

SEEKONK ZONING BOARD REGULAR MEETING

MINUTES July 19, 2010

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

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

This is the meeting of the Town of Seekonk Zoning Board of Appeals, July 19, 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.

2010-08 Paul Miles-Matthias, MD and Linda Coffin, MD, 363 Ledge Road, Seekonk, MA 02771, requesting an appeal of the Building Commissioner/Zoning Enforcement Officer's Decision, dated March 26, 2010 allowing the use of a shared driveway on record lots 1, 2, and 3 as shown on a plan entitled "Plan of Land in Seekonk, Massachusetts, 357 Ledge Road for John Dias" drawn and engineered by Borderland Engineering, Inc., 31 Sharlene Lane, Plainville, MA 02762, dated February 19, 2008. The action requested is relative to plat 18, Lots 53,199, 200 & 201 in an R-2 Zone at 357 Ledge Road. (continued from June 1, 2010)

Ch. Grouke At June 1st meeting, we requested an opinion from our Town Counsel regarding issues that came up, and we received that opinion, and it was circulated to the interested parties We also received a letter from Atty. Antine representing Mr. Dias giving his opinion and his comments on Town Counsel's opinion. Dr. Matthias and Dr. Coffin, would you like to approach the Board at this time since you are the petitioner?

Dr. Linda Coffin 363 Ledge Road Sworn in.

Dr. Matthias I want to thank the Board for getting Town Counsel's opinion. The letter states in their opinion that zoning bylaw does not allow shared driveways as accessory use.

I would hope that the Board would go along unanimously with Town Counsel's opinion that the use of the common driveway is not acceptable under two circumstances under zoning bylaws as principal or accessory use.

Atty. Antine Mark Antine, 63 Winthrop St. Taunton. I am here on behalf of the property owner John Dias; might I ask if the board members have both letters from Atty. Quirk and myself?

Ch. Grouke Yes, we have them.

Atty. Antine As a Town Counsel myself, I realize that when you request an opinion from your Town Counsel, your Town Counsel gives an opinion; it makes certain conclusions. Normally one would say what we know that the Zoning Board has now addressed our Town Counsel and our Town Counsel has given an opinion. On June 28, 2010, I sent a letter to Atty. Quirk, who, by the way, I know personally; I have had cases with her, and she is a fine zoning attorney. I sent her a letter in which I raised a number of issues that I indicated to her that she did not either consider in her letter or made statements in her letter for which she had no law to substantiate that position. I am assuming since the Chairman indicated, there was the letter from Atty. Quirk and that the letter from me, that three weeks later Attorney Quirk has not sent in to the Board any subsequent letter that tells that my letter of June 28, 2010 might be correct. Is that correct?

Ch. Grouke Correct, there has been no response.

Atty. Antine There is one other document I would like to hand out to you is section 4.1 of your Zoning Bylaw because Attorney Quirk uses that particular section as a launching pad for her opinion. In section 4.1 states "No structure or land should be hereafter used, no structure or part thereof shall be erected, altered, or moved unless in conformity with the regulations herein specified for the district in which it is located, except as otherwise provided." Attorney Quirk indicated in her opinion letter that from that section she concludes that the Seekonk zoning bylaw is a prohibitory bylaw and what that means in legal terms is if you don't specifically see a use that is in the bylaw; that means it is prohibited. So, from that Atty. Quirk, as I understand her opinion letter, comes up with a general guideline to start her opinion. I don't see shared or common driveways in the uses section as either principal or accessory use; that means to her that shared or common driveway, or driveways at all that it is not in the bylaw; therefore, it is not allowed. In my letter to Atty. Quirk, and you have the letter dated June 28, 2010, I indicated to her and I will indicate to you what a prohibitory bylaw is. A prohibitory bylaw is a zoning bylaw such as what you find for example, in the Town of Dighton, because they have under their principal use regulations; and I have that attached to my letter. They have under their principal use, Section 22.10. This is what a prohibitory bylaw is; no structure shall be erected or used, or land used except as set forth in Section 22.30 ...unless otherwise provided in this

bylaw or by statute. Uses not expressly provided for herein are prohibited. That is what a prohibitory zoning bylaw is. The Seekonk zoning bylaw, in my opinion, is not a prohibitory bylaw it simply says you can't build a structure or use land unless it is in conformity with the regulations. Of course that is true; naturally it has to be in conformity with the regulations. There is nothing in your bylaws that states that if a specific use is not specifically listed in the bylaw then it is prohibited. Now where do you go from that? Well, next Atty. Quirk looks at Section 6.1 of your zoning bylaw; and she says, "Well, I am looking, and I didn't see in the principal uses prohibited in Section 6.1 a common driveway." Well, of course not, you did not see a driveway, you didn't see a swimming pool, you didn't see a tennis court; you didn't see all kinds of uses that you can use in a single-family residential zoning district. You have them. I have never seen in any zoning bylaw a principal use, say driveway or common driveway. I have never seen it. With the greatest of respect, I believe that Atty. Quirk in this particular instance is incorrect in her opinion. Further, and I have pointed it out to Atty. Quirk in my letter, one of the important aspects of the zoning bylaw, if there is any ambiguity, is that if the person who is imbued with the enforcement authority and the zoning bylaw has to look at what is the history of what the bylaw has been and what has taken place in the town in order to determine what the bylaw means. Now in this particular case, the building inspector who is imbued with the interpretive authority for the Seekonk Zoning partly specifically found that in her opinion the Seekonk Zoning bylaw does allow for common driveway. She pointed out, I believe, that in her opinion and there was testimony at the last hearing that in a number of instances in residential and commercial, that building inspectors have granted building permits for structured buildings that are accessed by a common driveway. Now, I do not know if Atty. Quirk spoke with the Building Inspector in the interim. I don't know; I haven't spoken to either Atty. Quirk or the Building Inspector. But, that is an important thing to find out; the person who has the job of interpreting the zoning bylaws, what they have found in their research, is something being ambiguous is very important. Whether Atty. Quirk ever inquired the Building Inspector, I don't know, I haven't heard anything along those lines. Atty. Quirk then goes on in her letter and says, "Well, in effect, you can access a lot other than through its frontage." So in other words, if you had a driveway on your own land, and you wanted to access your house from a driveway on your own property, but it doesn't go through the frontage, she says "You can do it." Nothing substantiates why, no law, no interpretation of the Zoning Bylaw. She says, "You can do it." Well, I agree with her. You can certainly do that. That the reason that you can do it is because you don't have a prohibitory bylaw; so Atty. Quirk has stated, as I understand it, that if you have a lot, if you have frontage that you want to access one lot, your own lot, just one, you could go in through your frontage. It's when you cross another lot, even if it's owned by the same person; in this case it is. She says that's where the problem comes. The problem comes because it's not that you can't access through your frontage. It's once you access and go through one or more lots, now that is prohibited. Your bylaw doesn't say it. I didn't see any case that says it, so where you got it I don't know; but that's not the law as I understood it. So what

you have here by Atty. Quirk's letter, she says that one thing you can do, even though it's not listed in the Zoning bylaws, which is, you can access other than the frontage; she says that's okay. Even though she says you have a prohibitory bylaw that if it doesn't say it in the bylaws, you can't do it. But she blows that away, and says, well, you can do that. You can do that under the bylaw, and you also can go through other of your own lots in order to be able to access, as well. There is nothing in your bylaws that prohibits it; so, and then she says, well, if it isn't in the principal use, it's also not listed in a common driveway, it is not listed in the accessory uses, Well, what your 6.1 says which is a section that deals with uses permitted in a residential district, it says, accessory...uses. Guess what, it doesn't name them. It doesn't say what they are. So, does that mean that again if a swimming pool is not listed, you can't have one? That's going to come as a big surprise to the people in Seekonk. So the point is: what does this mean? What does all this mean? In my letter I indicated that accessory building, that is a term that is defined in your zoning and in that turn that specifically says, I believe, for that the accessory building has to be on the same lot. There is nothing that says that an accessory use has to only be on the same lot, and I suggest to you, as I indicated in the letter, so now does this mean if you ran a gas line across somebody else's property to get to your property, that's illegal under the Town Seekonk Zoning Bylaw because it's going across somebody else's property. Interesting! I don't think that's correct. There are a lot of problems with this opinion in my view. Then Atty. Quirk goes on to say that, well, a common driveway, if it is to be allowed to keep on as an accessory use, it has to be what they call a customarily incidental use to a residential building. Okay, I think a driveway is a customarily incidental use to a residential building as it is a commercial building. Secondly, the cases that Atty. Quirk cited, as I indicated this to her in my letter to her, dealt with zoning bylaws which specifically define an accessory use as a customarily incidental use. I think it said in law books, only on the same piece of property. Your bylaw in the cases which she cited that supposedly were backing up her opinion on your zoning bylaw doesn't apply to your zoning bylaw. I pointed that out to her as well. So, I know all of this is at the center. It's what we do as lawyers. We know that, and I am not trying to speak into the clouds here; but if you overturn the Building Inspector, you're not only going to do great damage to Mr. Dias, but if there are other common driveways that can use subsequent to the date of the passing of the resulting bylaw, Atty. Quirk's letter is going to legalize them; and if you legalize them, that has very significant potential ramifications for those lots. They are not considered pre-existing nonconforming uses or structures. They are illegal structures. You might get limited protection under Chapter 48, Section 6 and 7, if no one has brought an action against that within a certain period of time. But if those people go to make their buildings larger, things like that, and a few other things, I think they're going to be in a bit more trouble because if you overturn the Building Inspector's opinion, you're making any of those illegal. I don't think they are illegal. I looked at this bylaw; I've gone through it. The Building Inspector has looked at the bylaw. She came to a conclusion that she backed up with her cases; I don't see Atty. Quirk's opinion refuting what the Building

Inspector said, what I see Atty. Quirk's opinion is that she was asked a question and I believe she didn't look at the history of what took place in Seekonk; and I don't believe that her cases are on point; and I think that it is going to create a lot of problems. Now again, I'm here for Mr. Dias; and I'm a zealous advocate for his cause. But the fact of the matter is, he's not the only one who has something going on. Anybody who has a common driveway is, or should be, very interested in what to do as a Zoning Board. So I ask you not to overturn the Building Inspector in this matter, because it has very grave circumstances that are attached to it; and in your bylaws, it just does not say what Atty. Quirk thinks it says and she does not back it up, in my opinion, with an case law. The only case that she cited, I should tell you, is that (inaudible) with any case laws.

Gary Sagar This sheet you gave us with 4.1 on it, do you know how old this is?

Atty. Antine I don't. I didn't go through your annual reports to see when that came. I do not have a list of the amendments ...I don't know.

Gary Sagar You didn't get this off the internet or anything?

Atty. Antine No, I'm citing the same thing that Ilana Quirk cited.

Gary Sagar The only reason that I raise that issue at this time is that the sheet you gave us this 4.1 appears on appears on page 19, in my book it appears on page 18. I just want to make sure that everything is the same.

Atty. Antine Well, I guess the question to be--is 4.1 the same.

Ch. Grouke Is there anyone to speak in favor of the petitioner? No response. Is there anyone to speak against the petitioner? No response. Dr. Matthias would you like to speak?

Dr. Matthias I find it interesting that this whole process started over a year ago and one of the things that came up was the decision from the previous Building Inspector, it is interesting to me that that Building Inspector was wrong on all 18 points but suddenly this Building Inspector should be accepted as the word of the Pope as the only who can interpret the Zoning laws. Why did he think that the previous Building Inspector could not interpret those things only? I think it is interesting that the same guy who denounced the previous Building Inspector, in his opinion, suddenly this Building Inspector has the only opinion. That is why I asked to submit this to someone who has a legal background to make a decision on whether this is appropriate or not appropriate and that person, I am sure, went over all the information that was available and gave a pretty succinct and clear decision on her part. It is too bad that she is not here to refute the arguments to that letter. It seems to me that the Zoning Board would most likely have to go along with Town Counsel's opinion.

Gary Sagar I would like to respond to Dr. Matthias. The first appearance Mr. Antine made on behalf of Mr. Dias, they appealed one issue on the prior Zoning Determination and that was when the former Building Inspector ruled that a special permit was needed for a common driveway. That was the only issue that came before us and this Board overturned that and said no it is not. That is the only issue that we ruled on.

Dr. Matthias What was the other hour and 15 minutes that Atty. Antine talked about?

Ch. Grouke You might say that Mr. Crisafulli, he used the kitchen sink approach when he denied the request for Mr. Dias but a lot of the things he put in there were not the job of the Zoning Enforcement Officer so Mr. Antine went through them point by point.

Dr. Matthias Is it correct that one Building Inspector said it is not appropriate and another said it is?

G. Sagar That is not true at all. Mr. Crisafulli said you needed a Special Permit to have one, he did not say you could not have one but he said you needed a Special Permit. Our ruling was that there is nothing in the bylaw that says you have to have a Special Permit.

Dr. Matthias Again, in dealing with all these, they're all opinions, including Mr. Antine's; and like I said, you know that the person that the Town pays to interpret their own laws has clearly and distinctly said in her letter that this not legal in the Town under two different circumstances; and I think the Zoning Board's got to go along with it.

Ch. Grouke The decision rests with us. We are the ones who make the call. You can see just by the two very lengthy and well-reasoned letters that we got from Mr. Antine and Ms. Quirk, that this is really an open question. It is an open question that's not even close to being answered by our bylaw; and you've got a lot of different issues that are going on—not the least of which is, that there are a half-dozen shared driveways in the town.

Dr. Matthias We can get into the shared driveways again and I would like—every time we talk about shared driveways you do remember that this not a commercial zone area; and if every time we mention a commercial shared driveway it should be struck from the record because it has nothing whatsoever to do with this subject. But as long as we're talking about long-term implications, what are the long-term implications of the Zoning Board going against Town Counsel's opinion?

Ch. Grouke Well, you can't really say there's any implication with that, because it just deals with a particular case. You know, and we may accept Town Counsel's opinion 95 per cent of the time or 99 per cent of the time. And we may accept it in this case. I really don't know. It depends on what the Board does, but it's not final. It's

informative to us, and this case has a lot of twists and turns in it. So, I think there are a lot of things that need to be weighed.

G. Sagar No one from the public is here to speak on it?

Ch. Groucke No one is here for or against. So, as I said to Dr. Matthias, it's still up to this Board to decide how to decide on this issue. Anyone have any thoughts that they want to begin with?

K. Rondeau I have plenty of thoughts; I guess I'll start with the fact that we have to realize that it was intentionally set by this Board through a very limited scope as to what Atty. Quirk, acting as our Town Counsel, was going to address in this situation; and that is whether or not the common driveways were an allowable use in the Town of Seekonk. She did not go into any history on this parcel to any great extent. She didn't cause any history as to the Town and shared and common driveways throughout the Town. I guess Atty. Antine's rebuttal on that point is a non-issue because she was not asked to do that, she was only asked to in a very limited scope whether or not this was a common driveway an allowable use. The second thing I wanted to point out is that I thought she gave a very cognizant decision or opinion regarding this. The reason I say that is she addressed a couple issues of whether or not an allowable use as common driveways were an allowable use. But first she separated into was it allowable as a permitted use-a permitted principal use in the Town of Seekonk. Under Section 4.1 it clearly says that unless something is stated as a permitted use it can't be used unless its customary use or accessory use. That doesn't include whether or not the Zoning Board of Appeals gives somebody a special permit or a variance. That is exclusive of that. That's a different process, and could be a different decision. But she also goes on and talks about principal and accessory uses. She stated that common driveway could not be thought of as a principal use for several different reasons that she very carefully explained. She also stated what accessory and incidental uses should be. To quote her, she says, "Accessory or incidental use must be so necessary in connection with the primary use that it cannot be supposed the ordinance was intended to prevent it." Every instance that Mr. Antine gave, whether it was in his written opinion or what he gave today, was something that could be considered a use necessary with connection to the primary use. For example, swimming pools, he gave tonight. Other uses that he gave were power lines, water lines--that type of thing where there are some common uses. I believe that opinion by Atty. Quirk very narrowly and in very good scope; and I really think that this was to the point and was an excellent written opinion. But I have to say that as far as the following scope of an argument, it was one of the better ones that I have seen since I've been on the Board. I have to go along with Atty. Quirk; it is something I regret that I voted for the last time regarding whether or not shared driveways or common driveways were an allowable use. I voted with the Board that it wasn't stated either way in the bylaw; and I believe I was wrong at that point in time, and I stated that the last two hearings. I'll go forward and state it again. It's just because something isn't stated in the bylaw doesn't mean it

is allowable in the bylaw. I think this is well addressed in this particular opinion. I think that if we go forward and we go against the opinion of Atty. Quirk, then I think that what we are going to be doing is perpetuating a wrong as in regards to past history in this town, and Atty. Antine seems to think that her letter illegalizes the past; I don't know if that is necessarily true because we are only using it in this particular instance. If we go on to keep perpetuating something that is wrong and I believe it is wrong based on what Atty. Quirk has said,--you know the old famous saying, "Those who do not learn by lessons in the past are doomed to repeat it." --that's what we'll be doing here.

R. Read What decision are you referring to that we approved of?

K. Rondeau What we had done as a Board is last year we stated -- I'll just come right out and state it--we passed the buck, I think, as a Board. We said that we had no jurisdiction...

R. Read That's right, we said we had no jurisdiction, we did not approve or disapprove.

K. Rondeau I think we passed the buck on that one rather than take a stand and make a decision.

Ch. Grouke Just as an aside, we usually don't have jurisdiction over shared driveways. It's just another strange thing about this case as how it got here. That's the thing that's still an issue maybe, just the fact that the plan was approved by the Planning Board, and there is an issue in some minds of whether or not that's a valid approval or not. But certainly Mr. Antine would say it's approved; it's recorded—it's a done deal, and yet we also heard from Mr. Abelson who said that and also from our Planner who says otherwise that we know that it came back a second time with corrections from the land court that it was disapproved. That's kind of an issue that's out there, but...

G. Sagar I think the final determination would be when they go to apply for a building permit. If they grant it or deny it.

Ch. Grouke Who knows if that issue will come up again? I don't think that shared driveways are necessarily illegal as our attorney says they are. That project on Lincoln Street where you have a situation where the shared driveway—the access to those lots by that shared driveway, take a street off of 44, it is so far superior than the access would be off of Rte 44. I think that's an issue in this case too that may be in this case that the access to these lots by the shared driveway may be superior than access off of Arcade Avenue, because when you look at the big picture and weigh the necessity of disturbing all the greenery there and building whatever has to be built to pass over the wetlands and those types of issues.

R. Read The issue on Lincoln Street with the access off Taunton Avenue was strictly a safety issue; I don't think there is a safety situation here.

Ch. Grouke I agree, I don't think there is a safety issues here because there are driveways onto Arcade Avenue, but I think there are issues of gaining access from Arcade Avenue. I think there a lot of negatives; although it could be done. I'm not just talking about the expense to the developer; I'm talking about taking down trees, disturbing wetlands, and maybe there might be some necessity of wetland replication.

G. Sagar In our previous decision of a year ago, I don't think we passed the buck at all. I felt we were right on point; that we did the right thing. After reading and rereading these, I have to--let me first say—if this Board remembers I excused myself and was appointed by the Selectmen to represent the Town on the Fire Station project and I had very close contact and I worked very close with Atty. Quirk, and I have the utmost respect for her. She is regarded in the legal community as very good at what she does; but I have to concur with you, Mr. Chairman, that I think that the Building Inspector is on point here and not the Town Counsel; and my vote would be to uphold the decision of the Building Inspector.

Ch. Grouke It's a very close issue, and that's why you can have two very good opinions coming to different conclusions. There is no clear-cut answer. The other thing that comes to mind--the whole idea of an easement over somebody's property—an access easement—that's the right to pass over somebody's property; and if there is no such thing as a shared driveway, it seems to me that there is no such thing as an easement over somebody's property to gain access to it. Another thing about the opinion is -- if it's true that you do not need to access your property by the frontage, then where else are you going to access it from unless you're going over someone else's property? So, if your driveway comes out to a street and that's frontage even if it's 15 feet of frontage the chances are, if you are not gaining access over your frontage, then you're going over somebody's else's property.

(inaudible- many people speaking simultaneously)

R. Read Mr. Dias owns the property where it says proposed access utility easement. He owns that, doesn't he?

Ch. Grouke Yes, he does.

R. Read He owns that all the way through to the property. It seems to me, though, is this subdivided already or is it still one piece of property?

Ch. Grouke I think the plan is recorded.

R. Read It seems to me, I don't see how he can go farther than the first piece of property. I think he would have the right to do that.

Ch. Groucke That's the question that would he have the right to go over the next two.

R. Read If there were another road continuing across the top of the three pieces of property, that would be another story; but I have to say that Section 4.1 to me says it all. If it isn't stated, you can't do it.

G. Sagar For the record also, Mr. Chairman, I had Chris do research; the original structure on the Dias property was apparently a house built in the mid 1800's; converted into a barn sometime in the 1900's; there is no record of its construction on when it became a barn. The Mathias-Coffin house was built in 1910, and in 1971 was split from the original lot through a land court deed only. It never went before the Planning Board for a Form A. At that time an easement (end of tape) a new house in the back at 357 Ledge Road was constructed in 1993, and that lot was created via a warranty deed; so the three structures that are there now all enjoy the use of a common driveway. As you stated, there are many others that have been approved in Town so I think that the precedent certainly isn't set; again, I will be supporting the Building Inspector on her decision in this matter.

Ch. Groucke Any further discussion?

G. Sagar If not, I move to close the public hearing.

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

VOTE: (Approve 5-0)

Ch. Groucke We have an existing opinion by our Building Inspector which has been appealed, that is what is in front of us right now; so the request is for us to overturn the decision of the Building Inspector. Is there a motion to so do?

K. Rondeau made a motion to overturn the decision of the Building Inspector for the reason that the common or shared driveway noted in the appeal is not a permitted use. Robert Read seconded **and so voted by:** K. Rondeau, R. Read and R. Blum - 3

Ch. Groucke, G. Sagar - opposed

VOTE: 3-2 motion failed

Ch. Groucke It was necessary to have a vote of four votes to overturn the Building Inspector's decision; the motion failed due to the fact that there were three votes to overturn.

- Dr. Matthias I am 100% confused please explain that to me. I don't understand, a majority vote is not enough?
- Ch. Grouke Under the bylaws Section 14.3; a concurring vote of 4 members of the Zoning Board is necessary to overturn the decision of the Building Inspector. You have to have a supermajority. It was necessary to have 4 votes in favor of overturning the Building Inspector.
- G. Sagar It is also necessary for a Special Permit or Variance to have 4 votes. Any action this Board makes requires a super-majority.
- Dr. Matthias Several people have made a decision to go against the town counsel. What is my next step to appeal your vote because I think this is unbelievable.
- Ch. Grouke Our decision has to be reduced to writing, filed with the Town Clerk within 14 days and then you can appeal to the courts and the appeal must be done within 20 days from the date the decision is filed with the Town Clerk.
- Dr. Matthias I would want to receive this as soon as possible so I can file immediately.
- C. Testa You are the applicant so you will be getting the original decision immediately.

2010-07 Antonio Escobar, 173 Willard Avenue, Seekonk, MA 02771 Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Variance and Special Permit** under Section 6.4, 6.5 and 5.3, to allow a 24.5' x 26' addition and a 10' x 14' deck on an existing single family dwelling at 173 Willard Avenue, Plat 4, Lot 217 in an R-1 Zone containing 15,743 square feet.

Antonio Escobar sworn in. 173 Willard Avenue. I have lived there 28 years. I have grandkids, and they come over at Christmas. We have a very small dining room. We want to make a big dining room to fit a big family that continues to grow. I have nephews and extended family that we usually have for Christmas and Thanksgiving. That is the main reason; when we decided to do this, we had it surveyed twice, the information from 28 years ago when we originally bought the house was not available. It was identified by the surveyor that the present house was a couple inches off the present zoning requirements--the frontage, the side, the rear, everything else was okay. I don't have problems with the decision of the Inspector. I would just like to request to allow a variance in order that I could build an extension. It's a couple more feet in addition to the front. The reason for that is my designer--I did not want to build anything to bring down the neighborhood or my property. The designer suggested in order to have that

foundation (inaudible), I want a house that when someone comes in, they'll think the house was built exactly like this. I need to bring it out a couple more feet in order to make the house look more the way it is. Originally that was my intent. That is the reason why, not only that I'm asking for the extension to be, even if it was the same width as the present home, it would still be off. I would like an extra few feet for that. It will look better, and the designer suggested that. By saying I am off 2 feet I think there is a margin of error. I also want to explain something; if you go through my house, I deal with numbers all the time. When someone goes to measure, as difficult as this survey, he's taking a reference from documents that are 40 or 50 years old, coming to the conclusion—saying I'm off 2 feet. To me there is a lot of potential for error in that.

G. Sagar Are you challenging your land surveyor?

Mr. Escobar No.

G. Sagar That is what it sounds like.

Mr. Escobar No, I'm saying that for everything we do, not just surveyor, but anything we do, there is a margin of error in anything.

G. Sagar It might not be that much. It might be a little closer than 3 to 5 feet.

A. Escobar Let me also say, the rule that we are talking about—the 35 feet is not the actual rule. It's a rule—the layout (inaudible). I took a scale and I went to measure it. I'm about 55 feet from the actual road.

G. Sagar I don't think you're helping yourself by challenging the surveyor.

A. Escobar I'm not challenging; I'm just sick and tired of people involved in everything you do.

G. Sagar I can't see why you can't move the structure back.

A. Escobar I went by what the designer said and his recommendation. I want a house that looks good and also want my neighbors to be proud of my neighborhood. This is important to me. I have to (inaudible) to my designer and his recommendation

K. Rondeau My original question was, like Gary's--why do we need that variance and also from the building inspector requirements, was that satisfied?

A. Escobar Yes, there was an error and she verified it was a three bedroom.

Ch. Groucke Is there anyone to speak in favor? No response. Against? No response. Any questions? No response.

Ch Groucke It seems like it is a valiant effort to improve this property, and the jog will improve the appearance dramatically.

R. Blum Mr. Sagar makes a valid argument.

G. Sagar If the designer wants to make it forward to break it up, he can bring it back and there is not hardship here.

K. Rondeau I agree.

A. Escobar I have a septic system back there.

G. Sagar You have plenty of room.

R. Blum He wants to expand on the deck in the back.

Neal Abelson Sworn in I was wondering if any of the neighbors are closer; you can to take 300' and take the average.

K. Rondeau All the houses look like they all have the same; all the foundations are in the same line.

R. Read I would go along with it; I don't think anyone puts an improvement on their house to make it look worse.

R. Blum made a motion to approve as submitted; K. Rondeau seconded, **and so voted by:** Ch. Groucke, K. Rondeau, R. Read and R. Blum
G. Sagar - opposed

VOTE: (Approve 4-1)

R. Blum made a motion to uphold the Building Inspectors decision and close the Public Hearing, R. Read seconded **and so voted unanimously by:** Ch. Groucke, G. Sagar, K. Rondeau, R. Read and R. Blum

VOTE: (Approve 5-0)

2010-09 Dorothy Tameo, 50 Pine Street, Seekonk, MA 02771, owner and petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Variance** under Section 6.2.19.3, to allow the operation of a Bed and Breakfast establishment with less than the required minimum of 3 acres of land at 50 Pine Street, Plat 33, Lots 120, 121, and 122 in an R-1 Zone containing 15,803 square feet.

2010-10 Dorothy Tameo, 50 Pine Street, Seekonk, MA 02771, owner and petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 6.2.19, to allow the operation of a Bed and Breakfast establishment at 50 Pine Street, Plat 33, Lots 120, 121, and 122 in an R-1 Zone containing 15,803 square feet.

Dorothy Tameo Sworn in 50 Pine Street. You should have two packets; The first one to be addressed: The definition of a Bed and Breakfast: In Mass the law states you can have a bed and breakfast home; you have bylaws for a Bed and Breakfast establishment. (inaudible).

Ch. Grouke Is there a difference between a Bed and Breakfast home and a Bed and Breakfast establishment?

D. Tameo Yes. A Bed and Breakfast home has three rooms or less, and is owner occupied. The establishment has more than three.

Ch. Grouke Is that three rooms total or three bedrooms?

D. Tameo Three bedrooms.

Ch. Grouke What are you seeking?

D. Tameo Because the bylaws are only written for an establishment, (inaudible) the license was approved by a prior Building Inspector, and it was (inaudible) let out three. I am seeking approval for an establishment.

Ch. Grouke When was that done?

D. Tameo (inaudible)

Ch. Grouke Was that in your packet?

D. Tameo No.

Ch. Grouke What's the date on that?

D. Tameo (inaudible)

Ch. Groucke Was that the approval of so many rooms?

D. Tameo No (inaudible).

Ch. Groucke How many rooms do you let out?

D. Tameo Three.

Ch. Groucke And that's what you seek for approval? Is to let out three rooms?

D. Tameo No. The bylaws (inaudible) an establishment which (inaudible).

Ch. Groucke That says there are a maximum of 18 rooms.

Ch. Groucke On page 16? (inaudible)

Ch. Groucke Our bylaw requires a minimum of three acres of land. Did you know that?

R. Blum Doesn't that apply to a Bed and Breakfast establishment and not Bed and Breakfast home?

Ch. Groucke I didn't know there was a distinction in that bylaw. Where is the distinction? Is it in the state laws?

D. Tameo Yes.

R. Blum Do you have a copy of that?

D. Tameo The state has that MGL Ch 64G section 16, it just states that a bed and breakfast home (inaudible)

Ch. Groucke 64 is not zoning; it's got to be licensing for a Bed and Breakfast.

D. Tameo A Bed and Breakfast home is tax exempt,

Ch. Groucke That's what it will be; that's a tax law.

K. Rondeau We have 6.11 on page 18, it talks about home occupations, and not more than two persons are allowed to board in a residential district, and obviously 6.1- it's interpreted to me as (inaudible)

G. Sagar When did you first start operating a Bed and Breakfast?

D. Tameo Over the years we always had people coming and going, she died in 1998, I then started applying the state law, running three rooms. (inaudible)

G. Sagar Did you reside there?

D. Tameo I was born and raised there; and then I moved back there in 1999 to run the business because (inaudible) it was required by law.

How many rooms are in this house?

D. Tameo Seven rooms—seven areas would qualify as size (inaudible). Some rooms are used as a bedroom but not required, the dimensions could qualify as a bedroom but it is not used as a bedroom.

This says two and a half story—this paper right here, it looks like the only thing that we have as far as a plan. It's just an overview of.....

D. Tameo The first floor has a wing off the side of the house that is a bedroom, and the second floor as three bedrooms and a sitting room.

R. Blum You occupy one of four bedrooms?

D. Tameo Yes.

G. Sagar I want to make sure, the information I have is correct; on the 13th of August in 2002, the then inspector Paul Stringham issued you a cease and desist.

D. Tameo Yes. I also met with Mr. Sullivan and we were talking about doing what I was doing under the state law, Paul suggested that I use Nichols' guest rooms so I complied with whatever his directive (inaudible)

G. Sagar In his letter, he states that back in 1999 the Building Inspector's office provided with information regarding Bed and Breakfast zoning bylaws; so in 1999 they provided you with information, and this bylaw has been on the book since then. You say that you reside there since 1999; the information that we had is that you are a registered voter in Attleboro until last year, and you never registered to vote since last year.

D. Tameo That is correct. Because (inaudible)

You can only live in one place.

D. Tameo (inaudible)

Building Inspector Mary McNeil sworn in.

G. Sagar Ms. McNeil, the cease and desist that was issued by a former Building Inspector, Mr. Stringham, is that still valid?

M. McNeil Yes.

G. Sagar So as a Building Inspector, you included, has the right to issue a permit for a Bed and Breakfast establishment on your own?

M. McNeil No it is through your Board.

G. Sagar So the only way a validate a permit could be issued through (inaudible).

Is there any grandfathering? I notice in your (inaudible), you said that (inaudible)

D. Tameo Usually, receipts, gas, light voter registration, none of which were provided at the time.

G. Sagar Is there something that could allow?

Ch. Groucke Have you been to the establishment, can you verify the rooms

M. McNeil There is a wing with one bedroom upstairs there are three bedrooms and an attic space, the individual each have their own..

Ch. Groucke If this were a use under 6.11 for rooming and boarding for not more than two persons.

M. McNeil She would have to eliminate one of the bedrooms on the second floor and live herself on the first floor

G. Sagar This came on the books in 1995 and Mr. Stringham references this in his letter.

R. Blum Did you say your mother rented that room out?

D. Tameo They bought the house in 1942 looked like other Bed and Breakfasts from towns where he used to work

Ch. Groucke Is there anyone who would like to speak in favor of the petitioner?

Barbara Ross 85 William Avenue I believe it is something to be proud of that we have a bed and breakfast in our end of town, there is no traffic situation, it is nice piece of property and we should be proud to have it in our town.

Against? No response.

Ch. Grouke Do we need to take a look at the establishment? I think the idea of bed and breakfast establishment vs. if you want to call it a B&B you need three acres and we are not even near that, it is not for us to say if it is a good thing or not, if someone were close to three acres, but we are only 1/3 of an acre.

G. Sagar Could you Ms. Tameo interact with the Building Inspector to see what documents she would like to see from you.

K. Rondeau made a motion to continue the public hearing for a sight walk visit at 50 Pine St. on August 9, 2010 at 6:00PM with the Public Hearing at 7:00 PM. Seconded by G. Sagar, **and so voted unanimously by:** Ch. Grouke, G. Sagar, K. Rondeau, R. Read and R. Blum

VOTE: (Approve 5-0)

2010-11 Seekonk Equities, LLC, 55 5th Avenue, New York, NY 10003, owner, by Dr. D. J. Ahearn, 185 Highland Ave., Suite A, Seekonk, MA 02771, petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Variance** under Section 12.4.2.1, to allow the installation of additional exterior signage on the North entrance wall of an existing business at 185 Highland Avenue, Plat 8, Lot 141 in a Highway Business Zone containing 4,225 square feet.

Donna Kent 35 Old Main Rd, Little Compton, RI. I am speaking on behalf of Dr. Ahearn. I am an employee of his. If you wouldn't mind, I have another handout with a few more photos to support our case South Coast Smiles has been open in this location for almost three months; and there has been difficulty, I think that you know that, if you know the location of the property, we complied with the zoning for one sign on the Route 6 side of the building, and now we are finding that it is virtually impossible for our patients to find the entrance of the building as you go through the parking lot. It is surrounded by fields of vacant buildings and the vacant building after the entrance is hard to distinguish without any additional sign on those buildings. We are requesting a sign on that vacant building that would be the same sign that we installed on the Route 6 side of the building. Dr. Ahearn has invested about \$750,000 in the building in the renovation of this space. He has made a big adjustment in improving the property, establishing a business. He operates a business in Westport currently, and he has been there for sixteen years. So he has huge patient base in Westport and some of our patients will be coming out to Seekonk and using facilities adding value to the property to the business district. There are also some photos of other properties along Route 6 that have appeared to have variances to install a secondary sign on their building.

Ch. Grouke How did you arrive at the dimensions for your proposed sign?

D. Kent They are identical to the sign that is on the Route 6 side; rather than bring ...sign, rather than design it, (inaudible) we felt it was in keeping with scale and scope of the business and the site lines from the entranceexact same size as the one, the secondary sign is the artist rendition,

Ch. Groucke So, it is the exact same size as the one that is there?

D. Kent Yes.

B. Read I don't know about that.

The one that is facing Route 6—that is the existing sign now. Right?

D. Kent Yes. The secondary sign is odd at rendering; it is within scale, but the curve on the Route 6 sign is a painted application design. It isn't a dimensional sign it is paintedof the building but it is not.... (inaudible)

B. Read One of the other things that I believe is the proposed sign that goes above the next building there, I don't think you really want it over that far, do you? That roof, that has seven hangers—that's not there, is it?

D. Kent No, it isn't. But that is one of the original plans we presented to the Town that's approved.

B. Read Is that going to be put on?

D. Kent Eventually, I think we're trying to get the sign variance first; then we'd install the package. The variation in color on the paint of the building, our business does work all the way to the instep level line. It's the variation in the color of that part of the building. So that's about 65 feet on the front side of the building facing the parking lot.

K. Rondeau So, that door that looks like (inaudible).....that is one of your access doors?

D. Kent The front door is the one to the left. I can give you many examples of patients having difficulty finding the building—the entrance of the building, especially if they are coming from the East Providence side of the building. I don't know if you are aware of the location, but there is a vacant property that was Jennifer Leather (inaudible) The site line comes from that direction. These are patients that are kind of anxious to begin with coming to the dentist; and if they miss their appointment, it's affects the rest of the day.

G. Sagar I am going through the submitted information; we issued a variance, I believe, for Bed Bath & Beyond and Bernie's using the same criteria.

K. Rondeau I took a ride there today, thinking that it was going to be the same thing as Bed Bath and Beyond and Bernie's because of coming down Route 6 from East Providence; but as soon as, even before you hit that intersection which is the secondary intersection just after Applebee's and Stop & Shop, as soon as you hit that, you can see the South Coast sign; at least I could.

B. Read The one facing Route 6?

K. Rondeau Yes, I picked it up right away. So, I was wondering where the confusion would be? But, I think if you were in the parking lot, it is an issue. On Route 6, I don't think there is an issue, to tell you the truth. But if you are in the parking lot, there is somewhat of an issue. Now I did see when I was driving around the Route where your entrances are today, there's a nice big sign; it's on the wall inside that you can see very readily; it was a nice sunny day when I went out there. The rain stopped and so you have to take all that into account; but I don't know. What in your best estimate, how many complaints have you had regarding finding this?

D. Kent Well, I was (inaudible sentences) we had a dentist we had to talk to on the phone, to get to the location. The office manager has said most days it is a newly established business coming from the Route 6 direction first time patients that free standing building blocks a lot of the visibility you are almost past it.

R. Read I came from the East Providence direction, and I had a problem finding it. It seems to me that the proposed sign should be the primary sign; it's over the front entrance. The one facing Route 6 is typically one we allow on another road, which was their choice at first. I'm kind of surprised at that.

Ch. Grouke The end result will be the same. I know the other businesses put their signs on the front and came in for the.....

K. Rondeau The one we have proposed, is that exactly how it's going to go up? If we approve this tonight, then would we expect it to look like this?

D. Kent Yes, exactly.

Ch. Grouke I was just thinking, you know, to ask the question about how we determine the size of an extra sign? We don't really have many standards ourselves.

G. Sagar Fortunately there is an effort to rewrite the whole sign bylaw. So hopefully that will happen. That's a positive. But if there is anyone coming into this town in this economy and spending the money and needs a sign to help his business, I am all in favor of.

Ch. Grouke Is there anyone wishing to speak in favor of this petitioner?
No Response.

Is there anyone wishing to speak against the petitioner?
No response.

R Blum made a motion to approve the sign as submitted in the packet for South Coast Smiles. Seconded by G. Sagar **and so voted unanimously** by Ch. Groucke, B. Read, K. Rondeau, R. Blum, G. Sagar

Vote: (5-0) approved

G. Sagar made a motion to uphold the Building Inspectors decision and close the Public Hearing R. Blum seconded and so voted by: Ch. Groucke, B. Read, K. Rondeau, R. Blum, G. Sagar

Vote: (5-0) approved

2010-12 Slade's Ferry Realty Trust, 1400 Fall River Avenue, Seekonk, MA, owner, by Stephen E. Navega, Esq., 447 Taunton Ave., Seekonk, MA 02771, petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a Variance and/or Special Permit under Section 7, to allow a front, rear and side set-back variance, if necessary, for the reconstruction of an existing bank and a multi-lane drive-up window with canopy and at 1400 Fall River Avenue, Plat 4, Lots 29 & 34 in a Local Business Zone containing 113,826 ± square feet.

Atty. Navega sworn in; I am here tonight representing Rockland Trust, a bank that has been in existence many years; (inaudible) we have the branch manager, construction engineer and architectural consultant to answer questions; the plan is to reconstruct the building by raising a portion of it, the right retail space will be razed to accommodate a drive through--a two lane drive through—to enter on Route 6 and exit on Anthony Street. It will be much safer and much more acceptable to the public; I would suggest to you that they have by right the ability to get a building permit; but by right they should not even have to get a special permit or variance for a drive through; however, they are 48.5 ft off Anthony Street; so, I believe, by change of the building, there may become a need for 1' or less than 2' off the Anthony Street side (inaudible). This is a vast improvement to the area; they are sinking a lot of money into the place; only to accommodate the citizens of the Town (inaudible) that, you know if you are familiar with the area of Town, it is a very unique in and out of that Rockland Trust because you come in from Anthony Street, you have to go out on Route 6, only to take a right; it's confusing. Many people are taking u-turns in the parking lot to come back on Anthony Street. This will solve all that flowing kind of traffic problems (inaudible).

R. Blum The two other sections of the building that are called retail, are they going to be razed or expand into the bank?

Is it two lanes or two lanes of drive through? Now, you have explained it as coming off Route 6 and going into the drive through and out Anthony, but I'm sure there will still be traffic coming in off Anthony Street going around the front of the building into the drive through?

Atty. Navega Yes, you will be able to do that; you'll be able to come in off Anthony Street, going through the parking lot (inaudible).

R. Blum So, the bank will be expanded also?

Atty. Navega This area that I am pointing to here--the tanning salon that part of the building will be razed completely; that is nine feet off the plot line. We are going to comply with the side yard setback, but when this is razed and the two lanes with the drive through canopy, coming off Route 6 out on Anthony. It will alleviate the problem now; and by the way, they are committed to building a green, to seed the area near the green; anything here will be green landscaped; this is asphalt now. So right now you can come in off Anthony Street and go through the drive through. Your only way out is to come off Route 6 and take a right; many people are coming through the drive through and u-turning in a one way to get back out to Anthony. This causes a problem. There is a sign indicating not to do that, but people are doing it. So, I think it's a plus to the Town; it is a local business zone; it's a local business use. The only thing we are suggesting to you is that we're not 50 feet off the side yard. We will be except for the fact that the front (inaudible). You might know that history will tell you that actually I was in here for Century Bank for the canopy on that building some years back, and the Board allowed it at that time, for the canopy. Today, we are suggesting to you that we can make the situation much better and more compatible to all by (inaudible) one which it is; they are a preexisting (inaudible)

R. Blum Wasn't there other retail between the Sunset and the bank?

Atty. Navega Not between Sunset and the bank.

R. Blum The bank is going to be expanded?

Atty. Navega Yes. The bank will be made larger; this is a nice project, good for the area.

R. Blum I noticed that the removing of the current drive through--and it looks like there is an addition of four parking spaces there. Is that going to be any more encroachment on that throughway of traffic plan there, rather than just having nothing on that side of the building?

Atty. Navega I don't know the answer to that.

R. Blum I drive through that parking lot; it's pretty tight. When you come through the drive through, you can only exit out Anthony Street. It's going to eliminate people turning around in the parking lot.

When you come in on Route 6, you can go into the bank or you can go through the drive through; the only way out is that way or (inaudible).

Will that be two-way or will that be a one-way on the side? Meaning, when people come in off Route 6 to go to the bank and exit out Anthony (inaudible)

Atty. Navega We try to discourage people from going....

R. Blum The train of thought though, you have u-turn problems now. Still people want to go into the bank

Atty. Navega I think that the way they will set it up is the common-sense approach. (inaudible) July 27 Planning Board, they meet the requirements.

R. Read I think we should note that they are expanding the bank that Mr. Navega does his business with.

K. Rondeau We have had issues with that whole corner for traffic wise with Tim Horton's (inaudible) that would affect Slade's Ferry bank at the time; this looks to me that it is a winner as far as traffic wise. Expanding the site; that will make it a beautiful site there.

Artist rendition shown, that whole end of that neighborhood has been upgraded between the automotive place and Cumberland Farms.

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

G. Sagar made a motion to uphold the Building Inspectors decision and close the Public Hearing R. Blum seconded **and so voted unanimously by:** Ch. Grouke, B. Read, K. Rondeau, R. Blum, G. Sagar

Vote: (5-0) approved

R. Blum I like the plans; I think it's very nice; I am just playing the devil's advocate, I just think that old habits die hard, even though the drive through is being repositioned, I think that people will still try to go to the left and out to that—you may have a traffic problem because you have these four parking spaces and landscape you might (inaudible).

Atty. Navega I know what you mean. The situation will be vastly improved, but it may not be eliminated.

G. Sagar made a motion to approve the petition as submitted, seconded by R. Blum **and so voted unanimously by:** Ch. Groucke, G. Sagar, K. Rondeau, R. Read and R. Blum.

VOTE (5-0) Approve

Work Session:

Reorganization of the Board

G. Sagar made a motion to reorganize seconded by K. Rondeau **and so voted unanimously by:** Ch. Groucke, G. Sagar, K. Rondeau, R. Read and R. Blum.

VOTE: Approve 5-0

G. Sagar made a motion to nominate Edward Groucke as Chairman seconded by K. Rondeau **and so voted unanimously by:** Ch. Groucke, G. Sagar, K. Rondeau, R. Read and R. Blum.

VOTE: Approve 5-0

G. Sagar made a motion to nominate Christina Testa as Zoning Board Clerk seconded by Ch. Groucke **and so voted unanimously by:** Ch. Groucke, G. Sagar, K. Rondeau, R. Read and R. Blum.

VOTE: Approve 5-0

K. Rondeau made a motion to nominate Gary Sagar as Vice Chairman seconded by R. Read **and so voted unanimously by:** Ch. Groucke, G. Sagar, K. Rondeau, R. Read and R. Blum.

VOTE: Approve 5-0

Approval of Minutes:

K. Rondeau made a motion to approve the minutes of June 1, 2010, seconded by G. Sagar **and so voted unanimously by:** Ch. Groucke, G. Sagar, K. Rondeau, R. Read and R. Blum.

VOTE: Approve 5-0

G. Sagar made a motion to adjourn the meeting and enter into Executive Session for the purpose of discussing pending litigation without reconvening in open session, 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 Robert Read

VOTE: (Approve 5-0)

Meeting adjourned at 9:10 PM

Respectfully submitted by:

Christina Testa, Secretary