

## SEEKONK ZONING BOARD REGULAR MEETING

### MINUTES February 27, 2012

Present: Ch. Edward F. Grouke, Gary Sagar, Robert Read, R. Blum (7:08)

Absent: Keith Rondeau with cause

7:08 Chairman Edward F. Grouke called the meeting to order.

This is the meeting of the Town of Seekonk Zoning Board of Appeals, February 27, 2012. First I am going to read the Rules and Regulations. I am going to read each petition as it was advertised and call upon the petitioner or their representative to present their case. All testimony, including the testimony and statements of the petitioner and/or the representatives or witnesses will be taken under oath. The Board will ask questions of the petitioner and witnesses. Any questions from the podium will go through the Chair. We will hear from anyone in the audience to speak either in favor of or against the petition or with any questions. At the close of the evidence, we have a discussion and then take a vote. We also usually make a decision on the same night, although we are not required to do that. There are times that we may postpone a petition for another meeting either for a site visit or to gather some information. Once we have closed the public hearing and taken our vote, it is then reduced to writing and filed with the Town Clerk within 14 days of the date the vote is taken. Any person who feels that he is negatively affected by our decision, as long as he has the proper legal standing, has the right to appeal to the courts and anyone considering taking such an appeal has to comply with a very strict time limitations that are applicable to a court appeal.

Ch. Grouke We have four members tonight, you will need a unanimous vote of this board to get relief.

**2012-02 Costa Development, LLC**, 65 Emily Way, Seekonk, MA, owner and petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and if necessary, an amendment to an existing **Special Permit** (case number 2010-06) under Sections 5.2.1 and 5.3 to amend the setbacks of a newly constructed dwelling at 599 Fall River Avenue, Plat 9, Lot 284 in an R-3 Zone containing 47,452 square feet.

Donald MacManus Attorney representing Costa Development sworn in. Our case is laid out in exhibit a we are asking for an amendment to the Special Permit granted in 2010 to approve the setbacks as the house was actually built. The original special permit was to allow the replacement of the prior nonconforming house built prior to 1900,

approximately 50 years before zoning was in town. the original proposal was to build a house parallel to the southerly boundary line of the property and that way it would have been no closer to any of the sidelines than the prior house. Unfortunately, during construction there was a mistake made and instead of making the house parallel to the southerly boundary it was made parallel to the septic system which also makes it parallel to Fall River Avenue. How that happened is not clear but three corners of the house, because the house is skewed, are now re aligned and slightly closer to three of the property lines of the property. So the existing structure when you compare it to the original proposal that came before the Board, the northerly corner of the house is 1.7 feet, about 20", too close to the northerly line and southerly line is 22.8" and the easterly corner is 1.2" too close to line when compared to what the original proposal was. The mistake wasn't discovered even when the foundation was put in, the builder didn't discover it, the engineer didn't discover it and the Building Inspector didn't discover it so the foundation was approved and the house was constructed. The house is exactly the same size as the Board approved. If you look at it in a geometrical understanding, if you have it skewed, for every inch one of those corners is too close to the sidelines the other corner of the house is farther away from the sidelines. The standard for special permit is not a requirement for approval a hardship but the standard is that the new structure is not to be substantially more detrimental to the neighborhood than the original structure. The neighborhood we are in right now is bordered by Dunkin Donuts, the Ten Mile River and three other houses which are even more nonconforming than this house, which were originally part of all the same construction prior to 1900. The mistake was a good faith mistake, there was no advantage to Mr. Costa building the house at this angle. It was not more substantially detrimental to neighborhood because it is exactly the same size as what was approved and if you look at the plot plan, it is extremely close to the original footprint of house. A Special Permit you do not need to show a hardship but the hardship is obvious for Mr. Costa because the house is completed and ready to sell except for the fact that he cannot get a certificate of occupancy because it is not in conformance with the original decision. I have a foundation as built because I noticed the plan we gave you does not have the northerly setback on it. (Mr. MacManus provided a copy of the as-built for the record).

G Sagar

We have two choices, either grant the Special Permit or order you to raze the structure. Just to the point of information, in years passed in similar circumstances when mistakes have been made there has been no sympathy from this board from prior Boards and they have mandated demolition or alternatives but in this case, the existing lot predates zoning, it has no frontage, really it is not what was submitted but really in the grand scheme of things there is no harm no foul here. I think it is important that we differentiate why we would do this in this particular instance when it wasn't done in the past. We can make a good argument to support the petitioner.

Ch Groucke Certainly since clearly there was no attempt to gain advantage like Mr. MacManus said, no reason other than this was a mistake.

R Read Where is the septic?

Atty. MacManus In front of the house to the side closest to Fall River Avenue.

Ch. Groucke Is there anyone here in favor of the petition? None. Is there anyone in opposition to the petition? None. Is there anyone with any questions? None.

G Sagar made a motion to close the public hearing, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, R. Blum, and R. Read

**VOTE: (Approve 4-0)**

G Sagar made a motion to uphold the decision of the Building Inspector, seconded by R Read, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, R. Blum, and R. Read

**VOTE: (Approve 4-0)**

G Sagar made a motion to approve the petition as submitted but the Board should issue it as a new number rather than an amendment it and it should supersede the old Decision, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, R. Blum, and R. Read

**VOTE: (Approve 4-0)**

**2012-03 Doris L. Abraham**, 29 Westbrook Drive, Seekonk, MA, Owner and Petitioner, requesting a **Variance** under Sections 6.3 and 6.4 of the Zoning Bylaws to allow less than the required minimum lot area, rear lot width and frontage at 0 Wheaton Avenue, Plat 4, Lot 113 in an R-1 Zone containing 9,639 ± square feet.

Russell Weddell Attorney for Mrs. Abraham, 63 Winthrop St. Taunton, MA sworn in. This is an application for a dimensional variance from the Zoning Bylaws specifically sections 6.3 and 6.4 for minimum lot area, rear lot width and frontage. The lot in question is 0 Wheaton Avenue otherwise known as lot #43 as shown on Maplewood Terrace Section Two” that was approved by the Seekonk Planning Board on May 25, 1955. Most of the members of this Board are familiar with this

lot; it being the subject of a hearing back in October of 2011. Out of courtesy for the member who was not here for that hearing, Doris Abraham and her late husband acquired lot 36 as shown on that plan and has lived in a house on that lot since August 1955. On September 26, 1974 the Abrahams acquired lot 43 which abuts lot 36 along the rear of the property. It was their intention to maintain lot 43 as a separate lot for future use by their daughter if she chose to build on it or if she didn't they would sell it as a separate lot. In 1982 the Abrahams requested a determination from the town regarding the status of that lot. In a letter dated July 12, 1982, Mr. Motta who was then the Seekonk Building Inspector, stated the lot, and I quote "has grandfather rights and a building permit can be issued at any time and if sold, the new owner may also build." That letter was also produced in court (inaudible). Since purchasing that lot, the Abrahams have always maintained that lot as a separate lot and it has been taxed as a separate buildable lot by the Town. When this matter came before your Board in October, after hearing the Board issued a decision on November 7, 2011 that because the lots has always maintained separate identities, they were taxed separately and lot 43 has been taxed as a "potentially developable lot", this lot was entitled to separate lot exemption. Subsequent to that decision by this Board, the town through its BOS decided to appeal this board's decision and that appeal is currently pending in Land Court in Boston. After discussing this matter with Town Counsel several times, we agreed that the appeal would be stayed in order to allow Mrs. Abraham to submit an application to the ZBA for a dimensional variance with the idea that if you granted the dimensional variance it would effectively render the pending lawsuit mute, then dismiss the appeal, save the town a lot of money that they would incur if they pursued the appeal and save Mrs. Abraham a lot of money. So we are seeking with this application a dimension variance for lot 43 for the total area, lot width at rear and lot width at the front. Because the dimensions of the lot which were, at the time it was created fully in accordance with zoning bylaws, the dimensions certainly was not the fault of Mrs. Abraham that substantial hardship to Mrs. Abraham would result if the variance is not granted and third there is detriment to the public good or substantial derogation from the intent and purposes of the zoning bylaws if you grant the dimensional variance in fact (inaudible).

Ch Groucke Do you have any comment on what setbacks would apply to this?

R. Weddell We are not seeking any variance to current setbacks.

Ch Groucke Is there anyone here in favor of the petition? No response. Is there anyone in opposition to the petition? No response. Is there anyone with any questions or comments? No response.

Ch Groucke Well I think that it is a situation that obviously there is a history behind this, but there is ample basis with the unique circumstance of this case, ample proof of

hardship. The fact, as we found in the last hearing, that the acquisition of the lots at two different times, one of which was after the change of zoning; the fact that they obtained a letter from the then building inspector in 1982, which would have given anybody the idea that this was a buildable lot at that time and at any time because that is what the letter said; those are two pretty unique circumstances that apply to this case that if we were to grant a variance it would not result in opening the floodgates so to speak so that we would be required to grant other variances for other undersized lots.

R. Read We could add the fact that it taxed at full buildable value all these years.

Ch. Grouke That is definitely another indication of hardship. It does have the history, it is up at Land Court right now and it is here and we want to make full and fair decision on this but by the same token we cannot ignore what the history is behind this. But, like I said before I think there is ample grounds for a Variance based on the facts.

Matthew Costa Attorney representing the ZBA. The standard for variance also includes circumstances related to unique shape and topography as a legal matter, I would recognize that lot 106 and 113 if they were deemed a lot, there is some aspect that they are a unique shape if you want to include that.

Ch. Grouke Just for the record, Matthew J Costa, Gay & Gay, I am Special Counsel for the litigation referenced by petitioner's Attorney.

Ch Grouke If I understand correctly, if the two lots together, the shape of them would be, because of the way the line up or don't line up...

Matt Costa I just want the Board to keep in mind that the unique shape and topography should be considered.

G Sagar made a motion to close the public hearing, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, R. Blum, and R. Read

**VOTE: (Approve 4-0)**

G Sagar Mr. Chairman, on record I was hoping we would have five members here tonight so I would not have to vote for this and only vote "present" because this is more about politics than it is about zoning. I think it is a travesty that we have to sit

here and Mrs. Abraham who is a good citizen and playing by the rules has had to endure what she has had to endure. Part of variance also is financial; the reason why I would like to vote for this is to save her the financial cost of moving forward with this appeal. I am adamant that we made exactly the right decision when we met, but unfortunately this is a matter of economics not zoning or principles. For financial reasons I will support the Variance and I think it is a travesty that this whole thing had to develop the way it did.

Ch Groucke I have to agree with you and the same things I cited as far as hardships were the reasons I feel Mrs. Abraham was entitled to a Special Permit, but what was troubling to us was the way it was appealed and the fact that it was appealed by the BOS and in particular without any communication with our Board. We were never notified except in an offhanded manner that the BOS was taking that action. And then it was discovered that the Board did not have the proper standing and then the Planning Board was asked to come in, which did have proper standing. Then we went through this thing with us getting legal representation, which I feel in the long run was a good thing because in a lot of ways it resulted in this matter being resolved in the right way. Even that was a hotly contested matter in front of the BOS and we could have easily been without legal representation which in my opinion would have been wrong also. I also have to say that the fact that the towns' law firm took this appeal and represented the BOS against us is something that is troubling too because that is the law firm that represents this Board and at the same time they are representing the BOS against us while in other cases they are representing us. That does not pass the proverbial smell test. There are so many things upsetting and troubling about this whole situation. Fortunately and unfortunately both, it has come back here and we have the chance to solve this problem without the need of going forward, spending thousands more on legal fees even though thousands have already been spent. I would hope that in the future if something like this happened again that the boards could work together and have a meeting where we could all find out what the issues are in an appropriate setting and get to the problem and try to resolve it quickly rather than going through all these legal proceedings.

G Sagar Out of fairness to you Mr. Chairman, you have been here 17 years, and for you not even to have received the courtesy of a phone call, a letter, or an email. The official notification to this Board came by a by-chance meeting in the hallway between one of our members and the Chairman of the Board of Selectmen that is just unconscionable. The unprofessionalism and the interference with this is just repugnant.

Ch. Groucke Not just me, there should have been communication with all of us in more of a formal way too.

G Sagar made a motion to grant the Variance, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, R. Blum, and R. Read

**VOTE: (Approve 4-0)**

G. Sagar Mr. Chairman, with the closing of this dark chapter, once the appeal is done and everything is filed,

G Sagar made a motion that once the appeals are done the Board demands a copy of all the executive session material procured on behalf of this by both the BOS and Planning Board for review, seconded by R Read, **and so voted by:** Ch. Edward F. Grouke, Gary Sagar, and R. Read

R. Blum voted “present”

**VOTE: (Approve 3-0)**

**Work Session:**

G Sagar didn't we advocate additional resources to hire a part time Zoning Enforcement Officer, do you remember if that was solely for the enforcement of signs?

R. Blum I think it was for additional resources for all zoning issues.

G. Sagar The job description was written especially for signs?

M. McNeil (inaudible)

G. Sagar I just want to go on record that we did not advocate for a sign police it was for everything.

The Board discussed that the next meeting will be March 26, 2012 at 7:00 PM.

There will be no Executive Session because the Tavares case is done.

### **Approval of minutes**

G Sagar made a motion to approve the minutes from 01-23-12, seconded by R Blum, **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, R. Blum, and R. Read

**VOTE: (Approve 4-0)**

### **Adjournment**

G Sagar made a motion to adjourn the meeting, Seconded by R. Blum and so voted unanimously by: **Ch. Edward F. Grouke, Gary Sagar, R. Blum, and R. Read**

**VOTE: (Approve 4-0)**

Meeting adjourned at 7:50 PM

Respectfully submitted by:

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Christina Testa, Secretary