

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

**Monday, July 22, 2019  
9:00 a.m. – Rye Town Hall**

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

**I. Call to Order**

Chair Losik called the meeting to order at 9:04 a.m.

**II. First meeting of the 2019 Year to review the list of proposed zoning amendments that should be considered for the 2020 Ballot**

Member Quinn noted the items the committee was working on in 2018 that did not come to a conclusion; a/c, fences, generators and sheds. These items are often on the ZBA agenda but could easily be addressed with some guidance in the zoning ordinance to help the building inspector.

Planning Administrator Reed stated she has reviewed the minutes of the last meeting of the committee for 2018. The deputy building inspector had said at that meeting that he was going to look at these items but has not followed up with her on these items in question.

Chair Losik stated she thinks the committee was faced last year with discussions that were wide and not specific to the matters mentioned. The committee had said last year that they wanted specific recommendations in order to work through the issues in an effective manner.

The committee agreed that Mrs. Reed should speak with Chuck Marsden again about looking at those items.

Member Paul stated the committee should draft something and have the building inspector tweak it.

Mrs. Reed will send the committee past drafts on fences, generators and sheds before the next meeting. The committee agreed to look at the drafts from last year, while Mrs. Reed follows up with the building inspector regarding any open issues of concern.

Member Quinn commented he is not sure if there are any other zoning board type issues that come up that the committee should be looking at because it creates problems.

Mrs. Reed noted that she keeps a record of all the cases that are heard by the ZBA and the relief that is granted. She will get a copy of that list to the committee members for the next meeting. She also noted that a lot of the applications are for sheds, a/c's, and height of structures. The common variance requests are for impervious coverage and setbacks (rear, front and side).

### **Review of suggested zoning amendments:**

- **Town Administrator Mike Magnant would like the committee to look into Airbnb's.**

Mrs. Reed will research the ordinances for Portsmouth and Hampton to see if they address Airbnb's. She will also follow up with Mr. Magnant to get more information on what he feels are the issues that need to be addressed.

- **Flood Storage (suggested by Emily DiFranco)**

Mrs. Reed submitted language from FEMA regarding compensatory storage to the committee to review. The committee also reviewed the Town of Salem's compensatory storage language, which is more detailed and looks at any encroachment that involves new construction, substantial improvement or other development.

Chair Losik noted they now have maps from Conservation and UNH that show more definitively where the plan storage areas are. On the town's website, The Flood Risks Reductions Map can be overlaid on any parcel in the GIS in order to understand where the risks are for any particular resource in town. Chair Losik stated this is something the committee should spend some time on and consider.

Chair Losik will look at some other seacoast communities' flood plain ordinances. Mrs. Reed will reach out to Sally King, Conservation Commission Chair, to see if they would like to weigh in on this.

- **Height**

Mrs. Reed stated in 2018 the ZBA granted approximately 8 height variances ranging from 30ft to 34ft for homes within the Special Flood Hazard area and the Coastal Overlay District, which has a requirement of 28ft. In 2018, this committee came up with the 2ft freeboard which was approved by the voters. Attorneys are saying the height variances are needed because of FEMA. It has become a question of how much of the height is because of the 2ft freeboard versus esthetics and design. She looked at the Town of Hampton, who has a 1ft freeboard, to find out what they are doing. Hampton says that if the people are going to elevate for the 1ft freeboard, they can only go 2ft higher. The architectural design has to be tied to the freeboard for this variance. Mrs. Reed explained the Coastal Overlay District runs the entire coast. If a property is in the Coastal Overlay District, it does not matter what zoning district it is in, the height can only be 28ft. The reason the overlay was voted in is because the town did not want big homes, along the coast, blocking the views and having it look like Hampton. The town wanted to control on the development because it is such a packed community along the coast. She continued that not every home in the Coastal Overlay is in the Special Flood Hazard area, which has a 1% chance of flooding during any storm. (She explained the AO, AE, Velocity and VE Zones.) She stated they are looking at climate change and trying to protect the Town of Rye with the 2ft freeboard. If the ZBA is going to grant 38ft height variances, the properties in the back will be asking for 40ft variances. It ends up being a ripple effect.

Chair Losik pointed out RZO 304.2 has a general paragraph which recognizes the uniqueness of the coastal area via the Rye Master Plan. It is important for the committee to consider there is solid foundation for these protections in the Master Plan.

Mrs. Reed noted this is why changes and updates were made to the Master Plan. In order to make changes to the zoning ordinance, it has to be in the Master Plan first.

Member Paul agreed to look at Hampton's ordinance and work on drafting something for the next meeting.

There was some discussion about the possibility of making this a conditional use permit and having it fall to the responsibility of the Planning Board to have more control. Mrs. Reed will speak with Attorney Donovan about this idea. The committee also agreed to have Attorney Donovan look into the laws of the hardship criteria.

- **List of Impaired Surface Waters – 303 D**

Mrs. Reed stated she got an email from NH DES that the draft list of impaired surface waters was available. Parsons Creek is one of the impaired water bodies in Rye. She is going to research whether any zoning changes need to be made for the impaired water body.

- **Clean Fill Soils**

Mrs. Reed explained a petitioned warrant article was received from Janet Stevens for clean fill soils within the Town of Rye. The petitioned article was on the ballot in March and passed; however, it cannot be implemented because it was received after the deadline for amendments. The Board of Selectmen agrees with the intent of the proposed amendment. They feel it would be good public policy to ensure that fill brought in to the town is tested for contaminants. The Selectmen have asked that this be considered for 2020. Mrs. Reed noted this is being considered by the Long Range Planning Committee for the Land Development Regs. This was brought up at the Deliberative Session and it is a controversial matter. Some of the developers expressed their concerns on the regulations as this is regulated by the State. Julie LaBranche, RPC, also agrees that this is already regulated by the State. The town may be able to add a one sentence statement in the regulations that says all fill must meet the requirements of the RSA. The Selectmen have asked this Committee to look at this.

The Committee discussed the difficulty of enforcement and monitoring.

Mrs. Reed noted that if the town keeps the same standards as EPA or NH DES, the town can ask for their assistance. If Rye has tougher or stronger language it falls upon the town. Mrs. Reed suggested the possibility of asking for certification that the fill meets the State's regulations.

Chair Losik stated they first need to understand the parameters of the State rules.

Mrs. Reed agreed to research this information.

- **Wetlands – DES changes**

Chair Losik noted that the DES changes are going to be effective December 15, 2019. She asked Mrs. Reed to reach out to DES for guidance with the town's wetlands ordinance and where it should be headed.

Mrs. Reed stated that she will reach out to Ted Diers Surface Water Department Head.

### **III. Other**

#### **Next Steps:**

- Check on enforcement related matters that are still lingering from 2018. ZBA record. – Kim Reed
- Compensatory Storage (Hampton/Hampton Falls) – Pat Losik
- Compensatory Storage (Conservation Commission Chair) – Kim Reed
- Height requirements (Proposed elevation limit draft) – Nicole Paul
- Strengthening control within the Planning Board (Attorney Donovan) – Kim Reed
- State rules on fill – Kim Reed
- Contact Ted Diers, NH DES – Kim Reed
- Airbnb (Mike Magnant) – Kim Reed

### **IV. Public**

**No members of the public present.**

- **Next Meeting scheduled for Thursday, August 15<sup>th</sup>, 9:00 a.m.**

### **Adjournment**

**Motion by Nicole Paul to adjourn at 10:06 a.m. Seconded by Jeffrey Quinn. All in favor.**

Respectfully Submitted,  
Dyana F. Ledger