

December 10, 2019

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 Commercial 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 Commercial District, Multi-Family Dwelling District, Aquifer and Wellhead Protection District and Rye Landfill Groundwater Management (RL-GMZ) District. Case #06a-2019.

Special Use Permits for the Multi-Family dwellings, per Section 307.3 and Section 402 and for the Aquifer Wellhead Protection District 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 Commercial District, Multi-Family Dwelling District, Aquifer and Wellhead Protection District and Rye Landfill Groundwater Management (RL-GMZ) District. Case #06b-2019.

Date of Decision: Tuesday December 10, 2019

Decision: **The Board voted to approve with conditions the Major Subdivision and Condominium Development Plan;**

The Board voted to approve with conditions the Special Use Permits for the Multi-Family dwellings, per Section 307.3 and 402; and

The Board voted to approve with conditions the Conditional Use Permit for being within the Aquifer and Wellhead Protection District, per Section 306.5 C.

12/16/19
Date

Please see conditions attached.


Patricia Lobsik, Chairman

December 10, 2019

Rye Planning Board CONDITIONS OF APPROVAL
1244 WASHINGTON ROAD MAJOR LAND DEVELOPMENT/S.U.P. APPROVALS

1. The plans shall be revised as follows:
 - a. Add a stop line on Sht. 2 of 7 as recommended by the traffic study.
 - b. Signature blocks for the planning board chair need to be added to the drawings: Cover Sheet and Shts. 2, 3, 4 of 7; landscaping plans, architectural plans and effluent disposal plans. Two sets each of the architectural plans and effluent disposal plans are to be submitted for signature.
 - c. A "No Cut Buffer" needs to be added to the plans. The restrictions of the buffer shall be included in the Declaration.
 - d. A note should be added to Sht. L-1 indicating mowing of all areas except the bio-retention basin shall occur once every two (2) weeks.
 - e. The Stormwater Management/BMP Inspection and Maintenance Plan must be revised to indicate no mowing of wildflowers, provided that the removal of invasive species and adding to replenish growth of wildflowers as needed shall be permitted.
2. A condominium association shall be created for the development. Town counsel shall review and approve the *Declaration, Bylaws and other condominium instruments* and any other legal instruments required to form the association.
3. The applicant shall grant the town an easement relative to maintenance and repair of the bio-retention pond and forebay. The easement shall: (1) require the applicant/condominium association to be responsible for maintenance and repair of the drainage facilities; and (2) provide that, if the applicant or association fails to maintain or repair the facilities, the town, after notice, shall have the right, but not the obligation, to do so. In such case the association shall be responsible for reimbursing the town for its expenses. If the town has to commence a legal action to obtain payment, the town shall be entitled to its costs and reasonable attorney's fees. This easement shall be reviewed and approved by town counsel.
4. Compliance with the Stormwater Inspection and Maintenance Plan approved by the planning board engineer shall be the responsibility of the Association. Said responsibility to be set forth in the *Declaration*.

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5. Surety in the amount of \$346,000 and in the form of a self-calling letter of credit and/or cash escrow shall be posted to guarantee the completion of all on-site improvements (except septic systems) including the private drive, all drainage facilities, water lines and landscaping. Surety shall also include all improvements to the intersection of Washington Road and US Route 1. Surety to be approved by town counsel.
6. Sufficient funds shall be placed in escrow with the planning board to pay final statements of planning board engineer, town counsel and Consultant Truslow.
7. Applicant shall sign an Escrow Agreement and post escrow for planning board engineer's monitoring of site improvements. Amount to be determined by planning board engineer.
8. If the development is to be served by septic systems, DES approval of septic systems shall be obtained.
9. The Workforce Housing Services Agreement as approved by the planning board on December 10, 2019, subject to non-substantive changes acceptable to town counsel, shall be signed by all parties, and an original provided to the planning board.
10. Planning board chair may sign plans when foregoing conditions Nos. 1-9 are met.
11. All conditions of approval of the Conditional Use Permit required by the Aquifer and Wellhead Protection District shall apply to the land development.
12. Plan Sheets Nos. 2 and 3 of 7 shall be recorded along with a Certification of Major Site Development Review Approval.
13. The condominium shall be registered with the Attorney General as required by the N.H. Condominium Act or an exemption from registration shall be obtained.
14. Any changes to the *Declaration, Bylaws and other condominium instruments* or to any other legal instruments required to form the association required by the Attorney General that do not affect the Town of Rye's land use approvals may be made by the developer after review by town counsel.
15. The easement required by Condition Nos. 3 shall be recorded with the deed transferring the property to the developer. Copies shall be provided to the planning board and town counsel.
16. The *Declaration, Bylaws and other condominium instruments* and any other legal instruments required to form the association shall be recorded prior to the issuance of the first occupancy permit. Copies shall be provided to the planning board and town counsel.

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17. The Workforce Housing Subsidy Lien and Restrictive Covenant as approved by the planning board on December 10, 2019, subject to non-substantive changes acceptable to town counsel, shall be signed by the planning board chair and the developer and recorded with the plan sheets and Certification of Approval. Each subsequent owner of a workforce housing unit shall sign and record the lien and restrictive covenant upon purchase of a workforce housing unit.
18. There shall be one workforce housing unit in each of Buildings Nos. 1 - 4 as labeled on Plan Sht. 2 of 7. Building No. 5, which has no workforce unit, shall be the last building permitted. The workforce housing units shall be of the same quality as market units.
19. If the development is served by septic systems, there shall be one 3BR WF unit; two 2BR WF units; and one 2BR unit with an office, den or similar room. If the development is served by public sewers there shall be two 2BR WF units and two 3BR WF units.
20. If workforce housing units are not marketable as owner-occupied units, they may be rented to tenant families who meet the workforce housing requirements of the Rye Zoning Ordinance. Workforce housing units shall remain on the sales market for at least 6 months beginning at the later of the date of the first permit issued by the building department and the date the unit is first listed for sale and actively marketed. The developer shall notify the planning board of any workforce housing unit to be rented rather than sold.
21. The build out of the development shall comply with the Growth Management Ordinance.
22. Water lines, hydrants and appurtenances thereto shall be constructed in accordance with Rye Water District requirements.
23. If the development is served by septic systems, there shall be no conversion of any spaces in a 2BR unit to a third bedroom. There shall be no conversion of any spaces in a 3BR unit to a fourth bedroom. This restriction shall be included in the Declaration. It shall not be applicable if the development is served by public sewers.
24. Patio areas and balconies shall not be enclosed in any manner. This restriction shall be included in the Declaration.
25. The number of bedrooms served by each septic system shall not exceed the maximum number of bedrooms set forth in the "Site Septic Loading Tables" on the Effluent Disposal Plans (5 sheets). The Declaration shall state that 2BR units shall not be converted to 3BR

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units without the approval of NH DES and the Rye Building Inspector so long as the units are served by septic systems.

26. Any changes to the Lafayette Road/Washington Road intersection, including signalization changes, required by NH DOT shall be made by the developer prior to issuance of the first Certificate of Occupancy. These changes shall not impede free right turns onto Lafayette Road from Washington Road.
27. The condominium association shall be responsible for removing any snow windrows on Washington Road within the sight distance triangles of the driveway so as not to restrict lines of sight.
28. The land development may be connected to public sewerage, should it become available, without further review by the planning board. Plans for any such connection shall be approved by the Rye Sewer Commission and the City of Portsmouth (if required by the City).
29. There shall be no height variances applied for in this land development.
30. Monumentation shall be installed as required by the *Land Development Regulations* for the 3.64-acre parcel. A certificate of Monumentation shall be provided to the Planning Board and Building Inspector prior to the first occupancy permit being issued. Grading of lots shall not disturb installed monumentation. If development disturbs or covers monuments, the monuments shall be reestablished by a surveyor and a new Certificate of Monumentation provided.
31. For the purposes of RSA 674:39 "Active and Substantial Development or Building" shall be commencement of excavation for construction of the first dwelling.
32. As-built plans for all site improvements shall be submitted to the planning board (3 sets).
33. Per Section 303.7 of the *Land Development Regulations*, this conditional approval shall expire in 18 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.
34. Construction of the driveway, utilities and drainage infrastructure and pouring of building slabs shall be limited to 7 a.m. to 5 p.m. Monday to Friday.

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CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT APPROVAL
1244 Washington Road Townhouses

1. A condominium association shall be created for the development.
2. The development is approved with septic systems or with a connection to public sewers at the option of the developer. If the development is connected to public sewers the following conditions are not applicable: Nos. 3-7; 10 a-e; 12 c & d; 13 a-d; 14 a-d & g.
3. Five (5) Fuji Clean USA Model CE21 wastewater systems and associated leach fields shall be installed as portrayed on the approved plans.
4. Prior to the establishment of a condominium association the applicant shall designate a qualified entity to conduct inspections and maintenance of all Fuji Clean systems. After the establishment of a condominium association, the association shall be responsible for designating the qualified entity. The association shall have an inspection and maintenance agreement in place with the entity designated by the applicant or the successor association for the lives of the systems for all five (5) systems.
5. Within 30 days of a Fuji Clean system going on-line, an initial sample of effluent shall be collected for effluent testing to assess system performance. Follow-up testing will be conducted at six months after the system goes on-line and again at one year of use. Testing would then be conducted at one year intervals for the first four years of use with subsequent testing dependent upon results of the testing program. Testing results shall be provided to the Rye Planning Board, the Rye Building Inspector and planning board consultant Truslow within 30 days of the sampling event.
6. As part of this, the effluent from each system should be sampled for nitrate-nitrogen (nitrate-N) and Total Kjeldahl Nitrogen (TKN) at each inspection. Effluent shall contain less than 10 mg/L nitrate-N. A 10 mg/L or greater concentration of nitrate-N will trigger confirmation sampling and may require septic system maintenance, repair or replacement if issues are not resolved.
7. Septic tanks and pre-treatment chambers shall be pumped every two years. The frequency of pumping of anoxic chambers, aeration chambers, clarification chambers, influent chambers and media chambers shall also be every two years.

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8. The development shall be designated a "no salt area" with signage placed along the proposed drives (to be depicted on the plans) identifying it as a "no salt area".
9. Nitrogen based fertilizers are prohibited.
10. Prior to the establishment of the Condominium Association the applicant shall retain a Designated Oversight Manager (DOM) who shall have the following responsibilities:
 - a. Collecting and keeping on file the required inspection and maintenance agreement for the septic systems. The DOM shall certify to the planning board and building inspector in January of each year that the required agreement is in place.
 - b. Collecting and keeping on file the required inspection reports and providing them within 15 days of receipt to the building inspector, the planning board and planning board consultant Danna Truslow or such other consultant as may be identified by the planning board.
 - c. Reviewing the inspection reports. If a report indicates that the standard of No. 5 herein has not been met, the DOM shall notify the association to have the system inspected again and a confirmatory sample collected.
 - d. Keeping records of the pumping of all pre-treatment chambers and anoxic chambers, aeration chambers, clarification chambers, influent chambers and media chambers.
 - e. Providing a report to the planning board and the building inspector in January of each year. The report should summarize the inspections made, the pumping of pre-treatment chambers and anoxic chambers, aeration chambers, clarification chambers, influent chambers and media chambers and any deficiencies that were identified and the corrective action taken.
 - f. Certify that the no-salt restriction has been complied with.
 - g. Conduct annual inspections to ensure that required no cut buffer zone emblems remain in place and that there are no violations within the buffer area. Notify the association, planning board and building inspector of any observed violations. Provide an annual report to the planning board of the results of the inspections in January of each year.
11. The applicant shall provide the name of the DOM and contact information to the building inspector, planning board and planning board consultant Danna Truslow or such other consultant as may be identified by the planning board. Upon the establishment of an association the responsibility of retaining an oversight manager shall transfer to the

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association. The DOM and any changes of the DOM shall be approved by the planning board's Technical Review Committee.

12. Prior to the issuance of the first occupancy permit, the applicant shall record the *Declaration, Bylaws and other condominium instruments* and any other legal instruments required to form the association, which shall run with the land and which shall apply to all lots. The Declaration shall be reviewed and approved by town counsel and shall include provisions allowing the association and the town to enforce. The restrictions and requirements shall include:

- a. No salt use.
- b. No use of nitrogen based fertilizers.
- c. Replacement septic systems shall be Fuji-clean systems or other systems providing equal or better treatment and de-nitrification.
- d. No garbage disposals.
- e. Storage or use of regulated substances as defined by 40 C.F.R. 302 is prohibited, including for home occupations.
- f. Double walled oil storage tanks required if units have oil furnaces.

13. The responsibilities of the association shall include:

- a. Assuring that the required inspection and maintenance agreements for the septic systems are in place.
- b. Assuring that the required inspections and sampling of the septic systems have been done.
- c. Assuring that any required maintenance, repair or replacement of septic systems has been done.
- d. Assuring that all required pumping of chambers has been done.
- e. Monitoring the use of snow removal substances and fertilizers in the subdivision.
- f. Maintenance, repair and replacement (if required) of all drainage facilities owned by the association.

14. The association shall certify annually in January of each year to the planning board (with copies to the building inspector and planning board consultant Danna Truslow, or such other consultant as may be identified by the planning board) that:

- a. All required septic system inspection and maintenance agreements are in place.

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- b. All required septic system inspections have been conducted and the reports provided to all required parties.
 - c. Any required maintenance, repair or replacement of septic systems has been completed or will be completed by a time certain.
 - d. All required pumping of chambers has been done.
 - e. Nitrogen based fertilizers are not being used in the subdivision.
 - f. Salt is not being used in the subdivision.
 - g. There are no garbage disposals in the subdivision.
 - h. All drainage basins have been inspected by a qualified professional engineer and maintained in accordance with these conditions and are functioning properly.
15. The requirements of Condition No. 10 allow the association to assign the responsibilities set forth in Conditions Nos. 13 and 14 to a Designated Oversight Manager (DOM).
Notwithstanding this, the association has the ultimate responsibility for complying with Conditions Nos. 13 and 14.
16. Three monitoring wells (SH-3, MW10 and SH-1) will be maintained for future monitoring. MW-3, and all other wells not being retained for future monitoring will be properly abandoned according to NHDES requirements and the abandonment report submitted to the building inspector, planning board and planning board consultant Danna Truslow or such other consultant as may be identified by the planning board. Monitoring and sampling of these wells will commence upon agreement if the results of septic effluent sampling indicate a significant exceedance of the 10 mg/L nitrate-N concentration.
17. In December following the issuance of the first building permit the applicant shall pay the town a fee \$5000 (to be held in escrow) to be used to defray the expenses of its consultant and/or the building inspector in monitoring inspection reports on the septic systems and the annual certification of the association and such other work as may be necessary to effect compliance with these conditions, including annual inspections of drainage facilities. When the escrow is depleted the association shall be responsible for payment of the expenses of such work. Failure to pay such expenses shall constitute a lien on the condominium and the units.



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18. All Conditions of Major Site Development/S.U.P Approval are incorporated herein by reference. All conditions above (and all Conditions of Major Subdivision/SUP approval) shall be exhibits to the Condominium Declaration.

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