

PLANNING BOARD

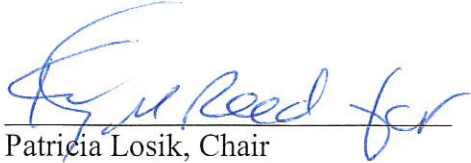
-Rye, New Hampshire-

NOTICE OF DECISION

- Applicant:** Tuck Realty and Jones & Beach, Engineers, Inc.
- Owners:** Malcom E. Smith III, of Hampton NH, Tax Map 10, Lot 1
- Property:** 0 Lafayette Road, Tax Map 10, Lot 1
Property is in the Commercial District, Aquifer and Wellhead Overlay District and the Multi-family Overlay District.
- Application case:** Case #11-2021
- Application:** Major Site Development Plan and Special Use Permit Application by Jones & Beach, Engineers, Inc. for Property owned by Malcolm E. Smith, III and located at Tax Map 10, Lot 1 to construct 30 2-bedroom residential condominium tri-plex units. Property is in the Commercial, Multi-Family Overlay District and Aquifer & Wellhead District. Case #11-2021.
- Date of decision:** January 11, 2022
- Decision:** **The Board voted unanimously to accept the Special Use Permit for the application per Section 190-4.2.D of the Multi-Family Dwelling Development.**
- The Board voted unanimously to accept the Conditional Use Permit for the application per Section 190-3.6.E(3)(a)-(e) of the Rye Zoning Ordinance of the Rye Wellhead and Aquifer Protection District with conditions.**
- The Board voted unanimously to accept the Major Site Development Plan for construction of a 78-bed assisted living complex with conditions.**

Please see conditions attached:

1-24-2022
Date


Patricia Losik, Chair
Rye Planning Board

Note: This decision is subject to motions for rehearing which may be filed within 30 days of the above date of decision by any person directly affected by it including any party to the action, abutters and the Rye Board of Selectmen; see *Article VII, Section 703 of the Town of Rye Zoning Ordinance*. Any work commenced prior to the expiration of the 30 day rehearing / appeal period is done so at the risk of the applicant. If a rehearing is requested, a cease and desist order may be issued until the Board of Adjustment has had an opportunity to act on the rehearing request.

CONDITIONS OF CONDITIONAL USE PERMIT APPROVAL
HECTOR'S SITE MULTI-FAMILY DEVELOPMENT

1. A condominium association shall be created for the development.
2. Ten (10) Septi-Tech Model STAAR 1.0 DENITE wastewater systems and associated leach fields shall be installed as portrayed on the approved plans (OVS Sheets S1-S10, revised 12/01/21) and as approved by DES.
3. Prior to the establishment of a condominium association the applicant shall designate a qualified entity to conduct inspections and maintenance of all Septi-Tech 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 ten (10) systems.
4. Within 6 months of a Septi-Tech system going on-line, an initial sample of effluent shall be collected for effluent testing to assess system performance. Follow-up testing will be at one year of use. Testing would then be conducted at one year intervals for the first five years of use with subsequent testing dependent upon results of the testing program. After all ten systems are operational, a testing schedule which provides concurrent testing of all ten systems may be approved by the Technical Review Committee. Testing results shall be provided to the Rye Planning Board, the Rye Building Inspector and planning board consultant Truslow (or such other consultant as the planning board may designate) within 30 days of the sampling event.
5. 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.
6. Effluent shall contain less than 16 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 shall be pumped every two years.
8. The most current Septi-Tech Operation and Maintenance Manual shall be provided to each unit owner.

9. Winter maintenance of the condominium roads and walkways should be completed by a New Hampshire Green Snow Pro certified contractor to minimize impacts to groundwater from road salt. The contractor used and salt usage should be included in the stormwater monitoring report.
10. The maintenance of porous pavement shall be as set forth on Plan Sheet D-1. These maintenance requirements shall be included in the Declaration.
11. The use of fertilizer shall conform to Note 18 on Plan Sheet CS1. This requirement and the May 2021 document titled "Guidance for Lawn/Turf Areas for Lawn Care and Fertilization that Protects Water Quality" shall be included in the Declaration.
12. 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. 6 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 septic tanks.
 - 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 septic tanks, and any deficiencies that were identified and the corrective action taken.
 - f. Certify use of a Certified Snow Pro for winter road maintenance and salt usage reported to NHDES.
 - g. Retaining a civil engineer to inspect the porous pavement once a year in order to evaluate its continued effectiveness.
 - h. Conduct annual inspections to ensure that required no cut buffer remains in place. Notify the association, planning board and building inspector of any observed violations.

- i. Provide an annual report to the planning board of the results of the inspections in January of each year.
13. 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 association. The DOM and any changes of the DOM shall be approved by the planning board's Technical Review Committee.
14. 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 board counsel and shall include provisions allowing the association and the town to enforce. The restrictions and requirements shall include:
 - a. Use of Green Snow Pro contractor for winter maintenance.
 - b. Use of fertilizer as required by Condition No.11.
 - c. Replacement septic systems shall be Septi-Tech systems or other systems providing equal or better treatment and de-nitrification.
 - d. No garbage disposals shall be installed in the dwelling units.
 - e. Double walled oil storage tanks required if units have oil furnaces.
 - f. Maintenance of porous pavement as required by Condition No. 10.
 - g. Best Management Practices will be used for storage or use of regulated substances as required by NH Code of Administrative Rules Best Management Practices for Groundwater Protection, Env-Wq 401.04 Storage of Regulated Substances and as described in Rye Ordinance Section 190-3.6, Aquifer and Wellhead Protection District, Section G2.
15. 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 septic tanks has been done.
 - e. Monitoring the use of snow removal substances and fertilizers in the development.
 - f. Maintenance, repair and replacement (if required) of all drainage facilities owned by the association.
 - g. Maintenance of all porous pavement in the development.
 - h. Operation, repair and maintenance of the irrigation system in accordance with the Irrigation Notes of Sht. L1 and the requirements for Irrigation Systems set forth in the NH DES Model Regulations for Water Efficient Landscaping for Subdivision and Site Plan Applications, which is attached hereto.
16. 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.
 - 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 septic tanks has been done.
 - e. Fertilizers are being used in accordance with Condition No. 11.
 - f. NH Green Snow Pro certified contractors are being used for snow removal and treatment and annual salt usage reported to NHDES.
 - g. No garbage disposals have been installed in the dwelling units.
 - h. All drainage basins have been inspected by a qualified professional engineer and maintained in accordance with these conditions and are functioning properly.
 - i. All porous pavement has been maintained as required by Condition No. 10 and a civil engineer has inspected the porous pavement and determined that it continues to effectively allow storm water to permeate into the underlying soil.
 - j. The irrigation systems have been operated and maintained in accordance with the Irrigation Notes on Sht. L1 and the NH DES Model Regulations for Water

Efficient Landscaping for Subdivision and Site Plan Applications, which is attached hereto, and shall be subject to all water restrictions imposed by the Town.

17. The requirements of Condition No. 12 allow the association to assign the responsibilities set forth in Conditions Nos. 15 and 16 to a Designated Oversight Manager (DOM).

Notwithstanding this, the association has the ultimate responsibility for complying with Conditions Nos. 15 and 16.

18. Groundwater monitoring will be accomplished utilizing existing and proposed monitoring wells. Two upgradient wells Geo-2, Geo-5 (both existing) and three downgradient wells: Geo-3 (existing) and proposed new wells Geo-7 and Geo-8. The existing well on the property Geo-4 will not be utilized at this time but will be left in place for possible future use. Note that any wells destroyed by construction must be replaced using the same construction details and in or close proximity to the original location to accurately monitor the hydrogeologic conditions at the original well.

19. One preliminary round of sampling will be conducted following construction of the housing units and septic fields and prior to occupancy to establish a background for groundwater quality. The laboratory parameters for proposed analysis include: fecal coliform, E. coli, nitrate-N, and TKN. Static groundwater elevation, temperature, pH, and specific conductivity will be evaluated each round using field instrumentation. The frequency for monitoring will be twice yearly in the months of May and November for the above list, and sampling will be scheduled coincident with sampling activities of Benchmark for an evaluation of synoptic data.

20. A report summarizing the results of sampling, water quality analyses, and field measurements will be provided to planning board consultant Danna Truslow, or such other consultant as may be identified by the planning board, within one month of the receipt of laboratory results for that sampling round.

21. Immediately 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

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such work. Failure to pay such expenses shall constitute a lien on the condominium and the units.

22. 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.

Attached: NH DES Model Regulations for Water Efficient Landscaping for Subdivision and Site Plan Applications

CONDITIONS OF APPROVAL
HECTOR'S SITE MULTI-FAMILY DEVELOPMENT
MAJOR LAND DEVELOPMENT/S.U.P. APPROVALS

1. The plan set dated November 29, 2021 (revision date) shall be revised as follows:
 - a. Show locations of Ground Water Monitoring Wells Geo-2, 3, 4, 5, 7 & 8 on Sheets C2 and C4.
 - b. Revise Sheet C4 to show latest plan for water service as approved by the Rye Water District and the Rye Fire Chief.
 - c. Show a "No Cut Buffer" on Sheets C2 and C3 on south and west sides of parcel. The restriction of the "No Cut Buffer" shall be included in the Declaration. The buffer shall be marked in the field before any clearing takes place.
 - d. In the detail sheets, add a cross-section for the emergency drive construction.
2. Written certifications from the RWD Superintendent and the Fire Chief indicating their approvals of the water supply and water system as depicted on Sht. C4, revised as of 1/10/22.
3. A condominium association shall be created for the development. Planning board counsel shall review and approve the *Declaration, Bylaws and other condominium instruments* and any other legal instruments required to form the association. The purpose of the review is limited to assurances that the instruments are consistent with the planning board's approvals.
4. The owner shall grant the town an easement relative to maintenance and repair of the infiltration basin located at the west corner of the site. The easement shall provide that, if the 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 board counsel.
5. The owner shall grant a drainage easement as depicted on Sht. C2 to BSL Rye Investors, LLC to allow surface water drainage from Tax Map 10/Lot 3 to pass through the easement area in order to be conveyed to the existing storm drainage system under Lafayette Road, including drainage emanating from the proposed Benchmark Assisted Living Facility. Said easement shall be approved by planning board counsel.

6. The owner shall grant the RWD a 25' x 40' easement as depicted on Sht. C2 for a valving station. The easement deed shall be reviewed and approved by RWD legal counsel.
7. Compliance with the Stormwater Management Operation and Maintenance Manual (Revised September 19, 2021) shall be the responsibility of the Association. Said responsibility to be set forth in the *Declaration*.
8. Surety 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 include any improvements to US Route 1 required by NHDOT and the emergency gate and access drive. Surety to be approved as to form by planning board counsel and as to amount by planning board engineer after review of an engineering estimate provided by applicant.
9. Sufficient funds shall be placed in escrow with the planning board to pay final statements of planning board engineer, planning board counsel and Consultant Truslow.
10. 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.
11. The following DES approvals shall be obtained: Alteration of Terrain and Subdivision.
12. A DOT Driveway Permit shall be obtained.
13. Applicant shall post an escrow in the amount of \$15,000 with the Rye Water District ("RWD") to be used towards the purchase of the Aquarion water line and other work depicted on Sht. C4. The escrow shall be posted for 5 years and returned to the applicant if the Aquarion water line is not purchased by January 11, 2027. Interest earned on the escrow may be used towards the purposes of the escrow.
14. The Workforce Housing Services Agreement as approved by the planning board on December 14, 2021, subject to non-substantive changes acceptable to board counsel, shall be signed by all parties, and an original provided to the planning board.
15. Planning board chair may sign plans and Certificate of Site Plan Approval when foregoing conditions Nos.1-14 are met.
16. All conditions of approval of the Conditional Use Permit required by the Aquifer and Wellhead Protection District shall apply to the land development.
17. Plan Sheets Nos. C2 and CS1 shall be recorded along with a Certification of Major Site Development Review Approval.

18. 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.
19. 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 planning board counsel.
20. The easements required by Condition Nos. 4, 5 & 6 shall be recorded with the deed transferring the property to the developer. Copies shall be provided to the planning board and town counsel.
21. 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.
22. The Workforce Housing Subsidy Lien and Restrictive Covenant as approved by the planning board on December 14, 2021, subject to non-substantive changes acceptable to board counsel, shall be signed by the planning board chair and the developer and recorded with the Declaration. Each subsequent owner of a workforce housing unit shall sign and record the lien and restrictive covenant upon purchase of a workforce housing unit.
23. Workforce housing units shall be as indicated on Note 1 of Sheets C2 and CS1.
24. 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.
25. The build out of the development shall comply with the Growth Management Ordinance, as amended by the provisions of RZO § 190-4.2, E.
26. Water lines, hydrants and appurtenances thereto shall be constructed in accordance with Rye Water District requirements.
27. There shall be no conversion of any first floor unfinished spaces or garage spaces into a third bedroom. This restriction shall be included in the Declaration.

28. Patio areas and balconies shall not be enclosed in any manner. This restriction shall be included in the Declaration.
29. 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).
30. There shall be no height variances applied for in this land development.
31. The applicant shall be responsible for the relocation of GPS Disk 10 in a manner and to a location to be determined by the planning board.
32. An emergency access gate shall be constructed on Tax Map 10/Lot 3 as depicted on the approved plans for the Benchmark Major Site Development. The gate shall be constructed by the owner of Tax Map 10/Lot 3. If for some reason the gate is not constructed on Tax Map 10/Lot 3, it shall be located on Tax Map 10/Lot 1 and constructed as part of the condominium land development.
33. Upon completion of construction of the emergency access drive the owner of Map 10/Lot 3 shall grant the owner of Map 10, Lot 1 an easement for it. The easement shall allow use by emergency vehicles, residents, and employees and contractors of residents during such time as access from the condominium's Lafayette Road drive is blocked. It shall include provisions for maintenance of the emergency drive and procedures for controlling the gate to be installed on the emergency access drive. The easement shall also allow use of the Benchmark perimeter drive and entrance drive for such emergency access to the condominium development. The easement shall be reviewed and approved by town counsel.

In the event that the Owner of Map 10 Lot 3 purchases the lot, but does not build the emergency access, or is delayed in building beyond the date that the owner of Map 10 Lot 1 seeks its 21st Certificate of Occupancy, the owner of Map 10 Lot 3 shall grant a temporary easement over its lot in the alternate location as depicted on Jones and Beach Plan Sheet EA1, dated 1/4/22.. The temporary easement shall remain in effect until such time as the owner of Map 10, Lot 3 provides the intended emergency access depicted on Jones and Beach plans, Sheet C2, dated 11/30/21 or some other suitable Planning Board approved location.

In the event that the Owner of Map 10, Lot 1 does not build, or is delayed in building the emergency access on its lot beyond the date that the owner of Map 10, Lot 3 seeks its Certificate of Occupancy, the owner of Map 10, Lot 1 shall provide an alternative emergency access on its Lot as depicted on Plan Sheet EA1 dated 1/4/22. The temporary easement shall remain in effect until such time as the owner of Map 10, Lot 1 provides the intended emergency access depicted on Jones and Beach plans, Sheet C2, dated 11/30/22 or some other suitable Planning Board approved location.

In the event that Benchmark does not purchase that portion of current Map 10, Lot 1 (to become Map 10, Lot 3) as shown on the plans, as approved by lot line adjustment, the owner of Map 10, Lot 1 shall return to the Planning Board for approval of a second means of egress/emergency access on the remaining portion of Map 10, Lot 1 prior to the issuance of its 21st Certificate of Occupancy.

34. Occupancy permits for more than 20 units shall not be issued prior to completion of construction of an emergency access drive connecting the condominium development to the perimeter drive located on Map 10/Lot 3 and recording of an easement over Map 10/Lot 3 for the emergency access drive or construction of a temporary easement per No. 33 above.
35. Monumentation shall be installed as required by the *Land Development Regulations*. 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.
36. For the purposes of RSA 674:39 "Active and Substantial Development or Building" shall be commencement of excavation for construction of the first dwelling.
37. As-built plans for all site improvements shall be submitted to the planning board (3 sets). It is recognized that the location of water line appurtenances such as hydrants and valves may be adjusted during construction. The As-Built Utility Plan shall show the final locations of all appurtenances and shall be signed by the Fire Chief and the RWD Superintendent.
38. Per Section 202-4.4 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.