

ARTICLE 03. To see if the Town will vote to amend the Rye Zoning Ordinance in accordance with the recommendation of the Rye Planning Board, as follows:

Amendment 13

- I. Amend Article III, Section 190-3.7 Multifamily Dwelling ***Overlay*** District (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

§ 190-3.7. Multifamily Dwelling *Overlay* District. [Added 3-9-2010]

- A. Purpose. The purpose of the Multifamily Dwelling Overlay District is to provide for multifamily dwellings and/or developments in appropriate locations in Rye in order to comply with the requirements of RSA 674:59. [Amended 3-14-2024 by Art. 3 (Am 4)]

B. Description of district. The Multifamily Dwelling Overlay District is comprised of ***parcels located within the Business and Commercial District that satisfy the Parcel and Lot Size Criteria set forth in Section 190-4.2(C)(2) and (3).*** ~~the Route 1/Lafayette Road Commercial District (except land owned by the Rye Conservation Commission) and all land in Rye within 800 feet westerly of the Route 1/Lafayette Road Commercial District. More specifically, the overlay district covers the following parcels as depicted on Town Tax Maps:~~

- ~~———— (1) — All of the following parcels on Tax Map 10: Parcel Nos. 1, 2, 3, 4, 4.1, 5, 6, 7, 8, 9, 10, 11, 14, 15, 15-3, 15-4, 16, 17, 18, 19, 20, 66, 67, 68, 69, 70, 82, 83, 84 and 85.~~
- ~~———— (2) — All of the following parcels on Tax Map 14: Parcel Nos. 4, 5, 6, 7, 9, 10, 12, 17 and 18.~~
- ~~———— (3) — The portions of the following parcels located within 1,300 feet of Lafayette Road: Tax Map 14, Parcel Nos. 8 and 11.~~
- ~~———— (4) — The portions of the following parcels located within 500 feet of Lafayette Road: Tax Map 14, Parcel Nos. 13 and 16; Tax Map 10, Parcel No. 13.~~

- C. Special use permit. Within the Multifamily Dwelling Overlay District multifamily dwellings and multifamily developments require a special use permit from the Planning Board pursuant to § 190-4.2 of this chapter.

- II. Amend Article III, Section 190-4.2 Multifamily dwelling and multifamily developments (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

§ 190-4.2. Multifamily dwellings and multifamily developments. [Added 3-9-2010]

- A. Authority. This section is adopted as an innovative land use control pursuant to RSA 674:21.
- B. Special use permit required. Within the Multifamily Dwelling Overlay District multifamily dwellings and multifamily developments require a special use permit from the Planning Board. The Planning Board may approve a special use permit which complies with the requirements of this section and the requirements of Chapter 202, Land Development Regulations, for major site developments. Applications for a special use permit shall be submitted to the Planning Board and reviewed in accordance with the Planning Board's procedural requirements for major site developments. The Planning Board may amend Chapter 202, Land Development Regulations, to include special requirements for the review and approval of multifamily dwellings.
- C. Requirements for multifamily dwellings and developments.
- (1) Location. Multifamily dwellings may be located in the Multifamily Dwelling Overlay District.
 - (2) Parcel size. The minimum parcel size shall be ~~two acres, which may include wetlands~~ ***44,000 square feet***.
 - (3) Frontage. A multifamily dwelling or a multifamily development shall have a minimum continuous frontage on a Town or state road or street of 150 feet. The Planning Board may allow the frontage requirement to be met on a private street provided the requirements of § 190-4.2C(6) are met and further provided that the Planning Board determines: [Amended 3-8-2016; 3-12-2019 by Art. 4; 3-14-2023 by Art. 3 (Am 5)]
 - (a) The private street is a street depicted on a subdivision plat approved by the Planning Board;
 - (b) Adequate provisions exist for maintenance and repair of the private street;
 - (c) Frontage on a private street will not result in an adverse impact on community facilities or community services;
 - (d) Frontage on a private street will not be contrary to the public health, safety or welfare; and
 - (e) The provisions of RSA 674:41 are satisfied.
 - (4) Number of dwelling units. A multifamily dwelling shall not have more than

five dwelling units. A multifamily development shall not have more than 40 dwelling units. The subdivision of land shall not be used to circumvent the forty-unit limitation; therefore, adjacent lands owned by the same individual or by affiliated entities shall be considered the same lot for the purposes of this provision.

- (5) Density. ***On lots that are smaller than 88,000 square feet, the density of a multifamily development shall not exceed four (4) dwelling units per contiguous acre of upland soils. On lots larger than 88,000 square feet, the density of a multifamily development shall not exceed six (6) dwelling units per contiguous acre of upland soils. For the purpose of this 190-4.2, "upland soils" shall include land that does not consist of wetlands or wetland buffers, aquifer and wellhead protection areas, slopes in excess of 20%, exposed ledge or ledge to a depth of two (2) feet below existing grade, or such other conditions which may act as physical or legal impediments to development (i.e. rights-of-way, easement restrictions, and restrictive covenants).*** ~~The density of a multifamily development shall not be greater than six dwelling units per contiguous acre of upland soils. In determining the potential density, the Planning Board may consider such other limitations on development that may exist on the property, including, but not limited to, aquifer and wellhead protection areas, steep slopes, ledge (exposed and shallow), soil types and legal impediments to development (rights-of-way, easement restrictions, restrictive covenants, etc.). No single contiguous area of uplands on a parcel shall have a density greater than six dwelling units per acre. The density is the maximum allowed, and it may be reduced by the Planning Board if the characteristics of the site, or the configuration of the site plan, or the relationship of the development proposal to its environs so warrants. [Amended 3-14-2023by Art. 3 (Am 5)] Workforce housing. [Amended March 2011]~~
- (6) Workforce housing. [Amended March 2011]
- (a) At least 20% but not more than 51% (each rounded to the next highest whole number) of the dwelling units in a multifamily development shall be workforce housing units ("WF units"). The WF units shall be allocated as nearly as possible to individual dwellings based on the same ratio as exists for the multifamily development to ensure equal distribution of workforce units throughout the structures containing dwelling units. Where the allocation does not work out evenly, the Planning Board shall have the authority to approve the allocation among dwellings, but the overall limitation of 51% on the development shall be controlling. [Amended 3-14-2023by Art. 3 (Am 5)]

[1] Example: An applicant proposed a multifamily development of 24 dwelling units in four dwellings, six dwelling units per dwelling. The twenty-four-unit development must have at least five WF units (20% of 24 = 4.8) but not more than 13 (51% of 24 = 12.2). If the applicant

proposes 10 WF units, the overall ratio of the development is 41.7% (10/24). This works out to be 2.5 WF units per dwelling structure for the four dwellings. The Planning Board would have the authority to approve an allocation of three WF units to each of two dwellings and two WF units to each of the other two dwellings.

[2] Another example: An applicant proposed a multifamily development of 40 dwelling units in five dwelling structures, eight dwelling units per dwelling. The forty-unit development must have at least eight WF units (20% of 40 = 8) but not more than 21 (51% of 40 = 20.4). If the applicant proposes the maximum of 21 WF units, the overall ratio of the development is 52.5% (21/ 40). Each dwelling would be allocated four WF units, with the extra unit allocated to one of the five dwelling structures.

- (b) At least 20% but not more than 51% (each rounded to the next highest whole number) of the dwelling units in a multifamily dwelling on a single lot (i.e., a multifamily dwelling that is not part of a multifamily development) shall be workforce housing units.
 - (c) The Planning Board shall impose conditions on the approval of multifamily dwellings and multifamily developments which shall assure that the approved number of workforce housing units remain permanently available for workforce housing as defined by RSA 674:58. Such conditions may include requirements for restrictive covenants and/or liens. [Amended 3-10-2020 by Art. 3]
-
- (7) Density bonus. At its discretion, the Planning Board may approve a density not to exceed eight dwelling units per contiguous uplands acre, provided that at least 30% of the total dwelling units are workforce housing as defined by RSA 674:58. If the bonus is awarded, no single contiguous area of uplands on a parcel shall have a density greater than eight dwelling units per acre.
 - (8) Building spacing. All dwellings shall be separated by at least 35 feet. [Amended 3-8-2022 by Art. 3]
 - (9) Parking. Each dwelling unit shall be provided with a one-car garage attached or in close proximity to the unit ~~and one other parking space~~. Site plans shall include adequate parking for visitors, as determined by the Planning Board.
 - (10) Open space and recreation. Multifamily developments shall be designed to include areas of open space and/or lands to be used for recreation. For each dwelling unit, there shall be 5,500 square feet of recreation space. Recreation and open space lands shall be designed to ensure that, to the greatest extent practicable, open space and recreational lands are contiguous and not***

fragmented or isolated. Recreational and open space areas shall be made available for the benefit of all owners of dwelling units and shall be accessible by pedestrian walkways amongst the various dwellings.

(11) Landscaping. Multifamily developments that are adjacent to nonresidential uses shall incorporate landscaped buffers in accordance with § 190-2.2(I).

D. Determinations required for special use permit approval. Prior to approving a special use permit, the Planning Board shall determine, by a vote on the record, that the multifamily dwelling or multifamily development meets each of the following standards:

- (1) All requirements of § 190-4.2C have been met. (This may be a single vote on the record.)
- (2) The granting of the special use permit will not be detrimental to adjacent property or the neighborhood.
- (3) The granting of the special use permit will not be detrimental to the public safety, health or welfare.
- (4) The granting of the special use permit will not be contrary to the public interest.

E. Growth management. The following provisions apply to multifamily dwellings which receive a special use permit pursuant to this section: [Amended 3-8-2016]

- (1) For multifamily dwellings and multifamily developments which may be affected by the limitations of Article IX, Growth Management, the Planning Board may require a phasing plan. Any such phasing plan shall assure proportional buildout of workforce housing units.
- (2) Multifamily dwellings and multifamily developments shall be exempt from the equitable distribution requirements of § 190-9.1B(3).
- (3) If the limitations of Article IX would allow building permits for at least 50% of the dwelling units in a multifamily dwelling or a multifamily development but not all of the units, building permits may be issued for all of the units (i.e., for the entire dwelling). However, the certificates of occupancy for the remaining units above the limitation shall not be issued until building permits would otherwise become available under Article IX. In such circumstances, the subsequent Town-wide building permit limitations shall be reduced accordingly. [Amended 3-10-2020 by Art. 3; 3-14-2023 by Art. 3 (Am 5)]
- (4) Waiver. The Planning Board may waive the requirements of § 190-4.2E(3) and/or § 190-9.1B(2), provided that after a duly noticed public hearing it determines on the record that each of the following criteria is met:
 - (a) Applicability of the requirement(s) will make financing of the multifamily dwelling or multifamily development infeasible;
 - (b) The waiver will not result in an adverse impact on community

facilities or community services; and

(c) The waiver will not be contrary to the public health, safety or welfare.

- F. Conditions. In approving a special use permit, the Planning Board may attach such conditions to its approval as it deems necessary to further the objectives of this section, this chapter and the public health, safety and general welfare.
 - G. Fees. The Planning Board shall charge an application fee for a special use permit for a multifamily dwelling or multifamily development, in addition to its fee for site plan approval and any fees for investigation and review allowed by RSA 676:4, I(g). Any special fees established by the Planning Board shall be reduced proportionally for applications which propose workforce housing (i.e., the fee for a proposal having 20% workforce housing shall be reduced 20%).
 - H. Conflicts. Where the provisions of this section conflict directly with another requirement of this chapter or a requirement of Chapter 202, Land Development Regulations, the provisions of this section shall govern. Otherwise, all other requirements of this chapter and Chapter 202, Land Development Regulations, shall apply to multifamily dwellings and multifamily developments.
 - I. Appeal. Pursuant to RSA 676:5, III, appeals of any Planning Board decisions made pursuant to this section shall be taken to the Superior Court or the Housing Appeals Board, not to the Board of Adjustment. [Amended 3-8-2022 by Art. 3]
- III. Amend Article III, Section 190-11.1 Definitions of Multifamily Dwelling and Multifamily Dwelling Development (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

§ 190-11.1 **Word usage and definitions.**

MULTIFAMILY DWELLING

A building containing three or more dwelling units.

MULTIFAMILY DWELLING DEVELOPMENT

A land development consisting of ~~two~~***three*** or more multifamily dwellings located on the same parcel.

- IV. Amend Article II, Section 190-2.2 Add P to the Applicability of use district section (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

§ 190-2.2 Applicability of use district regulations.

P. Adaptive Reuse of Commercial Buildings

An existing commercial building may be converted to either (a) a multifamily dwelling or (b) a development that combines (i) residential and (ii) a permissible commercial, cultural, institutional, or entertainment use within the same building. Proposals to convert commercial buildings in accordance with this Section shall be exempt from applicable setback, height, or frontage requirements, except for wetland buffers and aquifer protection districts, so long as the building's floor area, height, and setbacks do not change. Notwithstanding the foregoing, any proposed additional infrastructure related to said conversion, including but not limited to parking areas, septic systems, wells, and other structures shall adhere to all applicable setbacks and buffers under this Chapter.

Explanation

To amend the ordinances and sections where multifamily appears in the Rye to adapt to HB631