Rowe Planning Board
February 8, 2022
6:00 P.M.

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

Audience of Citizens: None

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

- *Approve the minutes of January 11th 2022 as amended.*
- *Adjourn the Planning Board meeting at 6:46 P.M.*

Meeting Minutes:

Call to Order: Chair McLatchy III called the Planning Board meeting to order at 6:04 P.M., a quorum of the committee present.

Minutes of January 11th:

A motion was made by Paul McLatchy III and seconded by Charles Sokol to approve the minutes of January 11th 2022 as amended, correcting the date on the first page to accurately reflect the date of the meeting.

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

Zoning Bylaw Review: Counsel MacNicol provided comments regarding the Zoning Bylaws revisions under consideration by the board in an email dated Monday, February 7, 2022 3:22 PM to Chair McLatchy III.

After reviewing the comments provided by Counsel, the Planning Board agreed to move forward with scheduling a public hearing on several of the Bylaw revisions previously discussed. Those bylaws that would be presented at the public hearing would include Section 2 (with changes, see below), Section 10, Section 18 (with changes, see below), and Section 20.

Zoning Bylaw Public Hearing: The planning board determined that March 23rd at 7pm would be a suitable date and time for a public hearing to present the proposed revisions to Zoning Bylaws Sections 2, 10, 18, and 20.

Zoning Bylaw Review Notes:

The following includes each reviewed section as it currently exists, followed by the notes and revisions previously discussed as described in previous meeting minutes, followed then by Counsel MacNicol's written comments and further discussion by the board at this meeting.:

Section 2: Relating to use regulations

As currently written:

B. *Table of Use Regulations*

	Zones	
	R-A	*I*
I. Residential Uses		
a. Detached, Single Family Dwelling	*Yes*	*Yes*
b. Two-Family or Semi-Detached Dwelling	*SP*	*SP*
c. Multi-Family	*No*	*No*
d. Trailer Park or Mobile Home Park	*No*	*No*

As discussed on 8-17-2021:

The Planning Board discussed the limitations on dwelling types imposed by Section 2.B.I. The board determined that altering the use table as follows may be prudent:

I. Residential Uses
   a. Detached, Single Family Dwelling –
      No Change
   b. Two-Family or Semi-Detached Dwelling –
      Change from "Special Permit" to "By Right" for both zone types
   c. Multi-Family –
      Change from "Disallowed" to "Special Permit" for both zone types
   d. Trailer Park or Mobile Home Park –
      No Change

As discussed on 9-19-2021:

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

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."

Counsel Notes in E-Mail 2-7-2022:

Section 2 B I

The change is legally acceptable. But you might want to discuss why you would allow any residential development in an Industrial Zone. If an industry did want to build in an industrial zone, it may disrupt residential living already there and lead to complaints. That reason and saving industrial land for industry are the reasons residential uses usually are a NO in industrial zones.

Section IX

The change is legally acceptable.

I would consider however, what roadside stand would be used for. Are you limiting this to farm, or horticultural products, or just any products? If farm roadside stand, I would put this in the definition. The way it is now written it could be a hot dog stand.

I would however, consider kiosks by SP, not by right. Kiosks along the roadway with no traffic considerations, landscaping, could present a problem. A charitable kiosk for clothing say, could be an eye sore and create problems for road maintenance and traffic safety concerns. Requiring a SP for these could alleviate these concerns by conditions on the SP. Many charitable kiosks end up with donations piled in front of and along side the kiosks. This could lead to trash bag donations piled along the side of the road.

As discussed on 2-8-2022:

The Planning Board discussed Counsel's note regarding allowing residential uses in industrial zones. The board determined that altering the use table as follows may be prudent:

I. Residential Uses
   a. Detached, Single Family Dwelling –
      No Change
   b. Two-Family or Semi-Detached Dwelling –
      Change from "Special Permit" to "By Right" for ONLY residential zones
      Remain "Special Permit" in industrial zones

c. Multi-Family –
   Change from "Disallowed" to "Special Permit" for ONLY residential zones
   Remain "NO" in industrial zones
d. Trailer Park or Mobile Home Park –
   No Change

The planning board, after considering Counsel's note regarding roadside stands/kiosks, determined that altering Section 2.B to include a new subsection IX regarding Kiosks should be delayed until further review is possible.

Section 4: Relating to non-dwelling structure roadside setbacks

As currently written:

"Any building or structure other than a dwelling and including roadside stands, gasoline pumps and accessory buildings hereafter erected shall not be located within twenty (20) feet of any street or highway line."

As discussed on 9-21-2021:

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."

Counsel Notes in E-Mail 2-7-2022:

What is the highway line? Is this the road lay out? Again I would not allow kiosk or roadside stand within the 20 feet of the highway lay out. This space is used for highway maintenance etc and allowing structures within this could impede maintenance or reconstruction.

Not sure you want to change Section 4 without more consideration.

As discussed on 2-8-2021:

The Planning Board, after considering Counsel's note regarding the definition of a "highway line," determined that altering Section 4 should be delayed until further review is possible.

Section 5: Relating to dwelling setback from roadways

As currently written:

"Any dwelling hereafter erected shall not be located within sixty (60) feet of any street or highway line."

As discussed on 11-18-2021:

The Planning Board discussed the limitations on road setbacks for dwelling structures, taking time to discuss ambiguity of the phrase "road line" in the existing language of this section. After some discussion the following wording was agreed upon:

> *"Any dwelling hereafter erected shall not be located within fifty (50) feet of the centerline of any street or highway."*

Counsel Notes in E-Mail 2-7-2022:

Why are you changing this to the centerline of any street or highway. If a street is 50' wide, this would allow a dwelling to be erected 25' from the lay out of the highway. A 60' lay out would be even worse. The problem with town roads is that they could have numerous widths, drainage issues etc. The further back development is from this, the better for the structure and the town road maintenance issues.

Also, sometime the records are very poor for road lay outs. Moving this to a distance from the centerline could cause even more confusion.

As discussed on 2-8-2021:

The Planning Board, after considering Counsel's note regarding this section, determined that altering Section 5 should be delayed until further review is possible. However, the Planning Board did note that the current wording of Section 5 does use the term "highway line" that was identified as ambiguous in Counsel's comments regarding Section 4.

Section 6: Relating to number of dwellings per lot

As currently written:

"Except as provided under Section 2(B) I (b) of this Article, no more than one (1) dwelling unit shall be constructed on any dwelling lot and no existing structure shall be converted for use as a dwelling unit unless a dwelling lot is created in accordance with Section 7 of this Article. A dwelling unit shall be defined as a single unit providing complete, independent living facilities for one or more persons."

As discussed on 8-17-2021:

After some discussion, the Planning Board determined that allowing for more construction in the town would be better accomplished through examining the building lot size definitions as established in Section 7.

No change to Section 6 was suggested at this time.

Counsel Notes in E-Mail 2-7-2022:

I agree not to change at this time.

As discussed on 2-8-2021:

The Planning Board agreed to continue not suggesting changes to Section 6 at this time.

Section 7: Relating to lot size and road frontage requirements

As currently written:

"No dwelling unit hereinafter placed in any district shall be located on a lot having less than the minimum requirements set forth below. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth below.

(A) Class A Lot:
A Class A Dwelling Lot shall not be less than four (4) acres and shall have a minimum frontage on a public road of four hundred (400) contiguous feet. In the case of a Class A Lot at the junction of two public roads, the minimum frontage on each such public road shall be four hundred (400) contiguous feet.

(i) A Class A Lot has none of the following qualities in the area of proposed usage:

(a) Bedrock, ledge, hardpan or other impermeable or poorly permeable subsurface layer within six (6) feet of existing surface grade.

(b) Seasonal surface water present during the year for a period of 30 days or more, within 100 feet of an area of proposed usage.

(c) Ground water within six (6) feet of existing surface grade during any period when percolation tests are permitted.

(ii) The Soils Map designations of "slight limitation" and "moderate limitation" may be used for reference location of Class A Lots.

(B) Class B Lot:
A Class B Lot is any lot which has in the area of proposed usage one or more of the qualities listed in the definition of a Class A Lot. An in-ground sewage system shall not be permitted in a Class B Lot.

(i) The Soils Map designation of "severe limitation" may be used for reference location of Class B Lots.

DEFINITIONS:

A DWELLING LOT is hereby defined as a continuous parcel of land in one ownership with legally definable boundaries described in a deed recorded in the Franklin County Registry of Deeds or Land Court, which complies with the minimum requirements of this section.

AREA OF PROPOSED USAGE shall mean the location of an in-ground sewage system, the area of such location to be not less than twice the area required for the initial installation of that system.

SOILS MAP shall mean the map on file with the Town Clerk entitled "Soils Limitation for Septic Tank Sewage Disposal" prepared for the Town of Rowe based on U.S. Department of Agricultural Soil Conservation Service Survey.

The classification of all lots on which an approved in-ground sewage system exists at the time of the adoption of this by-law is to be designated as Class A. The classification of any lot designated as Class B may be changed by the Planning Board to Class A upon presentation to that Board of a certificate from the Board of Health that said lot has an area of proposed usage suitable for the installation of an approved in-ground sewage system."

<u>As discussed on 11-18-2021:</u>

The Planning Board discussed the intention of the listed definitions of Class A (qualified for dwelling construction) and Class B (not qualified for dwelling construction) lots. In addition to determining minimum lot size and road frontage for dwelling lots, some of the requirements appeared to establish limitations related to septic system construction. The limitations related to bedrock, ledge, hardpan or other impermeable or poorly permeable subsurface layer, seasonal surface water, or ground water each appeared to be covered by existing Title V regulations or the Clean Water or Wetlands Protection Acts.

The Planning Board discussed the lot size and road frontage requirements as listed, and considered whether the frontage requirements should be that each abutting public way meet a minimum contiguous distance, or that at least one abutting public way meet a minimum contiguous distance. The Planning Board also discussed moving the definitions of "Dwelling Lot" and "Area of Proposed Usage" from this section to the previously established Definitions Section. After this discussion, the following wording was agreed upon (the additions to the definition section will be formalized at a later time):

"Each dwelling unit hereinafter placed in any district shall be located on a Class A Lot. No existing lot shall be changed as to size or shape so as to result in the violation of the requirements set forth below.

A. Class A Lot: A Class A Lot has all of the following qualities:
   i. A total area of no less than four (4) acres.
   ii. A minimum frontage of four hundred (400) contiguous feet on at least one public road.
   iii. Has an area of proposed usage suitable for the installation of an approved in-ground sewage system as certified by the Board of Health.

B. Class B Lot: A Class B Lot is any lot which does not meet the criteria of a Class A Lot.

C. Reclassification: The classification of any lot designated as Class B shall be changed by the Planning Board to Class A upon presentation to the Planning Board that said lot meets all criteria of a Class A lot."

Counsel Notes in E-Mail 2-7-2022:

I agree not to change at this time. I do not believe you need the words "at Least" in A ii. Anyone can build further away from the public road. In addition, I would use "public way" rather than "public road". Public ways are defined by law. Essentially a public way is a way laid out by the town, county or state. Of course, this provisions does not allow for subdivision roads to be used that are not taken over by the town. You may want to say public way or subdivision roadway.

As discussed on 2-8-2021:

The Planning Board felt that Counsel's comments required further clarification, as there was no instance of the phrase "at least" in Section 7.A.ii. in either how it is worded now or in the version under consideration, nor is there any mention of setbacks from roads in this section in either the current or proposed versions. However the Planning Board did note that the comment regarding using "public way" instead of "public road" was useful, and determined that other Zoning Bylaws under review that included reference to "road" should instead use the language "public way."

Section 10: Relating to number of unrelated persons within a single dwelling

As currently written:

"No dwelling in the Town of Rowe shall be occupied by more than one family; one family being defined as one or more persons related by birth, marriage or adoption including minors under the legal guardianship or control of one or more adults or up to four (4) unrelated individuals or a combination of these living together on a premises as a single housekeeping unit."

As discussed on 8-17-2021:

The planning board determined that this section is problematic given the changing cultural definitions of a "family," and collectively the board determined this section should be stricken from the Zoning Bylaws.

Note that the numbering of all following Zoning Bylaws will be referenced as if Section 10 still exists to avoid confusion until any changes are adopted by the town.

Counsel Notes in E-Mail 2-7-2022:

I agree this section should be removed.

As discussed on 2-8-2021:

The Planning Board agreed to continue suggesting removing Section 10.

Section 18: Relating to special permit application filing and issuing

As currently written:

"Special Permits shall only be issued after a public hearing which must be held within sixty-five (65) days after the effective date of filing of a special permit application. A special permit application shall be filed with the Planning Board at one of its regular meetings and the applicant is also responsible for transmitting a copy of the application to the Town Clerk forthwith. The effective date of filing is the date the application is filed with the Planning Board. If substantial use or construction has not commenced without good cause within a period of one (1) year from the date of the granting of a special permit, the special permit shall lapse. This time limit includes time required to pursue or await the determination of an appeal."

As discussed on 8-17-2021:

The Planning Board discussed ways to make the date of filing a special permit application more clear and no longer reliant on an official acceptance at a scheduled meeting of the Planning Board, as well as referencing the applicable Massachusetts General Laws. After some discussion the following wording was agreed upon:

"Special Permits shall be issued in accordance with Massachusetts General Laws Chapter 40A Section 9. A special permit application shall be considered filed as of the date the application is received by the office of the Town Clerk, either delivered in person or by certified return receipt mail. A special permit application, along with a record of the date of filing with the office of the Town Clerk, shall be delivered to the Planning Board. If substantial use or construction has not commenced without good cause within a period of one (1) year from the date of the granting of a special permit, the special permit shall lapse. This time limit includes time required to pursue or await the determination of an appeal."

Counsel Notes in E-Mail 2-7-2022:

I would add to your new language, as soon as practicable after "delivered to the Planning Board." You want to make sure that the Clerk understands that there is a timeline here and the PB needs the application as soon as possible to start their process.

Last sentence: "includes" needs to be changed to "excludes". I have been recommending this change for years. M.G.L. c. 40A, excludes appeal time from the SP lapse.

My only concern here is requiring that the application is send by certified return receipt mail. I do not believe that the AG's office would approve this additional requirement for filing an application.

As discussed on 2-8-2021:

The Planning Board agreed to incorporate Counsel's suggestions, resulting in the following:

> *"Special Permits shall be issued in accordance with Massachusetts General Laws Chapter 40A Section 9. A special permit application shall be considered filed as of the date the application is received by the office of the Town Clerk, either delivered in person or by mail. A special permit application, along with a record of the date of filing with the office of the Town Clerk, shall be delivered to the Planning Board as soon as practicable. If substantial use or construction has not commenced without good cause within a period of one (1) year from the date of the granting of a special permit, the special permit shall lapse. This time limit excludes time required to pursue or await the determination of an appeal."*

Section 20: Relating to public hearing notices

As currently written:

> *"The Planning Board and the Board of Appeals shall mail notice of their public hearings to all property owners in the Town."*

As discussed on 7-13-2021:

Mr. McLatchy III suggested changing the current wording:

> *"The Planning Board and the Board of Appeals shall mail notice of their public hearings to all property owners in the Town."*

To the following:

> "*The Planning Board and the Board of Appeals shall mail notice of their public hearing*s in accordance with state law."

Mr. McLatchy III suggested this would place the onus on State Law, which he believes requires notice be sent to property abutters and surrounding towns' planning boards.

As discussed on 8-17-2021:

The planning board determined aligning the notification requirements of public hearing with the applicable Massachusetts General Laws would simplify the process. After some discussion the following wording was agreed upon:

> *"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."*

Counsel Notes in E-Mail 2-7-2022:

> *Yes, finally. This provisions costs the Town a lot of money and can easily not be followed if one address in town does not get the notice. I further agree that it should be in accordance with M.G.L. c. 40A, section 11.*

As discussed on 2-8-2021:

The Planning Board agreed to proceed with the changes as discussed on 7-13-2021.

Adjourn:

A motion was made by Charles Sokol and seconded by Ben Werner to adjourn the Planning Board meeting at 6:46 P.M.

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

Respectfully Submitted,
Charles Sokol, Secretary

Approved: 4 / 13 / 22

Chair Paul McLatchy III

Vice-Chair Ben Werner

Daniel Burke

Jessica Albrecht

Charles Sokol

Attachments:

- *Agenda*
- *E-mail from Counsel MacNicol dated Monday, February 7, 2022 3:22 PM*