

**TOWN OF RYE – PLANNING BOARD
MEETING**

**Tuesday, September 13, 2022 – 6:00 p.m.
Rye Public Library**

Members Present: Chair Patricia Losik, Vice-Chair JM Lord, Clerk Steve Carter, Jim Finn, Rob Wright and Alternates Bill MacLeod and Kathryn Garcia

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

1. Call to Order

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

Alternate Bill MacLeod was seated for Kevin Brandon.

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

- a. Request to re-open for verification of the conditions of approval of the minor 3-lot subdivision by Jak Nadeau Revocable Trust for property owned and located at 711 Long John Road, Tax Map 16, Lot 136 to subdivide the existing lot into three single family residential lots with access via a 50'-wide right of way. Property is in the Single Residence District. **Case #07-2020.**

Attorney Tim Phoenix, representing the applicant, explained that this was approved in April 2021. The Board issued a number of conditions with its decision. There are conditions precedent to the Chair signing the recording and conditions subsequent. One of the conditions precedent is the requirement of a \$65,000 surety bond to guarantee the completion of the road and drainage facilities. The other requires the posting in escrow for the planning board engineer's monitoring of site improvements. Attorney Phoenix noted that Jay and Karen Nadeau are not going to develop this land themselves. The intent is to find a builder to do the work. There has been some interest. However, it's hard to find someone if it's unknown if there's a recordable subdivision plan or to find someone to post a bond to find out. He continued that the conditions should have been conditions subsequent. The proper time for requiring those conditions is before a building permit is issued, rather than before the Chair signs the plan. His proposal is to move conditions #8 and #10, conditions precedent, to paragraph #16, conditions subsequent, and make them 16a, 16b, and 16c.

Speaking to Planning Administrator Reed, Chair Losik stated that Attorney Maher's comment was that there would be risks if the mylar was recorded and the lots were sold without

infrastructure. It sounds like he is considering there are risks that the Board should be knowledgeable of.

Planning Administrator Reed replied that Attorney Maher said it is up to the Board. However, the Board should be very aware of the risks. What if a subdivision is recorded and the infrastructure is not built.

Attorney Phoenix commented that if this were a 100-lot subdivision, not all are going to be built right away. It might be done in phases. This is the same thing, only on a smaller scale. In his mind, the risk is de minimis because if the infrastructure is never built at a certain period of time, there are two years to protect against zoning changes and five years to begin substantial construction. This happens quite often and the subdivision doesn't go forward. It will either lapse or someone will come along later to decide if it's still valid to build. At that point, they would not be able to build without a building permit and that can't happen until the bond is posted.

Chair Losik asked why they are not requesting an extension.

Attorney Phoenix commented the Board granted 24 months, so that goes to April 2023 and it may be needed. However, it's still hard to find developers who want to the project without knowing there's a subdivision that they can post a bond for in order to begin construction.

Alternate MacLeod stated that he agrees with Attorney Phoenix. His experience has been that a subdivision plan is recorded with a condition that no lots may be sold until the roadway improvements are in place or a bond has been posted. He's never seen a situation where the bond has to be posted before the subdivision plan is recorded. The way to protect the lots is to have a condition that says no lot can be sold, unless the subdivision is sold in its entirety, until the road improvements are in place or a bond has been posted to cover the improvements upon any remaining improvements that might be necessary.

Attorney Phoenix confirmed that his client would be fine with such a condition.

Alternate MacLeod stated that it would protect any future owners and it would protect the Planning Board from the very thing that Attorney Maher was concerned about.

Member Wright stated that if he understood the opinion, if the mylar is allowed to be recorded, presumably lots could be sold. Without the language that Alternate MacLeod just described, there would be the risk of having a subdivision without substantial improvements. The statement that Alternate MacLeod just referred to makes sense.

Attorney Phoenix suggested a stipulation that the language be put on the plan before recording.

Vice-Chair Lord stated that it's always been done before it's recorded. It seems that if the Board starts to go down this road that anyone could be doing developments and who knows if they'll ever be built. If it's done on this one, it will have to be done on every single one. It seems there

will be a rush on pushing developments through to circumvent land development regulations, which are getting tougher.

Attorney Phoenix stated that Mr. Nadeau is not a developer. He went to some banks and bond companies to see if he could get approved for a bond and he was denied because he doesn't have the wherewithal to do the work, as a developer would. Unless someone buys this and does this all at once, he's stuck. Attorney Phoenix commented that he thinks the risk is pretty small. The request would be for each one to stand on its own. He noted that they are not asking for an extension of the deadline at this point. It's just to be able to sell the lots so they can be developed.

Vice-Chair Lord asked why they are not asking for an extension, as it would do the same thing.

Attorney Phoenix explained that he doesn't like to ask for extensions eight to ten months before they apply because he's not sure if it's needed. He would be asking for an extension if it was three months out.

Vice-Chair Lord asked if this is going to be kicked out one, two or five years. It could go on forever because it would already be recorded.

Attorney Phoenix stated that in his experience, subdivision plans have routinely been recorded before someone has to post a bond.

Vice-Chair Lord stated this was an agreed upon condition of phasing as part of the approval process. He believes this was talked about in depth during the approval process and everyone was fine knowing the risks going in.

Chair Losik stated that she has seen with larger projects that the bond can still be posted and there can still be phasing.

Attorney Phoenix explained this is a situation of a very small subdivision from a landowner that doesn't have the wherewithal to do the bonding right now. There are developers who are interested, but are not willing to move forward because they are not sure it can be done.

Vice-Chair Lord asked if this would be opening it up to landowners who would want to subdivide now and get it recorded as a way of circumventing the Land Use Development Regulations.

Attorney Phoenix commented this is not an attempt to circumvent the development. He suggested adding a condition that says if the two items have not been dealt with by the existing expiration, before a building permit can be issued a town review will be required for determination of whether the bond is adequate. He pointed out that if the bond is posted now, it's really a worse problem because the bond is already set.

Vice-Chair Lord replied there isn't a five-year window right now. It's only until April 2023.

Attorney Phoenix pointed out if everything is done by then there is three more years. It doesn't have anything directly to do with the bond. It has to do with amendments to zoning and lot development regulations. That's what it's vested against.

Chair Losik commented it's grandfathered to the zoning for five years, as long as it's within the substantial completion.

Alternate MacLeod stated that developers are constantly going to banks and getting construction mortgages and land mortgages. They have the experience of getting bonds. If it was a developer that was doing the subdivision, this would be second nature to him. It was always his recommendation to clients to have the plans signed and recorded at the registry of deeds. Everyone wants to see that what they are buying has the signatures on the plans and it's at the registry of deeds. Maybe Rye has been doing something unique because there has been less development in Rye than in other places. He can see where this is a unique situation. A surety company is not going to issue a bond because the landowner has no track record of land development. He doesn't think the Town is at risk of anything by signing the plan. The twenty-four-month extension expires in April. The most he gets is three years after that.

Chair Losik stated that her only concern is that the Board does not know enough about the risks that Attorney Maher might be concerned about. She continued that the Board needs to first determine if the packet is complete.

Vice-Chair Lord stated he doesn't know how to answer that question, as this is a reopen for verification. He thinks if this could be continued another month to speak with Attorney Maher, it could be resolved very quickly. He feels this is uncharted territory of whether this is complete or not.

Attorney Phoenix explained that in other towns, this would be considered an administrative item.

Speaking to Attorney Phoenix, Chair Losik asked his sense about this coming back in October, so the Board can have a chance to have some input from Attorney Maher.

The applicant agreed to continue until October.

Motion by JM Lord to continue Case #07-2020 by Jak Nadeau Revocable Trust to the October 11, 2022 meeting because the Board cannot determine whether the application is complete or not until they hear from counsel. Seconded by Steve Carter. All in favor.

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

Motion by JM Lord to take item c out of posted agenda order. Seconded by Steve Carter. All in favor.

- Major Subdivision Plan by Jones & Beach Engineering, Inc. on behalf of Marlene Veloso & Charles Fast property owners for property owned and located at 850

Washington Road, Tax Map 11, Lot 130 to subdivide the parcel into 3-lots and a road. Property is in the Single Residence and Aquifer & Wellhead District.
Case #11-2022.

- **Applicant requested a continuance to the October 11, 2023 meeting, as they are waiting for the hydro report.**

Motion by JM Lord to continue the application for 850 Washington Road, Case #11-2022, to the October 11, 2022 meeting. Seconded by Steve Carter. All in favor.

- a. Major Subdivision for a Condominium Conversion for property owned by Arthur & Sharon Pierce Rev. Trust, Arthur & Susan Pierce, Trustees for property owned and 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.**

Attorney Chris Mulligan, representing the applicants, spoke to the Board. He explained that what they are attempting to do is convert an existing developed site that consists of a number of residential units into condominium use. The last time the application was before the Board, a number of changes were requested for the site plan. He pointed out that they added back in the wooded buffer on the site plan. The sea-level rise locations were also added to the plan, which was requested by the Chair. In addition, the septic inspector went out to the site. In conjunction with that visit, Alex Ross mapped in the existing leach fields that are now shown on the plan. He continued that the condominium site plan and condominium floor plans are substantially the same.

Alternate MacLeod asked if additional work was done to map the existing septic systems.

Alex Ross, Ross Engineering, confirmed. He explained there was a firm that did the original inspections of the leach fields and septic tanks. They went back to the site to locate the corners of the existing leach field. That information was added to the plans.

Chair Losik asked if there are new reports for the recent septic inspections.

Mr. Ross replied there's no new reports. When the septic inspectors went to the site, they just hand dug to locate the corners. They didn't comment on the quality.

Referring to Unit 7, Chair Losik noted that on the 2020 report, it talked about that having a one leach line in that area. She asked what is happening with Unit 7.

Mr. Ross explained that units 7 and 8 go into the smaller rectangle area that is shown on the plan. Referring to the 2020 report, Mr. Ross stated that what the inspector is saying that when he went out in 2020, he didn't dig up enough of the field, but he did locate one leach line. When he recently went out, they located the whole entire field.

Chair Losik clarified that units 7 and 8 now go to what has been depicted on the plans.

Mr. Ross confirmed.

Member Carter commented there must be septic tanks somewhere. All that is shown is the leaching fields.

Mr. Ross pointed out that the sewer manhole shown on the plan is where the tank is located.

Referring to Attorney Donovan's September 9th letter, Chair Losik noted that there are seven items set forth in his letter. This is around the assertion made in the waiver request that if it had to be redesigned it would result in unwarranted redesign and delay. There is 18" difference between the design intent and a 4' separation. Exactly how much would each leach bed have to be raised?

Mr. Ross pointed out there are profiles of the septic. He continued that the Town requires 48" of separation. The State has different levels depending on the system that is being used. The system that is being used in this case requires 30" of separation per the State regulation, which has to do with the characteristic of the system that has been designed. He explained that for both systems, they are going with a 30" separation. If everything had to be raised by 18", it would be a significant difference at 1.5'. There would be a lot more fill and fill extension. It would be very hard to fit the systems in with the existing buildings and the setbacks.

Chair Losik asked if that could be approached by waivers.

Mr. Ross explained that the fill cannot go over the property line. Referring to the leach bed in the north corner, he pointed out that the contour catches up to the 9 contour, which is the flood elevation in that area. It shouldn't be raised higher with fill being added into that area. He also pointed out how close the proposed contour is to the existing building and it's getting close to the right-of-way line. He noted that right now the fill is 8' from the front property line. He also noted that the proposed system is the Clean Solutions System. He explained that with a traditional septic system, the waste leaves the house and goes into a septic tank, which is the primary treatment. The effluent then continues out to the leach field. With the Clean Solutions System, there's a secondary treatment where the bacteria cleanup the effluent to provide a cleaner end result. He noted that when they have been met with constricted sites, this is the system that is typically used. They have been granted waivers in the past to go from 48" to 30". The State would actually allow the system to go to 24". He pointed out that not only does the system have a secondary treatment, instead of a traditional stone and pipe system, larger pipes are used with fabric. The State takes all that into account and allowed the system to go to 30". He also pointed out that the State requires maintenance and inspections to make sure that the PH, air content and media is perfect.

Member Wright asked about the enforcement mechanism for the inspection.

Mr. Ross explained that the company that delivers the materials has a maintenance agreement that has to be signed by the owner prior to the State approval.

Chair Losik asked if the maintenance plan can become part of the conditions of approval.

Attorney Mulligan stated that in the condominium instruments, which he and Attorney Donovan have worked on, it provides for routine and required maintenance and inspections for the new systems, and for getting follow up systems approved by the State, if in fact the systems' approvals expire before their installed.

Chair Losik clarified the maintenance criteria for the systems is in the HOA.

Attorney Mulligan confirmed.

Chair Losik stated that typically on a project, testing would be required that would be in lines with the requirements of the system being installed. That testing would go to the Planning Board and the Building Department on an annual or bi-annual basis.

Alternate MacLeod asked the protocol for inspection and testing.

Mr. Ross explained the company goes to the site and logs what they find. They go out twice per year to the site. He is not sure if the report goes to the State or the Town. It's required for the system. He's sure that the maintenance log could be submitted to the Town.

Attorney Mulligan stated that he can be sure it's in the condominium instruments, which will be recorded as well. He noted that the last time they were before the Board it was agreed that the existing septic system should be inspected and pumped every other year. Attorney Donovan wanted those reports submitted to the Building Inspector. He pointed out that any approval would be conditioned upon final legal approval of the condominium documents.

Chair Losik clarified that the language would apply to the current systems. The reporting would apply to the current systems. The Planning Board and Building Inspector would be seeing the reports every two years. With the new systems, it would be a different mechanism for maintenance and reporting.

Attorney Mulligan confirmed.

Member Finn asked if this is an upgrade to the existing system.

Mr. Ross explained that there are currently systems that have been inspected and are in working order. A new design has been proposed, but is not being installed at this time.

Member Finn stated one of his concerns is that if one of the systems fails, a lot of people don't have excess cash to through at something. His concern would be that if there was a failure there

would be effluent seeping into the estuary with owners who do not have the financial means to take care of it. He asked if a possible buyer could put forth escrow into a homeowner's association. They need to think about the buyers and the environmental needs.

Attorney Mulligan stated that having multiple owners absorbing a joint cost can ease the burden on each individual homeowner, as each one is contributing to a common expense. There are single family homeowners in Rye who are in the exact same situation. From the Town's point of view, it's whether or not there's an enforcement mechanism in place that if the systems fail, action can be taken to get them corrected. That's really the limit of what the Town can do and that has been provided for in the HOA and the town's general health and safety regulations. If the homeowner doesn't have the money, they have to figure out how to get the money or move. They can't just keep letting a failed septic system leach into the estuary. He understands the concern. However, the Board can't impose requirements on this project that are drastically different from any other home ownership that would otherwise be similarly situated.

Chair Losik summarized that what she heard from Attorney Mulligan is there would be testing and reporting for the existing systems, every two years, and replacement systems, which would be shared with the Building Inspector and Planning Board.

Attorney Mulligan agreed that he and Attorney Donovan will come up with some language. He thinks they would want to keep the language about reporting as generic and broad as possible.

Vice-Chair Lord asked if it would be complicated to take up the leach bed another 18".

Mr. Ross replied it would be very complicated. That would be new shoreland and wetland permits. There would have to be a different arrangement for the wetland buffer. Based on the fill extensions, it would be in the flood zone and encroaching on the right-of-way or side line.

Chair Losik pointed out that a waiver would possibly be need for the setbacks.

Mr. Ross agreed.

Alternate MacLeod stated that the new advanced systems have proven that the degree of filtration and treatment is so much greater than a conventional system. That's why DES allows lesser separation for the water table. Raising a system 18" in tight quarters like this would be problematic.

Speaking to Attorney Mulligan, Chair Losik stated that he may want to think about the language in the waiver. What is said is that they are going to be high-tech systems. It's not saying that they can't be designed for the 4' separation. It's just saying that this waiver makes sense because it's a high-tech system. There's a reason its not being designed to the standard.

Attorney Mulligan agreed to redraft the waiver.

Mr. Ross clarified that with a traditional system, the State would deny less than 48". The State allows 24" and 30" for these special systems.

Referring to Attorney Donovan's questions from his letter, Chair Losik asked if raising the easterly leach field would affect the woodland buffer.

Mr. Ross explained it would really pinch the woodland buffer right out of that area. The fill extension would go right up to the side line. He continued that the design for these systems has a flat top and runs down a 3 to 1 slope. It's a gradual slope.

Referring to Attorney Donovan's letter, Chair Losik asked if raising the existing leach field has an impact on the abutter to the east.

Mr. Ross replied yes. With a plateau and slope coming down, there should be a bit of a buffer at the property line, so it doesn't alter the stormwater runoff and shoot it right over to the abutter. There should be 8' or 9' before hitting the property line.

Chair Losik asked the Board their thoughts in regards to the septic.

Member Wright stated that Mr. Ross has explained it pretty well. This has been approved by DES. The expiration on the approval is four years.

Mr. Ross noted it's four years from June 15, 2022.

Referring to Attorney Donovan's letter of September 8th addressing waiver request to 202-3.5.B(1)(a), submittal of stormwater management plan, Chair Losik noted that his recommendation is that there are no changes to the site, thus a stormwater management plan would be an unnecessary submittal. She pointed out that as Mr. Ross has explained, there would be a change if the systems were higher, but there are no other changes currently.

The Board agreed.

Referring to the submittal of the use intensity statement, Chair Losik stated that Attorney Donovan's sense was that this is something that could be provided as a placeholder with information about the condominium.

Attorney Mulligan stated that what has been submitted are comprehensive site plans and floor plans that seem to give the information that Attorney Donovan seems to want in a use intensity statement; the layout, number of bedrooms, parking, and location of buildings. He's not sure what the use intensity statement provides the Board and town that is not already provided in the plans that have already been submitted. In the regulations, the use intensity statement provides information for commercial developments; such as, the number of employees, traffic count and things of that nature. None of that applies to a residential development. The things that Attorney

Donovan is describing that he would like to see is all redundant information that has already been provided in the site and floor plans.

Chair Losik stated that she doesn't disagree. However, a simple written statement to describe the resources that exist on the property, is not too much to ask.

Alternate MacLeod commented a one-page summary would be sufficient. He pointed out that not everyone can read plans.

Vice-Chair Lord agreed with Alternate MacLeod.

Attorney Mulligan agreed to provide a summary.

Referring to waiver request to 202-3.5.B(1)(c), submittal of building elevation drawings, Chair Losik noted that Attorney Donovan recommends that. He thinks the set of photos should be resubmitted with the date of the photos.

Attorney Mulligan submitted dated photos to the Board.

Referring to Attorney Donovan's September 8th letter, Chair Losik noted that the Board knows that 4,000 DLAs exist with two qualifying test pits. Rather than further clutter on the drawings, Attorney Donovan's advice to the Board is to waive this requirement. Attorney Donovan recommends approval for lighting and landscaping. Under NH current law, the Board may not require the existing site to be retrofitted to comply with the standards. Attorney Donovan noted that colored plans are missing, which are required by 202-3.1.A(17). In regards to the survey plan, there is certification language required.

Attorney Mulligan stated that they can resubmit Mr. Ross's plans with color. The certification will also be added.

Referring to the proposed natural buffer plantings, Chair Losik noted there's a list of native plantings on the Town of Rye Conservation Commission website page on the town's website. She asked if they would be accepting of those plantings.

Mr. Ross agreed.

There was some discussion about a site walk. The Board agreed to schedule a site walk on October 6, 2022 at 1 p.m.

Chair Losik opened to the public for comments. Hearing none, the public hearing was closed at 7:30 p.m.

Motion by JM Lord to approve the waiver to Section 202-3.5.B(1)(a) of the Rye Land Development Regulations as a stormwater management plan is unnecessary for this fully

developed site. No physical change is proposed. The contemplated change from tenant occupancy to owner occupancy is not an extension of a non-conforming use under NH law. Seconded by Steve Carter. Vote: 6-0 All in favor.

Motion by JM Lord to approve the waiver to Section 202-3.5.B(1)(c) of the Rye Land Development Regulations that require elevation plans, as formal building elevation drawings are unnecessary for this fully developed site. No physical change to the site is proposed. In lieu of architectural elevations, existing condition photos of all the buildings have been submitted. Seconded by Jim Finn. Vote: 6-0 All in favor.

Motion by JM Lord to approve the waiver to Section 202-6.3.B to J of the Rye Land Development Regulations, as this is a fully developed site and no physical changes to the site are proposed. Compliance with design standards for a site that has already been designed and is presently in use is not warranted. Seconded by Steve Carter. Vote: 6-0 All in favor.

Motion by JM Lord to approve the waiver to Section 202-6.7.C(2) of the Rye Land Development Regulations requiring test pits, as Dennis Plante has witnessed the test pits on behalf of the town and reviewed and approved the data prior to its submission to the state. he has stated test pits may be done any time of the year. Seconded by Steve Carter. Vote: 6-0 All in favor.

Motion by JM Lord to approve the waiver to Section 202-10.2.A(1) of the Rye Land Development Regulations, as this is a fully developed site and no physical changes to the site are proposed. No additional lighting or change to the existing lighting is proposed. Adherence to the lighting standards is not warranted. A change from tenant occupancy to owner occupancy is not an extension of a non-conforming use under NH law. Seconded by Jim Finn. Vote: 6-0 All in favor.

Motion by JM Lord to approve the waiver to Section 202-11.4 of the Rye Land Development Regulations, as this is a fully developed site and no physical changes to the site are proposed. No additional landscaping or change to the existing landscaping is proposed. A landscaping plan is not warranted. A change from tenant occupancy to owner occupied is not an extension of a non-conforming use under NH law.

Motion by JM Lord to continue the application for 251-279 Pioneer Road to the site walk on October 6, 2022. Seconded by Jim Finn. All in favor.

Motion by JM Lord to continue the application for 251-279 Pioneer Road to the Planning Board meeting on October 11, 2022. Seconded by Jim Finn. All in favor.

- b. Major Site Development, Residential Condominium and Commercial Site Plan by The Sagamore Group, LLC for property owned by Split Rock Cove Family Trust of 2019 and located at 15 Sagamore Road, Tax Map 24, Lot 22 to construct three

single-family condominium dwellings on the back of the lot and two commercial buildings on the front of the lot. Property is in the Single Residence and Commercial District. **Case #10-2022.**

Chair Losik noted that some changes have been made to the plans since the application was before the Board in August. Responses have been received from Jones and Beach addressing the town engineer's comments. The Board would like to know the status of negotiations, exceptions, and approvals with the City of Portsmouth for water supply, City of Portsmouth Sewer Division, and DOT for landscape and drainage.

Joe Coronati, Jones & Beach Engineers, spoke to the Board. He explained that since the last meeting, they have responded to Steve Harding's comments. Mr. Harding just issued another letter with a handful of items to be addressed. Jones & Beach is close to completing Mr. Harding's review. Most items were minor comments. There were two items that were more substantive. Mr. Harding wanted an overflow device added in the patio area for stormwater. A yard drain is going to be added in the middle of the pavers to make sure there is a drain in that area. The other comment revolves around separation to ledge and seasonal high-water table. Mr. Coronati noted that they are looking at those separation areas to determine what is needed for depth of gravels for the stone.

Chair Losik commented that Mr. Harding is suggesting another test pit.

Mr. Coronati replied that the area of the patio is the middle of the asphalt and the existing building. That's also where utilities are run for the project for the back units. It's troubling to put a test pit in that area. However, he thinks this scenario addresses Mr. Harding's concern without the need for a test pit.

Chair Losik stated that Mr. Harding's comment was that in the absent of an additional test pit, use the results from test pit 2, which is more conservative.

Mr. Coronati noted that test pit 2 is in an area with shallow ledge. It's 13" to ledge. To the north of that about 30', there's a test pit that is 34" to water table with no refusal. He pointed out that test pit 3 directly to the west is 23" to water table. In the patio area, the lowest part of the patio is 1.5' above abatement. The patio has two levels. One half is roughly 26.25 and the other half is up at 27.5. The lowest patio is 1.5' above the existing pavement.

Chair Losik asked if he is confident that Steve Harding's concerns can be addressed.

Mr. Coronati confirmed. He believes Mr. Harding's concerns will be relieved once there's an overflow in that patio and the stone of the eco-pavers is above ledge. He continued that the overflow will be connected into the pipes that will be connected into the underdrain which connects into two catch basins along Sagamore. Mr. Coronati noted that comments have been received from DOT, which are fairly minor. DOT wants the two catch basins rebuilt on Sagamore with proper drain pipes. They also want the island in front of the site enlarged. They

want it 16' off the center line to the curb line, which will give a 12' travel lane and a 4' shoulder for bicyclists and pedestrians. They also want the whole island curbed.

Chair Losik asked if there has been any communication with the City of Portsmouth in regards to the sewer connection.

Mr. Coronati replied that Portsmouth has been hard to connect with, as there have been staff changes in their public works department. He received comments from Portsmouth and have responded, but have not heard back yet. He pointed out the site will need a water service agreement from the City of Portsmouth. It will also need a sewer connection permit from the State, which has to be signed by the Portsmouth Public Works Director. He is hoping to hear soon on both of those agreements.

Referring to the boxes shown on the plans, on the corner of units 5 and 1, Chair Losik asked if there will be trees in them.

Mr. Coronati replied they will not have trees. They will have some vegetation and grasses. The goal is for roof water treatment.

Chair Losik asked where the water will go when there is a lot of rain during a high frequency storm.

Mr. Coronati explained there's a piping system next to unit 1 that connects to the underdrain in the parking lot. There's also one near the front door of unit 5. (He reviewed the detail on Sheet D-5 of the plans.)

Chair Losik stated that it seems like there will be an increase in traffic, as there's 132% increase in commercial space and 113% increase in residential. She asked what this will mean for traffic.

Mike Garrepy, developer, stated that at one of the first meetings the Board decided that a traffic study wasn't needed, so a formal study hasn't been done.

Chair Losik commented that she wants to be sure the Board has concluded that.

Alternate MacLeod stated that the size of the dwelling units really doesn't affect the trip ends for the single-family dwelling units.

Mr. Coronati pointed out that the other high producer of traffic is the coffee shop and their staying, so that traffic will be the same. There's some other commercial space that could be generating traffic. The delta is really in one building. He doesn't think it's going to be a massive change.

Member Finn commented that the Board talked about this and felt comfortable.

Chair Losik continued that there was discussion about the snow storage, which is along the north boundary of the parking lot.

Mr. Coronati pointed out on the plan the areas for snow storage on Sheet C-2.

Chair Losik asked about the parking.

Mr. Coronati noted that the ledge outcropping goes into the first parking space off Sagamore and partially into the second space. It's an area where they could remove the two parking spaces and keep the ledge knob to have more green space at the entrance. However, in order to do this, a waiver would be needed for the parking.

Mr. Garrepy stated that on this site, it might be more valuable to keep the parking rather than saving the ledge. He pointed out that they are also trying to create some spaces for bicycles and mopeds.

Mr. Coronati pointed out on the plan a 6x10 concrete pad in the island which will be used for a bike rack.

Speaking to the Board, Chair Losik noted that the parking is at the required number of spaces. Also, if there's an interior parking area with more than 20, landscape islands can be considered. There's 15 along the front and 15 on the north side. She asked if there are any concerns about landscape islands and breaking that up.

Alternate MacLeod commented that he thinks that's more of a nuisance, especially for plowing.

Member Finn stated that he would keep the ledge and do away with one or two spaces, for aesthetic purposes.

Alternate MacLeod commented that he doesn't see anything beautiful about the ledge at all. He would go for parking over saving a hunk of stone.

Chair Losik called for a poll in regards to the parking and ledge:

- B. MacLeod – no waiver, provide the parking required
- R. Wright – inclined to give a waiver and keep the ledge
- P. Losik – keep the ledge
- J. Lord – not for the ledge, no waiver
- S. Carter – neutral
- J. Finn – leaning towards keeping the ledge
- K. Garcia – parking is important

Speaking to the developer, Chair Losik recommended that he look at the needs of the parking.

Mr. Garrepy suggested that they submit a waiver request and the Board vote on it.

Member Wright stated that part of his logic for keeping the ledge was the fact that the first space wouldn't be until 16' in.

Mr. Garrepy reiterated that they can submit a waiver and the Board can take a vote.

There was some review of where EBikes and mopeds could be parked on the site. They also reviewed areas on the plan where two parking spaces may be able to fit on the site, if the ones in the ledge area are removed.

Hearing no further comments from the Board, Chair Losik opened to the public. Hearing no comments, she closed the public session at 8:26.

Motion by JM Lord to continue the application for 15 Sagamore Road to October 11, 2022. Seconded by Steve Carter. All in favor.

- c. Major Subdivision Plan by Jones & Beach Engineering, Inc. on behalf of Marlene Veloso & Charles Fast property owners for property owned and located at 850 Washington Road, Tax Map 11, Lot 130 to subdivide the parcel into 3-lots and a road. Property is in the Single Residence and Aquifer & Wellhead District. **Case #11-2022. (See minutes above)**
- d. Amendment to Major Site Development Plan and Condo Conversion by Daniel Maguire of 403 Kari Court, Houston, TX for property owned and located at 20 Cable Road and The Paul Maguire Family Trust for property owned and located at 18 Cable Road, Tax Map 8.4, Lot 2 to expand a rear deck. Property is in the General Residence District and Coastal Overlay District. **Case #16-2022.**

Paul Maguire, applicant, was present before the Board in regards to the request for an amendment to a Major Site Development Plan and Condo Conversion to expand a rear deck.

Chair Losik stated that it looks like there's no encroachment to the limited common area, according to what was recorded in 2009 and the expansion shown on pages 3 and 4.

Planning Administrator Reed noted that this project is on the agenda for the October ZBA meeting for the side setbacks.

Chair Losik continued that the already approved site plan shows the existing deck and outlines the proposed expanded area.

The Board did not have any concerns. Chair Losik opened to the public. Hearing no comments, she closed the public session at 8:35 p.m.

Motion by JM Lord to accept the amendment to the Major Site Development Plan and Condo Conversion by Daniel Maguire and The Paul Maguire Family Trust for property

located at 18 and 20 Cable Road conditioned upon a variance for setback encroachments by the Zoning Board of Adjustment. Seconded by Jim Finn. Vote: 6-0 All in favor.

- e. Request to re-open for verification of the conditions of approval of the minor 3-lot subdivision by Jak Nadeau Revocable Trust for property owned and located at 711 Long John Road, Tax Map 16, Lot 136 to subdivide the existing lot into three single family residential lots with access via a 50'-wide right of way. Property is in the Single Residence District. **Case #07-2020.**

Motion by Rob Wright to continue the application on 711 Long John Road to the October 11, 2022 meeting. Seconded by JM Lord. All in favor.

4. New Business

- Amendment to Site Plans by Thompson Landing, LLC for property located at Tax Map 10, Lot 1 to modify the units what will be workforce housing and minor aesthetic changes to the façade.

John Lariviere, representing Thompson Landing, spoke to the Board. He explained the original plans that were submitted were for building heights of 33', 34', and 35'. Because of the nature of the road, it has a couple of feet of fill at the entrance, which causes the buildings at the back to be a couple of feet above the original grade. The applicant at the time of the application proposed varying heights for the buildings. However, at this time, it makes sense to build all the buildings at the 33' in height and not build to the taller buildings. The other change proposed is for the overhang rooflines; the window bump-out rooflines and small rooflines that overhang on the front porch. He is requesting to change those lower rooflines to a metal roof, rather than an asphalt shingle roof which was on the architectural renderings. He noted that the product and material would be similar to what was done at 1244 Washington Road.

The Board reviewed the height changes presented by Mr. Lariviere.

Referring to workforce housing, Mr. Lariviere stated that the purpose of the ordinance is to create reasonable and realistic opportunities to obtain affordable housing. He thinks this can be done in a way that doesn't affect the economic viability of the project at the same time. The originally approved units entail two interior units and four end units. There is nothing in the workforce housing requirements that say the units have to be the best views or the premium locations. However, this does substantially affect the economic viability of the development. It also creates a situation where one workforce housing buyer will pay the current workforce limit and get an interior unit, and another workforce housing buyer will pay the same price and get an end unit. He pointed out that the units have been designed so they are very similar in square footage. There's no outwardly visible way to discern a workforce housing unit from a market unit. The only thing that changing the interior units to end units does is affect the economic viability of the community. For the Town, it allows the four end units to create additional tax base, as they will not be limited to the workforce housing value. He pointed out that this will

have an economic impact to the Town, as well as himself, and it doesn't change the goal of creating an opportunity for workforce housing buyers.

Motion by JM Lord to approve the modification of the units at Thompson Landing, LLC for what will be workforce housing and minor aesthetic changes to the façade based upon Site Plan C-2 being amended and filed at the registry, and amending the Workforce Housing Subsidy Lien and Restricted Covenant language in Appendix A and B which identify the workforce housing units. Seconded by Jim Finn. Vote: 6-0 All in favor.

5. Committee Updates

- **TRC-Site walk of 1244 Washington Road and Stoneleigh**

Vice-Chair Lord gave a brief update in regard to the site walk at 1244 Washington Road, which was done with Steve Harding from Sebago Technics. There are two transplanted trees and a couple of possible failing trees that are going to be replaced. He continued that TRC also walked Stoneleigh. That subdivision is in very good shape. One of the infiltration basins on Signature Drive should probably be seeded and mowed, versus what is there today. There needs to be a final check to be sure all the conservation makers are in. There is a conversation going on between the engineer and Steve Harding to see if South Road can be used as the access point for construction of Lot 1 versus the present driveway entrance.

- **Rules and Regulations – Meeting with Attorney Maher on Zoning**

Member Carter reported that Rules and Regs met with town counsel on September 6th to discuss the zoning ordinances. Town counsel will be receiving further input from Rules and Regs at a later date on various topics. After that time, town counsel will work with Planning Administrator Reed and other town personnel to prepare an initial proposal for zoning amendments, which will be submitted to the subcommittee for public discussion.

- **Long Range Planning – Steering Committee updates**

Member Wright noted that a draft request for proposal (RFP) for the rewrite of the Master Plan has been circulated to the Board for review. Seven members for the Master Plan Steering Committee have been identified. The Long Range Planning Committee requests that the Planning Board vote to officially form a Master Plan Steering Committee for a term of 24-months and to appoint the following members to the committee: Howie Labarowitz; Gregg Mikolaities; Rob Patten; Anne Fox; Kathryn Garcia; Rob Wright; Joe Persechino as an ad hoc; and Pat Losik as an ad hoc. The first meeting of the Master Plan Steering Committee will be held on October 4th at 1:00 p.m.

Motion by JM Lord to create the Master Plan Steering Committee with the first meeting to start on October 4th at 1:00 p.m. with the following members; Howie Labarowitz; Gregg

Mikolaities; Rob Patten; Anne Fox; Kathryn Garcia; Rob Wright; Joe Persechino as an ad hoc; and Pat Losik as an ad hoc. Seconded by Pat Losik. All in favor.

6. Other Business

a. Escrows

Motion by JM Lord to pay the following escrows:

- 1.) Sebago Technics in the amount of \$1,139.85 from Thompson Landing, LLC
Escrow for construction monitoring;**
- 2.) Danna Truslow in the amount of \$560.00 for 850 Washington Road; and**
- 3.) Attorney Donovan in the amount of \$334.90 for the Pierce Condominium
Conversion.**

Seconded by Pat Losik. All in favor.

b. Minutes

The following corrections were noted:

- The heading should reflect the DRAFT MINUTES date of **8/09/2022**.
- Page 10, 3rd paragraph from bottom, 2nd sentence should read: **It didn't seem that ~~therefore that there was good clear communication~~ about the ability to supply water to all the entities that have been coming up over the last two to three years.**
- Page 10, 2nd to last paragraph, 3rd sentence should read: **They're the ones that are going to be bringing sewer up Route 1.**
- Page 11, last paragraph, last sentence should read: **There needs to be adequate capacity to service the Town of Rye, the prospective growth, and really have undifferentiated service.**

Motion by Steve Carter to approve the minutes of August 9, 2022 as amended. Seconded by JM Lord. All in favor.

7. Communications

- Public Hearing scheduled for September 20th for the Proposed Land Development Regulations Amendments. Public hearing will be held at the Town Hall at 6:00 p.m.

Adjournment

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

Respectfully Submitted,
Dyana F. Ledger

PLANNING BOARD

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant: Jones & Beach Engineering, Inc.

Owner: Marlene Veloso & Charles Fast

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

Application case: Case #11-2022

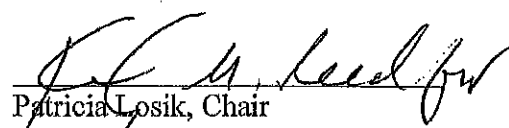
Application: Major Subdivision Plan by Jones & Beach Engineering, Inc. on behalf of Marlene Veloso & Charles Fast property owners for property owned and located at 850 Washington Road, Tax Map 11, Lot 130 to subdivide the parcel into 3-lots and a road. Property is in the Single Residence and Aquifer & Wellhead District. Case #11-2022.

Date of decision: September 13 2022

Decision: The Board 6-0-0 to continue the application to the October 11, 2022.

Date

9/15/2022


Patricia Losik, Chair
Rye Planning Board

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

RYE PLANNING BOARD

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

Notice of Decision

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

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


Case: Case #07-2020

Application: Request to Re-Open for purposes of conditions of approval of the Minor 3-lot subdivision by Jak Nadeau Revocable Trust for property owned and located at 711 Long John Road, Tax Map 16, Lot 136 to subdivide the existing lot into three single family residential lots with access via a 50'-wide right of way. Property is in the Single Residence District. Case #07-2020

Date of Decision: Tuesday September 13, 2022

Decision: The Board voted 6-0-0 to continue to the October 11, 2022 Board meeting.

9/15/2022
Date


Patricia Losik, Chairman
Rye Planning Board

PLANNING BOARD

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Thompson Landing, LLC

Property: 0 Lafayette Road, Tax Map 10, Lots 1
Property is in the Commercial District, Aquifer and Wellhead Overlay District and the Multi-family Overlay District.

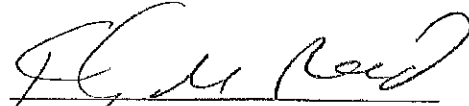
Application: Amendment to Site Plans by Thompson Landing, LLC for property located at Tax Map 10, Lot 1 to modify the units what will be workforce housing and minor aesthetic changes to the façade

Date of decision: September 13, 2022

Decision: The Board voted 6-0-0 to approve the aesthetic changes and to modify the work force housing units with the changes to the Sheet C-2, the WFH Lien agreement and changes to the Condo Documents.

Date

9/13/2022


Patricia Losik, Chair
Rye Planning Board

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

PLANNING BOARD

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Arthur & Sharon Pierce Rev. Trust, Arthur & Susan Pierce, Trustees

Property: 251-279 Pioneer Road, Tax Map 24, Lot 117
Property is in the Single Residence District.

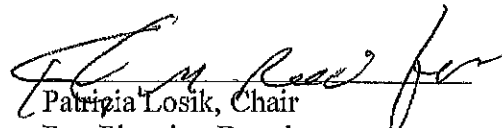
Application case: Case #13-2021

Application: 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.

Date of decision: September 13, 2022

Decision: The Board voted 6-0-0 to continue the application to the October 11, 2022 Planning Board meeting with a site walk on October 6, 2022 at 1pm.

9/15/2022
Date


Patricia Losik, Chair
Rye Planning Board

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

RYE PLANNING BOARD

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

WAIVERS

Notice of Decision

- Applicant/Owner:** Arthur & Sharon Pierce Rev. Trust, Arthur & Susan Pierce, Trustees
- Property:** 251-279 Pioneer Road, Tax Map 24, Lot 117
Property is in the Single Residence District.
- Application case:** Case #13-2021
- Application:** 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.
- Date of decision:** September 13, 2022
- Decision:** The Board voted 6-0-0 to grant the following Waivers:
- 202-11.4 Landscaping planting plan since it is a fully developed site with no physical changes to the site. A landscaping plan is not warranted.
 - 202-10.2.A-I Outdoor lighting design because it is a fully developed site and adherence to the lighting is not warranted.
 - 202-6.7.(2)(2) Septic system standards because Dennis Plante witnessed the test pits on behalf of the Town and reviewed and approved the data prior to its submission to the state.
 - 202-63.B to J Site design standards because this is a fully developed site and no physical changes to the site are proposed. Compliance with design standards for a site that has already been designed and is presently in use is not warranted.
 - 202-3.5(B)(1)(c) Building Elevations because formal building elevation drawings are unnecessary for this fully developed site. No physical change to the site is proposed. In lieu of architectural elevations, the applicant submitted photos of all buildings from all sides.
 - 202-3.5(B)(1)(a) Final stormwater management plan because this is a fully developed site. No physical changes to the site are proposed. The contemplated change from tenant occupancy to owner occupancy is not an extension of a non-conforming use under NH law.

9/15/2022
Date


Patricia Losik, Chairman
Rye Planning Board

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

PLANNING BOARD

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant: The Sagamore Group, LLC

Owner: Split Rock Cove Family Trust of 2019

Property: 15 Sagamore Road, Tax Map 24, Lot 22
Property is in the Single Residence and Commercial District


Application case: Case #10-2022

Application: Major Site Development, Multifamily Residential Site Development Plan and Special Use Permit by The Sagamore Group, LLC for property owned by Split Rock Cove Family Trust of 2019 and at located at 15 Sagamore Road, Tax Map 24, Lot 22 to construct three single-family condominium dwellings on the back of the lot and two commercial buildings on the front of the lot. Property is in the Single Residence and Commercial District. Case #10-2022.

Date of decision: September 13, 2022

Decision: The Board 6-0-0 to continue the application to the October 11, 2022.

9/15/2022
Date


Patricia Losik, Chair
Rye Planning Board

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

PLANNING BOARD

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner: Daniel Maguire of 403 Kari Court, Houston, TX
The Paul Maguire Family Trust

Property: 18-20 Cable Road, Tax Map 8.4, Lot 2
Property is in the Single Residence District.

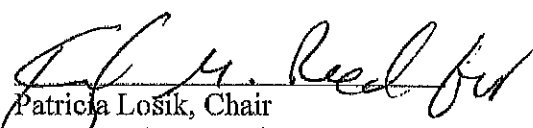
Application case: Case #16-2021

Application: Amendment to Major Site Development Plan and Condo Conversion by Daniel Maguire of 403 Kari Court, Houston, TX for property owned and located at 20 Cable Road and The Paul Maguire Family Trust for property owned and located at 18 Cable Road, Tax Map 8.4, Lot 2 to expand a rear deck. Property is in the General Residence District and Coastal Overlay District. Case #16-2022.

Date of decision: September 13, 2022

Decision: The Board voted 6-0-0 to grant the approvals for expansion of the rear deck with the condition that the applicant apply to the Zoning Board for dimensional requirements.

9/15/2022
Date


Patricia Losik, Chair
Rye Planning Board

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see Article VII, Section 703 of the Town of Rye Zoning Ordinance. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.