

SEEKONK ZONING BOARD REGULAR MEETING

MINUTES June 1, 2009

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

7:10 Chairman Edward F. Grouke called the meeting to order.

This is the meeting of the Town of Seekonk Zoning Board of Appeals, June 1, 2009. 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 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.

2009-11 The Town of Seekonk, a Municipal Corporation with its principal business address at 100 Peck Street, Seekonk, MA, owner, by Alan R. Jack, Fire Chief, petitioner, requesting a **Special Permit** under Sections 5, and 6.2.13, to alter, reconstruct, and/or extend the Richard C. Banna Memorial Fire Station, 30 Pine Street, Plat 33, Lots 114 & 115 in an R-1 zone containing 10,916 square feet. Mark Brisson sitting in for Gary Sagar who is presenting.

Was continued from May 11, 2009

G. Sagar 30 Elaine Drive, Seekonk, Sworn in. I would like to complete testimony on the special permit and then go into the variance. I would like to call on our Town Administrator Michael Carroll.

Michael Carroll 30 Cherry St, Wrentham, sworn in. I have been the Town Administrator almost a year and a half and have substantial experience in investigating sites for the Fire Station in other areas. Over a year ago, the Selectmen made it a priority to enhance the public safety and have a more active fire fighting capacity in the north end and look at other sites in the north end. At the Town Meeting last May,

the Town appropriated \$25,000.00 to be used to put a bond on property that would be suitable for a fire station. I looked at a number of sites, the McCarron property, practically everything with a for-sale sign, the McCarron property was already under commitment. I looked at a vacant lot next to Micheletti's. The problem with that is a river runs through it, there would be a small area in the front to put a building on, it was not practical for a fire station. The parcel on the corner of Brook and Newman, the owner approached me and the problem was the river running through it and it is not useful for this particular purpose. It would make the fire station one bay wide to keep away from the set backs and the river. Also we looked at town property, the lawn area is part of the layout but the telephone company building is sitting in the middle of the road and it sits right at the middle of an intersection and would be unsafe for entering. There was a vacant manufacturing building at end of Tower Street, but had been recently sold and not available. Those four come to mind quickly, we made (inaudible) to real estate brokers to let town know if something came up. I have exhausted the north end of town, and do not know of any other places in town, I did talk to the real estate department for Grand Union Supermarkets, they owned what is now Stop and Shop/Rojacks. That parcel includes the woods on the south side of parking lot and includes the septic system they were not interested because CVS was interested and they needed it for parking. Everything that was large enough that came to my attention I enquired about. The ability to purchase another parcel at that end of town is very restricted. We could do it only by eminent domain and that could get extraordinarily expensive. Banna Fire Station has been a fire station; it is currently a fire station and would just continue its current use.

Ch Groucke I will ask Atty. Merritt if he had any questions for the Town Administrator before he leaves.

Atty. Merritt I have no questions.

G Sagar I would like to ask the Fire Chief to come forward.

Chief Alan Jack Gerry Drive, Seekonk Ma, Sworn in.

G. Sagar At the meeting of May 11, 2009, there was discussion of the 2000 MMA report, could you comment on that report?

Ch. Alan Jack A report was done by MMA in Boston at the town's request and the report states that the town would be better served utilizing the two station concept, building two brand new facilities located suitably between the center of the north end of town and the center of the south end. During the years that passed, the town went forward with a new facility at Peck Street. When that facility was built, it took the MMA study and compromised it. It brought us further from the north end of town to the center of town, and it is my opinion that we probably are in an area now that we probably will need three fire stations. Something in the south end of town, the public safety complex in the center and most notably something that is

needed right now in the north end of town. OSHA and NFPA standards for manning regarding having “x” amount of people responding within so many minutes, it goes on to stipulate how many people we have on the scene within so many minutes. Those are great standards and we certainly would like to abide by them however we are not necessarily a state that follows OSHA or NFPA mandates. They are utilized as a recommendation and we would love to see that happen but unfortunately for us, with our manpower it would not allow that to take place, that is something we cannot do.

G Sagar I have some other documents I want to submit but I would like to yield to Atty. Merritt.

Atty. Merritt At the testimony of April 30th, you testified that at the Banna Fire station would house EMS medical personnel, how often would those individuals be stationed at the Banna Fire Station?

Ch. Jack We hope 24 hours a day, 7 days a week.

Atty. Merritt What percentage of your calls are EMS related?

Ch. Jack Approximately 60%.

Atty. Merritt When an EMS related emergency vehicle leaves the station, would the horns be in effect?

Ch. Jack It would be emergency lighting.

Atty. Merritt Say it is 7:30 on a Saturday night.

Ch. Jack We would not have horns on leaving the station, no sir but we would in traffic.

Atty. Merritt In terms of fire fighters alone, not EMS, how often do you hope to have fire fighters there?

Ch. Jack It is a loaded question. Out of 24 personnel, we only have one that is not EMS certified. It is mandatory that every new employee coming on the fire department has to be a paramedic in the state of Massachusetts. You will find that we have paramedics that are on the fire truck as well. They are cross trained and go from vehicle to vehicle, in circumstance of Banna Memorial Fire Station, the individuals would have the opportunity to take either fire or EMS vehicle.

Atty. Merritt As it is now, you don't have the space for both the Fire and EMS vehicles.

Ch. Jack Yes, there is enough space to have both, we have one fire truck parked there now and a rescue parked there now. There are two vehicles and we have the opportunity to take either one.

Atty. Merritt So on a 24 hour/7day a week basis, how many individuals would you like ideally?

Ch. Jack Ideally, we would love to have 3 or so, but in my tenure here in the Town of Seekonk I can't see any more than 2.

Atty. Merritt With OSHA standards, isn't it true that if only 2 are stationed there and if they go to north end of town, they could they not go into building?

Ch. Jack The way we operate now, you are correct, however if it is a confirmed structure fire, we automatically send out mutual aid, in this case, with the north end of town we would contact Attleboro and as we are responding they would also.

Atty. Merritt If there was a fire next to my clients home, they would have to wait until someone comes from a surrounding town.

Ch. Jack No, the fire fighters would go in.

Atty. Merritt Doesn't that put their lives in danger because they don't have other gentlemen on to help them?

Ch. Jack Yes, it does.

Atty. Merritt I have no further questions.

Ch. Grouke Mr. Sagar did you want to submit any further documents at this time?

G. Sagar I will yield to anyone else who wants to speak at this time.

Atty. David Merritt 792 West St. Mansfield, Ma, with an office at 50 Redfield St Boston, Ma. sworn in. Under section 5.3 a nonconforming use, may be extended or altered so long as the resulting change or expansion of the use is not substantially more detrimental to the existing nonconforming use. This is what you will have to answer. Is the increase in uses to the Banna Memorial Fire Station substantially more detrimental to the surrounding neighborhood. At the onset, I would like to remind you that the increase in uses would come in the form of increase fire department personnel, police substation, police department personnel, community meeting room, second floor addition, exercise area, lounge area. The issue we must answer is framed by section 11.2 of the Town of Seekonk's zoning code which goes on to say that special permits are to be issued only for uses which are in harmony with the general intent and purposes of the bylaws. I think it is important that we turn our attention now to Section 1 which illustrates the general intent and purpose of the bylaws. Which among others is to lessen congestion on

the streets, provide adequate light and air, prevent overcrowding of land, conserve the value of land and the buildings, to encourage the most appropriate use of the land throughout the town. In terms of congestion, (inaudible) police substation, increased fire department personnel, community meeting room, sleeping areas, quarters for people to work out in. This will only be provided for with 10-15 spots. I think this raises the reasonable inference that should a community meeting be held there, the inference is raised that parking could overflow in front to of my clients property and other property for that matter. At the April 30, 2009 meeting, testimony was given that the Banna Memorial Fire Station was one time used for little league sign ups, people running in and out, emergency response and because of all the activity going on in that area, there is significant overflow in front of my clients house. An additional intent of the zoning bylaws, to provide adequate air and light. As we alluded to a moment ago, the proposed structure will include a second floor addition, the uses for that include an exercise room, social area, and light. My clients have a garden which abuts where the addition would be. If this were to be built, the air and light would be reduced possibly damaging my clients garden perhaps irreparably. The intent is also to prevent overcrowding of land. As you know, the lot where the fire station is currently located is a mere 10,916 sq feet. Some 400 sq feet less then what is required in an R-1 residential district which requires 14,400 square feet. This would triple the use and have a tremendous amount of use on one small plot of land. I submit that this is the very definition of overcrowding. The other intent of the bylaw is to conserve the value of land and buildings. As noted earlier, the Banna Memorial Fire Station is in an R-1 residential district and the proposed changes will take it from a fire house used on as what Chief Jack alluded to on April 30th meeting on an as needed basis to a community meeting, police substation, and expanded fire department personnel will be there. These services are great for the town, they provide emergency personnel for the northern end of town on pretty much a daily basis however the practical reality of the situation is for my clients and other individuals in and around the Pine Street area is that emergency vehicles will be going in and out all hours of the night eventually as they should be because they are emergency response vehicles, community meetings will be held which will result in decreased privacy for my clients, a police substation which was alluded to at the April 30th meeting, there will be a substation which will allow for all police department needs at that location. This will result in a situation where if someone is looking to move to that area, they will turn away for the simple reason that they don't want their privacy reduces. They don't want to be woken at 3:30 in the morning by emergency vehicles. This will in turn have a detrimental property value for my client and those in and around that area. In fact, my clients have retained the services of an independent appraiser who estimates that their value will be reduced by \$50,000. I submit to the Board that perhaps theirs is more severe since they immediately abut the proposed renovations I would submit it provides a small anecdote as to how other values in and around the value could be impacted. Lastly, one of the other intents of bylaw, is the most appropriate use of the land. This is not the most appropriate use of land. The resulting change in

use will be substantially more detrimental than the existing nonconforming use and with that I will yield until the variance issue is taken up.

M Brisson What would you suggest to (inaudible)?

Atty. Merritt I suggested at the last meeting that an independent study be conducted similar to the MMA report. I am troubled as an advocate for my clients that no similar study has been done in 9 years since. That very same MMA study recommended that that fire station should be phased out of operations. It didn't allude to it in the report but I can presume that to phase out operations because it simply can't provide for the emergency response that the north end of town requires. Chief Jack testified tonight that if there is a fire, right across the street from where the station is now, they would go in at their detriment and harm. That is not the purpose of how a fire station is supposed to serve so my recommendation is to conduct an independent report that says this is the optimum location to house the increase in fire department personnel, increase police department personnel, increase exercise uses, all these increases in uses, but for now we just don't know, there are too many unknowns. It is not conforming with the intent of the bylaw.

Ch. Groucke My recollection of the testimony is that the proposed use of the fire station is not going to be dramatically different than what exists there now, although the Chief talks about what he would like to have, it seems that as a practical matter there are other forces, like personnel budgets, that will keep the operation at what it is now. I understood that is what the testimony was previously. I am wondering if you could point out specifically where you see that this proposed building will dramatically increase the activity there.

Atty. Merritt I don't know the Town's budget but, let's presume that it is not good right now but 10 years from now and the Chief has the budget and all the personnel to fully staff the location. If he has a facility up there that could house 6 fire fighters why wouldn't he when it is his job to protect the lives and safety of the citizens of the town of Seekonk? The simple answer is he definitely would staff it, he would be crazy not to. Right now, he can't do that so in the short term your point is valid, but don't forget, we also have the community meeting room, the police substation, the exercise and lounge area, and the second floor addition, this is a huge upswing in the uses even if the personnel are not there tomorrow, they hopefully will be some time in the future.

Ch. Groucke Again, the police substation, the way I understand the way it is being use is that it is going to a more private room where the police can conduct their activities which is about the same as what they are doing now, I don't see how that involves a lot of increased activity.

Atty. Merritt In the transcript from April 30th, the Chief did talk in his testimony that because certain citizens would not want to go down to the main police station, because individuals would not want to have a cruiser in their lot, people would want to go

to the police substation. But he continued that it will be used for all purposes of a police substation. So, what are all purposes? Lets just brainstorm together, all purposes are booking, arrests, people getting beat up going to a police station yelling at all hours of the night. That is significant, it would be a dramatic increase in use. While I understand your point the testimony was compelling.

K Rondeau I have many questions for Mr. Merritt, I heard the Chief of Police said that the history is that they use that basically as a table in the back room for someone to meet or for someone to do a report and that would not change. That was the testimony of the Chief, I heard the same testimony that the Chairman heard. For you to stand there and say that it will substantially change that is different that what the Police Chief stated. Secondly, you did nice job paraphrasing the purpose of Section 1 (of the Bylaws), but you omitted a lot. The other question I have before you is one of your biggest complaints is that the Fire Chief only has two people available 24/7 and yet it is not going to help the people in the area on a fire basis but it absolutely will on medical basis, maybe not on a fire basis otherwise they would be going against OSHA and NFPA recommendations but that are just recommendations in the state of Massachusetts, they are not law. But if they do 10 years from now have 6 people on there full time, doesn't that satisfy your concern about having two? And that would also help to make sure that these laws that are designed to lessen the congestion in the streets, to conserve health, to secure safety from fire, flood, panic and other dangers, some of the things that you conveniently left out. That was to serve the whole area including the people on both sides and in the back.

Mr. Merritt The gentleman makes great point, it satisfies OSHA, but it also illustrates the catch 22 of this whole scenario, if there are 6 people and that is just one increase in use from the way it is currently used, that is a dramatic increase in uses, you are satisfying OSHA but you are increasing uses from what it is currently used for to the detriment of my client and those around them. I would presume that if the budgets are in place the Chief of Police and the Fire Chief would want to have as many personnel at that location as possible which I would submit to the Board is a substantial increase in uses which is the very definition; substantially more detrimental...

K Rondeau It is a big maybe.

Mr. Merritt Yes, it is a big maybe but...

M Brisson I am not that familiar with police substations, but I have been to the Providence Police substation and they don't have any more than two policemen there at any point in time, I don't see any massive growth in personnel at the Banna Memorial Fire Station for that purpose and I don't see Chief Jack having 6-8 personnel on the fire side, it just doesn't make any sense because it probably won't be very effective to have that many personnel there. When he was talking earlier he was talking about 3 as a classic case for him would be perfect because he would have

2 people to respond to EMS and 3 to respond to a fire and that is a solidified wish list, this community room that you keep elaborating on that is going to bring all kinds of extra people in there, this community room is not even going to be the size of this room and will have minimal capacity to bring people in for a meeting. If there are big meetings in town, it is either here or the high school. It could be a neighborhood thing like a neighborhood watch but that is something that is pretty solidified with everybody who gets involved with that. I have a hard time with some of the things you are going against on this petition, what you are saying does not make any sense to me.

Atty. Merritt You are segregating the increase in uses, you have to look at all the increase in uses in their totality and the effect those increase in uses are going to have on the neighborhood as a whole.

M. Brisson You are looking at this as a negative impact. Everything this petition stands for is a positive impact and that is the way this has been presented.

Atty. Merritt I will submit to you that the idea of a Fire Station in the northern part of town is without question a great idea but is it the most appropriate use of land throughout the area? And I have submitted to you a list of reasons why I did not think it is.

R Blum In the past 3 years your client has lived there on that street they purchased the lot in 2006. Have there been any complaints concerning issues living beside the fire station?

Atty. Merritt There hasn't to the best of my knowledge however, I would also like to get on the record in that Chief Jack did indicate on his testimony on April 30th the fact that the station is used currently on an as-needed basis ie: weather emergencies.

R. Blum He also stated that he tries to staff it as much as he can.

Atty. Merritt As much as he can but keep in mind there are budget limitations, which restrict that.

R. Blum You are requesting that we do a new study. I believe that Mr. Carroll testified that he has done due diligence on looking at proposed properties that are available in the north end. You are proposing that we do another study, more money, more time, more effort that we don't have those resources in town right now and I think that your clients should know that as residents of Seekonk.

Atty. Merritt They are residents of Seekonk however when they bought the property, it was used on an as needed basis and right now you are going to have increase in uses.

R. Read The day room, is it true that the day room will be used by the personnel that are at the station at the time, that is like a lounge for the people on duty?

G Sagar That is the living quarters for personnel on duty only.

R. Read So if there are only two or three people on duty there, there wouldn't be an influx of people coming to use the day room?

G. Sagar That is correct.

R. Read Wouldn't the same thing apply to the exercise room, it would be only for the people on duty at the time.

Ch. Jack Yes, that is correct.

R. Read The police usage, do I understand that there would be one police officer that stops there from time to time to use it for some purpose?

Anthony R. Araujo 36 Cross Street, sworn in. On the plans, it discusses or depicts a police substation, currently officers who work that post utilize the building that is there now. There is a table for lack of a better phrase and a couple of chairs. They sometimes take their laptop from the car into the backroom at the station and use that periodically; they also use the necessary facilities there in the building. It is a good spot for them to do the things they need to do, not much more than that. It is a little more convenient for them than sitting in the car. I don't know if you have ever seen them type in the car, they have to type to the side and for a lengthy report, it gets fairly uncomfortable. As a supervisor I am excited that they would utilize that facility even in the current decrepit condition it is in now, at least it is a space for them to get out of the weather and to type and to think about what they are going to put into a report so that they are successful in later litigation in court. There was conversation earlier regarding arrests and booking. This facility either in its current form or the proposed rehabilitation of the building, there would never be arrests or booking that would occur at that facility. The facility is not designed for that, nor does it sustain any of the necessary equipment that we would need to complete the booking process, it is a very elaborate process, there isn't a finger printing machine in there and I don't ever foresee one there at least while I am alive. They are \$35,000 dollars and I don't think they are going to spend that kind of money there. There is no detention area there that meets the states requirements and they are very specific about what they require. This informal meeting room, that they discussed, that we would meet with people, that would be strictly an informal meeting. Right now the officer what is assigned to this particular post that encompasses the building we are in and the police station are responsible for all the walk in complaints that would occur. The only time I would ever foresee us meeting anyone in that room would be for an informal meeting or a meeting where someone was seekonk some kind of criminal guidance to the limitations that the officer could provide and it would be on an informal basis. If it should rise to the level of a formal meeting, the officer would meet the party here at the police station for purposed of processing whatever information needed to be done should there be a complaint filed with the Taunton

District Court. Those are the things that came up quickly. One other point since I am up here, there was conversation by Mr. Merritt concerning gardening by his clients at the rear of their property, they do have three elevated beds at the rear of the property. I had the opportunity to take photos taken around noon time of their garden and it does show the shading at approximately noon and if you look at the shading, you can see that the shading of the building at noon does not encroach on the grass much more than a couple of feet. If the photos are taken a little later in the day, the shading may come out a little more and then there will be some conversation about the height of the building. If you look at the height of the front portion of the building the shading is depicted here at the steps and it doesn't extend beyond that much and the trees on the side yard provides more shade once the leaves emerge during the growing season. The flower beds, or gardening beds that are raised towards the rear of the building, we are proposing a twenty foot extension to the rear of the station and it still leaves about two parking spots and those two parking spots would be within the scope of the sunshine. I don't see any shading that would occur even if the building were built in its present form without a reduction in size, I think the sunshine on the gardens would be well preserved.

- R. Read So the police substation room would be used no more than it is right now?
- A. Araujo That is correct, the officers are utilizing the space now, it would be nice to have a little bit of better size to work in but I don't anticipate much more usage if any.
- R. Read As far as the meeting room is concerned, could that be limited to the number of parking spaces in the lot?
- G. Sagar I believe that the occupancy permit would be determined by the available parking.
- R. Read So there would be no parking on the street or anything like that?
- G. Sagar No, the parking plan would have to be all encompassing (inaudible).
- R. Read If a fire truck or emergency truck were to leave the station, at what point would you turn the siren on?
- Ch. Jack We use the air horns and sirens sparingly, we would not use it coming out of the barn, the siren would be used at the intersection. Part of the proposal would be to use a preemption system for that traffic signal located at the intersection of Pine and Central Avenue.
- R. Read Once again, you would not use the sirens any more than likely then that you do now?
- Ch. Jack That is correct.

- R. Read If you had the money or the budget, what is the maximum number of people would you have there now?
- Ch. Jack The maximum people I would have would be 3 people. We have 4 shifts. In order for that fire fighter to have an impact 24 hours a day, there has to be 4 of them.
- R. Read If this building were added to and improved, you would still most likely have only 3 people there.
- Ch. Jack The most I could see is 2 to be quite honest with you. If we had unlimited funding the most I could see in my lifetime, not only my tenure here, would be three people. Because certainly if we had the availability to hire more fire fighters we would staff this station with more personnel and also address the needs in the south end of town.
- R. Read The other comment he made about the decrease in property values, personally I have never seen an improvement on a building which that obviously would be, decrease property values of any other building around it. I think basically, they are saying there would be no more usage in any of these rooms than there is right now.
- G. Sagar Even though you don't have the ability right now for permanent staffing, that is still a 24/7 call station is it not?
- Ch. Jack It is currently used 24 hours a day, 7 days a week. Our call department which we have no intention of doing away with, we are actually looking to fortify our call department, they currently respond out of that station predominantly weekends and evenings. There is activity there but you don't hear us.
- K Rondeau Going back to the statement of the most you would have would be three, is that more due to the productivity of the personnel there, and the fact that no more than 3 is needed.
- Ch. Jack It really isn't. In a perfect world it would be nice to have enough personnel to man the fire truck and the EMS vehicle but if we did that we would have to have enough funding to have appropriate personnel at the public safety complex next door as well as south end. I really, aside from that severe winter storm where would possibly might have one extra person there, in my tenure here I can't see that happening. Also for the impact for every fire fighter; if you see a fire fighter on a shift there are three other fire fighters on three other shifts. If the town were to put one more person on a shift, you would have to fortify by putting 4 more people on.
- R. Blum Some of the areas we are talking about are not that big, the meeting room is 18x30, not a big area. We are referring to the exercise room is an exercise area, it

is 5x12, that is maybe two treadmills. It is not a large area. The police substation, as it is listed is 17x10, they are not huge rooms, they are not going to function as a large meeting rooms. I think as things are labeled and discussed, people are getting misconstrued that this is a huge facility to accept meetings for town meeting, that is not going to happen.

G Sagar We tried everything we could, we tried to keep the building 50' so we would not encroach on the rear yards setback. We think we have come up with a common sense solution. We are privileged to have on staff at the public works department the assistant director is also a traffic engineer he did a comprehensive study of the site, without reading the whole report to you, I will read this one sentence that summarized it: "Therefore based upon preliminary analysis conducted for this project, it can be concluded that the project will not have a detrimental affect on traffic safety and operations of the station." I will tell you also that part of our due diligence we met with the Planning Board, they are on board with this. I have a copy of their certified minutes of that meeting. The Capital Improvement Committee also gave us their approval. I asked our town planner Mr. Hansen to do an evaluation of the fire station property and how it relates to the abutting neighbors. (Mr. Sagar read a letter from John Hansen, Town Planner dated May 27, 2009 into the record) The plan also shows A and B, the area for the two test pits for the new septic system that will be installed. These Title 5 requirements are in a letter dated April 7 from the Health Agent. It states that it is capable of supporting a new septic system. During testimony at the April 30th, 2009 hearing, John Hansen, Town Planner, in part said the town has a Master Plan "there is need for community meeting space and it would be furthering the goals of the Master Plan, I can't think of a better use to further public safety." It was his professional opinion as well as the Planning Board that this project should move forward. The attorney mentioned a \$50,000 detrimental value to the abutters. We were provided a copy of the Chestnut Hill appraisal for 22 Pine Street. It is 33 pages in length. I would like to take the time to highlight the summary pages on the back. It first talks about an interview with one of the owners on the 24th of April. It says the town is seeking a 10' wide easement along the right side with an 8' high privacy fence along the proposed easement. There were very early discussions about an easement that has never been pursued so for that reason, this part of the report is totally inaccurate. When you talk about lot coverage, it goes by footprint, you don't count based on how many stories, so that is flawed so total coverage (inaudible) it also has proposed floor area ratio of 30 Pine Street more than doubled from 15-36% and they talk about the floor area and ratio that again is sited at 36%, it is only 22.6% which is in harmony with the neighborhood. It says the uses on the site will increase 3 fold from an auxiliary fire station to a full time fire station. I believe the Fire Chief has been very adamant that this is not an auxiliary Fire Station, it is a functioning fire station 24/7. It talks about the uses and the increase in traffic. I think that is rebutted in the traffic report that we had by engineer Cabral. In the final page, they do an analysis of proposed improvements. It is the appraiser's opinion that the proposed easement on the subject property and the proposed improvements

under external obsolescence/special market conditions will have a negative impact. There is no easement so one of those two factors that they used to come up with a value is erroneous. They came up with a value of the property at \$250,000 they felt it would be a 20% reduction so that is how the attorney came up with the \$50,000 figure. I would like at this point to ask a real estate appraiser from Seekonk to comment on this.

Fred Slemon 17 Pheasant Ridge Road, Seekonk. Sworn in. I am a general certified real estate appraiser in both Massachusetts and Rhode Island and also a real estate broker. I have reviewed the appraisal for 22 Pine Street. The 33-page appraisal that I reviewed, 32 pages are fine but when I got to page 33 I was taken back by the external obsolescence and special market condition. I would be happy to expound upon this. The property in question, the residents to the left of the station as you face the station, was purchased with the external obsolescence the real estate appraiser is commenting on. It is a pre-existing condition. I believe the station went up in 1935 and the home that was appraised went up in 1930. The current owners and the previous owners purchased the property with the station there. The current condition of the station is in need of repair and I am being kind. When I heard about the improvements, I went to a meeting at the station where the improvements were going to detail; I had an opportunity to speak with the gentleman who drew them up. I looked at the appraisal and it talked about the external obsolescence negatively impacting the value of the residence. It also says, I quote, "It is the appraiser's experience that the properties exposed to similar forms of external obsolescence and/or special market conditions are rarely sold due to the negative effect on marketability caused by the external obsolescence and special market conditions. Typically buyers tend to shy away from these properties, instead substituting them with homes not affected by external obsolescence and/or special market conditions. Well, yes, maybe the typical buyer does shy away from buying a home next to a fire station as we all know, at least in my town and other towns I am familiar with, people buy homes next to, abutting, and in front of fire stations. I had difficulty with that comment but in terms of the external obsolescence, that existed when the home was purchased. It has existed for a number of years since the home has been there. I agree with the comment made earlier that any improvements to the fire station itself would add to the value of the surrounding homes since currently the station has fallen into disrepair. I can't understand how he can turn around and come up with some of the numbers in the report since he states that he has no data to base his reduction of 20-25% in value on except his experience of 60 years. I have been doing this since 1976. I know people buy homes next to fire stations, I believe there are people in this room that purchase homes next to fire stations. They are great neighbors. I feel that improvements to this station would positively impact the value of properties that surround the station. I see the improvements to be in harmony with the neighborhood. I did not appraise this property; I am very familiar with the neighborhood. I reviewed the report that was written but I disagree with the report because there is no data to support the depreciation; it is just an opinion and every appraiser including myself is entitled

to but usually when you present a number in a report of depreciation, and there are a number of issues in the report where they depreciated adjustments which is the nature of an appraisal, you have to establish data it was based on and state it on the same page of the report and this is based on experience there is no data. I disagree with the comments. My opinion of the impact of the improvements, it would positively impact the neighborhood and the value of the properties in the neighborhood. Of course with today's values, it would not be a large increase in value, but it would maintain the value if not increase in value. It is much more pleasing to they eye to look at an improved; building as opposed to look at one that is in disrepair.

G Sagar I have no other witnesses Mr. Chairman, in closing turning to page 3 of the zoning bylaw book under special permits, if I may read part of it. It says Special Permits are to promote the public health, safety and morals and general welfare” I think that we have clearly demonstrated that with the testimony of all that have come before us. Special Permits are to be issued only for a use that is in harmony with the general purpose and intent of these bylaws. That was the finding of our Town Planner and the Planning Board, Capital Improvement Committee, and we ask that this phase of the application, that you issue the Special Permit. At the last meeting we submitted some stipulations.

R. Blum Is the town still seeking an easement?

G. Sagar No.

Atty. Merritt You elude to the fact that it is your professional opinion that the value of the property will not be impacted by the improvements that are put forth today, is that true?

F. Slemon Negatively impacted. It will not be negatively impacted.

Atty. Merritt Have you done an appraisal on the property?

F. Slemon I have not.

Atty. Merritt Have you done any comparables on this property?

F. Slemon I have not.

Atty. Merritt How long have you been a real estate appraiser for?

F. Slemon Since 1976.

Atty. Merritt So, your experience as a broker, people prefer to live next to a fire station that is used on a full time basis.

F. Slemon I never stated that. I said people purchase homes next to or abutting fire stations.

Atty. Merritt I have no further questions on the Special Permit I will reserve them for the Variance.

Ch. Groucke So does the Board want to vote on the Special Permit now or take testimony of the Variance and vote on them at the same time?

K Rondeau We have in the past, any time we have a petition that is the same petition, same issues, same problems, etc., we have taken them under advisement at the same time.

Ch Groucke Mr. Sagar if you wouldn't mind, we will go forward with the request for the variance.

2009-13 The Town of Seekonk, a Municipal Corporation with its principal business address at 100 Peck Street, Seekonk, MA, owner, by Alan R. Jack, Fire Chief, petitioner, requesting a **Variance** under Sections 6.3, 6.5, 6.7, and 10.6.3.1, to alter, reconstruct, and/or extend the Richard C. Banna Memorial Fire Station, 30 Pine Street, Plat 33, Lots 114 & 115 in an R-1 zone containing 10,916 square feet.

G. Sagar The first item Mr. Chairman is that there are four listings in the bylaw for a Variance, the last being 10.6.3.1, we would like to request withdrawal of 10.6.3.1, that was a typo. Mr. Chairman, I would ask that you incorporate for the record from the hearings under the special permit as part of this also. There is no need to recall all the witnesses, resubmit all the documents so everything that was submitting for the special permit will be incorporated for the variance?

Ch. Groucke Yes.

G. Sagar (Mr. Sagar read from the Town of Seekonk's Zoning Bylaws the definition of a variance) If we can refer to the site map Mr. Chairman, this site located in an R-1 zone, should be 14,400 square feet, it is 10,916 square feet. In an R-1 zone 120'x 120' is the preferred size for a lot. However in this zone, you may reduce from the 120' down to 100' but for every foot you are short, you need 250 square feet of land area. So even if this lot was 100', you would need roughly an additional 5,000 square feet which would be over 19,000. We do not have that, we have 10,916 sq. ft. We do not have a (inaudible) This lot was created prior to zoning and it is irregular in shape as it appears here. When this station was built, the closest point is less than two feet from the property line, the proposal is to take and maintain those lines, this would be less than 4 feet and this would be 50' in length. Under an exemption, page 63 of our Zoning Bylaws, it allows for the front of the building, even though it is only 25' from the road where it should be 35', there is an exception under section 13 to allow us to line it up with the existing structures on the street. By the spreadsheet our Town Planner did, we are 22'-25' off the frontage (inaudible) we are not in conformance but we are

entitled to the exemption allowed under section 13. The lot area, again at 10,916 square feet, we should be 14,400, we need a variance because of the size and area of the lot. Also, under (Section) 6.7, there is supposed to be a maximum of 50% of longest side, which would be 69 feet. Currently the station is 66' long (inaudible). We feel we are entitled to all these variances and I will incorporate them all into one. Using the language of "owing to condition peculiar to the property". There is no other land available for us to attain so we have what we have and that is something that we have to work with. Literal enforcement of bylaws would create a hardship financial or otherwise. The financial hardship for us also is representing the town with the current state of economy. If we were to purchase property, and you heard the testimony from the Town Administrator, that he had done an exhaustive search and had not found land available, that would be a capital outlay and taking that property off tax roles would result in financial hardship for the town. We have, as far as our due diligence, met with some of the neighbors and the site right now is serviced by a cesspool. We are putting in a modern Title 5 septic system. One of the suggested stipulations is to regrade the whole lot based on the topography because of flooding that occurs to the neighbor's property. So owing to the size, shape and topography, we need to do this building the way it is located, the way all setbacks, the Board of Health and drainage and Planning requires, so there is a further hardship for the property. This property has been a fire station for 74 years and hopefully it will be a fire station for another 74 years. For all those reasons, I think we meet the criteria, the soil conditions, size, shape, topography, and the financial or otherwise hardship is substantial. This is not the town's doing, this is what is required.

R Blum You gave us a list of stipulations at the last meeting of April 30th, could you review those one more time? Maybe I could just read them to you and we could go over them.

1. The town/owner shall install an "Opticom Sensors" system signal at the Pine Street and Central Avenue intersection. This will allow the emergency vehicles to control the traffic signals reducing the noise level for the emergency warning systems when responding to an emergency incident. This follows up with what Chief Jack was saying about how they don't make as much noise as they did in the past.

G. Sagar Yes, that will allow the fire station and EMS to control the traffic light.

- R. Blum
2. The owner shall perform a traffic study on Pine Street to determine if the speed limits are appropriate in an effort to reduce noise and if additional signage as needed.
 3. The owner shall install a 6' high PVC fence along the southeasterly boundary line with lot 117 and the rear boundary line with lots 95 and 96. The style of the fence shall be determined with input from the abutters who share the common property lines.

4. The parking lot shall be redesigned to eliminate flooding of the adjacent property.
5. The owner shall install a 6' high PVC fence or screening in accordance with Section 7.3 along the northwesterly boundary line with lot 113 a distance of approximately 27', the style of the fence or screening shall be determined within put from the abutter.

R. Blum Would the department be open to a row of arborvitaes or screening along that side of the building at an agreed upon line. I know there is only less than a 1' space between the building and the property line, but with the abutter, if there was an agreed upon line, if they wanted them to be put on their property or whatever.

G. Sagar The best person to speak on that is Tony Araujo.

A. Araujo At the onset, we discussed the potential for an easement along the left hand side of the property as you face the station. After careful review of that we discovered that the lot sizes would fall below the required square footage and that did not appear to be a good idea at all. Some of the conversation we had with Mr. Merritt and his partner were that a work space would be more in line with the area we need to work with and the theory behind that is that the work space would afford us the ability to construct the building, and encroach on that line as discussed and at the conclusion of the work and once the building is completed and the ground was returned to its original form whether it be in the form of grass or mulch or whatever, we could determine where an appropriate spot may be that we might get involved with planting. I further have discussed with them that the plantings I was talking about was not a seedling. We are talking about a tree that is a good 6' high requiring a machine and a shovel and that type of thing and we would have someone carefully decide where the plants would be planted so that the actual spread of the plants through years time wouldn't encroach upon one another and cause the die-out that occurs. I can tell you that there has been conversation with them concerning just that type of thing. The actual spot or position of the planting would be determined at some point at the conclusion, if they were amenable to the works space, at the conclusion of the work space.

R Blum An 8' tall fence is...arborvitaes are a little more eye appealing.

A. Araujo My suggestion was also not to involve planting of deciduous trees but some type of evergreen tree that would give them screening year round rather than just during the growing season. We are still talking about that.

R. Blum You had mentioned some use of green concepts, solar use, would you go with the stipulation that we go every way we can to have some kind of green usage whether it be solar, or whatever else.

A. Araujo We are building green already. We are talking about 2x6 construction walls with super insulation and that would have to be the case with this building if they were

to hand solar panels on the roof. They would be on the southeast side of the building so that we gain maximum collection but they would be for nothing unless the building was super insulated so that was the reason that the 6" wall cavity was discussed. It is going to be a green building, hoping that it is going to be built. It will have to be for the solar panels to work. I would be happy with a 50% reduction in energy costs to the building. In order to achieve that, the building has to be green, there is no other way around it. The photovoltaic system we are proposing to put on the roof, we would sell the energy back to the power company so, it is a complicated program but for lack of a better expression, the meter would run backwards until it got dark and then it would run forward again.

R. Blum So you would be agreeable to this as a stipulation.

A. Araujo If it were cost effective.

R. Blum You have already done your homework and looked into this.

A. Araujo There is no question about that. I am concerned about shading and some of the things that go on. In the winter time, it would be great, in the summer time I am going to lose some efficiency just based on trees that are in line with the roof. You can if you want to make that a stipulation but I would prefer that you wouldn't because it may not be cost effective to put it on the roof today. I am looking for money to come from the Federal Government to help us with the cost of that and if it doesn't happen now, it may happen tomorrow.

G. Sagar You could make a stipulation that maximum consideration for all green initiative will be considered.

R. Read You are willing to discuss with Mr. Merritt and his clients and any other neighbors for that matter, anything about what the siding is going to be like or what the shrubbery will be like.

G. Sagar We had two neighborhood meetings and the plans that we had has been modified to take into account what the neighbors had asked. As far as Mr. Merritt's clients, certainly, any kind of greenery/shrubbery.

Mr. Merritt As Mr. Sagar pointed out, we are going to have an extension or alteration, it is at the current time, a nonconforming structure. By definition of your own bylaw a variance is required. You can see right here, the line from the proposed addition to the plot line is a mere 3.92 feet. Because it is a second floor addition, it is approximately 17' feet short of the 20' requirement. So, as I said, a variance is required. With that being said, only in exceptional circumstances would a variance be issued. There is long standing case law in the Commonwealth alluding to the fact that a variance is an extreme form of relief. It is not the same as a special permit where the analysis is a little less substantial. The old version MGL Ch. 40A the conditions of the land had to be unique, in a sense that they

cause hardship with the petitioner. This created a murky analysis for Boards, therefore the analysis was beefed up to say that the conditions of the land were caused by soil, shape, size or topography. However the additional requirement was put in there which reflects the fact that this is extraordinary relief in the sense that the conditions of the land, size, shape, topography or in this case size, cannot affect generally the zoning district in which the property is located. I would direct the Board's attention therefore to the traffic report dated May 14, 2009. If you look in the report, if you look at all the lots in this general vicinity, all the lots are very small in size, if the Banna Fire Station was on any lot in the neighborhood it is clear that a hardship would exist, the circumstances are one that it does affect generally the zoning district in which it is located. In other words, the hardship that the petitioner is alleging is not unique to just this one lot, it would be unique for all the lots in this particular area of the zoning district therefore by the law of the Commonwealth and by the case law interpreting such provisions, a variance just cannot be issued.

Ch Grouke Because all the lots in the neighborhood are the same size that is why you claim a variance can't be issued here?

Atty. Merritt Yes, if you look at the exact language, the condition can't generally affect the zoning district in which the lot is located. I submit to you that the hardship alleged or the condition on the ground affects the entire district, it is not unique to where the fires station sits currently. If you put it on any one of these lots in this area, the hardship would be the same. It is simply not unique to where they sit currently. It is a condition that affects the whole area.

Ch Grouke The condition that we have here is also the location of the building on that lot.

Atty. Merritt Yes, but if you look at all the lots, they are extraordinarily small. I would submit to you that if you put it on any lot in this general area between Pine Street and Mayfield Street, the hardship would be the same. The use is not just the building itself, it is also the parking lot itself, you are dealing with the side setbacks, rear setbacks, they would encounter the same problem on any lot in the area.

Ch. Grouke What we have the uniqueness of this situation is the location of the building on that lot seeing that it is so close to the property line and that is a condition that is particular to this lot rather than affecting every lot in the neighborhood, I think that is something that is unique to this lot only, the petition in front of us.

Atty. Merritt I would submit to the Board, on that issue you raised, that the petitioner carries the burden of proof on establishing that fact. I myself don't carry that burden. I simply point out the fact that all the lots in this general area are very small. You have a structure that is dramatically increased in size. You are trying to cram it into a small lot, it is a condition that if you put it on this lot or any other lot in this area, you are going to have the same problems which by definition means that it is not unique to just this area. Case law is clear on that.

Ch. Groucke What do you mean by a dramatic increase?

Atty. Merritt By dramatic increase I mean this right here, it is a mere 4' from my client's property line, less than 4', it 3.92'. (inaudible) Under the law of the commonwealth the conditions change dramatically, it is an extraordinary relief; it is not like a special permit where the analysis is much less strict. A variance analysis is very clear. It has to be a circumstance that affects this lot in particular.

M. Brisson I am trying to understand what he is trying to say.

Ch Groucke What he is saying is that the variance standard is that the petitioner has to show that they are entitled to a variance because there are conditions on this lot related to size shape topography or structures but not effecting generally the zoning district in which it is located. In literal enforcement of provisions of the bylaw would involve substantial hardship. It says that owing to circumstances related to soil conditions, shape, size and topography of such land or structures. That is what my comment was, because of the structure and its placement on the lot.

Atty. Merritt The lot itself is part of the analysis it has to comply with the general intent of the bylaws. That pertains to the lot itself and in terms of extension, alterations of the structure, you could put this structure on any lot and you would have the same structure.

Ch Groucke I don't think we have to look at this in a vacuum where this is an attempt to put a new fire station on a new lot. We don't have to do that. There is a fire station there now, we have to take that into account, we can look at the variance slightly differently then.

Atty. Merritt I understand your point and it is understood but once the decision is made, you do this right there and the analysis changes completely. It is a very rigid analysis. It is not a loosey-goosey analysis which is what a special permit is. It is very regimented by statute and by the Common-laws established in Massachusetts.

K Rondeau Where did you get that uniqueness?

Atty. Merritt It is Common-law interpretation of case law.

K Rondeau There is the word; interpretation.

Atty. Merritt This has been since variances have been allowed here in the Commonwealth by statute, this has been the analysis.

K. Rondeau I see nothing in our bylaws or MGL Ch. 40A that talks about this uniqueness that you are talking about. Also...

Atty. Merritt I am using the term uniqueness and circumstances almost interchangeably. Circumstances are not applicable across the board to every single lot. In this case the circumstances, which is alleged as a hardship will apply to any lot in the area.

K. Rondeau You have nothing here to back it up.

Atty. Merritt I have a well-established line of case law that substantiates my proof.

K. Rondeau Okay, where?

Atty. Merritt I don't have every single case in front of me.

K. Rondeau I have nothing in front of me, whatever decision I make will be made on 40A and the Seekonk Zoning Bylaws.

Atty. Merritt I will proceed under the expressed terms of the Seekonk Zoning Bylaws. Section 20.1 "But not affecting generally the zoning district in which it is located"

K. Rondeau You paraphrased it. I will read the full sentence for you. "The ZBA shall have the power, after public hearing notice has been given by publication and posting as provided in Section 21 and by mailing to all parties in interest, to grant, upon petition with respect to particular land or structure, a variance from the terms of the By-Law where the Zoning Board of Appeals specifically finds that owing to circumstances relating to the soil conditions, shape, size or topography of such land or structures but not affecting generally the zoning district the zoning district in which it is located, a literal enforcement of the provisions of the By-Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of these By-laws." By reading this, your paraphrasing, such land or structures but not affecting generally the zoning district. It does not affect the zoning district negative. That is how I read it.

Atty. Merritt Everyone is entitled to their own reading but I am confident that it will be viewed as a situation where you have circumstances on the ground with the structure which loses its grandfathered status where this is a situation that would affect the entire district.

K. Rondeau By your definition any one of the abutters that wishes to add on to the back of their home and encroaches either on the side yard or backyard setback...

Atty. Merritt That is irrelevant to what we are talking about now.

K. Rondeau It is not irrelevant.

Atty. Merritt I caution the Board because this is not relevant to this petition but you would have to approach it the same way.

K. Rondeau So nobody in this area would be entitled to relief ever, that is what you are saying.

Atty. Merritt The point is, it is not unique, that is the key distinction. It affects everybody in that area. They all have small lots, they all might be in grandfather status. I haven't analyzed all of the lots.

K. Rondeau So you don't know if it is unique now.

Atty. Merritt I do not carry the burden of establishing the variance it is the petitioner's.

G Sagar Our petition is with the bylaw which supercedes state law. The word unique was used. That word has never been used anywhere in the text of our bylaw. Size is added to the bylaw. If you refer to the spreadsheet that the Town Planner submitted, every lot in that neighborhood is a different size with different setbacks so every piece of property is unique. So, using his painting everything with the same brush, nobody would be able to come here and get a variance. That is certainly not the intent of our bylaw. Each petition is heard on its own merit. I believe, in reading the common sense definition of variance, we have met the burden.

Atty. Merritt Under the exact quote that Mr. Rondeau has read, size is expressly mentioned, however if they want to change the analysis to mean one of shape I will do that as well. If you want to focus on the shape of the lot, their argument was based upon the shape, there is not enough sizes. When you base a decision on the shape of a lot, you can't take shape into consideration, I think they are talk about a pork chop lot where there is a little strip of land and then a house is built and you want to put a deck on you need a variance, that is a different argument. If you want to go under shape that is fine but they can't go under size consideration.

G Sagar Our bylaw is very clear. It says, "related to soil conditions, we discussed that, shape, size or, topography. Is does not have to be a combination of any of them. I believe we have a double whammy with the topography, shape, size and soil conditions all qualifies this for a variance as it is clearly defined in a variance.

Ch Grouрке We have the petition for a special permit and variance. It is our job to decide the special permit. We have to decide whether or not the proposed project would increase the nonconforming nature of the structure. It is an active fire station and will continue to be an active fire station, there has been testimony about what the differences are going to be between the present use and the proposed use after construction. There has been suggestion that the new structure will have greater use, traffic... but it seems that the greatest weight of the testimony and evidence is that there will not be a dramatic change in the way the new structure is going to

be utilized by either as the fire station or any of the ancillary uses that are going to be available there.

R Read I would say no change, not just no dramatic change, there would be no change. We went item by item on all Mr. Merits concerns and I think we adequately explained them away.

Ch Groucke Secondly, would it be substantially more detrimental to neighborhood than the existing structure taking into account it will be a greater size on that lot. If you look at it from the standpoint of the use and improvements of the services that are going to be provided, then it is unquestionable that it is not detrimental but will be positive impact, but there will be more building. Is that in and of itself going to be more detrimental? It seems to me that the testimony on that was as much as possible it will remain in the footprint, there will be a bit of an expansion. There is going to be some improvement in terms of the grading, the septic will be improved so that is an improvement as opposed to a detriment to the neighborhood.

R Blum Throughout all presentation over several meetings, the applicant has done due diligence for us and Atty. Merritt. I think Atty. Merritt has raised many good questions, and one thing is wrapped up in Section 20.21 where it says "without substantial detriment to public good". I think we are talking about the public good here. We have a need in the north end, there has been testimony that there is a need for this in the northern end of Seekonk, there has been testimony from those who live in the area that there have been delayed times, I don't believe after reading Section 20.21 that it would be a detriment. I think the small increase in sizes may affect a small amount of people in that area but I think the benefit of looking at a new and improved building that is not in disrepair. We can't predict the future in Seekonk. They would like to continue having 2 or x amount of employees staffed at that facility, we don't know the future. What we could do to benefit the town and after Mr. Carroll's testimony is that the town has done the research on the funds and availability to see what is out there to build another fire station but could we afford to do that even if there was a piece of land out there, possibly not. I think this would be a very good improvement and it is something we do need to do and it is something that would be a positive thing for the north end of Seekonk.

K Rondeau Looking at the testimony that has been given to us regarding the situation. There is no change in use, it would be beneficial to the neighborhood we heard that from a real estate broker from the first hearing we had. It would be a financial hardship; it would be a financial and safety and health hardship to wait any longer. It would be in keeping with the harmony of the neighborhood, it absolutely satisfies the general health and welfare clause in Section 1. Based on testimony from both the Chief of the Fire Department and the Police Chief, there will be no substantial change in use. We have to remember that the use is going to stay the same. We have a use that has been there 74 years. We need to service

the people in the north end, to delay this further in order to conduct another study, hopefully wait for something to come up on the market that could come of for sale which could be 6 months or 6 years from now, we don't know, I believe is a hardship the town cannot undertake. It is the same use, it is not detrimental and it is in harmony and keeping with the neighborhood and not an alteration of the use.

R Read Basically I would say the same thing. The Chief, Mr. Sagar, and Mr. Araujo have satisfactorily answered all of Mr. Merritt's fears about the useage and the main difference is that it is a slightly larger building which will be infinitely better than what is there now, it is as simple as that.

M. Brisson I am in line with the same thing.

K Rondeau That is as far as the special permit goes. As far as the variance, it is a preexisting nonconforming lot and structure. It predates zoning, I am sure there are a lot of other homes in the area that fall under the same condition. It meets and exceeds the hardship threshold, size shape and topography is an issue and that will be corrected for storm runoff that is going into the neighbor's yards and that will be even more beneficial to the neighbors. I believe the structure on the lot is one of the thresholds of a variance that is met. I concur with one of the earlier statements of the Chairman that is one of the overriding things we have to look at. They have met all the thresholds to merit a variance.

Ch Groucke On the variance, if you are talking about the circumstances of the structure, it is antique, outdated, they had to order a special fire truck to fit in there, it is so run down and it can hardly operate as fire station under current conditions, would satisfy the requirement for a variance. The literal enforcement of the bylaw would involve substantial hardship financial and otherwise. To require the town to build a fire station on another location, which they tried to identify another location and could not do, that the cost of acquisition and building a new fire station would be financial hardship to the town and that the desired relief would be granted without substantial detriment to the public good and without nullifying or derogating the intents and purposes of the bylaw, those conditions have been met in this petition and those are good grounds to allow the variance as well. The stipulations have been suggested and discussed. The stipulations were also presented and discussed and modified somewhat, the traffic study has already been done. Mr. Merritt, do you have any comment on the stipulations, this list was presented at the last meeting.

Atty. Merritt I don't have a copy of the list.

Ch. Groucke It was suggested that if the board were inclined to grant this petition that the petitioners would be open to discuss certain stipulations to address screening and other issues.

Ch. Grouke One of the things that was just discussed was plantings instead of fencing.

Atty. Merritt We are in the process of discussing that assuming all other measures fail it is something I would welcome but right now it is too premature.

K. Rondeau made a motion to approve the Special Permit as proposed with the stipulations as suggested:

1. The town/owner shall install an "Opticom Sensors" system signal at the Pine Street and Central Avenue intersection. This will allow the emergency vehicles to control the traffic signals reducing the noise level for the emergency warning systems when responding to an emergency incident. This follows up with what Chief Jack was saying about how they don't make as much noise as they did in the past.
2. The owner shall perform a traffic study on Pine Street to determine if the speed limits are appropriate in an effort to reduce noise and if additional signage as needed.
3. The owner shall install a 6' high PVC fence along the southeasterly boundary line with lot 117 and the rear boundary line with lots 95 and 96. The style of the fence shall be determined with input from the abutters who share the common property lines.
4. The parking lot shall be redesigned to eliminate flooding of the adjacent property.
5. The owner shall install a 6' high PVC fence or screening in accordance with Section 7.3 along the northwesterly boundary line with lot 113 a distance of approximately 27', the style of the fence or screening shall be determined within put from the abutter.
6. The owner shall not encroach on the side yard setback any closer to the common property line with lot 113 with any structure or use than what currently exists.
7. The owner shall minimize whenever possible any impact to the abutting property during construction

but also with the further stipulations:

8. That the petitioners are still open to suggestions from the direct abutters regarding substitute screening and any other type of screening abatement; based upon the fact that they have met the thresholds of Special Permit and the proposed project is not detrimental to the neighborhood, it would be in keeping with the harmony of the neighborhood, it satisfies beyond all health, and welfare clause of the By-laws of the Town of Seekonk, there would be no substantial alterations of the use and it would be a financial hardship to the Town to delay the project any longer

R Blum amended the motion to include the stipulation:

9. That maximum consideration for green concepts in building and contact the local historical commission for any matters before demolition.

R. Read seconded and **so voted unanimously** by: Ch. Grouke, K. Rondeau, R. Blum, R. Read and M. Brisson

Vote: (Approve: 5-0)

The petition is for three variances and the Zoning Board voted on each one individually.

Section 6.3 R Blum made a motion to approve as submitted, K Rondeau seconded and **so voted unanimously** by: Ch. Grouke, K. Rondeau, R. Blum, R. Read and M. Brisson

Vote: (Approve: 5-0)

Section 6.5 R Blum made a motion to approve as submitted, R. Read seconded and **so voted unanimously** by: Ch. Grouke, K. Rondeau, R. Blum, R. Read and M. Brisson

Vote: (Approve: 5-0)

Section 6.7 R Blum made a motion to approve as submitted, R. Read seconded K. Rondeau added that all three variances met the threshold of a hardship due to a structure on the lot and the size and shape of the lot, and **so voted unanimously** by: Ch. Grouke, K. Rondeau, R. Blum, R. Read and M. Brisson

Vote: (Approve: 5-0)

Tricia Ostellen 19 Mayfield Street sworn in. I am in favor of it but respect everybody's choice to do whatever. In fairness to the neighbors. I have been there for 21 years, it is going to change the impact. I have lived in the neighborhood for 50 years. You are going to hear them come and go. But, if somewhere down the road if we could have something about the hours people going at night. We should have restrictions of what time people have to be out of there at night.

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

Vote: (Approve: 5-0)

The Board took a 5 minutes break.

2009-01 John Dias, 30 Oakhill Drive, Johnston, RI 02919, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and if necessary, a **Special Permit**, to allow construction of a shared driveway to serve one existing dwelling and three proposed dwellings at Plat 18, Lot 53 & 65 in an R-2 Zone (**Proposed Lot 1 containing 80,479 square feet**) at 357 Ledge Road. Continued from April 30, 2009.

2009-02 John Dias, 30 Oakhill Drive, Johnston, RI 02919, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and if necessary, a **Special Permit**, to allow construction of a shared driveway to serve one existing dwelling and three proposed dwellings at Plat 18, Lot 53 & 65 in an R-2 Zone (**Proposed Lot 2 containing 81,610 square feet**) at 357 Ledge Road. Continued from April 30, 2009.

2009-03 John Dias, 30 Oakhill Drive, Johnston, RI 02919, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and if necessary, a **Special Permit**, to allow construction of a shared driveway to serve one existing dwelling and three proposed dwellings at Plat 18, Lot 53 & 65 in an R-2 Zone (**Proposed Lot 3 containing 81,610 square feet**) at 357 Ledge Road. Continued from April 30, 2009.

Atty. Mark Antine Roster and Antine, 63 Winthrop St. Taunton, Ma. Sworn In. I have been looking at the paperwork in this matter and how it ended up with the zoning board. Last Friday, I sat down with your Building Inspector and Town Planner, I believe I have the history and I would like to go back to what I understand that the zoning opinion of the building inspector dated October 8, 2008 from Mike Crisafulli. That is the correspondence that is the basis of the appeal. I also understand that at the last meeting there was an ANR plan that was recorded at the Bristol county registry of deeds, there was a request to the applicant to show there was a plan approved by the land court. I want to give to you what the engineer was given to by the land court to Richard Bianculli who is the title attorney for Mr. Dias. If I might, when I went over the September 12, 2008 letter with the building inspector, there are a number of extraneous issues that were included in Mr. Crisafulli's zoning determinations. There are apparently 16 items regarding the zoning determinations of the buildability of lots 1,2 and 3. It appears the same letter was regarding all three lots. I am going to assume all 16 points are for all 3 lots. I have been town counsel for many towns, as I looked at the letter, does the ANR plan showing lots 1,2 and 3, do they meet the zoning requirements, second, just as there is an issue of illusory frontage, that can be raised in front of a planning board, it is probably true that it can be raised by a zoning enforcement officer, those are really the issues that are before the zoning board. Given that point, because part of the land is registered and you have to go to land court to get a title examiner, an issue was raised from the engineer, although the engineer on the unregistered side, the land court examiners indicated that there might be a difference along Arcade Avenue, there may have been a 2" difference as the title examiner looked at it. The land court title

examiners agreed to take the exact same line that was recorded in March 13, 2008, they allowed him to use that plan but to indicate on land court plan that there was a 2" difference. If you took the recorded ANR plan, recorded in registry of deeds and took the transparency and put over those lines would be congruent, exactly the same and would show one over the other. Land court indicated that they saw approximately a 2" difference but they used the same lines on both plans. I will go over the former building inspector's zoning determination point by point.

Number 1: I understand in the process these plans ended up before the zoning enforcement officer, Mr. Dias did not go before the Building Inspector for a building permit, those items brought up were not if the building inspector for a building permit. This all came about because as part of the septic system design, the plans are sent around for the other officials to look at, I don't know how this became a zoning determination by the building inspector. On item number 1, this is created by the ANR plan signed by the Planning Board, item number one does not deal with what was before the building inspector. What was before the building inspector were those septic system plans and showed proposed houses on proposed lots that met the setbacks. I don't know where the Building Inspector was coming from but it does not apply to lots 1, 2, and 3 on the ANR plan, they do meet the zoning requirements, they do meet setback requirements.

Number 2: The septic system plans were submitted to the Board of Health, Mr. Dias has not submitted for a building permit to the Building Inspector, it does not matter if the Board of Health has approved the septic, that is not a zoning determination.

Number 3: Nothing has been submitted for lots 1,2 or 3 to Conservation because there has not been a building permit requested. That is not part of the zoning determination.

Number 4: The site plans submitted and the ANR plan do have assessors map parcels on them, that is not correct.

Number 5: Approval from the Fire department for emergency access has nothing to do with the requirements of the zoning bylaw, it is an issue between the applicant and fire department.

Number 6: The State of Massachusetts does not set forth any subdivision regulations. We have of course the subdivision control law but it sets forth the delegation to the town of Seekonk subdivision regulations. I reviewed with the Building Inspector the and Town Planner and asked as to whether there is any requirement in your subdivision regulations that say you can only access the lots through its frontage. I reviewed your bylaw s and it does not say that you can only access a lot through your frontage. When I met with them, they were not aware of any bylaw that states you must access that must be accessed through

frontage, you have to show to the Planning Board and Zoning Enforcement that your access through the frontage is not illusory.

Number 7 I looked through your zoning bylaws and there isn't anything in your bylaws that states shared driveways must be deeded and approved by the Zoning Board of appeals via a special permit. If the parties in agreement and it meets requirements in Zoning Bylaw or Subdivision regulations, then that would be proper item but your bylaws do not state anything about that.

Number 8: According to Section 10.1.3, each lot requires 2 parking spaces per dwelling unit, it shows all kinds of room, I am perplexed by his comment.

Number 9: It calls for a certified plot plan being required per section 4.8, your certified plot plan is for people applying for a building permit, again, this is irrelevant.

Number 10: I could not figure out what he was trying to say. Lots 1,2 and 3 are conforming lots under bylaws

Number 11: These lots meet full requirements of frontage and area.

Number 12: Again, this is dealing with applications for building permit.

Number 13: Again, this does not belong in this zoning determination because nobody has applied for a building permit.

Number 14: 9.2.4 there is no such deviation including access other than the frontage, you don't have language in your zoning bylaw prohibiting access.

Number 15: In section 13.2 it says Taft Street creates two front yards, the street is a public way and does not create two front yards.

Number 16: I don't know what he is talking about.

In the ANR plan, do we have a fully compliant plan, we meet all area and frontage requirements. On lot one, here is the so-called stream. That stream is not here at the frontage, it is back here. It is the same on lot 2; it is coming closer to the front on lot 3 but not at the frontage. On lot 4, which is not before you, now it looks like an argument may be made that on lot 4, the stream is right at the frontage, therefore, even though you have the proper frontage on a map or on a plan, but that frontage might be illusory as the term is used in the case law, because you can't access that lot, ie; you can't drive a vehicle onto that lot because the stream is right there, that is akin to the cases, I will give you a whole bunch of them, in Massachusetts. If you have a stream that is literally at the frontage of a lot, then under Massachusetts case law running from Fox to

Cochrane..., Atty. Antine submitted to the Board documents concerning the Massachusetts cases concerning case law.

K. Rondeau If you have a stream running through a lot, does that affect setback requirements on where a building is placed on a lot?

Atty. Antine It would not affect anything other than, in zoning you have front, side and rear yards setbacks. It is true, that even if the building inspector says you have a buildable lot, that is not the end of the story, that applicant would have to go before Conservation Commission and if they determine that the proposed structure violated either the State Wetland Protection Act regulations or local Conservation Commission bylaw, they would say you can't build a house there. Then the building inspector, if there was a request for a building permit, at that point, might say, either no I am not going to grant a building permit until you get approval from Conservation or he might be able to get a contingent building permit based upon approval from Conservation.

K. Rondeau You could submit for approval by the building inspector for a structure on a stream and then it would be left to the Conservation Commission and Mass General Laws regarding wetlands whether or not that applies.

Atty. Antine If someone was foolish enough to show a house in the middle of a stream the building inspector as zoning enforcement officer has to go by what the zoning bylaw says. The building inspector is also has the authority to grant or deny on the building code. You may find something somewhere, you cant build a house on a stream. What these cases say is whether it is wetlands, streams, limited access highway or guard rail or chasm at front of lot between the grade of the street and the grade of the lot, if anything of those things are at the front of the lot, where the frontage is, now you have illusory access. If you have illusory access, you cannot use a lot if you have strictly illusory passage. That is not what 1, 2 and 3 are. The Cochrane case says if you can bring your vehicle in off the road that is not illusory access that is an interior problem that has to be met with Conservation Commission, if you want to access the lot through the frontage, in this case, the plan shows the access is not going to go through the frontage. Your zoning bylaws does not prohibit that, even if he wanted to come in through Arcade Ave, it is doable if he wanted to get permission from Conservation. They have chosen not to do that. From an illusory access point of view, if you can drive a vehicle into that lot, you don't have illusory frontage. For lots one two and three you do not have illusory access, when he ended up getting the opinion from the building inspector anything other than zoning bylaws don't apply. I know you will uphold the law and in this case he was incorrect. As far as a special permit, the application as it was printed said special permit but there is no prohibition so why would you need a special permit?

G Sagar Why don't you withdraw the application?

- Atty. Antine We have a determination before us, we will have to then go back to the building inspector and go before all the boards and commissions to satisfy. There is an existing decision of the building inspector. I have reviewed the zoning bylaws and I don't find any such prohibition I believe that the indication was that they could not see any prohibition either.
- Ch. Groucke What is your position on our authority to address the issues on width of driveway?
- Atty. Antine At the last meeting, there was discussion of the applicant meeting with the Fire Chief, a discussion took place and Mr. Bunavicz has plans that would show on a site plan what Mr. Dias could do. Increase the asphalt portion of the access to 16' rather than 10' and if you decided 18' or 20' we could do that. Your building inspector did not give any opinion of whether or not she would issue permit because she did not have all the information she felt was necessary. Until such time as all the documents are before her for a building permit she should not.
- G Sagar How about if we remand this back to the Building Inspector for a new determination?
- Atty. Antine I have not thought of that matter previously, but I think we can say, we would not be against that if that were the vote of the board. It is interesting
- G. Sagar Under section 14.2.3 we can modify the zoning determination and I believe that determination is flawed.
- Atty. Antine I believe that you can ask the building inspector questions without remanding it back to her, you could continue to another date, time and place.
- Dr. Paul miles Matthias 363 Ledge Road sworn in. I thought that the argument was about the access. There are two Taft Streets in Seekonk. Taft Street on this map, I don't see it, did this lot one pick up it is my impression that if there is a paper street. .lot I have a quitclaim deed that refers to the easement, it doesn't spell it out and maybe this is irrelevant, I can't imagine how but, this driveway is already shared by three lots, 104, 145 and originally by everything else back here which is has subsequently been subdivided, how did these three lots suddenly gain access through an easement that previously existed among these three land owners. As far as the driveway, originally they said 10' then 14' and now they can eve go to 18' or 20' that is a big issue. How did the three lots suddenly gain access, the easement was not to them, is this illusory or not, there are other places in Massachusetts that allow a shared driveway, it says that on property that has the frontage where the driveway comes, has to have frontage where the driveway comes from, their frontage is not on Ledge Road, their frontage is on Arcade Avenue. These three lots have no legal access. The picture shows you that when people have legal access they can put a boat there, parking, partying tents and whatever you want, how are you going to put a fire truck down there?

G Sagar The action requested is for a special permit for a shared driveway; we lack the authority to grant a special permit for a shared driveway.

Ch Groucke It is the inclination of the Board to continue this matter to another date to consult with the Building Inspector.

Gary Provazza 344 Ledge Road, they are asking for you to okay something, shouldn't they go before Conservation Commission first?

Mr. Antine Lots 1,2 and 3 have not been before Conservation, lot 5 has been but it is not before you.

G Sagar made a motion to continue the public hearing until June 29, 2009 at 7:00 and reach out to the Building Inspector with specific concerns as written by the Zoning Board Chairman and see if a Building Permit was ever applied for and if there was to attain a copy. Seconded by R. Read

K Rondeau made a motion to amend motion to continue the public hearing until June 29, 2009 in the Town Hall Meeting Room at 7:00 G. Sagar second and **so voted unanimously** by: Ch. Groucke, K. Rondeau, G. Sagar, R. Read and M. Brisson

Vote: (Approve: 5-0)

G Sagar made motion to adjourn the meeting, seconded by Keith Rondeau and **so voted unanimously** by: Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, Robert Read, and Mark Brisson

VOTE: (Approve 5-0)

The meeting adjourned at 11:15pm.

Respectfully submitted by:

Christina Testa, Secretary