

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

**Tuesday, October 15, 2019  
8:00 a.m. – Rye Town Hall**

*Present: Chair Patricia Losik, Nicole Paul, and Planning/Zoning Administrator Kim Reed*

**I. Call to Order**

Chair Losik called the meeting to order at 8:07 a.m.

**II. Continuation of Proposed Zoning Amendments for discussion:**

**a. Unnecessary Hardship language**

Chair Losik noted there was a question about what “unnecessary hardship” means in connection with Rye’s ordinance language.

Member Paul stated that she went through the zoning ordinance and the LDR to pull out every place that the word “hardship” is used. In the zoning ordinance, the word “hardship” is used in four sections; Section 303.5 E and H, Guidelines for Decisions of Appropriateness, and Section 505.11, which addresses waivers. The term “unnecessary hardship” is used in the section regarding variances and decisions of the board. She suggested looking at the language in those sections.

Review of 303.5, Guidelines for Decisions of Appropriateness

The following principles shall be followed in the granting a certificate of approval within the Historic District:

Subsection E – Such Certificate of Approval for demolition and re-use shall only be granted upon a showing by the applicant that to deny such Certificate would result in a hardship unique to the property in question and that such hardship is not common to neighboring properties within the District.

Subsection H – Exceptions to the above, based on hardship, may be considered to be granted by the Commission.

Chair Losik commented that “hardship” is not defined anywhere else in this section.

Review of 505.11, Waivers:

Where the Planning Board finds that extraordinary hardships, serious practical difficulties, or unnecessary and unreasonable expense would result from strict compliance with the foregoing regulations or the purposes of these regulations may be served to a greater extent by an alternative proposal, it may approve waivers to the regulations.

Subsection A (4) – A particular and identifiable hardship exists or a specific circumstance warrants the granting of a waiver. Factors to be considered in determining the existence of a hardship shall include, but not be limited to:

- a. Topography and other site features.
- b. Availability of alternative site locations.
- c. Geographic location of property.
- d. Size/magnitude of project being evaluated and availability of co-location.

Chair Losik commented it defines the context of hardship for waivers, which would possibly be different for the other one.

Member Paul agreed. She pointed out that RZO 701.2 and 702.4 uses the term “unnecessary hardship”. To her, this would be different then just “hardship”.

Chair Losik agreed.

Referring to Attorney Donovan’s memo, Planning Administrator Reed noted that it says; “effective January 1, 2010 the legislature amended RSA 674:33 to establish the following standards for “unnecessary hardship”. She commented that they do not say how to interpret it.

Member Paul stated they have dealt with unnecessary hardship. She continued that throughout the LDR, it is all “unnecessary hardship”. Also, Sections 701.2 and 702.4 deals with unnecessary hardship. That goes to what Attorney Donovan addressed in his memo.

Chair Losik agreed.

Member Paul continued that in the other sections, where it is just “hardship”, it really is not used within the concept of “unnecessary hardship”. To her, it is a different standard.

Chair Losik agreed.

Member Paul asked if this should be clarified.

Referring to RSA 674:33, Planning Administrator Reed noted that every time it says “hardship” it goes on with the word “unnecessary” next to it.

Member Paul suggested putting the word “unnecessary” with hardship in Sections 303.5 E and H, so it will all work under the same definition.

Planning Administrator Reed pointed out “unnecessary hardship” is defined in the RSA.

“Owing to special conditions of the property that distinguish it from other properties in the area. No fair and substantial relationship exist between the general public purposes of the ordinance provision and the specific application of that provision to the property and the proposed use is a reasonable one.”

Chair Losik stated she can see that is the way the meaning of “hardship” would be interpreted in 303.5 E and H, and 505. She pointed out that it is also in Section 900 of the LDR.

Planning Administrator Reed stated that in thinking of “hardship” people think of financial; however, “unnecessary hardship” relates to the RSA.

Chair Losik noted it refers back to special conditions, which is broad.

Planning Administrator Reed commented that a layman would consider “hardship” to be financial, such as “hard times”. Making it “unnecessary hardship” causes pause.

Chair Losik stated she thinks it should be unnecessary hardship. She wonders if there should be a definition in the appendix.

Member Paul commented that she would just refer to the statute. “As defined in RSA 674:33.”

There was discussion on how the amendments should be proposed:

- Proposed Zoning Amendment to 303.5 E and H to add the word “unnecessary” before hardship. Chair Losik feels that 505.11 A is an addition to “unnecessary hardship” and is a subset of “hardship”. Member Paul agreed to work on tweaking the language in 505. She will also work on the proposal for 303.5 E and H, and consider whether a definition for “unnecessary hardship” is needed for the appendix.

The committee will address this again at the October 24<sup>th</sup> meeting.

#### **b. Illegal apartments – Amnesty**

Chair Losik noted that they left the last meeting with some changes that was going to be sent on to Attorney Donovan.

Planning Administrator Reed stated that Attorney Donovan has some reservations with this. She is waiting to hear back from him.

The committee will address this at a meeting in the future.

#### **c. Chemical Free Pools**

Chair Losik stated there is not a lot of information and language in zoning ordinances in the State. The language can be found in ordinances in Connecticut and Massachusetts. She continued that the new DES Best Management Practice for Wetlands, as of 2019, uses the Rhode Island Department of Environmental Management’s manual as a guide for the State’s best management practice for wetlands. She noted that Rhode Island had some language rules and regulations that really made sense. There are two concepts that go back to the wetlands. When she reads the language for Connecticut, Massachusetts and Rhode Island, it has to do with two functions; the buffers and the definition of wetlands. She read from RZO 301.8A, which addresses the buffers of 100ft and 75ft to large water resources. She pointed out there are many wetlands in the community that are less than 1 acre. The buffer restrictions are addressed in 301.8B, which are so defined. Under that section is 7, which states “all other uses are prohibited”. When she looks at the wording used by some of the other jurisdictions, they are looking at what shouldn’t be close to the buffers, and what could harm buffers. Danna Truslow has talked about what happens in the first 25ft or 50ft and so on. The limitations are always moving based upon the possible impact to the natural resources. She thinks it starts in 301 and the particular mitigation prospect comes in the conditions of approval based on a particular application. She stated that chemical free pools are not

always the answer. That is one type of mitigation but she would not want to have that in the ordinance because it may change over time. She read from Rhode Island's manual. It was noted that in Rhode Island's rules swimming pools are considered exempt.

Chair Losik suggested that the committee go back to Danna Truslow and ask for her opinions, as Rye has sizeable buffers to sizeable wetland resources. There are many resources that could probably have protections by the current structure of 301 but there are resources, under an acre, that are not going to have protections. The second part would be whether the committee wanted to define the other structures in 301.8 B(7).

Planning Administrator Reed noted that anyone going before the ZBA for relief from Section 301 must go before the Conservation Commission first. The Conservation Commission is only an advisory board; however, if the ZBA approval is conditioned upon the recommendations of the commission, it then becomes binding as part of the Notice of Decision. In addition to Danna Truslow looking at this, she recommended that the Conservation Commission look at it as well.

The Committee agreed to have Danna Truslow look at 301 and give an opinion on the various distances as it relates to pools. They would also like her opinion about the expansion of the definition of wetlands in terms of area. The Committee also agreed it is important for the Conservation Commission to weigh in and provide guidelines back to ZBA, which encourages best practices.

Chair Losik noted the mitigation piece will change over time. She does not think that is a concept that should be introduced into the specific language of the zoning ordinance. She commented that she would like to see pools in 301.8B(7). She would like to see appropriate expansion of (7). "All other uses are prohibited", pulls a lot of traffic into the Board of Adjustment.

Member Paul stated she would like to ask Danna Truslow and the Conservation Commission what they would like to see added in the buffer restrictions.

#### **d. Email about RV's and other in setbacks**

The Committee reviewed the definition of yard:

Means an open unoccupied space surrounding or adjoining a building on a lot.

Planning Administrator Reed suggested taking out the word "open" and leaving "unoccupied space". Leaving the word "unoccupied" would mean that it can't be lived in.

Member Paul commented that to her "occupied" is more than just living.

Chair Losik stated she was looking at Exeter's ordinance. They have a concept of "open space" but it is not this. They are looking to find and cultivate those areas that can stay open.

Planning Administrator Reed noted that "open" is defined as allowing access, passage or a view through an empty space not closed or blocked off.

Member Paul suggested that they may need to define "open space". She would be curious to see where "open space" is used throughout the statute. She agreed to search this information. She thinks that what throws off Rye's definition is "not covered in any manner".

Chair Losik agreed.

After discussion, it was agreed that the Committee would look at the information Member Paul comes up with to decide how to proceed.

**e. Codification**

Waiting for information from Attorney Donovan.

**f. Other**

- **Next meeting scheduled for Thursday, October 24<sup>th</sup>, 8:00 a.m.**

**III. Public**

*No public members present.*

**Adjournment**

**Motion by Nicole Paul to adjourn at 9:20 a.m. Seconded by Patricia Losik. All in favor.**

Respectfully Submitted,  
Dyana F. Ledger