

SEEKONK ZONING BOARD REGULAR MEETING

MINUTES February 22, 2010

Present: Ch. Edward F. Gourke, Gary Sagar, Keith Rondeau, Robert Read, and Ronald Blum

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

This is the meeting of the Town of Seekonk Zoning Board of Appeals, February 22, 2010. 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. We will hear from anyone in the audience to speak either in favor of or against the petitioner or with any questions. At the close of the evidence, we will close the hearing. Usually we have a discussion and we also usually make a decision on the same night although we are not required to do that. We may take a petition under advisement and give a decision at a later date. It is our practice to decide it on the night of the hearing. There is an appeal that is available to the Superior Court by the petitioner or other parties who have the proper legal standing. That appeal is governed by very strict time limitations. If anyone is considering an appeal, they have to be very careful to meet the time limitations that are set forth in the law.

2010-03 Jeffrey A Seyboth, 74 Gregory Drive, Seekonk, MA, 02771 Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a Special Permit under Section 9.3.3, to allow the operation of a small engine repair shop, lawn mower sales and yard maintenance equipment at 465 Taunton Avenue, Plat 15, Lot 99 in a Mixed Use/R-2 Zone containing 12,286 square feet.

Jeffrey Seyboth 74 Gregory Drive. Sworn in. We want to set up a small engineer repair shop for the residents of Seekonk and small landscapers. We will service small equipment, chain saws, weed whackers, small lawn equipment, and things like that; with a small sales area. Everything would be inside the building.

Ch. Gourke In the past, we have information that the building was last used for a business for restoration and the repair of automobiles and before that it was an automobile repair shop?

J. Seyboth Yes, prior to this, the building was used as a garage for 60-70 years.

Where is the end of the Mixed Use Zone, how far back does it go?

G Sagar I think it is a couple hundred feet, I think it follows the property line. I think it is 200'; it does encompass the whole lot.

K Rondeau Will there be any outside display, lawnmowers or anything?

J. Seyboth No.

G Sagar I would like to compliment Mr. Seyboth for cleaning up the site, he has done a nice job at his operation down the street at (J & L Landscaping).

Ch Groucke Polled the audience. Is there anyone to speak in favor of the petitioner?

Arthur Martitz 243 Lincoln Street, Sworn in. I am a friend and resident of the town. What an improvement it is to Route 44 and the neighborhood, it has always been a disaster over there as far back as I can remember, he has done a great job and I can't think why the town would not grant the petition.

Mark Chandley Sworn in. I own the Country Kitchen Restaurant next door to the property. I want to echo what the last two gentlemen have said. He has done a great job cleaning up the property it really looks good. As a taxpayer, I welcome another business; it would be a good thing.

Ron DiPietro 47 Leann Drive. Sworn in. He did a great job cleaning up the property, it has always been a repair shop and heating and air conditioning, small engine repairs, I see no problem with this it is a good idea, and they have more than enough room.

Ch Groucke Is there anyone to speak against the petitioner? None.

G Sagar made a motion to approve the petition as submitted, seconded by R Blum **and so voted unanimously** by: Ch. Edward F. Groucke, Keith Rondeau, Robert Read, Ronald Blum, and Gary Sagar

VOTE: (Approve 5-0)

G Sagar made a motion to close the public hearing and uphold the Building Inspector's Decision, seconded by K. Rondeau **and so voted unanimously** by: Ch. Edward F. Groucke, Keith Rondeau, Robert Read, Ronald Blum, and Gary Sagar

VOTE: (Approve 5-0)

2010-04 Joshua J. Turcotte, 64 Edwards Ave., Seekonk, MA, 02771 Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a Special Permit under Sections 5.2 and 5.3, to allow the addition of a second floor to an existing dwelling on a legal, non-conforming lot at 64 Edwards Avenue, Plat 31, Lot 116 in an R-1 Zone containing 3,705 square feet.

Joshua Turcotte 64 Edwards Avenue, sworn in. We want to put an addition onto the house by going straight up with a second floor and not adding anything in any other respect.

Ch. Grouke Has everyone had a chance to see the plans?

G Sagar Yes, going up is the only alternative.

K Rondeau Based upon the drawings that were given to us, it looks like that this is in keeping with the flavor of the neighborhood, there is evidence of others in the neighborhood doing the same thing, it would be in keeping with the neighborhood and not be detrimental even though it is a very small lot, it looks to be the same remodel that other people have undertaken in that north neighborhood.

G Sagar When we look at alternatives he has none.

Ch. Grouke Is there anyone here to speak in favor of the petitioner? None.
Is there anyone here to speak against the petitioner? None.

G Sagar made a motion to approve the petition as submitted.

K. Rondeau amended and seconded the motion to include "because it is in keeping with the neighborhood and the size and shape of the lot create a hardship" **and so voted unanimously** by: Ch. Edward F. Grouke, Keith Rondeau, Robert Read, Ronald Blum, and Gary Sagar

VOTE: (Approve 5-0)

G Sagar made a motion to close the public hearing and uphold the Building Inspector's Decision, seconded by K. Rondeau **and so voted unanimously** by: Ch. Edward F. Grouke, Keith Rondeau, Robert Read, Ronald Blum, and Gary Sagar

VOTE: (Approve 5-0)

Work Session:

G. Sagar Mr. Chairman, there are a couple of items to discuss in open session and I believe we have some issues to discuss in Executive Session. Prior to the meeting, and I'll let Keith expand upon this, he wanted to discuss with us a policy change regarding court proceedings.

K Rondeau It is in the light of two things. First, we addressed this a couple months ago, and I spoke with the Town Administrator very briefly about it, and it went nowhere since then. It has to do with the issue of what happened at the DiPietro property. As you remember the timeline was the cell tower that was proposed there went before this Board, it was denied, then the applicant, T-Mobile appealed the decision. The abutters did not know there was an appeal in process, the last they knew there was a decision that was rendered and that was it. As we jump forward a little bit, the neighbors got upset because all of a sudden there was a cell tower was starting to be erected on the property and they had no foreknowledge of what was happening, the last they knew it was a decision that was denied. In the interim, there was going to be a settlement, if you will. I guess this Board, I was not part of the Executive Session, and based upon advice from town counsel they approved with stipulations the settlement that was presented and none of the abutters knew. Since then, one of our neighboring towns, North Attleboro, had a major issue; and this is what I was trying to avoid the last time I brought this up, the major issue coincidentally was over another cell tower in North Attleboro, that was denied but there was a settlement which was done apparently by the Board of Selectmen without any input from the Zoning Board of Appeals. From their standpoint coincides with what I am trying to do which is, I am trying to get it out in the open and let the abutters know what is going on. I don't know if it needs to be discussed in open session but certainly anyone who is directly affected, the abutter in any type of case, needs to be notified of what is going on, that neighborhood was blindsided. With the possibility of more problems with denials not just with our board, it could be with conservation, or the planning Board. Some type of communication has to be given to the abutters. Again, when you are walking out of a meeting, and there is a decision then you hear nothing about it until the shovel is hitting the ground it is a major issue. There is nothing anywhere about this. I saw nothing in Mass General Law or the Town of Seekonk laws or any of our bylaws that states that this has to happen but I think it is something that should happen so this does not have to happen and we don't have a recurrence of this. In all fairness to all parties there should be something done, I am asking for this board to be proactive. If this Board agrees, have Chris (Testa) formulate a letter and send it to the Town Administrator and each member of the Board of Selectmen to review what the issue is, to make them aware, and see if they

will do something in the future and be proactive, if they decide not to maybe this board can entertain the possibility of making it a new bylaw within our zoning bylaws or our operating guidelines.

G Sagar

I would like to suggest that we send you, as a representative of the Zoning Board, to meet with the Board of Selectmen to get on an agenda with the Selectmen, discuss it in open session so there is a public record. It is very interesting, there have been a lot of cases in the news, there is a case going on with an asphalt plant in Plainville, the company that wants to build it, and the person who is appealing it, who lives $\frac{3}{4}$ miles away, is an employee of one of the competitors. One of the issues, and we can talk about this in a little bit in Executive Session because it pertains to one of our cases, is the attorney on the other side is raising the issue of standing. I know with the issue of Teknor Apex facility on the Seekonk Attleboro line and some of the people on Oakhill Avenue are concerned but if you are out of the 300' radius the court does not believe you have standing.

Ch Groucke

I was reading a memo from Max (Voleterra) and it talks about the standing issue and you have to show that you are being particularly affected over and above the general public, it is not that easy to prove that.

G. Sagar

As far as notifying abutters as to the status of the case, it's not just a zoning matter, it has to be town-wide. The crazy thing is everything that is done through Conservation is done through Certified Mail; with us it is regular mail.

Ch. Groucke

It is a thorny issue, when you get into litigation everything happens in Executive Session because you don't want to disclose your discussions, so it is kind of difficult.

K. Rondeau

Yes, but there is no communication whatsoever, maybe when the settlement is signed, you should let the abutters know.

G. Sagar

(inaudible)

G Sagar made a motion to send K Rondeau to discuss abutter notification in court cases or appeal, seconded by Robert Read **and so voted unanimously** by: Ch. Edward F. Groucke, Keith Rondeau, Robert Read, Ronald Blum, and Gary Sagar

VOTE: (Approve 5-0)

Discussion with Christina Testa relative to minutes:

C. Testa Updated the ZBA that there are approximately 40 meetings dating back to 2001 that the minutes have not been transcribed.

G. Sagar made a motion that the Board's Clerk shall not transcribe verbatim the minutes from 2001-2004. Rather, there shall be an outline of the meeting kept in the file and also with tape of that meeting. From 2004-2010 minutes shall be transcribed verbatim and the Clerk shall forward to the Board a list of minutes that need to be transcribed, seconded by K Rondeau **and so voted unanimously** by: Ch. Edward F. Grouke, Keith Rondeau, Robert Read, Ronald Blum, and Gary Sagar

VOTE: (Approve 5-0)

Approval of Minutes: K. Rondeau made a motion to approve the minutes of September 21, 2009 with corrections as discussed, seconded by R. **and so voted unanimously** by: Ch. Edward F. Grouke, Keith Rondeau, Robert Read, Ronald Blum, and Gary Sagar

VOTE: (Approve 5-0)

G Sagar We have two individuals that have submitted talent bank forms for alternate members of the ZBA, one candidate will be interviewed next week by the Town Administrator. When they did the town charter they changed the charter to read 3 alternates instead of two reflecting the bylaws.

Gary Sagar made a motion to go into Executive Session for purpose of discussing pending litigation seconded by K. Rondeau **and so voted unanimously by a roll call vote** by: Ch. Edward F. Grouke, Keith Rondeau, Robert Read, Ronald Blum, and Gary Sagar

VOTE: (Approve 5-0)

G. Sagar made a motion to adjourn the meeting seconded by K Rondeau
and so voted unanimously by a roll call vote by: Ch. Edward F.
Gourke, Keith Rondeau, Robert Read, Ronald Blum, and Gary Sagar

VOTE: (Approve 5-0)

Meeting adjourned at 8:30 PM

Respectfully submitted by:

Christina Testa, Secretary