

**TOWN OF RYE – PLANNING BOARD
MEETING**

**Tuesday, May 8, 2018
7:00 p.m. – Rye Town Hall**

***Members Present:* Chairman Bill Epperson, Vice-Chair Patricia Losik, J.M. Lord, Jerry Gittlein, Jeffrey Quinn, Steve Carter and Selectmen's Rep Priscilla Jenness,**

***Others Present:* Kimberly Reed, Planning & Zoning Administrator**

I. Call to Order and Pledge of Allegiance

Chairman Epperson called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

II. Designation and appointment of alternates

No Alternates to be appointed.

III. Approval of the April 10, 2018 meeting minutes

**Motion by Patricia Losik to review the minutes of April 10, 2018 at the end of the meeting.
Seconded by Steve Carter. All in favor.**

IV. Submittal of Applications for Determination of Completeness – Not a public hearing. – Action Required:

- a. Minor Site Development Plan** by Laurie & Michael Steinberg for Amendment to Major Subdivision Development Plan, Condo Conversion, Conditional Use Permit and Lot Line subdivision for a retirement community development (RCD) to add a 4-season room 12'x16' to their 17 Sea Glass, Tax Map 16, Lot 71-3 property.
Property is in the Commercial District. Case #08-2018. Applicant requests to be continued to the June meeting.

Motion by Jeffrey Quinn to continue the application of Laurie & Michael Steinberg to the June meeting. Seconded by Pat Losik. All in favor.

- b. Major Subdivision** by Tuck Realty Corporation for property owned by Robert Goss and located at 0 Ocean Blvd., Tax Map 8, Lots 58 & 59, for a 5-lot subdivision. **Property is in the Single Residence District. Case #11-2018.**

Chairman Epperson stated that the applicant complied with the missing items per Attorney Donovan's memo and posted an escrow for peer review. In his mind, the application is complete.

Motion by JM Lord to accept the application as complete and move to a public hearing. Seconded by Jerry Gittlein. All in favor.

- c. Conditional Use Permit Application** by Roland Routhier for property owned by Cindy Weeks and located at 437 South Road Tax Map 4, Lot 28 for an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. **Property is in the Single Residence District. Case #12-2018.**

Motion by Pat Losik to accept the application as complete and move to a public hearing. Seconded by JM Lord. All in favor.

- d. Conditional Use Permit** by Steven & Lydia Dewitt for property owned and located at 170 Grove Road, Tax Map 7, Lot 103 for an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. **Property is in the Single Residence District. Case #13-2018.**

Motion by Jeffrey Quinn to accept the application as complete and move to a public hearing. Seconded by Jerry Gittlein. All in favor.

V. Public Hearings on Applications:

Chairman Epperson asked to take the applications out of posted agenda order.

No objections from the applicants were heard.

Motion by Pat Losik to move the two ADU applications out of posted agenda order and hear them first. Seconded by JM Lord. All in favor.

- d. Conditional Use Permit Application** by Roland Routhier for property owned by Cindy Weeks and located at 437 South Road Tax Map 4, Lot 28 for an Accessory Dwelling Unit (ADU) per Section 506 of the Rye Zoning Ordinance. **Property is in the Single Residence District. Case #12-2018.**

Peter Weeks, PGW Real Estate Consulting, spoke on behalf of Roland Routhier, and Cindy and Greg Weeks (son and daughter-in-law). He noted that the application complies with all the requirements on the ADU checklist. The house is a single-family home, which used to be a chiropractic office. When the project is complete, the home will not look any different. There is

an addition to the right-hand side of the building, when facing the structure. It continues to look like a one family home, per the regulation. It has two separate entrances; one for the home and one for the ADU.

Chairman Epperson asked if the entrances are joined.

Mr. Weeks replied yes. There will also be a locked door between the two units as required by the regulations.

Chairman Epperson noted that the unit has 750sf, a separate cooking area, bath and one bedroom.

Mr. Weeks stated that the house was built prior to the time that septic approvals and plans were necessary through the State. In 2000, a new leachfield was installed but no plans had to be submitted because it was an in-kind replacement of the field. The applicants are in the process of applying to the DES for a replacement field in case the existing septic system fails. The replacement septic is being designed by Ambit Engineering. He noted that the board packets have a letter from the evaluator who inspected the current system. There are no issues with the current system and it is in great working order. He noted that the house is currently on a well; however, there is a letter in the packets in regards to municipal water being available to the property.

Member Quinn asked for the location of the current leachfield.

Mr. Weeks replied it is at the rear of the property. He noted that the evaluator shows a picture of the location of the existing system in his documents.

Member Quinn asked for the location of the ancillary leachfield.

Mr. Weeks replied that they did the test pits and found two separate locations which met DES requirements. He is not sure which one they are going to use.

Chairman Epperson pointed out that the rest of the criteria has been met.

Vice-Chair Losik asked how they are intending to use the garage.

Greg Weeks, 437 South Road, noted that there are currently two parking spaces, which will not be altered, right in front of the accessory dwelling; as well as the two garage spaces and the space on the side of the driveway.

Chairman Epperson stated that the application complies with the regulations. He suggested that the Board make the DES septic plan approval a condition of approval.

Mr. Weeks noted that the applicant would like to start construction as soon as possible since the current system is working fine. He asked if the condition of approval could be that an occupancy permit for the AUD is not issued until the DES approval is received for the septic.

The Board agreed that would be reasonable.

Chairman Epperson opened to the public for comments or questions. Hearing none, he closed the public session at 7:15p.m.

Chairman Epperson asked for further questions from the Board. None were heard. He asked for a motion pending condition that the Certificate of Occupancy will be issued once the DES septic approval is submitted to the building inspector.

Motion by Pat Losik to take jurisdiction. Seconded by JM Lord. All in favor.

Motion by Pat Losik to approve the application with the condition that the Certificate of Occupancy will be issued upon the receipt of the NH DES approval for the new septic design. Seconded by JM Lord. All in favor.

e. Conditional Use Permit by Steven & Lydia Dewitt for property owned and located at 170 Grove Road, Tax Map 7, Lot 103 for an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. **Property is in the Single Residence District. Case #13-2018.**

Jake Sullivan, Gray Construction, presented the application and reviewed the performance criteria for an accessory dwelling unit for the property located at 170 Grove Road.

Chairman Epperson questioned the size, impervious coverage and setbacks.

Mr. Sullivan noted that the lot is 1.53 acres, all setbacks have been met and the percentages for the impervious coverage have been met. He reviewed the plans and continued the review of the performance standards.

Motion by Jeffrey Quinn to take jurisdiction. Seconded by Jerry Gittlein. All in favor.

Member Carter asked if the connector is going to be a third bay for the garage.

Mr. Sullivan replied yes.

Chairman Epperson opened the public for comments. Hearing none, he closed the public session at 7:26 p.m.

Motion by Pat Losik to approve the application as submitted. Seconded by JM Lord. All in favor.

- a. Major Subdivision, Lot Line Adjustment and Conditional Use Permit** by the Housing Partnership for property located at 0 Airfield Drive, Tax Map 10, Lot 15-4, for construction of a residential development consisting of a mixture of multi-family dwellings with a portion being dedicated as Workforce Housing. **Property is in the Commercial Zoning District and the Multi-Family Dwelling District Overlay and Aquifer and Wellhead Protection Districts. Case #07-2017.**

Attorney David Brown, representing the applicant, stated that they have made a lot of progress. They have taken out the looping road, which was something the Board wanted. The fire chief was happy to see that on the plan and it increases the green space. He continued they have also resolved the buffer along driveway A. Mr. Rickert agreed to move the lot line in further so The Housing Partnership will have 50ft on their side. He continued that the landscaping plan has a lot more detail about sidewalks and pathways. Lastly, the big pending issue was septic and nitrates. The Board will hear an update on that from the engineers. He commented that Mr. Chapman and his team has spent a lot of time studying high-tech septic systems, which will be addressed at this meeting.

Tim Stone, Stonehill Environmental, stated they originally proposed an AOS system, which had a nitrate discharge of 25mg per liter. The standard the town is using is 10mg at the property boundary. With the flows they have, they are finding it very challenging with the two lower septic systems to meet that standard. He continued that they went back to the drawing board and looked at more advanced treatment systems. He noted that they are trying to get a conceptual feel from the Board before they implement any more design changes. He stated they are looking at a system that will meet the 10mg per liter nitrate in the effluent going to the leachfield. There is so much treatment within the treatment system that the leachfield isn't much more than an infiltration system at that point. The system they are looking at right now is the Norweco Hydro-Kinetic System. The systems are a significant investment over a traditional stone and pipe system. The NSF testing on the Norweco Systems is showing an average nitrate level of 5mg actually entering the leachfield. The nitrate number is probably a little bit lower when getting down the nitrate standard. He noted that the NSF testing data has been submitted for Danna Truslow's review. The treatment is effective because it is going through multiple treatment tanks. The effluent is recirculating through the system and it might sit in the system for up to three days before it makes it out to the leachfield. He noted that Danna Truslow wanted them to do additional nitrate loading; however, at this point it is actually a moot point. If they are starting with a background number below 10 and a discharge below 10, they cannot physically exceed 10mg. They are really confident about moving ahead with this. The Housing Partnership has shown interest in doing all the septic systems on the site to meet this standard. He noted that this is a big investment but it really solves a lot of problems they have been dealing with in regards to the 10mg per liter concentration at the property boundaries.

Chairman Epperson asked if there will be additional maintenance.

Mr. Stone explained that the systems are typically maintained twice per year. They would propose that the effluent be tested on a six month basis initially and then drop back to annually. The testing is not that expensive.

Chairman Epperson asked about the additional infrastructure.

Mr. Stone replied that there is an air compressor, much like the other system. There are also a series of pumps that are all below grade. What is seen at the surface is just the flush covers to the systems, which could possibly be under benches or have bark mulch around them and plantings.

Member Losik asked about the tanks.

Mr. Stone explained they are pre-cast fiberglass or concrete tanks that are buried as a unit in the ground. There has to be access to the separate parts of the system.

Chairman Epperson asked if they are approaching a delta between the high-tech septic systems and a sewer line. He asked if the investment is getting close.

Marty Chapman, The Housing Partnership, replied no.

Vice-Chair Losik asked if the leachfield is the same type or if it is different.

Mr. Stone replied that the leachfield would be the same as a traditional leachfield. The size of the leachfield could actually be reduced because of how low the organics are going out to the leachfield; however, he does not think the regulatory framework has caught up to it yet.

Vice-Chair Losik asked if there is data available for these systems for a reduced leachfield size. She pointed out that the Board has talked about concerns with the shared space between the units with a mounded system.

Mr. Stone explained that the systems are not going to be mounded. There is enough depth to groundwater that these will be flush.

Vice-Chair Losik commented that the landscape architect was talking about six inches of loam on top, which would be sufficient. She clarified that they are talking about a flat useable space.

Selectmen's Rep Jenness asked what the covers are made of.

Mr. Stone replied that they are probably fiberglass.

Selectmen's Rep Jenness commented that there have been stories over the past few years about how people are stealing manhole covers to sell for scrap and creating very dangerous situations. She asked if lawnmowers would be able to go over the covers.

Mr. Stone stated they could go right over them but ideally, they would be worked into the landscaping. There was some thought of putting benches over the top of them. (He submitted a photo of another type of system and how they handled the covers within the landscaping.) He continued that this is something that will be addressed at the next presentation if these are the systems they are going to move forward with.

Chairman Epperson stated that theoretically the nitrate could be less than 10mg at the border.

Mr. Stone replied there is no question it will be less than 10mg.

Chairman Epperson stated that the issue last time was that it was going to be at 10mg and that was the absolute maximum that it could be; however, this looks like it is going to be less than that at the border.

Mr. Stone confirmed.

Mr. Chapman stated that whenever it comes out of the system higher than 10mg, science comes in to play as to what is going to happen underground before reaching the property boundary. They had a couple of models showing the numbers higher and some lower. Given how high those numbers were above 10mg at the property line, a way to solve the problem was to come out of the system at 10 and therefore, by definition, at the property boundary it would be less.

Member Lord asked how many tanks there will be compared to the AOS.

Mr. Stone replied there will be five tanks and six or seven covers, as opposed to three tanks with six covers with the AOS system.

Member Carter asked if the system needs to be pumped more often than the AOS systems.

Doug LaRosa, Ambit Engineering, explained the first tank is similar to a septic tank and will be pumped once every one to two years.

Member Carter asked about the duration of the systems.

Mr. LaRosa replied that the Norweco Singulair System has been in use for twenty years. These systems will last even longer. There will need to be some replacement of parts occasionally but they will last if they are maintained.

Mr. Stone stated that an interesting comment from a representative from the Suffolk County of Health Services was that having multiple units on a system is actually helpful to a system. Sometimes when there are individual homes on a system they may not get used very much. Having multiple units on a system evens out the use on a system and there may even be better results.

Member Quinn asked about how the systems will operate during a power outage.

Mr. Stone replied that they will probably operate not more a couple of days.

Mr. LaRosa explained that the plan calls for emergency generators at the pump stations, which will keep them running. This system will continue to run and will trickle into the leachfields so there should not be any interruption in service. It's just that they work better when all the components are running.

Chairman Epperson commented that while the power is down there could be an increase in nitrates because of that.

Mr. LaRosa confirmed. He commented that there will be a decrease in effluent, however, because people typically do not stay in their house with no power.

Vice-Chair Losik asked if the location of the leachfields will remain the same.

Mr. Stone confirmed.

Member Lord asked about the costs versus an AOS system.

Mr. LaRosa stated they are about 150% more.

Chairman Epperson noted that Attorney Donovan's letter of May 3rd has some issues that he would liked discussed. He asked if anything has been done with the condo documents at this time.

Attorney Brown replied that he has started a draft and will have more done on the documents by the next meeting.

Chairman Epperson stated that one of the big issues is how to retain Workforce Housing and how to keep it affordable long term.

Attorney Brown noted that Hershey Hirschkop (project manager) has stated that one of the finance authorities in Concord has that language developed and she is going to provide that to him.

Chairman Epperson continued there was a question about snow removal.

Mr. Chapman explained there is some snow storage areas on site. In cases where there are really bad storms, the snow will be taken off-site.

Mr. LaRosa reviewed the locations on the plan for snow storage.

Member Carter asked if they have to plow the fire access non-road in the winter. Is it required by the fire department to keep that open?

Mr. LaRosa confirmed.

Referring to the fire access non-road, Chairman Epperson asked what this will be made of.

Mr. LaRosa explained it will be constructed out of the same material as the driveways throughout the project, except the top layer is a gridded concrete layer that can be driven over. It will be at least as strong as the pavement.

Chairman Epperson asked if there will be bollards or something to keep traffic out of this area.

Mr. LaRosa replied that he is not sure that is warranted.

Chairman Epperson commented that people will drive over it. He continued that there are smaller removable bollards that could be put in place. His guess is this will have to be done to keep people from using it.

Mr. LaRosa stated that he has looked at the different bollards that could be used in this situation. The ones that would be the most successful would be two weighted bollards that are not attached but have a heavy base. If the fire truck needs to get through, it can plow through the bollards or they can be moved.

Referring to the fire access road, Vice-Chair Losik asked if it is going to have grass growing over it and will be mowed in the summer but be able to withstand a freeze/thaw.

Mr. LaRosa explained that as the driveways are stable during freeze/thaw, so will this be. The product is an 8-inch concrete grid that is put over the whole surface and is permeable. He noted that area is a crowned section so the water will run off until it hits the 95% compacted layer of gravel, go right to the side slope and be gone.

Chairman Epperson asked about the stone dust that has been proposed for the sidewalk.

Mr. LaRosa stated that there is going to be a typical sidewalk section with six inches of crushed gravel. Over that will be a stone dust mix that's permeable. It should last over ten years, even with the use of a sidewalk plow or snowblower. He noted a sidewalk detail will be provided to the Board.

Member Carter asked if the sidewalks have plastic boundaries or if grass is planted up to the sides.

Mr. LaRosa explained that if there is landscaping around the walkway, there should definitely be a root guard/plastic border to keep the roots from going through, which will disturb the soil more than anything.

Chairman Epperson stated that one of the issues has always been the density and the common areas. He asked if there has been any discussion about expanding the areas between the units, now that the boundary has been pushed back for the buffer.

Mr. Chapman noted that this exercise was done at the time the overall site was laid out. They feel that it is ample, given the concept of design and the amount of green space.

Mr. LaRosa commented there is over 10,000sf between each lot.

There was some discussion on the sidewalk near the play area.

Member Carter commented that it looks like the sidewalk goes right through the play area.

Mr. LaRosa asked if it is the Board's preference is to put the sidewalk adjacent to the roadway.

Vice-Chair Losik stated it is a concrete walkway. She would be more comfortable having it closer to the roadway since the common areas have been such a concern. She would be curious if there was a solution to give as much space as possible for the play area.

Mr. LaRosa stated the play area is about 8,000sf (60x120).

Member Losik asked if they could look at pulling the walkway out.

Selectmen's Rep Jenness commented that the play area is adjacent to the raingarden. She asked if this is something that kids can play on or should it be protected.

Mr. LaRosa explained the raingarden is an area that can be used. It will be made of grasses and will be mowed several times per year.

Chairman Epperson commented there is a fence around it now.

Mr. LaRosa noted that it was the Board's desire to remove the fence. If it is mowed continuously low, it is a great place to play.

Chairman Epperson commented this can be discussed a little further in the future.

Referring to Section 306.6 B, Chairman Epperson asked if they will be seeking a variance for the 25% coverage.

Mr. LaRosa explained they are providing a drainage analysis that shows they are recharging 100% of the stormwater back into the aquifer.

Chairman Epperson asked if the drainage analysis complies with the N.H. Stormwater Manuals.

Mr. LaRosa stated that they need to comply with DES Alteration of Terrain requirements for an Alteration of Terrain Permit, which goes by those manuals.

Chairman Epperson asked if the documentation will be supplied to the Board.

Mr. LaRosa stated they will supply the Town with the Stormwater Management Plan and the report.

Speaking to Mr. Stone, Chairman Epperson asked if the nitrates flow in the same direction.

Mr. Stone confirmed.

Referring to the play area in the southwest corner, Chairman Epperson asked if this is a lawn area.

Mr. LaRosa explained it is the same as the other area. It is a leachfield area that is graded.

Chairman Epperson asked if playground equipment will be provided in either of the play areas.

Mr. Chapman stated they have not discussed equipment; however, he would be open to the idea.

Chairman Epperson asked if there is a final decision on how many bedrooms are going to be in the units.

Mr. Chapman stated the septic is the driving force behind number of bedrooms.

Mr. LaRosa commented that on Sheet TP-1 it shows a breakdown of how many bedrooms will be in each unit pod. There are six septic systems. The units will be limited by the number of bedrooms. They can have less or all be three bedrooms but each pod has the ability to have two four-bedroom units.

Chairman Epperson asked if they will be doing four-bedroom units.

Mr. Chapman stated that from a market perspective they would like to have the option. The discussion with the limitation of three-bedroom units was with the previous septic system. He does not think the current system they are proposing will have that kind of impact.

Member Losik asked if the final plans will show the maximum number of bedrooms.

Mr. Chapman confirmed.

Chairman Epperson opened to the public.

Chris Brown, representing his parents at 24 Random Road, asked where the generators will be located and what the source of power will be.

Mr. LaRosa explained the generators will be located next to the three pump stations and will probably be run by propane. In a development like this the property management company will maintain the generators.

Mr. Brown stated that his father would like to ask the Board to consider, as part of the approval of this development, that a 50 ft buffer be written in because they are the closest abutters. They would like to see a "no-cut" written either in the deed and/or the association documents. He pointed out that at Marjorie Way there are signs in the shape of a leaf at the property. Also, Attorney Donovan suggested annual monitoring of that 50ft no-cut buffer. His parents feel this is reasonable and would like the Board to consider this as part of the approval.

Mr. Chapman commented that he is open to suggestions. He will speak with the landscape architect and he is already addressing the monitoring issues.

Chairman Epperson asked for further public comments. Hearing none, he closed the public session at 8:20 p.m. He asked Attorney Brown to work with Attorney Donovan on the legal documents.

No further comments or questions were heard from the Board.

Motion by Pat Losik to continue the application to the June meeting. Seconded by JM Lord. All in favor.

- c. **Major Subdivision** by Tuck Realty Corporation for property owned by Joseph Goss and located at 0 Ocean Blvd, Tax Map 8 Lots 58 & 59 for a 5-lot subdivision. **Property is in the Single Residence District. Case #11-2018.**

Chairman Epperson opened by stating that they have given the Town funds to establish the escrow and believes they can now take jurisdiction over this application.

Motion by Pat Losik to take jurisdiction over this application. Seconded by JM Lord. All in favor.

Chairman Epperson stated that they should discuss Lot 5 specifically, as it relates to Section 204.14 of the Rye Zoning Ordinance regarding frontage over its own lot.

Mike Garrepy, Tuck Realty Developer, stated that he believes they have a compliant lot that meets the frontage requirements. The Board had a question during the preliminary application as to whether there was compliant frontage for Lot 5. The understanding at the last meeting was that the Board would have a discussion about the matter at this meeting.

Kimberly Reed, Planning & Zoning Administrator, noted that Attorney Donovan has recommended that the Board determine the status of Lot 5 in Section 204.14. This Board should determine whether the lot is sufficient or if a variance is needed before moving forward.

Chairman Epperson commented this has been a “bone of contention” on numerous occasions with several applications. This ordinance was ratified and accepted in 2000. It is a relatively mature ordinance and there has also been some controversy over the last five years or so.

Mr. Gerrapy stated it sounds similar to the recent Hoefle Subdivision.

Attorney Kevin Baum, on behalf of Attorney Phoenix for the applicant, stated that Attorney Phoenix’s memo of March 23rd went through all of these issues and it is well detailed. It is pretty clear, based on the language of the ordinance, that no relief is required. Lot 5 has frontage on two sides. One side has enough linear feet with 200ft of frontage. The other side has about 59ft of frontage on Locke Road. He continued that RZO 202.14 states that access to a lot shall be over its own front. Frontage is defined as all the continuous side of the lot or track of land abutting on one side of the street measured along the street line. There is nothing in the ordinance that says access has to be made over the frontage that provides the linear footage. The law is clear that language cannot be read into the ordinance and the plain language has to be taken. He stated this was addressed with the Hoefle subdivision in 2011. This Board came to an opposite conclusion, which was then appealed to the Zoning Board and they overturned that decision. He read from a letter stating Attorney Donovan’s opinion at that time, which stated, *“A lot has to have access over its own frontage; however, it does not have to say it has to be over the minimum frontage. In terms of the zoning requirement, as long as a lot has a driveway coming through its frontage, it does not say it has to come through the 200ft of frontage. As long as it has access from one or the other of these places, it meets the zoning. It is not a zoning violation. In other words, no relief is required”*. Attorney Baum continued that he fails to see the difference between this application versus the Hoefle Subdivision. The facts are very similar, the issues are exactly the same and the ordinance has not changed since that time.

Vice-Chair Losik stated that she is on the Rules and Reg Committee. During the work on corner lots, the question of frontage came up. RZO 202.14 states that access to a lot shall be over its own frontage. The appendix has the definition of frontage, **“all that continuous side of a lot or tract of land abutting on one side of a street or proposed street measured along the street line”**. She continued this was amended March 2017 by the voters. Frontage is important in the

RZO because it has a great number of references. In looking at this, she thinks she can understand where a concern might be for this Board in that they are really looking at one definition of frontage and that says continuous.

Attorney Baum stated that he does not agree that "continuous" makes any difference in whether it is on Locke Road or Ocean Blvd. He agrees it is in the definition and that it has been amended. He noted that he has the minutes from the ZBA meeting of June 8, 2011, which include the definition of frontage that was in place at that time. ***"All that continuous side of a lot or tract of land abutting on one side of the street or proposed street measured along the street line"***. He noted that the only difference between that definition and the current definition is the current definition has deleted a section that states ***"a corner lot must satisfy the frontage requirements of the district in which it is situated on one of its two street sides and the depth requirements on the other street side"***. As far as continuous goes, there is no difference between 2011 when the ZBA founded that access could be made over any frontage.

Vice-Chair Losik stated she cannot speak for other board members; however, the word "continuous" is meaningful as it relates to many areas of the code she referenced. She feels it would be against the spirit of the Zoning Ordinance and purview of this board to allow the acceptance of Lot 5. If the applicant wishes to move forward with Lot 5, the ZBA would be the appropriate process.

Attorney Baum respectfully disagreed. He asked the Board to reconsider. The word "continuous" was already in the ordinance in 2011 and the ZBA already interpreted this. The language has not changed. The fact is in N.H. Case Law they can only deal with the language of the ordinance. Intent is being read into it, which the Supreme Court does not allow, unless there is ambiguity in the language. He would say that there is not. "Continuous" just means continuous along the street line.

Mr. Garrepy noted that they do have 250ft plus feet of frontage continuously along the street line and 59ft along Locke Road. He continued the ordinance also requires that the access be off the lesser travelled road, which they are doing.

Chairman Epperson commented that the 200ft is across wetlands. He is not sure it is a good idea to define frontage across unbuildable property.

Attorney Baum noted that it meets the definition. He also noted that in the 2011 appeal, the issue was not wetland but it was a Wellhead Protection radius. It is a similar issue that prevented access. He asked the Board if there has been any change in the Zoning Ordinance, which there hasn't, that would change the ZBA's interpretation of the ordinance now. He thinks it is unfair and unreasonable to force this applicant to appeal a decision to the Zoning Board and undertake that cost and time, given that nothing has changed in the language of the ordinance at issue.

Member Quinn stated that it is 59ft of frontage on Locke Road. He asked how many feet are on Ocean Blvd.

Mr. Garrepy replied it is 395ft total along Ocean Blvd with 59ft along Locke Road.

Member Quinn stated that regardless of language the spirit of the ordinance would suggest that access to a lot is along the side with an ample number of feet of frontage. That frontage might meet the letter of the law but there is no way to access the lot from Ocean Blvd. From a reasonable point of view, he is looking at 59ft of useable frontage off Locke Road. He would have to concur with Pat Losik that relief is needed from the ZBA.

Member Lord stated he was not on the board during Hoefle and asked about the issue.

Ms. Reed explained that the subdivision had frontage on Garland Road. The developer was creating a cul-de-sac and there was only 40ft of frontage for one of the lots. The property ran along Grove Road and Garland Road and had greater frontage on Garland Road. Unlike the wetlands, it was in the 500ft Wellhead Protection radius. In order for them to get a driveway, they would have had to get access from Garland or Grove Road to go through the wellhead radius. Therefore, they asked for permission to have their driveway on just 40ft of the cul-de-sac that was being created, which is now Marjorie Way.

Member Lord stated that it seems the Town could start to get subdivisions where there are a ton of wetlands. If it was divided up with 50ft of good frontage, it could be said that there is "adequate" frontage because there is multiple frontage on wetlands that is not really accessible.

Mr. Garrepy explained the frontage is not just simply for access. He continued that frontage is also to provide light, space and separation between units. He believes they meet the spirit of the ordinance with this plan. There were other considerations in the design of the plan and they made every effort to avoid environmental impacts. He noted that they have no wetland or wetland buffer impacts. They have been very respectful of the environmental aspects of the site.

Chairman Epperson stated that every application is different and the Board makes a decision on what needs to be done. If they decide that relief is needed from the ZBA, there will be no choice but to do that.

Attorney Baum stated that Attorney Donovan's letter of 2011 is very clear, based on the language of ordinance, what his interpretation was.

Chairman Epperson opens to public on the subject of frontage for proposed Lot 5 only.

Mimi White, 166 Locke Road, stated that her major concern is about the marsh.

Chairman Epperson stated that they are only addressing the frontage at this time. There will be time at a future meeting to address that concern.

Selectmen's Rep Jenness stated that there is no comparison between the Hoefle situation and this subdivision. A driveway could have been put in on Garland Road. It was solid ground with

good material underneath. Physically, it could have been done. It just happened to be within the wellhead radius. In this case, there are two frontages but one simply cannot be used.

Chairman Epperson agreed.

Karen Finnigan, 160 South Rd, asked about the frontage.

Ms. Reed asked the developer to show the public the two areas of frontage so that they can understand the discussion.

Mr. Garrepy reviewed the frontage on the plan for the public.

Vice-Chair Losik stated there are three (3) components of this definition and why it's important. Section 202.14 states that the access to a lot shall be over its own frontage. The other piece is the definition of frontage which is *a contiguous side of a lot or tract of land abutting*. The third component is this is in the Single Residence District, which requires 200 linear feet of frontage. Her sense is that this is not the Planning Board's decision to make. She does not think the Board is in a position to presuppose a decision by the ZBA that was made in 2011. That is not the Board's decision based on the spirit of the law.

Attorney Baum stated that even though the Board's have changed, the language of the ordinance hasn't. Applicants and the citizens of Rye have a right to rely on the Planning Board's and the ZBA's interpretation of the ordinance. The Board has an obligation to assist the citizens and help the applicants. Applicants need to rely on past decisions of the Board and a clear interpretation of the ordinance so they can move forward.

Chairman Epperson asked what would happen if the 59ft did not exist on Locke Road.

Mr. Garrepy explained they would have to look at a completely different design.

Chairman Epperson pointed out that it would be inaccessible.

Mr. Garrepy stated it would not be inaccessible but it would be more challenging to get to and there would be more permitting required to get to the property.

Joe Corranti, Jones and Beach Engineering, spoke in regards to the Wellhead Protection area on the Hoefle lot.

Vice-Chair Losik stated it was a 2011 decision and this Board was not there. Apparently, there was disagreement on the Board and it was narrowly decided. As far as the record, her understanding is that no public appeared before the ZBA when it was heard to oppose the administrative appeal. It was not the Board's mandate before and it is probably not the Board's mandate today to make this decision. It was opined that this was how Attorney Donovan felt. She pointed out that the Board does not always agree with Attorney Donovan. It is the Board's

role to look at the laws, zoning, land development and what is before the Board to make the best decision they can based on their understanding of what is presented.

Hearing no further comments from the public, Chairman Epperson closed the public hearing at 9:10 p.m.

Chairman Epperson asked the thoughts of the Board.

Member Gittlein stated that he agrees with Vice-Chair Losik. They cannot rely on a decision from 2011 to represent how they feel about this.

Member Lord stated he has a problem with starting to create subdivisions that have a lot of frontage on non-buildable property with minimal frontage on the buildable road. Based on the last two subdivisions, building a road across the wetlands and the buffer is really frowned upon and the probability is really slim. He thinks the applicant should go to the ZBA.

Member Carter agreed with Member Lord. Access over a lot has to be over its own frontage. There cannot be access on Lock Road because Ocean Blvd is being used to meet the frontage requirement. He does not have a strong personal opinion about whether the ZBA should approve it or not but he agrees it is up to them.

Selectmen's Rep Jenness commented that she agrees with what has been said.

Member Quinn stated the Zoning Ordinance is there to create reasonable expectations on the lot. He would expect that the access (driveway) would be located somewhere on the contiguous frontage area. They are talking about something the ZBA decided seven or eight years ago. This should not guide every incidence that comes before the Board. He agrees they need relief from the Zoning Board.

Chairman Epperson stated everyone knows how he feels on this. He asked for a motion to request that the applicant go before the ZBA at their earliest convenience. Summary of his concerns;

1. The Hoefle application can be distinguished because the qualifying frontage did not result in a driveway crossing wetlands. The driveway would have had to cross the 400ft. protection well radius of the adjacent RWD well.
2. No one appeared before the ZBA to oppose the administrative appeal. The outcome may have been different had the planning board or others opposed it before the ZBA.
3. The legislative history was not part of the 2011 record.
4. The land use boards do not always agree with Attorney Donovan.

Motion by JM Lord that lot 5 does not comply with the frontage and access requirements of the RZO; the applicant should go to the ZBA and come back when and if they receive relief. Seconded by Jerry Gittlein. All in favor.

Speaking to the developer, Chairman Epperson stated that they can continue on the other matters if they would like or wait until they have relief and come back.

Mr. Garrepy stated that he would like to continue. They have addressed the completeness issues and the plan shows all the requirements to render it complete. He continued they have completed additional test pits to comply with the 4k areas for each of the lots. Joe Noel did some soil analysis as well. Mark West visited the site with Jim Gove and they reviewed the full border of the wetland boundary. They have come to an agreement on the wetland delineation.

Referring to the new site plan, Chairman Epperson asked the location of the designated leaching areas (DLA's).

Mr. Garrepy reviewed the location of the additional test pits on the plan. He noted they have fully established the 4k area to meet the requirements.

Jim Gove, Gove Environmental, explained the analysis of the soil found on the site.

Chairman Epperson asked if any bedrock was found on the site.

Mr. Gove noted the locations on the plan for the Board.

There was some discussion on test pit 9 and 18.

Ms. Reed noted that Joe Noel's report was received.

Mr. Garrepy handed out his response to Mr. Noel's report. He stated the some of the lots may be defined as "ledge lots" per Rye's Building Code, which means they have to be 6ft above bedrock. He continued that they are going to follow the ordinance and they have talked about doing pre-treatment systems on all the lots in respect to the environment.

Mr. Gove noted items requested on the plan by Joe Noel.

Chairman Epperson asked if there were any other questions from the board. No questions were heard.

Mr. Garrepy spoke in regards to the site walk. He pointed out that they are working on a lot of changes. There was discussion on the roadway and they are working on that design now. They have met with DPW and are working on some tweaks to the design. They are also working on grading, septic plans, driveways and house locations for all the lots. Hopefully, they blend the site in with existing conditions. He noted that they are going to work with DPW and Sebago before they come back with another plan.

Ms. Reed questioned if they received Sebago's letter.

Mr. Garrepy confirmed. They will be responding to Sebago all at once.

Referring to the big tree, Member Carter asked about the chance of it surviving construction. He would hate to see the road go in, right next to the abutters' property and have the tree die two years later. At that point, there will be a permanent road but the tree will be gone.

Mr. Garrepy pointed out that the large 54-inch red oak is at the edge of the property. It has been identified as a canopy, which typically defines its root mass. The goal was to not impact the tree in any way. He commented they have also identified all the significant trees along the stonewalls and other locations throughout the boundary of the property. The intent is to save all those as well. He stated that the tree will have a good chance of survival. He pointed out that they are enjoying conversations with the Troy Family about ways to mitigate the impact the roadway will have on their property.

Chairman Epperson asked about fill, grading and outflow onto the wetlands. He noted that this will be covered in the next few meetings.

Vice-Chair Losik stated that there were general questions from site walk with regard to LDR Section 606 and 606.1, which says the developer shall identify and take suitable steps to preserve and protect significant existing features, with a list of those features. The one that comes to mind here are wetlands. The property naturally drains into the freshwater and tidal wetlands.

1. Will it be consistent with 606.1? Will the town have sufficient understanding that everything has been done to protect the wetlands?

She continued there is a beautiful meadow in this area that is edged by tidal and freshwater wetlands. The concern is the super elevated roadway, the mounded septic systems and the substantial fill on the lots.

2. Is this consistent with 606.1?

Mr. Garrepy explained the intent is to blend everything in. The goal is to sell homes. That is why they have spent the time and money to put forth a beautiful landscaping plan. He reiterated the idea is to blend everything together.

Vice-Chair Losik stated that someone spoke about the fact that because of the fill the front yards might be at a natural level but the backyards might have exposed basements. She asked that they keep Section 606.1 in mind.

Mr. Garrepy stated he can envision walkout designs.

Member Losik asked where he thinks they will be.

Mr. Garrepy explained it will potentially be in the lower fields but it is hard to say. Referring to Sheet C-3, he noted that the goal is to keep the trees that are shown. The grading plan for the lots will help to visualize what will be seen from Route 1A.

Selectmen's Rep Jenness asked if there will be grading of the road around the raingarden.

Mr. Garrepy explained there will be small rain gardens at entrance to the road that is collecting some of the stormwater. The rest of it is heading towards the cul-de-sac.

Selectmen's Rep Jenness asked if the road will be tilted to flow towards the raingarden.

Mr. Garrepy explained everything will be collected in the cul-de-sac and treated before it is released into the wetland. Sebago will review the road design.

Vice-Chair Losik spoke in regards to LDR Section 604, which states that there cannot be an increase in runoff to adjacent properties. She stated that she would like to have the drainage analysis expanded. She asked about the drainage.

A member of the development team addressed Vice-Chair Losik's questions.

Vice-Chair Losik clarified that there will be more work done on the proposal moving forward to understand what is going to happen on each lot. The Board can be confident that there will be changes if need be to handle any increased concerns over stormwater drainage.

Chairman Epperson opened to the public for questions.

Tom Decker, 271 Harbor Road, asked about the fill. He thinks it will be sizeable amount of fill and it may change the drainage run off. He asked where they plan to obtain the fill and if it will have contaminants.

Mr. Garrepy stated that they will be modifying the plan so it is premature to discuss it. There will be fill and the required specified DOT specs for the road construction will be brought in. He reiterated it is premature to talk about what the quantities will be before there is a final plan.

Mimi White stated that she has a concern that effluent will be going downhill into marsh. She is also concerned because marsh is not static. It continues to change and grow. The Town of Rye is in the Tides to Storms report. It states that Rye is unique in its ability to grow the marshland, which plays an important part of the eco-system. She is concerned that there is a development at hand that could impact the marsh. The area is very vulnerable.

Chairman Epperson stated they spent a lot of time on marshes and wetlands. They have done as good a job as can be done to protect those on-going. The Rockingham Planning Commission has been notified about this application and they have been asked to opine their opinion. RPC is working on that request.

Hearing no further comments, Chairman Epperson closed the public session at 10:02 p.m.

Ms. Reed noted that letters and emails have been received from;

- Mimi White, 166 Locke Rd
- Mary Ellen Fennessey, 294 Harbor Rd
- Karen Finnigan, 160 South Rd
- Anne and Tom Decker, 271 Harbor Rd
- Joan O'Neil, 15 South Rd

Motion by Pat Losik to continue this application to the June 12, 2018 meeting. Seconded by Jerry Gittlein. All in favor.

Mr. Garrepy asked for an idea of what they will talk about on the 12th. He noted they have hired Steve Pernaw to address the traffic analysis.

Member Epperson stated that legitimate concerns have been brought up by the Board and the public. RPC may have weighed in by that time and the Board would like to see the 100-year drainage reports.

VI. New Business and Subcommittee-Reports

- a. Conceptual Consultation by Driftwood Townhomes for property located at 1215 Ocean Blvd, Tax Map 17.3, Lot 6 by Samonas Realty Trust and John Samonas, Trustee who proposes to raze the current buildings and replace them with an 8-residential townhouse unit development. Property is in the General, Business and Coastal Overlay District.

Eric Weinrieb, Altus Engineering, spoke in regards to the conceptual and the history of the property. He also spoke about the property since it has been purchased by Mr. Samonas and how many times the property has been flooded. The proposal is to raze all the buildings and structures on the property. They have hired Joe Noel to map the wetlands and flag initial test pit data. The proposal is for eight townhouse units in a duplex style on the property.

John Samonas, property owner, stated his property has flooded three times since he purchased the property a year ago. He has updated the buildings with some painting and repairs but the cottages are old and at the end of their useful life.

Chairman Epperson asked if the flood waters are coming from the marsh.

Mr. Weinrieb noted that the waters are coming from Parson's Creek.

Mr. Samonas explained the new cottage is the one that gets flooded the most. It is closest to the creek and the bridge.

Chairman Epperson asked if the intent is to bring in fill.

Mr. Weinrieb explained they will raze everything on the property. He pointed out the 50ft primary setback from the tidal waters. They are going to try to keep the new buildings out of the 75ft town setback in its entirety. The 100ft setback that relief is requested for, goes to the building envelopes. He continued they will be getting rid of the multiple egresses onto Ocean Blvd. There will be a single point of egress onto Wallis Road, which will go slightly into the 50ft primary setback. This is to be far enough away from the bridge area to create a safe access point.

Chairman Epperson asked how far it is from the right-of-way to the access point.

Mr. Weinrieb replied that it is approximately 100ft. He continued to review the proposal for the Board. He noted the buildings will be taken up to at least elevation 12, which accounts for the 100-year flood, as well as some of the resiliency to climate change. The Clean Solutions Septic System will also be raised up above the 100-year flood plain.

Chairman asked if the buildings will be two-story.

Mr. Weinrieb replied that they will be three-story buildings with parking at the basement level.

Member Carter asked if the basement level is at grade 12.

Mr. Weinrieb confirmed.

Mr. Weinrieb stated that relief will be needed for Section 304.6. They are looking for guidance from the Board.

There was discussion on the parking in the front.

Member Quinn stated there is going to be a sight problem with getting in and out of Wallis road.

Mr. Weinrieb commented it should be better.

Member Quinn noted that trying to get out of side streets onto Ocean Blvd, in the summertime, is tough.

Mr. Weinrieb noted that they will work with DOT. He continued that they have spoken with NH DES about the proposal and have received very positive feedback.

There was some discussion on the elevation and drainage.

Chairman Epperson stated that he was an alternate when the Wentworth brought this property to the Board. The biggest issue was the fill and the height. The main thing was the fact they did not want another private club on that corner. He agrees that getting rid of the septic tanks that are non-functional is going to help. The look is going to be significantly better. With the FEMA issues, the raze is going to be a problem and relief will probably be needed.

Mr. Weinrieb talked about the structural design and Geo-Tech.

There was discussion in regards to concerns on the amount of fill.

There was discussion on the proposed design.

Board thanked Mr. Samonas and Mr. Weinrieb and the discussion on the conceptual concluded.

VII. Pay Escrows

- **Attorney Donovan - \$2,629.85 – 421 South Road, Falzone Subdivision**

**Motion by Steve Carter to pay Attorney Donovan in the amount of \$2,629.85 from the 421 South Road Falzone Subdivision Escrow. Seconded by Patricia Losik. Vote: 6-0-1
Priscilla Jenness recused herself from the vote.**

- **Sebago Technics - \$441.00 – 421 South Road, Falzone Subdivision**

**Motion by Patricia Losik to pay Sebago Technics in the amount of \$441.00 from the 421 South Road Falzone Subdivision Escrow. Seconded by JM Lord. Vote: 6-0-1
Priscilla Jenness recused herself from the vote.**

- **Attorney Donovan - \$277.90 – The Housing Partnership**

Motion by Patricia Losik to pay Attorney Donovan in the amount of \$277.90 from the Housing Partnership Escrow. Seconded by JM Lord. All in favor.

- **Danna Truslow - \$1,903.75**

Motion by Patricia Losik to pay Danna Truslow \$1,903.75 from the Housing Partnership Escrow. Seconded by JM Lord. All in favor.

- **Sebago Technics - \$1,414.35 – Tuck Realty Escrow**

Motion by Patricia Losik to pay Sebago Technics in the amount of \$1,414.35 from the Tuck Realty Escrow. Seconded by JM Lord. All in favor.

- **Approval of minutes**

Motion by Jerry Gittlein to move the approval of the minutes to June. Seconded by Steve Carter. All in favor.

Adjournment

Motion by JM Lord to adjourn at 10:50 p.m. Seconded by Patricia Losik. All in favor.

**All corresponding documents and files may be viewed at the Building Department, Rye Town Hall.*

Respectfully Submitted,
Dyana F. Ledger

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Laurie & Michael Steinberg

Property: 17 Sea Glass Lane, Tax Map 16, Lot 71-3
Commercial District

Case: Case #08-2018

Application: Minor Site Development Plan by Laurie & Michael Steinberg for Amendment to Major Subdivision Development Plan, Condo Conversion, Conditional Use Permit and Lot Line subdivision for a retirement community development (RCD) to add a 4-season room 12'x16' to their 17 Sea Glass, Tax Map 16, Lot 71-3 property. **Property is in the Commercial District. Case #08-2018.**

Date of Decision: Tuesday, May 8, 2018

Decision:

<input type="checkbox"/>	Approved
<input type="checkbox"/>	Conditionally Approved
<input type="checkbox"/>	Denied
<input checked="" type="checkbox"/>	Continued to the June 12, 2018 meeting

The Board voted to move the application to the June 12, 2018 meeting.

5/10/18

Date



William Epperson, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant: The Housing Partnership

Owner: Rickert Inv Real Estate LLC

Property: 0 Airfield Drive, Tax Map 10, Lot 15-4
Commercial District

Case: Case #07-2017

Application: Major Subdivision, Lot Line Adjustment and Conditional Use Permit by the Housing Partnership for Property located 0 Airfield Drive, Tax Map 10, Lot 15-4 for construction of a residential development consisting of a mixture of multi-family dwellings with a portion being dedicated as Workforce Housing. Property is in the Commercial Zoning District and the Multi-Family Dwelling District Overlay and the Aquifer and Wellhead Protection District.

Date of Decision: Tuesday, May 8, 2018

Decision:

<u> </u>	Approved
<u> </u>	Conditionally Approved
<u> </u>	Denied
<u> X </u>	Continued

The Planning Board unanimously voted to continue this application to the June 12, 2018 meeting.

5/10/18
Date



William Epperson, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Steven & Lydia Dewitt

Property: 170 Grove Road, Tax Map 7, Lots 103
Single Residence District

Case: Case #13-2018

Application: Conditional Use Permit by Steven & Lydia Dewitt for property owned and located at 170 Grove Road, Tax Map 7, Lot 103 for an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. **Property is in the Single Residence District. Case #13-2018.**

Date of Decision: Tuesday May 8, 2018

Decision: **x** Approved
 Conditionally Approved
 Denied

The Board voted to that the application is complete and to accept Jurisdiction over the application.

The Board voted to approve the application.

5/10/18
Date



William Epperson, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant: Roland Routhier

Owner: Cindy Weeks

Property: 437 South Road, Tax Map 4, Lot 28
Single Residence District

Case: Case #12-2018

Application: Conditional Use Permit Application by Roland Routhier for property owned by Cindy Weeks and located at 437 South Road Tax Map 4, Lot 28 for an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. **Property is in the Single Residence District. Case #12-2018.**

Date of Decision: Tuesday May 8, 2018

Decision:

<u> </u>	Approved
<u> x </u>	Conditionally Approved
<u> </u>	Denied

The Board voted to that the application is complete and to accept Jurisdiction over the application.

The Board voted to approve the ADU application with the condition that the Septic Design Plan be approved NHDES be approved prior to the property owner receiving the Occupancy Permit.

5/10/18
Date



William Epperson, Chairman
Rye Planning Board

RYE PLANNING BOARD

P10 Central Road Rye, NH 03870 (603) 964-9800

Notice of Decision

Applicant: Tuck Realty Corporation

Owner: Joseph Goss

Property: 0 Ocean Blvd, Tax Map 8 Lots 58 & 59
Single Residence District

Case: Case #11-2018

Application: **Major Subdivision** by Tuck Realty Corporation for property owned by Robert Goss and located at 0 Ocean Blvd, Tax Map 8 Lots 58 & 59 for a 5-lot subdivision. **Property is in the Single Residence District. Case #11-2018**

Date of Decision: Tuesday May 8, 2018

Decision: _____ Approved
_____ Conditionally Approved
_____ Denied

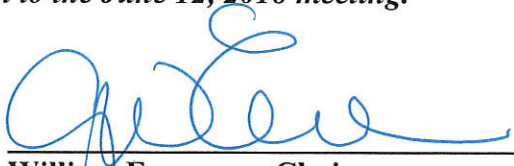
The Board voted to that the application is complete and that the reasons set forth in town counsel's memo of April 6, 2018 were met and the Board voted to accept Jurisdiction over the application.

The Board voted that lot 5 does not comply with the frontage and access requirements of the RZO for the following reasons:

- 1. The Hoefle application can be distinguished because the qualifying frontage did not result in a driveway crossing wetlands. The driveway would have had to cross the 400ft. protection well radius of the adjacent RWD well.*
- 2. No one appeared before the ZBA to oppose the administrative appeal. The outcome may have been different had the planning board or others opposed it before the ZBA.*
- 3. The legislative history was not part of the 2011 record.*
- 4. The land use boards do not always agree with Attorney Donovan. Sometimes he is wrong.*

The Board voted to continue the application to the June 12, 2018 meeting.

5/10/18
Date



William Epperson, Chairman
Rye Planning Board