

SEEKONK PLANNING BOARD
Regular Meeting
September 13, 2016

Present: Ch. Abelson, S. Foulkes, L. Dunn, and J. Roach

Absent: R. Bennett (with cause), D. Sullivan (with cause), and M. Bourque (with cause)

Ch. Abelson opened the meeting at 7:05 p.m. and introduced the Planning Board Members

Site Plan Approval: 32 Industrial Court (Consolidated Trucking)

AP 1, lot 158 located in the Industrial Zoning District

The applicant was not present for second meeting.

J. Aubin recommended moving this site plan application to the October 11, 2016 meeting. In the meantime, he will forward a letter to the applicant advising if no response is received, the PB may be forced to deny the application.

PB members were all in favor.

Site Plan Approval: 1075 Newman Avenue (Zouhir Sendian)

AP 27, lots 32 & 239 located in the Local Business District

J. Aubin updated the PB that this applicant went before the BOS to request a license for automobile sales. The applicant recently reopened an auto service station at this current location. This is considered a preexisting nonconforming use. Staff review has been completed. The applicant, Mr. Sendian went before the Conservation Commission last night. The Conservation Agent has confirmed as long as the use is within the existing limits of disturbance on the site, the conservation commission was not going to require anything further. Correspondence was received from the BOH with regard to the waste water treatment system. Mr. Sendian met with BOH today to discuss further. The applicant has identified where the proposed parking will be. North and South side will be proposed for automobile display for sales. The area in the rear will be for parking for vehicles for repair. Parking spaces adjacent to the building will be used for gasoline sales and small commercial sales. There are 29 spaces identified on the site plan.

S. Foulkes asked for clarification for the oil water separator and conservation requirements for a berm.

Mr. Sendian said the Conservation Agent was on site this morning and confirmed there is an existing berm.

J. Aubin also advised a fence is not required since that may impede wildlife.

Mr. Sendian said there are trees also separating the lot from the wetlands.

L. Dunn inquired about shade trees requirements.

J. Aubin said it is not required since it is a preexisting lot and they are not adding any impervious surface.

(The plans were shown and discussed).

L. Dunn asked if Mr. Sendian will be on-site during business hours.

Mr. Sendian said he is there every day.

Ch. Abelson asked if the cars they will be purchasing will be from auction and if the cars will be worked on at the location.

Mr. Sendian said yes but no body work done.

J. Aubin asked if there will be any repair work done at the location.

Mr. Sendian said there will be nothing done out of the ordinary, similar to regular customer cars. They will check to make sure they are road ready before they are sold and ready for inspection.

Ch. Abelson asked the direction water flows.

Mr. Sendian said it goes into the street.

S. Foulkes asked who will be responsible for striping the lot.

Mr. Sendian said the lot allows for 29 cars and it is his understanding that the Selectmen will decide how many parking spots will be allowed. He will go before the BOS at their next meeting after the plan has been approved by the PB.

Ch. Abelson asked how many cars he thinks they will need for sale.

Mr. Sendian said no more than 20.

J. Roach asked if they will be running a retail shop as well.

Mr. Sendian said only a small shop.

J. Aubin advised the BOH has to review the oil/water separator. Mr. Aubin's recommendation is to add the following stipulations to any decision; 1) resolution of any issues raised by the BOH; 2) no body work to occur on site; 3) the lot is to be striped once the final number of vehicles have been approved.

Ch. Abelson asked for the type of work that will be done on the cars.

Mr. Sendian said light repairs such as brakes, tires, tune-ups. It is a small 2 bay car garage.

Ch. Abelson recommends that there are no more than 16-20 vehicles for sale.

L. Dunn made a motion to approve the site plan with BOH approval with the following stipulations; 1) no more than 16-20 cars for sale; 2) no auto body work to be done on site, 3) the lot is to be striped once the final number of vehicles to be offered for sale is determined; and 4) resolution of the issued raised by the BOH regarding the oil/water separator.

J. Roach seconded and it was unanimously approved.

VOTE: 4-0

FORM A: ANR - 1977 Fall River Avenue (Scannell Properties)

AP 1, lots 32 & 239 located in the Industrial Zoning District

J. Aubin summarized the merging of the 2 existing lots.

Bruce Hagerman an engineer from Crossman Engineering was present on behalf of the applicant. Their intent is to merge lots 32 and 239 into a single parcel. This was also a stipulation for the site plan approval for 1977 Fall River Avenue.

S. Foulkes made a motion to endorse the ANR located at 1977 Fall River Avenue lots 32 and 239 located in the Industrial Zoning District, J. Roach seconded and it was unanimously approved.

VOTE: 4-0

Discussion: Correspondence from Sagar Services, Inc.

(It was approved by all parties to move this discussion toward the end of the meeting).

Gary Sagar was present to discuss and summarize his outstanding concerns regarding AP 35, lot 22 located in a Solar Photovoltaic Zoning District. For the record he stated he is a strong advocate for the solar photovoltaic district but has concerns with this site plan approval. Mr. Sagar disclosed he owns the abutting piece of land and provided documentation as such. On his abutting piece of land he has an approval for a preliminary subdivision, which included an aerial survey for the topography, and an instrument survey on the ground. All the points have been verified and the deeds have been certified by both a title attorney and an engineer from Caputo and Wick. According to the Seekonk Tax Assessor's office, lot 22 is assessed to Patricia Lowey. Patricia Lowey is an heir to the Ana Daggett title. Mr. Sagar contacted Ms. Lowey in January 2003, correspondence was exchanged, and on several occasions he spoke with her 2 of her sons. They have offered the land for sale but based on the research he has conducted, even though they may own the title to the land, they do not own the locus. This issue should be resolved before

any development can take place on lot 22. Mr. Sagar provided additional documentation to the PB. While he is aware the PB relied on the public record, some of that information is incorrect.

J. Aubin clarified that title searches are not completed on every application unless they are aware of a known title issue. In this instance, according to the tax assessor's record and support by the Land Court decision, Patricia Lowey is the record owner.

G. Sagar summarized his concerns regarding the description of land recorded on the deed at the Bristol County Registry of Deeds (page 361, p. 39). He noted pertinent issues are underlined in red (they reviewed the documents).

J. Aubin said that was the description in 1873, or at least, where people thought it was in 1873.

G. Sagar explained the title went to Land Court to settle a family feud between the heirs of Ana Daggett (Patricia Lowey) and Sidney Daggett. On June 12, 2012, the Land Court issued a Plaintiff's motion for a default judgment. The process of advertising for the heirs of Sidney Daggett was placed in multiple publications. When there was no response to the advertisements, Patricia Lowey was able to ask the court to issue a default. On the second page it states, "Order and adjudged that the plaintiff holds title to the Locus." Mr. Sagar does not dispute that they hold the title, however, there are 2 key components when you are talking about land; 1) title which is certified by an attorney; and 2) the locus which is certified by a registered land surveyor. It goes on to say commonly described as Woodland rear. If in fact Land Court felt strongly it was definitively described... typically when someone goes to Land Court, supporting documentation and a plan are supplied... in this situation a plan was never attached. If it had been, Land Court would have certified it then sent it to the Registry of Deeds as registered land and not recorded land. That has never occurred. A land surveyor needs to verify that the title fits this locus. Mr. Sagar supplied the board with a letter dated February 26, 2004 from his title attorney at the time, Thomas Planchett, who searched the title to his parcel. The Sidney Daggett piece comes out partially with his land also. (He referenced the highlighted section of the documents provided). He does not see an apparent title to the recorded owners. The title attorney said that was not where that deed belongs. The Lowey's made request to the assessor's office in 2014. The assessor's office researched the Menard plat and found the Daggett's had potential interest. They raised the issue that this is where this deed may fit and said the next step is to do a full title search which has never been done. Mr. Sagar also provided a larger plan that was prepared by Otis Dyer, a Land Surveyor, which states AP 35, lot 22 does not go to the heirs of Ana Daggett, but to Sidney Daggett. Mr. Otis referenced the field stone bound, stake and stones. According to the documentation provided and the opinion of 2 land surveyors, Mr. Dyer and Caputo & Wick, he strongly feels lot 22 belongs to the heirs to Sidney Daggett and the recording in the assessor's office is incorrect.

S. Foulkes asked who the rightful owner is if it's the heirs of...

G. Sagar said someone would have to find them. Mr. Sagar then provided and reviewed the plans of his approved preliminary subdivision plan with the board.

Ch. Abelson asked if Gary came across any legal description of the property while he was investigating the plans that were submitted to the board.

Mr. Sagar explained the plan the board approved references the recorded land court decision and it does refer back to 361, 39. He said he will meet with anyone at the property. He also realizes the railroad line has been there longer than the deed.

J. Aubin said the description is very broad in the 1873 deed. Mr. Aubin recognizes that it appears to be an issue with regard to the ownership of the property. He asked if Mr. Sagar was in agreement that it was reasonable that the PB accepted the owner of record when reviewing the application.

G. Sagar said he was in an agreement that it was reasonable based on the information the PB had in front of them. The board now has documentation from 2 licensed registered land surveyors and 2 title attorneys. Had he have known that this application was on the agenda he would have been at the meeting.

J. Aubin added under Section 1.3 in the Zoning By-laws, lot is defined as a parcel of land defined by metes, bounds, or boundary lines in a recorded deed *or* shown on a recorded plan or plat.

G. Sagar also said the decision of Land Court certifies that the land is land locked. He said because it was a default decision since the defendant(s) did not respond. Mr. Sagar suggested before someone goes before the PB, or any regulatory board, they should clearly demonstrate they own the land that is going to be developed. He agrees the PB acted with what they had in front of them last month but the new information presented supersedes that. He is requesting that the owners do what needs to be done and hire a registered land surveyor.

Mr. Sagar addressed his second concern regarding the landscaping requirements within the industrial district and responded to Mr. Aubin's memorandum dated September 13, 2016. Mr. Sagar attended the Conservation meeting on September 12, 2016 and stated he is satisfied with their plan.

Mr. Sagar's 3rd concern was also resolved due to it being a typographical error.

Mr. Sagar's 4th concern was in regard to the ZBA. In reading the By-laws as written, there is no special permit process to the ZBA, it's by-right.

J. Aubin explained the By-laws as adopted originally in 2010, and when the By-laws were reorganized in 2014, the language in the 3rd section of the Overlay District referred to the definition of as built by-right permitting. When the Attorney General authorized that reorganization and the town moved forward with the By-law from that point, that section was no longer in there. Mr. Aubin's analysis was not done on the By-law that was originally written, which he would agree did speak to by-right construction and by-right application of this use, however, that is no longer in today's By-law provisions. He thinks at this point, there needs to be a discussion as to bringing the Overlay District By-law into conformance with what it was

originally intended to, as well as bringing it into conformance with 40A, Section 3, Paragraph 10 which speaks to no unreasonable regulation of solar photovoltaic facilities. By doing the legislation research of the adoption of the Overlay District, his opinion is that when the By-laws were reorganized in 2014 that provision was left out.

L. Dunn asked for verification as to whether the by-right language is not in the By-law.

J. Aubin verified that there is no reference in the 2016 By-laws that in the Overlay District for solar photovoltaic facilities granting the planning board the authority to grant special permits. I think it is questionable whether or not this use is intended under the MGL as of right use. I have seen conflicting notes on this. This should be discussed going forward as to the status of this By-law. How this impacts this application and this request right now other than the fact that it is not there, and I think the way the By-law is presented and the way it is adopted today in 2016, it would require a special permit for these SPF's.

G. Sagar said he is of the opinion that the way the By-law is written as it is applicable today, they do not need a special permit in a solar photovoltaic...

J. Aubin said the land use table in the Seekonk By-laws does require a special permit for private utilities. Mr. Aubin said his understanding of Section 6.8 is that it provides for alternative site plan review process with alternative performance standards. It applies the dimensional standards of Section 5 specifically but it doesn't speak to special permits, or the use being allowed use as of right. Section 4 provides for special permits for private utilities in the Industrial District. He does not see how it is written in Section 6.8 in the By-law today, would exempt someone from Section 4. Also, where the definition of a special permit granting authority in the definitions of the By-law says that it will normally be the ZBA unless specifically stated. Which would require a specific statement that says for solar photovoltaic facilities the Planning Board shall be the special permit granting authority or if it is intended to be a use as of right within the solar photovoltaic overlay district, SPF shall be a permitted use.

Ch. Abelson said it his understanding is that if it doesn't say who it is, it is the ZBA.

J. Aubin said it is a broad statement to say there is nothing the PB can make. He thinks the status of Section 6.8, with regard to whether these uses are intended to be allowed by-right or a special permit uses, is an open question. However, this does not help Mr. Sagar with resolution.

G. Sagar said in the By-law under Section 6 has 8 Special Overlay Districts; 4 require special permits, and 4 do not. His other issue he has is a zoning issue with regard to frontage. According to the dimensional table on page 34 of the ZBL, you need 50' frontage minimum in the industrial district, and a minimum depth in the front yard has to be 50' minimum. Mr. Sagar thinks the applicant for this, as with the adjoining parcel, go before site plan approval and that there is no need for them to get a special permit from zoning.

J. Aubin said he disagrees with that since he does not see anything in Section 6.8 that would exempt them from getting a special permit under Section 4.

(Discussion took place regarding interpretation and the process).

G. Sagar thinks, at a minimum, a surveyor should certify the title.

J. Aubin suggest a list of questions that should be passed along to town counsel to review all the documentation to date. He recommends the PB not make a recommendation or a decision tonight until we have some of the questions answered. Mr. Sagar supplied additional information and more research has been done. Verification of the following issues/questions are needed; 1) is it proper for the PB to rely on the application that it is the owner of record, given the questions of ownership; 2) is it proper for the PB to issue site plan approval that don't have lot frontage; 3) is that proper grounds for rescission; and 4) who is the appeal authority?

G. Sagar requested the board vote to entertain to reconsider the decision and table this discussion until the next meeting.

J. Aubin said there are questions that should be answered before a rescission should be considered.

(Discussion took place regarding reconsideration, rescission, ZBL, and Robert Rules of Order).

Mr. Sagar asked that the appeal he asked for be tabled for 2 weeks. He asked the board to seek a zoning determination from the zoning enforcement officer.

Andy Steinke a representative from TJA Solar was present and said he had been working on the project with John Hanse for about 4 years. He summarized to the board that Otis Dyer was involved in the drawing supplied by Mr. Sagar and Mr. Fisk bought the property. As far as Ms. Lowey, he has been in contact with her and believes she is the rightful descendent of the Daggett family. In speaking with Otis Dyer, he was aware that this property was to be included in the northern portion of the project. It is his understanding that the 2014 land court judge cleared the property for Ms. Lowey.

G. Sagar provided the chairman with 40A (9b solar access) documentation. He also said he spoke with Otis Dyer and he believes that parcel belongs to the heirs of Sidney Daggett. Which confirms with what Mr. Caputo found.

(The process of the site plan approval was discussed).

J. Roach made a motion to table this discussion for 2 weeks until September 27, 2016 meeting S. Foulkes seconded and it was unanimously approved.

VOTE: 4-0

Discussion: Reduction of Surety Orchard Estates (Steve Najas)

J. Aubin provided a packet to the board that included the partial surety reduction application, triparty agreement, copy of correspondence from GPI indicating their approval of the construction cost estimate and the proposed construction cost estimate that identifies \$80,328 as the remainder of the public improvement costs for the site. The TRC reviewed this information as well and there were no outstanding issues noted.

S. Foulkes asked for a breakdown of what is left to be down.

Mr. Najas said the final coat, final prep, landscaping, clean detention basins, sidewalks, monuments, and the final as built.

J. Roach made a motion to reduce the surety for Orchard Estates to \$80,328, L Dunn seconded and it was unanimously approved.

VOTE: 4-0

Correspondence: Update for Caleb Estates/Logan Court

Mr. O'Loughlin, 1 Logan Court, updated board that a possible resolution for the ponding issue has been reached. He asked the board if anyone certifies the grading of the property because he still has an issue with the air conditioning unit pad being placed on a slope.

J. Aubin answered the grading for public improvements (i.e. swale) are inspected by the Planning Board engineer, however, installation of air conditioning pad does not qualify as a public improvement. He referred him to the building department with respect to the mechanical installation of the pad since that may be the developer's responsibility.

P. Carlson from InSite Engineering advised the abutters have seen the new set a plans and a potential solution has been provided until the road is complete. The front swale is scheduled for the end of September. There are other issues that have to be addressed between Mr. DeCastro and the property owners. The roof drain will be will be installed on the ANR lot.

J. Aubin advised Mr. Carlson that the bond is still needed.

P. Carlson said that it is currently being worked on.

J. Roach requested an update next month.

Discussion: Fall 2016 Zoning By-law Amendments

This be discussed at the next meeting.

Discussion: Monthly Report

J. Aubin provided update on each of the following:

Curt Street Ext.: Preconstruction site visit conducted, covenant signed and recorded;
Brady Estates: Public hearing scheduled for September 27, 2016;
Caleb Estates: update provided earlier;
1977 Fall River Avenue: update provided earlier;
32 Industrial Court: update provided earlier;
50 Woodland: updated provided earlier;
1075 Newman Avenue: updated provided earlier;
Attleboro Dye Works: EPA is doing some remediation work to remove some existing hazardous waste.
Enforcement matters: Jacob Hill Estates, Enterprise-Rent-A-Car, 550 Central Avenue (auto sales).

SRPEDD Update

J. Roach advised there was no meeting last month but he is aware that over 500 letters were sent to the Federal Government noting their opposition of the redistricting of the urban areas (as previously discussed at the August PB meeting).

Approval of Minutes:

S. Foulkes made a motion to approve the August 9th minutes with corrections, J. Roach seconded and it was unanimously approved. L. Dunn abstained since she was not present at the meeting.

Adjournment

J. Roach made a motion to adjourn the meeting, L. Dunn seconded and it was unanimously approved.

The meeting was adjourned at 8:47 p.m.

Respectfully Submitted by,
Kristen L'Heureux