

**RYE PLANNING BOARD
RULES AND REGULATIONS COMMITTEE
Wednesday, September 30, 2020, 9:00 a.m.
Via ZOOM**

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

Also: *David Choate, Demo Review Committee Chair and Attorney Michael Donovan (joined meeting at 9:40 a.m.)*

I. Call to Order

Chair Losik called the meeting to order at 9:05 a.m.

II. Business

• Codification

Chair Losik noted there is a section in the codification called ‘New Laws’, which covers things that are changing. This is where the correct Floodplain Ordinance has been posted. She further noted that all pieces of Rye’s Ordinances are included in the General Code.

Member Quinn asked if this is the section, where a change that has passed, would be listed in the codification document until its next publishing. If this is true, he would assume it would have a proper reference number.

Planning Administrator Reed explained that Rules and Regs does their work as usual and public hearings are held, which are legally noticed so they are legally binding. When the amendments are voted on, they are going to have addendums which are posted. Someone would go to the addendums to see what was updated and changed.

Member Quinn asked if the addendums would be listed in the section ‘New Laws’.

Planning Administrator Reed replied this is how she would perceive it.

Member Quinn asked if it would get a proper reference number as to where it would fall in the code.

Planning Administrator Reed commented that she would assume; however, she would need clarity, as this is the first year the Town has dealt with codification and amendments. She will get this information for the Committee.

- 1. Follow up and continue Request by David Choate HDC**
 - a. Look at proposed language for a zoning amendment on “Eliminating the need for the Demolition Committee to review demolitions in the Historic District, as this already falls within the jurisdiction of the HDC.”**

The Committee reviewed Planning Administrator’s draft proposed zoning amendment to Section 190-3.3(5); Proposed Zoning Amendment 2021-01. Members agreed the draft was fine with minor spelling corrections, as noted.

Motion by Jeffrey Quinn to move Proposed Zoning Amendment 2021-01 to the Planning Board. Seconded by Nicole Paul. All in favor.

David Choate, Demolition Review Committee Chair, requested a copy of the drafts for review.

The Committee reviewed Planning Administrator Reed’s draft Proposed Zoning Amendment 2021-02.

Member Paul commented that she is not a huge fan of the explanation. She suggested citing where it is addressed in the Historic District Ordinance.

Member Quinn suggested for the explanation; “The Historic District Commission has jurisdiction over all demolition within its district.”

Chair Losik pointed out that Section 190-3.3(5) actually has the language in 2021-01, except for monument, statute or memorial. She thinks it would prudent to reference 190.3.3(5).

Mr. Choate stated that proposed amendment 2021-02 talks about “any demolition, excluding the Historic District, shall be subject”. What was originally talked about was taking the Historic District out of the Demo Review Ordinance. He commented the drafts look fine to him.

Planning Administrator Reed noted that the Committee is asking for his help with the explanations.

Mr. Choate stated that the explanation makes sense to him because it is referencing 190-5.9.C(1)(b).

The Committee agreed to the following language for the explanation.

To be consistent with the demolition review language as contained in the Historic District §190-3.3(5).

Motion by Jeffrey Quinn to carry the amended language for Proposed Zoning Amendment 2021-02 and place it on the Planning Board’s agenda for approval. Seconded by Nicole Paul. All in favor.

There was some discussion on what happens in terms of demolition in the Rye Beach Village District, where their ordinance is silent on demo review. Mr. Choate questioned whether the Town of Rye would supersede in a case where the district's ordinance is silent.

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

Chair Losik noted that the Committee received an email from Attorney Donovan in regards to whether abutter notices were needed, as demolition review is referred to in the zoning ordinance as a public hearing. Planning Administrator Reed reached out to Attorney Donovan for information. She read from Attorney Donovan's letter; *"There is no legal bar to amending the Demo Review Ordinance to require abutter and/or published notice and to require application fees for the same. Who handles this administratively is not really a legal question, but an administrative one that would have to be worked out amongst yourselves at town hall, should voters adopt the amendment providing for notice. Although, if the Planning Board prepares an amendment, it could address the administrative responsibility in the amendment."* Chair Losik asked Member Paul her thoughts.

Member Paul stated that she is not going to provide legal advice; however, from her perspective, she does not see an issue with providing abutter notice. She thinks it might be a good thing.

Note: Attorney Donovan joined the meeting at 9:40 a.m.

Attorney Donovan noted that he went through the minutes of the September 3rd meeting. Chair Losik had asked him to weigh-in on whether the use of the word "public hearing" in the demo ordinance means that abutters need to be notified. Attorney Donovan commented that as he indicated in his email, that is not the case. Public hearings are hearings that are typically noticed with public posting and published notice, but anybody who may be an interested party may not necessarily be noticed, which would include abutters. His opinion is that just because an ordinance uses the term "public hearing" does not require notification to abutters.

Mr. Choate asked if they can do abutter notices.

Attorney Donovan confirmed. He explained that municipalities are always allowed to have more stringent public notice and due process requirements than what the State requires.

Referring to the administrative piece, Chair Losik asked if this would fall within code enforcement.

Member Paul asked who handles the abutter notices for the Planning Board now.

Planning Administrator Reed replied that she is the zoning/planning administrator. Anything that goes through the planning or zoning boards is handled by her, as she is the one who sends out the abutter notices and posts the public hearings.

Speaking to Planning Administrator Reed, Member Quinn asked if it would fall to her office if it was a subcommittee of planning or zoning.

Mr. Choate commented that it would probably fall on the building department because that is where all the demolition review applications go.

Referring to the ordinance, Attorney Donovan stated that the requirement is that the application be submitted to the building inspector. It seems that the person who has to make the decision administratively would be to the building inspector. There are other applications that have to go to the building inspector as well.

Planning Administrator Reed reiterated that she is the planning and zoning administrator but she does not handle the HDC or Demolition Review Committee.

Mr. Choate stated the if the Demolition Review Committee ever has an application that requires a public hearing, he can work with the building department on getting the notices out.

Chair Losik asked if the R&R Committee is in favor of requiring these notices.

Member Quinn commented that he is not, for the reasons stated at the last two meetings.

Mr. Choate pointed out that even if they are not required, there is nothing that prevents the DRC from working with the building department to do them.

Attorney Donovan clarified that there is nothing precluding the ordinance from being amended to require abutter notices. There may be a question of fairness to the applicant in due process, if without authority under the ordinance, the DRC starts sending out notices to abutters and entangling the property owner trying to demo something into a public hearing with abutters. He would not just do it without amending the ordinance to authorize it.

Mr. Choate asked Member Quinn what his objection is to requiring notices in the rare circumstance that there is a public hearing.

Member Quinn stated that nothing happens in the Town without an investment of money and resources. He thinks that whatever issues are discussed under the demolition review, may be requested by the Board of Adjustment and/or the Planning Board and can fall within that public notice requirement. He thinks this just taxes the resources of the Town. At some point, people are going to be too busy to do a good job or its not going to get done, neither of which are good results. He cannot see putting in ordinances that can't be administered.

Member Paul stated she understands what Member Quinn is saying; however, she is more a fan of putting the abutters on notice.

Member Quinn commented that his chief objection is this is just providing a layer of cost on the applicant, which he does not think is necessary.

Mr. Choate pointed out that the same argument could be made for the ZBA and Planning Board.

Member Quinn replied no he couldn't. Those boards have jurisdiction and a responsibility to the abutters to give a proper hearing on issues involving the property. Absent that kind of review, he thinks it puts another bureaucratic burden on the whole process.

Speaking to Attorney Donovan, Planning Administrator Reed asked if this could be in the Rules of Procedure as a procedural change for the Demo Committee.

Attorney Donovan explained the Demolition Review Committee is not a land use board. He is not sure if they have Rules of Procedure right now. His guess is they probably do not. He is back to the opinion that if this is going to be done it should be in the ordinance, not through Rules of Procedure.

Chair Losik commented that what is on the table is for the Committee to decide whether the language should be incorporated into 5.9.E. She asked Member Paul her feelings on this.

Member Paul stated she would still prefer to give notice to the abutters. She hears Member Quinn's concerns about cost. She does not feel strongly about it either way. So, if it was left as is without requiring notice to the abutters, she would be just as fine.

Planning Administrator Reed suggested bringing the issue of requiring abutter notices to the full Planning Board.

Member Paul stated that she feels that as a committee they should propose something that they support, rather than adding more people into the mix.

Member Quinn stated that if this is brought up in the full Planning Board, he is still going to vote against it. He thinks at some point they have to realize that procedures have consequences; such as, the amount of time and follow up, not to mention the extra burden to the property owner.

Chair Losik stated that given the amount of time this committee has spent this year and last year, she thinks they have been rather in the weeds with this. She thinks they have a good amount of what is knowable on the table right now, especially given Attorney Donovan's input. She would like to take a vote on whether to include this language or not. Mr. Choate has said this comes up not that frequently. He has raised the specter that it could come up and it could be an important issue. She does not have a problem with mirroring some language regarding notice for the fact that the public hearing language is already there. She understands Member Quinn's point. She does not want to add one bit more of burdensome effort onto anybody at the town office. However, from a process standpoint, she does not think it is that overwhelming.

Member Quinn stated the first thing is to get language, so he can be clear as to what's being voted on.

Attorney Donovan noted that they are looking at 190-5.9.E(2)(b), which has the posting and publication language. He thinks an amendment would simply say; **"Notice of a public hearing**

shall be posted in two public places and published at least five days prior to the hearing, not including the day of the hearing and the day of posting, and mailed certified receipt requested to all abutters.” He noted that they would have to consider whether five days’ notice by mail is sufficient when talking about notifying abutters. He explained the ordinance was modeled on one from the City of Concord.

Member Paul stated she is fine with that language.

Member Quinn reiterated that he does not think it is necessary, when there is signage out there. He asked why they are adding more cost, more time and effort into something that most people are going to throw into the trash anyway.

Attorney Donovan suggested alternative language; **“Notice of the public hearing shall be posted in two public places, published and mailed certified return receipt to abutters at least five days prior to the hearing”**.

Chair Losik and Member Paul both agreed to the change.

Planning Administrator Reed noted that she will draft up Proposed Zoning Amendment 2021-03 with the language.

Motion by Nicole Paul to move Proposed Zoning Amendment 2021-03 to the full Planning Board for their October 20th meeting. Seconded by Patricia Losik.

Vote: 2-1 Opposed: Jeffrey Quinn

Speaking to Attorney Donovan, Planning Administrator Reed noted that a question came up with David Choate in regards to the Rye Beach Village District. The district is silent on demo. Mr. Choate asked if the Town of Rye Ordinance would supersede as they are silent. She commented that this came up years ago with Mae Bradshaw. She asked what happens in the Rye Beach Village District when there is a demolition.

Attorney Donovan stated that notwithstanding the language in 104, which says ***“Within the Rye Beach Precinct, one must comply primarily with the precinct zoning ordinance and where it is silent, one must also comply with the zoning ordinance of the Town of Rye, N.H.”***. He commented that he is not sure if it is in the codified version or not, as it shouldn’t be. He noted that he gave the Town an opinion several years ago that this is invalid. The Rye Beach Precinct was established by the legislature almost 100 years ago. They were given certain powers, including the exclusive power to zone. The provisions of the Rye Zoning Ordinance are not applicable in the precinct.

Note: *Nicole Paul left the meeting at 9:15 a.m.*

Planning Administrator Reed noted that it is in 190-1.4 and it says limited applicability within the Rye Beach Village District. She asked if the Committee should be writing a proposed zoning amendment to strike that out of the code.

Attorney Donovan commented this probably should have been done as part of the codification. He agreed an amendment should be drafted.

Planning Administrator Reed agreed to draft language for this as Proposed Zoning Amendment 2021-04 and send to Attorney Donovan for review.

Motion by Patricia Losik to move Proposed Zoning Amendment 2021-04 to the full Planning Board on October 20th. Seconded by Jeffrey Quinn.

Vote: 2-0

2. Request for clarity on corner lots: 190-2.3 (C)(3) and 190-2.4 (C)(3)

Planning Administrator Reed noted that Patricia Weathersby from the BOA has asked for clarity on corner lots.

Chair Losik read the email from Patricia Weathersby. Her request for clarification was in regards to what happens to lots that are located on the corner with a road intersecting in between; such as, East Atlantic. At that time, Attorney Donovan responded by email; ***“The intent of this type of provision is to use the lots along the street having the frontage. For the East Atlantic frontage, that would mean jumping across Kenphil and using the lot at the west corner of Kenphil and East Atlantic. An alternate approach would be to treat it like a vacant lot and use 30’ on that side. But I think the above approach gets closer to the intent.”*** The email also noted that it must meet the frontage requirements of a corner lot on both streets. She asked Attorney Donovan if he still feels the best approach is to jump across.

Attorney Donovan stated that in thinking more about it, what if there was a corner lot like the Samonas parcel where it would be jumping across Ocean Blvd or Wallis? It might be better to consider it as a vacant lot.

Planning Administrator Reed asked if there should be proposed zoning amendment language for clarification.

Attorney Donovan replied that it should be clarified one way or the other. He continued that many of the Town’s right-of-ways are 50’ which could be a lot frontage in denser areas. He suggested that it could be treated as a vacant lot, which means, under that provision the setback of the lots on either side would be averaged.

After some discussion, the Committee agreed to take this under advisement and carry it forward to the next meeting.

- **Changes to LDR and Building Code per recommendations by FEMA to comply with the new floodplain maps**

Planning Administrator Reed noted that Attorney Donovan sent an email regarding rezoning places that are no longer commercial or businesses and now have residences. She pointed out

that this has been tried before; however, now the Board and the Town have changed. She asked Attorney Donovan to explain his email.

Attorney Donovan commented that he had forgotten that he had presented this five years ago, but the Planning Board did not want to go through with it. He can't remember why the Board did not want to go through with it. He explained there are three properties that have been redeveloped from business uses to residential uses; Saunders, Hemingway and Rye Beach Motel. Several years ago, there was an attempt to clean up all the business districts by getting rid of the business districts and coming up with a new commercial district. This was heard at the same time the Whitehorse Development was being heard at the junior high gym. Susan Labrie got all the property owners in the Business District to come out in mass and protest against it, so it was just dropped. He suggested reviewing the minutes of 2015 to see why the Board didn't want to move forward.

Member Quinn stated that they have talked at a subsequent meeting about rezoning a resident district into a business district. This is looking at changing business back to a residential district. He does not know what the advantages are of taking a piece of property that was once supporting a business and changing it into single residence.

Taking an example of the Rye Beach Motel, Attorney Donovan explained if that property owner wanted to put a business use on that lot with a residential use, the owner could have a mixed-use development that really is no longer compatible with the neighborhood. If it is just residential zoning, they would have to meet the home occupation requirements of the zoning ordinance. Leaving it zoned business opens up, what has now become residential areas, to business uses that might be incompatible with a residential area.

Member Quinn stated he is not sure whether they want to continue down the road of zoning out possibilities to bring commerce and business into the Town of Rye, which is generally a good thing. This is an unsettled question in his mind.

Chair Losik stated that to Attorney Donovan's point, it could bring something back into the possibility of looking at a mixed-use, as the world is full of changes all the time. She well images the concerns that would be raised by the abutters. In one way, it is simplifying and conforming language to what has evolved to existing uses. She thinks it causes some confusion when there are areas that are caught in between.

Referring to the condos that are on the Hemingway site, Attorney Donovan stated that they got the variances to do that project because they were residential condos. He supposes that someone could come in with an application to switch a couple of the units to a commercial condo and put in a commercial use allowed in the business district. They could claim they were entitled to it by right, as it is zoned business. The same thing could be done at the Breakers.

Chair Losik clarified that it is being said that it is really wide open, assuming that they could get the condo association to approve.

Attorney Donovan confirmed, as it is a permitted use. He continued that the theory between planning and zoning is that the zoning ordinance is supposed to implement land use goals of the community. To that extent, leaving those as business, does reflect the goal that Member Quinn was articulating, which is to not prohibit business use in those areas. The sound planning approach, as the Town has allowed those to be converted to residential use, is to clean up the zoning map.

Referring to the Webster at Rye property (only as an example), Member Quinn noted that at a recent Planning Board meeting, it was brought up that maybe it is time to take that property and make it commercial or business. This made him think about how it would be done and what the advantages or disadvantages would be. He noted that this could be for any area in Rye. He is not sure what the advantages of changing zoning would be in carving out a spot like that to give that property different rules to live by.

Giving another example, Chair Losik stated they are getting a lot of information from Amanda Stone's group and the water resource maps that are on the GIS overlay. There are concepts, such as, compensatory storage and flood related areas. The Town is now moving to the 2015 flood maps and there are additional areas which will be a concern. Another question is, how does the Town expand the identification of the conservation district? She would like to understand, just in general, how district changes occur.

Attorney Donovan explained that changes in the zoning map and changes in usage should start with the Master Plan itself. The land use policies, environmental protection policies and business development policies are in the Master Plan. The Town's zoning ordinance is supposed to carry out those policies. He pointed out that virtually all the business districts are exactly what they were like when they were adopted in 1953 because they were designed to be around the existing businesses that were there at the time. Rye's Master Plan policies reflect Rye's desire to be a residential community and to preserve the rural character of Rye. Over the past 70 years, since the zoning ordinance was first developed, the Town has transitioned so that most of the commercial development along the seacoast has gone away and been replaced by residential development. As long as these areas are zoned business, it does open the doors to some type of business use combined with residential. Admittedly, the risk is low but the possibility is still there. In which case, someone who lives next door to one of these places could make a significant argument that it is just not compatible with the residential area that it has become. Why should that property owner be allowed to have a business that nobody else in a residential area can have?

Chair Losik stated that when she thinks about where the Town is now and what the Master Plan says, she does agree it would be a sound planning approach. The Town has allowed the use of these areas to be residential, which did not happen overnight. It was over a period of time that these projects were approved. She sees that each specific application is taken on its own merits, but it is usually a long land use process. There is a lot of energy, effort and financial commitments that go into this. The Town has ended up with these areas that function as residential and there is an impact to the surrounding area, because they have switched and different decisions have been made around those areas. She does think it should be cleaned up. She noted that a change like this doesn't entirely prohibit someone who wants to have a business.

In looking at single residence, there is a whole section of business use in residence and there are uses permitted by special exception. She is in agreement that they should pursue looking at this and cleaning it up.

Planning Administrator Reed asked Attorney Donovan if he would write a proposed zoning amendment for the properties in question; Hemingway, Rye Beach Motel and Saunders. This could be brought to the Planning Board on October 20th for discussion.

Referring to the zoning map, Attorney Donovan commented that he did a quick scan, when he did the memo, and thought those properties were the only ones that should be considered at this time. He agreed to put together a draft proposed amendment.

Planning Administrator Reed agreed to pull out the minutes from when this issue was brought up in the past and provide them to the Board.

3. Consistency between Zoning and LDR. Wetlands Section 190-3.1 Delineation

Not addressed

4. Retaining Walls vs Stonewalls wording for definitions

Not addressed

5. Updates to the Floodplain Ordinance to prepare for adoption of new maps

Not addressed

6. Changes to LDR and Building Code per recommendations by FEMA to comply with the new floodplain maps

Not addressed

7. Re-zoning places that are no longer commercial or business but now residences

Not addressed

8. Other

- **Approval of minutes – September 3, 2020**

The following correction was noted:

- Page 6, 2nd to last paragraph, 1st sentence should read: **Chair Losik stated that she does think the discussion for solar should be town wide.**

**Motion by Jeffrey Quinn to approve the minutes of September 3, 2020 as amended.
Seconded by Patricia Losik. Vote: 2-0**

- **Next Meeting – Thursday, October 8th, 9:00 a.m.**

Adjournment

Motion by Jeffrey Quinn to adjourn at 10:59 a.m. Seconded by Patricia Losik.

Vote: 2-0

Respectfully Submitted, Dyana F. Ledger