

**TOWN OF RYE - PLANNING BOARD
MEETING**

**Tuesday, April 9, 2018, 7:00 p.m.
Rye Town Hall**

Planning Board Members Present: Patricia Losik, J.M. Lord, Jeffrey Quinn, Jerry Gittlein, Steve Carter, Tim Durkin, Selectmen's Rep Bill Epperson, Alternates Katy Sherman and Jim Finn.

Others Present: Attorney Michael Donovan and Planning/Zoning Administrator Kim Reed

5:30 p.m.

I. Call to order

The meeting was called to order at 5:30 p.m.

II. Non-Public Session (1) per RSA 91-A:3, II (e) Litigation

At 5:31 p.m., Patricia Losik made a motion to go into Non-Public Session per RSA 91-A:3, II (e) Litigation. Seconded by J.M. Lord.

Roll Call: Bill Epperson – Yes, Patricia Losik – Yes, Jim Finn – Yes, Jeffrey Quinn – Yes, Steve Carter – Yes, Katy – Sherman – Yes, Tim Durkin – Yes, JM Lord – Yes, Jerry Gittlein – Yes

The board came out of non-public session at 5:58 p.m.

Motion by JM Lord to reconvene the public meeting. Seconded by Steve Carter. All in favor.

6:00 p.m. RECONVENE PUBLIC MEETING

Motion by Jeffrey Quinn to seal the minutes of the Non-Public Session, for the reason that divulgence of the information would make the action ineffective. Seconded by JM Lord. All in favor.

III. Appointment of Officers

- Chair

Motion by Bill Epperson to nominate Pat Losik as chair. Seconded by Jeffrey Quinn. All in favor.

- Vice-Chair

Motion by Jeffrey Quinn to nominate J.M. Lord as vice-chair. Seconded by Bill Epperson. All in favor.

- Clerk

Motion by Jeffrey Quinn to nominate Steve Carter as clerk. Seconded by Bill Epperson. All in favor.

- Request for an extension by Karl and Andrea Swanson on the condition for ADU from 11-13-18.

Motion by Jeffrey Quinn to grant the extension requested by Karl and Andrea Swanson. Seconded by J.M. Lord. All in favor.

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

Motion by J.M. Lord to continue the application of Harbor Street Limited Partnership for property located at 1244 Washington Road. Seconded by Steve Carter. All in favor.

- 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 #01a-2019.

Motion by J.M. Lord to accept the application as complete. Seconded by Jeffrey Quinn. All in favor.

- b. Special Use Permit by Samonas Realty Trust for property owned and located at 1215 Ocean Blvd, Tax Map 17.3, Lot 6, to allow land housing tourist accommodations to become obsolete and to be redeveloped in residential use densities per Section 304.6 of the Rye Land Development Regulations. Property is in the General Residence, Business District and Coastal Overlay Districts and SFHA-Zone AO. Case #01b-2019.

Motion by J.M. Lord to accept the application as complete. Seconded by Jeffrey Quinn. All in favor.

- c. ~~Lot Line Adjustment by Cheryl Tulley for a proposed lot line relocation between Tax Map 8.4, Lot 141, and a portion of Foss Circle. Property is in the General Residence, Coastal Overlay. Case #05-2019.~~
- d. Major Subdivision and Condominium Development Plan by Harbor Street Limited Partnership for property located at 1244 Washington Road, Tax Map 10, lot 82, for a 20-unit residential town houses which will compromise of 5 4-unit buildings. Property is in the Single Residence District, Multi-Family Dwelling District, Aquifer and Wellhead Protection District and Rye Landfill Groundwater Management (RL_GMZ) District. Case #06-2019.
 - **Request for continuance to May 14, 2019.**

(Please see motion above)

V. Public Hearings on Applications:

- 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 #01a-2019.
- b. Special Use Permit by Samonas Realty Trust for property owned and located at 1215 Ocean Blvd, Tax Map 17.3, Lot 6, to allow land housing tourist accommodations to become obsolete and to be redeveloped in residential use densities per Section 304.6 of the Rye Land Development Regulations.

Chair Losik explained that this proposal has been receiving some attention and work since the last Planning Board meeting. There was to be a site walk; however, that was cancelled due to weather. She asked the applicant to bring them up to date on the changes since the March meeting.

Attorney Tim Phoenix explained they have two things in front of the board. One is site review, on the overall project, which is primarily technical. The other is for RZO 306, tourist conversion. He has submitted a letter from the board that has been analyzed by Attorney Donovan. He noted that he has not responded to Attorney Donovan's comments but will get that completed and submitted to the board for review. He turned the presentation over to Eric Weinrieb.

Eric Weinrieb, Altus Engineering, explained that in May of 2018, they were before the board for a conceptual review. There was some very positive feedback on what was being proposed. On October 3rd, zoning relief was obtained, by a unanimous decision, to allow the project to go forward. The project has been before the Conservation Commission and the Demolition Committee, who voted unanimously to allow the demolition of the buildings. The project was before the Heritage Commission, as required for the Division of Historic Resources review. The application was submitted to the Planning Board in December for site plan review. The intent was to go before the board at the January meeting; however, there was a glitch in the notification which pushed it out to February. The application was before the board in February. It did not go back to the board in March in order to address the concerns that were heard at the meeting in February. In the meantime, the project has received the NH DES Shoreland Permit. DOT has determined that a permit is not needed because a new driveway is not being created in the State right-of-way. He continued that the wetland permit is pending resolution of a couple of minor items. One is on the comments from DHR and the other is the waiver for work within 20ft of the property line. He noted that they have not submitted to the Subsurface System Bureau yet, as they are waiting to get through the wetlands permitting first. He also noted that they have met with DES and they are very supportive of the design.

Mr. Weinrieb pointed out the site on the plans before the board. He noted the location of Wallis Road and Ocean Boulevard. He also noted the location of the creek to the rear of the property. The edge of disturbance will be the silt fencing area for the removal of the existing buildings, infrastructure, septic and propane tanks. Mr. Weinrieb pointed out the location of the three leachfields that are identified to be removed. He noted that there are two other beds that are at grade in the wetlands resource. They are proposing that these are not removed.

Note: *Alternate Katy Sherman stated that she and Mr. Samonas are property owners of neighboring apartments in Portsmouth. She asked Mr. Samonas if he is comfortable with her sitting with the board.*

Mr. Samonas replied he is.

Member Quinn asked why it would be beneficial to leave those alone. He noted that the Parson's Creek Watershed is compromised. He would expect the leachfields were partial contributors to that.

Mr. Weinrieb explained that his belief is that they are so close to the resource that they have already washed and cleansed the bacteria out. It is just free flowing stone and pipe. It is now vegetated over and it would be very disruptive to the soil to try to reestablish that so close to the resource. He noted that they have no issue doing an analysis to determine if this is in fact the case.

Chair Losik stated that in looking at Plan C-2, she noticed that there would be excavation and activities pretty close to these two. Her question was also why these would not be taken out.

Mr. Weinrieb reiterated that the reason is because it is so close to the resource. Ripping up that area is just an opportunity for more erosion in that area. He noted that they have the report from Emily DiFranco of FB Environmental. He would like an opportunity to meet with her and vet those comments in order to address them in a manner that makes sense.

Chair Losik suggested holding a work session to go over those details.

Selectman Epperson asked if the DOT has acquiesced to leaving the parallel parking spots in front of the property.

Mr. Weinrieb stated that DOT has said that they do not want them and if the town wants them, they can go to DOT to make that request. He noted that if it is determined that they will stay, he will put them back on the plan.

Selectman Epperson commented the town wants more parking, not less.

Member Quinn stated that a compromise might be needed on parking. For traffic coming down Wallis Road looking left and right, with cars parked close to the corner, the sight line will be very difficult.

Selectman Epperson noted the parking now extends southerly past the parking lot. He believes the parking will be out of the sight line.

Mr. Weinrieb noted that they are actually moving the stop bar forward and creating a more defined intersection. This will be creating a safer area. (He reviewed the submittals included in the board's packets.) He noted that Jim Verra did the survey and Joe Noel mapped the wetlands.

Mr. Weinrieb stated the site is highly disturbed. It is all pavement and the septic systems go to the edge of the wetlands. The lawn in the entire area goes right up to the edge of wetlands so there is no real buffer. This project will create a buffer. It will create a protective area between the developed area and natural resource. All the buildings that are on the site today are non-compliant when it comes to building code. In order to make any renovations to them, they would have to be brought up to building code. In order to bring them up to code, they have to be made flood compliant. That would require raising all the buildings up 4ft, and creating handicap accessibility. The parking and access could remain in the same areas because it would be a renovation. In his opinion, that is not a way to treat a site that has challenging environmental issues. They decided to do the project right and complete. That is how they came up with

four buildings that are pushed forward, as far as possible, to the front setback line. He noted that a variance was received for the front setback; however, they are actually meeting the zoning for the setback. The driveway to the site is to the rear, away from the traffic, and the parking will be behind the buildings.

Chair Losik stated that in looking at the record from the ZBA, there were several points in the testimony that the problem water is coming from the marsh (the surge). There could be an ingress and egress issue with flooding in the driveway area on Wallis Road. She asked why those resources would be put in a greater danger point on the property.

Mr. Weinrieb explained that all the utilities are designed with FEMA compliance in mind. In looking at the point of access, the first thing that is addressed is the zoning requirements. The zoning requirement says that access is off the lesser travelled road. This is connecting off an area that is a town infrastructure that floods. If the access was to be off DOT, a berm would be created and this would negatively impact the abutting property. He pointed out that additional zoning relief would be needed and would be contrary to everything in the regulations regarding access.

Attorney Donovan stated that his opinion is that this site is grandfathered against that requirement. There is precedent, where the board agreed, that if a site already has a driveway on a corner lot, it does not have to be relocated to the lesser travelled street. He reiterated that he thinks the site is grandfathered on the driveway issue.

Attorney Phoenix stated that a flood event is typically a short-term event. For emergency access, if the driveway is flooded, it is easy for trucks to access the property from the road. It is a grandfathered access but it is also a non-conforming access. To make it conform now to be an accessible driveway, it would have to be expanded. The zoning ordinance says that a non-conforming condition cannot be expanded or enlarged. He commented that they would prefer not to have to get zoning relief.

Chair Losik referred to the record of the ZBA meeting and the discussions about the flooding of the marsh. She also noted that one of the ZBA members raised a question about driveway damage because of the marsh flooding. She asked why they would put people on that side of the building.

Attorney Phoenix explained it is generally safer to not have cars exiting onto Ocean Boulevard, especially when there is parallel parking on either side. In weighing an infrequent flood event compared to everyday use all the time, it does not make sense.

Mr. Weinrieb noted that this has been vetted by Shoreland Protection, the Alteration of Terrain Bureau and DES Wetlands Bureau. They did not have any issues with this design and they know that area floods on occasion. He also pointed out that the road (Wallis) does flood but also provides access for other people. There are ways for the residents to get out of that property. They may not be able to drive their car but that would be the same for other people in this area.

Vice-Chair Lord asked if the DES permits address safety issues.

Mr. Weinrieb explained that DES does not necessarily address the safety aspect. They look at the environmental aspect. DOT looks at the safety aspect. He noted that a driveway permit was submitted to Dennis McCarthy, Director of Public Works, but they have not heard any comment from him.

Referring to the NH DES letter dated January 25th, Chair Losik asked what Eben Lewis' concerns were.

Mr. Weinrieb replied that he had two concerns. One was that the Heritage Commission hadn't acted on the mitigation for the tearing down of the building. The comments from the commission were recently

received. The other concern was on the activity within 20ft of the abutter. A sign-off from the abutter or a waiver request is needed. Attorney Phoenix has been working with the abutter. They waited to file a waiver request because they thought they would get the abutters' sign-off. He continued that they have not heard from the abutter so they went ahead and filed the waiver request. He commented that Eben's concerns had nothing to do with the viability of the project. It was more for checklist items.

Attorney Phoenix stated that when they applied for the variances last year, the septic systems hadn't been designed so the building inspector's letter said he could not comment on them. He noted that there is a likelihood that they will have to go back before ZBA because the building code requires 2ft of separation from seasonal high-water, which they do not have.

Member Carter asked how much relief will be needed below the 2ft.

Attorney Phoenix replied the current distance is between 7 and 14 inches.

Mr. Weinrieb noted they comply with the 4ft separation. He continued that they have listened to the board's comments and the concerns of the neighbors and some changes have been made to the plans. The finished floor of the building has been lowered in elevation down to 10. That allowed for everything on the driveway to be lowered down. It allowed for the retaining wall to be eliminated and the reduction of a bit of the side slope on the back side. It does not change the area of the leachfields. He noted that the soils plans have been provided in the board's packets. The parallel parking has been removed; however, they would be willing to reintroduce the parking if the town works this out with DOT.

Referring to the soils, Chair Losik stated she was wondering about the freshwater area because everything is tidal. When Mr. Noel did the conversion, his mapping has a place for organic freshwater.

Mr. Weinrieb explained there are two different soil maps. The site specific soils map is required for the Alteration of Terrain Permit. There is also the town HISS map requirement, which is not really widely accepted. Mr. Noel converted that map. He noted that he is not a soil scientist and is not sure why it is a freshwater wetland. His guess is it's probably influenced from all the water that is coming out of the leachfield and going into the tidal water.

Referring to the reduction in height, Member Quinn stated he did not follow how this was going to net out with the finished height of the building. He asked if the elevation of the buildings are being lowered 2ft.

Mr. Weinrieb explained the finished floor of the garage is being taken from elevation 12 to elevation 10. In addition, there is another 6 inches being taken out of the structure itself. He noted that they found in their research that the garage floor of their plan is 6 inches lower than the Riley property.

Member Quinn commented that he does not understand the reference.

Mr. Weinrieb explained that one of the things that they heard from some of the people in town is that they wanted it to be more like Riley's. The Riley's garage is at elevation 10.6 and this plan is 6 inches below that.

Member Quinn asked if the Rileys had fill brought in to accommodate that.

Mr. Weinrieb replied yes. He commented that a site can't be built on just using native material.

Member Quinn stated that one of the things he is concerned with is precedent. If it has not been done, he is wondering about the ramifications of bringing in a lot of fill.

Mr. Weinrieb noted that by zoning, they are allowed to bring in up to 4,000 cubic yards.

Attorney Donovan stated the Land Development Regulations also address fill. The ZBA is not the sole authority on how much fill can be placed on this lot.

Chair Losik asked if the ridge of the roofs are going to be lower.

Mr. Weinrieb stated they are going to be about 2.5ft lower. He continued that one of the things they have heard about is pedestrian safety. A striped, at grade, walkway has been created in front of the property. The septic systems have been added to the plan set. The septic design is much better than what was designed for systems right in this neighborhood. As far as the 4,000k designated leachfield area, that is on the plan. He noted that Riley did not need it. The proposed design is going above and beyond what has been required by this Planning Board.

Attorney Donovan asked if the Riley plan came before the Planning Board.

Mr. Weinrieb replied yes. He noted that Pelletier also came before the board.

Planning Administrator Reed noted that Mr. Riley built those originally for himself and his children. He recently came forward to ask how they can now be turned into condominiums. They were not originally built to be condos.

Chair Losik stated there was a case before the board for The Housing Partnership, with more units, and 4ks were required for each unit. The board has generally been conservative in regards to the 4ks.

Attorney Donovan commented that Ms. DiFranco's letter reiterates that point.

Referring to the septic system, Chair Losik commented that they have air compressors. In the ZBA testimony, it was said that there would be no generators.

Mr. Weinrieb stated there will not be much waste water going into them because they are pumped systems with no power in the homes. He confirmed that generators are not proposed. He continued that the architect of the buildings has been modified to address the concerns of the abutters and the board. The buildings have been lowered and the stairs on the side have been removed, which narrows the building by about 8ft and reduces the massing. The buildings have been redesigned and have individual features and color schemes. Also, Attorney Hogan, representing the Pelletiers, provided a photograph to the ZBA that shows the Pelletier house. He continued that they were asked to overlay that onto this site and that is in the packets. The visual supports the fact that their view to the ocean is very limited and this project will not alter their view. He stated that the drainage computation has been affected by the new design. There is a 2400sf reduction in pavement associated with the removal of parking area along DOT, thus the runoff is further reduced. He noted that they mentioned in their submittals, and Sebago concurred, they did not modify the computations for that because it is a minor decrease. Also, they are hopeful that the pavement will come back at a later point. He stated they added some additional spot grading around the site (on the plan) to clarify the intent of the grading. He reiterated that the retaining wall has been eliminated because of the lowering of the site. He pointed out that they added a site lighting plan. He summarized that the environmental benefits of the project are exceptional. This is demonstrated in the comments from the State reviews for the AOT and Shoreland Permits and comments received from the Wetlands Bureau. He noted they have no objections to Sebago's recent letter with minor items to address or with Ms. DiFranco's letter regarding Parson's Creek Estuary. He reiterated that in general they agree with Ms. DiFranco's letter but would like to meet with her to further discuss. He stated that he saw there were two

proposals to look at the vulnerability assessment; Waterstone and RPC. He would be more comfortable with RPC because they are more independent and understand this estuary assessment.

Attorney Donovan stated the he suggested in his February 5th memo that it might be advisable to have someone review the technical calculations in the floodplain report that result in the conclusion that the impact on the flooding will be only 1/16th of an inch. He checked to see if that was in the scope of work that Emily DiFranco's proposal and it is not. Ms. DiFranco is not sure if it is necessary. If it is, it will be another \$1,000.

Mr. Weinrieb stated that he thought this is what she was doing in the first place.

Referring to Ms. DiFranco's report, Attorney Donovan pointed out that it did talk about the septic and the impervious coverage. (He read from her report.) He suggested a work session with the board with the peer reviewers and the applicant.

Mr. Weinrieb agreed.

Regarding the drainage, Chair Losik stated the board has had analysis before them that have included the 100-year storm and she noted that this one doesn't. This is a piece of land that is near a significant watershed with activity and reactivity. She thinks it is important to look at what would probably be higher levels of water and to make sure the property can handle that.

Mr. Weinrieb stated the site is a relatively small site. It's near the bottom of the watershed near the creek. Runoff from this site is never going to flood the abutting site. There is a substantial decrease in the rate and volume of runoff from this site because of the reduction of the impervious and infiltration ability of the driveway and drip edges around the buildings. He explained that the water coming in from the ocean runs under 1A, floods the creek and floods the marsh. In storm events, that is where the flooding comes from and it can come in when there is no rain. Flooding and drainage on this site are very separate issues.

Chair Losik commented that she would like to know what the numbers are. If there has to be some type of additional facility the board should know that. She would like the board members to know they have looked at all the pieces so when the town is living with this in the future they can say they have looked at it thoroughly. She does not want people to say the Planning Board did not do their job.

Member Carter asked if there was any thought of maintaining the other access as an emergency exit in case of flooding so people can get in and out.

Mr. Weinrieb stated they have looked at it and there are a lot of challenges. It would really compromise the buffer between the two properties. Also, it would really impact the drainage in that area.

Member Quinn commented that he had a similar concern. He asked if emergency equipment is going to be able to service building #1 from Ocean Boulevard. He asked if fire trucks would be accessing the property from Wallis or Ocean Boulevard.

John Samonas, applicant, stated that it will be the decision of the fire or police departments to continue through Wallis Road to access the property or to come down Washington Road. If they find that Wallis Road is passable, then the driveway is passable. If Wallis Road is not passable, they would go down Washington Road to access any property along Ocean Boulevard.

Mr. Weinrieb asked if it would give the board more comfort if the stone and pipe leachfields were changed to a chambered system that could be driven across in an emergency situation.

Chair Losik commented that might be a good idea.

Carla Goodknight, CJ Architects, presented the architectural plans on a screen before the board. She reviewed the existing conditions and showed the grade at elevation 10, which would make the building 31.5ft from the ground and 41.5ft above sea-level. It was noted that the grade is only 1ft above Ocean Boulevard. The distance between the edge of pavement and the property line varies from 36ft to 42ft, plus a 9.5ft buffer to the building. She reviewed massing of surrounding properties within a quarter of a mile of the subject property. Ms. Goodknight went on to review the architectural design of the buildings with drive-under garages with two stories of living space over. There will be varied roof lines and window styles to give each building their own identity. The garages are under the living space to help minimize the footprint, which would add roughly 700sf for every two car garage on the site. By having the garage underneath, it also helps elevate the living space out of any potential water experience. There was some discussion on having a walkway from the rear of the buildings to the front; however, it was felt that it was more attractive without the walkway. It was noted that the proposed porches and decks would have restrictions that they could not be enclosed. Ms. Goodknight reviewed each building architectural style being proposed.

Ms. Goodknight stated that the project was developed with a strong focus on the environment and character of the community. The feedback from the board and the neighbors has been taken into consideration and the design of the buildings has been changed significantly. The team is very committed to respecting the wetlands and preserving them. (She highlighted the environmental benefits to the proposal.)

Attorney Donovan asked if these are going to be condominiums.

Mr. Samonas replied that he is not sure.

Attorney Donovan explained if they are condominiums a homeowners' association for maintaining the driveway and such would be needed. If they are owner occupied they would have to be condominiums. The board would need to know that if they are going to be rental units or owner occupied.

Speaking to Mr. Samonas, Chair Losik stated that at the ZBA there was a concept of renting for a week or two weeks.

Mr. Samonas stated that he is not going to restrict the renting of the units. However, he will restrict daily rentals because that is not something he is intending.

Mr. Samonas stated there are reasons why he does not know if they are going to be condominiumized or not.

Member Carter asked if 8ft is the norm for the height of a garage. He asked why it could not be 7ft.

Ms. Goodknight explained that it needs to be 8ft to accommodate the garage door.

Mr. Samonas commented that the 8ft allows for the garage door to operate properly. A 7ft door is a very difficult door to operate. He noted that they have brought the garage and two additional stories as short as they can.

Alternate Finn asked the ceiling height of the first floor.

Ms. Goodknight replied 8.6ft.

Mr. Samonas stated that there are many renditions of ten or eight units all in a row and two buildings of four units. None of that looked nice. This has 206ft of open air space between the buildings. There is 49ft between these buildings and Petey's. He stated there has been a lot of care put into what is being presented. Ten units looked like too many so they did not bring the board ten. It was chosen to do eight to give it a more open feeling on the property. He thinks that what they have arrived at it very beautiful.

Member Durkin asked if six units were considered.

Mr. Samonas stated that the millions of dollars that he has to spend to put this property into this condition, septic systems and site work, six would not be economically viable.

Ms. Goodknight noted that the ordinance is written to allow for ten but eight are actually being pursued.

Member Carter asked how many square feet the units are.

Mr. Samonas replied they are approximately 2,000sf each, not including the garage.

Alternate Sherman asked where the mechanics are going to be located.

Mr. Samonas replied the mechanics will be between the floors or up in the ceiling of the garage. Most of the systems are between the floors. That is why 18 inches are needed between the floors.

Alternate Sherman asked if there will be propane tanks.

Mr. Samonas explained there will be buried tanks, between the buildings, for the propane. One tank will service two buildings.

Member Carter asked what they see happening on the artificial turf surface.

Mr. Samonas explained the turf was chosen because it wasn't grass. The turf does not need pesticides or mowing.

Vice-Chair Lord asked if the turf will look out of place, nine months out of the year, when there is not much snow on the ground.

Mr. Samonas replied that he does not think so because one that is not very green in color was chosen. He noted that this is something that can be easily changed if the board wishes.

Chair Losik stated there were a couple of comments about this being six units, something less than eight. Emily DiFranco talked about the impact on septic and reducing the aerial footprint of buildings. Also, the Conservation Commission talked about the buffers in their September letter. They said that maintaining the septic systems buffer considerations should be a priority, even if the number of units needs to be reduced from eight to six or the buildings reduced in size. In looking at 304.6, the language states "*the Planning Board may require lower densities to make a proposed redevelopment compatible with its environment based on wetlands, configuration of the parcel, septic capabilities, setback of abutting buildings, building massing, drainage and other characteristics of the site that effect land planning.*"

Mr. Samonas stated that this point is valid. He looks at 1311 and 1315 Ocean Boulevard and that is a beautiful redevelopment of what was not beautiful. Mr. Riley took that property and made it something that is very beautiful and safe. There were eight bedrooms on the property prior to redevelopment and he ended up with eight bedrooms. Mr. Samonas stated that his property has twenty plus bedrooms, a restaurant and swimming pool. The property will be brought down to sixteen bedrooms, which is a huge improvement.

Chair Losik stated there are still issues of concern about density and wetland. The volume displacement method, may be the right one in the floodplain ordinance, but maybe it's not. The full implications might not be understood. There is still more information that is needed. She continued that they need to look at the height, width and depth, (cubic feet), and consider what it would look like compared to the Riley property (which is 32,000cf). She noted that Mr. Samonas' property is 150,000cf, which feels dense. She commented that the buildings are beautiful but there are just a lot of them.

Mr. Samonas replied that Riley's property is 4.4 acres. They cannot just use that property to compare to. He looked at properties within 300ft of his property and compared it to units per acre. He found that he has 3.5 units per acre on his parcel. The average, within 300ft of his property both east and west, is 4.5 units so this is well below the average.

Attorney Donovan noted that is why the ordinance has the 4.5 as the conversion factor. That is the analysis that he came up with in 1988. The difference is most of the properties used don't have wetlands. One third of this properties' acreage is wetlands. The discussion which precipitated this being put forward as an amendment in 2012, was over the Rye Beach Motel parcel (a similar parcel). A large part of that parcel was wetlands. The discussion was how to treat a lot that has a lot of wetlands on it. The minutes of that discussion reflect that there were concerns about that. It was agreed that this could be taken care of on a parcel by parcel basis with the provision that Chair Losik just read. It gives the board the chance to just use the non-wetlands as a conversion factor.

Chair Losik noted it is important to get this out on the table and there can be more discussion at the work session. She opened to the public for comments.

Attorney Scott Hogan, representing a group of abutters, spoke to the board. He stated there are two issues the board needs to address before they can get into the details. The fundamental density of this project is going to be decided by 304.6. Attorney Donovan's memo to the board noted the fact that this will be the first application this board is reviewing in that context. This property is different from all the other properties that have been talked about because this is a tourist cabin conversion that is subject to 304.6. It is frustrating to hear the applicant say that they have a response to the 304.6 issues that no one has seen. That was the new thing in the submission the applicant gave to the board that was totally absent. That is the issue the board needs to address right off the bat. The board's counsel and land planner have said its six units just on the wetland issue. There are also other factors the board has to take into consideration, which are written in a way to reduce density. It starts at six and then the characteristics have to be considered. He stated there are view impacts. Right now, all the variances that were granted to even allow the project to come before the Planning Board, are subject to Superior Court appeal. In that appeal, the applicant has filed a motion to dismiss the entire thing saying that none of the abutters have any standing, no impact, from this project. Specifically, they have no impact from views. That was modified a little in the new submissions the board received from the applicant saying there is "little to no impact". He commented that there is impact. The board has to address 304.6 right out of the gate because the rest will follow based on the density.

Attorney Hogan continued there were many references that deal with the single access off Wallis Road. Several months ago, it was made clear by the applicant and others that the only access to this project would be inundated during 100-year storms. He noted that after the last meeting, he reached out to Jim Hewitt at NH DOT. There was some discussion at earlier meetings about fill in the DOT right-of-way. There was also some discussion about the parking in the DOT right-of-way and the access points itself. Roger Appleton, from DOT, stated that they have changed their stance from the beginning on what they are going to approve on this project. DOT is not going to allow fill to be brought in to the right-of-way for this project. Attorney Hogan continued that the applicant has represented to the board that DOT doesn't want the parking in the right-of-way. Mr. Appleton stated that DOT is enforcement in terms of the parking and formalizing the addition of width to parking. DOT's position was to keep the roadway as it is right now. He also spoke to Mr. Appleton about the elimination of the Ocean Boulevard access point and leaving the project with a solely frequently inundated access point. Mr. Appleton said if the Planning Board or someone else was to ask DOT they would consider the need for a secondary access point. In looking at the applicant's new submissions, it says one access point and emergency access would be from Ocean Boulevard. He pointed out that there is an existing curb now and an existing curb on the property. There are also various buffer areas that exist on the property right now. It seems that they are saying that emergency vehicle access would drive over curbs and landscaping in a way that has never been seen before. In thinking about the design and engineering changed, and the fill and the drainage issues that would be implicated by maintaining the access off Ocean Boulevard as well as Wallis Road, that and 304.6, just changes the project fundamentally from the very beginning. His concern is that a lot of time is going to be spent even before they get to the threshold issues that might completely change the fundamental design of the project.

Attorney Hogan pointed out that there are a number of waivers being requested. It was also heard that there is actual zoning relief that is required for this project, over and above what they have already received. Procedurally, the applicant has the discretion to take the Planning Board's review time to go through the process. The board in the end could issue some conditional decision pending what is needed in variance relief. He commented that his position from the beginning has been the height, the technical variance relief, and the extent to which it doesn't comply with the zoning ordinance; and the fact that it was really a self-created hardship in the classic way. His clients do not think the basis for the variance relief was lawful nor reasonable and that is why an appeal is pending right now. If there is another issue that needs to go before the zoning board before this board can act on the application, those are the sorts of things that need to be figured out at the beginning of this process, if there is going to be one that is efficient and respects all the parties' rights.

Chair Losik commented that it sounds like he would agree to participate in a work session. She asked if the information from Roger Appleton, NH DOT, is in a letter that can be shared and provided for the file.

Attorney Hogan explained that they spoke by phone; however, he can submit a summary of the conversation.

Attorney Donovan noted that his memo stated that he thought a parcel like this has a grandfathered right to an access on the State highway. The State can't require them to eliminate all accesses from that highway. It is being said that the State may control this. He stated the he believes if the property owner wanted to retain his access to Ocean Boulevard, he has that lawful right.

Attorney Hogan agreed. He pointed out that he asked Roger Appleton this question. One of the things Mr. Appleton said was that he was almost sure the existing access on Ocean Boulevard was never

permitted because it was pre-permitting. It exists by the fact that it has always existed. The cabins have been there since the 1930's. He noted that Engineer Tobin Farwell is representing his clients. The fact is that Wallis Road primary access having almost 2ft of inundation. He asked Tobin how many 100-year storms there have been in the last couple of years and it is several. He stated that DOT acknowledged that there is a definite safety issue here. He commented that he has never seen a project like this not having two ways in and out, particularly if one of them is going to be inundated in 100-year storms. He thinks that the applicant would have the right to maintain that access (Ocean Blvd) and DOT would support that right.

Chair Losik stated that she heard that the applicant would look at that secondary access.

Mr. Weinrieb stated that in the proposed 2014 maps, which will be enacted someday, the whole area floods. Putting in another driveway entrance does not change that scenario.

Attorney Donovan stated that the soils plans shows Ocean Boulevard, from the parking lot of the snack bar up to the driveway, at elevation 9.

Mr. Weinrieb noted that to get to it from the south it is at 8. Also, elevation 9 is in the 100-year flood.

Attorney Donovan commented that it is not as much in it as elevation 7. He noted that the drawings show that most of the frontage on Ocean Boulevard is at elevation 9.

Attorney Hogan stated that part of the applicant's points, in regards to the secondary access, is that they would have to create a berm and it would negatively affect abutting properties. They said they would need additional zoning relief. If the applicant is saying that it will change the stormwater plan and have a different effect on the fundamentals, it should be resolved at the beginning of the process.

Tobin Farwell, Farwell Engineering, representing the abutters, stated that in regards to 304.6, it looks like it is trying to create a yield plan. Typically, in a yield plan the wetlands would be deducted and then it would be multiplied by the 4.5, getting the six units. That does not take into account wetland buffer and surrounding neighborhoods. He stated that they should get points for improving the situation but that should not hold the board hostage for the applicant to get as many units as they want out of it.

Delvin Arnold, 1220 Ocean Blvd, stated that he is an abutter to the property. Attorney Hogan is not representing him and he was not asked his opinion on the project at all. He pointed out that Attorney Hogan is representing abutters; however, he is not representing all the abutters. He continued that what is on the property now is not conforming and not appealing. The project that has been submitted is far more beautiful than what is there now. It will address a lot of the public issues in terms of the safety, parking and transient tenants. This is a far more appealing project for people who are abutting in his neighborhood.

Selectman Epperson asked if he is a direct abutter.

Mr. Arnold confirmed. He noted that he lives right across the street.

Sandy Milley, 1256 Ocean Blvd, stated that the stormwater management is an unpredictable cycle. He noted that his house is on 100% permeable beach sand. It is flooded during a regular thunderstorm

because it is packed thick. He would like to see a contingency for the people so that abutters do not get “saddled” with having to redo their basements.

Steven Borne, 431 Wallis Road, commented that “less bad” is not good. Parson’s Creek is oversaturated with leachfields, which need to be coming out of the area. The applicant is talking about twenty summer units going down to sixteen year round. The twenty summer are a lot less impactful. The applicant said that six units will not work. He is trying to shove something in there that does not feet. He has to spend so much money because it is a piece of land that just can’t handle it. The location is unique. In coming down Wallis Road, this is going to be a wall. They have talked about views but that wall will also block the sound of the ocean. In regards to the condominiums, he does not think the town’s record of enforcing condominium agreements is the best. He would like the board to help the public understand what is going on; a list of all the variances and variables so it is consumable. He would like to see the town buy part of this parking and make it beach parking. There could then be two units so there is better protection of the wetlands.

Chair Losik noted that it is eight units. She asked Mr. Borne what he meant by sixteen.

Mr. Borne clarified that he meant sixteen bedrooms.

In regards to the statement condominiums are not held accountable, Selectman Epperson stated that over the last eight years the board has made major improvements on the conditions of approval and having the building department follow up to verify the affidavits every year.

Frank Drake, 5 South Road, commented that in looking at the design, the LED lamplight that is being proposed for the side of the building is not recommended for installation in coastal areas. He continued that four buildings of this size are at least one too many. Section 304.6 is clear and drives a different outcome. He does not think justice can be done without a good long time looking onsite at how small it is when standing on it. It is a tiny strip of land. It looks big because of the marsh behind it and wetlands. It does not have much uplands and that is what the ratio has to be done on. Rye Beach does not allow wetlands in their calculation for lot sizing. It has been this way for years and it has never been an issue. He stated that the applicant’s economic hardship should be irrelevant to this board. It is irrelevant to the Zoning Board. It is not appropriate to bring an economic hardship argument to the table. It is not the town’s responsibility to facilitate return on investment. He commented that the board has done a great job “holding the line” at overreaching. He hopes the board will give this great scrutiny. Section 304.6 is very clear on how to approach this and that should be addressed first.

Mrs. Pelletier, 22 Odiorne, stated that she sees the sidewalk along Wallis Road, which would be a nice addition. However, at the last meeting, the hope was that it not just have the Wallis Road access. It seems that a building would have to be removed in order to put in another egress other than Wallis Road. Everyone talks about Wallis Road being a problem because of the flooding; however, there is more going on at that intersection than what has been discussed, which was part of why the sidewalk was added. The sidewalk is to make it a safer intersection for people walking to the beach who live further up Wallis Road. This is why the second egress is important but because of the density it has not been added onto the plan. She hopes this will be taken into consideration.

Chair Losik closed to the public at 9:40 p.m.

Vice-Chair Lord stated that having a meeting with everyone will help. There are a lot of issues the board needs to discuss and make a determination on.

Member Durkin stated that this is the first time he is looking at this. The density issue was an immediate concern that he had. Having a second entry is a good idea from a safety standpoint. The board has a responsibility to address that.

Selectman Epperson stated this is the most tortured piece of property on the seacoast. The applicant has brought forward some interesting and novel ideas to clean this place up. Clearly there are other issues that need to be discussed; however, he applauds the efforts to get this moving.

Attorney Donovan commented that a work session is advisable. He suggested waiting on the work session until the applicant's written response to his and Emily DiFranco's reports. The board should also decide if they would like the two additional peer reviews and how that would factor into the schedule for a work session. The peer reviews would be for the storm surge and climate change analysis, along with the analysis of the fill compensatory flood technique used to get the 1/16th increase in flooding in the floodplain.

The board reviewed the peer review proposals received from Waterstone and RPC. The proposal from Waterstone (Dr. Roseen) includes design recommendations to reduce risk and increase climate resiliency.

It was the consensus of the board to accept the proposal from Waterstone, as it is more comprehensive.

The board reviewed the memo from Emily DiFranco regarding the additional analysis of the fill compensatory flood technique.

The board agreed to accept the proposal from Emily DiFranco, which was \$1,000 for 8 additional hours.

A site walk was scheduled for **Wednesday, May 8th, 5:00 p.m.**

The board requested at the site walk markings for;

- Proposed corner of the buildings
- Driveway – along with secondary access
- Septic
- Identify the location of State right-of-way (front property line)

c. ~~Lot Line Adjustment by Cheryl Tulley Trust for a proposed lot line relocation between Tax Map 8.4, Lot 141, and a portion of Foss Circle. Property is in the General Residence, Coastal Overlay. Case #05-2019.~~

- d. Major Subdivision and Condominium Development Plan by Harbor Street Limited Partnership for property located at 1244 Washington Road, Tax Map 10, Lot 82, for a 20-unit residential town houses which will comprise of 5 4-unit buildings. Property is in the Single Residence District and Multi-Family Dwelling District, Aquifer and Wellhead Protection District and Rye Landfill Groundwater Management (RL-GMZ) District. Case #06-2019.
- **Request for continuance to May 14, 2019.**

(Continued)

- e. 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 #03-2019.

- **Request for continuance to May 14, 2019.**

Motion by Tim Durkin to continue the application by Cellco Partnership to the May 14, 2019 meeting. Seconded by Steve Carter. All in favor.

VI. New Business

- Approval of the March 12, 2019 minutes

The minutes should reflect the date of **March 12, 2019**

Motion by Patricia Losik to approve the minutes of March 12, 2019 as amended. Seconded by Jerry Gittlein. Vote: 5-0-3 Abstained: Bill Epperson and Steve Carter

- Amend Rules of Procedure for place and time

The board reviewed the amendment to Section 4.1 of the Planning Board Rules of Procedure.

Motion by J.M. Lord to accept the amendments to the Rules of Procedure. Seconded by Jerry Gittlein. All in favor.

- Request for an extension by Karl and Andrea Swanson on the condition for ADU from 11-13-18.
(Taken out of posted agenda order. See above.)

- RPC Representative: Appoint Ray Tweedie to replace Tom McCormick.

Mrs. Reed explained the position of the RPC Representative. Currently, Selectman Winslow is a representative and a second representative is needed to replace Tom McCormick. Resident Ray Tweedie has volunteered for the position. The proposed representative would be recommended to the Selectmen by the board for the select board's appointment.

Steven Borne, 431 Wallis Road, recommended that the Planning Board look for an alternative representative based on his observations of Mr. Tweedie and how he presents himself. The position needs to represent all the residents of the town and he would feel better if it was someone else.

Mrs. Reed explained that the representative does not have to be a Planning Board member. The person would be the Planning Board's representative to the RPC and is responsible to the Selectmen. The representative reports back to the Planning Board on the monthly meetings through email communication through Mrs. Reed.

Selectman Epperson stated that Selectmen Winslow is not available to attend every RPC meeting. He noted that he recommended Ray Tweedie because he thought he would be qualified for that position. Mr. Tweedie

is smart and would do a good job. However, the recommendation has to come from the Planning Board to the select board for a final decision.

Motion by Jeffrey Quinn to recommend Ray Tweedie as the representative to the RPC. Seconded by Jerry Gittlein.

Vote: 2-2-3

Opposed: J.M. Lord and Tim Durkin

Abstained: Bill Epperson, Patricia Losik and Steve Carter

It was the consensus of the board that more information is needed in regards to the responsibilities of the representative.

VII. Sub-committee Reports

Select Members of Committees (Long Range Planning and Rules and Regs)

Long Range Planning

- Steve Carter
- Katy Sherman
- Tim Durkin

Rules and Regulations

- Patricia Losik
- Jeffrey Quinn
- Nicole Paul

Technical Review

- J.M. Lord
- Jim Finn

Capital Improvements Committee

- Jerry Gittlein

Motion by J.M. Lord to appoint the members to the committee as outlined. Seconded by Steve Carter. All in favor.

VIII. Pay Escrows

See Escrows in packet

- Sebago Technics:
 - Samonas - 215 Ocean Blvd - \$772.50
 - Stoneleigh Construction Monitoring - \$2,371.73
 - Patrick Subdivision - \$221.75

Motion by Jeffrey Quinn to pay the Sebago for the invoices as submitted. Seconded by Patricia Losik. All in favor.

IX. Communication/Other

- None

Adjournment

Motion by Steve Carter to adjourn at 10:23 p.m. Seconded by Patricia Losik. All in favor.

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

Respectfully Submitted,
Dyana F. Ledger

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Harbor Street Limited Partnership

Property: 1244 Washington Road, Tax Map 10, Lot 82
Property is in the Single Residence District, Multi-Family Dwelling District, Aquifer and Wellhead Protection District and Rye Landfill Groundwater Management (RL-GMZ) District

Case: Case #06-2019

Application: Major Subdivision and Condominium Development Plan by Harbor Street Limited Partnership for property located at 1244 Washington Road, Tax Map 10, Lot 82 for a 20-unit residential town houses which will comprise of 5 4-unit buildings. Property is in the Single Residence District, Multi-Family Dwelling District, Aquifer and Wellhead Protection District and Rye Landfill Groundwater Management (RL-GMZ) District. Case #06-2019

Date of Decision: Tuesday April 9, 2019

Decision: _____ Approved
_____ Conditionally Approved
_____ Denied
_____ X _____ **Continued to the May 14, 2019**

4-10-2019

Date



Pat Losik, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Karl & Andrea Swanson

Property: 320 Brackett Road Tax Map 19, Lot 137
Single Residence

Case: Case #22-2018

Application: Conditional Use Permit Application for Karl & Andrea Swanson for property located at 320 Brackett Road Tax Map 19, Lot 137 for an existing detached cottage to be an Accessory Dwelling Unit per Section 506 of the Rye Zoning Ordinance. Property is in the Single Residence District. Case #22-2018.

Date of Decision: April 9, 2019

Decision:

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

The Board unanimously voted to grant the applicant a 6month extension on his November 13, 2018 approval for the ADU with the conditions below:

Motion by Pat Losik to conditionally approve the application, seconded by JM Lord and unanimously approved with the following conditions:

- 1. The new septic system is to be installed within 6 months of this approval;***
- 2. There be no other Accessory Dwelling Units on this property;***
- 3. There be no further expansion of the ADU; and***
- 4. The performance standards of the ADU per Rye Zoning Ordinance be adhered to.***

4-10-2019
Date



Patricia Losik, 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, April 9, 2019

Decision:

<input type="checkbox"/>	Approved
<input type="checkbox"/>	Conditionally Approved
<input type="checkbox"/>	Denied
<input checked="" type="checkbox"/>	Continued to the May 14, 2019

4-10-2019
Date



Pat Losik, 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.

Special Use Permit by Samonas Realty Trust for property owned and located at 1215 Ocean Blvd, Tax Map 17.3, Lot 6 to allow land housing tourist accommodations to become obsolete and to be redeveloped in residential use densities per Section 304.6 of the Rye Land Development Regulations. Property is in the General Residence, Business District and Coastal Overlay Districts and SFHA-Zone AO. Case #01-2019.

Date of Decision: Tuesday April 9, 2019

Decision:

<input type="checkbox"/>	Approved
<input type="checkbox"/>	Conditionally Approved
<input type="checkbox"/>	Denied
<input checked="" type="checkbox"/>	Continued to the May 14, 2019

The Planning Board voted to hold a Site Walk on Wednesday, May 9, 2019 at 5pm.

4-10-19
Date



Pat Losik, Chairman
Rye Planning Board