

SEEKONK ZONING BOARD REGULAR MEETING

MINUTES October 15, 2012

Present: Ch. Edward F. Grouke, Robert Read, Keith Rondeau, Jeffrey Creamer, Gary Sagar (for Ron Blum)

7:00 Chairman Edward F. Grouke called the meeting to order.

Ch. Grouke This is the meeting of the Town of Seekonk Zoning Board of Appeals, October 15, 2012. I am going to go over our 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 of the Commonwealth of Massachusetts; and anyone considering taking such an appeal has to comply with very strict time limitations that are applicable to a court appeal. The time limits are very strict.

2012-16 Marita V. LaRotonda, 46 Juniper Road, Seekonk, MA, 02771 Owner, by Martin V. LaRotonda (Trustee), 46 Juniper Road, Seekonk, MA 02771, Petitioner, Appealing the Decision of the Zoning Enforcement Officer, and requesting a **Variance** under Section 6.3 to allow the construction of a garage and breeze way on an existing foundation of a single family dwelling on a lot with less than the required lot area at 46 Juniper Road, Plat 6, Lot 89 in a R-1 Zone containing 11,373 sq ft. (continued from August 27, 2012)

Martin LaRotonda 46 Juniper Road, Sworn in. (Mr. LaRotonda provided a certified plot plan to the Board)

Ch. Grouke Mr. LaRotonda, you had this done by InSite Engineering. It looks like it was done October 12 showing the existing foundation and the closest it comes to the

side yard setback 10.1 feet. You are seeking a variance asking us for the minimum lot area to put a garage on that. This is an R-1 Zone and 15' required.

G Sagar He needs two variances, the legal ad called for a variance because of the lot area which is less than 14,400 but he also needs a dimensional variance for the side yard setback; so two would be necessary.

Ch. Grouke Is there anyone here to speak in favor of the petition? None. Is there anyone here to speak in opposition to the petition? None. I think you had some people here last meeting speaking in favor of you at the previous hearing.

G Sagar The difficulty I see with this petition is this foundation has been there for quite a few years, and the whole discussion with the Board is; what is its location in relationship to the property lines? The requested relief is for a variance based on an undersized lot. In essence, he needs a second variance, one for the lots size as advertised and the second is for the dimensional. I am concerned procedurally, because the second one for the setback has not been advertised legally so I don't know if we can act on that.

Ch Grouke Our original concern is that Mr. LaRotonda had submitted detailed plans he had done but the measurements were not certified by an engineer and we were not sure what he was looking for in relation to the side yard variance and he has answered the major concern and now we know he is looking for a variance. The action requested is to look for a Variance prior to a Building Permit, it is a little bit vague but we could interpret it to encompass any variance he might need.

G Sagar My concern would be that he does not have the proper relief; it could create a title issue if he went to sell or refinance. If the variance was given for one but not for the other, it could create a problem for it.

Ch. Grouke Are you concerned about the way it was advertised?

G. Sagar Yes, it says for construction of a garage and breezeway on an existing foundation.

Ch. Grouke The existing foundation is within the side line.

J Creamer Is there any leeway because it is a preexisting and existing foundation in this case?

G. Sagar The variance is specific for 6.3 which is a minimum lot area. He would need a dimensional under 6.8.

G Sagar Personally I am willing to vote for both of them, but I think you can only give him one. He's going to have to reapply for the second one or we could continue it and then advertise it and do abutter notification because everybody who lives within

300 feet of there is entitled to know exactly what is going on; it's an undersized lot as the whole neighborhood is, but the foundation that was put in quite a few years ago doesn't meet our zoning bylaws. I think he may even come to a problem when he goes to (inaudible) in it because he doesn't have the proper setback or the proper (inaudible).

M LaRotonda I would just like to point out that at the last meeting I had a petition to grant a variance from the Zoning Board of Appeals listing 35 people who live all around me who wanted this garage done. If I may, I wanted to give you this anyway.

Ch. Grouke I would be inclined to allow the amendment right now and grant the variances later that he needs.

R Read The difference from a normal application is that the foundation is already there. Does that lend some weight? But I understand Gary's point.

G Sagar I can anticipate a potential problem when you go to pull a building permit. The Building Inspector would not issue a permit because you do not have the proper setbacks and it wasn't properly advertised. It is a procedural issue, we could approve with all good intentions; but it could come back to hurt him. You would have to come back here.

K Rondeau I concur with Gary. He needs to be certain this is iron clad for the sake of another month; if he is able to amend his petition to include the other variance and then in the meantime we also publicize and re-advertise and maybe waive the application fee. All he has to do is pay for the publication of the advertisement, and then he should be able to legally have both variances.

G Sagar In essence, now you have this plan which has been missing for all this time, you need to meet with the Building Inspector and say "here it is" and she looks at it and she might say you need another variance; if she says "no, you don't", then we are good. I think in fairness to her, she has to make an amended zoning determination based on this plan that was only done last week. The Zoning Enforcement Officer looks at the bylaw book; if it doesn't fit, then she has to deny you. Then you come to us. A lot of people think, we are the Zoning Board—well, we are really the Zoning Board of Appeals. We don't get involved until there is an appeal of the denial. She will issue a building permit, so you have to come here and this is the Board that will grant you the relief. My suggestion is you continue one more time, and you meet with her. She will be the determining individual; if it needs a variance, it gets re-advertised, pay that fee only, not the application fee.

K. Rondeau made a motion to continue the hearing to **December 3rd** with the stipulation that the applicant is using this time period to determine whether or not the second variance is needed by the Building Inspector and if so it needs to be advertised for the next hearing. I also make a motion that part of the stipulation is that we waive the application fee because he has already paid for it; seconded by G. Sagar

Ch. Grouke I might add that if he does have to fill out another petition that he also asks for variance under Section 6.8 as well as Section 6.3.

and so voted unanimously by: Ch. Edward F. Grouke, Keith Rondeau, Gary Sagar, Jeffrey Creamer and Robert Read

VOTE: (Approve 5-0)

2012-20 Elm Tree Farm Properties, 35 Westwood Road, Lincoln, RI 02865, Owner, by Mark T. Shane, 16 Gardners Neck Road, Swansea, MA 02777, Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 9.3.3.2 of the Zoning Bylaws to allow a 92-unit Assisted Living Facility within the Mixed-Use/R-3 portion of the property located at 1530-1544 Fall River Avenue, Plat 4, Lot 5 in a Mixed-Use/R-3 and R-4 Zone containing 12.06 acres. (continued from August 27, 2012).

Mark Shane 16 Gardners Neck Road, Swansea, Ma. sworn in. There were two concerns at the last meeting; one was the 30' we encroached into the R-4 zone. I trust that the Board received the letter from the Zoning Enforcement Officer. It was her opinion that we could do that as a matter of right. She addressed all the setback requirements and said we were okay. The board also requested some concept drawings. The concept drawings are a little bit vague but I wanted the Planning Board to agree with what we were doing but this is the basic concept and I wanted to give the Board some idea of what we were doing.

G Sagar Last Thursday, Mr. Read and I took a tour of your Swansea facility. The place is beautiful and immaculate; and if you build something close to that in Seekonk, it would be an asset for the Town. On your application you applied for 9.3.3.2 which in a mixed-use zone is for nursing homes and funeral homes which seems to fit in perfectly. The only criterion for a special permit is that it is supposed to be in harmony with the general purpose and intent [of the Bylaws] and in keeping with the general character of the neighborhood.

Certainly, you are on a four-lane road which has a lot of different uses in the area; and I think that this facility would be nothing but an asset. I would enthusiastically support this petition.

Ch. Groucke Any other questions for Mr. Shane? None yet. Is there anyone wishing to speak in favor of the petition? No response. Anyone wishing to speak against the petition? No response. Are there any questions about the petition? None

Mark Shane I just want to remind the Board that this will be built in three phases, we did mention that but I want to reinforce this.

G. Sagar made a motion to uphold the decision of the Building Inspector and close the public hearing, Seconded by R. Read; **and so voted unanimously by:** Ch. Edward F. Groucke, Keith Rondeau, Gary Sagar, Jeffrey Creamer and Robert Read

VOTE: (Approve 5-0)

G. Sagar made a motion approve the petition as submitted with the standard verbiage on the special permits that must conform with all the other approvals of all the other Boards, Seconded by R. Read; **and so voted unanimously by:** Ch. Edward F. Groucke, Keith Rondeau, Gary Sagar, Jeffrey Creamer and Robert Read

VOTE: (Approve 5-0)

2012-21 Gerard Matton, 6 Westdale Avenue, Seekonk, MA, Owner, by Neil A. Lefavre, Empire Design-Build, Inc. 81 South Main Street, Berkley, MA 02779, Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 5.3 and a **Variance** under Sections 6.3, 6.4, 6.5, and 6.8 of the Zoning Bylaws to allow the removal of the existing 12 pitch roof structure on an existing dwelling to rebuild with full 8' walls and new roof to accommodate additional living space within the existing dwelling located on a pre-existing, legal, nonconforming, undersized lot at 6 Westdale Avenue, Plat 34, Lot 23 in a R-1 Zone containing 5,000 sq ft.

Neal Lefavre 81 So. Main Street, Berkley, MA sworn in. The existing dwelling has two really small bedrooms and a 12 pitch roof; an elderly parent is moving in and there is a need for more space. To maximize the existing footprint that is already there

on the second floor, the owner wants to build 8 ft. walls. It will still be two bedroom house with a bathroom, and a small open area on the second floor. We are not seeking to change footprint, we are going straight up.

R. Read There are some other houses in neighborhood that have had this done or were built that way, so it won't be unique to the neighborhood.

G. Sagar When you have a 5,000 square foot lot, the only way you can go is up.

Ch. Grouke Anyone wish to speak in favor of the petition?

Dave Lemire 59 Border Avenue sworn in. I can't see any reason why not to do it.

Ch. Grouke Is there anyone who wishes to speak in opposition to the petition? No response.

K. Rondeau There is no interest or plan to build a separate entrance to the second floor?

N. Lefaiivre No, with the slanted ceiling height, it is just taking the existing footprint and maximizing. There is no other entry way.

G. Sagar made a motion to uphold the decision of the Building Inspector and close the public hearing, Seconded by J. Creamer; **and so voted unanimously by:** Ch. Edward F. Grouke, Keith Rondeau, Gary Sagar, Jeffrey Creamer and Robert Read

VOTE: (Approve 5-0)

G. Sagar made a motion approve the petition as submitted, Seconded by R. Read; **and so voted unanimously by:** Ch. Edward F. Grouke, Keith Rondeau, Gary Sagar, Jeffrey Creamer and Robert Read

VOTE: (Approve 5-0)

2012-22 Brian Rawnsley, 20 Shirwood Drive, Seekonk, MA, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 5.3 and a **Variance** under Section 6.8 of the Zoning Bylaws to allow an addition to an existing garage located on a pre-existing, legal, nonconforming, undersized lot at 20 Shirwood Dr., Plat 33A, Lot 3 in a R-1 Zone containing 10,018 sq ft.

Brian Rawnsley 20 Shirwood Drive, Seekonk sworn in. It is a one-stall garage now; I want to make it into a two-stall, a standard size two-stall garage.

Ch. Grouke It will be 18'5.5" away from the property line instead of the required 20 feet? So that is 1' 6.5" (variance).

B. Rawnsley Yes.

Ch. Grouke Are there any questions?

R. Read There is really not much else he could do.

Ch. Grouke He did ask for 6.8, correct?

G. Sagar Two issues he has; dimensional for the variance and special permit because it is in an R-1 [zone] and the old standard was 10,000 now it is 14,400 so he clearly has a hardship. I think we should support his petition.

Ch. Grouke Is there anyone who wishes to speak in favor of the petition? No response. Anyone who wishes to speak in opposition to the petition? No response. Any questions about the petition? No response. Any further discussion? None.

G. Sagar made a motion to uphold the decision of the Building Inspector and close the public hearing, Seconded by K. Rondeau; **and so voted unanimously by:** Ch. Edward F. Grouke, Keith Rondeau, Gary Sagar, Jeffrey Creamer and Robert Read

VOTE: (Approve 5-0)

G. Sagar made a motion approve the petition as submitted, Seconded by R. Read; **and so voted unanimously by:** Ch. Edward F. Grouke, Keith Rondeau, Gary Sagar, Jeffrey Creamer and Robert Read

VOTE: (Approve 5-0)

2012-23 Richard Senerchia & Mark Brown, 3 Luther Street, Seekonk, MA, Owners and Petitioners, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 5.2 and a **Variance** under Section 6.5 of the Zoning Bylaws to allow the applicant to repair and rebuild an existing porch on a dwelling on a pre-existing, legal, nonconforming, lot at 3 Luther Street, Plat 9, Lot 207 in a R-1 Zone containing 13,383 sq ft.

Richard Senerchia and Mark Brown 3 Luther Street, sworn in.

R. Senerchia The existing porch is just under 100 years old; it is in need of repair.

Ch. Grouke Are you just repairing the porch?

R. Senerchia Same exact thing; everything will be the same; even the same old railings will be up.

Ch. Grouke Then this is all about the lot size, right?

R. Senerchia Yes.

Ch. Grouke This is for a variance under Section 6.5 because of the frontage and a Special Permit for an undersized lot; it is 13,383 sq. ft.

G. Sagar Are you using pressure treated wood?

R. Senerchia We are using Azek; it looks like old tongue and groove wood that was there.

Ch. Grouke Any questions? No response. Anyone who wishes to speak in favor of the petition? No response. Anyone who wishes to speak in opposition to the petition? No response. Any questions about the petition? No response.

G. Sagar made a motion to uphold the decision of the Building Inspector and close the public hearing, Seconded by J. Creamer; **and so voted unanimously by:** Ch. Edward F. Grouke, Keith Rondeau, Gary Sagar, Jeffrey Creamer and Robert Read

VOTE: (Approve 5-0)

G. Sagar made a motion approve the petition as submitted, Seconded by K. Rondeau; **and so voted unanimously by:** Ch. Edward F. Grouke, Keith Rondeau, Gary Sagar, Jeffrey Creamer and Robert Read

VOTE: (Approve 5-0)

Work Session: Approval of minutes 7/16/12 and 8/27/12

K. Rondeau made a motion to approve the minutes from July 16, 2012, Seconded by R. Read; **and so voted by:** Ch. Edward F. Grouke, Keith Rondeau, Jeffrey Creamer and Robert Read.

Gary Sagar abstained as he was not present at that meeting.

VOTE: (Approve 4-0) 1 Abstained

R. Read made a motion to approve the minutes from August 27, 2012, Seconded by J. Creamer; **and so voted by:** Ch. Edward F. Grouke, Gary Sagar, Jeffrey Creamer and Robert Read.

Keith Rondeau abstained as he was not present at that meeting.

VOTE: (Approve 4-0) 1 Abstained

Discussion: Town of Seekonk Request for one year extension of Special Permit (Case 2011-23)

Ch. Grouke We received written communication requesting the one-year extension; and this is the petition regarding the animal shelter.

G. Sagar Mr. Chairman, Massachusetts legislature passed a law--the redevelopment law--all developmental permits that were issued between 8/2008 and 8/2010 were automatically extended to 2012. Now they just passed another law extending that even further. This bill is for a limited period; this is just a matter of reference. Any permit that is valid and in place automatically gets two additional years. If they went through the time to submit the request, then I move that we grant the request as submitted.

G. Sagar made a motion to grant the request for a one year extension of the Special Permit for case 2011-23 as requested, seconded by K Rondeau; **and so voted unanimously by:** Ch. Edward F. Grouke, Keith Rondeau, Gary Sagar, Jeffrey Creamer and Robert Read

VOTE: (Approve 5-0)

Discussion: General Discussion regarding ZBA Procedures.

Ch. Groucke There was a request from a citizen to ask questions on this issue.

Robert Machowski Shady Lane, Seekonk

Ch Groucke This is not actually a formal meeting; so in that vein, also, it is more of a general discussion. We should probably avoid anything specific about properties or business.

R. Machowski This is an ongoing issue; what I have to ask this Board is probably about 6 questions. (wording muffled); I can't even get past those questions with the normal procedures that we probably have these answers to because of some of the actions taken or not taken by different Boards; and we ended up with a situation that in my view is what zoning is all about. If I can just get on with the questions then you can go home; and if you can enlighten me with some of the problems I've had as far as (inaudible). When zoning relief is granted, how long does the petitioner have to take advantage of that relief?

G Sagar First and foremost, if a variance or special permit is issued, it is not valid until it is recorded.

R. Machowski There are some activities going on that would only happen within that relief; I don't know (end of tape) I was just wondering, not being specific, these variances were granted with a proposed development 7 or 8 years ago. The variances obviously are still in place because the Zoning Official claims that she can't enforce that zoning as is written because it has variances issued by this Board.

G. Sagar I believe, sir, I know the property you're talking about, without naming it. I don't know if they are variances or special permits.

R. Machowski Either or.

G. Sagar A variance is much tougher; a special permit, if it's specific to a project, it is generally for one year; it is up to the petitioner when he records it. He can't get any permits until he records it. If a variance or special permit is granted and then required for that relief, if you want to get a building permit, the Building Inspector will not issue a permit unless She sees evidence that the variance or special permit has been recorded at the registry of deeds.

K Rondeau So they have a year to record it and a year to act on it?

G. Sagar I think if they have not acted on it within a year, it is expired.

R. Machowski This is very difficult and complex; without talking about the whole thing so I'm really specific about staying away from all that stuff; maybe at another time I hope that we can resolve in a non-expensive way but probably won't; but it is not clear to me how long this kind of relief is good for? I'll just leave it with that then; it's still not clear

with me. When this kind of thing is given, I admire you guys, what you do you give people some extra leeway because in the case of the fellow that just needed eighteen inches. I'm happy with that. I don't really want to cause hardships for anybody. This is a commercial problem, and I've been friends with these people forever; and I'm glad to see them make money, but they can't abuse the abutters to the extent that they have because enough is never enough.

- R. Read Whether he has recorded that or not, it's over, right; he hasn't done anything in that period of time?
- Ch. Grouke Isn't the real problem that in this case you told us that the Building Inspector is saying that they had certain rights under the decision, right?
- R. Machowski Exactly.
- Ch. Grouke So, isn't it really the only way to approach that is to ask for—did you get that in writing? Did she give you a letter?
- R. Machowski For whatever reason, I haven't had a great deal of success in that office. I got answers like "The ZBA did this and I can't do anything." that was fine. Another answer was "No comment" and I said "That's not a political response. Can't you have a real response?" That's why I just can't get any further than that because she puts all her eggs in the basket saying that she can't do that and enforce the bylaws as they are written because they have been stretched by this Board.
- Ch. Grouke I was just thinking of another case that once happened which was a person approached the Building Inspector with a complaint about something that was happening near her property; the Building Inspector said "I'm not going to take enforcement action because of 'whatever' ". That person appealed that to the Zoning Board, and then that issue came in front of us. We hashed it out. That was the procedure that was done in that case. It seems similar to what you are saying.
- R. Machowski The Building Inspector is pointing the finger at you guys. So why appeal to a party who is part of the appeal? That person appealed that to the Zoning Board, there was a procedure that was done in that case.
- Ch. Grouke What you are saying is that we granted a certain thing, but it was part of a whole project—the whole project never took place.
- R. Machowski Not by a little bit. It has been 7 or 8 years past the time you guys gave him some relief.
- Ch. Grouke It's your argument, it is a valid argument. Whether or not it is right or what the final result is I don't know that because that would take a full hearing, but it seems to me that it is an unusual case in that we granted some relief which I don't remember specifically what it was but it was part of a bigger decision. And now if the bigger project isn't started does that mean the smaller parts aren't valid? That is something that is a different set of circumstances than what was presented.

R Read If this is something other than what we acted on, it really has nothing to do with us.

Ch. Groucke It was presented to us as part of one large piece.

R. Read If I understand correctly, you are questioning something that is already there.

R. Machowski No. When this relief was granted, I wasn't part of the meeting that night. There are things that were granted to his satisfaction based on the whole project, nothing got off the ground. That made the problems that are still there today go away if this project ever came to fruition, but it didn't so those problems are still there. People in our neighborhood got frustrated because I think every one of us has taken a whack at it and has not gotten very far because this one is blaming that one, that one blames this one. Even the health board blames you they say, "they got permits, what do you want from us?" In the mean time, we complain and when the Zoning Officer went down to visit again, she came back and said she found nothing. I don't know if she can't see, it wasn't even on commercial property, it is on residential property. It is frustrating. After complaining, with her presence, they clean up their act and as soon as the heat is off, here we go again. Quite frankly, you have a member of your Board who can attest to all the things that I am saying, I don't need to say any more than that. I don't mean to throw anybody under the bus. I know these guys are well informed and know what is going on over there and it is totally inappropriate.

K Rondeau You are not throwing me under the bus, I totally agree. Part of the frustration for myself and other neighbors is the fact that not only has the property blossomed much more than it ever was, but much more than it was ever intended to be in the nature of the business. But as we as neighbors have gone from one board to another and had to complain and even called the police on many occasions about issues on that property, nobody including Health Department wants to take ownership of trying to do something to alleviate our concerns. I am not going to speak for Mr. Machowski, but I know his frustration, I share the same frustration and I have tried to keep arms length because I am on the Board.

G Sagar Keith, you have to be very careful where you go with this because you are an abutter and you are on this Board and I don't want to see anyone come back on you from an ethics perspective. One thing I can tell you sir, If you ask the Building Inspector a questions and you submit it in writing, she has to answer you in writing and if she doesn't answer you within a timeline, her not answering is an answer.

R. Machowski I have a response from her in writing, it goes back a few years, that she found nothing to be out of the bylaws. One of my questions, it is a wonderful thing to sit here in this room and give stipulations and all these other things based on variances but in my view, it is so frustrating. I had to take two trips here just to get to this meeting because it seems like they wanted to know what I was going to say. I just want to come and vent my frustrations for a lack of any other place to go and on my third trip I was just heading out the door when Chris called and said I was on for the 15th. That is what it took just to get the okay to come in here.

- Ch. Grouke It is just that we are sensitive about talking about a certain property, we do not want to do anything without everyone being present. The Board here, we only act on petitions that are present, what you are asking is out of the ordinary, that is why I was reluctant to do it this way. But Section 14.2.1 of our bylaws says we can hear from any person who is aggrieved by your inability to obtain enforcement action from any administrative officer under this bylaw. We have had people come before us based on that section.
- R. Machowski I would like to quote from the attorney who represented the petitioner in this case; "I do not believe that the burden to appeal/variance/special permit should be placed on the land owner", or abutter in our case, "to disagree with the July 6, 2006 notice of violation, I believe that a simple letter to you disagreeing with your letter of determination is sufficient to place the matter on the calendar with the Zoning Board. The land owner should not be under the burden of obtaining a certified list of abutters, a certificate of good standing and engineered plan, a plot plan, and filing fee before the ZBA just because an arbitrary decision by the town official", (inaudible) this is their estimation of the appeals process, and guess what? It flew it worked to a tee. They came in here right after that with a \$1.5 million project and this Board bought it hook, line and sinker, and you gave them all the relief that they needed. And they are still utilizing it without putting a shovel in the ground.
- Ch. Grouke It comes down to if you feel you are not getting enforcement action, you have the right to bring it in front of this Board.
- R. Machowski And I have to bare the expense of that.
- Ch. Grouke Yes, I am sorry. This is what it says here, that is what we go by.
- R. Machowski Does the ZBA have the authority to direct the Zoning Enforcement Officer to follow up on conditions or Variances. If you are made aware of conditions that are not being lived up to, do you have any authority?
- Ch. Grouke She is the enforcement officer, that is her job.
- R. Machowski In my case, when I try to tell her what is going on there, I got dumped off on you guys.
- Ch. Grouke That brings us back to filing a petition appealing her lack of action as you see it.
- R. Machowski Does this board have the authority to retract perhaps a five year old project if the petitioner did not do any of the things? Can you call a petition back?
- Ch. Grouke We could but how is it going to get in front of us? The only way it gets in front of us is if somebody files a petition. It gets advertised, all the interested parties are notified and we have a hearing. We can't do it based on one person saying they are not doing what they are supposed to be doing. I am not insulting you; it has to be done in that formal way. That is what these rules talk about; there is a procedure that needs to be followed.

- G. Sagar You need to, if you are questioning if those permits expired, that would be a question you would have to ask first of the Zoning Enforcement Officer and if you are not satisfied with her answers, you could appeal her decision to us. If in fact, you need to take that file, resubmit it with those six questions and demand an answer in writing and once you get a written determination, if you are not satisfied with it, whatever it may be, in whole or in part, you have the right to appeal to this Board under Section 14.2.
- R. Machowski I am not doubting that is your interpretation, (inaudible), this whole problem is created simply because the people who are responsible for making sure, this is all one sided, this is obviously in volition of all things that zoning stands for, it is going to have to cost me money to get this thing addressed. Let me tell you, if I miss one of these issues you guys would send me back and probably make me re-file, there are probably 10 things I have a problem with, and he snuck in another business that had nothing to do with this. I shouldn't have to pay for this, I don't have to pay the Chief of Police to site someone breaking the law, all I have to do is tell him about it.
- G. Sagar The problem here is a simple matter of interpretation.
- R. Machowski This is simple to interpret.
- G. Sagar You interpret it one way and if the Building Inspector interprets it another based on what is in front of her then if you are not happy with what she is interpreting then you bring it here, then if you don't like what we interpret, then you take it to Superior Court. The whole process is laid out and you have to exhaust all your administrative options first. You read those documents one way and the Building Inspector reads it and interprets it another way, and you two can't agree on it and you want to pursue it, then it has to come here.
- R. Machowski Not to be redundant and we will bang this thing back and forth, we are at a stalemate but I think everyone on this board knows exactly what this is. There isn't any discretionary interpretation here. This, ladies and gentlemen, is black and white and there is no attempt to even come close to playing by the rules. Maybe I am trying to simplify this too much, but this is something that should be stopped, tomorrow.
- G. Sagar We have no authority to initiate an enforcement action.
- R. Machowski I asked that question and was told you don't really know; I don't think I got a clear answer on that, did I Mr. Grouke?
- Ch. Grouke We are not the Enforcement Officer.
- R. Machowski But can't you tell her to revisit this?
- Ch. Grouke We can't tell her what to do.
- R. Machowski Who does?

- G. Sagar You, by asking for a Zoning determination.
- R. Machowski Do you think that is fair? This isn't a questionable thing Gary, this is black and white.
- G. Sagar In your world it is black and white, this is an interpretation issue.
- R. Machowski Don't take my word for it. You all know what is going on there, and you are going to give me that kind of an answer? Gary, I am ashamed of you.
- G. Sagar This is an interpretation issue.
- R. Machowski Thank you ladies and gentlemen for your time, I kind of expected this as a result if a Board member can't get any further than what I am at right now, then I guess I should have known better.
- G. Sagar You have the power within you, sir, to pursue this.
- R. Machowski I also don't have deep pockets. I am retired and I can't afford to blow \$500 here and there to get the same run around and still end up in court. How much money do you think the average citizen has to go play your little court game?
- G. Sagar I am not advocating a court game. You need to write a letter with all your concerns; I think it is a \$35 filing fee to the Zoning Enforcement Officer.
- R. Machowski I beg to differ with you Gary, I have watched you in action for a few years now and it seems that you are the first guy to suggest court action whenever anyone whether it is this board or another board and I don't think that is the right approach. Thank you for your time.
- G. Sagar We are limited to what we can do, sir. You don't seem to understand that or want to respect that. Our hands are tied on a lot of issues. You read that file and you interpret it one way. You could get three or four Building Inspectors who would take that same file and interpret it three or four different ways. That is why there is a set process.
- R. Machowski How do I appeal to a board that is part of this process? This is like a cop gives you a speeding ticket and then you go knock on his door and tell him you want to appeal it.
- Ch. Grouke The circumstances are entirely different, what was presented and approved before is not what you would present to us. What was approve before was an entire project, what you are saying is this company is not complying with what was granted, what is going on there is not right. We haven't been there, I don't go back there. We do not have a reason to go back there, we can't act officially.
- R. Machowski Not only are they not complying but the facility that was supposed to be in place for this to happen never even got built.
- Ch. Grouke You can come in front of us, it is a different set of circumstances than it was six years ago. We are not going to just say we already granted it, we need to know what is going on now.

- G. Sagar You have to initiate this whole thing, we can't do it.
- R. Machowski I am sorry if I offended anybody but this is how I see it and I am not afraid to speak my mind. My back is up against the wall. I am not willing to carry the ball by myself. There are two restaurants and coffee shops that have to tolerate this. I don't know why there aren't more complaints about this thing but it is awful.
- K Rondeau If I could say something, I am trying to bite my lip. I have heard before from other people that there is a distinct frustration with a lot of people in this town with the enforcement of zoning in this town. We drive by many of the properties that we made decisions on in this town and the stipulations were not enforced, not this Building Inspector, but previous, they did not want to do it for one reason or another. We have had to during open meeting, during discussion, make mention of it to send a letter to the Building Inspector, to have that Building Inspector go and enforce the decision or write a determination letter as to why not. I can name off the top of my head at least 15 people who have voiced their concern, it is a common theme where the actions of this board are not fulfilled 100% and it is up to the abutter to start the process out of the expense of their pocket to get the ball rolling. Like Gary said, you go to the Building Inspector, get a determination, etc. I think, we have a gentleman here before us making a presentation about a long standing problem and it is something I think we all recognize as a long standing problem and nobody has done anything about it. Why can't we ask the zoning enforcement officer to do that now? Because I am an abutter I am going to talk as a citizen and I will abstain from any action this Board takes on this matter. We need to stand by the people of this town.
- R Read I have no idea what you are talking about, I am not clear what the two of you are discussing, frankly.
- K. Rondeau I am sure you are not because they have kept it as a general discussion, which is a good thing. But I think that if Mr. Machowski writes a formal letter to this Board, we could take some kind of action in a work session, if not we should tell him now.
- Ch. Groucke Well, I think what is going to happen, if he makes the request to the board, we are going to ask Mary to check it out and it is going to be the same, it is the same thing that he could ask Mary to do.
- K. Rondeau At \$35; and the out of pocket expense to advertise. We have come across this before.
- Ch. Groucke In my opinion that has happened most recently, the Seekonk library sign was not taken down, we can drive right by that and see that without trying to look. I am not questioning what you are saying about what is going on there but I have not been there to see it, the more we get into details, the next thing you know we are having a hearing on it and make findings without the owner being there. To me it is going to end up at the same place.
- K. Rondeau All I am asking is for you to request a determination.

- Ch. Grouke The \$35 is not the problem, the problem is the application fee, the advertising, all that stuff.
- R. Read You are assuming Mary will reject his letter.
- Ch. Grouke I am because she is already on the record as saying they have the right to do it because of our decision.
- G. Sagar Could I ask you sir, how many of your neighbors, you mention there are 15 other people, do they want to get actively involved? Are you the spokesman? My point is, as an alternative, contact the Town Administrator, ask if you can meet with her. She could bring in the Building Inspector and that could start the process.
- R. Machowski In all fairness to Mary, if she goes down there right now, she won't see anything. Somebody is whispering in their ear, and I think I know who it is, that place is just as clean as a whistle right now. As soon as things settle down, it will be business as usual. This is not something that should be going on at that particular location. It is not creating a hardship because he has no vested interest in that property. Nobody has to sell anything, knock anything down. (inaudible) I am getting absolutely zero out of you.
- K. Rondeau There has to be a way, when an abutter has an issue regarding the enforcement of the policies and procedures with this Board, or any other board there doesn't seem to be that avenue, I am only asking the chairman of the Planning Board because they write the bylaws. Maybe he knows, does he know if there is a way for an abutter to resolve these issues without having the tax payer or abutter having to file and go through all that just to see that what is supposed to be in place is enforced.
- G. Sagar If he sits with the Building Inspector and with the Town Administrator, she would have to get back to speed on what is going on, again, if the building Inspector opens up the file and says her interpretation is there is not an issue, that is her decision, and you either live with it or appeal it with us. It is just that simple. None of us have the authority to walk on someone's property and order them or initiate an enforcement order, it is not our job.
- K Rondeau I know, but in general when we have that issue, it is prevalent and it happens yearly that we know of. It happens that we have an abutter who complains because somebody was supposed to do something and never did it. Again, there have been some cases where we asked the Building Inspector to check it out, but there is no hard and fast rule. How do we get something to resolve a situation like this so he does not have to go to every single board at the Town Hall.
- G. Sagar If it is a zoning issue, there are only two places he has to go; the Zoning Enforcement Officer and if he is not satisfied with that answer; here. You have documents that go back to 2006, you should try to initiate a meeting with the Building Inspector and Town Administrator.
- R. Machowski Since 2004, Mike Crisafulli, he issued a violation notice and I went back a year later (inaudible) it was not enforced. (inaudible) One of the abutters works there, one or

two rent from the participating properties. (inaudible) There is nothing simple in this world anymore.

G. Sagar It is as simple as you initiating the process.

R. Machowski We could beat that one to death Gary and I don't wish to. I am sure if we went around with a hat we could get the money to do this. It isn't all about money, I am going on principal, it shouldn't come with a cost to do the things that are right or wrong. I can take my lumps. If you guys show me I am wrong

G. Sagar Do you understand the limitations and restrictions we have?

R. Machowski I understand a lot more than what people give me credit for at times. I understand double talk when I am getting it, I understand censorship when I hear it, I understand different ways of saying you can't do something when I know you can and you have done, I understand the game of politics.

G. Sagar You think we are playing a game?

R. Machowski I don't say this board is playing a game but this whole thing from beginning to end is the biggest game you have ever been in. Violations that have been issued are missing. They get a lawyer and got all the resolutions they need and walk out of here.

G. Sagar Based on those documents, that is why I suggested, contact the Town Administrator make an appointment with her and show her your concerns.

R. Machowski Your suggestion was I go get an attorney.

G. Sagar That is not what I said, don't put words in my mouth. I said go see the Town Administrator.

R. Machowski You also said if you don't like it, you can go to court.

G. Sagar I said if you exhaust the administrative remedies, which is go to the ZEO, if you don't like her decision, you can come to us. If you don't like our decision then you can appeal it in Superior Court. (tape change) ...I can't speak for her but she might order the Building Inspector to do a new Zoning Determination. Air your concerns with the executives with this town, it would benefit you.

Ch. Groucke Lets hold it right there, lets end it with that.

R. Machowski This guy isn't going anywhere. I've been in this town 42 years; I have a nice little spot down there. I'm staying.

Adjournment:

G. Sagar made a motion to adjourn the meeting, Seconded by R. Read; **and so voted unanimously by:** Ch. Edward F. Grouke, Keith Rondeau, Gary Sagar, Jeffrey Creamer and Robert Read

VOTE: (Approve 5-0)

Meeting adjourned at 8:40 PM

Respectfully submitted by:

Christina Testa, Secretary