

**SEEKONK ZONING BOARD  
REGULAR MEETING  
MINUTES**

**August 31, 2015**

Present: Roger Ross, Robert Read, Keith Rondeau, Gary Sagar and Shane Halajko

7:00 Chairman Roger Ross called the meeting to order.

R. Ross This is the meeting of the Town of Seekonk Zoning Board of Appeals, August 31, 2015. It is 7:00PM and the meeting is now in order. I am going to go over our procedures; I will read the agenda for the public hearings for this evening and call the cases in the order in which they appear on the agenda. As the cases are presented, the owner, petitioners and/or their representatives, will represent the case and the Board may have some questions and we expect that those questions will be answered. After the petitioner has presented his case, anyone who wants to speak either in favor of or in objection to the petition, we will hear. All witnesses, except attorneys, if there are any this evening, will be sworn in and all testimony will be taken under oath. If there are questions from anyone in the audience, all those questions should be directed to the Chair, there will be no colloquy between a witness and a member of the audience. At some point, we will close the public hearing; there may be some discussion between members of the Board, we may ask for some clarification. It is typically the practice of this Board to take a vote tonight on a matter but we are not required to do so. There may be times and circumstances that arise where we will delay a vote. If the vote is taken, the decision of the Board will be reduced to writing and posted in accordance with M.G. L. Any person or entity who feels they are aggrieved by the decision of the Board has the right to appeal to the appropriate courts of jurisdiction of the Commonwealth but I caution anyone who elects to do so that they are limited by very strict time requirements and I advise any such person to either consult the laws or an attorney if they choose to file an appeal. Having said that, I will read the agenda for this evening. We have two matters that are up for public hearing.

**(Chairman Ross read the agenda into the record)**

**2015-08 Michael Costa/Costa Development LLC**, 65 Emily Way, Seekonk, MA 02771, Owner and Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 6.3.3 (Formerly Section 9.3.3) of the Town of Seekonk Zoning Bylaws to allow office and retail use in an existing building at 950 Taunton Ave., Plat 17, Lot 82 in a Mixed Use-R-2 zone containing 42,395 sq ft.

- Michael Costa Costa Development, 65 Emily Way, sworn in. I purchased the building at 950 Taunton Avenue, they have had mechanics and auto sales and various uses over the past few years including Northeast Golf Sales. I am looking to divide the building into three sections, one would be an office for my construction company, the other two tenants lined up would be a financial planner who will be using 800 sq ft and the other is 1500 sq ft for a sales office for a food distributor. The building stayed same size, we did renovations in and out and we have a new parking lot. It has always been used as commercial property.
- Ch. Ross Are there any questions?
- K Rondeau The third use is a sales office for a food distributor?
- G Sagar The way I understand it is he wants one master permit for three uses?
- M. Costa Yes, I do. I don't want to have to come back before the Board each time.
- Ch. Ross As long as it is the same type of use because traffic is a concern.
- G Sagar Do the three separate spaces have three separate addresses?
- M. Costa Yes.
- G. Sagar Then perhaps the decision could reflect that.
- R. Ross How does that work with 911?
- G. Sagar I believe it would go through dispatch but having a separate address would be more beneficial.
- M. Costa I set that up with the tax assessors already. They gave it 950, 952, and 954 Taunton Avenue.
- K Rondeau In this instance, the uses fall under 9.3.3 and 9.3.3.4 but if he wanted a blanket special permit we could stipulate that if there is a change, they all have to comply with section 9.3 mixed use zone. If something different comes up, he would have to come back. The offices you propose fall under that Special Permit but if it were a different type of office, or if it is a retail shop it wouldn't apply.
- G. Sagar Yes, but his petition includes retail use so it would cover both.
- Ch Ross Yes, there are some permitted retail uses but they are limited.
- K. Rondeau You couldn't put a milk and bread store but you could put a craft store, specialty shop or antique store.
- Ch. Ross Is there anyone in the audience to speak in favor of this petition? None. Or in opposition? None.

G Sagar made a motion to close the public hearing, seconded by Shane Halajko **and so voted unanimously by** Roger Ross, Robert Read, Keith Rondeau, Gary Sagar and Shane Halajko

**VOTE: (Approve 5-0)**

Keith Rondeau made a motion to uphold the decision of the Building Inspector, seconded by R. Read **and so voted unanimously by** Roger Ross, Gary Sagar, Robert Read, Keith Rondeau, and Shane Halajko

**VOTE: (Approve 5-0)**

K. Rondeau made a motion to approve the Special Permit as requested for three office space uses as described and if there are any changes to the professional offices as described in the future, they need to be in accordance to Section 9.3 of the Zoning Bylaws, seconded by G. Sagar **and so voted unanimously by** Roger Ross, Gary Sagar, Keith Rondeau, Robert Read and Shane Halajko

**VOTE: (Approve 5-0)**

**2015-09 Peter Cournoyer, DVM**, 643 Fall River Avenue, Seekonk, MA 02771, Owner, by RGB Architects at David DeQuattro, 50 Holden Street, Providence, RI 02908, Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, **Variance** under Section 5 of the Town of Seekonk Zoning Bylaws to allow the addition of a roof to protect an existing ramp within the side yard setback at 643 Fall River Ave., Plat 9, Lot 191 in the Luther's Corners Village District containing 18,367 sq ft.

Ch. Ross Just a couple of housekeeping matters before we begin, and this is just a labeling issue. In 2001, as I read the record that was presented to us, your client was before this board for zoning relief for construction of the ramp and other things, and at that time, lots 191 and 192 had separate ownership. It was presented to the board that Dr. Cournoyer owned one parcel and he owned another jointly with his wife. There was a deed to make the ownership consistent and there was a Form A filed and the lots were merged. All your applications reflect the large survey plan referencing lots 191 and 192; after the merger 192 ceased to exist. Lot 191 is reflected in the application, that is correct, but it is just a labeling matter on the plan, it says lots 191 and 192 but there is no such lot 192 any longer. I don't know that we need to ask for an amendment to the plan but I wanted to point that out. The other housekeeping thing has nothing to do with your application. There is a Building Inspector's letter, I think it was just a typo, he was probably looking

at something else but the letter dated July 22, 2015, about 2/3 of the way down, it references A.P. 32 lot 2, that has nothing to do with this application, it is plat 9, lot 191, I want the record to reflect that was just a typo but it is your property we are dealing with.

David DeQuattro sworn in. Managing principal/owner of Robinson Green Beretta. What started this whole issue is that people leaving the animal hospital during inclement weather were carrying their pets in their arms, protecting their pets while coming out of the vet thinking they will be too cold and in doing so they don't hold the rail. You can see from the plans submitted that there are two exit ways out of the building, there is the stairway and there is the ramp. Dr Cournoyer has had both situations where they have fallen on steps and ramp due to slippery conditions and people have broken wrists and arms and what he wants to do for safety is to cover and heat the ramp both of which should stop drifting snow and any kind of accumulation. He wants to eliminate the back stairs and the second rendering shows that we tried to conform to the Luther's Corners Village District, 4.1.2.3, but we also comply with 8.11.9 which is roof lines. The roof stops the wind from blowing, it will stop the snow from accumulating, and it will make it so people can walk down that ramp without slipping. We have eliminated that back stair in its entirety. Hopefully, these two devices will protect the people. In addition to going for a variance on the side yard setback, there is already a pre-existing structure so the roof structure would land on top of where the ramp is. We don't plan on any additional excavation around that, it will be on top of that; it won't be wider than the ramp is now; the only difference is the coverage. The 3-D sketch model is really nice, Dr. Cournoyer wants something first class, he could have put a vinyl canopy but this matches the aesthetic quality of the building and enhances it.

S Halajko What was the purpose of the existing three entries?

D. DeQuattro When they passed ADA in 1984 they had to put ramp and they just kept the stairs the way they were and people were using those stairs to go to the parking lot in the back. This will now be enclosed and there will be a low voltage system, an ice melt system, and snow will not accumulate, it will just be wet. The other door is an entry for storage.

G. Sagar When we permitted the ramp in 2001, the reason you put the ramp is there was because it had to comply with ADA, you had no choice, you had to put that in. Mass law exempts any zoning control over ADA ramps. I consider this roof to be part of that ramp. I don't think you need to be here, and I have a problem with you removing those rear stairs because now I think you're impeding the exit from that door in the event of a fire in that building. I would really like to see something from the Fire Department and the Building Inspector, they don't have a clear access out. That building isn't sprinkled is it?

Dr. Cournoyer No, it's considered a place of assembly.

G. Sagar As far as variance, I would be willing to overturn the decision of the Building Inspector because it's mandated under the ADA.

- K Rondeau     It looks like your exit has been moved 8-12 feet to the top of ramp, is that correct?
- D. DeQuattro   We put the entrance door inside and we made the porch opaque which would stop the snow from hitting that deck, we are not reducing our means of egress, there is still only one door but we are relocating it, putting a cover over it. But there are two more exits one in the front of the building.
- G Sagar         In fairness to this discussion, I retract my comments as far as that goes (the exit doors) but as far as needing a variance, I stick with my opinion about ADA.
- Ch Ross         I think I respectfully disagree. I agree with the ADA portion that it trumps zoning; I don't know that by having a ramp that necessarily includes cover. You can have a ramp as it's been there since 1994 without cover, as for the ramp itself, the Feds trump local zoning, I agree with that but I don't know that ADA addresses the coverage of it in my view. I think the Building Inspector was correct.
- G. Sagar         Can I read into the record what 40A Section 3 says? It says "No dimensional lot requirement of the zoning ordinance, or bylaw, including but not limited to setbacks, front yard, side yard, rear yard, and open space, shall apply to any handicapped access ramps on private property used solely for the purpose of facilitating ingress or egress of a physically handicapped person as defined in section A of Chapter 22." The whole reason they need the roof is because the ramp is there. If they didn't have the ramp they wouldn't need the roof, the ramp is what caused the roof to be there and I think it should be all included in one and I think if the primary use is exempt under state law then I don't see why a bylaw requires they have a variance to put a roof over it.
- Ch. Ross         My view is if you are building a ramp and a ramp violated a setback requirement, you couldn't deny the ramp because of the setback and that is different from the roof. But, let's agree to disagree.
- R Read         Mr. Chairman, are you saying that if this cover violates the setbacks you would be against it?
- Ch Ross         Not at all. What I'm saying is the determination that the Building Inspector is correct and that ADA doesn't address the cover and Gary disagrees. But I am not saying I am opposed to the petition at all. In fact, I understand the reason for it and I'm in favor of granting the petition, I just believe the Building Inspector was correct.
- G. Sagar         At the end of the day, I want him to get what he wants.
- Ch. Ross         As I do.
- G. Sagar         We just have a little disagreement on the mechanics of it.

Ch. Ross Is there anyone in the audience to speak in favor of this petition? None. Is there anyone in the audience to speak in opposition to this petition? None.

G Sagar made a motion to close the public hearing, seconded by K. Rondeau **and so voted unanimously** by Roger Ross, Robert Read, Keith Rondeau, Gary Sagar and Shane Halajko

**VOTE: (Approve 5-0)**

G. Sagar made a motion to overturn the decision of the Building Inspector, as the Variance is not necessary as it is part of a handicapped ramp; there was no second to the motion.

The motion failed for lack of a second.

K. Rondeau made a motion to approve the Variance under Section 5 as described in the application, seconded by G. Sagar **and so voted unanimously** by Roger Ross, Gary Sagar, Keith Rondeau, Robert Read and Shane Halajko

**VOTE: (Approve 5-0)**

**Work Session:**

Ch. Ross We have a matter that is not on the agenda, it was the application that was dated July 27, 2015, filed August 5, 2015 for the property on Fall River Avenue. Chris received a letter dated August 11, 2015 from InSite asking to withdraw without prejudice, it didn't make the agenda.

G. Sagar The motion to accept the withdrawal should be on the next agenda and we should deal with it next time.

Ch. Ross Just make sure that is on the next agenda.

**Approval of Minutes:**

G. Sagar made a motion to approve the 5-4-15 minutes, seconded by R. Read **and so voted unanimously** by Roger Ross, Gary Sagar, Keith Rondeau, Robert Read and Shane Halajko

**VOTE: (Approve 5-0)**

G. Sagar made a motion to approve the 6-22-15 minutes, seconded by R. Read **and so voted unanimously by** Shane Halajko, Gary Sagar, Keith Rondeau, Robert Read and Shane Halajko

**VOTE: (Approve 5-0)**

**Discussion:** John Aubin, Town Planner discussion of proposed Zoning Bylaw amendments

J. Aubin, Town Planner discussed two different sets of bylaw amendments. The first set of revisions is considered housekeeping amendments and has been reviewed by the Planning Board and forwarded to the BOS for the Planning Board to hold a public hearing on September 8, 2015. The proposed amendments will be included in the warrant at Town Meeting for November 23, 2015.

Mr. Aubin stated that the second set of amendments is more substantive and will be heard at a future public hearing, perhaps next year. The substantive amendments include suggestions also made by the Attorney General's office and Mr. Aubin welcomed any comments or suggestions from the Board regarding the amendments.

Gary Sagar mentioned that the sign ordinance is of major concern and asked if they will also be considered.

J Aubin advised that there could be a separate work session with ZBA, town residents, businesses and Planning Board regarding the sign ordinance. Mr. Aubin suggested sign ordinances should include size, quantity, prohibitions, what the exemptions are and they should be kept as simple as possible. The existing 30 pages of definitions are confusing.

The Board discussed the land use table in section 4.2.4, it was determined that some of the wording is confusing and should be clarified and included with the substantive changes for next year's Town Meeting.

Mr. Aubin said it was his goal to make the zoning bylaws as user-friendly as possible.

Ch. Ross said that the Board has discussed the concerns about the Zoning Bylaws in the past and praised Mr. Aubin for his efforts in suggesting these amendments. The Board will review the proposed amendments and forward comments at a later date.

**Discussion:** Redesign of the ZBA applications and authority of ZBA clerk to review applications

The Board discussed making changes with the procedures in applying for zoning relief. Gary Sagar believed that with the updated Zoning Bylaws, it is not necessary for petitioners to attain a letter of determination every time they apply for a Variance or Special Permit. If it states in the

bylaw that something is allowed by Special Permit, they should be able to simply file directly for the Special Permit or Variance.

Gary Sagar mentioned that it is stated in the procedures that an applicant must attain a letter of determination first. The Board decided that they have the authority to come up with new procedures and perhaps a public hearing should be scheduled once the changes are confirmed.

John Aubin mentioned that there are certain situations where they would want to get a determination in writing that can be relied on. Mr. Aubin included that the letter of determination lays out a process for the applicant, allowing the applicant to know when they have to go to the Board of Appeals.

G Sagar suggested that Chris (Testa) draft changes.

Ch. Ross recommended a number of changes such as including if the property is in an overlay district, the section of the bylaw the applicant is seeking relief, the present use of building, and the proposed use.

John Aubin suggested that a lot can be handled with check-off boxes.

The Board determined that Ch. Ross, Chris Testa and John Aubin would draft proposed applications to be circulated for review and discussion at a later date.

**Adjournment:**

G Sagar made a motion to adjourn the meeting seconded by K. Rondeau and **so voted by unanimously by** R. Ross, Robert Read, Keith Rondeau, Gary Sagar and Shane Halajko

**VOTE: (Approve 5-0)**

The Meeting adjourned at 8:45 PM

Respectfully submitted by:

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Christina Testa, Secretary