



Town of Rowley
Massachusetts

ZONING BOARD OF APPEALS

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June 18th, 2015 Meeting Minutes

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

Public Audience: Vincent Pesaturo

I. Call to Order

Chairman Thurston calls the meeting to order at 7:03 pm.
Chairman Thurston reads Agenda for the record.

II. Miscellaneous Business

- 7:06 pm: Approval of Minutes – April 16th, 2015

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

- 7:10 pm: Financial Report

Board Members review report and discuss purchasing items for the year-end FY15.
Heidgerd mentions the email received from Rowley Media and instructs Lozzi to read for the record. Board Members agree to allow Lozzi to purchase a chair for the ZBA office.

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 reads the department memos/letters from ConCom, BOH, Fire Dept, PB, and BOS for the record. Chairman Thurston also reads for the record the continuance letter from the Applicant's attorney for this meeting date.

Mr. Ross, applicant's attorney comes before the Board and hands the Chairman copies of the tax returns requested by the Board Members at the site visit. The request was made to show proof of an ongoing business due to the concern of the 'business' not being in operation for a period of years.

After viewing the tax returns submitted, Heidgerd asks if there are two separate corporations and Mr. Bontos says its two mailing addresses. Levesque questions the addresses on the tax returns and states the tax return does not show a Rowley address. Levesque says it (tax return) should show where the business is conducted, not the mailing address. Applicant's attorney says the work was done in Rowley.

Clewell addresses the Chairman and says the applicant has submitted the tax returns with a Salem, NH address with the representation that these are evidence that work was done in Rowley. Clewell says he submits they are not evidence that work was done in Rowley or that they aren't evidence that work was done anywhere else either. And says if all the Board is looking at is these documents that have a New Hampshire address, as evidence, these do not support the conclusion that anything was ever done in Rowley whether or not it actually was.

Mr. Ross says the receipts and tax returns go hand and hand and gives a copy of the business receipts to Chairman Thurston.

Chairman Thurston says it appears to him that in all probability that there was some work being done up there but not much and if that is the case, the ZBA would want to, and assume that what the (applicant and applicant's attorney) is showing us is true, then the Board would be looking for an expansion of a non-conforming use and according to the bylaws and it being in the water protection district, the expansion would be in violation.

Attorney Ross says it's an 'exercise' of a non-conforming use or sub set of original use and also mentions a permissible shift in use from auto salvage to auto sale.

Clewell asks Attorney Ross if he's seeking a special permit and Attorney Ross says if he has to have a special permit he would ask for one. Attorney Ross says he's asking for an appeal from the Building Inspector's decision and a special permit.

Clewell asks Attorney Ross under what section is he seeking the special permit and he responds 5.2. Clewell states that's expansion. Ross says he is hoping to go by way of the non-conforming use and hopes everyone agrees with him so he doesn't have to go the route of the 5.2 for the special permit. Clewell sites bylaw 5.5.2b and the capacity issue.

Heidgerd says he is having difficulty with the definition of how it's a subset as opposed to an expansion of the non-conforming use. Based upon the information that your showing us on the tax returns, that you're suggesting represent the business that was carried on there, year in year out, there is so little dollar business there that its very very hard for to believe. It almost looks as though there were one or two transactions of some sort a year. Sum of \$400.00 and your saying that's the basis of the business that was there for a year. That's all that you reported. It seems to me that when we visited the site and the pictures that exist that the amount of vehicles that are now simply being stored there is an enormous change from whatever it was you were actually doing there based on the evidence we saw in the building. It didn't look to me at least currently you had many more parts than in our own garages. I was anticipating a lot of parts from automobiles and I didn't see that. (transmission's, engines, etc.) and certainly your tax returns suggest that there wasn't a lot going on there. I would suspect whatever rental income your enjoying now is greater than that and that doesn't seem to show anywhere on the tax returns.

Attorney Ross says he whited out the rental income on the tax return and just showed income from car parts. He says it's not part of what the Board needs to see in order to

prove the nonconforming use. It's not abandonment when there is little use or lean years.

Heidgerd says he has less trouble with the abandonment and that his concern is there seems to be two (2) types of business and the nature of the company is different and it's effectively earning the bulk of its income from a different type of business. Heidgerd submits that a parts related salvage is one type of business as auto supply and a rental/storage business that is currently going on there now which was permitted from a period of 87 to 07 and has ended.

Heidgerd says he's struck by the fact that there's a very different type of business there and the ZBA is dealing with an expansion and a change and the ZBA has constraints that the Board has to deal with which make it difficult to think about granting a permit. Heidgerd says he's not disputing what Attorney Ross is saying, but is concerned about what Attorney Ross wants the Board to go on. Heidgerd says there's change, there's expansion, there's water and flood plain issues and thinks it's a change of use as far as he's concerned.

Clewell asks Attorney Ross if he agrees the Board/Applicant/Attorney is talking about a prior existence of non-conforming use and Attorney Ross says yes.

Clewell says he just wants to make sure everyone agrees that the prior existence is or was a non-conforming use because you can't expand like you can with a conforming use and Attorney Ross agrees.

Heidgerd says the Board needs to address the other dept.'s concerns as well such as the fire dept. and capacity and the need to get access onto the premises.

Levesque suggests getting rid of the junk car rule and just go with storage and deal with the speeding. The whole salvage has changed and that's the problem.

Mr. Bontos says the companies are going to address the situation and have the police give out tickets. Mr. Bontos says he's trying to address the neighbor's concerns and says all he's asking to is to conduct his business and if he was a detriment to the town, he doesn't think people would be buying homes across the street.

Mr. Bontos says this is his livelihood and he's a one man operation.

Chairman Thurston asks if there's any further questions and Clewell says he's prepared to vote but not done commenting. He says he doesn't want this to get muddled between what the prior tenant did and scope of use by the prior tenant and the scope of use which is the prior existence of non-conforming use which is the basis for this (applicant's application). The tenant's gone and if you're going to compare whether or not it's an expansion, you don't compare it to what the tenant did, you compare it to Rowley Auto Salvage.

Levesque questions the audience member (neighbor-Mr. Pesaturo) and Mr. Pesaturo says he doesn't see the bother and that the traffic is a different issue. Mr. Pesaturo says he's lived 22 years in the neighborhood and never new if he was working or not working and he (Bontos) hasn't been a hazard to him (Pesaturo).

Heidgerd says this has risk factors due to the water investment and the town paying for it. Heidgerd says it's very hard to accept that an auto dealer that was selling 50 units a month is now selling 500 a month. Same thing just bigger numbers. There's more

that's happening there and it's an expansion. It's a good expansion but it's an expansion and am having difficulty getting past the constraint here.

Heidgerd says he would like to look a little more into Attorney Ross's review of conditions that suggest his cases and if he could get past that that would help a lot. Heidgerd also states he has secondary concerns about groundwater and even if a permit is granted it will still have to go before ConCom and the Planning Board and would still have to go before them for conditions on the property.

Clewell addresses the Chairman and states as long as Heidgerd wants to review, he would not want to vote. Clewell moves that the Applicant consent to continue. Applicant's attorney (Mr. Ross) signs the 'request to continue' form and all are in agreement.

Clewell moves to continue the hearing with the applicant's permission to August 20th, 2015. Cressey seconds. All in favor. The Ayes have it.

IV. New Public Hearing(s)

- 8:30 pm: Case #15.08 - 157 Boxford Rd – Caram (Special Permit – In-Law Apartment)

Members acting on case: Chairman Thurston, Clerk Heidgerd, Member Levesque, Member Philip Cresse and Member Nathaniel Dummer.

Chairman Thurston reads the public hearing script, applicant's application, and the department memos/letters from the BOS, BOH, and PB for the record.

Chairman Thurston asks the applicant (Mr. Caram) to explain his intent. Mr. Caram says he wants to help his parents out. When the applicant is asked about the structure's appearance, He states it will look the same from the road or 'road' view.

At this time, Member Levesque discloses to the Board that the applicant plows for him in the winter.

Questions are asked by Board Members concerning the septic, lot delineations, structure dimensions and footage. Board Members have no issues with the application.

Heidgerd explains the covenants process/protocol and the necessity of the document to the applicant. Lozzi has Mrs. Caram sign the form which will be submitted and recorded with the Decision along with the construction plan.

Chairman Thurston asks for a motion. Heidgerd makes a motion to accept the application as submitted and the ZBA grants the special permit for the in-law apartment subject to conditions which will include what is listed in the Planning Board memo. Dummer seconds. All in favor. Chairman Thurston directs Clerk Heidgerd to construct a Decision for the applicant for an in-law apt.

At this time, Chairman Thurston says a few words and presents Member Nathaniel Dummer with a plaque from the Board honoring him for his 55 years of service with the ZBA. Mr. Dummer also gives a brief history of his earlier years on the Board of Appeals. **This is Mr. Dummer's last ZBA meeting he will attend as a ZBA Board Member. Thank you Mr. Dummer. You will be missed.**

V. Adjournment

Chairman Thurston asks for a motion to adjourn the meeting. Clewell so moves. Levesque seconds. All in favor. Meeting adjourns at 9 pm.

Minutes accepted at the ____August 20th, 2015____meeting.

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

Minutes of April 16th, 2015
ZBA Financial Report
Letter of 5.6.15 from Ross & Ross
Continuance Form – Signed
BOS Memo for Caram
PB Letter for Caram
BOH Memo for Caram
PB Letter of 4.16.15
CC Letter of 4.16.15
FD Letter of 4.14.15
BOS Memo of 4.14.15
BOH Memo of 3.31.15
BI Letter of 2.24.15
Copies of Receipts – Rowley Auto Parts
Copies of Aerial View Pictures (9) – From PB & CC

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.]