

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

**Wednesday, September 15, 2021  
8:30 a.m. – Rye Town Hall**

***Present: Patricia Losik, Kevin Brandon and Kim Reed***

**1. Call to Order**

Chair Losik called the meeting to order at 8:40 a.m.

**2. Follow up from last week's meeting:**

Planning Administrator Reed noted that she prepared a table showing the zoning amendments, LDRs and building codes that were adopted last year. It also shows what did not go forward. She also noted that she handed out some information on detached accessory dwelling units. Information was also submitted to the committee from Pat Losik addressing pilings and fill. Mrs. Reed pointed out there's also a letter regarding two DES applications that were before Conservation and ZBA from Eben Lewis, NH DES, as well as a memo about the driveway regulations.

**• DADU (Detached Accessory Dwelling Unit)**

Chair Losik pointed out the language in RSA 674:72 regarding accessory dwelling units. That language got most towns to adopt an ADU. She continued that RSA 674:73 is the language on DADU.

***A municipality is not required to but may permit detached accessory dwelling units. Detached accessory dwelling units shall comply with the requirements of, and any municipal ordinances or regulations adopted pursuant to, RSA 674:72.***

Mrs. Reed noted there may have been more DADUs prior to 2011. However, since she took over the zoning administration in 2011, there have been a few two dwelling units on one lot (6). This is why she started thinking about two dwellings on one lot versus having an apartment above a garage.

The committee reviewed the list of DADUs submitted by Mrs. Reed.

Mrs. Reed commented that if the committee is thinking about DADUs, they could try to put it into some language to put it before the full Board. She continued that it should be subsidiary to

the main house. It should meet the same requirements of the ADU checklist. She thinks it should also have to connect to the existing septic.

Chair Losik noted this is not required in the law. The law says it has to go back to 674:72 V. The language that applies to a detached would be the same as an attached; ***“The applicant for a permit to construct an ADU shall make adequate provisions for water supply and sewage disposal. But separate sewer systems shall not be required for the principal and accessory dwelling unit.”*** She pointed out that they could have separate systems, but it’s not required. The Board could have; ***“the approved sewage disposal system shall be installed if the existing system has not received construction approval”***.

Mrs. Reed asked if the committee wants to move forward with detached. She commented that she was thinking about DADUs because people have come to her wanting an apartment over a detached garage, which would need a variance for two dwellings on one lot. This route can be difficult as they have to prove hardship. She pointed out that this is why some people have connected breezeways. In order to meet today’s standards, an ADU has to be connected to the main house.

Chair Losik stated that some communities have different requirements based on siting. Should the size of the lot be considered? Should it have a greater lot size to mitigate the possible need for two septic? Some communities have looked at lot size, but she doesn’t know enough to say whether that’s a good idea or not.

Referring to lot coverage, Member Brandon asked if there’s an analogy to septic coverage.

Chair Losik commented this gets back to density and how much the land is impacted.

Member Brandon stated there should be a physical limitation that says this is how much is allowed on a conforming lot. If there’s a detached dwelling unit that meets the zoning requirements, there’s still a certain amount of intensity for that use.

Referring to DADU, Chair Losik commented that she thinks it’s a good idea; however, there needs to be parameters.

Member Brandon pointed out that people are trying to maximize the value of their real estate and create additional income streams.

Chair Losik agreed. She continued that the Board also talks about the need for affordable housing. This is a mechanism to provide more affordable housing. The last time Rockingham Planning Commission (RPC) did an update of housing needs, a 2008 document, it said that Rye needed over 1,500 units of workforce housing. There’s been a lot of talk about age related senior housing and what happens with young people. She’d rather have it be age neutral (age friendly). How can the community help all of those buckets? A person could have an apartment, attached or detached, as long as the parameters are met. It’s also an income stream.

Mrs. Reed commented that a lot of people have family moving back in with them and the elderly parents move into the apartment.

Member Brandon pointed out that it could be a tenant. It's really making sure it's properly constructed and it meets safety standards and density.

Mrs. Reed agreed to research DADUs to find more information for the committee for the next meeting.

- **Lot coverage**

*Continued to the next meeting when Member Paul can be present.*

- **Retaining Walls vs Stone Walls**

Chair Losik stated that a retaining wall is a structural component. It's holding a lateral force; soil, water. Some of the earlier information that came from code enforcement was the location of the retaining walls. Were they right on people's borders? Are they impacting other properties? Does it meet pre and post flows (RZO 5.7)?

Mrs. Reed pointed out that right now, stone walls are exempt in the zoning ordinance from meeting the dimensional setback requirements. However, retaining walls should be required as a structure.

Chair Losik agreed. She noted that retaining walls are not stone walls. Stone walls have different connotations. There are stone walls that are protected by the Scenic Roads State Law. There's protection under RSA 472:6 that if the stone wall is representing boundary markers, they can't be removed or altered. Stone walls really have a different function. Last year, there was a discussion about whether they should be pulled out of the definition for structures.

Mrs. Reed read the definition of "structure" from the zoning ordinance; ***"The following are structures but are exempt from dimensional requirements unless covered in other parts of the ordinance: subsurface and waste disposal facilities, fences and stone walls, driveways, and fuel storage tanks."*** She pointed out that it says that stone walls are structures, but they're exempt from the dimensional. What is being seen at the ZBA is that people are calling it a stone wall so they don't have to get a variance. What they are actually doing is putting up a retaining wall for a garage or house. They're using it for a different purpose other than decorative.

Chair Losik stated the building inspector said; ***"The building department has been treating retaining walls as structures. A retaining wall is considered a structure simply by description of the purpose."*** She found in some towns; ***"A retaining wall is a wall designed to resist the lateral displacement of soil or other material."*** She thinks it would help to have a definition so there's a clear understanding. She thinks that stone walls are confusing to people when they find that language in structures. She suggested they might pull "stone walls" out and call them out

for what they are. Also, there's language in the Master Plan that relates to the recognition. The LDR also calls them out as features to protect.

Chair Losik summarized that they would need to; a) amend definition of structure which would pull in retaining walls and possibly set aside stone walls; b) define retaining walls; and c) provide a definition of stone walls.

Mrs. Reed will draft a proposed amendment for the definition of structure. The committee can flush out a definition for retaining wall at the next meeting.

- **Driveways – 10' from side property line**

Mrs. Reed stated that it's in the LDR (under 202), but not in zoning, that a driveway has to be 10' from the property line. Also, in the Planning Board's Rules of Procedure, it states that driveways have to be 10' from the property line. The question is whether the same language should go in the zoning ordinance. If so, where?

Chair Losik commented that she thinks it should be put in. She noted that Patricia Weathersby (ZBA Chair) suggested that perhaps the 10' driveway setback requirement should be added to the RZO similar to the parking setback (5.6).

The committee reviewed RZO 190-5.0.B(1). Chair Losik pointed out that driveways are acknowledged, as it refers to "safe driveways". Is this where the setback should go? She is not sure but it's an option. The other reason she thinks it should go into zoning is that sometimes in the ADUs there have been questions about the driveway configuration. She thinks it's something they're going to continue to see.

After some review of the ordinance, the committee agreed that they liked the idea of adding it to 190-5.0. Mrs. Reed agreed to write up language for the committee to consider at the next meeting.

### **3. Low Impact Development**

The committee read an email sent from Steve Harding, Sebago Technics, to Attorney Donovan (dated 1/25/21) regarding 202-9.A for an application before the Board at that time. Chair Losik asked if Attorney Donovan feels there needs to be some language change around the separation of the types of development and where it should go with stormwater. She continued there was some give and take between the applicant's engineer and Sebago about what constituted acceptable stormwater treatment which would meet stormwater regs. In that application, there were additional stormwater treatments because the water table and bedrock were close to the bedrock on the site. Significant water treatment resources were needed, which ended up with a number of raingarden/bio-retention ponds. Sebago was working from the aspect of low impact development (202-9.2.A(2)) and looking at stormwater treatment through those mechanisms.

The applicant and his engineer were insistent that those would not meet the criteria set up in the LDR's and the Board had to go to the more aggressive treatment structures, which was overkill.

Mrs. Reed commented that some of the regulations are meant for big subdivisions and this was a very small subdivision. It's over engineering. She thinks this should go to Attorney Donovan.

Chair Losik agreed. She asked Mrs. Reed to also reference the letter of February 3, 2021 from Hannah Giovannucci, TF Moran Engineering.

#### **4. Fertilizers in the Aquifer**

Chair Losik pointed out that they have received a multitude of guidance on fertilizers. It really stems from the questions that the Planning Board deals with in zoning 3.6 addressing the Aquifer and Wellhead Protection District. In the Aquifer and Wellhead Protection District, a conditional use permit may trigger a hydrogeological study. In that study there's a requirement that the nitrogen loading is analyzed. The nitrate concentrations can't exceed the level set at the State. There is also language that requires *"fertilizers shall not be applied within the Aquifer and Wellhead Protection District between October 1<sup>st</sup> and April 1<sup>st</sup>"*. The answers to development in this area has been to generally eliminate fertilizer use during that time and eliminating fertilizers which have nitrogen. However, this can't be done. She referred to Danna Truslow's letter of January 20, 2021 where she opines on fertilizer use in that district. It was found that its very difficult to find fertilizers without nitrogen.

Mrs. Reed explained that this came up with Webster at Rye. The Board was going to have a condition of no nitrogen. The applicant's landscaper said that they needed nitrogen. The Board asked Danna Truslow (Planning Board consultant) to look into it and she agreed. Prior to that time, the Board was just saying no nitrogen.

Chair Losik commented they can't be overreaching. They can probably look at what change might need to be made in 3.6. How can these best practices be incorporated?

#### **5. Land Development Regs**

Mrs. Reed handed out LDR Amendment 2021-07 to clarify that if an approval has appealed to the court, the 18-month period begins on the date of the final resolution.

#### **6. Look at emails and suggestions from other Boards and Committees**

Referring to the emails sent from Patricia Weathersby regarding wetland resources and piers/fill, Chair Losik asked the committee to look at the information from Eben Lewis, NH DES; wetlands rules from DES which became effective December of 2019 and later updated October 23, 2020. The committee will have a discussion at a future meeting about where this should go.

## **7. Other**

Chair Losik noted that they need to look at the appeals for workforce housing and multi-family dwelling. Right now, the ordinance says not more than 8 dwelling units. She thinks the law says it can go to 5 and that's the minimum. This means units in a building. The Board may want to take this up and decide if they would ever want to see 8 (for a large building) or if it should go back to 5. Density is also a question for Attorney Donovan. She asked for Attorney Donovan to look at E on growth management. She would also like him to look at the percentage for workforce housing. Referring to C.4, it says; "***A multi-family development shall not have more than 40 dwelling units. The subdivision of land shall not be used to circumvent the 40-unit limitation.***" There have been conversations about developments with more. She asked how this could be done if the max is 40?

Mrs. Reed noted the question for Attorney Donovan and agreed to reach out to him.

- **Next Meeting scheduled for Wednesday, September 22<sup>nd</sup>, 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 F. Ledger