Rowe Planning Board
September 21st, 2021
7:00 P.M.

Planning Board: Chair Paul McLatchy III, Vice-Chair Ben Werner, Charles Sokol
Absent: Daniel Burke, Jessica Albrecht

Audience of Citizens: David Gregory Poehlein

Approved Motion Summary:
(discussion details and vote records in minutes below)

- Accept the special permit application permit as filed by David Gregory Poehlein for short-term rentals at 61 Zoar Rd.
- Schedule a hearing for the special permit application permit as filed by David Gregory Poehlein for short-term rentals at 61 Zoar Rd to occur on Tuesday October 19th, 2021 at 7:00PM.
- Approve the minutes of August 17th 2021 as presented.
- Schedule a hearing on Tuesday October 19th, 2021 at 7:00PM to discuss altering Section 20 of the Zoning Bylaws.
- Adjourn the Planning Board meeting at 8:38 P.M.

Meeting Minutes:

Call to Order: Chair McLatchy III called the Planning Board meeting to order at 7:00 P.M., a quorum of the committee present.

Audience of Citizens: Mr. Poehlein expressed disappointment in the progress of considering the granting of the special permit for the use of his property for short-term rental. Mr. Poehlein asked whether there were any interpersonal issues between one or more members of the Planning Board who had been regularly attending and the other two members that may be leading those two members to not attend; he expressed his belief that the Board of Selectmen had the power to step up in a situation where the Planning Board was not acting with regards to its established duties; he asked if we had discussed potential conflicts of interest regarding members of the board who hosted activities similar to short-term rentals on properties they managed; he asked why the Planning Board has not brought the granting of the special permit up for a vote.

Mr. McLatchy III explained that he was unaware of any interpersonal issues between the active members of the board and the others, detailing the outreach efforts he had undertaken to include those other members in the activities of the Planning Board. He further explained that, as elected officials, there are no actions that can be taken by any member of any board, or the Town of Rowe more generally, other than encouraging all members to participate to compel such participation.

Mr. McLatchy III explained that the powers of the Planning Board are solely the jurisdiction of the Planning Board, and no other board, including the Select Board, can take any action in lieu of action by the planning board to perform its various functions as defined by state law and Rowe bylaws.

Mr. Sokol opined that any member of the planning board that operated facilities where activities similar to short-term rentals may occur does not necessarily suggest a conflict of interest in the way that such conflicts are understood in the context of municipal government, but if such a member were to recuse themselves out of an abundance of caution, that would necessitate the involvement of both of the inactive Planning Board members to have a four-member quorum to hold a vote on the granting of the special permit.

Mr. McLatchy III explained that the three Planning Board members at this meeting have been actively working to move this process forward, with the sole exception of scheduling a special permit application hearing without certainty that four or more members would be present.

All three Planning Board members present expressed an eagerness to bring this special permit application process to a close, whether by holding a four- or more-member hearing and vote, or by proceeding through the statutory timeline leading to the constructive grant of the special permit.

Mr. Sokol asked Mr. McLatchy to recapitulate the latest findings by Planning Board counsel Donna MacNicol given the discovery of the effect of Chapter 53 of the Acts of 2020.

The email from counsel MacNicol, dated September 9th, 2921 at 4:27PM read:

"[...]Chapter 53 of the Acts of 2020, Section 17 (b) (i) states in part 'an application for a permit shall be deemed duly filed and accepted as of the date of the filing by the applicant if filed with and certified as received by the ... town clerk.'

Assuming that you somehow certified acceptance of the application as the acting town clerk, the application was filed as Mr. Poehlein said on October 20, 2020.

Chapter 53 of the Acts of 2020, Section 17 (b) (ii) states in part: 'a requirement of a statute, ordinance or bylaw, rule or regulation that a hearing commence within a specific period of time after the filing of an application or request for approval of a permit shall be suspended as of March 10, 2020, provided, however, that the applicable period shall resume 45 days after the termination of the state of emergency, or by a date otherwise prescribed by law, whichever is later.'

In addition, Chapter 201 of the Acts of 2020 amended section 17 (b) (ii) of the Chapter 53 of the Acts of 2020, that section now reads in part: 'a requirement of a statute, ordinance bylaw, rule or regulation that a hearing commence within a specific period of time after the filing of an application or request for approval of a permit shall be suspended as of March 10, 2020; provided, however, that the applicable period shall resume December 1, 2020, unless such date is extended by relief from the deadline from the secretary of housing and economic development as set forth in subsection (d);'

Chapter 201, section 17 (b) (iv) states: 'when a statute, ordinance, bylaw, rule or regulation provides that a permit shall be considered granted, approved or denied, constructively or otherwise, due to a failure of the permit granting authority to act within a specified time period, the time within which the permit granting authority must act shall be deemed tolled from March 10, 2020 to December 1, 2020 unless relief form the deadline has been granted by the secretary of housing and economic development pursuant to subsection (d);'

So, in essence I believe that Mr. Poehlein constructive grant time frame would have run 155 days from December 1, 2020, or sometime in late April or early May, 2021."

Mr. McLatchy III said he was informed by Counsel MacNicol that the constructive grant, which would have been available 155 days after December 1st, 2020 – specifically Wednesday, May 5th 2021 – would likely no longer be available as no action was taken by Mr. Poehlein, and that the quickest way to provide a path to consideration and potential approval would be for him to file a new application for a special permit. He further explained that she suggested we schedule a hearing to consider the special permit application, and that holding such a hearing – whether four or more members were present or not – would advance the constructive grant process forward.

Mr. Sokol asked if anyone knew with whom someone who has a constructive grant available to them is required to file an application for that constructive grant. No one present provided a specific answer.

Special Permit Application for Short-Term Rental at 61 Zoar Rd:

A motion was made by Paul McLatchy III and seconded by Chuck Sokol to accept the special permit application permit as filed by David Gregory Poehlein for short-term rentals at 61 Zoar Rd.

Paul McLatchy III	-	Yes
Ben Werner	-	Yes
Daniel Burke	-	Absent
Jessica Albrecht	-	Absent
Charles Sokol	-	Yes

Hearing for Special Permit Application for Short-Term Rental at 61 Zoar Rd:

A motion was made by Paul McLatchy III and seconded by Chuck Sokol to schedule a hearing for the special permit application permit as filed by David Gregory Poehlein for short-term rentals at 61 Zoar Rd to occur on Tuesday October 19th, 2021 at 7:00PM.

Paul McLatchy III	-	Yes
Ben Werner	-	Yes
Daniel Burke	-	Absent
Jessica Albrecht	-	Absent
Charles Sokol	-	Yes

Minutes of August 17th:

A motion was made by Ben Werner and seconded by Chuck Sokol to approve the minutes of August 17th 2021 as presented.

Paul McLatchy III	-	Yes
Ben Werner	-	Yes
Daniel Burke	-	Absent
Jessica Albrecht	-	Absent
Charles Sokol	-	Yes

Cellular Tower Use Variance Application: Mr. McLatchy III reported that Francis D. Parisi reached out to him in his capacity as Town Clerk to provide information on how to file an application for a use variance for a cellular communications tower, likely someplace near County Road. Mr. McLatchy III said there would not be any involvement of the planning board, as use variances are the purview of the Zoning Board of Appeals, but felt it was still prudent to inform the Planning Board.

Zoning Bylaw Review: The planning board began reviewing Zoning Bylaws, starting with those bylaws identified as "Medium Priority" at the July 13th, 2021 meeting. All suggested re-wording of these bylaws is tentative, and each may be formally presented through the public hearing process at a later time if the Planning Board wishes to pursue adoption of any or all of these changes.

Section 4: Relating to non-dwelling structure roadside setbacks

The Planning Board discussed the limitations on road setbacks for non-dwelling structures, taking time to discuss special-case structures such as farm stands or community-oriented charity kiosks (such as those for book lending/trading or non-perishable food distribution). After some discussion the following wording was agreed upon:

> *"Any building or permanent structure, other than a dwelling, kiosk, or roadside stand, hereafter erected shall not be located within twenty (20) feet of any street or highway line."*

Definitions:

The Planning Board discussed the benefit of establishing a section in the bylaws where specific terms could be defined. After some discussion the following terms and definitions to add to such a section were agreed upon:

> *"Roadside Stand: A structure not having a ground area of more than 100 square feet, not permanently fixed to the ground, readily removable in its entirety, not fully enclosed, and to be used for the sale of products."*
>
> *"Kiosk: A structure not having an area of more than 10 square feet, not to exceed 6 feet in any dimension, to be used for the charitable distribution of items, including but not limited to books or non-perishable foods."*

Section 2: Relating to use regulations

The Planning Board discussed adding an item related to kiosks to a new Section 2.B.IX, where that section could be used to define "other" structure types for regulation. The board agreed to upon the following addition:

IX. Other Uses
  a. Kiosks –
    Allow as "By Right" for both zone types

Priorities for Bylaw Review: The Planning Board requested that the sections of the current zoning bylaws to be focused on for review, as previously categorized as either "high," "medium," or "low" priority at the July 13th, 2021 meeting, be listed within future minutes for reference. Those priorities, as listed in the minutes of the July 13th, 2021 meeting, are listed here for convenience:

High Priority:

Section 2: Relating to use regulations
Section 6: Relating to number of dwellings per lot
Section 10: Relating to number of unrelated persons within a single dwelling
Section 18: Relating to special permit application filing and issuing
Section 20: Relating to public hearing notices

Medium Priority:

Section 4: Relating to non-dwelling structure setback from roadways
Section 5: Relating to dwelling setback from roadways
Section 7: Relating to lot size and road frontage requirements
Section 8: Relating to structure setback from side and rear lot lines
Section 9: Relating to chassis-based mobile home and trailer restrictions
Section 15: Relating to zoning board of appeals

Low Priority:

Section 1: Relating to the purpose of zoning bylaws
Section 3: Relating to the on-site storage of unregistered and/or inoperable vehicles
Section 11: Relating to the storage of brush, timber, or other cuttings
Section 12: Relating to earth removal
Section 13: Relating to construction permits
Section 14: Relating to sewage systems
Section 16: Relating to the beginning of construction
Section 17: Relating to modifications to pre-existing non-conforming structures
Section 19: Relating to the applicability of zoning bylaws to existing non-conforming structures
Section 21: Relating to zoning bylaw changes via town meeting vote
Section 22: Relating to site plan reviews
Section 23: Relating to solar generating installations

Additionally, the group determined it would be worth reviewing the definition of the Planning Board and term length of Planning Board seats as defined in the general bylaws.

Hearing for Bylaw Change Regarding Hearing Notices:

A motion was made by Paul McLatchy III and seconded by Chuck Sokol to schedule a hearing on Tuesday October 19th, 2021 at 7:00PM to discuss altering Section 20 of the Zoning Bylaws to read:

"The Planning Board and the Zoning Board of Appeals shall mail notice of their public hearings in accordance with Massachusetts General Laws Chapter 40A Section 11."

Paul McLatchy III	-	Yes
Ben Werner	-	Yes
Daniel Burke	-	Absent
Jessica Albrecht	-	Absent
Charles Sokol	-	Yes

Adjourn:

A motion was made by Paul McLatchy III and seconded by Chuck Sokol to adjourn the Planning Board meeting at 8:38 P.M.

Paul McLatchy III	-	Yes
Ben Werner	-	Yes
Daniel Burke	-	Absent
Jessica Albrecht	-	Absent
Charles Sokol	-	Yes

Respectfully Submitted,
Charles Sokol, Secretary

Approved: 11 / 18 / 2021

Chair Paul McLatchy III

Vice-Chair Ben Werner

Daniel Burke

Jessica Albrecht

Charles Sokol

Attachments:

- Agenda
- Email correspondence between Paul McLatchy III and Donna MacNicol
- Special Permit Application for 61 Zoard Rd