

RULES AND REGULATIONS COMMITTEE MEETING

**Wednesday, July 25, 2018
6:30 p.m. – Rye Town Hall**

***Members Present:* Chair Pat Losik and Nicole Paul**

***Others Present:* Kimberly Reed, Planning & Zoning Administrator**

I. Call to Order

Chair Losik called the meeting to order at 6:30 p.m.

Chair Losik explained that the sub-committee strives to meet twice per month and the deadline is in January.

Planning Administrator Reed noted that the work of the sub-committee needs to be presented to the Planning Board by November/December in order to meet the January deadline. There has to be two public hearings on any changes and ten days are needed between the hearings for public notices. She summarized that there were three zoning amendment changes in 2018. The amendment addressing temporary permits for mobile homes was for “housekeeping”. The amendment regarding accessory dwelling units was because of a legislative change. The amendment to Section 306, Wellhead Protection, was the biggest change and involved a lot of work from the sub-committee. The building code changes came from a request from the code enforcement officer. The Floodplain Ordinance change was something that she brought to the Board which addressed freeboarding. There was one small change to the Land Development Regulations with regard to wording and was a “housekeeping” revision.

2018 Zoning Ordinance Changes:

- 2018-01 RE Amend Section 400.1 – Temporary Permits for Mobile Homes or House Trailers
- 2018-02 RE Accessory Dwelling Units Amend Section 506.3 – Performance Standards
- 2018-03 Re Amend Section 306 – Wellhead Protection and Aquifer District

2018 Building Code Changes:

- 2018-01 RE Septic Systems in the Wetlands Buffer and Amend Section 7.9.4.1 and Section 7.9.2.2.1
- 2018-02 RE Swimming Pools Amends Section 7.12 by deleting section in the building code

2018 Floodplain Ordinance Change:

- 2018-01 RE Freeboard

2018 Land Development Change:

- 2018-01 RE Buffers Amend Section 611.3,A.1 of LDR

II. Review of Recommended Zoning Changes

Planning Administrator Reed submitted a draft of recommended zoning changes for the 2019 warrant for the sub-committee's review. She noted that the ideas for amendments come from comments and questions she has received over the past eight months. These are things that have caused some concern with a particular town department, the Zoning Board or Town Attorney.

2019 Zoning Ordinance Recommended Changes:

#1 – Re-Index blanket ZO amendment: “When a zoning amendment results in erroneous references in other sections of the ordinance, the board may correct these when discovered, after public hearing, without having to do a formal amendment on the ballot.

The sub-committee agreed that they would be in favor of this change and Attorney Donovan may draft a proposed amendment to allow the Board, after a public hearing, to correct erroneous references.

#2 – Floodplain Ordinance Amendment: The cumulative number of improvements for structures within the SFHA for the “substantial improvement” cap.....

Planning Administrator Reed noted that the building inspectors have discussed this with her. Right now, there is a 50% rule in the ordinance that effects homes when they are under repair or being renovated. Some homes are really old and may not be built to the town's current floodplain ordinance. The 50% rule says that if it is an “act of nature” or an improvement brought on by the homeowner, if it is beyond 50% of the value of the structure, it must be brought into compliance with the floodplain ordinance, even if just a small portion of the house is in the floodplain. People do not want to get up to that 50% threshold so they are not coming in for permits or are doing the work years apart in stages. The building inspector has suggested a cap on the timeframe for the work, such as work being completed over a ten year period.

Chair Losik commented that it sounds like they need to review the specific area of the floodplain ordinance, before the next meeting, and the sub-committee can then discuss some ideas.

Member Paul agreed. She asked if there would be an issue with maintaining records if a ten year period was put into the regulations.

Planning Administrator Reed explained that properties are now logged into a computer program the building department maintains for permits issued. All work and improvements for any particular property can now be found online in the building department's computer files. This has been done since Peter Rowell took the position as building inspector for Rye. Work done before that time is still kept in the paper files.

Chair Losik asked if this information is automatically added to the property card.

Planning Administrator Reed explained that the assessing department follows up with the building department to update their files.

Member Paul asked if there has been any thought to one owner doing 20% of the renovation and selling the property with the new owner doing 35% of the renovations within the timeframe, if one was established. She asked if they would want to capture that instance.

Planning Administrator Reed replied that she is not sure but she thinks it goes with the structure. This is something that would have to be discussed.

#3 – Look at definition of structure: Amend definition to exclude walkways as well as driveways.

Member Paul noted that “driveways” is specifically addressed in the Land Development Regulations. The sub-committee should research whether “walkways” is addressed in another code or regulation.

Chair Losik agreed.

Planning Administrator Reed commented that if “walkways” are not referenced it will become (e), under exemptions. Walkways would not follow the dimensional requirements but it would still have to meet the impervious coverage.

#4 – Definition of rear yard: Corner Lots – The confusion comes from the definition of rear yard.

Planning Administrator Reed noted that the Zoning Board had a couple of cases with corner lots. Corner lots have two fronts. The question is whether the lots have rears or sides. Attorney Donovan believes that the definitions for Front Yard, Side Yard and Rear Yard are confusing. The intent on corner lots is that the other two sides are side yards because they would then match the side yard of each adjacent lot. The incontinency in the ordinance is with the rear yard; “to which the area of the rear of the side yards”. The chair of the Zoning Board asked if the sub-committee could look at rewording the definition for rear yard.

Chair Losik asked Mrs. Reed to speak with Patricia Weathersby (ZBA Chair) about her thoughts on wording.

Planning Administrator Reed agreed. She will also ask Attorney Donovan to draft some language.

#5 – Tiny homes ordinance: Amend the zoning to add the word tiny house/small homes to the current provision for mobile homes.

Building Inspector, Peter Rowell, has denied “tiny homes” in Rye because of the following reasons:

1. Section 203.3E requires all one story buildings to have 960sf of floor area.
2. If they are connected to pressurized water they need a septic system per DES rules.
3. Rey Building Code requires all dwelling units to have an effluent disposal system.
4. Can’t meet the requirements of an ADU Section 506 or the former accessory apartment.

Planning Administrator Reed asked the sub-committee if they feel the zoning should be amended to allow for tiny homes.

Chair Losik asked if there is any precedent within the seacoast community. She would be interested in how this is handled in other coastal communities because there is such an impact with the price of housing.

The sub-committee agreed that research was needed on what other communities are doing. They also agreed that the town should be proactive in looking at this issue, as it is becoming more popular across the country.

#6 – Impervious coverage: Amend the zoning to not allow homeowners to use the beach sand and wetlands as the building area.

Planning Administrator Reed explained that years ago the town was seeing a lot of homes on Old Beach Road and Ocean Boulevard using the beach sand in the total coverage calculations. For example, the house lot may have only been 43,000sf and to get the 44,000sf the homeowners were including the beach sand. They were coming in with homes that maximized the buildable area because they were using wetlands and beach sand. The Zoning Board drafted a proposed zoning ordinance that said beach sand and wetlands could not be used; however it did not get past the first public hearing because of a resident's objection over the amendment. She continued that the Town of Hampton addressed this issue recently and the amendment was passed by the voters. (A copy of Hampton's Warrant Article and their recommendations was submitted to the sub-committee for review.)

Chair Losik agreed that the sub-committee should relook at this issue.

Member Paul noted that it changes the whole feel of the town if huge homes are allowed on lots where they are using land that should not be used in the calculations for lot size.

Chair Losik stated that DES is rewriting the wetland rules. Chapter 600 relates to coastal lands and tidal waters. She would like to review their suggestions. She noted that the updates can be viewed on the DES website; 'Revision of NH Wetland Rules'.

Planning Administrator Reed noted that she will research what was drafted for language when this came up for the first time in Rye.

Chair Losik commented that this subject is very closely related to the new Master Plan chapter, 'Coastal Risks and Hazards', which was approved in December.

#7 – Frontage: ZBA Chair requested closure on Frontage.

Planning Administrator Reed explained that Frontage has "fallen through the cracks" over the years. Back in 2008, there was a subdivision called 'Hoefle Subdivision' off Grove Road, which had over 200ft of frontage on Garland Road; however, they wanted to use the 40ft on the newly created subdivision on Marjorie Way. The Planning Board told the applicant that they did not meet the definition of Frontage. An administrative appeal was brought to the ZBA who upheld the appeal saying they did meet the requirement of Frontage. There is now another subdivision with the same situation that was denied by the Planning Board and was granted by the ZBA. The chair of the ZBA has provided some language for Frontage, which was vetted by Attorney Donovan. (The drafted revision was submitted to the sub-committee for their review.) She continued that Attorney Donovan changed Section 202.14 but the definition of Frontage also needs to be changed.

Member Paul asked if they are looking to have the driveway go through the actual frontage as part of the requirements.

Chair Losik confirmed.

Member Paul agreed to work on drafting some language for the next meeting.

#8 – Building Inspector: Wants to grandfather all illegal apartments and some type of minimum housing inspection/certification every 5 years or so.

Planning Administrator Reed explained that the town currently has different types of apartments. ‘In-law apartment’ was created in the early 1990’s, which could be anywhere, as long as someone in the family resided in the apartment. The homeowner did not need to go to the Planning Board or Zoning Board for an in-law apartment. They could just go to the building inspector and a lot of times it was not even recorded. However, it was always under the condition that it would be converted back to a single-family structure once the family member no longer lived in the apartment. In a lot of cases, the family members passed away or moved on and the apartments started to be rented. Now, there are a lot of illegal apartments that started off as in-law apartments and were never converted back. Around 1997, the town said that an apartment would be allowed, as long as the property owner went to the ZBA for a special exception. Some people who had the in-law apartments went to the ZBA for a special exception and others did not. The town now has some apartments granted by special exception. The town also has accessory dwelling units, which the legislation passed making it easier for town and cities to have apartments. Two years ago, the Zoning Ordinance was changed to allow apartments in both the Single and General Residence, as long as certain criteria is met. The issue is that the town now has a lot of illegal apartments that have not gone to the Planning Board, for a Conditional Use Permit, or, prior to that, a special exception from the ZBA. The Building Inspector has asked if there is a way to grant amnesty to those old illegal apartments to get them legalized.

Member Paul commented that she likes the concept of requiring some type of minimum inspection certification.

Chair Losik agreed.

After discussion, it was agreed that it should not be an automatic amnesty if the apartment has life and safety code issues. If the property owner wants it to continue to exist, they should be required to do some work to bring it into code.

Planning Administrator Reed agreed to contact Attorney Donovan in regards to drafting language, while taking into consideration the minimum housing inspection certification with a specific process.

III. Land Development Regulations:

Planning Administrator Reed explained that she went to the Rockingham Planning Commission in 2017 regarding assistance in rewriting the Land Development Regulations. The contract with RPC was approved by the Budget Committee and the Selectmen for the 2018 budget. The individual that she met with no longer works for RPC. To date, no work has been done. She continued that she met with the new director of RPC recently who has drafted a new contract for Rye. The new contract went before the Selectmen who approved it with two provisions. They would include the consideration of impact fees and Task #7 for public engagement work session. RPC is working on a new contract to include these provisions, along with a complete rewrite of the Land Development Regulations.

IV. Other Amendments to Consider

Chair Losik reviewed other items she would like the sub-committee to work on and discuss.

- **Watercourse Definition** – It is referenced in Section 507.3 but currently there is no definition.
 - Planning Administrator Reed will speak with the Public Works Director to get better clarity on what it means. Does it include a natural watercourse (perineal stream)?
- **House Bill 486** - This area needs to be reviewed to see if any action should be taken.
- **Best Management Practices** – Blanket amendment to cover rewording for changes; “as amended”.
- **Signage** – Recommendations from the Building Inspector with regard to signage with respect to wetlands – Planning Administrator Reed to ask.

V. Next Meeting

- **Tuesday, August 7th, 6:30 p.m., Rye Town Hall**

VI. Adjournment

Motion by Patricia Losik to adjourn at 8:01 p.m. Seconded by Nicole Paul. All in favor.

Respectfully Submitted,
Dyana F. Ledger