

**RYE PLANNING BOARD
RULES AND REGULATIONS COMMITTEE
MEETING**

**Wednesday, September 22, 2021
8:30 a.m. – Rye Town Hall**

Present: Patricia Losik, Kevin Brandon and Kim Reed

Call to Order

Chair Losik called the meeting to order at 8:30 a.m. and led the Pledge of Allegiance.

1. Follow up from last week's meeting

- **Review of Minutes – Sept. 9th**

The committee reviewed the minutes of September 9, 2021 and noted some changes. *(Corrections were made to the draft minutes and resubmitted for posting as approved minutes.)*

- **DADU – (Detached Accessory Dwelling Unit)**

Planning Administrator Reed stated that after looking at all the variances for two dwellings on one lot, she wonders if the detached is something the committee wants to pursue. After the discussion from the last meeting, it gave her pause.

Chair Losik noted that the committee received seven examples of cases that had gone through the zoning board, some of which became two dwellings on one lot. It seemed like there's interest in having this opportunity for a "second dwelling".

Member Brandon stated that another component that was brought up is the creation of these second dwellings creates more housing in Rye. An extension of that is the prospect of creating more housing that would meet the workforce housing criteria, but it wouldn't actually be captured in the numbers. He thinks this is relevant as well.

Chair Losik pointed out that even if the DADU couldn't expand above the 1200sf, if people are going to put the expense into an entirely separate building, they may look to go to the maximal square footage.

Member Brandon commented that the market is going to drive them to maximize the amount of space, for all the obvious reasons; including, trying to get someone to do the work for too small a space.

Mrs. Reed noted that she has emailed Attorney Donovan about the density for DADUs, as well as multi-families. She has not yet heard back from him. She asked the committee if they would like her to continue looking into this and possibly doing a draft ordinance on language for the detached.

Chair Losik replied that she would like to hear from Attorney Donovan first. One of the items that was discussed at the last meeting was in regards to septic systems. If a second septic system is needed, will that force it to be a match with a larger lot? If there is a house that is already maximized on space and close to its impervious calculations already, she would be interested in having that conversation. If people don't think it's a positive for the specific reasons that are laid out, it won't go through. She is a little concerned about putting something in the workforce housing. There were some ideas discussed last week about changes; such as, percentages.

Mrs. Reed commented this was also a question that was sent to Attorney Donovan.

Member Brandon stated that if there are a certain number of units you're working for, it might mean a fewer number of developments are needed to reach that number. However, the truth is, there's a breakeven point where a developer is going to say that beyond a certain percent they will start running into mathematical issues.

Mrs. Reed stated that a couple of years ago, Mike Garrepy came before the Board for 40 units on Lafayette Road. At that time, there was a proposed zoning amendment to make a change in the percentage. Mike Garrepy spoke up and said that if it's changed, he wouldn't be able to do the development because it's a cost issue and a breakeven point.

Chair Losik explained that Mr. Garrepy was before the Board for a conceptual at that time. This was after 1244 Washington had been approved. There were several board members who were proponents of increasing the percentage and she was one of them. She felt that if they were going to put a "stake in the ground" and be intentional about workforce housing, it's a realistic avenue. She also felt at the time that economically it was quite possible because it was just about moving the number a bit at the fringes.

Member Brandon stated there are certain criteria that's going to be nonstarters for developers. In reading about the projects, the one thing that can be seen more than anything is that the original proposal was for a certain number of units and it came down to lesser units being approved. Just mathematically the numbers of units are being reduce and derivatively the number of workforce housing units are going to decrease. Developers are not doing a lot of speculative building in high-cost areas like Rye because the land and labor costs are so high. They will be "painted into a corner" with very little flexibility. His concern is that the higher the percentage is raised, paradoxically, the greater the disincentive is for someone to try to build workforce housing. The question is what is being seen in terms of percentages for like-kind real estate environments. He pointed out that 35 minutes west, there's an altogether different ratio of land and land costs.

In regards to looking at workforce housing and detached structures, Chair Losik if they are meeting the goals of the town? Are they meeting the goals of differentiated housing? She

pointed out that this might not be known unit they go through this next iteration of master planning. It may not really be known at this point.

Member Brandon commented that if they are going to go through the exercise of having an overarching plan, it's probably useful to at least consider not treating workforce housing and detached units as two separate silos. If this is creating more workforce housing, can it be recognized as such?

Referring to DADUs, Mrs. Reed pointed out that in order to make it workforce, there's financial and deeding criteria. The average homeowner is not going to go through that work.

Member Brandon noted that another question for Attorney Donovan is whether workforce housing is being achieved through ownership and rental. Does it expressly have to be through ownership?

Chair Losik pointed out that there is language that says a rental can happen if it's owned by a nonprofit entity in the business of housing. Workforce housing is tied to the legislative language that was passed in 2009. The town passed the ordinance in 2010 with a couple of changes afterwards. There have been some discussions in the legislature about other possibilities; such as, trying to make living denser on lots if it's possible.

Member Brandon stated that what is written is to ensure the intended outcome, as best as possible. What happens in practice is often a function of the actual real incentives that are out there. That's what they should try to understand.

After discussion, the committee agreed to wait to hear from Attorney Donovan in regards to their questions before moving forward.

Chair Losik opened to the public for comments.

Dominique Winebaum, 52 Cable Road, stated that she has concerns about detached accessory dwelling units. In regards to keeping Rye's semi-rural character, it's going to impact this. She thinks the town can do more to protect Rye's semi-rural character. For instance, a detached accessory dwelling needs to be accessed and it may require its own driveway. She does not feel that driveways are well regulated in the zoning ordinance. She noted that she has neighbors with detached garages and they already have an access to their dwelling. Her concern is that there are people who already have detached accessory dwellings that are legal. Then there may be some that come up on nonconforming lots and they'll want to legalize it. In her opinion and many others in Rye, the ZBA is granting too many variances. She can see that there'll be more variance relief in the future if they allow for DADUs. She does not think the town has a good grasp on short-term rentals. Short-term rentals are not regulated. She noted that the other concern is septic systems. Also, if there's a detached barn, she thinks that someone should be able to create a necessary dwelling unit; however, those barns are pretty big. She was wondering if some research could be done so something could be allowed for detached barns; however, it doesn't fit into the ADU because of the size.

Chair Losik stated that RPC looked at workforce housing for the whole region in 2008. They showed Rye as needing just over 1500 units. The town has an ordinance where they are making some progress. However, she is not sure they have a clear path to do that.

Member Brandon commented that the points that are being made tie back into the questions with Attorney Donovan. The goal is to create some rules that give guidance, so outlier exceptions are not being made.

In regards to septic, Chair Losik commented that she and Kim always talk about how much of Rye's land is over aquifer. There's been discussion about the nitrate readings and the nitrate setbacks. In the Rye Water District minutes, there's been discussions that the State may change standards and make them more vigorous. It's known that Marjorie Way has had some exceedances in the nitrates. Danna Truslow raised that in her first report on Hector's and Benchmark. She continued that Rye is very reliant on the aquifer and they need to pay attention.

Member Brandon commented that density is going to be the driver of pressure on the aquifer. Even if there's the most egalitarian way of allowing people to create additional housing, whether its captive or developed, it's still density. If it's development within the framework that maintains the integrity of the town's resources, then it's development that should be supported. However, there can't be all these exceptions because then there will be a lot of development that isn't coordinated and within a reasonable framework to manage.

Mrs. Reed pointed out that DADUs will be before the Planning Board; whereas, the zoning board cannot grant variances to the criteria of an accessory dwelling unit because it's a special use. Currently, if it's two dwellings on one lot, they can apply for a variance. It's stricter if there's criteria that they can't get variances from. She is curious to hear what Attorney Donovan says to tie all these together; septs, short-term rentals, detached accessory dwelling units and workforce housing density.

Chair Losik pointed out that the work Nicole Paul is doing in terms of dimensional requirements leads to density as well. Density is kind of the theme of this session.

Member Brandon pointed out that the short-term rental issue is important because the seacoast has a certain seasonality to work opportunities. In breaking up the rentals into costs, summer is expensive and winter is cheaper. There are short-term rental opportunities for seasonal work.

Mrs. Reed pointed out that people are also inheriting these houses and live out of state. They are renting the houses out on a weekly basis. The question is how is this defined?

Referring to DADUs and ADUs, Chair Losik stated it's an innovative land use control. It's a conditional use permit, not a special use permit, under ADU. A planning board decision can be challenged to Superior Court and now, also the Housing Appeals Board. That could be another Pandora's box for the Board.

- **Lot coverage**

This will be addressed when Nicole Paul is in attendance.

- **Retaining Walls vs. Stone Walls**

Chair Losik stated there was an exchange between the Building Inspector Chuck Marsden and Patricia Weathersby (ZBA chair). This was in regards to how retaining walls were being handled. Patricia Weathersby said; ***“Going forward the ZBA will treat retaining walls as structures, even if they are made of stone, as it was the general consensus that a retaining wall is a different animal than a traditional stone wall; thus, they can be subject to dimensional requirements.”*** Patricia Weathersby also asked about putting it into the RZO updates. Chuck Marsden replied; ***“The building department has been treating retaining walls as structures. My response to contractors when challenged is, a retaining wall is considered a structure simply by the description of the purpose.”*** Referring to the proposed definition, Chair Losik pointed out that she made a couple of possible changes, so it’s known in practice that this is how ZBA and the building department are already handling this.

Chair Losik stated the two possible impacts she sees for the community with retaining walls are drainage. She asked if they are at all concerned about drainage pressure? Who will pay attention to the hydrostatic pressure? She sees a lot of retaining walls that are built of non-mortar (fieldstone) and some of them have drainage facilities in front of them between where they end on the property and the roadway. She continued that in some communities, retaining walls that are higher than 4’ sometimes require special attention and need to be engineered because the forces are greater. There have been cases where a retaining wall, or something that functions like a retaining wall, is very close to a property line.

Mrs. Reed explained that because Rye is practically built out, people are going to the ZBA and using the criteria for the hardship that it’s a unique lot, has wetlands, or has ledge, etc. Nowadays, almost every application that goes before the building inspector is required to have a stormwater management plan. She noted that it should be codified that a retaining wall should have a stormwater management. The purpose of a retaining wall is to hold something back on a slope. It needs to be engineered.

Chair Losik stated that she is not sure if the building inspector will say this has to be done at 4’ or maybe 5’. She thinks he may have an understanding of when it gets to be pretty concerning, just by the shear pressure behind it and volume. She wonders about practice and who sees this when. This happened in Stoneleigh recently. It was at the end of the buildout on Lot 13. There was a wish to install a changed wall on the north side of the property, which is a sloped property. She asked who deals with that at that point. They’re already in the process of building. Is that when code enforcement would look at the plans?

Mrs. Reed explained that code enforcement is the party responsible for that. Does it happen realistically? She doesn’t know. However, the way the town is structured and the ordinance is written, it’s code enforcement who is supposed to be making sure it gets done to the plans or conditions. Since Stoneleigh, Chuck Marsden has taken on hiring Sebago because he doesn’t have the skills, knowledge or capacity on some of these. He can hire outside assistance, if needed.

Chair Losik stated that it seems to her that this expanded language is needed in the definition in the zoning section. It's probably needed in the LDR, as well. She sees this could come up in both places.

Mrs. Reed agreed.

Member Brandon stated that it should be made abundantly clear, early in the process, what needs to be done and taken into consideration. People could get very deep into expenses and find out that there's a loss of investment.

Chair Losik commented that in the final plans that are recorded there's a condition that requires changes on a plan be brought back to the building department and they have to redo the stormwater management plan. This has been in effect since the 561 South Road. In 190-5.7, it says that changes cannot be made on a property that increases the drainage to adjacent properties.

Mrs. Reed agreed to make the changes proposed by Chair Losik to the draft amendment. She will also draft the LDR amendment.

Mrs. Winebaum clarified that stone walls are not defined as structures. She asked what happens if someone wants to build a stone wall in the wetland buffer. It's not clear in the zoning ordinance.

Chair Losik replied this is a good point. In looking at the buffer restrictions in wetlands, it's not quite there, as far as stone walls. She will look at this for the next meeting, as this may be something the committee will want to address. Chair Losik continued that there are rules around stone walls. There are two areas of state law which are protective of the boundaries and protective of altering those boundaries. Another area where stone walls are protected under state law is when a road is designated as scenic. Stone walls within a right-of-way have to be repaired, if they are damaged, and can't be disturbed. After that, there is very little municipal guidance to what towns are doing. There are some communities that regulate their stone walls in overlay districts; such as, historic district. The Town of Hampstead just references the State in their general provisions. She is not sure how far Rye wants to take stone walls. However, she is happy to look at it.

Mrs. Winebaum noted that she brought this up several years ago, about the stone walls not really being protected. There is a point where it needs to go further than just citing the RSA.

Chair Losik asked if she is thinking the zoning needs to encapsulate stone walls in the same fashion as fences.

Mrs. Winebaum replied that in the RSA it's under the jurisdiction of the planning board in terms of trees and stone walls. She doesn't think there has been an application for stone walls. The tree cutting is enforced but not the stone wall and it's the same RSA. There needs to be a pathway so that's its better protected. She pointed out that the Historic District Commission is working on new design guidelines. She thinks they are going to include stone walls. The

committee may want to find out what is being presented to HDC by Dominique Hawkins (Preservation Design Partnership).

Mrs. Reed agreed to find out if HDC is considering language regarding stone walls.

- **Driveways**

Chair Losik noted that driveways came from Dominique Winebaum and then again from Patricia Weathersby. She clarified that Mrs. Winebaum had watched a ZBA meeting and had concerns about driveways. Mrs. Winebaum sent an email to Patricia Weathersby and Kim Reed. Patricia Weathersby's comment was; ***"Perhaps the template driveway setback requirements should be added to the RZO similar to the parking setback. Maybe it's okay as a regulation that the Planning Board can waive."*** Chair Losik stated that the waiver language, under the planning board, has been changed; Strict conformity presents an unnecessary hardship and it must be shown it would not be contrary to the spirit and intent of the regulations.

Mrs. Reed explained that usually the Planning Board only sees a driveway if it's a subdivision or it's going to require a curb cut. However, a lot of the zoning board's applications, who are demoing or rebuilding, are changing their driveway to match wherever the garage is going. That wouldn't be coming before the Planning Board because it's already an existing lot. The Planning Board usually does not get involved with single residential as it pertains to driveways, unless it's a complete curb cut. It has to go to the DPW Director and if it does not meet the driveway regulations, it has to go to the Planning Board. She is not sure a waiver is the way to go with this. She reiterated that if it's an existing home on an existing lot and they are changing their driveway, the Planning Board would not see them. She noted that she took the language in 190-5.0.C and added; ***"No driveway shall be constructed within 10' of an abutting property line, said distance measure from the nearest abutting sideline to the nearest driveway sideline."*** This is the exact same language that's in the LDR.

Chair Losik pointed out that Mrs. Winebaum also raised; ***"The driveway shall have a maximum finished width of 14' at the property line and flair to a max of 20' at the road surface"***. The question is whether that should be added or is that an attribute that the ZBA is not going to see? If that should go in, are there more components of 'E' that should go into this.

Member Brandon asked if she is looking for agreement for whatever the ZBA is looking at.

Chair Losik replied that she's looking to define what the ZBA has to work with to cover their needs. The ZBA is going to see these things for a variance; 10', width of the driveway and flairs. She commented that she read through the other components and didn't think there were ones that ZBA would routinely come upon. This may be a question for Patricia Weathersby.

Mrs. Winebaum commented that the median width of the driveway is 20' when it hits the road. Basically, 40' of road frontage would be needed for the driveway.

Chair Losik replied no because it's 14' at the property line. The flair goes out into the right-of-way. This is a question that should be clarified by DPW.

Mrs. Reed stated that she will work on this with Dennis McCarthy (DPW) and Patricia Weathersby.

Mrs. Winebaum stated it would be good if the town paid more attention in regulating driveways from the perspective of Rye's semi-rural character. Driveways are important and it's not really regulated once it's on the lot. It's only the entrance and 10' setback and then people can have a very extended driveway. She wonders if driveways could be regulated better on a lot, as opposed to just the entrance and 10' setback.

Chair Losik asked if her concern is the length of the driveways.

Mrs. Winebaum replied driveways in general. She continued there are also people who will add a second entrance and it seems that's not well regulated.

Mrs. Reed explained that no matter what, if they are putting in a second curb cut, they have to go to the DPW Director and he looks at the criteria. If it does not meet the criteria, he sends it to the Planning Board.

Mrs. Winebaum pointed out that in the Master Plan, under Land Use, there are recommendations; "rural by design" and "planning for town and country". This would help the town's semi-rural character. She doesn't think the town has knowledge about the Master Plan. Also, if there is going to be an update of the Master Plan, the Planning Board's Rules of Procedure should also be revised.

2. Other

- **Next meeting scheduled for Monday, October 4th, 8:30 a.m.**

Adjournment

**Motion by Kevin Brandon to adjourn at 9:55 a.m. Seconded by Patricia Losik.
All in favor.**

Respectfully Submitted, Dyana Ledger