

**Rowley Planning Board  
Meeting Minutes  
April 8, 2015**

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*Approved on June 3, 2015*

Members present:

Curtis Bryant (Chairman), Cliff Pierce (Vice Chairman), Steve Kassiotis (Member), David Jaquith (Member), Chris Thornton (Member), and Jean Pietrillo (Associate Member)

HL Graham, P.E. (Planning Board Technical Review Agent) and Kirk Baker, Town Planner are also present.

At 7:30 pm Curtis Bryant calls for a motion to open the meeting. Thornton motions to call the meeting to order. Jaquith seconds the motion. All vote in favor.

Bryant notes that the Planning Board has two public hearings on the agenda. Bryant notes that legal notices for both public hearings was published in the Newburyport Daily News newspaper.

**7:35 - Public Hearing for proposal to amend zoning bylaw by adding provision that will permit the Zoning Board of Appeals to grant use variances.**

Bryant reads the legal notice which was published. Bryant opens the floor to public comment.

Tom Heidgerd representing the Zoning Board of Appeals (ZBA) and the Zoning Review Committee (ZRC) describes the proposal to allow use variances in Rowley and the process by which the proposal came to be. He states that there have numerous applications previously before the ZBA for which the possibility of granting a use variance would be a beneficial tool that would give the ZBA added flexibility.

Baker reads the proposed criteria for allowing a use variance.

A citizen named Kirk Turner (372 Haverhill Street) speaks in opposition to the proposal. He states this would add additional burdens to the ZBA in carrying out their function. He also asserts that the use variance proposal would “piecemeal” the Town’s zoning. Finally, he states that the notion of what makes a hardship will be evaluated subjectively.

Heidgerd responds that the Board is typically assertive in its obligation to uphold the intent of the zoning bylaws.

Bryant asks Heidgerd if he would agree that the ZBA has been sensitive to maintaining the character of the town and taking effort to cease perpetuation of uses which are no longer appropriate per the zoning classification. Heidgerd states that in his time on the ZBA, they have been sensitive to that goal. Heidgerd then states that the use variances would allow flexibility in

allowing needed space for some businesses. He cites the recent dog kennel application on Wethersfield as a good example.

Pierce states that he is against the proposal because it would obliterate the useful distinction between established zoning districts as well as create conflicts between neighbors and the potential for lawsuits against the town. He further asserts that establishment of the hardship criteria would be too easy because the criteria is so subjective. He finally points out that the proper procedure for addressing these kind of issues is to pursue an amendment of the Zoning Bylaw by going to the Town Meeting and getting a two-thirds majority vote.

Bryant follows up by stating the proposal for having use variances sounds like an enforcement nightmare by creating and “end-run” or circumvention of the existing zoning regulations.

Jaquith states that he is in favor and asserts that the others are mischaracterizing the proposal by implying automatic approval whereas the ZBA would come first and approval is not guaranteed. Pierce interjects that disapproval is hard for any Board to do when an applicant claims a hardship and the subjectivity of the criteria would make it more likely than not that the ZBA would feel it necessary to grant approvals.

Thornton indicates his agreement with Pierce and Bryant that the subjectivity of the criteria is a real problem and that leaving an opening for the possibility that use variances can be granted can create a lack of confidence in those purchasing residential properties that their area will remain securely residential.

Pierce notes that the town already does allow home occupations throughout the town.

Heidgerd states that he would like to correct the notion that the ZBA is looking for a means of rubber stamping applications. Pierce agrees that the ZBA is diligent in its duties but that he feels that use variances are a power that any board would have a tendency to abuse.

Pierce motions to close the public hearing. Thornton seconds. Bryant requests that if there is no further discussion, he would accept a motion for a vote to approve or not approved the proposal. Pierce motions that the Planning Board recommends against the adoption of the Use Variance bylaw amendment. Thornton seconds the motions. All vote in favor 5-0 to recommend against the proposal to allow the ZBA the power to grant use variances.

**8:15 pm - Public Hearing for proposal to amend zoning bylaw by amending zoning map and adding section to create the Flea Market/Antique Stores Overlay District.**

Jaquith makes motion to open the public hearing. Thornton seconds the motion. All vote in favor 5-0.

Bryant reads the public hearing legal notice which had been published and posted.

Bryant opens the floor to public comment. Bryant notes that this proposal follows the previous request and is an alternative to changing the residential OD zoning of this area to a commercial zoning.

Frank Todd (303 Main Street) claims the map cuts his property in half. Baker insists the proposed zoning line follows the line provided on the assessor GIS map. Todd points out that part of his land is in the Central District and he wants it changed also. Pierce points out that that change is not on the table tonight. Thornton states that the Flea Market use would be allowed in the Central district and that such a change would not be necessary. Baker points out that any amendment to the map at this point would mean the proposal will not be on the Spring Town Meeting Warrant.

Pierce answers a citizen question about the meaning of spot-zoning in the law but that this proposal has been vetted by the Town Counsel.

Glen Gavin (292 Main Street) states he thinks that amendment would have little day to day impact because everyone would have to sell their property to allow a large commercial use to come in. Pierce reminds Gavin that the only two uses involved here are Flea Markets and Antique Store and no other commercial uses will be allowed.

Mike Sabatini (245, 275, and 283 Main St) asks if there is any proposal for buildings to be built. Pierce states that buildings are implied but reminds Sabatini that the process includes a Special Permit public hearing process prior to any approvals. Pierce notes that building character and its compatibility with the surrounding neighborhood will be part of any Special Permit process.

Steve Comley (270 Main Street) asks if restricting the area would help to mitigate some of the problems the neighbors have with this project. Baker notes that changes to the proposal means that it will not go to the Spring Town Meeting.

Michael Tracy (317 Main Street) states that he is opposed to the project because it appears to be what amounts to a large rezoning to benefit one person. He also worries about the impact to their property values. Pierce reminds them that this only involves two limited uses and that Special Permit approval (and also a Site Plan Review) is not guaranteed but discretionary and any approval would have associated conditions to address impacts to adjacent properties. Pierce does note that 316 and 317 could be left out of the overlay area. Tracy states he is not advocating being excluded from the rezoning but is concerned that the larger proposal will still have an impact on his property even though his property is excluded from the overlay district.

Pierce discusses how this proposal is a compromise with the earlier proposal to rezone the entire 65 acre area to commercial.

Leslie Tucker (309 Main Street) believes the proposed classification is a little too narrow and should be expanded to include pottery making shops. Pierce adds that if they were to add uses to the proposal they would have to re-advertise the legal ad which means this proposal would fail to make the Spring Town Meeting Warrant.

The Board discusses the issue of the definition for Flea Market. Baker notes there is a definition in the General Town Bylaws, but the Board members agree that definition would not be adequate for this purpose. Baker introduces some language from other municipal bylaws. The Board

discusses issues surrounding the use of “transient businesses” and “licensed vendors”. Frank Todd states that he gets a junk license permit but does not require that a business sign a lease to use a stall. Thornton points out that misconduct with a permit means immediate removal but a lease would require an eviction process. The Board decides to adopt a definition which emphasizes the language “licensed vendors or as otherwise authorized”.

Jaquith recommends a motion to forward a recommendation from the Planning Board that the Town Meeting vote to pass the proposed Bylaws amendment creating the Flea Market/Antique Store Overlay District and to modify the zoning map to create the district boundary. Pierce seconds the approval. All vote in favor of the motion 5-0.

**Adjournment:**

Jaquith motions to adjourn the meeting. Pierce seconds the motion. All vote (5-0) to adjourn the meeting at 9:36 pm.