

**CITY OF RYE
1051 BOSTON POST ROAD
RYE, NY 10580
AGENDA**

**REGULAR MEETING OF THE CITY COUNCIL
VIA ZOOM
Wednesday, March 2, 2022
6:30 p.m.**

The meeting will be held via zoom video-conferencing with no in-person location and will be broadcast on the city website. A full transcript of the meeting will be made available at a future date.

Residents may email comments regarding the public hearing to: **publichearingcomments@ryeny.gov**. All comments must be received by 4:15 pm on the day of the meeting. The subject of the email should reference the hearing topic. Please include your name and address.

TO PARTICIPATE IN THE PUBLIC HEARING, PLEASE ATTEND THE MEETING VIA ZOOM VIA THIS LINK:

<https://zoom.us/j/944402663308?pwd=eTIHWIRPbERBdGpyenMwSnZFc0ZlQT09>

Or Telephone:

US: (646) 558-8656 or (312) 626-6799 or (301) 715-8592 or (253) 215-8782

Press *9 to raise your hand to speak during the public hearing

Webinar ID: 944 0266 3308

Password: 380293

[The Council will convene via ZOOM CONFERENCE at 5:45 p.m. and it is expected they will adjourn into a teleconference Executive Session at 5:46 p.m. to discuss pending litigation, personnel matters and pending contracts.]

1. Roll Call.
2. Draft unapproved minutes of the Regular Meeting of the City Council held February 16, 2022.
3. Post Ida Storm Update.
4. Update on the City's Capital Projects Program.
5. Resolution adopting a negative declaration for various capital improvements.
6. Resolution to issue \$13,550,000 of bonds to finance the costs of various City projects.

7. Adjourn until March 16, 2022 the public hearing to create a new local law, Chapter 122, “Landscapers and Leaf Blower Regulations” requiring all landscapers to obtain an annual permit in order to operate as a landscaper and restrict the use of leaf blowers.
8. Residents may be heard on matters for Council consideration that do not appear on the agenda.

CONSENT AGENDA

9. Consideration of a request by the Rye Chamber of Commerce for the use of City Car Park #2 on Sundays from May 8, 2022 through December 4, 2022 from 6:30 a.m. to 2:30 p.m. for the Rye Farmers Market.
10. Consideration of a request by the Rye Free Reading Room for the use of the Village Green and City Hall Parking lot to host the Annual Vehicle Fair Sunday, May 22, 2022 from 11:00 a.m. to 3:00 p.m.
11. Consideration of a request by the Rye Free Reading Room to have three food trucks at the Annual Vehicle Fair on Sunday, May 22, 2022 from 11:00 a.m. to 3:00 p.m. The City Council will have to waive § 144-8D and G of the City Code.
12. Old Business/New Business.
13. Adjournment

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The next regular meeting of the City Council will be held on Wednesday, March 16, 2022 at 6:30 p.m.

** City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at www.ryeny.gov under “RyeTV Live”.

DRAFT UNAPPROVED MINUTES of the
Regular Meeting of the City Council of the City of
Rye held in City Hall on February 16, 2022, at 6:30
P.M.

PRESENT:

JOSH COHN, Mayor
BILL HENDERSON
EMILY HURD
CAROLINA JOHNSON
JOSHUA NATHAN
JULIE SOUZA
BENJAMIN STACKS
Councilmembers

ABSENT: NONE

The Council convened at 5:30 P.M. by videoconference pursuant to the NYS Legislature waiving requirements of the Open Meetings Law. Councilman Stacks made a motion, seconded by Councilwoman Souza, to adjourn briefly into executive session to discuss litigation and personnel matters. The Council reconvened in a public videoconference at 6:37 P.M. The meeting was streamed live at www.ryeny.gov for public viewing.

1. Roll Call.

Mayor Cohn asked the City Clerk to call the roll; a quorum was present to conduct official City business.

2. Draft unapproved minutes of the Regular Meeting of the City Council held February 2, 2022.

Mayor Cohn recommended a change to the minutes; he stated that he be included in the list of City representatives who had met with the Army Corps and DEC. The City Clerk made the appropriate changes.

Councilwoman Souza made a motion, seconded by Councilwoman Johnson to approve the minutes of the Regular Meeting of the City Council held February 2, 2022.

3. Acknowledgement of Jim Buonaiuto's service to the City of Rye.

Mayor Cohn took a moment to appreciate Jim Buonaiuto's eight years as golf club manager as he moves to a position closer to home. He stated that Mr. Buonaiuto was a calm and steady hand in rebuilding the golf club. Councilman Stacks added that the City will be losing a consummate professional and overall great person who was a pleasure to work with. City Manager Usry spoke about the current state of the golf club; Jim left the club in a great position to continue the operations he established.

4. Post-Ida Storm Update.

Mayor Cohn gave an update. He reported that before the meeting, a letter was received by New York State DEC from the Army Corps of Engineers stating that the DEC will cooperate in the initial scoping study. The City will look to the Corps to understand the acceptability of the letter, but it appears the DEC is onboard and eager to get the Corps process moving.

Mayor Cohn shared notes with the Council from the first all-hands meeting for DEC's resilient stream study of the Blind Brook Watershed which was a kickoff review of the study coming in the next six months. A parallel Ramboll study of the watershed has begun, and Mr. Usry explained that Ramboll is anxious to get started and will deliver what was promised. Two of four stakeholder meetings have been held wherein various residents, businesses, and nonprofits weighed in with their ideas and concerns. The goal is to develop definitive projects with an appropriate cost-benefit return that are ready for implementation.

Councilwoman Johnson added that Ramboll was going to keep an eye on the funding sources; when they become available, they should be built into Ramboll's presentation to the City. It will be important to receive updates, so the City is ready when the funds are available. Mayor Cohn confirmed that disaster remediation consultants are being interviewed to assist in finding funds, and it may be appropriate to RFP.

3a. Opposition of Governor's Budget Bill with regarding to zoning.

Mayor Cohn added an agenda item. Recently the City received notice of the addition of troublesome provisions in the Governor's Budget Bill that will impact zoning in the City of Rye. The "transit-oriented dwellings" provision focuses on zoning in the half-mile radius around railroad stations in Westchester and states any residential lot within the area would be subject to development as part of a 25-unit-per-acre residential development. Another inclusion is any residential lot in the City would be subject to a provision made for "accessory dwelling units," defined as independent dwelling units on the same lot as an existing property.

The added provisions of the budget bill substantially dilute the home rule zoning power of the City and will result in unplanned development burdens on infrastructure, flooding implications, and population density increases. Both state representatives oppose these provisions. The mayor encouraged the Council to pass a resolution of opposition to the proposals and forward it to the representatives and the governor.

Councilwoman Souza shared her concerns that bigger buildings that need not comply with the City's zoning standards will affect the impervious surface after experiencing the most disastrous flooding ever seen in the region. Clauses have been added to support why these provisions of the budget bill would negatively impact the City.

Mayor Cohn asked Corporation Council Wilson to read the resolution to the Council, including the "whereas" clause that Councilwoman Souza referenced:

"WHEREAS, the City has historically experienced severe flooding events with the most significant impact felt after Hurricane Ida, and the City needs to contain local control over the increase in impervious surface and lot coverage in and around the Blind Brook Watershed;

WHEREAS, it is through home rule and discrete community actions that complex issues relating to planning, zoning, and housing are best resolved; and

WHEREAS, the New York State Conference of Mayors and Municipal Officials have opposed the legislation on similar grounds, and be it further

RESOLVED, that the City of Rye opposes the proposal within the 2023 Executive Budget dealing with the accessory drilling unit proposal, and the transportation-oriented development proposal; therefore, be it

RESOLVED, that the City Council urges its partners in the state legislature, as well as the governor, to reject the accessory drilling unit proposal and the transportation-oriented development proposal, and to preserve and protect local home rule and local zoning powers."

Mayor Cohn asked for a motion to accept the resolution. Councilwoman Souza made the motion, seconded by Councilman Stacks and unanimously carried by the Council, to adopt the resolution as set forth above by Corporation Counsel.

5. Approve the application of Luke Henry Goldszer for the position of Volunteer Firefighter for the City of Rye Fire Department.

Commissioner Mike Kopy spoke of his support for Luke Goldszer's application for volunteer firefighter. Luke is an 18-year-old senior at Rye High School and will be attending a local college in the fall. He is CPR-certified and has life rescue experience as a lifeguard. The department is excited to have Luke, the first new member in some time, and he was encouraged to recruit his friends. A program is in development to have fire department internships for graduating seniors who may be interested in the career. The Council formally accepted the application in support of Luke in his pursuit to be a volunteer firefighter.

6. Continue the public hearing to create a new local law amending Chapter 197 "Zoning" of the Code of the City of Rye setting new restrictions on lot width and configurations of properties in new subdivision Rye to amend authority and scope considered by the Architectural Review Board in reviewing applications.

Mayor Cohn stated that the Council's review of three new laws should be performed with protective intent and care. Ms. Wilson shared the draft currently before the Council including a change to a minimum lot width of 75 feet.

Councilman Nathan thanked Councilwoman Johnson for her countless hours of volunteer work on this and other proposals. Mayor Cohn shared his appreciation for Councilwoman Johnson and the other volunteers on the committee who created the draft and guided its revisions.

The public was invited to speak on the matter, but there was no one present to speak.

Before voting on the new law, Councilwoman Johnson made a motion to close the public hearing, and Councilwoman Hurd seconded the motion.

Mayor Cohn asked for a motion for a vote on the new local law amending Chapter 197 "Zoning." Councilman Henderson made the motion, and Councilwoman Johnson seconded the motion to adopt the law as written below. The moratorium will automatically expire upon the filing of the new laws. The amendments approved are as follows:

LOCAL LAW NO. 2 2022

**A LOCAL LAW TO AMEND CHAPTER 197 (ZONING) OF THE
CODE OF THE CITY OF RYE, NEW YORK
REGARDING THE LOT WIDTH AND CONFIGURATION
OF PROPERTIES IN NEW SUBDIVISIONS**

Be it enacted by the City Council of the City of Rye as follows:

Section 1. **Section 197-36, Zoning, Article V, Lot, Floor Area, Height, Yard and Court Regulations, of the Code of the City of Rye is hereby amended as follows:**

§ 197-36 Lot width required.

- A. Within any residence district no part of any dwelling, house or other structure housing a main use, and within any business district no part of any residence structure shall be erected on any part of the lot which has a width of less than the distances specified in the table incorporated as Article VIII, except as hereinafter provided. In addition, for any lot created after January 1, 2022 in the R1 through R-6 District, no part of the lot that lies between the street line and the minimum required rear yard setback for the district in which the lot is located shall be narrower in width than seventy-five (75) feet or narrower in width than fifty (50) feet in any other residence district in which a single-family dwelling is proposed.

- B. For any lot created after January 1, 2022, that has frontage on a turn-around or cul-de-sac, the required lot width between the street line and the principal building shall not be narrower in width than thirty-five (35) feet and the lot width shall not be less than the distances specified in the table incorporated as Article VIII between the front of the principal building and the minimum required rear yard setback.

Section 2. **Severability.**

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any other part of this Local Law that can be given effect without such invalid part or parts.

Section 3. **Effective Date.**

This Local Law shall take effect immediately upon its adoption and filing with the Secretary of State.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Henderson, Hurd, Johnson, Nathan, Souza, Stacks
Nays: None
Absent: None

7. Continue the public hearing to create a new local law, Chapter 166 “Steep Slope Protection” regulating development on steep slopes.

Mayor Cohn asked Ms. Wilson to briefly review the substantive changes to the new local law regarding steep slope protection. Councilman Stacks recused himself on the matter and temporarily removed himself from the meeting.

Since the last public hearing there were three substantive changes which were bolded in the most recent circulated version. A verbiage change in Section 166-6 B2 allows the Planning Commission to consider issuing a steep slope permit for development on slopes greater than 35%. The second and third change are both in Section 166-14 regarding the \$1,000 daily fee per violation, and the denial of construction-related permits and a three-year suspension of the entity's ability to obtain other construction-related permits in the City of Rye.

Councilman Nathan asked how the \$1,000 daily fine works if a steep slope has been destroyed without a permit. Ms. Wilson explained that the fee continues to accrue until there is legal resolution. Depending on the severity, the judge would be asked to black-list the entity that performed the work as a deterrent for future violations. Mayor Cohn added that there is a restitution provision which allows the court to construct a remedy.

Councilman Nathan commented about the need for clarification about the adjustments made for "exigent circumstances." His interpretation is the state of emergency wherein a structure or surface will imminently fall. Ms. Wilson replied that the Planning Commission should be given latitude in determining what is exigent or what is next to impossible but for development on the steep slope. Councilwoman Souza argued that stronger language is needed to strongly discourage the disruption of steep slopes. The mayor's interpretation of exigent is "a great urgency of need." Considering the lengthy debate around the issue, Councilman Henderson believes the Planning Commission should proceed with current language which can be revised. Councilwoman Hurd underscored that there is a policy discouraging any application for steep slope work at 35% or greater.

Comments from the public were heard. Steve Wrabel, McCullough Goldberger & Staudt, agreed that the Planning Commission should be allowed to define exigent; his comments were also shared in a letter to the Council. He emphasized concern over an emergency-only interpretation and shared his client's experience with a steep slope on their property.

Councilwoman Souza stated concern that giving the Planning Commission the power of discretion was like a child asking the other parent for permission when the first says no. Mayor Cohn reiterated that the goal of changing the language was a higher degree of scrutiny about exigent circumstances when disturbing steep slopes.

Hearing no further public comment, Mayor Cohn asked for a motion to close the public hearing. Councilwoman Johnson made a motion, seconded by Councilwoman Hurd, to close the public hearing.

Councilman Henderson made a motion, seconded by Councilwoman Johnson, to create a new local law, Chapter 166 “Steep Slope Protection” regulating development on steep slopes as follows:

LOCAL LAW
CITY OF RYE NO. 3 2022
A local law to add a new Chapter 166 “Steep Slope Protection”
to the Code of the City of Rye, New York

Section 1. The following new Chapter 166, titled “Steep Slope Protection” is hereby added to the Rye City Code:

Chapter 166
STEEP SLOPE PROTECTION

ARTICLE I
General Provisions

§ 166-1. Title; findings and policy.

- A. Title. This chapter shall be known as the "Steep Slope Protection Law of the City of Rye." It is a chapter regulating the disturbance of steep slopes in the City of Rye.
- B. Findings and policy. The City Council of the City of Rye finds and declares it to be the public policy of the City to regulate, preserve, protect and conserve its steep slopes so as to maintain and protect the natural terrain and its vegetative features, preserve wetlands, water bodies and watercourses, prevent flooding, protect views, vistas, and open areas that contribute to a sense of space in our suburban environment, preserve areas of wildlife habitat, provide safe building sites, protect the subject property and the

adjoining properties by preventing erosion, creep and sudden slope failure. In this connection the City Council finds as follows:

- (1) Protection of steep slopes is a matter of concern to the entire City. Once a steep slope is disturbed, that disturbance may well be irreversible. The establishment of regulatory and conservation practices to prevent disturbance of steep slopes is needed to protect the public health, safety and general welfare.
- (2) The disturbance of steep slopes can aggravate erosion and sedimentation beyond rates experienced in natural geomorphologic processes. Erosion and sedimentation often include the loss of topsoil, the disturbance of habitats, degradation of the quality of surface water and wetlands, alteration of drainage patterns, the gulying of land, the obstruction of drainage structures, the intensification of flooding both on and off the subject site, the failure of slopes and the mass movement of earth and danger to the natural environment, man-made structures and the safety of persons.
- (3) Steep slopes, including vegetation and rock outcroppings located thereon, are important environmental features that contribute significantly to the visual impression one forms while traveling through the City. Overdevelopment of or improperly managed disturbance to these steep slopes is detrimental to the visual character of the City.
- (4) Regulation can allow the reasonable use of private property by encouraging flexibility in development design to avoid disturbance of steep slopes. Regulation can also permit environmentally sound disturbance of steep slopes conducted in accordance with acceptable site design practices.
- (5) To minimize the potential adverse impacts of development on steep slopes, the City should seek the preservation of such areas by the use of flexibility in site design, (including the application of § 37 “Subdivision review; approval of cluster development” of the General City Law), the establishment of conservation easements and other land preservation techniques.
- (6) These regulations are enacted with the intent of providing a reasonable balance between the rights of the individual property owners and the public interest in preserving the valuable functions of steep slopes.

§ 166-2. Definitions.

- A. For the purpose of this chapter, certain words and terms used herein are defined as follows.
- B. All words used in the present tense include the future tense; all words in the plural number include the singular number; and all words in the singular number include the plural number, unless the natural construction of the wording indicated otherwise. The word "lot" includes the word "plat"; the word "building" includes the word "structure";

and the word "shall" is mandatory and not directory. The word "use" is deemed also to include "designed, intended, or arranged to be used." Unless otherwise specified, all distances shall be measured horizontally.

ANGLE OF REPOSE — The maximum angle at which the exposed face of various soil and rock materials can deviate from the horizontal without incurring the likelihood of a slope failure.

APPLICANT — Any individual, firm, partnership, association, corporation, company, organization or other legal entity of any kind, excluding the City of Rye and its governmental agencies, who requests the approval authority to approve disturbance to a steep slope, or to whom a steep slope approval or a steep slope work permit has been granted under the provisions of this chapter.

APPROVAL AUTHORITY — The Planning Commission of the City of Rye.

BUILDING INSPECTOR — The Building Inspector of the City of Rye.

CITY — The City of Rye.

CITY COUNCIL — The City of Rye City Council.

CITY ENGINEER — The Engineer for the City of Rye.

DISTURBANCE — The removal of vegetation, or the filling, excavation, regrading or removal of soil, rock or retaining structures in areas of steep slope, whether by manual labor, machine or explosive. The condition of disturbance will be deemed to continue until the area of disturbance is revegetated and/or permanently stabilized.

DISTURBED AREA — Any steep slope area for which a disturbance is proposed or is ongoing.

EXCAVATION — Any activity which removes or significantly disturbs rock, gravel, sand, soil, or other natural deposits.

FILL — Any act by which earth, sand, gravel, rock or any other material is deposited, placed, replaced, pushed, dumped, pulled, transported, or moved by man to a new location and shall include the conditions resulting therefrom.

GRADING — Adjusting the degree of inclination of the natural contours of the land, including leveling, smoothing and other modification of the natural land surface.

MATERIAL — All liquid, solid or gaseous substances.

PERSON — Any person, firm, partnership, association, corporation, company, organization or other legal entity of any kind, including public agencies and municipal corporations.

PLANNING COMMISSION — The Planning Commission of the City of Rye.

PROJECT — Any proposed or ongoing action that may result in direct or indirect physical impact on a steep slope, including, but not limited to, any regulated activity.

STATE ENVIRONMENTAL QUALITY REVIEW ACT — The law, pursuant to Article 8 of the New York Environmental Conservation Law, providing for the environmental review of actions.

STEEP SLOPE — Any contiguous land area greater than 500 square feet having a topographical gradient of 25% or greater (ratio of vertical distance to horizontal distance) and a minimum horizontal distance of 10 feet measured along a horizontal plane. If the slope extends onto adjacent property and would result in the land area being greater than 500 square feet having a topographical gradient of 25% or greater, then the applicant shall be required to obtain Steep Slope Work Approval from the Planning Commission.

STEEP SLOPE AREA – The area defined in accordance with Section 166-3.

STEEP SLOPE, EXTREME — Any contiguous land area greater than 500 square feet having a topographical gradient of 35% or greater (ratio of vertical distance to horizontal distance) and a minimum horizontal distance of 10 feet measured along a horizontal plane.

STEEP SLOPE WORK APPROVAL — The written form of authorization issued by the Planning Commission and required by this chapter prior to the issuance of a steep slope work permit by the Building Inspector and commencement of work within a steep slope area.

STEEP SLOPE WORK PERMIT — The written form of permission to commence work within, or otherwise disturb, a steep slope area issued by the Building Inspector, which permit shall be issued only where such regulated activity has been approved and authorized by the Planning Commission.

STRUCTURE — Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

§ 166-3. Rules for establishing steep slope areas.

The applicant shall be responsible for having the boundaries of each steep slope area determined by field investigation, flagging and subsequent survey by a licensed land surveyor. The Planning Commission may also consult, at the expense of the applicant, and/or

may also require the applicant to consult with a landscape architect, architect, professional engineer, soil scientist or other experts and professionals as deemed necessary to make this determination.

§ 166-4. Applicability.

The provisions of this chapter shall apply to all lands defined and/or designated as an area containing one or more steep slopes as determined in accordance with §166-3.

ARTICLE II
Regulated Activities and Review Standards

§ 166-5. Allowable and regulated activities.

- A. Allowable activities. The following activities within a steep slope area shall be allowed without a steep slope work permit:
- (1) Normal ground maintenance which does not require disturbance of existing terrain, including mowing, trimming of vegetation and removal of dead or diseased vegetation, provided that such activity does not involve regrading, and further provided that such activity conforms with all other applicable laws and regulations.
 - (2) Routine and minimally invasive landscaping activities including adding new plants or removing existing plants.
 - (3) The disturbance to steep slopes under temporary emergency conditions, as determined by the City Engineer, where such disturbance is necessary to protect persons or property from present and imminent danger.
 - (4) Repair or replacement in-kind of existing walkways, walls, decks, stairways and docks.
 - (5) Any new structure or addition to an existing structure involving not more than 100 square feet.
 - (6) Public health activities and emergency uses pursuant to orders of the Westchester County Department of Health and/or the New York State Department of Health.
 - (7) Alteration of the interior of a building.
 - (8) The demolition of a part or all of the exterior of an existing building.

- B. Regulated activities. It shall be unlawful to create a new steep slope area or to create any disturbance, other than an allowable activity as defined above, on any existing or proposed steep slope in the absence of a steep slope work permit.

§ 166-6. Review standards.

- A. Considerations. During its review of the application, the Planning Commission shall evaluate, as necessary and appropriate, the extent to which the application accomplishes the following:

- (1) The alignment of roads and driveways shall follow the natural topography to the maximum extent practicable, shall minimize regrading and shall comply with design standards for maximum grades set forth in the City Code.
- (2) All regrading shall blend in with the natural contours of the land.
- (3) Cuts and fills shall be shaped to eliminate sharp angles at the top, bottom and sides of regraded slopes.
- (4) The angle of cut and fill slopes shall not exceed the natural angle of repose of the soil or rock materials in the cut or fill, except where retaining walls or other structural stabilization is used; generally, for soils, cut and fill slopes shall be not steeper than two horizontal to one vertical.
- (5) Natural slopes of two horizontal to one vertical, or steeper, shall not be altered by fill slopes. The toe of a fill slope shall not be located within 12 feet horizontally of the top of an existing or proposed cut slope.
- (6) Tops and bottoms of cut and fill slopes shall be set back from existing and proposed property lines a distance at least equal to the lesser of three feet plus $1/5$ of the height of the cut or fill, or 10 feet.
- (7) Tops and bottoms of cut and fill slopes shall be set back from structures a distance that will ensure the safety of the structure in the event of the collapse of the cut or fill slopes; generally, such distance will be considered to be six feet plus $1/5$ the height of the cut or fill, but need not exceed 10 feet. Nevertheless, the Planning Commission may allow a structure to be built on a slope or at the toe of a slope if it is designed to retain the slope and to withstand the forces exerted on it by the retained slope, subject to subsection B below.

- B. Decision.

1. In granting, denying or conditioning any steep slope permit under this chapter, the Planning Commission shall consider all relevant facts and circumstances and determine that each of the following is true:

- (A) That the proposed activity and the manner in which it is to be accomplished are in accordance with the findings and policy set forth in § 166-1 of this chapter.
- (B) That the proposed activity and the manner in which it is to be accomplished can be completed without increasing the possibility of creep or sudden slope failure and will minimize the potential for erosion to the maximum extent practicable.
- (C) That the proposed activity and the manner in which it is to be accomplished will not adversely affect the preservation and protection of existing wetlands, water bodies, watercourses and floodplains.
- (D) That the proposed regulated activity is compatible with the public health and welfare.

2. The foregoing paragraph notwithstanding, the Planning Commission shall not allow activity that:

- (A) Can be relocated or modified so as to eliminate or reduce the disturbance of the steep slope area to the maximum extent deemed reasonable and appropriate by the Planning Commission.
 - (B) Would disturb a slope in excess of 35% provided that, the Planning Commission may allow the activity only in rare and exigent circumstances, and then only in accord with all other provisions of this Subsection B (Decision).
- C. Burden of proof. The applicant shall have the burden of proof to demonstrate compliance with this chapter by clear and convincing evidence, that is, highly and substantially more likely to be true than untrue.

ARTICLE III **Application Procedure**

§ 166-7. Approval authority.

The approval authority for all applications for steep slope permits shall be the Planning Commission.

§ 166-8. Procedures for application.

- A. Application contents. The application and an application review shall be submitted to the City Planner. The application shall contain the following information:

- (1) Name and address of owner and applicant.
- (2) Street address and Tax Map designation of property to which the application pertains.
- (3) Statement of consent from the owner for any agent making application.
- (4) A written narrative explaining the nature of the proposal, including the proposed work and purpose thereof, any future development proposals for the property and whether alternative locations exist for the proposed activity.
- (5) A site plan, which shall be drawn at a scale no less detailed than one inch equals 50 feet and prepared by a landscape architect, architect or professional engineer licensed in the State of New York and showing the following information for all areas on the subject site that contain steep slopes:
 - (a) The location of proposed structures, septic systems, wells and driveways.
 - (b) The location of the proposed area of disturbance and its relation to neighboring properties, together with structures, roads and affected wetlands as defined in Chapter 245, Freshwater Wetlands, of the City Code, if any, within 50 feet of the boundaries of the proposed disturbed area
 - (c) The existing topography in the proposed area of disturbance at a contour interval of not more than two feet. Contours at this interval shall be shown for a distance of 50 feet or greater beyond the limits of the proposed area of disturbance. If, however, the 50 foot radius is not on property controlled by the applicant and the applicant is unable to gain access to such property, the contours must be shown at least to the boundary of the property under applicant's control. The contour map shall be prepared, signed and sealed by a professional land surveyor licensed to practice in New York State. The elevations and contours on said map shall be in United States Geological Survey (USGS) datum, latest revision.
 - (d) The location and size of areas of steep slope and extremely steep slope, under existing and proposed conditions, in the area of proposed disturbance and within a distance of 50 feet thereof. If, however, the 50-foot radius is not on property controlled by the applicant and the applicant is unable to gain access to such property, the location and size of such slopes must be shown at least to the boundary of the property under applicant's control. The Planning Commission shall make a site visit to observe neighboring topography and shall in its decision-making take notice of any slope and other relevant conditions on the property beyond the applicant's control.
 - (e) The proposed final contours at a maximum of two-foot contour intervals in the proposed disturbed area and to a distance of 50 feet beyond; elevations of

the site and adjacent lands within 200 feet of the proposed work site at contour intervals of no greater than 10 feet; and proposed surface materials or treatment. If, however, the 50- or 200-foot radius is not on property controlled by the applicant and the applicant is unable to gain access to such property, the contours must be shown at least to the boundary of the property under applicant's control. The Planning Commission shall make a site visit to observe neighboring topography and shall in its decision-making take notice of any slope and other relevant conditions on the property beyond the applicant's control.

- (f) An erosion and sediment control plan in accordance with Chapter 174, Stormwater Management, of the Rye City Code.
 - (g) The details of any surface or subsurface drainage system proposed to be installed, including special erosion control measures designed to provide for proper surface or subsurface drainage, both during the performance of the work and after its completion.
 - (h) A description of the existing and proposed vegetative cover of the regulated area.
 - (i) Location of the construction area and the area proposed to be disturbed and their relation to property lines, roads, buildings and watercourses within 250 feet thereof.
 - (j) The exact locations, specifications and amount of all proposed excavating, draining, filling, grading, dredging and vegetation removal or displacement and the procedures to be used to do the work.
 - (k) Location of all wells and depths thereof and all sewage disposal systems.
 - (l) A completed environmental assessment form in accordance with the New York State Environmental Quality Review Act.
- (6) A list of all applicable City, county, state and federal permits that are required for such work or improvement.
- (7) A list of names of owners of record of lands adjacent to the steep slope area in which the project is proposed to be undertaken.
- (8) Payment of all applicable fees.
- B. Additional information. The following information and materials shall be supplied if requested by the City Planning Commission:

- (1) A site plan or site plans drawn at a scale of not less than one inch equals 50 feet, prepared by a landscape architect, architect, or professional engineer licensed in the State of New York showing:
 - (a) Cross sections of all disturbed steep slope areas.
 - (b) Existing soils within 50 feet of the proposed disturbed area, taken from field investigations by a soils scientist and classified into hydrologic soil groups. The depth to bedrock and depth to water table, K-factors, and soil and rock strata in all areas of proposed disturbance shall be identified.
 - (c) A cut/fill map delineating proposed areas of disturbance at affected depths in increments of zero to three feet, three to six feet, six to 10 feet, and 10 feet and over, and the estimated material quantities of cut/fill.
 - (d) A slope map showing existing and proposed slopes within the proposed disturbed area for each of the soil types described in Subsection B(1)(b) above.
 - (e) A stabilization and revegetation plan.
 - (f) Other information, including specific reports by qualified professionals regarding soils, geology and hydrology, as may be determined to be necessary by the Planning Commission.
- (2) A plan with the existing topography of the watershed tributary to the disturbed area presented at a scale of not more than one inch equals 100 feet. This map shall show existing and, if required by the Planning Commission, proposed controls and diversions of upland water.
- (3) Estimates for the proposed site improvements, which shall be certified by a professional engineer, architect, or landscape architect licensed in the State of New York.
- (5) Any additional information as needed. Such additional information may include, but is not limited to, the study of flood, erosion or other hazards at the site; the effect of any protective measures that might be taken to reduce such hazards; and any other information deemed necessary to evaluate the proposed use in terms of the goals and standards hereof.

§ 166-9. Fees.

- A. An application fee and inspection fee in amounts set forth in a fee schedule established from time to time by the City Council shall be submitted with the application.
- B. In addition to the fees required in Subsection A of this section, the Planning Commission shall require the applicant to place in escrow with the City a fee sufficient to reimburse

the City for the cost of professional consultation fees and other expenditures attributable to the proposal. The Planning Commission may establish an escrow account funded by the applicant prior to the Commission authorizing the performance of consulting services regarding the proposal.

§ 166-10. Approval procedures; public hearing.

- A. It is the intent of this chapter to incorporate the consideration of steep slope protection into the City's existing land use and development approval procedures in conjunction with the procedures of the New York State Environmental Quality Review Act. To the maximum extent possible, the review, hearings and decisions upon any application processed under this chapter will run concurrently with similar procedures that the Planning Commission may undertake in connection with other applications that are directly related.
- B. A public hearing shall be required on all steep slopes applications. Notice of such hearing shall be delivered by the applicant to all property owners within 300 feet of the subject property at least seven (7) days prior to the hearing. To facilitate notification of the public, a public notification list shall be prepared by the applicant, using the most current City of Rye Tax Maps and Tax Assessment Roll, showing the Tax Map sheet, block and lot number, the owner's name and owner's mailing address for each property. If a property within the notification area is a multifamily dwelling, apartment building, cooperative or similar-type residential structure, the applicant shall send the notice to the property owner of record. Such notices shall be mailed by first-class mail posted within Westchester County at a post office or official depository of the Postal Service. The applicant must obtain a certificate of mailing for every notice mailed. All notices mailed must be sent via certified mail (no return receipt). All certificates of mailing must be provided to the Planning Department at least five days prior to the public hearing.

§ 166-11. Approval.

- A. In approving a steep slope work application, the Planning Commission may impose such conditions or limitations as are determined necessary to ensure compliance with the intent, purposes, and standards of pursuant to § 166-6 of this chapter. A determination shall be made to approve, approve with modifications, or disapprove the issuance of such permit simultaneously with the determination by the Planning Commission of the other permit or approval for which the application was made.

ARTICLE IV
Steep Slope Work Permits

§ 166-12. Conditions and expiration.

- A. Steep slope work permits issued pursuant to this chapter shall contain conditions including the following:
- (1) The work permit shall expire on a specified date, no later than one year from the date of issuance.
 - (2) The permit holder shall notify the Building Inspector at least five days in advance of the date on which the work is to begin.
 - (3) The work permit shall be prominently displayed at the project site during the undertaking of the activities authorized by the permit.
- B. Conditions may include, but shall not be limited to, the following:
- (1) Limitation on the total portion of any lot or the portion of the steep slope on the lot that may be disturbed.
 - (2) Setbacks for structures, fill and other activities from the steep slope.
 - (3) The disturbance of existing vegetative ground cover shall not take place more than seven days prior to commencing grading and construction.
 - (4) Permanent vegetative cover shall be planted within three days after completion of final grading. Notwithstanding the sentence above, where final grading and permanent planting cannot be established within a short period of time, temporary seeding or mulching shall be applied. Upon good cause shown and based upon consideration of the time of year, slopes, soils and environmental sensitivity of the area involved, the City Engineer may modify these specified time periods.
 - (5) Measures for the control of erosion and sedimentation shall be undertaken in accordance with the Chapter 174, Stormwater Management, of the Rye City Code.
 - (6) Topsoil that will be stripped from all areas of disturbance shall be stockpiled in a manner so as to prevent erosion and sedimentation and shall be replaced on the site as a component of final grading.
 - (7) Fill material shall be composed only of nonorganic material, including rock with a diameter that will allow for appropriate compaction and cover by topsoil. No voids are to be created or left remaining in the fill material that will allow further settlement of the fill or habitat for rodents, vermin or other unwanted species.

- (8) Compaction of fill materials in fill areas shall be such that it ensures support of proposed structures and stabilization for intended uses.

C. Expiration of steep slope work permit; extensions.

- (1) All steep slope work permits shall expire on completion of the acts specified therein and, unless otherwise indicated, shall be valid for a period of one year from the date of issue. Upon written request by the original permit holder or his/her successor, the Planning Commission may extend the time in which the acts specified in the permit must be completed for additional periods of up to one year each if the Planning Commission, in its discretion, finds that such extension is warranted by the particular circumstances involved, provided that in the case of a permit where no work on the steep slope(s) has been accomplished, extensions shall not exceed two additional periods of 90 days each, in which case, should a permittee fail to complete the acts specified in the permit prior to the expiration of the second ninety-day extension, at the discretion of the Planning Commission, the original permit may become null and void, and an application would then need to be made for a new permit. The request for a new permit shall follow the same form and procedure as the original application, except that the Planning Commission shall have the option of not holding a public hearing if the original intent of the permit is not altered or extended in any significant way.
- (2) In the case of a permit where the work on the steep slope(s) is partially completed, the number and length of extensions shall be at the sole discretion of the Planning Commission.
- (3) A request for an extension of an original permit shall be made in writing to the Planning Commission at least 30 days prior to the expiration date of the original permit and each extension. The time period for requesting an extension may be waived for good cause shown.

§ 166-13. Period of validity; completion of work; revisions.

- A. A steep slope work permit will be valid for a period of one year. Work Permits, including all of their conditions, shall be binding on successors and assignees of the applicant.
- B. Following completion of the work, the applicant shall submit certification by the designer of record that the completed work meets the requirements of the steep slope work approval. The Building Inspector will verify that the work has been completed in accordance with such approval. Submission of an as-built survey may be required by the Planning Commission.
- C. The Building Inspector shall not issue a certificate of completion until the Building Inspector has verified that all work has been completed in accordance with the steep slope work permit.

- D. Any proposed revision to work covered by a steep slope work permit shall be reviewed by the City Engineer. Where the City Engineer determines that a substantial revision is proposed, the submission of a new application shall be required.

ARTICLE V
Enforcement

§ 166-14. Inspections, violations and fines.

- A. Inspection. Any site for which an application has been submitted shall be subject to inspection at any reasonable time, including weekends and holidays, by the Planning Commission or its designated representatives.
- B. Administrative sanctions.
- (1) Damages. Any person who undertakes any activity regulated by this chapter without a permit issued hereunder, or who violates, disobeys or disregards any provision of this chapter, shall be liable to the City for civil damages caused by such a violation for every such violation. Each consecutive day of the violation will be considered a separate offense. Such civil damages may be recovered in an action brought by the City on behalf of the Planning Commission in any court of competent jurisdiction.
- (2) Restitution. The Planning Commission shall have the authority to direct the violator to restore the steep slope area to its condition prior to the violation, ~~insofar as that is possible,~~ within a reasonable time. Further, the Planning Commission shall have the authority to require an adequate performance guaranty in a form and amount deemed necessary by the Planning Commission to insure the restoration of the affected steep slope area.
- (3) Stop-work order; revocation of permit. In the event that any person, firm or corporation is performing work without a permit, the Building Inspector shall issue a stop-work order. Such stop work order shall remain in effect until such time that the Building Inspector determines that all appropriate permits are granted. In the event that any person holding a permit issued pursuant to this chapter violates the terms of the permit, fails to comply with any of the conditions or limitations set forth in the permit, exceeds the scope of the activity as set forth in the application or operates so as to be materially detrimental to the public welfare or injurious to a steep slope area, the Planning Commission may suspend or revoke the permit, as follows.
- (a) Suspension of a permit shall be by a written stop-work order. The stop-work order shall remain in effect until the Building Inspector is satisfied that the permittee has complied with all terms of the subject permit or until a final determination is made by the Planning Commission as provided in Subsection B(3)(b) immediately below.

- (b) No steep slope work permit shall be permanently suspended or revoked until a public hearing is held by the Planning Commission. Written notice of such hearing shall be served on the permittee, either personally or by registered mail, and shall state the grounds for complaint or reasons for suspension or revocation and the time and place of the hearing to be held. Such notice shall be served on the permittee at least one week before the next regularly scheduled public meeting of the Planning Commission. At such hearing, the permittee shall be given an opportunity to be heard and may call witnesses and present evidence on his behalf. At the conclusion the hearing, the Planning Commission shall determine whether the permit shall be reinstated, suspended or revoked. If revoked, all other construction related permits for the property shall also be revoked unless, in the interests of the general welfare, public health and safety, the work needs to continue.

- C. Fines. Any person deemed to have violated or disobeyed any provision hereof, any order of the Building Inspector or any condition duly imposed by the Planning Commission in an approval or work permit granted pursuant to this chapter, shall be liable for a fine of up to-\$1,000 per violation with each consecutive day of the violation being considered a separate offense.

- D. Denial of Construction Related Permits. Any person, firm or corporation, or any principal of the firm or corporation (or any successor or assign of any of them) who violates this Chapter shall be subject to a three year suspension of his or its privilege to obtain any construction related permits in the City of Rye, including, but not limited to, blasting permits, demolition permits, building permits, wetland permits, and steep slope permits.

§ 166-15. Injunctive relief.

The City is specifically empowered to seek injunctive relief restraining any violation or threatened violation of any provisions hereof and/or to compel the restoration of the affected steep slope area to its condition prior to the violation of the provisions of this chapter.

Section 2. Severability

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this Local Law shall not affect the validity of any other part of this Local Law that can be given effect without such invalid part or parts.

Section 3. Effective Date

This Local Law shall take effect immediately upon filing with the Secretary of State.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Henderson, Hurd, Johnson, Nathan, Souza
Nays: None
Absent: None
Recused: Councilman Stacks

8. Continue the public hearing to create a new local law amending Chapter 53 “Architectural Review” of the Code of the City of Rye to amend authority and scope considered by the Architectural Review Board in reviewing applications.

Ms. Wilson highlighted two changes to the new local law. The first change under Section 53-56(D) addresses temporary ice hockey rinks. The initial permit period will be two years from the date of issuance. The permitting process is similar for swimming pools and other outdoor courts with the exception of the length of permit. The final language in Chapter 53 now reads that "it must be by clear and convincing evidence that is highly and substantially more likely to be true than untrue."

Councilman Stacks asked if the changes reflect the middle ground; he disagreed with the watered-down language. Changes were made to reflect the feeling that the City's zoning rules were too permissive. Mayor Cohn replied that within the four levels of legal review this language falls in the two-to-three range and might never be truly middle-ground. Councilwoman Souza said the purpose of rewriting the language was to give the Zoning Board of Appeals a basis upon which to uphold application rejections. Mayor Cohn clarified that the "beyond a reasonable doubt" standard was removed from the language and replaced with "clear and convincing evidence," a substantially lesser standard.

Councilwoman Hurd appreciated the dedication of the subcommittees in the development of the proposal. She understood Councilman Stacks' concerns and will continue to monitor the situation as the Board of Architectural Review liaison. Councilwoman Johnson pointed out that this is what compromise looks like. The BAR in the City of Rye is the only one in the area with such standards of proof.

The meeting was opened to comments from the public, but there were no comments.

Councilwoman Souza made the motion, seconded by Councilwoman Johnson and unanimously carried, to close the public hearing.

Mayor Cohn asked for a motion to vote on the legislation. Councilman Henderson made a motion, seconded by Councilman Nathan, to adopt the following amendments the City legislation:

A Local Law amending Chapter 53 “Architectural Review” to change membership requirements, timing of decisions, elements to consider during decision making process and standard of review and Chapter 197-86 Table A, Column 3, to include seasonal courts and rinks.

Section 1.

§ 53-1 Legislative findings; definitions.

- A. The Council hereby finds that excessive uniformity, dissimilarity, inappropriateness or poor quality of design in the exterior appearance of structures erected, reconstructed or altered in any residential, business and other areas in the City of Rye adversely affects the desirability of the immediate area and neighboring areas within the community and by so doing impairs the benefits of occupancy or use of real property in such areas, impairs the stability and value of both improved and unimproved real property in such areas, prevents the most appropriate development of such areas, produces degeneration of the property in such areas, with attendant deterioration of conditions affecting the health, safety, morals and general welfare of the inhabitants of the community, and/or destroys a proper relationship between the taxable value of real property in the community and the cost of municipal services provided therefor. It is the purpose of this chapter to prevent these and other harmful effects and thus to promote and protect the health, safety, morals and general welfare of the community.
- B. As used in this chapter, the following terms shall have the meanings indicated:
[Amended 5-31-1995 by L.L. No. 6-1995]

ERECTED, RECONSTRUCTED or ALTERED

As defined in Chapter 68, Building Construction, of the Code of the City of Rye and in the approved regulations of the Building Inspector.

ORDINARY MAINTENANCE AND REPAIR

As defined in Chapter 68, Building Construction, of the Code of the City of Rye and in the approved regulations of the Building Inspector.

SMALL PROJECT

Any addition to or alteration or modification of an existing single- or two-family residence structure:

[Amended 10-24-2013 by L.L. No. 3-2013]

- (1) For which a valid certificate of occupancy exists for all structures on the property;
- (2) Upon which property there are no open building permits and no building permit or certificate of occupancy was issued within the immediate past 12 months;
- (3) That does not change the appearance visible from the street of any front or side facade or roof.

STRUCTURE

Includes all buildings, accessory buildings, decks, signs and satellite earth station dish antennas as defined by Chapter **108**, Housing Standards, and Chapter **197**, Zoning, of the Code of the City of Rye.

§ 53-2 Membership of Architectural Review Board.

[Amended 2-1-2006 by L.L. No. 2-2006; 3-16-2011 by L.L. No. 1-2011]

In accordance with Article 19 of the Rye City Charter, there is hereby created a Board of Architectural Review which shall consist of seven members who shall serve without compensation. All members of the Board shall be lawful residents of the City and shall be specially qualified by reason of training or experience in architecture, land development, community planning, real estate, landscape architecture, architectural history, engineering, law, building construction or other relevant business or profession, or by reason of civic interest and sound judgment to judge the effect of a proposed erection, reconstruction or alteration of a structure upon the desirability, property values and development or preservation of surrounding areas and to understand and carry out the legislative findings and policy statements of the Council set forth in § **53-1**. There shall be no requirement that a member of the Board be a citizen of the United States. At least one member shall be a licensed architect in the State of New York. The Chair and other members of the Board shall be appointed by the Mayor, with the approval of the Council, for terms of three years, with staggered terms, such terms to be subject to renewals at the discretion of the Mayor, subject to the approval of the Council, except that one new appointment made in 2006 shall be for a two-year term, and one new appointment made in 2006 shall be for a one-year term so that term, and thereafter their successors, shall be appointed for terms of three years from and after the expiration of the term of their predecessors in office. In the same manner, vacancies shall be filled for the unexpired term of any member whose place has become vacant.

§ 53-3 Meetings and procedures of Board.

[Amended 2-1-2006 by L.L. No. 2-2006]

- A. Meetings of the Board of Architectural Review shall be held at the call of the Chair and at such other times as the Board may determine but shall be held within 31 days of the date of referral to the Board of any application for building permit as required in § **53-4** of this chapter. The Chair or, in his/her absence, the Acting Chair may administer oaths and compel the attendance of witnesses. A majority of the appointed members of said Board shall constitute a quorum for the transaction of business. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions. The Building Inspector shall act as the Secretary of the Board and shall keep in the City Hall a comprehensive record of all meetings and transactions by the Board. The Board shall have power from time to time to adopt, amend and repeal rules and regulations, not inconsistent with law or the provisions of this chapter and subject to review and approval of the Council, governing its procedure and the transaction of its business and for the purpose of carrying into effect the standards outlined in § **53-5** of this chapter.

- B. Every rule or regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the Board shall immediately be filed with

the Building Department and shall be a public record.

- C. Notice. An applicant for a building permit needing Board of Architectural Review approval for any project, except small projects as defined in Chapter 53, shall notify abutting property owners and property owners across the street of the application upon its filing and at least 14 days before the date of any Board of Architectural Review meeting. To facilitate notification of the public, a public notification list shall be prepared by the applicant, using the most current City of Rye Tax Maps and Tax Assessment Roll, showing the Tax Map sheet, block and lot number, the owner's name and owner's mailing address for each property as described by the rules and Schedule B of the Building Department. If a property within the notification area is a multifamily dwelling, apartment building, cooperative or similar-type residential structure, the applicant shall send the notice to the property owner of record. Such notices shall be mailed by first-class mail and the notice shall substantially conform to the model notice in Schedule A. The applicant must obtain a certificate of mailing for every notice mailed. All notices mailed must be sent via certified mail (no return receipt required). All certificates of mailing must be provided to the Building Department at least five days prior to the public hearing. **[Added 3-10- 2010 by L.L. No. 3-2010]**

§ 53-4 Referrals of applications for building permits.

- A. Every application for a building permit for the construction of any structure within the City of Rye or for the reconstruction or alteration of any structure, including any addition thereto, within the City of Rye that would affect the exterior appearance of such structure shall be referred by the Building Inspector to the Board of Architectural review within 31 ~~24~~ days of the date of the application, provided that it conforms in all respects to all other applicable laws and ordinances. The term "structure" shall be construed in accordance with the legislative findings and definitions set forth in § 53-1 of this chapter. The requirements of this section do not apply to "small projects" as defined in § 53-1 of this chapter and § A201-1 of the Rules of the Building Inspector, except for small projects that require or have been granted a variance by the Zoning Board of Appeals; or that involve a recreational or accessory structure or facility; or when the Building Inspector refers the small project to the Board of Architectural Review upon finding that the small project may meet one or more of the guidelines for such referral as prepared by the Board of Architectural Review, thereby having a substantial aesthetic impact upon immediately neighboring properties. The requirements of this section do not apply to additions or alterations that meet the requirements of § 68-5F or 197-84C(5) of this Code. **[Amended 5-31-1995 by L.L. No. 6- 1995]**
- B. Applications must be accompanied by plans showing all elevations of new structures and all affected elevations in the case of reconstructions or alterations. When required by the Building Inspector or by the Board of Architectural Review, a site plan shall be submitted showing both existing and proposed contours at two-foot intervals, all existing trees with a trunk diameter of four inches or more at a point three feet above the ground level and whether such

trees shall remain or be removed and/or other topographical features.

§ 53-5 Standards and considerations for approval.

- A. Approval or disapproval of any building permit shall be by a vote of a majority of the members of the Board of Architectural Review. In considering an application for a permit, the Board shall take into account natural features of the site and surroundings, exterior design and appearances of existing structures in the area and the character of the area and its peculiar suitability for particular purposes, with a view to conserving the values of property, encouraging the most appropriate use of property and preventing the harmful effects referred to in § **53-1** of this chapter.

- B. Findings for approval; conditions.
 - (1) The Board shall, subject to the provisions of Subsection B(2) of § **53-5**, approve any application referred to it upon finding that the structure for which the permit was requested if erected, reconstructed or altered in accordance with the submitted plan would be in harmony with the purpose of this chapter, would not be visually offensive or inappropriate by reason of poor quality of exterior design, monotonous similarity or striking visual discord in relation to the site or surroundings, would not mar the appearance of the area, would not impair the user enjoyment and desirability or reduce the values of properties in the area, would not be detrimental to the character of the neighborhood, would not prevent the most appropriate development or preservation and/or utilization of the site or of adjacent lands or would not adversely affect the economic stability, health, safety and general welfare of the community.

 - (2) In approving any application, the Board may impose appropriate conditions and safeguards designed to prevent the harmful effects set forth in § **53-1** of this chapter. The Board may also suggest interior change(s) that would improve the exterior appearance.

- C. The Board may disapprove any application for a permit, provided that the Board has afforded the applicant an opportunity to confer upon suggestions for change of the plan, or provided that the Board finds and states that the structure for which the permit was requested would, if erected, reconstructed or altered as indicated, cause one or more of the harmful effects set forth in § **53-1** of this chapter by reason of:
 - (1) Excessive similarity to any other structure or structures existing or for which a permit has been issued or to any other structure included in the same permit application, within 1,000 feet of the proposed site, in respect to one or more of the following features of exterior design and appearance: apparently identical facade; substantially identical size and arrangement of either doors, windows, porticoes or other openings or breaks in the facade facing the street, including reverse arrangements; or other significant identical features, such as but not limited to material, roofline and height or other design elements, provided that a finding of excessive similarity shall state not only that such similarity exists, but further that it is of such a nature as to be expected to cause **by** clear and convincing evidence, that

is, highly and substantially more likely to be true than untrue one or more of the harmful effects set forth in § **53-1** of this chapter.

- (2) Excessive dissimilarity or inappropriateness in relation to any other structure or structures existing or for which a permit has been issued or to any other structure included in the same permit application, within 1,000 feet of the proposed site, in respect to one or more of the following features: cubical contents; gross floor area; height of building or height of roof; inappropriate relationship to the site, its contours, shape or natural characteristics; inappropriate relationship to immediately adjacent properties; dissimilarity related to the orientation of the front of the house in relationship to streets; inappropriate location of features incorporated into the structure, including but not limited to windows, doors, chimneys, stairs, porches, air conditioners or air-conditioning equipment, or of features ancillary to the structure, including but not limited to antennas, toolsheds, greenhouses, patios, decks, balconies, garages or refuse storage areas; or other significant design features, such as material or quality or architectural design, provided that a finding of excessive dissimilarity or inappropriateness exists, but further that it is of such nature as to be expected to cause by clear and convincing evidence, that is, highly and substantially more likely to be true than untrue one or more of the harmful effects set forth in § **53-1** of this chapter and that the finding is not based on personal preference as to taste or choice of architectural style.
- D. The Board of Architectural Review shall examine, review, approve or disapprove applications for permits for the following exterior facilities: swimming pools (in ground and above ground), jacuzzis, hot tubs, tennis courts, paddle tennis courts and other permanent or seasonal courts or rinks (hereinafter collectively referred to as "recreational facility" or "recreational facilities") as to the necessary screening required by § **197-86** of the Code of the City of Rye, Table A, Column 3, Subsections (9)(a) and (9)(b). Approval or disapproval must be by majority vote of the total Board. A ten-foot wide landscape strip planted and maintained with at least a double row of alternately spaced evergreens, with an actual height of at least six feet above the natural grade when installed, is the preferred screening method for recreational facilities and must be approved by the Board. However, the Board may approve alternate screening under the following conditions:
- (1) There is existing landscaping on the lot between the recreational facility and the property line equal in effectiveness, height and density to the required evergreen screening.
 - (2) There is an existing six-foot-high opaque fence or wall on the lot between the recreational facility and the property line, which is totally owned and controlled by the lot owner and in conformity with the fence height regulations of this chapter, provided that the Board further finds that the increased height of matured evergreen screening is not necessary to screen the recreational facility from the view of the abutting property and that the fence was installed at least two years prior to the application for the waiver.

- (3) The existing topography of the lot where the recreational facility is to be located, relative to the topography of the abutting property, is such that the recreational facility will not be within the view of the abutting property, provided that the Board further finds that it is reasonable to expect that this topographic relationship will not be adversely altered in order to facilitate future development of either property.
- (4) The soil conditions where the landscaping strip would be required to be installed are such that the evergreens cannot be expected to survive or to properly mature, provided that the Board further finds the recreational facility cannot be reasonably placed in another location with suitable soil conditions, and further provided that a six-foot-high opaque fence or wall which conforms to the fence height regulations of this chapter will be installed between the property line and the recreational facility in place of the landscaping strip.
- (5) Conditions do exist which are not specifically covered in Subsection C(1) through (4) above, but which are of a similar nature, provided that the Board further finds that approval of the waiver will not be inconsistent with the spirit and intent of this section or less protective of the view from the abutting properties.
- (6) The approval of any alternate screening as described in Subsection C(1) through (5) above and the acceptance of it by the owner shall also be subject to the following limitations and conditions:
 - (a) A variance has not been granted by the Board of Appeals permitting a reduction of the minimum property line setbacks required by this chapter.
 - (b) The recreational facility was not constructed prior to the application for approval, except that this limitation shall not apply to recreational facilities constructed prior to the effective date of the screening requirements for which an owner wishes to seek compliance.
 - (c) After construction of the recreational facility, the owners of the lot shall thereafter be required to maintain, repair and replace such existing landscaping, fencing, walls or topographical features which served as the basis for approval as if they were required by this chapter in the first instance and enforced in the same manner.
 - (d) The approval shall become null and void one year after its approval by the Board of Architectural Review unless the recreational facility has been substantially completed. For temporary ice hockey rinks, the initial permit shall be for two years from the date of issuance. Any subsequent permit application(s) shall be reviewed by this Board to determine if any additional screening or other mitigation measures are necessary.
 - (e) The approval shall become null and void if the permanent recreational facility is removed.

§ 53-6 Applications for sign; awning, marquee-type awning and canopy permits. [Amended 5-1-1991 by L.L. No. 6-1991; 1-20-1999 by L.L. No. 1-1999]

The Board of Architectural Review shall have the power to examine, review and, by majority vote of the total Board, approve or disapprove applications for permits for signs, awnings, marquee-type awnings and canopies affixed to any structure or erected in connection with any structure, pursuant to § 165-2 of the Code of the City of Rye.

§ 53-7 Applications for dish antennas. [Amended 9-18-1996 by L.L. No. 7-1996]

The Board of Architectural Review shall have the power to examine, review and, by majority vote of the total Board, approve or disapprove applications for the installation of satellite earth station dish antennas, subject to the provisions of § 197-9D of the Code of the City of Rye. Satellite earth station dish antennas which measure one meter or less in diameter are permitted as of right in residential zones and are not subject to the provisions of this section or § 197-9D. Such antennas, which measure two meters or less in diameter, are permitted as of right in non-residentially zoned areas.

§ 53-8 Advisory powers.

The Board of Architectural Review shall advise with respect to public buildings and such other matters as the Council, the Planning Commission, the Landmarks Advisory Committee (NOTE: or Landmarks Preservation Commission, if so changed by City Council) and/or any other public agency, Board or Commission may refer to it.

§ 53-9 Effect of disapproval or failure to act.

The Building Inspector shall refuse any building permit application disapproved as provided in § 53-5 of this chapter. If the Board of Architectural Review shall fail to approve or disapprove any building permit application referred to it under § 53-4 of this chapter within ~~21~~ 31-days of the date of referral of such application to it, the application shall be considered to have been approved, and the Building Inspector shall forthwith issue the permit unless the applicant shall have agreed to an extension of time.

§ 53-10 Appeals.

Any applicant aggrieved by the action of the Board of Architectural Review in disapproving a building permit application and of the Building Inspector in denying such permit because of such disapproval may request the Board to make formal findings of fact. In the event of such a request, the Board shall make findings of fact within 30 days after the request is filed in the office of the City Clerk, shall thereafter provide the applicant with an opportunity to answer the findings by the submission of formal proof and shall reconsider the application on the basis of such answer. If the application is disapproved after such reconsideration, the applicant may take an appeal therefrom to the duly constituted Board of Appeals of the City of Rye. The standard of review shall be whether the decision of the Board of Architectural Review was arbitrary, capricious and/or unsupported by substantial evidence of record. The Board of Appeals may reverse or affirm the action of the Board of Architectural Review and reverse or affirm any action taken by the Building Inspector pursuant to that action of the Board of Architectural Review.

§ 53-11 Powers of Board under Chapter 117.

Chapter 117, Landmarks Preservation, of the Code of the City of Rye ascribes certain

responsibilities and powers to the Board of Architectural Review, and these are hereby included in this Chapter **53**.

Section. 6. Section 197-86 Table A, Colum 3.

(9)(b) Outdoor swimming pools, seasonal courts and rinks, including accessory equipment shall:

[1]

Not be located in a required front yard.

[2]

Be set back, including accessory equipment, from side and rear property lines at least 20 feet in R.1 Districts and 15 feet in all other districts.

[3]

Be screened, including accessory equipment, from the view of the street and abutting residentially zoned properties along the side and rear property lines. Such screening shall be reviewed and approved by the Board of Architectural Review pursuant to §§ **53-3** and **53-4** and the standards contained therein before a permit may be issued. [Amended 12-1-1982 by L.L. No. 12-1982]

[4] Be completely surrounded by fences, freestanding walls and/or the walls of a building containing no doors, at least four feet high above grade at all points, and each gate or door opening through the fence or freestanding wall shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times and shall be locked when the pool is not in actual use.

[5] Have no floodlighting, directly or indirectly, and all other lighting shall be arranged and shaded as to reflect light away from adjoining premises or a public street.

[6] Be located at least 25 feet away from any septic tank and its fields.

Section 7. Severability

If any part of this Local Law is deemed by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder of this Local Law.

Section 8. Effective Date

This Local Law shall take effect immediately upon filing with the New York Secretary of State.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Henderson, Hurd, Johnson, Nathan, Souza

Nays: Stacks

Absent: None

Mayor Cohn thanked the Council and staff for writing and passing new laws that are more protective of the City of Rye. Councilman Henderson thanks Councilmembers Johnson and Stacks and the Planning Commission for taking important steps to ensure Rye develops according to its residents and not outside parties. Councilwoman Hurd also appreciated the fantastic work, and Councilman Nathan congratulated the team on responsive work to density and overdevelopment concerns in the community.

9. Residents may be heard on matters for Council consideration that do not appear on the agenda.

There were no comments from residents.

10. Transfer \$180,000 from general fund to BV fund for technology upgrades to City Hall and to amend the prior authorization of an amount not to exceed from \$150,000 to \$156,000 for Council Chamber upgrades.

City Manager Usry explained that this measure will upgrade the audio visual recording and transmission capabilities in the Council chamber to match what is typical of other municipalities. Lighting improvements are included so the public will be able to see speakers on the dais, and speakers will be able to see the public.

Councilwoman Souza asked why there was a difference between the transferred amount of \$180,000 and the amount not to exceed \$156,000, and if the upgrades include hybrid meeting capability. City Manager Usry explained that \$180,000 was received in settlement of a long-standing dispute with Altice about franchise fees. The settlement resides in the general fund and will be transferred into building and vehicle maintenance. Most of the settlement will be used for Council chamber upgrades, and there is an additional buffer of around \$20,000 for other technology upgrades.

The quote for services increased due to supply chain issues and increased cost of goods. The projects should be able to be completed for \$160,000 or less. Certain components of the technology upgrade will not be available until June, but the City will move as quickly as possible. Features like hybrid meetings and a smart podium will improve the experience for people at home who are participating in the meetings. City Manager Usry hoped everyone will be back in June with the new features installed.

Councilwoman Souza made a motion, seconded by Councilwoman Hurd, to adopt the following resolution:

RESOLUTION

Authorizing the City Manager to Transfer Monies from the General Fund to the Building and Vehicle Maintenance Fund for improvements to the Council Chambers

WHEREAS, the City settled with Altice for an amount of One Hundred Eighty Thousand Dollars (\$180,000.00) (the “Settlement Amount”) to satisfy outstanding franchise fee payments; and

WHEREAS, the City previously authorized the City to spend an amount not to exceed One Hundred and Fifty Thousand Dollars (\$150,000.00) to upgrade Council Chambers; and

WHEREAS, the estimated cost of the upgrades has increased slightly.

NOW, THEREFORE, BE IT RESOLVED, that the City Council authorizes the City Manager to

transfer the Settlement Amount from the General Fund to the Buildings and Vehicle Maintenance Fund; and

BE IT FURTHER RESOLVED, that the City authorizes the City to spend an amount not to exceed (\$160,000) for improvements to Council Chambers.

ROLL CALL

Ayes: Mayor Cohn, Councilmembers Henderson, Hurd, Johnson, Nathan, Souza, Stacks
Nays: None
Absent: None

Be it enacted by the City Council of the City of Rye as follows:

11. Adjourn until March 2, 2022 the public hearing to create a new local law, Chapter 122, “Landscapers and Leaf Blower Regulations” requiring all landscapers to obtain an annual permit in order to operate as a landscaper and restrict the use of leaf blowers.

Mayor Cohn explained that this item had been postponed because the Council's priority was passing the three laws approved in today's meeting. There was an appropriate request from the public to come out with a new draft of the Leafblower law before adding another public session. The Council will make every effort to do that and not adjourn again.

Mayor Cohn asked for a motion to adjourn the issue. Councilwoman Souza made the motion to adjourn, and Councilman Henderson seconded the motion. All councilmembers were in favor of adjournment.

12. Appointments to Boards and Commissions by the Mayor with Council approval.

The mayor appointed to the Human Rights Commission Ingraham Taylor. For the Recreation Commission, the City renews Bart DiNardo, , Lisa Dempsey, Rick McCabe, and Shelly Wolfson. The mayor thanked Steve Verille for his past work as he exits, and new to the Commission is Tom Walsh.

The staggering of terms is off with the REC Commission, so instead of three-year renewals, Mr. DiNardo and Ms. Dempsey will have two-year terms. The Council concurred with the decision.

13. Old Business/New Business.

Councilwoman Souza thanked Tony Coash and Liz Woods for serving as the presidents of the Chamber of Commerce; she reported that Brian Jackson has taken over the role. Tony, Liz, and Brian and other members of the Executive Committee worked tirelessly and cooperatively with the Council to keep downtown Rye afloat during the height of the pandemic. Mayor Cohn agreed the three presidents deserved gratitude for their hard work.

14. Adjournment.

There being no further business to discuss, Councilwoman Souza made a motion, seconded by Councilman Henderson and unanimously carried, to adjourn the meeting.

Respectfully submitted,

Carolyn D'Andrea
City Clerk