

**TOWN OF RYE – PLANNING BOARD  
MEETING**

**Tuesday, November 21, 2023 – 6:00 p.m.  
Rye Town Hall**

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

***Also Present on Behalf of the Town:* Planning/Zoning Administrator Kim Reed, Maddie Dillonno (RPC)**

**I. Call to Order**

Acting Chair Lord called the meeting to order at 6:00 PM, led the Pledge of Allegiance, and acknowledged that Chair Losik was in attendance via Zoom. Alternate Member Bill MacLeod was seated in Member Kevin Brandon's place. Not in attendance were Alternates Steven Borne and Katie Sherman.

**II. Determination of Completeness:**

- A. Revision of Notice of Decision granted 10-17-2023 for 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**

Attorney Monica Kieser spoke via Zoom on behalf of the applicants. She explained that the town requested to clarify items in the NOD regarding conditions 29 and 30 to make sure they reference the appropriate paragraphs in the appropriate places. She expressed that she is in agreement with Attorney Maher's red-line draft, but has questions regarding condition three. Attorney Kieser presented the red-line changes to the board via Zoom.

Steven Borne joined the board at 6:04 PM.

**Motion by Steve Carter to seat Bill MacLeod. Seconded by Kathryn Garcia.**

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

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

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

**B. Major Non-Residential Site Development and Condominium Amendment by Robin Wehbe for property located at 2203 Ocean Blvd, Tax Map 5.3, Lot 28, Units A & B to raze the existing structures that are currently being used as a yoga business and build two residential units. Property is in the Business District, Coastal Overlay District and SFHA Zone AO (2). Case #17-2023.**

**Robin Wehbe**, the applicant, explained to the board that he'd received detailed notes at the previous meeting, all of which have been addressed.

The board deliberated and discussed whether the presented information was enough to determine whether the application was complete.

Chair Losik noted that the board had received only one department head report from the Police Chief addressing the parking on Gray Ct., access, and egress.

Member MacLeod discussed the 2022 RSA 365 regarding parking, controlled access ways, and limited access highways, which may or may not apply to Route 1A.

Vice-Chair Lord commented that it would be nice to have the DPW and FD weigh in on this. To that, Planning/Zoning Administrator Reed reported that Jason Rucker has no concerns, but would like to see a stormwater management plan.

Vice-Chair Lord expressed a need for more clarity regarding finished floor elevations and grading. He also noted that while impervious coverage would stay the same, the drainage would change and that grading would be required. He stated that details that are normally included in an application are missing.

The board discussed the site plan, curbing, and responses from Department Heads. Planning/Zoning Administrator Reed explained that the PD, FD, and DPW all responded in August and shared those responses with the board. She also described the requirement for an application to be complete, expressing the importance of remaining consistent between applications.

Chair Losik observed that this application has been through several iterations of being an incomplete application submittal because it has complex issues. She stated that the board has been specific, as required, with additional information required. She stated that all Department Heads were consulted last week in response to the plan set and it will take some time to receive their response. She stated that this is the first filing the board has received that includes the heart of the additional information that's required. She added that parking is a concern, which this plan

doesn't address. She expressed that information from the Fire Chief is important, especially regarding the separation required for units C and D.

Mr. Wehbe discussed the project and explained that he's tried to alleviate people's frustrations and address parking. He stated that he'd like to have a conversation about these things, he's worked hard to include everything, and it's incorrect that the application is missing significant pieces.

Ms. Dilonno addressed her memo, noting that this application has details that need to be ironed out. Regarding completion, she recommended the board consider whether all information that's required on the site plan checklist has been submitted with the waiver requests.

Member Wright summarized that the application seems to be complete for the board's standards and wondered if the lack of feedback from Department Heads would merit the application being considered incomplete.

Vice-Chair Lord noted that the board requested a use intensity statement and a statement regarding safety and the site plan analysis, which was requested, has not been submitted. He explained that the board needs an analysis of how the applicant plans to manage pedestrian safety.

Mr. Wehbe stated that he requested a waiver which was given to town engineers to review, the outcome was that the town should request a statement about the impact of intensity. He stated that the Sebago information was submitted last week.

Chair Losik stated that the Sebago letter does not deal with a waiver for use intensity and site impact. Mr. Wehbe clarified that the section is incorrectly titled and that it addresses site use.

Member Wright observed that the proper place to continue discussion of the merits of the application would be in the public hearing. He noted that RPC advised that the application is complete and suggested that the board move it forward to a public hearing for more discussion.

The board deliberated and discussed the role of the Technical Review Committee, the time frame of the application approval process, the next steps for technical review, and the potential for an extension request.

In response to whether the application could be considered complete, Ms. Dilonno explained that, based on a review of the materials and the site plan application checklist in the LDRs, all information that is required has been submitted, including waiver requests.

Planning/Zoning Administrator Reed explained that Attorney Kieser has an upcoming public hearing in Portsmouth.

Planning/Zoning Administrator Reed clarified that all waiver requests were submitted on 10/31/23.

The board discussed the possibility of waiving the requirement of an environmental engineer. Ms. Dilonno confirmed that the board could do that and could also take out any parts of the site impact analysis that don't apply if they take up the waiver request.

In response to Member MacLeod, Mr. Wehbe explained that he hired Millennium Engineering to do the design work. Member MacLeod asked if Millenium did a survey or a design. Mr. Wehbe explained that the survey was the original site plan they did and the plan laid out what they would accomplish with the building.

Member MacLeod expressed that it doesn't look as if the project was reviewed from an engineering point of view. He suggested that, while not required, it might be smoother if they were present at meetings to explain.

Vice-Chair Lord agreed and explained that a lot of questions need to be answered by technical people. He noted that there's no engineer or architect's stamp on any plans.

Planning/Zoning Administrator Reed stated that the Rules and Regulations Committee should change the expectations so applicants know how to present information. Chair Losik noted that it's in the LDR checklist.

Member MacLeod stated that he doesn't think the application is complete and the plans need a lot of revision.

Selectmen's Rep. Epperson explained to Mr. Wehbe that what's being requested is not uncommon. He stated that if the board can get the applicant to work with them beyond 65 days, if necessary, then he would agree that it's complete and vote it forward.

Member Wright stated that this application is technically complete, but has issues that will drag the hearing out. He suggested the board devote a TRC session to the application so the applicant can get clarity. Chair Losik agreed.

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

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

- C. Conditional Use Permit Application for an Accessory Dwelling Unit by Steve & Tara Danielson for property owned and located at 5 Douglas Circle, Tax Map 8.1, Lot 105 per Section 5.6 of the Rye Zoning Ordinance. Property is in the General Residence District and Aquifer Protection Overlay District. Case #23- 2023**

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

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

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

- A. Revision of Notice of Decision granted 10-17-2023 for 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**

Attorney Kieser presented a request to the board which was based on a comment from Dana Truslow, who noted a lack of clarity in the stormwater operations manual regarding item 2A. Attorney Kieser requested that 2A discuss the vacuuming of pervious pavers. In response to Chair Losik, attorney Kieser confirmed that this is related to #3 (impervious surfaces) and doesn't have any impact on pervious detail in the plan.

Acting Chair Lord opened to the public at 7:10 PM; hearing no comment, the public session was closed.

**Motion by Bill Epperson to accept the amended Notice of Decision as of November 21, 2023 with respect to 29 and 30, and as requested by the applicant with respect to condition three. Seconded by Pat Losik.**

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

- B. Conditional Use Permit Application for an Accessory Dwelling Unit by Steve & Tara Danielson for property owned and located at 5 Douglas Circle, Tax Map 8.1, Lot 105 per Section 5.6 of the Rye Zoning Ordinance. Property is in the General Residence District and Aquifer Protection Overlay District. Case #23- 2023**

Mr. Hammer, representing the applicant, explained that they went before the ZBA and got a building permit; the applicant's purpose is to create an ADU for his mother. He explained that they've met every hurdle needed by all departments and he believes it's allowed by statute.

Planning/Zoning Administrator Reed explained that the applicant doesn't need a building permit for the ADU and has a permit for variances required. She explained that he couldn't get a CO for the ADU.

Responding to Member Carter's request, Mr. Hammer described the layout of the structure.

Responding to Member Borne's question, Planning/Zoning Administrator Reed explained that the maintenance log would be recorded in the ZBA's Notice of Decision and it would be on file with the Building Department.

Chair Losik asked if the only part of the garage that's used for the ADU is the North side. Mr. Hammer stated no, the proposed ADU is 1,086 square feet, as presented on plan A1.

Acting Chair Lord opened to the public at 7:23 PM; hearing no comment, the public session was closed.

**Motion by Steve Carter to issue a Conditional Use Permit for an Accessory Dwelling Unit to Steve & Tara Danielson for property owned and located at 5 Douglas Circle, Tax Map 8.1, Lot 105 per Section 5.6 of the Rye Zoning Ordinance. Property is in the General Residence District and Aquifer Protection Overlay District. Case #23- 2023. Seconded by Bill Epperson.**

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

Planning/Zoning Administrator Reed explained that the applicant got a variance for the driveway and it was questionable whether they needed a waiver or not.

**Motion by Pat Losik to grant a waiver for property owned and located at 5 Douglas Circle, Tax Map 8.1, Lot 105 from Land Development Regulations Section 5, Paragraph B: For a driveway to be constructed within 10 feet of an abutting property line of the Rye Land Development Regulations due to the fact that strict conformity would pose and unnecessary hardship to the applicant and the waiver would not be contrary to the spirit or intent of the regulations, due to the Zoning Board granted relief on September 6, 2023 for a driveway within 10 feet of the abutting property line for the ADU, and also granted relief on June 7, 2023 for parking in the front boundary for the ADU. These variances are necessary for the parking and driveway access for the ADU. Seconded by Bill Epperson.**

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

**Motion by Pat Losik to accept the Notice of Decision and Findings of Fact for Case #23-2023, 5 Douglas Circle, Tax Map 8.1, Lot 105 as the Factual Findings are described in the date of decision NOD draft November 21, 2023 subject to the condition that written approval from the Rye Fire Chief regarding access and egress as well as the interior door between principal and accessory dwelling units be obtained prior to any Occupancy Permit being issued. The variances granted by the ZBA need to be on the cover sheet of the final plan. Seconded by Bill MacLeod.**

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

**C. Major Non-Residential Site Development and Condominium Amendment by Robin Wehbe for property located 2203 Ocean Blvd, Tax Map 5.3, Lot 28, Units A & B to raze the existing structures that are currently being used as a yoga business and build two residential units. Property is in the Business District, Coastal Overlay District and SFHA Zone AO (2). Case #17-2023.**

Mr. Wehbe discussed his application and expressed that there's a gap in what he's able to provide and what the board is looking for. He stated that he would be happy to meet with TRC.

Planning/Zoning Administrator Reed explained that Mr. Wehbe met with her, Kara Campbell, and Maddie Dilonno to review his current application, the Planning Board Checklist, and the Notice of Decision. She stated that they believed the application was complete.

Acting Chair Lord stated that having his engineers present for the meeting would be beneficial. Mr. Wehbe stated that his team has been present at all other meetings. He asked if an engineer stamp was required. Member MacLeod commented that it doesn't look as though an engineer was considered in the design and encouraged Mr. Wehbe to meet with TRC, explaining that it could be more efficient.

Member Wright observed that Mr. Wehbe's focus was on whether the boxes were checked, but the board's question was whether the contents of those checked boxes were sufficient to be able to answer the board's questions. He noted that the content of the submission is missing several details including a stormwater plan and NRI.

Mr. Wehbe explained that this is why he wrote the waiver requests and submitted them to Sebago. He expressed frustration with Sebago's confusion over "street elements" that were vetted and submitted seven weeks prior to the meeting.

Acting Chair Lord explained that a TRC meeting would save the applicant time and noted that the plans look as though an architect did an overlay on a civil engineer's drawing, but the civil wasn't involved. He stated that a civil engineer would have picked up on a lot of things, which didn't occur.

Mr. Wehbe stated that he would bring them back before board. He explained that he had an engineer work on this and an architect did an overlay on the structure, not on the site. He stated that he would be happy to move to TRC but this should be more obvious to an applicant earlier in the process.

Chair Losik noted that it shouldn't have been this difficult, but felt that the applicant didn't have the right help at the right time to produce something more fully developed. She stated that a TRC review and a site walk would be a good idea and escrows need to be established for legal, Sebago, and RPC.

The board discussed the scheduling of the TRC meeting, Mr. Wehbe's submission to the ZBA on 12/6/23, and changes to parking, access, and egress on the site.

The board determined the following schedule:

- Site Walk - Monday 12/4 at 3:00 (no architect or engineer needed unless Mr. Wehbe would prefer it)
- TRC Meeting - Tuesday 12/5 at 9:00 (Member MacLeod, Vice Chair Lord, Chair Losik on behalf of Jim Finn, Mr. Wehbe, and team)

The board discussed the importance of feedback from department heads, the ZBA variance requests, and previously granted relief. Acting Chair Lord suggested Mr. Wehbe consider requesting a continuance from the ZBA.

The board discussed who would attend the TRC meeting, including Steve Harding. Planning/Zoning Administrator Reed explained that Mr. Harding didn't do this review, someone within his staff did it.

Planning/Zoning Administrator Reed stated that \$5000 should cover escrows and that Ms. Dilonno would look up the RSA, which would be sent to Attorney Maher. She stated that Attorney Maher has the condo docs and will be engaged with the application, but the board needs to give him a clear role and guidance. She clarified that RPC fees are part of the contract.

Acting Chair Lord closed the public session at 8:08 PM.

**Motion by Pat Losik to continue the application to December 19, 2023. Seconded by Rob Wright.**

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

**IV. New Business: Proposed Amendments for schedule of a public hearing**

- A. LDR 2024-01: Add Section 202-5.5 RE: Hearings on HOA per House Bill 42**
- B. LDR 2024-02: Amend Driveway regulations Appendix E 5-E(M) per House Bill 296**
- C. LDR 2024-03: Amend 202-7.1 surety per Senate Bill 78**
- D. RZO 2024-01: Amend 190-2.2.D**
- E. RZO 2024-02: Amend definition of Principal Dwelling**

**Motion by Rob Wright to schedule these proposed amendments for a public hearing on December 19, 2023. Seconded by Steve Carter.**

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

**V. Other Business:**

**A. Master Plan and Build Out updates**

Member Wright reported that the Housing Needs Assessment, Phase One, and Build Out Analysis are complete. He stated that public input sessions will be held to discuss alternate scenarios.

Planning/Zoning Administrator Reed reported that there would be a public forum on February 15 at the Rye Junior High. Both the Build Out Analysis and Master Plan are awaiting public input before they move to the next steps.

Member Wright gave a Master Plan report and discussed the existing conditions report.

Planning/Zoning Administrator Reed stated that the existing conditions report still needs to be completed; there is a draft and they are waiting for committee members to review and submit comments to complete it. She stated that the next Master Plan Steering Committee meeting is 12/5/23 at 1:00. At that point committee members and consultants can meet and complete existing conditions.

**B. Rules and Regs update**

Member Carter explained that the committee has been busy refining amendments and putting them to the public hearing. He explained that they've also discussed a proposed expansion of the historic district, the demolition process in zoning, the clarification of change of use, tiny houses, and ADUs.

## **VI. Minutes and Escrows**

### **A. Escrows**

**Motion by Bill Epperson to pay the following escrows:**

- A. 665-667 Wallis Road: DTC in the amount of \$1,091.50, Sebago in the amount of \$1,752.75.**
- B. THP Airfield Drive Subdivision: Sebago in the amount of \$647.44**
- C. Marden Woods: Sebago in the amount of \$2,528.04**
- D. Thompson's Landing: Sebago in the amount of \$312.54**
- E. Split Rock, 15 Sagamore: Sebago in the amount of \$210.00, and an invoice for \$685.95**
- F. 1244 Washington Road: Sebago in the amount of \$723.53**
- G. Goss Farm: Sebago in the amount of \$1,033.88**
- H. Stoneleaf in the amount of \$1,031.59**

**Seconded by Steve Carter.**

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

### **B. September meeting minutes and October meeting minutes**

- Correction to October meeting minutes: page five, change "CEP" to "CUP"

**Motion by Steve Carter to accept the September and October meeting minutes. Seconded by Pat Losik.**

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

**Motion by JM Lord to adjourn at 8:39 PM. Seconded by Bill Epperson. All in favor.**

Respectfully Submitted,  
Emilie Durgin

# RYE PLANNING BOARD

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

## NOTICE OF DECISION AND FINDINGS OF FACT TOWN OF RYE PLANNING BOARD

**Applicant/Owner:** Steve & Tara Danielson

**Addresses:** 5 Douglas Circle, Tax Map 8.1, Lot 105

**ZONE:** Property is in the General Residence District and Aquifer Protection Overlay District

**CASE NO:** #23-2023

**Request:** Conditional Use Permit Application for an Accessory Dwelling

**Date of Decision:** Tuesday November 21, 2023

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The Rye Planning Board issues this Notice of Decision and Findings of Fact in accordance with RSA 676:3. In issuing this Notice of Decision and these Findings of Fact, the Planning Board incorporates such facts and evidence as are reflected in the submittals and meeting minutes associated with this matter that are supportive of the decisions and Findings of Fact contained herein.

### FACTUAL FINDINGS

1. The Property is located at 5 Douglas Circle, (Tax Map 8.1, Lot 105) (“**the Property**”).
2. The Property is owned by Steve & Tara Danielson (“**the Applicant**”).
3. Property is in the General Residence District and Aquifer Protection Overlay District.
4. Application was submitted on 8-21-2023 to include the application, ADU Checklist, waiver for driveway within 10’ of side boundary and site plans by Ross Engineering, stormwater management plan by Ross Engineering, architectural plans by Landry Architects, LLC, and plans by Great Island Builders, ZBA approvals on 7-7-2023 and 9-6-2023.
5. Letter was received from Lee Aurther, Sewer Commission authorizing the ADU with service.
6. Legal Notice was sent to the Portsmouth Herald and ran on the 10-06-2023 paper and on-line. Abutter notices were sent on October 3, 2023.
7. Department Head notices went out to: DPW, Fire, Police, Public Works, Aquarion Water and also sent to Maddie at RPC and as of 10-11-2023 their responses are:

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

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- a. Aquarion Water said they are an existing customer and service.
- b. Kevin Wunderly, Deputy Fire Chief stated applicant meets the requirements of NFPA.
- c. Police Chief stated the current driveway can support the number of vehicles.
- d. RPC recommended written approval from Fire Chief and Building Inspector prior to occupancy permit.

8. On October 17, 2023, the Planning Board conducted a public hearing on the matter.


### **DECISION**

1. After review of all submittals provided and statements made during the record, the Board grants the waiver from LDR, Section 5.E.B for a driveway 10' from the side property line because the planning board finds that either: (1) strict conformity would pose an unnecessary hardship to the Applicants and waiver would not be contrary to the spirit and intent of the regulations because the variances were granted for the driveway and the side line boundary.
2. After review of all submittals provided and statements made during the record, the Board grants the Applicants request for an Accessory Dwelling Unit (ADU) at 5 Douglas Circle, Tax Map 8.1, Lot 105.

### **CONDITIONS OF APPROVAL**

1. Written approval from the Rye Fire Chief and Building Inspector regarding access/egress as well as the interior door between the principal and accessory dwelling unit be obtained prior to any occupancy permit issues.
2. The variances granted shall be on the cover sheet.

11/22/23  
Date

  
JM Lord, Acting- Chairman  
Rye Planning Board

Any party aggrieved by this decision has the right to seek judicial review of this decision by filing an appeal to the Rockingham County Superior Court within thirty (30) days of the date of the hearing at which the Board voted to take the action set forth herein, unless such decision related to the application, construction, or interpretation of the Rye Zoning Ordinance, in which case, an aggrieved party may appeal such decision to the Rye Zoning Board of Adjustment in accordance with RSA 676:5 and the Zoning Board of Adjustment Rules of Procedure.

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

# **NOTICE OF DECISION AND FINDINGS OF FACT TOWN OF RYE PLANNING BOARD**

**APPLICANT:** 665-667 Wallis Road, LLC

**PROPERTY:** 665-667 Wallis Road, Tax Map 11, Lot 78

**ZONE:** Commercial District, Single Family Residence District, Berry's Brook Watershed and Aquifer Protection Overlay Zones

**CASE NO:** #12-2023

**DATE OF DECISION:** October 17, 2023 and Amended November 21, 2023

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The Rye Planning Board issues this Notice of Decision and Findings of Fact in accordance with RSA 676:3. In issuing this Notice of Decision and these Findings of Fact, the Planning Board incorporates such facts and evidence as are reflected in the submittals and meeting minutes associated with this matter that are supportive of the decisions and Findings of Fact contained herein.

## **WAIVERS**

Motions made by J Lord, seconded by Rob Wright to grant the Applicant's requests to the following waivers of the Rye Development Regulations:

1. LDR §202-3.1.A(17) Soil types and mapping
2. LDR §202-3.3.B(5)(c) Soil types in accordance with SSSNNE
3. LDR 202-3.5.B(1) Final Stormwater Management Plan (including information required by LDR §202-3.3B(6), 6.9, and Article IX)
4. LDR §202-3.5.B(1)(c) Landscaping Plan (LDR §202-11.4)
5. LDR §202-3.5.B(1)(d) Plant Maintenance Plan (LDR §202-11.5A)
6. LDR §202-3.5.(1)(g) Lighting Plan (LDR Article X)
7. LDR §202-3.5.B(1)(j) Site Impact Analysis by an Environmental Engineer
8. LDR §202-6.7.C.1 Designated 4,000 s.f. Reserve Leach Field Area

The Board voted unanimously to grant the aforementioned waivers, the basis for waivers granted per Decision #32-#35, and that strict conformity would present an unnecessary hardship and granting a waiver under such circumstances is not contrary to the intent or spirit of the regulations.

## **FACTUAL FINDINGS**

1. The Property is located at 665-667 Wallis Road (Tax Map 16, Lot 21) ("the Property").
2. The Property is owned by 665-667 Wallis Rd, LLC.
3. The Property is approximately 30,500 square feet (.7 acres) in size with 122.87' feet of frontage on Wallis Road.

4. The Property is located mostly in the Commercial Zone and partially in the Single Residence District and is also located in the Berry's Brook Watershed and Aquifer Protection Overlay Zones.
5. The Property is improved by a pre-existing, one-story duplex with a 2-car garage to the rear of the duplex.
6. The Property is accessed by Wallis Road by an existing asphalt driveway located to the south of the existing duplex, which proceeds in a northwesterly direction toward the existing 2-car garage and asphalt parking area.
7. The Property is presently serviced by a shared septic system that, in the aggregate, is comprised of 750-gallon tanks with a leach field that is located, in part, on the Property and, in part, on Tax Map 16, Lot 22.
8. The septic system is estimated to be constructed in 1965.
9. The existing impervious coverage is 19.5%.
10. On May 19, 2023, the Applicants submitted an Application for a Major Site Development Plan and Condominium Conversion for the Property, seeking to convert the existing duplex into a three-unit condominium development. As part of this Condominium Conversion, the Applicants propose to expand the existing residential structure by constructing a second story and stairwell addition.
11. The Applicants propose to mitigate stormwater impacts by and through, removing a portion of the asphalt driveway and installing pervious pavement (or, if necessary, pervious pavers), replacing the existing concrete walkway with pervious pavers, and having the captured runoff from those pavers be directed to a perforated underdrain that leads to a stone apron on the Property in the vicinity of a Town-owned catch basin on Wallis Road.
12. The Applicant submitted plan sets related to the Condominium Conversion prepared by Ross Engineering, LLC, which included: (1) an Existing Condition Plan (Sheet 1), (2) a Site Plan last revised August 8, 2023, (3) a Stormwater Management Plan (Sheet 3), (4) an Overlay Plan (Sheet 4), (5) A Detail sheet (Sheet 5), and (6) an Erosion Control Plan (Sheet 6). All plans contained in the Plan set reflect that the last revision was September 12, 2023.
13. The Applicants also submitted a Subsurface Disposal System Plan, dated August 8, 2023 and also prepared by Ross Engineering, LLC. The Subsurface Disposal System Plan proposes an Advanced Onsite Solutions septic system which is proposed to be located to the rear of the garage on the Property.
14. The Applicants seek waivers from the following provisions of the Land Development Regulations ("LDR"), as voted by the Board on October 17, 2023 (per 08/08/23 Memorandum by Attorneys Kieser and Phoenix, pp 5-7):
  - a. Soil types and mapping pursuant to LDR §202-3.1.A(17);
  - b. Soil types in accordance pursuant to LDR §202-3.3.B(5)(c);

- c. A Stormwater Management Plan pursuant to LDR § 202-3.5.B(1), § 202-3.3.B(6), §202-6.9, and Article IX of the LDRs;
- d. A Landscaping Plan pursuant to LDR §202-11.4;
- e. A Plant Maintenance Plan pursuant to LDR §202-11.5A;
- f. A Lighting Plan pursuant to LDR Article X;
- g. A Site Impact Analysis prepared by an Environmental Engineer pursuant to LDR § 202-3.5.B(1)(j); and
- h. A Reserve Leach Field Area pursuant to LDR §202-6.7.C.1.

15. On May 3, 2023, the Rye Zoning Board of Adjustment granted the Applicants a variance from:

- a. §190-2.11.C(2) to allow for expansion of a second floor 12.9' from the side boundary;
- b. §190-6.2.A for expansion of nonconforming residential units; and
- c. §190-6.3.A for expansion of a nonconforming structure to a two-story structure with 3 residential units.

16. The ZBA further granted a waiver from §35-14(C)(1) and §35-14.D.1(c) of the Rye Building Code to allow for the installation of a leachfield 2.5' from ledge.

17. The ZBA further issued a special exception pursuant to §190-6.4 and §190-7.1.A(3) and §190-5.3 to allow for expansion of an existing 2-unit dwelling into a 3-unit dwelling and conversion to a condominium form of ownership.

18. The ZBA's approval was subject to the following conditions of approval:

- 1. The Applicants shall observe the deeded septic agreement referred to in their application.
- 2. The Applicants shall keep clear site lines in the front yard setback 30' from the property line to keep fencing for landscaping 30 inches or lower to grade; and
- 3. Some type of notice(s) in the Declaration of Condominium documents that notifies buyer that they are in a commercial zone, subject to abutter's commercial use.

19. The Planning Board initially noticed a public hearing on this matter for July 18, 2023. That hearing was continued to August 15, 2023.

20. On August 15, 2023, the Board voted to accept the Application and open the public hearing.

21. Prior to the August 15, 2023 hearing, the Town received an analysis from Emily DiFranco of Comprehensive Environmental, Inc. dated July 19, 2023, opining that the Applicant's proposed septic system is "adequate for the proposed development" and that the "proposed aerobic treatment unit (ATU) planned for installation on this site is an improvement over conventional septic systems including the existing system on site." Ms. DiFranco recommended that "any replacement system or future installations at the site be an ATU system or other system that provides equal or better water quality treatment." Ms. DiFranco, however, expressed some concern as to the presence of shallow ledge in the

vicinity of the proposed leaching area. Ms. DiFranco also recommended that a reserve leach field of similar size be identified on the Plan Set and that owners be provided by a User's Manual associated with Operation and Maintenance for the advanced septic system. Further communication dated 8/10/23 by Emily DiFranco of Comprehensive Environmental, Inc., "It was recommended in the July 19, 2023 review that Ross Engineering ensure that any impermeable layer encountered during the installation be removed to meet the 30" requirement and stated intent. Based on the updated plan set (8/8/23), it appears Ross Engineering has added that note to the Septic Plan sheet." (and Site Plan). "As shown in the plan set (8/8/23), the additional leach field was added." "Based on conversations with other reviewers, it is noted that the underdrains in the permeable paver section have the potential to pick up untreated or partially treated effluent in the leach field. Though it is likely that the bacterial treatment in the leach field is sufficient, additional nutrient treatment may be needed. Removing the closest underdrain to the leach field and discharging the lower underdrain to a rain garden for further infiltration is recommended."

22. On August 10, 2023, the Town received a letter from Truslow Resource Consulting ("**TruslowRC**") related to groundwater recharge and water quality protections. TruslowRC's letter recommended that the underdrain be directed to a rain garden, instead of a stone apron to address the discharge from the underdrain and that the first row of underdrains closest to the septic system's leachfield be eliminated to less the likelihood of interception.
23. On August 11, 2023, the Town received a letter from Steve Harding of Sebago Technics ("**Sebago**"), providing comments on the stormwater and engineering aspects of the project. Sebago expressed support of the proposed Stormwater Management Plan provided by the Applicant and that the proposed "infiltration system will function as intended to reduce the estimated surface water flow from the site." Sebago further opined that the proposed plan would constitute an improvement on existing conditions and will lessen the area of impervious surface. Sebago concurred with CEI and TruslowRC's opinion to eliminate an underdrain closest to the leach field for the septic system to avoid interception and supported the outlet of the underdrain to a rain garden.
24. On August 18, 2023, the Board conducted a public hearing on the matter, at which time Applicants' counsel, Tim Phoenix, the Applicant's Engineer Alex Ross, Marc Jacobs, Wetland Scientist, and Gary Spaulding of Advanced Onsite Solutions provided information and responded to inquiries from the Board. The hearing was continued to September 19, 2023.
25. On September 11, 2023, Public Works Director Jason Rucker opined that the Applicant's proposed stone outlet for the underdrain to "store and address the stormwater potential runoff from the infiltration pipe will be a sufficient BMP for this application."
26. On September 13, 2023, Sebago and TruslowRC provided further communications.
27. TruslowRC opined that the septic system and pervious paver and drainage infrastructure have been modified to protect against excess nutrient loading that could impact groundwater quality and downgradient surface water quality. Truslow RC identified discrete recommended revisions to the plans.

28. Sebago stated that it continues to support the Stormwater Management Plan approach to infiltrate runoff generated from the site for the proposed project with the use of permeable pavement in a portion of the driveway and permeable pavers to connect the front of the building to Wallis Road. Sebago further stated that the use of a stone apron at the underdrain's outlet, in lieu of a rain garden, was "an acceptable approach to act as a treatment method prior to discharge to the Town's catch basin along Wallis Road." Sebago also confirmed the removal of the underdrain closest to the leach field. Sebago expressed some concern, however, with the Applicant's proposal to reserve the right to install pervious pavers, as opposed to porous pavement, should an "excessive amount of ledge" be encountered, and recommended clarification on that phrase. Sebago made further recommendations for the plans.
29. On October 17, 2023 Emily DiFranco of Comprehensive Environmental, Inc. reiterated guidance based on the ledge probe and test pit data and the stated intent, the bottom of the pipe is not the intended 30' above an impermeable layer in the area of LP F. It was noted in her letter that the EnviroSeptic Manual on page 5 recommends that a vertical separation distance to restrictive features (SHWT and impermeable layer) of 30 inches to bottom of pie is required for EnviroSeptic systems. "Ross Engineering also has added a note to ensure that any impermeable layer encountered during the installation be removed to meet the 30' requirement and stated intent. As long as they plan to do that during construction, it should be fine."
30. On October 17, 2023, the Board conducted a further public hearing on the matter, reviewing the Plan Set dated 9/12/23, the Subsurface Disposal System dated 10/13/23, and Sebago's email of 10/12/23. The draft conditions of approval were reviewed and agreed by the Applicant, waivers from 8/8/23 Memorandum by the Attorneys Kieser and Phoenix were discussed and approved by the Board and voted upon and the NOD and edited and approved.

Motion by Rob Wright to approve Factual Findings, seconded by J Lord, unanimously approved.

### **DECISION**

31. After review of all submittals provided and statements made during the record, the Board grants the waivers sought by the Applicants because the planning board finds that either: (1) strict conformity would pose an unnecessary hardship to the Applicants and waiver would not be contrary to the spirit and intent of the regulations or (2) specific circumstances relative to the proposal indicate that the waiver will properly carry out the spirit and intent of the regulations.
32. The Board grants the Applicants request for a waiver from LDR §202-3.1.A(17) and LDR §202-3.3.B(5)(c) because the Applicants strict conformity is unnecessary where the Applicants have performed extensive ledge probes and three test pits were dug in various locations on the property and where the majority of the project pertains to already improved and disturbed areas. Therefore, the Board determines that the spirit and intent of the regulations have been satisfied with the information provided in the context of this Applicants' proposal.
33. The Board grants the Applicants' request for a waiver from LDR § 202-3.5.B(1), § 202-3.3.B(6), §202-6.9, and Article IX of the LDRs related to the submission of a Stormwater Management Plan because the Applicants' proposal seeks to convert the existing structure into a three unit condominium by adding

a second story and acting in the general developed footprint of the property and the Applicants have proposed improvements over existing conditions through the use of porous pavement and pervious pavers and through the use of an AOS septic system. Given the specific circumstances associated with the proposal, the spirit and intent of the regulations, which is to ensure capture and treatment of stormwater runoff, is satisfied. For the same reasons, the Board grants the Applicants waiver to LDR § 202-3.5.B(1)(j) related to a Site Impact Analysis prepared by an Environmental Engineer.

34. The Board grants the Applicants' request for a Landscaping Plan, Plant Maintenance Plan, and Lighting Plan pursuant to LDR §202-11.4, LDR §202-11.5A, and Lighting Plan pursuant to LDR Article X because the current proposal does not seek to alter the current residential use of the Property in a manner that would require significant buffering or screening and the Applicants do not propose any altered lighting on the Property.
35. The Board grants a waiver to LDR §202-6.7.C.1 requiring a 4,000 square foot reserve leach field area because the Applicants have identified a 275 square foot reserve leach field area and the Applicants are required, by and through the conditions set forth below, to ensure that the Property is served by an AOS septic system or a septic system that uses equal or greater treatment solutions.
36. The Board finds that, with the conditions of approval set forth below, the Applicants' proposal satisfies all other pertinent provisions of the LDRs.
37. The Applicants' proposal reflects that suitable steps will be taken to protect significant existing features on the Property.
38. The proposed subsurface treatment system is of a type and is to be put in a location sufficient to constitute an improvement over existing conditions and provides sufficient protection to groundwater and other environmental resources.
39. The Applicants' proposed stormwater management system, comprising of porous pavement, pervious pavement, and an underdrain that outlets to a stone apron near the Town's Stormwater System is appropriate. Given the presence of shallow ledge, the AOS system, and other features of the proposed stormwater management system, the Board finds that the use of a stone apron, instead of a rain garden is sufficient to adhere to the standards set forth in Article IX of the LDRs.
40. The Applicants' proposal to increase the residential use on the Property by one residential dwelling unit will not adversely impact the neighborhood, will not materially increase traffic generation, or will not otherwise alter the surrounding neighborhood.

Motion by J Lord to approve Decision, seconded by Rob Wright, unanimously approved.

## CONDITIONS OF APPROVAL

1. Site Plan shall depict the entire lot and provide adequate space for the approval signature of the Planning Board, the date of approval and the Planning Board file number.
2. A 35' no-cut buffer in the wooded area abutting Tax Map 016, Lot 36 on Tehias Road will be depicted.
3. The Applicants' submittal titled, "Stormwater Management Operation and Maintenance" last revised September 12, 2023 ("**Stormwater Manual**") shall be revised to address comments 2-5 raised in the Truslow RC letter dated September 13, 2023.
4. The Applicants shall review and confirm that the various underdrain pipe outlet invert and stone outlet area elevations shown on the plan titled, "Stormwater Management" last revised on September 12, 2023 and prepared by Alex Ross ("**Stormwater Management Plan**") and in the Infiltration Trench Outline and Stone Outlet area details are consistent.
5. The Detail Sheet, identified as Drawing Number 5 of the Plans, and last revised September 12, 2023 ("**the Detail Sheet**") shall be revised to reflect that 3-inches of bedding stone shall be added under the 4-inch perforated underdrain in the Pervious Paver Detail.
6. Applicant shall follow all notes, requirements, recommendations, and suggestions set forth in the Plans.
7. The location, layout, construction, and design of all structures on the Property shall be in accordance with the document titled, "Site Plan" prepared by Ross Engineering, LLC, identified as Drawing No. 2 of the Plans, and last revised September 12, 2023 ("**the Site Plan**").
8. All porous pavement shall be installed in accordance with all installation recommendations and requirements identified in the Detail Sheet.
9. All pervious surfaces (i.e. porous pavement or pervious pavers —see Condition 11) and stormwater infrastructure shall be maintained in accordance with the maintenance specifications identified in the Stormwater Management Plan, the Detail Sheet, and the Stormwater Manual. All inspections and maintenance to the stormwater infrastructure shall be performed by qualified contractors. A note shall be added to the Stormwater Management Plan and Site Plan requiring the Applicants and/or Condominium Association to adhere to the Stormwater Manual. On or before April 15<sup>th</sup> of each year the Applicant and/or Condominium Association shall provide a Stormwater Inspection & Maintenance Log, in the form identified in the Stormwater Manual, to the Town of Rye Department of Public Works or within thirty days of a qualifying stormwater event identified in Condition 3 or the Stormwater Manual.
10. Any contractor performing winter maintenance and/or snow removal shall be informed of all maintenance specifications related to porous asphalt pavement systems. A note shall be added to sheet the Site Plan and Stormwater Management Plan reflecting this condition.

11. If the Applicant encounters ledge at a depth of 32 inches in a contiguous area of greater than or equal to 500 square feet such that the installation of porous pavement becomes impracticable, as determined by the Applicant's Engineer, the Applicant may install a pervious surface in lieu of the porous pavement. In such event, the Applicant shall provide the Town with an updated Site Plan and Stormwater Management Plan reflecting the location of such pervious surfaces and shall provide an updated Details Plan reflecting the installation and maintenance specifications. The Detail Sheet shall be amended to reflect this condition.
12. Applicant shall ensure that any impermeable layer that is encountered during the installation of the septic system shall be removed to a depth of at least 30" to meet all necessary installation requirements for any subsurface disposal system.
13. Any replacement systems or future installations of subsurface disposal systems on the Property will be an Aerobic Treatment Unit or other system that provides equal or better water quality treatment than what is proposed by the Applicants. A note shall be added to the Site Plan reflecting this condition.
14. Rock hammering or similar rock removal activities will be limited to the hours of 8 am - 4 pm, Monday – Friday.
15. No blasting shall be permitted on the Property.
16. Owners shall adhere to Appendix F of the Town of Rye's Land Development Regulations related to the use fertilizers on the Property.
17. If an irrigation system is installed on the property, Owners shall adhere to Appendix G of the Town of Rye's Land Development Regulations.
18. The Applicants, Condominium Association, and all unit owners shall adhere to all maintenance, inspection, and operation instructions associated with the subsurface disposal system. No garbage disposals or water treatment systems.
19. The Applicants and/or Condominium Association shall arrange for the subsurface disposal system on the Property to be inspected in accordance with manufacturer's recommendations, but no less frequently than once every three years from the date of installation. The Applicants and/or condominium association shall provide all such inspection and test results associated with the subsurface disposal system to the Town of Rye within thirty days of receipt of such inspection results.
20. A Condominium Association shall be created this development. Applicant shall submit a Condominium Declaration and Bylaws to the Planning Board. The Condominium Declaration and Bylaws shall be subject to the satisfactory review of town counsel, whose review shall be limited to ensuring that the Condominium Declaration and/or Bylaws contain the following provisions ensuring the following:
  - a. Covenants and obligations for maintaining all stormwater drainage improvements and interior access ways, including all porous pavement or pervious surfaces;

- b. Covenants and obligations for adhering to all recommendations, requirements, and notes in the Plans, all conditions of approval, and all conditions to be issued by any federal, state, or municipal agency;
  - c. The Condominium Association shall be responsible for the maintenance, repair, and/or replacement of subsurface disposal systems, porous pavement and/or pervious surfaces, underdrains, stone aprons and outlets, and other stormwater management infrastructure located on the Property and the submission of all inspection logs associated therewith;
  - d. The Condominium Association and its agents shall have access and authorization to enter onto any common area or limited common area for the purposes of inspecting and maintaining the subsurface disposal system, porous pavement and/or pervious surfaces, underdrains, stone aprons and outlets, and other stormwater management infrastructure located on the Property;
  - e. In the event that the Town has reasonable concerns regarding the maintenance and function of the subsurface disposal system, porous pavement and/or pervious surfaces, and/or stormwater infrastructure, the Town of Rye shall, after providing 72 hours' notice to the Condominium Association and all owners, have access and authorization to enter onto any common area or limited common area for the purposes of inspecting and maintaining the subsurface disposal system, porous pavement and/or pervious surfaces, underdrains, stone aprons and outlets, and other stormwater management infrastructure located on the Property;
  - f. The Condominium Association shall be responsible for complying with the Stormwater Management Plan, the Detail Sheet, and the plan titled "Erosion Control Plan" last revised September 12, 2023 and prepared by Ross Engineering, LLC;
  - g. The Condominium Association shall provide each unit owner and subsequent purchaser thereof with the applicable instruction manual for any subsurface disposal system;
  - h. Each new owner of any Unit shall be responsible for filing an acknowledgment that the new owner will comply with the requirements of the aforesaid covenants and restrictions.
21. Applicant shall supply an estimate of the costs for the installation, construction, inspection and disposition of all stormwater management infrastructure on the Property. Applicant shall further supply a performance bond or other acceptable form of surety in an amount sufficient to ensure the adequate construction and installation of the stormwater and drainage facilities. The form of such performance bond or other surety shall be subject to the review and approval of town counsel.
22. Applicant shall provide the Town with sufficient funds to be placed into escrow to pay final statements of the Town's engineer and town counsel.

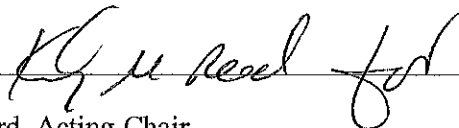
23. Applicant shall sign an Escrow Agreement and post escrow for the Planning Board engineer's monitoring of site improvements. Said amount shall be determined by the Planning Board engineer.
24. Notes shall be added to the Site Plan reflecting conditions 7 through 18.
25. For the purposes of RSA 674:39, active and substantial development or building shall be the earlier of:  
(a) construction of the foundation for the stairwell addition or (2) the excavation or disturbance of land for the driveway and septic.
26. As-built plans for all site improvements shall be submitted to the Building Department within 60 days of the completion of construction (3 sets).
27. Per LDR § 202-4.4, this conditional approval shall expire in 24 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.
28. The executed conditions of approval shall be appended to and recorded with the Condominium Declaration.
29. The Planning Board chair may sign the Plans when the foregoing conditions Nos. 1-5, 20, and 24 are met.
30. The Town may issue a building permit to proceed with the work authorized by this approval upon the satisfaction of Conditions 21 through 23.

Motion to approve by JM Lord the Conditions of Approval, seconded by Rob Wright, unanimously approved.

Motion by JM Lord to approve the 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. Seconded Rob Wright, unanimously approved.

Any party aggrieved by this decision has the right to seek judicial review of this decision by filing an appeal to the Rockingham County Superior Court within thirty (30) days of the date of the hearing at which the Board voted to take the action set forth herein, unless such decision related to the application, construction, or interpretation of the Rye Zoning Ordinance, in which case, an aggrieved party may appeal such decision to the Rye Zoning Board of Adjustment in accordance with RSA 676:5 and the Zoning Board of Adjustment Rules of Procedure.

Dated 11/22/23

Signed:   
J.M. Lord, Acting-Chair

# RYE PLANNING BOARD

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

## Notice of Decision

**Applicant/Owner:** Robin Wehbe

**Addresses:** 2203 Ocean Blvd, Tax Map 5.3, Lot 28, Units A and B

**Request:** Major Non-Residential Site Development and Condominium Amendment by Robin Wehbe for property located 2203 Ocean Blvd, Tax Map 5.3, Lot 28, Units A & B to raze the existing structures that are currently being used as a yoga business and build two residential units. Property is in the Business District, Coastal Overlay District and SFHA Zone AO (2). Case #17-2023

**Date of Decision:** Tuesday November 21, 2023

**Decision:** The Board unanimously voted upon:

- a. A Site Walk on Monday, 12-4-2023 at 3:00pm;
- b. A TRC meeting on Tuesday, 12-5-2023 at 9:00am;
- c. Applicant shall supply an escrow in the amount of \$5,000 to pay for Sebago and Town Attorney services; and
- d. Continue the application to the Tuesday, 12-19-2023 regular meeting at 6:00pm in the Rye Library.

11/22/23  
Date

  
J.M Lord, Acting Chair  
Rye Planning Board

