

**TOWN OF RYE – PLANNING BOARD
MEETING**

Friday, June 23, 2023 – 1:40 p.m.

Rye Town Hall

Members Present: Steven Borne, Bill MacLeod, Rob Wright, Steve Carter, Chair Patricia Losik, Vice-Chair JM Lord, Selectmen's Rep. Bill Epperson

Also Present: Planning/Zoning Administrator Kim Reed, Giorgia Nagle

I. Call to Order

Chair Losik called the meeting to order at 1:40 p.m. and called for introductions.

Chair Losik explained that the Board is meeting to review the request for exemption from §202-2.1B(4) the property located at 1191 Ocean Boulevard (Kooks Cafe & Beach Bar).

Chair Losik reviewed what's happened since the Board's last meeting on 6/20/23. She explained that a letter was sent from the Rye Police Department to the state liquor commission. She added that the restaurant has been approved for 34 seats outside and 25 seats inside. The owner will petition the liquor commission to extend privileges of the 25 indoor seats.

Selectmen's Rep. Epperson joined the meeting at 1:43.

Chair Losik explained that in April 2020, at the beginning of Covid, the approved 20 indoor seats became 25 outdoor seats. She added that the liquor commission has been circling back to people to make sure they have the correct license.

Chair Losik, speaking to Ms. Nagle, explained that she must clearly define the locations of expanded space. She noted that the Place of Assembly permit was issued on 6/6/23 by the Fire Department which allows 105 people, but the Planning Board limited seating to 25 inside and 34 outside within a fenced-in area.

Selectmen's Rep. Epperson discussed the definition of "fence".

Chair Losik clarified that if a customer ordered a drink at an outside table and walked to the picnic table area and someone else came to join them, the owner and staff will not serve an alcoholic beverage because the outside already has 34 tables served. It is the responsibility of the owner of Kooks Cafe and Beach Bar or her staff to manage the maximum number of customers.

Member Wright, speaking to Chair Losik, asked if the Board is seeking to amend the language of the letter or requirement for a fence.

Chair Losik explained that if the Board is moving forward with this, it would need to be taken up as a condition.

Chair Losik explained that the current hours of business are 7 AM to 8 PM, seven days a week, which was communicated to the liquor commission; Ms. Nagle has requested to amend those hours.

Vice-Chair Lord noted that items three and four refer to customers instead of seats and that the language limits the number of people on the property and the ability for people to wait for their takeout order. He explained that there needs to be an outside space where people can wait.

Ms. Nagle explained that there is a roughly 8x12' space to the left of the takeout window. She added that there is no waiting area for inside seating, but it could be created by the front door.

The Board discussed the number of customers on-site as opposed to "seated customers".

Member Brandon joined the meeting via Zoom at 1:48.

Chair Losik discussed an email Ms. Nagle sent with the request to amend her business hours.

Ms. Nagle explained that she asked to change the beach store to indoor seats in the summer of 2019. At that point she no longer needed hours from 7-7. She explained that she didn't know that she would be locked into those hours. Now that the business has indoor seating, she no longer opens at 7 AM nor closes at 7 PM.

Member Carter discussed the total number of seats, noting that some seats are intended for people waiting for their takeout orders and are ineligible for alcohol and table service.

Chair Losik and Member Wright discussed Ms. Nagle's change of hours, which would require the Planning Board to amend their Notice of Decision, and the Police Department to write another letter to the liquor commission.

Ms. Nagle stated that she's fairly confident the state is not concerned with her business hours.

Member Borne agreed, stating that in looking at letters from the liquor commissioner, it seems they just care about whether a liquor license is granted for inside or outside, and any occupancy the Fire Department approves.

Member Brandon summarized his understanding of the discussion so far and explained that there's nothing required by the NH Liquor Commissioner that governs hours; hours are something the municipality will work out with the business owner.

Chair Losik, referring to the emailed exemption request, explained that the business owner would like to amend the hours from 7 AM-7 PM to 8 AM-9 PM to accommodate the Planning

Board's Notice of Decision granted 4/1/20. She explained that the request is for the kitchen to open at 8 AM and close at 9 PM with occasional extensions to 11 PM for lingering guests. Chair Losik asked for clarification of that request.

Ms. Nagle discussed her hours of operation and stated that she'd ideally like to serve food from 8 AM to 9 PM with an additional hour of liquor service until 10 PM, and an additional permitted hour for patrons to linger until 11 PM.

The Board discussed what town and state regulations exist regarding hours of food and drink service and the ability for customers to linger on-site after the kitchen and bar have closed.

Chair Losik clarified that Ms. Nagle's chosen hours of operation don't matter to the Board except for its relationship to the exempt request before them, which requires them to review the change of use and consider the adverse impact, additional street parking, sanitary waste loading, traffic hazards, lighting, and noise pollution.

Chair Losik, speaking to Member Macleod, pointed out that he had thoughts at the previous meeting regarding use intensification.

Member Macleod explained that he's reconsidered his position. He explained that residential septic systems are designed and based on the number of bedrooms, while restaurant systems are based on the number of seats, not the hours that those seats are in use. He explained that the increase in hours probably doesn't constitute an increase in flow. He stated that he has no concerns, technically speaking, and he doesn't consider this to be a change of use.

The Board discussed whether there is an intensification of use great enough to have any adverse impacts.

Chair Losik referred to each point of the code related to adverse impact and asked for each Members' feedback.

Regarding the risk of increased traffic hazards:

Wright -Yes
Carter -No
Losik -No
Lord -No
Brandon -No
Borne -No
MacLeod -No

Member Borne was seated for Member Garcia for the vote.

Regarding groundwater and drainage:

Wright -No
Carter -No
Losik -No
Lord -No
Brandon -No
Borne -No
MacLeod -No

Regarding sanitary and solid waste disposal:

Wright -No
Carter -No
Losik -No
Lord -No
Brandon -No
Borne -No
MacLeod -No

Regarding lighting:

In response to Chair Losik, Ms. Nagle clarified that the current lighting would not change

Wright -No
Carter -No
Losik -No
Lord -No
Brandon -No
Borne -No
MacLeod -No

Regarding noise pollution:

The Board clarified that, per town ordinance, music is permitted until 11 PM.

Wright -No
Carter -No
Losik -No
Lord -No
Brandon -No
Borne -No
MacLeod -No

Chief Walsh arrived at 2:16 pm

Regarding Air pollution:

Wright -No
Carter -No
Losik -No
Lord -No
Brandon -No
Borne -No
MacLeod -No

Chair Losik explained that loading is not a concern and that no additional off-street parking is required.

The Board discussed the required number of parking spaces for the business. Ms. Nagle stated that she has enough spots to accommodate the number of seats and employees and they are all lined.

Ms. Nagle summarized her menu and explained that it's classified as a full-service restaurant. She applied for a food license in 2019 and a license to sell beer and wine in 2020, which was approved after the April 14, 2020 Planning Board meeting. She explained that the food truck is not operational.

Planning/Zoning Administrator Reed clarified that Ms. Nagle has a box car on site that the Building Department has approved to be used as signage.

In response to Member Wright's question, Ms. Nagle explained that she has 30 total employees, with four working at one time. She explained that she has 36 total parking spaces and added that she rents the property and there is a four-unit building in the back.

Chair Losik discussed Flood Plane Management and asked Ms. Nagle to explain how she'll respond to flooding with regards to the portapotty.

Ms. Nagle discussed plans for the portapotty and explained that it's placed on the center-most part of the property, away from the water. She added that it's removable at any time, she has a direct line to the company that services it, and it's serviced twice per week. She explained that it's a convenience to her customers and beachgoers as there is no town portapotty. She explained that she's never had to move it in response to flooding.

Chief Walsh expressed concerns from the emergency management department and explained that checking on a portapotty would be labor-intensive for him and the fire chief, especially during storms or high tides.

Member MacLeod pointed out that as long as the portapotty is on dry land during the highest tides, it shouldn't be checked, except during storms.

Ms. Nagle noted that during a large storm over the winter, the portapotty was removed but the water didn't reach that area anyhow.

Member Wright discussed the service schedule and monitoring of the proposed portapotty.

Chief Walsh pointed out that a precedent would be set by allowing this portapotty. He also discussed his concern regarding flood risks.

Member Brandon noted that the Board has a map and a good understanding of which businesses are prone to flooding. He discussed the importance of business owners being proactive in monitoring potential weather threats.

Planning/Zoning Administrator Reed explained that the ZBA discussed the prevalence of portapotties for contractors along Ocean Boulevard.

Chair Losik and Ms. Nagle discussed the most up-to-date diagram with the portapotty and notation of indoor seats as well as the most current information on the existing septic system, dated 2008.

Ms. Nagle explained that she doesn't know when the septic system was last pumped as the landlord takes care of it.

Chair Losik discussed the proposed closing hour of 11 PM.

Chief Walsh explained that follows the town noise ordinance, but the police department will still get complaints, which is why he's asking for more officers.

The Board discussed business hours of similar, nearby restaurants.

Chair Losik discussed the exempt status and noted that it requires a detailed site development and use plan, which the Board does not have.

Selectmen's Rep. Epperson reported that the septic system complies.

The Board discussed whether Ms. Nagle's business changes would qualify as a change of use, intensification, or site development, referring to the definition of each, respectively.

Chair Losik determined the Planning Board recognizes de minimus changes which do not rise to the level of intensification of use that occurred, including the change of hours from 7 AM-7 PM to 8 AM-11 PM. The Planning Board has evaluated that no adverse impacts beyond the site boundaries will occur.

Members MacLeod, Wright, and Brandon discussed the clarity of the business hours.

Member Brandon expressed that hours of operation should be the decision of the business owner.

Chief Walsh stated that the Police Department has received parking complaints regarding deliveries and asked if Ms. Nagle's business can support deliveries on-site instead of Ocean Boulevard.

Mr. Nagle clarified that delivery drivers pull into the parking lot and take ten minutes to deliver food; they've never stopped on Ocean Boulevard. She explained that the deliveries are made on set days within set times and she has relationships with all of the representatives and drivers and is in communication with them. She explained that delivery trucks pull in on the left side of the building in the big parking lot between 10:00 and 1:00. She showed Chief Walsh the diagram of the property, pointing to the place of delivery, and clarified that delivery trucks do not back onto Ocean Boulevard as they can navigate within the parking lot.

Chair Losik stated that Kooks Cafe at 1191 Ocean Boulevard is remaining a restaurant. The Planning Board has determined no changes to represent an intensification in use. Further, there are no adverse impacts beyond site development boundaries per §202-2.1.AB(4)[3][a-c]. The hours are changing from 7 AM-7 PM to 8 AM-11 PM.

Chair Losik suggested a condition of a site sketch to be modified to reflect 34 outdoor seats, corded off, and a delivery area on the left side of the restaurant.

The Board discussed the business hours.

Vice-Chair Lord suggested the Board define customers versus seats on site, noting that the number of customers on-site should be limited to what the fire chief said was permitted: 105 people. That number would include the maximum number of seated customers as well as customers waiting for takeout.

Member Macleod stepped in as an alternate for Member Carter.

Vice-Chair Lord proposed a condition that any further expansion of incremental use of the property should come back with a site plan review

The board discussed the proposed condition and its implications.

Member Brandon discussed his reservations about the condition.

Planning/Zoning Administrator Reed clarified that a change from business to business with no changes could go to the building inspector, get a change of use, and not be forced to come back to the Planning Board unless they were expanding that business.

Ms. Nagle asked if she were to move forward as a current business owner and make changes that include a further expansion or incremental use, she would have to provide a full site plan review.

Chair Losik confirmed.

Motion by Chair Losik in that Kooks Cafe at 1191 Ocean Boulevard is remaining a restaurant, the Planning Board has determined no changes which represent an intensification in use. Further, there are no adverse impacts beyond site development boundaries particularly to the business per §202-2.1.AB(4)[3][a-c]. The hours are changing from 7 AM-7 PM to 8 AM-11 PM. Conditions include the following:

- **A site sketch shall be modified to reflect 34 outdoor seats, corded off, and a delivery area on the south side of the restaurant.**
- **Any further expansion(s) of incremental use on the property shall come to the Planning Board for a full site plan review.**

Seconded by Rob Wright.

Vote: 7-0-0 (S. Borne, B. MacLeod, R. Wright, P. Losik, J. Lord, K. Brandon, B. Epperson)

Motion by JM Lord for the findings of fact that the amount of customers on-site shall be limited to 105 per Rye Fire Department Permit of Assembly dated 6/6/23, however, the maximum number of seats are 25 indoor and 34 outside; outside seating to be corded off. Seconded by Steven Borne.

Vote: 7-0-0 (S. Borne, B. MacLeod, R. Wright, P. Losik, J. Lord, K. Brandon, B. Epperson)

Member Borne asked for clarification as to when the conditioned sketch needs to be done.

Ms. Nagle and Chair Losik agreed on Monday.

Ms. Nagle thanked the Board for their time and exited the meeting.

Chair Losik discussed the workload of the Planning Board and Attorney Donovan's contributions to the Planning Board, noting that he attended 63% of meetings, and that's not including additional site walks, etc.

Chair Losik discussed factors that have increased the amount of time spent on and complexity for members of the Planning Board including regulatory changes; the rewriting of land development regulations and zoning changes; changes to districts which cause applications to become more complex; applications' increasing demands and an increase in conditions of approval as well as the implementation of initiatives.

Selectmen's Rep. Epperson explained that he's requested resources to relieve Planning/Zoning Administrator Reed and Planning Board members and to bolster the planning efforts. He explained the

plan to extend a contract and open a new contract giving 420 hours of planning assistance from the RPC starting 7/1/23 to 6/30/24.

Chair Losik explained that the contract would assist in all planning services including general planning assistance, attendance at meetings, answering questions, and anything that Planning/Zoning Administrator Reed typically does. She explained that the Board of Selectmen meets on Tuesday and this would be a contract between the Planning Board and the town, not out of the Planning Board's budget.

Planning/Zoning Administrator Reed explained that the Planning Board will add to its legal expenses for the 2024 budget to include these hours to pay RPC for planning assistance.

In response to Member Borne's question, Chair Losik confirmed that this person would report to Planning/Zoning Administrator Reed.

Planning/Zoning Administrator Reed explained that this would be similar to when the Board hires peer reviewers for developments, which she coordinates.

Motion by Rob Wright for the Planning Board to enter into an agreement with the Rockingham Planning Commission commencing July 1, 2023, and expiring on 6/30/24 to support its existing Planning and Zoning Administrator in all manner that's required for a maximum total of \$35,040 as outlined in Appendix A. Seconded by Patricia Losik.

Vote: 7-0-0 (S. Borne, B. MacLeod, R. Wright, P. Losik, J. Lord, K. Brandon, B. Epperson)

Motion by Bill MacLeod to adjourn at 3:33 PM. Seconded by Rob Wright. All in favor.

Respectfully Submitted,
Emilie Durgin

RYE PLANNING BOARD

10 Central Road Rye, NH 03870 (603) 964-9800

Notice of Decision

Applicant/Owner: Georgia Nagle, owner Kook's Café & Beach Shop
Jim Murphy aka Searose Properties, LLC owner of property

Location: 1191 Ocean Blvd, Tax Map 17.3, Lot 30
Business District, Coastal Overlay District, SFHA Zone AE (9)

Request: Exempt status from site plan review

Date of Decision: Friday June 23, 2023

Decision: The Board voted that as Kook's Café at 1191 Ocean Boulevard is remaining a restaurant, the Board determined there are no changes in the restaurant use of the site which represent an intensification of use. Further, there are no adverse impacts particular to this business beyond site development boundaries. The Board granted the hours of operation for the restaurant from 8am – 11pm and the request for exempt status from site review per LDR 202-2.1.B(4) as presented by Ms. Nagle, owner of Kook's Café. The exemption and extended hours were granted with the following conditions of approval:

1. Any further expansion or incremental use for this business must come to the Planning Board for Site Plan Review.
2. The site sketch should be modified to reflect 34 outdoor seats, cordoned off, and a delivery area on the south side of the restaurant, and submitted to the Planning & Zoning Administrator on June 26, 2023.

Findings of Fact:

1. The number of customers on site shall be limited to 105, per the Rye Fire Department's occupancy permit dated 6/6/23, however, the maximum number of seats are 25 indoors and 34 outdoors; outside seating to be cordoned off.

6/27/2023

Date

Patricia Losik, ps

Patricia Losik, Chairman
Rye Planning Board