

**TOWN OF RYE – PLANNING BOARD
MEETING**

**Tuesday, July 18, 2023 – 6:00 p.m.
Rye Public Library**

Members Present: Bill MacLeod, Rob Wright, Selectmen's Rep. Bill Epperson, Chair
Patricia Losik, Vice-Chair JM Lord, Steve Carter, Kathryn Garcia, Steven Borne

Also Present: Planning/Zoning Administrator Kim Reed

I. Call to Order

Chair Losik called the meeting to order at 6:00 PM.

II. Determination of Completeness

- A. Major Site Development Plan by Grail Real Estate, LLC for property at 6 Airfield Drive, Tax Map 10, Lot 15 for a community of fitness and wellness business. Property is Commercial District, Multi-Family Overlay District. Aquifer Protection Overlay and Berry's Brook Watershed. Case 11- 2023.**

Motion by JM Lord to continue the application for a Major Site Development Plan by Grail Real Estate, LLC for the property at 6 Airfield Drive, Tax Map 10, Lot 15 to the August 15, 2023 meeting. Seconded by Bill Epperson.

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

- B. Major Site Development Plan and Condominium Conversion by 665-667 Wallis Road, LLC for property located at 665-667 Wallis Road, Tax Map 16, Lot 21 for construction of a new driveway, new septic system and new second floor with stairway to be added to existing building to create a three-unit condominium. Property is in the Commercial District, Single Residence District, Aquifer & Wellhead Protection District and Berry's Brook Watershed. Case #12-2023.**

Motion by Bill Epperson to continue the application for a Major Site Development Plan and Condominium Conversion by 665-667 Wallis Road, LLC for property located at 665-667 Wallis Road, Tax Map 16, Lot 21 to the August 15, 2023 meeting. Seconded by Steve Carter.

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

- C. Driveway application by Paul Treseder & Susan Vogelsang for property owned and located at 59 Central Road, Tax Map 12, Lot 35 from Section 5: Paragraph. O for two driveways on one lot. Property in the Single Residence District. Case #13-2023.**

Motion by JM Lord to determine the application by Paul Treseder & Susan Vogelsang for property owned and located at 59 Central Road, Tax Map 12, Lot 35 complete and move it to the public session. Seconded by Bill MacLeod.

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

- D. Conditional Use Permit by Paul Treseder & Susan Vogelsang for property owned and located at 59 Central Road, Tax Map 12, Lot for an Accessory Dwelling Unit per Rye Zoning Ordinance 190- 5.6. Property is in the Single Residence District. Case #14-2023.**

Motion by JM Lord to determine the application by Paul Treseder & Susan Vogelsang for property owned and located at 59 Central Road, Tax Map 12, Lot 35 complete and move it to the public session. Seconded by Bill MacLeod.

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

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

- A. Minor 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 2-lots. The property is in the Single Residence District and Aquifer & Wellhead Overlay District. Case #10-2023.**

Paige Libbey with Jones and Beach Engineering presented the application to the Board. She explained that last month the Board had minor comments that resulted in notes to the plan. She explained they did relocate the 4000 square foot septic reserve area and they're now proposing a shared driveway for the two lots to address safety concerns.

Selectmen's Rep. Epperson asked if that is by easement, which Ms. Libbey confirmed.

Responding to Member Wright's question, Ms. Libbey confirmed that the other curb cut will be dismantled, as shown on sheet C2 of the plan.

Chair Losik asked Ms. Libbey if she has any concerns regarding minor changes to the draft conditions of approval.

Ms. Libbey responded that she doesn't have concerns and that the notes were all minor. She confirmed receiving the draft conditions of approval and findings of fact for the waivers.

Chair Losik noted that a letter referenced amended waivers and asked if there were two. Ms. Libbey confirmed there were two, which were submitted. She explained that changes were a result of previous comments and recommendations for stormwater requirements.

Planning/Zoning Administrator Reed stated that those were emailed to the Board and included in packets.

Member MacLeod commented on the draft conditions of approval and asked for clarification that the Board would approve the form but the deed wouldn't be recorded.

Chair Losik confirmed that the deed wouldn't be recorded until after she signs it. She clarified that the Planning Board counsel will review the deed and driveway easement.

Member Wright asked for clarification regarding the removal of the gravel drive. Ms. Libbey, referring to sheet C2, described the design of the drive.

Selectmen's Rep. Epperson asked if the fire chief has reviewed that arrangement. Ms. Libbey explained that he had not.

Chair Losik explained that when the lot development plan comes through, the fire chief will need to review it.

Member Borne asked some clarifying questions regarding the stormwater management plan.

Chair Losik explained the process for developing a stormwater management plan.

Chair Losik opened to the public at 6:15 PM. Hearing no comments, the public session was closed.

Motion by JM Lord, seconded by Rob Wright to accept the applicant's requests for the following waivers of the Rye Land Development Regulations:

Motion to waive the requirement from Article III, §202-3.4 D(4) in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations - as this project is subdividing an existing lot with no proposed grading or impervious surface proposed at this time.

Per condition of approval, a SWMP will be required at the time a lot development plan is prepared for a building permit.

Motion to waive the requirement from Article VII, Construction Performance Guarantee and Inspection in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations – as this project's small scope will consist of the construction of one single family home.

Motion to waive the requirement from Article VIII, §202-8.3 Construction Site Runoff – Erosion and Sediment Control Standards – Inspection and Enforcement, in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations – as measures applicable to §202-8.0 through 8.2 are reflected per Plan Sheet E1, inspections would be unnecessary due to this project's small scope will consist of the construction of one single family Home.

Motion to waive the requirement from Article IX, Post-Construction Stormwater Management Standards in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations -- as this property slopes away from the public roadway so will not impact roadside drainage quantity or quality, and as this project is subdividing an existing lot with no proposed grading or impervious surface proposed at this time. Per condition of approval, a SWMP will be required at the time a lot development plan is prepared for a building permit.

Motion to waive the requirement from Article XI, Landscaping Standards in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations – as per condition of approval, a landscape plan is required for a building permit.

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

Motion by JM Lord, seconded by Rob Wright to agree with the following findings of fact:

The Board finds the proposed plan to subdivide the existing lot meets applicable land development standards, site runoff and erosion and sediment control standards, and outdoor lighting standards.

The Board finds the proposed stormwater management plan, landscape plan, irrigation plan, and septic plan compliant with §190-3.6 J specific to future lot development for one single-family home will be undertaken to meet applicable standards.

The Board finds that a hydrogeologic study and conditional use permit to meet requirements of §190-3.6 specific to future development for one single-family home that alters more than 50,000 square feet of natural terrain will be undertaken to meet applicable standards. The Board finds that a shared driveway easement as depicted on Plan Sheets A1 and C2 will enhance the safety of access and egress on Washington Road.

Seconded by Rob Wright.

Motion by JM Lord to approve the following Conditions of Approval:

1. The June 28, 2023 plan set shall be revised as follows:
 - a. A1 Subdivision Note 5, MAP NO. and EFFECTIVE DATE shall be revised:
 - i. Map No. 33015CO270E to 33015CO270F
 - ii. Effective date from May 17, 2005 to January 29, 2021
 - b. A1 Subdivision Note 17 shall be revised:
 - i. First zoning reference shall be revised from §190-3.6(G)(6)(J) to §190-3.6J
 - ii. Second zoning reference from §190-3.6(E) to §190-3.6 F(4), (6) and (7)
 - c. A1 Subdivision Note 24 shall be revised from §190-3.6(F)(1)(A)[2] to §190-3.6 E(2) and (3), and §190-3.6 F(1)(a)[2]
 - d. A1 Subdivision Note 25 shall be revised to include language emboldened: A landscaping plan for Lot 130-1 shall be required by the building inspector at the time of building permit depicting the limits of tree clearing and the voluntary no-cut buffers.
 - e. A note shall be added to A1 Subdivision describing the respective voluntary no-cut buffers as prohibiting the cutting of live trees greater than 4 ½ inches in diameter measured at a height of 4 ½ feet above ground.
 - f. A note shall be added to A1 Subdivision indicating that no structures shall be located within the 90' voluntary setbacks as depicted along the eastern, southern, and western property lines.
 - g. A note shall be added to A1 Subdivision indicating that Lot 130-1 only provides access to one dwelling.
2. The Planning Board counsel shall review the deed and driveway easement.
3. The Planning Board Chair may sign plans when the foregoing condition(s) are met.
4. The Building Inspector shall require a lot development plan prior to issuance of a building permit. Building permit(s) and certificate of occupancy shall not be issued unless the plan complies with the following:

- a. Any use altering more than 50,000 square feet of natural terrain per §190-3.6 F(1)(a)[2] shall require a hydrogeologic study and a conditional use permit per §190-3.6 from the Planning Board.
- b. A stormwater management plan per §190-5.7 B and §190-3.6 F(3) shall be submitted and shall be approved by the TRC of the Planning Board, or the planning board engineer at the expense of the building permit applicant.
- c. A septic plan compliant with §190-3.6 J which requires a high-performance, de-nitrifying septic system, and that all uses must comply with the best management practices set forth in New Hampshire Administrative Regulations Part Env-Wq401.
- d. A landscape plan depicting limits of tree removal and the voluntary no-cut buffers shall be submitted.
- e. If an irrigation system is installed on the lot, the system shall comply with §202 Appendix G.
- f. The lot development plan shall identify the compliance requirements regarding salt and de-icing practices per §190-3.6 F(4), fertilizers per §190-3.6 F(6), and manure per §190-3.6 F(7).
- g. The lot development plan shall indicate that no structures shall be located within the 90' voluntary setbacks as depicted along the eastern, southern, and western property lines.

5. Written approval from the RFD shall be obtained per Appendix B Driveway Regulations Section 5-E: M.

6. Written approval from the RWD shall be obtained per §202-6.5 Waterline construction.

7. 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.

Seconded by Bill Epperson.

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

Motion by JM Lord to approve the Minor 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 two lots. The property is in the Single Residence and Aquifer & Wellhead District. Case #10-2023. Seconded by Bill Epperson.

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

B. Major Site Development Plan by Grail Real Estate, LLC for property at 6 Airfield Drive, Tax Map 10, Lot 15 for a community of fitness and wellness business. Property is Commercial District, MultiFamily Overlay District. Aquifer Protection Overlay and Berry's Brook Watershed. Case 11-2023.

Application continued to the August 15, 2023 meeting.

C. Major Site Development Plan and Condominium Conversion by 665-667 Wallis Road, LLC for property located at 665-667 Wallis Road, Tax Map 16, Lot 21 for construction of a new driveway, new septic system and new second floor with stairway to be added to existing building to create a three-unit condominium. Property is in the Commercial District, Single Residence District, Aquifer & Wellhead Protection District and Berry's Brook Watershed. Case #12-2023.

Application continued to the August 15, 2023 meeting.

D. Driveway application by Paul Treseder & Susan Vogelsang for property owned and located at 59 Central Road, Tax Map 12, Lot 35 from Section 5: Paragraph. O for two driveways on one lot. Property in the Single Residence District. Case #13-2023.

Paul Treseder presented his application to the Board. He described the property and the need for a zoning variance due to the property's proximity to Meadow Lane. He explained that he's no longer requesting a parking pad, but a 12'-wide driveway and 20'x42' turnaround area to serve the ADU. He explained that the existing driveway would continue to serve the main house. The house has been a rental for 20 years, and they plan to convert the property to their personal residence with a rented ADU behind it.

Chair Losik, speaking to Mr. Treseder, asked if the tenant will use the access on Meadow Lane. Mr. Treseder confirmed and added that he will continue to use the existing driveway off Central Road. He also clarified that the originally proposed parking pad is no longer a part of the plan.

Member Borne discussed his concern about the driveway off of Central Road and observed that the current tenants park right on Meadow Lane, suggesting that the existing house doesn't seem to have enough parking. He noted that if it were new construction, the Board would force the driveway to be on the less traveled road, which would be safer. He also discussed an abutter's concerns expressed in a submitted letter.

In response to Chair Losik's question, Mr. Treseder spoke about his need for parking. He expressed his hope that the second driveway would address the parking issue on Meadow Lane.

Chair Losik asked if it would be possible to add a turnaround to the existing driveway, which Mr. Treseder agreed could be done.

Member Macleod observed that the proposed parking design is sufficient for the ADU and that the suggestion of a backup strip is a good one. He added that the Board can't require the applicant to have more than two spaces per unit.

Mr. Treseder asked if a gravel parking area would be permitted. The Board confirmed.

In response to Member Wright's question, Mr. Treseder explained that he would be amenable to conditioning approval on an added turnaround. He also confirmed that there will be fewer people living in the main house. The rest of the Board agreed that a turnaround would be a helpful feature.

Chair Losik opened to the public at 6:46 PM.

Stacey Smith of 51 Central Road explained that she's excited about the proposed parking solution as there has been a lot of parking on Meadow Lane, which has posed safety concerns.

Hearing no further comments, the public session was closed at 6:48 PM.

Motion by JM Lord to approve the driveway application by Paul Treseder & Susan Vogelsang for property owned and located at 59 Central Road, Tax Map 12, Lot 35 from Section 5: Paragraph. O for two driveways on one lot, with the condition that a backup strip be added to the existing driveway. The backup strip will be a minimum of 20' deep and 12' wide. Seconded by Bill Epperson.

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

E. Conditional Use Permit by Paul Treseder & Susan Vogelsang for property owned and located at 59 Central Road, Tax Map 12, Lot for an Accessory Dwelling Unit per Rye Zoning Ordinance 190- 5.6. Property is in the Single Residence District. Case #14-2023.

In response to Chair Losik's question, Mr. Treseder confirmed that the addition will include two stories, 600 square feet on each story, with a one-story porch.

Mr. Treseder described the proposed ADU.

In response to Member Wright's question, Mr. Treseder explained that the total square footage of the ADU is 1,200 square feet.

Member Carter asked if the two bathrooms on the second floor are back to back.

Mr. Treseder confirmed and explained that they designed it that way since there is no bathroom on the first floor. He also explained that there is a total of 5 bedrooms and the septic system is designed for six.

Member Borne expressed concern over the septic system being inundated with water.

The Board discussed the septic plan.

Mr. Treseder explained that the septic system is one year old and both units on the property use the same system.

Chair Losik opened to the public at 6:56 PM.

Stacey Smith asked whether a property owner is permitted to live in the main house or the ADU.

Planning/Zoning Administrator Reed explained that the principal owner of the property can live in either one of the units, but the owner has to certify to the Building Inspector that the property owner lives in the dwelling.

Chair Losik added that an ADU must be rented for a period greater than three months.

Chair Losik closed to the public at 6:57 PM.

Motion by JM Lord to approve the Conditional Use Permit by Paul Treseder & Susan Vogelsang for property owned and located at 59 Central Road, Tax Map 12, Lot 35 for an Accessory Dwelling Unit per Rye Zoning Ordinance 190- 5.6. Property is in the Single Residence District. Case #14-2023 with one condition that the interior door between the principal dwelling unit and the accessory dwelling unit must be approved by the Building Inspector and the Fire Chief. Seconded by Rob Wright.

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

IV. New:

A. Conceptual Consultation by Grail Real Estate, LLC for property at 6 Airfield Drive, Tax Map 10, Lot 15 for a community of fitness and wellness business. Property is Commercial District, Multi-Family Overlay District. Aquifer Protection Overlay and Berry's Brook Watershed

Chair Losik summarized the purpose of the consultation: to review the exempt status by the Planning Board granted on 10/12/21.

Attorney John Bosen, representing the applicant, introduced his team: **Jay Jacobs, Burke Biron, Corey Colwell, Jon Ricci, and Nicole Kerouac.**

Attorney Bosen stated that there's been some confusion regarding this project and his hope to have a dialogue to address any of the Board's concerns.

Mr. Jacobs, the owner of 6 Airfield Drive, introduced himself and described his background. He described his vision for Airfield Place: to create a community of fitness and wellness businesses under one roof. He explained that roughly 400 Rye Residents have already used the facility, there are roughly 200 members today and it also employs Rye Residents. He discussed the contributions this facility would make to the Rye Community.

Attorney Bosen explained that he believes they are operating in compliance with the original exception that was granted in October 2021, which is consistent with Attorney Roman's letter dated 7/17/23. He explained this all started with a letter of non-compliance from the Building Inspector dated 4/19/23, where it was stated that the proposed use of the property was materially different from what was presented to the Board in 2021. Attorney Bosen stated that this is factually incorrect and explained his reasoning.

Chair Losik asked if Mr. Colwell could clarify the square footage, occupancy, and architectural numbers.

Mr. Colwell explained that the architect could better explain the numbers and stated that he would speak to factual findings. Mr. Colwell outlined work that he's previously done on this property and explained why the applicant is exempt from any further site plan requirements. He explained that the previously submitted plans reflect that the site was not to be used as a food service site for catering. Mr. Colwell distributed plans submitted to the Board in 10/2021 and explained that onsite consumption of food is not allowed, nor is the space used for catering. He also explained that the co-working space is for gym members only. Mr. Colwell presented a letter from Engrain Market dated 7/17/23 to the Planning Board explaining that the space does not operate as a catering business.

In response to Selectmen's Rep. Epperson's question, Mr. Colwell explained that meals aren't prepared in Rye. He also explained that the Building Inspector's claim of intensification of use was based on a Notice of Decision from 10/12/21 when the Board voted on exceptions to Land Development Regulations. He explained that the building hasn't changed, nor has parking and while loading zones were changed, they were approved by the Board in October 2022. He discussed several details to prove there has been no intensification of use.

Member Wright asked about the capacity of the septic system.

Mr. Colwell explained that the 10/12/21 approval limits occupancy to 1,042, but the applicant has limited occupancy to 706 because of the capacity of the septic system.

Mr. Colwell explained that there has been no increase in building, parking, sidewalks, drainage, stormwater runoff, sanitary waste disposal, lighting, noise, or air pollution and that all uses were presented to the Board on 10/12/21.

Selectmen's Rep. Epperson asked how much more space is available and which tenants are considering using the space.

Referring to the tenant ensuite chart, Ms. Kerouac pointed to the list of future tenants.

Selectmen's Rep. Epperson asked if all colored areas are in use currently.

Ms. Kerouac explained that it's an overall plan of available suites, which will say whether the unit is currently leased or not. All suites have been calculated in the 706 occupancy for the overall load of the building.

Chair Losik asked about the calculation of a load of 995.

Ms. Kerouac explained the overall building occupancy is also considering egress. While the owner has agreed to where they will cap occupancy, for the building code, Ms. Kerouac also needs to make sure occupants can safely exit the building, which is what the overall building occupancy plans are showing.

Chair Losik commented that the most current information the Board has for septic is the TF Moran report from 2022 which lists occupancy at 706.

Ms. Kerouac explained that they have agreed to use the lesser number as their occupancy.

Chair Losik stated that the Board did not have that information in 2021.

Ms. Kerouac and Chair Losik discussed the proposal for the community health and wellness center as proposed in 2021. Ms. Kerouac explained that the overall occupancy might adjust, but 706 is the max occupancy and none of the tenant spaces are changing from what was proposed.

Member Wright asked for a description of the nature of the business that was approved in 2021.

Mr. Biron, General Manager for the building, and Mr. Jacobs described the health and wellness community proposed. Mr. Jacobs explained that Grail Real Estate is a holding company that has a master lease with Grail Zone LLC.

Chair Losik distributed a copy of a letter from Ricci Construction and noted the 1042 occupancy.

Member Wright asked if alcohol will be served at any point in future plans.

Attorney Bosen stated that alcohol will not be served and if that were to occur, it would be a separate request to the Planning Board.

Chair Losik asked Mr. Biron to clarify whether the proposed community of resources would require a membership.

Mr. Biron explained that each business has an individual business model, but in order to sign up for a class, you need to be a member, even if it's a day pass. The co-working space also requires membership to one of the businesses, even if only for the day. The lounge is a communal area for all tenants, and the working area is upstairs and locked.

Member Carter asked for clarification of a proposed child care center.

Mr. Biron explained that the gym operates a monitored playroom for members, for which they submitted a letter to NHDHHS stating that it's not a daycare but a monitored playroom.

Ms. Kerouac clarified that parents must remain on site.

Member Carter clarified that the business is not expanding to be a daycare business.

Member Garcia asked if each business has their own liability waiver.

Mr. Biron confirmed that all are businesses are individually responsible for their own liability waiver and insurance, which is vetted individually.

Member Wright asked if there is an agreement with each tenant as a part of the lease. Mr. Biron confirmed.

In response to Member Carter's question, Mr. Biron explained that they will allow members to use the co-working rental office space, but they are not renting it to anyone.

In response to Member Garcia's question regarding event hosting, Mr. Biron explained that they were approached by a tenant to hold a corporate event. He explained they considered finding a way to use another space in the building, but they will make sure that doesn't happen if it's not permitted.

Chair Losik, noting the six pickleball courts, asked if the applicant will have more pickleball or if they will repurpose the pickleball space.

Mr. Biron explained they don't want to give him any more space inside the building.

Chair Losik explained that the TF Moran report from March 2022 established member capacity at 706 based on septic capacity and occupancy limits. Speaking to Mr. Colwell, she asked for the numbers from October 2021 that were driving the 730 capacity.

Mr. Colwell explained that the building can handle more than 706 people at a time and it's approved for 1042. Since the system will not handle more than 706, the owner has to limit and police capacity to 706. Mr. Colwell described their letter to the Building Inspector in February 2022 to acknowledge the findings of the septic capacity and agree to a building occupancy of 706 in the facility.

Chair Losik noted that the Board didn't have these details in 2021 and asked if numbers increase, who would police the occupancy numbers.

Member Borne described it as a flowing system and asked the applicant how they intend to keep track of the number of occupants at one time.

Ms. Kerouac explained that the front desk always has someone standing there.

Mr. Ricci explained that water meter calculations show they're grossly under the approved number. He estimated that when fully built out, they'll use only 50% capacity of the septic system. He explained that the business can keep an eye on people going in and out but water meter calculations are real numbers, not estimates.

Vice-Chair Lord explained that the septic system is based on gallons per day and you'd need to manage and calculate sewer flow rather than the number of members.

Ms. Kerouac explained that the 706 is the septic system capacity and they've agreed to cap it there, but the building can hold more. The owner has agreed to cap daily usage at 706, but has agreed to rent over 60% of the building and they never reach that capacity. She explained that the space wouldn't be used to capacity.

Chair Losik asked how the capacity of 706 occupants would be managed.

Ms. Kerouac explained that the maximum occupancy can be managed by the person at the front desk; classes are scheduled, people use a key to enter the gym, and they have a way to monitor the number of people coming in. She explained that they use a digital system to keep track of numbers and they have never come close to the 706 capacity.

The Board discussed how to calculate and manage the number of occupants in the building.

Member MacLeod explained that the applicant's septic system is huge and the Board shouldn't have any concerns. He added that the water meter readings show the use is much less than the use that DES puts in their charts. He discussed how DES does calculations for septic systems.

Mr. Colwell, in response to Member Borne's question, explained that the septic system on that site was designed in 2001 and installed in 2002 for the skate park. He explained that the septic change of use to the wellness center can handle the flow.

Member Borne asked if there has been any discussion of partnering with the Rye Rec. to get community use out of this facility.

Mr. Jacobs explained that he would love to partner with the Rye Rec., but has been afraid to discuss anything new considering the constraints they've had with the project thus far. He explained that he would love to bring a farmers market and other community events there, but thought to get the building with the plan they have presented and then bring other things in.

Member Garcia commented that the proposed facility would mean so much to the community.

Selectmen's Rep. Epperson discussed use intensification, noting that the occupancy load cannot exceed 1,042, but the applicant is at 706. He explained that there seems to be less intensification, not more, and it seems like a good plan.

Mr. Colwell explained that it was upsetting that he reached out to the Building Inspector to discuss his letter and was told to comply or not and that they weren't given an opportunity to discuss it further.

Member Carter asked how much business Engrain Market expects to do.

Mr. Biron explained that the business owner is currently breaking even and hoping that other businesses will open and increase business. He explained that she was trying to grab additional business by advertising catering.

Chair Losik observed that the owner of Engrain Market is trying to find ways to connect with people in this community and the website advertises Rye offerings.

Member Wright explained that every customer of Engrain is a subset of the combined businesses that are tenants.

The Board discussed occupancy related to customers at the various businesses and their consumer overlap at Engrain Market.

Member MacLeod stated that he believes the applicant is in compliance with the original exemption the Planning Board gave them in 2021. He asked if that's the case, can the Board confirm they're in compliance with plans as presented in use intensity and septic load is in compliance with the original exemption granted.

Chair Losik explained that the applicant should come back to the Board next month with a written request for exempt status.

Mr. Colwell stated that he believes they were granted exempt status and as nothing has changed and they comply with exempt status, there is nothing they need to apply for.

Member Borne expressed concern that the Board is holding up their business.

Mr. Jacobs explained that he has a tenant looking to put in a rock climbing gym, but he won't sign the lease as he doesn't feel confident that he can get a Certificate of Occupancy.

Attorney Bosen explained that they have been at a standstill since April.

Member Wright explained that the only remedy the Board can offer is a specific agreement with the applicant's contention that they are compliant and maintain exempt status. He explained that the applicant could take that to the Building Department as evidence that the Board isn't the path forward.

Vice-Chair Lord explained that the Board can't make a decision tonight, but if the applicant came back next month with an application to recertify the status, then the Board could make a decision.

Chair Losik discussed the traffic report and parking calculations.

Planning/Zoning Administrator Reed asked the Board to clarify a direction forward for the applicant.

The Board discussed the applicant's next steps and determined that they would need a recertification of the previous exemption.

Attorney Bosen acknowledged that this meeting is a non-binding discussion, and the Board needs a formal and public discussion.

Chair Losik commented that this has been a good discussion and the Board has a better understanding of the proposal.

Planning/Zoning Administrator Reed explained timeline for processing exemptions

The Board discussed Engrain Market and the traffic study.

It was determined that the Board would hold a special meeting on Tuesday, July 25, 2023 at 1:00 PM at the Rye Town Hall.

Chair Losik asked Mr. Colwell to include a snapshot of the square footage and occupancy chart in the letter requesting recertification.

V. Old Business:

A. NHHOP Needs Assessment Survey and Phase II

Chair Losik explained that a meeting was held with Jen Roudin on Monday at 1:00 to review the survey, which was very successful with 320 responses. She explained that the application has been submitted, the organization is reviewing funds, and some funds are still left in the previous budget, and some funds are in the current budget.

B. Master Plan and Build Out updates

Member Wright summarized the Master Plan Steering Committee meeting on July 11th with the Resilience Core Team: Steve Whitman, Liz Kelly, and Crystal Kidd. He explained that they will discuss two topics at each of the monthly meetings.

Planning/Zoning Administrator Reed explained that Crystal Kidd has reached out to the police and fire chief. She also explained that Jenn Roudan will be at the August meeting to discuss the outreach and engagement plan as well as demographics and housing.

Member Wright explained that the September topics are natural resources and coastal resilience and adaptation, and the October topics are history heritage and recreation.

The Board discussed possibilities for the town's branding and Planning/Zoning Administrator Reed described those ideas proposed by the Master Plan Steering Committee.

Chair Losik discussed public outreach out for the master plan in late winter or early spring and explained that public meetings would be held in September.

VI. Minutes and Escrows

A. June meeting minutes

Minutes - June 20, 2023

- Correction to page five: "asked [if] Mr. Ross would look for a waiver"
- Correction to page seven: "nobody cared that the ~~arm~~ barn was on the neighbor's property"
- Correction to page ten: "Member MacLeod suggested that the applicant include a request to the ZBA to have two ~~lots~~ residences on one parcel temporarily."
- Correction to the spelling of Corey Colwell throughout the document
- Correction to the spelling of Attorney John Bosen throughout the document.
- Correction to page eight: "frontage ~~on~~ of the back of the lot".

Chair Losik expressed the importance of capturing the specific language of conditions of approval.

Motion by JM Lord to approve the June 20, 2023 minutes as amended. Seconded by Steve Carter.

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

B. Escrows for May-June

The Board had no escrows for May-June.

Communication:

- A.** Chair Losik and Member Borne discussed a reference to the January 2021 minutes.

Motion by Bill MacLeod to adjourn at 9:04 PM. Seconded by Bill Epperson. All in favor.

Respectfully Submitted,
Emilie Durgin

7/18/23

Conditions of Approval
850 Washington Road

1. The June 28, 2023 plan set shall be revised as follows:
 - a. A1 Subdivision Note 5, MAP NO. and EFFECTIVE DATE shall be revised:
 - i. Map No. 33015CO270E to 33015CO270F
 - ii. Effective date from May 17, 2005 to January 29, 2021
 - b. A1 Subdivision Note 17 shall be revised:
 - i. First zoning reference shall be revised from §190-3.6(G)(6)(J) to §190-3.6 J
 - ii. Second zoning reference from §190-3.6(E) to §190-3.6 F(4), (6), and (7)
 - c. A1 Subdivision Note 24 shall be revised from §190-3.6(F)(1)(A)[2] to §190-3.6 E(2) and (3), and §190-3.6 F(1)(a)[2]
 - d. A1 Subdivision Note 25 shall be revised to included language emboldened: A landscaping plan for Lot 130-1 shall be required by the building inspector at the time of building permit depicting the limits of tree clearing **and the voluntary no cut buffers.**
 - e. A note shall be added to A1 Subdivision describing the respective voluntary no cut buffers as prohibiting the cutting of live trees greater than 4 ½ inches in diameter measured at a height of 4 ½ feet above ground.
 - f. A note shall be added to A1 Subdivision indicating that no structures shall be located within the 90' voluntary setbacks as depicted along the eastern, southern, and western property lines.
 - g. A note shall be added to A1 Subdivision indicating that Lot 130-1 only provides access to one dwelling.
2. The Planning Board counsel shall *review* approve the deed and driveway easement.
3. The Planning Board Chair may sign plans when the foregoing condition(s) are met.
4. The Building Inspector shall require a lot development plan prior to issuance of a building permit. Building permit(s) and certificate of occupancy shall not be issued unless the plan complies with the following:
 - a. Any use altering more than 50,000 square feet of natural terrain per §190-3.6 F (1)(a)[2] shall require a hydrogeologic study and a conditional use permit per §190-3.6 from the Planning Board.
 - b. A stormwater management plan per §190-5.7 B and §190-3.6 F(3) shall be submitted and shall be approved by the TRC of the Planning Board, or the planning board engineer at the expense of the building permit applicant.
 - c. A septic plan compliant with §190-3.6 J which requires a high performance, denitrifying septic system, and that all uses must comply with the best management practices set forth in New Hampshire Administrative Regulations Part Env-Wq 401.

- d. A landscape plan depicting limits of tree removal and the voluntary no cut buffers shall be submitted.
 - e. If an irrigation system is installed on the lot, the system shall comply with §202 Appendix G.
 - f. The lot development plan shall identify the compliance requirements regarding salt and de-icing practices per §190-3.6 F(4), fertilizers per §190-3.6 F(6), and manure per §190-3.6 F(7).
 - g. The lot development plan shall indicate that no structures shall be located within the 90' voluntary setbacks as depicted along the eastern, southern, and western property lines.
5. Written approval from the RFD shall be obtained per Appendix E Driveway Regulations Section 5-E: M.
6. Written approval from the RWD shall be obtained per §202-6.5 Waterline construction.
7. 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.

DRAFT

Date _____ Patricia Losik, Chair
Rye Planning Board

850 Washington Road
DRAFT MEMORANDUM: Waiver Requests

Motion to waive the requirement from Article III, §202-3.4 D(4) in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations - as this project is subdividing an existing lot with no proposed grading or impervious surface proposed at this time. Per condition of approval, a SWMP will be required at the time a lot development plan is prepared for a building permit.

Motion to waive the requirement from Article VII, Construction Performance Guarantee and Inspection in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations – as this project's small scope will consist of the construction of one single family home.

Motion to waive the requirement from Article VIII, §202-8.3 Construction Site Runoff – Erosion and Sediment Control Standards – Inspection and Enforcement, in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations – as measures applicable to §202-8.0 through 8.2 are reflected per Plan Sheet E1, inspections would be unnecessary due to this project's small scope will consist of the construction of one single family home.

Motion to waive the requirement from Article IX, Post-Construction Stormwater Management Standards in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations – as this property slopes away from the public roadway so will not impact roadside drainage quantity or quality, and as this project is subdividing an existing lot with no proposed grading or impervious surface proposed at this time. Per condition of approval, a SWMP will be required at the time a lot development plan is prepared for a building permit.

Motion to waive the requirement from Article XI, Landscaping Standards in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations – as per condition of approval, a landscape plan is required for a building permit.

850 Washington Road
DRAFT MEMORANDUM - Findings of Fact

The Board finds the proposed plan to subdivide the existing lot meets applicable land development standards, site runoff and erosion and sediment control standards, and outdoor lighting standards

The Board finds the proposed stormwater management plan, landscape plan, irrigation plan, and a septic plan compliant with §190-3.6 J specific to future lot development for one single-family home will be undertaken to meet applicable standards

The Board finds that a hydrogeologic study and conditional use permit to meet requirements of §190-3.6 specific to future development for one single-family home that alters more than 50,000 square feet of natural terrain will be undertaken to meet applicable standards

The Board finds that a shared driveway easement as depicted on Plan Sheets A1 and C2 will enhance the safety of access and egress on Washington Road.

DRAFT

**LAND DEVELOPMENT REGULATIONS
ATTACHEMENT 2**

APPENDIX B

**APPLICATION FOR WAIVER OF SUBDIVISION REQUIREMENT
§ 202-1.9. General waiver authority.**

(Complete one form for each waiver request)

To the Chairman and Members of the Rye Planning Board:

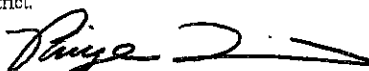
On June 28, 2023, I submit a plan for (subdivision/site plan review) approval to the Board,
entitled Subdivision Plan prepared by
Jones & Beach Engineers, Inc. and hereby request a waiver from Article III
Section 202-3.4.D.(4) of the Rye Land Development Regulations.

A. The Planning Board may waive requirements of these regulations in accordance with RSA 674:36, II (n), and RSA 674:44, III (e)

B. RSA 674:36, II(n), for subdivision applications and RSA 674:44, III(e), for site plan review applications require that the basis for any waiver granted by the Planning Board shall be recorded in the minutes of the Board. The Planning Board may only grant a waiver if the Board finds, by majority vote, that strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of these regulations or that specific circumstances relative to the subdivision (or site plan) or conditions of the land indicate that the waiver will properly carry out the spirit and intent of these regulations. Requests for waivers shall be submitted in writing 7 at least 10 days before the meeting at which the Board considers the waiver request. A written waiver request shall describe how compliance with the regulations for which a waiver is requested would pose an unnecessary hardship to the applicant and why the waiver would not be contrary to the spirit and intent of the regulations.

Explanation for Wavier Request: _____

The spirit and intent of this regulation is to require a Stormwater management plan (SWMP) in compliance with the Land Development regulations. The section we are requesting be waived states that "the Planning Board may waive the requirement if it determines that specific circumstances relative to the subdivision or conditions of the land indicate that the waiver will properly carry out the spirit and intent of these regulations." The intent of a SWMP is to calculate and compare pre-existing and post-construction stormwater peak rates of runoff and volumes. These calculations are based on grading, impervious surface, etc. Stormwater BMP's are then designed as part of the SWMP to mitigate any increase in runoff based on the proposed grading and the addition of impervious surfaces. The proposed project is simply to subdivide a lot off with no proposed grading or impervious surface proposed at this time, so a SWMP would not result in the need for any new BMP's to be added. At such time that the applicant applies for a building permit for the new lot, a SWMP is already required per Section 190-5.7(D) of the Zoning Ordinance. It makes more sense to prepare the SWMP at that time when the applicant has building plans and the proposed lot grading, septic, etc. is fully designed. At this point, preparing a SWMP would pose a hardship to the applicant as we would be designing stormwater BMP's based on a guess of what the building footprint, lot layout and grading may be, only to have to make significant revisions to it once a real building footprint and lot layout is chosen. The spirit and intent of the ordinance is met by requiring the SWMP at the time of building permit per Section 190-5.7(D). It is understood the stormwater management plan would also need to comply with Section 190-3.6(F)(3) since it is in the Wellhead protection District.

 (as Agent)

Signature of Applicant (or designee)

6/28/23

Date

**LAND DEVELOPMENT REGULATIONS
ATTACHEMENT 2****APPENDIX B****APPLICATION FOR WAIVER OF SUBDIVISION REQUIREMENT
§ 202-1.9. General waiver authority.**

(Complete one form for each waiver request)

To the Chairman and Members of the Rye Planning Board:

On June 28, 2023, I submit a plan for (subdivision/site plan review) approval to the Board,
entitled Subdivision Plan prepared byJones & Beach Engineers, Inc. and hereby request a waiver from Article IXSection _____ of the Rye Land Development Regulations. Post-Construction Stormwater
Management StandardsA. The Planning Board may waive requirements of these regulations in accordance with RSA
674:36, II (n), and RSA 674:44, III (e)

B. RSA 674:36, II(n), for subdivision applications and RSA 674:44, III(e), for site plan review applications require that the basis for any waiver granted by the Planning Board shall be recorded in the minutes of the Board. The Planning Board may only grant a waiver if the Board finds, by majority vote, that strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of these regulations or that specific circumstances relative to the subdivision (or site plan) or conditions of the land indicate that the waiver will properly carry out the spirit and intent of these regulations. Requests for waivers shall be submitted in writing 7 at least 10 days before the meeting at which the Board considers the waiver request. A written waiver request shall describe how compliance with the regulations for which a waiver is requested would pose an unnecessary hardship to the applicant and why the waiver would not be contrary to the spirit and intent of the regulations.

Explanation for Wavier Request: _____

The spirit and intent of this regulation is to set the standards for which Stormwater Management plans (SWMP) shall be designed. Section 202-9.1(B)(2) regulates "subdivisions comprising lots with frontage on existing private or public roadways" and goes on to state that for these types of subdivisions (such as the one we are proposing) "roadside drainage and any other stormwater runoff from the new lots discharging to the roadside drainage system must be managed for stormwater runoff quantity/ volume and water quality treatment if stormwater is discharged to the municipality's drainage system subject to the EPA MS4 permit." This does not apply to this property because it does not slope into the road. The entire lot is sloped away from the road and will not impact road drainage quantity or quality. Additionally, we have already requested a waiver from Section 202-3.4(D)(2) which is the regulation that makes the SWMP required for minor subdivisions. Since we are requesting a waiver from the requirement to provide a SWMP, it also makes sense to request a waiver from the standards by which SWMP's are designed (Section IX). Section 202-3.4(D)(2) also mentions that "the Planning Board may waive the requirement if it determines that specific circumstances relative to the subdivision or conditions of the land indicate that the waiver will properly carry out the spirit and intent of these regulations." As discussed above and in our Waiver Request to Section 202-3.4(D)(2), granting this waiver will properly carry out the spirit and intent of the LDR. A SWMP will be required regardless at the time of building permit per Section 190-5.7(D) of the Zoning Ordinance. It is understood the stormwater management plan would also need to comply with Section 190-3.6(F)(3) since it is in the Wellhead protection District.

Signature of Applicant (or designee)

 (as Agent)

Date 06/28/2023

JONES & BEACH ENGINEERS INC.

85 Portsmouth Avenue, PO Box 219, Stratham, NH 03885
603.772.4746 - JonesandBeach.com

June 29, 2023

Town of Rye Planning Board
Attn: Kim Reed
10 Central Road
Rye, NH 03870

Re: Response Letter
850 Washington Road, Rye, NH
Rye Tax Map 11, Lot 130
JBE Project No. 20641.2

Dear Ms. Reed,

Jones & Beach Engineers, Inc., is in receipt of comments from you dated June 15, 2023. Original review comments are italicized, and we offer the following responses below.

1. *Per our LDR you need 2 test pits in the proposed leachfield area. You only have one. If you use #6 you will need to change the leachfield and potentially the building area. Please look at this. Per 202-6.7.C(2) 2 qualifying test pits, maybe readjust.*
Response: The leachfield has been adjusted to include test pit #6.
2. *On sheet E1 you have temporary catch basin but where is it on the plans, we could not find any catch basins? Are we missing something?*
Response: The temporary inlet protection detail has been removed from the plan set.
3. *Driveway regulations 202-Appendix 5-E(M) says must have suitable turn around for apparatus if the driveway is over a certain length, which this is. Please get confirmation from fire chief this hammerhead on your plans is efficient.*
Response: A truck turning plan has been added to the plan set showing that the driveway can accommodate a fire truck turnaround.
4. *The stone wall runs through the proposed driveway, that needs to be remedied.*
Response: A portion of the existing stone wall has been noted to be relocated along edge of driveway.

5. *Do you have confirmation from DPW on the driveway? Driveway permit? 200' site line distance both ways? Please get permit if you can prior to the 20th.*

Response: A revised sight distance profile has been added to the plan set. The location proposed is the safest possible location for the driveway. The applicant will apply for a driveway permit once the subdivision is approved.

6. *Limit of disturbance for the Aquifer, you have 40k in your notes it is an area of concern for the Chair for what if the go to 50K then a Hydro study will be necessary. She is thinking of making it a condition not to exceed 40K.*

Response: The note has been updated to indicate a limit of disturbance for Lot 130-1 is 40,800 S.F. which is under the 50,000 S.F. limit that would trigger a hydrogeologic study. We understand that a 50,000 S.F. disturbance limit will be a condition of the approval and this has been noted on Sheet A1. See Note #24.

7. *A condition of approval will be no blasting*

Response: This has been added as Note #20 to Sheet A1.

8. *Clarification on the No cut buffer, is that the tree line? Emblems will be required to be placed on the trees. Both Pat and JM want it in notes on Sheets A1 and C2. (Sheet A1 and C2 should have the same labeling of the voluntary buffer) there will be a condition no variances.*

Response: The No Cut Buffer is not a tree line. Buffer emblems have been added along the voluntary buffer line at 50' intervals. Note #19 has been added on Sheet A1 addressing the buffer and condition that no variances shall be granted.

9. *Denitrification on note #16 (do not need substances greater than 5 gallons exempt are residential houses) add salt and deice and manure though*

Response: Note #16(now note # 17) has been revised to include the above.

10. *Amend waiver for stormwater (all three waivers IX, VIII and III) They need to add a sentence that complies with 190-3.6.F.3 that runoff must be recharged on site and also in accordance with 190-5.7*

Response: Amended waiver requests for Section 202-3.4.D(4) and Article IX are included with this resubmission. In Article VIII, we are only requesting a waiver from section 202-8.3 – Inspection and Enforcement, and Sections 190-3.6.F.3 and 190-5.7 are not applicable to anything in that section. Note #23 has been added to Sheet A1.

11. *Landscape and irrigation there will be a condition that if irrigation is installed it must apply with Appendix G of the LDR.*

Response: Notes #21 and 25 have been added to Sheet A1.

12. *Condition no variances to buffer and we need clarification as mentioned above if it is the tree line? Condition limiting limit of disturbance to 40K.*

Response: See responses to comments #6 and 8 above.

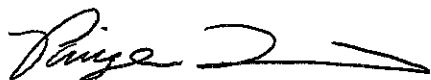
In addition to the changes noted above, the applicant has also decided that the proposed curb cut onto Washington Road from the existing home will be closed off and connected to the new driveway for safety purposes. An access easement on Lot 130-1 to benefit lot 130 has been added to the plans.

Please find enclosed 12 copies of the following items in support of this Application:

1. Amended Waiver Requests.
2. Twelve (12) Half-Size Plan Sets.
3. Twelve (12) Full-Size Plan Sets.

Thank you very much for your time. If you have any questions, or need further assistance, please contact our office.

Very truly yours,
JONES & BEACH ENGINEERS, INC.



Paige Libbey, P.E.
Associate / Project Manager

cc: Marlene Veloso & Charles Fast (via email)

TO: Rye Planning Board
FROM: Kerlann Roman, Planning Board Attorney
DATE: July 17, 2023
RE: 6 Airfield Drive "Grail Real Estate"

Recommendations

1. **What is the applicant asking for?** The Planning Board needs clarity from the applicant what the applicant is asking of the Planning Board, because the applicant has submitted a Site Plan application for which it is seeking waivers. But the applicant also discusses the additional uses being exempt and then at the June 20th meeting says that no review at all is necessary because this is the exact same use as already deemed exempt in October 2021. The applicant needs to clarify its position. Or clarify is it a "if not this, than this" situation? I.E. The use is exactly the same so no PB review is required, but if it is, then we request review that the use is exempt, and if it is not, then we request PB Site Development review with requested waivers. This is fine, the PB just needs to know, and can proceed under this framework on July 18th solely as to "the use is exactly the same so no PB approval is required." Anything beyond that must be continued and handled at the August 15th meeting, properly noticed as an exemption request if that is what it is, because the agenda tells the public that this application is for a Major Site Development and that it has been continued to August, so interested parties are not likely to show up on July 18th.
2. **Applicant's Position #1: The use is exactly the same as proposed in October 2021 and the October 2021 conditions are not violated, so no PB approval is required.** It may be the case that the uses are all part of the same commercial recreation use, but the PB still has to determine if this is correct and if its October 2021 conditions are still met, requiring the PB to go through the submissions and possibly request additional information, particularly on the issue of whether all the uses of the building are for members only or also available to the general public. Because if any of the uses are available to the general public this *could* mean the October 2021 conditions (and the LDR §202-2.1 exemption criteria on which those conditions are based) are not met, particularly as to the septic system and traffic. That would mean the applicant would either have to treat this as a change/expansion in use and request an exemption finding in writing, or go to Site Plan/LDR review.
3. **Applicant's Position #2: This is an expansion or change in use but it is still exempt from the LDR.** If this is their position, the PB can do nothing about it until the applicant "appl[ies] in writing to the Planning Board requesting exempt status [for the additional uses] which shall include detailed site development and use plans and explanation of compliance with criteria in § 202-2.1B(4)(a)[1], [2] or [3] above. The Planning Board or its representative will then reply within 30 days in writing, advising if necessary or not to proceed with a formal review." I was not clear if Attorney Bosen's June 27, 2023 letter was

asking for an exemption finding on the additional uses, so if this is the intent, the PB should make clear that a direct request in compliance with the above LDR criteria is submitted to remove any confusion.

4. **Applicant's Position #3: Site Plan approval with waivers requested.** The application remains incomplete as discussed in my June memorandum. If the applicant wishes to proceed with Site Plan approval, the PB should move to continue it to the August meeting, with the understanding that the applicant will submit the items necessary for a complete application; if they do not, the application will not be continued further and they will have to re-apply for Site Plan/LDR approval.

Analysis

Applicant's Position #1: The use is exactly the same as proposed in October 2021 and the October 2021 conditions are not violated, so no PB approval is required.

"The use is exactly the same as proposed in October 2021."

The site is approved for commercial recreation and accessory uses.

Commercial Recreation - A privately owned use providing indoor or outdoor nonmotorized recreational activities, or a combination of both, with or without seating for spectators, including basketball, football, baseball, softball, ice hockey, wrestling, soccer, tennis, racquetball, handball, squash, volleyball, rope courses, zip lines, miniature golf, golf driving range, skateboarding, cycling, bowling, swimming, weightlifting, gymnastics, and health and fitness, but not including firearms shooting ranges. A commercial recreation use may include accessory uses such as snack bars, restaurants (**but no sales or service of alcoholic beverages**) and retail sales of related recreational, sports or health and fitness items. Special events must comply with all Town permitting requirements.

Accessory Use - Any subordinate use of premises which customarily is accepted as a reasonable corollary to the principal use thereof.

(Zoning Ordinance, Article XI, § 190-11.1 Word usage and definitions.)

- **Analysis:** Engrain Marketplace - if it sells alcohol, this automatically kicks this use out of "commercial recreation". So, they either have to give up the plan of selling alcohol, or the applicant has to proceed with an exemption request. In other words, selling alcohol at Engrain means the use is NOT the same as proposed in October 2021.

Co-working rental office space, "the Hanger" – not a commercial recreation use or an accessory use if this is for general public rental use not just gym/health/fitness facility members. In other words, general public rental use means the use is NOT the same as proposed in October 2021.

"The October 2021 conditions are not violated."

In order for this to be true, the following must be true:

1. There are no additions to the aggregate coverage of existing structure or buildings or additions to existing parking, loading and unloading areas, and driveway areas.
2. There is no surfacing of existing unsurfaced parking areas, driveways, loading and unloading areas and walkways.
3. No change in use (including use intensification) involving expansion of a building or construction on the lot. Further:
 - a. no additional off-street parking;
 - b. no increase the impact of the existing septic system;
 - c. no adverse impacts will occur beyond the site development boundaries including:
 - i. increase traffic hazards
 - ii. groundwater and drainage
 - iii. sanitary and solid waste disposal
 - iv. lighting
 - v. noise pollution
 - vi. air pollution
4. If a change in use is determined, a change of use permit must be obtained from the building department prior to the operation of Grail Zone business.
5. Hours of operation will not exceed 9pm, 7 days a week.
6. All activities will take place within the building
7. The occupancy load will not exceed 1,421 occupants.

From what I have reviewed, it appears #1 and #3 are primarily at issue so I address only those below but the Planning Board should, at least briefly, go through all of the conditions.

Condition #1

"There are no additions to the aggregate coverage of existing structure or buildings or additions to existing parking, loading and unloading areas, and driveway areas."

The Applicant submitted Exhibit 2 which shows that in 2007, the revised Site Plan provided for 251 parking spaces where 250 were required. At present, the property has 235 spaces where 236 are required.

Condition #3

Like all of these conditions, Condition #3 is taken directly from the Rye Land Use Regulation, §202-2.1.B(4).

"No change in use (including use intensification) involving expansion of a building or construction on the lot." This comes from LDR §202-2.1.B(4)[3]: "Changes in use (including use intensification) which do not expand a building or involve construction on the lot(s), provided that the change in use complies with the following criteria." This means that even if there is no expansion or construction on the lot, the additional criteria must still be met. The applicant argues that this condition is still met because the occupant load has decreased from 1042 to 706.

Criteria a. and b.: "a. no additional off-street parking; b. no increase [in] the impact of the existing septic system . . ." This comes from LDR §202-2.1.B(4)[3][b] "Sanitary waste loading of the site does not increase beyond the capacity of existing septic systems or waste disposal service."

The applicant provided a septic system capacity analysis from TF Moran (Exhibit 2 of the applicant's packet) which states that the existing subsurface disposal system was approved by DES for a total design flow of 7,292 Gallons per Day and that the current uses of the building, including the gym/recreational uses plus the café kitchen use will stay under the 7,292 GPD limit provided that total building capacity is limited to 706 members and employees per day.

The applicant must either clarify and agree to limit these additional uses (which are new since the October 2021 exemption finding) to members/employees only or they must get a new septic letter taking these general public uses into account and which then still finds the conditions are met.

Criteria c. "c. no adverse impacts will occur *beyond* the site development boundaries including:

- i. increase traffic hazards
- ii. groundwater and drainage
- iii. sanitary and solid waste disposal
- iv. lighting
- v. noise pollution
- vi. air pollution"

The applicant submitted a Traffic Impact Assessment ("TIA") dated July 2022 which included in its analysis "all usable square footage within the building". (Exhibit 3) The TIA noted that the CO for the skate park allowed for up to 1,840 occupants which could have generated "3,680 vehicular traffic volumes" but that no actual data or traffic counts from the skate park are available so the actual traffic volume for the skate park is not known. The TIA found that the current/proposed use will generate 1,074 new vehicle trips during the average weekday and 1,474 new vehicle trips during the average Saturday. The TIA also seemed to indicate that it was not contemplating general public use of the facility (refers to a "kitchen" use rather than a "café" use). The TIA states that a "left-turn lane into the site is warranted" but that the applicant is willing to "restripe the Airfield Drive westbound approach to formalize a three-lane cross-section" The TIA also notes that movement will operate at an elevated level during peak hours but that it is only "two seconds over the LOS D/E threshold."

The Planning Board should assess whether there is an increase in traffic hazards and inquire whether there is any information at all on the skate park frequency of use/traffic. Further, it appears the TIA did not take into account that some uses will be open to the general public. The applicant must either clarify and agree to limit these additional uses (which are new since the October 2021 exemption finding) to members/employees only or they must get a clarifying Traffic letter or assessment taking these general public uses into account.

No information was presented by the applicant regarding: ii. groundwater and drainage; iv. Lighting; v. noise pollution, or vi. air pollution.

PLANNING BOARD

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Paul Treseder & Susan Vogelsang

Property:

59 Central Road, Tax Map 12, Lot 35
The property is in the Single Residence District.

Application case:

Case #13-2023

Application:

Driveway application by Paul Treseder & Susan Vogelsang for property owned and located at 59 Central Road, Tax Map 12, Lot 35 from Section 5: Paragraph. O for two driveways on one lot. Property in the Single Residence District. Case #13-2023.


Date of decision:

July 18, 2023

Decision:

The Board voted unanimously to grant a waiver to Appendix E, Driveway Regulations, Section 5-O for two driveways on one lot. The waiver was granted on the condition that the existing driveway off Central Road has a backup strip installed at a minimum of 20' in depth and 12' in width.

4/19/2023
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.

PLANNING BOARD

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant/Owner:

Paul Treseder & Susan Vogelsang

Property:

59 Central Road, Tax Map 12, Lot 35
The property is in the Single Residence District.

Application case:

Case #14-2023

Application:

Conditional Use Permit by Paul Treseder & Susan Vogelsang for property owned and located at 59 Central Road, Tax Map 12, Lot for an Accessory Dwelling Unit per Rye Zoning Ordinance 190-5.6. Property is in the Single Residence District. Case #14-2023.

Date of decision:

July 18, 2023

Decision:

The Board voted unanimously to grant the Conditional Use Permit by Paul Treseder & Susan Vogelsang for property owned and located at 59 Central Road, Tax Map 12, Lot for an Accessory Dwelling Unit per Rye Zoning Ordinance 190-5.6.

7/19/2023
Date

Patricia Losik
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: Marlene Veloso & Charles Fast

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

Request: Minor 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 2-lot. The property is in the Single Residence and Aquifer & Wellhead District. Case #10-2023.

Date of Decision: Tuesday July 18, 2023

Decision:

Motions by JM Lord, seconded by Rob Wright to accept the applicant's requests to the following waivers of the Rye Land Development Regulations:

Motion to waive the requirement from Article III, §202-3.4 D(4) in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations - as this project is subdividing an existing lot with no proposed grading or impervious surface proposed at this time. Per condition of approval, a SWMP will be required at the time a lot development plan is prepared for a building permit.

Motion to waive the requirement from Article VII, Construction Performance Guarantee and Inspection in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations - as this project's small scope will consist of the construction of one single family home.

Motion to waive the requirement from Article VIII, §202-8.3 Construction Site Runoff - Erosion and Sediment Control Standards - Inspection and Enforcement, in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations - as measures applicable to §202-8.0 through 8.2 are reflected per Plan Sheet E1, inspections would be unnecessary due to this project's small scope will consist of the construction of one single family home.

Motion to waive the requirement from Article IX, Post-Construction Stormwater Management Standards in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations - as this property slopes away from the public roadway so will not impact

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

roadside drainage quantity or quality, and as this project is subdividing an existing lot with no proposed grading or impervious surface proposed at this time. Per condition of approval, a SWMP will be required at the time a lot development plan is prepared for a building permit.

Motion to waive the requirement from Article XI, Landscaping Standards in accordance with RSA 674:36, II (n) finding that strict conformity would pose an unnecessary hardship to the applicant and a waiver would not be contrary to the spirit and intent of these regulations -- as per condition of approval, a landscape plan is required for a building permit.

Motion passed.

Motion by JM Lord, seconded by Rob Wright to agree with the following finds of fact:

The Board finds the proposed plan to subdivide the existing lot meets applicable land development standards, site runoff and erosion and sediment control standards, and outdoor lighting standards.

The Board finds the proposed stormwater management plan, landscape plan, irrigation plan, and a septic plan compliant with §190-3.6 J specific to future lot development for one single-family home will be undertaken to meet applicable standards.

The Board finds that a hydrogeologic study and conditional use permit to meet requirements of §190-3.6 specific to future development for one single-family home that alters more than 50,000 square feet of natural terrain will be undertaken to meet applicable standards.

The Board finds that a shared driveway easement as depicted on Plan Sheets A1 and C2 will enhance the safety of access and egress on Washington Road.

Motion passed unanimously in favor and motion for findings of fact passed.

Motion by JM Lord, to approve the Minor 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 2-lot. The property is in the Single Residence and Aquifer & Wellhead District. Case #10-2023, Seconded by Bill Epperson and approved unanimously with the following conditions.

Conditions of Approval:

1. The June 28, 2023 plan set shall be revised as follows:
 - a. A1 Subdivision Note 5, MAP NO. and EFFECTIVE DATE shall be revised:
 - i. Map No. 33015CO270E to 33015CO270F
 - ii. Effective date from May 17, 2005 to January 29, 2021
 - b. A1 Subdivision Note 17 shall be revised:
 - i. First zoning reference shall be revised from §190-3.6(G)(6)(J) to §190-3.6 J
 - ii. Second zoning reference from §190-3.6(B) to §190-3.6 F(4), (6), and (7)

- c. A1 Subdivision Note 24 shall be revised from §190-3.6(F)(1)(A)[2] to §190-3.6 E(2) and (3), and §190-3.6 F(1)(a)[2]
 - d. A1 Subdivision Note 25 shall be revised to included language emboldened: A landscaping plan for Lot 130-1 shall be required by the building inspector at the time of building permit depicting the limits of tree clearing **and the voluntary no cut buffers.**
 - e. A note shall be added to A1 Subdivision describing the respective voluntary no cut buffers as prohibiting the cutting of live trees greater than 4 ½ inches in diameter measured at a height of 4 ½ feet above ground.
 - f. A note shall be added to A1 Subdivision indicating that no structures shall be located within the 90' voluntary setbacks as depicted along the eastern, southern, and western property lines.
 - g. A note shall be added to A1 Subdivision indicating that Lot 130-1 only provides access to one dwelling.
- 2. The Planning Board counsel shall review the deed and driveway easement.
 - 3. The Planning Board Chair may sign plans when the foregoing condition(s) are met.
 - 4. The Building Inspector shall require a lot development plan prior to issuance of a building permit. Building permit(s) and certificate of occupancy shall not be issued unless the plan complies with the following:
 - a. Any use altering more than 50,000 square feet of natural terrain per §190-3.6 F(1)(a)[2] shall require a hydrogeologic study and a conditional use permit per §190-3.6 from the Planning Board.
 - b. A stormwater management plan per §190-5.7 B and §190-3.6 F(3) shall be submitted and shall be approved by the TRC of the Planning Board, or the planning board engineer at the expense of the building permit applicant.
 - c. A septic plan compliant with §190-3.6 J which requires a high performance, denitrifying septic system, and that all uses must comply with the best management practices set forth in New Hampshire Administrative Regulations Part Env-Wq 401.
 - d. A landscape plan depicting limits of tree removal and the voluntary no cut buffers shall be submitted.
 - e. If an irrigation system is installed on the lot, the system shall comply with §202 Appendix G.
 - f. The lot development plan shall identify the compliance requirements regarding salt and de-icing practices per §190-3.6 F(4), fertilizers per §190-3.6 F(6), and manure per §190-3.6 F(7).
 - g. The lot development plan shall indicate that no structures shall be located within the 90' voluntary setbacks as depicted along the eastern, southern, and western property lines.

5. Written approval from the RFD shall be obtained per Appendix E Driveway Regulations Section 5-E: M.
6. Written approval from the RWD shall be obtained per §202-6.5 Waterline construction.
7. 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.

7/19/23
Date


Patricia Losik, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Grail Real Estate, LLC

Addresses: 6 Airfield Drive, Tax Map 10, Lot 15
Property is Commercial District, Multi-Family Overlay District, Aquifer Protection Overlay and Berry's Brook Watershed

Request: Major Site Development Plan by Grail Real Estate, LLC for property at 6 Airfield Drive, Tax Map 10, Lot 15 for a community of fitness and wellness business. Property is Commercial District, Multi-Family Overlay District, Aquifer Protection Overlay and Berry's Brook Watershed, Case 11-2023.

Date of Decision: Tuesday July 18, 2023

Decision: The Board voted to continue the application to the August 15, 2023 meeting.

7/19/2023
Date


Patricia Losik, Chairman
Rye Planning Board

RYE PLANNING BOARD

10 Control Road, Rye, NY 08870 (803) 264-9808

Notice of Decision

Applicant/Owner: Grall Real Estate, LLC

Addresses: 6 Alkfield Drive, Tax Map 10, Lot 15
Property is Commercial District, Multi-Family Overlay District, Aquifer Protection Overlay and Berry's Brook Watershed

Request: Major Site Development Plan by Grall Real Estate, LLC for property at 6 Alkfield Drive, Tax Map 10, Lot 15 for a community of fitness and wellness business. Property is Commercial District, Multi-Family Overlay District, Aquifer Protection Overlay, and Berry's Brook Watershed. Case 11-2023.

Date of Decision: Tuesday June 20, 2023

Decision: The Board voted unanimously to not accept jurisdiction of the application and deemed it to be incomplete as a complete application requires either (1) submissions as required by Articles VI, X and XI of the LDRs or (2) detailed waiver requests, explanations outlining each use and their impacts on the site as related to the LDRs, and why the waivers should be granted, addressing:
Customer base: members only or general public
Hours of operation per use
Customers per day per use
Traffic changes due to additional uses including parking, circulation, loading, and pedestrian safety
Septic system capacity and utilization
Overall impacts, including:
Lighting standards -- impacts to residents, motorists, pedestrians, nocturnal wildlife, and safety and security, and
Landscaping standards.

6/20/23
Date


Patricia LaSalle, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Grail Real Estate, LLC

Addresses: 6 Airfield Drive, Tax Map 10, Lot 15
Property is Commercial District, Multi-Family Overlay District. Aquifer Protection Overlay and Berry's Brook Watershed

Request: Major Site Development Plan by Grail Real Estate, LLC for property at 6 Airfield Drive, Tax Map 10, Lot 15 for a community of fitness and wellness business. Property is Commercial District, Multi-Family Overlay District. Aquifer Protection Overlay and Berry's Brook Watershed. Case 11-2023.

Date of Decision: Tuesday July 18, 2023

Decision: The Board voted to continue the application to the August 15, 2023 meeting.

7/19/2023
Date


Patricia Losik, Chairman
Rye Planning Board