

**RYE PLANNING BOARD
RULES AND REGULATIONS COMMITTEE**

**Monday, September 11, 2017
10:00 a.m. – Rye Town Hall**

Meeting is a worksession with the building inspector, not a regular meeting

Members Present: Chair Patricia Losik, Jeffrey Quinn and Steve Carter

Others Present: Zoning Administrator Kimberly Reed

I. Call to Order and Pledge of Allegiance

Chair Losik called the meeting to order at 3:15 p.m. and led the Pledge of Allegiance.

II. Approval of Minutes of August 22, 2017

To be accepted at next meeting

III. Meet with Building Inspector to go over his memos

Building Inspector Peter Rowell and Assistant Building Inspector Chuck Marsden met with the committee to discuss proposed changes to zoning.

Fences & Swimming Pools:

Chair Losik stated that the committee had questions regarding fences and how they relate to pools. The committee also had questions regarding the pool safety covers. She would also like his thoughts on what he would like to see done for the building code.

Peter Rowell, Building Inspector, stated there are two issues; swimming pools and the height of fences. In regards to the swimming pools, they are in the building code. The State adopted Building Code, Appendage G, also covers barrier requirements for swimming pools; Section 105. He continued there is also another section in the building code that covers the electrical. The plumbing and safety requirements are in a different section. He has two different codes to enforce. They are very similar, except Appendage G has a lot more detail. He noted there is one major difference. Appendage G (State adopted Building Code) only asks for a 48 inch high fence. Rye wants a 60 inch high fence. His recommendation would be to eliminate the swimming pool in the Rye Building Code and use Appendage G, which is a State standard, to cover barrier requirements around swimming pools. He stated the other difference is that a swimming pool is defined as anything with 2ft of water, where Rye's code talks to 3ft. The State is more restrictive in that case and less in the height of the barrier around the pool.

Member Quinn asked if a fence or enclosure have to go around a hot tub.

Mr. Rowell replied that hot tubs have to have safety covers on them. A lot are elevated also. A fence or enclosure is not needed in all cases.

Chair Losik stated that Building Code 7.12 addresses swimming pools. She asked Mr. Rowell if he is suggesting they remove that section and reference the International Residential Code, specific to the sections on swimming pools.

Mr. Rowell commented they can reference Appendage G of the 2009 Residential Code.

Speaking to Mr. Rowell, Member Quinn asked if he feels that going to a 4ft requirement is a prudent thing to do for Rye.

Mr. Rowell stated he thinks 4ft, as it is laid out in the International Residential Code, is adequate. A 5ft fence is obviously safer.

Member Quinn commented it might not be safer. It is just higher. He asked Mr. Rowell if he would like the committee to target the 4ft or the 5ft.

Mr. Rowell replied that he feels the 4ft requirement is adequate.

Chair Losik stated when she reads Appendage G, Section 105, and the other components of pool fences, they are specific to pools and much more narrowly structured than the fence section. The language needs to be considered with fences. It needs to be clear that when dealing with fences around a pool, it will come from this section.

Mr. Rowell agreed. In looking at pool barriers it would come from Appendage G.

Chair Losik pointed out that Appendage G is much more detailed. To a certain degree there are added safety features which are not contemplated in the current building code.

Chuck Marsden, Assistant Building Inspector, noted that the more strict 2ft mention of the water will also address inflatable pools.

Member Carter asked what would happen with inflatable pools, which are about 3ft deep.

Mr. Rowell replied that they need a fence around them because it falls into the definition of a swimming pool.

Member Quinn asked Mr. Rowell if he could recommend a wording that he would like to see in the building code relative to this issue.

Mr. Rowell stated they could retract the whole section and put a note stating; "withdrawn use Appendage G in the IRC".

Member Quinn stated that he would like to see what is going to be approved and carried forward. He continued that this makes good sense; however, he would like to see the proposal of the change to the building code.

Mr. Rowell agreed to put something together.

Chair Losik clarified that it sounds like 7.12 will reference the building code and the International Residential Building Code and International Building Code; Appendage G and Section 301.9. She continued that she would also add the definitions so when someone goes to that they will have a reference. In regards to the references, she asked how someone would get that information.

Mr. Rowell explained that when someone is contemplating a project they should get in touch with the Building Department and ask what is required. The Building Department has all the code books for people to review. Something such as this, it is written out on a handout that is given to people. The building inspector's explain the safety requirements needed, not just for a swimming pool barrier, but for everything. This is tied in to the code.

Chair Losik pointed out that when a section is hooked into the International Code, as the International Code changes, building or residential, Rye's rule around swimming pool fences will also change.

Mr. Rowell noted that the International Codes are pretty much driven by the insurance companies. They play a very big piece in reviewing the codes and making them come forward. When safer buildings are built, the insurance companies save money.

Member Quinn commented that it is really not known where the 5ft requirement came from. Planning Administrator Reed stated it has been in the Rye books for a long time.

Chair Losik stated the more user friendly the rules and regulations are, for people at home on their computers, the better. If a link to the reference can be found that would be encouraged. The links could be put in the sections of the code or in the definitions so people can have access to that immediate information.

Mr. Rowell commented it is hard to get copies of the code book online because they make money selling those books. He recommends to the contractors to buy a copy of the code book. A lot of the codes are fairly easy to read. The International Building Code is not.

Mr. Marsden asked if code books are available at the library.

Chair Losik commented that is a great question.

Mr. Rowell noted that he will put together some wording on this change. He is sure that Attorney Donovan will weigh in on it also.

Fences:

Referring to Section 510 relating to fences, Chair Losik stated there are other issues with overall height.

Mr. Rowell explained the problem he is having with the 6ft. There may be a situation where one neighbor wants a 6ft high fence and the other neighbor does not want a 6ft high fence. The fence is put 1ft from the property line and everything is good until it goes to the record. All of the fence panels are 6ft panels. When someone builds the fence, they put the post in the ground, which is about 6" above the fence with the 6ft fence panels. Everyone wants the fence to be about 3" or 4" off the ground because it does not rot and will last longer. If there is a little "hump" in the ground, it will be 6 or 8" off the ground. If that happens with the post, the fence is now 6'8". The neighbor who did not want the fence in the first place is in the office filing a complaint.

Chair Losik commented that in a small area someone almost does not have a choice.

Member Quinn asked if they could say the height of the panels should not exceed 6ft.

Member Carter commented that it states now "the overall height of the fence shall be no more than 7ft above the ground". It could be added that the panels can be no more than 6ft in height and the overall height can be no more than 7ft above the ground.

Mr. Rowell suggested putting some averages in, such as 5% of the fence structure shall extend above the line. No more than 20% shall be 8" off the ground. It should be kept as simple as possible. Then it can be said that they are allowed to have a post higher than the fence. Right now, it is 6ft and that's it.

Member Quinn suggested "fences and walls shall not exceed 6ft in height, exclusive of supporting posts". He asked what kind of wording is going to alleviate the problem. Chair Losik commented that she thinks what is being suggested is new language in 510.3.

Mr. Rowell commented that he can work on some wording and Attorney Donovan can weigh in on this also.

Member Quinn noted that he likes "no portion of the fence shall be no more than 7ft above the ground".

Chair Losik asked if this would exclude the posts.

Mr. Marsden asked if this would make all the fences at 7ft.

Mr. Rowell commented that is what he would be afraid of. Everyone would then build 7ft fences from the ground.

Mr. Marsden suggested using the recommended standard of 2" above the ground, giving a measurement of 6'2" from beginning to end, and allowing for the lowest dip, they could be given an average from how the fence is laid out.

Member Quinn commented he is not sure if this is simple.

Member Carter stated there is a basic problem if the panels themselves are 6ft and the recommendation is to have them 4" off the ground, the fence is going to be 6'4". It is actually a 6'4" fence, even if the ground is flat.

Chair Losik commented that on the market there are also add-ons that can go on the top of the fences.

Mr. Rowell stated that he would say this could not be put on. The height would have to include that add-on.

Member Quinn commented that if it is 7ft with a 6ft fence panel, there is wiggle room in-between. He does not understand the problem.

Mr. Rowell stated he wants something to tie the maximum panel size to 6ft with no part of the support structure to be higher than 7ft.

Chair Losik stated this is reasonable and sounds fair. She thinks the standard in the industry is a 6ft panel.

Mr. Rowell stated he sees 7ft posts with 6ft panels right to the top with a foot underneath. He commented that it can be left as it is and he can keep working with it. He agreed to work on some language for 510.3 and bring it back to the committee. He will also work on language for Building Code 7.12.

Member Carter asked if a plan has to be submitted to the Building Department if someone is going to install a fence.

Mr. Rowell explained there is a Fence Permit Application that has to be filled out. He requires a plot plan showing exactly where the fence is going to go. If it is going to be 1ft off the property line that has to be marked at the property (with a string), along with the property line being marked. This will also let the abutter know that something is happening. A picture of what the fence will look like also has to be submitted. He continued that if it is a boundary line fence a survey is used for verification. Both abutters need to sign off on a boundary line fence.

Chair Losik asked if the boundary rules are 1ft.

Mr. Rowell replied that the boundary must be agreed upon by both abutters. If the abutter will not sign off, it has to be 1ft off the property line.

Wetland Buffers:

Chair Losik pointed out that the memo regarding wetland buffers will be addressed at the Wetlands Subcommittee meeting.

Mr. Rowell commented that it should be kept simple. DES has a Shoreland Protection Ordinance which does protect wetlands in certain situations. He explained DES has a graduating scale from 50 all the way up to 250. After it is past 100ft, there is a buffer requirement there is a point system for wetlands. In talking about protecting wetlands and buffers, they want three layers; grasses, herbaceous layer and trees. They want those evenly dispersed across the whole buffer for protection. DES does that by doing a point system that allows for view paths with either side of the lot staying in a natural state. DES is fairly specific and it is cumbersome; however, it has been around for about 8 or 10 years.

Speaking to Mr. Rowell, Member Quinn stated that his memo says that he would like to see some provision for placement of permanent monuments and markers.

Mr. Rowell explained there are homes going in on two recently approved lots that abut right up to the wetlands. They have a 100ft buffer from the tidal buffer. He gave the contractor some markers and he placed the markers along the 100ft buffer. These were put on trees and stakes that will stay there because this is a "Do Not Disturb" buffer. It is clearly marked so the contractors stay out of the buffer and the homeowners will know where it is.

Member Quinn pointed out that the markers could be moved.

Mr. Rowell replied that most of this is backed up with a plan that is kept on file. There will be Planning Board approved plans and Zoning Board approve plans which are kept in the Building Department files. That file can be pulled and compared to what is on the site.

Chair Losik stated they are looking at 483 (B), which is what the DES uses for shoreland. This was part of the work last year of the Wetlands Subcommittee. The subcommittee is being reconvened and they will see where that goes. She commented there is also the bill before the House and there is a lot of good language in that as well.

Solar Panels:

Mr. Rowell stated there was an installation of solar panels in the Jenness Beach area where the early morning sun hits the panels and reflects into the abutter's yard. The abutter calls it a nuisance. He is not sure what can be done about this because there is nothing in the ordinance to address this.

Member Carter asked how long the reflection lasts.

Mr. Rowell replied a couple of hours.

Planning Administrator Reed noted the abutter wants the town to change the zoning ordinance to prohibit this or have protective measurements.

Chair Losik asked if ordinances in other towns have been reviewed.

Mr. Rowell replied that he has not. This is the first time it has ever been an issue. The panels have been in place for about four months. The house is still under construction.

Member Carter asked if this is a seasonal problem for this property.

Chair Losik asked if the homes are both year round homes.

Mr. Rowell explained both are year round homes. The town does not build any more seasonal homes. The residents of the new home are going to be there year round. He does not believe the abutter is there year round; however, he is not positive.

Chair Losik stated that she would like to take a little bit of time on this and will look at some other town ordinances.

Mr. Rowell stated it could be something as simple as “no installation of solar panels shall cause a nuisance or glare to any surrounding property”.

Member Carter pointed out that the problem with that is the whole thing could be designed and it could be fine then in January there could be a problem.

Chair Losik asked how they can establish a standard that can be measured.

Mr. Rowell commented they can probably run a computer program to get the glare angles off the panels.

Planning Administrator Reed commented that would be for today but how about three years from now with climate change.

Chair Losik stated they will look into this and discuss it again.

IV. Other

- Chair Losik noted that she will be attending the Downpours and **Extremes, NH Coastal Adaptation Workshop on Wednesday, October 26, 2016.**

In regards to 306, Aquifer and Wellhead Protection District, Chair Losik stated the Planning Administrator Reed reached out to DES, particularly to Pierce Ryborg who was the drafter of the model Groundwater Protection Ordinance. That was the basis that was used for the changes that were made in 2015. She continued that Carl McMorin stated that the protection for Well 5A was established by DES. She noted that the committee received the emails that went between Mrs.

Reed, Mr. Ryborg and his team. At first, Pierce was not sure they could combine one map for the Wellhead Protection Areas (from DES) and the aquifers (from USGS). Kristen Swenson, from DES, spent some time on this and sent the map to Mrs. Reed. The two maps were combined to include the Stratified Drift Aquifer and the Wellhead Protection Areas, which Rye Water District has established around Garland, Bailey and Cedar Run. Bailey and Cedar Run are the two bedrock wells and Garland is the gravel well. The map also shows the area around Well 5A, which is also a gravel well. The committee now has one map that shows the areas that they should be concerned about protecting under 306. She continued that as she goes back through 306, she sees some areas that she thinks that they can improve in terms of understand the district. She would like the members to review the model ordinance for the next meeting. She pointed out that in 306.4 it talks about the boundaries and 306.4 (A) is the location. That language will need to change to include the area within the Aquarion Wellhead Protection Area.

Chair Losik continued that in 306.10, Wellhead Protection Area, the area around Well 5A should be incorporated. Section 306.11, Sanitary Protective Radius, will also need to have the language of Well 5A added. Referring to 306.7 (F)(1), Exemptions, she thinks that at the last meeting they came away with the understanding that private residences are exempt from the criteria in 306. She stated they are not fully exempt. They are exempt from the Performance Standards only. There are areas in 306 where private residences could be impacted, for example, requirements for the Conditional Use Permit, 306.5 (B)(k). A Conditional Use Permit is required for any use that is rendered impervious over 15% or 2500sf of any lot, whichever is greater. This could impact a private residence if they are within the Aquifer and Wellhead Protection Areas. When the committee gets back to the questions they have been asked to address in the districts there are some overlays. She noted that they have to be looked at in context with one another. They need to be aware of how the components which are impacted under 306 will be affected. They also need to handle the detail of impervious, Section 203.

Next Steps:

- Chair Losik would like members to come to the next meeting prepared to look at proposed word changes for 306.
- **Wetlands Subcommittee Meeting – Tuesday, September 12th, 10:00 a.m.**
- **Well 5A Site Walk – Wednesday, September 13th, 4:00 p.m.**
- **Rules and Regulations Committee Meeting – Monday, September 25th, 4:00 p.m.**

Adjournment

Motion by Steve Carter to adjourn at 4:31 p.m. Seconded by Patricia Losik. All in favor.

Respectfully Submitted,
Dyana F. Ledger