

**SEEKONK ZONING BOARD
REGULAR MEETING
MINUTES**

October 21, 2013

Present: Ch. Edward F. Grouke, Robert Read, Ronald Blum, Roger Ross, Keith Rondeau,
David Saad

7:08 Chairman Edward F. Grouke called the meeting to order.

Ch. Grouke This is the meeting of the Town of Seekonk Zoning Board of Appeals, October 21, 2013. I am going to go over our Rules and Regulations. I am going to read each petition as it was advertised and call upon the petitioner or their representative to present their case. All testimony, including the testimony and statements of the petitioner and/or the representatives or witnesses will be taken under oath. The Board will ask questions of the petitioner and witnesses. Any questions from the podium will go through the Chair. We will hear from anyone in the audience to speak either in favor of or against the petition or with any questions. At the close of the evidence, we have a discussion and then take a vote. We also usually make a decision on the same night, although we are not required to do that. There are times that we may postpone a petition for another meeting either for a site visit or to gather some information. Once we have closed the public hearing and taken our vote, it is then reduced to writing and filed with the Town Clerk within 14 days of the date the vote is taken. Any person who feels that he is negatively affected by our decision, as long as he has the proper legal standing, has the right to appeal to the courts of the Commonwealth of Massachusetts; and anyone considering taking such an appeal has to comply with very strict time limitations that are applicable to a court appeal. The time limits are very strict.

2013-18 **Colbea Enterprises**, 2050 Plainfield Pike, Cranston, RI, 02921, Owner by Alan J. Micale, P.E., 414 Benefit Street, Pawtucket, RI 02861, petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 12.4 of the Town of Seekonk Zoning Bylaws to allow the installation of an LED price panel on signage at 430 Taunton Ave, Plat 19, Lot 535 in a Local Business Zone containing 13,504 sq. ft. +/-.

Steve Pedro Ayoub Engeering, I am here on behalf of Colbea Emterprises, requesting a Special Permit to allow us to modify the existing free standing sign to incorporate LED price panels. My business address is 414 Benefit Street, Pawtucket, RI. Mr. Pedro was sworn in. There is currently a free-standing sign with acrylic plastic

placards, numbers for the price panel. Colbea is looking to modify that sign to include LED price tags to identify regular gas price and diesel gas price. Right now we have two free-standing signs; one is oriented toward Arcade Avenue with traffic coming down and also Taunton Avenue. Besides that is located for the Arcade Avenue traffic will be removed, and we'll utilize only the Taunton Avenue as shown on plan. One on the corner will be removed, and the other will remain. The shell will be same size; the only difference is that previously they were displaying three gasoline prices; now they will identify only two prices, regular and diesel. That will be a separate panel. That plan was the original that was submitted. There was another plan that was submitted after that. The single sheet identifies the sign at the corner of Arcade and Taunton to be removed. The revision date is in the title block.

Ch. Grouke Are there any questions from the Board?

R. Ross I just want to make sure I'm correct. The revision date is January 18th, is that correct?

Ch. Grouke The date is 9/18/2013.

Ch. Grouke Are there any additional plans for signage in the future?

S. Pedro We are just staying with the proposal as submitted. We are essentially reducing the site signage by taking one of the free-standing signs down. The area of the free-standing sign will not change, just slight modifications. We are not changing the overall dimensions. We are here because of the LED aspect of the signage only. The Building Department ruled that we come before this Board. It will be for gas prices only. There will be no flashing, just continuous LED numbers that will change only when gas prices change. There will be no animation, no messages being streamed across.

Ch. Grouke Are there any other questions? None. Is there anyone who wishes to speak in favor of this petitioner? None. Is there anyone who wishes to speak in opposition to the petitioner? None.

Discussion:

R Blum I think it is a good use and obviously reducing what they have now. It's keeping the same dimensions.

R. Read The face of the new one is actually slightly smaller than the one that is already there. With our past practices, we have been granting petitions with the LED signs.

- Ch. Grouke Is there a motion?
- R. Read In the past, we have stipulated one change per day. Are we staying with that?
- Ch. Grouke How do you feel about that?
- S. Pedro I'm not sure how the market works—whether they change the price in the morning or whether it's changed later.
- R. Ross I don't know what the past practice is, but that may fly in the face of the marketing realities of gasoline. I don't know that I would insist on that type of a limitation. Weighing all the facts since there is no screening, no messages, it's only gas prices.
- R Blum Moved to close the public hearing.
- R. Read Second. Vote: 5-0 in favor.
- R. Blum Motioned to uphold the decision of the Zoning Enforcement Officer.
- R. Read Second. Vote 5-0 in favor.
- R. Blum A motion to approve the Special Permit under 12.4 as submitted with the revision date of 9/18/2013.
- R. Ross Second. Vote 5-0 in favor.
- Ch. Grouke The Board has voted 5 in favor and 0 opposed to grant the request for a Special Permit.

2013-19 **Stephen Schabowski**, 24 Meadowcrest Drive, Cumberland, RI, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 5.2 of the Town of Seekonk Zoning Bylaws to allow construction of a single family dwelling, on a legal, nonconforming lot, at 0 Williams Avenue, Plat 33, Lot 330 in a R-1 Zone containing 11,540 sq. ft. +/-.

Steven Schabowski 24 Meadowcrest Drive, Cumberland, RI. and Patricia Wash, 108 Lorden Drive, North Attleboro, MA, were sworn in. Patricia is a family friend of Mr. Schabowski.

Ch. Grouke You are looking to construct a family home on the lot?

S. Schabowski It was purchased a long time ago when my father was expecting my sister or I to build on it. Since I lost my son-in-law, I am going to move to Florida where my son is now, and I figure this is the time to sell it.

Ch. Grouke You are seeking permission to get it cleared for building, is that right?

S. Schabowski Yes.

Ch. Grouke There is a plan here, is that your proposed house plan?

S. Schabowski Yes, the second.

Ch. Grouke I notice that our Building Inspector wrote a letter addressing the ownership issue. He said that there would not be a merger problem by stating that the lot has been held in separate ownership from any adjoining property and under Zoning Bylaw Section 4.2 has grandfathered provisions as a buildable lot. You don't have any merger problems-- at least that have been reported to us by the Building Inspector.

Ch. Grouke Are there any questions for Mr. Schabowski? None.

Is there anyone who wishes to speak in favor of the petitioner? None.

Is there anyone who wishes to speak in opposition to the petitioner? None.

Are there any questions about this petition? None.

Then, we have a legal nonconforming lot with the proposed location of the house that will be situated in an R-1 zone, and the proposed building meets all the setbacks.

S. Schabowski Yes, it does.

R. Ross Is the driveway going to be asphalted? Cemented? Graveled?

P. Watson Yes, asphalted, as other properties in neighborhood are.

Question from the audience:

- Lee Dunn 660 Fall River Avenue, Seekonk, sworn in. Where is 0 Williams Avenue?
- Ch. Grouke It is just off of Central Avenue. It is one block in from Central. Newman Avenue turns into Central.
- R. Blum I move to close the public hearing and uphold the decision of the Building Inspector.
- R. Read Second. Vote: 5-0 in favor.
- R. Blum I move to grant the Special Permit as submitted.
- R. Read Second Vote: 5-0 in favor.
- Ch. Grouke The Board has voted 5 in favor and 0 opposed to grant the Special Permit as submitted.

2013-20 Michael Robitaille, 294 West Avenue, Seekonk, MA, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 6.3 and Variance under Sections 6.4 & 6.8 of the Town of Seekonk Zoning Bylaws to allow the construction of a 24' x 24' detached garage to replace a 20' x 20' garage which was destroyed, on a legal, nonconforming lot, at 294 West Avenue, Plat 24, Lot 622 in a R-2 Zone containing 14,864 sq. ft. +/-.

- Michael Robitaille 294 West Avenue, Seekonk, MA, sworn in. Thank you for hearing my petition as it applies to reconstruction of my garage that was destroyed by a 70' pine tree in December, 2005. So what I'd like to do—it was 20' x 20'; I want to update it to 24' x 24'. The plans show the existing slab and walls; they will be completely removed. I'm not going to use any part of it; there will be a new slab and walls.
- Ch. Grouke I see from the plan it will be slightly closer to the rear lot line, but a little close to the house. That is the only difference to what was there.
- M. Robitaille In my understanding as far as the attached garage, it is still within 10' from house and rear yard line.

Ch. Grouke Are there any questions for Mr. Robitaille? None. Is there anyone to speak in favor of the petition? None. Is there anyone to speak in opposition to the petition? None. Is there anyone with a question for this petitioner? None.

R. Read With a 70 foot pine tree falling on your garage, that is a definition of a hardship.

R. Ross The obvious question to me is--other than personal preference, why are you increasing the size of the garage?

M. Robitaille It actually is a personal preference; it will give me more space.

R. Ross It's causing you to encroach farther into the noncompliance setbacks. You are exacerbating the noncompliance. You are going 4' closer to the rear and the side.

M. Robitaille It is my understanding with the detached garage, it is 10 feet to the rear.

R. Blum Where is the leaching field?

M. Robitaille There is one on the other side of the house, and there is one near the driveway.

Ch. Grouke The lot's undersized, Roger, in an R-2 Zone?

R. Ross I understand the undersize; I only view the zoning ordinance for this; but it was destroyed by an act of God, does he get to construct this by right? If you were keeping it 20' x 20', we wouldn't be here.

Discussion and vote:

K. Rondeau made a motion to close the public hearing and to uphold the decision of the Zoning Enforcement Officer.

R. Blum Second. Vote: 5-0 in favor.

K Rondeau made a motion to grant the Special Permit and Variance as requested under Section 6.4 and 6.8 of the Town's Bylaws.

R. Blum Second. Vote: 5-0 in favor.

Ch. Grouke The Board has voted 5 in favor 0 opposed to grant the petition for a Special Permit and the Variances.

2013-21 **Steven Najas, Najas Realty, LLC**, 111 Miles Avenue, East Providence, RI, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's

Decision, and if necessary, a **Variance** under Section 25.4.3 of the Town of Seekonk Zoning Bylaws to allow an increase of the Limit of Disturbance percentage allowance for a 9-lot subdivision, Pine Hill Estates, from 25% to 35% at 524 Newman Ave, Plat 24, Lots 73 & 394 in a R-2 Zone containing 435,373 sq ft. +/-.

Eric Brainsky I am an attorney representing the applicant with offices at 1547 Fall River Avenue, Seekonk, MA. Mr. Chairman, as you know, this is an application for a Variance to appeal the Building Inspector's decision regarding the Limit of Disturbance. I know that this Board has had prior opportunities to review the Conservation Development Ordinance and to review it relative to this specific element. The history on this project—this project was brought by definitive plan approval by my client before the Planning Board last spring. It was originally 10 lots on the subdivision project; it went back and forth to the Planning Board; it was initially denied. My client made a concession to eliminate one lot dropping the total lot number down to nine lots and to submit another plan that complied with the Limit of Disturbance bylaw and to ultimately seek a variance from this Board within a certain time period, which is where we are now. Now, a little bit about the Conservation Development Bylaws—you know this is really where Seekonk, when talking to Mr. Hansen of the Planning Department, is heading and wants developers to head in terms of developing subdivisions—and really overall you find that in a lot of different communities that the movement is really toward conservation developments. Now what is a conservation development? It is a trade off that allows developers to have breaks on certain costly development items, such as sidewalks, concrete curbs in exchange for dedication of a certain amount of open space, which was in most cases 40 or 50%; in this case 50% was dedicated as open space. Your ordinance contains the additional component called a Limit of Disturbance which was basically something above and beyond the open space dedication which basically says that you take the entire property and however much area you are going to develop, disturb, and the drainage, roadways, the lot coverage, back yards, peoples' lawns, it cannot be more than 25% of the entire parcel. Well, when you're dealing with large parcels of land, that often works and you have enough land to go around; when you're dealing with smaller parcels, such as ten acre lots like this one, you have an issue with the Limit of Disturbance that once you do your open space dedication and do your design of how many lots you can fit between the roadways, etc., you are significantly constricted with how much land you can disturb, which as a practical matter results in people being deprived of a significant portion of their back or side yards, in this case the back yards. You can see on the plan that I am going to have Mr. Carlson give you a little overview of that. The green line around the lots is a Limit of Disturbance that is completely in compliance to your bylaw, and that Limit of Disturbance resulting in rear yards of lots that are 10-12' in some places. So imagine yourself buying a single family lot in Seekonk—for my client trying to sell a single family lot in Seekonk and telling the buyer or person who is going to

live there that you can only use 12' as a back yard. That is really not a lot. We have a real estate expert here this evening. Twenty-five or thirty feet is really the average backyard, with grass yards, sprinklers, whatever it may be. You want people to use their conservation development ordinance; that is where you want it to end up. If you ask my client this evening if he would do this all over again whether he would use the conservation development ordinance, the answer would probably be no. I don't want to put words in his mouth, the reason being is because the development constraints, including most specifically the Limit of Disturbance has resulted in lots becoming virtually unmarketable; it's made it really, really tough on selling lots; and had he done a typical subdivision, standard under the regulations he would be able to have ten lots with longer roadways, longer surface, essentially clear-cut the entire piece of property, with the exception of wetlands. He opted not to do that and to go with this bylaw; the ultimate end of that resulting in this project going before you and for the variance that has been requested from this Board. What my client is seeking here is a vote from this Board to approve a 10% deviation in Limit of Disturbance to increase that from 25 to 35%; Mr. Carlson would tell you that is approximately one acre additional disturbance; we are not talking impervious space here; we're talking back yards. So, that was the least amount of relief that he felt that he needed to give people an adequate backyard of 25 to 30 feet depending upon the design; and we also took a look through how this Board has previously interpreted this provision of the zoning ordinance, and we believe in the Tall Pines matter, and we realize every condition is different, there was a 10% deviation issued for that project which again has similar constraints, small piece of property and resulted in a smaller back yard. So one thing I would note as a condition of the Planning Board approval, they require that a split rail fence which has been a common facet of this Limit of Disturbance be installed. So not only do you have Limit of Disturbance behind peoples' back yards but you have a split rail fence that is demarcating that Limit of Disturbance so these folks are walking out to backyards 12' out-- you have a fence where you can't do anything other than walk on the other side. We are seeking a zoning variance; it is largely market driven; it's also driven by the fact that the characteristics of this particular piece of property really does necessitate to make this project work--work well. I am happy to answer any questions that you have.

Ch. Groucke Where the fence goes, is that going to be the property line or are the people going to own what's in back there?

E. Brainsky It is actually not a property line; the fence basically goes through the middle of the property. The fence is the green line, and that's your Limit of Disturbance. The red is what we are seeking from this Board is a deviation—that's 10 %. The black line all the way to the back is the property line. So this guy right here on Record Parcel #4, 9 Jacoby Way—if you walk out your back door, you probably have about 10 feet from the corner of your house; maybe 13-14 feet here; and

then you have a fence and you have all this land that you cannot touch. You cannot put a lawn back there; you can walk back there, but you cannot put a spade in the ground.

R Blum On the average, if we gave an increase of 35 %, would it average out between 25 and 30 feet per parcel?

E. Brainsky I would like to defer to our engineer.

Paul Carlson Insite Engineering Services, 1539 Fall River Avenue, Seekonk, sworn in. Increasing this to 10%, the average backyard would increase between 25-35 feet—that depends on the way you can configure this. The septic systems that are required within these which obviously allow us to jockey around; the average would be about a 30 foot backyard.

Ch. Grouke Mr. Brainsky, how about this settlement agreement? It seems to say that you were not going to ask for not more than 30%. Part of our package is a release and settlement agreement-- and it says, the way I read it, is that you were not going to ask for not more than 5% deviation for a total of 30%. I understand that this went to Superior Court, correction--Land Court, so, what happened-- the original plan was denied?

E. Brainsky Yes, the original plan was denied for ten lots—then it went to Land Court.

Ch. Grouke Before a judge decided on it there was an agreement?

E. Brainsky There was a settlement agreement—my client reduced the lots from ten to nine, also shortened the roadway a bit; as for the settlement agreement my recollection is that it was 35%; although the document you showed me said 30%. Assuming that it is not a typographical error in the document, then it is 30%.

Ch. Grouke That is just one thing that jumped out at me as I was reviewing this package. I wanted to have your response on that.

Ch. Grouke Are there any other questions for Mr. Brainsky at this time?

R. Read Is this agreement among whom?

Ch. Grouke The Planning Board and the client. We were also supplied with the remand decision, which was the Planning Board's decision which doesn't specifically talk about 35% or 30%, but it does reference this release and settlement agreement.

R. Read Does this have to go back to the Planning Board again?

- E. Brainsky Yes, it does. If you were to approve the Variance, I would have to go for a modification of the project.
- K. Rondeau Could Mr. Brainsky show us the difference between 30% and 35% to give us an idea at least?
- P. Carlson You could split the difference. Right now, as we stand today, as Mr. Brainsky mentioned, we are about 10 foot average backyards; if in some cases like this house, we have an eight foot backyard. If we went with the 30%, we would be looking at in the neighborhood of 20 foot backyards; and then again as we show in the red, there is an average of about 30 to 35.
- E. Brainsky That plan would have to obviously be amended before it goes back to the Planning Board. The Planning Board would have to settle the lines so to speak if this is what law calls a Limit of Disturbance. The function of this Board is to interpret the ordinance, the percentages, and to decide whether or not the Variance needs to be issued (inaudible wording).
- K. Rondeau To get a sense of the buildings on the land, what is the square footage of the buildings?
- P. Carlson We are looking at a majority of these lots that are probably in the average of 90 ft. wide, with a 10 foot side yard on each side. So we are down to 70 ft. houses including the garage. So we are probably looking at about eighteen on some of these smaller houses, 1800, and then the other lot would be about 2400 sq. ft. We are looking at those that would fit within the conservation subdivision.
- Ch. Groucke Do we have a representative from the Planning Board? Yes.
- P. Carlson I just conferred with my client. We are looking at 3-4 bedroom houses out there; we are not looking at any monstrosities. There's a limit; 30% works; we can sell them at a commission we would amend the application and ask for that request. Mr. Mello is a real estate agent and has exclusive listing for the property. He can give you a practical overview of what's happening due to the Limit of Disturbance.
- Gary Mello 581 Warren Avenue, Swansea, MA, sworn in. My firm is the Mello Group, located in Seekonk on Route 6. I just wanted to provide a little bit of thought. The backyard issue we find from a sales perspective is really critical because when you look at what is the most important thing people do outside when they live there typically, the backyard is critical. That is where the kids are playing; that is where families typically spend the majority of their time. We manage sales at Banna Estates in Seekonk; that was a very large project; we are just finishing

up there. The average there typically was a 25-30 ft backyard; we did fairly well there; obviously we sold a lot of homes in the last five years there. We did recently have one particular lot there where we had a backyard that was about 15 feet, and we had a 12 foot deck off the back. That loss of about 10 feet from the average was really a substantial difference in terms of the marketability of the house. When you have a 15 foot backyard and you got a 12 foot deck, you have 3 or 4 feet extra, you basically don't even have room to throw a baseball back and forth. Most families today are not looking for an overly large backyard but just enough room where they have the complete width of their lot, maybe another 10 or 15 feet beyond that. Our request for that additional space is really critical for usability of the lot. Our demographics of most of our buyers who are buying here at Pine Hills are young families that really need that extra space.

Ch. Grouke If anyone on the Board doesn't have any questions right now, let's see if anyone is here with any questions. Is there anyone who wishes to speak in favor of the petitioner? No response. Is there anyone who wishes to speak in opposition to the petitioner?

Robert McLintock Chairman, Board of Selectmen,, sworn in. This subdivision is putting a lot of pressure not only on the building developer but also on the Town as it relates to the water supply for this Town. I got involved with this about a year or so ago when I was on the Board of Health; I still am on the Board of Health. I have been concerned enough as it is with the way it was approved by the Planning Board originally. There have been a lot of discussions that have taken place. To increase this by 10% is a significant amount; I don't know what the square footage is, but it is a significant amount, especially where it is all at the back of each property which is also right close to the well which supplies about 83% of the drinking water for this Town. I think that is something that the Zoning Board of Appeals and the laws that are in place as it relates to the way they should be developed and the way they could be developed. It is in the aquifer protection district. There are a lot of things that we could go on and on all night for and go over and over and over; but when we talk about that all the Boards that they've been through, and they got where they were they had 25% that was okay up until then; I almost fell off the chair when I read the paper two weeks ago, and I saw it in the paper. I'm going to say what I have to say. I don't think it's necessary; the Town has no responsibility to say, "Okay, we are going to increase this by 10% so the developer can make more money on the property." We have a situation here where the whole water supply in this Town could be at risk. And I say could be, because we don't know for sure because even though we thought there were tests that should have been done and so forth, etc., by the developer; he was not asked to do that. This is in your hands at this point in time, and I would ask you not to increase this by 10%.

Robert Fuller Water Commissioner, was sworn in. I find it very interesting that the back yards have suddenly become a problem in this development. It is something that should have been taken care of a long time ago in the development stages, and now we are concerned about back yards. Just a point, we do have a serious problem in this area because it abuts the large aquifer that supplies 85% of the water to the Town of Seekonk; the last thing we want is to pollute that. We went to the Planning Board, and they erred on the side of the developer, not the Water Department. That was a disservice to the townspeople. Tonight this is before you, and I hope you will deny this exception because it is a plan we might have to live with; and I am not so sure yet, but the fact of the matter is that to enlarge and encroach upon critical land in that area bringing it closer to the water aquifer--that is a potential pollution problem in the future. I think we need to contain it as much as we possibly can. I think that your Board is in a position tonight to contain it. I hope that your vote is to uphold the distance the way it is, to leave alone the conditions that they want.

Ch. Grouke Is there anyone else to speak in opposition to the petitioner? No response.
Are there any questions about the petition?

R. McLintock Could we find out exactly what the square footage of what the increase would be?

R. Ross Before we go into that, I think that may be the motion that may be in order to orally modify your application down to 5% so we'll know what we are dealing with, and then the Board will choose to grant that motion or not.

Ch. Grouke Yes.

E. Brainsky I would ask the Board to allow us to amend the application from 10% to 5%.

(tape change)

R. Ross The way I read the release and settlement agreement; that is the maximum that they can apply for under the settlement agreement that was done on a remand from the Land Court which is to go from 25 to 30 so this motion is just to be consistent with the settlement agreement.

Ch. Grouke I would think that we would be inclined to grant this.

R. Read Are they going to ask for more deviation from the Planning Board when it gets back there? More than the 30?

Ch. Grouke You cannot go there and ask for 35?

E. Brainsky That is correct.

Ch. Grouke A motion was made by K. Rondeau to amend the petition to request a 5% increase to 30% of the area of disturbance.

R. Ross Seconded.

Vote 5-0 in favor.

R. Ross Assuming for purposes of this question that the 5% deviation is approved, I think this is probably a question for the engineer, would the Limit of Disturbance line at the 30% deviation be less than in all cases the rear yard setback line under zoning? Fifty feet?

P. Carlson Substantially. Again, as the question was asked, the dark line, which is the property line, is the area which each of the homeowners will own. As you know, the rear yard setbacks are only 10 feet off the back under the conservation subdivision. Even with the 30% we are going to be substantially reduced to almost 75 ft. where they cannot touch.

R. Ross So in answer to my question, they could be limited to zoning, putting aside the limits of disturbance, you cannot be building less than 50 ft. in all cases from the property line.

P. Carlson Currently where the houses are situated, these are about 95 by about 150 ft. long. The houses are currently about 100 ft. from the property; that wouldn't change because the Limit of Disturbance is 75% of the parcel.

E. Brainsky Mr. Carlson, there was a question about the acreage.

P. Carlson Twenty-five percent, we would be looking at one acre. At 10%, so at 5% we would be looking at an additional ½ acre of disturbance over what is allowed.

E. Brainsky I kind of preface that by saying that we've heard some water issues or the water supply well that is over 1100 from this subdivision. We are talking about back yards here; we are not talking about industrial use, or commercial use or garbage facility uses. It's grass that we are talking about; it's like everyone else in Seekonk has. In the end, if this was a conventional subdivision; ten lots would be out there, and this could be clear cut. It is not; we chose to go with a conservation development; I don't know whether that is the best decision, but we would be asking for relief for people's back yards.

As to the water issues that were discussed; that was discussed extensively at the Board of Health which approved this, the Planning Board which approved this--

throughout the entire Planning Board process. There was really no evidence to support that there will be any sort of contamination; they would have found that in their decision; there was really no evidence to support that there was a threat to the ground water. They would have found that in their decision. Another matter that was brought up was “why is this just coming up now?” If you read the settlement agreement in the lease, this was part of the reason that it went to clear in the first place; it was put into the settlement agreement—and the agreement was that if you get an approval before the Planning Board then you could seek a variance within the six month of getting approval from the Planning Board. That is in the agreement; so it wasn’t something that just came out of the blue; this was always the plan. That’s why we are here now. With that being said, I think we meet the standards of a variance.

Ch Grouke It seems pretty clear that with this settlement agreement, it was contemplated that they would come in here and ask for the 5% not the 10%, but the 5%; and I understand the concerns that were raised by Mr. Fuller and Mr. McLintock, but those issues really aren’t before this Board; other Boards have addressed them.

R. McLintock You keep referring to an agreement that was made—this is the first that I hear of an agreement that was made. The fact of the matter is that very early on in this whole thing, the Water District wanted to have test borings done over there to see where the water was flowing. So they weren’t being unreasonable about the development, that some people would have you believe that this was going on. That never happened. Now, we have Boards in this Town that are supposed to see to it that the Town property and the people who live here are protected from someone coming in and doing something that may interfere with our futures. This is one of them. The Water District was not unreasonable by asking for those drills to go down and see which way the water is flowing.

Ch. Grouke Who did they ask?

R. McLintock They asked the Planning Board; they asked the developers; they asked anybody that would listen to them. Not once, but many times. So, when you talk about things being done, what we didn’t do was make sure that the wells in this Town--we had gone as far as we could go to make sure that they didn’t get contaminated. They have nitrate loading over there now; they know they have it; and they know it is expanding.

Ch. Grouke The problem that I have is not only do we not address water issues on this Board; it is not in our jurisdiction at all. Secondly, I do not see any connection between their request and any additional effect on the water supply. They are requesting some additional limits of disturbance; this doesn’t involve increasing the lots, more houses. It will be nine houses whether we grant this or not.

R. McLintock I'm sure you are aware of this, but the Water District was against this from the beginning; you know that. That being said, anything that expands it beyond what our bylaws allow and what the Zoning Board is guided by, that makes it that much worse, don't you think?

Ch. Groucke Not this particular—what they are asking for. I can't see that connection; I think we have to judge it on the standards of variance that we usually employ.

R. McLintock I hope you are right. If you are not, think about the consequences.

R. Ross Two things: One--not to give short trip to the water issues--that is an issue that properly should have been addressed before the Planning Board; that is part of their charter, and I don't want to put myself in the place of the Planning Board--that is not my intent, but if they chose for whatever reasons to rely on the engineering studies that were done or not to request the engineering studies in the first instance, I don't believe that is our issue. They voted the way they voted; I take Mr. Brainsky at his word; he is an attorney. The Planning Board decision reflected their acknowledgement of the water issues and approved it at any event. As to the point that you made, Mr. Chairman, assuming that this Board grants that 5% deviation, that does not permit the developer to do any construction within that deviated disturbance area. It either stays in its natural state the way it is, or the developer can plant some grass; because as it stands now, you cannot put a spade in the ground in that 25% area or the 30%. I am not an engineer, but I don't see an issue with the water whether in its natural state or if grass is planted

R. Blum On this 25% or 30% area, grass is planted? Can it be a shed there? Not beyond that.

R. Ross That was the question I asked the engineer; and what I understood him to say was that the modified area of disturbance at the 30% would be 75 feet from the rear property line.

R. Blum Yes that is non-disturbed, but I'm saying the extra 5% of area that we're giving them, is that any place where a shed could be built?

E. Brainsky To answer both of your questions, I guess you are both correct in a way. We are looking to modify the Limit of Disturbance. We would be allowed to—future homeowners would be allowed, to do what anybody else could do with that Limit of Disturbance within the bounds of the zoning code. If the shed is located within that area and meets the zoning setbacks, then they are allowed to build a shed; if the shed is located in the 5% area, then it does not meet the zoning setbacks; then they have to come before the Board to request relief; but we are not just saying

the only thing we are going to allow these folks to do is grass--maybe a swing set, a horseshoe pit. etc.

R. Blum I think the question I was going to ask is, and I'm sure we are way beyond the big planning stage, is there going to be any adaptations for septics or anything changing that because you need more green space to do this?

P. Carlson The septics will be located as dictated by the Board of Health. That was already thought out and went before the Planning Board and Board of Health.

E. Brainsky Just for the record, this drilling, boring; the Water Board's engineer testified that it would be \$60,000 to \$70,000 to do that study, and my client wasn't willing to pay for it and the Planning Board wasn't willing to impose it. My client also agreed to do the fast septic systems which are 30% more expensive than normal septic systems on five of the lots on the northerly side as a condition of Planning Board approval. These concessions were made.

Lee Dunn Could I ask Mr. Brainsky a question? I just appreciate the developer's willingness in part to work with us, and I would ask Mr. Brainsky or whoever else knows how effective the fast systems that he has agreed to put in are? I heard they are 50% less nitrogen—would that be the end product?

Ch. Grouke Could you give us a real quick answer to that question, Mr. Brainsky, because again that is not something that this Board is going to take into account in deciding this plan.

E. Brainsky I have to defer to Mr. Carlson.

Paul Carlson Approximately 50%.

Ch. Grouke In terms of the request that we have here is for a variance to go from the 25% to 30%, and we have heard the testimony and the evidence that the developer in choosing this type of development has given up the potential for more lots and also has part of plan involved less disturbance of the land in which a conventional subdivision would have involved much more disturbance and possibly leveling the whole site and much more use of disturbance. I certainly recognize that; and the fact that the 25% would result in extreme limitation of these residential lots would appear to be a hardship at least as far as I can see it.

R. Read I have a question. Is the 30% that we are talking about, is that 30% of the entire lot?

P. Carlson Approximately 30% if the whole parcel.

Ch. Grouke Is the 30% that we are talking about, is that 30% of the entire lot, of the entire project?

E. Brainsky 30% of the whole parcel is the total disturbed area.

Ch. Grouke So in terms of that map, the whole parcel is the ?

(discussion about the map)

Ch. Grouke You are giving more that what is required?

E. Brainsky Correct, nearly six acres.

R. Read This will go back in the hands of the Planning Board? I think that is where it belongs.

R. Ross The way I read it, they are not bound by our finding. We can grant the variance, they can still say no.

E. Brainsky Whether or not that is allowable is another issue. I don't want to go on record; I don't want to make that argument.

Ch. Grouke I think that this type of conservation development is a good thing, and I agree that we would like to provide the incentive to developers to do these things. I would like to help in that process anyway. As compared to a conventional development, it has a lot of advantages.

K. Rondeau In reading this settlement agreement, should we approve 30%; then after all appeals and approval periods have been exhausted, it goes back to the Planning Board, and because our action tonight would constitute a change in the circumstances; they would be able to review and reconsider so if there were any issues regarding the Water Commission and the Water Board, they could take care of those at that time. Am I correct in assuming that?

Ch. Grouke That is correct. That is how I am reading it. It says our action is, would be considered, a change in circumstance; this would allow the Planning Board to grant the modification; but they are not compelled to do so.

E. Brainsky (Inaudible)

Ch. Grouke If they have a hearing, then they can address whatever issues that they feel are pertinent; Counsel might disagree. But it would be up to that Board to decide.

K Rondeau It looks like this can be another bite of the apple as far as the Planning Board and anybody else would consider, as far as considering other factors and issues; I don't feel that I am qualified tonight to address the water aquifer district, but I think there is a failsafe there for the Planning Board to be able to do so.

K. Rondeau moved to close the public hearing.

R. Ross Second Vote 5-0 in favor.

Ch. Grouke Do we have a decision on the Building Inspector?

R. Read made a motion to uphold the decision of the Building Inspector.

R. Ross Second. Vote 5-0 in favor.

Ch. Grouke Do we have a motion on the request for a variance?

Ch. Grouke Motion on the request for a variance as amended.

R. Ross Based on the review of the application being evidence presented by the engineer, the real estate expert, and the arguments advanced by Mr. Brainsky, I move that the application as amended by this Board in open hearing be granted to modify the area of Limit of Disturbance from the legally authorized 25% to Limit of Disturbance not to exceed 30% of the total area of the two parcels of land in issue, Plat 24, Lots 73 and 394.

K. Rondeau Second Vote 5-0 in favor.

Ch. Grouke The Board has voted 5 in favor and 0 opposed to grant this petition.

2013-22 Seekonk Mall Trust 1 Ann & Hope Way, Cumberland, RI, 02864, Owner by Irwin Chase Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Variance** under Sections 12.4.2 and 12.4.2.2 to allow a total of 2 signs, involving 130 sq. ft. for the proposed Vision Works and 3 signs, involving approximately 200 sq ft, for the proposed Chipotles Restaurant at 35 Highland Ave., Plat 8, Lot 33 in a Highway Business Zone containing 666,468 sq. ft.

Gus Raposo Raposo Engineering, Stratford, MA, sworn in. On behalf of the Seekonk Mall Trust, I was here before for the setbacks because of the land taking. At that time I could have applied for the variance for the sign, because as you know most commercial buildings in Town go for a variance because of the very strict regulations for signs. As you recall the building has basically two facades, one faces the plaza and one to the street. The reasons for the signs is for marketing reasons, the Chipotle signs are in total less than 200 sq ft. You allow up to 200 sq ft for signage, but you only allow one sign per building. Having said that, if you have any questions? I do have some photos.

Ch. Grouke So those three views there, could you tell me which one is the street view?

G. Raposo When you come down Route 6, on the side you'll see the back of the plaza coming from Bed Bath and Beyond. The front faces the interior of the lot

Ch. Grouke Which direction do you see—you are going to have three signs then, right?

G. Raposo For Chipotle three signs; one right along Route 6, another you'll see from the side and on the front facing the plaza. The Vision Works Company, there will be two signs; one facing the street and the other on the front entrance. Bed Bath and Beyond has two signs—for the same reason in the same plaza.

G. Grouke The Vision Works signs would be two signs—one facing the street and the other..?

G. Raposo Reversed, because the entrance is on the other side.

Ch. Grouke The total square footage is?

G. Raposo Close to 200 sq ft for Chipotle, and 130 sq. ft. for Vision Works. They are entitled to 200 sq. ft. maximum.

R. Read I calculated that; there is no problem with the area.

Ch. Grouke Any questions for Mr. Raposo?

R. Ross I don't see it in the application, Mr. Raposo, and it may be there and I missed it; but these are going to be illuminated signs, correct?

G. Raposo Yes, correct.

The photos submitted collectively into evidence as Exhibit A.

Ch. Grouke Is there anyone who wishes to speak in favor of the petitioner? No response.

Is there anyone who wishes to speak in opposition to the petitioner? No response.

Are there any questions of the petitioner? No response.

(Inaudible)

Ch Groucke We have granted a number of variances in this location for different businesses based on the configuration and the fact that the front of this building will be facing all directions with the traffic issues where cars coming up and down the street would like to be able to identify the building without too much straining.

K. Rondeau This is just plain simple signs, no pylon signs.

Ch. Groucke So under the circumstances, I'd be inclined to go along with the request as we have in the past with other petitions in this area. Is anyone ready to make a motion to close the public hearing?

R. Read So moved.

K. Rondeau Second Vote 5-0 in favor.

Ch. Groucke Do we have a motion on the Building Inspector's initial decision?

R. Ross So moved

K. Rondeau Move to approve his denial. Second. Vote 5-0 in favor.

K. Rondeau made a motion to accept the petition as presented with signs as presented and grant the variance as presented.

R. Read Second Vote 5-0 in favor.

Ch. Groucke Mr. Raposo, the Board has voted 5 in favor and none opposed to grant your petition for a variance.

2013-23 Ronald Reeves, 32 Covell Avenue, Seekonk, MA, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Variance** under Sections 6.3, 6.4, 6.5, and 6.8 of the Town of Seekonk Zoning Bylaws to allow the construction of a 8' x 10' deck, on a preexisting, legal,

nonconforming lot, at 32 Covell Avenue, Plat 34, Lot 78 in a R-1 Zone containing 4,843 sq. ft. +/-.

- R. Reeves 32 Covell Avenue, Seekonk, MA, sworn in. I moved there with my parents when I was 8 years old; I've been there for 66 years; my wife and I have been there for 31 years. This is David Harovan, my stepson. We've got a wonderful shaded backyard, 4800 sq. ft.—they are all small lots up there. It would be nice to have patio or deck or something—we started kicking that around, and he said, “Let me do this as a gift.” I told him that we better get on the ball because I don't like doing things shortcut, because any time I try something like that, it comes back to haunt you; and I'd rather be nice and relaxed. The deck would provide us a very pleasant activity for the backyard—we are kind of homebodies; and as I say with the right trees we have grown there over the years—my Mom and Dad have some responsibility for doing that. There's wildlife—we've got squirrels and chipmunks, etc.; and as a footnote, my wife said “you know if we had a door back there, we could let the dogs out and let them back in instead of harnessing them up, out the back door, open the gate door—so that's a little bit of a footnote. I would like to point out right now that David is a very experienced carpenter; he can do anything. He lives in Burrilville. That's quite a generous thing. I never question him; I just get out of his way. We live in the north end—against the Attleboro line; I take a lot of pride in the yard. As I said, we are homebodies—we sit out there with coffee in the nice weather, observing the wildlife—we've had raccoons, possums,—it's a nice neighborhood.
- Ch. Grouke Is there anyone who wishes to speak in favor of the petitioner? No response.
- Is there anyone who wishes to speak in opposition to the petition? No response.
- Ch. Grouke We notice on the plan here, it is showing the deck that you wanted to build, Mr. Reeves; and you are not going any closer to the side line, just extending out into the backyard a little bit. You have an undersized lot, of course, based on today's standards.
- R. Read The size of the lot is consistent with the lots in the neighborhood.
- Ch. Grouke It certainly creates a hardship for any development, any improvement.
- K. Rondeau We've had a number of people come from that neighborhood in the last couple of years wanting to improve their homes, the neighborhood.

R. Ross Just one question—I know that your plan is a 1 to 30 scale, and I don't have a ruler, but it appears that on the plan that the deck is square; but are going to build an 8' by 10', correct?

R. Reeves Yes.

R. Ross Just a little housecleaning—your application says the project meets all the zoning bylaws, if you met all the zoning bylaws, you wouldn't be here--I think you meant to say—does not.

Ch. Grouke It seems like a worthy project; it's going to be an improvement; certainly a hardship exists that would allow us to grant type of petition.

K. Rondeau made a motion to close the public hearing.

R. Ross Second Vote: 5 in favor 0 against.

K. Rondeau made a motion to uphold the decision of the Building Enforcement Officer.

R. Ross Second. Vote: 5 in favor 0 against.

K. Rondeau made a motion to grant the variance as requested for the 8x10' deck.

R. Ross Second Vote: 5 in favor 0 against.

WORK SESSION

Ch. Grouke Number one on the Work Session agenda is Reorganization of the Board. Does anyone have any thoughts about the reorganization of the officers of this Board?

R. Blum Ted and I had a discussion about a week or so ago. I was asked to be Vice Chairman last year, and right now I have a lot on my plate at work. I told him that I was not looking to be reelected, so I was hoping that somebody else might just step up and take that nomination.

R. Blum I'd like to nominate Ted Grouke as Chairman.

K. Rondeau Second Vote: 5-0

K. Rondeau I'd like to nominate Roger Ross as Vice Chairman.

K. Rondeau Second. Vote: 5-0

Clerk

Ch Grouke made a motion to nominate Chris Testa as Clerk.

R. Ross Second Vote 5-0

Approval of Minutes

Three sets of minutes

R. Ross made a motion that the minutes of the meeting of July 1, 2013; August 5, 2013; and September 9, 2013 be accepted as submitted, Seconded by R. Blum; **and so voted unanimously by:** Ch. Grouke, Robert Read, Roger Ross, R. Blum.

K. Rondeau--abstain.

VOTE: (Approve 4-0)

Work Session completed.

Five minutes recess.

Ch Grouke, K. Rondeau and R. Blum left the meeting and Gary Sagar, N. Abelson and D. Saad attended the meeting to continue in Executive Session.

8:52 PM Neal Abelson made a Motion to enter into Executive Session under G.L. c.30A, sec 21(a)(3): for the purpose of discussing litigation strategy relating to Ronald J DiPietro and Velta L. DiPietro v. Seekonk Zoning Board of Appeals, Bristol Superior Court, C.A. No. BRCV2013-00966 (ZBA Case 2013-12); not to reconvene in open session, D Saad second **and so voted unanimously** by a roll call vote.

VOTE: (Approve 5-0)

Neal Abelson made a motion to adjourn the meeting, Seconded by R. Read; **and so voted unanimously by:** Gary Sagar, Robert Read, Roger Ross, Neal Abelson and David Saad

VOTE: (Approve 5-0)

Meeting adjourned at 9:17 PM

Respectfully submitted by:

Christina Testa, Secretary