

RYE PLANNING BOARD
RULES AND REGULATIONS COMMITTEE
Tuesday, August 18, 2020, 9:00 a.m.
Via ZOOM

Present: *Patricia Losik, Jeffrey Quinn and Kim Reed*

I. Call to Order

Chair Losik called the meeting to order at 9:00 a.m.

II. Agenda

1. Request by David Choate HDC:

a. Eliminating the need for the Demolition Review Committee to review demolition in the Historic District, as this already falls within the jurisdiction of the HDC

Planning Administrator Kim Reed had reached out to Attorney Donovan in regards to this request. Attorney Donovan agreed with David Choate and does not think it is necessary, since it is already listed somewhere else in the ordinance. Attorney Donovan did not have an issue with this request.

b. Requiring abutter notices to be send for any public hearing that is held on the significance historic value of the building, etc., proposed to be demolished

Planning Administrator Reed noted that Attorney Donovan did not have an issue with this and thinks it is a good idea.

Chair Losik read from 190-3.3(5); “Before a building or other structure is demolished or moved out of the district, the applicant shall in good faith prepare a detailed plan for the reuse of the site which the Commission determines will meet the requirements for a certificate of approval. Such certificate of approval for demolition and reuse shall only be granted upon a showing by the applicant that to deny such certificate would result in an unnecessary hardship unique to the property in question and that such unnecessary hardship is not common to neighboring properties within the district. [Amended 3-10-2020 by Art. 3]”

She asked if they want to add “*monument, statute or memorial*” so it is the exact same language as in the demolition section. (added in first sentence after “other structure”)

The committee agreed with this change.

Referring to 190-5.9, Member Quinn stated that when identifying the scope of the Demolition Committee, it seems it would be very easy to insert a sentence saying that they have jurisdiction over the Town of Rye, excluding the Historic District.

Referring to 190-5.9(C), demolition subject to review, Chair Losik asked if it should say “*any demolition within the Town of Rye, excluding the Historic District*”.

Member Quinn commented this is one way to deal with this.

The committee agreed.

Additions:

- **190-3.3(5) – Before a building or other structure, monument, statute or memorial is demolished....**
- **190-5.9(C) - Demolition subject to review. Any demolition within the Town of Rye [excluding the Historic District] shall be subject to the requirements.....**

The committee reviewed the town code to determine where to include the stipulation of abutter notices.

Member Quinn suggested adding it to 190-5.9 as an item “a”.

Chair Losik agreed this would be the right place because that addresses posting of the sign within five days. She asked who would be responsible for noticing abutters.

Member Quinn commented from a philosophical standpoint, he does not agree with this. However, if it is going to be added, someone has to bear the cost of notifying the abutters. He asked if this would fall to the person who wants to tear down their shed.

Planning Administrator Reed replied yes. Both the planning board and zoning board have to send out abutter notices per the RSA. In looking at Section 202-3.3(2), Abutters list; Mrs. Reed noted this is in the application process for the planning board. In going back to the HDC, it has to be in their application process. She asked if this should be tabled to ask David Choate if the applicant has to file an application fee when they apply for a demo permit.

Chair Losik read from 190-5.9(E), Demolition Review Procedure.

Mrs. Reed stated that Member Quinn has brought up a really good question as to who will be sending out the notices and who will be paying for it.

Chair Losik noted that it could go to two different places. If it is part of a site plan review, it’s going to go to the planning administrator. If it is going to come through building or demo, it is going to go to the building inspector’s office. She does not think this is a step that code enforcement would ordinarily do. She pointed out there’s time, cost and tracking that would be associated with abutter notices. She agrees this should be a question back to David Choate.

Member Quinn stated things do not get done without cost. He does not see that his neighbor would have any standing as to whether or not he tears down a shed or his house, for that matter. This is just adding cost for someone.

Referring to 190-5.9(3), Chair Losik commented this section addresses the requirement of the sign. The sign is the abutter notice. Is it really felt that more is needed? The posting of the sign has to be within five days and shall be the responsibility of the applicant. The date, time and place of the public hearing is on the sign. Is there more that needs to be done? What happens if the abutters are away?

Member Quinn noted that if the building inspector was polled, he would say he has enough to do.

Mrs. Reed replied the building inspector has made it clear he does not want anything more to do.

Follow up with David Choate is needed.

c. Ask about the solar in the HDC

To be discussed at a future meeting when David Choate is present.

2. Floodplain Ordinance in the Code Book

Mrs. Reed noted that what was approved by the voters is the correct ordinance with the VE language. The one currently in the code is not correct, but this will be corrected.

3. Wetlands – NHDES

Chair Losik noted that DES updated all of their wetland rules. It became apparent for DES that a complete revision of the wetland rules was necessary to streamline the permitting process; NH RSA 482-a, Fill and Dredge in the wetlands and RSA 483-b, Shoreland Water Quality Protection Act. On December 15, 2019, the revised wetland rules became effective. She commented it has been unclear to her what this means in a practical sense for Rye. One of the things that they have done is a Wetlands Permit Planning Tool (WPPT). This is a big data base so people can look at national wetland inventory, streams, watershed data, FEMA Maps and the shoreland protection areas. Chair Losik explained this is a platform for permitting and is a great wealth of information. The link to WPPT is on the DES website.

Chair Losik stated when she was researching, she found information on a grant from 2008 with the Regional Environmental Planning Program who had a sample ordinance for the wetland conservation overlay district. She has reached out to Stephanie Giallongo from the DES Portsmouth office to see if there is a more current document that should be looked at, given the changes through December 2019. She has not yet heard back from Ms. Giallongo.

Chair Losik stated that right now, the Town is in an okay place as far as DES goes. Last year, the Best Management Practice Techniques for Avoidance and Minimization was brought in to the ordinances. That is an updated document and gives guidance in a host of areas. That is a very practical and logical solution when dealing with some of these issues.

Referring to the wetland definition, Chair Losik commented this has not changed substantially. It is still defined by the hydric soils, hydrophytic vegetation and hydrology. This is consistent with what Rye has in its ordinance, which says a wetland scientist is going to be used to define a wetland. She noted that language was also brought up to date when Attorney Donovan worked on the codification.

Referring to setbacks, Chair Losik pointed out this is going to be addressed in RSA 482 and 483. The question on the DES website is; “what are the wetland setbacks?” “Under NH wetlands law there are no setbacks. Many municipalities have more stringent standards and include wetland buffers and setbacks. Several resource types in NH have buffers; for example, prime wetlands and tidal.” She pointed out that there is flexibility and each town treats it differently.

Chair Losik noted that she will send the committee Ms. Giallongo’s response; however, she thinks the Town is okay in the important areas with regard to wetlands.

4. Look at Hampton’s eliminating the beach and wetlands as building area

Chair Losik explained that Rye does not include tidal wetlands in the wetland conservation overlay district. Hampton and many other towns include tidal wetlands. In looking at the Wetlands Conservation District, 190, Chair Losik noted that in looking at the definition of the district, it deals with tidal marshes, freshwater marshes, streams and ponds, and wetlands. Wetlands are delineated based on the soils and vegetation, in accordance with the Corps of Engineers Wetlands Delineation Manual. In looking at what is included in Hampton’s ordinance, they include everything on the “wet side” of the highest observable tide line (HOTL). That would include the Atlantic Ocean and Hampton Harbor. Rye does not include, in its ordinance, the Atlantic Ocean, nor does it include Rye Harbor. She pointed out that Rye includes the tidal marsh. Hampton does include its saltmarsh complex. Both towns include freshwater marshes, streams and ponds. Rye does not define its first to fourth order streams and rivers. Hampton probably has more ordered streams and rivers. The fourth to sixth order are medium streams. Seventh to twelfth order are rivers. As it goes up in number, the action and volume also goes up.

Chair Losik pointed out that Hampton’s wetlands are delineated by very poorly drained and poorly drained soil. Hampton references the Society of Soil Scientist of New England (SSSNE), which is also referenced in Rye’s LDR. She asked if they should look at that section of wetlands delineation to be sure the zoning is consistent with Rye’s LDR.

Chair Losik continued that both Rye and Hampton have vernal pools and they are defined. The towns having differing buffers.

Member Quinn asked if she is promoting the inclusion of tidal areas.

Chair Losik pointed out that in 2016, a subcommittee of the Rules and Regs spent a lot of time looking at all the resources. It was clear that the Town was not going to be on a path to be inclusive of the shorelands. Some towns have dealt with these assets differently. Newmarket's Shoreland Protection Overlay District is not part of their wetland overlay district. It is a pretty succinct code section, which links the assets to 483-b; State guidance. This is really what Rye is reliant on right now, as anyone who has a need for a permit now has to go to the State. She does not see an easy way to bring the ocean into Rye's wetlands.

Planning Administrator Reed agreed. She thinks what they are doing in Rye is pretty darn good. She does not see how they are going to bring in the Atlantic Ocean, especially with climate change and the borders may be changing.

Member Quinn agreed.

Chair Losik noted that she has done a spreadsheet on the attributes between Rye and Hampton. There are some minor areas they may want to consider. The committee could look at the spreadsheet between now and the next meeting. For example, she sees no reason not to align the Town's zoning ordinance with the LDR in terms of soil determination.

Planning Administrator Reed agreed. She pointed out that Hampton has more wetlands and more streams than Rye. Also, they are a bigger community.

Chair Losik pointed out there are some areas where Hampton incorporates some landscaping language which might have appeal. She continued that Hampton tries to get at it by their minimum lot area. Newmarket also does this. In Newmarket's wetland district, they are using very poorly drained soils (hydric A) and the associated buffer in connection with those very poorly drained soils. "Such wetlands shall not be included in the minimum lot size or as any part of lot density calculation, as required by any provision of this chapter." She commented this seems to be a pretty straight forward way in whether to include these comprised resources or not. Hampton defines existing lots and newly created lots in their special provisions area. For larger lots, "the minimum lot area required in the underlying zoning district or 30,000s.f., whichever is less, shall be contiguous and outside of wetlands conservation district". In WCD, the very poorly drained or poorly drained soils will not be included. In looking at the lots along the Atlantic, none of them meet the size for the district and most don't have 30,000s.f. In this case, Hampton just looks at a 12' setback.

Planning Administrator Reed commented that she does not think this would work for Rye.

Chair Losik agreed. She continued that what is kind of an issue that Rye has had, is the compromised soils do not impact any of the calculations at all.

Planning Administrator Reed commented that Newmarket might be more of a fit for what they might want to look at versus what Hampton is doing.

Chair Losik stated she feels this might have to go to a sub-committee and spring forward from that. Even if they do something along the lines of what Newmarket is doing, she does not necessarily see it as being something that will happen this year. She explained that Newmarket has brought the shoreland assets in but it's coordinated with 483-b. At the end of 2015, one of the fears is that there were changes that would really redefine these assets under consideration and under limitation, which would be a great amount of oversight beyond where the State was. She thinks this was problematic for many.

Planning Administrator Reed suggested they table this, given the pandemic and what work can be done this year. This would give it the time it needs to be consistent with 483 and to look at towns like Newmarket.

Member Quinn asked if this is moving towards the way buildable areas are calculated.

Chair Losik replied it has to do with buildable areas but also with defining the assets, so that buffers can be properly understood. It gets into a lot of different areas.

There was some discussion about how Hampton addresses this issue.

Member Quinn commented it is an interesting point to take a look at a person's lot with regard to how much of it is wetlands and non-buildable, and having the tax assessment reflect that so the owner gets some kind of compensation for the restrictions placed on whether or not that area can be developed.

Chair Losik replied she does not think Rye is there now. She thinks it is really a balance and there are two sides of this. It's protecting one but also understanding the real costs associated with that. There are implications to the landowners but there are also considerations for the Town, in terms of tax base and how these assets are valued.

Planning Administrator Reed suggested this be considered down the road through a committee. At this time, a doable action would be to make the zoning consistent with the LDR.

Chair Losik pointed out that in 2019, thirty-six percent of the cases before the zoning board had applications to 301; special use buffers and permitted use. Most of it was in the buffers. This was the same for 2018 where there were twenty-five percent of the cases. She would like to spend more time reviewing these cases to see if there are some minor fixes they could work on.

Member Quinn stated that a question came up at the last meeting as to how the buildable area is calculated and how pervious surfaces are calculated. This is one of those issues that needs to go to an ad hoc sub-committee to study the issue. Referring to the comment about the tax implication, he stated that they can't just arbitrarily say to someone down on the beach that they can't use their whole property, in terms of calculation, unless they have been provided some benefit. As it stands right now, he can't really support it. If it would come to a vote at the planning board, absent of any sub-committee recommendation, he would not support it. He would have to hear more rationalization for making this kind of limitation on the homeowner before he could agree to something like that.

Chair Losik agreed. She stated these assets are quite diverse amidst the Town. What might be the calculations in one area might be very different calculations in another area. The implication of those are also different from area to area. She commented they are in the beginning stages of understanding there are going to be some issues that are pretty complicated.

Planning Administrator Reed stated the Town is not there yet. They are not anywhere near putting together a proposed zoning amendment to limit building area. What Hampton is doing is a great discussion. If someone's property is going to be restricted from being developable, they should be provided some sort of tax relief or compensation. She thinks there is more to understand before any suggested zoning amendments can be made. They need to look at the homeowner, how it is going to impact them and what kind of relief can be offered if it is going to impact them. She does not think this is something that can be done for this voting cycle.

Member Quinn stated if this is going to be an issue they are going to look at, he would feel more comfortable with it being a charge issued by the full Planning Board. Before it gets started, there has to be some overarching or compelling reasons to take this up. Solar panels is another area. He does not want to fight this battle amongst four people, if it is not a direction that the Planning Board would vote to go in.

Planning Administrator Reed suggested that the Planning Board hold a workshop to solely look at proposed zoning amendments and to get some direction. She explained that the Rules and Regulations Committee is the committee that will be doing the work. The workshop is just to find out what areas the board members feel should be looked at.

Chair Losik agreed the workshop would be a great idea.

Member Quinn expressed other areas of concern regarding proposed zoning amendments.

There was also discussion on possibly holding a planning visioning session for the Town.

5. Look at what the ZBA is approving and see if there are any areas that need changing

Addressed above

6. Julie LaBranche

no response as of yet

Summary:

- Clarity from David Choate
- Zoning into same compliance in regards to LDR
- Committee to look at retaining walls
- Committee to look at the calculation of frontage

- **Next Meeting scheduled for Thursday, September 3rd, 9:00 a.m.**

- **Approval of Minutes – July 21, 2020**

The following was noted:

- Page 3, word “jurisdictional” to be taken out.
- Page 5, paragraph at the bottom, 2nd sentence should read: **There are towns in the State that have solar activity in their Historic Districts and they have handled them thoughtfully.**
- Page 5, 3rd to last paragraph, last sentence should read: **If other members don’t have the same point of view, he does not see any reason to “fight the battle” that is going to be lost in the end.**

Motion by Jeffrey Quinn to approve the minutes as amended. Seconded by Patricia Losik. All in favor.

Adjournment

Motion by Jeffrey Quinn to adjourn at 10:53 a.m. Seconded by Patricia Losik. All in favor.

Respectfully Submitted,
Dyana F. Ledger