

TOWN OF RYE --PLANNING BOARD

MEETING

Tuesday, December 4, 2018, 7:00 p.m.

Rye Town Hall

Planning Board Members Present: Chairman Bill Epperson, Vice-Chair Patricia Losik, Jeffrey Quinn, Jerry Gittlein, Steve Carter, Selectmen's Rep Priscilla Jenness and Alternate Katy Sherman.

Others Present: Planning & Zoning Administrator Kimberly Reed

I. Call to order and Pledge of Allegiance

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

Alternate Katy Sherman was seated for J.M. Lord.

II. Approval of Minutes:

Motion by Jerry Gittlein to move the approval of minutes to the end of the meeting. Seconded by Priscilla Jenness. All in favor.

III. Public Hearings on Proposed Zoning Amendments

****Please see attached Proposed Zoning Amendments***

- a. Petition to amend RZO Section 505.3 Wireless to add Tax Map 23/Lot 2
Withdrawn by the Selectmen.**

- b. Proposed Zoning Amendment 2019-09 Re: Driveways**

Vice-Chair Losik read Proposed Zoning Amendment 2019-09 regarding driveways. It was noted that under explanation the word "to" will be changed to "in".

Chairman Epperson opened to the public.

Peter Crawford, 171 Brackett Road, suggested adding the words "or from". ***A private way for vehicles which provides entrance, exit, access or approach to or from land in Rye to or from a public street.***

There was some discussion about changing this language in the Land Development Regulations (LDR) as well to avoid any conflicts. This can be done at any time because changes to the LDR do not need a town vote.

The board did not have any issue with the amendment suggested as it was felt that it is not a substantial change.

Chairman Epperson closed the public hearing at 7:08 p.m.

Motion by Patricia Losik to amend Proposed Zoning Amendment 2019-09, as aforementioned, second line "from land in Rye to or from a public street", 'Explanation', second line fourth word to "in" rather than "to". Seconded by Katy Sherman. All in favor.

Motion by Jeffrey Quinn to move Proposed Zoning Amendment 2019-09 to the ballot as amended. Seconded by Patricia Losik. All in favor.

c. Proposed Zoning Amendment 2019-11 Re: Growth Ordinance

The board reviewed Proposed Zoning Amendment 2019-11 regarding the rescission of the Growth Management.

Chairman Epperson opened to the public.

Mr. Crawford asked why it is felt this needs to be done.

Chairman Epperson commented that this could be challenged in court. This amended is to delete Article IX.

Mr. Crawford submitted information to the board on the housing statistics for Rye over the last 50 years, which was taken from the Town Annual Reports. He asked why this needs to be repealed if the town is never going to get to the 47 cap.

Chairman Epperson explained that this was a recommendation from Attorney Donovan who felt this could be challenged in court and the town would not win.

Mr. Crawford stated that he thinks they should keep it as is. If there is a challenge, a special town meeting could be called at that point or a variance could be granted to the ordinance.

Steven Borne, 431 Wallis Road, stated that this was a problem thirty years ago and was the reason this was put in. He would like to see the discussion around where the growth is really hazardous to Rye. The land is being stressed in certain areas. Maybe this should be updated to where the land needs to be protected.

Chairman Epperson pointed out that the town has never reached the cap.

Mr. Borne stated that in 2019 there is a different problem. It is not the number of developments. It is the stress on the land.

Vice-Chair Losik stated that because the land is stressed, there are limitations to development. The board has talked about water and bedrock. There are natural reasons why the town is a little bit limited. However, if the town gets municipal wide septic, it will change the equation. Is the town being forward

thinking by removing it at this point? She is not sure about the legal issues that Attorney Donovan was concerned about.

Note: *Attorney Michael Donovan joined the meeting by phone.*

Attorney Donovan explained that Article IX has not been used so nothing bad will happen by leaving it in; however, if it is challenged, it might not stand up.

Vice-Chair Losik stated that Mr. Crawford had submitted information back to 1969 that showed the town had some time periods with significant development. Mr. Borne noted that something in the future could change. Right now, there are certain limitations on properties because of the stresses of the natural resources. However, what happens if the town, at least in some areas, start to have more systems (septic) and different opportunities that support infrastructure development. She asked if they are impeded if it is taken out.

Attorney Donovan stated that if it is taken out there are no limitations. The cap is 47 and the town hasn't really come close to that. He does not think it is going to be challenged in the near future. He commented that there is no problem with deleting it.

Chairman Epperson commented that it could also be left in as it is benign.

There was discussion on the last possible dates to have a second hearing on this amendment.

Chairman Epperson explained that the board can either table this and have another hearing or withdraw it because it doesn't seem like it is that important. He noted that this was really just an attempt to clean up the ordinance. He asked the board how they would like to proceed.

The board agreed to leave the ordinance as is and withdraw the proposed amendment.

Motion by Bill Epperson to withdraw Proposed Zoning Amendment 2019-11. Seconded by Jerry Gittlein. All in favor.

- d. Proposed Zoning Amendment 2019-10 Re: IDDE
MS-4: Municipal Separate Storm System
(Illicit Discharge Detection and Elimination Ordinance)

Julie LaBranche, Rockingham Planning Commission, explained the ordinance is a requirement of the revised EPA MS-4 Permit that regulates stormwater from municipal properties and municipal systems. The permit has yearly benchmarks that each community has to meet. The first year's task is to adopt an IDDE authority of some kind. (She read from the proposed ordinance; Section 507A.) She noted that the IDDE Ordinance has a list of prohibited activities, addresses the applicability, and covers what it means to have an illegal discharge and connection. It also covers the purpose of surface water protection, enforcement and penalties. It outlines the enforcement and authority of the community. She pointed out that only a portion of Rye is served by a sewer system. In those instances, the permit is looking at the illegal tie-ins to the sewer system. The intent is to prevent stormwater or other non-sewer discharges in the system because it will overload. For a town like Rye, illicit discharge is mostly going to be illegal dumping into catch basins (chemicals or materials), or open drainage swales that connect to the system (sewer pump, pool water, animal or yard waste). (Ms. LaBranche read from the list of exclusions from the

ordinance; allowable.) She stated that putting this ordinance forward is a requirement of the MS-4 Permit. The permit term ends June 30th. The other part of this is the Illicit Discharge and Detection Elimination Program. A document will be prepared and adopted by the Selectmen covering a policy for program administration. This document covers the procedure for processing violations that are found. The third part of the program covers who will administer the program and look for illicit discharges. It outlines how the town will react to the process. She explained that if the town does not adopt the ordinance, the town still has to go forward with the other parts of the program, which just require the Selectmen to adopt programs and procedures. She recommended that the town form an MS-4 Committee to work on items that will be required under the permit, such as messaging, and adoption of stormwater and sediment control regulations.

Chairman Epperson noted that there are a number of horse farms in Rye. He asked how this would affect those property owners.

Ms. LaBranche explained that agriculture is protected by State and Federal Statutes. However, there is still a responsibility, if something is entering the MS-4 system that is a contaminant, to do something about it. The Department of Agriculture has a Mitigation and Oversight Bureau that could work with a property owner to build a best management plan.

Chairman Epperson commented that he is afraid of overburdening people with regulations. Yes, people throwing motor oil in a drain is a problem. However, when people are trying to run their business and could possibly be in violation, this becomes a concern to him.

Ms. LaBranche noted that farms are required to have a best management plan on file. They are supposed to do things like manure containment. She does not think that in a small town like Rye that this will come up that often. She explained that every community is subject to the same permit. It applies more intensely in urbanized areas and less frequently in small communities because there is not as much activity. Education and prevention is key. There is an education and messaging requirement under the permit. She does not see this as being extremely heavy handed or restrictive. It is more common sense.

Planning Administrator Reed spoke in regards to preparation that she, Dennis McCarthy and Peter Rowell have put into this in order to move this forward.

The Board reviewed the proposed ordinance.

Vice-Chair Losik stated that Section 6 covers surface water protection. That is a section that may impact development that goes before the Board. This may have an impact to conditions of approval at times. She continued that it seems like the town needs to go forward with this but it sounds like it will be a bit of a struggle.

Ms. LaBranche stated it is going to be a process. The first line of business is to get the authority in place. The program is going to evolve over time. One of the requirements is to do a complete total systems mapping. She noted that she and Dennis McCarthy worked with the Seacoast Stormwater Coalition. They created impaired waters maps to help the communities identify their outfalls in order to prepare outfall maps. The MS-4 system is not every single part of town. It is just places where stormwater is managed. It doesn't include drainage along the state highways. It includes town local roads, town properties and anywhere stormwater is physically managed. She commented that the MS-4 Permit is to make sure that U.S. and local waters are protected.

Chairman Epperson opened to the public.

Peter Crawford, 171 Brackett Road, noted that under the definition of “pollutant” there is no exception for small amounts. It would seem to him that if stormwater flows across someone’s yard that has been fertilized, and it gets in the drainage system, they would be in violation. He does not see the specificity of what is considered a pollutant in the federal regulation.

Selectman Jenness stated that another problem is that it does not involve state roads. In Rye Beach, there are many lawns that are fertilized and they flow into Eel Pond; however, the outlet is state regulated.

Ms. LaBranche replied this becomes the state’s problem. She explained that it is not stormwater or snow melt that runs across someone’s lawn and could potentially pickup fertilizers and pesticides. It is when someone is dumping those things into the town’s MS-4 system in quantities that are detrimental. Part of the outreach requirement involves four required messages; pet waste, yard waste, fertilizers and pesticides. Those messages have to be done every year. The messages have to hit residences, businesses, industrial and institution audiences. The normal everyday fertilizer gets taken care of through the educational process. She pointed out that the program documents would actually set limits and have the details.

Chairman Epperson asked what would happen if it is not adopted.

Ms. LaBranche stated that an option would be to continue to work on the ordinance and the program documents. The town would report that they are working on those things and will put forth an ordinance at the next town meeting.

Vice-Chair Losik stated that last year, Rules and Regulations did a lot of work on the Aquifer and Wellhead Protection language. There was a lot of work done to strengthen this and there are partnerships with existing portions of the ordinance. She hates to see this wait another year but she sees that they are not ready.

Chairman Epperson stated that he would like to talk to the Town Administrator and the Public Works Director to see where they are on this.

Ms. LaBranche stated that they have completed the notice of intent with the outfall map. That was filed for October 1st. The conversation has since been on what the year one requirements are and what can be accomplished.

The Board discussed whether this could be reviewed and revised before the deadline for the 2019 warrant.

Vice-Chair Losik stated that this is really important. It may make sense to set up a subcommittee early to start work on this for 2020.

Ms. LaBranche noted that she will put together a list of questions to send to the Region 1 EPA Office.

Hearing no further comments from the public, Chairman Epperson closed the public hearing at 8:21 p.m.

Motion by Jerry Gittlein to table Proposed Zoning Amendment 2019-10; IDDE, for further review. Seconded by Jeffrey Quinn. All in favor.

e. Proposed Zoning Amendment 2019-12 Re: Fees

Chairman Epperson read the proposed amendment and opened to the public for comment.

Mr. Crawford stated that he did a research of the last 50 years in Rye. He found some warrant articles from quite a few years ago where this came up. He thinks the town voted at that point to exempt anything under \$1,500., not only from the fees but from having to have a building permit at all. He would hate this to be taken out without a review of those prior warrant articles.

Member Quinn stated that he wonders how much activity there is out of the building department for situations of \$1,500 or less. He asked how much the fee is for a building permit.

Planning Administrator Reed noted that it is 1%.

Mr. Crawford noted that there has been discussion with the Selectmen recently to have a \$50 minimum building permit fee, plus 1%. It could be more serious than \$15. He continued that most permits go to the residents of the town. Fees should not be put in place that are going to penalize the tax payers just to save them a little money on their taxes. It doesn't make sense. If it goes to people outside the town then that is another thing.

Member Quinn stated that if there is a motion to put this on the warrant, he is going to vote against it.

Vice-Chair Losik stated that repairing something that is under \$1500 should not have to go to the building department.

Member Gittlein agreed.

Motion by Jeffrey Quinn to not advance Proposed Zoning Amendment 2019-10 to the town warrant. Seconded by Patricia Losik. All in favor.

f. Proposed Floodplain Ordinance Amendment: 2019-01

Planning Administrator Reed submitted a memo to the Board from **Jennifer Gilbert, FEMA Representative**, stating why she feels this should be adopted. (She read the memo from Jennifer Gilbert, dated January 4, 2019.) She noted that Jennifer Gilbert did a complete rewrite of the Floodplain Ordinance based on the State's model floodplain ordinance.

Vice-Chair Losik stated that this was discussed in Rules and Regulations, in terms of the definitions and concept of substantial damage and substantial improvements. The document does quite a good job of explaining that in a workable fashion.

Member Quinn stated that he has trouble when the discussion of various zones come in. He was wondering if there could be a map attached that shows the zones.

Planning Administrator Reed explained that the Town of Rye is working on the adopted 2005 FEMA Floodplain Ordinance. In 2014, there was a preliminary that came out which added a new zone, VE, which Rye does not have. Those preliminary maps have not yet been adopted. FEMA has said that they may come forward for adoption in 2019. She continued that there are maps out there that show the zones. The building department has them and they are on the town's website. Someone can also go to FEMA.org to find the zones. She stated that hopefully, the town will be adopting the preliminary maps and the town will have a new VE Zone, which is mostly the coastal area of Rye. She noted that VE stands for velocity. The proposed floodplain ordinance has a new Section 11, which addresses VE Zones, as the current ordinance does not. She reiterated that the berm maps are in the building department and someone can also go to the FEMA website to look up a particular property to see what zone it is in. She noted that the maps are very large, hard to read and are not something that can be attached to a document.

Vice-Chair Losik noted that Rules and Regulations had a discussion with the building inspector about "substantial improvement" and "repair of substantial damage". The town does not have adequate definitions. There wasn't a way for the building department to look at when the cumulative cost exceeded 50%, at which time there is a requirement to bring the property up to code.

Planning Administrator Reed explained that the new ordinance gives the guidelines so that all communities are taking the cumulative, substantial damages all the same. It is not going to be piecemealed from one community to the next. Hopefully, this will standardize substantial improvements and substantial damages in all communities.

Chairman Epperson opened to the public.

Mr. Crawford stated that he is confused because normally there is a markup that shows the change. The town has a floodplain ordinance now. He asked if that is being replaced by this new one.

Planning Administrator Reed confirmed. She noted that the ordinance is completely different. She also noted that the proposed ordinance was presented to the Board at their meeting on December 11th. The Board voted unanimously to move it to a public hearing.

Chairman Epperson noted that moving it forward was with the understanding that it was a new document from the State to replace the old document that was already adopted.

Planning Administrator Reed agreed.

Member Quinn stated he thinks the Board should advance this. It comes recommended and the town has people working on its behalf on things such as this.

Chairman Epperson agreed. It is a big document. It is a document that is designed to help the town understand what the regulations are in the floodplain. He thinks they should move this and see what happens at the Deliberative Session.

Member Carter stated that he thinks it should be advanced. He read the ordinance and did not see anything that was concerning.

Mr. Crawford suggested adding the old ordinance is repealed to the article.

The Board agreed.

Motion by Bill Epperson to add "to adopt the revised Floodplain Ordinance based upon the State's updated model floodplain ordinance which replaces the floodplain ordinance adopted in 2005". Seconded by Jerry Gittlein. All in favor.

Motion by Jerry Gittlein to move Proposed Zoning Amendment 2019-01 to the warrant with the addition of the language stated. Seconded by Priscilla Jenness. All in favor.

**IV. Submittal of Applications for Determination of Completeness – Action Required:
(Not a public hearing, if deemed complete the application will move to a public hearing below)**

- a. Major Site Development Plan by Samonas Realty Trust for property owned and located at 1215 Ocean Blvd, Tax Map 17.3, Lot 6, to raze all of the existing structures, eliminate the parking and access encroachment's, remove the existing septic systems, and other building infrastructure and replace them with 4 duplex style town homes with new septic, permeable driveways and tidal buffers. **Property is in the General Residence, Business District and Coastal Overlay Districts and SFHA-Zone AO. Case #01-2019.**
To be continued to the February 12, 2019 meeting.

Motion by Patricia Losik to continue to the February 12th meeting. Seconded by Steve Carter. All in favor.

**V. Public Hearings on Applications:
(Taken out of posted agenda order. As shown in minutes.)**

- a. Major Site Development Plan by Samonas Realty Trust for property owned and located at 1215 Ocean Blvd, Tax Map 17.3, Lot 6, to raze all of the existing structures, eliminate the parking and access encroachment's, remove the existing septic systems, and other building infrastructure and replace them with 4 duplex style town homes with new septic, permeable driveways and tidal buffers. **Property is in the General Residence, Business District and Coastal Overlay Districts and SFHA-Zone AO. Case #01-2019.**
To be continued to the February 12, 2019 meeting.

- b. Conditional Use Permit Application by Cellco Partnership d/b/a Verizon Wireless for property owned by Dolores F. Lintz and located at 120 Brackett Road, Tax Map 22, Lot 95-A, to install at 125' monopine wireless telecommunications facility which shall include twelve (12) panel antennas, six (6) remote radio heads; one (1) junction box, and ground-based equipment to be housed within a 30' x 40' fenced enclosure. **Property is in the Single Residence District. Case #03-2018. Public closed, this will be continued.**

Motion by Patricia Losik to continue to the February 12th meeting. Seconded by Steve Carter. 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.**
Board to vote on Notices of Decisions from 12-18-18 meeting. Public Hearing Closed.

Chairman Epperson explained that last month the Board had a vote to deny the application. A notice of decision has been drafted for the Board to vote on.

Mike Garrepy confirmed that he was in receipt of a draft.

Motion by Jeffrey Quinn to approve the Notice of Decision for the Goss Farm Subdivision, as proposed and written by Attorney Donovan, per the Board's direction. Seconded by Katy Sherman.

Vice-Chair Losik noted minor edits to the draft NOD.

Motion by Priscilla Jenness to accept the Notice of Decision with the edits by Patricia Losik. Seconded by Steve Carter. All in favor.

- d. Minor Three Lot Subdivision by Brian Roper, Trustee of the Lee H. Roper Family Trust of 71 Irish Setter Lane, Guildford, NH for property owned and located at 85 Brackett Road, Tax Map 22, Lot 67. Property is in the Single Residence District. Case #24-2018.

Paul Dobberstein, Ambit Engineering, noted that at the November meeting there were a few items requested by the Board that be looked at. The first item was a request that the plan go before the Conservation Commission, which has been done. A site walk was done with some members of the Planning Board and Conservation Commission. The drainage was also reviewed to make sure it was going to comply with the rules for runoff onto adjacent property. The plan has also been revised to show conceptual site improvements on the property. Another major concern for the Board was the offsite exposed bedrock on the adjacent property impacting the 4K area on Lot 2. He noted that they identified bedrock on the adjacent property that was within 75ft of the 4K area on Lot 2. With some simple modifications, the 4K area was changed so it is in compliance with the rules. The drainage was also reviewed using the conceptual site plan. There is a proposed home, shown on the plan, located on the back of Lot 2 with a proposed leachfield that will meet the requirements of the town and the state. The proposed home on Lot 3 is up front. The driveway for Lot 2 has been placed 10ft from the property line to keep it as far

away from the wetlands as possible. Driveway permit applications have been sent to the state and there is 400ft of site distance on all the driveways as required.

Mr. Dobberstein stated there are three discharge points for existing and proposed. There are two culverts that cross the road currently. Discharge point number 1 is on Lot 1, which has the existing structure. Discharge point number 2 is coming off the drainage ditch/wetland that goes across Lot 2 and the wetland to the rear of Lot 3. He noted there is no change in the discharge points. With discharge point number 2, with the 100-year storm, it will be matching or reducing the peak runoff for all those discharge points. This is being done primarily by the use of raingardens which will hold and slow the water. He noted that the Conservation Commission had a question about the wetland in the rear of Lot 3 because there was standing water in it at the site walk. Their question was whether it was a vernal pool or not. The wetland scientist wrote a detailed report on why he does not feel it is a vernal pool. During the amphibian breeding season, there were no egg masses observed nor was there actually any standing water, which is required for it to be a vernal pool. The Conservation Commission has issued a letter stating that they have no comment on the project.

Vice-Chair Losik commented that an inspection and maintenance plan for the subdivision has been included in the drainage study.

Mr. Dobberstein stated there is one other item that has come up in the last week. It has to do with the rear lot line that crosses the existing driveway to the adjacent properties. There have been recent discussions with the adjacent landowners and the possibility of doing a boundary line agreement. There is ambiguity in that line with conflicting surveys and locations. The actual monument that set the line is long gone. RSA 472:4 allows in that situation for the owners to agree to a line and execute a boundary line agreement with a recorded plan. (He presented a plan to the Board showing the proposed boundary line agreement line.)

Chairman Epperson opened to the public for comment.

Mr. Crawford stated that at the site walk, he mentioned the idea of a cell tower going in the back. Mr. Dobberstein said that there might need to be a subdivision to do that. RSA 674:12 says that if a part of a property is leased, that is considered a subdivision. There is an exception for wireless telecommunications facilities but only if the structure is less than 500sf. He knows that when these are approved it is normally approved with the condition of no further subdividing. He suggests no further subdividing unless the Planning Board grants the right to have a telecommunications facility there.

Mr. Dobberstein noted that at this time the applicant has not been in contact with Verizon. This idea is not part of the proposal at this time.

Chairman Epperson asked the Board their thoughts on Mr. Crawford's proposal to include that language on the plan.

The Board agreed that they would be fine with it.

Chairman Epperson stated he would leave it open for legal counsel's opinion. If Attorney Donovan doesn't have any issue with the language, he would not have a problem with it. However, he does not want to approve something to be put on the plan and have it be a problem.

Motion by Patricia Losik to waive the requirements of Section 404.4 A, which requires topographic and HISS information for the entire parcel to be shown, as the proposed development only impacts the area of the parcel at the road, it would be costly and of little to no benefit to provide this information for the remainder of the property. Topo and HISS is provided for the area of the property to be impacted by the subdivision and the lot is showing the required information presented on the entire property. Seconded by Jeffrey Quinn. All in favor.

Motion by Patricia Losik to waive 403.1 E of Rye Land Development Regulations (LDR). This requires topo and HISS information for the entire parcel. It impacts only the area of the parcel at the road and would be costly and of little to no benefit to provide this information for the remainder. The topo and HISS info is provided for the area to be impacted by the subdivision and the lots are shown without the required information being presented on the entire property. Seconded by Jeffrey Quinn. All in favor.

Motion by Patricia Losik to waive 404.2 D (2) of Rye LDR's, which requires lot dimensions to be shown to a 100th of a foot and bearings at least to the half minute. The area of the property that is subjected to the subject subdivision has been surveyed and the required information provided. A waiver is requested to show this information, as a plan of record of the entire property exists. Registry of Deeds Plan D-3185 has been provided for the Board's information. Seconded by Jeffrey Quinn. All in favor.

Motion by Patricia Losik to conditionally approve the subdivision subject to:

- 1. Receipt of subdivision approval from NH DES;**
- 2. Driveway approvals being granted by the State;**
- 3. Boundary markers being set prior to any construction;**
- 4. Flagging of wetlands and satisfaction with the building inspector before any construction;**
- 5. Adherence to the drainage study, inspection and maintenance report that is set out in Appendix B of the drainage analysis dated December 20, 2018; and**
- 6. No blasting. Rock hammering will be limited to Monday through Friday, 8:00 a.m. to 5:00 p.m. Seconded by Steve Carter. All in favor.**

After discussion, it was agreed that Mrs. Reed will ask Attorney Donovan about Mr. Crawford's concern with no further subdividing with regards to a telecommunications facility.

VI. New Business

- Planning board vote on whether the board approves or disapproves the selectmen's January 3, 2019 approval of a petition to layout the easterly half of the first 80 feet of the Starboard Way Right-of-Way. Starboard Way is currently a private street. (Note: If the board approves of it, a majority vote of approval of town meeting will be required. If the board disapproves of it, a 2/3 vote of approval of town meeting will be required.)

Motion by Bill Epperson to approve the finding of the Select Board on January 3, 2019 regarding Starboard Way. Seconded by Patricia Losik. All in favor.

- Conceptual Consultation by Tuck Realty for a Minor 3 Lot Subdivision and Lot Line Adjustment on the property located at 388 and 410 South Road, Tax Map 4, Lots 62 & 63. The intent to adjust the lot line between Tax Map 4, Lots 62 & 63 and subsequently divided Map 4, Lot 62 into 2 lots using the Rye/North Hampton town line as a rear property line for all 3 lots.

Mike Garrepy, for Tuck Realty, presented a conceptual plan for property located at 388 and 410 South Road. The property is currently described in one deed but is two lots; Tax Map 4, Lot 63 in Rye and also another in Rye with two other tax maps in North Hampton. The town line goes through the property. (He pointed out the portion of land that is in North Hampton, which is mostly wet.) He continued there are two lots of record in Rye. There is one home on each lot. There are some grandfathered setback issues that affect the two dwellings on the property. It is intended that the homes will remain as part of the subdivision. Using the town line as the lot line, there will be three lots of record created. It is really the creation of one additional house lot. He noted that Lot 1 is 70,000sf, Lot 2 is 80,000sf and Lot 3 is 90,000sf. There is already an existing septic system for both of the existing homes. There is no bedrock on the site. Ten test pits have been done which show good gravel on the site. The end result is one new lot. The goal would be to sell the three lots as they are in hopes that someone will want to preserve the homes or part of them.

Shelly Patrick, property owner, spoke in regards to the history of the property.

After discussion, Chairman Epperson noted that this will need to come back in February. At that point, the Board will take jurisdiction and will establish an escrow. The Board will try to move this along.

VII. Pay Escrows

- Attorney Donovan: Verizon – Brackett Road - \$3,137.22
Housing Partnership – Airfield Drive - \$155.13
- Sebago Technics - \$842.04

Motion by Patricia Losik to pay the invoices as presented. Seconded by Katy Sherman. All in favor.

VIII. Other Business

- Approval of Minutes:
 - November 13, 2018
 - November 29, 2018
 - December 4, 2018
 - December 11, 2018
 - December 18, 2018

Motion by Patricia Losik to accept the minutes listed with the edits as submitted. Seconded by Steve Carter. All in favor.

Adjournment

Motion by Jeffrey Quinn to adjourn at 10:00 p.m. Seconded by Patricia Losik. All in favor.

Respectfully Submitted,
Dyana F. Ledger

December 5, 2018

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2019-09

RE: Driveways

Add the following definition to the Appendix of Definitions: (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

Driveway: *A private way for vehicles which provides entrance, exit, access or approach to or from land in Rye to a public street.*

to from

Explanation

This amendment goes along with changes to Section 202.14 which refers to the definition of driveways in the Land Development Regulations. By adding the same definition to the zoning ordinance there will be consistency.

RYE PLANNING BOARD
PROPOSED AMENDMENT TO THE FLOODPLAIN ORDINANCE 2019-01

Re: Floodplain Ordinance

- I. To adopt the revised Rye Floodplain Ordinance based upon the State's updated Model Floodplain Ordinance.

Explanation

While the minimum National Flood Insurance Program (NFIP) regulations have not changed, the new model version makes the regulations more understandable to both community officials and property owners. Other improvements include added sections that provide a clearer description of the floodplain administrator's role and responsibilities, explain the floodplain permitting process, and clarify how substantial improvement and damage determinations are made.

In addition to the model ordinances, an accompanying notes document that explains the sections of the ordinances, provides guidance resources, and references applicable sections of the Code of Federal Regulations, State statute, and State building code is also now available.

RYE PLANNING BOARD

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

Notice of Decision

Date of Decision: Tuesday, January 8, 2019

Decision: X Approved

The Planning board voted to approve the selectmen's January 3, 2019 approval of a petition to layout the easterly half of the first 80 feet of the Starboard Way Right-of-Way. Starboard Way is currently a private street.

1/9/19
Date



William Epperson, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant: Cellco Partnership d/b/a Verizon Wireless

Owner: Dolores F. Lintz

Property: 120 Brackett Road, Tax Map 22, Lot 95-A
Single Residence District

Case: Case #03-2018

Application: Conditional Use Permit Application by Cellco Partnership d/b/a Verizon Wireless for property owned by Dolores F. Lintz and located at 120 Brackett Road, Tax Map 22, Lot 95-A to install at 125' monopine wireless telecommunications facility which shall include twelve (12) panel antennas, six (6) remote radio heads, one (1) junction box, and ground based equipment to be housed within a 30' x 40' fenced enclosure. Property is in the Single Residence District. Case #03-2018.

Date of Decision: Tuesday, January 8, 2019

Decision: ☐ Approved
☐ Conditionally Approved
☐ Denied
☒ Continued to the February 12, 2019

1/9/19

Date



William Epperson, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Samonas Realty Trust

Property: 1215 Ocean Blvd. Tax Map 17.3 Lot 6
General Residence, Business District, Coastal Overlay and SFHA

Case: Case #01-2019

Application: Major Site Development Plan by Samonas Realty Trust for property owned and located at 1215 Ocean Blvd, Tax Map 17.3, Lot 6 to raze all of the existing structures, eliminate the parking and access encroachment's, remove the existing septic systems, and other building infrastructure and replace them with 4 duplex style town homes with new septic, permeable driveways and tidal buffers. Property is in the General Residence, Business District and Coastal Overlay Districts and SFHA-Zone AO. Case #01-2019.

Date of Decision: Tuesday January 8, 2019

Decision:

<input type="checkbox"/>	Approved
<input type="checkbox"/>	Conditionally Approved
<input type="checkbox"/>	Denied
<input checked="" type="checkbox"/>	Continued

The Planning Board voted to continue the application to the February 12, 2019 Agenda.

1/9/19
Date



William Epperson, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Brian Roper, Trustee of the Lee H. Roper Family Trust
Of 71 Irish Setter Lane, Guilford NH

Property: 85 Brackett Road Tax Map 22, Lot 67
Single Residence

Case: Case #24-2018

Application: Minor Three Lot Subdivision by Brian Roper, Trustee of the Lee H. Roper Family Trust of 71 Irish Setter Lane, Guilford, NH for property owned and located at 85 Brackett Road, Tax Map 22, Lot 67. Property in in the Single Residence District. Case #24-2018

Date of Decision: Tuesday January 8, 2019

Decision: ☐ Approved
☒ Conditionally Approved
☐ Denied

Motion by Pat Losik to grant the following waivers, seconded by Jeff Quinn. All in favor, motion passes.

- 1. Section 404.4.A 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 because topographic and HISS information for the entire parcel/subdivision would be costly and of little to no benefit to provide the information for the remainder of the property not impacted by the subdivision.*
- 2. Section 403.1 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 because topographic and HISS information for the entire parcel/subdivision would be costly and of little to no benefit to provide the information for the remainder of the property not impacted by the subdivision.*
- 3. Section 404.2 D.2 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 because lot dimensions to shown to the hundredth of a foot and bearings at least to half the minute has been surveyed and the information has been provided and a plan of record for the entire parcel exists (R.C.R.D Plan D-3185)*

Motion by Pat Losik to grant the application with the following conditions. Second by Steve Carter. All in favor.

- 1. The applicant shall obtain NHDES Subdivision approval;*
- 2. The applicant shall obtain State driveway permits;*
- 3. The Boundary markers will be set prior to any construction;*
- 4. The wetlands will be flagged per the Building Inspector's instructions and approval prior to any construction;*
- 5. The applicant/subsequent property owners shall adhere to the drainage study and maintenance analysis; and*
- 6. There shall be no blasting. If there is rock hammering it will be during the week, Monday through Friday and only from 8am to 5pm.*
- 7. Chairman may sign mylar for recording.*

1/9/19
Date



William Epperson, Chairman
Rye Planning Board

RYE PLANNING BOARD

10 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 January 8, 2019

Decision:

<input type="checkbox"/>	Approved
<input checked="" type="checkbox"/>	Denied
<input type="checkbox"/>	Conditionally Approved
<input type="checkbox"/>	Continued

The Board voted to deny the Waivers and Subdivision, see attached explanation of Notice of Decision.

1/8/19

Date



William Epperson, Chairman
Planning Board

STATE OF NEW HAMPSHIRE
TOWN OF RYE PLANNING BOARD

GOSS' GRANT SUBDIVISION APPLICATION
Application No. 11-2018

NOTICE OF DECISION

I. Summary of Application Process.

The Goss's Grant Subdivision application was filed on March 23, 2018.¹ On April 10, 2018 the planning board determined that the application was incomplete for several reasons.

The planning board conducted a site walk on April 23, 2018. Board members, the applicants "team", the property owner, board consultants, members of the Rye Conservation Commission, several abutters and other interested Rye residents attended the site walk.

The applicant revised the plans to address the incomplete items. The board determined that the application was complete on May 8, 2018 and formally accepted jurisdiction over the application. On May 8 the board also determined that proposed Lot 58 did not comply with Rye Zoning Ordinance § 202.14 which states:

RZO § 202.14 Access to Lots: Access to a lot shall be over its own frontage. (While a lot may be reached via a shared driveway by permission of the Planning Board for safety reasons, a lot shall not be considered suitable for development unless it is accessible over its own frontage.)

The applicant appealed the planning board's decision interpreting and applying RZO § 202.14 to the Rye Zoning Board of Adjustment (ZBA). Pursuant to RSA 676:6, the appeal to the ZBA stayed the planning board proceedings on the application.

On June 7, 2018 the ZBA reversed the planning board's decision interpreting and applying § 202.14 to proposed Lot 58. The planning board did not apply for a rehearing, and the RSA 676:6 stay ended on July 6, 2018. The applicant submitted a revised set of plans on July 27, 2018. The revised plans eliminated a retaining wall, guard rails and super-elevated pavement originally proposed and reduced the depth of fill required for street construction. The applicant submitted several LDR waiver requests with the July 27 package, including waivers from:

¹ The applicant had a non-binding preliminary consultation with the planning board on January 9, 2018.



- LDR § 602.2, A.7-b to allow the inside of the street loop to be 36 ft. in diameter where 40 ft. is required.
- LDR § 602.2, A.7-b to allow the pavement width of the loop to be 20 ft. where 24 ft. is required.
- LDR § 602.2, B.1-b to allow 3:1 side slopes where 4:1 is required.

The board heard the revised plan on August 14, 2018. The revised plans did not have designated leachfield areas (DLA's) which complied with LDR § 603.3 on 4 of the 5 proposed lots. In addition to requiring DLA compliance, the board requested that several items of additional information be provided. Revised plans showing different DLA's were submitted on August 29, 2018, but not all the requested information was provided. Hence the board did not hear the application at its September 11, 2018 meeting.

The board next heard the application on October 9, 2018. The DLA on proposed Lot 59-3 still did not comply with LDR § 603.3. Revised plans which finally showed compliant DLA's on all lots were submitted on November 1, 2018.

The board heard the application again on November 13, 2018. After hearing presentations from the applicant's representatives and public testimony, the board closed the public hearing and record. The board began discussing the waiver requests to LDR § 602.2, A.7-b. A motion to deny the waivers passed. The applicant and his legal counsel then interrupted deliberations by demanding explanations and objecting to the board's procedures, which include requesting counsel to draft notices of decisions for subsequent review and approval. Since it appeared the meeting was getting out of hand, town counsel recommended continuing the deliberations to the next meeting.

On November 30, 2018 the applicant submitted a new plan which it represented did not require and waivers.² The applicant requested that the hearing and record be reopened for consideration of the new plan. On December 18, 2018 the board heard a brief presentation by the applicant of the new plan and voted not to reopen the hearing and record to consider it. After deliberating, the board voted: (1) to deny the requested waivers; and (2) to deny the subdivision application.

² Since the board and its consultants did not review the new plan against the LDR's, the board does not know whether waivers would be required for the new plan.

II. Denial of Request to Reopen.

The planning board denied the request to reopen because:

1. The new plan is significantly different than the plan which had been before the board since March 23, 2018.
2. The board had closed the public hearing and record on November 13, 2018. Abutters and the public had no notice of the new plan. If the board reopened the hearing, legal notice of a hearing on the new plan would be required.
3. In addition to proposed Lot No. 58, two additional lots on the new plan have driveway access from frontage which does not meet the minimum frontage requirement of the *Rye Zoning Ordinance*. This conflicts with proposed Zoning Amendment No. 2019-03 which was posted on November 23, 2018. RSA 676:12 precludes the board from accepting and hearing a new plan which conflicts with the proposed zoning amendment.
4. The plan could have been presented much earlier in the process. It was only after board deliberations on November 13, 2018 indicated likely disapproval of waivers that the new plan was presented.
5. When the board closed the hearing and record on November 13, it was ready to deliberate and make a decision. Had a decision been made on November 13, there would be no new plan.

III. Denial of Waivers.

Contrary to the statements of the applicant, the original plan submitted on March 23, 2018 would also have required waivers for the retaining wall, guard rail, and super-elevated pavement cross-section and also for the non-compliant DLA's on that plan. The planning board engineer and the public works director each expressed concerns about the retaining wall, and the public works director also questioned the super-elevation. Had the applicant pursued that design, the waivers for the wall, guard rail and super-elevation probably would not have been granted.

After the ±8 week stay imposed by RSA 676:6 expired, the applicant revised the plans to eliminate the retaining wall, guard rail and super-elevated pavement. These changes reduced the

drainage flowing into the rain garden in the center of the loop thereby allowing less fill for the loop while still meeting DES requirements for separation to seasonal high water table (SHWT).

To do this required new waivers to:

- LDR § 602.2, A.7-b to allow an inside loop radius of 36 ft. where 40 ft. is required.
- LDR § 602.2, A.7-b to allow a pavement width of 20 ft. around the loop where 24 ft. is required.
- LDR § 602.2, B.1-b to allow 3:1 side slopes where 4:1 is required.

The waivers to the above three LDR requirements and the waiver to LDR § 602.2, B.2 (Grades) are denied because the applicant did not demonstrate the unnecessary hardship required by LDR § 900.

1. The hardship does not arise from special conditions of the property. It arises from the Seasonal High Water Table (SHWT) and the need to comply with DES requirements for separation of the bottom of the rain garden from SHWT. A high seasonal water table is not a special condition of land which is unique to this property. Most of Rye's so called "good land" for development was developed years ago. Developers are not turning to more challenging tracts, most of which have high water tables. *E.g* (most recently) the Stoneleigh Preserve Subdivision and the Roper Subdivision.
2. The hardship, if any, arises from the applicant's and the property owner's desire to carve five (5) building lots out of the non-wetlands portion of this difficult site. Economic gain does not constitute unnecessary hardship.
3. Although applicant's counsel disagreed with town counsel's advice on the standards for unnecessary hardship, he did not offer a different standard. On November 13, 2018 applicant's counsel stated: "The expense alone is a hardship to the applicant. It is less of a hardship if less money is spent." Again, economic gain is not unnecessary hardship.
4. Under the ZBA's interpretation of RZO § 202.14, the property could have been subdivided into three lots without requiring any street construction.

IV. Denial of Major Subdivision Application.

The first reason for denying the subdivision application is that it depends on four (4) waivers which were not granted. The board may not approve an application which does not comply with LDR requirements if waivers to those requirements have not been granted.

Additional reasons for denying the subdivision application are:

1. The applicant did not establish that the application complied with the LDR § 606. 1.

SECTION 606 STANDARDS FOR THE PRESERVATION OF NATURAL FEATURES AND THE ENVIRONMENT

§ 606.1 General.

The land developer shall identify and take suitable steps as required by the Planning Board to preserve and protect significant existing features such as trees, scenic points, brooks, streams, rock outcroppings, water bodies, wetlands, other natural features and historic landmarks.

- a. The applicant has not taken suitable steps to preserve the portion of the meadow beyond what is required to be preserved by wetlands buffers.

Reference 11/1/18 Plan Set Sht. C4.

Lot 59 DLA runs right up to wetlands buffer boundary.
Lot 59 house \pm 35 ft. from wetlands buffer boundary.

Lot 59-1 DLA runs right up to wetlands buffer boundary.
Lot 59-1 house \pm 40 ft. from wetlands buffer boundary.

Reference 11/1/18 Plan Set Sht. C5.

Lot 59-2 DLA runs right up to wetlands buffer boundary.
Lot 59-2 house \pm 40 ft. from wetlands buffer boundary.

Road slope at Stations 5 to 5+50 is \pm 40 ft. from wetlands buffer boundary.

- b. The applicant has not demonstrated that suitable steps have been taken to reduce the stress to the tidal wetlands system.

- c. A suitable step to address these concerns and comply with § 606.1 would be to reduce the subdivision by one lot and terminate the street in the vicinity of proposed Lot 59-3 (the lot to

be eliminated). This would: (1) allow houses and leachfields to be located further west thereby preserving more of the meadow from development; and (2) reduce the stress on the tidal wetlands by reducing storm runoff.

2. The applicant did not establish that the application complied with the LDR § 606. 2.

§ 606.2 Character of Land for Development.

Land judged by the Planning Board to be unsafe for building development because of exceptional danger to health or peril from fire, flood, tidal water, poor drainage, impermeable soil, excessive slope or other hazardous conditions shall not be approved for development until appropriate measures have been taken to eliminate the hazards.

a. The threat from sea level rise and storm surge is an exceptional danger due to the proximity of these two tracts to tidal waters. Four scenarios for sea level rise and storm surge for the year 2100 were analyzed by the applicant's consultant. Under these scenarios the percentage of the development impacted by flood waters ranges from 63% to 89%.

- Although septic system bottoms (bottoms of leach pipe bed) are above the combined water surface for three lots for Scenario # 3, the side slopes of the raised leachfields are partially inundated and thereby susceptible to being undermined and washed away by flood waters.
- The assumption that septic systems designed only to meet Scenario # 2 is acceptable is not consistent with the past. Rye has numerous septic systems greater than 30 years old, and expansion of the town sewer system built circa 1990 or a construction of a regional system do not seem likely in the foreseeable future.
- Under Scenario #4, egress from the new street is blocked by flooding.

b. An appropriate measure which would reduce the hazards to septic systems from flooding in these scenarios would be to reduce the subdivision by one lot and terminate the street in the vicinity of proposed Lot 59-3 (the lot to be eliminated). This would allow the homes and the leachfields on Lots 59-1 and 59-2 to be located further west at higher elevations.

3. The application does not comply with LDR §'s _602.1, A.2. & A.3.

§ 602.1 Lots.

Lot configurations, the layout of lot lines and the arrangement of lots in a subdivision shall be orderly and harmonious and shall not be contrary to established principles of subdivision design.

A. Lot Configuration: Except on cul-de-sacs, rectangularly shaped lots having side lot lines perpendicular to straight streets or radial to curved streets are preferred for buildable lots less than three (3) acres in size.

1. Lot lines intersecting the street shall not vary more than 30 degrees from the perpendicular or radial. Intersecting property lines at street intersections shall be joined by a curve of at least twenty (20) foot radius.

2. Lot shapes shall not be grossly irregular.

3. Lot lines shall not be gerrymandered to obtain required frontage, yard space or lot area.

4. All front setback measurements shall begin at the right-of-way line of the street.

a. Lots 59-3 and 58 have been gerrymandered to obtain required frontage. They are also grossly irregularly shaped.

b. The requirements of A.2 and A.3 are not limited to lots less than three acres in size. The limitation applies only to the requirement for rectangularly shaped lots. The board's administrative practice has been to require lots of any size to meet the requirements of A.1 to A.4.

For all of these reasons the request to reopen; the waivers and the subdivision application were denied.

Notice of Decision Approved: January 8, 2018



William Epperson, Chairman
Rye Planning Board



PB Chair Initials

December 5, 2018
Revised January 8, 2019

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2019-09

RE: Driveways

Add the following definition to the Appendix of Definitions: (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

Driveway: A private way for vehicles which provides entrance, exit, access or approach to or from land in Rye to/from a public street.

Explanation

This amendment goes along with changes to Section 202.14 which refers to the definition of driveways in the Land Development Regulations. By adding the same definition to the zoning ordinance there will be consistency.