

**TOWN OF RYE – PLANNING BOARD
MEETING**

**Tuesday, February 20, 2024 – 6:00 p.m.
Rye Public Library**

Members Present: Kevin Brandon, Rob Wright, Selectmen's Rep. Bill Epperson, Chair Patricia Losik, Bill MacLeod, Steven Borne

Also Present on behalf of the Town: Planning/Zoning Administrator Kim Reed

I. Call to Order

Chair Losik recognized **John Shaw, Peter Moynahan, Donald Cavalliaro, Bob Eberhardt, and Steven Borne** and their interest in running for Planning Board membership in the upcoming election. She also recognized Members Kevin Brandon, Rob Wright, Kathryn Garcia, and Katie Sherman, who will be moving off the board.

Chair Losik noted a change in the agenda and invited DPW Director **Jason Rucker** to present.

Mr. Rucker praised the town's Master Plan and shared that he'd discussed it in meetings with state senators and in an interview with NPR. He also updated the board about a meeting with FEMA regarding coastal resiliency and opened to any questions regarding MS4.

Mr. Rucker explained that DPW would require assistance with revisions to the town's post-construction stormwater ordinances.

Mr. Rucker explained MS4 and discussed its significance. He described it as a separate stormwater and sewer designation: a series of pipes, culverts, and drainage ditches that take stormwater from streets and parking lots and channel it to 35 outfalls in town, which go into the ocean or Great Bay.

Selectmen's Rep. Epperson asked if this is a federal unfunded mandate. Mr. Rucker confirmed and explained that it's a 7-year permit. Selectmen's Rep. Epperson noted that the town budgets for this and Mr. Rucker agreed.

Member Wright asked if the post-construction permitting is an as-built compliance check and whether one would need a certificate of occupancy stamp of approval from DPW. Mr. Rucker confirmed and explained that DPW would provide a checklist to contractors to make sure they fulfill all requirements.

Member Wright asked about the requirements of a homeowner to keep the stormwater directive so it remains functional moving forward. Mr. Rucker explained that driveway culverts are the responsibility of homeowners and the town is responsible for under-road culverts.

Member Wright asked what part of the MS4 process ensures that as-built structures are still functional. Mr. Rucker explained that it would fall under stormwater regulations for construction. He stated that there is no code enforcement and that DPW is not code enforcement.

Chair Losik, referring to GIS mapping, asked whether it was complete. Mr. Rucker stated that it's a work in progress and hopefully always will be. He explained that there are updates coming and there is a contract in place to help with updates and that GIS in Rye is currently rudimentary. Chair Losik asked what percentage of the assets are reflected. Mr. Rucker stated that it probably captures 80% of all assets and they're finding more all the time.

Chair Losik, referring to a previous IDDE incident, asked if there had been any others in the last three years. Mr. Rucker stated that no other IDDEs have been reported.

Chair Losik noted that chapter nine regarding stormwater would be pumped up and it was rewritten in 2022. She stated that there are a lot of LID techniques and the board is excited to see more guidance to strengthen that. She asked Mr. Rucker about any concerns regarding zoning. Mr. Rucker stated that he would have to look at it a little closer to provide any feedback.

Chair Losik, referring to existing conditions, stated that Mr. Rucker's insight regarding the land use section, base condition buildout analysis, and backlands development would be helpful.

Member Borne expressed concerns about the ongoing costs to the town caused by conditions placed upon ZBA approvals. He asked whether the properties listed as primary concerns are part of MS4. Mr. Rucker confirmed and explained that they're generally spaces with a lot of impervious surfaces. He stated that those properties get a letter from DPW annually asking them to use proper snow storage, snow removal, and minimize salt. Regarding enforcement, the stormwater management system in place for subdivisions is required to submit their annual maintenance and inspection of stormwater systems to the DPW. Mr. Rucker stated that he does cursory inspections as well, but it mainly falls on the building inspector.

Member Borne discussed the flooding in January and asked Mr. Rucker to explain what was learned from the events. Selectmen's Rep. Epperson stated that it's a work in progress and that the Fire, Police, and Department of Public Works are working on it together as a package. Mr. Rucker stated that three department heads have been working in conjunction and have had after-incident meetings. He stated that there's been improved communication and responses regarding debris in the road, machinery maintenance, and response times.

Member Wright asked Mr. Rucker what conversations have happened with the state regarding the seawall and their help. Mr. Rucker stated that there's one section of seawall that's the town's responsibility. He reported that the state has a 10-year plan to do major, costly upgrades to the seawall. He stated that it's still in the pre-design phase and they're hoping for something more permanent from the state.

Selectmen's Rep. Epperson stated that it's a \$16 million project from North Hampton into Rye.

II. Determination of Completeness:

- a. Driveway Application by Shaun McCarthy by Jones & Beach Engineers, Inc. for property owned and located at 53 Spring Road, Tax Map 8.1, Lot 21 request a waiver from Appendix E- Section 5-E (O) for two driveway curb cuts when one is allowed. Property is in the Single Residence District. Case # 01-2024.**

Motion by Bill Epperson to determine the application complete. Seconded by Rob Wright.

Vote: 6-0-0 (K. Brandon, R. Wright, B. Epperson, P. Losik, B. MacLeod, S. Borne in favor)

III. Public Hearings on Applications:

- a. Major Non-Residential Site Development and Condominium Amendment by Robin Wehbe for property located 2203 Ocean Blvd, Tax Map 5.3, Lot 28, Units A & B to raze the existing structures that are currently being used as a yoga business and build two residential units. Property is in the Business District, Coastal Overlay District and SFHA Zone AO (2). Case #17- 2023.**

Chair Losik invited questions from Mr. Wehbe regarding the factual findings, decisions, and proposed conditions of approval. Mr. Wehbe stated that he had questions regarding the conditions when the discussion came to that point.

Chair Losik noted that decisions #47-49 should be corrected to say #51-53. Chair Losik discussed LDR section 6.8, noting that it doesn't have a lot of applicability in this case. She observed that steps were taken to minimize impervious surfaces, reduce impervious coverage, maintain the existing structural dimensions, and not materially impact stormwater negatively. She suggested the board strike #57.

Mr. Wehbe thanked the board for their guidance and stated that, regarding the TRC stamp and utilities, he doesn't have them yet but the board could add that to conditions of approval.

Shannon Alther of TMS Architects noted a couple of spot grades that were added in. The board discussed spot grades.

Chair Losik stated that page 12 of the NOD shows items in red that were picked up by either TRC minutes, streaming, Sebago, or RPC.

Mr. Alther discussed the combination of TMS plans and landscape components. He stated that there are pervious pavers throughout and that he wanted to be sure the drip edge was noted,

which is a 2' band of stone gravel. Chair Losik agreed that the stone drip band should be added to the plan.

Member Wright, noting the shape of the site, asked whether wheeled vehicles would have trouble accessing it. Mr. Alther stated that it's all driveable by a regular car.

Mr. Wehbe posed questions for the board regarding conditions 10-12, which the board discussed. Member MacLeod asked whether there's a requirement for the applicant to post a performance bond. It was discussed and determined that it's not a requirement.

Member Borne asked who reviews condo docs. Chair Losik explained that Attorney Maher reviews them and the board has a copy.

Chair Losik asked Planning/Zoning Administrator Reed to verify the square footage of Unit 1.

Chair Losik opened to the public at 6:46 PM; hearing no comment, the public session was closed.

Chair Losik discussed the waivers, noting that the board would insert #49 on page nine:

“On February 20, 2024 the planning board conducted a further public hearing on the matter. Reviewing the plan set dated 2/2/24 and 1/23/24 the draft conditions of approval were reviewed and agreed upon by the applicant. Waivers submitted by the applicant on 10/31/23 were discussed and approved by the board.”

The board discussed best practices with **Maddie Dillonno**; it was determined that the board could vote on the application as presented, as long as all documents are attached to the meeting minutes.

Motion made by Bill Epperson, seconded by Rob Wright to grant the Applicant's requests to the aforementioned waivers of Rye's Land Development Regulations because the Planning Board finds that strict conformity would present an unnecessary hardship and granting a waiver under such circumstances is not contrary to the intent or spirit of the regulations.

Vote: 6-0-0 (K. Brandon, R. Wright, B. Epperson, P. Losik, B. MacLeod, S. Borne in favor)

Motion by Bill Epperson to approve Factual Findings as written. Seconded by Rob Wright.

Vote: 6-0-0 (K. Brandon, R. Wright, B. Epperson, P. Losik, B. MacLeod, S. Borne in favor)

Motion by Bill Epperson to approve the Decision. Seconded by Steven Borne.

Vote: 6-0-0 (K. Brandon, R. Wright, B. Epperson, P. Losik, B. MacLeod, S. Borne in favor)

Motion by Bill Epperson to approve the Major Non-Residential Site Development and Condominium Amendment by Robin Wehbe for property located 2203 Ocean Blvd, Tax Map 5.3, Lot 28, Units A & B to raze the existing structures that are currently being used as a yoga business and build two residential units subject to the conditions of Approval. Property is in the Business District, General Residence District, Coastal Overlay District and SFHA Zone AO (2). Seconded by Steven Borne.

Vote: 6-0-0 (K. Brandon, R. Wright, B. Epperson, P. Losik, B. MacLeod, S. Borne in favor)

- b. Driveway Application by Shaun McCarthy by Jones & Beach Engineers, Inc. for property owned and located at 53 Spring Road, Tax Map 8.1, Lot 21 request a waiver from Appendix E- Section 5-E (O) for two driveway curb cuts when one is allowed. Property is in the Single Residence District. Case # 01-2024.**

Paige Libbey, Jones & Beach Engineers, presented the application on behalf of the applicants, who were also present.

Referencing sheet C2, Ms. Libbey stated that the applicants recently purchased the property and are looking to do a major renovation to the interior and exterior of the house with the purpose of making it more functional. She explained the driveway configuration noting that the existing side entryway is used most often and the applicants would like to make the front of their home the main entry and would like to provide parking near the front door. She explained the second issue that the existing driveway is slightly on the neighbor's property. There is 12' between the corner of the garage and the driveway to the property line; on average it's roughly 25' which is not adequate space. They intend to make the driveway a frontloading garage with one entryway, mainly used for storage. She explained that it's an oddly shaped lot. Selectmen's Rep. Epperson noted that it was built that way because of the wetlands.

Member Wright asked whether there is a definition of the eastern boundary. The board discussed the eastern boundary and property line.

Ms. Libbey stated that adding a looped driveway improves their sight distance. Chair Losik agreed that the sight distance profile makes a lot of sense and it would be a good improvement.

Selectmen's Rep. Epperson asked if all that's being requested is a waiver for two curb cuts. Ms. Libbey confirmed and stated that they also needed variances and had already been to the ZBA.

Selectmen's Rep. Epperson stated that he drove by the property and the request makes perfect sense. Chair Losik noted that it adds to the safety. Selectmen's Rep. Epperson stated that the Fire Chief opined that it's easier for emergency equipment access with two curb cuts.

Member MacLeod stated that he also looked at the property and that he's a fan of circular driveways, that it's not a problem here, and it's at the end of a cul de sac where there is no traffic. He stated that he has no problem with the application but Rules and Regs could look at allowing two cuts so they wouldn't have to go through all this work.

Chair Losik opened to the public at 7:03 PM.

Mr. Wehbe stated that it's a great project.

The public session was closed at 7:03 PM.

Chair Losik suggested a correction to Factual Finding #4, the second line is H-1-F.

The board discussed the variances and special exceptions granted by the ZBA and the Planning Board's Findings of Facts.

Chair Losik discussed a scrivener error in the Planning Board's Findings of Facts: §190-3.1H2F is §190-3.1H1F.

Planning/Zoning Administrator Reed stated that the board could put that in, but should run it by Attorney Maher as it may change the variance they receive. She suggested that it may not need to be referenced as a scrivener error in the notice of decision, but it's noted in the minutes.

The board discussed language for Findings of Fact #4 and #5.

Motion made by Bill Epperson to grant the applicant's request for a waiver from Appendix E- Section 5-E (O) from the Rye Land Development Regulations. After review of all submittals provided concluded the plans dated 1-29-2024 and revised plans Sheets C2, C3 and H1 dated 2-5-2024 and said statements made during the record, the Board grants the waiver sought by the Applicants because the planning board found that: (1) strict conformity would pose an unnecessary hardship to the Applicants and waiver would not be contrary to the spirit and intent of the regulations. Seconded by Rob Wright.

Vote: 6-0-0 (K. Brandon, R. Wright, B. Epperson, P. Losik, B. MacLeod, S. Borne in favor)

IV. New Business:

- **Request for reduction in LoC for Airfield Drive THP**

Chair Losik read aloud the revised and adopted LDR §202-7.1D. She explained that the board has a declaration from engineer Steve Harding of Sebago Technics responding to a request by Hailey Ward, the Housing Partnership's engineer, dated 2/11, and the original construction cost estimate prepared by Ambit Engineering in 2018. She stated that this was before the board in December for the language of the bond, which had changed by statutory requirements.

Motion by Bill Epperson to Amend on behalf of The Housing Partnership 0 Airfield Drive, Tax Map 10, Lot 5 (15-4) in the amount surety bond currently at \$958,441.00 to \$506,554.00 per reduction of \$451,887.00 consistent with the Town Engineers, Sebago Technics declaration of February 12, 2024. Seconded by Rob Wright.

Vote: 6-0-0 (K. Brandon, R. Wright, B. Epperson, P. Losik, B. MacLeod, S. Borne in favor)

- **Sebago Technics Contract Renewal**

Chair Losik directed the board to page 3, paragraph nine, in the second line and noted that the amount should be \$500,000. She explained that Kim Reed would sign this document on behalf of the Planning Board if the board so chooses.

Motion by Bill Epperson to recommend the consulting agreement between the Town of Rye and Sebago Technics Inc. consultant for engineering services for two years from January 10, 2024 to be executed on behalf of the Planning Board by the Planning Board administrator. Such agreement may be extended for an excess of one year by mutual consent of the town and consultant. Seconded by Rob Wright.

Vote: 6-0-0 (K. Brandon, R. Wright, B. Epperson, P. Losik, B. MacLeod, S. Borne in favor)

- **Voluntary Lot Merger**

Chair Losik explained the board's legal guidance: the granting of the variance by the ZBA clears the way for the applicant to proceed with a lot merger with the Planning Board.

Planning/Zoning Administrator Reed explained that this applicant came before the ZBA last summer and the ZBA didn't have the jurisdiction to do a voluntary lot merger at that time. The property owner was granted a variance to demolish both houses and will build one more conforming house in the middle of the two lots. The ZBA stated that it's conditioned on a lot merger. Attorney Maher explained that because it's conditioned on a ZBA decision, the Planning Board can vote to grant the lot merger.

Motion by Bill Epperson to approve the lot merger of pre-existing lots Tax Map 17.3, Lots 55 and 57 for Ocean Mustang Trust, Donna M. Miller, Trustee and Viking Realty Trust, Donna M. Miller Trustee. Seconded by Rob Wright.

Vote: 6-0-0 (K. Brandon, R. Wright, B. Epperson, P. Losik, B. MacLeod, S. Borne in favor)

V. Other Business

• **Master Plan Update**

Member Wright reported that the Master Plan Public Forum had 48 people in attendance. The committee had help from Resilience Planning and Design, who moderated. There were five stations available for people to ask questions and inform themselves. He explained that this was all in an effort to gather information from the public as to what they think Rye should look like in the future. He shared that there is still an open comment section on the website available until March 15th.

Selectmen's Rep. Epperson thanked Member Wright and commented that the forum was well done.

John Shay commented that he and his wife enjoyed the pictures and maps and were surprised at how much wetlands and conservation land there is in Rye.

Mr. Moynahan stated that his favorite part was the online survey.

Chair Losik expressed that she hopes people will read the Existing Conditions report as it's a worthwhile document. Member Wright agreed that it was fascinating.

Member Borne noted that Candidates Night on 3/7 and the election on 3/12 would be good opportunities to communicate and get input. He stated that Civic News has the NRI broken down by section to make it easy to review and will do the same for the buildout analysis and existing conditions. He stated that he gets feedback from people via email, phone, and text. He stated that one person emailed him asking what would keep non-residents from filling this out as it's open to anyone.

Planning/Zoning Administrator Reed asked Member Borne for clarification that people are going to him with questions and not to town staff. Member Borne stated that people email him constantly and that he answers their questions. Planning/Zoning Administrator Reed requested that he please try to steer questions to town staff.

Chair Losik stated that the MPSC meetings are on the first Tuesday of every month and the April meeting will have summarized information and the committee will discuss focus groups. She stated that outreach will continue to expand.

- **TRC**

Chair Losik stated that the board has discussed a contract with the RPC and will discuss the TRC process moving forward.

Member Wright explained that he received input from a citizen that there used to be TRC at the beginning of every process and it was helpful to get guidance upfront which eliminated missteps. Selectmen's Rep. Epperson confirmed that that used to be the process, which was terminated after 421 South Road. The board discussed the TRC's process.

VI. Minutes and Escrows

- **December and January meeting minutes**

Meeting Minutes: December 19, 2023

Corrections:

- The spelling of "counsel" should be corrected throughout the document.

Meeting Minutes: January 2, 2024

Corrections: N/A

Meeting Minutes: January 16, 2024

Corrections:

- Page 7, paragraph 9 -strike, "Selectmen's Rep. Epperson suggested Member Borne submit his notes to the town attorney."

Motion by Rob Wright to accept the minutes from the December 19, 2023, January 2, 2024, and January 16, 2024 meetings. Seconded by Bill Epperson.

Vote: 5-0-1 (R. Wright, B. Epperson, P. Losik, B. MacLeod, S. Borne in favor, K. Brandon abstained)

- **Escrows**

Motion by Bill Epperson to pay the following escrows:

- A. Rye Airfield to Sebago in the amount of \$922.54**
- B. Marsden Woods to Sebago in the amount of \$1,647.83**

Seconded by Rob Wright.

Vote: 6-0-0 (K. Brandon, R. Wright, B. Epperson, P. Losik, B. MacLeod, S. Borne in favor)

Motion by Rob Wright to adjourn at 7:41 PM. Seconded by Bill Epperson. All in favor.

Respectfully Submitted,
Emilie Durgin

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: Ocean Mustang Trust, Donna Miller, Trustee
1264 Ocean Blvd, Tax Map 17.3, Lot 55

Applicant/Owner: Viking Realty Trust, Donna Miller Trustee
Addresses: 1266 Ocean Blvd, Tax Map 17.3, Lot 57.

Request: Voluntary Lot Merger by Ocean Mustang Trust and Viking Realty Trust for property located at 1264 Ocean Blvd, Tax Map 17.3, Lots 55 & 57.

Date of Decision: Tuesday February 20, 2024

Decision: **Findings of fact:**

The granting of variances clears the way for the applicant to proceed with a lot merger.

Motion by Bill Epperson to approve the lot merger of pre-existing lots Tax Map 17.3, Lots 55 and 57 for Ocean Mustang Trust, Donna M. Miller, Trustee and Viking Realty Trust, Donna M. Miller Trustee. Seconded by Rob Wright. Unanimously Approved in a vote 6-0-0.

2/21/2024
Date


Patricia Losik, Chairman
Rye Planning Board

RYE PLANNING BOARD

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

Notice of Decision

Applicant/Owner: The Housing Partnership
Request: Reduction in Line of Credit
Date of Decision: Tuesday February 20, 2024
Decision: Reduction which is allowed under Land Development Regulations 202-7.1.D - **Partial release of performance guarantee or surety.**

- (1) Performance guarantees or other performance sureties shall be entitled to a partial release by the Planning Board upon the completion of improvements or installation or upon the substantial improvements being made. In seeking a partial release, the applicant shall identify the work that has been performed and the cost of the work performed, as against the anticipated project costs. Upon the certification from the project Engineer that the improvements that have been completed or partially completed have been done in a satisfactory manner in accordance with the approved plans, these regulations and standards are adopted herein by reference. Such partial release shall be without reservation of the Planning Board to seek a guarantee and maintenance surety in accordance with Paragraph (E).

Finding of Facts:

1. Declaration from Town Engineer, Steve Harding from Sebago Technics.
2. Haley Ward, Applicant's Engineer for The Housing Partnership dated February 11, 2024.
3. Construction Bond prepared by AMBIT in 2018.
4. Before the Planning Board in December 2023 dealing with the language of the Bond, which had changed by Statutory requirements.

Motion by Bill Epperson to Amend on behalf of The Housing Partnership 0 Airfield Drive, Tax Map 10, Lot 5 (15-4) in the amount surety bond currently at \$958,441.00 to \$506,554.00 per reduction of \$451,887.00 consistent with the Town Engineers, Sebago Technics declaration of February 12, 2024. Seconded by Rob Wright.
Unanimously Approved in a vote 6-0-0.

2/21/2024
Date


Patricia Losik, Chairman
Rye Planning Board

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

I | P a g e

RYE PLANNING BOARD

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

NOTICE OF DECISION AND FINDINGS OF FACT TOWN OF RYE PLANNING BOARD

Applicant/Owner: Shaun and Sara McCarthy

Addresses: 53 Spring Road, Tax Map 8.1, Lot 21

ZONE: Property is in the Single Residence District

CASE NO: #01-2024

Request: Driveway Application by Shaun McCarthy by Jones & Beach Engineers, Inc. for property owned and located at 53 Spring Road, Tax Map 8.1, Lot 21 request a waiver from Appendix E- Section 5-E (O) for two driveway curb cuts when one is allowed. Property is in the Single Residence District. Case # 01-2024.

The Rye Planning Board issues this Notice of Decision and Findings of Fact in accordance with RSA 676:3. In issuing this Notice of Decision and these Findings of Fact, the Planning Board incorporates such facts and evidence as are reflected in the submittals and meeting minutes associated with this matter that are supportive of the decisions and Findings of Fact contained herein.

FACTUAL FINDINGS

1. The property is located at 53 Spring Road, Tax Map 8.1, Lot 21 (“**the Property**”).
2. The Property is owned by Shaun and Sara McCarthy (“**the Applicant**”).
3. The Property is approximately 2.06 acres in size with 150 feet of frontage on Spring Road.
4. On January 3, 2024, the Applicant received a special exception and variances from the Rye Zoning Ordinance.
5. The Applicant submitted a Planning Board Driveway application on February 2, 2024. As shown on Sheet C2 (dated 2-5-2024) the existing driveway, which is 26.3’ is to be removed and replaced with two (2) curb cuts both 20’ on Sheet C3 (dated 2-5-2024).
6. Site line distances are shown on Sheet H1 (dated 2-5-2024).
7. The application was emailed to Maddie Dilonno, RPC on February 2, 2024.
8. After reviewing the submitted application, the Planning & Zoning Administrator noticed that the waiver was not attached to the application and the dimensions of the driveway cuts were not present on the plans. Requests for those were made to the applicant.

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

9. As part of the application submitted February 2, 2024, the applicant seeks a waiver from the following provision of the Land Development Regulations ("LDR"):
 - a. Appendix E – Section 5-E(O) for two driveway cuts when one is allowed.
10. Abutter notices were sent on February 5, 2024, and legal notice was posted and sent to Portsmouth Herald on February 5, 2024.
11. The Planning and Zoning Administrator sought comments from the Town's Department Heads on February 5, 2024 with a reminder on February 12, 2024.
 - a. Received denial by the DPW Director, February 12, 2024
 - b. Received email with Dept Response and letter from RCC, February 12, 2024
 - c. Received email from Deputy Fire Chief, he had no concerns.
 - d. Received email from Police Chief, he had no concerns.
12. Revised plans and waiver submitted and forwarded to RPC on February 6, 2024.
13. On February 20, 2024, the Planning Board conducted a public hearing on the application for a waiver for two driveway cuts when one is allowed.
14. On February 20, 2024, The Planning Board issues this Notice of Decision and Findings of Fact.

DECISION

Motion made by Bill Epperson to grant the applicant's request for a waiver from Appendix E-Section 5-E (O) from the Rye Land Development Regulations. After review of all submittals provided concluded the plans dated 1-29-2023 and revised plans Sheets C2, C3 and H1 dated 2-5-2024 and said statements made during the record, the Board grants the waiver sought by the Applicants because the planning board found that: (1) strict conformity would pose an unnecessary hardship to the Applicants and waiver would not be contrary to the spirit and intent of the regulations. Seconded by Rob Wright. Unanimous vote 6-0-0.

15. The Board grants the Applicants' request for a waiver from:

- a. Appendix E – Section 5-E(O) for two driveway cuts when one is allowed.

Any party aggrieved by this decision has the right to seek judicial review of this decision by filing an appeal to the Rockingham County Superior Court within thirty (30) days of the date of the hearing at which the Board voted to take the action set forth herein, unless such decision related to the application, construction, or interpretation of the Rye Zoning Ordinance, in which case, an aggrieved party may appeal such decision to the Rye Zoning Board of Adjustment in accordance with RSA 676:5 and the Zoning Board of Adjustment Rules of Procedure.


Date


Patricia Losik, Chairman, Rye Planning Board

RYE PLANNING BOARD

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

NOTICE OF DECISION AND FINDINGS OF FACT TOWN OF RYE PLANNING BOARD

Applicant/Owner: Rye General Store & Grill LLC
Robin Wehbe

Addresses: 2203 Ocean Blvd., Tax Map 5.3, Lot 28-00A and 00B

ZONE: Property is in the Business District, General Residence District, Coastal Overlay District and SFHA Zone X and Zone AO (2).

CASE NO: #17-2023

Request: Major Non-Residential Site Development and Condominium Amendment by Robin Wehbe for property located 2203 Ocean Blvd, Tax Map 5.3, Lot 28, Units A & B to raze the existing structures that are currently being used as a yoga business and build two residential units.

Date of Decision: Tuesday, February 20, 2024

The Rye Planning Board issues this Notice of Decision and Findings of Fact in accordance with RSA 676:3. In issuing this Notice of Decision and these Findings of Fact, the Planning Board incorporates such facts and evidence as are reflected in the submittals and meeting minutes associated with this matter that are supportive of the decisions and Findings of Fact contained herein.

WAIVERS

1. LDR §202-3.5.B(1)(a) Final Stormwater Management Plan (including information required by LDR §202-3.3.B(6), 6.9, and Article IX)
2. LDR §202-3.5.B(1)(b) Erosion & Sediment Control Plan
3. LDR §202-3.5.B(1)(c) Landscaping Planting Plan (including information required by LDR §202-11.4)
4. LDR §202-3.5.B(1)(d) Plant Maintenance Plan (including information required by LDR §202-11.5.A)
5. LDR §202-3.5.B(1)(i) Site Impact Analysis by an Environmental Engineer

Motions made by Bill Epperson, seconded by Rob Wright to grant the Applicant's requests to the aforementioned waivers of Rye's Land Development Regulations. The Board voted 6-0-0 to grant the aforementioned waivers, the basis for the waivers granted per Decision #51 - #53, and that strict conformity would present an unnecessary hardship and granting a waiver under such circumstances is not contrary to the intent or spirit of the regulations.

FACTUAL FINDINGS

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

1. The property is located at 2203 Ocean Boulevard, Tax Map 5.3, Lot 28, Units A and B (“the Property”).
2. The Property is owned by Robin Wehbe (“the Applicant”).
3. The Property is approximately 17,162 square feet (0.39 acres) in size with 175 feet of frontage on Ocean Boulevard.
4. The northern portion of the Property is located in the Business District. The southern portion is located in the General Residence District. The Property is also located in the Coastal Overlay Zone.
5. The existing impervious coverage is 90.6%
6. The Property is presently serviced by Rye sewer system and Aquarion Water Company.
7. The Property consists of two residential condominium units, a yoga studio, an orthodontist office, and a general store/café. Unit 1 is an 1,887 square foot, three-bedroom, two-bathroom condominium. Unit 2 is a 604 square foot, one-bedroom, one-bathroom condominium. Units A and B are a yoga studio. Unit A is 636 square feet and Unit B is 640 square feet. Unit C is a 1337 square foot orthodontist office. Unit D is an 1,810 square foot café.
8. On August 8, 2006, the Planning Board reviewed a Conceptual Consultation from the previous owner, Rye Beach Investments, LLC, to convert 5 commercial and 2 residential units presently existing to a condominium form of ownership.
9. The Technical Review Committee (TRC) of the Planning Board met on August 29, 2006 and November 28, 2006 to further review the proposal.
10. In October 2006, Rye Beach Investments, LLC, presented their case to the Zoning Board of Adjustment for a special exception as provided in Article II, Section 210.2(F) and Article V, Section 503, to convert two existing legal apartment dwelling units into condominiums.
11. On November 8, 2006, the Zoning Board of Adjustment granted the Special Exception with the following conditions:
 - Designate condo owner parking via signage visibly placed on 4 spaces along Powers Ave as per E. Cote site plan dated June 14, 2006, and amended October 12, 2006; and
 - Clearly delineate Powers Ave right of way (for parking spaces)
12. On December 12, 2006, the Planning Board held a Public Hearing for a Conditional Use Permit Application for Rye Beach Investments, LLC to convert five (5) commercial

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rental units to a condominium form of ownership, per proposed zoning ordinance 2007-03, as well as a Subdivision/Site Plan Review Application to convert five (5) commercial and two (2) residential rental units, presently existing, to a condominium form of ownership.

13. On January 4, 2007, Rye Beach Investments, LLC, presented their case to the Zoning Board of Adjustment for variances from Article V, Sections 500.1, 500.2, 500.3 to permit 16 existing parking spaces that are less than the required dimensions of 10' x 18', 12 said parking spaces are located within 10' of the front yard property line where a 10' setback is required; "Table for Off-Street Parking Requirements" in Section 500 requires 29 spaces and 16 exist. Section 500.2 requires compliance in conjunction with a condominium conversion.
14. On January 4, 2007, the Zoning Board of Adjustment granted the variances.
15. On February 13, 2007, the Planning Board granted the Conditional Use Permit and conditionally approved the Subdivision/Site Plan Review with the following conditions:
 - Applicant to place the BOA decisions on the drawings.
 - Retype and submit the Revised Condo Documents
16. A major non-residential site plan application was submitted July 28, 2023, to redevelop Units A and B of the existing building at 2203 Ocean Boulevard into two residential units, which are currently used as a Yoga Studio. Units A and B are to be reconstructed on pilings to meet current Rye Floodplain Ordinance development standards and allow for parking underneath the building whilst keeping them structurally connected to the remaining existing building. The Application included a six page "Project Concept" by TMS Architects Interiors dated September 20, 2017, including site photos, project data, sketches of buildings and site plan, building information, and diagrammatic images, and a Plan of Land Existing Site Conditions dated November 15, 2022, by Millenium Engineering Inc., and FEMA elevation certificates (1st submission).
17. Guidance for construction of the units to comply with the Rye Floodplain Ordinance, Substantial Improvement/Substantial Damage portion was obtained from Jennifer Gilbert, FEMA Representative from the Office of Planning & Development on July 14, 2023, and shared with RPC, Planning Board and the Building Inspector.
18. As part of the application submitted July 28, 2023, the applicant seeks waivers from the following provisions of the Land Development Regulations ("LDR"):
 - a. Erosion & Sediment Control Plan (202-3.5.B(1)(b))
 - b. Landscaping Planting Plan (202-3.5.B(1)(c))
 - c. Plant Maintenance Plan required ((202-3.5.B(1)(d))
 - d. The Assessment of Complete Street elements (202-3.5.B(1)(e))
 - e. Lighting Plan (202-3.5.B(1)(g))

19. A public hearing on the application was scheduled for August 15, 2023.
20. On August 3, 2023, the Rockingham Planning Commission ("RPC") provided a "Review of Major Nonresidential Site Plan Application at 2203 Ocean Boulevard (Tax Map 5.3, Lot 28, Unit D); Case # 17-2023." The RPC's review recommended submittals in accordance with certain land development regulations including site plans per standards in LDR§202-3.1 Engineering Standards, identified waivers sought, and zoning matters. A permit is required from Rye's Floodplain Administrator per §60-7 of the Rye Floodplain Management Ordinance. The intent is to elevate units A and B while keeping them structurally connected to the remaining existing building. The determination of substantial improvement may require additional approvals from the town. RPC recommended the Applicant obtain such determination after which RPC can provide further guidance.
21. The Planning and Zoning Administrator sought comments from the Town's Department Heads on August 8, 2023. Comments were provided by DPW regarding stormwater management plan, and RPD regarding parking, delivery, snow storage, dumpster, and site access/egress.
22. On August 15, 2023, the Planning Board found the application was not complete and did not invoke jurisdiction (NOD: August 15, 2023).
23. A public hearing on the application was scheduled for September 19, 2023.
24. On September 19, 2023, the Planning Board received submittals including a TMS Architects Interiors TMS Overlay/Project Concept/Proposed Site Plan dated September 11, 2023 on a Site Plan Existing Site Conditions & Proposed Outdoor Seating by Millenium Engineering dated September 5, 2023, TMS Architects Interiors Proposed Floor and Roof Plans, Proposed Elevations and a Stormwater Management Plan Memo, and waiver requests from Erosion & Sediment Control Plan, Complete Street Elements, and Lighting Plan (2nd submission).
25. On September 19, 2023, the Rockingham Planning Commission ("RPC") provided a "Review of Major Nonresidential Site Plan Application at 2203 Ocean Boulevard (Tax Map 5.3, Lot 28, Unit D); Case # 17-2023." The RPC's review recommended submittals in accordance with certain land development regulations, identified waivers sought, and obtaining a permit from Rye's Floodplain Administrator (FA) per §60-7 of the Rye Floodplain Management Ordinance. Units A and B are shown to be elevated and remain structurally connected to the existing building. The NH State Floodplain Management Program Director advised this is a "lateral addition" and elevation of the remaining units is dependent upon the determination of substantial improvement per the FA. "Such determination of substantial improvement and subsequent floodplain development permit may be a condition of site approval, however, if it is found that project plans must be modified from what was approved by the board, an amended site plan application and public hearing is required."

26. On September 19, 2023, the Planning Board found the application was not complete and did not invoke jurisdiction (NOD: September 19, 2023).
27. A public hearing on the application was scheduled for October 17, 2023.
28. On October 2, 2023, the Applicant requested to be heard at the November 21st meeting. On October 17, 2023, the Board voted to reschedule the public hearing to November 21, 2023.
29. Site Plans drafted by Millenium Engineering, Inc. (dated October 24, 2023) for the proposed redevelopment of Units A and B reflecting Existing Site Conditions Site Plan (sheet 1 of 2) and Proposed Site Conditions Site Plan (sheet 2 of 2), and by TMS Architects Interiors (dated 10/24/23): Proposed Landscape Plan, Proposed Lighting & Street Elements Plan, Proposed Floor Plans, and Proposed Elevations (pp.3-6) were submitted by the Applicant on October 24, 2023 (3rd submission).
30. Applicant met with Land Use Assistant, RPC Circuit Rider and Planning and Zoning Administrator on October 27, 2023 to go over the requirements for completion. On October 30, 2023 RPC issued a follow up email summarizing information requirements and due dates for the Applicant.
31. New waivers were submitted on November 1, 2023 and sent to Sebago Technics for review along with 3rd submission dated October 24, 2023 including:
 - A. October 31, 2023 Applications for Waivers:
 - i. Stormwater Management (LDR §202-6.9, 202-3.3, B(6), and Article IX, specifically 202-9.2B)
 - ii. Erosion & Sediment Control Plan (LDR 202-3.5.B(1)(b))
 - iii. Landscaping Planting Plan (LDR §202-11.4)
 - iv. Complete Street elements (LDR §202-3.5.B(1)(e));
 - B. October 24, 2023 submissions: Site Plans drafted by Millenium Engineering, Inc. (dated October 24, 2023) for the proposed redevelopment of Units A and B reflecting Existing Site Conditions Site Plan (sheet 1 of 2) and Proposed Site Conditions Site Plan (sheet 2 of 2), and by TMS Architects Interiors (dated October 24, 2023): Proposed Landscape Plan, Proposed Lighting & Street Elements Plan, Proposed Floor Plans, and Proposed Elevations (pp.3-6)
32. On November 14, 2023, Sebago Technics ("Sebago") issued a review memorandum providing input on the revised waiver requests included in the application.
 - i. Stormwater Management, Sebago expressed: "This reduction in impervious surface is noted to be reduced from 90.6% to 80.8% which should reduce the runoff generated from the site. If the existing site does not exhibit existing stormwater management issues that should be

addressed with this new application, we support this stormwater management plan waiver request.”

- ii. Erosion and Sediment Control Plan, Sebago noted: “...the Proposed Conditions Site Plan provides an erosion control silt sock be placed around the limits of disturbance for construction,” and “Given that no grass vegetation is proposed to be established and all the construction activity is within relatively flat existing impervious surfaces, we support the waiver regarding the submission requirement for erosion and sediment control plan.”
- iii. Landscaping Planting Plan, Sebago opined: “...believe that it is reasonable for the Planning Board to waive the submission for a landscape planting plan...given the small areas of landscaping and the minimal impact of these two areas will have on the overall site’s design or appearance.”
- iv. Complete Street Elements, Sebago noted: “While we believe that it would be acceptable for the Planning Board to waive this submission requirement for the assessment of complete street elements based on the limited opportunities available to the applicant, it would also be reasonable for the Board to request that the applicant provide a narrative and explain the improvements to vehicular, pedestrian, and bicycle safety that the proposed plan presents which would demonstrate meeting the complete streets requirements.”

33. A package dated November 10, 2023 including Existing Site Conditions Site Plan (sheet 1 of 2, 10/24/23) and Proposed Site Conditions Site Plan (sheet 2 of 2, 10/24/23), and TMS Architects (11/10/23) Interiors Proposed Landscape Plan, Proposed Lighting & Street Elements Plan, Proposed Floor Plans, Proposed Elevations, Sea Level Rise elevations, and Independent Buildings for FEMA (pp.3-9) and Third Amendment to Condominium Declaration were submitted on November 14, 2023 (4th submission).

34. On November 20th, Rockingham Planning Commission (RPC) issued a review of application materials submitted November 14, 2023. The revised application depicted the detachment of Units A and B from the existing building and elevating them in accordance with Rye Floodplain Ordinance Development standards. The revised application requires 3 variances from Article §190-2.2. D (1), Article §190-3.4. E and Article § 190-5.0.C of the Rye Zoning Ordinance. RPC commented that a waiver request for a written site impact analysis by an environmental engineer appears reasonable due to redevelopment nature of the site. Consultation with the Rye Fire Chief was recommended to ensure development adequately provides for fire safety per LDR §202-6.3G. Noted: “...the Rye Floodplain Administrator and Applicant are working with the NH State Floodplain Coordinator and the Federal Emergency Management Agency (FEMA) to ensure the proposed detachment and reconstruction of Units A and B complies with federal floodplain development approvals. The Planning Board may grant site approval conditioned upon receipt of such permit and approvals. If such permit or approvals results in a material change to the application approved by the Planning Board, an amended application to the Planning Board will be required. (LDR §202-4.1).”

35. On November 21, 2023, the Board voted to accept the Application and open the public hearing. The board scheduled a site walk for December 4, 2023, and a Technical Review Committee meeting on December 5, 2023.
36. On December 4, 2023, the Planning Board held a site walk at 2203 Ocean Boulevard to discuss the subject application.
37. On December 5, 2023, the Technical Review Committee convened to discuss the subject application.
38. On January 5, 2024, the applicant submitted revised plans to the Planning Board, TRC and RPC for review including: Existing Site Conditions Site Plan (sheet 1 of 2, rev. 12/12/23) and Proposed Site Conditions Site Plan (sheet 2 of 2, rev. 12/12/23), and TMS Architects Interiors (1/5/24) Proposed Landscape Plan, Proposed Lighting & Street Elements Plan, Proposed Floor Plans, Proposed Elevations, Sea Level Rise elevations, and Independent Buildings for FEMA (pp.1-9) (5th submission).
39. On January 11, 2024, the Rockingham Planning Commission (RPC) issued a review memorandum on the revised application materials. The revised application depicted the detachment of Units A and B from the existing building and elevating them in accordance with Rye Floodplain Ordinance Development standards. The revised application requires 3 variances from Article §190-2.2. D (1), Article §190-3.4. E and Article § 190-5.0.C of the Rye Zoning Ordinance. RPC commented that a waiver request for a written site impact analysis by an environmental engineer appears reasonable due to redevelopment nature of the site. Recommends RPD review revised parking and circulation layout for driver/pedestrian safety given access/egress from Gray Court and 3.5' wide curbed island separating the parking lot from Ocean Boulevard. The RFD should review the site for adequate fire and emergency vehicles access per LDR §202-6.3G. Noted: "...the Rye Floodplain Administrator and Applicant are working with the NH State Floodplain Coordinator and the Federal Emergency Management Agency (FEMA) to ensure the proposed detachment and reconstruction of Units A and B complies with federal floodplain development approvals. The Planning Board may grant site approval conditioned upon receipt of such permit and approvals. If such permit or approvals results in a material change to the application approved by the Planning Board, an amended application to the Planning Board will be required. (LDR §202-4.1)."
40. On January 13, 2024, Sebago Technics issued a review memorandum on the revised application materials including the following submissions: December 12, 2023: Existing Site Conditions Site Plan and Proposed Site Conditions Site Plan prepared by Millenium Engineering, and January 5, 2024 Proposed Landscape Plan exhibit, Proposed Lighting & Street Elements Plan, Proposed Floor Plans exhibit, Proposed Elevations exhibit, Independent Buildings for FEMA exhibit, all by TMS Architects Interiors. Due to the minimal nature of the following site plan elements and steps taken

by the Applicant to reduce related impacts, Sebago reiterated its support of the waivers for: stormwater management (202-6.9, 202-3.3.B(6)) and Article IX (202-9.2B), erosion and sediment control (202-3.5.B(1)(b)), and landscaping planting plan (202-11.4). Discussions between the Applicant, Planning Board, TRC, and Town staff, regarding complete streets (202-6.2.B(8)(d)) resulted in proposed improvements of vehicular, pedestrian, and bicyclist safety. Site changes include: improved circulation and access issues for vehicles within the site, front of the building has been moved back 2' for both users of parking along Ocean Boulevard and residential garage parking. A raised 3.5' wide island along Ocean Boulevard eliminates direct access/egress from the site to/from the Boulevard, and parking directly accessed from Gray Court is eliminated. Sebago recommended the RPD and RFD weigh in on the proposed improvements and noted the Planning Board should determine whether such steps would satisfy the complete streets requirements. The Planning Board should discuss the Site Impact Analysis (1/8/24) that has been prepared by the Applicant to address the requirements in lieu of a waiver. Bollards were suggested to address minimal clearance at ramp location.

41. On January 16, 2024, the Planning Board conducted a continued public hearing on the matter. The Planning Board voted to schedule a Technical Review Committee meeting on January 30, 2024, to discuss the application. (NOD: January 16, 2024)
42. On January 23, 2024, the Applicant submitted revised plans to the Planning Board, TRC and RPC for review including: Existing Site Conditions Site Plan (sheet 1 of 2, rev. 1/22/24) and Proposed Site Conditions Site Plan (sheet 2 of 2, rev. 1/22/24), and TMS Architects Interiors (1/23/24) Proposed Landscape Plan, Proposed Lighting & Street Elements Plan, Proposed Floor Plans, Proposed Elevations, Sea Level Rise elevations, and Independent Buildings for FEMA (pp.1-7) (6th submission).
43. On January 30, 2024, the Technical Review Committee convened to discuss the subject application.
44. On February 5, 2024, the Applicant submitted a Site Impact Analysis (§202-3.5.B(1)(j)) and a Use Intensity Statement (§202-3.5.B(1)(i)).
45. The applicant appeared before the Zoning Board of Adjustment on February 7, 2024 on the variance requests and the application was continued to the March 6, 2024 meeting.
46. On February 14, 2024, the applicant submitted revised plans to the Planning Board, TRC and RPC for review including: Existing Site Conditions Site Plan (sheet 1 of 2, rev. 2/2/24) and Proposed Site Conditions Site Plan (sheet 2 of 2, rev. 2/2/24), and TMS Architects Interiors (1/23/24) Proposed Landscape Plan, Proposed Lighting & Street Elements Plan, Proposed Floor Plans, Proposed Elevations, Sea Level Rise elevations, and Independent Buildings for FEMA (pp.1-7) (7th submission).
47. On February 14, 2024, the Rockingham Planning Commission (RPC) issued a review memorandum on the revised application materials noting the waiver requests seem reasonable including the most recent waiver request for a site impact analysis prepared

by an environmental engineer. Notes on the Site Plan should reflect waivers granted on the cover sheet of the final plans. Pending zoning and floodplain development matters were repeated from the January 11, 2024 RPC memorandum.

48. On February 15, 2024 Sebago Technics issued a review memorandum on the revised application materials described in Factual Finding Item #46. Sebago reiterated support for waivers requested. Sebago noted the following re site changes and improvement to vehicular, pedestrian, and bicyclist safety conditions of the site and surrounding roadway network:

- Improved grading in the front and back of proposed new building
- Clarification of landscape islands
- Bike rack in the striped area of the northeast corner of the site.
- ADA compliant space near pedestrian ramp and bollard

Sebago offered additional detailed elements: Items #7-11 which should be incorporated in the Plans, including: landscape elevation (#7), curbing material and style (#8), "stone drip band" (#9), woven and non-woven geotextile fabrics (#10), and bike rail detail (#11).

49. On February 20, 2024, the Planning Board conducted a further public hearing on the matter, reviewing the Plan Set dated February 2, 2024, and January 23, 2024. The draft conditions of approval were reviewed and agreed by the Applicant, waivers submitted by the applicant on October 31, 2023, were discussed and approved by the Board and the Notice Of Decision (NOD) was discussed, edited, and approved.

Motion by Bill Epperson to approve Factual Findings as written seconded by Rob Wright. Approved unanimously in a vote 6-0-0.

DECISION

50. After review of all submittals provided and statements made during the record, the Board grants the waivers sought by the Applicants because the planning board found that: (1) strict conformity would pose an unnecessary hardship to the Applicants and waiver would not be contrary to the spirit and intent of the regulations.
51. The Board grants the Applicant's request for a waiver from LDR §202-3.4.B(1), §202-3.3.B(6), §202-6.9, and Article IX of the LDRs related to the submission of Stormwater Management Plan because the Applicant's proposal seeks to reconstruct Units A & B of the existing building in accordance with Rye Floodplain Management Ordinance (Chapter §60-7) to meet federal floodplain standards within the general developed footprint of the property with minimal increase in proposed structure coverage, a reduction of impervious surface from 90.6% to 80.8%, and two vegetated areas planted with native plantings. The existing site does not exhibit stormwater management issues per current use of Town stormwater systems structures as confirmed by DPW Director.

Given the specific circumstances associated with the proposal, the spirit and intent of the regulations, which is to ensure capture and treat stormwater runoff, is satisfied. For the same reasons, the Board grants the Applicant's waiver to LDR §202-3.5(1)(j) related to a Site Impact Analysis prepared by an Environmental Engineer.

52. The Board grants the Applicant's request for a waiver from LDR §202-3.5.B(1)(c), LDR §202-3.5.B(1)(d), LDR §202-11.4, and LDR §202-11.5A for a Landscaping Planting Plan and Plant Maintenance Plan given that the site plan given the small areas of landscaping and the minimal impact these two areas will have on the overall site's design or appearance.
53. The Board grants the Applicant's request for a waiver from LDR §202-3.5.B(1)(b) for an Erosion & Sediment Control Plan because the Applicant's strict conformity is unnecessary as no grass vegetation is proposed to be established and all construction activity is within relatively flat existing impervious surfaces, Applicant has agreed, per the Proposed Conditions Site Plan to provide an erosion control silt sock be placed around the limits of disturbance for construction.
54. The Board finds that, with the conditions of approval set forth below, the Applicants' proposal satisfies all other pertinent provisions of the LDRs.
55. The Applicants' proposal to redevelop a portion of an existing commercial building in the GR zone into a multi-story building of two residential condominium units with garage parking on the ground level with minimal increase in proposed structure coverage, to reconfigure the existing paved drive and parking areas around the building to support the redevelopment including the installation of a permeable paver surface treatment behind the building, and to install two landscaped areas planted with native plantings appropriate for the site, will reduce impervious surface from 90.6% to 80.8%. The existing site does not exhibit stormwater management issues per current use of Town stormwater systems structures as confirmed by DPW Director. The redevelopment will incrementally lessen the amount and rate of runoff from the site and will not materially impact stormwater management.
56. The Applicants' proposal to redevelop a portion of an existing commercial building in the GR zone into a multi-story building with two residential condominium units with garage parking on the ground level with minimal increase in proposed structure coverage, and the reconfiguration of the existing paved drive and parking areas around the building to support the redevelopment will not adversely impact the neighborhood, will not materially increase traffic generation, and will not otherwise alter the surrounding neighborhood. Such reconfiguration of parking and circulation layout adequately provides for driver, pedestrian safety, and adequate access for fire and emergency vehicles per §202-6.3.G. The Police Chief and Deputy Fire Chief discussed

the revised parking and circulation layout during the TRC meetings of December 5, 2023 and the January 30, 2024:

- The RFD Deputy Fire Chief agrees with the entrance and exit off of Gray Court. The set up for Fire and EMS/Ambulance will be on Gray Court and/or Ocean Boulevard.
- The Police Chief agrees with the entrance and exit off of Gray Court, and that parking plan is clear per revised parking and circulation site plans. RPD will follow the DOT's recommendations re access for pedestrians and bikes. Vegetation heights of proposed planting areas to be maintained at 3' max height.

57. The Applicants' proposal reflects that suitable steps will be taken to protect significant existing features on the Property. §202-6.8(1) the applicant has taken steps to preserve and protect waterbodies by minimizing expansion of the structure reducing impervious coverage and redevelopment will incrementally lessen the amount and runoff from the site and not materially impact stormwater management.

Motion by Bill Epperson to approve the Decision, seconded by Steven Borne in a unanimous vote of 6-0-0.

Motion by Bill Epperson to approve the Major Non-Residential Site Development and Condominium Amendment by Robin Wehbe for property located 2203 Ocean Blvd, Tax Map 5.3, Lot 28, Units A & B to raze the existing structures that are currently being used as a yoga business and build two residential units subject to the conditions of Approval. Property is in the Business District, General Residence District, Coastal Overlay District and SFHA Zone X and Zone AO (2). Seconded by Steven Borne. Approved unanimously in a vote 6-0-0.

CONDITIONS OF APPROVAL

1. The following revisions to be made to the site plan:

- a. Name, address, license number and seal of all licensed professionals shall be shown on the approved plans.
- b. Directional arrows at the entrance to the site off Gray Court to be more prominently displayed; directional arrows and stop bar should be detailed on the approved plan sheet 2/2.
- c. All required state and local permits are received, and permit numbers shall be noted on the approved plans including the permit from Rye's Floodplain Administrator in accordance with §60-7 of the Rye Floodplain Management Ordinance.
- d. Spot grades should be added to the pervious pavers, and drainage flow vectors should be added to both the pervious pavers and parking lot area.

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- e. Any material changes to the proposed NHDOT curbing plan on Route 1A should be reviewed by the TRC to address any site impacts.
 - f. Sebago Technics comments #7-#11 per February 15, 2024 communication shall be noted on the approved plans.
 - g. Notes acknowledging waiver relief be provided.
 2. Applicant shall follow all notes, requirements, recommendations and suggestions set forth in the Plans.
 3. The Applicant shall apply for and obtain variances from the following Articles of the Rye Zoning Ordinance:
 - a. **Article 190-2.2. D (1)** – No more than one principal building on one lot in the Single Residence and General Residence Districts.
 - b. **Article 190-3.4.** – No dwelling shall occupy more than 15% of its lot in the Coastal Area District.
 - c. **Article 190-5.0.C** - No off-street parking shall be located within the required front yard area nor within 10 feet of any lot line in any district of the Rye Zoning Ordinance for a reduction in the amount of required parking spaces.
 4. All lighting fixtures shall be fully shielded to produce no light above a horizontal plane through the lowest direct-light-emitting part of the luminaire in accordance with LDR 202-10.2.
 5. All required plant materials shall be tended and maintained in a healthy growing condition, replaced as necessary, and kept free of weeds, invasive plants, refuse and debris.
 6. All signage shall conform to the Town of Rye Zoning Ordinance and Land Development Regulations.
 7. No blasting shall be permitted on the Property.
 8. Notes shall be added to the Site Plan reflecting conditions 3 through 7
 9. The Applicants shall submit a revised Condominium Declaration and Bylaws to the Planning Board reflecting the revisions to the Condominium Association necessitated by the Applicants' proposal. The revised Condominium Declaration and Bylaws shall be subject to the satisfactory review of Town Counsel.
 10. The executed conditions of approval shall be appended to and recorded with the Condominium Declaration.
 11. The applicant shall supply an estimate of the costs for the construction, inspection and disposition of all stormwater management infrastructure of the Property. Applicant shall further supply a performance bond or Letter of Credit in an amount sufficient to ensure
- ❖ *Planning Board Approvals do not include building permits; please check with the Building Inspector's office before any and all construction.*

the adequate construction prior to the issuance of a building permit. The form of such performance bond or other surety shall be subject to review and approval of town counsel.

12. Applicant shall provide the Town with sufficient funds to be placed into escrow to pay final statements of the Town's engineer and town counsel.
13. Applicant shall sign an Escrow Agreement and post escrow for the Planning Board engineer's monitoring of site improvements prior to the issuance of a building permit. Said amount shall be determined by the Planning Board engineer.
14. Notes shall be added to the Site Plan reflecting Variances per Condition #3.
15. For the purposes of RSA 674:39, active and substantial development or building shall be the earlier of: (a) the demolition of existing structures on the property or (2) the excavation or disturbance of land for access way construction.
16. As-built plans for all site improvements shall be submitted to the Planning Board within 60 days of the completion of construction (3 sets).
17. Per LDR § 202-4.4, this conditional approval shall expire in 24 months if the Chair has not signed the plan as the result of the Applicant's failure to meet those conditions necessary to permit the chair to sign the plan.
18. The Planning Board chair may sign the Plans when the foregoing conditions Nos. 1, 8, 9, and 12 are met.

Any party aggrieved by this decision has the right to seek judicial review of this decision by filing an appeal to the Rockingham County Superior Court within thirty (30) days of the date of the hearing at which the Board voted to take the action set forth herein, unless such decision related to the application, construction, or interpretation of the Rye Zoning Ordinance, in which case, an aggrieved party may appeal such decision to the Rye Zoning Board of Adjustment in accordance with RSA 676:5 and the Zoning Board of Adjustment Rules of Procedure.

2/21/2024
Date


Patricia Losik, Chairman
Rye Planning Board