

**TOWN OF RYE – PLANNING BOARD
MEETING**

**Tuesday, May 16, 2023 – 6:00 p.m.
Rye Public Library**

Members Present: Bill MacLeod, Kevin Brandon, Rob Wright, Bill Epperson, Chair
Patricia Losik, Vice-Chair JM Lord, Steve Carter, and Jim Finn

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

I. Call to Order

Chair Losik called the meeting to order and led the Pledge of Allegiance.

II. Determination of Completeness

A. Driveway Application by Robert Lang on behalf of Tucker D. Allard & Mary Coppinger for property owned and located at 457 Central Road, Tax Map 8.1, Lot 4 for a driveway per Section 5: Paragraph A for a new driveway to be 80' where 100' is required of an intersection and from Section 5, Paragraph B for a driveway 6' from the abutting property line where 10' is required. The property is in the Single Residence District. Case #21-2022.

Planning/Zoning Administrator Reed reported that she received new plans late in the afternoon, which she shared with Bruce Scammon, the project engineer. She explained that there were slight changes to the plans.

Bruce Scammon presented the board with the updated plans. He explained that the applicant went before the ZBA two weeks ago and noted the new request for a strip of paving, and the additional dimensions for the intersection.

**Motion by JM Lord to determine the application complete and move it to a public hearing.
Seconded by Bill Epperson.**

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

B. Giorgia Nagle, applicant, Samonas Realty Trust, owner for property 1215 Ocean Blvd, Tax Map 17.3, Lot 6 requesting Minor Site Development Plan for change of use of a restaurant, update seating indoor and outdoor. Property is in the General Residence, Business District and Coastal Overlay District and SFHA-Zone AO, Case #07-2023.

Member Wright noted that the proposed plan is not a change of use. Member MacLeod agreed and made a motion that the application is complete. Seconded by Rob Wright.

Vice-Chair Lord stated that he disagrees. He explained that indoor dining was already denied by the building inspector and the Planning Board can't approve indoor dining without an appeal to the ZBA.

Chair Losik stated that she doesn't believe the application is complete. She explained that the applicant has already been granted outdoor seating and a Certificate of Occupancy by the building inspector. She also noted that Ms. Nagle would have the right to appeal after receiving the partial denial letter. In regards to parking, Chair Losik pointed out that in the applicant's application to the building department, she was in the wrong jurisdiction. Chair Losik discussed conformity of parking spaces and noted that while the number of spaces is appropriate for outdoor seating, in terms of indoor seating, the applicant would need a variance from the Board of Adjustment.

Selectmen's Rep. Epperson recalled that the board had discussed this matter previously and determined that it was a ZBA issue.

In response to Selectmen's Rep. Epperson's question, Ms. Nagle explained that the partial denial letter is dated April 27, 2023.

The board discussed the history of the restaurant and whether or not this application could be considered a change of use. Ms. Nagle explained that she's not asking the board for a change of occupancy with outdoor seating, she's requesting indoor seating only.

Chair Losik explained the importance of acquiring a variance from the ZBA prior to coming before the Planning Board.

Member Brandon summarized that most everything hinges on the request for indoor seating. He wondered hypothetically if, absent that, there would be a reason to go before the Planning Board or ZBA at all.

Member Wright pointed out the challenge presented by the conditions hamstringing her ability to prepare food.

The board discussed the application and what to advise the applicant moving forward.

Planning/Zoning Administrator Reed explained that Ms. Nagle was sent to her initially as it was a change in use, which then received a partial denial. She requested the Board give Ms. Nagle further direction.

Chair Losik stated that she appreciates that the decision from the building department came after the April 18th meeting.

Member MacLeod noted that no site development is occurring; it's an existing building and restaurant that hosted indoor dining long ago.

The board discussed the history of the restaurant and whether this qualifies as a change in use. Chair Losik outlined her research into the property and explained that it has stayed consistent with outdoor seating since 2016.

Member MacLeod pointed out that the most significant problem has been addressed since the DOT approved the parking and that whatever the Planning Board does won't have an impact on paving or drainage.

Chair Losik explained her concern about parking.

Member MacLeod explained that parking is already maximized, and if it's a ZBA issue, the Planning Board could open a public hearing and make approval conditional upon going before the ZBA to discuss matters addressed in the building inspector's letter.

Speaking to Planning/Zoning Administrator Reed, Chair Losik suggested that the first step is to appeal the decisions that the applicant would like. She explained that the board still needs to make a decision on whether the parking is non-conforming. She discussed the Carriage House's process in going before the Planning and Zoning Boards.

Member MacLeod asked what harm there would be to the town to open a public hearing if the layout is ok and the approval is subject to a variance from the ZBA.

Chair Losik explained that the information is not there and the Planning Board should not open to a public hearing; but, she could be persuaded to have a public hearing.

Member Brandon wondered if the board could be more clear about the applicant's path forward. He referenced recent ZBA and Planning Board conditions regarding parking that would make any incremental business in a deficit with respect to parking. He noted that many businesses thrive on parking along Route 1A and asked what the Planning Board could do to help business owners come to a solution, especially considering the time-sensitivity of seasonal businesses.

Member Carter, considering what is in the purview of the Planning Board, suggested that the board could choose to approve the indoor dining room conditioned upon the issuance of a variance for parking from the ZBA.

Chair Losik reminded the board that they need to determine whether the application is complete enough to have a public hearing.

Speaking to Chair Losik, Member Wright asked if her view of the lack of completeness stems from not having a variance from the ZBA. Chair Losik agreed and noted that the Planning Board doesn't have an answer to parking. Member Wright noted that the answer would be a variance from the ZBA and if she had that, the application would be complete. He asked if the board could have a hearing on the merits of the application, knowing that the next step is conditioned upon the variance from the ZBA.

Chair Losik agreed -she noted that she'd prefer the Zoning Board to be the first stop since they can't approve this without zoning approval, but that she is persuaded to bring the application to a public hearing.

Chair Losik clarified that if the Planning Board moves forward with a public hearing and agrees to indoor seating, then they can make an approval with conditions including the zoning issue. If the Zoning Board says no, then there can be no indoor seating. In response to Member MacLeod's question, she also explained that she would need to return to the Planning Board as it's considered an intensification in use.

Motion by Rob Wright to determine the application complete and move it to a public hearing. Seconded by Bill MacLeod.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

C. Lot Line Adjustment by Patrick & Jenny Donnelly for property owned and located at 5 Whitehorse Drive, Tax Map 11, Lot 15-2 with Rye Conservation Commission, Tax Map 11, Lot 32 to adjust the common boundary of the 7.16 acre parcel to convey 2.16 acres to The Town of Rye Conservation Commission and grant a .84 acre easement as well. Properties are in the Single Residence District and Wetlands Conservation District. Case #08-2023.

Motion by Steve Carter to determine the application complete and move it to a public hearing. Seconded by JM Lord.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

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

A. Driveway Application by Robert Lang on behalf of Tucker D. Allard & Mary Coppinger for property owned and located at 457 Central Road, Tax Map 8.1, Lot 4 for a driveway per Section 5: Paragraph A for a new driveway to be 80' where 100' is required of an intersection and from Section 5, Paragraph B for a driveway 6' from the abutting property line where 10' is required. The property is in the Single Residence District. Case #21-2022

Bruce Scamman, representing Emanuel Engineering and James Verra Associates, introduced **Robert Lang**, the applicant, of 20 Portsmouth Avenue in Stratham, and **Tucker Allard**, owner, of 457 Central Road in Rye.

Mr. Scamman explained that they have been before the board previously for this application and he was brought in to look at the existing conditions and prepare the new design. He described the existing driveway and the proposed changes, including an upgraded driveway and a turnaround at the rear of the home. He noted the primary concern is the danger presented by backing out of the driveway.

He summarized their discussions with the ZBA, who recommended a paved apron. He explained that they have been working with Jason at the DPW who agreed to a paved apron less than 20 ft at the road.

Mr. Scamman discussed the dimensions of the proposed driveway in relation to the property line (6.9') and to the center of the intersection (169.4'). He also noted that Jason's measurement to the intersection was measured from the edge of the driveway to the edge of the intersection, which was 80', but they don't have an exact replication of how he came to that measurement. He noted that cars coming through the intersection are aimed at the driveway and the applicant's concern is for backing into this intersection with a young child in the backseat. He also noted the benefit of pavement rather than loose stone, which can shift when accelerating a vehicle. Mr. Scamman also discussed the increase in impervious areas and coverage.

Member MacLeod commented that he drove past the property and he feels that it's a great plan and a big improvement. He also noted that, with the proposed changes, you could see the entrance of that driveway from the north.

Member Brandon added that it's a very busy area and anything that reduces the opportunity for collision is good.

Member Wright wondered if there is a need for the 100' waiver given that there's a stamped plan which shows it's in excess. Chair Losik expressed the same question.

Mr. Scamman commented that he doesn't think they need a waiver, but they wanted to present the findings of the survey.

Member Wright asked if the director of Public Works has seen the new plans. Mr. Scamman explained that the plans were emailed to him; he responded that if there is a plan that shows more than 100' then it will be fine.

Selectmen's Rep. Epperson reminded the board that they approved a driveway next door to this property a few years ago for the same reason. He agreed that it's a big improvement.

Chair Losik thanked Mr. Scamman for the dimensions and asked if the DPW is aware of the removal of the other driveway. Mr. Scamman responded absolutely and explained that they talked to him about the paving that was discussed with the ZBA. He noted the ZBA's concern regarding loose stones.

Chair Losik clarified that one waiver is required for the driveway 6' where 10' is required.

Chair Losik opened to the public. Hearing no comments, the public session was closed at 6:46 p.m.

Motion by JM Lord to approve waivers from Articles B, E, and F from Appendix E, Section 5.E. Seconded by Steve Carter.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

B. Giorgia Nagle, applicant, Samonas Realty Trust, owner for property 1215 Ocean Blvd, Tax Map 17.3, Lot 6 requesting Minor Site Development Plan for change of use of a restaurant, update seating indoor and outdoor. Property is in the General Residence, Business District and Coastal Overlay District and SFHA-Zone AO, Case #07-2023.

Ms. Nagle updated the board on her conversations with the DOT, Fire Department, and Chief Walsh. She explained that the fire department was happy with their walk-through, though they don't issue a permit of assembly for under 50 seats. Ms. Nagle asked for clarification regarding outdoor seats and whether they count toward the total number of seats. She explained that the lack of clarity provides a lot of gray areas regarding restrooms, septic, parking, etc. Selectmen's Rep. Epperson clarified that it had to do with Covid policies.

In response to Chair Losik's question, Ms. Nagle confirmed that Chief Walsh is fine with up to 50 people, that the fire department was happy, and that they will communicate with the building department. She also explained that she and Chief Walsh discussed a better way to maintain

parking spots and for guests to navigate the parking lot and pull out into 1A. They discussed signage, and he was happy with the plan. Ms. Nagle clarified that P.A. systems and live music were not a part of the plan. She also explained that she initially requested indoor seats in order to move forward with an application for beer and wine; however, that request confused certain departments about the change of occupancy. She explained that Chief Walsh is happy with outdoor-only seating and a takeout window. She noted that a change of use would be part of phase two, at which point she will continue the discussion of indoor seating. She explained that she applied for beer and wine a few months prior, which was what triggered the larger discussion.

In response to Chair Losik's question, Ms. Nagle explained that she discussed the potential for indoor seating with Jeff Debartolome who was happy with the layout and who made some suggestions, but her request was only for a change of occupancy. She emphasized the goal to open for outdoor seating and a takeout window. She also clarified that the office space attached to the kitchen is vacant and that a state liquor inspector did a walk-through two months ago who was also happy with the layout. She explained her process of providing the board with mockups of the space. Chair Losik confirmed that the board now has a clear understanding of what's requested for outdoor and indoor seating.

In response to Planning/Zoning Administrator Reed's question, Ms. Nagle explained that she submitted the initial application to the building department in January.

Speaking to Chair Losik, Member Wright asked for clarification of her concerns regarding the Police Department. Chair Losik explained that she wanted to know what the board could consider for conditions.

Selectmen's Rep. Epperson clarified that when Covid hit and the town was trying to keep restaurants open, occupancy numbers remained the same regardless of where the seats were located, indoor or outdoor.

In response to questions regarding the dumpster and porta potty, Ms. Nagle explained that the dumpster has been there longer than she's been in the area. She also clarified that the porta potty is present in order to remain ADA-compliant without construction.

Chair Losik discussed a conversation between Ms. Nagle and DES representative James Telvey. She also discussed the building department denial letter, which cites several criteria for their denial of the ADA porta potty. Ms. Nagle explained that she hasn't had any further conversations with the building department regarding the portapotty because she was waiting to have this conversation first. She added that there's been a lack of clarity and resistance from the building department in this process.

Member MacLeod noted that If she may want to keep a porta potty on site to limit the hydraulic load on the septic system.

In response to Member Wright's question, Ms. Nagle explained the date of expiry for the certificate of occupancy is October 15th.

Member Brandon commented that having the porta-potty there is a good solution. Selectmen's Rep. Epperson commented that it will be an attractive place for beachgoers to use the restroom. Ms. Nagle confirmed that it will be serviced twice per week, and if visibility is an issue, that can be fixed.

Chair Losik commented to the board that this is good feedback, but the focus should remain on indoor seating, having a conversation with the building department, and deciding whether or not to return for an appeal.

Speaking to Planning/Zoning Administrator Reed, Selectmen's Rep. Epperson asked if the building inspector has the ability to amend his conditions of approval. Planning/Zoning Administrator Reed explained that he can change a denial letter at any time.

Ms. Nagle explained that she's had many conversations with individual departments. She outlined her contacts with the building department and other departments, several of whom directed her to the Planning Board.

Member Carter commented that he agrees with Member MacLeod, that the porta-potty is essential and that the plan may not pass the board of health without it.

The board discussed a 2010 approval for indoor seating in this building.

Member Brandon expressed the need for the board to provide transparency and a streamlined approach to help the applicant use time and town resources wisely and get to an endpoint.

Member Finn asked what will be served at the restaurant. Ms. Nagle explained that artisan pizzas would be served.

Chair Losik opened to the public at 7:11 p.m.

Steven Borne of 431 Wallis Road recalled a request for a porta potty near Sawyers Beach, and the concerns surrounding the risk of a tip-over near the wetlands. He also expressed concern about the frustrating process the applicant has had to go through.

Member MacLeod commented that he admires Ms. Nagle's tenacity.

Hearing no further comments, Chair Losik closed the public hearing at 7:12 p.m.

Chair Losik explained that the approval of indoor seating with a maximum of twenty qualifies as a change of use and discussed the applicant's request for an exemption. Referring to Land Development Regulations, Chair Losik discussed exemptions and determined that the applicant needs more off-street parking for the additional twenty seats or recognition that it's non-conforming parking. The board discussed parking regulations and determined they cannot provide an additional exemption for indoor seating.

Chair Losik suggested that the applicant's next steps include going back to the building department. The applicant explained her experiences working with the building department but noted that she is still in the window to appeal the denial by the building department. In discussing her conversations, Ms. Nagle explained that Chief Walsh sent an email after their meeting with the subject title, "There Is No Indoor Seating" -Ms. Nagle explained that he's been very specific about that one topic. In response to Vice-Chair Lord's question, Ms. Nagle responded that there was no explanation as to why.

Planning/Zoning Administrator Reed explained that the email was sent to Matt, Becky, herself, and two building inspectors, but the Planning Board doesn't have a copy because she didn't have the authority to send it. Ms. Nagle outlined the email she received from Chief Walsh in which he denied indoor seating, alcohol, live music, and PA systems. Planning/Zoning Administrator Reed explained that several emails had been exchanged between the police chief, building department, and Matt Scruton between April 25-27, after Ms. Nagle met with the board.

Ms. Nagle explained that she met with Chief Walsh on 5/10 to discuss parking and music, at which point he was clear that the application going before the board for review was solely for a change of occupancy, not a change of use for indoor seating.

The board discussed the application and determined that there is no need for the fire department or police department to decide what can and cannot happen aside from checking the building for safety.

Member Brandon noted that the Planning Board is trying to make decisions within its purview, but they are seeing examples of decisions being made outside of other people's purview.

Planning/Zoning Administrator Reed asked if the applicant is able to appeal any of the restrictions that have been placed upon her via email. Chair Losik explained that Ms. Nagle could include that information as a part of her appeals package to argue her case.

The board discussed a path forward to approval of indoor seating conditioned upon a Zoning Board approval of a variance for parking. They clarified that the applicant does not need the board's approval for outdoor seating as she has a certificate of occupancy for outdoor seating until October 15, 2023. The board also discussed the importance of providing the applicant with written notice of the board's decision to present to any other department of interest. The board discussed what's in their jurisdiction.

The board discussed their choices in language so as to avoid further confusion. Chair Losik noted that the purview of the board is narrow. Member Brandon expressed his concern that the Planning Board is being handed applications outside of their purview, but that the board's silence on those matters doesn't provide applicants with clarity.

Ms. Nagle commented that the change of use and change of occupancy have been enmeshed and, as a result, slowed the entire process. She clarified that she asked the board at the last meeting if they are okay with the existing takeout window, to which they responded yes. Her hope was that this clear answer could be presented to the building department in order to open the takeout window.

Member Carter suggested that the board cite the fact that Ms. Nagle was issued a certificate of occupancy on April 25, 2023, for the summer for outdoor dining and the Planning Board is ruling on the indoor dining.

Motion by JM Lord to approve the waivers from Article III, §202-3.5-A. Seconded by Bill MacLeod.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve the waiver from Article III, §202-3.4-B for a change or expansion of use. Seconded by Rob Wright.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve the waiver from Article III, §202-3.1-A for Engineering Standards as there is no physical change in use on the site. Seconded by Kevin Brandon.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve the waiver from Article IV for the Land Development Standards. Seconded by Kevin Brandon.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve the waiver from Article VII for performance guarantee. Seconded by Kevin Brandon.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve the waiver from Article VIII for erosion control. Seconded by Bill MacLeod.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve the waiver from Article IX for post-construction. Seconded by Kevin Brandon.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve the waiver from Article X for outdoor lighting. Seconded by Kevin Brandon.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve the waiver from Article XI for landscaping. Seconded by Kevin Brandon.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by Steve Carter: Understanding that a certificate of occupancy has been granted on April 25, 2023 at 1215 Ocean Boulevard for Lieto Pizza for takeout and paper service and outdoor seating to be limited to six four-seat tables, the Planning Board approves a change-of-use permit to allow 20 indoor dining seats conditioned on the granting of a variance by the Zoning Board to off-street parking and loading requirements. Seconded by Bill MacLeod.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

C. Minor Subdivision Application for Edward G. Patenaude, Sr. Revocable Trust for property owned and located at 10 Forest Green, Tax Map 18, Lot 45-9 to subdivide the lot into two single family residential lots with waivers to 202-3.4.D(2) & 202-3.4.D(4) requiring a topographical and stormwater management plans. The property is in the Single Residence District. Case #04- 2023.

Chair Losik thanked **Paige Libbey** for working with the wetland scientist and commented that the document she sent to the board was perfect. Chair Losik explained that the board is ready to review their waivers, and noted that she sent Planning/Zoning Administrator Reed some possible conditions of approval. She invited Ms. Libbey to present any new information and asked that information on existing conditions in regards to the soils could go in the other two plans. Ms. Libbey agreed that they would add those to the final plan set, and distributed the information to the board.

Chair Losik discussed the site-specific soil survey submitted by Ms. Libbey and pointed out page three, which reviewed the drainage of upland soils. She discussed the districts of zoning and definitions of upland soil and stated that this satisfies the requirements and board's concerns in a good way.

Ms. Libbey distributed hard copies of the Possible Conditions of Approval draft to the board.

Planning/Zoning Administrator Reed noted that the board asked for Attorney Maher's opinion, so his fees should be paid from the escrow that was established. Chair Losik added "sufficient funds shall be added to escrow to pay attorneys fees" and "The Planning Board Chair may sign the plans when forgoing conditions of approval" to the draft.

The board discussed the possible conditions of approval:

1. Remove "NRCS"
2. Sufficient funds shall be added to escrow to pay attorneys' fees.

Planning/Zoning Administrator Reed noted that there was a \$1000 fee to cover attorneys' fees for the covenants and for the soils.

Monica Kieser of Hoefle, Phoenix, Gormley & Roberts commented that Attorney Phoenix had written a letter opining about the declaration of covenants. Planning/Zoning Administrator Reed explained that Attorney Maher agreed. In response to Attorney Kieser's question, Planning/Zoning Administrator Reed confirmed that they'd submitted sufficient funds.

Member MacLeod asked when the remainder of those funds would be returned to the applicant. Planning/Zoning Administrator Reed responded as soon as it was signed and recorded.

The board continued to review the possible conditions of approval and discussed condition five and the topic of landscaping. **Mr. Patenaude** explained that he has a new set of documents, including the condo association approval of plans, to share with the board.

The board edited condition five to read, "The Building Inspector shall require a landscape plan depicting limits of tree removal prior to the issuance of a building permit."

Chair Losik discussed irrigation in Appendix G. She explained that the Rye Water District will use similar language in their practices. She commented that the board would like to have irrigation systems comply with §202, Appendix G.

Chair Losik explained that the board would do findings of fact, drafted from Ms. Libbey's work in the letter discussing outdoor lighting. She added that the board will also discuss the following waivers: 3.4D2, 3.4D4, 7, 8.3, 9, and 11. Chair Losik commented that she would like to review land development intent as there is some language that needs restructuring. She suggested that the board would accept waivers without any additional statements as they're sufficient enough as is. Ms. Libbey agreed.

Chair Losik opened to the public at 8:16 p.m.

Mr. Born stated that he was confused about the section regarding lot line adjustment. Chair Losik explained that the board hasn't discussed that section yet, they're discussing section C, but will get to the lot line adjustment later. Mr. Born also requested that the hand-written letter by Ms. Bass, presented at the previous meeting, be scanned and included in the meeting notes. Chair Losik agreed that it could be scanned and attached to the previous minutes.

Chair Losik closed the public session at 8:17 p.m.

Motion by JM Lord to approve a waiver from Article 202, §3.4.D2 as showing detailed topography on the rear portion of the lot that poses a hardship to the applicant. Seconded by Bill MacLeod.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve a waiver from Article 202, §3.4.D4 regarding Stormwater Management. This will be done when the building permit will be signed. Seconded by Bill Epperson.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve a waiver from Article 202, §7 regarding Construction Performance Guarantee. Seconded by Kevin Brandon.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve a waiver from Article 202, §8.3 regarding Construction Site Runoff, Erosion, and Sediment Control Standards. Seconded by Bill MacLeod.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve a waiver from Article 202, §9 regarding Post Construction Stormwater Management. Seconded by Bill MacLeod.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve a waiver from Article 202, §11 regarding Landscaping. Seconded by Bill Epperson.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Chair Losik discussed Findings of Fact, which is a new requirement as of August.

**Motion by Pat Losik that the board agrees with the following findings of fact:
The Planning Board finds that the proposed plan has adequately met the following sections of Land Development Regulations:**

Article VI, Land Development Standards: §202-6.0, general provisions; §202-6.1, zoning and other regulations have been considered; §202-6.2, subdivision design standards; §202-6.5, waterline construction is adequate; §202-6.7, septic standards are met; §202-6.8, standards for the preservation of natural features and the environment are met; §202-8, construction site runoff, erosion, and subcontrol standards are met; §202-8.0, purpose and standards are met; §202-8.1, erosion and sediment control plan requirements are adequate; §202-8.2, best practices for site plan review and subdivision applications are adequate; §202-10.0, purpose and §202-10.2acfg are adequate.

Seconded by JM Lord.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve the following conditions of approval for this project:

- **The May 10, 2023 plan set should be revised as follows:**
 - **C1, A1, and C2 shall include soils as depicted on information submitted in the site-specific soil survey report dated 5/16/23 stamped by James Goud.**
- **Sufficient funds shall be added to escrow to pay attorneys' fees**
- **The Planning Board Chair may sign the plans when the forgoing conditions are met**

- **Stormwater management plan per §190-5.7D shall be submitted at such time that the applicant applies for a building permit.**
- **The Building Inspector shall require a landscape plan depicting the limits of tree removal prior to the issuance of a building permit.**
- **If an irrigation system is installed on the lot, the system shall comply with §202 Appendix G.**
- **Per §202-4.4 of the Land Development Regulations, this conditional approval shall expire in 18 months if the Chair has not signed the plan as a result of the applicant's failure to meet those conditions necessary to permit the Chair to sign the plan.**

Seconded by Bill Epperson.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve the Minor Subdivision Application for Edward G. Patenaude, Sr. Revocable Trust for property owned and located at 10 Forest Green, Tax Map 18, Lot 45-9 to subdivide the lot into two single family residential lots. The property is in the Single Residence District. Case #04- 2023. Seconded by Kevin Brandon.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

D. Lot Line Adjustment by Patrick & Jenny Donnelly for property owned and located at 5 Whitehorse Drive, Tax Map 11, Lot 15-2 with Rye Conservation Commission, Tax Map 11, Lot 32 to adjust the common boundary of the 7.16 acre parcel to convey 2.16 acres to The Town of Rye Conservation Commission and grant a .84 acre easement as well. Properties are in the Single Residence District and Wetlands Conservation District. Case #08-2023.

Monica Kieser of Hoefle, Phoenix, Gormley & Roberts presented the proposal on behalf of the applicant. She explained that there have been ongoing discussions with the Rye Conservation Commission to deed them a portion of this lot. Attorney Kieser, referring to the map, pointed out the different lots and easements granted to the RCC. She noted that there are septic lot loading requirements at issue, which is what kept them from deeding the RCC a full three acres.

The board discussed the easement with Attorney Kieser, who explained the reasoning for the structure of the easement and the purpose, which is to retain the 5-acre as it is.

Chair Losik opened to the public at 8:33 p.m.

Mr. Borne alluded to a topic of discussion in the RCC's meeting notes and asked if this was an application for the same property. Chair Losik responded that she's not sure if it's the same property as she hasn't read all of the RCC's meeting minutes, but the board does have a letter

from the RCC dated 12/5/22 written by Susan Shepcaro, which addresses the ongoing restoration, and other issues. Chair Losik offered Mr. Borne a copy of that letter. Chair Losik and Attorney Kieser asserted that this property owner did not do anything they shouldn't have been doing. Mr. Borne asked for the letter to be posted as a part of the Notice of Decision; Attorney Kieser noted that the letter is also on file through the Zoning Board. Attorney Kieser and Chair Losik outlined some of the information detailed in the letter.

Hearing no further comments, Chair Losik closed the public hearing at 8:36 p.m.

Motion by JM Lord to approve the Lot Line Adjustment by Patrick & Jenny Donnelly for property owned and located at 5 Whitehorse Drive, Tax Map 11, Lot 15-2 with Rye Conservation Commission, Tax Map 11, Lot 32 to adjust the common boundary of the 7.16 acre parcel to convey 2.16 acres to The Town of Rye Conservation Commission and grant a .84 acre easement as well. Properties are in the Single Residence District and Wetlands Conservation District. Case #08-2023. Seconded by Bill Epperson.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

IV. New Business

A. Giorgia Nagle request for exemption from site review on 1215 Ocean Blvd.

Agenda item addressed during the public hearing of the application, see above.

B. Selection of Contractor(s) for Build Out Analysis, Master Plan

Chair Losik thanked Rob Wright, Kim Reed, Kara Campbell, Kathryn Garcia, members of the Long Range Planning Committee, Katie Sherman, Dominique Winebaum, members of the Planning Board, and Julie LaBranche for their work on the Master Plan.

Member Wright summarized the Master Plan Steering Committee's process in evaluating and selecting a top candidate for a consultant to assist the town in the creation of a Build Out Analysis and a revised Master Plan. He discussed the four submittals which were evaluated by four different firms.

Member Wright explained that the MPSC had previously read and evaluated the proposals individually prior to the meeting and deliberating as a group. Ultimately, each member of the MPSC individually came to the same conclusion as to which firms were best suited to win the bid. The committee unanimously agrees that the Planning Board should put forward the following firms for Select Board approval: FB Environmental Associates of Dover for the Build Out Analysis and Resilience Planning and Design of Plymouth, with assistance from FB

Environmental Associates and the Rockingham Planning Commission for the Master Plan update. He explained how these firms were selected and also described another firm; though it was a credible option, for various reasons it was comparably not as well suited to the task.

Member Wright outlined the cost for the Build Out Analysis, which is \$23,000. He explained that the budget passed in March was for \$22,000, but what was inadvertently placed in the RFP was \$23,000. He explained that the Planning Board will need to make up the \$1000 out of the other expense budget. He added that the cost for the Master Plan update is \$90,000 and both firms came in just under that number. While the MPSC didn't select the lowest bidder, they selected what seemed to be the best value. He noted that Resilience had worked with many highly comparable towns.

Chair Losik also commented on the ways that Resilience was a better overall value and noted that the breadth of knowledge from the eight people spanning three firms is great. She added the Planning/Zoning Administrator Reed tracked down references and had many good conversations with the individuals from the firms. She also noted Resilience's continued emphasis on their history of being on schedule and on budget. Resilience just completed work for Hampton, and has worked with several other coastal towns. Member Wright discussed their GIS mapping and their work on the Parsons Creek Watershed since 2008. He noted that the firm has done a lot of projects for the town and that the synergy of these three groups is tremendous.

Member Wright concluded by explaining that the Planning Board needs to make a decision whether to accept the recommendation of the MPSC, which the Select Board would need to finalize at their next meeting.

Motion by Pat Losik to accept the proposal for the Build Out Analysis with a team led by FB Environmental for \$23,000 and the Master Plan led by Resilience Planning and Design LLC. for \$89,996 and recommend the same to the Board of Selectmen on May 22, 2023. Both proposals are subject to the execution of contracts per the RFP. Seconded by JM Lord.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Chair Losik thanked each of the members of the Master Plan Steering Committee. Member Wright added that working with the committee is fun as meetings are crisp and highly collegial.

C. RPC consultants for the Planning Board: Jaci Grote and Phil Winslow

Planning/Zoning Administrator Reed explained that the Planning Board would need to vote to recommend to the Select Board that they continue the contracts for Jaci Grote and Phil Winslow to be the Planning Board representatives from the RPC.

Motion by Rob Wright that Jaci Grote and Phil Winslow be reappointed as the representatives to the RPC. Seconded by JM Lord.

Chair Losik made a friendly amendment to recommend that to the BOS.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

V. Consideration for Alternate to the Planning Board Steven Borne

Chair Losik explained that the current alternates are Jim Finn and Bill MacLeod; Kathryn Garcia is now full-time. She invited questions for Mr. Borne.

Selectmen's Rep. Epperson noted that the board is privy to a lot of client's attorney documentation, which cannot be disclosed. Mr. Borne agreed that he only discusses matters that are in the public domain.

In response to Member MacLeod's question regarding his engineering degree, Mr. Borne explained that his undergraduate degree is in mechanical with a minor in ocean engineering, with an MBA, and a minor in business.

Motion by Bill MacLeod to appoint Steven Borne as an alternate to the Planning Board. Seconded by Kevin Brandon.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Chair Losik explained that Planning/Zoning Administrator Reed will send the Oath of Office to Mr. Borne and that all communication goes through her.

VI. Old Business:

A. Rules of Procedure

Motion by JM Lord to table the Rules of Procedure. Seconded by Steve Carter.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Motion by JM Lord to approve the Planning Board Rules of Procedure. Seconded by Kevin Brandon.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

B. InvestNH HOP Grant

Chair Losik explained that Ann Fox, Kathryn Garcia, and Brett Mulvey are attending the Housing Academy along with Planning/Zoning Administrator Reed, who summarized their first meeting. She explained that it was very informative with discussions similar to those held by the Long Range Planning Committee. She explained that they're trying to change the discussion regarding workforce housing and spoke to the diversity of attendees and the ways in which they can reach different demographics and get the word out.

Chair Losik explained that minutes from the May 4, 2023 Phase One meeting are posted on the website. She added that the survey is ready to go and will launch on May 30, 2023. She also discussed the focus of Phase Two and explained that the board has an opportunity to apply for a grant through June 30, 2023. Jenn Rowden suggested the RPC write the application for the Planning Board, which would do so without charge.

Motion by Kevin Brandon to have the RPC draft an application for phase two. Seconded by Bill MacLeod.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Chair Losik commented that the Housing Academy is open for anyone to attend, Planning/Zoning Administrator Reed agreed to send out the link.

C. Escrows and Minutes

Motion by JM Lord to pay the following escrows:

- **Sebago in the amount of \$210.00 for the Goss Subdivision**
- **Sebago in the amount of \$399.28 for the housing partnership at Airfield Drive**
- **Sebago in the amount of \$414.13 for Hectors AKA Thompson Way.**

Seconded by Rob Wright.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Minutes - April 18, 2023

- Attach communication presented to the board by Ms. Bass
- Correction to page four, paragraph one, omit the "a"
- Correction to page four, paragraph six, "she tried looking"
- Correction to page seven, "grown by half"
- Correction to page eleven, "was not willing"
- Correction to page eleven, "additional"

- Correction to page three, "RCO"
- Correction to page six, "covenants"
- Correction to page seven, "even though"
- Correction to page seven, "four more soil probes"
- Correction to page twelve, capitalize "Rucker"

Motion by JM Lord to approve the April 18, 2023 minutes as amended. Seconded by Steve Carter.

Vote: 7-0-1 (B. MacLeod, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn in favor; K. Brandon abstained)

VII. Communication:

A. The Housing Partnership Tech Review update

JM Lord updated the board on the Housing Partnership Tech Review and Chair Losik discussed the report.

Motion by Jim Finn to adjourn at 9:08 p.m. Seconded by Steve Carter.

Vote: 7-0 (B. MacLeod, K. Brandon, R. Wright, B. Epperson, P. Losik, J. Lord, S. Carter, J. Finn)

Respectfully Submitted,
Emilie Durgin

PLANNING BOARD

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant: Jones & Beach Associates

Owner: Edward G. Patenaude, Sr. Revocable Trust

Property: 10 Forest Green, Tax Map 18, Lot 45-9
Property is in the Single Residence

Application case: Case #04-2023

Application: Minor Subdivision Application for Edward G. Patenaude, Sr. Revocable Trust for property owned and located at 10 Forest Green, Tax Map 18, Lot 45-9 to subdivide the lot into two single-family residential lots with waivers to 202-3.4.D(2) & 202-3.4.D(4) requiring a topographical and stormwater management plans. The property is in the Single Residence District. Case #04-2023.

Date of decision: ~~May 16~~
April 18, 2023

Decisions:

Motions by JM Lord, seconded by Bill MacLeod to grant the applicant's requests to the following waivers of the Rye Land Development Regulations:

- 1) Section 202-3.4.D(2) for a topographical and soils plan;
- 2) Section 202-3.4.D(4) for a Stormwater management plan (SWMP);
- 3) Section 202- VII Construction Performance Guarantee and Inspections;
- 4) Section 202-8.3 Construction Site Runoff – Erosion and Sediment Control Standards/Inspection and Enforcement;
- 5) Section 202-IX Post-Construction Stormwater Management standards; and
- 6) Section 202-XI Landscaping Standards

The Board voted unanimously to grant the aforementioned waivers, the basis for the waivers granted shall be recorded in the minutes of the Board and that specific circumstances relative to the subdivision indicate that the waivers will properly carry out the spirit and intent of these regulations.

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.

Motion by Pat Losik, seconded by JM Lord to approve the following Findings of Fact:

1. The Planning Board finds that the proposed plan has adequately met the following sections of Land Development Regulations:

Article VI – Land Development Standards

- a. 202-6.0 General Provisions
- b. 202-6.1 Zoning and other regulations have been considered.
- c. 202-6.2 Subdivision design standards, (A)1-lots considered.
- d. 202-6.5 Waterline construction is adequate.
- e. 202-6.7 Septic standards are met.
- f. 202-6.8 Standards for preservation of natural features and environment are met.

Article VIII – Construction Site Runoff -erosion and Sediment Control Standards.

- a. 202-8.0 Purpose and standards are met.
- b. 202-8.1 Erosion and Sediment control plan requirements are adequate.
- c. 202-8.2 Best practices for site plan review and subdivision applications are adequate.

Article X – Outdoor Lighting Standards

- a. 202-10.0 Purpose
- b. 202-10.2 Outdoor lighting Design A, C, F, G are adequate.

Motion passed unanimously.

Motion by JM Lord, seconded by Bill McLeod, to approve the following Conditions of Approval:

Conditions of Approval:

1. *The May 10, 2023 plan set shall be revised as follows:*

C1, A1, and C2 shall include soils as depicted on information submitted in the Site-Specific Soil Survey Report by Gove Environmental Services, Inc. dated 5-16-23, stamped by James P. Gove.

2. *Sufficient funds in escrow to pay attorney fees.*

3. *The Planning Board Chair may sign plans when the foregoing condition(s) are met.*

4. *A Stormwater Management Plan per §190-5.7B shall be submitted at such time that the applicant applies for a building permit.*

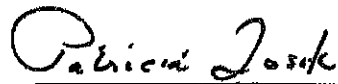
4. *The Building Inspector shall require a landscape plan depicting limits of tree removal prior to the issuance of a building permit.*

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.

5. *If an irrigation system is installed on the lot, the system shall comply with §202 Appendix G.*
6. *Per §202-4.4 of the Land Development Regulations, this conditional approval shall expire in 18 months if the Chair has not signed the plan as the result of the applicant's failure to meet those conditions necessary to permit the Chair to sign the plan.*

Motion by JM Lord, seconded by Bill MacLeod, to approve the Minor Subdivision Application for Edward G. Patenaude, Sr. Revocable Trust for property owned and located at 10 Forest Green, Tax Map 18, Lot 45-9 to subdivide the lot into two single-family residential lots, with conditions. Motion passed unanimously.

5-22-2023
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

Notice of Decision

Applicant: Georgia Nagle, applicant

Owner: Samonas Realty Trust

Property: 1215 Ocean Blvd, Tax Map 17.3, Lot 6
Property is in the General Residence, Business District and Coastal Overlay District and SFHA- Zone AO

Application case: Case #07-2023

Application: Minor site development plan for change of use of a restaurant, update seating, indoor and outdoor.

Date of Decision: Tuesday May 16, 2023

Decisions:

Waivers: The Board voted unanimously to grant the waivers to the Land Development Regulations, such grant will properly carry out the spirit and intent of these regulations:

§202-3.5A – The restaurant would like to take advantage of the upcoming summer season and would like to expand the seating at the restaurant to maximize the potential for food service and beach attending customers and locals. There will be no other changes to the site, using the number of allowed seats per previous operators and readjust to allow for indoor and outdoor seating.

§202-3.4B – for a change or expansion of use, to take advantage of upcoming summer season, and site seating of previous operators to allow indoor and outdoor seating.

§202-3.4A - No physical changes on the site to increase indoor and outdoor seating.

Article VI, Land Development Standards - No changes to outside of building, not necessary.

Article VII, Construction Performance Guarantee and Inspections – No work on site, not required.

Article VIII, Construction Site Runoff - Erosion and Sediment Control – No work on site, not required.

Article IX, Post-Construction Stormwater Management Standards – No work on site, not required

Article X, Outdoor Lighting Standards – No changes to outdoor lighting, not required

Article XI – Landscaping Standards - No changes on site, not required.

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Patrick & Jenny Donnelly
Rye Conservation Commission


Address: 5 Whitehorse Drive, Tax Map 11, Lot 15-2
Properties are in the Single Residence District and Wetlands
Conservation District.

Request: Lot Line Adjustment by Patrick & Jenny Donnelly for property
owned and located at 5 Whitehorse Drive, Tax Map 11, Lot 15-2
with Rye Conservation Commission, Tax Map 11, Lot 32 to adjust
the common boundary of the 7.16 acre parcel to convey 2.16 acres
to The Town of Rye Conservation Commission and grant a .84
acre easement as well. Properties are in the Single Residence
District and Wetlands Conservation District. Case #08-2023.

Date of Decision: Tuesday May 16, 2023

Decision: The Board voted unanimously to grant the Lot Line
Adjustment for Patrick & Jenny Donnelly and the Rye
Conservation Commission.

5/18/23
Date



Patricia Losik, Chairman
Rye Planning Board