

**SEEKONK ZONING BOARD
REGULAR MEETING
MINUTES**

April 14, 2014

Present: Ch. Edward F. Grouke, Robert Read, Ronald Blum, Keith Rondeau, Roger Ross (case 2014-05), Neal Abelson (case 2014-06)

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

Ch. Grouke This is the meeting of the Town of Seekonk Zoning Board of Appeals, April 14, 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.

Public Hearings:

2014-05 Joseph & Paula Ruggiero, 1 Nayatt Court, Barrington, RI, 02806 Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Sections 5.5 and 6.2 of the Town of Seekonk Zoning Bylaws to allow the construction of the relocated pool and tennis facility for Ledgemont Country Club, at 225 Brown Avenue, Plat 25, Lot 217 in a R-4 Zone containing 118,372 sq ft

Roger Ross For the record, when the matter was originally heard on March 10, 2014, I was unavailable. It was represented to Mr. Brainsky that there were only 4 members available, and he agreed to go forward that evening with the four members on the representation that I would appear on the date of continuance, which turned out to be tonight. Under the provisions of the Mullin Rule, I have reviewed the video of the entire hearing, which I have done on two separate occasions. Given the nature of that hearing I feel that I am sufficiently familiar with the testimony and the evidence that was given and the nature of the case that I can fully hear this matter this evening. I have not yet signed the document that I need to sign to indicate that I am in comportment with the Mullin Rule but I will do so later tonight or tomorrow morning.

Ch. Grouke Thank you Mr. Ross.

E. Brainsky I am an attorney on behalf of the applicants. I have offices at 1547 Fall River Avenue, Seekonk. Mr. Chairman, I am sure the Board has received my April 7, 2014 correspondence. Since the last time we were here, a new zoning determination was issued by Mr. McDonough who was the zoning official in Seekonk. He rescinded the zoning determination that this board heard a month ago and again is hearing this evening. He has issued a new determination. Based on the new determination my client has opted to withdraw this appeal without prejudiced to file a new appeal of the March 27, 2014 zoning determination and/or request for special permits. We are here tonight asking to withdraw the application without prejudice and to file a new appeal application pursuant to March 27, 2014 zoning determination.

Ch Grouke Any questions for Mr. Brainsky? (no response) So there has been a request made by the applicant to withdraw the petition that they filed and was heard a few weeks ago without prejudice. Just a word on that idea of prejudice or without prejudice, usually in the legal world, if something is dismissed with prejudice that means it can never be brought again, it is final and over with and the courts don't want to hear about it again. So the idea of without prejudice means that it can be heard again. In this case, I believe the applicant is seeking to preserve all of their possible rights to go forward and have another petition heard with regard to this particular piece of property. Would you like to comment Mr. Brainsky?

E. Brainsky Under the new zoning determination of March 27, 2014, because the prior zoning determination has been rescinded.

Gloria Haddad 62 Tanager Road sworn in. I have a question regarding terminology in the Zoning bylaws and that concerns nonconforming uses. I know that I heard over the last several meetings that the property in question, the house, the parcel for which they are seeking the variance, had a nonconforming use. To be honest with you, I don't understand that. I looked it up in the bylaws under 5.1. There was a

house on this property and somebody lived there. How is that a nonconforming use for something that is zoned residential?

Ch. Groucke I don't want to get into this with too much detail because really the request tonight is to withdraw this case but I think just to answer your question quickly, it is not the house that is considered nonconforming; and that would be one of the things we would ultimately rule on, whether or not the new proposed use is nonconforming. That is what the concept is but that is something we don't have to decide tonight because the only request tonight is to withdraw the existing petition and not go forward on it at all.

John Ratcliffe 251 Brown Ave. Sworn on. Do lawyers get sworn in? I just noticed he did not.

Ch. Groucke It was the practice of the previous Chairman to swear everybody including the lawyers but for the most part, the lawyers don't actually testify, they usually summarize and make arguments so that is why they usually aren't sworn in.

J. Ratcliffe In regards to the withdrawal; I think I speak for most of the neighbors but I think before they bring a new petition forward, we would request that they consider some of the other locations for the proposed site.

Ch. Groucke Is there anyone else with questions, comments regarding what is being proposed tonight? No response.

R Ross I don't have questions but I have an observation. As the members of the board know, and I know Mr. Brainsky knows; up until such time as the publication of the pending application actually runs, the applicant, as a matter of right, has the right to withdraw a petition. Once a publication runs, it is at the discretion of this board. That is the discretion of this board. As I said, I reviewed the video of the last hearing on two separate occasions. The issue that was crucial, were the two attorneys who represented objectors, both recommended and urged the appropriate avenue for Mr. Brainsky's client was to withdraw the application without prejudice and begin again. My position based on what I heard was that the objectors don't have an objection. I am inclined to exercise my discretion and vote to authorize a withdrawal of the petition without prejudice.

Ch Groucke I agree with you, it only seems to make sense that if the applicant wants to withdraw the petition without prejudice that it makes sense for us to do so. If they want to re-file again based on the new zoning determination they have the right to do that. As far as the one that is existing, that is a reasonable thing to do.

R. Ross made a motion that the applicant's request to withdraw the pending application and for relief and appeal that is currently pending be allowed to be withdrawn without prejudice and close the public hearing, seconded by R.

Blum; **and so voted unanimously by:** Ch. Grouke, Roger Ross, Robert Read, Ronald Blum, and Keith Rondeau

VOTE: (Approve 5-0)

2014-06 Alfred L. Penacho Jr. Tr., 39 Back Street, Seekonk, MA, Owner, and **The Town of Seekonk**, a Municipal Corporation with its principal business address at 100 Peck Street, Seekonk, MA, 02771, by and through Nelson Almeida, Chairman, Board of Selectmen, Petitioner, request an **Appeal** of the Zoning Enforcement Officer's Decision, and **Special Permit and Variance** relief, under Zoning By-law §4.3, §4.7, §5.3, §6.2.3, §14 and §20, so as to allow property that contains 49,893 s.f. and is located at 442-540 Taunton Avenue and is shown on Assessors Plat 18, Lot 8 and is located in a R-2/Mixed Use Zone to continue to be used for a lawful nonconforming multi-family use and to alter the lawfully nonconforming commercial use of the property to a municipal senior center use and/or any other lawful municipal use, either on the property as presently configured or as divided and shown on the plan accompanying the application for relief.

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Ilana Quirk

Kopelman & Paige, Town Counsel, representing the Town of Seekonk by and through the Board of Selectmen.

Roger Ross

Mr. Chairman, as I discussed previously in general terms, I represent a client, who is not the owner, but who has a significant interest in the proceeding that are here this evening and in the real estate, he is the mortgage holder on the property. Given that circumstance, I have determined that I should recuse myself from the consideration of this pending application on behalf of the Town and arrangements have been made for Mr. Abelson to sit instead and hear this matter so I will recuse myself.

I Quirk

I am presenting the petition before you for zoning relief regarding the potential new senior center that is proposed for 442 Taunton Avenue. I have a number of materials for you that I would like to give to you. I have the ANR plan for the property that was endorsed by the Planning Board last week. I have two letters from the Board of Assessors, one that indicates that the commercial building at the property has been in place since the early 1970s and that the existing multifamily dwelling use has been in place since the 1930s. In addition, I have copies of the excerpts from the relevant assessing map showing the property which will help you get oriented with it. As you read with the public hearing notice, the town is considering buying the property at issue and using it as a senior center. Right now there are two buildings and two uses on the property. One of

them is a multifamily use with a number of tenants and the other building is being proposed for the senior center is the 12,000 sq ft commercial building that would be refurbished, not taken down and rebuilt. It has been in place for 40+ years and the multifamily for 80 or more years. The town seeks relief this evening in multiple ways. One appeal you have before you is from the Building Inspector's determination which I understand is the usual practice of the board to require that there be such an appeal when relief of this nature is being sought, so we are following that rule. Essentially what the town is seeking this evening is a special permit to allow the municipal use to go forward under Zoning Bylaw section 6.2.13, which certainly the ZBA has the ability to give that relief. It would be appropriate to have the senior center at this location and in the building. In addition, you have before you alternative relief, a request that the town have the option to take the property as it exists now and divide it into two parcels. That is the reason for the ANR plan that was endorsed last week by the Planning Board. The town has not made a final determination when it gets the relief that is sought this evening to go forward and buy the property it is just exploring options to determine if this is something that is appropriate to look carefully at every angle of this potential project. The ANR plan would place the multifamily structure on one independent parcel with parking of 2 spaces for each unit and its own means of egress. The commercial use building would be on a separate parcel and that's where the senior center would be located. The town believes that the area is very appropriate for the senior center, it is centrally located to the town, it has a number of uses around it that would be conducive to the senior center. There is a K of C on one side, the YMCA on the other side, it is on a major thoroughfare, it is easy to get to. The reason for at least looking at the potential for dividing the parcel into two distinct parcels is that certainly for 911 purposes, its important and appropriate for each parcel to have a separate identity so in the event of a call there is a way to know exactly where emergency response is to go. It is helpful for conveyance purposes, for making sure everyone knows which property is which so parking is well defined for each. There is potential in their discussions going back and forth with the Knights of Columbus for an easement for additional parking to serve the senior center use for any overflow for any particular event. Once the swimming pools are removed from the property, there will likely be the ability to add more parking than what is there. If you have questions, I will be happy to try and answer them.

Ch. Groucke The first question is whether or not we will allow the building to be used for municipal uses.

I Quirk Correct, the special permit use under section 6.2.13 and as part of that you would be making a determination under section 5 of the zoning bylaw with regard to the extension, change or alteration to the nonconforming situations that are out there. Again, there is the twofold request; one part we asked that if you would allow relief with regard to the entire property and also the respective property as it may

be divided so the town has the option going forward. Again, that decision has not been made; the town really has not made a final decision on that. The ANR was approved, was endorsed last week by the Planning Board.

Ch Groucke If there are two parcels, there might be some relief needed for setbacks?

I Quirk Yes, in the event you allow the division of the property to go forward as a proper extension alteration or change to the nonconforming situation that is out there, then some relief would be necessary if you look at the ANR plan, you can see there are issues with regard to how close the line would be between the two buildings. Again, this is very similar to an MGL, Chapter 41 81L situation, when you have an old, nonconforming lot and someone comes in and asks for this kind of separation so as to have the proper identification if you will of the different uses and structures that are on the individual parcels. Again, it helps with 911, assessing, leasing, mail delivery; it helps with any number of issues to divide up the property. So the two questions are for Special Permit relief under 6.2.13, and then the section 5 relief, which is really a 40A Section 6 relief to do the change, extension, alteration of the nonconforming situation to allow what it is to go forward. First one parcel with the two structures and uses to remain on one parcel and also, to allow them to be divided if that is what the town chooses to do in the future.

Ch. Groucke And then the question of whether the municipal uses should be allowed.

I Quirk That would be your ordinary Special Permit standard under Section 6.2; is it more detrimental to the neighborhood than the current use?

K Rondeau The current commercial building, what will happen with that building?

I Quirk It would be refurbished; it will stay in place, it will be intact but the inside would be refurbished to use as a senior center, municipal use.

K. Rondeau So the top floor would be a senior center, the whole thing?

I Quirk I believe it would be the whole thing. I suppose it would be the potential that there would be other municipal uses that would come in, perhaps offices, overflow offices, often times there are other office type uses that would be of particular benefit to have within a senior center; the council on aging, whatever you may have within the municipal side, the veterans office, that kind of thing, the visiting nurse. Often times within a senior center you see those kinds of municipal uses.

K. Rondeau So the current tenants will probably end up leaving.

- I Quirk I think that in order to do the renovations that would likely be necessary at some point. Obviously, leases would be honored.
- R. Read That was my question. Does this in any way affect the existing tenants?
- I Quirk I don't know the duration of the existing leases but certainly it may have some kind of an impact but I don't know the duration of the leases would be. They would be honored.
- R Read Could the town allow the tenants to remain and stay under a new lease?
- I Quirk That raises an interesting question. We are looking for a Special Permit to allow the present commercial uses to be changed to a municipal use, which requires a special permit. Certainly, if you wished, you could indicate in a favorable decision that municipal uses are allowed under the special permit and that commercial uses as they exist now could continue as well. You certainly could do that.
- Ch. Grouke Are there any other question right now? No response. Is there anyone here to speak in favor of this petition?
- Dave Bowden Chairman of the Senior Center Building Committee, 170 Walker Street, Seekonk. Sworn in. As the Chairman of the Senior Center Building Committee, I am obviously in favor of this and to have a commercial building sitting there that could not be used for municipal use would be a waste of the town (inaudible); the purpose is to establish it as a commercial building use for municipal use as a senior center.
- Ch. Grouke There doesn't seem like there is a long line of people trying to get in there.
- D. Bowden No, I think the other people who were looking at it were looking at it for a lot of different reasons, one of which was to get two pad sites, and it just didn't work.
- Ch. Grouke Is there anyone else to speak in favor of the petition? No response. Is there anyone here to speak in opposition to this petition? No response. Are there any questions on this petition? No response. Are there any more questions for Ms. Quirk? No response.

It certainly seems like it is a win-win situation. The use as a senior center would appear to be not a use that would involve a lot of traffic or overburden the site or involve any substantial outward change other than the renovations to the inside. When you compare that to what it has been, it certainly seems like it is consistent to what it was before. It is going to be a positive change. The whole idea to give

the town the option to separate those lots seems good. I don't know that the town wants to own a 5-family tenement house.

R Blum I think it's a good use.

Neal Abelson made a motion to close the public hearing, seconded by R. Read **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum, Keith Rondeau and Neal Abelson.

VOTE: (Approve 5-0)

Ch. Grouke We have a petition and there are a couple of different things that have been requested. In our discussion, we considered the possibility of allowing the special permit to allow the site to be used as a municipal use and also allow the potential continued commercial use.

N. Abelson made a motion to approve the applicant's request for a Special Permit to allow the subject property to be used for a municipal senior center and any other lawful municipal use and not to the exclusion of commercial uses and potentially allow commercial uses, seconded by R. Read; **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum, Keith Rondeau and Neal Abelson.

VOTE: (Approve 5-0)

I Quirk Mr. Chairman, procedurally, I recommend that there be a motion under Section 5 to grant the nonconforming relief and also grant the necessary variance relief as shown on the ANR plan.

K Rondeau made a motion to grant the Special Permit under Zoning Bylaw Section 5.3 and under 14.2.3 to extend the nonconforming structures and uses on the property, to allow the subject property to be divided into two parcels as shown on the ANR plan submitted so the multifamily residential use may be located on one separate and independent parcel and the municipal senior center use and any other lawful municipal and/or commercial use may be on the second separate and independent parcel and that the parcel could also be used as one undivided parcel; seconded by N. Abelson **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum, Keith Rondeau and Neal Abelson.

VOTE: (Approve 5-0)

K. Rondeau made a motion to grant variance relief as requested under Zoning Bylaws Section 14.2.2 and 20 to allow the property to be divided into two separate and independent parcels as shown on the submitted plans and with the nonconforming side yard setback and lot area dimension as noted on the accompanying plan seconded by N. Abelson **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum, Keith Rondeau and Neal Abelson.

VOTE: (Approve 5-0)

Ch. Grouke The Board has voted 5 in favor and 0 opposed to grant the two Special Permits and the request for a Variance.

N. Abelson made a motion to adjourn the meeting, seconded by R. Blum **and so voted unanimously by:** Ch. Grouke, Robert Read, Ronald Blum, Keith Rondeau and Neal Abelson.

VOTE: (Approve 5-0)

The meeting adjourned at 8:00 PM

Respectfully submitted by:

Christina Testa, Secretary