

**RYE CONSERVATION COMMISSION
MEETING**

Thursday, March 14, 2024

6:30 p.m.

Rye Town Hall & via Zoom

Commission Present: Chair Suzanne McFarland, Vice-Chair Sally King, Clerk Susan Shepcaro, Karen Oliver, Mike Garvan, Joe Tucker, Danna Truslow, and Alternates Paula Mahoney and Jeff Gardner (via Zoom)

I. CALL TO ORDER AND PELDGE OF ALLEGIANCE

Chair McFarland called the meeting to order at 6:31 p.m. and led the Pledge of Allegiance.

II. SEATING OF ALTERNATES

None

III. APPROVAL OF MINUTES

- February 6, 2024

The following corrections were noted:

- The date should be Tuesday, **February 6**, 2024.
- Page 1, 1st paragraph, 6th sentence should read: **The parcel has a lot of wetland complexes and is not a good place for access because of its position on West Road.**
- Page 1, 1st paragraph, 7th sentence should read: **The Brown Lane Farm property has good access, so a small appropriate parking lot was created to allow people to park off the road.**
- Page 2, last paragraph, 2nd to last sentence should read: **He pointed out that Fish and Game spends a lot of money stocking the creek so the fishermen can fish.**
- Page 5, 4th paragraph from bottom, 2nd sentence should read: **The planning board hears vital information that has to be communicated to the public and zero people show up, except for the board.**
- Page 6, 2nd and 3rd sentences should read: **He doesn't think that the Commission should look at acquiring this for the purposes of access being a legitimizing reason to take additional risks to expose people to a potentially harmful watershed that would probably do it harm from its**

over use. Not only is not necessary to provide access, it is not in the Conservation Commission's charter.

Motion by Danna Truslow to approve the minutes of February 6, 2024 as amended. Seconded by Mike Garvan. All in favor.

- February 8, 2024
 - It should be noted that the Conservation Commission met at the Rye Town Hall.
 - Page 3, 6th paragraph, last sentence should read: **The Commission's concern is protecting the vernal pools and the wetlands.**
 - Page 8, 7th paragraph, 2nd to last sentence should read: **If the situation changes, she would like to be able to figure out a way in, so that people could access.**
 - Page 9, 2nd paragraph should read: **Chair McFarland also clarified that she doesn't want to bind future commission's hands.**

Motion Susan Shepcaro to approve the minutes of February 8, 2024 as amended. Seconded by Danna Truslow. All in favor.

IV. WETLANDS

- 1. 1085 Old Ocean Boulevard, Tax Map 19.4, Lot 69**
Owner: Daniel and Jennifer Mayo Revocable Trust
TF Moran
Variance: §190-3.1.H(2)(a)(b): 100' Tidal Wetland Buffer
Replace a failing septic system with a clean solution alternative system.

Corey Colwell, TF Moran, presented the proposal for the replacement of a failed septic system for the property at 1085 Ocean Boulevard. The lot is approximately 8,800 s.f. on the north side of Ocean Boulevard. The lot is well beyond the 100' buffer from the ocean; however, there is a tidal wetland in back of the lot. Beyond the tidal wetland is freshwater wetland and the 75' buffer from that wetland goes through the home. The home is a one and a half story home with a one-story addition on the back. Behind the addition is a shed and deck. There is a failing septic system on the north side of the lot, with a tank that is believed to be a holding chamber. The owners have to pump the tank every time the building is used. The current septic system is failing and needs to be replaced.

Mr. Colwell noted that they have been looking at the lot to determine the best location for the new system. The east side of the lot was considered, where the existing system is located; however, the abutting home has an addition that encroaches onto this lot. There is not enough room between the abutting home and this home for the system. The front of the lot was also considered for the system. In speaking with DOT, they have said that they don't want to grant an easement or a license for the system in the State right-of-way. DOT would only do that if there

was absolutely no other location for the system on the lot. DES has reviewed the plan and looked at the proposed location for the system. DES has agreed that the best spot would be on the west side. The Advanced Onsite Solution System would fit with the proper setbacks between the left lot line and the building. Mr. Colwell pointed out that there is absolutely nowhere on the lot that a system could go that would be completely out of the buffer. The entire field is out of the buffer; however, the settling chamber and the tank, which are sealed units, will be in the buffer. The proposal will have to go before the ZBA for disturbance of the buffer for the tank and settling chamber.

Mr. Colwell noted that currently, effluent is leaking into the ground, the system is failing and needs to be replaced. The home was built in the 1940's or 1950's and it's believed that the system was put in at the same time. This is an opportunity to cleanup the buffer, as well as the wetland with a new system.

It was noted that the back of the tank for the new system will be 27.5' from the wetland at its closest point. The existing tank is approximately 50' from the wetland.

- **Site walk scheduled for Tuesday, March 19th, 2:15 p.m.**

2. 14 Sagamore Road, Tax Map 24, Lot 74

Owner: Elements 9 LLC

TF Moran

Variations: §190-2.11.A(1): Residential Use in Commercial District, §190-2.11.C(2)(3): Front & Side Yard Setbacks, §190-2.2.J(1): Residential Buffer, §190-3.1.H(2)(a)(e)[2]: 75' Freshwater Wetland Buffer

Remove existing building and pavement to construct two new buildings (one with office space, the other with 4 residential units) along with associated new parking, access, grading, stormwater management systems, and other improvements.

Revised plans

Corey Colwell, TF Moran, presented the revised plans for the property located at 14 Sagamore Road. The project was first reviewed by the Commission in November 2023. Since that meeting, two site walks have been held with the Commission. The project went before the ZBA at their December 2023 meeting. The abutters voiced a lot of concerns at that meeting with regard to the layout, the proximity of the building to the neighborhood, and parking. Mr. Colwell noted that three meetings have since been held with the abutters. The plans have been completely redesigned based on input from the abutters.

Mr. Colwell reviewed the plan being submitted to the ZBA for zoning relief. He pointed out that the previous proposal was a mixed-use building with three floors of office space and nine residential units. The current proposal is for two separate buildings. The office building is 2,150 s.f. and the residential building has been reduced from nine units to four units with a total of 4,700 s.f. The buildings have been moved northerly on the lot to provide more separation from the abutters on Frontier Street.

Mr. Colwell pointed out the three wetlands, which are all smaller than 3,000 s.f.; however, there is a 75' buffer because the wetlands are within 100' of each other. Under existing conditions, the building is 45' to the small wetland in the back and is only 2' away from the wetland on the abutting property to the north. The building on the revised plan is about 34' to the pocket of wetlands in the back and is 34' from the wetlands to the north, where it was previously 2'.

Mr. Colwell reviewed the tree lines on the plan that currently exist, along with the proposed tree line to be cleared with the development. Previously, there was 6,500 s.f. of trees to be cleared and it is now 2,400 s.f. of clearance. Under the previous proposal, 42 trees were to be cut and the revised proposal requires the cutting of 22 trees. This reduces the amount of clearing by 4,100 s.f.

The revised proposal complies with the front, side, and rear yard setbacks. Under the original proposal, there was encroachment onto the front setback. Most of the parking in the original proposal was surface parking with a larger parking lot. The revised plan has five parking spaces for the office building and eight spaces for the residential units, all which would be enclosed. The amount of pavement has been reduced significantly by enclosing the parking spaces.

Mr. Colwell noted that the square footage for wetland buffer impact has been reduced. The previous plan had approximately 6,000 s.f. of buffer impact. The revised plan has 5,223 s.f. of impact. He summarized that most of the features are further from the wetland. There's less impervious surface and less surface water runoff as a result of the revised design. There will be less clearing with fewer trees being cut. There will be a lot less pavement by having the parking enclosed. He noted that the existing total impervious coverage on the site is 20,400 s.f. with the proposed being 17,600 s.f., which is a 3,200 s.f. reduction in impervious coverage. There is less stormwater runoff, post construction, than what exists today and a lot less than the previous proposal.

Chair McFarland opened to the public for comments.

James Scammon, 4 Sagamore Road, spoke in regard to his concerns about the drainage issues in this area. He also expressed his concerns about turning a commercial property into a mixed use.

Mr. Colwell addressed Mr. Scammon's concerns about drainage.

Rich Pettigrew, 13 Sagamore Road, supported the comments made by Mr. Scammon.

- **Site walk scheduled for Tuesday, March 19th, 1:15 p.m.**

3. 2242 Ocean Boulevard, Tax Map 53, Lot 69

Owner: Jean Varney

Jones and Beach, Ambit Engineering, Tim Phoenix

Variances: §190-2.3.C91)(3)(5): Front, Rear, Side Yard Setbacks, §190-3.1.H(2)(a)(f)(g):
100' Tidal Wetland Buffer

Remove existing structure and construct a single-family dwelling

Note: *Paige Libbey noted that the proposal does not call for a side setback variances, as stated on the posted meeting agenda.*

Paige Libbey, Jones & Beach Engineers, presented the proposal for the property located at 2242 Ocean Boulevard to remove the existing structure and construct a new single-family dwelling. Ms. Libbey pointed out on the plan the 100' tidal buffer, which encompasses approximately half the property. A variance application has been submitted to the ZBA for wetland buffer impacts, as well as front and rear setbacks. The front setback variance is being requested in order to shift the proposed home closer to the road and further from the wetland. The proposal complies with the State's 50' primary setback, but it's still within the 100' buffer. The impervious coverage is being reduced on the property, as well as within the buffer. She pointed out that a planting plan has been submitted to the Commission showing a 7' wide planting buffer of salt tolerant native plantings. The existing home is 1,687 s.f. and the proposed home is 3,136 s.f. There is increase in the building coverage, but an overall decrease in impervious coverage due to the porous driveway and walkways. Ms. Libbey noted that the proposed home is being constructed to comply with flood standards for both FEMA and the Town of Rye.

- **Site walk scheduled for Tuesday, March 19th, 2:45 p.m.**

4. 39 Parson Road, Tax Map 20.2, Lot 45

Owner: Colen Family Revocable Trust

Attorney Monica Kieser, Ross Engineering, CSA Environmental Consultants, LLC,
BMA Architectural Group

Variances: §190-2.4.C(2): Side Yard Setback, §190-3.1.H(2)(a)(b)(f)(g): 75' Wetland Buffer, §190-6.3.A: Expansion of a Nonconforming Structure; and Special Exception to §190-3.1.G(2) and §190-3.1.H(2)(f): Driveway within Wetland Buffer

Remove shed, construct garage with living space above; extend existing driveway to connect to proposed garage, expand deck, construct retaining wall along driveway, replace existing septic tank with Advanced Online Septic System, relocate leach field further from the wetland, stormwater management plan, native plantings.

Revised plans

Alex Ross, Ross Engineering, noted that the Commission held a couple of site visits in October and gave some recommendations. He presented a revised set of plans based on the recommendations made by the Commission. The proposal is to remove the existing shed and construct a garage with living space above. The size of the garage is smaller than the original proposal and will be located closer to Parsons Road. The Advanced Online Septic System will be in the same location as the existing septic system and will be pumped to a leachfield in the front of the property. Mr. Ross pointed out that notes have been added to the plan with regard to mulching and plant survival rate. He also pointed out on the plan the wetland buffer planting strip. Mr. Ross reviewed the stormwater management plan for the Commission. He also reviewed the changes made in the revised plan from the previous proposal.

The Commission agreed to revisit the site to see it staked out with the new proposal.

- **Site walk scheduled for Tuesday, March 19th, 3:30 p.m.**

5. Perkins Road Culvert Replacement Permit by Notification
Wright Pierce

Britt Eckstrom, Wright-Pierce Engineering, met with the Commission to present the proposal for two culvert replacements on Perkins Road, which are being done by the Town of Rye. The construction will be done in phases and the intent is to start at the end of the summer. The contractor will be required to provide erosion and sediment controls throughout the duration of the project. Approval from DES has already been received for the project.

V. PENDING SITE WALKS AND REVIEWS

- 1. 5 Wentworth Road** – tree removals – finalize/send letter
Suzanne, Paula, and Kara

Chair McFarland noted that she sent Member Garvan photos after visiting the site to get his input. One tree has fallen into Sagamore Creek and another will probably be falling into the creek. She and Member Mahoney thought they should have more voices, as they did not have a quorum when they visited the site. Chair McFarland pointed out that the blueberry bushes didn't survive and the trees are falling. There is also a question about whether the project has to go through DES. The property owner has been given Eben Lewis' contact information and the 50' DES grid.

Member Garvan will visit the site and review the information sent to him to provide input.

- 2. 140 Brackett Road** – tree removals – finalize/send letter
Mike, Jeff, and Joe

Member Garvan commented that there is some question as to whether the trees are in the wetland buffer. He thinks they are not in the wetland. There is a small wetland near the road, but the trees are more than 50' from that area. Member Garvan noted that they were all in agreement that the trees were a hazard to the house and the property owner should be allowed to take them down. Member Garvan also noted that the Commission should strongly recommend plantings.

Alternate Gardner stated that it wasn't clear to him that the trees were outside the buffer. He would want the property owner to delineate the wetlands to show they are outside the buffer.

Member Garvan pointed out it's not in the National Wetland Inventory Overlay.

Member Tucker commented that the Commission should let the property owner cut the trees down based on the observations that they are probably not in the wetland buffer.

Vice-Chair King pointed out that the trees are hazardous anyway.

It was agreed that Land Use Assistant Kara Campbell should reword the letter and send it to the property owner.

3. 22 Pioneer Road – tree removal – schedule site walk
Monday, March 18th, 2:00 p.m.
4. 44 Pioneer Road – trees marked for removal for relocation of shed – schedule site walk
Monday, March 18th, 2:20 p.m.
5. 61 Parsons Road – tree removal – schedule site walk
Monday, March 18th, 2:40 p.m.
6. 230 Parsons Road – tree removals – schedule site walk
Monday, March 18th, 3:00 p.m.
7. 640 Long John Road – removal of platform and debris – check for CO – site walk
Friday, March 22nd, 10:30 a.m.
8. 1220 Ocean Boulevard – tree removals – schedule site walk
Friday, March 22nd, 10:50 a.m.

VI. OTHER BUSINESS

1. ZBA update

Alternate Mahoney reported that the request for rehearing and reconsideration for 0 Jenness was denied by the ZBA. The side property line variance request for 114 Harbor Road was approved for a generator. The expansion of a non-conforming structure for a deck and addition at 267 Brackett Road was approved with RCC's conditions, except #3 on RCC's letter. The LeSaffre proposal was heard by the ZBA. The property owners presented an extensive planting plan and have done everything the Commission has asked. Alternate Mahoney pointed out that the neighbors are still very much against the project, but she feels it will still pass. The application has to go back to the ZBA in April because they couldn't get through all the information at the March meeting.

2. Cedar Run yellow trail update
Member Gardner and Member Garvan will finish project.
3. Bog bridge construction – Jim Raynes Trail

Member Truslow noted that the challenge with the Jim Raynes Trail is that it hasn't really been dry and it's now a season where the wetland shouldn't be disturbed. She suggested July or August for the project.

There was discussion about building the bog bridges. It was agreed to have a two or three person committee to try to get some of the work done.

4. Bog bridge approval PBN NHB24-0768 Cedar Run
(See notes above)
5. Earth Day April 22, 2024
NH Association of Conservation Commissions sent information about what other commissions are doing for Earth Day.
There was some discussion about what RCC would like to do for Earth Day.
Members agreed to clean up debris on Harbor Road that was brought in from the recent storms and is now sticking to the vegetation along the wetland edge.
6. Recommendation to selectboard

Chair McFarland noted that Danna Truslow's term is up this year as a member and she would like to be reappointed. She also noted that Joe Tucker's term is up and he has decided not to continue.

The Commission thanked Member Tucker for his service over the past year.

Motion by Sally King to recommend Danna Truslow for reappointment. Seconded by Mike Garvan. All in favor.

RCC Officers beginning April 1st:

Motion by Suzanne McFarland to nominate Susan Shepcaro as chair. Seconded by Mike Garvan. All in favor.

Motion by Sally King to nominate Mike Garvan as vice-chair. Seconded by Suzanne McFarland. All in favor.

7. Junkins Family Conservation Land

Member Garvan noted that at the previous meeting, the Commission talked about taking a vote and codifying their position on the Junkins Family parcel. The Commission was worried that hands would be tied in perpetuity in using the original motion that was being considered.

Original motion:

In consideration of the very high conservation values of the land and water resources on the Junkins Family Conservation Land, 0 Pioneer Road, Map 22, Lot 73, as well as concerns about over use of the resource and public safety, the Conservation Commission will not pursue development of a parking area on the property.

Member Garvan reiterated that the Commission was worried that language would be too definite and would not be allowed to ever change their position.

Mike Garvan moved the following statement: In consideration of the very high conservation values of the land and water resources on the Junkins Family Conservation Land, 0 Pioneer Road, Map 22, Lot 73, as well as concerns about overuse of the resource and public safety, the Conservation Commission will not pursue development of a parking area on the property at this time, leaving open the possibility to do so in the future if any circumstance changes, particularly if the owner of 3 Brackett Road denied access. Seconded by Karen Oliver for discussion.

Chair McFarland noted that the motion has been reviewed by the Commission's attorney and this is her opinion.

Member Garvan stated that the motion would give the Commission leeway if circumstances changed. If the Commission approves this, it lets the public know that they were heard and the plans have been abandoned at this time.

Member Truslow asked if they should clarify the words "denied access."

The Commission agreed to add "particularly if the owner of 3 Brackett Road denied access to the Junkins Family Conservation Land through 3 Brackett Road."

Mike Garvan moved the following statement: In consideration of the very high conservation values of the land and water resources on the Junkins Family Conservation Land, 0 Pioneer Road, Map 22, Lot 73, as well as concerns about overuse of the resource and public safety, the Conservation Commission will not pursue development of a parking area on the property at this time, leaving open the possibility to do so in the future if any circumstance changes, particularly if the owner of 3 Brackett Road denied access to the Junkins Family Conservation Land through 3 Brackett Road. Seconded by Karen Oliver. All in favor.

8. New rules for blinds and tree stands on conservation property

In order to be compliant with NH RSA Section 207:36-a, Mike Garvan moved to revise the Rye Conservation Commission rules as follows:

- 1) No person shall erect, build, or use a tree stand or observation blind on Rye conservation land that damages or destroys a tree by inserting into the tree any metallic, ceramic, or other object used as part of a ladder or observation deck.
- 2) No person shall construct a permanent tree stand or observation blind on Rye conservation land.
- 3) A portable tree stand or observation blind that does not violate paragraph 1 or 2 may be erected on Rye conservation land from April 25 to June 1 and from August 1 to December 31 of a calendar year. All portable or temporary tree stands or observation blinds erected between April 25 and June 1 shall be removed from the property by July 1. All portable or temporary tree stands or observation blinds erected between August 1 and December 31 shall be removed from the property by January 31.
- 4) All tree stands or observation blinds shall be labeled with the name and contact information of the owner of the tree stand or observation blind in a clearly visible manner.
- 5) Any person who violates and provision of these rules shall be guilty of a violation and:
 - a. Shall be liable for the amount of damage caused by the act, to be recovered by the property owner sustaining the damage; and
 - b. Shall be liable for any fine amount levied by the fish and game department, to be recovered by the department.
- 6) The Rye Conservation Commission shall contact a local or state law enforcement officer or conservation Officer to remove and seize a permanent, portable or temporary tree stand or observation blind which was placed, or the owner of which has failed to remove, in violation of these rules.

Seconded by Karen Oliver. All in favor.

9. Bittersweet

Member Truslow noted that the Commission had questions about bittersweet. She was able to get recommendation language from UNH Cooperative Extension that can be added to the Commission's website. She also received recommendations for low water grasses and that information can be put on the website, as well.

VII. CORRESPONDENCE

1. 2024.02.14 28 Old Beach Road, Tax Map 8.4, Lot 108 NHDES Emergency Authorization
2. 2024.02.15 1180 Ocean Blvd, Tax Map 19.4, Lot 96 NHDES Emergency Authorization

3. 2024.02.20 1314 Ocean Blvd, Tax Map 174, Lot 38 NHDES Emergency Authorization Extended
4. 2024.02.20 1200 Ocean Blvd, Tax Map 17.3, Lot 35 NHDES Emergency Authorization Extended
5. 2024.02.23 15 F Street, Tax Map 5.3, Lot 57 NHDES Emergency Authorization Extended
6. 2024.03.01 1228 Ocean Blvd, Tax Map 173, Lot 39 NHDES Emergency Authorization
7. 2024.03.05 Harbor Road, Tax Map 9, Lot ROW NHDES Extended Emergency Authorization
8. 2024.03.08 2260 Ocean Blvd NHDES Emergency permit-VERIFY_EA-2024234199
9. Letter from Brenda Murray 0 Jenness Ave, asking for a rehearing
10. Plant sale – Strafford, April 6th
11. 2024.03.08 City of Portsmouth Assessor’s Office Letter – Inspectors for Revaluation
12. 024.03.11 15 Carbee Drive, Tax Map 84, Lot 10 NHDES Emergency Authorization
13. Watershed News, Green Mountain Conservation Group – Article on road salt

VIII. BILLS

1. \$63.84 – Home Depot – wetland posts
2. \$2,730.00 – BCM Environmental and Land Law #13285
3. \$27.60 – Eversource

Motion by Mike Garvan to pay the invoices as listed. Seconded by Danna Truslow. All in favor.

**IX. NON-PUBLIC SESSION (1) per RSA 91-A:3, II (d) Acquisition
(2) per RSA 91-A:3, II (e) Legal**

At 9:09 p.m., Motion by Suzanne McFarland to go into non-public session. Seconded by Mike Garvan.

Roll Call: Danna Truslow – Aye; Susan Shepcaro – Aye; Sally King – Aye; Suzanne McFarland – Aye; Mike Garvan – Aye; Joe Tucker – Aye; Karen Oliver – Aye; Paula Mahoney – Aye

Note: *Alternate Jeff Gardner left the meeting at 9:10 p.m.*

The Commission came out of non-public session at 9:40 p.m.

ADJOURNMENT

Motion by Mike Garvan to adjourn at 9:41 p.m. Seconded by Susan Shepcaro. All in favor.

Respectfully Submitted,
Dyana F Ledger