

TOWN OF RYE – PLANNING BOARD

Tuesday, February 14, 2017 – 7:00 p.m.

Rye Town Hall

Members Present: Chairman Bill Epperson, Vice-Chair Phil Winslow, Mel Low, Jerry Gittlein, Keriann Roman, Selectmen's Rep Priscilla Jenness, Alternates Pat Losik, Jeffrey Quinn. Anne Richter-Arnold and Katy Sherman.

Others Present: Planning Administrator Kimberly Reed

I. Call to Order and Pledge of Allegiance

Chairman Epperson called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance.

II. Designation and appointment of alternates

Chairman Epperson seated Jeffrey Quinn for J.M. Lord.

III. Approval of the January 10, 2017 meeting minutes

The following corrections were noted:

- Page 3, 3rd paragraph from bottom, 1st sentence should read: **Stephen Pernaw, Pernaw and Company, representing the Board, stated that he was retained to do the peer review for the traffic study that was done for this particular subdivision.**
- Page 7, 3rd paragraph from bottom, 2nd sentence from bottom should read: **This may be a way to get that through; however, he does not think there is that kind of visibility problem.**
- Page 5, 1st paragraph, 1st sentence should read: **Their only concern was the island on Woodland Road.**

Motion by Phil Winslow to accept the minutes of January 10, 2017 as amended. Seconded by Jerry Gittlein. Vote: 6-0-1. Abstained: Priscilla Jenness.

**IV. Submittal of Applications for Determination of Completeness
Not a public hearing – Action Required:**

- a. Conditional Use Permit by Chris Redmond for property owned by John Fulkerson and located at 25 Washington Road, Rye NH, Tax Map 17, lot 74 for an accessory dwelling, per Section 506 of the Rye Zoning Ordinance. Property is in the General Residence District. Case #02-2017.

The Board reviewed the packet of information submitted with the application.

The members agreed the packet was complete.

Motion by Phil Winslow to move Case #02-2017 to a public hearing. Seconded by Jeffrey Quinn. All in favor.

V. Public Hearings on Applications:

- a. Conditional Use Permit by Chris Redmond for property owned by John Fulkerson and located at 25 Washington Road, Rye NH, Tax Map 17, lot 74 for an accessory dwelling, per Section 506 of the Rye Zoning Ordinance. Property is in the General Residence District. Case #02-217.

Chris Redmond, representing the applicant, reviewed the Accessory Dwelling Unit Checklist for the Board.

Referring to the parking near the barn on-site, Member Losik asked how the barn is used.

Brad Fulkerson, property owner, explained that the barn is used for storage of gardening equipment. The parking is in front of the doors.

Vice-Chair Winslow asked if they are living on the property.

Mr. Fulkerson stated that when he purchased the property five years ago, with his father, the plan was that the property would be a family property. The apartment has not been used to this point. The plan is for his parents to use the apartment as their living space.

Chairman Epperson asked if they have spoken with the Building Inspector about the requirement of a separate cooking area.

Mr. Redmond explained that they have received a permit for the renovation of the apartment over the garage; however, it did not include the kitchen. The approval from the Planning Board will allow them to put in an actual kitchen.

Chairman Epperson asked if there is existing plumbing.

Mr. Redmond explained there is plumbing for the kitchen and bath; however, those have been demoed and will need to be redone to code.

Chairman Epperson noted that NFPA Life Safety Codes will need to be followed.

Member Quinn asked the height of the building for the proposed accessory dwelling.

Mr. Redmond replied it is about 26ft. (He continued to review the checklist.)

Chairman Epperson asked if the septic plan for the NH DES approval is required to be done.

Mr. Redmond explained that the Building Inspector required an inspection of the current system. It was deemed to be in good shape. The septic design will be on file. If the septic was not in good shape the Building Inspector would have required that the septic be replaced.

Vice-Chair Winslow asked if the design is for a four or three bedroom septic.

Mr. Redmond explained that the new design is for a four bedroom septic.

Member Quinn asked the age of the septic.

Mr. Redmond replied that he is not sure. Based on the evaluation of the system, they felt like it was about 20 years old.

Planning Administrator Reed noted that the septic design was approved by the Town's septic consultant, Dennis Plante, as well as Rye Water District.

Member Roman noted that NH DES did the calculations for five bedrooms, four in the main house and one in the accessory unit. It says that the existing system can easily handle that. In the approval, for the number of bedrooms they put four. This is an error on the part of DES. She wanted to point out that although the approval says four, DES has done the calculations and five can be accommodated.

Speaking to Mr. Fulkerson, Planning Administrator Reed suggested that this number be changed to five.

Chairman Epperson agreed that this should be done right away.

Mr. Redmond continued with the review of the checklist.

Referring to the floor plan, Chairman Epperson asked if a CAD plan could be produced for the Building Department files.

Mr. Redmond confirmed. (He reviewed the access and egress on the plans for the Board.)

Planning Administrator Reed noted that before a Certificate of Occupancy can be issued for the apartment, the Building Inspector and the Fire Department will do a final inspection.

Chairman Epperson reviewed:

- Floorplan to be provided for files;
- NH DES approval to be corrected for a septic approval for 5 bedrooms; and
- Verify that the septic design does not need to be replaced at this time.

He asked the Board if they agree the application is complete.

The Board agreed.

Chairman Epperson noted that the required Zoning Ordinance 506.4, checklist, has been submitted. The Performance Standards, 506.3, have been reviewed.

Motion by Phil Winslow to accept jurisdiction. Seconded by Jerry Gittlein. All in favor.

Chairman Epperson opened to the public for comments or questions. Hearing none, he closed the public hearing at 7:45 p.m.

Motion by Phil Winslow to approve the Conditional Use Permit by Conditional Use Permit by Chris Redmond for property owned by John Fulkerson and located at 25 Washington Road, Rye NH, Tax Map 17, lot 74 for an accessory dwelling, per Section 506 of the Rye Zoning Ordinance, property is in the General Residence District, Case #02-2017, with the following contingencies;

1. Floorplan to be provided for existing first floor and second floor;
2. Building Inspector to verify that the septic system design does not have to be installed; and
3. Pending the adoption of Proposed Zoning Amendment #1 at the March Town Vote.

Seconded by Jeffrey Quinn. All in favor.

- b. Major Subdivision, Lot Line Adjustment and Conditional Use Permit by Harbor Street Limited Partnership of Stratham NH for properties located at 421 South Road, Tax Map 4, Lots 25, 27, 31 & 32 for a 22 lot subdivision. Properties are in the Single Residence District and within the Aquifer and Wellhead Protection District. Case #13-2016.

- **Request to continue to the March 2, 2017 Planning Board Meeting.**

VI. Payment of Escrows:

A. Sebago Technics

- a. Harbor Street Limited Partnership Escrow - \$1,156.48
- b. Binnie Subdivision Escrow - \$437.50
- c. Old Ferry Landing Escrow - \$451.25
- d. 561 South Road Escrow - \$421.25
- e. Sea Glass Lane Escrow - \$288.00
- f. Sea Mist Escrow - \$167.75
- g. Stoneleigh – Harbor Street Escrow \$2,828.00

Motion by Phil Winslow to pay Sebago Technics for the invoices submitted. Seconded by Jeffrey Quinn. All in favor.

B. Attorney Donovan

- a. Harbor Street Limited Partnership Escrow - \$4,007.50

Motion by Phil Winslow to pay Attorney Donovan in the amount of \$4,007.50. Seconded by Jeffrey Quinn. All in favor.

C. Others

- a. Stephen G. Pernaw and Company from Harbor Street Escrow - \$3,300.00

Motion by Phil Winslow to pay Stephen Pernaw and Company in the amount of \$3,300.00. Seconded by Jerry Gittlein. All in favor.

- b. Joe Noel from Harbor Street Escrow - \$2,443.86

Motion by Phil Winslow to pay Joe Noel in the amount of \$2,443.86. Seconded by Mel Low. All in favor.

- c. Danna Truslow from Harbor Street Escrow - \$2,728.75

Motion by Phil Winslow to pay Danna Truslow in the amount of \$2,728.75. Seconded by Jeffrey Quinn. All in favor.

- d. West Environmental from Harbor Street Escrow - \$1,479.95

Motion by Phil Winslow to pay West Environmental in the amount of \$1,479.95. Seconded by Jeffrey Quinn. All in favor.

VII. Old Business

- None

VIII. Communications

- None

IX. Other

- Chairman Epperson noted that after the Town Vote in March the Board will begin working on appointing members to the sub-committees and move forward on work for the new year.
- **March Planning Board Meeting to be held on Thursday, March 2nd**

Adjournment

Motion by Jeffrey Quinn to adjourn at 8:05 p.m. Seconded by Phil Winslow. All in favor.

Respectfully Submitted,
Dyana F. Ledger

Peter J. Loughlin

ATTORNEY AT LAW

LEONARD COTTON HOUSE • STRAWBERY BANKE
144 WASHINGTON STREET
P.O. BOX 1111
PORTSMOUTH, NH 03802-1111

TELEPHONE 603-431-6466
FAX 603-436-4079

E-MAIL
peter.loughlin@pjllaw.com

February 10, 2016

VIA EMAIL

Kimberly Reed, Planning & Zoning Administrator
Rye Town Hall
Central Road
Rye, NH 03870

RE: STONLEIGH SUBDIVISION - SOUTH ROAD

Dear Kim:

In order to give Harbor Street Limited Partnership more time to respond to questions that were raised at the Tuesday evening, February 8th work session, on behalf of Harbor Street, I respectfully request that the hearing scheduled for Tuesday, February 14th, be continued to the next meeting of the Rye Planning Board, which I believe is scheduled for Thursday, March 2nd.

In accordance with RSA 676:4, I(f), Harbor Street hereby waives the requirement for Planning Board action within sixty-five (65) days and agrees to an extension of an additional 65 days for consideration of this application.

Respectfully submitted,



Peter J. Loughlin

PJL/dea

Cc: Michael Donovan, Esquire
Harbor Street Limited Partnership
Falzone\2017-02-10 Ltr to Reed Re Extension

MICHAEL L. DONOVAN

Attorney and Counselor at Law

52 Church Street
PO Box 2169
Concord, NH 03302-2169

Tel. (603) 731-6148
Fax: send a pdf
mdonovanlaw62@gmail.com

MEMORANDUM

TO: Rye Planning Board

RE: Accessory Dwelling Unit CUP Application
25 Washington Road

DATE: February 11, 2017

Dear Board Members:

Planning and Zoning Administrator Kim Reed has asked me to explain two things relative to the pending CUP application for an accessory dwelling unit at 25 Washington Road.

1. How the board can hear the application when the zoning amendment establishing the CUP procedure will not be voted upon until March 14, 2017.
2. The CUP approval procedures.

Implications of RSA 676:12, I.

RSA 676:12, I. prohibits the building inspector from issuing a building permit within 120 days prior to the town meeting if proposed changes in the building code or zoning ordinance would, if adopted, justify refusal of the permit. This prohibition applies only if the proposed change was posted for public hearing by the planning board prior to the application for the building permit.

In most typical scenarios, when faced with this prohibition, an applicant for a building permit may proceed if he/she amends the permit in a manner which complies with both the existing and the proposed regulation. For example, there may be a zoning amendment pending to increase a side yard setback requirement from 20 ft. to 25 ft. If the building permit application shows a 25 ft. setback, it can be approved because it complies with both the existing and the proposed setback.

The pending zoning amendment on accessory dwelling units changes the procedure from a special exception granted by the ZBA to a CUP granted by the planning board. Also, several new performance standards have been added. Because of these proposed changes, when the 25 Washington Road application came in January, the building inspector could not have referred the applicant to the ZBA for a special exception. Even if the special exception were granted, he could not issue the building permit due to the RSA 676:12, I. prohibition.

Memo: Rye Planning Board
February 11, 2017
Page 2 of 2

Rather than making the applicant wait an additional two months, the building inspector and planning and zoning administrator allowed him to move forward under the proposed ordinance. In my opinion, this is a reasonable interpretation of how to apply RSA 676:12, I. to circumstances more complicated than the framers of the statute envisioned, even though the new process and new standards will not become effective until voted upon on March 14, 2017.

However, if the board approves the CUP, it should state in its Notice of Decision that the approval is effective March 15, 2017 and only if Zoning Amendment No. 1 is adopted. A building permit should not be issued until after March 15, 2017.

The downside to this approach is that, if Amendment No. 1 is not enacted, the CUP exercise will have been a waste of time for the applicant and for the board. The applicant would then have to go to the ZBA for a special exception. However, when balanced with having the applicant wait in limbo for +2 months, I believe the building inspector and planning and zoning administrator made a reasonable and lawful decision on how to proceed.

The CUP Process.

First, the board needs to review the application for completeness. If the information required by RZO § 506.4 has been submitted, then the application should be deemed complete and the board should move it forward to public hearing.

Next, the board should review the application against each of the 15 performance standards of RZO § 506.3. I do not believe the board needs to formally vote on each of the 15 standards, but the minutes should clearly record whether or not each is met.

Lastly, if each of the 15 performance standards has been met, the board must approve the application for a CUP. It may not be denied.

I hope this memorandum is helpful to the board as it proceeds with its first application under the new ordinance.

Very truly yours,



Michael L. Donovan

Cc Rye Building Inspector (By Email)

Town of Rye, New Hampshire Accessory Dwelling Unit Checklist

1. ____ **Conditional Use Permit** required, heard by the Planning Board
2. ____ **Zoning:** Single, General Residence or Business Districts. [506.2]
Yes, house is in General Residence
3. ____ **Floor Area Minimum:** 600 SF. [506.3A]
4. ____ **Floor Area Maximum:** 1200 SF. [506.3A]
Floor Area = 1028 sf
5. ____ **Cooking:** Separate cooking area with kitchen/bathroom. [506.3A]
Yes, there is a kitchen and one bathroom.
6. ____ **Bedrooms:** Maximum of two bedrooms. [506.3A]
There is one bedroom.
7. ____ **Occupancy:** Maximum occupancy of three persons, one bedroom shall not have more than two (2) occupants. [506.3B]
There will be two occupants.
8. ____ **Parking:** Two additional off-street parking spaces. [506.3C]
Yes, two parking spaces are available. See attached site plan.
9. ____ **Appearance:** Single-family structure appearance. [506.3D]
Yes, the accessory dwelling unit is located above the garage.
10. ____ **Location:** An integrated part of existing single-family dwelling. [506.2]
Yes, there is an interior door leading from the main house to the ADU.
11. ____ **Dimension Requirements:** Compliance with 203.3. [506.3E]
Yes, see attached site plan
12. ____ **Owner-Occupied:** Property owner must reside on premises. [506.3F]
Yes, the occupant of the ADU co-owns the property with his son.
13. ____ **DES Approval:** NHDES approval for on-site waste disposal system. [506.3G]
Yes, see attached approval.
14. ____ **Water Approval:** Certification from public water supplier. [506.3H]
Yes, see attached approval.
15. ____ **Interior Door:** An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit. [506.3M] **Yes.**
16. ____ **Zoning:** All other zoning requirements shall be met. [506.3O]
Yes, all requirements have been met.
17. ____ **Septic Plan:** Property layout showing proposed septic plan. [506.4A]
Included in application

- 18.____ **Parking Plan:** Parking plan showing two spaces for accessory apartment. [506.4B]
Included in application
- 19.____ **Floor Plan:** A floor plan of all rooms on the premises and the uses thereof. [506.4C]
Included in application
- 20.____ **Access and Egress:** Plan showing access and egress. [506.4D]
Included in application
- 21.____ **Fire Chief Approval:** Approval must be received from the fire chief. [506.4E]
Yes, see attached approval.
- 22.____ **Elevation Views:** Elevation views of buildings whenever exterior changes are proposed.
[506.4F] **Included in application**
- 22.____ **Recertification:** Every two years after approval, and when the dwelling is sold, the owner of the dwelling and all adult occupants of the accessory apartment shall file an affidavit with the

Rye Water District

60 Sagamore Road
PO Box 156
Rye, NH 03870-0156
(603)436-2596
Fax (603) 436-6257

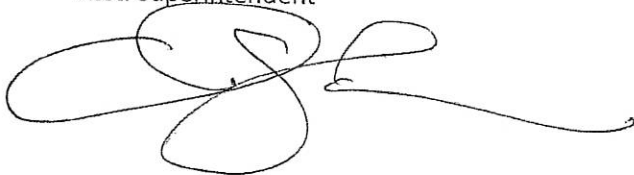
January 23, 2017

This letter is to confirm water service for 25 Washington Road in Rye. This property was previously being billed as a single unit. We have been made aware, as of this date, of the multi units and will supply water to the property accordingly.

Please let us know if you should have any other questions.

Sincerely,

Arik Jones
Asst. Superintendent

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by a long horizontal stroke that ends in a small loop.



Tom Lambert
Fire Chief
tlambert@town.rye.nh.us

RYE FIRE DEPARTMENT
555 Washington Road
Rye, New Hampshire 03870
www.town.rye.nh.us



Business (603) 964-6411
FAX (603) 964-9894

Date: 1/23/2017

Mr. Chris Redmond
13 Alden Ave.
Greenland, NH 03840

After reviewing the plans for your accessory apartment and addition at 25 Washington Rd, The Rye Fire Department approves your request. You will be required to follow NFPA 101 Life Safety Code 2015 edition, and the current NH State Fire Code. You will also be required to install CO detectors per the State Fire Code and number the apartment per the town ordinance before a final Certificate of occupancy will be issued by the Rye Fire Department.

Fire Inspector
Lt. Jeff DiBartolomeo

CC:
Building Inspector

Revised 8/18/2016
Revised 11/1/2016

RYE PLANNING BOARD
PROPOSED ZONING AMENDMENT 2017-01

Re: Accessory Dwelling Units

- I. Amend Section 506 as follows: (Note: Deleted language struck through. New language emboldened and italicized.)

SECTION 506 ACCESSORY ~~APARTMENTS~~ DWELLING UNITS

506.1 Purpose: The Town of Rye recognizes the public need for the provision of a variety of housing types, including efficient and affordable housing for singles, couples, single parents, elderly and new households. Throughout the town opportunities exist within underutilized and/or large single family dwellings to create small accessory ~~apartments~~ ***dwelling units*** to meet these needs, as well as to provide a source of income and other assistance for property owners. To accomplish this purpose and to protect the health, safety and welfare of the existing neighborhoods, accessory units may be permitted subject to the following requirements.

506.2 ~~Special Exception Conditional Use Permit:~~ ~~The Board of Adjustment~~ ***Planning Board*** may grant a ~~special exception conditional use permit~~ to allow the construction of, addition to, renovation of and use and occupancy of a single family dwelling in the Single Residence District ~~only, the General Residence District or the Business District~~, in order to create one subordinate ~~rental accessory apartment~~ ***dwelling unit*** as an integrated part of said single family dwelling, in accordance with the following performance standards.

506.3 Performance Standards: ~~In addition to making the determinations required by Section 701.3 of this ordinance, the Board of Adjustment~~ ***The Planning Board*** shall determine that an accessory ~~apartment~~ ***dwelling unit*** complies with the following standards.

- A. Each accessory ~~apartment~~ ***dwelling unit*** shall have a minimum floor area of 600 sf and a maximum floor area of 1200 sf and shall contain, at a minimum, a separate cooking area with a kitchen sink, one full bathroom, and not more than two bedrooms.
- B. Each accessory ***dwelling unit*** shall be limited to a maximum occupancy of three persons, ~~not more than two of whom may be greater than 18 years of age.~~ ***A one bedroom accessory dwelling unit shall not have more than two (2) occupants.***
- C. Two additional off-street parking spaces shall be provided for the accessory ~~apartment~~ ***dwelling unit***.
- D. The accessory ***dwelling unit*** shall be constructed and maintained in such a manner as to retain the appearance and character of the structure and site as a single family dwelling.
- E. The principal dwelling unit on the premises shall comply with the floor area requirements of Section 203.3, E, of this ordinance.
- F. The property owner shall reside on the premises.

Revised 8/18/2016

Revised 11/1/2016

- G. An approval shall be obtained from NHDES relative to the adequacy of the on site waste disposal system.
- H. An approval shall be obtained from the applicable supplier of public water or certification of a well of adequate capacity shall be provided.
- I. *Rye Sewer Commission approval shall be required for an accessory dwelling unit served by town sewers.*
- J. *There shall be no more than one (1) accessory dwelling unit allowed in a single family dwelling.*
- K. *There shall be no more than one (1) accessory dwelling unit allowed on a lot.*
- L. *If a dwelling unit is rented, it shall be for a term greater than three (3) months.*
- M. *An interior door shall be provided between the principal dwelling unit and the accessory dwelling unit.*
- N. *An accessory dwelling unit shall not be permitted in a detached accessory building.*
- O. All other zoning requirements shall be met.

506.4 Applications: All applications for ~~special exceptions~~ conditional use permits shall include the following information:

- A. A property layout, including existing or proposed septic system.
- B. A parking plan.
- C. A floor plan of all rooms on the premises and the uses thereof.
- D. Plans for access and egress.
- E. Approval of the Fire Chief.
- F. Elevation views of buildings whenever exterior changes are proposed.

506.5 Recertification: Every two years after approval and when the dwelling is sold, the owner of the dwelling and all adult occupants of the accessory ~~apartment~~ *dwelling unit* shall file an affidavit with the Building Inspector certifying that the owner lives on the premises and that the occupancy of the accessory *dwelling* unit complies with Section 506.3 B.

506.6 Appeal. *This is an innovative zoning provision adopted pursuant to RSA 674:21. Appeals of decisions on applications for a conditional use permit may be filed with the Rockingham County Superior Court within 30 days of the date of the decision.*

Revised 8/18/2016
Revised 11/1/2016

II. Add the following definitions to the Appendix of Definitions.

DWELLING UNIT, ACCESSORY. A residential living unit that is within or attached to a single-family dwelling, and that provides independent living facilities for one or more persons, including provisions for sleeping, eating, cooking, and sanitation on the same parcel of land as the principal dwelling unit it accompanies.

BUILDING, ATTACHED. A building connected to another building by a common wall.

BUILDING, DETACHED. A building which is not connected to another building by a common wall. For example, a garage connected to a dwelling by a breezeway is a detached building.