

**TOWN OF RYE – PLANNING BOARD
MEETING**

**Tuesday, December 6, 2022 – 6:00 p.m.
Rye Town Hall**

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

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. Chair Losik introduced members of the board and provided her phone number for anyone accessing the Zoom meeting, in case of a lost connection. Chair Losik explained that the board will meet on the third Tuesday of each month at the Rye Public Library starting in January 2023. The board determined that if a second public hearing is needed, the board will meet on January 3, 2023.

Chair Losik gave special thanks to all for reviewing the proposed zoning amendments, particularly noting Attorney Maher’s work. She outlined the evening’s agenda procedure, noting that the Rye Water District would present a special request first. She explained that the RWD would like to address ordinance language regarding irrigation systems. Attorney Maher elaborated upon their request, explaining that the RWD is seeking an addition to their building code.

Ralph Hickson, Rye Water District Commissioner of 91 Washington Road, explained that the presented document will become a part of the RWD’s bylaws. He outlined the processes for obtaining an irrigation permit.

Chair Losik asked Mr. Hickson if the foundation of this document is based upon model water fish and landscaping regulations put out by DES for the LDR. Mr. Hickson confirmed. Chair Losik also explained that this document is a comprehensive program for irrigation systems. Mr. Hickson explained that it would be administered by the RWD. From this document, Chair Losik read 35.5A aloud to the board and opened to comments.

Selectmen’s Rep. Epperson summarized the board’s aim in reviewing irrigation system regulations. Mr. Hickson summarized the RWD’s concerns regarding irrigation systems.

Attorney Maher clarified the RWD’s intent behind this document; not to create a permitting or enforcement obligation on the town, but to notify the public of the proper processes of installing an irrigation system. Mr. Hickson agreed. Attorney Maher explained the importance of having the RWD supply and administer the technical criteria necessary.

Mr. Hickson agreed and explained that the RWD would have one of their operators oversee installations.

On behalf of the town administrator, Attorney Maher asked if there should be a similar notice to individuals related to the city of Portsmouth or Aquarion, who use other utilities. He felt that this would be an appropriate measure and offered a revision of the language within the addition to the building code.

Chair Losik approved of the revision and asked for an explanation of stand-alone irrigation and watering systems.

Mr. Hickson explained that some municipalities have a separate meter for irrigation systems, and they charge a different rate. Currently, the town of Rye uses the standard water meter for irrigation systems.

Chair Losik clarified that the RWD has two meters. She also asked about the reporting of irrigation systems, which was not explicitly included in the document.

Mr. Hickson clarified the intent that homeowners will provide the RWD with a report.

Selectmen's Rep. Epperson explained that the board is trying to ensure that irrigation systems are operating the way that the manufacturer intended, especially considering the water pollution issue, the source of which is still unresolved. He pointed out that the source may have been a backflow valve.

Chair Losik suggested strengthening the certification language within 5.2.10 and clarified that it will reside with the RWD. Selectman's Rep Epperson agreed, and commented that the RWD may not have the personnel to do that. He suggested a rewording of the ordinance and see what happens from there.

Member Wright stated that the RWD is one of three public utilities; he doesn't feel comfortable having this level of granularity with something that only addresses part of the board's scope of work. If the board is going to ensconce in law or code something related to public utilities, it should be evenly dispersed among suppliers. The onus shouldn't be placed upon any individual to make an outreach inspection; if this is required, the user of the utility should provide evidence that it's in working order.

Mr. Hickson commented that the RWD has annual backflow preventers that must be installed by someone who's certified. He believed that the RWD has the personnel to handle irrigation systems.

Member Brandon commented that if the board is going to put something in place, they should understand how it's going to work and it should be thoughtfully planned. He pointed out potential complications made for residents using the Portsmouth Water or Aquarion Water systems.

Chair Losik asked Attorney Maher for clarification of the language. She asked if the property owners must go to the building department, who would issue a permit.

Attorney Maher explained that a permit is needed from the RWD. To his understanding, the intent of the document is to put members of the public on notice: if a resident is serviced by any of these water systems, and intend to install an irrigation system, then they might need to get a permit prior to installation.

Chair Losik asked if a building code would be the correct place for a notice.

Attorney Maher recommended that if the notice is provided somewhere, it should be within the building code as opposed to a zoning ordinance. He explained his reasoning.

Member Carter pointed out the importance of including residents who use well water.

Mr. Hickson pointed out the RWD has no jurisdiction over people who have wells.

Member Carter suggested that they include language that says “properties serviced by RWD, Portsmouth Water, and Aquarion” as those are the people who may have a well, but may have their water back up into the Rye Water System.

The board continued to discuss with Mr. Hickson and Mr. Marsden the current processes for permitting and regulation of irrigation systems as well as what regulations are needed moving forward in order to prevent backflow.

Attorney Maher suggested the following language:

“A backflow preventer shall be required for all new, expanded, replaced or altered irrigation systems, which shall be installed by a licensed New Hampshire plumber. Owners and/or contractors shall apply for a permit from the building inspector, who shall ensure that such backflow preventer is appropriate for such irrigation system and will be installed in accordance with New Hampshire’s building code and established best practices.”

The board discussed the nuances of the discussed language.

Chair Losik and Attorney Maher determined that to have enough time to put this forth to a second public hearing in January, the language would need to be finalized at this meeting.

Chair Losik opened to comments from the public at 6:54 p.m.

Sam Winebaum of 52 Cable Road stated that anybody with an irrigation system should provide proof that they have a backflow preventer installed by a licensed plumber.

Steven Born of 431 Wallis Road stated that building permits for irrigation systems are needed across town, regardless of where the water is. He also requested that the town's water issues be addressed at another time.

Joe Cummings of Washington Road objected to all of the proposed language. He stated that homeowners should have the option to accelerate the installation of a testable backflow preventer at the meter. He pointed out the unfair burden placed upon those with new or existing irrigation systems and noted an attitude of hostility towards residents with irrigation systems.

Diana Wigley of 633 Central Road agreed with Mr. Born's statements regarding water quality. She wondered whether there is a certification that can be required of the installer of the irrigation system, thereby certifying that they've adhered to all of the requirements placed upon them. If not, what recourse does the RWD have?

John Pennachio of 1182 Ocean Boulevard wondered about the agreement between Aquarion and the residents using Portsmouth water.

Jenn Madden of 620 Central Road suggested increased education regarding water and root systems.

Tom King of 535 Wallis Road noted that the town only has an opportunity to update this once per year and stated that the town can't afford to wait another year. He also agreed with Mr. Pennachio's concerns regarding Aquarion and Portsmouth but didn't think it should hinder the decision.

Chair Losik and Attorney Maher agreed that the board should review the language at the January 3 meeting, post the public notice by January 6, and have a public hearing on January 17.

II. Public Hearing on Proposed Zoning Amendments

ARTICLE I

Chair Losik and Attorney Maher summarized the changes made to Article I. Chair Losik opened to the board for comments; hearing none, she opened to the public for comment.

Mr. Born commented on the readability of the document. Chair Losik agreed and explained the reason behind the format. She also noted that the ordinance on general code is much more user friendly.

Hearing no further comments, Chair Losik closed to the public and opened to the board for deliberation, of which there was none.

Motion by Steve Carter to move proposed amendment 2023-01 to the warrant. Seconded by Bill Epperson. All in favor.

ARTICLE II

Chair Losik and Planning/Zoning Administrator Reed discussed the correction of a map.

Attorney Maher summarized the changes made within Article II, noting that it's lengthy, diverse, and covers a variety of matters.

Chair Losik opened to the board for comments; hearing none, she opened to the public for comment at 7:14 p.m.

Christopher Piela of 25 Mountain View Terrace and Rye Zoning Board of Adjustment member commented on the need for clear, concise language and explained that the language within §190-2.2G(3), "alteration of the character of the neighborhood" could be too ambiguous. He asked the board to provide more explanation within the language to aid the ZBA in their review of applications. Mr. Piela summarized an item within the Single Residence District section noting that the language "no disturbance of the local environment[...]" provides an opportunity to review what uses are permitted by special exception in a single-residence district; specifically noting hospital facilities and educational institutions.

Dominique Winebaum of 52 Cable Road suggested that the square footage should be incorporated in the ADU checklist when subdividing a home.

Karen Oliver of 1159 Washington Road pointed out some grammatical corrections.

Steven Borne 431 Wallis Road asked for clarification of the word "reserve" within §190-2.9 on page 14, which was stricken. Attorney Maher explained that the word "reserve" was deleted from the document. Mr. Borne, alluding to the town's water issues, expressed concern about the potential addition of golf courses noted on page 9. Referring to Parson's Creek ADUs, he stated that the town should not be adding any more septic systems or leachfields within the buffer.

John Tuttle, 31 Breakers Road and Rye Zoning Board of Adjustment member, echoed Mr. Piela's notions on §190-2.2G(3) and pointed out the issue of legality of the matter, noting that it's a homeowner's right to do what they choose with their property as they see fit.

Suzanne McFarland of 1324 Ocean Boulevard requested that the board consider using the language "native plantings" where applicable to encourage the use of native species. She also pointed out that she's unaware of any quarries, pits, or turf farms in the town but requested that turf farms not be allowed as they would utilize too much water.

Chair Losik referenced the NRI, where there is language referring to former areas of gravel extraction, and stated that the matter would be addressed in later articles.

Chuck Marsden, Building Inspector, had an inquiry regarding the “unreasonable use of property” He asked what the guidelines for enforcement would be.

Chair Losik stated that this topic would be brought forth for further discussion.

Dwight Tuttle of 31 Breakers Road shared Mr. Marsden’s concern about the “unreasonable use of property”

Hearing no further comments, Chair Losik closed to the public at 7:30 p.m.

Chair Losik suggested the board discuss questions brought forth by the public; primarily those regarding the unreasonable use of property.

Attorney Maher stated that the language is similar to that used by several other municipalities throughout the state. He also pointed out that it provides a lot of enforcement discretion for Mr. Marsden. He explained the language within that section and stated that these standards and ordinance provisions have been upheld and deemed sufficiently clear, legal, enforceable, and could be applied.

Chair Losik addressed Mr. Piela’s questions regarding the resources and assets in §190-2.3B(4). Speaking to Attorney Maher, Chair Losik explained that this section has long been a part of the ordinance.

Attorney Maher clarified that the board is looking to engraft a criterion for the issuance of a special exception consistent with what exists under §190-2.3B(4) onto the special exception criteria that would be necessary for a hospital/nursing facility. He suggested adding a note to the end stating that such a facility shall not result in a disturbance to the local environment. He also suggested that the board adopt an approach similar to what’s used in the business use section.

The board continued to discuss crafting language that would mitigate further expansion in the area.

Chair Losik and Attorney Maher discussed the possibility of redrafting this section, which would require Attorney Maher to obtain the board’s guidance prior to drafting revisions to bring to the public hearing on January 17, 2023.

Member Wright noted that the board spent a significant amount of time discussing the language of this section, in part to provide the ZBA more latitude in their jurisdiction. He felt that it would be difficult to draft something concise that could address every possible assault. He felt comfortable with the section as it’s currently drafted.

Chair Losik stated that the board has been through this before and that it’s time to update this section, which has significantly impacted the single residence district. Speaking to Attorney Maher, Chair Losik asked what the cleanest way would be.

Attorney Maher suggested an amendment to the first section's sentence to say, "In the SR district the following uses are permitted by special exception provided that these criteria, and the additional criteria are met." He also suggested that he draft the language so the board could revisit this at their meeting on January 3.

Chair Losik agreed that they would come back to this section.

ARTICLE III

Chair Losik explained that Article III has been bifurcated into two sections: 3.1 and everything else. She explained that 3.1 had a lot of help by the Rye Conservation Commission and guidance from the Natural Resources Inventory. She explained that the resources are identified with greater specificity and also subject the most important resources to buffers of 100', which is detailed in section H.

Attorney Maher summarized the changes within 3.1, most notably the alteration or application of a wetland buffer away from one contiguous acre in size to all wetlands. This change will significantly expand the extent of the wetlands conservation district, which will likely require increased applications for variances by the ZBA.

Chair Losik explained that the board grappled with what's appropriate for sizing that provides protection. She wanted to check in with board members on the application of a 75' buffer to all of the other wetlands, aside from those designated in section b-e on page 6.

Referring to page 5, Chair Losik summarized and explained the buffer restrictions. She also summarized the board's discussion of buffers at their November 17, 2022 meeting. At that meeting, the board discussed the option to utilize the NRI's suggestion of a 0' buffer, or is there some place in between 0' and 75' buffer.

Member Wright explained that reducing the buffer to 0' would create a spate of requests for variances. He pointed out that much of the town is wet, there are many existing non-conforming parcels, people have an expectation of using their properties, and that's what the ZBA is for. Member Wright explained that he voted for an intermediate standard rather than going to 0'.

Member Brandon recalled that there was a rationale for one acre originally, so going from one acre to zero is understandable. Alternatively, he questioned what is to be gained relative to the burden for individuals who would need to go to the ZBA, potentially creating a backlog. He noted that while it might seem appealing, it may become impractical and burdensome.

Chair Losik summarized her research of nearby communities North Hampton and New Castle, and how they have addressed wetland buffers. Chair Losik incorporated pieces of language from those communities' ordinances into the document and invited the board to share their thoughts.

Attorney Maher suggested avoiding ancillary numbering changes and adding “Isolated Non-Bordering Wetlands” to the definitions section.

Chair Losik and Attorney Maher discussed how to wordsmith the language within §190-3.1HF regarding isolated non-bordering wetlands. They also discussed a discrepancy in language regarding septic systems between the ordinance and the building code.

Attorney Maher suggested that the board add language to §190-3.1A(1a) to include “isolated non-bordering wetlands and all other wetlands” to make clear that the wetland itself is protected.

Chair Losik asked if the proposed language addresses Member Wright's initial concerns.

Member Wright appreciated the notion of discontinuous small parcels being treated separately.

The board then discussed contributions to flood storage and the proper conveyance of surface water.

Attorney Maher, referring to the definitions within the document, suggested that the board include specific examples of those natural resources they're seeking to protect and mirror them within A(2).

Vice Chair Lord stated that he was initially in favor of 0' but, upon hearing what other communities have done, feels that his concerns have been addressed, that the uniformity of seacoast towns is beneficial, and that he's comfortable with the draft with the incorporated borrowed language.

Member Carter supposed that a wetland scientist would have to assess flood storage prior to any building.

Chair Losik summarized the way North Hampton addresses flood storage. She discussed how to draft flood-storage language with Attorney Maher. Attorney Maher believed that, with changes, the board's proposal is sufficiently clear and usable. Chair Losik summarized the proposed changes.

Hearing no further comments from the board, Chair Losik opened to the public for comment at 8:17 p.m.

Sam Winebaum of 52 Cable Road stated that the board had made good progress and suggested that the board consider a small buffer around non-contiguous areas.

Steven Born of 431 Wallis Road noted the spike in housing developments between 1968-1988 and his feeling that the town should push back against further development into the buffer areas, particularly in Parson's Creek. Attorney Maher explained to Mr. Born that it's illegal to completely prohibit the granting of variances in a particular area.

Dominique Winebaum of 52 Cable Road alluded to a survey used to guide the Long Range Planning Committee's Master Plan and noted the town's desire to restore and protect wetlands and natural resources.

Karen Oliver pointed out a correction needed on page three, section E(1) pertaining to the measurement of a tree's diameter. She also agreed with Ms. Winebaum's points and noted that the abundance of non-conforming lots in town makes this work more important.

Chuck Marsden noted the erosion and harm caused by developments so close to wetlands and reiterated the need for setbacks.

Suzanne McFarland, referring to §190-3.2(a), pointed out that the wetland maps on the town website are too general and out of date. She asked the board to consider using the New Hampshire Coastal Viewer as a more accurate reference. She also noted that section three states, "wetlands and vernal pools shall be identified by a wetland scientist every ten years". She felt as though ten years is too long, and that NH DES uses a five-year timeline.

Chair Losik agreed that this is a change the board could make.

Referring to section 1a, Ms. McFarland asked if the town is allowing new woods roads.

Chair Losik responded yes.

Ms. McFarland asked if permits are required to harvest marsh hay.

Chair Losik wasn't sure.

Ms. McFarland had concerns about the inclusion of "Wharves" in the definitions section. She also asked who determines whether a tree is diseased.

Speaking to Ms. McFarland, Chair Losik asked if she had any suggestions.

Ms. McFarland responded that the Building Department or residents usually call the Rye Conservation Committee, who may refer to a tree company.

Chair Losik asked Ms. McFarland if guidance for fertilizer use and native plantings is included on the town website. Ms. McFarland responded that she wasn't sure. Chair Losik noted that education on those topics is important. Ms. McFarland addressed agriculture and animals grazing in marshes, which led to problems with fecal matter in the marshes. She pointed this out as an example of old language which needs updating. Ms. McFarland also addressed water impoundment and dams, which are considered harmful and are being removed throughout the state. She suggested that the town consider prohibiting the creation of any new dams in Rye.

Attorney Maher pointed out that the town isn't subject to zoning ordinances. He agreed with Ms. McFarland's assessment that large dams are no longer permitted by the state. Ms. McFarland asked Chair Losik about Forestry in section 2, on page six. Chair Losik confirmed that section 2 will stay as it is.

Diana Wigley of 633 Central Road expressed her appreciation for the board's work on behalf of the wetlands. She shared her concern that the increased workload for the Zoning Board shouldn't be among the board's considerations; what's most important is the protection of the wetlands. Ms. Wigley hoped that the board, using scientifically supported guidance, could draw conclusions while keeping the protection of wetlands in the forefront.

Mr. King echoed Mr. Marsden's thought that a 0' buffer wouldn't be appropriate; that a minimal buffer is necessary so as not to disturb the wetland.

Hearing no further comments, Chair Losik closed to the public at 8:40 p.m.

Chair Losik summarized the proposed changes to Article III:

- 1A - Isolated Non-Bordering Wetlands
- 2A - New Hampshire Coastal Viewer and hyperlink will be added to the town website
- Remove 10 years, change to 5 years
- Include "4.5' above ground level"
- Correct spelling of "streams"
- Change language within F to say "within 75' of edges of all other wetlands that are not named in section §190-3.1H(1a-e) or identified as isolated non-bordering wetlands. Isolated non-bordering wetlands shall have no required buffers."

Vice Chair Lord asked if New Castle had a 50' buffer.

Chair Losik confirmed.

Vice Chair Lord asked whether the town of Rye should consider the same.

Member Carter stated that he believes there should be a 25' buffer.

Chair Losik clarified that New Castle doesn't have a required buffer if the wetland is not bordering.

The board discussed whether or not a buffer should be required of isolated non-bordering wetlands. Member Wright pointed out the need for scientific data to guide such a decision. Member Brandon echoed the need for more information prior to making a decision about buffers; he also noted the variability in wetland size from year to year. Member Carter suggested that section B should include "isolated non-bordering wetlands shall have 25' buffers". Attorney

Maher suggested the language read, “within 25’ of the edges of isolated non-bordering wetlands”.

Chair Losik noted the addition of Isolated Non-Bordering Wetlands to Article XI defined as, “Those areas of 3,000 square feet or less which satisfy the definition of wetlands per article §190-11, but which (1) are not within 100’ of any other wetlands and do not abut tidal lands, ponds, first to fourth order streams or rivers, vernal pools, or freshwater marshes; (2) do not contribute to flood storage or the proper conveyance of surface water runoff; and (3) are not identified as a vernal pool.

Motion by Steve Carter for the amended language for Article III §190-3.1, and an amendment to Article XI as a proposed amendment for the January 3, 2023 hearing. Seconded by Vice Chair JM Lord. All in favor.

ARTICLE II

Attorney Maher proposed the following language within Article II:

“2.3B Uses Permitted by Special Exception: In the S.R. district the following uses are permitted by special exception provided that (1) the criteria or the grant of a special exception set forth in section §190-7.1A(3) is satisfied and (2) there is no disturbance to the local environment visually or from noise, noxious fumes, nighttime lighting, excessive traffic, or any other actions beyond what is customary in the neighborhood.”

Motion by JM Lord for Article II, subject to the changed language within §190-2.3B as provided by Attorney Maher. Seconded by Bill Epperson. All in favor.

ARTICLE III

Noting the time, Chair Losik took stock of the board’s willingness to continue past 9:00 p.m. All in favor.

Attorney Maher summarized Article III changes to the Overlay District, Flood Hazard District, Historic District, Coastal Area District, and Aquifer and Wellhead Protection District.

Chair Losik invited comments from the board; hearing none, she opened to the public at 9:00 p.m.

David Choate of 108 Washington Road, a member of the Historic District Commission, stated that it would be more productive if the board would meet with groups as changes are being proposed, rather than at the public hearing. Referring to page five, section 6B, the elimination of temporary signs, he stated that the language should be left intact. Attorney Maher explained the Supreme Court’s ruling: you can’t establish different standards for signs based upon what they say or the type of sign.

Tom King, Selectman's Rep. on the Historic District Commission, stated that the Historic District Commission has a new, comprehensive set of design guidelines that they'd like incorporated into the Article.

Mr. King also asked about recertification within the wellhead protection section on page 24. Chair Losik explained that Kara Campbell is knowledgeable about information regarding recertification and conditions of approval. Mr. King noted that the updated recertification requirements may be onerous and unrealistic. Chair Losik stated that the topic is beyond this meeting's discussion, but noted that the current process brings solutions at hand more quickly.

Mrs. Winebaum suggested that the Master Plan Steering Committee should be made aware of the Historic District Commission's design guidelines.

Mr. Born, referring to the wellhead protection area, asked about an Aquarion well near Jenness Beach and why it's not listed.

Chair Losik clarified that the Aquarion well is addressed on page 24.

Mr. Born asked if the definitions listed on page 13 are necessary if the state already defines them.

Attorney Maher explained that explicit definitions are needed, even if the town adopts the state's definitions; otherwise, a courtroom would use a dictionary definition.

Mr. Choate asked if 6B is adopted, would temporary signs be prohibited?

Attorney clarified that if 6B were adopted, temporary signs would not be prohibited, but limited to 8 square feet.

Mr. Choate asked what jurisdiction the town would have to regulate the duration of temporary signs.

Attorney Maher explained the 2016 Reed v. Gilbert Supreme Court case and its impacts.

Hearing no further comments, Chair Losik closed to the public at 9:13 p.m.

Speaking to Attorney Maher, Member Wright asked a clarifying question about signage.

Chair Losik asked Attorney Maher if there is a way to incorporate the Historic District Commission's design guidelines.

Attorney Maher suggested adding the following language to the end of b4: "applicants are advised to consult the Town of Rye HDC Design Guidelines 2021 dated December 2021 by the Historic District Commission as those guidelines may be amended."

The board discussed town signage at length; Attorney Maher clarified the Reed v. Gilbert Supreme Court case and its impact on the town's temporary and permanent signage.

Chair Losik listed the changes to Article III, including 3.3D(1b), 3.3E(1), and referencing changes to 2, 3, and 4.

Motion by Chair Losik to send Article III to a second public hearing on January 3, 2023. Seconded by Steve Carter. All in favor.

ARTICLE IV

Attorney Maher summarized Article IV changes, which primarily highlight innovative land use control, the manner with which density is calculated, density bonuses, processes for variances from the provisions to be in line with the statute, and clarification to avoid ambiguity.

Chair Losik invited comments from the board; hearing none, she opened for public comment at 9:34 p.m.

Ms. Winebaum commented that the Planning Board once approved the increase of RCD units. She felt that this was done unfairly and requested the board consider this as the Master Plan is updated.

Chair Losik commented that RCDs have not increased as of late, and the number has remained at ten since the construction of Seaglass Lane.

Mr. Winebaum, referring to number 9 on page 5, suggested striking "other" from "walking trails from the site to other public forest trails, lands, and amenities".

Mr. Borne expressed concern regarding the excellence of design as it applied to the development of Sea Glass Lane. He requested that the board make the process more visible to the public. He also presented concerns about the workforce housing process and expressed a need for a controlled system. Chair Losik clarified the board's current process for workforce housing approval.

Ms. Winebaum, referring to the Retirement Community Development section under D, item four noted that the zoning ordinance states, "not more than 16 dwelling units".

Chair Losik stated that the board would address this.

Hearing no further comments, Chair Losik closed to the public at 9:42 p.m.

The board discussed changing “provisions for public walking trails” to “other public forest trails” as requested by Mr. Winebaum.

Motion by Vice Chair JM Lord to move Article IV with changes to the January 3, 2023, public hearing. Seconded by Steve Carter. All in favor.

ARTICLE V

Attorney Maher summarized Article V, which included changes to parking calculations, content and types of signs, excavation regulations and prohibitions, conservation of condominium conversions, wireless telecommunications ordinance, ADUs, IDDE ordinance, and small wind energy systems.

Chair Losik invited comments from the board.

Selectman’s Rep Epperson asked if a cell tower could be placed upon a piece of land that does not fall within the telecommunications overlay zone.

Attorney Maher explained that if you have the cell tower company provide a radio frequency study that identifies a gap in coverage and that the tower in that location is the only feasible location.

Hearing no further comments from the board, Chair Losik opened to the public at 9:57 p.m.

Mr. Choate, Chair of the Demolition Review Committee, discussed processes for rules and regulations moving forward and agreed to continue the discussion with the board in 2023.

Chair Losik explained that she’s been reading their minutes throughout the year and suggested a change to operate on a 49-business-day cycle.

Mr. King pointed out that “Bethany Church” is no longer accurate and page 20 should refer to the “Congregational Church”. He also asked for the last sentence in that section to be unstruck so that the Historic District Commission will maintain the ability to regulate the appearance of future cellular towers within the historic district.

Speaking to Mr. King, Attorney Maher explained why the language had been stricken.

Mr. Winebaum requested that the board review off-street parking near restaurants in 2023. In response to Mr. Winebaum’s concern, Attorney Maher pointed out a footnote that addresses picnic tables and their affect on a restaurant’s seat count.

Chair Losik noted a correction to the superscript on page three and parenthetical references on page five.

Mr. Born presented a list of his concerns regarding restaurant parking, subsidized trash vs. required recycling for rental property owners, camouflaging of cell towers, cell tower search rings, and ADUs as they relate to water supply.

Member Brandon exited the meeting at 10:08 p.m.

Chair Losik addressed the topic of ADUs. Referring to page 22, item e, Attorney Maher discussed cell tower camouflage.

Chair Losik closed to the public at 10:13 p.m.

Chair Losik reviewed the changes to Article V. On note two, page 20 the name “Bethany Church” will change to “Rye Congregational Church” and two changes will be made to the superscripts in the footnotes. Attorney Maher reminded the board to add a strikethrough on demolition review.

Motion by Chair Losik to move Article V to the warrant striking the proposed language in Demo. 5.9, changing 5.5C from Bethany Church to Rye Congregational Church and changing superscripts for parking on pages three and five. Seconded by JM Lord. All in favor.

ARTICLE VI

Attorney Maher explained that Article VI provides clarification as to when a variance is necessary as it relates to pre-existing nonconforming use or a pre-existing nonconforming structure. It’s intended to clarify ambiguity in consideration of a 3-dimensional rather than 2-dimensional structure. This article also clarifies the definition of obsolescence to include remodeling and renovation of a structure.

Hearing no questions from the board, opened to public comment at 10:18 p.m.

Ms. Winebaum raised a question that the board determined to be related to an item within Article VII.

Hearing no further questions, Chair Losik closed to the public at 10:19 p.m.

Speaking to Attorney Maher, Member Finn asked whether the volume of a structure refers to the square footage of the structure in total or cubic feet. Attorney Maher clarified that volume refers to cubic feet.

Motion by Vice-Chair JM Lord to move Article VI to the warrant. Seconded by Steve Carter. All in favor.

ARTICLE VII

Attorney Maher summarized the contents of Article VII. He explained that the criteria for a special exception are now formatted in a list to be reviewed more easily by applicants. There was a change in the recitation of variance criteria, which now references the statute. He also explained the hearings and notices process mandated by house bill 1661, which now establishes firm deadlines by which the zoning board of adjustment must consider, hear, and rule upon applications. Also, an application for a variance must meet all criteria.

Chair Losik opened to the board for comments; hearing none, she opened to the public at 10:21 p.m.

Ms. Winebaum expressed her concern that she doesn't know when the minutes are posted. Referring to the last paragraph regarding appeals, she noted the application may be amended if minutes and notice of decision are not filed within the required five business days.

Attorney Maher clarified that there's still a requirement to timely file an appeal, but the appeal can be revised and amended based upon when the meeting minutes are made public.

Ms. Winebaum asked how the public is notified when the minutes are made public.

Attorney Maher responded that some municipalities require notification; it's a matter of internal practice.

Ms. Winebaum expressed concern about the delay of the October Zoning Board of Adjustment meeting minutes and the impact upon applicants.

Chair Losik identified that this is something the board could take up in rules of procedure.

Mr. Borne commented that meeting minutes are usually posted after two to three weeks. He suggested that meeting length and chapters could be added to draft minutes for readability. He also suggested that the board utilize more technology during meetings.

Chair Losik closed to the public at 10:26 p.m.

Chair Losik invited Attorney Maher to comment regarding meeting minutes or live streams, noting that the town was previously without a transcriptionist, a position which is now filled.

Attorney Maher responded that the topic of video is more suited to another evening as it would require a much longer conversation.

Mr. Borne noted that the notification on the town website doesn't work. Planning/Zoning Administrator Reed explained that the town doesn't have control over the system and clarified the process to sign up for e alerts.

Chair Losik stated that there are no changes to Article VII, but the board will look into the items presented by Ms. Winebaum for 2024.

Motion by Rob Wright to move Article VII to the warrant. Seconded by Jim Finn. All in favor.

ARTICLE VIII

Attorney Maher summarized changes to Article VIII; most notably 8.3, which is related to the investigation of complaints. He explained the purpose of this is to provide the town with additional prosecutorial discretion as it relates to code enforcement complaints.

Attorney Maher explained the largest change to Article VIII within section 8.4, which relates to administrative decisions. The current process requires prospective applicants to complete an application and receive a denial letter prior to presenting their case to the ZBA. This process places an excessive burden upon the Zoning administration. The change would create another avenue by which prospective applicants could go to the planning and zoning office and get an administrative decision solely related to the interpretation applications of the zoning ordinance, which could then be appealed to the ZBA.

Attorney Maher noted concerns related to item F. The town has contracted with The Rockingham County Planning Commission for guidance in various matters. If there are conflicting opinions among administrators as to how a zoning ordinance is to be applied, an administrator could seek an outside consultant who would serve as a tiebreaker. Attorney Maher proposed language within item F to read, "In the event of any conflict between the decision of a building inspector and an administrative decision of the planning and zoning administrator pursuant to this §190-8.4 regarding the interpretation, application, or construction of this chapter, the matter shall be submitted to the town administrator, who may refer the matter to the Rockingham County Planning Commission or such other individual/entity that may be authorized for an independent determination and, in such instance, the determination of the reviewing entity shall control."

Member Wright asked for clarification as to the administrative process.

Attorney Maher explained the administrative process and noted that this is a codification of what other municipalities do in this situation.

Chair Losik opened to the public at 10:37 p.m.

Mr. Winebaum commented that item F seems very complicated, and this process may work well in Exeter, but it won't work well here with the current staffing. He expressed that applicants should do the appropriate research themselves rather than relying upon town employees.

Mr. Borne summarized his perspective of the issues presented in the variance application process and suggested that the ZBA mimic the Planning Board's use of a technical review committee. He pointed out that land use regulations and zoning ordinances aren't intuitive or user friendly. Mr. Borne suggested that the town invest in education and a clear communication within the Citizen's Handbook, which would resolve a lot of issues for employees and residents alike. He noted that the School Board does an excellent job of making public documents available in advance of the meeting, which makes public commentary much more productive.

Chair Losik commented that the data the Planning Board is working with is structurally different from the School Board's.

Mr. Marsden asked for clarification regarding the Planning Board's direction. He commented that the current application process is costly and cumbersome and that the Building Department is consistently operating under a three-week backlog. He commented that this new process will save a lot of time for the Building Department and asked for clarification as to how the new denial process will work.

Attorney Maher explained that the only time a denial letter would touch upon a zoning-related matter is if an applicant doesn't consult with the Building Department in advance and submits an application for a building permit, which then reveals a non-conforming structure.

Mr. Marsden asked questions specific to the denial letter process, which Attorney Maher clarified and the board discussed.

Chair Losik closed the public hearing at 10:55 p.m.

Motion by JM Lord to move Article VIII with changes to section 8.4, items C, D, and F to the January 3, 2023 public hearing. Seconded by Steve Carter. All in favor.

ARTICLE X

Attorney Maher summarized Article X.

Hearing no comments from either the board or the public, Chair Losik closed the public hearing at 10:56 p.m.

Motion by JM Lord to move Article X to the warrant. Seconded by Steve Carter. All in favor.

ARTICLE XI

The board added the definition for "Isolated Non Bordering Wetlands" to Article XI.

The board discussed the addition of “Principal Dwelling” on page 15.

Chair Losik and Attorney Maher determined that Article XI would need to go to the public hearing with the addition of a definition for “Isolated Non Bordering Wetlands”.

Hearing no further comments from the board, and with no public present, Chair Losik called for a motion.

Motion by JM Lord to move Article XI to the January 3, 2023 public hearing. Seconded by Steve Carter. All in favor.

Chair Losik clarified that Article I, Article V, Article VI, Article VII, and Article X will move to the warrant; all others will move to the second public hearing on January 3, 2023.

Planning/Zoning Administrator Reed asked for clarification regarding driveways.

Chair Losik explained Attorney Donovan’s language regarding driveways and Attorney Maher clarified the related zoning ordinance, which allows the Planning Board to issue a conditional use permit. Attorney Maher stated that if the driveway is within ten feet of the property line, then a variance is needed.

Motion by Planning/Zoning Administrator Reed to adjourn at 11:03 p.m. All in favor.

Respectfully Submitted,

Emilie Durgin