

**SEEKONK ZONING BOARD
REGULAR MEETING**

**MINUTES
May 3, 2010**

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

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

This is the meeting of the Town of Seekonk Zoning Board of Appeals, May 3, 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.

2010-05 William Platt, 352 Warren Avenue, Seekonk, MA, 02771 Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 6.2, to allow an addition to the existing dwelling for a Day Care for 26 students at 352 Warren Avenue, Plat 1, Lot 107 in an R-3 Zone containing 66,086.5 square feet.

William Platt 352 Warren Avenue, Seekonk, Ma. Sworn in. Most of you were here in 2004 when we first came before you. We were approved to build a preschool, a unanimous vote, we built the preschool and came in to Mary McNeil, three Building Inspectors later, to have a discussion for the Certificate of Occupancy and I was informed that because we never recorded the original decision with the Registry of Deeds, Mary said we should reapply and hopefully we have the same vote tonight. The preschool is built, we need you all to agree hopefully on

allowing the preschool, nothing has changed, the pupil count is the same, the Board of Health needs to review the septic and that is it. I never knew after the first meeting that we were in charge of recording the document with the Registry of Deeds, this is the same exact petition, and nothing has changed.

G. Sagar We have standard verbiage now that is added to the decision that says, it will not take affect until the Decision is recorded.

K Rondeau Are the state approvals current?

W Platt Yes, they do a final walk through after the Fire Department and Mary (McNeil) do theirs.

Ch. Groucke Let me poll the audience. Is there anyone in favor of the petitioner? No response. Is there anyone against the petitioner? No response. Any questions about this petition? No response.

R Blum We are just re-issuing the special permit, this is already built.

Ron Blum made a motion to approve the application as submitted, seconded by G. Sagar **and so voted unanimously** by: Ch. Edward F. Groucke, Keith Rondeau, Ronald Blum, Gary Sagar and Jeffrey Creamer

VOTE: (Approve 5-0)

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

VOTE: (Approve 5-0)

K. Rondeau made a motion to uphold the Building Inspector, seconded by G. Sagar **and so voted unanimously** by: Ch. Edward F. Groucke, Keith Rondeau, Ronald Blum, Gary Sagar and Jeffrey Creamer

VOTE: (Approve 5-0)

2010-06 Ruth Allaire, 58 Wakefield Avenue, Fredericksburg, VA, 02771
Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 5.2.1 and 5.3, to allow the petitioner to raze the existing nonconforming dwelling and construct a new single family dwelling at 599 Fall River Avenue, Plat 9, Lot 284 in an R-3 Zone containing 47,080 square feet.

Donald MacManus I am an Attorney representing Ruth Allaire and 11 other here. I have an office on Arcade Ave. Sworn in. Exhibit A has all the details of our case. We have 4 houses on Fall River Avenue built prior to 1900. They were originally built on one lot, then in 2007 that one lot was subdivided into 4 lots, which is allowed in the Subdivision Control Law, making the 4 houses on the 4 lots legal, nonconforming uses on the lots. The area we are talking about is right off Luther's corner and it actually abuts the Dunkin Donuts on Luther's Corner. It is considered an R-3 zone; it is one of the most densely populated areas in town. 599 Fall River Avenue, which is the one we are talking about, which is set back. There are four houses, two in front on Fall River Avenue and two in back; this is one of the houses in the back. The Allaire family has been repairing the houses they own in town in preparation to sell them. Mr. Costa from Costa Development has offered to purchase this house with the understanding he would be able to remove the house and replace with a modern structure. The reason why we are meeting with Zoning Board of Appeals is because the current house has less than the required front set back, less than the required rear set back and does not have frontage on Fall River Ave. it has frontage an easement and that goes back to the original houses. I have photographs of the site, the current structure is dilapidated the rear of the house abuts Dunkin Donuts and the Allaire houses. The structure now is about 725 sq ft, to be replace with 1,344 sq ft, the only thing that makes this non conforming is because it does not have the proper set backs. State law Chapter 40 A has special provisions for single family houses that allow for special permits when you change a prior nonconforming use, if there is not an addition of the nonconformity. In this case the only nonconformity is the set back and the frontage. We are not asking for a change the new house would not have a change in setback except for the front would have a bigger setback. If the Board still feels there is an addition to the nonconforming then Chapter 40A says that the Board should issue a special permit if it is not substantially more than detrimental to the neighborhood than the current structure. We are asking the Board to say tonight is that as long as the proposed structure does not have larger setbacks than the former structure and comports with the zoning then Mr. Costa should have the right to build a single family house on this site.

G. Sagar The house has been vacant based on water district since October 2005. I found your Exhibit A was very helpful; you are right on point with what you say. I first thought that because it had been abandoned it might lose some of its grandfathering, but it is not a grandfathering issue it is a residential area.

D. MacManus The use is not changing, so they have not lost grandfathering rights for use, because the use is permitted. Non-conformity is...

G. Sagar I took comfort out of the Planning Board approving the plan as recently as 2007. I think he is right on point with what he is asking for. 81P plans are not that popular. I only have one request if this is approved. The new owner Mr. Costa is here? Typically, what we have done in the past on buildings that are going to be razed is we like to request that they might be made available to the fire department for training purposes.

M. Costa That's fine.

Ch. Groucke Any other questions? None at this time. I will poll the audience. Is there anyone here in favor of the petitioner? No response. Is there anyone here against the petitioner? No response.

K. Rondeau This is something new we are treading on. Like Gary (Sagar) I first thought there was going to be an issue with the fact that the property has been abandoned for over 2 years. It appears that the use is the same, although they are going to continue nonconformity it doesn't look like the nonconformity is going to be any more detrimental in the sense of nonconformity, a new building will certainly not be detrimental to the neighborhood. This is the first time approaching this type of application, I thought long and hard to see if I could find any type of an issue or a problem, but I don't see one. Those lots were "Form A'ed in 2007, one lot with 4 houses, this is all new and all new circumstances but I don't see anything...

G. Sagar I don't think there are too many parcels like this. Had the Planning Board not approved this, I would have looked at it differently, but for the plan to be recorded at the registry, it had to meet the requirements.

K. Rondeau They did put a diagram of what the house is going to look like, that is the footprint they gave us, I would expect they don't exceed that.

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

VOTE: (Approve 5-0)

G. Sagar made a motion to approve the application as submitted, with the stipulation that the footprint of the house not exceed the setback that is proposed and that the building be made available to the Fire Department for training purposes, and that the Fire Department have access to the building no later than

June 30. K. Rondeau amended the motion to include that the reason for approval is because it falls under M.G.L. 40A § 6 Paragraph 1, regarding the fact that it is not a substantial intensification of nonconformity and the new building would not substantially be more detrimental to the neighborhood. G. Sagar seconded the amended motion **and so voted unanimously** by: Ch. Edward F. Grouke, Keith Rondeau, Ronald Blum, Gary Sagar and Jeffrey Creamer

VOTE: (Approve 5-0)

Work Session

Approval of Minutes:

Approval of Minutes: K. Rondeau made a motion to approve the minutes of January 11, 2010 with corrections as discussed on page 4 and 5, 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 made a motion to approve the minutes from August 3, 2009; June 29, 2009; December 14, 2009; and February 22, 2010, 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)

Discussion

G. Sagar discussed with the Zoning Board of Appeals a Warrant Article brought forth by a resident. "I would like to see us not be involved in this, we are a quasi judicial board and this goes far beyond our functions, I support the initiative but we should not be included".

J. Creamer Zoning should not have anything to do with it.

G. Sagar made a motion for the Board's Clerk to send a memo to either the Town Clerk or Town Moderator and cc the Board of Selectmen, that we wish to not be a part of it, we have no standing or issue with the Warrant Article, 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)

The Board determined that the next meeting would be held Tuesday, June 1, 2010 at 7:00 PM.

G. Sagar Advised the Board that there is an appeal of the decision of the Building Inspector regarding property on Arcade Avenue and Ledge Road. It would be beneficial to do a site walk at 6:00 PM and that the Board's Clerk contact the owner of the property to attain permission granted from the owner to meet out there.

Gary Sagar made a motion to go into Executive Session not to reconvene 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. Grouke, Gary Sagar, Keith Rondeau, Ronald Blum, and Jeff Creamer

VOTE: (Approve 5-0)

Meeting adjourned at 8:30 PM

Respectfully submitted by:

Christina Testa, Secretary