

**RYE PLANNING BOARD  
RULES AND REGULATIONS COMMITTEE  
Tuesday, July 21, 2020, 12:30 p.m.  
Via ZOOM**

**Present:** *Patricia Losik, Nicole Paul, Jeffrey Quinn and Kim Reed*

**I. Call to Order**

Chair Losik called the meeting to order at 12:30 p.m.

**II. Overview:**

**1. Last Year the RnR Committee accomplished:**

**ARTICLE 3**

- Amendment 1. Height
- Amendment 2. IDDE
- Amendment 3. Unnecessary Hardship
- Amendment 4. Demo Review
- Amendment 5. Public Hearing on ZBA Applications
- Amendment 6. Wetlands
- Amendment 7. Sound level for wind energy
- Amendment 8. Definition of Wetland Scientist
- Amendment 9. Legal Apartments
- Amendment 10. Adoption 190 Code
- Amendment 11. Telecommunications

**ARTICLE 4**

- Amendment 3. Adoption of Chapter 35

**ARTICLE 5**

- Amendment 1. Adoption of Chapter 60 of Town Code

Chair Losik thanked everyone for their hard work last year. She noted that there were some things that the committee couldn't bring to a vote. She suggested that they look back at those things and see if there is anything that should be brought forward for this coming year.

Member Quinn asked for a description of the Building Department structure at the present time.

Planning Administrator Kim Reed explained that Building Inspector Peter Rowell is officially retiring on July 30<sup>th</sup>. Building Inspector Chuck Marsden was hired three years ago to be Peter Rowell's replacement, but that did not happen. Now that Peter Rowell is officially retiring,

Chuck Marsden will step in as department head and he will be hiring an assistant building inspector. Sandy Dufresne is the Building Department's secretary.

Member Quinn asked if the Rules and Regs meetings are available to the public.

Planning Administrator Reed explained that the committee meetings must be legally noticed and open to the public, unless the committee or board is meeting in non-public session and that has to be legally noticed why it is not open to the public. The meetings are also live-streamed on the Town's website.

Chair Losik noted that all meetings are properly noticed with agendas and minutes of each meeting will be taken.

- 2. First meeting of the 2020 Year to review the list of proposed zoning amendments that should be considered for the 2021 Ballot**
  - a. Request by David Choate**
  - b. Floodplain Ordinance placed in the Rye Code book not correct**
  - c. Other**

Planning Administrator Reed noted that the committee worked really hard last year and accomplished a lot, especially with changes in the zoning ordinance and moving it to a Rye Code. She has had some concerns expressed that the people who did the code book did not put in the proper floodplain ordinance. The committee will need to take a look and make sure the one that was adopted two years ago regarding freeboard actually gets into the new code. She has not heard about any proposed changes from anyone; except the ones from David Choate for the Historic District Commission. Those requested changes have been sent to the committee to review before meeting with Mr. Choate. The committee should consider if those changes can legally be done and if they are beneficial for the Town. Since this is the first meeting of the year, she would like to get a sense from the committee of what they would like to work on and how they would like to proceed.

Member Quinn stated that last year there was a problem that the length of the zoning board's agenda was being taken up by minutia, or things that could be rectified, by a change or clarification in the ordinance of some kind. He commented that is one thing they could look at or any other issues that can help the whole process run as efficiently as possible.

The committee reviewed the chapters of the code that were sent by the Planning Administrator to the committee before the meeting. It was agreed that the committee needed the chapter regarding the floodplain ordinance. It was also noted that the most recent floodplain ordinance was adopted March 12, 2019. Kim Reed agreed to ask Attorney Donovan if the correct ordinance can be pulled into the code without sending it to another vote, as it is just a publication error. She will also ask if the building inspector is supposed to be operating under what was published versus what was actually approved in 2019, since that code did not get published.

Planning Administrator Reed read David Choate's email regarding changes requested by the Historic District Commission (sent July 13<sup>th</sup>):

- 1) Eliminating the need for the Demolition Committee to review demolitions in the Historic District, as this already falls within the jurisdiction of the HDC.
- 2) Requiring abutter notices to be sent for any public hearing that is held on the significance historic value of the building, etc., proposed to be demolished.

Chair Losik noted that the second request is definitely a question for Attorney Donovan. She asked if Mr. Choate is suggesting that the abutters have standing if something is going to be demolished.

Planning Administrator Reed pointed out that sending out abutters' notices for the planning board, zoning board and select board is set in the NH RSA's. She is not sure what the legal requirement is for sending out abutters' notices if it is not in the RSA's.

Chair Losik suggested that they ask Attorney Donovan this question. Referring to Mr. Choate's first request, she asked if there are any other **jurisdictional?** districts that should be considered for elimination.

Planning Administrator Reed read from Section 190-3.3.D Historic District. She pointed out that it says that it has to go to the Historic Commission for demolition.

Chair Losik stated that she thinks he is saying that because that is there it would be duplication of effort if it goes to the Demolition Review Committee.

Planning Administrator Reed commented this would also be a legal question.

Member Quinn asked if it could be stated in the DRC's role and responsibilities that they are they govern demolition in the Town of Rye, excluding the Historic District.

Chair Losik commented that when she looks at Demolition Review and the specific resources that are called out, which are subject to review, it includes;

- A building or part of a building that is greater than 500s.f., or a monument, statue or memorial, or an accessory building less than 500s.f.

It is where that language relates to a monument, statue or memorial. In the HDC the applicable demo language is building or other structure. In going back to the definition of structure, she is not sure it picks up monuments, statues or memorial. Is the language coordinated enough to take the step that Member Quinn is suggesting? She does not think it is.

Planning Administrator Reed noted that she will speak with Attorney Donovan about both of these requests proposed by Mr. Choate.

Chair Losik stated that something else that came from the Conservation Commission and the Planning Board was in regards to wetlands; the wetland conservation district ordinance in Hampton.

Planning Administrator Reed explained that years ago, they tried to change the area that is buildable on a lot so the wetlands, marsh and beach could not be used as part of the buildable area. This change was shot down by a lot of homeowners who live on the beach that are using the sand as part of their lot percentage so they can build to the maximum extent possible. She sent the ordinance for Hampton. She asked the committee if they want to try again.

Member Paul asked if this ever got to the ballot or even the planning board.

Planning Administrator Reed explained it was scheduled for a public hearing before the Planning Board. There were at least forty people who live on the beach that came out in force and threatened to sue the Town if it went through, so the chair of the planning board, at that time, removed it.

Member Quinn asked if there is a compelling reason to make this change.

Member Paul noted the compelling reason is that the Town is getting huge houses on small lots. On lots that really should not be supporting a large house, especially when there are water issues.

Member Quinn commented it has not been a detriment all these years, so why it is a detriment now?

Member Paul replied that she thinks it is a detriment now because there is a water problem and it is only going to get worse.

Chair Losik asked if she is referring to storm surges and those calculations.

Member Paul confirmed.

Chair Losik stated it is a good idea for the committee to have a re-read of the current wetlands ordinance. She continued that she believes what Kim was explaining happened in 2015. In 2016, there was a very active Rules and Regs Committee and there was a subcommittee that met. They were able to institute some changes that were due. One of the most significant pieces that tried to come into play, as part of that complete overhaul, was to bring in the tidal wetlands, which meant the beachfront. She pointed out that in Rye that is not part of the wetlands ordinance and it relies on the State (482). There is also the issue of how broad the Town wants to be because there was a feeling it was too big a reach. There was also a proposed change in the definition of a wetland which went to 3,000s.f. She pointed out there was pushback and no one was ready for that step.

Chair Losik commented the committee has a few things for consideration. She noted that Kim always provides the committee with the history of cases before the ZBA. The committee can look at those and see exactly which code areas are covered. She continued there have been some changes in WQ for DES which were brought forth in December of 2019. Also, the Conservation Commission and Amanda Stone made a presentation on water resources in 2019. She suggested that before the next meeting the committee read the current wetlands ordinance and review the document from Hampton. She has some documentation that she has been working on that may

have relevance in terms of DES. She pointed out that they can decide to be more stringent. DES comes into play with a lot of things that come before the planning board and ZBA. If the committee would like to familiarize themselves with water resources, they can go on the GIS and look at the layers, as there is a lot of information there. After reviewing all that information, the committee can then decide how much they want to work on.

Planning Administrator Reed pointed out that if they are going to make something enforceable, they have to think about the steps because the building department right now is so strapped that they cannot do current enforcement.

Chair Losik noted that one person they can reach out to is Julie LaBranche, as she had significant information for the environmental section of the Master Plan. She may have some suggestions for the wetlands ordinance.

Speaking to Member Quinn, Planning Administrator Reed asked if he has any insight on changes that should be made to the zoning ordinance.

Member Quinn stated that he thought there were some issues with generators and where they are allowed to be placed on the property. The ZBA was getting a lot of traffic in that regard and it was because it wasn't clearly spelled out. There is also the issue of fences and sheds. If it is something that needs to be rectified or needs direction, he is looking to get it crossed off the list. He continued that he would like to have a discussion, at some point, about the Historic District and solar panels. He has a different view than the Historic District Commission. He is not sure it is a battle that has any kind of juice. He brought this out to the board last year because he thought it was unfair to people who wanted to go in that direction with technology. He commented that there have been some discussions about this but he wants to be sure the committee can be productive in the end.

If they are going to go back and look at solar, Chair Losik pointed out that there are towns that have ordinances; such as Durham, which is well thought out and broad. She thinks they would want to reach out to the constituent groups if they want to have a good and rich discussion to try to further something that will be of interest and will work. She commented the committee was at the end of the agenda cycle and didn't have the time to really dig into it.

Member Quinn commented that as time goes forward there are other things that take precedence; however, there may need to be some changes if people are going to look at other ways to heat or power their home. If other people don't have the same point of view, he does not see any reason to "fight a battle" that is going to be lost in the end.

Planning Administrator Reed commented that she would need to reach out to the Energy Committee and the Historic District Committee to see if this is still an issue.

Chair Losik agreed. She stated this is important. There are towns in the State that have activity in their Historic Districts and they have handled them thoughtfully. She asked Kim to circulate the ZBA case history for 2019.

Planning Administrator Reed noted it was Chuck Marsden who brought fences, generators and sheds to the committee. When they went back and asked Chuck for clarification, he withdrew it. She continued that she found out that for fences it was because of one woman who was suing the Town. She asked if something should really be changed because one person wants it. She pointed out that the Town ended up winning the lawsuit. The same for generators. It was one ZBA member that was complaining that they were seeing all these applications. However, they ended up agreeing that generators and sheds are structures and therefore, should meet the setback requirement.

Member Paul commented that she thought they addressed generators and sheds last year.

Planning Administrator Reed noted it was shot down by the ZBA. The one person who wanted the committee to look into it did not back them up.

Member Quinn stated his goal is to lighten the load of the ZBA and Planning Board. The ZBA was complaining about full agendas and a lot of it was minutia. If there is not a problem, he does not want to make it one.

Planning Administrator Reed noted that the ZBA is seeing a lot of teardowns and rebuilds. The homes need so many variances because people are building really big homes and pushing the limits of their lots; side setbacks, front setbacks and/or lot coverage.

Chair Losik pointed out that they also had the camping trailer discussion last year. She does not see a reason to address this right now.

Planning Administrator Reed noted that she will ask Jennifer Gilbert about compensatory storage when she speaks with her about the floodplain ordinance.

It was noted by Planning Administrator Reed that little houses has to be taken off the table at this time because the International Building Code is not up to date. With regard to ADU's, she asked the committee if they want to consider detached dwelling units.

Chair Losik stated she would have to look at similar towns in terms of resources; size of lots and issues of the land.

Member Paul asked if the issue really pops up. She feels like the changes that were made for legalizing apartments is going to address a lot of the existing issues. She is not sure that she wants to consider a new build.

Member Quinn commented that adding property to the Town of Rye without a sewer system is asking for trouble. Putting more of a burden on that strikes him as not being very prudent to do.

Planning Administrator Reed pointed out that there is a mechanism in the zoning ordinance (190-2.1 two dwellings on one lot) for an existing structure and a new build. Since it is two dwellings on one lot, it would be the variance criteria and they would have to show the hardship as to why

a second dwelling unit on one lot is needed. If it went Accessory Dwelling Unit method, it would be before the Planning Board and there would not be the hardship criteria.

It was agreed to not take on ADU's this year, as it seems everyone is comfortable with what the Town has at this time.

### **3. Next Steps**

- **Committee members to review the Wetland Ordinance 190-3.1**
- **Planning Administrator Reed to circulate Hampton document re: Wetland Conservation District.**
- **Chair Losik to circulate the new DES criteria as of 2019.**
- **Planning Administrator Reed to reach out to Julie LaBranche re: water resources.**
- **Planning Administrator Reed to reach out to Attorney Donovan re: DRC's requests and question on wetlands ordinance the building department should be following at this time (due to publication issues of code).**
- **Planning Administrator Reed to reach out to Jennifer Gilbert re: correct wetlands ordinance in code and compensatory storage.**

➤ **Next meeting scheduled for August 5<sup>th</sup>, 9:00 a.m.**

### **Adjournment**

**Motion by Jeffrey Quinn to adjourn at 1:32 p.m. Seconded by Nicole Paul.**

**Roll Call: Jeff Quinn – Yes; Nicole Paul – Yes; Patricia Losik - Yes**

Respectfully Submitted,  
Dyana F. Ledger