

# RYE PLANNING BOARD

*10 Central Road Rye, NH 03870 (603) 379-8081*

*Date*

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

**Applicant:** Three Rivers Farm Irrevocable Security Trust,  
Mark Kearns, Trustee, Dan Philbrick representative

**Addresses:** 32 Cable Road, Tax Map 8.4, Lot 6

**ZONE:** Property is in the General Residence, Coastal Overlay District.

**CASE NO:** Case #16-2024

**Request:** Major Subdivision and Condominium Conversion Conditional Use Permit for Three Rivers Farm Irrevocable Security Trust, Mark Kearns, Trustee for property located at 32 Cable Road, Tax Map 8.4, Lot 6 to convert 6 existing apartment units into 6 residential condominium units. Property is located in the General Residence, Coastal Overlay District. Case #16-2024.

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 owned by Three Rivers Farm Irrevocable Security Trust (“**the Applicant**”).
2. The Property is a 1.92-acre parcel located on the Cable Road with 114.69 linear feet of frontage.
3. The property is located in the General Residence, Coastal Overlay District.
4. The Property contains freshwater wetlands abutting Tax Map 8.4, Lots 4, 3, and 1 and Tax Map 5.3, Lots 1, 41, 37, 36 and 35.
5. The Applicant applied to the Planning Board on October 30, 2024 to be placed on the December agenda, while pending Zoning Board Special Exception Approval.

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6. A copy of the application was emailed to Maddie DiIonno, RPC Circuit Rider; Steve Harding, Town Engineer at Sebago Technics; and Eric Maher, Town Attorney on October 31, 2025.
7. The Applicant is requesting waivers to the following sections of the Land Development Regulations:
  - a. 202-3-4. E(1)
  - b. 202-3-4. E(2)
  - c. 202-3-4. E(3)
  - d. 202-3-4. E(4)
  - e. 202-3-4. E(5)
  - f. 202-3-4. E(7)
  - g. 202-3-4. E(8)
8. The Applicant was granted a continuance at the Board of Adjustment Hearing on November 6, 2024, for a special exception so that they may meet the criteria per 1905.3 Condominium Conversions of existing dwelling units to the December 4, 2024 meeting.
9. The Applicant submitted a supplement on November 15, 2024, which included a permit list, utility plan and a Conditional Use Permit application.
10. Received an email from Steve Harding Sebago Technics on November 15, 2024 which states: *We have downloaded the submittal package and reviewed the submission material and the attached drawings to determine the scope of the project. The application includes several waiver requests of engineering, design, and site plan regulations based on the premise that the project is a proposal to convert six apartment units into six condominium units with no physical changes to the site. Given that there are no changes proposed to the existing site aspect of the project, we believe that there may not be anything of consequence for us to review and provide comments upon. As such, we would defer to the Planning Board on the waiver requests. Let us know if there is some portion of this application that the Town would like us to review and provide comments upon.*
11. Department Head requests went out on December 4, 2024, and abutter notices went out and the hearing posted in the Portsmouth Herald and on the Town Website.
12. The Applicant was granted a continuance at the Board of Adjustment Hearing on December 4, 2024 to the January 8, 2025 meeting so that the Board may seek guidance from counsel.
13. Email from Maddie DiIonno, RPC Circuit Rider on December 6, 2024, which stated the following: *Hi Kim, for 32 Cable Road, I believe the wrong section of the LDR is being referenced for the waivers. Condo Conversions are required to follow submittal requirements for major site developments, not subdivisions. 202-2.1: Condominium conversions are considered to be both major subdivisions and major site*

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*developments. However, condominium conversions must only meet the procedural and information submittal requirements set forth herein for major site developments. Not a huge deal since the waivers will pretty much be the same – just have different section numbers. However, with that said, they’ll need to submit a waiver request for a lighting plan and use intensity statement as well.*

14. The Applicant submitted an updated application and waiver request on December 10, 2024, which was shared with Maddie DiIunno, RPC Circuit Rider; Eric Maher, Town Attorney; Steve Harding, Sebago Technics.
  15. Maddie DiIunno, RPC Circuit Rider submitted a review letter on December 10, 2024.
  16. William T. McLaughlin and Cindee Carter, 28 Cable Road requested all letters, pictures and emails submitted for the ZBA Hearing be shared with the Planning Board.
  17. The Applicant requested a continuance to the January 21, 2025 Planning Board public hearing.
  18. Received email from Jason Rucker, DPW Director on December 18, 2024 stating that: *I have field verified 32 Cable Road for stormwater/drainage proximity. I can confirm that there is no catch basins in the proximity of 32 Cable.*
  19. Received a letter from Alan & Patricia Smith on January 7, 2025 to be shared with the Planning Board.
  20. At the Board of Adjustment meeting on January 8, 2025, Shawn Crapo, Chair read the following from legal counsel at the beginning of the hearing on 32 Cable Rd: *The subject condominium conversion involves a pre-existing, non-conforming use and several pre-existing, non-conforming structures. The existing structures are presently being used for year-round residential use. The proposal does not involve altering the structures presently on the property. The Supreme Court has stated in Town of Rye Bd. of Selectmen v. Town of Rye Zoning Bd. of Adjustment that the Town of Rye’s Zoning Ordinance cannot apply the Town’s Condominium Conversion provisions of its Zoning Ordinance such that the application would prohibit a condominium conversion for a pre-existing, non-conforming use when there is no physical change proposed to the pre-existing non-conforming use and structures. As such, while the subject condominium conversion would not satisfy criteria (2) and (7) of Section 190-5.3(C), the Supreme Court has directed the ZBA to “not consider” those criteria. Therefore, the ZBA will not do so here.*
  21. The Board of Adjustment voted unanimously on January 8, 2025, to grant the application for a special exception from the Rye Zoning Ordinance per § 190-5.3 **Condominium conversions of existing dwelling units.**
  22. On Tuesday, January 21, 2025, the Planning Board conducted a public hearing on the application for a Major Subdivision and Condominium Conversion Conditional Use
- ❖ *Planning Board Approvals do not include building permits; please check with the Building Inspector’s office before any and all construction.*

Permit for Three Rivers Farm Irrevocable Security Trust, Mark Kearns, Trustee for property located at 32 Cable Road, Tax Map 8.4, Lot 6 to convert 6 existing apartment units into 6 residential condominium units. Property is located in the General Residence, Coastal Overlay District. Case #16-2024.

23. On Tuesday, January 21, 2025 the Planning Board issued this Notice of Decision and Findings of Fact.

### DECISION

A site visit by the Planning Board may be important to view the stormwater and wetlands prior to a vote on the waivers.

An Escrow should be put in place to pay for peer review, waiver review and legal review of all documents and submittals.

Motion by \_\_\_\_\_ to grant a waiver from \_\_\_\_\_, Section \_\_\_\_\_ from \_\_\_\_\_ requirement 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. Seconded by \_\_\_\_\_.

Motion by \_\_\_\_\_ for a Major Subdivision and Condominium Conversion Conditional Use Permit for Three Rivers Farm Irrevocable Security Trust, Mark Kearns, Trustee for property located at 32 Cable Road, Tax Map 8.4, Lot 6 to convert 6 existing apartment units into 6 residential condominium units. Property is located in the General Residence, Coastal Overlay District. Case #16-2024, per the Notice of Decision and Finding of Facts, as amended. Seconded by \_\_\_\_\_ Vote \_\_\_\_\_.

### Conditions of Approval:

1. The Condominium Declaration and Bylaws shall be subject to the satisfactory review of town counsel prior to the Chair signing the Plans, whose review shall be limited to ensuring that the Condominium Declaration and/or Bylaws contain the following provisions ensuring the following:
2. Applicant shall provide the Town with sufficient funds to be placed into escrow to pay final statements of the Town's engineer, town counsel and town environmental consultants.
3. 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.

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4. The executed conditions of approval shall be appended to and recorded with the Condominium Declaration.
5. The Planning Board chair may sign the Plans when the foregoing conditions are met.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Patricia Losik, Chairman, Rye Planning Board**

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 or the Housing Appeals Board (HAB) 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.

