



Town of Rowley
Massachusetts

ZONING BOARD OF APPEALS

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August 20th, 2015 Meeting Minutes

Those present: Chairman Donald Thurston, Clerk Thomas Heidgerd, David Levesque, Philip Cressey, Robert Clewell, Peter Carpentier and Lisa Lozzi.

I. Call to Order

Chairman Thurston calls the meeting to order at 7:04 pm.
Chairman Thurston reads Agenda for the record.

II. Miscellaneous Business

- 7:06 pm: Approval of Minutes – June 18th, 2015

Chairman Thurston asks for a motion to accept the minutes. Levesque makes a motion to accept the minutes as submitted. Clewell seconds. All in favor. The ayes have it.

III. Cont'd Public Hearing(s)

- 7:15 pm: Case #15.07 – 164 Boxford Rd – Bontos (Appealing BI Decision, Special Permit)

Members acting on case: Chairman Thurston, Clerk Heidgerd, Member Levesque, Member Cressey and Associate Member Clewell. Chairman Thurston states the Board has received a Fire Department letter dated August 4, 2015, and proceeds to read the letter for the record.

Attorney Ross (applicant's lawyer) stands before the Board and hands a document/list dated July 1st, 2015 (of Abutter/neighbor signatures of approval) to Chairman Thurston for review. Mr. Ross states his client, Mr. Bontos has had conversations with the names (neighbors) on the list. Chairman Thurston reads the statement portion of the document (list) for the record and continues to verify the signatures on the submitted 'list' with the Assessors Department abutter list with board member Levesque.

Chairman Thurston asks the Board if there are any questions to be asked and Heidgerd says his main concern as of the last meeting was the issue of whether or not there was a grandfathered use that was being expanded and reads a small portion of the letter submitted in 1987 for Underwriters Salvage from Attorney Jeff Press dated 10.30.86. The letter states clearly of a prior case law which shows that a use, even if it is a larger than prior use, whether it's 10 or 100 it is still the same use. Heidgerd says it removes his concerns for an issue surrounding whether or not there's an expansion issue. Heidgerd continues and says the Planning Department highlighted a number of concerns and says he tried to look closely at them. In answer to their first concern, the

applicant is not asking for auto sales so their comment doesn't apply. The Planning Board's comment is just incorrectly stated. #2 relates to section 2.2 and this nullifies because there's no new use and when he looks at that request for what that need actually is, relates to something which is referred to as 'new development activity' (anytime any new development activity is done in a flood plain district). The fact of the matter is, the definition of a new development activity actually pertains to the design of a physical structure and the development of homes and the impact they would have on it. Heidgerd says he doesn't find that that concern applies either. Further, Heidgerd says he went to the state environmental protection protocol and what they prohibit and the element they were probably looking at was the existence of a junk yard or a storage yard. That is clearly not what the use is here or what the applicant is looking for. It may have been the use in the past but it is not the use now. There are reasonable concerns that have been voiced, (Planning Dept.) but Heidgerd says he doesn't think they apply. Lastly, the habitat eco system - the Rowley Master Plan was never adopted by the town and says as far as he's concerned, the ZBA or no other Board is bound to directives to the Master Plan.

Heidgerd says there are issues from ConCom which are relevant and will be included in the conditions and which essentially addresses the issue of 'what happens if there is a problem' over there.

Heidgerd says he has questions about the Fire Dept. and says he's not sure how the Fire Chief came up with 276 cars. Says he went to the site since the ZBA site visit and viewed just under 300 cars.

Mr. Bontos explains to the Board what he discussed with the Fire chief at the site visit. (see Fire Chief's letter)

Heidgerd asks if vehicles will only be parked in the 'back' area and Mr. Bontos says no. Board Members and Applicant discuss the amount of area for parking the vehicles and the access for emergency vehicles. Heidgerd asks about 'leases' and winter plowing and Mr. Bontos says the leasing companies do the plowing with a front end loader while moving the vehicles around.

Heidgerd says the reason the ZBA has to look at these things, the former lessee, the auto salvage company ended that relationship, all of the conditions, all of the circumstances, everything else that was relative to that tenant ended and that was really not the operating use that was grandfathered. It was the use that Mr. Bontos had under his licenses prior to that. That was the original grandfathered use. Because those uses occurred before the leasing company was there, it was a prior use. Not the grandfathered use. Heidgerd says he doesn't have a problem with that, but the ZBA is also being asked to grant a new permit which is allowing them to do something that they hadn't been otherwise doing and we're going to grant them the right to do that there. Says he doesn't want to create a set of circumstances that either jeopardizes the property or jeopardizes what the applicant will do in the future so at least the town has some sense that there are precautions being taken out there.

Heidgerd says he went back and looked at the original complaint and it really has nothing to do with any of this. The original complaint is purely based on that there is activity in and out of the place outside of the hours which are no longer applicable to

the use of it. Heidgerd says he referred to the attorney's on the ZBA Board and in a very technical sense you could say that's not even a valid complaint. Part of it was an abandonment issue and Heidgerd says he doesn't see abandonment here. Given the Board's view of the 1987 case, that was a thorough vetting of what the applicant was doing, how he was doing it, the licensing that he had to do it, was all there in place. And given the fact that Jeff Fess's article says uses; whether you have '1' or whether you have '100,' it's a use. Selling cars is a different use. If it was building cars, that's a different use. But the applicant is 'storing' them there, that's part of the prior use and frankly, these are 'new' cars. Those were 'old' cars, those were junkers. Those were much more risky in terms of hazardous impact than new cars. Heidgerd says he sees it as a less detrimental use with new cars as opposed to old cars.

Chairman Thurston asks Clewell if he has any comments. Clewell says he thinks there are two issues. One, the board is going to grant a permit or uphold the appeal and 2, the conditions. Chairman Thurston says the ZBA generally grant the permit with conditions and Heidgerd says the ZBA decides on the permit, and then the Board discusses the conditions and the signing of the decision. It's a 2-step process.

Clewell states his concern over the huge difference in the amount of cars between Heidgerd's visit (300) and the Fire Chiefs visit (276) and says he's concerned and would be reluctant to go against the Fire Chief's statement about only having 250 cars which are his expressed wishes unless it was clear he made a mistake somehow or did such a rough calculation that it was off. Says he's wondering if there's a way to reconcile that somehow.

There is discussion among Board Members over the wordage in the Fire Chief's letter of 276 in two locations or 276 total for both? Need clarification on the understanding of the verbiage.

Levesque suggests the Board asking the Fire Chief what he really means for numbers in his letter. Says where the ZBA has this letter the ZBA has to address it.

Heidgerd says he thinks the Board should address the hours for business as opposed to going there whenever they want because the residents were concerned in the original complaint about vehicles coming and going.

Applicant says he going to put a sign inside the property as they (drivers) 'exit' out of the property depicting the speed limit of 25 mph to remind them.

Heidgerd says after the ZBA is done and with a decision, whatever it includes, if there are any elements that are subject to their control (tenant-leasing company) this will be the current state of what the ZBA is doing.

Clewell addresses the Chairman and says he'd like to go back and be on the record, as Heidgerd alluded to earlier, and says he believes virtually the same as he, that a quantitative expansion, a large quantitative expansion for parking when it was originally the auto salvage of maybe 10 cars to 200 now, seemed to be that it would not be allowable and that was his feeling, however, it has been addressed by the appeals court in Blackstone vs. Tellestone, provided by Attorney Ross, the court says the character of

the use does not change solely by reason of an increase in its volume. Clewell says his gut feeling was wrong, you can increase multifold, it doesn't change the use.

Chairman Thurston says if he (applicant) increased his 'area' from the nine acres that has been there all along, and decides to move the fence another 5 acres, that's an expansion. Same with a business, you can't control the volume of a business, but as soon as you expand the floor print, you've expanded the business. And that's an expansion. You've changed the area in which you operate.

Clewell says the other thing the court pointed out, was one of the tests, that if the volume goes up, does that have an effect on the neighborhood. The ZBA doesn't have any evidence of any kind of different effect on the neighborhood. Couple people mentioned they thought cars were speeding, but there's no evidence. There's no substantial effect on the neighborhood and as far as the underlying issue, not condition of granting the permit, says he thinks the applicant is entitled to a permit.

Cressey questions whether the Board will be specific to the type of vehicles stored and Heidgerd says the ZBA can certainly be specific to the lessee. The ZBA certainly does not want the ability to store 18 wheelers.

Chairman Thurston states the dealers are not going to be storing vehicles up there that they don't intend to sell. In that case, he doubts there are cars up there that are more than three (3) or four (4) years old.

Clewell says perhaps the decision could say 'road worthy', registered, not junked, meet state inspection codes, as long as it is understood these are cars that can be driven legally on the road, i.e. not junk, not salvaged.

Attorney Ross asks if he could tweak the conditions and Heidgerd says the Board would be open to any suggestions he would like to consider incorporating in the decision but the ZBA is still going to look closely at what the Fire Chief said.

Chairman Thurston suggests he and Heidgerd go and see the Fire Chief.

Heidgerd says we have a motion to grant a permit that will allow the use of storage of vehicles, allowing the appeal, and in doing so, finding it was not a case of abandonment that was alleged in the appeal. That there is currently no hard restriction on the cars and that we are prepared to grant a permit for the storage of new and used vehicles subject to the conditions to be drafted by the Board prior to final signature. Clewell seconds. All in favor.

Applicant asks the Board about attending the 'meeting' with the Fire Chief also and Heidgerd says he'll email him with a date.

Levesque motions to have Heidgerd draft a decision. Clewell seconds. All in favor.

Levesque motions to continue the hearing to September 17, 2015. Heidgerd seconds. All in favor.

IV. Adjournment

Levesque moves to adjourn the meeting. Cressey seconds. All in favor. Meeting adjourns at 8:25 pm.

Minutes accepted at the _____ meeting.

Documents and exhibits provided/used at meeting and are available in the ZBA office:

Meeting Agenda

Minutes of June 18th, 2015

FD Letter of 8.4.15

Case Continuance Form

Abutter Signature List

Letter from Attorney Jeff Press dated 10.30.86.

Appeals Court Case Blackstone vs. Tellestone 1976 (document)

Pursuant to the 'Open Meeting Law,' G.L. 39, S.23B, the approval of these minutes by the Board constitutes a certification of the date, time and place of the meeting, the members present and absent, and the actions taken at the meeting. Any other description of statements made by any person, or the summary of the discussion of any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Board as to the completeness or accuracy of such statements.]