

PLANNING BOARD

-Rye, New Hampshire-

NOTICE OF DECISION

Applicant: BSL Rye Investors, LLC d/b/a Benchmark Senior Living

Owners: BSL Rye Investors, LLC, Tax Map 10, Lot 3
Malcom E. Smith III, of Hampton NH, Tax Map 10, Lot 2

Property: 295 Lafayette Road, Tax Map 10, Lot 3
Property is in the Commercial District, Aquifer and Wellhead Overlay District and the Multi-family Overlay District.

Application case: Case #14-2021

Application: Major Residential Site Development Plan and BSL Rye Investors, LLC for property owned by BSL Rye Investors, LLC and located at 295 Lafayette Road, Tax Map 10, Lot 3 for construction of a 78-bed assisted living complex. Property is in the Commercial District and the Aquifer and Wellhead Protection District. Case #14-2021.

Date of decision: January 11, 2022

Decision: **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 Zosik, 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 C.U.P. APPROVAL
BENCHMARK ASSISTED LIVING FACILITY

1. A Two Stage Bioclere wastewater system with flow equalization and associated leach field shall be installed as depicted on the approved plans, Shts. S1 –S3, 11/30/21.
2. Since the Benchmark Expansion and the existing Benchmark facility have or will have a Groundwater Discharge Permit (GDP) issued by NHDES, the applicant will provide the final GDP for the facility to the Town of Rye Building Inspector and hydrogeologic consultant for the Town of Rye prior to issuance of a Certificate of Occupancy.
3. The required sampling of effluent and groundwater will be conducted as specified in the GDP. The expected groundwater monitoring program will include the proposed wells and analyses listed in items 4 and 5 below.
4. The proposed groundwater monitoring program will include existing and proposed monitoring wells. Two upgradient wells, Geo-1, MW-6 (both existing) and three downgradient wells, Geo-5, Geo-6 (both existing) and proposed new well Geo-9.
5. One preliminary round of sampling will be conducted following construction but prior to occupancy to establish a background for groundwater quality. The laboratory parameters for analysis include: fecal coliform, E. coli, nitrate, TKN, Volatile Organic Compounds (using EPA Method 8260B), & Drinking Water Metals (Arsenic, Barium, Cadmium, Chromium, Lead, Mercury, Selenium, & Silver). Dissolved metals will be tested and therefore samples will be field filtered. Static groundwater elevation, pH, and specific conductivity will be measured with field instruments. The frequency for permit monitoring will be twice yearly in the month of May and November for the above list excluding VOCs, PFAs and drinking water metals which are to be conducted twice during the 5-year permit (years 3 and 5). Modifications to the sampling program may be made after further discussion with Benchmark and NHDES. Reasonable efforts will be undertaken to schedule sampling coincident with the Map 10, Lot 1 property for an evaluation of synoptic data.
6. 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.
7. The existing unnamed well on the property will be decommissioned. Any wells destroyed by construction (other than the decommissioned well) will be replaced with the same well construction and in the same or nearby location to accurately monitor the hydrogeologic conditions at the original well. The decommissioning report for this and any other well

decommissioned as part of construction will be provided to planning board consultant Danna Truslow, or such other consultant as may be identified by the planning board.

8. Grease traps and primary tanks shall be inspected every 3 to 6 months and pumped as needed. (See Owner Notes, Sht. S3, 11/30/21).

9. The operation and maintenance of the Bioclere system shall conform to the Operation and Maintenance Manual submitted to the planning board, including the sampling frequency set forth in the "Recommended Modeling Parameters" table, a copy of which is attached to these conditions.

10. Bioclere system monitoring and sampling and groundwater monitoring reports prepared for the GDP shall also be sent to the Town of Rye Building Inspector and the hydrogeologic consultant for the Town of Rye upon completion. If a sampling exceeds the recommended range set forth in the "Recommended Monitoring Parameters" table, an explanation of the corrective action taken shall be provided.

11. Winter maintenance of the facility 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.

12. Fertilizer use should conform to the requirements of the May 2021 document titled "Guidance for Lawn/Turf Areas for Lawn Care and Fertilization that Protects Water Quality," a copy of which is attached to these conditions.

13. The irrigation system shall be designed and maintained in accordance with 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 that may be imposed by the Town.

14. The Irrigation Notes on Sht. 1-1 of the Hectors plan set shall be added to Benchmark Sht. L2 and incorporated into the Landscape Best Management Practices Operations and Maintenance Plan, where applicable. 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, should be incorporated into the Landscape Best Management Practices Operations and Maintenance Plan.

15. Best management practices will be used for storage or use of regulated substances as required by the 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.

16. Immediately following the issuance of a 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 and such other work as may be necessary to effect compliance with these conditions, including annual inspections of drainage

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facilities. When the escrow is depleted the owner shall be responsible for payment of the expenses of such work. Failure to pay such expenses shall constitute a lien on the facility

Attached:

Guidance for Lawn/Turf Areas for Lawn Care and Fertilization that Protects Water Quality.

Bioclere Operation and Maintenance Manual.

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

CONDITIONS OF APPROVAL
BENCHMARK ASSISTED LIVING FACILITY
MAJOR LAND DEVELOPMENT APPROVAL

1. The plan set dated November 30, 2021 (revision date) shall be revised as follows:
 - a. Show locations of Ground Water Monitoring Wells on Sht. C2.
 - b. In the detail sheets, add a cross-section for the emergency drive construction.
 - c. Show the location of the emergency access gate on Sht. C2 and all other sheets which depict the emergency access drive.
 - d. Plan set shall include Sht. C4, revised 1/10/22, and Sht. EA1, dated 1/4/22.
2. Written certifications from RWD Superintendent and Rye Fire Chief indicating their approvals of the water supply and water system plan, Sht. C4, revised 1/10/22.
3. The owner shall grant the town an easement relative to maintenance and repair of the six (6) bioretention ponds. The easement shall provide that, if the owner 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 owner 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 prior to Chair signing pursuant to No. 9 below. To be recorded prior to issuance of Certificate of Occupancy.
4. 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.
5. 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.
6. The following DES approvals shall be obtained: Alteration of Terrain and Subdivision (i.e. septic system).
7. A DOT Driveway Permit shall be obtained.
8. 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.

9. Planning Board chair may sign plans and Certificate of Site Plan Approval when foregoing conditions Nos. 1-8 are met.
10. All conditions of approval of the Conditional Use Permit required by the Aquifer and Wellhead Protection District shall apply to the land development.
11. Plan Sheets No. C2 shall be recorded along with a Certification of Major Site Development Review Approval.
12. Operation and maintenance of stormwater management facilities shall comply with the Stormwater Management Operation and Maintenance Manual (Revised October 28, 2021).
13. Maintenance of landscaping shall be performed in accordance with the Landscape Best Management Practices Plan prepared by Ironwood Design Group, LLC and dated October 28, 2021, which is attached.
14. The easement required by Condition No. 3 shall be recorded prior to the issuance of a Certificate of Occupancy. Copies shall be provided to the planning board and town counsel.
15. Water lines, hydrants and appurtenances thereto shall be constructed in accordance with Rye Water District requirements.
16. 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).
17. An emergency access drive and gate shall be constructed as depicted on the approved plans.
18. Upon completion of construction of the emergency access drive the owner of Map 10/Lot1 shall grant Benchmark/Evolve an easement allowing emergency vehicles, residents, and employees and contractors of Benchmark/Evolve to pass over the drives of the adjacent condominium development during such time as access from Benchmark/Evolve'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 be reviewed and approved by town counsel.

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 a Certificate of Occupancy, the owner of Map 10, Lot 1 shall provide an temporary emergency access drive in the location on Map 10, Lot 1 as depicted on Jones & Beach plan Sheet EA1,

dated 1/4/22. The temporary easement shall remain in effect until such time as Map 10, Lot 1 is developed and the original permanent easement is provided

In the event that Benchmark/Evolve purchases Map 10 Lot 3, but does not build or is delayed beyond the date that the owner of Map 10, Lot 1 seeks its 21st Certificate of Occupancy, Benchmark/Evolve shall grant the owner of Map 10, Lot 1, a temporary emergency access easement as depicted on Jones and Beach plan Sheet EA1, dated 1/4/22. The temporary easement shall remain in effect until such time as Map 10, Lot 3 is developed and the original permanent easement is provided

19. An occupancy permit for the assisted living facility shall not be issued prior to completion of construction of the emergency access drive recording of the easement over Map 10/Lot 1.
20. 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.
21. For the purposes of RSA 674:39 “Active and Substantial Development or Building” shall be commencement of excavation for construction of the assisted living facility.
22. 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 such appurtenances and shall be signed by the Fire Chief and the RWD Superintendent.
23. 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.

Attached: Landscape Best Management Practices Plan