

RYE PLANNING BOARD
RULES and REGULATIONS COMMITTEE
MEETING
Monday, November 30, 2018, 10:00 a.m.
Rye Town Hall

Members Present: Chair Patricia Losik, Jeffrey Quinn, and Nicole Paul.

Others Present: Building Inspector Chuck Marsden, Planning & Zoning Administrator Kim Reed, and Rye Water District Commissioner Art Ditto.

I. Call to order

Chair Losik called the meeting to order at 10:00 a.m.

II. Follow up on Proposed Zoning Amendments for further discussion:

- **2019-05 Re: Fence Height**

Building Inspector, Chuck Marsden, stated that he measured the prefabricated supports for fences. The top of the post is 6 inches above the panel on average. That would be the minimum height above the panel and then there is the cap, which could be anywhere between 10 or 12 inches above that. He noted that he has drafted some language for a proposed amendment but would like to work on it some more before presenting the final draft. He continued that he has looked at a lot of others towns; however, there is not a lot of information. It might be a matter of verbiage in the ordinance that says “installed in a reasonable manner, at an average of 6ft (6.6ft above grade)”.

Member Quinn commented that he thought they agreed at the last meeting not to have the fence post exceed 6.6ft. He is not sure why this would not govern the height of the rest of the fence.

Mr. Marsden explained that they also agreed that they need to measure the premanufactured posts that have a predetermined spot in the fence panel. The top of the post is 6.6ft.

Chair Losik noted that if it is flat cap it is not adding much more height. However, a decorative cap could add 10 to 12 inches above the 6.6ft. The decorative piece could top off the post at 7.6ft.

Mr. Marsden explained that to have the restriction of 6.6ft for the post, the panel would be setting right on the ground.

Member Quinn asked why they have to be concerned about where the panel sits. The panel cannot be higher than the post or lower than the ground.

Mr. Marsden explained that the concern is the change in contour of the ground, the low and the high spots. He noted that they need to find a way to create an average over the length of the fencing. He has not figured that out yet.

Planning Administrator, Kim Reed, asked if what Attorney Donovan proposed in October be a solution for now, with it being reviewed again in 2019 for further corrections. They could also just wait until 2019 for more verbiage.

Mr. Marsden stated that he would feel more comfortable waiting so it does not cause problems later on. If it is left as is, they will not be creating an unseen problem now.

Chair Losik stated that her concern with setting something definitively, is that there are many prefabricated fences being put up because of costs and ease of installation. As these change in scope, size and quality, it could become a situation where they have to revisit this every couple of years because the stock has changed in size. She continued that she was looking at ordinance in other town's that are similar, in terms of the need for fences in tighter areas. New Castle's language is pretty broad. New Castle allows 6ft in height. They have two requirements in their zoning that she did like; (1) "Fences and walls must not be detrimental to the character of the surrounding neighborhood", and (2) "Fences and granite standing walls greater than 6ft in height shall not be permitted, even by special exception, if an abutter objects to the increased height".

Mr. Marsden stated that he would like to focus on an actual panel height because of the variation in posts and post caps.

Chair Losik commented that she does not think New Castle really attends to the height of the panel. It is generally fences and walls. New Castle and some other towns have limitations on the height of retaining walls. In New Castle, if the retaining wall is over 18 inches it requires a building permit. Speaking to Mr. Marsden, she asked if he is thinking about going back to just the panel.

Mr. Marsden confirmed. He noted that this is the real height issue. Although, monitoring the panel height by monitoring the posts is an excellent idea.

Member Quinn stated that he likes the suggestion that it can't be detrimental to the character of the surrounding neighborhood. He commented that he is frustrated that they can't get to a closure on this. They can't mitigate every contingency. There needs guidance and something to fall back on without it getting too complicated.

Chair Losik stated that in some places where there is a change in grade, possibly as much as a foot, it could actually be stepped down. She has seen a lot of upright fences that followed that scheme. She suggested that they should talk with a couple local fence installers for additional input.

Mr. Marsden agreed. He also agreed to come back to the committee in January with thoughts on new language, which can be discussed. If the committee comes up with a proposal for fences at their next meeting, the amendment could still meet the deadlines for the 2019 warrant.

- **2019-08 Re: Generators with discussion on 2019-09 Re: Sheds**

Chair Losik reviewed the proposed amendment regarding generators. (Amend the definition of structure in the appendix of definition by adding; (e) generators intended to provide power during power outages.) She noted that there has been input from ZBA Chair Weathersby in regards to generators. Chair Weathersby suggests that if generators are exempt from setbacks, a maximum size and noise decibel level should be specified. Chair Weathersby noted that another possibility is that generators come out of the zoning ordinance and be added to the building code. Chair Losik commented that the DB number that was discussed was 70. The generators couldn't be louder than 70 when measured at the property line. There was also discussion about what an acceptable setback would be if someone wanted to locate a

generator near their property line. The question is whether generators are going to remain in the RZO or be taken out. If they stay in the definition of structures, they will definitely stay in the ZO. The other question is whether they are going to be subject to DB measurements and setbacks.

Member Quinn asked what the existing problems are that are trying to be regulated.

Mrs. Reed explained that the ZBA is getting a lot of generator applications because they don't meet the setbacks. Right now, the ZBA Meeting Agendas are two to three pages; however, they are only getting to two or three applications at the meetings. Applicants with a generator application have to spend time and money on something that may have been a "quick fix". She pointed out that almost nobody comes to complain about a generator.

Member Quinn asked about the decibel levels.

Mrs. Reed noted that no one has ever questioned it.

Chair Losik clarified that they are trying to make it a more efficient process for generators.

Mrs. Reed confirmed.

Member Quinn commented this is a fantastic idea. However, he is not sure about the decibel levels. There are manufacturers that put out generators that make a specific amount of noise.

Mr. Marsden stated that the reason the decibels was brought up was to prevent nuisance complaints from neighbors. There is a problem with people who want generators to locate it on their lot as far back from the house as possible for esthetics and noise. He does not know if giving up the setback requirements completely is the answer. It may be a matter of addressing an exception based on lot size. An idea would also be to require a sign-off from the neighbors, if the generator is located a certain distance off the property line.

Chair Losik asked if he is thinking of the Single Residence District where there are smaller lot sizes.

Mr. Marsden replied that any lot that is under a certain size would have to get relief.

There was some discussion on generator setbacks.

Member Paul stated that she thinks generators should be addressed in the building code. The general rules should be established, which would include the setbacks. If someone cannot comply, they should be required to get an exception.

Mrs. Reed explained that if it is changed from the ZO to the building code, the requirements for relief are different. If it is a variance, the applicant has to prove hardship. If it is a waiver from the building code, hardship is not one of the criteria. The applicant has to answer two questions in order to get relief from the building code. For a variance, the applicant has to meet the five criteria in the RSA, one of which is hardship.

Chair Losik noted that structurally, they moved fences out of the building code into the zoning ordinance in March of 2017. Fences would be back in the zoning ordinance with generators in the building code.

Mr. Marsden stated that his concern with generators is that is a mechanical instrument that uses utility. He asked if that would "open up a can of worms" where people would want to move the condensers as far

away from their house as possible. That is something they have to be careful of. The 10ft guideline that is used for septic systems, to the front yard line, and underground propane tanks, to the side setbacks, might be helpful. This might be a good benchmark to apply to this situation. He continued that they should not give up the required setback. The 10ft should be an exception to where the 20ft is not met.

Chair Losik asked if he is saying it should correspond with the setback requirements in the respective sections.

Mr. Marsden confirmed. If someone cannot meet the setback, maybe it could be an exception based on the lot size, location or unseen factors, such as ledge.

Chair Losik stated that a lot of it has to do with what the building department sees when they are on site. She is logically struggling with a house that is in the middle of 1.5 acres someone who wants to put their generator close to the property line and violate the setbacks. It could create ill will.

Art Ditto, speaking from the public, stated that generators are used in an emergency. It is not going to be used all the time. He thinks noise level is important because manufacturers have different levels. Generator manufacturers give the decibels on the generators. If someone wants to go close to the property line, maybe they need to have a quieter generator so it is not impinging on the neighbors.

Chair Losik replied this is an excellent idea.

Member Quinn stated this is a very good point. He is not in favor of trying to fix everything. Some of this needs to be investigated. Maybe they should check with generator companies to get a range for the decibel levels. Anyone who exceeds an acceptable level, should be required to put some sound mitigation into place. His goal is to get it off the plate of the ZBA so they don't have to keep dealing with these.

Mrs. Reed suggested that they ask the thoughts of the ZBA because they are the ones who want this change. She pointed out that it is not just for generators but also for sheds.

Chair Losik agreed.

Mrs. Reed agreed to get feedback from the ZBA and discuss it with the building inspectors. She will bring that information back to the committee.

Chair Losik noted that "one size may not fit all". Single Residence may not be the same as General Residence. She is thinking about larger acreages and why the setbacks could not be met in most cases for the Single Residence. She does not want to set a precedent where people are just "dumping" generators for their neighbors view.

Mr. Marsden pointed out that the building department issues a lot of permits for generators. It is not just what is going to the ZBA. A lot of people can meet the setbacks. He commented that setbacks are there for a reason and should be held to whenever they can be.

Chair Losik stated that when a structure, (sheds), is within a setback, there are reasons for honoring the setbacks. There are special reasons where they may not be able to meet the setbacks. She is asking that the ZBA to keep in mind, when reviewing the language, that it is not "one size fits all".

There was some discussion on the common placement of sheds on a property.

Chair Losik noted that they will address generators and sheds again after they hear back from the ZBA.

III. Request from the Rye Water District on irrigation systems

The committee received the information and request from the Rye Water District at their last meeting.

Art Ditto, RWD Commissioner, explained that the Water District uses a lot of water in the summer. The district is trying to come up with a reasonable approach for irrigation systems that is more efficient than what is currently in place. A lot of systems are put on a timer to turn on and off at certain times; however, this does not take into consideration the weather or time of year. He noted that in October he saw an irrigation system running on Washington Road and it was raining that day. He continued that the Water District has been talking about this for a while. When the developers come in, they are asked if they are going to have irrigation. They do not really say and state that it is really up to the homeowners. The new houses that are going into the developments are big houses with a lot of money into the landscaping. Chances are, they are going to have irrigation, unless it is prohibited. He stated that it can't be prohibited unless the homeowner is told why. That is why this proposed regulation was developed. He was trying to figure out if it would be best as an ordinance or building code. He thinks the best way for it to be managed would be in the building code. He stated that the Water District is not trying to leverage or burden the building department. If it is in the building code, it would require a building permit so it would be known when an irrigation system is done. The Water District would be the enforcement to make sure the systems are done properly. If there was a violation, it would fall upon the Water District to manage. The only reason it would be in the building code would be; (1) to make it visible and (2) to track the systems that are being installed. He stated that there are many regulatory documents that NH DES has established. One document is called 'Established Water Efficiency and Landscape Requirements' (August 2010). That is built off the EPA's 'Water Sense', which is for all water usage within the home and has a section for irrigation.

Member Quinn stated that he is hearing that conservation of the water resources is the primary goal.

Mr. Ditto confirmed.

Member Quinn asked how the Water District recognizes that people are not conserving and spending money on water just doesn't matter.

Mr. Ditto presented a chart showing water usage over the last four years. He explained that the chart shows that every summer, the water usage spikes, depending upon how dry the season is. The highest was in 2015, which was the year of the drought. He continued that it becomes a capacity issue. Some days, the district is running all three wells to meet the demand, just for a short period of time. During the winter, the usage is really level and the amount of water used is minimal. Mr. Ditto reviewed some of the proposed requirements for new and replacement irrigation systems.

Member Quinn stated that he is worried about policing and who that would fall to and what the consequences would be.

Mr. Ditto noted that the policing would be the responsibility of the Water District. As far as the consequences, the Water District would have to speak with the district's attorney to see what regulations can be put in place and what the consequences can be. He continued that water is a finite resource. It can't be used continuously without having a negative effect.

Chair Losik asked how the Water District would deal with identification. She asked how all the users are going to be covered.

Mr. Ditto noted that the RWD workers see it on a daily basis when they are working throughout the town.

Member Quinn stated that he sees this as arbitrary. The RWD staff may not be seeing everyone. Everyone will not be held to the same standard.

Mr. Ditto explained that the district knows the water usage and who is using a lot of water. The water reading will flag the properties that should be looked at because of their readings.

Member Paul commented that her irrigation system is on a separate meter.

Mr. Ditto replied that the irrigation systems are all on the same meter for the district. The reason to do a separate meter is typical due to sewer charges.

Member Paul wonders if one of the regulations should be separate meters for irrigation. That way the water just for irrigation can be turned off if there is an issue.

Mr. Ditto explained that the source of the water from the street is all the same. There is just an internal valve to shut the irrigation off. He commented this might be something to consider. He noted that having to put in two meters gets expensive and they have to be read. It's another level of work. He reiterated that the district can tell who is using the water just by the overall usage to the household.

Chair Losik stated that she likes the idea because it provides the hard data. It would streamline the process. She has done a lot of reading on groundwater protection, from DES, and how it relates. There is a lot in subdivision regulations that could tie in with new developments. It seems that it would be a start to have separate irrigation metering. This is not only establishing sprinkler system standards but also landscaping standards. Can this go further into landscaping requirements? People may be required to have a landscape that supports water conservation.

Mr. Ditto noted that part of the 'Water Sense' document addresses landscaping.

Chair Losik asked if the district would look at that for some of the proposed ordinance suggestions.

Mr. Ditto commented that he is not sure how far the district wants to get into landscaping.

Mrs. Reed stated that the Planning Board has a contract with Rockingham Planning Commission (RPC) to rewrite the entire Land Development Regulations (LDR). A section on landscaping is being added to the LDR for new developments. This might be the section this could go in because it seems that this is for new development.

Member Quinn asked who the town has on staff that could look at an irrigation system to say that it meets the regulations.

Mrs. Reed replied that the town does not have someone on staff that is qualified. It would come from the Rye Water District.

Member Quinn asked how the Planning Board is going to evaluate the plans that are brought before them.

Mrs. Reed explained that the Board sets escrows to do peer review and hires an expert.

Chair Losik commented that the Planning Board has been heading in that direction with respect to the last couple of developments, in that the developer was engaged in providing landscape plans. She pointed out that it was not to the extent of looking at the water implications of the plantings, although there was the suitability issue. She sees no reason why it cannot be part of the LDR as another component.

Speaking to Mr. Ditto, Mr. Marsden asked if he is proposing that irrigation systems be placed in the ordinance and go through the building department process.

Mr. Ditto explained that he is proposing that permits be issued. Once a permit is issued, the Rye Water District would be notified and would take over as far as policing and review of the plan.

Mr. Marsden stated that he sees many steps that would be inefficient for a lot of people. If this was to go forward, he would suggest that this be handled like someone getting permission to have water service tied to their new home. The whole process would start with the Water District. The permit would be issued by the Water District, as the district reviews the plan and how the system is being installed. As far as policing, the building department is the enforcing agent; however, he does not know that they should be enforcing sprinkler systems.

Mr. Ditto noted that the action officer would come from the Water District.

Mr. Marsden commented that this totally belongs with the Water District.

Mr. Ditto stated that how irrigation systems should be installed could be made part of the district's by-laws. The problem is knowing when this is happening. The only way to know it is happening is to require a building permit.

Mr. Marsden noted that they could have that question on the application for a building permit. If someone says they are going to have an irrigation system, the building department can tell them to follow up with the district.

Member Quinn commented that the building department could require a letter from the water department proving their design is approved.

Mr. Marsden stated that if they were to check off that they were going to have an irrigation system, the building department would require acceptance of that application from the water department.

Mr. Ditto stated that right now there is no requirement to have a building permit for an irrigation system. Someone could install a system at any time. There is no way to track the installation of systems.

Mr. Marsden commented that when the district sees a spike in someone's water usage, they will know there is a reason to investigate.

Mr. Ditto noted that this would be after-the-fact and a compliant irrigation system would not be installed. That is what the district is trying to manage.

Mr. Marsden stated that it could be added to the ordinance that if someone wants to install an irrigation system, they must go through the process with the water department. It could be in the building code or ordinance, depending on what is appropriate. This would be for a new system.

Chair Losik commented that one of the statements that was made is that quantity is being managed. It is a finite amount. She asked if the district is able to look at what is being installed and estimate the quantity of usage per year. If people want to over landscape, will the district partner with that to give them all the water they need?

Mr. Ditto explained that right now, there is no restriction on how much water people can use. People are not restricted on watering their lawns, unless there is a drought and there is a draw down on the resource.

The district is not going to get into specifying the type of vegetation that is going to be put in. The district wants to make sure the systems that are put in place are efficient and used efficiently.

After discussion, Mrs. Reed asked the committee where they would like to go with this.

Chair Losik stated that a lot of this makes sense. The question is where does it rest?

Mr. Ditto stated that he will rethink this proposal and how to implement it. He will come back to the committee with a revised proposal.

Mr. Marsden commented that he likes the idea of separate meters.

The committee agreed.

Mrs. Reed spoke in regards to adding a line to the building permit application with regards to irrigation systems. She noted that the building department could work right now with the building department with all the new developments that are being proposed.

The committee agreed.

IV. Requests from the building department

A. Peter and Chuck:

- **Growth Ordinance**
- **Re: Building Permit Fees. Suggested zoning amendment to delete the last sentence of Section 801.1. The Selectmen could set a fee pursuant to RBC Section 3.12.**
- **See Peter's memo from 10-4-18**
- **Chuck's requests**

- **Apartments**

To be addressed at a future meeting.

V. Other

- Next meeting scheduled for Wednesday, December 19th, 10:00 a.m.

VI. Public

No comments heard

Adjournment

Motion by Nicole Paul to adjourn at 11:30 a.m. Seconded by Jeffrey Quinn. All in favor.

Respectfully Submitted,
Dyana F. Ledger

