

TOWN OF RYE – PLANNING BOARD MEETING

**Tuesday, December 3, 2019
6:00 p.m. – Rye Public Library**

Members Present: Chair Patricia Losik, Vice-Chair J.M. Lord, Steve Carter, Jeffrey Quinn, Tim Durkin, Selectmen's Rep Bill Epperson, and Alternate Katy Sherman

Others Present: Town Attorney Michael Donovan and Planning Administrator Kim Reed

I. Call to Order

Chair Losik called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

Alternate Katy Sherman was seated for Member Jerry Gittlein.

II. Public Hearing: Proposed Zoning Amendments

Note: Public hearings for proposed amendments taking out of posted agenda order. (As shown in minutes.)

- o **RZO Amendment 2020-08** would amend Section 303.5.G Solar Collectors in Historic District to delete "visibility from adjacent public streets and adjoining properties" from the list of factors to be considered by the Historic District Commission in evaluating a solar panel installation.

Public hearing was opened at 6:04 p.m. by Chair Losik.

Mae Bradshaw, 106 Harbor Road, Historic District Commission Chair and Heritage Commission Member, submitted copies of the entire ordinance, as one small section is listed as being proposed for change. She noted the Historic District Commission (HDC) drafted the ordinance after much research in the region of other solar design guidelines for other historic districts. The HDC was very careful to include solar panels within the Historic District because of its support for solar energy throughout Rye, including the District. The focus of this amendment being proposed removes the one safe guard that was put into the ordinance, which was to not be visible from the street so the historic appearance for the center of the town would remain intact.

She feels the ordinance is misleading, as it does not include the whole ordinance that is being revised. This gives the community the impression that solar panels are not allowed in the Historic District, which is not true. She noted that solar panels are already provided for in the District, just not in full-face. She continued that the report from the Energy Committee to the Selectmen at their meeting recently, stated the committee was looking to put panels on the gym roof of the junior high building, which would be seen as well as panels on the front. The committee also proposed panels for the safety building. She clarified the HDC understands they have no control over what the municipality does. From the HDC's perspective, this amendment is not needed at all to install solar panels on the safety building or the junior high. The ordinance is not going to change anything for the municipality. This proposed amendment is "meddling" with something that is not broken. The homeowners in the town center should not be encouraged to

affect the appearance of the front of the building. In the Plan NH Report, it was stated the Town's ten year view for the town center was to keep the quintessential historic town center appearance. The Town Center Committee has voted on its principals in working towards satisfying the Selectmen's charge to the committee. The priority that was voted as being the most important was maintaining the historic appearance of the town center. This proposed amendment goes against that completely. It may also jeopardize the town's ability to obtain grants in the future, once the appearance turns into something that does not fit the period of most of the other buildings on the street. She noted the HDC is working on a draft for design guidelines, as recommended by Plan NH. HDC is working on a Centralized Local Government (CLG) Grant to help fund a design guideline study to help with that work.

Speaking to Ms. Bradshaw, Member Durkin asked if she is aware of any historic structures that were not awarded grants because of solar panels.

Ms. Bradshaw replied not specifically. She noted that grants would not be available under the standards from the Federal Government. The HDC considered what would be permitted to keep the historic preservation grants when writing the ordinance. One thing that would not be permitted is being able to see the panels.

Selectman Epperson asked Ms. Bradshaw if she is specifically speaking about the Historic District.

Ms. Bradshaw confirmed. She noted the Historic District is not just the center of town. All of Star Island is also included as part of the District.

Selectman Epperson asked if the HDC would have any objection to exploring the possibility of the elementary school building for solar panels.

Ms. Bradshaw replied no.

Member Carter asked if the HDC has objections to solar panels on the gymnasium portion of the Rye Junior High building.

Ms. Bradshaw stated the HDC had suggested this idea; however, there is now talk about raising the panels on the roof, which would make them visible. She explained the junior high is in the District, which impacts other buildings in the area. The overall theme of the overlay ordinance is that it has to be in harmony.

Tom Pfau, Energy Committee Co-Chair, stated the Energy Committee is not in favor of residences or businesses in the Historic District being allowed to have solar panels that are visible from the street. However, the committee would like to have the option of being able to explore the possibilities for municipal buildings. He spoke about different options that are being explored, at this time, for the junior high and safety building.

Mr. Pfau noted the solar panel proposal would be a twenty-five year lease, which is called a power purchase agreement. The first six years would pay off the investors who have paid for the installation, so there is no upfront cost to the Town. In the sixth year, there is a buyout. The panels being proposed would provide about 80% of the power of the schools, water district and the town. He noted the projections show the thirteenth year as being the breakeven point.

David Choate, 108 Washington Road, Demolition Review Committee Chair, stated that by changing the ordinance, it allows people to install solar panels wherever they want which could be visible. He noted the HDC is also looking at other historic structures throughout the community and considering the expansion of the Historic District. There are a number of structures, which are considered to be historic, just outside the District that are not protected. He encouraged the Energy Committee to go back to the HDC and discuss practical solutions. He urged the Planning Board to not move the proposed amendment to the warrant.

Member Quinn asked why property owners should have additional burdens placed on them that their neighbors don't necessarily have, when there are solar panels placed on homes all over Rye.

Mr. Choate commented that hopefully people know they are buying a house in the Historic District, which comes with other requirements. Also, the enabling legislation for historic districts in the State says that economic hardship is not an issue. A decision cannot be made on whether it is more economical to do a project a different way. The change has to be in keeping with all the criteria that is in the ordinance. He pointed out the ordinance does not say there cannot be solar panels on the property. It says the panels cannot be visible from the street.

Steve Borne, 431 Wallis Road, asked why this is being proposed if the HDC and the Energy Committee does not support the amendment.

Member Quinn stated it seems arbitrary. It seems like another level of criteria is being placed on people living in the Historic District. He asked why a potential user of solar panels should be excluded. The idea of the amendment is to allow solar panels where it is appropriate.

Burt Dibble, 106 Harbor Road, stated there has not been any discussion about abutting properties. There are many people in the Historic District that take the characters of the District very seriously. He thinks those people would be troubled if they could see panels from their property with it not being visible from the street. He recommended reaching out to those people to ask their input or concerns so there would not be an after-the-fact issue of unhappiness. He also recommended working with the schools, as this progress, so they do not feel neglected or disregarded in the process. He pointed out it is at least the spirit, if not the fact, in the town's master plan that the historic nature of the center of town be preserved. To move this forward, would be contrary to the spirit of the Master Plan.

There was some discussion about the process for applying to install solar panels on a property within the Historic District.

Member Quinn asked if solar panels would be considered for the Town Hall or church, which would allow for the ability to offset some of the operational costs.

Mr. Pfau commented these buildings would be ideal but they are historical buildings.

Member Quinn stated that it seems to him the expanse and orientation of the buildings are good. It seems that other buildings are not configured favorably. He commented that the property across from the Town Hall would not be allowed to have solar panels. He noted this is what drove the line through item 4.

Ms. Bradshaw stated if those sites had solar panels, the entire community would need to vote to withdraw the Historic District. There would not be a Historic District that benefited why people move here and

why people say that keeping the center of the town looking as it does is most important. That appearance of history of a time cannot be recreated.

Referring to the design guidelines, Chair Losik stated that in driving through the Historic District, there are a lot of things that are not representative. She asked if taking up these guidelines is going to empower a better alignment with history.

Ms. Bradshaw explained the HDC started working on the guidelines because there was a history of inconsistency with proposals before the commission. The commission could see that the public did not know what could and could not be done in the District. It was felt it would be too arbitrary to keep it that way and more clarity was needed. This is why the HDC started on this work; however, it is a monumental task. The commission has sent a letter of intent to the CLG program to hire a professional to help with the work.

Chair Losik stated that she hears a lot of concerns about people not being able to replace a window if they live in Portsmouth's Historic District. She asked if this is the direction Rye's Historic District Commission is going.

Ms. Bradshaw replied no. She explained there are contractors who are members on the commission. They are very good at looking at materials that are new and sustainable, while keeping the historic appearance.

Chair Losik stated there is a lot of balance in the Master Plan. In the energy section, there is a statement that the community supports and preserves its semi-rural character, while simultaneously embracing 21st Century technology. It sounds like the commission is looking at design. Maybe solar is not quite where it needs to be to get the blends. It's hard for the Board to look and say certain people who are living along that line of Washington Road are being penalized. If the house has a discreet south facing roof of a nice size, it can probably be "tucked in" if it is not going to be visible to the neighbor or street.

Ms. Bradshaw stated people who buy in the Historic District, generally have a sense of history. They care about not only preserving their house in that fashion, but their neighbor's house as well. Part of the value of living in the Historic District is being able to rely on the fact that every property owner is going to be "controlled" on the same level. For some people, the Historic District is a desirable place to live.

Chair Losik read a letter from Scott Marion, Rye School Board Member, supporting the promotion of solar energy use in Rye.

Jaci Grote, Washington Road, stated she is one of the original members of the Rye Energy Committee. The intent of the Energy Committee was to look at ways to reduce carbon footprint of the town's municipal buildings. She does not feel the municipal buildings, which serve the entire population of Rye, should be considered part of a jurisdiction that has domestic building requirements. Those buildings serve everyone in Rye, not only the Historic District. The panels need to be located where they will be the most effective and efficient, whether it be the side or the front. For municipal buildings, the technology has to override the other aspects.

Burt Dibble, 106 Harbor Road, comment regarding the science of the energy issue and global warming, I am a member of the Zoning Board and I respect that people do have rights within their own property, troublesome to me, like Mae we are solar energy and I am a big fan of protecting the environment. On the

other hand, the United States over the last 10 years has reduced its carbon footprint by nearly 25% and the carbon footprint of the European Union and China is what totally drives global warming its 10 times what the United States is. As a practical matter, I do not think that anything we do in Rye will have any impact on global warming and sea-level rise and really global warming and sea-level rise is a defensive position regarding real estate than it is energy management.

Selectman Epperson commented that he thinks everyone can agree the location of the solar panels is the issue, not the fact they exist. He suggested this be tabled for more information from the HDC's design guideline study.

Attorney Donovan noted the Board has three choices; (1) vote to forward to town clerk to be included on the ballot as written; (2) table the proposed amendment; or (3) vote to not forward it to the town clerk. It could also be amended, which would require a second public hearing if it is of any substance.

Chair Losik asked the public for any last comments.

Ms. Bradshaw stated the Energy Committee, Planning Board and Historic District Commission agree this is not needed for solar arrays to be put on a municipal building. She recommends this be withdrawn. The HDC will be bringing new guidelines to the Town next year. She feels this amendment will be interrupting that process.

Mr. Pfau noted that he stated he does not feel there needs to be a change to the Historic District Guidelines that allow residences or businesses to install panels that are visible to the street. He suggested the HDC consider some of the wording from the ordinances in Durham and Exeter.

Gail Hughes, 6 Acorn Acres, suggested not "railroading" something through because there are other options that will be available next year that should be considered. She also suggested the Board should give this a lot of thought before accepting this or making any changes.

Keriann Roman, 23 Locke Road, Select Board Member, stated a lot of this is premised on the fact the municipal buildings and schools can still put these panels up because they are not subject to their own zoning. However, these would be installed under a power purchase agreement. The benefit of that power would go to the municipal buildings; however, the company that puts them up is going to be receiving money from the Town. If the Town is going in together with a private company on town land, does it become subjective to zoning?

Attorney Donovan commented it could be an issue.

Mrs. Roman stated it seems to be the general agreement this would not bar the schools and the Town from putting solar panels on these buildings. From the Energy Committee's perspective, they do not need this to go on municipal buildings. However, if having this stay as it is subjects the Town to having to go to the HDC because of the agreement with the private solar company, this issue would come back on the table. She suggested continuing this to another public hearing to have this question answered.

The public hearing was closed at 7:08 p.m.

The Board agreed to table the discussion.

- **Rye Zoning Ordinance (RZO) Amendment 2020-03** would amend Section 304 Coastal Area District to require a Special Use Permit from the planning board for new dwellings and substantial renovations of existing dwellings within the district.

The public hearing was opened at 7:14 p.m. by Chair Losik.

Attorney Tim Phoenix, Hoefle Phoenix Gormley & Roberts, stated he is present on his own accord based on his relationships and experiences with various boards in town. He would like to express his personal and professional views based on his experience. The ZBA and the Planning Board have separate but complimentary roles. Typically, the planning board has authority over site plan and subdivision approval, while the zoning board deals with variances and special exceptions for any variations to the zoning ordinance. There are innovative land use controls that allow for special use permits and conditional use permits. Those can be proposed for the planning board but they do not have to be. The zoning board can exercise jurisdiction over innovative land use controls. He pointed out that typically, things like height are the providence of the zoning board. In Rye, the Planning Board already has a jurisdiction over a number of zoning sections. While some of those probably should be the providence of the Planning Board, in this case some thought should be given. One of the unintentional consequences may be the burden of more applications for the Planning Board because of the new FEMA requirements. It is also an added burdened on the citizens to have to go to each board that might not be necessary.

Attorney Phoenix noted there are other issues besides flood that drive height. For instance, Rye's Building Code for septic requires 4' of separation from seasonal high-water. The way the zoning amendment is proposed, there is no possibility of review. Section 304.6B, as proposed, says exceeding 28' in height is prohibited. It goes on to say 30' may be possible if complying with freeboard. He thinks that is a dangerous precedent to set. If someone already has a house of 30' and it burns down, the owner now has to comply with Rye's 2' of freeboard. The same house could not be put there. This amendment would also conflict with 603.2, which says a house can be replaced exactly as it was. According to the proposed amendment, if the house was already over 30' it could not be done.

Attorney Phoenix stated the way the amendment is drafted, anything over 28' or 30' is contrary to the spirit and intent of the Coastal Area District. He thinks it is dangerous for a planning board and community to decide in advance, in all circumstances, that some of the applications are contrary to a zoning requirement. The purpose of the zoning ordinance is to have experienced people analyze the situation and decide what is in the best interest between the public rights and private rights of land owners. To say something cannot exceed under any circumstance and anything over 28' or 30' is contrary to the spirit and intent of the ordinance in the Coastal Area District, seems to be a "slippery slope". He thinks the ordinance could be drafted in a way that leaves people some possibility of review based upon the circumstances. The zoning ordinances need to be in compliance with the Master Plan.

Alternate Sherman asked if a house that has burned down would be grandfathered.

Attorney Donovan stated he believes the grandfathered provisions would trump that in the case of a house being destroyed. He continued that if a building is a non-conforming structure greater than 30' in height and it is destroyed, the building provisions would allow it to go back to 30'.

Attorney Phoenix commented his concern is for a 30' building that is razed for any reason for replacement. Many of the residences along Wallis Sands are 30' because the measurement is from the center front street side. If something happens to the house, the property owner has to now comply with

the FEMA Regulations, which may raise it 4'. A variance would be needed for the additional 4' but as the amendment is written, it would be prohibited.

Chair Losik stated the concept of bringing this in as a SUP or CUP is a process the Planning Board is totally comfortable with. FEMA requirements are going to require changes to the ordinances. This would be amended over time.

Keriann Roman, as a resident, 33 Locke Road, asked if increasing the interior of the living space by more than 20% includes a basement that was unfinished that has become finished. She asked if this would be subject to a SUP from the Planning Board. She pointed out the definition of "living space" does not seem to encompass a rough basement. This may need some clarification if it is not the intent to "grab" people who were wanting to finish their basements. As an individual, she urges the Board to excluded people wanting to finish their basements, as it is not going to increase the height or scope of the building. She does not think it would be a negative effect on things the Board is trying to control and it would be a burdened to folks in that district.

Planning Administrator Reed explained the reason that particular language was discussed is because there are some homes that are in the Coastal Overlay District, as well as the Special Flood Hazard Area. Some of these homes have finished off basements with bedrooms below the base flood elevation. The reason that provision was put in was to stop people from putting people in harm's way below the base flood elevation.

Mrs. Roman stated it seems to be over burdensome for folks who are not in the Special Flood Hazard Area but are in the Coastal Overlay District, to have to come for a SUP.

Chair Losik commented it could be excluding the finishing of a basement, as long as the home is not in a flood zone.

Steve Borne, 431 Wallis Road, stated in putting the Rye Civic League News together, he had a hard time understanding what this relates to. He suggested better wording explaining all the amendments for the voters.

Attorney Donovan suggested changing the language in B to address Mrs. Roman's concern.

Substantial renovation would be one that increases the bulk of the building resulting in an increase of interior living space of more than 20%.

Attorney Phoenix expressed concerns about Proposed Zoning Amendment 2020-01 for Section 304.4 which also deals with height and may be a conflict.

Attorney Donovan explained he made a revision that was supposed to take care of this. The Board may grant an exception to the prohibition if a building or structure is required to be elevated in accordance with the flood plain zone and building ordinance where the overall height of the building and structure shall not exceed 30'.

Attorney Phoenix commented that the ZBA, under certain circumstances, allow more than 30' but it can't happen at the Planning Board. It seems to be inconsistent.

Attorney Donovan noted that what is being raised is the question of what if someone tries to get a variance to circumvent this amendment, which is a legitimate question. He pointed out that he expressed some concerns in a confidential memo to the Rules and Regulations Committee about this whole approach being innovative enough so that there is no guarantee it would withstand legal challenge. He thinks the intent was to make this consistent. The extent that the Zoning Board may grant a variance, allowing something to be 32', and then the Planning Board denies it and there is an overlapping jurisdiction, is unknown as to how that would play out in court.

Vice-Chair Lord asked if the onus would be on the Zoning Board to allow a variance up to what the Planning Board would allow.

Attorney Phoenix commented that is not what the proposed zoning ordinance says.

Attorney Donovan stated there is a line of legal thought that any provision in a zoning ordinance that "prohibits" something is something the zoning board cannot grant a variance to. A variance to a prohibition is something clearly against the spirit and intent of the ordinance. That language is in there to strengthen the argument against granting a variance to something that has been prohibited.

Mrs. Roman suggested adding to 304.4; ***"For any new dwelling or substantial renovation, as defined in 304.6, the height of the dwelling shall be governed by Section 304.6."*** This would be a step in the right direction of making the Planning Board trump the Zoning Board.

There was some discussion on the deadlines for the proposed zoning amendments.

Motion by Tim Durkin to change 304.6.A.2.b to read "increases the bulk of the building resulting in an increase of interior living space by more than 20%". Seconded by JM Lord. All in favor.

Motion by Tim Durkin to reconsider the Planning Board's decision to send Rye Zoning Ordinance Amendment 2020-01 to the ballot and to further amend 2020-01 to add the sentence "Any new dwelling or substantial renovation, as defined in 304.6, the height of the dwelling shall be governed by 304.6".

- **RZO Amendment 2020-04** would add the RSA 743:33 definition of "unnecessary hardship" to the ordinance and amend Sections 303.5.E and 303.5.H of the Guidelines for Decisions on Appropriateness in the Historic District by replacing the word "hardship" with "unnecessary hardship".

The public hearing was opened at 7:51 p.m. by Chair Losik.

Mae Bradshaw, 106 Harbor Road, commented it would be beneficial to print the definition, instead of just referring to it. She also noted an edit in the draft.

The Board agreed to Ms. Bradshaw's suggestion. Hearing no further comments, the public hearing was closed at 7:54 p.m.

Motion by Jeffrey Quinn to move to the ballot Rye Zoning Ordinance Amendment 2020-04 with the addition of the language from the statute relative to unnecessary hardship in RSA 674:33 added to the definitions and the explanation. Seconded by Bill Epperson. All in favor.

- **RZO Amendment 2020-05** would amend Section 509 Demolition Review to make several changes including requiring demolition review of monuments, statues, memorials and accessory buildings over 50 years old and adding a third alternate member to the Demolition Review Committee.

The public hearing was opened at 7:58 p.m.

Chair Losik explained the Rules and Regulations Committee met with the chair of the Demolition Review Committee to discuss and research changes. The committee looked at Portsmouth's and Concord's zoning. The committee also looked at language from the National Trust for Historic Preservation. Language was coordinated with current RZO definitions to incorporate additional resources to be considered in the ordinance; statues, monuments and accessory buildings. The time to make the determination regarding the resource being of potential significance was increased from 5 to 10 days. The committee's size was also increased by 1 alternate.

David Choate, Demolition Review Committee Chair, stated this is "housekeeping" to make the process more workable. There have been some issues with time tables so now everything is consistent with business days for a meeting. What is proposed will clean up the ordinance without altering the fundamental concepts. He noted that under 509.6.C a sentence was added "a demolition permit shall be conditioned upon receipt of all local, state and federal permits required for the demolition activity". The reason that sentence is being proposed is because at this time, it is theoretically possible to get an approval to demolition a dwelling and not get the approvals to build the replacement.

There was some discussion on the timeframe for posting public notices for demolition review hearings. The public hearing was closed at 8:03 p.m.

Motion by Steve Carter to move RZO Amendment 2020-05 which would amend Section 509, Demolition Review, to the ballot. Seconded by JM Lord. All in favor.

- **RZO Amendment 2020-06** would change the time period for the Zoning Board of Adjustment to hold a hearing on an application from 21 days to 45 days.

Chair Losik noted this amendment is related to a legislative change to RSA 676:7 to require public hearings on ZBA applications to be held within 45 days of receipt.

The public hearing was opened at 8:05 p.m. Hearing no comments or questions, Chair Losik closed the public hearing.

Motion by Jeffrey Quinn to place RZO Amendment 2020-06 on the town warrant. Seconded by Tim Durkin. All in favor.

- **RZO Amendment 2020-07** would amend Section 301.4.B of the Purposes provisions of the Wetlands Conservation District to change the reference to Best Management Practices to "Best Management Practice Techniques: For Avoidance and Minimization" and to add a reference to Best Management Practices – Wetlands to the definition of "Wetlands" in the ordinance.

Chair Losik explained that DES has made changes in regards to wetlands this year with a fair number of their guidelines being affected as of December 2019. This amendment adds Best Management Practice Techniques for Avoidance and Minimization to the ordinance and the definitions.

The public hearing was opened at 8:06 p.m. Hearing no comments or questions, the public hearing was closed.

Chair Losik further explained there are several that are going to be a component of warrant Schedule B of Chapter 190, Codification. Instead of these minor changes standing alone on the warrant, they will be caught up in Schedule B and will be incorporated into a new merit system. These zoning amendments that are less substantial can be wrapped up into Schedule B of the zoning codification, which becomes Chapter 190.

Attorney Donovan stated this will shorten the ballot and includes 07, 09 and 10. These will not be standalone warrant articles but will be wrapped up into the codification.

Motion by Jeffrey Quinn to move RZO Amendment 2020-07 to the Town Warrant under Schedule B 2020-12. Seconded by Tim Durkin. All in favor.

- **RZO Amendment 2020-09** would amend Section 508.7.D Sound Level Criteria for Small Wind Energy Systems to delete the 55 decibels sound level restriction in order to comply with recent state legislation.

The public hearing was opened at 8:10 p.m. Hearing no comments, Chair Losik closed the public hearing.

Motion by Jeffrey Quinn to move RZO Amendment 2020-09 to the Town Warrant under Schedule B 2020-12. Seconded by JM Lord. All in favor.

- **RZO Amendment 2020-10** would replace the definition of “NH Certified Wetland Scientist” with the statutory definition of “Certified Wetlands Scientist” and change the references to NH Certified Wetland Scientist in the ordinance accordingly.

The public hearing was opened at 8:12 p.m.

Attorney Donovan explained that the State changed the definition of “NH Certified Wetlands Scientist”. This brings it to be consistent with the State.

Steven Borne, 431 Wallis Road, asked for clarification on the town code.

Attorney Donovan explained the Selectmen hired a company to codify all the ordinances of the Town. There will be a separate warrant article on the warrant to adopt the new town code. The town codes will be organized in a book of town codes. The zoning ordinance becomes Chapter 190 of the town code; however, because it is a zoning ordinance it has to be acted on as a special warrant article as a zoning amendment in order to get it into the town code. The warrant article that adopts the new town code will adopt all the chapters of it, except Chapter 192 Zoning; Chapter 68 Building Code; Chapter 38 Building Code and Chapter 60 Floodplain, which will be separate warrant articles.

Chair Losik commented that codification facilitates researching these components of the law and being able to look at one document.

The public hearing was closed at 8:15 p.m.

Motion by Jeffrey Quinn to move RZO Amendment 2020-10 to the Town Warrant to be included on Schedule B 2020-12. Seconded by JM Lord. All in favor.

- **RZO Amendment 2020-11** would adopt an ordinance establishing a procedure for conversion of illegal apartments to legal apartments by adding a new Section 202.9.A to the zoning ordinance. The procedure would be in effect until December 31, 2021 and would allow owners of apartments which existed prior to March 10, 1998 to obtain a Certificate of Legality if certain standards are met.

Chair Losik noted this is an issue that has been worked on for a long time. In the fall of 2018, Attorney Donovan provided a draft to the building department. The building department met with Rules and Regulations this fall and worked on the language, which was reviewed by Attorney Donovan.

The public hearing was opened at 8:17 p.m.

Mr. Borne asked if this is considered amnesty.

Attorney Donovan explained that they considered calling it an amnesty ordinance. Essentially, it is amnesty.

Hearing no further comments, Chair Losik closed the public hearing at 8:18 p.m.

Motion by Jeffrey Quinn to move RZO Amendment 2020-11 to the Town Warrant. Seconded by Tim Durkin. All in favor.

- **RZO Amendment 2020-12** would adopt Chapter 190 of the new town code as a replacement of the present Rye Zoning Ordinance.

The public hearing was opened at 8:20 p.m.

Attorney Donovan stated that General Code, Inc. is the company that did the codification work. Every time they found a statute that was outdated or was inconsistent with other sections of the zoning ordinance, they compiled a set of worksheets that were circulated amongst the department heads and himself for clarification on what to do with the statute. Most of them were recommended to put into the new codification. The zoning ordinance has the most changes. There are 32 changes that are basically housekeeping. General Code, Inc. felt these should be articulated to show that substantial changes have not be buried in the body of the recodification. He feels a second hearing is needed because the Board is adding 07, 09 and 10 to Chapter 190.

Motion by Jeffrey Quinn to move Proposed Zoning Amendment 2020-12 to a second hearing with date to be determined. Seconded by Tim Durkin. All in favor.

- **RZO Amendment 2019-X** would, pursuant to Section 1000, allow the planning board to correct a typographical error in Section 402.4.1 Determinations Required for Special Use Permit Approval [of multi-family developments].

The public hearing was opened at 8:23 p.m. Hearing no comments, Chair Losik closed the public hearing.

Motion by Jeffrey Quinn to approve RZO Amendment 2019-X. Seconded by Steve Carter. All in favor.

- **Building Code (BC) Amendment 2020-01** would amend Section 3.6 Permits for Temporary Structures to exclude “platforms, stands, observation or circus seats and tents for assembly purposes” in order to comply with recent state legislation governing tents.

Attorney Donovan commented this would be wrapped into the recodification of the building code.

The public hearing was opened at 8:25 p.m. Hearing no comments or questions, Chair Losik closed the public hearing.

Motion by Jeffrey Quinn to place Building Code Amendment 2020-01 to be added to Schedule B Chapter 35, Building Code Amendment 2020-03. Seconded by Steve Carter. All in favor.

- **BC Amendment 2020-02** updates the Section 7.4 reference to the International Property Maintenance Code from the 2009 version of the code to the 2018 version.

The public hearing was opened at 8:27 p.m. Hearing no questions or comments, the public hearing was closed by Chair Losik.

Motion by Jeffrey Quinn to place Building Code Amendment 2020-02 on the Town Warrant. Seconded by JM Lord. All in favor.

- **BC Amendment 2020-03** would adopt Chapter 35 of Code of the Town of Rye.

The public hearing was opened at 8:28 p.m.

Motion by Jeffrey Quinn to move Building Code Amendment 2020-03 to a second hearing. Seconded by JM Lord. All in favor.

- **Floodplain Ordinance Amendment 2020-01** would adopt Chapter 60 of the new town code as a replacement of the present Rye Floodplain Development and Building Ordinance.

The public hearing was opened at 8:30 p.m. Hearing no comments, the public hearing was closed.

Motion by Jeffrey Quinn to place Floodplain Ordinance Amendment 2020-01 on the Town Warrant. Seconded by Tim Durkin. All in favor.

- **Other Zoning Amendments**

- **Rye Zoning Ordinance (RZO) Amendment 2020-13:** Amends Section 505 of the Wireless Telecommunications Facilities with the complete revisions by the Telecommunications Committee drafted by Isotrope.

Keriann Roman joined the Board at the table and submitted draft copies of the amendment drafted by David Maxson consultant with Isotrope, which also included changes from herself and Chair Losik. Mrs. Roman noted the definitions have all been changed by the IT consultant to reflect the changes in state and federal law. She reviewed her proposed changes and edits with the Planning Board, along with reviewing Chair Losik's suggestions.

After some review and agreement on the changes, Mrs. Roman noted that 55 Recreation Road is not in the Overlay District. The parcel has conservation and recreation issues that the Telecommunications Facility Committee is working through. Right now, there is no support from Rye Rec or Rye Conservation for this site. She is hoping the committee will get to the point where they really understand the concerns. This is the site that the committee unanimously recommended as the best site. She recommends putting this to a public hearing; however, it might not go to the ballot because of the issues.

Attorney Donovan stated he had suggested to put 55 Recreation Road in amendment by itself. The Board could hold a public hearing and then decide whether or not to put it on the ballot.

It was agreed this was the best approach. The Board continued to review and discuss the suggested changes and edits to 505.

Discussion on changes concluded.

Motion by Tim Durkin to move RZO Amendment 2020-13 to a public hearing with the changes as discussed. Seconded by JM Lord. All in favor.

- **Rye Zoning Ordinance (RZO) Amendment 2020-14:** Amends Section 505.3 and adds 55 Recreation Road, Tax Map 012-079-000 to the Wireless Telecommunications Facilities District Map

Motion by Tim Durkin to move RZO Amendment 2020-14 to a public hearing. Seconded by Katy Sherman. All in favor.

Motion by JM Lord to move RZO Amendments 2020-01, 2020-03, 2020-12, 2020-13, 2020-14, and Building Code Amendment 2020-03 to a rehearing on January 7, 2020. Seconded by Tim Durkin. All in favor.

- **Next Zoning Amendment Public Hearing scheduled for Tuesday, January 7, 2020, 6:00 p.m.**

Adjournment

Motion by JM Lord to adjourn at 10:03 p.m. Seconded by Tim Durkin. All in favor.

**All zoning and building code amendments are available at the Building Department, Rye Town Hall*

Respectfully Submitted,
Dyana F. Ledger

**TOWN OF RYE – PLANNING BOARD
TUESDAY, DECEMBER 3 2019 at 6:00pm
RYE TOWN HALL 10 CENTRAL ROAD**

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MEETING AGENDA

1. Public Hearing: Proposed Zoning Amendments:

Rye Zoning Ordinance (RZO) Amendment 2020-03 would amend Section 304 Coastal Area District to require a Special Use Permit from the planning board for new dwellings and substantial renovations of existing dwellings within the district

RZO Amendment 2020-04 would add the RSA 674:33 definition of “unnecessary hardship” to the ordinance and amend Sections 303.5.E and 303.5.H of the Guidelines for Decisions on Appropriateness in the Historic District by replacing the word “hardship” with “unnecessary hardship.”

RZO Amendment 2020-05 would amend Section 509 Demolition Review to make several changes including requiring demolition review of monuments, statutes, memorials and accessory buildings over 50 years old and adding a third alternate member to the Demolition Review Committee.

RZO Amendment 2020-06 would change the time period for the Zoning Board of Adjustment to hold a hearing on an application from 21 days to 45 days.

RZO Amendment 2020-07 would amend Section 301.4.B of the Purposes provisions of the Wetlands Conservation District to change the reference to Best Management Practices to “Best Management Practice Techniques: For Avoidance and Minimization” and to add a reference to Best Management Practices – Wetlands to the definition of “Wetlands” in the ordinance.

RZO Amendment 2020-08 would amend Section 303.5.G Solar Collectors in Historic District to delete “visibility from adjacent public streets and adjoining properties” from the list of factors to be considered by the Historic District Commission in evaluating a solar panel installation.

RZO Amendment 2020-09 would amend Section 508.7.D Sound Level Criteria for Small Wind Energy Systems to delete the 55 decibels sound level restriction in order to comply with recent state legislation.

RZO Amendment 2020-10 would replace the definition of “NH Certified Wetland Scientist” with the statutory definition of “Certified Wetlands Scientist” and change the references to NH Certified Wetland Scientist in the ordinance accordingly.

RZO Amendment 2020-11 would adopt an ordinance establishing a procedure for conversion of illegal apartments to legal apartments by adding a new Section 202.9-A to the zoning ordinance. The procedure would be in effect until December 31, 2021 and would allow owners of apartments which existed prior to March 10, 1998 to obtain a Certificate of Legality if certain standards are met.

RZO Amendment 2020-12 would adopt Chapter 190 of the new town code as a replacement of the present Rye Zoning Ordinance.

RZO Amendment 2019-X would, pursuant to Section 1000, allow the planning board to correct a typographical error in Section 402.4.1 Determinations Required for Special Use Permit Approval [of multi-family developments].

Building Code (BC) Amendment 2020-01 would amend Section 3.6 Permits for Temporary Structures to exclude “platforms, stands, observation or circus seats and tents for assembly purposes” in order to comply with recent state legislation governing tents.

**TOWN OF RYE – PLANNING BOARD
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BC Amendment 2020-02 updates the Section 7.4 reference to the International Property Maintenance Code from the 2009 version of the code to the 2018 version.

Floodplain Ordinance Amendment 2020-01 would adopt Chapter 60 of the new town code as a replacement of the present Rye Floodplain Development and Building Ordinance.

Other Zoning Amendments:

Rye Zoning Ordinance (RZO) Amendment 2020-13: Amends Section 505 of the Wireless Telecommunications Facilities with the complete revisions by the Telecommunications Committee drafted by Isotrope.

Rye Zoning Ordinance (RZO) Amendment 2020-14: Amends Section 505.3 and adds 55 Recreation Road, Tax Map 012-079-000 to the Wireless Telecommunications Facilities District Map.

Patricia Losik, Chair
Rye Planning Board

October 21, 2019
Revised 11/15/19

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-03

Re: Special Use Permits for New Dwellings and Substantial Renovations
in Coastal Area District

Amend Section 304 COASTAL AREA DISTRICT by adopting the following new § 304.6 and re-indexing present § 304.6 to § 304.7.

§ 304.6 Special Use Permit for New Dwellings and Substantial Renovations.

- A. Within the Coastal Area District a new dwelling or the substantial renovation of an existing dwelling shall require a Special Use Permit (SUP) from the Rye Planning Board.
- 1) For the purposes of this requirement the term “new dwelling” includes a dwelling which replaces an older dwelling.
 - 2) For the purposes of this requirement the term “substantial renovation” is the renovation of an existing dwelling which:
 - a. Increases the dwelling’s coverage by more than 25%; or
 - b. Increases the interior living space floor area of the dwelling by more than 20%.
- B. The planning board shall not grant an SUP for a new dwelling or for the substantial renovation of an existing dwelling which exceeds 28 feet in height. Exceeding 28 feet in height is prohibited. Heights in excess of 28 feet for dwellings which require an SUP or substantial renovations of existing dwellings which require an SUP are contrary to the spirit and intent of the Coastal Area District. The board may grant an exception to this prohibition if a building or structure is required to be elevated in accordance with the Floodplain Development and Building Ordinance, but the overall height of the building or structure shall not exceed 30 feet measured from existing grade.
- C. Prior to approving a Special Use Permit, the planning board shall determine, by a vote on the record, that the proposal meets each of the following standards.
1. All other requirements of the zoning ordinance.
 2. The granting of the SUP is not be detrimental to adjacent property or the neighborhood.
 3. The granting of the SUP is not be detrimental to the public safety, health or welfare.
 4. The granting of the SUP is not be contrary to the public interest.
 5. The architecture of the proposed new dwelling or the proposed substantial renovation is compatible with the architecture of abutting dwellings.

October 21, 2019
Revised 11/15/19

D. 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, the zoning ordinance and the public health, safety and general welfare.

E. Fees. The planning board shall charge an application fee for a Special Use Permit in addition to its fee for site plan approval and any fees for investigation and review allowed by RSA 676:4, I. (g).

F. Conflicts. Where the provisions of this section conflict directly with another requirement of the zoning ordinance the provisions of this section shall govern.

G. Authority. This subsection is adopted as an Innovative Land Use Control, pursuant to RSA 674:21.

H. 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, not to the board of adjustment.

Explanation

The amendment tightens the 28 ft. height limitation of the Coastal Area District by requiring a Special Use Permit from the planning board for new dwellings and substantial renovations of existing dwellings within the Coastal Area District.

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-04

Re: Unnecessary Hardship

- I. Amend Section 303.5 E Guidelines for Decisions on Appropriateness: as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

Before a building or other structure is demolished or moved out of the District, the applicant shall in good faith prepare a detailed plan for the re-use of the site which the Commission determines will meet the requirements for a Certificate of Approval. Such Certificate of Approval for demolition and re-use shall only be granted upon a showing by the applicant that to deny such Certificate would result in a ***unnecessary*** hardship unique to the property in question and that such ***unnecessary*** hardship is not common to neighboring properties within the District.

- II. Amend Section 303.5 H Guidelines for Decisions on Appropriateness: as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

Exceptions to the above, based on ***unnecessary*** hardship, may be considered and granted by the Commission. (Re-indexed 1997, 2007, 2013)

- III. Add to the Definitions

Unnecessary hardship: See NH RSA 674:33 I(b)(1)

Explanation

The amendments add the word “unnecessary” before the word hardship throughout the zoning ordinance. Unnecessary hardship is defined by state statute (NHRSA 974:33) and supported by case law. This change makes the ordinance consistent.

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-05

Re: Demolition Review

Amend Section 509: Demolition Review as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

SECTION 509 DEMOLITION REVIEW (Adopted 2009) (Rev. 3/12/2013)

509.1 Purpose: The purpose of this section is to encourage the preservation of buildings and places of historic, architectural and community value.

509.2 Demolition: For the purposes of this section, the word “demolition” means the act of pulling down, destroying, ***dismantling***, removing or razing a building or part of a building. ***This shall include a monument, statue, memorial, or accessory building.*** ~~or commencing the work of total or substantial destruction with the intent of completing the same.~~ It does not include interior demolition which does not alter the appearance of the exterior of the building.

509.3 Demolition Subject to Review: Any demolition within the Town of Rye shall be subject to the requirements of this section where:

A. The demolition is:

1. ***a building or part of a building*** greater than five hundred (500) square feet of gross floor area; *or*
2. ***a monument, statue, or memorial; or***
3. ***is an accessory building less than five hundred (500) square feet of historical or architectural interest; and***

B. the building ***or part of a building, monument, statue, memorial, or accessory building*** was constructed more than fifty (50) years before the date of application for a demolition permit. (Revised March 12, 2013)

509.4 Demolition Review Committee: A Demolition Review Committee is hereby established consisting of three persons and ***three*** ~~two~~ alternates.

A. The Demolition Review Committee members shall be appointed by the Board of Selectmen to three year terms, with the initial terms staggered as one, two and three year terms, respectively. The initial terms of alternates shall be staggered as two and three year terms, respectively.

B. One member of the Demolition Review Committee shall be a member of the Historic District Commission; one member shall be a member of the Planning Board; and one member shall be a representative of the Rye Historical Society.

C. If the Town establishes a Heritage Commission pursuant to RSA’s 673:1, 673:4-a,

the Demolition Review Committee shall be comprised of three (3) members of the Heritage Commission and two alternates appointed by the Chair of the Heritage Commission. If the Demolition Review Committee already exists pursuant to Paragraph B, above, such appointments shall be made as replacements for the existing Demolition Review Committee members as the terms of the existing members expire.

509.5 Demolition Review Procedure:

A. When an application for a demolition permit, or a building permit involving demolition, or a site plan review involving demolition is made, or a formal written application is submitted to the Building Inspector for a determination under this article, the Building Inspector will determine if the building, or section of the building, meets the criteria of Section 509.3. If it does, the Building Inspector shall:

1. Notify the applicant in writing within five (5) business days of the filing that the demolition must be reviewed before proceeding and that the delay will not exceed forty-nine (49) days.
2. Within five (5) business days forward the application to each member of the Demolition Review Committee.

B. The Demolition Review Committee shall meet within ~~ten (10)~~ ~~five (5)~~ business days ~~after~~ of receipt of the application and make one of the following two determinations.

1. If the Demolition Review Committee determines that the building is not potentially significant, it shall, within three (3) business days of making that determination, notify the Building Inspector of the determination. In such case, a demolition permit may be issued by the Building Inspector provided all other requirements applicable to the demolition have been met.
2. If the Demolition Review Committee determines that the building is potentially significant, it shall schedule a public hearing within twelve (12) business days of making that determination, and within three (3) days of making that determination notify the Building Inspector of it. Notice of the public hearing shall be posted in two public places and published at least five (5) days prior to the hearing, not including the day of the hearing or the day of posting.

C. Within five (5) business days of the Demolition Review Committee's decision to hold a public hearing, the Building Inspector shall notify the applicant that a sign identifying the building as proposed for demolition and the date, time, and place of the public hearing on the proposed demolition is ready for posting in a visible location on the building or site. Posting of the sign within five (5) business days of receiving notification from the Building Inspector shall be the responsibility of the applicant.

D. The Demolition Review Committee shall hear all public testimony regarding

demolition of the building. The owner or his representative shall be invited to attend the hearing.

E. At the conclusion of the hearing, the Demolition Review Committee shall either:

1. Notify the Building Inspector in writing within three (3) business days of the decision if the building is found to be not significant, in which case demolition may proceed, provided all other requirements applicable to the demolition have been met.
2. Hold a meeting between the Demolition Review Committee and the owner (or owner's representative) within ten (10) business days of the public hearing to discuss alternatives to demolition if the Demolition Review Committee determines the building is significant and its loss potentially detrimental to the community.

F. The demolition review process shall not delay the issuance of a demolition permit by more than the 49 days provided by Section 509.5, A.1, except in the following circumstances.

1. An owner's (or his/her representative's) unwillingness or inability to meet with the Demolition Review Committee shall extend the period until such a meeting is held and for 20 days following the date of the meeting.
2. An owner's delay in posting the sign required by Section 509.5, C shall extend the period by the number of days of delay in posting the sign.

509.6 Demolition:

- A. If no alternatives to demolition have been identified and agreed to by the applicant, after the meeting provided for in Section 509.5, E.2, the applicant is free to proceed with demolition, provided all other requirements for demolition are met. Prior to demolition, and if the applicant is in agreement, the Demolition Review Committee shall photographically document the building. The Demolition Review Committee shall also encourage the applicant to salvage significant architectural features.
- B. Nothing in this article shall be construed to prevent immediate demolition where public safety is at stake and the building has been determined by the Building Inspector to be a public hazard and demolition is the only viable recourse.
- C. *A demolition permit shall be conditioned upon receipt of all local, state, and federal permits required for the demolition activity.*

509.7 Criteria: In determining if a building is "potentially significant" or "significant" the Demolition Review Committee shall consider whether:

- A. The building is of such interest or quality that it would meet national, state or local criteria for designation as an historic, cultural or architectural landmark.
- B. The building is of such unusual or uncommon design, texture or materials that it could not be reproduced or could be reproduced only with great difficulty and expense.
- C. The building is of such historic, architectural or community value that its removal would be to the detriment of the public interest.
- D. Retention of the building would help preserve and protect an historic place or area of historic interest.

510: Fences: All fences, walls, and similar enclosures, except trees, shrubs and natural vegetation, are subject to the restrictions of this section. All fences or enclosures surrounding an outdoor swimming pool shall also comply with Sections 7.12.1 and 7.12.2 of the Building Code. (Deleted from Building Code section 7.13 and added to the Zoning Ordinance 3-14-17)

510.1: Fence Permits. No fence shall be erected or replaced prior to obtaining a permit from the Building Inspector, except wire or rail fencing for agricultural use, which is exempt from the permit requirement.

510.2: Common Boundary Line Fence Permits. Common Boundary Line Fences are those placed along the common boundary line of properties. A Common Boundary Line Fence permit application shall be signed by all property owners of the land involved. The permit shall hold the town harmless from any disputes which may arise concerning such fences.

510.3: Height. Fences and walls shall not exceed six (6) feet in height.

510.4: Setback. All fences, except "Common Boundary Line Fences," shall be located at least one (1) foot from the property line. The applicant is responsible for establishing the boundary with a survey by a licensed New Hampshire surveyor.

510.5: Finished Side. Any fence within 10 feet of a lot line shall have the finished side face the abutting properties, and the side of a fence containing the posts and other bracing appurtenances shall face inward to the property on which the fence is located. For Common Boundary Line Fences, the finished side(s) shall be as designated by the property owners in the application.

510.6: Sight Distance. All fences and walls shall comply with the corner clearance requirements of Article II of the Rye Zoning ordinance.

510.7: Town Rights-of-Way. Erection of fences within town rights of way is

11-12-2019

prohibited. Fences abutting a right of way shall be set back at least one (1) foot from the right-of-way line.

510.8: Applicability. This section shall apply to all fences erected or replaced after January 2, 2001.

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-06

Re: Public Hearings on ZBA Applications

Amend Section 702.3: **Hearings and Notice:** as follows (Note: New language *emboldened and italicized*. Deleted language ~~struck through~~).

702.3 Hearings and Notice: The Board shall fix a reasonable time for the hearing of appeal and give due notice thereof to the parties and decide the same ~~within twenty-one (21) days.~~ ***Within forty-five (45) days.*** Notice of hearing shall be published at least once in a newspaper of general circulation in the Town of Rye, and mailed by registered or certified mail, to the parties and all abutters not less than seven (7) days prior to such hearing. Willful failure of the party filing such appeal to disclose in his notice of appeal the names of all abutting owners to the premises concerned shall be cause for denial of the appeal, or its continuation for new hearing on proper notice to all concerned at the option of the Board. Upon the hearing, any party may appear in person or by agent or by attorney. The Board shall hear all abutters desiring to submit testimony and all non-abutters who can demonstrate that they are affected directly by the proposal under consideration. The Board may hear such other persons as it deems appropriate.

Explanation

2019 HB 136 changed RSA 676:7 to require the public hearing on ZBA applications to be held within 45 days of receipt of the application.

November 12, 2019

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-07

Re: Wetlands

- I. Amend Section 301.4 B: Wetlands Best Management Practices as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

301.4 Purpose: In the interest of public health, convenience, safety and welfare, the regulations of this District are intended to guide the use of areas of land with extended periods of high-water tables. (Renumbered 1995 and 2012, Amended and renumbered 3/18/2017)

- B. To reduce the impact on wetlands of uses, development and re- development by controlling the rate and volume of stormwater runoff and preserving the ability of wetlands to filter pollution, trap sediment, retain and absorb chemicals and nutrients, and produce oxygen by utilizing Best Management Practices – ~~Wetlands Conservation District (Appendix A) and Low Impact Development techniques (Appendix A)~~. ***Wetlands Best Management Practice Techniques: For Avoidance and Minimization, as amended.***

- II. Amend Wetlands Definition as follows: (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

WETLANDS: An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs and similar areas. (Adopted, 2012)

BEST MANAGEMENT PRACTICES (BMP) – Wetlands

- “Best Management Practice Techniques: For Avoidance and Minimization”, as amended <https://neiwpcc.org/wp-content/uploads/2019/05/Wetlands-BMP-Manual-2019.pdf>

Explanation

To bring up to date the latest Best Management Practices for Wetlands.

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-08

Re: Solar in the Historic District

Amend Section 303.5 G: **Solar Collectors** as follows (Note: New language *emboldened and italicized*. Deleted language ~~struck through~~).

- G. **Solar Collectors:** The Rye Historic District Commission has jurisdiction over solar collectors as appurtenant exterior fixtures of buildings in the Rye Historic District. Solar panels require the Historic District Commission's review and approval. The Historic District Commission shall evaluate applications on a case-by-case/property-by-property basis. (Adopted March 12, 2013)

The Commission takes into consideration five factors in evaluating solar panel installation, including:

1. The structure's historic character and architectural importance,
2. The purpose of the installation,
3. Alternative means to conserve energy,
4. ~~Visibility from adjacent public streets and adjoining properties and~~
5. The project's design and compatibility with the structure.

Explanation

To allow for solar collectors within the Historic District

November 3, 2019

AMENDMENTS RESPONDING TO COMMENTS FROM GENERAL CODE INC.

Rye Zoning Ordinance Amendment No. 2020-09

Re: Sound Level for Small Wind Energy Systems

Amend § 508.7, D. Criteria for Small Wind Energy Systems [§ 190-5.8, G(4) of new Town Code] as follows. (Note: New language ***emboldened and italicized***. Deleted language struck through.)

Sound Level. The small wind energy system shall not exceed ***limits specified by rules of the state Site Evaluation Committee***, ~~55 decibels using the A scale (dBA), as measured at the property line,~~ except during short-term events such as severe wind storms and utility outages.

Explanation

In 2018 the legislature amended the statutes to prohibit municipalities from imposing noise levels on small wind energy systems lower than the state Site Evaluation Committee rules. The amendment makes the ordinance consistent with this legislative requirement.

November 12, 2019

Rye Zoning Ordinance Amendment No. 2020-10
Definition of Wetland Scientist

I. Amend the Definition of "NH Certified Wetland Scientist" found in the Appendix of Definitions [Article 10 of the new Town Code] to delete the present definition and replace it with a new definition of "Certified Wetlands Scientist".

Present Definition. (NH Certified Wetland Scientist)

A NH State Certified Wetland Scientist is defined as: "a person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified by RSA 310-A:84, RSA 301-A:76, II-a and II-b, is qualified to delineate wetland boundaries and prepare wetland maps in accordance with standards for identification of wetlands adopted by the New Hampshire Department of Environmental Services or the United States Army Corps of Engineers or its successor, and who has been duly certified by the Board."

New Definition. (Certified Wetland Scientist).

A person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified by RSA 310-A:84, II-a and II-b, is qualified to delineate wetland boundaries and to prepare wetland maps; to classify wetlands; to prepare wetland function and value assessments; to design wetland mitigation; to implement wetland mitigation; to monitor wetlands functions and values; and to prepare associated reports, all in accordance with standards for identification of wetlands adopted by the New Hampshire Department of Environmental service or the United States Army Corps of Engineer or their successors, and who has been duly certified by the board.

II. Amend Sections 301.3 and 301.7, F.2 and F.3 as follows: (Note: New language ***emboldened and italicize.*** Deleted language ~~struck through.~~)

301.3 Disputes about Wetlands Boundaries: Disputes about the locations of wetlands boundaries as determined by the Building Inspector or the Planning Board may be appealed to the Zoning Board of Adjustment as an administrative appeal pursuant to Section 701.1 of this ordinance. The zoning board of adjustment may call upon the services of ~~an independent-NH~~ ***a*** Certified Wetlands Scientist to examine said area and report his or her findings to the Board for their determination of the boundary. ~~NH Certified Wetlands Scientist is interpreted to mean a person qualified in wetlands delineation and who is licensed by the State of New Hampshire.~~

November 12, 2019

301.7 F. Special Exceptions may not be granted:

1. Unless it is essential to the productive use of land not so zoned.
2. Unless it can be shown by a NH Certified Wetland Scientist (definition Appendix A) that, to the maximum extent practicable, such construction shall have the least possible detrimental impact upon the wetland.
3. Unless it can be shown by a NH Certified Wetland Scientist (definition: Appendix A) that no alternative feasible route or area exists which does not cross or alter a wetland.
4. Economic advantage alone shall not be deemed sufficient reason for the above mentioned exceptions.

Explanation

The intent of the ordinance is to incorporate the state definition of "certified wetland scientist". That definition has changed since the present definition was placed in the ordinance. The amendment incorporates the updated state definition.

October 18, 2019
Revised 10-30-2019

Rye Zoning Ordinance Amendment No. 2020-11

**ORDINANCE ESTABLISHING A PROCEDURE
FOR CONVERSION TO LEGAL APARTMENTS**

WHEREAS since its adoption in 1953 the Rye Zoning Ordinance (RZO) has prohibited apartments; and

WHEREAS since its adoption in 1953 the RZO has allowed two-family dwellings in the GR District but only if certain minimum lot size and frontage requirements (which have changed over the years) are met; and

WHEREAS for one year from March 1982 to March 1983 the RZO allowed so called “in law and caretaker apartments”; and

WHEREAS between 1983 and 1998 the RZO allowed so-called “in law apartments”; and

WHEREAS between 1998 and 2017 the RZO allowed “accessory apartments” in the SR District by special exception granted by the zoning board of adjustment; and

WHEREAS since 2017 the RZO has allowed “accessory dwelling units” in the SR, GR and Business Districts by conditional use permit granted by the planning board; and

WHEREAS the town’s records of dwelling units permitted decades ago are not complete; and

WHEREAS when the building inspector discovers an apartment existent in a dwelling it is often not possible to determine from town records whether it is a legal apartment which is “grandfathered” or which was allowed under one of the above described provisions or whether it is an illegal apartment; and

WHEREAS persons may purchase properties containing apartments not knowing the origin of the apartment and believing the apartments to be legal; and

WHEREAS, although a property owner has the burden of establishing that an apartment is legal when there is no evidence of approval in town records, it may be inequitable in many circumstances for the town to order discontinuance of apartments that have existed for many years;

NOW THEREFORE the Town of Rye enacts the following procedure for conversion of illegal apartments to legal apartments, to be incorporated into the RZO as Section 202.9-A:

202.9-A Conversion to Legal Apartments

A. Definition. For the purposes of this section only an “Illegal Apartment” is a dwelling unit other than the principal dwelling unit or principal use on a property for which a permit does not exist in the records of the Building Department and for which the owner is unable to establish that the dwelling unit is either lawfully permitted or “grandfathered”.

B. Certification. The owner of a property having an illegal apartment may apply to the building inspector for a Certificate of Legality for the apartment on or before December 31, 2021. The building inspector may grant a Certificate of Legality if he/she determines that the following requirements are met.

1. The illegal apartment has existed prior to the adoption of Rye Zoning Ordinance § 506 Accessory Apartments on March 10, 1998. Tax records and records supplied by the property owner may be consulted in making this determination.
2. The illegal apartment has an interior floor area of at least 600 square feet.
3. a. Sanitary waste disposal for the property is provided by town sewers or by an Effluent Disposal System (EDS) which has been permitted by NHDES for a loading which includes the illegal apartment and all other uses of the property; or
b. The EDS serving the property has been inspected by a licensed septic system inspector and determined to be functioning adequately and a design for a replacement system has been approved by NH DES.
4. The illegal apartment complies with the following codes.
 - a. NH RSA 48-A:14 Minimum Housing Standards
 - b. Smoke Detectors per International Residential Code (IRC) R314 and State Building Code.
 - c. Carbon Monoxide Detectors per IRC R351 and State Building Code.
 - d. Emergency Escape and Rescue opening per IRC R310 and State Building Code.

- e. Street Number per IRC 319 and Town Ordinance.
- f. Egress and Access door per IRC R31.2.2 and State Building Code.
- g. Fire Chief approval.
- h. Demonstrate adequate off-street parking required by RZO § 500.

C. Conditions. The building inspector may place such conditions on the issuance of a Certificate of Legality as he/she deems to be in the interest of the public health, safety and welfare.

D. Renewal. Certificates of Legality shall be valid for five (5) years or until sale of the property. Property owners granted a Certificate of Legality may apply for renewal of the Certificate at 5 year intervals or at the time of sale of the property. Certificates shall be renewed after inspection of the premises to determine continued compliance with the above requirements and any conditions placed on the original Certificate. The Board of Selectmen may enact fees for the renewal inspection.

E. Form of Certificate. The building inspector is authorized to create a certification form which implements this provision. The form shall contain a space for describing the apartment including the size, number of rooms and any other information the building inspector deems pertinent.

F. Effect of Certification. The issuance of a Certificate of Legality shall establish the legality of the apartment and shall quiet all assertions to the contrary.

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2020-12

Re: Adoption of Chapter 190 of Code of the Town of Rye

§ 1-23. Adoption of codified Zoning Ordinance.

The Rye Zoning Ordinance adopted March 10, 1987, as amended through March 12, 2019, as renumbered, revised and codified as Chapter 190 Zoning of the Code of the Town of Rye, is hereby approved and adopted. This ordinance and Chapter 190 shall supersede all other Zoning Ordinances enacted prior to the enactment of this ordinance.

§ 1-24 Continuation of existing provisions.

The provisions of Chapter 190, insofar as they are substantively the same as those of the ordinances in force immediately prior to the enactment of Chapter 190 by this ordinance, are intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances.

§ 1-25. Severability of Code provisions.

Each section of Chapter 190 and every part of each section is an independent section or part of a section, and the holding of any section or a part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof. If any provision of Chapter 190 or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 1-26. Severability of ordinance provisions.

Each section of this ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.

§ 1-27. Changes in previously adopted ordinances.

A. In compiling and preparing the ordinances for publication as Chapter 190 of the Code of the Town of Rye, no changes in the meaning or intent of such ordinances have been made, except as provided for in Subsection B hereof. Certain other minor nonsubstantive changes were made to correct spelling and grammatical errors. It is the intention that all such changes be adopted as part of Chapter 190 as if the ordinances had been previously formally amended to read as such

B. The amendments and/or additions as set forth in Schedule B attached hereto and made a part hereof are made herewith, to become effective upon the effective date of this ordinance. (Chapter and section number references are to the ordinances as they have been renumbered and appear in the Code.)

§ 1-28. When effective.

This ordinance shall take effect upon passage, provided the March 10, 2020 Town Meeting adopts the Code of the Town of Rye.

§ 1-29. Incorporation of provisions into Code.

The provisions of this ordinance are hereby made part of Chapter 1 of the Code of the Town of Rye, to be titled "General Provisions, Adoption of Chapter 190 of the Code of the Town of Rye".

Schedule B (As Referenced in § 1-27B)

(Note. Added text is underlined. Deleted text is struck out or in brackets).

Section 190-2.1A(2) is amended as follows:

The Zoning Map was amended March 9, 2010, to enlarge the Commercial District by moving the boundary between the Commercial District and the Single Residence District ~~this~~ that is located west of Lafayette Road and north of Breakfast Hill Road a distance of 800 feet further to the west so that the new boundary is 1,300 feet from Lafayette Road and to add a new Multifamily Dwelling Overlay District, per § 190-3.7 of this chapter.

Sections 190-2.2J(7), 190-4.2E(3) and 190-4.3G(3) are amended to change "occupancy permit" to "certificate of occupancy."

Sections 190-3.1C and G(1) and (2), 190-3.6I, 190-4.0B, 190-5.2A(3) and 190-5.5L(2) are amended to change "Zoning Board of Adjustment" to "Board of Adjustment."

Section 190-3.1E(1) is amended as follows: "There shall be no cutting of live trees with a diameter of 4 1/2 inches or more, measured 4 1/2 feet above ground level, within the ~~fifty-foot~~ one-hundred-foot border zone of the tidal marshes and the ponds of § ~~301.7 A.2~~ 190-3.1H(1)(a)."

Section 190-3.1F(6) is amended as follows: "Where there are existing streams and drainageways, swales, rain gardens, infiltration systems, functioning detention ponds or man-made water conveyance systems[,], whose flow of water has become impeded by excessive vegetation of any kind or by fallen trees, logs, silt, natural detritus, or by any other means, the owner may have this condition corrected."

Section 190-3.1I(2) is amended to delete a duplicate reference as follows:

Exempt work shall be accomplished in accordance with Best Management Practices (BMPs) as described in "Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials," NH DES, January 2004, as amended[;], and "Innovative Stormwater Treatment Technologies Best Management Practices Manual," NH DES, 2002, as

amended; and "~~Best Management Practices to Control Nonpoint Source Pollution: A Guide for Citizens and Town Officials~~", NH DES, January 2004, as amended.

Section 190-3.6E(1)(e) is amended to change "at the time of this ordinance" to "at the time of adoption of this section."

Section 190-3.6G(2)(d) is amended to change "Env-Wq, Best Management Practices for Groundwater Protection" to "New Hampshire Administrative Rules Part Env-Wq 401, Required Best Management Practices for Groundwater Protection."

Section 190-3.6G(6)(g) is amended to update the Administrative Rules reference from "Env-Wm" to "EnvHw."

Section 190-4.0C is amended in the first sentence to change "Zoning Board of Adjustment" to "Board of Adjustment" and in Subsection C(5)(a) to update the Administrative Rules reference from "WS 1004:03" to "Chapter Env-Wq 1000."

Section 190-4.2C(6)(c) is amended as follows: "The Planning Board shall impose conditions on the approval of multifamily dwellings and multifamily dwellings developments which shall assure that the approved number of workforce housing units remain permanently available for workforce housing as defined by RSA 674:58."

Section 190-5.1F(1)(a) is amended to delete the reference to "N.H. Admin. Rules TRA 602."

Section 190-5.4E is amended to change "both the Town and State Ordinances" to "both Town ordinances and state laws."

Section 190-5.5E(1)(a) is amended as follows: "The application for a special use permit shall include the certification of a professional engineer registered licensed in the State of New Hampshire that the tower is capable of structurally supporting four antenna locations."

Section 190-5.5E(1)(d) and (3)(a) are amended to change "Electronic Industry Association" and "Electronic Industries Association" to "Electronic Industries Alliance."

Section 190-5.5G(1) is amended as follows: "All ~~applications~~ applicants under this section shall apply to the Planning Board for site plan review, in accordance with the requirements and procedures in the Rye Planning Board Land Development Regulations. In addition, ~~applications~~ applicants under this section shall also be required to submit the information provided for in Subsection G(2) and (3) below."

Section 190-5.5G(3)(b) is amended as follows: "If an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required under the FCC rules and NEPA, ~~submission of the EA or EIS shall be submitted~~ to the Board prior to the beginning of the federal thirty-day comment period, and the Town process shall become part of the application requirements."

Section 190-5.8A is amended to change the reference to RSA 674:39 to RSA 674:62 et seq.

Section 190-5.8G(8) is amended as follows: "The small wind energy system shall be built to comply with all applicable Federal Aviation Administration requirements, including but not limited to 14 CFR Part 77, Subpart B, regarding installations close to airports, and the New Hampshire aviation regulations, including but not limited to RSA 422-B and RSA 424."

Section 190-5.10 is amended to delete the following sentence from the opening paragraph: "All fences or enclosures surrounding an outdoor swimming pool shall also comply with Sections 7.12.1 and 7.12.2 of the Building Code."

Section 190-6.1B is amended as follows: "The following lots are considered buildable lots which are exempt from the variance requirements of this section ~~and the merger requirements of Section 601.1, provided all other requirements are met.~~"

Section 190-7.0 is amended to change "Chairman" to "Chair."

Section 190-7.1A(1) is amended as follows: "To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by any administrative official in the enforcement ~~thereof or of any ordinance adopted pursuant thereto~~ of this chapter."

Section 190-7.2A is amended as follows: "The officer from whom the appeal is taken shall forthwith transmit to the Board all the papers constituting the record upon which the action appealed from was taken, ~~and on due cause shown.~~"

Section 190-7.2D(1) the first sentence is amended as follows: "The Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order or decision as in its opinion ought to be made ~~on the premises~~, and to that end shall have all the power of the officer from whom the appeal is taken."

Section 190-11.1A is amended as follows:

Unless otherwise expressly stated, the following words and phrases shall be construed throughout this chapter to have the meaning indicated in this section. The present tense includes the future; the singular number includes the plural, and the plural the singular; the word "used" or "occupied" includes the words "designed, arranged, or intended to be used or occupied"; the word "person" includes an individual, partnership, firm, association, corporation, or organization; and the word "building" includes the word "structure"; ~~the word "occupied" and the word "shall" are always mandatory and not merely directory.~~ Subject to the foregoing rules of construction, the following definitions apply.

In the definition of "Best Management Practices – Forestry" in § 190-11.1B, Subsection (1) is amended to read as follows: "New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations 2016" as amended,
https://extension.unh.edu/resources/files/Resource000247_Rep266.pdf."

The definition of "hydric soil" in § 190-11.1B is amended to update the reference to New Hampshire Administrative Rules Section Env-Ws 1002.36 (August 26, 1999) to Section Env-Wq 1002.32.

The definition of "hydrogeologist" in § 190-11.1B is amended to delete "according to Env-Ws 388.06(b)."

The definition of "solid waste" in § 190-11.1B is amended to update the reference to New Hampshire Administrative Rules "Env-Wm 101-103 and 2100-3700" to "Chapter Env-Hw 100 and Chapters Env-Sw 400 to 2000."

The definition of "stormwater" in § 190-11.1B is amended to correct the reference to RSA 132:1, II, RSA 149-I:6-a, II.

The definition of "toxic or hazardous materials" in § 190-11.1B is amended to change "Groundwater Management and Groundwater Release Detection Permits, New Hampshire Administrative Rules Env-Wm 1403.05" to "New Hampshire Administrative Rules Chapter Env-Or 700, Groundwater Release Detection Permits."

RYE PLANNING BOARD
PROPOSED ZONING ORDINANCE AMENDMENT 2019-X

Re: **SECTION 402 MULTI-FAMILY DWELLINGS & MULTI-FAMILY
DEVELOPMENTS:**

Amend Section 402.4 1 as follows (Note: New language ***emboldened and italicized***. Deleted language ~~struck through~~).

402.4 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 multi-family dwelling or multi-family development meets each of the following standards.

1. All requirements of Section 402.4 **402.3** have been met. (This may be a single vote on the record).

Explanation

This would, pursuant to Section 1000, allow the planning board to correct a typographical error in Section 402.4.1. Determinations Required for Special Use Permit Approval (of multi-family developments).

Kim Reed

From: Kim Reed
Sent: Tuesday, November 12, 2019 9:39 AM
To: Michael Donovan
Cc: Patricia Losik
Subject: FW: RZO 402

Mike
In accordance with RZO 1000, will you make a change to 402.4 1 - It should say: All requirements of Section 402.3 have been met.

This is a mistake that is in the RZO, we had the change last year for typo's and errors we can correct. It does not need to go on the ballot but it does need a public hearing. Mike can you add this to the legal notice that you are typing up for the December 3, 2019 public hearing on the other proposed zoning amendments.

Thank you.

Kim

ARTICLE 04. 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 1.

Re: Correction of Erroneous References/Indexing

Amend Section 1000 Amendment to add the following new paragraph:

Where a previously adopted amendment has resulted in an incorrect reference in another section of this ordinance or incorrect indexing of sections or when typographical errors are discovered, the planning board may make the corrections in the ordinance after a public hearing pursuant to RSA 675:3, without putting the corrections on the town warrant and ballot for approval.

Explanation

The Rye Zoning Ordinance is a 118 page ordinance with numerous cross references contained therein. When the planning board prepares amendments, it tries to identify and amend any references in other sections of the ordinance (or indexing) which may be affected by the amendment. Inevitably though, some are missed. The amendment provides a simple way of correcting the ordinance where a cross reference or indexing change has been overlooked or typographical errors discovered without taking up space on the town warrant and ballot for what is, in essence, a ministerial correction.

From: Patricia Losik <patlos@comcast.net>
Sent: Tuesday, November 12, 2019 7:11 AM
To: Kim Reed <KReed@town.rye.nh.us>
Subject: RZO 402

Kim,

November 3, 2019

AMENDMENTS RESPONDING TO COMMENTS FROM GENERAL CODE INC.

Rye Building Code Amendment No.2020-01

Re: Permits for Temporary Tents

Amend § 3.6 Permits for Temporary Structures [§ 35-5 F. of new Town Code] as follows.
(Note: New language ***emboldened and italicized***. Deleted language struck through.)

3.6 Permits for temporary structures. No temporary structures, including ~~platforms, stands, observation or circus seats and tents for assembly purposes,~~ shall be erected unless Fire Department approval has been obtained and a permit therefor has been issued by the Building Inspector. Such structure may be maintained only for the period of time stated on the permit, and in no case for a longer period than one week unless otherwise specified in this code or the zoning ordinance. There is no fee for a temporary structure permit.

Any event tent erected on public or private property shall comply with applicable provisions of the state building code and state fire code. A building permit is not required for a tent of any size erected as an accessory structure on property that is an owner occupied one or two-family dwelling.

Explanation

The amendment makes the building code compliant with legislation enacted in 2018 relative to municipal regulation of tents.

November 3, 2019

AMENDMENTS RESPONDING TO COMMENTS FROM GENERAL CODE INC.

Rye Building Code Amendment No. 2

Re: Permits for Temporary Tents

Amend § 7.4 Building Regulations. [§ 35-9 D. of new Town Code] as follows. (Note: New language *emboldened and italicized*. Deleted language ~~struck through~~.)

Sections 105, 108, 202, 304.1, 305.1, 308, 403.1, 404, 502.1, 505.4, and 602.3 of the ~~2009~~ *2018* International Property Maintenance Code published by the International Code Council are incorporated by reference into the Rye Building Code. Notes: (1) These provisions are adopted only for units which are not owner-occupied. An owner shall not rent or let a dwelling unit, a motel or hotel unit, a tourist camp unit, a rooming house or boardinghouse unit or a dormitory unit to another person unless such unit complies with these provisions. These provisions may be enforced against both owners and occupants of units. (2) Exempted from Section 404, Occupancy Limitations, are units occupied by the same renter(s) for 14 consecutive days or less. (3) The heat supply requirements of Section 602.3 apply only from September 1 to May 31. (4) A copy of the ~~2009~~ *2018* International Property Maintenance Code is available for inspection at the office of the Building Inspector.

Explanation

The amendment updates the reference to the International Property Maintenance Code to incorporate the recently established 2018 code rather than the ten year old code.

RYE PLANNING BOARD
PROPOSED BUILDING CODE AMENDMENT 2020-03

Re: Adoption of Chapter 35 of Code of the Town of Rye

§ 1-30. Adoption of codified Building Code.

The Rye Building Code adopted March 14, 2000, as amended through March 12, 2019, as renumbered, revised and codified as Chapter 35 of the Code of the Town of Rye, is hereby approved and adopted. This ordinance and Chapter 35 shall supersede all other Building Codes enacted prior to the enactment of this ordinance.

§ 1-31 Continuation of existing provisions.

The provisions of Chapter 35, insofar as they are substantively the same as those of the ordinances in force immediately prior to the enactment of Chapter 35 by this ordinance, are intended as a continuation of such ordinances and not as new enactments, and the effectiveness of such provisions shall date from the date of adoption of the prior ordinances.

§ 1-32 Severability of Code provisions.

Each section of Chapter 35 and every part of each section is an independent section or part of a section, and the holding of any section or a part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof. If any provision of Chapter 35 or the application thereof to any person or circumstances is held invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

§ 1-33 Severability of ordinance provisions.

Each section of this ordinance is an independent section, and the holding of any section or part thereof to be unconstitutional, void or ineffective for any cause shall not be deemed to affect the validity or constitutionality of any other sections or parts thereof.

§ 1-34 Changes in previously adopted ordinances.

A. In compiling and preparing the ordinances for publication as Chapter 35 of the Code of the Town of Rye, no changes in the meaning or intent of such ordinances have been made, except as provided for in Subsection B hereof. Certain other minor nonsubstantive changes were made to correct spelling and grammatical errors. It is the intention that all such changes be adopted as part of Chapter 35 as if the ordinances had been previously formally amended to read as such

B. The amendments and/or additions as set forth in Schedule B attached hereto and made a part hereof are made herewith, to become effective upon the effective date of this ordinance. (Chapter and section number references are to the ordinances as they have been renumbered and appear in the Code.)

§ 1-35 When effective.

This ordinance shall take effect upon passage, provided the March 10, 2020 Town Meeting adopts the Code of the Town of Rye.

§ 1-36 Incorporation of provisions into Code.

The provisions of this ordinance are hereby made part of Chapter 1 of the Code of the Town of Rye, to be titled "General Provisions, Adoption of Chapter 35 of the Code of the Town of Rye".

Schedule B (As Referenced in § 1-34B)

(Note. Added text is underlined. Deleted text is struck out or in brackets).

Section 35-2C(3) is amended as follows: "If a proposed building site is in a flood-prone area, all new construction and substantial improvements (including the placement of prefabricated buildings and mobile homes) shall comply with the ~~Floodplain Development and Building Ordinance Chapter 60~~, Floodplain Management, of the Town Code. This ordinance and The map showing the Flood Hazard District are is available in the Building Inspector's office."

Section 35-2C(4) is amended to update the reference to the Department of Environmental Resources to the Department of Environmental Services.

Section 35-8 is amended to change "Zoning Board of Adjustment" and "ZBA" to "Board of Adjustment" and to delete the reference to "the State Energy Code (see Section 7.6)."

Section 35-9B is amended to change "State Building Code" to "State Fire Code" in the first sentence and to add the International Existing Building Code and the International Residential Code to the list of codes incorporated by reference into the State Building Code.

Original § 7.6, NH State Energy Code, is repealed.

Section 35-13B(1) is amended to delete the following sentence: "The April 1, 2010 date shall be delayed or indefinitely postponed if the Commissioner of NHDES delays the April 1, 2010 date per RSA 125-R:2, II."

Section 35-13B(2) is amended as follows: "~~The only permitted fuel for single-fired OWHHs is clean wood (i.e. cordwood or wood pellets) or any other fuel which may be approved by the Commissioner of NHDES. Fuel that is not "clean wood" as defined by RSA 125-R:1 is prohibited. Dual-fired OWHHs may use home heating oil, propane or natural gas as a starter or alternate fuel. Permitted fuels shall be as prescribed in RSA 125-R:4.~~"

Sections 35-14E and 35-15F are amended to update the reference to New Hampshire Administrative Rules Chapter Env-Ws 1000 to Chapter Env-Wq 1000.

§ 1-42 When effective.

This ordinance shall take effect upon passage, provided the March 10, 2020 Town Meeting adopts the Code of the Town of Rye.

§ 1-43 Incorporation of provisions into Code.

The provisions of this ordinance are hereby made part of Chapter 1 of the Code of the Town of Rye, to be titled "General Provisions, Adoption of Chapter 60 of the Code of the Town of Rye".

Schedule B (As Referenced in § 1-41B)

Sections 60-10B(2)(c) and C(4), 60-14 and 60-15A(2) are amended to change "registered professional engineer" to "professional engineer."

Section 60-16A and C(1) are amended to change "Zoning Board of Adjustment" to "Board of Adjustment."

Kim Reed

From: Kim Reed
Sent: Monday, December 2, 2019 1:36 PM
To: james.finn@snet.net; Jeffrey A. Quinn (Jeff.quinn@comcast.net); Katy Email; Nicole M. T. Paul (NPaul@orr-reno.com); P. E. J. M. Lord (Jmlord560@gmail.com); patlos@comcast.net; sdcarter620@gmail.com; Tim Durkin; William Epperson
Subject: FW: Solar energy in Rye
Attachments: Planning Board Solar_120119.docx

From: Scott Marion <Smarion@nciea.org>
Sent: Sunday, December 1, 2019 7:46 PM
To: Katy Work Email <katy@johnshermanlaw.com>; Phil Winslow <philwins@gmail.com>; Janice Ireland <JIreland2@RYENH.US>; Kim Reed <KReed@town.rye.nh.us>
Cc: Margaret Honda <mhonda@sau50.org>; Paula Tsetsilas <ptsetsilas@sau50.org>; Jeanne Moynahan <jmoynahan@sau50.org>; Debra Crapo <dcrapo@sau50.org>; Jacinthe Grote <ojgrote@me.com>
Subject: Solar energy in Rye

Dear Kim and Rye neighbors,

I heard the Planning Board was receiving opposition to its solar energy initiatives. Unfortunately, I am unable to attend the meeting on Tuesday night, so I wrote the attached letter to express my support in two ways:

- Emphasizing that municipal and school facilities should be treated differently than private homes, and
- We should be promoting solar and other renewable energy sources everywhere in Rye we can.

Please share this letter with the other Planning Board members and don't hesitate to reach out to me with any questions.

Thank you for your work!
Scott

Scott F. Marion, Executive Director
Center for Assessment
31 Mount Vernon St. | Dover, NH 03820
O: 603-516-7900 | C: 303-818-1145
smarion@nciea.org | www.nciea.org
Twitter: @ScottFMarion

November 26, 2019

To the Rye Planning Board,

I commend the Planning Board for acting to help Rye follow national and international trends in promoting solar energy. We are all aware of the global threat due to the changing climate, but our seaside town is incredibly vulnerable too. I'm writing though because I am very concerned about the resistance you are facing from several citizens and the Rye Historic District Commission. I appreciate the historic nature of Rye as do most of us who chose to live in this terrific town. Unfortunately, we are facing an existential threat to our town and the larger world. We are simply out of time to quibble whether solar panels threaten the historic nature of our town. Besides the inconspicuous look of modern solar panels, we should embrace having solar panels on as many roofs and other locations as possible in Rye. The cost of solar and other renewable sources of electricity is now as or more competitive with fossil fuels, but without emitting heat-trapping carbon into the atmosphere. I want to convey my support for your plans to continue to promote solar energy use in Rye.

I emphasize two main points in support for your position:

- Municipal and school facilities are not the same as private homes.
- Given the nature of the threat from climate change, we should be promoting solar and other renewable energy sources everywhere in Rye we can.

You are probably aware that the school board, with the assistance of the Rye Energy Committee, is actively pursuing placing solar panels on our school buildings. As some of the biggest energy users in town, the schools have a responsibility to minimize our carbon footprint, save money in the long run, and model environmental stewardship for our students. As a member of the Rye School Board for the past seven years, I can say unequivocally that all school members take very seriously our responsibility to care for and maintain our school buildings. In fact, we have increased our yearly maintenance budgets considerably over the years to do just that.

It is the elected school board members' statutory responsibility to make decisions about our school facilities. These decisions are subject to voter approval (or disapproval) in one of two ways. Items requiring large capital and out-of-regular-budget expenditures generally need to be approved by the voters through a special warrant article. Second, voters have the opportunity every three years to vote school board members out of office. Again, maintaining the Rye schools is the responsibility and under the discretion of the school board, constrained by New Hampshire statute. The same can be said of the Select Board's responsibility to maintain municipal buildings. We are not subject to Historic District Commission oversight.

Second, I cannot help but question the irony of the Historic District Commission's argument. If solar panels negatively affect the historic authenticity of Rye Town Center, why stop at solar

panels? Why are we allowing electricity in the historic district? Shouldn't those living in the District be required to light their homes with kerosene and heat with wood? Certainly our ancestors did not have flush toilets, so should we require outhouses for any facilities in the District? I'm obviously exaggerating, but I am making the point that we have allowed changes in the Historic District to account for changing technologies. We have generally allowed these changes for convenience and safety. Therefore, we must allow—actually, encourage—installing solar panels anywhere in Rye where we can efficiently generate energy. There is no point in worrying about the aesthetics of our town if we are looking up at the surface of the water because we haven't done anything to prevent sea level rise.

Thank you again for your willingness to take this important action.

Sincerely,
Scott Marion
Rye School Board

km

SOLAR

Connecticut historic preservation boards warming up to solar panels

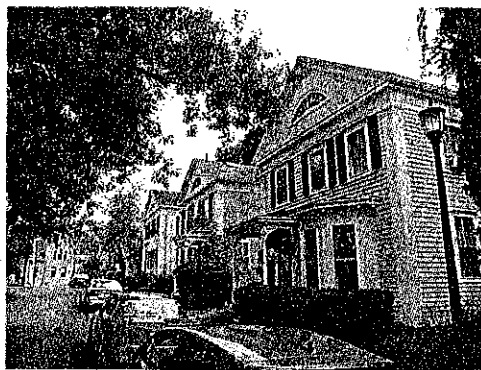
WRITTEN
BY



Meg
Dalton
March 4,
2019

PHOTO
BY

John
Phelan
via
Wikimedia
Commons



A historic district in New London, Connecticut.

***Historic preservation boards
are seeing more requests
related to solar panels and
increasingly finding
compromise.***

Historic preservation boards are increasingly finding ways to compromise with homeowners who want to install solar panels in historically significant areas.

The acceptance of solar comes as technology helps to make systems less obtrusive, and also as more historic preservationists recognize the urgency to address climate change.

Cases involving solar panels are also becoming more common. In Connecticut, about a tenth of the state's 3,000 historic preservation cases last year involved solar installations. That's a significant increase from five years ago, said Todd Levine, an architectural historian for the state's preservation office.

Of those 300 solar cases, only 10 were concluded to have adverse effects, but even in those cases the state office was able to work with stakeholders and ultimately approve them all.

"In some ways, the solar panels help the historic structure and don't harm it," said Catherine Labadia, deputy state historic preservation officer. "That's not to negate the few cases when it's bad."

The National Trust for Historic Preservation and the Department of the Interior recommend installing solar panels on the area least visible to the public or on any new addition on the property, like a garage. Typically, historic commissions don't want panels on the principal facade of the building facing the public right-of-ways. If they have to be on the roof, it's better to have them on the non-street-facing part, or even ground-mounted in a backyard. They also suggest solar panels and mounting systems that match the roof's color scheme. In general, the lower the profile the better.

While the Department of the Interior provides guidance (<https://www.nps.gov/tps/sustainability/new-technology/solar-on-historic.htm>) for installs in historic districts, the responsibility ultimately falls on the local historic commissions. In Connecticut, the state historic preservation office also provides resources and guidance, as well as handles cases that require state or federal permitting.

In New Haven, Connecticut, a home in one of the city's three historic neighborhoods is the latest to successfully petition for approval

me ways, the panels help historic picture and 't harm it.'

from its local Historic District Commission. Nestled on a sunny street corner in Fair Haven, the single-family home received immediate approval from the commission last month to install a rooftop solar array, despite a few hiccups during the approval process.

Trinity Solar, the company behind the install, approached the commission in January with a mea culpa

(https://www.newhavenindependent.org/index.php/archives/entry/solar_array_approved_in_fair_haven_after_starting_the_installation_before_getting_formal_approval_from_the_commissioners).

After realizing its mistake, the company apologized and temporarily stopped the installation, deciding to wait for the commission's approval before proceeding. Since the planned solar array was street-facing and highly visible, the commission's approval was critical.

After making some adjustments — including moving some equipment inside — Trinity Solar received unanimous approval for the three-panel array on the home's rooftop. This case is one example of the evolving relationship between historic preservation and green technology in Connecticut and across the nation.

"It's something people want to see happen and in a way that respects historic integrity in these buildings," said Elizabeth Holt, director of preservation services at the New Haven Preservation Trust.

That hasn't always been the view of historic preservationists. Several cities and towns have pushed back against solar on certain properties, believing it would compromise their historic character. In Washington, D.C., a local commission denied homeowners

(https://www.washingtonpost.com/realestate/solar-power-project-eclipsed-in-dc/2012/06/21/gJQADxrdtV_story.html) from

installing visible rooftop solar panels on their house in the historic Cleveland Park district in 2013. This year, the same commission

loosened its restrictions, allowing for visible solar panels (<https://ggwash.org/view/70784/in-a-shift-front-facing-takoma-solar-panels-win-dc-historic-preservation-hprb-approval>), at least in some cases.

"I have a sense that there's rapidly growing

sophistication among preservationists that there's a societal mandate to achieve greater sustainability and energy efficiency," said Anthony Veerkamp, director of policy development at the National Trust for Historic Preservation.

He only has an anecdotal sense of what's happening on the ground, but noted a shift from commissions defaulting to "no." More boards seem open to working with property owners, whether that means adjusting where to situate an array, or opting for ground-mounted panels instead. He attributes the shift partially to improved technology, with solar panels becoming more streamlined in recent years, as well as the emergence of solar roof tiles. It's analogous to television antennas or satellite dishes. "First, TVs were the size of car, and now they're the size of pizza pan," Veerkamp said.

Plus, a home solar installation can make a difference for state or city climate goals. Municipalities can't just rely on new housing to reduce carbon footprints; they need to maximize older stock, too.

"I want to believe historic commissions around country are looking for ways that historic buildings can help contribute to reaching carbon goals," Veerkamp said.

As a preservationist, Holt thinks the realities of climate change mean that preservation and sustainability must go hand in hand. New Haven's commission has become flexible and collaborative, and she believes they can do that while still championing New Haven's historic architecture.

"Each case should be reviewed individually to find a solution that respects the historic integrity of the building and maximizes the effectiveness of the solar panels," she said.

At the state level, the historic preservation office has partnered with the quasi-public clean energy agency, the Connecticut Green Bank (<https://www.ctgreenbank.com/>), to mitigate any adverse effects installs could have on historic properties. Together, they're developing a publication they plan to distribute in the coming months outlining

**best practices on the intersection of energy
efficiency, renewable energy, and historic
preservation.**

Keri
Revisions
12-3-19

TOWN OF RYE, NEW HAMPSHIRE

ZONING ORDINANCE

Isotrope draft revisions Nov 14, 2019;
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SECTION 305: WIRELESS TELECOMMUNICATIONS FACILITIES DISTRICT. (Adopted 3/9/99)

See Section 505 for the description of the Wireless Telecommunications Facilities District and the regulations which apply to wireless telecommunications facilities.

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SECTION 505 WIRELESS TELECOMMUNICATIONS FACILITIES (Adopted 3/99, Rev. 3/11/2014)

505.1 Definitions. (Adopted 3/11/2014) For purposes of this Section.

ANTENNA: Apparatus designed to emit and/or receive radio frequency energy. Note: the RSA 12-K definition is narrower, applied only to PWSFs.

BASE STATION: A structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a Tower as defined herein or any equipment associated with a Tower.

(i) The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(ii) The term includes, but is not limited to, radio transceivers, Antennas, coaxial or fiber-

optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small-cell networks).

(iii) The term includes any structure other than a Tower that, at the time the application is filed, already supports or houses equipment described above that has been reviewed and approved under the applicable zoning process, even if the structure was not built for the sole or primary purpose of providing such support. [Note: This part of a Base Station is referred to as a Base Station structure in this ordinance.]

(iv) The term does not include any structure that, at the time the application is filed, does not support or house equipment described in paragraphs (i)-(ii) of this section.

(FCC 14-153, 47 CFR 1.40001)

COLLOCATION: The placement or installation of new PWSFs on existing Towers or Mounts, including electrical transmission towers and water towers, as well as existing buildings and other structures capable of structurally supporting the attachment

of PWSFs in compliance with applicable codes. "Collocation" does not include a "Substantial Modification." (RSA 12-K:2,X)

In the context of an Eligible Facilities Request (for Modification), the FCC 14-153 definition shall supersede the above: **Collocation:** The mounting or installation of Transmission Equipment on an Eligible Support Structure for the purpose of transmitting and/or receiving radio frequency signals for communications purposes. (FCC 14-153, 47 CFR 1.40001) [Note: This latter definition is equivalent to "Site-Sharing" as defined below, and is not limited to PWSFs.]

COLLOCATION APPLICATION: Shall mean a request submitted by an applicant to an authority for Collocation on a Tower or Mount. (RSA 12-K:2,XI)

ELIGIBLE FACILITIES REQUEST: Any request for Modification of an existing Tower or Base Station that is not a Substantial Modification to such Tower or Base Station, and involves:

- (i) Collocation of new Transmission Equipment;
- (ii) removal of Transmission Equipment; or
- (iii) replacement of Transmission Equipment.

(FCC 14-153, 47 CFR 1.40001)

EXISTING: (with respect to Towers and Mounts) A constructed tower or base station is existing for purposes of this section if it has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed and approved because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this definition. (FCC 14-153, 47 CFR 1.40001)

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ELIGIBLE SUPPORT STRUCTURE. Any Tower or Base Station, provided that it is existing at the time the application is filed.
(FCC 14-153, 47 CFR 1.40001)

EQUIPMENT COMPOUND: An area surrounding or near the base of a Tower or Mount supporting a WTCF, and encompassing all equipment shelters, cabinets, generators, and appurtenances primarily associated with the WTCF. [Note: This is the RSA 12-K:2,XV definition, but modified from "PWSF" to "WTCF" for the purpose of this ordinance.]

FAA: The Federal Aviation Administration.

FCC: The Federal Communications Commission.

HEIGHT: The height above ground level from the natural grade of a site to the highest point of a structure. (RSA 12-K:2,XVII)

HEIGHT, OVERALLL: the height above ground level from the natural grade of a site to the highest point above a structure, including any attachments or appurtenances thereon.

MODIFICATION: The replacement or alteration of an existing PWSF within a previously approved Equipment Compound or upon a previously approved Mount. Routine maintenance of an approved PWSF shall not be considered a Modification. (RSA 12-K:2XVII)

MODIFICATION APPLICATION means a request submitted by an applicant to an authority for Modification of a PWSF. (RSA 12-K:2,XIX) [Certain limitations apply: See definition of Collocation and Substantial Modification, which preclude Substantial Modifications from Collocation and from Modification].

MOUNT: The structure or surface upon which Antennas are mounted and includes roof-mounted, side-mounted, ground-mounted, and structure-mounted Antennas on an existing building, as well as an electrical transmission tower and water tower, and excluding Utility Poles. (RSA 12-K:2,XX)

PERSONAL WIRELESS SERVICE FACILITY (PWSF): Any PWSF as defined in the federal Telecommunications Act of 1996, 47 U.S.C. 332(c) (7) (C) (ii), including facilities used or to be used by a licensed provider of personal wireless services. A PWSF includes the set of equipment and network components, exclusive of the underlying Tower or Mount, including, but not limited to, Antennas, accessory equipment, transmitters, receivers, Base Stations, power supplies, cabling, and associated equipment necessary to provide personal wireless services. (RSA 12-K:2,XXII) [Note 1: In this ordinance, the facilities of individual personal wireless service providers are treated as independent PWSFs, even if operating at the same site as other PWSFs. Note 2: A PWSF is a subset of the class of WTCF.]

SITE-SHARING: The use of a Tower or Base Station structure by more than one PWSF. [Contrast with "Collocation."]

SUBSTANTIAL MODIFICATION: A substantial change as defined by the FCC: A Modification to an eligible facility that substantially changes the physical dimensions of an Eligible Support Structure, if it meets any of the following criteria:

(i) for Towers other than Towers in the public rights-of-way, it increases the Height of the Tower by more than 10% or by the height of one additional Antenna array with separation from the nearest existing Antenna not to exceed twenty feet, whichever is greater; for other Eligible Support Structures, it increases the Height of the structure by more than 10% or more than ten feet, whichever is greater;

(A) Changes in Height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on building rooftops; in other circumstances, changes in Height should be measured from the dimensions of the Tower or Base Station, inclusive of originally approved appurtenances and any Modifications that were approved prior to the passage of the Spectrum Act.

(ii) for Towers other than Towers in the public rights-of-way, it involves adding an appurtenance to the body of the Tower that would protrude from the edge of the Tower more than twenty feet, or more than the width of the Tower structure at the level of the

appurtenance, whichever is greater; for other Eligible Support Structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(iii) for any Eligible Support Structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for Towers in the public rights-of-way and Base Stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10% larger in Height or overall volume than any other ground cabinets associated with the structure;

- (iv) it entails any excavation or deployment outside the current site;
- (v) it would defeat the concealment elements of the Eligible Support ^{Facility} Structure; or
- (vi) it does not comply with conditions associated with the siting approval of the construction or Modification of the Eligible Support ^{Facility} Structure or Base Station equipment, provided however that this limitation does not apply to any Modification that is non-compliant only in a manner that would not exceed the thresholds identified above.

(FCC 14-153, 47 CFR 1.40001)

Note: the RSA 12-K definition, below, narrowly applies to PWSFs, not WTCFs as defined by the FCC. It also is inconsistent with the FCC definition above. 12-K: "Substantial modification" means the mounting of a proposed PWSF on a tower or mount which, as a result of single or successive modification applications:

- (a) Increases or results in the increase of the permitted vertical height of a tower, or the existing vertical height of a mount, by either more than 10 percent or the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; or
- (b) Involves adding an appurtenance to the body of a tower or mount that protrudes horizontally from the edge of the tower or mount more than 20 feet, or more than the width of the tower or mount at the level of the appurtenance, whichever is greater, except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower or mount via cable; or
- (c) Increases or results in the increase of the permitted square footage of the existing equipment compound by more than 2,500 square feet; or
- (d) Adds to or modifies a camouflaged PWSF in a way that would defeat the effect of the camouflage. (RSA 12-K:2,XXV)

TRANSMISSION EQUIPMENT: Equipment that facilitates transmission for any FCC-licensed or authorized wireless communication service, including, but not limited to, radio transceivers, Antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul. (FCC 14-153, 47 CFR 1.40001)

TOWER: Any structure built for the sole or primary purpose of supporting any FCC-licensed or authorized Antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. (FCC 14-153, 47 CFR 1.40001) "Note: the RSA 12-K:2,XXIV definition narrowly applies to PWSFs, while this ordinance requires inclusion of all WTCFs, including PWSFs.

UTILITY POLE: A structure owned and/or operated by a public utility, municipality, electric membership corporation, or rural electric cooperative that is designed specifically for and used to carry lines, cables, or wires for telephony, cable television, or electricity, or to provide lighting. (RSA 12-K:2,XXVI)

WIRELESS TELECOMMUNICATIONS FACILITY (WTCF): Shall mean any installation that includes an Antenna and related equipment for the transmission or reception of radio frequency communications, including but not limited to PWSFs. See Tower.

505.2 Purpose: These regulations have been enacted in order to establish general guidelines for the siting of Towers and Antennas and to enhance and fulfill the following goals:

- A. Preserve the authority of the Town of Rye to regulate and to provide for reasonable opportunity for the siting of wireless telecommunications facilities, by enhancing the ability of providers of wireless telecommunications services to furnish such services to the community quickly, effectively, and efficiently.
- B. Balance the Town's responsibility to provide reasonable opportunities for wireless telecommunications facilities with the other objectives of this zoning ordinance and with the goals and objectives of the Rye Master Plan.
- C. Reduce adverse impacts such facilities may create, including, but not limited to: impacts on aesthetics, quality of experience, environmentally sensitive areas, historically significant locations, flight corridors, health and safety by injurious accidents to persons and property, and property values.
- D. Encourage minimal impact siting options, including, when applicable, Collocation and Site Sharing, through an assessment of technology, electronic compatibility, current locational options, future available locations, innovative siting techniques, and siting possibilities beyond the political jurisdiction of the Town.
- E. Permit the construction of new Towers only when all other reasonable opportunities have been exhausted, and to encourage the users of Towers and Antennas to configure them in a way that minimizes the adverse visual impact of the Towers and Antennas.
- F. Require cooperation and Site Sharing, to the highest extent possible, especially with respect to the use of Towers, between competitors in order to reduce cumulative negative impacts upon Rye.
- G. Provide for the compatible use and safe operation of such facilities.
- H. Provide for the removal of abandoned or inactive facilities to eliminate unnecessary visual blight and remove potential unsecured safety hazards.

505.3 Wireless Telecommunications Facilities District and Map: (Rev. 2003)

The Wireless Telecommunications Facilities District ("WTCF District") shall be an overlay district as shown on the Zoning Map of the Town of Rye and described as follows:

<u>Map-Lot</u>	<u>Location</u>	<u>Present Use</u>	<u>Controlled By</u>
007-093-000 007-093-00A	0 Grove Road 96 Grove Road	Cell Tower	Town of Rye
007-096-000-PR4 007-096-000-PR3	Off Grove Rd	Town	Town of Rye
007-108-000 007-109-000 007-112-000	South from Garland Rd	Water Wells & Pumping (see note 1)	Rye Water District
010-004-001	Lafayette Road/Breakfast Hill 271 Lafayette Road	Water Tank	Independent Wireless One Rye Water District

012-052-000	580 Washington Road	See note 2	Rye Congregational Church
018-034-000	555 Sagamore Road Lang's Corner	School Soccer Field	Rye School District
023-001-000	68 Port Way	Vacant	Town of Rye
012-079-000	55 Recreation Road	Town Forest and Recreation lands	Town of Rye Rye Recreation Committee

Note 1. Towers and other telecommunication facilities are prohibited within the 400 ft. sanitary radius exclusion zone of the Rye Water District water wells. (Revised 2009).

Note 2. Within the Rye Center Historic District, wireless telecommunications facilities may be mounted only upon existing structures, including ~~Bethany~~ Church, provided that such facilities do not exceed 20 feet height above the existing structure. Any structure and/or facility shall require the approval of the Rye Historic District Commission, in accordance with Section 303.

505.4 Permitted Uses.

A. In the Telecommunications Facilities District: In addition to uses permitted in the underlying zoning districts under Article II, wireless telecommunication facilities are a permitted use within the Wireless Telecommunications Facilities District only after obtaining a Special Use Permit as provided for in Section 505.7. All such uses must comply with other applicable ordinances and regulations of the Town of Rye (including Site Plan Review Regulations).

B. In All Districts: In addition to those uses permitted in the underlying zoning districts under Article II, wireless telecommunication facilities are a permitted use within all zoning districts subject to the following limitations and requirements, and wireless telecommunication facilities that do not satisfy these requirements are prohibited in all districts other than the Telecommunications Facilities District:

1. All WTCF installations, whether new, involve Site Sharing, or are Substantial Modifications, must obtain a Special Use Permit as provided in this Section 505, subject to limited exemptions described herein.
2. New Towers more than 50 feet Height are limited to the Wireless Telecommunications Facilities District. A new Tower is not permitted without an accompanying PWSF committed to occupying the Tower.
3. The harmonious use of existing structures to mount Antennas is encouraged over the construction of new Towers.
4. The use of Antenna concealments, for example, cupolas, steeples or flagpole-style Towers, is preferred over the construction of Mounts with exposed Antennas and apparatus.
5. Towers 50 feet or less in Height, and 55 feet or less in Overall Height are permitted in all districts, subject to these regulations.
6. Within the Rye Center Historic District, wireless telecommunications facilities may be mounted only upon existing structures, provided that such facilities do not exceed 20 feet Height above the existing structure, using designs that are compatible with the architecture of the site and its visual context in the district. Any such WTCF shall require the approval of the Rye Historic District Commission, in accordance with Section 303.
7. All the foregoing uses must comply with all applicable ordinances and regulations of the Town of Rye (including Site Plan Review Regulations).

505.5 Clarifications:

- A. **Principal or Secondary Use:** WTCFs may be considered either principal or secondary uses. Having an existing permitted use on site shall not preclude the addition of WTCFs as a secondary use, provided all other provisions of this ordinance are met. A different existing use or an existing structure on the same lot shall not preclude the installation of a WTCF Base Station or Tower on such lot. For purposes of determining whether the installation of a WTCF complies with district development regulations, including but not limited to setback requirements, lot coverage requirements, and other such requirements, the dimensions of the entire lot shall control, even though the WTCF may be located on leased parcels within such lots. WTCFs that are constructed and operated in accordance with the provisions of this ordinance shall not be deemed to constitute the expansion of a nonconforming use or structure.
- B. **Height Requirements:** These requirements and limitations shall preempt all other height limitations as required by the Town of Rye Zoning Ordinance and shall apply only to WTCFs. A requested Tower Height must be substantiated by the applicant and must be approved by the Planning Board. No Tower approved after the adoption of this Section shall exceed 150 feet Overall Height.
- C. **Amateur Radio and Receive-Only Antennas:** This ordinance shall not govern any Tower, or the installation of any Antenna, that is under 70 feet in Height and is owned and operated by a federally licensed amateur radio station operator or is used exclusively for over-the-air reception devices as regulated by the FCC. This application adopts the provisions and limitations as referenced in RSA 674:16, IV, pertaining to FCC requirements that local regulation of amateur Antenna structures “must constitute the minimum practicable regulation to accomplish the local authority’s legitimate purpose.” (47 CFR 97.15). Amateur Antenna structures greater than 70 feet are subject to Site Plan Review.
- D. **Essential Services & Public Utilities:** Wireless telecommunications facilities shall not be considered infrastructure essential services, public utilities or public utilities buildings, as defined or used elsewhere in the Town’s ordinances and regulations. Siting for WTCFs is a use of land, and is addressed by this article.

505.5 Design Performance Requirements:

The Planning Board may take into account the facts of each application to adjust or waive the requirements of this section by making specific written findings in support of such adjustments or waivers.

A. Tower Design:

1. Towers shall be designed and built to accommodate Site Sharing to the extent required by the Planning Board as a condition of a Special Use Permit. The minimum number of additional WTCFs that a Tower can accommodate will be determined by the Planning Board in consideration of the height, visual impact and other characteristics of the proposed Tower in the context of its proposed location.
2. Applicants for special use permits to construct, modify or Site Share on a Tower shall show designs that are of the realistic dimensions required to satisfy

structural codes for such construction. Full structural code compliance analysis need not be provided with an application, as any approved project is subject to code review by the building inspector.

3. Towers greater than 70 feet height shall be of monopole construction, unless waived by the Planning Board based on a finding that the visual impact of the Tower design is not more objectionable in the context of the proposed Tower site.
4. Towers shall not be artificially lighted, unless required by the FAA or other applicable authority. It is preferred that Towers not be of such heights as to require FAA lighting, due to the residential nature of the community. If lighting is required, the Planning Board may review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.
5. Towers shall be a color to reduce visual obtrusiveness or otherwise appear harmonious with the context of its location. Two-tone Towers are discouraged.

B. Visual Aesthetics, Finishes and Workmanship:

- 1 Towers, exposed Antennas and related apparatus and Antenna concealments shall be finished with durable materials that will not deteriorate and cause visual or safety impacts over time. Elements of Towers, Antennas, Base Stations and Transmission Equipment visible to the public shall be maintained in a neat and workmanlike condition and appearance, subject to terms of the special use permit and enforcement by the building inspector.
- 2 At all WTCF sites, the design of the equipment shelters, compounds and related structures shall, to the extent possible, use architecture, materials, colors, textures, screening, and landscaping that will blend with or be architecturally compatible with the natural setting and/or built environment around the site.
- 3 If Antennas and other apparatus are installed on a structure other than a Tower, it is preferred that they be enclosed within architecturally compatible concealments, unless they are not obtrusive to the public view by nature of their surroundings (e.g. on an industrial rooftop, or out of sight from public views).
- 4 WTCFs shall not display any signs, advertising, writing, symbols, or any graphic representation of any kind visible to the public, other than reasonable notification and safety signage.
- 5 Base Stations and Towers shall be landscaped with a buffer of plant materials that effectively screens the view of WTCF from adjacent residential property. ^{year round} In locations where the visual impact of the Tower would be minimal, the landscaping requirement may be reduced or waived entirely. Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as Towers sited on large wooded lots, natural growth around the property may be deemed a sufficient buffer.
- 6 To the extent practicable, Towers, Mounts and equipment shall be placed on the property in such a way as to minimize the visual impact on neighbors and viewsheds. The Planning Board may consider a setback waiver if it enables the proposed installation to be more harmonious with its surroundings.

505.6 Additional Requirements for Wireless Telecommunications Facilities: These requirements shall supersede any and all other applicable standards found elsewhere in Town ordinances or regulations that are less strict.

A. Setbacks and Separation:

1. Towers must be set back a distance equal to 120% of the Height of the Tower from the edge of the side and front property lines, and 100% to the rear property line on which they are located.
2. Towers, guys, anchor structures, Base Stations and accessory facilities must satisfy the minimum zoning district setback requirements.
3. Towers must be set back a minimum of 100 feet from wetland soils, marshes and year-round streams and ponds unless the applicant makes a showing including the approval of the Conservation Commission and the Planning Board makes a written finding that being within 100 feet of a wetland yields a better result with respect to the purpose and intent of this ordinance and the design, construction and operation of the Tower will not have a detrimental impact on the environment.

B. Security Fencing: Towers shall be enclosed by security fencing not less than six feet in height and shall also be equipped with an appropriate anti-climbing means.

C. Noise: Equipment noise must not be audible to residential neighbors, except emergency generators, which may be audible up to a maximum of 50 dBA at the property line. Generator exercising (testing) shall be conducted during normal weekday business hours.

505.7 Special Use Permits:

- A. General:** All Wireless Telecommunications Facilities ~~in the Wireless Telecommunications Facilities District~~ shall require a Special Use Permit from the Planning Board, subject to the criteria of this Section 505 and all other relevant requirements of the Rye Zoning Ordinance. All applications under this ordinance are also subject to the Planning Board Site Plan Review, in accordance with the requirements and procedures in the *Rye Planning Board Land Development Regulations*. In addition, applications under this ordinance shall also be required to submit the information provided for in paragraphs B and C below.
- B. Plan Requirements:** Each applicant requesting a Special Use Permit under this ordinance shall submit a scaled plan in accordance with the *Rye Planning Board Land Development Regulations* and further information including:
1. Plans and elevation drawings employing the various scales and details necessary to show:

- a. The general locus of the proposal, including abutting properties and structures,
 - b. The details of the proposed Antenna mounting structure (e.g. Tower, rooftop) and accompanying Base Station and Transmission Equipment, and utility interfaces,
 - c. The fencing, landscape buffering, screening and/or concealment elements,
 - d. Access way, utility lines and parking,
 - e. Tree and vegetation clearing, slopes, wetlands and other surface characteristics or changes thereto.
2. Photosimulation of the installation from one or more publicly accessible views. Applicants are encouraged to discuss potential photographic locations with the Town Planner during the preliminary processes outlined in the Rye Planning Board Development Regulations. The Town Planner, in consultation with the Planning Board Chair, may defer the photosimulation requirement if 1) it may not be necessary considering the nature of the application, subject to a Planning Board decision during the hearing, or 2) it may be prudent to set a public announcement for a balloon/crane test of a proposed Tower during the hearing, from which the applicant can prepare a photosimulation report in consultation with the Planning Board.
3. Such evidence of coverage as is necessary to demonstrate the need for the proposed Tower Height, usually in the form of coverage maps of the participating wireless services.
4. If the applicant asserts any federal or state preemption is applicable, such as the non-prohibition of the provision of personal wireless services clause under the 1996 Telecommunications Act, or any other relevant federal or state rulings or laws, such evidence as is necessary to demonstrate how the preemption applies to the application. Such evidence might include an analysis of alternatives pursued, additional coverage or capacity analysis, demonstration of dimensions comporting with such preemption, etc. It is the applicant's responsibility to make the case for such consideration. Upon reviewing the facts, the Planning Board may require the applicant to submit supplemental information.
5. If the applicant asserts it is entitled to consideration under a regulatory shot clock, documentation demonstrating why and how the shot clock is applicable.
6. Analysis of the noise the facility will generate.
7. Analysis of the facility's radio frequency energy emissions demonstrating the design will be in compliance with applicable FCC regulations regarding human exposure to radio frequency energy.
8. Approvals from, or copies of submitted applications to, the State of New Hampshire, Rye Board of Adjustment, and/or ~~Rye Conservation Commission~~ allowing crossing of wetlands, or work in wetland buffers, if required.
9. Documentation of the applicant's environmental review, further referenced in applicable FCC rules, satisfying the requirements of the National Environmental Policy Act (NEPA), as well as its historic review and tribal notifications under the National Historic Preservation Act (NHPA) and other laws. If subject to a categorical exclusion, documentation demonstrating applicability.

18. An inventory of the applicant's existing facilities within the jurisdiction of the Town and those outside the border and closest to it, including specific information about the location, height, design of each facility.
19. The applicant for a new Tower shall provide an assessment of existing Towers and structures on which applicant could collocate one or more facilities to materially reduce the coverage or capacity issues that the proposed facility is intended to address. The Planning Board may consider combinations of one or more Collocations and/or reduction or relocation of the proposed new facility to achieve the applicant's stated objectives in a way that may be materially less objectionable to the community.
20. The applicant for a new Tower shall submit an alternatives analysis containing written evidence demonstrating that no existing structure(s), or no existing structures in combination with less impactful new facility site(s), and no alternative new site(s) can be combined to address the applicant's network objectives in a manner more consistent with the ordinance..

C. **Issuance of Special Use Permits:** In granting the Special Use Permit, the Planning Board may impose conditions to the extent the Board concludes such conditions are necessary to minimize any adverse effect of the proposed WTCF on the purpose and intent of this ordinance.

1. **Decisions:** Possible decisions rendered by the Planning Board, include approval, conditional approval, or non-approval of the special use permit. All decisions shall be rendered in writing, in accordance with RSA 676:3. Notice of Decision shall be filed within 72 hours and in the event of denial shall include written reasons for same. In accordance with the National Wireless Telecommunications Siting Policy Section 332(C) (47 U.S.C.332(C)), any non-approval (in the form of a vote to deny or a vote not to approve) shall be based upon substantial evidence contained in the written record.
2. **Factors to be Considered in Reviewing Applications:**
 - (a) Height of the proposed WTCF does not exceed that which is essential for its intended use and public safety within the limits of Section 505.4B.
 - (b) Impact of WTCF (including Tower, when applicable) on the community including such factors as:
 - ii) Noise
 - iii) Vehicular traffic
 - iv) Visual impacts to neighbors
 - v) Visual impacts to the community
 - vi) Proximity of WTCF to residential development or zones.
 - vii) Compatibility with uses on adjacent and nearby properties.
 - viii) Surrounding topography.
 - ix) Surrounding tree coverage and foliage.
 - x) Design characteristics of the WTCF (and Tower, when applicable) that reduce or eliminate visual obtrusiveness.
 - (c) Availability of less objectionable alternatives more consistent with the purpose and intent of the ordinance
 - (d) Consistency of proposed WTCF with this and other sections of the Rye Zoning Ordinances
 - (e) Adequacy of proposed ingress and egress to the site.

- (f) Availability of suitable existing Towers and other structures as discussed in Section 505.7.C.4
- (g) Visual, traffic, noise and other impacts to neighboring residential uses and overall compatibility with surrounding land uses.
- (h) Visual impacts on view sheds, ridge lines, and other impacts caused by Tower location, tree and foliage clearing and placement of incidental structures.
- (i) Impact on view from any public park, public beach, natural scenic vista, historic building or site or major view corridor.
- (j) That the proposed facility is not constructed in such a manner as to result in needless height, mass, visual clutter and bulk.
- (k) That if exposed (unconcealed) Antennas and related apparatus are proposed, the visual impact of such a design would not be materially improved by concealment or that such concealment is impracticable.
- (l) That if a proposed Tower is not a monopole, the reasoning for not using a monopole is consistent with the intent of the ordinance in the context of the proposed site and visibility.
- (m) Consistency with the goals and objectives of the Rye Master Plan.
- (n) The proposed WTCF is in harmony with the various requirements of this ordinance, NEPA, NHPA and other applicable regulations.

505.8 Removal of Abandoned Antennas and Towers: Owners of property on which one or more WTCFs are being deactivated or abandoned shall promptly notify the Rye Building Inspector and the Planning Board in writing, within 60 days of becoming aware of such plan to deactivate or abandon. Any WTCF or Tower that is not operated for a continuous period of 12 months shall be considered abandoned and hazardous to the public health and safety, unless the lessee or owner of said Tower provides proof of quarterly inspections. The property owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Town notifying the lessee or owner of such abandonment.

A declaration of abandonment shall only be issued following a public hearing, noticed per Town regulations, with notice to abutters and the last known owner/operator of the Tower. If the abandoned WTCF or Tower is not removed within 90 days, the Town may have the WTCF or Tower removed. This provision may apply to individual WTCFs provided it shall not apply to a Tower all WTCFs cease using the Tower.

505.9 Consultant Fees: The Board may retain the services of a consultant qualified in WTCF siting and design review to review the application and all associated information. The Board may further require, pursuant to RSA 676:4 I (g) that the applicant reimburse the Town for reasonable costs of this review. No application shall be approved until such fees, if applicable, are paid in full. This provision shall not limit or restrict in any way the Board's ability to require other investigative studies under its permitting and site plan review authority.

505.10 Waivers: Where the Planning Board finds that extraordinary hardships, serious practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or that the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to these regulations, provided the Planning Board makes specific written findings for each such waiver based on the record. The purpose of granting waivers under provisions of these regulations shall be to ensure that an applicant is not unduly burdened as opposed to merely inconvenienced by said regulations and/or to obtain an outcome that is most consistent with the purpose and intent of this ordinance. The Board shall not approve any waiver(s) unless a majority of those present and voting shall find that all of the following apply:

A. Requirements for Waivers:

1. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property and will promote the public interest.
2. The waiver is to provisions within this Section 505 and will not, in any manner, vary the other provisions of the Rye Zoning Ordinance, Rye Master Plan or Official Maps.
3. Such waiver(s) will substantially secure the objectives, standards and requirements of these regulations.
4. A particular and identifiable hardship exists or a specific circumstance warrants the granting of each waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:
 - a. Information requested is not relevant to or not necessary for making a decision,
 - b. A requirement in this Section 505 does not reduce the impact of the proposal in the context of its design and location compared to the result proposed with waivers,
 - c. The effort required to comply with this Section 505 regarding application content, design criteria, performance criteria or other criteria is unreasonably disproportionate to the intensity and scale of the proposal or the resources of the applicant.

B. Conditions: In approving waivers, the Board may impose such conditions as it deems appropriate to substantially secure the objectives of the standards or requirements of these regulations.

C. Procedures: A petition for any such waiver shall be submitted in writing by the

applicant with the application for Board review. The petition shall state fully the grounds for the waiver and all of the facts relied upon by the applicant. The Planning Board will not consider a waiver request unless it has been submitted in writing.

505.11 Compliance with RSA 12-K: 7: (Adopted, March 2011) (Rev 3/11/14/)

- A. Upon receipt of an application to construct a new PWSF Tower or to complete a Substantial Modification to an existing PWSF Tower or Mount which will be visible from any other New Hampshire municipality within a 20 mile radius, the town shall:
 - 1. Provide written notification of such application to such other municipality, per RSA 12-K:7, I (b); and
 - 2. Publish a notice in a newspaper customarily used for legal notices by the town, as required by RSA 12-K: 7, I (b). Such notice shall be published not less than 7 days nor more than 21 days prior to the date of any public hearing which may be required.
- B. For applications to the Zoning Board of Adjustment relative to a proposed Wireless Telecommunications Facility, the building inspector shall provide the above notifications required by RSA 12-K:7.

505.12. Collocations/Modifications: Pursuant to RSA 12-K: 10, PWSF Collocations on Towers and Mounts with existing Antennas, and Modifications to existing PWSFs that are not Substantial Modifications, are exempt from the requirements of §'s 505.4 to 505.11. Applicants for Collocation or Modification shall apply to the building inspector for a building permit. The Building Inspector's review and decision shall comply with RSA 12-K: 10, II. Nevertheless, such Collocations on existing Towers and Mounts and such Modifications shall comply with the criteria of the underlying site approval and the performance criteria under this Ordinance to the extent they are not preempted by federal rule.

505.13 Administration: WTCF application reviews are subject to certain federally imposed time constraints known as "shot clocks" and other restrictions.

A. Shot Clocks

- a. In the case of applications for Collocations or new Towers regulated herein, or for Determinations of Eligible Facilities Requests, the Planning Board has 30 days from receipt of application to decide whether the application is complete. Shot-clocks may be tolled until the application is deemed complete, subject to procedures outlined by the FCC, including, without limitation, providing the applicant written notice clearly and specifically delineating all missing documents or information. To facilitate efficient application-completeness review, the Planning Board may delegate the responsibility of making such reviews to the Town Planner or other town employee, who shall act in consultation with the Planning Board Chair, including the decision whether to engage the services of a WTCF siting consultant to assist with the review at the applicant's expense. This administrative activity shall be brought to the Planning Board for consideration when the Planning Board opens the hearing for the application.
- b. It is presumed that an application for Collocation can be heard and decided within 90 days, while the presumption for new Tower applications is 150 days. Applications for Determination of Eligible Facility Request must be decided upon within 60 days (plus any legitimate tolling or mutual extensions) at which time the FCC asserts the application is deemed granted. The Planning Board shall make reasonable effort to meet these schedules and shall document any exigencies that contribute to the time required to fully hear and act on the application. The Planning Board shall obtain written agreement of tolling of the shot clock or extension of deadline from the applicant when practicable.

B. Eligible Facilities Requests

- a. The Planning Board is responsible for entertaining all Determination of Eligible Facilities Request applications.
- b. The applicant must file an application for a Determination of Eligible Facility Request with the Planning Board, which application shall conform to the criteria below and any regulations adopted by the Planning Board.
- c. Upon receipt of such an application, the Planning Board must make a determination of completeness within 30 days of receipt, according to the procedures above.
- d. Within 60 days of receipt of a Determination of Eligible Facility Request, plus any legitimate tolling or mutual extensions, the Planning Board shall determine in writing whether the proposed project is a valid Eligible Facilities request or is subject to Site Plan Review or Special Use Permit Criteria. If the application is determined to be an Eligible Facilities Request, the written determination may also include any reasonable conditions consistent with prior approvals and considering the nature of the proposed Modifications. The conditions may not further limit those characteristics that determine the proposed Modification is not a Substantial Modification. The Planning Board may not deny and shall approve a valid Eligible Facilities Request. (per 47 CFR 1.40001)
- e. Applications for a Determination of Eligible Facilities Request shall be accompanied by such evidence as necessary to demonstrate the scope of the project is clearly within the bounds of an Eligible Facilities Request, including, without limitation:
 - i. Documentation showing how the project involves:
 - 1. Collocation of new Transmission Equipment;
 - 2. removal of Transmission Equipment; or
 - 3. replacement of Transmission Equipment.
 - ii. Documentation showing the project involves an Eligible Support Structure, and
 - iii. Documentation showing how the project is not a Substantial Modification.
- f. The Planning Board's review of a Determination of Eligible Facilities Request may require the applicant to provide documentation or information only to the extent reasonably related to determining whether the request meets the requirements of this section. It may not require an applicant to submit any other documentation, including but not limited to documentation intended to illustrate the need for such wireless facilities or to justify the business decision to modify such wireless facilities. (per 47 CFR 1.40001)