

TOWN OF RYE – PLANNING BOARD

Tuesday, October 10, 2017

7:00 p.m. – Rye Town Hall

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

Others Present: Attorney Michael Donovan and Planning Administrator Kimberly Reed

I. Call to Order and Pledge of Allegiance & Designation of sitting alternates

Chairman Epperson called the meeting to order at 7:07 p.m. and led the Pledge of Allegiance.

II. Approval of September 12, 2017 meeting minutes

Motion by Patricia Losik to move the approval of the September 12, 2017 minutes to the November meeting. Seconded by Jerry Gittlein. All in favor.

III. Public Hearing on Proposed Zoning Amendments – Action Required

- **Proposed Amendment No. 2018-02:** Amend Section 506.3 Performance Standards of the ADU and add a new Section 506.5 to the ADU and re-index sections 506.5 and 506.6 accordingly.

Attorney Donovan explained that last year the Legislative passed a law that if a municipality chose it can say that an accessory dwelling unit will not be permitted in attached single family dwellings, such as townhouses, and they shall not be permitted in manufactured housing, which are essentially mobile homes. Also, notwithstanding the provisions of the condominium act, an accessory dwelling unit cannot be conveyed away as a condominium severed from conveying the principal dwelling unit it is associated with. To have these three prohibitions applicable in Rye, the Performance Standards for Accessory Dwelling Units has to be amended.

The Board did not have any comments, questions or revisions.

Chairman Epperson opened to the public.

Peter Crawford, 171 Brackett Road, stated that in RSA 674:71,2 there is an amendment to the definition of single family to not include condominium units. He gathers this is what allows the town to enact this.

Attorney Donovan stated it is possible that 506.5 is moot because right now the town does not provide for accessory dwelling units in condominiums. He commented 506.5 should be added in as a protection.

Mr. Crawford suggested adding at the end “as allowed by RSA 674:71,2”.

Attorney Donovan commented that he would leave it as is.

Hearing no further comments, Chairman Epperson closed the public hearing at 7:13 p.m.

Motion by Patricia Losik to move Proposed Zoning Amendment No. 2018-02 to the town warrant. Seconded by Jerry Gittlein. All in favor.

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

Note: Katy Sherman recused herself from the following application, as she is a member of the Wentworth by the Sea Country Club.

- Major Site Development Plan by WBTSCC Limited Partnership for property owned and located at 60 Wentworth Road, Tax Map 24, Lot 61-26, to replace an existing 50' golf net and nine (9) 50' wood poles with a ninety 90' golf net and nine (9) 90' steel poles and removing pavement relocation of existing netting and poles around pavement to be removed and poles and netting to the south are proposed to have 10ft and 20ft extensions. Property is in the Single Residence District. Case #06-2017.

Chairman Epperson stated the documentation and the application have been submitted to the Board for review. Based on what the Board has seen, he agrees the application is complete.

Motion by J.M. Lord to declare the application of Wentworth by the Sea Country Club Limited Partnership complete. Seconded by Patricia Losik. All in favor.

Note: Katy Sherman was reseated as an alternate.

- Conditional Use Permit by Dintino Building for property owned by Carol Ann Nooney and located at 432 Wallis Road, Tax Map 18, Lot 92, for an accessory dwelling unit, per Section 506 of the Rye Zoning Ordinance. Property is in the Single Residence District. Case #10-2017.

Chairman Epperson noted that the application has been submitted along with all the documentation. He does not think there are any issues with completeness.

Motion by J.M. Lord to declare the application for 432 Wallis Road complete. Seconded by Patricia Losik. All in favor.

- Conditional Use Permit by Shawn McCarthy & Marcel Miranda for property owned by Wayne Powers and located at 424 Sagamore Road, Tax Map 18, Lot 50, for an accessory dwelling unit, per Section 506 of the Rye Zoning Ordinance. Property is in the Single Residence District. Case #11-2017.

Chairman Epperson noted that the documentation looks complete.

Motion by Patricia Losik to declare the application for 424 Powers Road complete. Seconded by Jerry Gittlein. All in favor.

- Amendment to the Breakers Condominiums approved by the Planning Board in January 1980, recorded at the RCRD D-9440 on April 18, 1980 for Andrew Foss of 780 Ocean Blvd, Tax Map 23.1, Lot 29-16, for a solar array off southern deck. Property is in the Business, Coastal Overlay District. Case #12-2017.

Chairman Epperson noted that the documentation looks complete.

Motion by Patricia Losik to declare the application for the Breakers Condominiums complete. Seconded by J.M. Lord. All in favor.

Note: *Katy Sherman recused herself from the following application and sat as a member of the public.*

V. Public Hearing on Applications: (Action Required)

- Major Site Development Plan by WBTSCC Limited Partnership for property owned and located at 60 Wentworth Road, Tax Map 24, Lot 61-26, to replace an existing 50' golf net and nine (9) 50' wood poles with a ninety 90' golf net and nine (9) 90' steel poles and removing pavement relocation of existing netting and poles around pavement to be removed and poles and netting to the south are proposed to have 10ft and 20ft extensions. Property is in the Single Residence District. Case #06-2017.

Chairman Epperson asked Corey Colwell to address the requested waivers.

Corey Colwell, MSC Engineering, stated the site itself is 108 acres in size. (He pointed out the location for the work on the plan before the Board.) He noted the plan shows the entire golf course and the area for work. Everything has been done that is required by the Site Review Regulations in the area for the work. It is not felt that it is necessary to topo the rest of the 108 acres.

Chairman Epperson noted the request is for a waiver from Section 403.2 (D). He continued this is a waiver that was approved before. He asked the Board if they understand the waiver request.

No comments were heard from the Board.

Attorney Paul McEachern, representing Louis Georgopoulos, stated that he does not object to the topo for the entire parcel; however, where the poles are going and on the southerly side where there are new poles, it is either in the wetland or the wetland buffer. The delineation of the wetland on the application is incomplete. It does not have the buffer. It is either in the wetland or in the buffer on the southerly side. He thinks the Board should require the applicant to fully delineate the wetland and the buffer. These structures are not allowed in the wetland or the buffer.

Speaking to Mr. Colwell, Chairman Epperson asked if the newly submitted plan has the wetlands and the buffer delineated.

Mr. Colwell replied yes. (Referring to the plan, he reviewed the wetland locations for the Board.) He noted the wetland scientist delineated the wetland and the 75ft buffer. (He pointed to another wetland area.) He stated that the other wetland that was delineated does not have a buffer. The reason why it is does not have a buffer is because it is less than the required size and a buffer does not apply. The first wetland is greater than an acre and the wetland buffer is shown. The second wetland area is less than an acre and the buffer does not apply. He commented that any wetland within 100 to 150ft of the driving range was delineated and shown on the plans. Those are the only wetlands that would affect this work.

Attorney McEachern stated that the town map shows that it goes out to Sagamore Creek. He is not convinced that section is not part of the greater wetlands. (He pointed this area out on the plan.) The plan should be complete. If there is a representation that it is not jurisdictional, there should be a reason as to why it is not part of the greater wetland that goes out to the Sagamore Creek.

Speaking to Mr. Cowell, Chairman Epperson asked if it is a site plan that has been surveyed and examined by a soil scientist.

Mr. Colwell confirmed. (He pointed out Mr. Georgopoulos' house and the Ice House on the plan.) He noted that the line does stop at the golf course easement but it does not go much beyond because there are houses, yards and septic systems. It is delineated entirely to show a closure but it is not delineated beyond the golf course easement because work is not proposed in that area.

Member Losik stated that the town's 301.1 language is a general guide to delineate locations of wetlands. There are two references. One is the National Wetland Inventory Map and also the N.H. Wetlands Mapper. It is important to note that that is a general guide and they approximately delineate the locations of the district. The actual delineation of the wetlands is 301.2A. She continued that it is her understanding that the jurisdictional wetlands were

delineated on the plan on October 17, 2016 by Christopher K. Danforth and he is a certified wetland scientist.

Mr. Colwell confirmed. He noted that the work started on October 17, 2016 at the northern pocket. More recently, Mr. Danforth did the southerly pocket.

Chairman Epperson commented that he feels the applicant has satisfied that particular requirement.

Louis Georgopoulos, 120 Wentworth Road, stated that Bob Diodati came over to his house and said that they would stop letting the players use the drivers. That was eleven years ago. Five balls have come into his yard and it is because they do not repair the net.

Chairman Epperson stated that they are talking about the waivers.

Mr. Georgopoulos agreed to hold his comments until the public hearing.

Chairman Epperson asked for comments from the public in regards to the waiver for 403.2 (D). The subject came up about the wetlands on the south side. It was determined that it was examined by a soil scientist. He sees no reason why it should not be granted.

Motion by Jeffrey Quinn to accept the waiver request for Section 403.2 (D) (3-10) of the Rye Development Regulations, for Case #06-2017 because strict conformity with it would impose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations. Seconded by J.M. Lord. All in favor.

Chairman Epperson stated the second waiver relief request is for 403.2 (E-J), preliminary Topographic Soils Plan, Surface Water Drainage Management Plan, building elevation, water and sanitary extension lines, Use Intensity Statement and condominium documents.

Mr. Colwell stated the Surface Water Drainage Plans, building elevations, condominium docs, and water and sewer sanitary extension lines are not applicable to the golf netting. There is no new impervious surface. In fact, the impervious surface is being reduced by 5,000sf. He reiterated that none of those requirements apply to the netting on the golf course.

Chairman Epperson closed the public hearing on waiver 403.2 (D) at 7:38 p.m. He asked the Board if they had any comments on the waiver request for 403.2 (E-J). No comments from the Board were heard. He opened to the public for comments. No comments were heard. He closed the public hearing for wavier 403.2 (E-J) at 7:39 p.m. He continued that he does not see any reason why they should hold the applicant to this particular standard based on the application and the use.

Motion by Jeffrey Quinn to accept the waiver request for Section 403.2 (E-J) for preliminary Topographic Soils Plan, Surface Water Drainage Management Plan, building elevation, water and sanitary extensions, Use Intensity Statement and condominium documents because strict conformity with it would impose an unnecessary hardship to the

applicant and the waiver would not be contrary to the spirit and intent of the regulations. Seconded by J.M. Lord. All in favor.

Chairman Epperson stated the third waiver being requested is from Section 405.3 (A-E), Final Topographic Soils Plan, Surface Water Drainage Management Plan, Erosion and Sediment Control Plan, building elevations, Use Intensity Statement and condominium documents.

Mr. Colwell stated that the previous waiver that was voted on were for those same requirements in a preliminary fashion. This is for the same things in a final version. Those are normally required when there is a new building proposed or a subdivision being proposed. For the same reasons previously cited, he is requesting the waiver.

Chairman Epperson opened to the Board for comments. None were heard. He opened to the public. No comments were heard. He closed the public hearing at 7:40 p.m.

Motion by Jeffrey Quinn to accept the waiver request for Section 405.3 (A-E) because strict conformity with it would impose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations. Seconded by J.M. Lord. All in favor.

Mr. Colwell stated the Board has a five sheet set of drawings. There is no changes to the first sheet, Overall Site Plan. There are no changes to Sheet 3 and 4, which show the details of the netting. The only change to the application since the Board last saw the application is to Sheet C-2. He continued there has been very little change on the north side. The only change is that three poles have been pulled 10ft away from the golf course easement. Poles 4, 5 and 6 have been pulled 10ft away from the easement line. (He pointed this out on the plan for the Board.) There is no change to the proposed height. Poles 1 through 9 are proposed to be 90ft. The end pole would be 44ft in height and the end pole closest to Mr. Georgopoulos' house would be 40ft in height. The netting would go from 40ft to 90ft and then back down again to 40ft.

Chairman Epperson asked if there is vegetation along the property line with Mr. Georgopoulos' house.

Mr. Colwell confirmed.

Member Low asked how high the poles are currently near Mr. Georgopoulos' house.

Mr. Colwell replied they are currently between 45 and 50ft. He explained there is a total of 11 poles. The two will remain on the end at their existing height. There will be 9 new poles, in-between the end poles, at 90ft. He continued the majority of the changes are on the south side. (He pointed out on the plan an area of paved parking. He also pointed out the poles that go around the paved parking.) The proposal is to eliminate a 44ft strip of pavement, which represents about 5,000sf and 8 parking spaces. The poles will be relocated down to the edge of the parking so the new poles will be located in a straight line. That will gain about 40ft from the driving range. Those poles are currently around 50ft in high. The proposal is to add wooden extensions on the first 4 poles. The net would be raised on the wooden extension 20ft.

Chairman Epperson asked if the wooden poles that are there now would stay and just have extensions.

Mr. Colwell explained they would either be extended or replaced. They would be wooden poles but they are not sure if they can safely get a 20ft extension on the top of the wooden pole.

Referring to the poles that go along the building on the south side, **Bob Diodati, General Manager WBTSCC**, stated that the netting stops 10ft from the top of the poles. If the 10ft extensions are put on top of that it will add back 20ft of net but it only raises the height by 10ft.

Mr. Colwell stated that by eliminating the 5000sf of parking and the island there would be 8 parking spaces removed. Those parking spaces would have to be relocated in order to keep the parking calculations in line. (He pointed out the location for the new parking spaces on the plan.) He noted that all of the Site Review Regulations are in compliance.

Vice-Chair Losik asked what will happen to the netting around the hitting stations.

Mr. Colwell pointed out a hitting station that is going to be removed. He explained the first pole is no longer necessary. The netting that goes around the station would be removed entirely, along with the hitting station. He continued that they are attempting to widen it out a little bit. The minimum driving range is about 300 yards. This driving range is about 200 yards, hence the higher nets. The proposal is to widen it out and raise the nets on both sides. This is strictly safety related. There are golf balls going over the nets all around. There are also golf balls going over the nets at the end of the driving range where it is 200 yards. The balls are going over the nets on both sides. They are trying to reduce the liability of the golf course and make it a safer area for those practicing driving.

Vice-Chair Losik asked the height of the net at the end.

Mr. Colwell replied it will be unchanged. It is about 50ft.

Attorney Donovan asked how far it is from the tee area to the third pole on the easement line.

Mr. Colwell replied that it is about 150 to 175 yards.

Chairman Epperson asked how far it is from the tee box to Mr. Georgopoulos' house. He commented it has to be about 200 yards to the house and the ball would have to go over a 50ft net at the end.

Mr. Colwell confirmed.

Chairman Epperson clarified that the last pole closest to Mr. Georgopoulos' house is 40ft.

Mr. Colwell confirmed.

Mr. Diodati stated that the changes to widen the landing area is an important safety measure. By moving the center target area away from the homes and The Ice House will result in fewer error shots but it does not change the calculations the PGA makes on their protectory of golf balls. By widening the landing area, fewer balls will go over that net but any one ball has just as much chance of going over the net whether the landing area is widened or not. He continued they are stuck on the 90ft because they are looking at the logistics that the PGA presented at previous meetings that the highest trajectory of golf balls come off of a seven iron. Some people can easily hit a golf ball over the net in Mr. Georgopoulos' backyard. The seven iron goes a little bit higher than the driver does. He asked if there are any questions on the reason for the 90ft.

Chairman Epperson commented that the trajectory report said that it could be higher; 100 to 110ft.

Vice-Chair Losik commented there are reports of 100 to 120ft.

Mr. Diodati explained these are averages of PGA players. There are people who can hit the ball higher. He noted that this project has become quite expensive. It is being done primarily for the safety factor and liability. In addition to all the work with the poles, the entire facility is getting new netting. The last time a major renovation was done to the range was 11 years ago. The nets are supposed to last a minimum of 10 years and the nets are due to be replaced.

Alternate Carter asked if there is a reason why the last three poles could not be pulled in 10 or 15ft away from the wetland.

Mr. Diodati replied that they did. The last two poles are in the small wetland by Mr. Georgopoulos' backyard. Those poles have been relocated 16 to 20ft out away from the easement line to stay out of the wetland.

Referring to the area adjacent to The Ice House, Chairman Epperson asked if there would be any objection to planting something there.

Mr. Diodati replied that he is open to that.

Chairman Epperson stated that from the very start of this application, he was thinking this was something that people would embrace because of the safety issue. Having been a member a long time ago, he has hit a lot of balls over that net. He never expected there would be this kind of opposition, especially when balls are coming over into yards and hitting windshields. He continued that he is sensitive to the fact that people are objecting to it.

Vice-Chair Losik stated that there is a space between the garage and The Ice House. There is also a space opening in the eastern boundary. She asked if there was a way to provide additional evergreen buffers in those open spaces to take away some of the visibility of the fencing.

Mr. Diodati explained the evergreens would have to go on the property owners' side of the nets. He is not opposed to that idea at all. He continued that would address patrons and children getting near the nets.

Attorney Tim Phoenix, representing WBTSCC, stated that the industry standards show that this height is needed. The big concern seems to be what it will look like. (He reviewed a series of photos for the Board.) He continued that both The Ice House and Mr. Georgopoulos' property are subject to the easement. The point is they bought their homes knowing this easement existed. (He read from the easement.) He stated that he understands the fact that the neighbors have a position on this and want to be heard. However, the rights of the club, which are set forth in the easement, have to be weighed with the rights of the property owner and the safety aspect this is designed to address. The cost of replacing the nets is hundredths of thousandths of dollars. They are doing it because they think it is what is best for the members and the public. He continued there was talk about birds flying into the net. Jason Bastille testified last time that in his 18 to 20 years at the club, there has only been a handful of birds that have been an issue. He stated the proposal is not obtrusive. What it looks like is far outweighed by the safety aspect that is trying to be achieved.

Referring to the idea of plantings behind the fence, Member Lord asked if the easement allows the Wentworth to go back there for planting and maintenance of the plants.

Attorney Phoenix stated that he reads the easement as yes it does. If this is approved with conditions that would require it, he would hope the neighbors would be cooperative and want to see that screening there.

Mr. Colwell stated that paragraph C of the easement states "unrestricted access and egress for all reasonable purposes, including construction, development, maintenance, management and repair for replacements and improvement for said country club use."

Member Low stated the reason this is before the Board is because it is going from 50ft to 90ft. He is amazed that there are not more neighbors in opposition.

Chairman Epperson opened to the public in favor of the application.

Jonathan Hixon, 106 Wentworth Road, stated he is a direct abutter next to The Ice House. The last time he was before the Board, he brought in about 30 golf balls that had gone over the fence and were collected from his yard. There have been a lot of things said about the visual aspect of this. (He submitted photos taken from his backyard.) He commented that he challenges anyone to say they can see the netting. (He showed a picture taken from the road.) He continued that he is friends of the Malinowskis and he respects their opinion, however, they have said on other occasions they do find golf balls at times in the back of their property. He stated his biggest concern is that if someone is in his yard and is injured due to a golf ball going over the net and this Board did not approve something that could prevent that from happening, that would be a very unfortunate event. The club has done a really good job of presenting their case. He noted that he is a direct abutter and is definitely in support. It is definitely a safety concern.

Jerry Quirk, 561 South Road, stated he is one of the many golfers that hit the ball over the net directly onto the abutting properties. The ball not only clears the net, it clears the trees above the net to get into The Ice House.

Stewart Frye, member of WBTSS since 1999, stated that balls go over the net. He noted that widening the landing would definitely make a difference. It would reduce the amount of golf balls that go over the net.

Thomas Hickson, 106 Wentworth Road, stated that he is the current club champion. He has seen a countless number of people on the driving range swinging at the tee and the balls go over the net. If new nets are going to be put in, it has to be done right.

Speaking to the owners of The Ice House, Chairman Epperson stated that part of their objection the last time this was before the Board, in addition to the 90ft poles, was the aesthetics of the whole thing. He asked if they were able to convince WBTSSC to plant the evergreens between the garage and by The Ice House, in a way that kept the children away from there and protected them, if this is something they would be interested in doing.

Meg Bishop, The Ice House, replied she believes so if they were kept up.

Keith Malinowski, Owner of The Ice House, stated the in regards to the deed it was not really a voluntary signing. It was either give the piece of property or lose it because he was locked out of The Ice House.

Chairman Epperson asked for other comments in support or in opposition.

Attorney Paul McEachern, representing Louis Georgopoulos, stated that they are not here to interpret the easement. The job is to look at the zoning ordinance and say yes or no on the conditions. There has been a lot of talk about balls going over the net and potential injuries. However, they have not heard of anybody getting hurt. There is always a first time but he also knows that if there was a documented case of someone getting hit with a golf ball they would have heard about it. He stated that Mr. Georgopoulos is at the end of this range. The 90ft in his backyard is literally on land that he owns. This is a residential area. There is one resident that is clearly in favor but Mr. Georgopoulos is against this and it is going to be in his backyard. He does not think it passes the common sense test for the club to do this, especially with the sprouting of so many mcmansions along the course. Someday there will be all houses in that area. There is a balancing test here. Mr. Georgopoulos would say that since they have raised it 10ft there have hardly been any balls go over at his end.

Mr. Georgopoulos stated that no balls have gone over the net in 25 to 30 years since he's been there. (He showed pictures from his backyard showing the wetlands.) He stated they filled in the pond that was there. He stated he owns 375ft at the end is a culvert that goes over to BJ's Boathouse and water goes there. When they filled all this in is when this became wetlands and not until then.

Chairman Epperson asked when the photos were taken.

Mr. Georgopoulos replied when he was buying the house. He continued to talk about the land to the rear of his property and the wetlands.

Mrs. Bishop stated that after the July meeting her family discussed the situation. They agree that there are balls coming over the net. This year there have been more golf balls. She is worried about the customers on the back of the lot. Mr. Georgopoulos and his wife are great neighbors and she understands their concerns; however, they do not have customers on their back lawn. Her family has worked too hard for 38 years to lose it because a golf ball comes over and hits someone. She continued that she feels very conflicted. She wants to know that if they build a 90ft fence what guarantee they have if balls come over. At the last meeting, there was discussion about technology with golf clubs. If that changes in 5 years and the golf balls come over where do they stand?

Chairman Epperson stated that if this is a reoccurring problem in 5 years with golf clubs, yes, they will be back again. Right now, this is the application and this is the technology that they have to deal with. He personally feels that this is the best solution to a potentially bad situation.

Mrs. Bishop asked if there is any guarantee for balls coming over the net.

Chairman Epperson stated that if a ball comes over and someone is hit or property is damaged he would think the club's liability insurance would come into play.

Attorney Phoenix stated that balls going over the net into private property is a civil issue. Insurance is the first line of defense for anyone. If a person or property got hurt the person would have the right to raise a claim against the property of where it happened or the Wentworth or against the person that hit the ball. He continued that what the Wentworth is concerned about is meeting the standards for today and the foreseeable future.

Mr. Colwell stated it is a fairly lengthy deed. He feels all the facts should be put on the table. He read from the deed; "In association with the flight and or impact of golf balls, the owner of this easement (Wentworth) shall not be responsible for the replacement of broken window glass in homes and automobiles, if said break is a direct result of the flight and or impact of a golf ball coming from the golf course. Also, the golf player who hit the ball, the owner of this easement and the golf course, shall not have any liability whatsoever for any damage to a structure or injury."

Mr. Diodati stated that to mitigate the risk of golf balls going over the netting, the club uses compression balls that fly approximately 90% of height and distance of a range ball. He commented that he feels this will take care of the problem for the foreseeable future. They do not want to be back before the Board.

Mr. Crawford stated that at the last meeting the Board discussed the tree height being 70 or 80ft. There was a PGA study that says a pro-golfer can hit the ball up to 95ft. There was testimony last time that the balls are 90% balls and that was said again tonight. Right away, it would be somewhat below the 90ft. The real issue is not the height of the ball at the peak of its trajectory. The issue is how high is the ball when it crosses the play and the net. Is that going to be above 90ft. He would suggest that it is going to be lower in almost every case.

Speaking to Member Lord, Chairman Epperson asked how he feels about the 90ft.

Member Lord stated that he probably could live with the 90ft but he would want to add some conditions. What bothers him is to hear that they won't pay for a windshield for a person's car. That whole argument is petty.

Alternate Carter stated that he suspected that the last three poles worked their way down to 85 to 75ft, at the farther end near the wetlands. He agrees with the 90ft The Ice House area.

Member Low stated that it is known where he stands.

Vice-Chair Losik commented that maybe some consideration could be given to staggering that at the end, maybe the two 90ft poles. She is not sure if that could be done. The trajectory studies from Fullerton seem to show that it could be done. It shows that this is a reasonable expectation. She also thinks that 202.10, buffer between residential and non-residential, is reasonable. There is some open area and it could be improved. Someone made mention about the trees near the tennis building and they are looking in need. She also wonders if in the area where paving is being taken out, maybe some trees could be added in there. She continued that in looking at the functionality of the space, it is a narrow space for a driving range. She was concerned about the netting above the trees but there is already netting above the tree line. Some of the houses on the east of the driving range are actually dealing with that fundamental visual.

Member Quinn stated the Wentworth are well within their rights. He continued that he likes Mr. Georgopoulos and he has known him a long time. He stated they have to think about people getting hurt.

Member Quinn stated he is in favor of the application. He thinks they have done a nice job and have done everything they can to try to keep golf balls from landing on other people's property.

Selectmen's Rep Jenness stated that on the 14th of June she was with two friends at The Ice House. They were sitting at the table right beside the barn where there were two vehicles parked. She continued that they were talking about the request for a net and what could be seen down the line. Suddenly, there was a sharp crack and the ball dropped 10ft from them. (She presented the ball from her pocket.) She stated that needless to say she is concerned about safety.

Member Low stated that he has been on the Board for a long time. The Wentworth has come before the Board probably ten times and he has always voted for them. He voted for the tennis court, the new parking, the drainage component and all. In this case, it is in a residential area and he always sticks with the resident. He just thinks the location is bad. People, traffic, The Ice House, it shouldn't be there. To go from 50 to 90ft, if it was in his backyard he would be fighting like Mr. Georgopoulos. He commented that the Board can out vote him but he is not changing his vote. It's no.

Hearing no further comments, Chairman Epperson closed the public hearing at 8:55 p.m.

**Motion by Jeffrey Quinn to take jurisdiction on Case #06-2017. Seconded by Pat Losik.
All in favor.**

Chairman Epperson stated this should be approve with conditions. The conditions should be in favor of the residents, The Ice House and Mr. Georgopoulos to create a buffer. He thinks that Vice-Chair Losik had a good point about the trees by the tennis shed, which need to be replaced. Maybe some higher foliage should be put in at that corner so Mr. Georgopoulos can't see it.

Vice-Chair Losik stated there was also discussion in July about no lights from dusk to dawn in perpetuity.

Chairman Epperson commented no multi-levels. He summarized; no multi-levels, no lights from dusk to dawn and trees near The Ice House.

Member Lord stated the poles are 2ft in diameter. He does not think they need to line the whole thing but they should be clustered on the back of the poles.

Chairman Epperson stated his idea is that there is a gap near the barn.

Vice-Chair Losik pointed out there is another opening on the east towards Mr. Georgopoulos' property.

Attorney Donovan stated that the Board may want to delegate the Technical Review Committee the right to review the screening plan and sign off on the plan. The motion would have a condition that there would be screening by The Ice House and by Mr. Georgopoulos' house, with additional screening along the indoor tennis court area, with the specific screening being approved by the Technical Review Committee. The other conditions would be the use of the driving range from dawn to dusk only, no lights and no two tier tees in perpetuity.

Member Lord pointed out that last time the Board wanted the fall zone poles on the plan, the plans stamped by a New Hampshire licensed professional engineer and Best Management Practices put into place for the site.

Speaking to Mr. Colwell, Chairman Epperson asked if the plans are stamped.

Mr. Colwell confirmed.

Vice-Chair Losik asked if there is any opportunity to angle the height of the net.

Chairman Epperson stated that it sounds like someone could theoretically hit the ball over the end of that and end up in Mr. Georgopoulos' yard.

Attorney Phoenix stated that is the concern. They would prefer not to lower the nets.

Mark Galvin, Heather Drive, requested for the public hearing to be reopened because he was held up.

Chairman Epperson stated the public hearing is closed.

Mr. Galvin asked for photos of the poles. (He submitted photos to the Board.)

Chairman Epperson explained they have had a meeting on this for the past two hours. The Board is deliberating if it is going to be approve and what it will be approved with. He continued that the question is whether the third pole on the end on the north side can be shorter, the last two. The last one is already 40f but the other two are 90ft.

Mr. Diodati explained the reason there are not higher poles at the end, even though balls will go over the end, is because nothing is there but woods. If the Board wanted the poles to go from 90 to 80 to 50, they would still build it and be okay with it.

Attorney Phoenix stated that he objects to the photos that were just turned in as being part of the record, as they were turned in late. (Mr. Galvin's photos.)

Motion by Bill Epperson that the last two pictures that were presented at 9:05 p.m., during the meeting, not be put into the public record because it was after the public hearing was closed. Seconded by Jeffrey Quinn. All in favor.

Member Quinn stated that they have made a reasonable case as to why the 90ft poles need to be at that particular height to protect the property that is beyond the driving range. He is not in favor of lowering poles arbitrarily.

Chairman Epperson stated that if the poles went from 90 to 80 to 50, it is going to hit into the wetlands and it is not going to go into Mr. Georgopoulos' house. He thinks it is a legitimate compromise.

Selectmen's Rep Jenness stated that to make it the least visual it should be made 90ft right to the end. To have a diagonal in there, the more the eye is drawn to it. To make it the least visual, it should be straight up and straight across.

Vice-Chair Losik asked if she is suggesting 90ft all the way to the end.

Selectmen's Rep Jenness stated that she would because she thinks it would be seen less.

It was the consensus of the Board to leave the poles the way they were presented in the proposal.

The list of conditions were reviewed:

- No multi-level tee box in perpetuity.
- No lighting from dusk to dawn in perpetuity.
- Planting of trees in the bare spots near The Ice House, on Mr. Georgopoulos' side and around the parking area near the tennis building.

- The screening will be reviewed and signed off by the Technical Review Committee.
- Add the language from the fall zone from the approval of March 2017.
- Best Management Practices for the site.
- Erosion Control

Motion by J.M. Lord to approve the Major Site Development Plan by Wentworth by the Sea Country Club Limited Partnership for property owned and located at 60 Wentworth Road, Tax Map 24, Lot 61-26, to replace an existing 50' golf net and nine (9) 50' wood poles with a ninety 90' golf net and nine (9) 90' steel poles and removing pavement relocation of existing netting and poles around pavement to be removed and poles and netting to the south are proposed to have 10ft and 20ft extensions. Property is in the Single Residence District, Case #06-2017, with following conditions;

- No multi-level tee box in perpetuity.
- No lighting from dusk to dawn in perpetuity.
- Planting of trees in the bare spots near The Ice House, on Mr. Georgopoulos' side and around the parking area near the tennis building.
- The screening will be reviewed and signed off by the Technical Review Committee.
- Add the language from the fall zone from the approval of March 2017.
- Best Management Practices for the site.
- Erosion Control
- With the flexibility to relocate the poles with the extensions.

Seconded by Pat Losik.

Vote: 6-1-0

- Conditional Use Permit by Dintino Building for property owned by Carol Ann Nooney and located at 432 Wallis Road, Tax Map 18, Lot 92, for an accessory dwelling unit, per Section 506 of the Rye Zoning Ordinance. Property is in the Single Residence District. Case #10-2017.

Robert Mallet, representing the applicant, spoke to the Board. He stated they are requesting a Conditional Use Permit for an accessory dwelling. Ms. Nooney would like to have an apartment for her mother when she comes to Rye. The building is approved for four bedrooms. The site plan was done in 2006. Construction has started but the apartment would not be able to be put in without the Board's approval.

Referring to the drawings, Member Quinn stated the rough drawings the lines are 25x24. There is some other paperwork that suggests it is 26x28.

Mr. Mallet stated the building is 24x25.

Alternate Carter asked if a new septic system was going in.

Mr. Mallet replied no. The current septic was sized for a four bedroom house originally. (He reviewed the plans for the Board.)

Selectmen's Rep Jenness asked what happens to the roof.

Mr. Mallet explained that the roof is going to be gabled on the end and will tie into the existing roof.

Chairman Epperson asked about the runoff from the roof.

Mr. Mallet stated that it will be guttered and drain out into the ground. He pointed out it is an interior perimeter drain.

There were no further questions from the Board.

Motion by Jerry Gittlein to take jurisdiction. Seconded by Pat Losik. All in favor.

Chairman Epperson opened to the public for comments or questions. Hearing none, he closed the public hearing at 9:24 p.m.

Motion by Jeffrey Quinn to approve the application as presented, Case #10-2017. Seconded by Pat Losik. All in favor.

- Conditional Use Permit by Shawn McCarthy & Marcel Miranda for property owned by Wayne Powers and located at 424 Sagamore Road, Tax Map 18, Lot 50, for an accessory dwelling unit, per Section 506 of the Rye Zoning Ordinance. Property is in the Single Residence District. Case #11-2017.

Marcel Miranda, applicant, stated that they are looking for a Conditional Use Permit for a house they are looking to purchase. It is basically an older farmhouse that needs some updating. The accessory dwelling unit makes sense. It is part of the plan. He pointed out that the septic system is new and was designed for the three bedroom. The accessory dwelling unit will be a one bedroom and will be located in the garage. The rest of the house will have two bedrooms.

Chairman Epperson asked why Mr. Powers, the owner of the property, is not present.

Mr. Miranda stated that it is not really for Mr. Powers.

The Board reviewed the plans.

Member Low asked the applicant if he is going to live at the property.

Mr. Miranda confirmed.

Motion by Jeffrey Quinn to take jurisdiction on Case #11-2017. Seconded by Jerry Gittlein. All in favor.

Chairman Epperson opened to the public for comments or questions. Hearing none, he closed the public hearing at 9:30 p.m.

Motion by Jeffrey Quinn to accept as proposed Case #11-2017. Seconded by Pat Losik. All in favor.

- Amendment to the Breakers Condominiums approved by the Planning Board in January 1980, recorded at the RCRD D-9440 on April 18, 1980 for Andrew Foss of 780 Ocean Blvd, Tax Map 23.1, Lot 29-16, for a solar array off southern deck. Property is in the Business, Coastal Overlay District. Case #12-2017.

Andrew Foss, applicant, stated the he is in the process of electrifying his house and getting rid of the old oil heating furnace to use geothermal. He has been through the Conservation Commission and they liked it. He has a waiver from the ZBA. He has talked to four of his abutters across the street. So far, everyone has liked it. At least one has written a letter in support. He noted that the solar panels that are being proposed are flat and non-reflecting.

Motion by Pat Losik to take jurisdiction over the application. Seconded by Jerry Gittlein. All in favor.

Chairman Epperson opened to the public for comments.

Regina Murtagh, 795 Ocean Blvd., asked to see the photos. She commented that she wanted to be sure it was not above the building. (She continued to review the plans.)

Alternate Sherman stated it looks like it is tucked away behind the house.

Mr. Foss confirmed.

Alternate Sherman asked if the garage is being eliminated

Mr. Foss explained it is a short garage and this is on that level. It could be thought of as a carport.

Mr. Murtagh commented it is fine.

Hearing no further comments from the public, Chairman Epperson closed the public hearing at 9:37 p.m.

Motion by Jeffrey Quinn to accept the application for Case #12-2017 as presented. Seconded by Jerry Gittlein. All in favor.

VI. New Business

- Conceptual Consultation by Andrew Foss for the Breakers Condominiums property located 780-792 Ocean Blvd, Tax Map 23.1, Lot 29, for the discussion of enabling floodproofing for 8 structures. Property is in the Business District, Coastal Overlay District and SFHA. Case #13-2017.

Andrew Foss, representing the Breakers Condominiums, spoke to the Board. He explained that one of the units was up for sale. The buyer tried to get a mortgage and could not get an FHA Mortgage. That was when it was discovered that the condominium insurance did not have a Master Flood Plan Policy. The reason it did not qualify for an FHA Mortgage was because there was no flood insurance. That was not just for that one unit but for all nine units. The condo docs have to be changed. It takes a vote of 75% and they have taken vote after vote on different ideas. He no longer knows how to get the approval to change the docs. He pointed out the docs are old and outdated. These were done when it was not contemplated that flood insurance would be needed. He noted that some of the residents want insurance and some want to floodproof, which would eliminate the need for flood insurance to get a mortgage. The first order of business is to solve the problem of how new buyers can get FHA Mortgages on the property. The values of the units are down and investment is not going into the property.

Member Low pointed out that it used to be for any mortgage not just for FHA.

Mr. Foss stated that in all the ideas that have been considered, the one thing that the residents can agree on is they want to make the decision for their own building on whether to insure or floodproof. The way to do that is to switch to an Home Owner's Association (HOA). This will not change the rules at all. The condo rules become covenants, the driveway becomes an easement and the septic distribution fields become an easement. What it does is when someone goes to the bank to get a loan, they know how to deal with a privately owned piece of property. He asked how the Board would feel about this kind of a plan.

Alternate Carter stated that this would basically become a subdivision. The lots would be divided up, as opposed to one big unit.

Chairman Epperson stated it would be a Major Subdivision. He stated that the Major Subdivision Regulations would give a real good snapshot of what it would take. The Board would take a look at that plan, massage it and find out if any relief is needed.

There was more discussion on the process.

VII. Old Business/Communication

- **None**

VIII. Other

Nicole Paul spoke to the Board in regards to her interest in becoming an alternate on the Planning Board.

Motion by Pat Losik to accept Mrs. Paul as an alternate to the Planning Board. Seconded by Jerry Gittlein. All in favor.

IX. Bills

- **Sebago Technics - \$378.75 – 561 South Road**

Motion by Pat Losik to pay Sebago Technics in the amount of \$378.75. Seconded by J.M. Lord. All in favor.

- **Sebago Technics – \$918.75 - Binnie Subdivision**

Motion by Pat Losik to pay Sebago Technics in the amount of \$918.75. Seconded by Jerry Gittlein. All in favor.

- **Sebago Technics - \$562.50 – Old Ferry Landing**

Motion by J.M. Lord to pay Sebago Technics in the amount of \$562.50. Seconded by Pat Losik. All in favor.

Adjournment

Motion by Mel Low to adjourn at 10:20 p.m. Seconded by Mel Low. All in favor.

Respectfully Submitted,
Dyana F. Ledger

September 5, 2017

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2018-02

Re: Accessory Dwelling Units

- I. Amend the Section 506.3 Performance Standards for Accessory Dwelling Units as follows: (Note: Deleted language ~~struck through~~. New language ***emboldened and italicized***).
- G. An approval shall be obtained from NHDES relative to the adequacy of the on site waste disposal system. ***As required by RSA 674:72, V, prior to constructing an accessory dwelling unit, an application for approval for a sewage disposal system shall be submitted in accordance with RSA 485-A as applicable. The approved sewage disposal system shall be installed if the existing system has not received construction approval and approval to operate under current DES rules or predecessor rules, or the system fails or otherwise needs to be repaired or replaced.***
- O. ***[new] An accessory dwelling unit shall not be permitted in single family dwellings attached to each other, such as town houses.***
- P. ***[new] An accessory dwelling units shall not be permitted with manufactured housing.***
- Q. ~~Q.~~ All other zoning requirements shall be met.
- II. Add a new Section 506.5 as follows and re-index present Sections 506.5 and 506.6 accordingly. (Note: New language ***emboldened and italicized***).
- 506.5 Condominium Conveyance. Notwithstanding the provision of the Condominium Act, condominium conveyance of an accessory dwelling unit separate from that of the principal dwelling unit is prohibited.***

Explanation

During 2017 the Legislature passed two bills affecting accessory dwelling units. HB 238 strengthens the septic system requirements for an accessory dwelling unit. HB 265 allows municipalities to prohibit accessory dwelling units in attached single family dwellings and with manufactured housing (i.e. mobile homes). HB 265 also allows municipalities to prohibit the condominium conveyance of an accessory dwelling unit separately from the principal dwelling unit.

The amendment incorporates these legislative changes into Rye's requirements for accessory dwelling units.

RYE PLANNING BOARD

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

Notice of Decision

Waivers

Applicant/Owner: WBTSCC Limited Partnership

Property: 60 Wentworth Road, Rye, Tax Map 24, Lot 51-26
Property is in the Single Residence District

Case: Case #06-2017

Application: Major Site Development Plan by WBTSCC Limited Partnership for property owned and located at 60 Wentworth Road, Tax Map 24, Lot 61-26 to replace an existing 50' golf net and nine (9) 50' wood poles with a ninety 90' golf net and nine (9) 90' steel poles and removing pavement, relocate existing netting and poles around pavement to be removed and poles and netting to the south are proposed to have 10ft and 20ft extensions. Property is in the Single Residence District. Case #06-2017.

Date of Decision: Tuesday, October 10, 2017

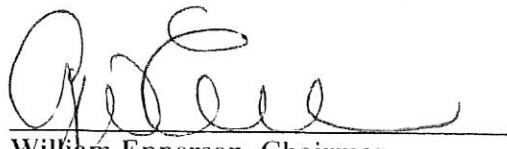
Decision: x Approved

Motion by Jeff Quinn on the waiver request from Section 403.2D (3-10) because specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out spirit and intent of the regulations. Seconded by JM Lord. All in favor.

Motion by Jeff Quinn to accept the waiver request from Section 403.2(E-J) because specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out spirit and intent of the regulations. Seconded by JM Lord. All in favor.

Motion by Jeff Quinn to accept the waiver request from Section 405.3 (A-E) because specific circumstances relative to the site plan, or conditions of the land in such site plan, indicate that the waiver will properly carry out spirit and intent of the regulations. Seconded by JM Lord. All in favor.

10/12/17
Date



William Epperson, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: WBTSCC Limited Partnership

Property: 60 Wentworth Road, Rye, Tax Map 24, Lot 51-26
Property is in the Single Residence District

Case: Case #06-2017

Application: Major Site Development Plan by WBTSCC Limited Partnership for property owned and located at 60 Wentworth Road, Tax Map 24, Lot 61-26 to replace an existing 50' golf net and nine (9) 50' wood poles with a ninety 90' golf net and nine (9) 90' steel poles and removing pavement, relocate existing netting and poles around pavement to be removed and poles and netting to the south are proposed to have 10ft and 20ft extensions. Property is in the Single Residence District. Case #06-2017.

Date of Decision: Tuesday, October 10, 2017


Decision: x Approved

Motion by J.M. Lord to accept the application as complete and move to a public hearing. Second by Pat Losik. All in favor of moving to a public hearing. Motion by Jeff Quinn accept jurisdiction over Case #06-2017. Seconded by Pat Losik. All in favor.

Motion by JM Lord to approve the application with the following conditions. Seconded by Pat Losik. Approved in a 6 to 1 vote.

- Amend the plans to depict the new steel pole fall zone as presented to the Board;
- If birds flying into the net become a problem, then applicant will install bird deterrent;
- The use of the driving range shall be from dawn to dusk with no lights, and there shall be no 2-tier Tee's in perpetuity;
- The flexibility to relocate poles along the tennis building;
- The applicant shall follow Best Management Practices for all construction; and
- The screening planted near the Ice House and Mr. Georgeopolous' house and the additional screening by the indoor tennis court area with the specific screening to be approved and signed off by the Technical Review Committee (TRC).

10/12/17
Date


William Epperson, Chairman
Rye Planning Board

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

RYE PLANNING BOARD

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

Notice of Decision

Applicant: Dintino Building

Owner: Carol Ann Nooney

Property: 432 Wallis Road Rye, Tax Map 18, Lot 92
Property is in the Single Residence District

Case: Case #10-2017

Application: Conditional Use Permit by Dintino Building for property owned by Carol Ann Nooney and located at 432 Wallis Road Tax Map 18, Lot 92 for an accessory dwelling unit, per Section 506 of the Rye Zoning Ordinance. Property is in the Single Residence District. Case #10-2017.

Date of Decision: Tuesday, October 10, 2017

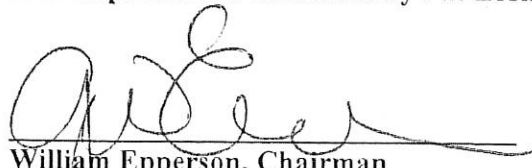
Decision: x Approved

Motion by JM Lord that the application is complete and to move to a public hearing on its merits. Seconded by Pat Losik. All in favor.

Motion by Jerry Gittlein to take Jurisdiction of the application. Seconded by Pat Losik. All in favor.

Motion by Jeff Quinn to accept the application as presented. Seconded by Pat Losik. All in favor.

10/12/17
Date


William Epperson, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant: Shawn McCarthy & Marcel Miranda

Owner: Wayne Powers

Property: 424 Sagamore Rye, Tax Map 18, Lot 50
Property is in the Single Residence District

Case: Case #11-2017

Application: Conditional Use Permit by Shawn McCarthy & Marcel Miranda for property owned by Wayne Powers and located at 424 Sagamore Road, Tax Map 18, Lot 50 for an accessory dwelling unit, per Section 506 of the Rye Zoning Ordinance. Property is in the Single Residence District. Case #11-2017.

Date of Decision: Tuesday, October 10, 2017

Decision: x Approved

Motion by Pat Losik that the application is complete and to move to a public hearing on its merits. Seconded by JM Lord. All in favor.

Motion by Jeff Quinn to take Jurisdiction of the application. Seconded by Jerry Gittlein. All in favor.

Motion by Jeff Quinn to accept the application as presented. Seconded by Pat Losik. All in favor.

10/12/17
Date


William Epperson, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner:

Andrew Foss

Property:

780 Ocean Blvd, Tax Map 23.1, Lot 29-16
Property is in the Single Residence District

Case:

Case #12-2017

Application:

Amendment to the Breakers Condominiums approved by the Planning Board in January 1980, recorded at the RCRD D-9440 on April 18, 1980 for Andrew Foss of 780 Ocean Blvd, Tax Map 23.1, Lot 29-16 for a solar array off southern deck. Property is in the Business, Coastal Overlay District, Case # 12-2017.

Date of Decision:

Tuesday, October 10, 2017

Decision:

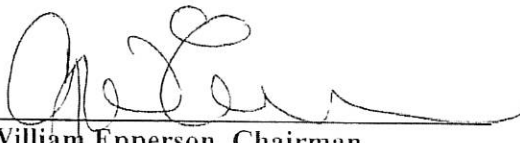
 x Approved

Motion by Pat Losik that the application is complete and to move to a public hearing on its merits. Seconded by JM Lord. All in favor.

Motion by Pat Losik to take Jurisdiction of the application. Seconded by Jerry Gittlein. All in favor.

Motion by Jeff Quinn to accept the application as presented. Seconded by Jerry Gittlein. All in favor.

10/12/17
Date



William Epperson, Chairman
Rye Planning Board