

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

**Wednesday, October 2, 2019
8:00 a.m. – Rye Town Hall**

***Present: Chair Patricia Losik, Nicole Paul, Planning/Zoning Administrator Kim Reed,
Building Inspectors Peter Rowell and Chuck Marsden***

I. Call to Order

Chair Losik called the meeting to order at 8:00 a.m.

II. Business

- **Discussion regarding amnesty for illegal apartments**

The group received copies of the last draft changes, which were done in 2018.

Chair Losik asked for background information on the draft.

Building Inspector Rowell noted that apartments have always been an issue for the Town. Over the years, apartments have been approved a number of different ways. He explained that last year, they started work on cleaning up the issue with apartments to make them easier to deal with. The document addressing “amnesty” was suggested by Attorney Donovan to take care of the issue.

Planning/Zoning Administrator Reed noted that Building Inspector Rowell put together a timeline that talks about amnesty. He went through the ordinance and looked at all the changes that have happened over the years with apartments. There are a lot of illegal apartments that come up all the time. The Building Department has questions as to how to enforce them.

Chair Losik noted the document is the Building Department’s 2018, Apartment Approvals Allowed in Rye. There are six separate components of types of apartments and two-families that have been approved.

- Anything built prior to the enactment of the 1953 zoning.
- 1953 and present – Two-family dwellings that had been allowed in the General Residential District only, with area per family requirements, then by extension into the other districts (Business, Commercial and Industrial).

- March 1983 to March 1984 – Article VII allowed in all residential districts for changes to dwellings, additions and separate buildings to allow a second dwelling to be used by family, immediate relatives and/or caretakers.
- March 1984 to March 1998 – Zoning Article II was allowed by right in all residential districts to changes to dwellings and additions to allow for a second dwelling to be used by members of family and immediate relatives.
- 1998 to 2017 – Article IV allowed by special exception for an accessory apartment in Single Residence only, recertified every two years that the owner lives in one of the units.
- 2017 to present – As mandated by State, RZO Article III allowing ADU's to be established in any residential district subject to a CUP granted by the PB. Recertification of occupancy by the owner and no less than a three month rental, is required every two years.

Chair Losik noted there is a memo dated May 3, 2018, from the Building Department outlining their ideas about an apartment amnesty program, which has been incorporated into Attorney Donovan's work. The document from Attorney Donovan was drafted in the fall of 2018, in response to the Building Department's request. There was a Building Department staff meeting on 10/23/18. The changes from that meeting has been incorporated, which brings it to today.

Chair Losik noted that page 1 basically incorporates the history, which the Building Inspector laid out in April 2018 and the language of which has been included by Attorney Donovan.

There were no concerns with page 1.

Referring to page 2, Chair Losik stated one concern she has is under 'B', certification; "the owner of a property having an illegal apartment may apply to the building inspector for a certificate of legality for the apartment, on or before March 31, 2020. She suggested the date be changed to March 31, 2021, as a year has already gone by.

There was discussion on whether a year would be enough time for the residents to learn about the amnesty program and apply for the certification.

Member Paul stated she has mixed feelings about having a timeframe. The goal is to get all the illegal apartments inspected and approved, so why is there a timeframe at all?

Building Inspector Rowell noted the goal is for safety but also to identify all the apartments. A resident can come in and turn their illegal apartment into a legal unit, if the criteria can be passed to deem it safe. If there is a close date, any apartment after that is an illegal apartment and the resident will have to suffer the consequences. The Building Department will not have to struggle with one apartment at a time trying to get the owners to legalize them.

Building Inspector Chuck Marsden commented it gives a sense of urgency for the owner to make it right.

Chair Losik stated she is not uncomfortable with the date. There has been an amnesty period but now it is saying there is an end date.

The group agreed to the date of December 31, 2021 to give a whole year and nine months after adoption.

Chair Losik pointed out that definitions will be needed for;

- ADU (Accessory Dwelling Unit)
- In-law apartments, accessory apartments
- Illegal apartments (added to the appendix)

Building Inspector Marsden noted that if someone comes in on December 15th for amnesty, it would not give enough time to address the septic system if it is not adequate.

Chair Losik suggested addressing this under proposed 202.9 B(2).

The group reviewed the requirements for the amnesty program. They also reviewed the criteria for a Conditional Use Permit (CUP) for accessory dwellings.

Building Inspector Rowell noted that the septic is probably going to be a big hurdle for a lot of the illegal apartments. In order to have an approved ADU, the owner needs to show a second dwelling unit on the septic design.

Planning Administrator Reed asked what the solution would be for this.

Building Inspector Marsden stated it needs to be consistent with what is done for the ADU's. *"An approval shall be obtained by NH DES relative to the adequacy of the on-site waste disposal system, as required by RSA 674:72 V. Prior to construction of an accessory dwelling unit, an application for approval for a sewage disposal system shall be submitted in accordance with RSA 485, as applicable. The approved sewage disposal system shall be installed if the existing system has not received construction approval and approval to operate under current DES rules, or predecessor rules, or the system fails or otherwise needs to be repaired or replaced."*

If the goal is to give existing illegals amnesty, Planning Administrator Reed pointed out that homeowners who know their septic system is not going to pass are not going to apply for amnesty.

Chair Losik commented the wording could be "prior to legal permitting". The Building Department cannot issue a legal permit, unless the septic is dealt with.

Building Inspector Rowell confirmed. The Building Department should not be approving ADU's, unless their septic design shows two dwelling units. He commented this is going to be

onerous on the person who is trying to get their ADU approved. They may need to upgrade their septic system to show two dwelling units.

Building Inspector Marsden stated he is worried about the things that are wrong that cause problems in other ways; such as, a failed septic system affecting Parsons Creek watershed or the nonuse of smoke detectors. He thinks they should be given amnesty for the apartment if they do certain things to make it right.

Chair Losik agreed. She stated the septic is no different than the other safety factors.

Planning Administrator Reed agreed it is a safety issue if it is a dysfunctional system. She is talking about systems that are functioning, but they do not have the plan and it is going to be onerous on the owner to have someone go out and do a plan. She asked if they should consider “unless they can prove, by having an inspection, that it is a functioning good septic system”.

Member Paul suggested “inspected by a septic system inspector and determined to be functioning adequately and the design for a replacement system has been approved”. Basically, this will cover an inspection to make sure everything is working fine; however, if it fails, the design is already to go for the replacement system. The plan would be for the new system.

Building Inspector Rowell noted that if there is no State plan on record for what is in the ground now, the State is going to make them install. There is actually a State rule, which is not being pushed, that the plan has to be 20 years or newer. He continued that this is a good start. Rye will make sure the new system is designed, which will be installed if the one that is proven to be working properly now, fails. If the State wants to force them to install, it is not Rye’s issue, even though the State depends on the Town to enforce it for them.

Member Paul read the suggested language (#3 will be merged with #2).

The building inspectors agreed the language was enforceable.

There was more discussion on the date for amnesty.

Building Inspector Rowell noted that the applicant will have to apply by the date. If the septic needs to be done, they will be given a timeframe in which to have that done. If they do not follow through with the work, there will be a notice of violation issued for the illegal apartment. It would be handled on a case by case basis.

Chair Losik noted that the minimum square footage is set at 600sf. She asked if there should be a maximum on the apartments for amnesty.

Building Inspector Rowell stated they should not make it more onerous than it has to be.

Planning Administrator Reed noted there are apartments that are less than 600sf. She asked if the owners would have to apply for a variance.

Building Inspector Rowell confirmed.

There was discussion on whether 600sf is too high. It was agreed to keep it consistent with the requirements of the ADU. Apartments that are smaller would require a variance.

The group continued to review the criteria for an ADU. There was discussion in regards to parking; two off-street parking spaces. It was agreed that the applicant for amnesty should show adequate parking on the plan.

Chair Losik stated ADU gets into the question of consistency with the overall character of the property. In these cases, they are illegal apartments that have already been used. She asked if there is concern with retaining the appearance and character of the structure.

Building Inspector Rowell stated the apartments have been there a number of years.

Chair Losik stated that windows may need to be changed. A stairway may need to be changed because there is a problem with access and egress or entryways. She asked if there is a concern with maintaining the appearance and character of the property. Can the owner put in any window or door as long as it meets code?

Building Inspector Marsden commented that is the extent of their jurisdiction.

Planning Administrator Reed pointed out it could be a detached building.

Chair Losik noted that enforcement is saying it is an issue in respect to safety. It is an issue in respect to code. She thinks enforcement is saying it is not an issue with respect to appearance and character.

Member Paul stated this gets into whether it is a new ADU construction, whereas these are existing. To get into the business of bringing them into aesthetic compliance, to her, is not what they are supposed to be doing.

The group continued their review of criteria. There was review and discussion on the definition of “dwelling”. It was agreed that “two family building” under C, conditions; should be “any two-family dwelling or lot with two dwelling units”. Under the criteria for “owner occupancy”, the word “building” will also be changed to “dwelling unit”. There was discussion on the wording for “transfer” of the property, for renewal of certificates. It was agreed it should be “until transfer by sale of the property”. The group completed the review.

Motion by Nicole Paul to bring the draft, with the language changes as discussed, to the November Planning Board meeting. Seconded by Patricia Losik. All in favor.

- **Discussion in regards to campers, RV's, trailers**

Building Inspector Rowell noted that he received a complaint, from an abutter, in regards to a camping trailer being located in both the side yard and front yard setbacks of a very small lot. A small deck was also built. The owners received a notice of violation; however, they insisted that the RV was not being occupied and was only parked in that location for storage. Attorney Donovan was asked to weigh-in on whether the camper could be stored in the setback. His memo was very clear that the setback cannot be occupied by anything. (A copy of Attorney Donovan's confidential memo was submitted to the committee.)

Chair Losik stated the guidance is central under the definition in the RZO of "open space", which *"means an unoccupied open area of land not covered in any manner and open to the skies"*.

Building Inspector Rowell noted that Rye has a lot of small lots with setbacks that have materials stored in that location. He pointed out there are also sheds, swing sets, woodpiles and lobster traps in setbacks. It raises an enforcement issue of trying to clear up all those setbacks.

Chair Losik read from 203, Single Residence District, in regards to front yards. She noted that it does not really address, in the context of the ordinance, the concept of open space. Under definitions, there is a definition of "open space" and a definition for "yards". All of them (front, rear and side yards), reference the concept of "open space". She commented this is something that could be a pretty big issue.

There was some discussion on whether this is an issue that should be addressed at this time.

Chair Losik stated she would like to look at some other zoning ordinances from towns that are similar to Rye to see if there is some language that could be used that is workable.

The group agreed.

III. Other Business

Building Inspector Rowell suggested looking at the following;

- Cabin Licensing – Needs to be updated
- Air Bnb's - Should be addressed; such as limiting rental timeframes

Next Meeting – October 15th, 8:00 a.m. to 9:30 a.m.

Adjournment

Motion by Nicole Paul to adjourn at 9:35 a.m. Seconded by Patricia Losik. All in favor.

Respectfully Submitted, Dyana Ledger