

**SEEKONK ZONING BOARD
REGULAR MEETING
MINUTES**

April 28, 2014

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

Roger Ross present...will hear Case Avenue petition under the Mullin Rule for N. Abelson not hearing.

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 28, 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.

2014-07 Frank Moitozo, 64 Salisbury Street, Rehoboth, MA, Owner, by Roberto & Grinoalda Rego, 72 Blanding Road, Rehoboth, MA, Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Sections 6 and 9, to allow the continuance of an auto repair shop at

785 Taunton Avenue, Plat 16, Lot 78 in a R-2/Mixed Use Zone containing 40,372 sq ft.

Robert Rego and Grinoalda Rego, 72 Blanding Road, Rehoboth, MA
Frank Moitozo 64 Salisbury Street, Rehoboth, MA 02771 sworn in.

F Moitozo I am the seller, and I am here to help him out because he doesn't know what goes on at ZBA meetings and I belong to the Rehoboth Zoning Board of Appeals and I know a little bit more of what goes on. I own the property now and we are transferring ownership they want to purchase the property and continue with an auto repair shop. The (existing) shop has been there since 1979 and I have continued the use since then.

G. Rego I was told it is a mixed use zone and no matter what you use the property for, you have to have a special permit.

Ch. Grouke Are there any questions for the petitioners? None. Is there anyone who wishes to speak against the petition at this time? No response. Is there anyone to speak in favor of this petition?

Robert Botelho I reside in Tampa, FL but I own 824 Taunton Avenue; right across the street from Mr. Moitozo. Sworn in. I bought the property in December 1999 and never had issue with the car repair business operating there. There has only been 1-2 cars at a time; no clunkers. In the summer, the foliage gets high and you can't really see anyway. He doesn't make any noise, its sound proof off the road and if you live on the road. I live in the upstairs apartment occasionally and the noise from traffic drowns out anything going on. I have no objection to that being retained as the business it has been since I bought the property.

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

K Rondeau You said you had been in continued use there. Has there been any cessation of activity there at all?

F. Moitozo No. I've been doing cars there right up until last week. It has always been a repair business, I have always done repairs.

Ch. Grouke So there is no issue with abandonment of the use.

R. Ross It has been 35 years Mr. Moitozo has been operating on the property; we have heard no complaints from any neighbors. Mr. Botelho spoke in favor and he lives across the street and he has had no issues. I see no issues.

R Ross made a motion to 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)

K. Rondeau made a motion to grant the permit as requested, seconded by R. Read; **and so voted unanimously by:** Ch. Grouke, Roger Ross, Robert Read, Ronald Blum, and Keith Rondeau

VOTE: (Approve 5-0)

2014-08 Central Volunteer Fire Association, Inc., 211 Newman Avenue, Seekonk, MA, Owner, by Warren S. Carpenter Jr., 150 Arcade Avenue, Seekonk, MA, Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 6 to allow the use of the old fire station as a museum at 211 Newman Avenue, Plat 24, Lot 140 in a R-2 Zone containing 20,000 sq ft

Warren Carpenter 150 Arcade Avenue, Seekonk sworn in.
William George 77 Kent Drive, Seekonk sworn in.

W. Carpenter I am the treasurer of the association and Bill is the president. We are asking for a permit to use the building as a museum. It was a fire station for many years from the time the building was built, around 1930 and used as fire station until the town built this building next door and presently it is not being used. We would like to use it as a museum and would like to collect memorabilia from the fire service, hopefully from Seekonk, from old members throughout the years. We would like to collect items and display them. It is a residential zone; there is not much else we could do with the building so we would like to have a fire museum. It is not being used now except we have some antique apparatus at this point. We don't foresee this to be a very active museum, probably by appointment only. It would be a very limited use, not a lot of traffic, no construction.

Ch. Grouke Are there any questions for the petitioner? Is there anyone to speak in favor of the petition?

David Bowden 170 Walker Street, Seekonk sworn in. The first meeting of the Central Volunteer Fire Association took place in the basement of the old Aiken school, which is no longer there. It had 75 members. The association continues to take part in meetings today and that was in late 1920s. The building was built in the late 1920s early 1930s. My uncle was a secretary; I was a member for 27 years. There have been an awful lot of people in this town who have gone through that station. My son is a fire fighter in Fort Bragg, NC having been a call-man at that station. I have a son outside of Russia, who was involved when I was enrolled. It would be too bad, like other facilities in this town, that no longer exist, to let yet another piece of history of this town go and let the members of this association continue to just tell the story of how things happened back then.

Frank Almeida 226 Newman Ave, Seekonk sworn in. I would love to see this go through, it would be a great thing for the community, they do a great job keeping the building up. It would be a wonderful idea.

W. Carpenter He lives across the street.

Gary Sagar Sworn in. In 1930 the building was built, it predates zoning. It was a fire station up until 2005 when the fire department moved next door. It is in a residential district it has limited use in a residential zone; it would be a shame to see anything happen to that building or used for any other purpose. I applaud these gentlemen; it is being operated with private funds. I think it is a great resource for the town. I would wholeheartedly endorse it and would like, in your decision, if you vote affirmatively, to include accessory uses to include any office and storage they need necessary to operate the museum.

Ch. Grouke Is there anyone else to speak in favor of the petition? No response. Is there anyone to speak in opposition to the petition? No response. Is there anyone with any questions? No response.

W. Carpenter When call station 1 shut down, a lot of their memorabilia was brought to our station. When station two on Pine Street was shut down a lot of their stuff was brought to us. We have a pretty good head start, hundreds of volunteer fire fighters in town; somebody's grandfather could have something in their house memorabilia. We could put out a newsletter asking people if they have any memorabilia they would like to bring in, we would be glad to take it. The North Attleboro Fire, the woman who works there who does all their paperwork and categorizes everything for the museum said she would come and help us get set up.

Ch. Grouke It seems like a worthwhile use of the building with educational purposes.

R Read The use is permitted after ZBA approval.

K Rondeau I can't think of better way to utilize that building. It is never going to be a fire station again. It is about time we try to preserve some of the history of Seekonk in an appropriate manner. The Central Volunteer Fire Association is really stepping up to preserve the memory of the call fire department I am sure they will do a great job. Aiken school is right around corner, I can foresee classes going up there. The Middle School is right up the street, same thing. It is a great way to share the history of the Town and Fire Department.

W. Carpenter We are all retired members, maybe we can inspire some kids to consider the fire service as a career.

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

VOTE: (Approve 5-0)

K. Rondeau made a motion to uphold the decision of the Building Inspector, seconded by R. Blum; **and so voted unanimously by:** Ch. Grouke, Roger Ross, Robert Read, Ronald Blum, and Keith Rondeau

VOTE: (Approve 5-0)

R Blum made a motion approve the petition as submitted with ancillary uses of office and storage space as needed, seconded by R. Read; **and so voted unanimously by:** Ch. Grouke, Roger Ross, Robert Read, Ronald Blum, and Keith Rondeau

VOTE: (Approve 5-0)

2014-09 Brad Abreu, 65 Hawthorne Drive, Seekonk, MA, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit and/or Variance** under Section 5 to allow an in-ground pool at 65 Hawthorne Avenue, Plat 6, Lot 82 in a R-1 Zone containing 11,457 sq ft.

Brad Abreau and Jessica Sanchez 65 Hawthorne Drive, Seekonk. Sworn in.

B. Abreau We are here to apply to have an in ground pool. We moved to town with a goal to put a pool in. We keep the property neat and organized, it is not a detriment to the neighborhood; we realize other neighbors have smaller lots and have pools. We had a surveyor come and plot it out, the pool companies came in and told us what they could do.

R Ross How long have you owned the property?

B. Abreau Almost 3 years.

R. Ross Did you put the shed there?

B. Abreau No the shed was there and it will have to be taken down and moved as a result of the pool being put in.

K Rondeau Are those the dimensions of the pool, 35' x 14' x 29'?

B. Abreau No, that wouldn't be the actual dimensions. The surveyor said he was going to draw it to the maximum and he said you can always go down from there so this way you are asking for the biggest thing that will fit in the lot space. That is a massive size pool; we have no intention of being anywhere near that size.

K. Rondeau What is it you are looking to build there?

B. Abreau A typical 16'-18'x 32'-35' pool, somewhere in that normal neighborhood. Nothing anywhere near 40-something feet long the drawing has. We could work it out with whatever company we hire as to what would make the most sense. That almost takes up the entire space we could fit the pool, that is why he drew it that way, I don't know why other than that reason, that is all he told me when he did it.

K Rondeau 16-18' is almost the same size, that is not much smaller. That leaves only 4' to the fence. Is the fence right on the property line?

B. Abreau I am not sure, I think he said it is either on or right next to property line. I think he had challenges getting exact information. We are on a corner lot so it would only affect one lot, which is the neighbor behind us. The other side is a small street, it's not really a street, it's just a connector. Only our driveway is on that street oddly enough.

- R. Blum If it was 35', what is the side-yard setback?
- B. Abreau The other person's yard is wide enough; it is not like they are right next to us. We spoke to the folks that live there; she thought it was a good idea because she doesn't like the tree that is there. The tree would come down, the neighbor right next door doesn't mind, she said as long as the tree comes down.
- R. Blum A corner lot is 35'.
- K. Rondeau He is short anyway because it is supposed to be 120' at the rear of the width and he has 105'. He is supposed to be 25' for the rear and he is looking for 4' that is a 21' variance.
- Ch. Groucke There is another question of whether or not side setbacks don't apply to pools. It is typical with other bylaws that side setbacks do not in other towns. They do in ours.
- K Rondeau Have you considered something smaller or a different size, or round or oval? A 21' variance is a huge variance for this board to grant. Could you consider a smaller pool?
- B. Abreau We could bring it in a few feet from the fence line. We are stuck with the location, because of the septic tank.
- R. Blum How do you propose to put the pool, rectangular shape this way or along the line of the house?
- B. Abreau This is not a typical rectangular shape pool. We want this same triangular shape because it goes with the shape of the yard but smaller. Because of the shape of the yard, it is only 14' wide here and we would like it to be wider as it goes along the shape of the yard.
- J. Sanchez With this shape pool, the fatter end of it we could put an area for games in the shallow end that is why we have the shape of the pool the way it is.
- R. Read They are kind of stuck with the location of the house. If they had their druthers, they would probably want the house closer to the street.
- B. Abreau The front yard is twice as large as the back and the septic is on the side yard. The entire back yard is fenced in. We only need to change the gate to open out instead of in.
- R Blum If you were going with a more traditional, rectangular shape pool, there would not be as much of an issue on this corner of the yard. When you are laying this out to

the maximum capacity, you are looking at 4' to the property line for the entire 35'.

J. Sanchez What is the concern with the pool being near the fence?

R. Blum You are looking for relief of 21' for a span of 35'.

K Rondeau There is a reason why structures are not put 25' from the property line, and that is to protect the abutters and everybody else in the neighborhood. What you are asking for is a 21' variance. What we are trying to tell you is you may want to try and redesign this pool.

B. Abreau Mr. Blum suggested bringing the pool down but we can't bring closer, even if we made it rectangular, because of the 10' minimum to the septic tank.

R. Blum I was saying if you went with a traditional rectangular pool, this back lot line would need less relief. I love the idea; I have never seen a pool shaped like this. I am curious to see if your neighbors are all... an in ground pool is pretty much a permanent structure.

B. Abreau We have seen other neighbors on the same street as us and they have very few feet to their property line and they have in ground pools in their yards. There are at least three with smaller yards and have similar size pools.

Ch. Grouke To me a pool is a different animal, it does not rise out of the ground, it is not a structure in that it's not looming on the property line. A lot of the things that apply to the side line variances as a practical matter wouldn't apply to a pool in my opinion.

B. Abreau Is the biggest concern the neighbors? Because we have elderly neighbors that live behind us that probably aren't here but we would be happy to speak with them and ask if they could put something in writing. We live on the corner lot so we only have the one neighbor behind us, other than that, it probably would not affect anyone else.

K Rondeau If we grant this type of variance of 21' there will be a line of people looking for variances for pools and buildings going down Peck Street. You have to look at it at its totality, not just the pool.

R Read I think Keith is wrong when he says there will be a line down the street because they are a captive of the shape of their piece of property and where their house is. I understand it is a big variance, but someone with a lot of room in their back yard, if they wanted to put it 4' from the property line it is easy to say, you have plenty of room move it. If they could move it, they don't have that...

K Rondeau The problem is twofold. The threshold for variance is a hardship, in my mind a pool is not a hardship. The other is the size, shape and topography of the lot. Except for the corner, it is pretty well square. The problem lies where they built the house. That is a different issue; it is not the size, shape or topography of the lot. I would rather see Mr. Abreau go back and see if he can get it resigned, maybe even an oval shape. If he wants a pool that's fine but maybe he can do it without such a major variance. Or he can come to some terms or agreement where it is not as egregious.

B. Abreau I understand your reasons but I look at it for safety reasons as well. I agree a pool is a luxury but a hardship in a sense that we are limited. This is designed with only a 6' gap from the house. Obviously, that is probably not the best safety thing to have when you have kids around. Putting it as close to the fence as possible and cutting feet out from that side and making it more of an 8' or 9' gap to the house to me is much safer than making it rectangular, putting it away from the fence and having it closer to the house where kids are walking from the deck down into the pool and onto the patio which is where the shed is. I want to put it as close to the fence and give the kids, and we plan on having others along the way, more space to walk and less chances to fall into the pool. Even by going with a rectangular shape, there would be variances needed because at some point it would only be 4' away from the fence, no matter which way you did it. In this case, we are asking for 4' the entire length of the pool but it would be a 4' variance at some point even if we made it rectangular and angled it like you suggested.

Ch. Groucke I want to poll the audience but before I ask, if there is anyone here in the audience regarding Ledgemont, that is not being heard here tonight, it is being heard down the hall. Just in case anybody is here regarding that property. Is there anyone who wishes to speak in favor of this petition? No response. Is there anyone in opposition to this petition?

Ryan Benharris I am an attorney with an office address of 191 Bedford Street, Fall River, MA the law offices of Deborah G. Kohl. I am retained by Charles Calverley, 69 Hawthorne Drive. He is basically abutting the property; I am here to speak to the issue of the other people that live right in the area. We feel granting this variance would impede on my client's quiet enjoyment of the property. This lot is just too small for this proposal. This swimming pool would get about 15' from my client's property line. My client is an older gentleman he is treating for cancer; he doesn't want a swimming pool right on top of his property. Further, he has been there for 50 years. More construction in this area on this small lot would ecologically destroy the wildlife that has already been there. We would strongly oppose that. We understand but to piggy back on what was brought up, if one lot is allowed to do that, my client has an issue that there would be other lots trying to

do the same thing; there would be swimming pools all over the place. This is not an area that is big enough to have this type of pool there. We have another concern, this piece of property is currently listed on MLS to be sold and what is the intention of a pool if the property is to be sold. It is a concern of my client we would strongly oppose this and ask you to deny this appeal. We would oppose any swimming pool not just a smaller one. We would oppose any swimming pool, the lot is just not big enough and would impede on my client's quiet enjoyment of his own property.

B. Abreau He mentioned the pool would be 15' from his client's property. That is not even remotely close to being accurate. If you look at the enclosed drawing, it looks like there is a 10' minimum to septic and beyond that there is significantly more than 20' if not 30'+ to the property line. That property line is lined with trees and a fence so you can't see into the yard. We have cookouts all summer and have never had complaints from a neighbor as far as disturbance or loudness, whatever he used. I think we are set back significantly back from his property line to alleviate the concern the gentleman has.

Ch. Grouke Is there anyone else to speak in opposition to this petition?

Joan Tortolani 60 Linden Road, Seekonk, sworn in. My property backs up to the property in question.

Michael Tortolani 97 Briarwood Drive, Seekonk, sworn in. I am representing my father Paul Tortolani who is too ill to be here tonight. My parents' main concern is they had a leaching system put in approximately 16 years ago and it is approximately 10' from the property line of the abutters. They are concerned with the high water table that water might encroach onto their septic system and the leaching field is 10' from the property line.

Joan Tortolani I don't know enough about it to know the affect of the pool on my leaching field.

Ch. Grouke Do you want to look at the plans?

J. Tortolani Yes sure.

Ch. Grouke You can also look at the plans here. I am not so sure that pools have an adverse effect on leaching fields.

M. Tortolani You are looking at 14' between the pool and the leaching field. We are not engineers but it is a concern.

K. Rondeau If you put a concrete structure in the ground 14' away, it is definitely going to have an effect.

- Ch. Grouke Pools are a commonplace in residential areas.
- J. Tortolani I don't know if there is a rule about pools and fences.
- R Blum Changing of groundwater significantly anywhere could ...
- R Ross My concern is I have no firsthand knowledge what the effect of a pool is on the water table, we have no evidence in front of us of whether it would or wouldn't. I am going to vote on evidence.
- K Rondeau If you put a structure like this in the ground it would have an effect on groundwater.
- Ch Grouke If that were the case, anyone who wanted to put a pool in would have to have it cleared with another process to make sure it won't impinge on somebody's septic. I don't think you can make that connection based on.
- K. Rondeau If you put a foundation there it would do it and this is deeper than a foundation.
- Ch. Grouke I don't know about that.
- R. Read It is ironic that you can put a septic system within 25' of the boundary but you can't put a pool within 25' of the boundary. I would rather have the pool.
- Kandilynn Cahill I now reside at 31 Perrin Avenue this past year, I was on 147 Olney Street which is in the watershed area in south Seekonk. I was there 10 years didn't have one water problem, they put Evergreen in there and everything flooded. The house that adjoined me put an in ground pool and I flooded, I had to upgrade pumps, it does affect water table. They hired engineers, they had a special town meeting just for me, I was there 35 years, I want to attest that is a watershed area, that water has to go somewhere it will flood out leaching fields. For these people it is trouble, anything that is put in there. When you agreed to put that new development in, you are flooding out those people. It is a similar water shed area.
- R. Ross Where was your house in relation to this area?
- K. Cahill On 147 Olney Street, it is way down but it is a similar watershed area and I do know the troubles.
- M. Tortolani That was our main concern.
- R. Blum We are not engineers. But this is a very large installation. Those lots are very unique, someone I know lives a little bit away and they have a pool, that was put

in years ago but this is a very large request. If it was 10', maybe but but 21' is a large request for me.

R. Ross And it is an unusual configuration.

R. Blum Yes, and Keith has a valid point. If we grant 4', the next applicant comes in and wants 2'. It could be that you have neighbors that don't care but then they go and try to sell their house and the buyer comes and says the pool is right up against the fence. I feel like we have to see how it affects others, the abutters and Seekonk. I have a pool and I had to comply with setbacks and I had leaching and I am on a corner lot just like you so I know how you feel.

Abreau We are willing to work on the size but it still will be 4' wherever it starts. That end of the yard is too small to not be anywhere near that. We don't want a 29' wide pool at the widest part. We can adjust but...

R. Blum Usually when people come before us, they say this is what we want. If you are saying this is the maximum and we grant that, you could put in a 29' pool. I am thinking there is 35' and 70' which would meet the setbacks, I am just assuming because I don't see your side yard setback measurements on the plan.

R Ross I scaled it from the proposed pool to the property line 26' to Windsor Lane.

R. Blum So they need side and rear setbacks too. A corner lot must be 35', they are short on the side yard too. You need clarity on your plans. I need to make a decision on something specific.

B. Abreau I am happy to have the plans changed, we took the advice of the surveyor who said he had done this before.

R. Read Is the deck there now?

B. Abreau Yes, but it is coming out.

R. Ross The plans ought to reflect that, I'm sorry. There ought to be a notation on the plans that the shed will be removed and deck will be removed.

J. Sanchez We told the surveyor but we didn't know.

Ch. Groucke I will let you consider rescheduling this and ask for some more detailed, specific plans.

R. Ross On the point Ron was making, the northerly line of your proposed pool that is the closest to the house; the 38' line. That is running roughly parallel to the house and the garage. The rear line, why couldn't you have it running parallel to each other and the house rather than this 90° angle?

B. Abreau The 38' line wouldn't get as long because it wouldn't be 29' wide. We want that walking space. We would like a 32-33' length. Maybe we could cut down a couple of feet to get it away from the driveway. We don't want it so close to the house.

Discussion between the Board and the applicant ensued regarding the reconfiguration of the pool.

K Rondeau The house is for sale right now?

B. Abreau It was for sale, we are waiting for the realtor to come and take the sign down.

R. Blum My suggestion would be to table this, ask them to revamp their plan and come back to us with a more definitive plan, something that fits better, present it again with more definitive exact dimensions.

B Abreau Is 4-7' going to be an issue? It cost us \$500 to have this drawn so to have it done again if we don't know...

Ch. Groucke We can't give you an answer but we are trying to keep down on your expense by keeping this open, instead of starting all over again. We can't give you a definite answer but if you are only close for a short distance rather than a large distance, that means you are looking for less of a variance and that is a fair summary without saying yea or nay.

K Rondeau If you are looking at removing the shed anyway, maybe you should look at a longer side; move closer so it won't impinge on the water table regarding the leach field of the neighbor.

B. Abreau It can't because our septic tank. To put a 16' x 32', the only place we can go is this part of yard.

K. Rondeau Maybe you could go with an oval or maybe go back to your engineer, I suggest that whatever is being removed, say it is going to be removed. If you are going to add something, a deck or apron, you need to do that also because you don't want to be coming back before this board for a deck.

R Ross If he is going to redo this, have him spell the street name correctly.

K Rondeau I would make a motion to leave open the public hearing and allow the petitioner to withdraw the petition until such a time that he can come back to us with reengineered drawings, without prejudice, and continue this until the petitioner can come back. We won't run into the 60 day and allow them to do this without time limits.

R. Ross That would require them to file a new application, I heard withdraw.

K. Rondeau I meant table.

Ch. Grouke But if we don't have a date, it has to be re-advertised and everything, that will be another expense for them. I would rather keep it on a specific date. If they can't have something by then, we will see if we can have another date without prejudicing anybody.

K. Rondeau made a motion to continue the public hearing until June 16, 2014 at 7:00PM, seconded by R. Read; **and so voted unanimously by:** Ch. Grouke, Roger Ross, Robert Read, Ronald Blum, and Keith Rondeau

VOTE: (Approve 5-0)

2014-10 Chester Kogut, 893 Newman Avenue, Seekonk, MA, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 5 to allow a second floor addition to an existing dwelling and a 15' x 24' additional stall to an existing garage at 893 Newman Avenue, Plat 25, Lot 264 in a R-2 Zone containing 2.11 acres.

Chester and Gabrielle Kogut both were sworn in.

C. Kogut It is a single level ranch with a one car garage. We are looking to put a two car garage and put a second floor adding three bedrooms and two baths. We are going straight up. We have a preexisting nonconforming lot, the only thing we would not conform to is 1.5 foot of frontage only.

- Ch. Grouke It looks like that's the way the house was built.
- C. Kogut We are taking care of my mom and just had a fourth child. We were trying to find another house in Seekonk but it is not as much of a buyer's market, so we decided to go up.
- R. Ross The lot is 440' deep and the house is up front.
- K Rondeau It is in line with other houses on each side.
- R. Read The houses to the left and right are both two story homes.
- C. Kogut It would be nice to have more room, we are going straight up on the existing footprint. The garage is not going to be as tall as the rest of the house with a walk-in space for storage.
- Ch. Grouke Is there anyone in favor of this petition? No response. Is there anyone to speak against the petition? No response. Is there anyone with any questions? No response.
- K Rondeau This neighborhood has undergone a transformation in the last couple of years with some nice additions to the neighborhood. This would be in keeping with improving that neighborhood, and I applaud him for staying in the old homestead. He is staying in the same footprint and adding a garage, I see no issue whatsoever.

R Ross made a motion to 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)

R Ross made a motion to uphold the decision of the Building Inspector, seconded by R. Blum; **and so voted unanimously by:** Ch. Grouke, Roger Ross, Robert Read, Keith Rondeau and Ronald Blum

VOTE: (Approve 5-0)

K. Rondeau made a motion to approve the special permit as requested by the petitioner with the plans submitted, seconded by R. Read; **and so voted**

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

VOTE: (Approve 5-0)

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.

R Ross I was absent for the last hearing, Mr. Abelson sat in my place but under the Mullen Rule, I viewed the video recording of the meeting and read the minutes of the hearing. I am well familiar with what the testimony was, what the issues are and I feel confident I can sit and hear whatever presentations that are made this evening and I have already signed the appropriate documents and filed them with Madame Clerk.

Jack Auger 103 Cedar Street, Rehoboth, Ma sworn in.
David Bray 1066 Pike Avenue Attleboro, Ma sworn in.

Ch. Grouke This is a continued matter.

D. Bray At the last meeting we introduced that we would like to put an addition to the rear of the building, it would be the northwest quadrant of the facility, infill the back and square off the building so it becomes a perfect rectangle. The building would be 20' x 64' approximately 1280 sq ft. additional building area. The building is in a residential zone grandfathered industrial use. Years ago, it housed Regional Construction and some other construction activities since then. At the last meeting, you asked if we could continue it so you could seek some additional information. I believe a few members were going to take a site visit. Jack Auger has some rebuttals to some of the testimony that was presented to you.

J. Auger I purchased the property in July of last year, specifically the 17th day. I am here before the Board to petition you to just square off the footprint of the building. The number of accusations made against me by Mr. Allen Sousa, sworn under oath, they were all false. I have the paperwork to rebut those. First I have the prior approval from the previous zoning and building official to house my business there. I have a copy of the statement from her if you would like one.

Ch. Groucke If you would like to submit it, we will take it.

J. Auger If you read down the highlighted things I testified, we asked if the business could be housed there. We asked Mary McNeil, who was the Building commissioner at the time. "...therefore the lot and building for a fuel delivery business would be considered an appropriate use". The use of my building isn't in question.

R. Ross Could we mark these exhibits as they are being submitted?

Ch. Groucke The letter from Mary McNeil dated May 6, 2013 is (Exhibit 1).

J Auger Secondly, he (Mr. Sousa) stated I had no building permit on the property. I have each and every one that I have obtained. Previous to my purchasing the property, there were permits issued, Conservation Commission, all that stuff was already in place; all I needed to do was transfer the existing foundation permit to my name. (Exhibit 2)

Once the building Inspector came out when we installed the foundation, I applied for a building permit to erect the building on that foundation. (Exhibit 3) the foundation permit was signed off by the Building Official when it was completed. Next he stated I was filling in the property and extending my area to put the building up so it could be approved. Bernadette from Conservation came out, she originally came out when we were starting construction and sought to see where the hay bale line was. She saw it and approved what could be taken away as far as brush. I will give you a copy of that also. (Exhibit 4 memo addressed to ZBA from Bernadette DeBlander dated March 24, 2014)

We also have electrical permits for the building (Exhibit 5)

He stated I come in at 6:30AM to start trucks and let them run. Each one of our drivers is required by DOT to fill out an inspection report every day. It gives you the mileage on the truck, the time they leave the building and if there is anything wrong with the truck. I have a number of those if you want to look at the time, dates, the different drivers. (The driver's vehicle inspection reports were shown to the Board but not submitted as exhibits)

My business is a seasonal business; we only start being busy late November through the end of February. We have 4 months that we are running all trucks every day. Previous to that, let's say October, we run 2-3 trucks and say now, in April we may only run 2 trucks. For a very short period of time in the winter we are very busy and our trucks leave early in the morning, they are gone all day and return in the evening. We are not going up and down the street all day long creating all kinds of havoc.

He (Mr. Sousa) also stated that we are working nights and weekends on the construction. That never happened. Some of the neighbors are here they can attest to that fact.

The next thing is the transfer of fuel. I sought the Fire Department's advice on this and spoke with Captain Healy and Chief Jack. Captain Healy said to me that there is no regulation regarding transferring fuel on private property. I have a letter from Chief Jack, he came out to visit the site and spoke with me personally. (Exhibit 6)

Lastly, he (Mr. Sousa) stated my property devalues the neighborhood. First of all the last few years, as we all know, the national devaluation of property is 20% of the property. When you walk out Mr. Sousa's front door this is what you see. (Exhibit 7- four photographs) this is diagonally across the street from Mr. Sousa. This house is on the corner that has been vacant for I don't know how long, it has been foreclosed on. This is my building. I don't believe I am devaluing the neighborhood. I believe I am increasing the property value in that neighborhood. I am very respectful of the neighbors. When I bought the property, there were two oil tanks outside behind the building that heated the building; I had a gas line installed I am in the heating oil business. I am very aware of taking care of the environment. All I am asking is to square the building off, I have a couple of trucks that sit outside at night, to keep trucks from being vandalized. It is a very small addition, it doesn't change anything on the property, it is on the back side, and it is not an obtrusive addition. I think it would be much better for the neighborhood.

D. Bray This addition will not encroach upon the wetlands or the river at all. It will entirely be within the existing work limits that were established years ago under the former notice of intent that was filed with the Conservation Commission. It is actually farther away from the river than the previous parts of the building are.

R Ross When I viewed video from last hearing, you had a pending hearing in front of Con Com, has that taken place?

D Bray It has not. It was going to take place tonight but Bernadette was away and had not finished doing all her review yet. She has been in correspondence with (inaudible) and with somebody at DEP as well.

J. Auger At no time do I do anything without her approval. I always call her and ask.

R. Ross You filed your applications with DEP?

D. Bray Correct, we filed simultaneously.

R Blum I wanted to bring to the boards' attention there is a discrepancy in the application as advertised and the plans. It says 20'x60' addition; on the plans by Caputo and Wick it says 20'x64'. I am not sure if your applicant is aware of that.

D. Bray It is 20' x 64', we would like to amend that dimension from 60 to 64'. It would not extend any farther than the southwesterly line of the existing structure. If you want to put it in the wording of the approval, that would be fine.

R Ross made a motion to allow the applicant's request to amend the application to reflect the proposed 20' x 64', seconded by R Blum; **and so voted unanimously by:** Ch. Grouke, Roger Ross, Robert Read, Keith Rondeau and Ronald Blum

VOTE: (Approve 5-0)

Ch. Grouke We are going to make the letter from Chief Jack Exhibit 6 and we will return these slips to you, we have examined them. We will hold onto these photographs collectively as Exhibit 7.

Mr. Sousa 10 Case Avenue sworn in. I have reviewed the meeting. I never questioned the petitioner that he did not pull permits. There were permits in place by the former owner, Mr. Sagar; and I stated that they had been in place for quite some time. I never stated he didn't have proper paperwork. Those permits were transferred from Mr. Sagar, from the previous owner, to Auger Realty so I never said he didn't pull the proper permits. What I did say was from Bernadette, that she had not been out to the site outside of just saying what exactly what Mr. Auger said, put down the bales of hay and this is what is to be done.

G. Sagar Point of order! Is this witness under oath?

Ch. Grouke Yes.

A Sousa That was about 2 minutes ago. In addition to that, when the residents of Case Avenue received the letter of the Zoning issue, we called the conservation office, as was requested and she had no idea there was oil distribution being done there. That was her words. We have also spoken to a few council members and we have also spoken to the Town Administrator who has had conversations in reference to that. Since then, at the last meeting, you folks asked that some additional information was to be gathered. One of which was from Conservation. Since the initial meeting, when this was tabled, or continued, Conservation has cancelled two meetings and tabled it for tonight. I don't know how a person who has a

concern is supposed to attend two meetings on the same night. It was conveyed to Conservation. In addition, Conservation asked if I had any additional information to please turn it in. (inaudible) the new Town Administrator had reviewed it. To rebut what Mr. Auger said, that he can transfer oil on his property. He did mention it at that meeting, and I believe Mr. Rondeau had some questions about that. This picture was turned in to Conservation about 3 days after our meeting. On that you will see two of his trucks on Case Avenue transferring fuel, not on his property. Conservation has had this for over a month. I am not sure if you folks have been able to review the photos that were turned in.

Ch. Grouke To Conservation?

A Sousa To Conservation which was to be presented to your Board.

Ch. Grouke Conservation wouldn't be presenting...

A Sousa ...You asked Conservation for additional information. I requested...

K Rondeau Lets clarify one thing first. The letter from Chief Jack does not state anything about the transfer of fuel. He says "I found no issues regarding the occupancy." It doesn't say anything about the transfer of fuel. In all due respect to Mr. Auger, he is absolutely, 100% wrong when he says you can transfer oil on private property without special permits and without submitting prior spill containment and mitigation for the transfer of oil. He has to apply. It may not be the town of Seekonk but he has to apply to the state and federal level to do that.

Ch. Grouke They are here to square off a building.

A Sousa At that meeting when presented, if you review the meetings, after the initial meeting when concerns were raised, it is on video, the planning board members, some, did not know what was going on and conservation said they had no idea what the occupancy or plans were and at our meeting, the town was supposed to supply, Mr. Auger was supposed to supply, Chief Jack or whoever it might be, with an EPA plan, proper documentation, a mitigation plan of what is supposed to be happening if there were, God forbid, a spill. Also with DEM. I have been to Conservation numerous times, and gotten nowhere. I have conveyed it to the Town Administrator who had a conversation with Bernadette at per say 1:00 and she said yes. I met with the Town Administrator at 3:00 saying Alan, you are on the agenda. No I wasn't. It was canceled, it was tabled, no rhyme or reason. You asked at that meeting for additional information to be presented. We are looking at well over a month. Each time I approach Conservation, looking for additional information, I got zero. In addition, these photos were turned in to conservation. This shows work was done on the back side of property as well as where the bales of hay were. You folks also stated at your last meeting, this shouldn't be where

these questions are coming up. They should be coming up at the beginning, with Planning, with Conservation. It's on video with the town that why wasn't this done? Not my words, not Mr. Auger's words, other town department's. I am not trying to hurt his business, I understand that. If you start to go forward, certain members also said, it's not our concern what goes on, we are here for a zoning variance. Someone brought up Powers vs. Barnstable. In that, no there is no double-decker or triple-decker on the waterfront but it does show concern for the three causes in a, b, and c of change of nonconformance of use. In that, each and every one of them if you look at it, it does. First and foremost, yes it is a grandfathered industrial zone. You had three industrial buildings in which two are being used or commercial buildings, this property has been vacant for close to 7 years from what its intent was. Its intent as stated tonight had been grain store and a construction company. For 7 years, it was basically housing a race car that people were working on and/or storage of landscaping trailer. Yes, Mr. Auger has made improvements, I'm not disputing that. What I am disputing is it is a residential area and it did bring change to the environment because there wasn't anything going on within there and it should have been reviewed on whoever does that of nonconformance of use and it wasn't addressed. In addition to that, as far as his claim that his trucks leave once and come back at the end of the day, that is not the case. They are in and out all day. A log book? There is no supervisor signing off on it. Joe Blow can write on it and say I appeared at 8:00AM, I did my route, as long as he is done within 12 hours and marks it, that's a Federal licensed driver. Unless you are inspected, and even with that at a road stop you can still fudge your way around it. So there are concerns and there has been no attempt to breach what has been going on over there with the neighbors. Yes, it is a grandfathered industrial zone but you have over thirty homes between the two streets and only 3 commercial buildings; one that has been there for a hundred years and one Mr. Sagar owns, and this property Mr. Sagar previously owned and sold it. But there have been additional homes. At some point its got to get reviewed to say do the homes outweigh what goes on there if conforming? That's all we are asking. In addition to that where he says the property value; you're right, the house on the corner has been abandoned and that has gone before the previous Town Administrator, the Assistant Town Administrator, the Building Inspector, the safety inspector, Mr. Sagar on the street, who told me to mind my own business and you can't board up the house. We have had 4 break-ins. You want to ask who knows better than I? And the police wonder why we get upset because the grass is up this high and the town of Seekonk did nothing when we complained that there were rodents and people were dumping stuff there. Mr. Sagar drives down every day.

Ch. Groucke Mr. Sousa, we are really getting far...

A Sousa No! He brought it up he was...

Ch. Grouke What he is saying is that his building looks good compared to that. That's his point.

A Sousa It absolutely does. None of you are living there when the trucks are idling at 6:30 and you're taking their word today of what's going on. What is the zoning variance for noise for a commercial in a residential area? It doesn't matter because if it reaches a decibel, then the police may be called and the person whether it's a commercial zone or not will have to cease and unless when that happens you are having to have numerous calls come in what we are asking for is some consideration, and there has been none. I will back off because there are other folks of Case Avenue who want to speak.

J. Auger He said he did not say that no building permits were pulled. These are the minutes from the last meeting. "...a variance was never granted or building permits were never granted." That is Mr. Sousa's statement. Again, towards the end of the meeting, "...if you go through the records, the permits were not in place."

Joseph Koger 40 Perrin Avenue, sworn in. I abut, I am right across the street, it is the back lot. I will agree with my neighbors, the trucks are idling Saturday morning, and there is an anti idling law in place; I looked at it. I can smell diesel now that the windows are open, I don't like it. And I am going to disagree with everyone who thinks this is going to raise property value; I feel it is going to degrade my property value. His trucks have been parked right behind my fence, I don't like it. I don't want them there. I believe now that I see the photos, they could be transferring fuel. Is the town ready to clean up the spill within 20' of my property? Is there a safety law in place? Did he get a license from the town of Seekonk? Is it renewed annually? I called the state department in Mass and they said it was a town issue. Are all these things in place? And I just want to know how did he get a license without my being notified that an oil company was going into my back yard that started with one truck and brought it up to six? I don't care if its two months, I don't want him there. I feel like this is being hidden. I called for two days, all the town offices no one knew anything about this; where to get a license. Is there a public record I could look at, read? I am in disagreement about this building permit.

Ch. Grouke Are there any additional people in opposition who would like to speak? No response. Is there anyone in favor of the petition?

Jamie Greco 21 Perrin Avenue sworn in. I am a neighbor also, a tenant of Jack's so I can vouch for trucks running at 6:30 in the morning, I have never really witnessed that. As far as the building being built out back, I have no issues, it is on the back of the building its just squaring it off. It was just a vacant lot back there with shrubs growing all over the place then they cleared it up, I don't see what the big

deal of that is. As far as transferring of fuel, I don't know anything about that. I am putting my two cents in, it doesn't bother me. Usually when I get there at 7:30-8:00, that's when I see them.

Ch. Grouke Is there anyone else to speak either in favor of or in support of the petition? Okay, Mr. Sagar, you already testified at another hearing this evening and you were under oath at that time, so you are still under oath at this time.

G. Sagar Yes, I was. I too have exhibits but I also have them numerically so with your permission, Mr. Chairman, I would like to pass out a document entitled "list of exhibits for petition 2014-02. I have a copy for each member and a copy for Mrs. Testa. There are 32 documents and they are all listed.

Let me first begin by saying, if you recall, the hearing on March 10th, I did not participate. It was my preference not to participate, even though I am a direct abutter to this property and, as referenced to, the former owner. With statements being made about me as the former owner, in response to that I felt it necessary to respond and set the record straight. (For the matter of the record, Mr. Sagar listed exhibits 1-32 to the Board).

R. Ross May I suggest we mark this as "Sagar Exhibit A" as a group rather than having 32 separate exhibits.

Ch. Grouke Yes.

K. Rondeau Let the record also show that this basically is the file for that piece of property as anybody who asks for a copy can receive it, as I did. It is readily available as the file is public record.

G. Sagar I have had ownership interest in 48 Case Avenue from November 10, 1997-July 17, 2013. At no time was that use as a grandfather industrial site ever abandoned. That is false. Could I ask a procedural question Mr. Chairman?

Ch. Grouke Yes.

G. Sagar What is the penalty for lying under oath?

Ch. Grouke It depends, we can't give a set answer to that, it depends on different circumstances.

G. Sagar I would like to refer to the draft minutes of March 10, 2014. This is Mr. Sousa speaking, "We have concerns about from the time the property changed hands, there were permits that were previously pulled from the Town of Seekonk trying

to get a variance but a variance was never granted or building permits were never granted.” It is a complete contradiction to his testimony. “If you go through the building department and you look at the correspondence to the former property owner”, that is me, “constantly asking what needed to be done for a proposed sale.” I asked for multiple zoning interpretations and determinations for the property. “The property gets sold and all of a sudden things are moving quickly. We are concerned as residents on Case Avenue, what has changed recently within the last 6 months to a year that whatever wasn’t good enough now is.” All the permits were in place, (inaudible) you apply for a foundation permit first, once that’s installed and certified and meet all the requirements, then you are issued your building permit. I ask you to refer to exhibits 7-14 that further clarify those statements. Further testimony Mr. Sousa entered at the previous hearing, “It seems like they have extended back to ensure they have enough room to do what they need to do. I was under the impression that they were supposed to clean up some vegetation, not bring in fill, and extend the buildable area in the rear of the property.” I can attest as the abutter that has not occurred, that is not what they were supposed to do. Further testimony from Mr. Sousa “...if you go on 44, that is basically a similar area. I know of a business that was restricted, even though the industrial zone was there prior to the houses” first of all, there has never been an industrial zone on route 44, “... being there, a business was shut down by Seekonk because of the noise ordinance, that it reached a certain decibel. And that is a matter of record.” I enquired with the Building Inspector and the Police Chief and they have no such record.

Ch. Groucke You will have your chance to respond, Mr. Sousa.

G. Sagar Mr. Sousa, again, “If you look at what markers were put, it goes off like that so if you needed additional space to be able to square off your building, you would bring in more fill, make it level and therefore get what you need to get done”. Insinuating there was alteration of the land in the back, and I assure you that did not occur. Mr. Sousa, again, “I am going to house a business of heating oil here-shouldn’t that have come to the light of somebody in Seekonk before they gave permission to put any additions on and asking the questions if they had these checks and balances in place?” The authority on that is the Zoning Enforcement and she responded that it was a town-allowed use. He then criticized Mr. Auger for not all the trucks being inside, “There are trucks on the outside, it does have an adverse to the community and to our neighborhood.” Hence another reason why he should be working with Mr. Auger rather than opposing him. Mr. Sousa, again, “If you go through the records, the permits were not in place.” Clearly there is a whole packet of permits and correspondence. “There was a request that numerous Building Inspectors did not grant.” That is absolutely false. “It is the Building Inspector’s own permit that there is correspondence between the previous property owner and the town and it was not being granted.” Absolutely false. (inaudible) Mr. Sousa, again, “this gentleman claims that the permits were

in place prior to purchasing the property.” That is absolutely correct. “I am talking about the addition to the right of the property, there were permits that were requested and things were not done and not granted that needed clarity and number Building Inspectors did not sign off on that for zoning.” Again, that is totally false. Mr. Sousa again, “There were numerous requests to get something approved and it had not been and it went through at least two to three building Inspectors then, in order for the property to get sold, something had to be clarified, it was done and then the building went up.” Another inaccuracy. “He is saying he got all the correct permits in order to be able to put his business there and I am saying I don’t believe that everything was put in place.” Another false statement, it just goes on and on. Now, Mr. Sousa further sates, “I understand there could be a conflict, maybe not a conflict with a Board member, or not.” That has to be me, and I recognize that. Under state law, because I am an abutter and I do serve as an alternate on this Board, I am prohibited from sitting and hearing that case. But I am entitled under Mass General Law, and Seekonk Zoning Bylaw, as a direct abutter, I have the right to appear, and I did, and I remained silent and had no interest in participating in this petition until my name was subsequently dragged into it. In following the meeting in March, Mr. Sousa filed a complaint with one of the other selectmen who forwarded it to the Town Administrator who convened the discussion on March 24th, with the Town Planner, Conservation Agent and the Building Commissioner, and they found there were no issues, everything was done properly, legally, and everything was as it was presented by Mr. Auger. I will say, it is my opinion, this Board has gone way beyond the scope of its authority in reviewing this petition. The issue of use was decided by the Building Commissioner, it is not before you. The application so states it and the zoning determination so states it, the legal ad states it. A special permit under Section 5.3 to allow construction of an addition, that is all that is before you. What people don’t seem to realize is that if Mr. Auger is denied his petition for an industrial use, it is not going to eliminate the oil trucks from being there, the determination that he has the use of the property, if he so chose to tear the buildings down and park his trucks there on an empty lot, he has the legal right to do that, I know he doesn’t want to do that, he is expending his own resources to improve and all he is asking for is an extension of the footprint. I find it kind of ironic that Mr. Sousa would complain about truck noise when back 3-4 years ago, he approached me about being able to park a tractor trailer with a refrigeration reefer on it that would run all night long and I refused because I did not want any of the noise. We have, from my understanding, 4 fuel oil companies in Seekonk. Two of them, including Mr. Auger, are in an Industrial zone where you would want to see them. One parks his truck in a residential district and one of them this Board permitted in 2005 in a mixed use zone and I don’t ever remember anybody asking for EPA, all kinds of different plans, that is beyond the purview of this board. As far as the footprint, his petition respectfully requests he be allowed to square off his building, that is the only thing before you. I do find it ironic that if you look at my Exhibit #3, there are 31 abutters that

signed the petition when I requested to put the addition that Mr. Auger recently completed construction on back in 2008. On that list of abutters, there is a lady that lives at 10 Case Ave., this recent list of abutters that goes with the petition, Mr. Sousa is not even listed so I would question Mr. Sousa's status as an abutter. He is not ever listed on the official listing.

A Sousa (inaudible)

G. Sagar The Health Agent did respond regarding the storage and transportation of fuel, they don't get involved with licensing of fuel.

Ch. Grouke Hold on Mr. Sousa, we are not done with Mr. Sagar yet.

A Sousa Sure.

Ch. Grouke Are there any further questions for Mr. Sagar? None. Mr. Sousa?

Mr. Sousa To rebut, I went to your secretary's office and asked for copies of minutes and I was specifically looking for Barnstable vs. (inaudible) she researched it, she found it, she goes, "You know, when we take minutes not everything is exact." Is that correct?

Ch. Grouke No, you are not going to ask her any questions.

Mr. Sousa Okay, well that's what was the answer. Yes, I did file a complaint with two different council members that went to the Town Administrator. The Town Administrator not only went to the Board's Mr. Sagar mentioned, he mentioned it to all Boards according to the Town Administrator. My concern was, at that meeting, Mr. Sagar did not recuse himself, he sat over there. When the Town Administrator asked him, what he was doing there, he said "I was operating the camera." That he never spoke to this gentleman here but that he did say you should continue it. That is not recusing himself.

R Ross Hold on a second. Mr. Chairman, what is this all about? Meetings with the Administrator; who was there, who wasn't there. Give me a break.

Ch Grouke You are absolutely right. We usually have a policy of letting people speak here and let them say what they want to say but we are getting to the outer limits of that policy. We have a person here who wants to square off a building.

A Sousa Sure, I understand that, but Mr. Sagar mentions that there is no zoning on 44, what is the Sealtest Building? Is that...

Ch. Grouke All right, Mr. Sousa, you can't talk to Mr. Sagar, you have to speak to us.

- A Sousa The old dairy on 44.
- Ch. Groucke We don't care about that we are not going....
- A Sousa Well he said there wasn't but it is.
- Ch. Groucke He made a statement, we are not going to pursue it.
- A Sousa So that's it?
- Ch. Groucke On that, this is not Route 44.
- A Sousa No, it's not, but he brought it in.
- Ch. Groucke There are a lot of things that have been brought into this hearing that are really far afield. We are here on a petition to square off a building. We have a permit for an oil business in the zone. He is allowed the oil business; he is operating that as a matter of right under that Building Inspector's letter so he can run the business there. The next question is, can he square off the building? The issue is very limited as to what we need to think about and how we need to consider that.
- K Rondeau You are missing 2 points. I don't think by limiting the people here to not address these points, I think you are doing a very big disservice. One is, under section 5.3, and under the Zoning Bylaws, we do have the right, because it is coming in as a preexisting, legal, nonconforming structure, it is coming before us, we do have the right to review the use. That is number 1. Number 2; there is a large confusion here between running fuel oil business and transfer of toxic materials and fuel oil. I don't think anybody, nobody has addressed, in none of this has the transfer of fuel oil been addressed by the Fire Department, by the Conservation Commission, by the Board of Health, nobody. And that is a major issue that needs to be addressed here.
- R. Blum That is not addressed by us.
- K. Rondeau It is addressed by us because it is part of the use. I think, and it could be very incidental and innocent, that the acceptance of people in the town regarding the fact that there was going to be a transfer of oil and toxic materials was not spelled out as part of the running of the fuel oil business. And we addressed this very same thing in that decision back several years ago. In our stipulations on that decision, it states that there cannot be transfer. "Trucks are limited to fuel oil, kerosene, diesel, no gasoline, no transfer of oil, kerosene, diesel fuel are allowed." That is on the decision of 1587 Fall River Avenue regarding the running of a fuel oil business in a mixed zone. If we do not allow this to be heard, we are creating

not only a disservice to the people who are there, I believe we are creating a wrong. Allowing fuel oil delivery trucks to operate ...short of bringing somebody in from EPA to give everybody a lesson and what's at stake here, I think we need to ere on the side of caution and listen and go by our own previous decisions. It may be that they apply and get the right and do so at a later date to transfer toxic materials and oil.

Ch. Grouke He is not asking to do that.

K Rondeau He is saying he is doing it.

Ch. Grouke He is squaring off the building. If that is illegal, then he should be cited by somebody. I don't know if it's illegal.

K. Rondeau We are allowed to be able to look at that use.

R. Read You are basing what you just said on that Fall River Avenue situation, that is comparing apples and oranges. That was an application for the use, this is and application for a building. There is no comparison.

R. Blum I don't think we have any jurisdiction; we are looking at an application...

K. Rondeau I think you are totally wrong if you don't think you have the jurisdiction. Not only do you have the jurisdiction, you have the right as a board. That's just like saying any other request that comes before us, we are not going to be able to question the use? That is unfathomable. We are allowed to question the use on everything that comes before us.

J. Auger I spoke with Captain Healy because the last time you mentioned to me about the transfer of fuel. You said to check with the Fire Department. I did, I called them the next day and Captain Healy....if you don't believe me you are welcome to speak with him. I did exactly what you said to do, I checked with the governing body, which is the Fire Chief and Captain Healy.

K. Rondeau And nothing against you Mr. Auger but they didn't respond to what I asked for.

J. Auger I saw that he did not put in the letter that he had checked on that. But you can speak with him personally and get his response to me.

Ch. Grouke What was that?

J. Auger There was no regulation regarding the transfer of fuel.

K Rondeau He is wrong.

Joseph Koger I believe the size of the building and the use go hand and hand. If this building gets bigger, he is allowed to put more trucks in there, then as a resident, I have to worry about more oil being stored near my house because I have to assume these trucks are full. When they are not parked in that parking lot and adjacent to my fence, I have to assume those are full of oil. And my kids and whoever else is in the back yard are near those oil trucks. If that building is allowed to get bigger and he is allowed to put possibly more trucks on the property, then yes, I believe the use and the building size go hand in hand. How you can look at one and not the other, I don't know; especially when the residents have not had a say in an oil company. We have been left out of that conversation, and this is nothing against the Board.

Ch. Groucke I think one response to what you are saying is that we have had this issue come up before where there is a building in an Industrial Zone but it is close to a residential area so some things are allowed in an Industrial Zone, and it was allowed by the Building Inspector. Now, it happens to be close to a residential zone but that doesn't mean they can't do what they are allowed to do in an Industrial Zone.

J Koger So have all the safety precautions been taken for this to be in a residential neighborhood? When I look on Massachusetts state law, it tells me, all these laws, about what can be stored there and what can't; and what has to be on file at the fire station, the Town Hall, and I am not familiar with it all and I tried to download it all and read it but I am not sure I've seen any of that before I am confident that this project is okay, and approved. I am not trying to be a bad neighbor; I am trying to make sure the safety of my home is taken into account before this permit is granted. That's what I care about, it's not even the transfer of oil, I could care less. What's important to me is the safety of my home near this oil company and the use of the building and the size of the building.

K. Rondeau Don't get me wrong, I am not arguing the fact that he can have his trucks there, he can distribute his trucks from there, I am not arguing that fact. I am arguing the fact that he is not allowed to transfer toxic materials without the proper permitting, etc. And that is not taking place.

Ch. Groucke Where does that permit come from?

K. Rondeau You have to apply to the state and the federal government for both. In the state of Massachusetts, you have to get both. I think Mr. Auger knows the old saying in the oil business, you own it from cradle to grave.

J Auger I sought the advice of the Fire Department.

K Rondeau But he didn't address it.

J Auger Do you want me to keep going?

K Rondeau Again, he didn't address it. Yes.

R. Blum I would just like to say, this has nothing to do with this application. Granted, we have reasonable arguments, I get that however, there are certain routes to take. I don't know this for a fact; I am taking it from hearsay and testimony that there was transfer of fuel. If that is happening, it has to be addressed via a certain route, not zoning. That is not us. I don't think this is on this application, we are looking at a building, we are looking at an addition to a building. I am getting a little tired of debating this. That's just me.

K. Rondeau Mr. Chairman, I will say that I did ask for and did receive all the documents I asked for because of all the statements that were made by different people at the last meeting. I am perfectly satisfied with what was stated by Mr. Auger and Mr. Sagar tonight up through basically May of last year. When it was presented to the Building Inspector, I don't believe she knew it would be transfer of toxic material and/or fuel oil and she allowed the fuel delivery business thinking it was a fuel delivery business like the other 3-4 that are in town, without the transfer of fuel. That's where I have the issue. We addressed it in the previous decision to make sure that wouldn't happen.

Ch. Grouke I think we have heard all the comments from everybody in the audience so I think we are ready to have a discussion unless anybody disagrees with that.

R. Ross made a motion to close the public hearing, seconded by R Blum, **and so voted by:** Ch. Grouke, Roger Ross, Robert Read, and Ronald Blum

VOTE: (Approve 4-1)

K Rondeau opposed to closing public hearing.

R. Ross I have a couple of things. As I said prior to any testimony tonight, I watched the CD, I listened to the video and I took notes. I know precisely what was said at the last hearing. Documents were requested, documents were supplied. Despite what was said here tonight, I am persuaded that all the building permits were in place in a timely fashion, the building went up and I have no problems with that. I am very conscious about jurisdictional issues and it has come up with others. Issues about the Fire Department, Con Com, Board of Health, they have their own jurisdiction. I, for one, would be upset if the Conservation Commission started handing out special permits or variances. We all know the mechanisms here. If

we approve this, it is subject to Conservation Commission approval down the road. If they deny, for whatever their own reasons are, they have their own standards, they listen to their own testimony; our approval by operation of law is null and void. That's the end of it. There are enforcement mechanisms in the Town or at the state level if there are any objections to the way business is being carried out. We are not an enforcement body. What is in front of us, as has been said infinitum, in affect the squaring off of a building by an addition of a 24x64 addition to the irregularly shaped building now. It is not encroaching on any wetlands any further, it is not, it doesn't t have any other zoning relief that is required. What we are constrained by is section 5.3, as has been discussed by Keith and others, that the alteration or extension "shall not be substantially more detrimental than the existing nonconforming use in the neighborhood." I guess it is how you define "more detrimental". I view this, and I am trying to be objective, Mr. Auger, as I understand it, and correct me if I am wrong sir, you are now parking vehicles on your property which you intend to house within the addition.

- J. Auger Exactly.
- R. Ross So trucks that are now exposed to neighbors, the street, are now going to be within a shelter.
- J. Auger Exactly.
- R. Ross It seems to me that is not only not more detrimental; that is ameliorating an existing condition and making it better. That is what is in front of me as I look at this. I don't know what Mary McNeil was asked to pass upon. All I have is the four corners of the letter that she issued on May 6, 2013 that says Mr. Auger, or any owner of the land, it runs with the land, it's not personal to the owner, we all know that. A fuel business is authorized, that is the end of my discussion on the use; now we move on. There was no appeal filed from that. That is not what's in front of us. We have a permitted or legal use. What is before us now is a 1200 square foot, more or less, addition to the existing building. I think that is all that is in front of us, that it my view.
- R. Blum I agree.
- R. Read Me too.
- Ch. Grouke Me too.
- K. Rondeau I would disagree one point, and one point only. Two points. Again, everything that was provided to us since the last meeting shows that up to and through the Mary McNeil determination, that there were no issues, no problems. The proper

permitting was in place, etc, for the building of a steel structure that was there, the foundation was there prior and there were a whole lot of other contemplated uses for the building; some zoning determinations requested. Everything was done according to Hoyle if you will; I have no problem with that. I do believe that when there was the expression of the desire to house a fuel delivery business, there was a misinterpretation, as far as what the use was and I believe we have the right because it is before us regarding this building, we have the right to review that use. Especially from the standpoint of the use that may be detrimental will be inside of that enclosed building. Because of that, I think that I would have no problem granting the request for squaring off the building as submitted with some stipulations, just like we did before when we talked about the fuel delivery business. I guess what happened was somewhere in the request to Mrs. McNeil, maybe where the misunderstanding is, the semantics of fuel oil delivery business was misinterpreted. When you start transferring all this hazardous material it is an issue. It is an issue I don't think we can sidestep as a Board. It is before us, it is the 800 lb gorilla in the room. We have the right to address it, we have the right to make the stipulations as we see fit, or the decision as we see fit. I think we ought to be consistent with the past decision this Board made regarding a fuel delivery business.

R. Blum You are saying that Mary McNeil, Building Inspector, employee of the town of Seekonk, state of Massachusetts, misinterpreted when she stated in her letter of May 2013, "therefore use of the lot and building for fuel delivery would be considered an appropriate use." That's a big argument, a huge argument. You are talking about people who do this every day, officials that do this every day. I am saying verbatim what Mr. Sagar presented to us; you are saying that it was misinterpreted by somebody that works for us and the state. I totally disagree with that. And I think that is totally against this...

K. Rondeau The reason why I say that is the transfer and delivery of the hazardous materials is totally different and looked upon totally different than delivery. There are a number of fuel delivery companies that are just one truck operating out of a household in the state of Massachusetts, yet they are not transferring on their property, they go to a fuel depot for the transfer.

(Inaudible, multiple people speaking simultaneously)

K. Rondeau That is the rule and the law.

R. Read The next time you get a delivery of oil at your house, make sure you tell the guy he can't deliver because you don't have a permit to transfer fuel. That is a way out statement.

K Rondeau No, it isn't. If you looked at the laws, you would know it wasn't.

R. Blum I am not debating this anymore.

R. Read Me neither.

R. Blum I recommend we move on this application ASAP.

R. Ross Just for the record, it was suggested a while ago in the back and forth that we should listen to the people who showed up and not cut them off and listen to everything they have to say. I think we have, you have been more than liberal and generous with the time afforded people. I am not saying they shouldn't have spoken. No one got cut off, no one was asked to step back until we got to this meeting with the Administrator which has nothing to do with this case; that was so far afield. But I am confident saying that everyone had the opportunity to have their say. I listened to it, I considered it, but no one was given short shrift from this Board on this petition, in my opinion.

R. Read I agree with that.

Ch. Grouke Having said that, are we ready for a motion on the letter of the Building Inspector?

R. Ross made a motion to uphold the determination of the Building Inspector that the applicant required a Special Permit under Section 5.3 of the zoning ordinance.

K Rondeau Mr. Chairman, may I ask which letter?

Ch. Grouke The letter dated November 26, 2013.

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

VOTE: (Approve 5-0)

Ch. Grouke Now, a motion on the petition itself please.

MOTION: R. Ross made a motion that the petition for the special use permit for the addition of a 20'x 64' structure to the existing building to square the building off be approved as amended and as submitted; seconded by R. Blum...

K Rondeau My I ask since it's been seconded, would Mr. Ross making the motion, would you consider a stipulation?

R. Ross Do you want a second for discussion?

R. Blum I don't want to discuss anymore.

R Read You did second it.

R. Ross The motion has been made and seconded.

Ch. Grouke Keith, what is your request?

K Rondeau My request would be that we make the stipulation that there is no transfer of oil or diesel fuel or any other hazardous materials on the site unless he receives the appropriate state and federal approvals. That would be my stipulation.

Ch. Grouke I would look at it differently by saying if there is some state or federal violation, then they should have their eye on that and they take their appropriate action. That is the way I prefer to look at it.

R. Ross Me too, my motion stands as made and seconded.

VOTE: and so voted by: Ch. Grouke, Roger Ross, Robert Read, and Ronald Blum

Opposed: K. Rondeau

VOTE: (Approve 4-1)

Work Session:

K Rondeau made a motion to delay the approval of minutes until the next scheduled meeting June 16, 2014; seconded by R Blum **and so voted unanimously by:** Ch. Grouke, Roger Ross, Robert Read, Keith Rondeau and Ronald Blum

VOTE: (Approve 5-0)

Adjournment

K. Rondeau made a motion to adjourn the meeting, seconded by R Ross **and so voted unanimously by:** Ch. Gourke, Roger Ross, Robert Read, Keith Rondeau and Ronald Blum

VOTE: (Approve 5-0)

The meeting adjourned at 9:45PM

Respectfully submitted by:

Christina Testa, Secretary