

Town of Windham

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MEMO

DATE: November 3, 2014

TO: Windham Town Council

THROUGH: Tony Plante, Town Manager

FROM: Amanda Lessard, Planner *AL*

Cc: Ben Smith, Director of Planning
Windham Planning Board

RE: Planning Board Recommendation - Ordinance Amendment – Chapter 140,
Sections 300 & 1000 – Rockeries & Code Enforcement Officer appeals,
requirements for permitting

At the Planning Board's meeting on October 27, 2014, a public hearing was held on the proposed amendments to the Land Use Ordinance to: define Rockery and exclude it from the definition of a structure for permitting purposes; clarify the actions of the Code Enforcement Officer that are subject to appeal; and only require the submission of plans from a design professional when required by Chapter 140.

Two Windham residents spoke in favor of the proposed amendments and one member of the public asked a clarifying question related to the role of a design professional in the permitting process.

During Planning Board discussion, the majority of Board members agreed that a free-standing stacked rock wall (as in those that mark property lines or are landscaping features) should not be required to be engineered or permitted but "Rockeries" that hold back earth and act as retaining walls maybe did need to be engineered or permitted if over 4 feet in height. The Board also discussed that the language as written still leaves a lot to interpretation by the Code Enforcement Officer when it comes to making decisions about rocks being stacked in an "interlocking pattern" and "proper rock layout" and if a retaining wall adjacent to a daylight basement is a structure that is "incorporated as part of any other structure or building or otherwise used for any type of support for another structure or building."

Following discussion of the proposed changes, the Board made the following motion:

To recommend to the Town Council approval of the proposed amendment as sent by the Town Council with the additional recommendation of differentiating between retaining walls and free standing rock walls.

Motion: James Hanscom

2nd: John Eddy

Vote: 5-2 (Ryan McDonald, Scott McDonald opposed)

Chapter 140, Land Use Ordinance
Ordinance Amendments Relating to Rockeries and Code Interpretation
August 15, 2014

Section 300, Definitions

Add:

Rockery (or "rockeries"). Rough rocks stacked in an "interlocking" pattern without concrete, mortar, or steel reinforcement. Neither mechanical nor physical connections are made between the individual rocks; "interlocking" is accomplished through proper rock layout, rock weight, and frictional interaction.

Modify:

Structure. A combination of materials that form a construction for use, occupancy, or ornamentation whether installed on, above, or below the surface of land or water. For the purpose of this chapter, antennas shall be considered "structures"; however, rockeries that are not incorporated as part of any other structure or a building or otherwise used for any type of support for another structure or building, fences, doghouses, tree houses designed for children's use, and bus shelters shall not be considered "structures."

Section 1001, Duty of the Code Enforcement Officer

Add:

C. The Code Enforcement Officer is authorized to interpret provisions of this Ordinance and the Maine Uniform Building and Energy Code (MUBEC) as part of his or her duties. When done in the context of an application for a permit, certificate of occupancy or notice of violation, such interpretation shall be considered an order that is appealable to the Zoning Board of Appeals. The Code Enforcement Officer shall give appropriate consideration to the opinions of design professionals or engineers in making such interpretations, although such opinions will not be required as part of an application, unless otherwise established by this Code.