

**TOWN OF RYE – PLANNING BOARD  
MEETING**

**Tuesday, December 19, 2023 – 6:00 p.m.**

**Rye Town Hall**

***Members Present:*** Bill MacLeod, Selectmen’s Rep. Bill Epperson, Chair Patricia Losik, Vice-Chair JM Lord, Steve Carter, Jim Finn, Steven Borne

**I. Call to Order**

Chair Losik called the meeting to order and seated Steven Borne, Jim Finn, and Bill MacLeod in place of Kevin Brandon, Rob Wright, and Kathryn Garcia, who were not present.

**II. Public Hearing on Proposed Amendments:**

A. LDR 2024-03: Amend 202-7.1 surety per Senate Bill 78

The board discussed LDR 2024-03: Amend 202-7.1 surety per Senate Bill 78 and Chair Losik opened to the public at 6:10 PM; hearing no comment, the public session was closed.

**Motion by JM Lord to approve LDR 2024-03: amendment 202-7.1 surety per Senate Bill 78. Seconded by Bill Epperson.**

**Vote: 7-0-0** (S. Borne, J. Finn, S. Carter, J. Lord, P. Losik, B. Epperson, B. MacLeod in favor)

**III. New Business**

A. Request from Attorney Kevin Baum on 0 Airfield Drive, Tax Map 10, Lot 15-4 amend the LOC

Chair Losik explained that Attorney **Kevin Baum** provided a letter dated 12/13/23 regarding surety and submitted to the Planning Board a formal request that Condition 8 be amended to permit the use of a surety bond and avoid potential conflict with terms of the board’s 2018 special use permit approval.

Attorney Baum explained that the housing partnership submitted a letter of credit. He explained that the change of form frees up funds under the existing loan to use toward construction. He stated that he’s discussed this with Attorney Maher and though the LDR will change, he wanted to request an amendment since it was an expressed condition of approval.

**Motion by JM Lord to amend the conditions of approval for the Housing Partnership at 0 Airfield Drive, Tax Map 10, Lot 15-4, Condition of Approval #8 as follows: Surety in the amount of \$958,450.00 in the form of a self-calling letter of credit and all cash escrow or bond enclosed to guarantee the completion of all infrastructure including the private**

**drives, all drainage facilities, waterlines, sidewalks, retaining walls, and fences. Surety to be approved by town council. Seconded by Steve Carter.**

**Vote: 7-0-0** (S. Borne, J. Finn, S. Carter, J. Lord, P. Losik, B. Epperson, B. MacLeod in favor)

**Public Hearing on Proposed Amendments (Continued):**

**B. LDR 2024-01: Add Section 202-5.5 RE: Hearings on HOA per House Bill 42**

Member Carter explained that this new section would describe how to dissolve an HOA. It was written by the town council, corresponds with House Bill 42, and would be inserted into §202-5.5 of the LDR.

Selectmen's Rep. Epperson inquired if item E refers to a hearing between the Planning Board, Zoning Board, and HOA, which Member Carter confirmed.

The board discussed HOAs in Rye and **Chuck Marsden** discussed the process of issuing building permits in an HOA.

Chair Losik opened to the public at 6:26 PM; hearing no comment, the public session was closed.

**Motion by JM Lord to table this subject for town council review and continue at the January 16, 2023 meeting. Seconded by Bill Epperson.**

**Vote: 7-0-0** (S. Borne, J. Finn, S. Carter, J. Lord, P. Losik, B. Epperson, B. MacLeod in favor)

**C. LDR 2024-02: Amend Driveway regulations Appendix E 5-E(M) per House Bill 296**

Member Carter noted the change that the board shall seek comment from the Fire Chief to comply with House Bill 296.

Chair Losik noted that the state fire code doesn't supersede local land use board authority over driveways when it's not governed by RSA 236-13 for one and two-family dwellings, effective 10/3/23.

Chair Losik opened to the public at 6:31 PM; hearing no comment, the public session was closed.

**Motion by JM Lord to approve LDR 2024-02 on Driveway regulations as amended. Seconded by Steven Borne.**

**Vote: 7-0-0** (S. Borne, J. Finn, S. Carter, J. Lord, P. Losik, B. Epperson, B. MacLeod in favor)

**D. RZO 2024-01: Amend 190-2.2. D**

Member Carter explained that this amendment clarifies that two lots containing two or more dwelling units and/or structures in a condo form of ownership pursuant to a condo conversion authorized under section §190-5.3 shall be deemed to have two or more principal dwellings on the lot and no such dwelling unit and/or structure shall be expanded in the manner reflected in §190-2.2.D(2)(A).

Chair Losik described Attorney Maher's added language in D to Z regarding the expansion of a dwelling unit. She suggested that the explanation in the definition applies to and could be used for both.

The board discussed the process for condominium expansion, variances, and the definition of "nonconforming".

Chair Losik read aloud a 9/6/23 memo to the board from Attorney Maher.

Member MacLeod and Chair Losik discussed principal dwelling units.

Chair Losik opened to the public at 6:50 PM; hearing no comment, the public session was closed.

**Motion by JM Lord to move RZO 2024-01 to the public warrant with the change in explanation that was used for 2024-02. Seconded by Steven Borne.**

**Vote: 7-0-0** (S. Borne, J. Finn, S. Carter, J. Lord, P. Losik, B. Epperson, B. MacLeod in favor)

**E. RZO 2024-02: Amend definition of Principal Dwelling**

Member Carter explained that this amendment would add condominiums as a primary or predominant structure to which a property is devoted to residential use and to which all the uses and structures on the premises are subordinate or accessory. He stated that condominium units on the same lot, whether within the same dwelling structure or detached, shall each be considered a principal dwelling for the purpose of this section 190.

Chair Losik opened to the public at 6:52 PM; hearing no comment, the public session was closed.

**Motion by JM Lord to move RZO 2024-02 to the public hearing. Seconded by Steven Borne.**

**Vote: 6-0-1** (S. Borne, J. Finn, S. Carter, J. Lord, P. Losik, B. Epperson in favor, B. MacLeod abstained)

#### **IV. Public Hearings on Applications:**

**B. Major Non-Residential Site Development and Condominium Amendment by Robin Wehbe for property located 2203 Ocean Blvd, Tax Map 5.3, Lot 28, Units A & B to raze the existing structures that are currently being used as a yoga business and build two residential units. Property is in the Business District, Coastal Overlay District and SFHA Zone AO (2). Case #17-2023. Request a continuance to the January 16, 2024 meeting.**

**Motion by JM Lord to continue the application to the January 16, 2024 meeting. Seconded by Bill Epperson.**

**Vote: 7-0-0** (S. Borne, J. Finn, S. Carter, J. Lord, P. Losik, B. Epperson, B. MacLeod in favor)

#### **V. Proposed Amendments for schedule of a public hearing**

##### **A. FPO 2024-01: Amend 60-6 Substantial Improvement/Substantial Damage.**

Member Carter explained this amendment is regarding the look-back period on substantial improvement and damage determination. Currently, the town has no look-back period for improvements and he explained the changes and implications.

Mr. Marsden discussed the look-back period, substantial improvement, and FEMA regulations.

Member MacLeod suggested that a ten-year period is too long and a 5-year may be more reasonable, which he discussed with Mr. Marsden and other board members. There was also a discussion of flood zones.

**David Choate**, Chair of the Demolition Review Committee, discussed cases where residents initiated a small addition, but the cost of bringing a whole structure up to code made it so they had to tear the structure down. He stated that it's frustrating and wondered what the solution is.

Mr. Marsden discussed the old residential code, Appendix J, and common misconceptions.

Member Carter questioned the last sentence, "ten year period begins on the date of the first permit issued for improvement or repair of that structure subsequent to March 12, 2024". The board discussed this language and when tracking would begin. The board agreed, going forward they will use a five-year period.

**Motion by JM Lord to move this to a public hearing with the discussed amendment to use a five-year period moving forward. Seconded by Jim Finn.**

**Vote: 7-0-0** (S. Borne, J. Finn, S. Carter, J. Lord, P. Losik, B. Epperson, B. MacLeod in favor)

**B. RZO 2024-03: Amend the Historical District Boundary**

**David Choate**, 108 Washington Rd, member of the Historic District Commission presented a proposed expansion of the Historical District boundary. He explained that 1966 original documentation for the town's historic district had recently been discovered. The HDC applied for and received a CLG grant to document the existing district and look at other areas of logical expansion. He summarized page 109 of the report, which suggests a section of Central Road to be included. He discussed the possible readjustment of property lines and proposed to move this to a public hearing to then have more intimate meetings in addition to the public hearing and deliberative sessions.

Selectmen's Rep. Epperson asked if all affected residents agreed with the shift in the historical district.

Mr. Choate stated that they are aware of it and the HDC hasn't heard of any objections. He stated that they were invited to the October HDC meeting and two people showed up with questions regarding use. He stated that people on Meadow Lane had concerns, but they haven't heard any more about that. He stated that it's important to protect this vista.

Member Carter asked what implications this would have for the trolley barn on Central Road.

Mr. Choate stated that any change to the structure would have to come through the HDC.

Chair Losik asked if the consultant's report is on the HDC's landing page. Mr. Choate stated that it's not yet as it's not finished, but it will be available before the deliberative session.

Chair Losik and Mr. Choate discussed the current language within the ordinances and bylaws

Member MacLeod asked if all owners have been notified and have no objection.

Mr. Choate clarified that he didn't say that. He stated that they'd been notified and invited to a meeting, and a couple showed up. He stated that people on the HDC who live in the district have spoken to them and if they objected, like the Moynahans do, they would have shown up. He stated that the HDC will make a conscious effort to get them together, give them the consultant report, and answer their questions after the first of the year.

Member MacLeod noted that, according to the report, all land behind 45 Central Road would be in the Historic District.

Mr. Choate wondered what could someone do on this land realistically.

Member MacLeod observed that the house is historic but the land is not historic. He suggested that the district area could be described without including the extra piece of land. He explained concerns regarding ADUs on Meadow Lane and suggested that a meets and bounds description be used.

Chair Losik asked if the consultant discussed anything regarding Meadow Lane. Mr. Choate stated that they discussed detached ADUs, setback requirements, and preserving the historic vista.

Member MacLeod discussed the possibility of defining the areas by meets and bounds.

Mr. Choate stated that he would rather use the original district boundary lines and stated that it could be tweaked in the future.

Member MacLeod asked if it's permitted to rezone less than what was proposed with an amendment. The board determined that neither land use nor zoning can be amended.

Vice-Chair Lord observed that the intent seems to be to control architecture, not land, along Central Rd. He stated that Member MacLeod's suggestion of using meets and bounds is extremely logical; if the HDC were to object, he would question their objective.

Mr. Choate stated that if this didn't get into the cycle, the HDC would amount to a citizen's petition.

Selectmen's Rep. Epperson stated that the board should approve it and asked Mr. Choate if he understood the downside.

The board determined that Member Borne, Vice-Chair Lord, Member MacLeod, and Member Finn would want to amend to include a meets and bounds description, which would require another meeting.

**Motion by Steve Carter to move this amendment to the Rye Zoning Ordinance 190-3.3A to amend the definition of the Historic District as follows in the text and move it to a public hearing. Seconded by Pat Losik with the change to the explanation as previously described.**

**Vote: 3-4-0** (S. Carter, P. Losik, B. Epperson in favor, S. Borne, J. Finn, J. Lord, B. MacLeod opposed)

The board scheduled a special meeting on January 2, 2024.

Chair Losik discussed the proposed amendment 2024-05, which was pulled.

**Tom Pfau** of 15 Seaglass Lane, Co-Chair of the Energy Committee, explained the background of the amendment. He explained that the amendment is regarding the town's strict energy code which strives to make homes more energy efficient. He stated the code requires testing for mechanical ventilation by a third party, not the building inspector. He discussed the cost of testing and inspection and pushback from builders over the expense. He stated that the alternative is to enroll in the NH Saves program, which is free, and provides inspection and testing. He stated that this amendment is a backdoor way of requesting houses that are healthy, safe, more sustainable, and with lower emissions.

The board discussed the building code stringency, the wording within the building permit application to highlight the code's language, and the HERS reports.

Mr. Marsden explained that they could shine a spotlight on more sections of the energy code to make builders more aware of what's expected of them.

Member MacLeod discussed his personal experience regarding the expense required to meet the code noting that in the long run, it's worth it, but some can't afford it. He also agreed that a third party would be needed for inspections.

Chair Losik noted that Rules and Regs, while supportive of the effort, determined that this isn't the right time to add to 8.2. She stated that it would go into the zoning ordinance, not the building code.

### **C. RZO 2024-04: Amend 190-5.7 Stormwater Management**

Member Carter explained that this amendment ensures that an engineer certifies that the town's storm drainage system can accommodate the additional flow of a property. Losik -believe this came from a ZBA member.

Member MacLeod suggested section C be edited by removing "now and in the future" so it will read, "shall accommodate the additional flow".

Chair Losik suggested that it should say, "to reduce overburden and protect town's storm drainage system".

**Motion by JM Lord to move this as amended to a public hearing on January 16, 2024. Seconded by Jim Finn.**

**Vote: 7-0-0** (S. Borne, J. Finn, S. Carter, J. Lord, P. Losik, B. Epperson, B. MacLeod in favor)

**D. RZO 2024-06: Amend 190-5.9 Demo Review**

Member Carter explained that the board decided not to change Demo Review in zoning last year. He explained that this year adjustments were made and read aloud the changes to E.2.A.

Chair Losik suggested a minor change to F, paragraph 1 to reference section §190-5.9E(4).

Chair Losik suggested a minor change to E.2(B) where “significant” is old language and shouldn’t be italicized or bolded.

**Motion by JM Lord to move this to a public hearing on January 16, 2024. Seconded by Steven Borne.**

**Vote: 7-0-0** (S. Borne, J. Finn, S. Carter, J. Lord, P. Losik, B. Epperson, B. MacLeod in favor)

**E. RZO 2024-07: Amend 190-2.1 Zoning Map**

**F. RZO 2024-08: Amend 190-3.1.H (1) & (2) mean high watermark**

Member Carter discussed the rewording of the amendment and read aloud the new buffer description.

The board discussed the mean high water mark, vernal pools, and the new wording in sections A and B.

**Motion by JM Lord to move 2024-08 to the January 16, 2023 public hearing. Seconded by Steven Borne.**

**Vote: 7-0-0** (S. Borne, J. Finn, S. Carter, J. Lord, P. Losik, B. Epperson, B. MacLeod in favor)

**VI. Other Business:**

**A. Master Plan Public Forum set for February 15, 2024 at the Rye Jr. High 6:30-8:00 pm**



Chair Losik stated that the Existing Conditions Report is still working through its edits and will be out in January and that Member Wright could give an update at the next meeting.

### **B. Rules and Regs update**

Chair Losik stated that Rules and Regs updates had previously been discussed.

### **C. TRC**

Vice-Chair Lord stated that the TRC meeting went well and that the committee was able to give the applicant a good direction to start down.

Member MacLeod noted how helpful it was that the applicant's architect was present for the meeting. He commented that the meeting was very productive and should be done more often.

Ms. Dilonno agreed that it was a good meeting and very productive. She stated that there were some reservations about timing, but they could cross that bridge when we got there.

Chair Losik discussed the changes to Farmington's ordinances regarding TRC and Change of Use noting that it's a worthwhile document and that she'd like to do some work on that in the spring.

The board discussed the role of the TRC.

### **D. New Business**

Member Borne discussed a report by FB Environmental report regarding the contamination of Parsons Creek. Selectmen's Rep. Epperson stated that the Selectboard would take this up.

Member Borne stated that a summary of Planning and Zoning Boards was sent and observed that most variances are related to wetland buffers and setbacks. He expressed concern that the number of variances is going up.

The board discussed this concern and Chair Losik stated that the RPC and Jenn Rowden can help with this.

## **VI. Communication - Minutes and Escrows**

### **A. November meeting minutes**

**Motion by Steve Carter to approve the November meeting minutes. Seconded by Jim Finn.**

**Vote: 7-0-0** (S. Borne, J. Finn, S. Carter, J. Lord, P. Losik, B. Epperson, B. MacLeod in favor)

**B. Escrows**

**Motion by JM Lord to pay the following escrows:**

- A. For the Rye Airfield Partnership pay Sebago in the amount of \$272.37 and Sebago in the amount of \$1,093.85**
- B. For Marsden Woods pay Sebago in the amount of \$1,124.47 and Sebago in the amount of \$1,647.83**
- C. For Split Rock, 15 Sagamore pay Sebago in the amount of \$132.24**
- D. For Thompson's Landing pay Sebago in the amount of \$218.10 and Sebago in the amount of \$260.00**
- E. For 665-667 Wallis Road pay Sebago in the amount of \$280.00.**
- F. For 2203 Ocean Boulevard pay Sebago in the amount of \$1,074.00**

**Seconded by Jim Finn.**

**Vote: 7-0-0** (S. Borne, J. Finn, S. Carter, J. Lord, P. Losik, B. Epperson, B. MacLeod in favor)

**Motion by Jim Finn to adjourn at 9:00 PM. Seconded by Bill MacLeod. All in favor.**

Respectfully Submitted,  
Emilie Durgin