

**SEEKONK ZONING BOARD
REGULAR MEETING
MINUTES**

March 31, 2014

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

Gary Sagar and Neal Abelson – Zoning Bylaw discussion only

Roger Ross present and will hear petition 2014-02 under the Mullin Rule

7:04 Chairman Edward F. Grouke called the meeting to order.

Ch. Grouke This is the meeting of the Town of Seekonk Zoning Board of Appeals, March 31, 2014. 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.

2014-02 Auger Realty, LLC, 48 Case Avenue, Seekonk, MA 02771, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 5.3 of the Town of Seekonk Zoning Bylaws to allow the construction of a 20' x 60' addition to an existing structure, at 48 Case Avenue, Plat 31, Lots 474 & 475 in a grandfathered Industrial Zone containing 19,035+/- sq. ft. (continued from March 10, 2014)

Ch. Grouke This is the composition of our board tonight: Roger Ross was not available last time, he will take the place of Neal Abelson. The Mullin Rule allows him to read

transcripts of what was submitted and then he can participate and vote on the petition.

- R. Ross I was absent from the last hearing and since then I have read the full minutes and have also viewed the DVD of the hearing provided. I am well familiar with the petition and confident I can participate and vote. I have signed the Mullin Rule document.
- Ch. Grouke There is a procedural problem. The Board took a vote to close the public hearing 3-2 and decided to not allow any additional testimony from the public but then decided to solicit additional information from other departments. By closing the public hearing, we have prevented ourselves from taking additional information. We have put ourselves into a corner and the solution is to have the board reconsider the vote and allow us to take in the evidence. I would like to have a vote tonight because the petition then has to be re-advertised in the event someone heard that the public hearing was closed and to keep the procedure proper. I would entertain a motion to reconsider the vote to close the public hearing and reopen the public hearing for another night.
- K Rondeau It only needed a 3-2 vote not 4-1?
- Ch. Grouke Yes.
- R Read After we voted to close, there was no more testimony other than rescheduling. What is there that could be considered testimony?
- Ch. Grouke We asked for more information from Conservation and the Fire Department. Without reopening we couldn't do anything.
- R Read Why can't we just reopen now? There was no testimony given between what was happening then and now.
- Ch. Grouke There is a small possibility of someone who thought the public hearing part of this petition is closed and would not be present to speak. Now if it is advertised, like it is always advertised, we have done what is required. We are trying to cover all procedural bases.
- R Ross I understand the board sought and received additional documents from other departments. It seems the board can consider what was provide by various departments, but the public would be prohibited from commenting on anything we received from those departments.
- Ch Grouke That is my concern.

- R Ross I think it is truly cautious to do that. Particularly as I read what is contained in those documents substantively.
- R Read In order to discuss those documents, the public hearing has to be reopened?
- R Ross I wouldn't think so, I believe we have the right if we so choose to view those documents as provided with the public hearing closed. If the public hearing remains closed per the 3-2 vote, I believe the board can still go forward.
- K Rondeau I think there is a fine line between what was provided. I think that new information could be at issue.
- R Read You said we could examine those documents?
- R Ross The hearing was continued from then until tonight, but I don't understand why we can't go forward tonight.
- Ch. Grouke I believe we need to keep it open for the public.
- K Rondeau I would rather err on the side of caution, even if it is extreme.
- G. Sagar Sworn in. I am here as an abutter and in no other capacity. Ted, if you recall being a senior member of the ZBA, years ago the ZBA procedure was they would close the public hearing and continue the meeting until another night to make the decision. I did not have an opportunity to speak at the last hearing, I would like to have you reschedule this and incorporate into the record so I can have an opportunity to speak.
- R Ross The motion to reconsider the vote to close the public hearing has to be made by one of the majority of those who voted to close.

R Blum made a motion to reconsider the vote to close the public hearing and to rescind that vote. Seconded by R. Read; **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum, Roger Ross and Keith Rondeau

VOTE: (Approve 5-0)

R Blum made a motion to reopen the public hearing; Seconded by R. Read; **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum, Roger Ross and Keith Rondeau

VOTE: (Approve 5-0)

R Blum motion to continue this meeting until April 28 at 7:00 and to re-advertise and waive all fees, Seconded by R. Read; **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum, Roger Ross and Keith Rondeau

VOTE: (Approve 5-0)

Work Session: Zoning Bylaw Amendments

G. Sagar I provided to the board some documents. A couple of years ago, the Planning Board requested an appropriation to redo the Zoning Bylaws. They utilized Horsley Witten. These were done several months ago and the Planning Board requested comments. The day we received the appeals court decision was the same day they had the public hearing on this, that court decision changed dramatically town counsel's opinion. I did a preliminary review of the changes; the planner was of the opinion that there were no substantive changes.

N Abelson Basically Horsley Witten reorganized the book

G Sagar I reviewed the proposed changes, it eliminated accessory uses in a residential zone; it eliminates driveways, pools, and garages. Under our current bylaw, accessory uses are allowed. In a local business district it eliminated public schools, auto nursing homes, boarding houses are not allowed, accessory uses 7.1, nothing to allow auto dealerships. I met with the planner, he was of the opinion that there are no substantive changes but there is language placed in there that totally changes bylaw from permissive to prohibitive. If it isn't listed, it can't be done. Appeals court says it is a permissive bylaw. One of the languages was to make it a prohibitive bylaw which changes everything. I haven't done a complete review of this. Mr. Hansen has gone back and made some changes that I suggested and outlined. My concern, they had one public hearing and approved I believe they will have to reopen the public hearing. They are looking to revise the sign bylaw to but my concern is, every time you change zoning, you affect somebody. When relief is needed, they come here. I feel that we have waited a couple of years, I think that we should probably just ask the planning board to take more time to review it, let's do it and not create more problems and move forward. I viewed this document, as you know; we have a new part of the bylaw that covers conservation bylaws, maybe that needs to be tweaked. We heard from petitioners the 1979 town-wide zoning negatively affects some of the homeowners.

- R. Ross I received this proposed amendment very shortly before vacation. I did not have a chance to review it. For myself, I would like to have an opportunity to go through more thoroughly.
- G Sagar I am only involved in this because I was asked. I think everybody wants to go through it. It is going to take some time.
- K. Rondeau You would have to proof read this whole document. One 'shall' or 'may' in the wrong place could change the meaning of a bylaw. On the face of it, it looks like some of the changes of the document make it easier to read, the tables make a lot of sense. I think we have to go through the bylaws line by line.
- R Read Should item one be changes from prohibitive to permissive? We disagreed with Mary on that subject on more than one occasion.
- G Sagar Right now the bylaw states accessory uses are allowed by right.
- K Rondeau The Appeals Court said we have a permissive bylaw, however, it does state in here, on page 1 of the current bylaws, the second paragraph from bottom, "whenever there appear to be multiple interpretations of points within these bylaws, the more restrictive or more controlling interpretation is intended and will prevail unless ruled otherwise by due course of law."
- G Sagar A few years ago Mr. Hansen met with us at a meeting and we mentioned under the state law, you get two years and it is one year under town bylaws. I requested we mirror state law. It has since been removed.
- Ch. Grouke The use of tables is more restrictive in itself.
- K Rondeau I would like to make a suggestion, as a board we do our homework, review these revised bylaws and in two months come back and have a work session and come together as a board and create a list of concerns.
- G Sagar I would suggest that Mr. Hansen and the Chairman of the Planning Board be invited and any other member of the Planning Board who would like to attend. We could have a special town meeting just for zoning issues. This is important to the whole town. It needs more review it is in the town's best interest. We recognize the effort and time put in to this, but once you adopt something is more difficult to change.
- K Rondeau The mistake of one 'will' or 'shall'...we should meet on this sometime in June to revisit this.

G. Sagar This needs a new public hearing. I would like to suggest that we inform the Planning Board or the Planner that we not try for the June town meeting. It could have a special town meeting and there could be a presentation with power point; it is important that everybody is on board.

R Blum I will not be available June, July or August. I am away.

The Board collectively agreed to meet again June 16, 2014 at 7:00 PM for a work session to discuss the revised Zoning Bylaws again.

Adjournment:

K. Rondeau made a motion to close work session, Seconded by R. Blum; **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum, Roger Ross and Keith Rondeau

VOTE: (Approve 5-0)

Meeting adjourned at 8:05 PM

Respectfully submitted by:

Christina Testa, Secretary