

**SEEKONK ZONING BOARD  
REGULAR MEETING  
MINUTES**

**November 9, 2015**

Present: Ch. Ross, Robert Read, Keith Rondeau, Gary Sagar and Neal Abelson for Shane Halajko

7:02 Chairman Roger Ross called the meeting to order.

Ch. Ross This is the meeting of the Town of Seekonk Zoning Board of Appeals, November 9, 2015. It is 7:04PM 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)**

First matter to be heard is Raymond Paprarian, 123 Indian Trail, Wakefield, RI 02871, owner and is being represented by Edward F. Grouke, Esquire for Bay Coast Bank, 330 Swansea Mall Drive, Swansea, MA 02777. The petitioner is requesting a special permit and/or variance under Section 8 of the Town of Seekonk Zoning By-Laws to allow an LED/EMC message board sign, a signage on three facades, directional signs with bank logo, an excess square footage on a pylon sign on 110 Taunton Avenue, Plat 20, Lots 207 and 585 in a local business district, an R1 Zone containing 52,347 sq. ft. of land. This matter is continued from September 28, 2015.

Second matter is a corrective notice, Case # 2015-15, 1058 Leiser, LLC and Harry Leiser, revocable trust Harry Leiser Trustee, 62 Mark Avenue, New London, CT 06230, owner and

petitioner requesting an appeal of the Zoning Enforcement Officer's decision, and if necessary, a variance under Section 5 of the Town of Seekonk's Zoning By-Laws to allow the construction of a new medical building within the front and side yard setbacks on the proposed reconfigured lot (Lot 15) at 1058 Fall River Avenue, Plat 7, Lot 15 in a Highway Business Zone containing 7,840 sq. ft. and 1080 Fall River Avenue, Plat 7, Lot 16 in a Highway Business Zone containing 77,536 sq. ft. Just as a note, the corrective notice is because the last public notice advertisement was defective and it was the town's error that caused the defective notice. The ad was re-run for tonight and the petitioner/owner was notified in advance.

Then we have a work session as scheduled. We will take the matters in order that I read them, if the petitioners or owners are represented by counsel, counsel will begin. Any witnesses that are called will be sworn in, and before they give any testimony, if there are any questions from any members of the board, they will ask and presumably will be answered, any questions from the audience or anyone here that appears will be directed to the chair, and they will no colloquies among petitioners, witnesses, everything will be through the chair, it is the usual practice of this board to vote, tonight on the pending petitions, although we are not required to do so. In certain cases we may postpone the actual decisions for either, for consideration of what the testimony that we've heard or to acquire additional information if we deem it appropriate. In all events we are constrained by time before we do issue a decision, once a decision is rendered and posted if any affected party wishes to file an appeal, they can do so with the appropriate court in the commonwealth, if an appeal is filed, there are very strict time constraints that control appeals, any one wishes to do so, is advised that they have to comply with those time constraints. Having said that the first matter to be heard is 2015-14 the Raymond Papanian/Baycoast Bank case.

Attorney Edward F. Grouke, office address is 24 Spring Street, Pawtucket and a resident of the Town at 62 Meadowlark Drive. We are here tonight to ask for board's consideration of request for a variance a special permits for signage at Bay Coast Bank site at 110 Taunton Avenue. This board previously approved the petition for the necessary construction of the bank building at its last meeting. We have several requests tonight and I would like to take them one at a time. I'd also like to introduce Mr. Richard Poyant of Poyant Signs and he is the sign contractor. His main office is in New Bedford and he is available to testify as the various aspects of our request. At the outset, I would like to make note of possible procedural issue which is that the petition that I found requested a special permit and/or variance as the case may be; however, I believe I neglected to ask for an appeal of Zoning Enforcement Officer's decision. So I did request a zoning determination letter and received that letter and we did file the appeal of this decision on timely basis, however, I did not formally ask for an appeal of that determination. So if possible, I ask to be allowed to amend the petition for your consideration of an appeal as well as request for variance for a special permit.

Ch. Ross      Is there is any discussion on the motion to amend the petition to include an appeal from determination of the building official.

G. Sagar      He had no problem.

Ch. Ross All those in favor of allowing petitioner to amend to include an appeal from the determination of the zoning official say Aye. Ayes have it 5-0 consider your application amended Mr. Grouke.

Mr. Grouke Thank you very much. At first I would like to address the building signs and what we are asking for this location is building signs on three different facades. I think you have copies of the plans. I'm going to direct your attention to the south elevation signs, page 1A-1. Essentially the signs sitting on the south elevation total 39 sq. ft. That includes both the Bay Coast Bank sign and the Partner's insurance sign. We are allowed signage totaling 45 square feet and 45 square feet is 5% of the façade so we are within the allowed square footage for that side. The By-Law talks about total square footage of 200' or 5% of the façade, whichever is less, and given the size of this building the 5% is much less than 200 but just as a gauge as to what is allowed we are seeking nowhere near 200 square feet of signage. Now I'm turning to the next page...

K. Rondeau Does that includes the Partners sign.

Atty. Grouke Yes that it does include the Partners.

Ch. Ross Partners I assume is a subsidiary of Bay Coast?

Atty. Grouke Yes or I'm not sure exactly of the relationship of the two, but they are connected.

Ch. Ross They are connected.

Atty. Grouke Yes. The east elevation, page 4A.21 is the one that depicts the Partners sign alone on the east side of the building.

Ch. Ross That is the Fall River Avenue side right?

Atty. Grouke That is right. On that façade we are allowed 47.7 size of sign and we are seeking a sign of 24.37. We are within what is allowed on that façade as well. What we are seeking a variance on would be the sign (the next page, 5A.1) which is the west elevation. The By-Law, because the building is on two streets, we are allowed to have signs on two sides but not on three sides so we are seeking a variance that will allow the sign on this façade. This one is 28.4 sq. ft.

R. Read That side faces the parking lot next door is that correct?

Atty. Grouke Yes.

Ch. Ross That is on the Benny's side?

Atty. Grouke Yes and it's diagonal to Route 44.

G. Sagar        So you are not allowed to have that by right and that is what the variance is for.

Atty. Grouke Correct.

N. Abelson     What is your total square footage for signage Ted?

Atty. Grouke The total of those three would be 91.77 and the total allowed even just for the two sides is 92.7 so we are underneath the total allowance. Furthermore, an examination of local landscape will tell you the Santander Bank has signs on three sides of that building, not to mention the cupola which of course was the subject of litigation with this Board but the cupola does have the Santander logo on it and Santander signs on three sides of that building so there is some precedence in the neighborhood.

N. Abelson     What is on top of your cupola? It looks like a little Weathervane?

Atty. Grouke said it's no signage at all. It is strictly a Weathervane.

R. Read        Will your parking lot be accessible from the parking lot next door?

Atty. Grouke: No I do not believe there will be any access. That was something that was considered.

R. Read        They make it that way a lot these days.

G. Sagar        If they are compounders but they are not compounders.

N. Abelson     If you are going to both places you might make an access there so they wouldn't have to back onto Route 44.

R. Read        On Route 6 there are a lot of them.

J. Aubin        is there a grade change there between the two properties?

Ch. Ross        I don't believe so

N. Abelson     It's slight.

Ch. Ross        I know there is a guardrail.

K. Rondeau    I think there is maybe about a foot to a foot in a half.

Ch. Ross        The existing guardrail, is that your guardrail or is it Benny's?

Atty. Grouke I believe it's Benny's, but I'm not 100 percent sure about that.

G. Sagar It does shows the guardrail on the site plan. It appears it begins...it is mostly on the Benny's property.

J. Aubin As part of my site visit for the Planning Board I do have a picture on the corner if the Board wants to pass it around if Mr. Grouke has no objection.

Atty. Grouke Not at all.

J. Aubin The only thing I can't tell is whether or not there is a drop off after the guardrail. I am just not sure if the topography falls down a little bit as you go to the west. As you go westward it kind of fall downs as you go into East Providence.

*Existing photos of Benny's parking lot is shown.*

R. Read What is it that we are looking at, this piece here?

J. Aubin The guardrail looks like it is almost missing a second rail on top.

R. Read Yes it does.

J. Aubin If you want, we can enter that electronically for the record.

Ch. Ross In any event you are not going to be allowing traffic from parcel to parcel.

Atty. Grouke No, it was not part of the plan that was presented.

G. Sagar I don't think you would want to do that anyways.

N. Abelson I don't think those two uses would draw that much traffic together. You know going to Benny's and the Bank.

G. Sagar It becomes a cut through.

N. Abelson Most of the places are larger stores, big box stores, and things like that are connected.

K. Rondeau Were you thinking about asking whether or not there would be a directional sign on the side of the building or not?

R. Read No, not really. We have approved signs before that are visible from a big parking lot next door that's why I was really why I was mentioning it.

G. Sagar We have also on many occasions, to Mr. Grouke's point, traded location as long as it's within the square footage.

Ch. Ross I just wouldn't want to get into the situation where people from Benny's are trying to bypass the traffic light and then to cutting Bay Bank. Your concern more than ours but...

G. Sagar That would definitely not be good.

Ch. Ross What I'm thinking about is whether we should take these one at a time or collectively, or each request for a variance...

R. Read Each façade separately?

N. Abelson One would only be that one side.

Ch. Ross Well, dealing with the building signs, then moving on taking a vote, then moving onto the free standing sign so that we can keep the record clear.

N. Abelson The only building sign that would be a problem would the 3<sup>rd</sup> one.

Ch. Ross The 3<sup>rd</sup> one right.

N. Abelson So that would be the only one we have to really consider. The other ones, he's allowed by right.

Ch. Ross So is there any further discussion on the building façade signs among any of the members. Do you have anything further on that Mr. Grouke?

Atty. Grouke No I do not.

Ch. Ross Okay let me just poll the audience. Is there anyone in the audience who wishes to speak in favor of this portion of the pending petition? Hearing none, is there anyone wishes to speak in opposition to the façade signs on the building? Hearing none, if the members have nothing further I'll entertain a motion.

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

R. Read Should the public hearing be closed before we hear the rest of it?

? No.

N. Abelson So we can't really close the public hearing.

G. Sagar In all fairness, this petition should have been separated out. Since it wasn't, we have to do it all as one.

N. Abelson We can vote on the 2 separate issues I believe. We've heard the evidence and go forward with the next part. And hold up the Building Inspector's opinion or not.

Ch. Ross Close the hearing and then go. That's fine. That makes sense. If you want to move onto your next signage issue.

Atty. Grouke Yes, the next issue is the free standing sign and that appears on 2A.1 The situation with this sign is that the By-Law allows us a sign totally 60 square feet but it also allows, because it's a corner lot, for us to request 2 free standing signs. What we are seeking is to have one free standing sign only, although the total square footage of the sign that we are seeking is 106.325, so although it doesn't seem this amount that is allowed for one sign, we are offering to waive the right to ask for a second free standing sign.

G. Sagar So you are trading 120 square feet for 106.325 on one sign as opposed to two.

Atty. Grouke Yes.

Ch. Ross So you still need a variance.

Atty. Grouke Yes, I think we still need the variance, however, given the fact that we are giving up some signage which will satisfy the overall intent of the By-Law as we are asking relief on an area. As you see it on 28.1, which would consist of the Bay Coast project and that third section of the sign is the LED sign that we will be addressing. The total of those 3 is the 106.325.

G. Sagar The location of it?

Atty. Grouke Yes. That will be shown on the first page.

R. Read I see. It's right at the corner.

G. Sagar It can't go there. The By-Law says you can't be on a corner lot, can't be within 60 feet of the corner because of the line of site. That was the section I brought up the last time you were here Mr. Grouke. I think it's between 30 inches and 10 feet. You can't be within 60 feet of the corner. Section 8.10 corner visibility, page 78.

R. Read Isn't height involved in that too? If it's high enough so you can see under it?

Ch. Ross It's 8 ½ feet from elevation. 8.7 it appears. The bottom of the ATM LED sign.

Atty. Grouke That is correct.

N. Abelson Most vehicles but a tractor trailer would not be able to see under that.

Atty. Grouke Mr. Poyant is available to answer specific questions on this issue.

J. Aubin I think with regard to that 60 feet, the key question would be where do you define where the intersection is? Is it the center of the intersection? In which case the sign might be all right. Or is it the actual edge?

Ch. Ross The By-Laws says the right of way lines so that wouldn't be the center of the intersection. That would be at least the pavement and possibly even more.

G. Sagar Within 60' of the intersection of any right of way.

Ch. Ross Of any street right of way lines.

G. Sagar So right of way that's the whole layout.

N. Abelson The whole layout of the road. That seems almost excessive. Doesn't it? I mean if you have a 10' on one side that's not even the asphalt and you are like 70' from the edge of pavement.

R. Read Is the building back that far?

G. Sagar If I read this correctly, is this 8'7" to the bottom?

Atty. Grouke Yes sir. (inaudible)

N. Abelson For a car, but I don't know about a tractor trailer truck or someone like that because they maybe up so high.

G. Sagar I can agree with you but it's another variances under the By-Law. Can you raise the sign?

Ch. Ross Based on this plan; it requires 2 separate variances, right? One for siding and one for height.

N. Abelson And then 1 for the LED.

G. Sagar It says in the By-Law sign and post, so it includes the post too. Not just the sign itself.

*(Members are looking at the site plan)*



G. Sagar Is there a sign there now?

N. Abelson You have to be 60' off of this radius.

R. Read We are not sure that radius is that property line either. If you notice down a little lower, there is a curve that sticks out.

N. Abelson That radius in the dark line is probably the layout of the road. The other line, Bob, is the existing bituminous sidewalk and stuff that goes around, I think he said.

Ch. Ross I think that 81' radius, the length of that radius where it says 81.19', I think that's the edge of the right of way.

G. Sagar In fairness, the other corner, the Santander Bank has a sign that doesn't meet the By-Law either.

N. Abelson How far back do you think you could push it from that corner and still have line of site coming down the other road?

R. Read It would go right into the parking lot. I don't know if you can make it out but the parking lot isn't 60' from the street either.

N. Abelson But if you slide it diagonally along, you wouldn't have to go deeper, just further from the corner so you could move it laterally along Route 44.

Atty. Grouke Mr. Chairman, it seems as our petition addressed the signage on the pylon and not its location, so given that fact that we did not address that, it is clear that this sign does not comply with 60' even without exact measurements. So we really need to go back to the drawing board.

N. Abelson At least for the location.

R. Ross For the siting of the sign. We can deal with the sign itself.

Atty. Grouke We have to come back to see if we can site it in a way that we don't need a variance or if we can't then we will ask for a variance.

G. Sagar If you come back, I would like to see an engineered plan that shows the distances and give us the one across the street. This sign is 8.7' to the grade to the bottom of the sign where it calls for 10. See what the one is next door is then if that functions, then there is an argument that could be made.

Ch. Ross I'm sure you agree it's not for us to determine the point of intersection it's from which we measure. That would be engineering or surveying issue.

G. Sagar This doesn't hold up your construction.

R. Read We can still vote on the rest of it, right Mr. Chairman?

Ch. Ross On the area, the LED sign, all subject to either you would be entitled to right because it's 60' from the intersection or you're back with a variance.

N. Abelson We also have to think about the height too.

Ch. Ross He'll address the height issue. Either put 10' from grade or look for relief for the 8.7.

G. Sagar You will need some time to do the site plan. There is no great urgency to get you back here.

Atty. Grouke I don't think so. Do you have a meeting in December yet?

G. Sagar We haven't.

N. Abelson Because you can still construct the building without the signage in place.

Ch. Ross I don't know how far they want to go until they get all their blessings.

R. Reed Why don't we continue on the rest of the signs?

Ch. Ross As to the free standing sign, rather than take it piece meal, why don't we have a single vote at whatever the continued date is for the area, variance, as well as the siting to see if you need relief from that. That is not going to change anything from your perspective.

Atty. Grouke No.

G. Sagar The point being, if we continue this public hearing, we have to continue it to a date certain.

Ch. Ross That's right.

G. Sagar So we should schedule it out after the holidays. Is that an issue to you Mr. Grouke?

Ch. Ross Do you plan on starting your construction this year or are you going to wait until the spring.

Atty. Grouke I think they want to start ASAP and then we have to consider the appeal period also. Perhaps a date of December, if that is possible with the board?

Ch. Ross You will be able to get in touch with an engineer/surveyor in that time to submit a revised plan?

Atty. Grouke I would think so.

G. Sagar Would something along 30 days be agreeable?

Ch. Ross I don't want to get it to close to the holidays.

G. Sagar Mr. Chairman, I would move that we continue this public hearing until 7:00 p.m. on 14<sup>th</sup> of December.

Ch. Ross All those in favor of continuing this public hearing until December 14<sup>th</sup> of this year say Aye.

VOTE: 5-0

Ch. Ross The issue with the free standing signs and all of its components and elements is continued until December 14<sup>th</sup> subject of course to the appropriate supplemental filings. We are all in agreement on what issues are going to be addressed, correct?

Atty. Grouke Yes we are.

Ch. Ross Is that your totality of your presentation for tonight?

Atty. Grouke The other issues were the directional signs and also the LED sign, but they can wait also.

Ch. Ross The LED sign is a component of the free standing sign.

Atty. Grouke True.

Ch. Ross Lets deal with the free standing sign all at once.

Atty. Grouke The only other thing is the directional signs.

N. Abelson In and Out?

Atty. Grouke Yes, the issue there is what we are asking that the bank logo be allowed to be posted on the directional signs (in/out, ATM, drive-up, entrance and exit). There are 5 of them at 6 sq ft. each. The rationale there is that that will identify the bank, better way for traffic...

Ch. Ross That sheet, SP, that's not to scale right?

Atty. Grouke For the location, yes.

G. Sagar We can't vote approval or denial on any portion of it as long as the public hearing is still open. We can't close the public hearing because then we preclude them from coming back on the 14<sup>th</sup>.

Ch. Ross Exactly.

N. Abelson As long as those directional signs are back far enough not to create a line of sight problem. That is my only concern like when you are pulling out if it's not far enough back so the driver of the car can see past the sign. That would be my only stipulation.

R. Read Actually 1, 2, 3 & 4 are pretty close to the street.

Ch. Ross That's why I asked if it was to scale because they seem to be virtually on the right of way line.

N. Abelson It's hard to tell because the signs are back a little further.

J. Aubin Mr. Chairman, I just want to point out the height limitation would be 3' so that someone to see at all times. That's 8.8.4.5; it says 3' height limitation. The sign should be 3' or less.

Ch. Ross It can't be lower than 3' or higher than 7'. You are at 4.6.

N. Abelson Is that the bottom of the sign.

Ch. Ross So the top of the sign can't be higher than 7' and the bottom can't be lower than 3'. And you are in the prohibited area the way I understand it.

Atty. Grouke I believe so. So we need to make an adjustment.

R. Read You need to drop it a foot and ½ is that right? That would be doable.

Atty. Grouke So the petition on that that was based on a request to have the logo on the signage and that's what we needed the variance for on that. Is that something you are going to act upon tonight?

Ch. Ross No, I think we will continue the entire signage issue. We got your testimony on the first section.

Atty. Grouke Yes. Ok. That is all then.

Ch. Ross We will see you on the 14<sup>th</sup> of December.

Atty. Grouke All right, very well. Thank you.

Ch. Ross Next is the 1058 Fall River Avenue, Leiser, LLC, Harry Leiser, Trustee, Case Number 2015-15. Would you state your name for the record please?

Paul Carlson InSite Engineering Services, 1539 Fall River Avenue, Seekonk, Mass.

Ch. Ross Would you raise your right hand please? Do you swear the testimony you are about to give is the truth and the whole truth?

P. Carlson Yes I do.

Ch. Ross You may proceed Mr. Carlson.

P. Carlson We are here to ask you for consideration for variance within the stated lots (inaudible). As I mentioned, I represent the applicant, Mr. Harry Leiser, who is here in attendance. He is the owner of 1058 Fall River Avenue, LLC and Harry Leiser irrevocable trust. The 2 properties that make up the Leiser properties are referred to as 1058 Fall River Avenue also known as Map 7, Lot 15 and 1084 Fall River Avenue also known as Map 7, Lot 16. These two properties are found on the eastern side of Fall River Avenue at the Fall River Avenue and Highland Avenue split. The properties are located within a Seekonk Zoning Highway Business Zoning District and the properties surrounding this particular property are also zoned Highway Business and Commercial Buildings and Uses surrounding this area. Access to the properties currently exists off Fall River Avenue and also through the Seekonk Grand Prix parking lot. This also has its own utilities. The lots itself at 1058 has .18 acres of land and 1080 has 1.78 acres and existing 23,000 sq. ft. commercial building currently houses West Marine, Adam and Eve, Orange Leaf, and Five Guys is located on this property. As many of you may know, the property located at 1058 formerly housed the T.R. Little Real Estate office. The proposed project we have before you includes the redivision of land to construct a new 3,200 sq. ft. medical office building, redivision would create a 15,300 sq. ft. parcel of land on Lot 15 and create a 70,077 sq. ft. parcel on Lot 16, and within Lot 16 the new 3,200 sq. ft. medical office building would be constructed as part of the requirements of your subsection 2.8.5 a site plan review would be required during approval of this variance. The construction of the 42 x 76 wide medical office building would necessitate the need for two variances. Our client is seeking a variance from the Seekonk Zoning By-Laws, Section 5.14, front yard and side yard setback. The variance requested is a front yard setback 70' to 64.5 and a side yard reduction from 15 to 3. The variances are necessary to meet MA house requirements for room sizes, including physicians'

waiting areas, exam rooms, X-ray and office space for the two doctors and employees. In addition the location of the eastern edge of the building is limited to provide ample turning movement for the tractor trailer deliveries to the West Marine. The north side of the building is located the same distance as the side yard as the existing building. All zoning meets up to subdivision control regulations have been considered. No significant negative environmental impacts are anticipated as a result of this development. At this time, I would more than happy to answer any questions you may have regarding this application.

R. Ross        Your client was going to be seeking a continuance because there were issues of proposed tenants and if those leases were put in place they may change the nature of your application. Is my recollection correct?

P. Carlson     That is correct. Mr. Leiser and the tenant, Carewell, were in negotiations and there was potential for moving to change within the footprint of that building. Subsequently since that request, the building itself has not changed.

R. Ross        So no changes?

P. Carlson     No sir.

R. Ross        Does anyone have any questions?

G. Sagar        No matter what size building he puts on there is going to need a variance.

R. Ross        Setback relief.

K. Rondeau    How many offices will this medical building have?

P. Carlson     Two doctors offices.

K. Rondeau    There seems to be a lot of parking there.

R. Ross        How many spaces?

P. Carlson     There are seven spaces within the property but the zoning with a shared lease parking agreement, the minimum requires 10 but with the shared lease agreement they meet all zoning regulations. Parking for all commercial and existing building, plus the doctor's office.

Ch. Ross       And the parking agreement is with which lot?

P. Carlson     It would be with the lots 15 to 16.

R. Read        So that parking lot has to be refigured?

P. Carlson Yes, it has to be refigured just for the medical office building itself.

G. Sagar And that would be under the purview of the planning board?

P. Carlson After this we would submit a site plan review.

Ch. Ross I just want to make sure I understand. You are looking to subdivide lot 16 and merge a portion of that into 15?

P. Carlson That is correct. It will be a redivision of 16 and 15 to increase the size of lot 15 to the proposed 15,300 sq. ft.

R. Read Is there going to be another entrance to the whole parking lot?

P. Carlson Ultimately we will be submitting an application to Mass DOT for an egress northbound and one from the northbound at the edge of the site.

G. Sagar I believe Mr. Chairman, that prior to us making no substantive changes to the By-Law, highway business always used to have a minimum lot size and now a ??? local business doesn't. Basically with the T.R. Little business that was there, that lot does predate zoning I believe. And again, whatever you do there is going to require a variance.

K. Rondeau What type of medical office is going to be there?

? Urgent care center

Ch. Ross So there will be quite a bit of traffic. So you are looking for minimal relief on the front yard and it's the side yard that is significant.

G. Sagar And the plan you are referencing there, Mr. Carlson, is dated July 27, 2015.

P. Carlson That is correct.

R. Ross With the revision date of August 11, 2015?

P. Carlson Right.

G. Sagar Is that the plan you will be submitting to the Planning Board?

P. Carlson This particular one will not because there will be additional requirements such as grading and drainage, utilities will also have to be modified.

G. Sagar But for our purposes, we can site this date?

P. Carlson Yes.

R. Read Which date?

R. Ross August 11<sup>th</sup> is the revision date. The plan date is July 27<sup>th</sup>.

N. Abelson The layout of the building is not going to change. That is the important part for us to be looking at.

K. Rondeau The building is so close to the miniature golf course, you an alley way in the back, there is no emergency access to the back of the building or anything like that?

P. Carlson There is not, but there is an existing fence Mr. Darling presently around the golf course.

N. Abelson But they do have open access to 3 sides.

Ch. Ross Does anyone have any questions or concerns?

R. Read No.

G. Sagar No.

Ch. Ross Do you have anything further Mr. Carlson? Do you want to call any witnesses? Ok. Is there anyone in the audience who wishes to speak in favor of this petition? Hearing none, is there anyone in the audience who wishes to speak in opposition to the petition. Hearing none, unless there is anything further we are ready to entertain a motion.

G. Sagar I entertain a motion to close the public hearing and uphold the decision of the Zoning Building Officer. N. Abelson seconded.

Ch. Ross All those in favor say Aye. No opposition.

VOTE: 5-0

Ch. Ross The public hearing is closed. The Building Inspector is upheld. Is there a motion on the petition itself for the requested relief, for the front and side yard variances?

G. Sagar I move that we approve as submitted with a reference of a plan of July 27, 2015 revised August 11, 2015 as submitted. N. Abelson seconded.

Ch. Ross Is there any discussion on the motion? Hearing none, all those in favor of the motion pending say Aye. No oppositions.



VOTE: 5-0

Ch. Ross        ZBA procedures and zoning determination letters.

J. Aubin        I made recommendation to the Town Administrator that the Zoning Board may want to consider work session with BOS, PB, and ZBA with regard to planning department staffing and zoning amendments. We have some housekeeping amendments going in front of town meeting on the 30<sup>th</sup>. I'm not sure if the board was aware, but town meeting did get switch from the 23<sup>rd</sup> to the 30<sup>th</sup>. There is some interest across the board to look at some zoning issues, so as soon we get the 30<sup>th</sup> in the books, I'd like to start working on the next set for the spring town meeting.

Ch. Ross        What we had to begin with is a draft proposal of an application that John put together that was circulated. I commented on it with very mild tweaking and I know that Gary did as well with, again, minor suggestions. Everyone has a copy of what was emailed?

G. Sagar        Chris has mine, right?

C. Testa        Would members like me to make a copy?

G. Sagar        I didn't print mine out.

Ch. Ross        Yes, why don't we do that.

J. Aubin        While we are waiting on that, I did take a look at the application, kind of handbook, Guide to Appeal. I did make some notes on that. I can redline that up and forward it onto the board. One thing to note is that it does state the requirement that a zoning certificate is required as part of the application.

G. Sagar        Determination?

J. Aubin        Zoning Certification Determination. That's a topic we talked about last time and had some discussion as to whether or not that is necessarily a prerequisite to an application. To me it's a written statement from the building official. It certainly gives an applicant something in writing to 1) rely in; and 2) to take an appeal from. But as far as being the basis for any kind of relief from this board, to me the application is really where the start of that is. I will make those additions to that and forward it onto the board. As far as the zoning determination certificate, I will note it as though to be determined.

R. Ross        I do the same thing. I constantly refer to this as a zoning ordinance. I'm so RI oriented.

K. Rondeau    You were saying that we don't necessarily need the determination letter attached to the application?

J. Aubin In my opinion. Right now we do because it says so in the rules and regulations application process. But as far as in the grand scheme of things, to me an applicant will know whether or not someone is proposing to build a structure that will be within the setback. And to make them go through an additional step with the building official, I don't see what it adds to the application process other than the fact that we have an applicant, homeowner, or individual that wants a determination, kind of wants to get that written statement, there's some value to that. But again, that to me stand separate and apart alone from the variance special permit process.

N. Abelson They'd still probably go to the building inspector to get an opinion though.

J. Aubin Informally though.

N. Abelson Because otherwise they...

Ch. Ross You can file for relief because without getting a zoning determination and filing an appeal...

J. Aubin And when someone does file for that zoning determination they have rights under the zoning bylaws to take an appeal from that and as a determination from an administrative officer.

R. Ross The trade off on that though is that if you don't request the zoning determination, now you are not facing the 30 day appeal period. You are not constrained time wise.

J. Aubin Just from an efficiency standpoint, to me, if there isn't much overall value to the process, why make someone jump through the loop.

G. Sagar What are your thoughts? Sometimes we need it, sometimes we don't.

J. Aubin My feeling on it, as far as the zoning board, as far as prerequisite for a zoning board application, I don't necessarily see it as necessary. As far as a process in town to have an official written determination by the building official, I think in that instance, it's valuable and should be retained. But I don't think it should be a prerequisite for anyone to come before this board.

N. Abelson I was just thinking what if there are grey areas, if you don't have a determination from the building inspector, we might have necessarily realize why it was denied initially.

J. Aubin In some instances we would have someone come forward with the opinion that they might need relief and come forward with it, get to the board, an ultimately not need that relief.

R. Read Won't most people go to the building inspector to find out?

J. Aubin        At least formally and informally.

G. Sagar        Because in essence our rule is when somebody is denied a permit, and then they come to us.

J. Aubin        There is a different couple of roles. There's the role of providing for relief for someone that can't meet or there are certain situation can't meet the requirements of the By-Law in which case you are sitting as the special permit authority, then you also set as the Board of Appeals to any kind of administrative determination, which is the appeal from the building official's determination or an appeal from the Planning Board from their decision or appeal. I think the way the By-Law is written, I think it's an appeal from any administrative determination made under the By-Laws. It is pretty broad for the most part would be from theoretically the determination is the Town Planner, the Planning Board may make in their review of site plans or subdivisions, and then as I said, as a special permit granting authority under the By-Laws for variances special use permits.

J. Aubin        The two most important things for me were the supporting brief section where it cites the criteria for granting of a variance and also the authorization for property owner and making sure that covered everything that needed to be covered.

Ch. Ross        The only thing I added to John's and it's not that important but I added it anyway, on page 1, you got the Zoning Districts and the lot area which I kept, I just added frontage and depth. I reconfigured some of the substance is the same.

J. Aubin        One thing I think that is on the existing application...I'll touch base on it later. Gary and Chris added it.

R. Read        Which one is the final copy?

J. Aubin        The last one that's fine was Gary's. For the most part, the forms are sent out online. We don't necessarily have too many people coming in and getting applications. If the fee were to change...

G. Sagar        The fee is set by the BOS, annually so once they set it would be effective in the new fiscal year.

J. Aubin        Chris, you added the note on Page 4 with regard to the certified plot plan and the failure to appear?

C. Testa        Yes I did and I also added the book and page. At the bottom of page 1, I need the book and page information to do the decisions. And I just changed the layout a bit. I added the property owner information at the top as opposed to the property information first. This is how the Town Clerk has her letter and it is also how I work the decisions.

J. Aubin I also want to point out, Chris's note with regard to failure for the petitioner to appear corrects an error currently on the application form it says, "It *may* result in the application being denied" where the Rules and Regs say *shall* be denied.

G. Sagar I think the Rules and Regs need to be changed because I changed it on mine to be *may* also.

Ch. Ross I made that change too. I think the Rules and Regs are what they are now but I think we should have some flexibility of not being compelled to deny an application.

G. Sagar The changes that I made were at the top of the application. I spelled out, like for tonight, the application for Bay Coast with all those signs. Those should have been multiple applications.

J. Aubin I was going ask that question because if you look at the Rules and Regs, it says that each one is subject to a separate application.

G. Sagar And we could have picked the ones to approve, tabled some. Because it's all under one envelope, we have to do it that way.

Ch. Ross Administratively it just gets cumbersome.

G. Sagar And just so that people know too that they are responsible for the cost of the legal ad.

N. Abelson If you file them all separate does that mean a separate fee for each ad in the paper?

Ch. Ross Yes.

G. Sagar The other thing I added to on Page 2, under Petition, where it says variance from...I added State Law or By-Law.

Ch. Ross The problem with that is if it's a variance from a state law, it's outside of our jurisdiction. It could be 40B on the Affordable Housing, but that is specifically delegated. That is not in the By-Law.

G. Sagar I was looking just on the 40A.

J. Aubin There should be some authority language in 40A with regard to the authority of the Zoning Board.

Ch. Ross      The By-Laws have been approved by the AG, so whatever is there has already been approved, that has been delegated by the Commonwealth.

G. Sagar      So do you want to cross out State Law and keep it as By-Law?

Ch. Ross      Keep it as nebulous as we can.

G. Sagar      Cross out State Law and put “include By-Law or other provisions.” I think the only other thing I put in there was the change from *shall* to *may* on the last page (what we just talked about).

Ch. Ross      But that would require an amendment to the Rules and Regulations.

J. Aubin      Does that require a public hearing?

Ch. Ross      I think that is administrative to us.

G. Sagar      But I would do it as a public hearing. The last time we changed the Rules and Regulations it was a public hearing.

Ch. Ross      I don't think that requires a special meeting or a special ad.

G. Sagar      If we are all fine with this then were you going to mark up some of the Rules and Regulations?

J. Aubin      I have my notes with me, but I would mark up them in accordance with our discussion to be consistent with the new proposed application. We'll take a look at them and draft form it in December and then if we are going to go forward with the public hearing, go from there.

Ch. Ross      Out of curiosity, why did you remove, “for relief” from the title of the application?

G. Sagar      Because I think it might be too confusing to the lay people.

J. Aubin      It could be for a relief, it could be an appeal, technically...

Ch. Ross      Next, we have attorney testimony. Gary, you have the floor.

G. Sagar      It has been a long standing practice that we swear in attorneys like everyone else. I don't think they are above anybody or below anybody. I think everyone should be treated the same.

Ch. Ross Yes, I put my feelings on it when we discussed it earlier. I don't want to do it. Not because lawyers are better than anybody else, but for one thing, whatever they tell you is not evidence that is to be considered. They are advocating for client and as I said before, you know, I've both testified in court and called attorneys in court and same thing in front of Planning Boards or Zoning Boards. Not in Mass, I don't practice in Mass. I've never been sworn in. I've never known a lawyer to be sworn in at a Zoning Board or Planning Board. Have you in Cumberland?

J. Aubin My general thoughts on it, not know what attorney testimony what is being referred to on the agenda, would be, what it really boils down the difference between representation and testimony.

Ch. Ross Yeah, you are not a witness.

J. Aubin One question I had tonight when Mr. Carlson got up and was representing a client and testifying, to me that type of a situation should be sworn in.

Ch. Ross I did.

J. Aubin In RI, technically under the law, the only person that is supposed to represent anyone in front of the Zoning Board is the property owner, the applicant, or their attorney. I am not a lawyer of any communities that hold the line of that too tightly. But that's always been on my end. If it's the rule, it is and if it's not, it's not. So I think that's kind of the distinction between someone who is representing an applicant and a witness who is testifying as to an application which is a situation where you would swear someone in.

Ch. Ross All right. I'm foreign to Massachusetts practice. We've had cases where a guy wanted to build a sign comes in representing the landlord. Steve Long comes in all the time to represent applicants. He is a surveyor. He comes in and nobody cares. But that's not the issue. The issue is swearing in attorneys. I'm dead set against it for the reasons that I have said.

R. Read I don't see the difference between an attorney standing there and explaining the situation or the owner standing there explaining the situation. Why is one testimony and the other is not. I don't get that.

N. Abelson Well, he's presenting evidence to us. That's like giving testimony.

R. Read I think so. I think that's kind of beside the point.

J. Aubin I think in an ideal situation the attorney shouldn't be testifying to you. He should be presenting what the application is and then supporting that with testimony. If there is a situation where is testifying, then I think there is maybe a case where having them sworn in.

Ch. Ross There are many cases where an attorney comes in and the applicant or the owner never shows up. That always bothers me.

J. Aubin So maybe that's a situation where the board may want to be swearing someone like that if they are the sole source of information on an application.

N. Abelson Because sometimes they will come in, like Steve Navega, and he will do that main procedure, like with what they are going to try to do and achieve, and then he will hand it over to the engineer. But lots of times, it's just the lawyer.

Ch. Ross And that bothers me. I agree.

J. Aubin In that instance, I think the boards' evidence or vote is the application itself.

Ch. Ross Because there are certain municipalities in RI that the petitioner doesn't show up, they won't hear the case.

G. Sager So that's why I think from that perspective, just have one policy that fits all.

R. Read I agree. Continuity is important.

N. Abelson Keith, what do you think?

K. Rondeau It wouldn't hurt to err on the side of caution.

N. Abelson I understand both sides.

J. Aubin At least until the first attorney objects.

K. Rondeau We haven't had one yet that I know of.

R. Read Why would they object?

J. Aubin Because they feel that they are not required too, they are there to represent their client.

K. Rondeau What is the difference between an applicant representing himself and an attorney representing him?

Ch. Ross That's the attorney's job to represent his client. Someone wants to come in pro se representing themselves; they are entitled to do it.

J. Aubin But they are still going to get sworn it though right?

Ch. Ross Absolutely.

N. Abelson So they are getting the same evidence or testimony.

K. Rondeau One has to be sworn in and the other one doesn't.

N. Abelson I agree with Keith kind of. I'd like to err on the side of caution. Keep it consistent. I mean I understand what Roger is saying.

K. Rondeau I look at it as even though we are a Board of Appeals, we don't carry the same weight as judges in front of attorneys.

J. Aubin Still a quasi judicial board.

Ch. Ross We don't do it often enough. We ought to be making finders of fact and applying the law. That's our obligation. We have decisions that are two paragraphs and we are okay until it gets appealed.

J. Aubin But that is considered another discussion.

Ch. Ross That is another discussion. Yeah.

G. Sagar What is discouraging is I specifically said to the engineer, the president of the bank, and Poyant Signs the last time they were here, referred to the sections of the By-Law that I brought up tonight and they just ignored it. That is unfortunate. I said that to the engineer figuring he could show distances in the plan.

C. Testa While I was out, did the Board discuss the Zoning Determination Letters or anything like that?

J. Aubin Yes. We are going to take a look the Guide to the Appeals Process, rework that a little bit for next month and then come back with the new application.

G. Sagar Are you going to join us on the 14<sup>th</sup>?

J. Aubin It looks like it.

G. Sagar Even if Ted withdraws or wants a continuation, we have to come back on the 14<sup>th</sup> for the work session.

**Adjournment:**



**\*\*Tape ended without formal adjournment\*\***                      made a motion to adjourn, seconded  
**and so voted unanimously by R. Ross, Gary Sagar, Robert Read, Keith Rondeau, and N.**  
Abelson

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

The Meeting adjourned at 8:43 PM

Respectfully submitted by:

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Christina Testa, Secretary