

**TOWN OF RYE – PLANNING BOARD
MEETING**

Thursday, November 17, 2022 – 6:00 p.m.

Rye Town Hall

***Members Present:* Kevin Brandon , Selectmen’s Rep Bill Epperson, Attorney Erik Maher, Rob Wright, Steve Carter, Chair Patricia Losik, Vice-Chair JM Lord**

***Also Present on behalf of the Town:* Planning/Zoning Administrator Kim Reed**

I. Call to Order

Chair Losik led the Pledge of Allegiance and called the meeting to order at 6:00 p.m. She summarized the meeting’s procedure: the board would review each article and provide opportunities for discussion and public commentary after each.

Chair Losik and Attorney Maher summarized the work he’s done with the aim of clarifying and simplifying the articles so that members of the public and professionals in the community understand how these zoning ordinance provisions should be applied. Chair Losik noted that the 2021 NRI had a significant impact on both general and specific language used in the wetlands ordinance.

II. Public Meeting on proposed Zoning Amendment Changes and to schedule for a public hearing to be held on December 6, 2022.

ARTICLE I

Member Carter reviewed the changes made to sections H and I. There was discussion about “sensitive environs and natural resources” between Member Brandon and Attorney Maher. Chair Losik added a semicolon after “resources” in item H.

Member Carter opened to the public for comments. Hearing none, he closed the public hearing at 6:09 p.m.

Motion by JM Lord to move Article I to the Public Hearing on December 6, 2022.

Seconded by Bill Epperson. All in favor.

ARTICLE II

Member Carter noted the addition of principal dwellings on page three. Chair Losik explained that the zoning map will be updated to include the noted districts and acknowledged Attorney Maher’s changes in section I. Attorney Maher explained that the ordinance didn’t previously

address circumstances of mixed use development on the same lot, and there was a need to define a required vegetative buffer.

Member Wright asked if the comment highlighted on page two would be included in the final draft. Chair Losik replied no, the comment is solely for the purposes of the board.

Chair Losik invited Attorney Maher to provide background to the religious institutions in the use district. Attorney Maher explained that a recent legislative enactment states that religious institutional uses must be allowed as a matter of right.

Chair Losik referenced the parsonage case and information explaining whether or not municipal properties are subject to zoning. She asked if Attorney Maher could speak to that matter as they would be striking language regarding municipal use buildings. Attorney Maher explained. Chair Losik also noted that Industrial Districts were struck from the article as there are no such districts in the town.

Attorney Maher explained the changes related to legal apartments. Chair Losik also commented that they renewed the sunset, which was 12/31/21.

Chair Losik invited questions or comments from the board. Hearing none from the board, Member Carter opened to the public at 6:17 p.m.

Dominique Winebaum brought forth concerns about off-street parking in section J(4).

Attorney Maher explained that modifications were made to the table of parking in article 5.0

Ms. Winebaum clarified that her concern could be raised during discussion of Article V. Chair Losik noted that section H(8) has similar language.

Sam Winebaum raised questions regarding § 190-2.2, D. He suggested that there's a need to more specifically define the term "principal dwellings". Attorney Maher explained that the intent behind "principal dwelling" is that it is the primary dwelling on the lot. The same member of the public also raised concerns regarding § 190-2.2, G(3) and suggested that light pollution should be included; or, more definition for the word "glare". He also asked for more definition of the term "screening buffer" in § 190-2.2, I(1), and additional specificity regarding the approval of septic systems in § 190-2.2, J(3). He also asked for clarification of "construction" in § 190-2.8, B(2); clarification of "diner", "stationary food truck", and "walk-up windows" in § 190-2.10. He reiterated his concern about glare. The board discussed whether to further define the word "glare", or keep it more general. Ultimately the board decided to keep "glare" and add "excessive lighting" to § 190-2.11, B(2).

The board discussed § 190-2.11 Commercial Districts. Attorney Maher recommended keeping the language of section B(2) more broad. Chair Losik agreed, noting that there are residential neighborhoods within the commercial districts who would benefit from that language.

The board discussed the septic system approval process as well as the matter of screening buffers.

Chair Losik noted that she would add a definition for principal dwelling to Article XI.

Motion by Chair Losik to move Article II to December 6, 2022 with the changes of §190-2.2, G(3) language to be incorporated in §190-2.11, B(2) and §190-2.2, J(3) language to be expanded regarding septic systems in good working order. Seconded by Vice-Chair JM Lord. All in favor.

ARTICLE III

Attorney Maher explained that Article III generated the most discussion and debate regarding the Wetlands Conservation District. He explained that the goal was to adopt many of the recommendations coming out of the NRI. The article now details with greater specificity the type of wetland resources and buffers that will be subject to protection. He noted one of the more significant changes: the application of a wetland buffer is no longer at one acre contiguous buffer, but to all wetlands. This was a recommendation from the NRI. He also summarized changes to the historic district commission, signing regulations, wireless telecommunications facilities district, and the aquifer/wellhead protection district. Attorney Maher welcomed Chair Losik's commentary on those items, noting her wealth of technical knowledge.

Chair Losik observed that they seem to be parsing regulated substances versus toxic and hazardous materials. Instead, the two definitions will be blended, providing a much more robust understanding of the toxic and hazardous materials which cause concern.

Referring to the section addressing manure storage, Chair Losik asked whether the language should say "precipitation *and* storm water runoff" or "precipitation *or* storm water runoff"?

Vice Chair Lord pointed out the section detailing best practices for agriculture management as it relates to manure storage.

Selectman Epperson pointed out the importance of using language within the ordinance that will keep manure out of the watershed. Chair Losik agreed and described the benefit of using broad language.

Chair Losik emphasized that the Best Management Wetlands Practices for Agriculture is a comprehensive document.

Chair Losik continued the discussion of wetlands and their permitted uses as detailed on page three, section E., and suggested that vernal pools be excluded from the section to avoid nature trails running through them.

The board discussed the verbiage within §190-3.1E, §190-3.1F, §190-3.1A(1a), and §190-3.1A(1b). The board also decided to edit §190-3.1E and strike §190-3.1F, as it is redundant.

Chair Losik gave a summarized history of the wetlands and buffer ordinances for context. She explained that the NRI is an informative resource to understand the importance of preserving these natural resources.

Member Wright asked for clarification of Attorney's Maher's previous comment regarding an avoidance of increased requests for variances. He made a case that if this becomes the town's new statute, then there should be an adoption of greater rigor in order to uphold that statute. Selectman Epperson pointed out that the Planning Board doesn't have any say in matters of zoning. Attorney Maher explained the process of satisfying variance criteria, which can be a rigorous process. Member Carter noted that variance requests will likely increase as Rye is covered in wetlands. Member Wright clarified that making ordinances more stringent will likely require more people to apply for exceptions. Selectman Epperson confirmed.

Attorney Maher explained the strategy in presenting the Warrant Articles individually rather than bundled together. The board continued to discuss the topic of zoning criteria rigor and language, and its effect on the Zoning Board of Adjustment. Member Brandon observed that the rigor of the ordinances may be perceived as being excessive. Chair Losik commented that they could refer to the DES guidance of 3,000 square feet, or 20,000 square feet.

There was discussion of similar coastal towns, and what they have done. Attorney Maher explained that in his experience, it's a wide spectrum among towns. He described a community he works with that eres on the side of more protective, utilizes a half acre.

Member Wright expressed concern with using language that may overburden the Zoning Board. The board discussed pulling section 3.1 out of Article III to stand on its own.

Vice-Chair Lord pointed out that this is a tremendous help to the town. It may or may not increase the number of people requesting variances from the ZBA, and it could encourage citizens to reconsider before initiating plans with such an environmental impact.

Chair Losik suggested that the board could leave the language as written and bring it to a public hearing in December to see what happens.

Member Brandon noted the public perception of a 0' boundary versus a 3,000' boundary and the importance of being practical and circumspect in the board's considerations. Member Carter clarified that a 3,000' boundary is considered "minimal impact". Chair Losik confirmed. Member Carter asked Attorney Maher if any communities go below .5 acre, or if Rye would be the outlier. Attorney Maher responded that there are communities that utilize 0'; they are smaller, less busy communities than Rye.

Member Wright asked if this will apply more to new developments rather than existing properties. Administrator Reed and Member Carter clarified that this could apply to any property, new or existing. Chair Losik pointed out that it's not the job of the Planning Board to make the laws to mitigate the workload of the ZBA.

There was discussion of bringing this matter to the public hearing on December 6, 2022. Member Carter expressed that he'd like to keep the item separate so that Article III isn't voted down because of one item. He also suggested that the board push the number to zero and see how it's received.

Dominique Winebaum discussed the Parsons Creek Watershed Management Plan and requested that the addition of, "within 100' of the edges of wetlands located within Parsons Creek Watershed as depicted on the map" be added to Article III.

Chair Losik explained that Parsons Creek Watershed is protected in the first through fourth order on page 16 of F.B. Environmental's Management Plan. She also spoke about the buffer language, and clarified that it's already covered within the article. Attorney Maher confirmed, and acknowledged Ms. Winebaum's concern that Parsons Creek should be specifically called out. Ms. Winebaum expressed that Parsons Creek Watershed is an area that needs attention and education. The board discussed where the suggested language could be added. The board added Bailey Brook, Seavey Creek, Parsons Creek, and Witch Creek to section D. Attorney Maher suggested that the language should read, "the mean high-water mark" to be consistent.

Ms. Winebaum brought forth concerns about water regulation for Aquarion customers in the Jenness Beach area and concerns about Well 5A. She requested that the board review the Pump Out Ordinance at a later date.

Chair Losik pointed out Delineation of Wetlands in section C –if there is a dispute about the location of the wetland boundaries it may be appealed to the Planning Board.

Member Brandon requested further discussion and expressed the importance of including a number. He noted that the implication of a one-acre setback is that the board feels that any number more than zero is not adequate protection. He felt as though this may be a provocative proposal. Protecting the wetlands is important; however, the board doesn't have empirical evidence to say that 20,000' is harmful and 0' is precise. Chair Losik reminded the board that the evidence from DES states minimal impact is 3,000'.

The board had an extended discussion about possible numbers to be presented at the public hearing on December 6, 2022.

Motion by Chair Losik to move Article III and two components to the public hearing on December 6, 2022. A separate stand-alone component of §190-3.1 with the changes that were discussed in §190-3.1E, §190-3.1F, §190-3.1H, §190-3.1Hd including Seavey, Witch,

and Parsons. The remainder of Article III would be moved in its current form. Seconded by Vice-Chair Lord. Vote: 4-2

ARTICLE IV

Attorney Maher summarized the contents of Article IV. He noted that one of the more significant changes deals with the preservation of yield plans. He defined yield plans for members of the public and described that they would now allow for consideration of unique environmental characteristics.

Member Carter clarified that Attorney Maher was referring to §190-4.1D(5).

Attorney Maher explained that this was written to make Rye's ordinance mirror other communities' innovative land use control. He noted that the retirement community development prioritized placement of open space near existing open space corridors to create more contiguous land. Attorney Maher explained his choice to strike a clause within the ordinance.

Member Carter invited comments from the board.

Chair Losik asked two questions regarding RCD and multifamily density. Where it states, "not limited to wellhead areas", she suggested editing to say, "aquifer and wellhead areas". The board agreed to add the suggested change to §190-4.1D(5), §190-4.1C(5), and §190-4.3D(b)[1].

Hearing no further comments from the board, Member Carter opened to the public at 8:06 p.m.

Referring to §190-4.1D(9), Sam spoke about the importance of maintaining buffers in order to preserve Rye's rural character. He also discussed the provisions of walking trails to community facilities. Implies that it's private to homeowners. Attorney Maher explained that it would depend upon the designation of the space and each unique development. Sam spoke about where to allow for bonuses and the affect of town amenities on property values. He also noted that the word "community" makes it unclear as to who can access the amenities.

Member Wright suggested replacing the word "community". Attorney Maher suggested, "other public forest trails, land, and other public amenities".

Member Carter noted that the board is agreeable to making that change and invited any other comments from the public. The board identified where in the Article the language should be changed.

Motion by Chair Losik to move Article IV in its entirety with changes to §190-4.1D(5), §190-4.2C(5), §190-4.3D(4b1), and §190-4.1D(9), §190-4.3D(9) to the December 6, 2022 public hearing. Seconded by Vice-Chair Lord. All in favor.

ARTICLE V

Attorney Maher summarized changes made to Article V, listed below:

- Minimum required parking spaces
- Home occupation restrictions
- Add and reduction in minimum required parking spaces for accessory dwelling units
- Sign regulations in accordance with the Supreme Court's case of Reed vs. Gilbert.
Attorney Maher summarized the case and stated that there were an extensive number of edits made to that section to make the sign ordinance "content neutral"
- Overhaul of section 5.2 to establish excavation limitations
- Revisions related to condominium conversions
- Tourist camp regulations
- Wireless telecommunications ordinance to bring into compliance with RSH chapter 12K
- Telecommunications ordinance, which was brought into accordance with recent changes to federal law related to the "Shot Clock", used for processing applications.
- ADU requirements regarding parking
- Elimination of listed discharge ordinance provisions

Member Wright asked if the removal of the last item is conditional upon another ordinance being put into place.

Attorney Maher responded that he'd like the Select Board to review the change before the town meeting for ultimate adoption. Administrator Reed commented that she's been working with Jason whom, she believes, has already presented this to the Select Board, who approved.

Attorney Maher clarified that the town wouldn't be in compliance with the EPA if they were to remove the ordinance without replacement. The goal would be to have a new ordinance in place, making the current ordinance redundant.

Attorney Maher continued summarizing changes; namely, wind energy systems, photo simulations, and measurement of sound levels. Attorney Maher stated that he's in a lawsuit with the Site Evaluation Committee and summarized some of the challenges he's had with them in establishing a benchmark of sound level measurement. He added that the last change is regarding the Demolition Review Committee; the steps listed within that section were streamlined. He summarized the clarification that retaining walls are going to be deemed structures subject to setbacks.

Member Carter invited comments from the board.

Selectman Epperson addressed the telecommunication overlay and noted that a gap in coverage is determined by the carrier who is making a request. He wondered if language should be included that would preclude the mandatory placement of towers inside that overlay; in other words, allow for the placement of towers outside of the overlay area.

Attorney Maher explained that this was something that was discussed. Ultimately, if this provision were challenged, federal law would require the ZBA to grant the variance.

Attorney Maher explained that he'd like to see a provision where a zone can be changed based upon a demonstration of a substantial gap in coverage and the parcel is the only feasible location where a tower can be constructed.

Vice-Chair Lord exited the meeting.

Chair Losik suggested the board bring all of Article V to the public hearing, with the exception of §190-5.5. The board discussed changing the language regarding the overlay district within §190-5.5C.

Selectman Epperson summarized the goal: to improve cellular service throughout town as unobtrusively as possible.

Attorney Maher suggested inserting note three prior to the December 6 public hearing. The board agreed.

Member Carter invited comments from the board. Hearing none, he opened to the public.

Sam asked about illicit discharge and previous Selectmen's ordinances for people who've connected their sump pumps to the stormwater system. How would those people disconnect?

Attorney Maher explained that the purpose of the IDDE is compliance with EPA regulations as a part of the MS4 stormwater permit system. Generally, you don't get grandfathered over regulations related to public health safety.

Sam pointed out a typo in §190-5.10G "of" instead of "or". He commented that he was shocked that the setback is "at least one foot from the right-of-way lane".

The board discussed §190-5.10G, determining that this is likely a matter of building code.

Ms. Winebaum asked if David Choate is aware of the changes in regard to demolition review.

Attorney Maher stated that he doesn't know if he's aware of those changes. The board discussed this and Ms. Winebaum offered to email David Choate.

Ms. Winebaum also discussed rental requirements, parking restrictions, and her desire for the town to provide fair housing. The board discussed Ms. Winebaum's concern over parking restrictions and had an extended discussion over whether one parking space per rental unit is sufficient or not.

Motion by Rob Wright to revert to two parking spaces per ADU. Seconded by Chair Losik. All in favor.

Motion by Chair Losik to move Article V with discussed changes to the December 6, 2022 public hearing. Seconded by Kevin Brandon. All in favor.

ARTICLE VI

Attorney Maher gave a brief summary of Article VI and explained it's purpose is to clarify the application of non-conforming lots. There had been some discussion as to when a variance was necessary for redevelopments when it didn't expand the footprint of the structure. There were also some changes made to clarify the type of land use permit that was necessary from the ZBA when changing to a non-conforming use. He also noted the clarification of the use of the word "obsolescence".

Member Carter invited comments from the board; hearing none, he opened to the public. Hearing no comment, the public hearing was closed.

Motion by Chair Losik to move Article VI to the December 6, 2022 public hearing. Seconded by Rob Wright. All in favor.

ARTICLE VII

Attorney Maher summarized Article VII and explained that it's largely a simplification of appeals language to reflect what the statute requires.

Chair Losik pointed out a typo where "agree" should be written "agreed" in section C.

Motion by Chair Losik to move Article VII to the December 6, 2022 public hearing. Seconded by Rob Wright. All in favor.

ARTICLE VIII

Attorney Maher summarized Article VIII. He explained certain exceptions to getting a building permit under the state building code and summarized the Administrative Decisions proposed in §190-8.3.

Member Carter noted that it should be §190-8.4 and opened to the public.

Sam stated that he feels uncomfortable with this notion. It's not clear that Mr. Marsden's expertise will come to bear when a developer knows they need variances. Sam asked if not Mr. Marsden, what individuals would be reviewing these applications.

Attorney Maher explained that it would be someone trained as a planner, land use development coordinator, community development director; somebody who's responsible for the review of applications for zoning ordinances. He also pointed out that this is the way other small towns deal with ZBA applications.

Ms. Winebaum also stated concerns with the Administrative Decisions section.

Chair Losik explained that the process of application review by the ZBA would remain the same; what would change is the process by which the applications arrive to the ZBA. A process that would hopefully increase the speed with which applications can move through to the ZBA.

Chair Losik made note of two typos within the article.

Motion by Chair Losik to move Article VIII to the December 6, 2022 public hearing. Seconded by Kevin Brandon. All in favor.

ARTICLE X

Member Carter noted that this article is very straightforward and invited discussion. Hearing no comments, he called for a motion.

Motion by Rob Wright to move Article X to the December 6, 2022 public hearing. Seconded by Kevin Brandon. All in favor.

ARTICLE XI

The board made the addition of the definition for "Principal Dwelling". Member Carter invited discussion among the board.

Member Carter noted the addition of a more inclusive definition of "Toxic or Hazardous Materials" and the definition of "Retaining Walls".

Attorney Maher noted the changed definition of "Upland Soils".

Motion by Chair Losik to move Article XI to the December 6, 2022 public hearing. Seconded by Rob Wright. All in favor.

Chair Losik clarified the coverage for the coastal area district within Article III.

Motion by Chair Losik to amend Article III as discussed. Seconded by Kevin Brandon. All in favor.

See attached to review the following Warrant Articles. For more information, see the red line on file at the Town Clerk's office or the Planning/Zoning office.

III. Adjournment

Motion by Chair Losik to adjourn at 9:32 p.m. Seconded by Kevin Brandon. All in favor.

Respectfully Submitted,
Emilie Durgin