

**Rye City Planning Commission Minutes**  
August 12, 2014

**MEETING ATTENDANCE:**

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**Planning Commission Members:**

- Nick Everett, Chair
- Martha Monserrate, Vice-Chair
- Laura Brett
- Barbara Cummings
- Hugh Greechan
- Peter Olsen
- Alfred Vitiello

**Other:**

- Christian K. Miller, AICP, City Planner
  - Carolyn Cunningham, CC/AC Chair
  - Melissa Johannessen, AICP, LEED AP
  - JoAnn Rispoli, Secretary
  - Tracy Stora, CC/AC member
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**I. HEARINGS**

**1. 450 Milton Road**

- Mr. David Mooney stated he was filling in for Mr. Steven Secon, the applicant's architect. Mr. Mooney noted that the proposed addition will be 80 feet from the wetland edge. The proposed addition in the rear would be located over existing driveway and not result in an increase in impervious in the wetland buffer. The application also includes enclosing the front porch; however, that improvement is located outside the 100-foot wetland buffer. The proposed rear addition would have no basement and the proposed elevation would be two feet above the 100-year FEMA base flood elevation, compliant with the City's Floodplain Management Law.
- There was no public comment.

**ACTION:** Barbara Cummings made a motion, seconded by Peter Olsen, to close the public hearing for Wetland Permit application number WP#380, which was carried by the following vote:

Nick Everett, Chair:	Aye
Martha Monserrate, Vice-Chair:	Aye
Laura Brett:	Absent
Barbara Cummings:	Aye
Hugh Greechan:	Absent
Peter Olsen:	Aye
Alfred Vitiello:	Aye

**2. 7 Kirby Lane**

- Barbara Cummings recused herself from the discussion of this application and left the hearing room.

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- Mr. Seth Mandelbaum (applicant's attorney) stated he is representing Pankaj and Emily Gupta who are contract vendees in the purchase of 7 Kirby Lane. He stated that the plans have been revised since the last meeting to reduce the scope of the project in response to the comments raised by the Planning Commission.
  - Mr. Alan Pilch (applicant's engineer) stated that the project consists of demolition of the existing garage, reconstruction of a new garage including a connection to a proposed addition to the rear of the existing residence. The application also includes modification of the existing driveway and installation of a fence. Mr. Pilch stated that the plans have been revised since the Commission's previous meeting to reduce the amount of impervious area in the wetland buffer. He stated that the current plan results in a 13 square-foot reduction in impervious area in the wetland buffer as compared to existing conditions. He stated that the plan includes a 3-foot fence on the top of the existing seawall.
  - Mr. Paul Noto stated that he is representing the Liman family who resides at 5 Kirby Lane. He submitted a letter and a report from Patrick Cleary both of which are dated August 12, 2014 and are included as part of the official record of this application. Mr. Noto stated that he submitted a July 12, 2014 letter, which is also part of the official record.
  - Mr. Noto noted concerns with the application. He stated that the application was not signed by the owner. He also stated that the notification was not done properly since his client, who is an abutting neighbor, did not receive a copy of the notice as required by the City's Wetlands Law. Mr. Noto summarized Mr. Cleary's reports, which identifies ten environmental issues of concern that in Mr. Cleary's opinion were not properly addressed by the applicant in his submission to the City Planning Commission. Mr. Noto stated concern that the plan had been further revised to include a fence on top of the seawall and that this was not previously identified by the applicant.
  - Mr. Noto stated his opinion that the action should be considered unlisted instead of a Type II (i.e., exempt) action under SEQR. He requested that the Commission find that the application is an Unlisted Action under SEQR and require the applicant to submit a Full Environmental Assessment Form (EAF). He stated that Mr. Cleary's report states that wetland permits are not building permits and therefore should not be considered Type II actions under SEQR.
  - Mr. Noto provided highlights of Mr. Cleary's report including Mr. Cleary's opinion that the Commission should find under the City's Wetlands Law that the project will adversely impact the function of the adjacent wetland. He stated Mr. Cleary's opinion that the application requires a Stormwater Pollution Prevention Plan pursuant to Chapter 174 of the City Code. He stated Mr. Cleary's opinion that

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1 more information and analysis should be provided to demonstrate compliance  
2 with the City's Floodplain Management Law and that the proposed addition will  
3 be two feet above the 100-year flood elevation, especially given the project's  
4 location within a Hurricane Inundation zone. He stated Mr. Cleary's request that  
5 the application provide more information demonstrating that the project will not  
6 adversely impact wildlife. He stated that Mr. Cleary's report questions whether  
7 the project scope could be further reduced to minimize impacts in the wetland  
8 buffer.  
9

- 10 • Mr. Noto concluded the location on the southeast side of residence should be  
11 redesigned to be on the southwest side of the residence to reduce the amount of  
12 encroachment in the wetland buffer. Mr. Noto questioned how the height of the  
13 fence was measured (i.e. from the ground side or the waterside of the existing  
14 seawall). He stated that the fence would disrupt his client's existing water views.  
15 He stated concern about surface water control measures since the property is  
16 located in a flood zone. He suggested that a third party engaged by the City  
17 oversee the installation of the proposed stormwater measures and that the  
18 applicant provide a bond for the perpetual maintenance of the measures to  
19 insure their proper functioning.  
20
- 21 • Mr. Mandelbaum stated that it is difficult to respond to Mr. Noto and Mr. Cleary's  
22 report having just been provided a copy. He said a more complete response  
23 would be provided. Mr. Mandelbaum did state his opinion that the proposed  
24 action is Type II under SEQR and that the Planning Commission has consistently  
25 considered wetland permits for single-family residences as Type II actions. He  
26 noted that the plan has been revised to reduce the amount of impervious area in  
27 the wetland buffer as compared to existing conditions and will not have a  
28 significant impact on the wetland or wetland buffer. He stated that floodplain  
29 permit is administered by the City Building Department and the stormwater  
30 measures are approved by the City Engineer.  
31
- 32 • Mrs. Monserrate questioned the City Planner if the Liman residence was notified  
33 of the public hearing. The City Planner reviewed the file confirming the receipt of  
34 the notice of mailing from the postal service and that such mailing was circulated  
35 in advance of the meeting as required by law. He stated that there did not  
36 appear to be any notice deficiency.  
37
- 38 • Mr. Pilch stated that the proposed fence is necessary for safety to prevent the  
39 applicant's children from falling into the water.  
40  
41

42 **ACTION:** Martha Monserrate made a motion, seconded by Peter Olsen, to continue  
43 the public hearing for Wetland Permit application number WP# 381, which  
44 was carried by the following vote:  
45

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1	Nick Everett, Chair:	Aye
2	Martha Monserrate, Vice-Chair:	Aye
3	Laura Brett:	Absent
4	Barbara Cummings:	Recuse
5	Hugh Greechan:	Absent
6	Peter Olsen:	Aye
7	Alfred Vitiello:	Aye

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9

10 **3. 20 Mayfield Street**

11

- 12 • Mr. Mooney (applicant's architect) briefly described the application. He stated  
13 that the project involved raising the existing house from an elevation of 9.5' to an  
14 elevation of 16' compliant with the requirements of the City's Floodplain  
15 Management Law. The project would involve constructing new front steps and  
16 moving the driveway to the east of its present location with the wetland buffer.  
17 An existing shed would be removed and a new two-story addition would be  
18 added to the back of the house, both of which are located outside the wetland  
19 buffer. Mr. Mooney stated that the project would result in a 35 square-foot  
20 increase in impervious area in the wetland buffer.  
21
- 22 • The Commission questioned the variances required for the application. Mr.  
23 Mooney identified the required variances.  
24
- 25 • There were no comments from the public.  
26

27 **ACTION:** Barbara Cummings made a motion, seconded by Martha Monserrate, to  
28 close the public hearing for Wetland application number WP# 382, which  
29 was carried by the following vote:

30

31	Nick Everett, Chair:	Aye
32	Martha Monserrate, Vice-Chair:	Aye
33	Laura Brett:	Absent
34	Barbara Cummings:	Aye
35	Hugh Greechan:	Absent
36	Peter Olsen:	Aye
37	Alfred Vitiello:	Aye

38

39

40 **4. 2 Florence Avenue**

41

- 42 • The City Planner stated that the applicant had not submitted revised plans  
43 addressing concerns regarding stormwater runoff raised at the previous public  
44 hearing. He recommended that the Planning Commission consider keeping the

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1 hearing open until this information had been provided and made part of the public  
2 hearing.  
3

4 • Mr. Kevin Kelly (applicant) stated that the project consists of the subdivision of  
5 the property into two zoning-compliant building lots. He stated that the existing  
6 residence would be removed and two new residences would be constructed that  
7 meet all setbacks, lot area, width and other requirements of the R-5 District. He  
8 stated that the project engineer is revising the drainage plans to relocate the  
9 proposed sub-surface drainage measures to the front yard further from abutting  
10 neighbors. He also stated that a drainage line would be added to address an  
11 existing ponding area in the rear yard.  
12

13 • Mr. Kelly reviewed a table he prepared showing the lot and house sizes in the  
14 neighborhood. He stated that his analysis shows that average lot size of area  
15 homes was 0.159 acres and average house was 2,080 square feet. He stated  
16 that his proposed building lots would be larger than the area average including  
17 one lot that would be 0.187 acres (or 17.6% larger than average lot) and a house  
18 size of 2,863 square feet. The second lot would be 0.182 acres with a maximum  
19 proposed residence of 2,637 square feet.  
20

21 • The Planning Commission asked when the applicant will have the engineer plans  
22 completed. Mr. Kelly stated that the project engineer is on vacation but that they  
23 would be available before the Commission's next meeting.  
24

25 • The Commission discussed comments raised in the previous public hearing  
26 regarding the potential future subdivision of lots within the neighborhood. The  
27 City Planner confirmed that there are no lots in the R-5 District that have future  
28 subdivision potential.  
29

30 • Sarah Vizard, 34 Harding Drive, questioned why the applicant wants to build two  
31 houses instead of one bigger one on the existing lot. Mr. Kelly responded that  
32 under existing zoning regulations one residence could be more than 5,000  
33 square-feet, which, in his opinion, would not be in keeping with the character of  
34 the neighborhood. Mr. Kelly stated that the proposed building lots and residences  
35 are compliant with the City zoning regulations and that no variances are needed.  
36  
37

38 **ACTION:** Martha Monserrate made a motion, seconded by Barbara Cummings, to  
39 continue the public hearing for subdivision application number SUB#336,  
40 which was carried by the following vote:  
41

42	Nick Everett, Chair:	Aye
43	Martha Monserrate, Vice-Chair:	Aye
44	Laura Brett:	Absent
45	Barbara Cummings:	Aye

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1                    Hugh Greechan:                    Absent  
2                    Peter Olsen:                        Aye  
3                    Alfred Vitiello:                    Aye  
4

5 **Comments from Laura Slack**  
6

7 Laura Slack (Rye City Board of Education, president) thanked the Planning Commission  
8 for giving her the opportunity to speak on short notice. She stated that she would be  
9 making a presentation to the City Council but wanted to alert the Planning Commission  
10 to the challenges the District faces in accommodating increases in public school  
11 enrollment. She requested that the Commission consider limited school capacity as they  
12 review land use applications that increase school age children population. She stated  
13 that there have been significant increases in enrollment, which have required the need  
14 for increases in both operational and capital improvement expenditures. She stated that  
15 projected enrollment increases are putting further strain on the District and the capacity  
16 of its facilities.  
17  
18

19 **II. ITEMS PENDING ACTION**  
20

21 **1. 11 Elm Place** (Item taken out of order)  
22

- 23 • The Commission discussed the request for a time extension of the approved site  
24 plan and had no objections.  
25

26 **ACTION:** Martha Monserrate made a motion, seconded by Alfred Vitiello, to approve  
27 the extension of time for Site Plan SP#322, which was carried by the  
28 following vote:  
29

30                    Nick Everett, Chair:                    Aye  
31                    Martha Monserrate, Vice-Chair:                    Aye  
32                    Laura Brett:                        Absent  
33                    Barbara Cummings:                    Aye  
34                    Hugh Greechan:                        Absent  
35                    Alfred Vitiello                        Aye  
36                    Peter Olsen:                         Aye  
37  
38

39 **2. 450 Milton Road**  
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- 41 • Mr. David Mooney stated that the house addition would be elevated two feet  
42 above the FEMA flood elevation. Mr. Mooney confirmed that the addition would  
43 be over existing driveway and that there would be no increase in impervious  
44 area. He stated that no wetland mitigation plantings are proposed.  
45

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1 **ACTION:** Barbara Cummings made a motion, seconded by Martha Monserrate, to  
2 approve Wetland Permit application number WP#380, which was carried  
3 by the following vote:

4		
5	Nick Everett, Chair:	Aye
6	Martha Monserrate, Vice-Chair:	Aye
7	Laura Brett:	Absent
8	Barbara Cummings:	Aye
9	Hugh Greechan:	Absent
10	Peter Olsen:	Aye
11	Alfred Vitiello:	Aye
12		
13		

14 **3. 7 Kirby Lane**

- 15
- 16 • Mrs. Barbara Cummings recused herself from the discussion of this  
17 application.
- 18
- 19 • Mr. Paul Benowitz (applicant’s architect) provided an overview of the  
20 proposed improvements to the residence.
- 21
- 22 • Mr. Alan Pilch (applicant’s engineer) stated that the project consists of  
23 demolition of the garage, reconstruction of southeast side of house along with  
24 the addition of walls and the driveway. He stated that the plans were revised  
25 to result in a 13 square-foot reduction in impervious area in the wetland buffer  
26 as compared to existing conditions.
- 27
- 28 • The Commission questioned if the fence could be relocated so that it is  
29 setback from the top of the seawall. Plant material could be provided in front  
30 of the fence to reduce the visual impact concern expressed by Mr. Noto and  
31 still meet the safety needs of the applicant. Mr. Pilch stated that plantings  
32 alone would not meet the safety needs of the applicant, but that he would  
33 review the Commission’s suggestion with his client.
- 34
- 35 • The Commission questioned what alternative locations were considered by  
36 the applicant for the proposed addition. Mr. Pilch and Mr. Benowitz responded  
37 that the addition is largely dictated by the internal house design, but that the  
38 applicant would look at alternative designs that may meet the needs of the  
39 applicant.
- 40
- 41 • The Commission requested that the applicant provide a written response to  
42 the August 12, 2014 Cleary report and Paul Noto letter prior to its next  
43 meeting. The City Planner requested that Mr. Noto provide some additional  
44 legal analysis supporting his position that the application should be  
45 considered an Unlisted rather than a Type II (i.e. exempt) action under SEQR.

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- Mr. Benowitz, the applicant’s architect, stated that as with nearly all applications approved by the Planning Commission the project cannot progress without a floodplain management and building permit issued by the Building Department and a Surface Water Control permit approved by the Engineering Department. These departments will address the stormwater runoff and floodplain compliance concerns expressed by Mr. Noto.
- The Commission questioned the need for additional mitigation plantings in the wetland buffer. Mr. Pilch stated that none were proposed given that there was no increase in impervious area and the fact that the property already has substantial plantings along the top of the seawall.
- The Commission reviewed the stormwater drainage design and questioned the type of pipe that would be used for the system. Mr. Pilch stated the type of pipe that would be provided and he would review the pipe detail on the plan to make sure it is clear.
- The City Planner stated that if this project is deemed to be considered an Unlisted Action under SEQR the application would also require coastal consistency review. He stated that during his tenure with the City Planning Commission applications involving single-family residences have been considered Type II actions and not subject to environmental review.
- The Commission requested that if Mr. Noto had any additional comments that they be provided in advance of the next meeting so that they would have an opportunity to review them.

**4. 20 Mayfield Street**

- Mr. Mooney stated that this project will need a Floor Area Ratio (FAR) variance, a rear yard variance for the rear addition, a building height variance and a lot width variance. The Commission stated that the applicant should work with the adjacent neighbor who has expressed concern with the scale of the project. The Commission agreed that the 35 square-foot increase in impervious area for the proposed steps in the front yard was reasonable and that the wetland permit should be approved.

**ACTION:** Barbara Cummings made a motion, seconded by Martha Monserrate, to approve as amended Wetland Permit application number WP#382, which was carried by the following vote:

Nick Everett, Chair:	Aye
Martha Monserrate, Vice-Chair:	Aye

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1	Laura Brett:	Absent
2	Barbara Cummings:	Aye
3	Hugh Greechan:	Absent
4	Peter Olsen:	Aye
5	Alfred Vitiello:	Aye

6  
7  
8 **5. 2 Florence Avenue**

- 9
- 10 • The applicant did not attend the work session. The City Planner presented a map  
11 of the size of area properties relative to the minimum lot area required by the R-5  
12 District. The Commission stated that the revised drainage plan should be  
13 provided in advance of the next meeting.

14  
15  
16 **6. 2 Second Street**

- 17  
18 • Seth Mandelbaum (applicant's attorney) stated that his variance request was  
19 denied by the Board of Appeals. His clients are still contract vendee and have  
20 amended the plan to reduce the number of units from 16 one-bedroom units to  
21 12 units. The current plans comply with the City Zoning Code and do not have  
22 any off-site improvements proposed.
- 23  
24 • The project architect reviewed the revised plans showing the reductions in the  
25 second and third floors to comply with the City FAR requirement. He stated that  
26 the building would maintain the existing zero lot line building footprint. The  
27 application complies with the City's parking requirement. There would be no off-  
28 site improvements to redo the City parking lot to add additional parking spaces  
29 and no outdoor seating area would be provided.
- 30  
31 • The Commission stated that most buildings in the CBD have some off-site  
32 improvements. The City Planner stated that the opportunities are limited in this  
33 case, but the applicant should increase the width of the side walk along the  
34 building frontage. He noted that this increase would be limited because you  
35 could not compromise the vehicle travel aisle width of the adjacent parking lot. If  
36 possible the City Planner suggested that a street tree be provided. He requested  
37 that the overhead utility poles be shown on the plan and that if they are located  
38 underground existing overhead street lights would need to be preserved. He  
39 stated that these improvements would not require City Council approval since  
40 they are not substantial such as those provided in connection with the Rye Grill  
41 and Bar property.

42  
43 **ACTION:** Martha Monserrate made a motion, seconded by Al Vitiello, to set the  
44 public hearing for Site Plan Permit application number SP#351, which was  
45 carried by the following vote:

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1  
2 Nick Everett, Chair: Aye  
3 Martha Monserrate, Vice-Chair: Aye  
4 Laura Brett: Absent  
5 Barbara Cummings: Aye  
6 Hugh Greechan: Absent  
7 Peter Olsen: Aye  
8 Alfred Vitiello: Aye  
9

10  
11 **7. 12 Pine Island Road**

- 12
- 13 • Mr. Jonathan Kraut (applicant’s attorney) stated that the project involved  
14 removing the existing house and constructing a new residence in the center of  
15 the lot and a new sewer line from the property to Forest Avenue.  
16
  - 17 • Mr. Kraut stated that the existing residence is approximately 1,400 square feet.  
18 He reviewed with the Commission three alternative plans consistent with the  
19 suggestion of the Commission at its last meeting including plans compliant with  
20 the maximum FAR of the R-1 District, a plan located completely outside the  
21 regulated wetland buffer and a plan involving reuse of the existing structure and  
22 addition to it. Mr. Kraut provided comparisons of the increases in impervious area  
23 in the wetland buffer for each alternative and the setback from abutting  
24 properties.  
25
  - 26 • The Commission reviewed and discussed each alternative and concluded that  
27 construction of a new residence completely outside the wetland buffer would  
28 require substantial variances from the Board of Appeals and would likely be  
29 objectionable to abutting neighbors. The Commission agreed that some  
30 compromise of the wetland buffer and zoning code was necessary. After  
31 considerable discussion of an appropriate alternative there was a general  
32 consensus that the applicant should amend its drawings to provide a residence  
33 that respects the required 20-foot side yard setback from the northern property  
34 line, provides a 50-foot setback from the rear/eastern property line (where 60 feet  
35 is required by zoning), does not encroach in the 100-foot wetland buffer along the  
36 western property line, and encroaches only 25 feet into the wetland buffer along  
37 the southern property line. The Commission felt that these changes would begin  
38 to address an application that could be supported by the Commission. The  
39 Commission respects the Board of Appeals jurisdiction in its consideration of the  
40 required variances.  
41
  - 42 • The Commission questioned the location of the existing septic system. Mr. Pilch  
43 (applicant’s architect) stated that the location was not known since its installation  
44 pre-dates public records. He stated that a new sewer line was necessary.  
45

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- 1       • Mr. Kraut stated that there have been some discussions with area neighbors  
2       regarding the application. The Commission stated that it would like to send the  
3       application to the Board of Appeals after a revised plan is submitted. The  
4       Commission did not want to proceed much further without the input of the Board  
5       of Appeals.  
6
- 7       • The Commission reviewed the FEMA flood elevations and the requirements of  
8       the City's Floodplain Management Law.  
9

### 10

### 11 **8. Starboard Properties, LLC**

### 12

- 13       • Marc Castaldi, property owner, was present along with the head of the rowing  
14       program. They were advised by the Commission that it had received complaints  
15       regarding early morning noise vehicles queuing, slamming doors and club  
16       coaches and participants talking. The rowing program stated that they would  
17       send out letters to its membership to be sensitive to noise and area residential  
18       neighbors. He stated that he has received only one complaint directly and that  
19       was from a resident located far from the property on Stuyvesant Avenue.  
20

### 21

### 22 **9. Minutes**

### 23

- 24       • The Planning Commission reviewed the minutes of July 22<sup>nd</sup> and made no  
25       changes.  
26

27 **ACTION:** Martha Monserrate made a motion, seconded by Nick Everett, to approve  
28       the minutes of July 22<sup>nd</sup>, which was carried by the following vote:  
29

30       Nick Everett, Chair:	Aye
31       Martha Monserrate, Vice-Chair:	Aye
32       Laura Brett:	Absent
33       Barbara Cummings:	Aye
34       Hugh Greechan:	Absent
35       Peter Olsen:	Aye
36       Alfred Vitiello:	Aye