the concerns are.

Chair Losik read a letter from Miriam Bryant, 3/5 Brown Court, in opposition to the proposal. She also read an email from Brother Thornton for the property at 12 Brown Court, which abuts The Carriage House land.

Member Wright asked about the deadlines for the ZBA meetings.

Attorney Phoenix noted that the ZBA meets the first Wednesday of every month. The application has to be in by the second Friday of the month before the meeting. At this point, the applicant won't be able to apply until May to be heard in June. Also, there is the situation where the Building Department is way backed up with work. The applicants will need a denial letter

from the Building Department and that can take five to six weeks. The applicant wouldn't be heard by the ZBA until at least July.

Vice-Chair Lord stated that he doesn't believe the Planning Board has the ability to extend an existing non-conforming condition. He thinks that can only be done by the Board of Adjustment.

Member Wright agreed. He doesn't see how they can call this anything other than an expansion or change of use. It's not just non-conforming, it's non-conforming by double presently. It's operating under a non-conforming grandfathered status and that's okay. He doesn't see how the Planning Board can get over the hurdle of approving something without the additional variance.

**Note: Chair Losik seated Alternate Bill MacLeod for Jim Finn.**

Alternate MacLeod stated that the applicant has an as-built plan that's dated September 2021. For all intents and purposes, it's an up-to-date plan. He wouldn't want to see them have to go through any more than what they've submitted. To have them go through with additions to the plan, and have them go through an engineer to do additional work, isn't going to change anything. It isn't going to give any more information. To him it's very clear where the outside seating is going to be located.

Chair Losik noted that when she was talking about presenting the Board with a site plan, she sees minor things and an engineer would make a few changes. She pointed out that Wentworth by the Sea has had some plans before the Board in the past. One of the things the Board wants to know is access and egress. It's important to know where the pedestrians will be walking and how they're going to navigate the parking lot. The Planning Board wants this to work. However, they also want to do the right thing as a land use board. She thinks more detail is needed, which would give her greater comfort. She doesn't think it's an overreach.

Vice-Chair Lord commented that he doesn't think there's a lot that needs to be added to the plan.

Chair Losik agreed. She stated that now is the time to do it. She thinks the time issue will be the Board of Adjustment. She also thinks a site walk would be a good idea, as the Board sometimes sees things and can make things simpler.

There was discussion in regards to whether the proposal meets site plan review exemption status under the LDR or if waivers need to be requested.

**Motion by JM Lord to continue the Minor Site Development Plan by RJ Joyce for The Carriage House Restaurant located at 2263 Ocean Boulevard, Tax Map 5.3, Lot 43-03 for seasonal outdoor dining, with the condition that the proposal goes to the ZBA for reduction in parking and it comes back to the Planning Board with a package that contains letters from the Fire Chief, Police Chief, and statement addressing exemption from the LDR or a**

**request for waivers. Application to be continued to the June 14, 2022 Planning Board meeting. Seconded by Patricia Losik.**  
**Vote: 7-0 All in favor.**

David Loney, 2266 Ocean Blvd, requested to speak.

Chair Losik agreed.

Mr. Loney stated that it's an improvement to the property with the way it is now. They don't have cars coming in and out two entrances. It's a huge improvement to the safety on the road. If parking is allowed on Brown Court, that is an issue for the Town, not the restaurant. If parking is not allowed on Brown Court, that is an issue for the Town, not the restaurant. He thinks Brown Court is a moot point because there will be no change in parking.

Mrs. Loney noted that when the beach clears out in the late afternoon, parking opens up all over on Ocean Boulevard. There is plenty of public parking in the area. The Carriage House is not open during the day. They are open during the evening when the parking in the area opens up.

Mr. Loney commented that esthetically it's an improvement.

Mrs. Loney agreed that it's beautiful.

A neighbor from the public noted that she is in favor of the outdoor dining. Her only concern is the corner that has now been removed from the equation. She thinks the last two summers has actually been a test of the noise. She was concerned about the noise because of where her property is located, but that has had no impact on her. She is in favor of the proposal.

Brother Thornton stated that he wished he knew where the proposed dining was going to go because he never found out.

Chair Losik gave Brother Thornton a copy of the plan.

- b. Amendment to the Surf Club of Rye Condominiums** approved by the Planning Board on March 12, 2002 by Peter Fregeau for property located at 1196 Ocean Blvd, Tax Map 17.3, Lot 35, to add a shed to unit #2. Property is in the Business/General Residential, Coastal Overlay District and SFHA, Zones AE and VE. **Case #02-2022.**

**Motion by JM Lord to continue the determination of completeness and the public hearing for the Amendment to the Surf Club of Rye Condominiums for property located at 1196 Ocean Blvd, Tax Map 17.3, Lot 35, to the May Planning Board Meeting.**  
**Seconded by Bill Epperson. Vote: 7-0 All in favor.**

- c. Jones & Beach Engineers, Inc** for property owned by David Prothro located at 12 Goss Farm Lane, Tax Map 8, Lot 59-2, request to install a fence within the voluntary

buffer established per the Conditions of Approval dated May 14, 2019, for the Major Subdivision by Tuck Realty Corp, Case #11-2018. Property is in the Single Residence District. **Case #06-2022.**

- *Withdrawn*

**3. Public Hearings on Applications if they are complete and/or have been continued:**

- a. Minor Site Development Plan** by RJ Joyce for the property The Carriage House Restaurant located at 2263 Ocean Blvd, Tax Map 5.3, Lot 53-03, for seasonal outdoor dining. Property is in the Business District, Coastal Overlay District. **Case #07-2022.**

- *See minutes above*

- b. Amendment to the Surf Club of Rye Condominiums** approved by the Planning Board on March 12, 2002 by Peter Fregeau for property located at 1196 Ocean Blvd, Tax Map 17.3, Lot 35, to add a shed to unit 32. Property is in the Business/General Residential, Coastal Overlay District and SFHA, Zones AE and VE. **Case #02-2022.**

- *See minutes above*

- c. Jones & Beach Engineers, Inc** for property owned by David Prothro located at 12 Goss Farm Lane, Tax Map 8, Lot 59-2, request to install a fence within the voluntary buffer established per the Conditions of Approval dated May 14, 2019, for the Major Subdivision by Tuck Realty Corp. Case #11-2018. Property is in the Single Residence District. **Case #06-2022.**

- *See minutes above*

**4. New Business**

- a. Request for reduction in line of credit for 1244 Washington Road Condo Project**

The Board reviewed the request for the credit line reduction for 1244 Washington Road.

Selectman Epperson asked if they have to approve the whole request. He noted that the project is woefully inadequately landscaped in relation to what the Planning Board approved. He would like to verify the landscape information.

Chair Losik read a letter from the manager of the project regarding the installation of plantings, and landscape finish work, and the timeframe for the work to be completed.

Alternate MacLeod asked if Sebago has inspected the work and given an estimate of the work to be completed.

Chair Losik confirmed. She noted that Steve Harding at Sebago has estimated \$138,000 for the remaining work.

The Board agreed that they are comfortable with Mr. Harding's assessment of the work to be completed.

**Motion by JM Lord to approve the reduction in the line of credit for 1244 Washington Road Condo Project per Steve Harding's letter. Seconded by Rob Wright.**

**Vote: 7-0 All in favor**

**b. Street names and house numbering**

- *Taken out of posted agenda order. See minutes above.*

**c. Appoint Phil Winslow as the Planning Board representative to the RPC**

**Motion by Steve Carter to appoint Phil Winslow as the Planning Board representative to the RPC. Seconded by Kevin Brandon. Vote: 7-0 All in favor.**

**5. Other Business**

**a. Committee Updates**

- **Long Range Planning Committee**

Member Wright reported that the next Long Range Planning meeting is scheduled for May 3<sup>rd</sup> at 1:00 p.m., at the Town Hall.

- **Rules and Regulations Committee**

Chair Losik noted that she, Nicole Paul and Kim Reed had a consultation meeting with Attorney Eric Maher to scope out the process of the review and rewriting of the zoning. Attorney Maher will be following up with the Rules and Regulations Committee soon.

The next Rules and Regulations Committee meeting is being held on May 3<sup>rd</sup> at 4:00 p.m.

**b. Approval of Minutes**

- **February 8, 2022**

The following corrections were noted:

- Page 1, under item b, the motion should read: **All in favor.**
- Page 3, 3<sup>rd</sup> paragraph from bottom, 3<sup>rd</sup> sentence should read: **That delay set back the project for well over a year.**
- Page 11, 1<sup>st</sup> paragraph, 3<sup>rd</sup> sentence should read: **How is the puzzle solved of who the consultant should be?**
- Page 11, 1<sup>st</sup> paragraph, last sentence should read: **What way should the Town go?**

- Page 4, 4<sup>th</sup> paragraph, 2<sup>nd</sup> sentence should read: **The reasons have been a combination of financing, contractors not being available and manpower being scarce.**
- Page 4, 2<sup>nd</sup> paragraph from bottom, 2<sup>nd</sup> sentence should read: **He doesn't think anyone can confidently say that it will be nine months and everything will breeze through. Without it being something that can be predicted,**
- Page 5, 1<sup>st</sup> paragraph, 2<sup>nd</sup> sentence should read: **The manual also includes some items that now sit in landscaping, which includes fertilizer maintenance, litter control for landscaped areas and control of invasive species.**
- Page 12, 2<sup>nd</sup> paragraph, 1<sup>st</sup> sentence should read: **Chair Losik commented that when she thinks about the numbers, she gets nervous because the Town has a lot of needs, not just the Master Plan.**
- Page 14 and Page 16, it should be noted that the meeting starts at **6:00 p.m.** (not 6:30 p.m. as stated).

**Motion by JM Lord to approve the minutes of February 8, 2022 as amended. Seconded by Bill Epperson. All In favor.**

- **March 15, 2022**

The following corrections were noted:

- Page 6, 5<sup>th</sup> paragraph, 1<sup>st</sup> sentence should read: **Mr. Singer explained that the carriage house is the part that sticks out closest to the garage.**
- Page 12, 2<sup>nd</sup> paragraph from bottom, 3<sup>rd</sup> sentence should read: **What's being proposed is to subdivide the existing lot owned by Malcolm Smith into two lots.**
- Page 13, 2<sup>nd</sup> paragraph from bottom, 2<sup>nd</sup> sentence should read: **It wasn't needed to serve the property.**
- Page 18, last paragraph, last sentence should read: **He suggested that they don't add all the monitoring wells to the plan because some exist today and some are proposed.**
- Page 19, under a., 1<sup>st</sup> sentence should read: **Chair Losik stated that she has asked Suzanne McFarland to give an overview.**

**Motion by JM Lord to approve the minutes of March 15, 2022 as amended. Seconded by Rob Wright. All in favor.**

- **March 29, 2022**  
*Tabled*

**c. Escrows**

**Motion by JM Lord to pay the following escrows:**

- **Sebago Technics for the old Hector's site in the amount of \$193.75;**
- **Sebago Technics for Benchmark in the amount of \$193.75; and**
- **Sebago Technics for Airfield Drive in the amount of \$305.00.**

**Seconded by Bill Epperson. All in favor.**

**6. Communications**

*None*

**Adjournment**

**Motion by JM Lord to adjourn at 7:44 p.m. Seconded by Bill Epperson. All in favor.**

Respectfully Submitted,  
Dyana F. Ledger