

RULES AND REGULATIONS COMMITTEE MEETING

Wednesday, October 4, 2018

7:00 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 7:00 p.m.

II. Approval of Minutes

- **July 25, 2018**

Motion by Nicole Paul to approve the minutes of July 25, 2018 as amended. Seconded by Patricia Losik. All in favor.

- **August 7, 2018**

Motion by Nicole Paul to approve the minutes of August 7, 2018 as amended. Seconded by Patricia Losik. All in favor.

III. New Proposed Zoning Amendment to Consider

Corner Lots: 202.6

Member Paul stated that she went back through her notes. The committee was talking about how frontage and access to corner lots all work together. There is an inconsistency in Section 402.3 that uses “contiguous”. She thinks “contiguous” still works in that instance so it might not be worth amending.

Mrs. Reed noted that Attorney Donovan stated, *“I think it should stay as continuous. The committee may want to review definitions for contiguous, which means adjacent to or next to. I do not think that applies to frontage, which must be a continuous measurement not a contiguous measurement”*.

Chair Losik pointed out that contiguous and continuous is a frontage issue. The corner lots is dealing with the side and rear yards.

The committee reviewed the current language in Section 202.6.

Chair Losik stated that Attorney Donovan suggested that the yard behind the principal building will meet the rear yard requirement.

The committee reviewed possible new language for the ordinance.

Member Paul asked if it is intended that corner lots have to meet the frontage on both streets. It says that the required frontage has to be on both sides. Do both sides have to meet the frontage?

The committee continued to review the suggested language changes for Section 202.6, Yard Requirements for Corner Lots.

Member Paul stated that this is saying that for a corner lot they have to meet the frontage requirements, depth requirements and the front yard requirements on both streets. She noted that the question that has to be answered is whether a corner lot will have to meet the requirements on both sides or just for one side.

After review and discussion, it was agreed to take out “*..except for a corner lot as to which the front yard shall extend across both sides of the main building nearest the streets*”. Under #1, Front Yard, however, remove that language for Rear Yard and Side Yard. In the first paragraph, the word “other” will be replaced with “side” in the fourth sentence. With the word “third” being removed from the last sentence of the first paragraph.

Mrs. Reed will send the proposed changes to Attorney Donovan for his review.

Chair Losik stated that the term “principal building” comes up in 202.4; however, there is no definition of principal building. For consistency, they may want to stick with the wording “principal building”, instead of “main building”.

Mrs. Reed will ask Attorney Donovan about principal building versus main building.

Access to Lots: 202.14

Chair Losik read the proposed language for Access to Lots. She noted that driveway in the Land Development Regulations (LDR) is a “*private way for vehicles that provides entrance, exit, access or approach to or from land in Rye to a public street*”. She asked if there would be any issue with “public street”.

Mrs. Reed replied what is not public is right-of-ways and some Class VI roads.

Chair Losik pointed out that some developments that have just been approved have private roads. It is not an issue now but it could be an issue in “to be developed” land on a non-public. Someone could make the case that this is not applicable. She suggested that the wording may need to change in the LDR to public street or approved private street.

Mrs. Reed will check with Public Works Director Dennis McCarthy to be sure there is not other language, besides “street”, that needs to be covered. She will also ask him about private access less than 40ft. She noted that the zoning ordinance describes “street” as “a public roadway that has been accepted by the town or such a roadway, otherwise established by law, as a town or state highway or an officially approved private road, if not less than 40ft in width, which affords means of access to abutting property”.

Chair Losik pointed out that they do have them less than 40ft in width now.

Member Paul noted that the term “street” is defined so that can definitely be referenced. The question is whether there is another category that needs to be covered.

Chair Losik stated that with the constraints with respect to development, the town may continue to see requests for streets that are less than 40ft in width.

Mrs. Reed reiterated that she will have DPW review this, otherwise she thinks it is ready to be presented to the Planning Board.

The committee agreed.

Frontage:

Chair Losik noted that the committee has Attorney Donovan’s proposed wording for No. 2019-02.

Member Paul stated that she does not think they need to make this change.

Chair Losik agreed it could remain “continuous”. When the word “continuous is used it means “same property and same owner”.

The word “contiguous” was discussed as to how it is used in 402.3. The committee agreed it should be changed to “continuous”.

Floodplain:

Chair Losik explained that the last discussion on floodplain was in regards to “substantial improvement” and how to capture this with either dollar amounts or time limits and what happens with change of ownership. She does not feel this question has been addressed.

The committee reviewed the notes regarding floodplain from the building inspectors.

Mrs. Reed noted that she had a conference with the town’s FEMA representative. The representative said that all the other towns do not have a problem with FEMA in the ordinance. Most towns follow FEMA’s guidance.

Chair Losik stated that the town does not want people to not improve their properties. There seems to be a balance in the FEMA document. She continued that in the FEMA documents it says that *“if your town does not require permits for re-roofing or minor maintenance for projects under a threshold, then such projects are not subject to substantial improvement requirements”*.

After some discussion, the committee agreed to table this for more clarification from the building inspectors.

Walkways:

Member Paul stated that throughout the document there are many different terms that are used; driveway, paved way, walkway, sidewalk, paved walk, etc. It really comes down to impervious versus pervious. For structure purposes, she thinks they need to carve out “sidewalks” on its own. They should have a definition for “sidewalk”. For “impervious” versus “pervious”, it comes down to whether it is paved or nonpaved. It is going to be time consuming to do this right.

Chair Losik stated that she is hearing that there are two issues. First, the structure of the ordinance, which has the references, and then there is the issue of the definitions.

Member Paul agreed.

Chair Losik suggested that this go back to Attorney Donovan for input on how to approach this.

Mrs. Reed noted that there are a lot of inconsistencies throughout the zoning ordinance on driveways and walkways.

Chair Losik stated that the percentages for pervious are going to change based on the district; however, there should be consistency in the assets that are included. Those definition can then be flushed out for Appendix A.

Member Paul commented that the definitions for lot and lot area need to have the beach sand issue addressed; not impervious coverage. The definition of lot excludes sand. The calculation of the building area is calculated on the lot; non-beach/non-sand.

Mrs. Reed asked if it should be the buildable area.

Chair Losik stated that when someone purchases land, the area of their lot is whatever is in the legal description.

Mrs. Reed stated that she likes the idea of changing the definition for “lot” but adding to that should be the “building area”. Wetlands and beach sand cannot be built on but it is used in the calculations.

Member Paul commented that she feels it keeps coming back to how “lot” is defined. “No dwelling shall occupy more than 50% of its lot”. It comes back to lot area.

Chair Losik stated that part of it is how does NH DES look at the beach sand. There is a whole section that is being updated for Shoreland. This is getting into RSA 482. She noted that she would like to see where the updates are going before getting into this.

The committee agreed to table walkways and impervious until there is more information available on the DES updates to Shoreland.

Amnesty:

The committee reviewed the draft from Attorney Donovan regarding amnesty with notes from Building Inspector Chuck Marsden.

Mrs. Reed stated that she believes this is intended to be in the zoning ordinance. It would need to go to the Planning Board for a public hearing for an ordinance; however, it is not something the Board would deal with.

Chair Losik stated that this does not say anything about a conditional use permit. It says that the building inspector may grant the certificate of legality based on the satisfaction of the requirements. She asked if this is what they want.

Mrs. Reed stated it is really just a building inspector amnesty. She thinks this should go back to Attorney Donovan and the building department. The way this is written does not involve the Planning Board or Zoning Board at all. She is not sure where this would lie.

Member Paul stated that in her opinion it certainly does not belong in 202.9.

Mrs. Reed explained that the building inspector has to go to the Selectmen to get permission to hire Attorney Donovan to have something enforced.

Chair Losik asked if this is different than an occupancy permit. An occupancy permit fully rests with code enforcement.

Member Paul commented that she does not think it is an occupancy use. This is higher than that.

Mrs. Reed pointed out that an occupancy permit is established in the zoning ordinance and the building code, which the Planning Board writes, has public hearings and recommends to the voters. She thinks this is enforcement, therefore, she wonders if it should be a Selectmen's ordinance.

Member Paul commented that an accessory dwelling unit has a conditional use permit.

Chair Losik stated this is similar. It is housing; and an additional family or group within a property.

Member Paul asked if they should also be required to get a conditional use permit.

Chair Losik replied that she thinks so.

Member Paul commented there may be different rules than an accessory dwelling unit because they can't comply with these rules. That is what should be addressed. They should be able to get a conditional use permit if they meet certain criteria. She does not think this is just a building

inspector issue. It rises above that. It is basically an accessory dwelling unit that can't comply with this ordinance.

Chair Losik agreed. She reviewed the purpose of an ADU. She noted that the last sentence states; *"to accomplish this purpose and to protect the health, safety and welfare of existing neighborhoods accessory units may be permitted subject to the following requirements"*. She would rest back to the "health, safety and welfare" of the use. This is establishing a legal thoroughfare for additional housing.

Member Paul stated that this is just a subset of accessory dwelling units. The her, it should have a special exception to it. The criteria in order to get this special exception has to be laid out.

Chair Losik agreed.

There was some discussion about the similarities under 202.11.

Referring to the ADU requirements, Member Paul stated that she thinks they should have to comply with most of them; maybe not the interior door and can't be detached.

Mrs. Reed reviewed the possible process for the legalization of illegal apartments. The property owner would have to apply for a special exception. It should be added to the requirements that the apartment must meet the criteria of 506, ADU Performance Standards. If it is a special exception, the property owner could apply for a variance if they do not meet anyone of the criteria. It's the burden of proof on the applicant to prove their hardship.

Member Paul stated that maybe instead of citing 506.3, the standards that are wanted could be inserted into this document. That might eliminate some of the special exception because it will be pared down. It could be made a relatively easy process because most of them are going to be in compliance anyways.

Chair Losik stated that the town needs to establish a commitment to the health and safety standards. The conversion of seasonal to year-round is pretty thin.

There was more discussion about the possibility of this falling under 202 (as 202.11-A) and including some of the criteria from 506.

The committee agreed this should go back to the building inspectors and Attorney Donovan.

IV. Other

The committee reviewed the suggestions from Building Inspector, Chuck Marsden.

- Building Code – Application fees – No charge for construction under a certain threshold
Currently, there is no fee under \$1,500. The committee agreed to keep it as is and to take no action.

- Height of a fence – tie in the measurement for the height of fence (6ft) with 4, Grade. Attorney Donovan to write a draft.
 - Parking – Unclear as to what Mr. Marsden is looking for (need clarification).
 - Signs – Committee would like time to review the information Mr. Marsden submitted.
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- **Next Meeting – October 29th, 7:00 p.m.**

Adjournment

Motion by Nicole Paul to adjourn at 9:02 p.m. Seconded by Patricia Losik. All in favor.

Respectfully Submitted,
Dyana F. Ledger