

RULES & REGULATION SUB-COMMITTEE MEETING

**Wednesday, November 8, 2023
12:00 pm (Noon) – Rye Town Hall**

***Present:* Chair Steve Carter, Patricia Losik (viz Zoom), Katy Sherman, Steven Born (ad-hoc member, via zoom) Planning Administrator Kim Reed, Land Use Assistant Kara Campbell and Building Inspector, Chuck Marsden.**

Chair Carter opens meeting and pledge of allegiance.

Chair Carter has an idea of what we should be looking at: Legislative changes, changes to historic district will do next week, then we have suggested change zoning on 22 Pioneer Rd and question on condos and thought we must and then a few things we may want to take up considering detached ADU's and do it for existing barns, be careful there. Then whole change of use and how address changes of use.

Ms. Reed said she was thankful that the Building Inspector was in attendance and would like to look at substantial improvement/substantial damage. Emailed building and the committee language from Keene and New Castle. Nothing drafted yet.

Chair Carter last things were tiny houses and left zoning board of adjustment issue nothing to build into the zoning ordinance.

Ms. Sherman and it is huge, we need to take on time sensitive.

Chair Carter we have a process now, variance. Then the short-term rental which is complicated and if look at Gilford.

Ms. Reed email from Attorney Maher, puts an end on short term rental. Confidential October 30, 2023, from the Attorney. He states, "RSA 48: A, municipalities cannot by and through a selectmen's ordinance seek to regulate short term rental in a manner distinct from other residential occupancies."

Chair Carter says it is a long-term issue.

Ms. Losik agrees with Attorney Maher in terms of regulation. Dig into Jenn Rowden's Gilford ordinance. Agree with Steve appropriate avenue look language aspect and input from community, when have outreach in February and beyond in 2024 we will hear more, and this will be a good piece. Do not want to be in a place to fix before we have the full picture.

Mr. Borne did not have time to read anything that came across that morning.

Ms. Reed asks if he agrees with what Ms. Losik stated.

Mr. Borne agreed too early to have that discussion until public input and view of what people want for the town.

Ms. Reed asks if we can have a vote or consensus that not take up short-term rentals until after the Master Plan public forum.

All agreed, put on top of next year's agenda detached ADU's and short-term rentals.

Ms. Losik talks about Ben Frost's article on workforce housing and in the midst of gathering all this information of master plan it would be premature to take this up now.

Chair Carter begins with legislative changes.

Ms. Losik points out legal counsel on the house bills and he has referenced language and good to have those drafts circulated. (HOA, driveway and sureties.) Have Kim put those in form and get them out to the committee before November 14th.

Ms. Reed sent out the Attorney memo on October 30th and asked everyone if they read it and do you agree with this language before I put it in draft form.

Chair Carter said he has not read it.

Ms. Reed goes over the recommendations in the memo: House Bill 42 LDR 202-5.5 dissolution of the HOA. Next House Bill 296, RSA 153:5 Fire Codes and recommends that driveway regulations be updated as follows in (M). Two proposed Land Development Regulations and they go before the Planning Board for a public hearing and adoption, they do not go on the warrant.

Ms. Losik asks that we read the changes to M in the Appendix for the driveway regulations.

Ms. Reed, reads the new language in bold and italics in front of what already exists "***The Board shall seek the comment of the Fire Chief on any proposed new driveway. The Board will seek the Fire Chief's comment with regard to any or all of the following: width, vertical clearance, grade, suitability of road surface, bridges, dead-ends, and the ability to pass and turn around once in the driveway. In addition to the foregoing, driveways greater than 150 feet measured from the edge of the paved roadway to the residence shall be equipped with a suitable turnaround area for emergency apparatus and require written approval from the Rye Fire Chief.***"

Ms. Sherman asks about corner lots.

Ms. Losik recommends Ms. Reed put it in proposed amendment language and circulates it in draft form and look at it next week.

Ms. Reed goes on to say the third on is the Senate Bill 78, revised performance bonding this is what we delt with last two subdivisions, they wanted their bonds released. Attorney Maher has necessary revisions are Land Development Regulations revision section 202-7.1, put in draft and circulate. We are not going to get into the HDC yet since they are not present.

Ms. Losik speaks to Ms. Sherman about corner lots and she should look at access driveway lesser traveled road and this has more to do with the construct of Planning Board's purview as long as met width and length. Corner lots in zoning also deal with access.

Ms. Reed we have a property owner, 22 Pioneer Rd, he asked his property be changed from single residence to business.

Chair Carter had a question, it looked to him like spot zoning. Once we make it business it is business.

Ms. Reed asks the building inspector his thoughts on this.

Mr. Marsden stated he agrees spot zoning, it qualified home owner's business, not sure how much was clear in long lengthy process, agree spot zoning.

Chair Carter asked if grandfathered.

Ms. Reed said grandfathering must be prior to zoning was established in Rye, 1952.

Mr. Marsden stated it was complex, with some police logs.

Ms. Sherman asked if not in danger of being used as an office now.

Mr. Marsden stated it is confusing two buildings on one lot.

Chair Carter said it is a residential area excluding the Atlantic Grill.

Ms. Losik looks at recent tax card, 2013 it was Seacoast Print. Under use code, store or shop with 4-year cycle. Suggest the committee members go on GIS and get a flavor of the neighborhood. Of course, the abutters will be noticed, saw 6 abutters. Concerned about once it crosses from single to business and that is a big change.

Ms. Sherman my vote is no, area is residential and know that Atlantic Grill is zoned business.

Ms. Reed mentions the Teiglands across the street fought the Atlantic Grill thought losing some of the character of that neighborhood.

Chair Carter ok re-examine it next time, my feeling is once changed to business lose control and get rights business has no longer grandfathered, now create a new animal.

Mr. Borne that place always been a business, I am in favor. Something in my view, always knew it as a business.

Ms. Sherman said not zoned as business.

Mr. Borne said he always knew it has a business.

Mr. Marsden two structures on one lot were print shop and 3 apartments on the two-story building. They share the same septic system.

Ms. Campbell stated a unique case it does not come to us often it does not affect his ability to have a home office/business, don't change it and a lot of people in the future will want to do this.

Chair Carter states to take up Change of Use.

Ms. Reed points out October 4, 2023 Attorney Confidential Memo where Attorney Maher cited case law on Change of Use which Ms. Losik read the cases at the last meeting. Questions this committee to think about based on Attorney memo, he would like to know about the issues the town is facing. What does this committee want to do with Change of Use. Glad Chuck is here because the Planning Board gets change of Use. If it meets the criteria, it is not change of use. She asks the building inspector to explain.

Mr. Marsden said I have not seen the attorney's memo.

Ms. Reed said she will get it to him, she then asks the building inspector how he determines change of use.

Mr. Marsden said he does not. I do not. I send out all the information to the departments and ask for their input and go from there depending upon what they want to do. If they are need zoning or planning I forward it to you. (referring to Ms. Reed).

Ms. Reed says okay you do not make a determination.

Mr. Marsden said he cannot make a determination. I need the input from all the departments and any relief needed from zoning and planning to make that decision.

Ms. Sherman says maybe we need to clarify it specifically for the building inspector to know to forward on.

Chair Carter says on the last sentence of Maher's memo is clear and concise. He reads the last paragraph "I see that the concern is that the Planning Board is receiving referrals by the Building Department, but that appears to be a product of the fact that the LDR's require, at the least, a certification from the Planning Board that the "change of use" does not require site plan approval. If the Planning Board is being inundated, then a potential solution may be amending the LDRs as to that requirement." It is the certification that it does not need site plan approval that pushes it to the Planning Board, is that correct Chuck?

Mr. Marsden, it makes sense, that is probably right why I send it to the Planning Board, I cannot make that determination.

Ms. Sherman asked if the Planning Board felt they were being inundated with these requests.

Chair Carter same question, inundated seems high bar what we have been seeing.

Ms. Reed asks Pat Losik her concerns, comments, and ideas.

Ms. Losik stated that Katy has not had the recent experiences as those of us the last couple of years, this year a lot to do with exempt activities it seems like everything was coming more, we can view criteria for exemption then no site development required, but if does not meet then it goes to site plan review, Attorney Maher on October 30th, eliminate Planning Board does expedite change of use but risk sole hands of the building inspector. He suggests language aggrieved party if they did not agree decision from building department could appeal to the Planning Board.

Ms. Reed in October 30th Attorney Maher letter, pages 8 and 8.

Ms. Losik, the definition of Change of Use, Attorney Maher said it would trigger site plan review unless exempt approach which makes sense. Hearing something else from Chuck, what she is hearing from you is you are reaching out to dept's (fire, police, dpw) input which to me is looking at the safety, fire and code criteria. Is that true?

Mr. Marsden they share their concerns or non-concerns with me when the information is sent to them.

Ms. Losik, Town of Franklin, one of the things they do Change of Use, she reads the components, when a change is proposed for use of a property whether a commercial, industrial, multi-family a change of use of that application must be filed in the Planning Office. A change of use occurs when 1. Proposed shift from one of these classifications. They use a table. 2nd area application of life, safety, fire or other appropriate code. Once change of use made, certificate use and occupancy will be issued. Breaks it down. Planning Board struggles is it really a change in use.

Mr. Marsden, I Do not want to shoot from the hip, may reach out to attorney Maher, then put some time into it give it my thoughts, if you can give me anything you have and anything from Franklin, I will put some time into this and give it some thoughts.

Ms. Losik said she will get language from Franklin.

Ms. Reed said thank you we do not have other language except court from Attorney Maher and especially after couple of Planning Board someone said inundation not sure who, but they wanted the Board to clarify Change of Use, if you can get that language to Chuck and he can put his thoughts on paper.

Ms. Losik to Kim check with Attorney Maher what work for applicant.

Ms. Sherman said a checklist helps.

Chair Carter said some of the change of use requests, the Planning Board was not sure what they are trying to approve.

Ms. Reed said there are two things: Life Safety and Change of Use. In October Attorney Maher, we are quite clear as to what is not change of use. As long as we do not expand the parking, etc, we have it in there what is not change of use. We have it in there, can apply for exemption.

Chair Carter said some we have been getting are change of hours, that is an issue, need to clarify, is it worth the Planning Board's time.

Dominique Winebaum 52 Cable Road talked about the Aquifer and Outdoor pride now trucks stored, something take into consideration because of Aquifer.

Chair Carter said depending on change of use, people need process to go through to appeal. To me it has been a little bit vague to me what is a change of use. What really qualifies as a change of use.

Mr. Marsden said it is not a smooth process.

Ms. Reed that is why the Planning Board asked for clarification of Change of Use.

Ms. Sherman said a change of use to Outdoor Pride is a lot different than someone who has a store and is going to open at 8 instead of 9. What we need to get to.

Ms. Reed stated when Chief Walsh was Town Administrator, he was using Change of Use as a police officer, the terminology was different and a lot more things were put before the Planning Board.

Ms. Losik when we get into those areas of safety, think overlay districts the Overlay is robust, not just a code. What is the process for that how do we pull it all together.

Ms. Sherman asks the Building Inspector for a checklist to go to the Planning Board what they should approve.

Ms. Reed asks if want to take up SI/SD.

Chair Carter lay out currently is there 5 year look back or forever.

Ms. Reed nothing in writing yet. We have been working with FEMA since 2019, CAV visit and we have been talking about this.

Chair Carter asks the building inspector what he does now? If something built in 1950s do you go back to then.

Mr. Marsden no look back, when Peter was here he would trace it back to when the first permit was pulled when the flood ordinance was adopted, do not resources for that. There was no reference for look back. We struggle with that. FEMA looks back based on project. When project completed, end no

look back. All talked about previously a look back conversation came up 5 or 10 years. Because building values so high, 5 no accomplish what should accomplish. 10 year would accomplish more successful.

Ms. Reed said you have potential language from New Castle and Keene.

Ms. Losik said New Castle via definition and Keene from body of language and definition and as Rules and Regs committee we should have it both sections. Section 60 of Rye Code is the Floodplain Ordinance 60-6. It needs to be sorted. Good information from Chuck on 10 year.

Ms. Sherman thinks 10 year more reasonable, can you please explain 10 year.

Mr. Marsden because if use the accumulative cost of repairs versus the 50% of the value of the structure, the value of the structure could be so high, it could be a \$500,000 structure not counting the land, look back 5 years is unrealistic, better chance to come into compliance 10 years.

Chair Carter how does this work, if you look back 5 years all things done in that time, if the value of structure is \$500,000 and they have done \$250,000 in repairs then whatever they have to do has to be over \$250,000.

Mr. Marsden the 50% threshold would force the whole building. Now going back to 10 years good chance meet that threshold not about making people spend more money but we all want houses to be compliant in flood zones it affects the whole town.

Chair Carter asks if this is only about flood zones. I live on Wallis Road, I do not have to worry if I put in over 50% I do not have to bring it up to code.

Ms. Reed explains the 50% rule applies to the Special Flood Hazard zone, terminology is confusing bring house into compliance to the Floodplain regulations if it is over the 50% value and building code is different.

Chair Carter asked if we were talking about flood standards? Building Code or both?

Ms. Losik says flood.

Mr. Marsden said the building code references the flood it all ties together.

Chair Carter agrees with 10 years.

Mr. Borne 10 year okay and have to make it clear how it works. How does building inspector make a decision.

Ms. Reed explains anyone in the SFHA needs to fill out a floodplain permit in addition to a regular permit.

Mr. Borne asks what is the litmus test.

Mr. Marsden asks what the litmus test is.

Ms. Reed explains it is a difficult process for the Floodplain Administrator.

Mr. Carter asked if it is only repairs.

Ms. Reed says it can be improvements and/or damage from anything.

Committee moves on to 1902.2.D two or more dwellings.

Ms. Reed reads the Attorney memo on the proposed change.

Chair Carter says it clarifies. Have Attorney Maher look at 190-5.3.

Ms. Reed explains the process. Zoning, Building Code and Floodplain amendments go through the Rules and Regulations then to the Planning Board. The Planning Board can then schedule it for a public hearing and it has to be legally noticed. At the public hearing if there are NO substantial changes then the Board can vote to move it to the warrant. If there are substantial changes then another public hearing must be noticed and another public hearing held 10 days after the first. Land Development Regulations similar process except it ends at the Planning Board public hearing process, it does not go on the warrant. December to January tight window.

Mr. Borne asks difference Substantial versus non.

Ms. Reed explains.

Chair Carter asks if other.

Dominique Winebaum 52 Cable Rd and she brought up a few points last meeting and like to bring them up again. More driveway requests 2nd driveway over the past year, an increase. She wants a worksession. She questions enforcement.

Chair Carter tells her to attend and talk to the Full Planning Board when an application for a driveway is before them, not for this committee. The driveways they have approved have been for safety and we have driveway regulations.

Mr. Losik advised her of materials she could read.

Adjourned.