SEEKONK ZONING BOARD REGULAR MEETING MINUTES

June 20, 2016

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

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

Ch. Ross:

It is 7 o'clock, June 20, 2016, this is the Town of Seekonk Zoning Board of Appeals, we have some matters down tonight, but before we begin the meeting, would everyone please rise and join the board in the Pledge of Allegiance? :: All saying pledge of allegiance ::

Thank you, you may all be seated. We have four public hearings down for tonight, I will begin by reading the agenda, and we will call the cases in the order in which they are read. As the cases are presented, I will ask the petitioner or the owner, their counsel if appropriate, or any witnesses to come forward one at a time, and present their case, we will hear from anyone that a petitioner wishes to present. Afterwards, I will ask if any other people, other than witnesses who wishes to speak in favor or opposition to a given petition we will hear all of the evidence, it is our practice, although we are not required to do so, after we close the public hearing, we consult among ourselves, we may ask additional questions of anyone who has testified, and we will more than likely take a vote tonight. Once a vote is taken, anyone who feels they are aggrieved by the decision, whether they are the petitioner or the objectors, have a right under Mass General Law to file an appeal with the appropriate court of jurisdiction, and the commonwealth of Massachusetts, if anyone chooses to file such an appeal, I would note that there are fairly strict constraints as to time and as to standing, so if you chose to do so, I urge you to consult with the by-laws, the Mass General laws, or consult with counsel. Having said that, First matter on the agenda this evening Is case 2016-09 Amedeo A Petronio, Jr. 45 Mabel Drive Seekonk, MA, 02771 Owner/Petitioner, requesting a Variance and Special Permit under Section 5.1.4 of the Town of Seekonk Zoning Bylaws for relief from the minimum required side setback of 15'+5' for every story above one to 8.01", and the minimum lot size requirement of 14,400 sq ft at 45 Mabel Drive, Plat 7, Lot 124 in an R-1 Zone containing 10,387.28 sq ft. this matter is continued from June 6, 2016). Is there anyone hear on this matter? Next on the agenda is case number 2016-11 Stuart & Kristen Montgomery 89 Woodward Avenue, Seekonk MA 02771 Owner, Neil Lefaivre, 81 South Main Street Berkley, MA 02779 Petitioner, requesting a Variance and Special Permit, to construct a 20' x 22' addition under Section 5.1.4 of the Town of Seekonk Zoning Bylaws, located at 89 Woodward Avenue, Plat 21, Lot 206 in a R-2 zone containing 16, 988 sq ft. this matter was also continued from June 6, 2016, is anyone here on the Montgomery matter? Thank you. The third matter is case #2016-12 Orion Realty

102 C Pond Street, Seekonk MA 02771 Owner, Kathleen Buckley of Canine Mastery 102 A Pond Street, Seekonk MA 02771 Petitioner, requesting an Appeal of a Town Official relative to the Zoning By-Laws, and a Special Permit, to continue dog training and care including grooming and dog daycare, located at 102 A Pond Street, Plat 32, Lot 69 in an Industrial zone containing 378,362.16 sq ft. of land also this matter was also continued from June 6, 2016, Mr. Navega you are representing this applicant, is your client here? Okay, thank you. Ok and the final matter is 2016-13 James Dias, 41 Lancaster Street, Seekonk MA 02771 Owner, InSite Engineering Services, 1539 Fall River Avenue #1, Seekonk MA 02771 Petitioners, requesting a Variance, under Section 5.1.4 of the Town of Seekonk Zoning Bylaws for relief from the minimum required setback of 35' to 10.2', at 41 Lancaster Street, Plat 20, Lots 449, 450, 451 in an R-1 Zone containing 14,985 sq ft of land, anyone here on the Dias matter? Ok, thank you. Those are the public hearing tonight, we have a regular session for approval of minutes and discussion of a formally decided case and then we will have a motion to go into executive session to discuss pending litigation. So before we get started do any of the members of the board have anything questions, observations? None? Hearing none, the Amedeo A. Petronio Jr. matter, if you would approach, please sir.

Ch. Ross: Would you state your name and address for the record please? A. Petronio: Amedeo A. Petronio, Jr. 45 Mabel Drive, Seekonk Mass 02771

Ch. Ross: Would you raise your right hand please? Do you swear or affirm that the

testimony you are about to give is the truth?

A. Petronio: Yes

Ch. Ross: And you may begin with whatever presentation you'd like to make.

A. Petronio: As everyone already has the packets, we applied for a special permit and a

variance due to the non standard we'd need a variance anyways. Putting an addition on the back and a wraparound porch on the side. And the special permit is for the 15' clearance on the side. As you can see on the property lines, from the plot plans, (inaudible) that will only have 8' of clearance however my neighbors are very far away, they just, at least another 15' before there's a row of arborvitaes, and then his driveway and his house is set way back.

Ch. Ross: This is the Vieira property, you're talking about?

A. Petronio: Yes, the one that's on the porch side, yes. It has the only place I can put an

addition due to the layout of the house.

G. Sagar: Mr. Chairman, just to be clear on this, just to clarify something you said, you have

a 10, 358 sq ft lot in a zone that requires 14,400. So you have legal non conforming lot, so to complete your addition of 14' x 18' addition on the back, without meeting all the setbacks you need that special permit, to extend that legal non conforming use. The same thing applies for your farmer's porch, you're extending the legal non conforming use, but you also need a variance because of

the side setback, so, I just wanted to make sure that you understand

A. Petronio: I may not have used all the correct words, so

G. Sagar: Just that everyone is clear

A. Petronio: I just want to put a porch on, whatever the legal ramifications of that is.

Ch. Ross: Where is the septic located? Because you, A. Petronio: It's on the other side of the property.

Ch. Ross: What does other side mean?

A. Petronio: Opposite of where the porch is, on the right hand side, if you are facing the

property from the street.

Ch. Ross: Okay, where the longer driveway is?

A. Petronio: It's just behind that driveway and the house

Ch. Ross: Between that and the shed?

A. Petronio: Yes,

Ch. Ross: Okay. And you proposed to relocate that portable shed, correct?

A. Petronio: I already did, sir,

Ch. Ross: You already did? The one that appears to be encroaching on the other property?

A. Petronio: Yes, as soon as I had the plot plan done, I moved it.

Ch. Ross: Okay

A. Petronio: It was a plastic shed, it was easy.

Ch. Ross: Do you have anyone else that wishes to testify?

A. Petronio: I have my builder with me.

Ch. Ross: I'm sorry?

A. Petronio: I have my builder, my general contractor with me Ch. Ross: If you want to call him, you have that option

C. Bois: Yeah, there's not too much to add, I mean, the septic system being on the right

side of the house is the whole reason why we moved the porch to the left side.

Ch. Ross: Okay, so you are okay on the rear of the property, it appears, so it's the side yard?

Does anyone have any questions at this point? Keith?

K. Rondeau: The addition at the rear of the property, that's just a three season, four season?

A. Petronio: Four season K. Rondeau: Four season C. Bois: Four season

K. Rondeau: What is that like a family room type thing?

A. Petronio: Yes

Ch. Ross: And it's going to be on a slab.

C. Bois: It's going to be on sonnatubes; actually, they didn't want to dig the ground too

much, because they actually wanted the house in the neighborhood that's not

getting water in their basement

Ch. Ross: Okay

C. Bois: So instead of building, putting a full foundation and disturbing everything we're

just going to put tubes in.

Ch. Ross: Okay. Anyone else have any questions at this point?

B. Garrity: Can I get his name?

Ch. Ross: Oh, I'm sorry
C. Bois: C-o-r-e-y B-o-i-s

Ch. Ross: Kind of late in the game, but would you raise your right hand please? Do you

swear or affirm that the testimony you are about to give is the truth?

C. Bois: Yes,

Ch. Ross: And anything you have said has been the truth?

C. Bois: Yes

Ch. Ross: Okay, if no members have any questions, at this time, I'll ask you to take a seat

and let me just poll the audience. Is there anyone in the audience who wishes to speak to in favor of this petition? Seeing or hearing none, is there anyone who wishes to speak in opposition to this petition? Seeing or hearing none, I'll ask one more time; do any members of the board have any questions? Or observations about this petition?

G. Sagar: The only thing I'll observe, Mr. Chairman, is the fact that they do have an

undersized lot that is irregular in shape, and they certainly meet the burden for a

special permit or variance.

Ch. Ross: Okay, having said that, do I have a motion on the public hearing? G. Sagar: If it's appropriate, I'll move that we close the public hearing.

Ch. Ross: Do I have a second?

S. Halajko: I'll second it

Ch. Ross: So moved, all those in favor of closing the public hearing? Opposed, no. Ayes

have it 5-0. Do I have a motion on the pending petition, for special permit, as to

the side yard setback and the undersized lot size?

G. Sagar: And it's a petition for a variance

Ch. Ross: For a variance, did I say a special permit? Variance

G. Sagar: For both

Ch. Ross: Variance and special permit

G. Sagar: Okay, I'll move that we approve it as submitted.

Ch. Ross: Okay, do I have a second?

R. Read: Second

Ch. Ross: Any discussion on the motion? Hearing none, I'll ask for a vote. All those in favor

of granting the petition, as filed for a variance and a special permit, signify by

saying aye, opposed no. Ayes have it 5-0. Good luck Mr. Petronio.

A. Petronio: Thank you, sir

Ch. Ross: Next matter is, up for hearing is the Stuart and Kristen Montgomery matter, is

anyone is here on that, please step forward. Hi, who is the petitioner?

N. Lefaivre: I'm Neil Lefaivre,

S. Montgomery: And I'm Stuart Montgomery,

Ch. Ross: Would you both raise your right hands, please? Do you both swear that the

testimony or affirm that the testimony that you are about to give is the truth?

N. Lefaivre: Yes S. Montgomery: Yes

Ch. Ross: Ok, whoever wants to proceed first?

N. Lefaivre: My name is Neil Lefaivre with Empire Design Build; I am Stuart's general

contractor for this project, based on it getting approval. The only thing I see on the write up that is a little bit different than the way it was written is we're looking for relief for two things. One is a non conforming lot that's the first one, the second one is a setback variance. One of things that's listed here is it says "to construct a 20x22 dwelling". It's actually a 20 x 12.6 addition. So I just want to make sure we get that out of the way first, and it is part of the packet of

information, I just want to make sure that the cover sheet states.

G. Sagar: It's smaller? N. Lefaivre: It's smaller Ch. Ross: So rather than 20 x 22, it's what please, again?

N. Lefaivre: 12.6 x 20

Ch. Ross: Ok, and was the, were the correct dimensions what was submitted to the building

inspector, do you know?

N. Lefaivre: Yes. Ch. Ross: Okay

N. Lefaivre: It just looks like a typo.

Ch. Ross: Okay, so you are suggesting that the letter of determination from the building

inspector is errant.

N. Lefaivre: Yes

Ch. Ross: Do you have anything further Mr. Lefaivre?

N. Lefaivre: It's just the addition, family room, extension on the first floor, and then the

second floor is extending to the master bedroom.

S. Montgomery: We're not going to put another additional bedroom on the house, the bedrooms,

still have 3 bedrooms on it, the septic tank is rated for 3 bedrooms.

R. Read: You have two completely different drawings

Ch. Ross: Yeah, I was confused the same way, Bob, when I saw this.

B. Garrity: I think one is from the...

Ch. Ross: One is from the previous petition B. Garrity: One is from the previous petition.

S. Montgomery: We had a fire back in 2011, we had an engineer come up and

Ch. Ross: Right, the one

S. Montgomery: Drew up a plot plan for us

Ch. Ross: The one done by Land Planning, Inc. was the 2012 petition, correct?

N. Lefaivre: Yes

Ch. Ross: and the one that doesn't have a name of an engineer, as a matter of fact it says "no

scale", that one? That's the one that's pending this evening.

N. Lefaivre: Exactly

Ch. Ross: And the construction that was done after 2012 is reflected on your plans?

N. Lefaivre: It is

Ch. Ross: That's the way I saw it.

G. Sagar: And that was reflected in petition 2012-04

Ch. Ross: That's correct

G. Sagar: Which was granted to them for a variance and special permit for the deck and

addition at that time.

Ch. Ross: That's correct, and I believe a copy of that decision was attached,

G. Sagar: I have one if you need it

Ch. Ross: I have one as well. Right 2012-04. Do you have anything further Mr. Lefaivre or

Mr. Montgomery?

N. Lefaivre: I don't believe so, the questions have all been answered?

Ch. Ross: Let me inquire, do any members of the board have any questions of the petitioner

or the owner? At this point?

N. Lefaivre: Based on the last hearing, and the last gentlemen, the septic tank based upon

where this addition will go, is still 13' away from the new structure, and the old is

beyond that

Ch. Ross: It's still as depicted on the 2012 plan, and you are not relocating any of that?

N. Lefaivre: Nope Ch. Ross: Okay,

G. Sagar: It would appear Mr. Chairman, on the last variance we granted, it allowed that

deck which was, needed relief on the side yard setback to closer to the property line than we are required. So this one is really just making an interior improvement if you will, so it's less intrusive, but they still, being a corner lot,

and being undersized they still

Ch. Ross: And it's on the other side of the lot of the previous

G. Sagar: And that's another, like the first petition, and irregular shaped lot.

Ch. Ross: Right, exactly. G. Sagar: The size

Ch. Ross: Does anyone else, on the board, have any questions? Observations, at this time? If

you have nothing further, gentlemen, I'll ask if you would take a seat, I will poll the audience on this. On the Montgomery petition, is there anyone in the audience who wishes to speak in favor of the petition? Seeing or hearing none, is there anyone who wishes to speak in opposition to the petition? Seeing or hearing none, unless any members of the board have any questions of Mr. Montgomery or Mr.

Lefaivre, I'll ask for a motion on the public hearing.

G. Sagar: I move we, close the public hearing, Ch. Ross: Do I have a second on the motion?

R. Read: Second

Ch. Ross: Any discussion on the motion to close the public hearing? Hearing none, I'll ask

for a voice vote, all those in favor of closing the public hearing signify by saying Aye, opposed No, Ayes have it 5-0. Do I have a motion on the petition as submitted for the variance and for the special permit for the lot size and the side

vard setback, respectively?

G. Sagar: Mr. Chairman, This one we do have a zoning determination by Mr. Betts, on May

4th,

Ch. Ross: Correct

G. Sagar: I would move that we uphold his decision as amended by the applicant for the

proper size, the 20 x 12, you said, or the 22 x 12,

Ch. Ross: 12.6 x 20, I believe is the new addition, correct?

N. Lefaivre: Correct

Ch. Ross: So we'll amend from 20 x 22 to 12.6 x 20, all those in, anyone second the motion

to uphold the determination of the building inspector, as amended on the floor this

evening?

S. Halajko: I'll second it.

Ch. Ross: Any discussion on that motion? Hearing none, all those in favor of upholding the

determination of the building inspector, as amended, signify by saying Aye, opposed no, ayes have it. And finally on the pending petition, for relief, variance relief and special permit relief for the lot size, undersized lot size, and the setback,

side yard setback, do I have a motion.

K. Rondeau: So moved

Ch. Ross: Do I have a second on the approval of the petition as submitted?

S. Halajko: I'll second it

Ch. Ross: Any discussion on the motion to approve the petition for a variance and a special

permit relief, as submitted? Hearing none, I'll ask for a voice vote, all those in favor of granting the petition, signify by saying Aye, opposed No, ayes have it 5-

0, Good Luck Mr. Montgomery.

S. Montgomery: Thank you

Ch. Ross: Next matter is Case 2016-12 Orion Realty, Owner, Kathleen Buckley, Canine

Mastery, petitioner. Good evening Mr. Navega,

S. Navega: Good Evening

Ch. Ross: Before you get started, have you seen a copy of the correspondence from the

Animal Control Officer, that

S. Navega: I have not

Ch. Ross: What I would suggest, if it's alright with you, if we give you a copy of it, give

you a few minutes to review it, and take you out of order, and take the last case

S. Navega: That'd be great

Ch. Ross: Okay, I'll give you; do you have an extra copy? Great, so we'll all be on the same

page. Thank you, sir. Okay, out of order, but the Case number 2016-13 James

Dias. Mr. Dias, please.

S. Ainsworth: For the record Shawn Ainsworth, of InSite Engineering for Mr. Dias.

Ch. Ross: Okay, okay Mr. Ainsworth, would you raise your right hand please? Do you

swear or affirm that the testimony you are about to give will be the whole truth?

S. Ainsworth: Yes,

Ch. Ross: Thank you, you may proceed

S. Ainsworth: What we have out here on Lancaster Street, 41 Lancaster is an existing dwelling,

what Mr. Dias is proposing to do is to take a 3 season porch, in the front, enclose that to make it livable, 4 season livable, construct a covered porch in front of that, and put an addition on to the side along with the front. What he's looking for is relief from the front yard setback, per the letter we received from building inspector Betts, down to 10.2 which would be the covered porch, the 4 x 10 covered porch, and to 13.4 which would be the addition that is going on the house. The addition is going on the left side of the house, reason being is we have a driveway over to the right, and we've got the septic system in the rear, so it's the most ideal place to put it, as far as disruption on the lot. From a hardship standpoint, the house was built in 1920, prior to any zoning, whether it be in town or with the state, so basically, the position of the house on this lot, really kind of prohibits us from putting the addition anywhere else, or again with the septic system and the driveway, it is the most ideal place to put it. The lot does conform to the current zoning, of R-1, it does have the 100' of frontage, as you can see it has 150' of frontage and it does exceed the 14,500 for the area, its 15,000 sq ft lot.

Does the board have any questions?

Ch. Ross: As I understand your existing conditions and your proposed plans, your client

currently is encroaching in the set back more, than this addition will encroach, is

that correct?

S. Ainsworth: No, that is not correct,

Ch. Ross: Because I see 8.6' now.

S. Ainsworth: That 8.6 basically is to a deck style set of stairs, so yes, as far that goes, that

existing is at 8.6'; the new porch would be at 10.2'. So, it would be, the egress

would be moved back a few feet, a couple of feet from the street. Being more

conforming that

Ch. Ross: That's right, so you still need relief because you are within the side yard, side

yard requirements, but the proposal is less than already exists.

S. Ainsworth: Yes,

S. Halajko: Does Mr. Dias currently reside there?

S. Ainsworth: I believe so, to be honest with you, Mr. Dias was here, he is here

S. Halajko: Only because I see on this here application, property owner, James Dias says

owner address is 124 Northrup Street Warwick,

J. Dias: I live at both places. I reside here with my brother at times. I live in Warwick as

well, my plan is to move

Ch. Ross: Please raise your hand, do you swear or affirm that the testimony you are about to

give will be the whole truth?

J. Dias: Yes, I do

Ch. Ross: Okay, continue

J. Dias: I grew up in the town of Seekonk, I've been here for like 50 years, my brother

lives by himself, currently, and my plan is to make this place a little more comfortable and move in with him, and sell my house. He's a single guy all by himself and my mother's wish was to take care of me, she was alright, so I got to make these little adjustments to make it a little more comfortable for my brother

and I. Hopefully the board approves that

S. Halajko: Thanks for the clarification

Ch. Ross: Do you have any other questions of the applicant, or Mr. Ainsworth? Nothing at

this point? Do you have anything further, Mr. Ainsworth? Okay, if you take a seat, I'll simply poll the audience. Is there anyone in the audience who wishes to speak in favor of this petition? Seeing and hearing none, is there anyone in the audience who wishes to speak in opposition to this petition? Seeing or hearing none, do any members of the board have any questions, on this petition of either the engineer or Mr. Dias? Hearing none, ask for a motion on the public hearing.

G. Sagar: I move we close

K. Rondeau: Second

Ch. Ross: Any discussion on the motion to close the public hearing? Hearing none, all those

in favor, signify by saying Aye, opposed No, Ayes have it 5-0. Do I have a motion on the building inspector's determination by letter, dated May 16 of this

year?

G. Sagar: Move we uphold

Ch. Ross: Any second?

K. Rondeau: Second

Ch. Ross: Any discussion on the motion to uphold the determination of the building

inspector, hearing none, all those in favor signify by saying aye, opposed no,

Ayes have it 5-0, Good Luck Mr. Dias

R. Read: We didn't vote on the...

Ch. Ross: Oh, wait a minute, hold on a second, no, no I'm sorry, we upheld the building

inspector. On the petition itself, for the variance relief for the setback

requirements, as submitted?

G. Sagar: So moved

R. Read: Second

Ch. Ross: Any discussion?

K. Rondeau: Yes, just for the record, there's a couple of things going on here with this in

addition to just the fact that the building was placed 80 some odd, almost 100 years ago, you have other homes in the area, that already, almost on top of the street, also, so this would be, in addition to, the other hardships noted, we could say that's in keeping with the neighborhood. Which is something that's different?

Ch. Ross: That whole neighborhood is pre-zoning, so you could put your house anywhere

you wanted.

K. Rondeau: Right, so this would be in keeping with the neighborhood any ways so,

R. Read: I believe they are on 3 lots, it looks originally, each lot was about the size of this

room.

K. Rondeau: Right,

Ch. Ross: I think there is a pending motion, correct?

K. Rondeau: Yes

Ch. Ross: Anything further for discussion? On the motion to approve the petition as granted,

signify by saying aye, opposed no, ayes have it 5-0. Now you are all set Mr. Dias

J. Dias: Thank you.

G. Sagar: Take a 5 minute recess?

Ch. Ross: Take a 5 minute recess until Mr. Navega is back in the room.

Ch. Ross: Ok, the zoning board of appeals is back in session, its 7:34pm. Mr. Navega, have

you had an opportunity to review the correspondence that was provided you?

S. Navega: Yes

Ch. Ross: Having said that, if you want to proceed, on

S. Navega: Good Evening, I'm Stephen Navega, I'm an attorney, I have an office address of

447 Taunton Avenue in Seekonk, and I'm also a resident of the town, residing at 175 Warren Avenue. I'm here tonight representing Kathleen Buckley owner of Canine Mastery, regarding the special permit, or the appeal of the animal control officer, building inspector's decision. One of the things I did when I reviewed this case is I reviewed the history of the situation, and I note that your board in 1997 issued a special permit granting the use of area for the doggie camp, or whatever they termed it at that time. I will reiterate it is not a kennel, even though the law in 2012 changed and defined and a lot of particulars having to do with animal control. First thing I would suggest to your board, you should, and I'm going to urge to make a motion later on, is to nullify paragraph E of case 1997-21 that limits the (inaudible) special permit to a 10 year period. It's simply; something that goes beyond the public policy kind of an issue, and is certainly is not contemplated by the power granted to the zoning boards under 40a, particularly section 9. Of course you know, on a special permit a main (inaudible) imposed conditions safeguards and limitations, on time or use, however it's not contemplated that you would authorize the use and then give a limitation to be reviewed again when it's a new board, new town official, new zoning board, whole new criteria, new neighborhood, new everything and expect and applicant to come in here and be able to reiterate what they said in 1997, hoping for a vote from your board. I mean if you want to use, something of an analogy, that would be like, that would be like granting Chardonnay's a permit to operate a restaurant

and then say "come back in 10 years and we're going to review it again. If we think you're okay we might reissue the permit" so that's one of the problems I see here. You could go around town and think of every special permit you ever issued, and you put a time limitation on it, it would be contrary to any kind of business relationship. One of the things that happened here also is that the 10 years went by, without my client realizing that she was in technical violation of a special permit that was granted. So here we are 19, I believe, I believe 19 years later, she has 17 employees, some of which are subcontracted, but 17 employees there, has been operating since 1997, since the permit was granted, and in the 19 plus years, she has never had any problem except for the incident that occurred some weeks back. So I would, you know, suggest to you that a granting of a special permit in this situation, and I reviewed everything, the granting of a special permit in this situation is appropriate in the sense that the zoning board of appeals at the time in the minutes, they discuss this ad nauseam, about whether or not it should be or shouldn't be, or should be or shouldn't be, and they determined that it was as an allowable use at the time, so nothing's changed, other than general laws change in 2012, but it's not an ex post facto kind of a situation, you can't go backwards once you grant something, as a quasi judicial board, you folks set the standard, you folks set the laws, you created the law and you can't, in my opinion go backwards from what you did in 1997, to deny the situation. Keeping in mind that it is not a kennel. The general laws define kennels as "a pack or collection or dogs, on a single premises", I don't even know what that means. I mean does that mean two dogs, three, seven, it doesn't talk, it doesn't further define it. But you know she wants to remain a good neighbor, she wants to remain in business there, and she has like I said, for 19 years, she doesn't board animals, she teaches owners really how to interact with their dogs. All owners are picked up, excuse me, all dogs are picked up before 7 o'clock at night, and no dogs brought to the place before 7 in the morning. You know she likes to call herself a dog camp, so I would suggest to you, that it would be appropriate that you extend, first of all delete, or nullify, bring forward case '97-21 bring it forward to nullify, delete or amend, so that paragraph E is no longer part of that decision, and grant her the relief she is seeking tonight, and that is just to continue going along she has been enjoying for 19 years. Thank you,

S. Halajko: So she has been there 19 years as the owner?

S. Navega: I think she was, I think she was a partner with the owner, initially but she bought out the original fellow, she been there for a period of time

S. Halajko: So basically

S. Navega: Kathy, how long have you been there?

K. Buckley: I've been there since the beginning, 19, years

S. Halajko: So basically, in '97, in 2012 something changed from '97, and she was unaware?

S. Navega: No, the law changed. The acts of 2012 changed the defined anything to do with animal control, it created the animal officer statute, you know back in the day Jan Bowden was the dog officer, now they, now it's the animal control officer, so they enacted a bylaw talking about all of the livestock, fowl, kennels a keeper, nuisance dogs, person, personal attack those kind of, that's what set up all the statutes and by laws by which it gives the towns the ability to act against nuisance

dogs or dogs that run away, research institutes also for animals, veterinary clinics all of that kind of stuff was amended by the acts of 2012. Not just dog kennels, everything having to do with animal control.

S. Halajko: Okay S. Navega: Thank you

Ch. Ross: So you're suggesting that, as I understand it, that by virtue of the 1997 decision,

your client has a legal non conforming use, that she's grandfathered in and the

2012 amendment to the laws doesn't affect her.

Doesn't affect her S. Navega:

Ch. Ross: And, just an observation, if you have a problem with what the word kennel

means, then, your argument is not with us.

No, I understand, I understand S. Navega:

Ch. Ross: Ok

S. Navega: and the same thing is true when I read the animal control officer incident report, it

really has nothing to do with the zoning, other than her observation of what happened that particular day. And by the way all those fences have been fixed, the

animal control officer has not been back to review the physical layout.

What about the cages, when the ACO suggest that there are large dogs that are too Ch. Ross:

small?

S. Navega: This is Miss Buckley, maybe she can...

Would you raise your right hand ma'am, please? And do you swear or affirm that Ch. Ross:

the testimony you are about to give is the truth?

K. Buckley: Yes.

Would you state your name for the record, please? Ch. Ross:

K. Buckley: Kathleen Buckley And you're the owner Ch. Ross: Canine Mastery K. Buckley: Petitioner, go ahead Ch. Ross:

K. Buckley: Umm, I

S. Navega: He's referring to the animal control officers' report

K. Buckley: Report about the kennels? Umm, we give significant amount of space for every

> dog. She talked about pens which are exercise pens, which are professional exercise pens, and since she mentioned those, we put wooden supports all the way around them, so there is no way they can move in any way shape or form, um, we just give those to the large Great Danes that wouldn't be comfortable in a crate anyways, so, um, it's um, not an issue, I would not put any dog in any situation that I wouldn't put my own in, so, I, that, feel very strongly about that and would

not crate a larger dog into a lot of space that they shouldn't have.

So, let me just read, verbatim, this is something that was received by the zoning Ch. Ross:

> secretary on June 16, and I don't have the date of the visit, with that as a given it says; "other large breeds were in small kennels not large enough for them to fully

lie down", and you disagree with that?

I totally disagree with that. K. Buckley:

That's Ch. Ross:

S. Navega: What page is that?

That's on the first page that I gave you, the one with the June 16 date on the lower Ch. Ross:

S. Navega: (inaudible)

K. Buckley: There was German S hepherd in a 42 inch crate, I think that is plenty

Ch. Ross: We're not competent to make that determination; I just wanted your position on it.

K. Buckley: I understand that

G. Sagar: Mr. Chairman, if I may, I have some real issues procedurally with this. First of all,

it's to my understanding that in '97, when this board issued case # 97-21, a quicker preliminary search by our secretary could not find it being recorded at the

registry of deeds, so in essence this special permit does not exist,

Ch. Ross: Was never granted

G. Sagar: Okay, taking that into account, under Mass general law chapter 40a, section 7,

they've been operating there for 19 years. They're grandfathered. I, to quote Mr. Navega, and I'm surprised they didn't bring it up tonight; I don't even think they have to be here. Number 1. Second of all, with all due respect to our animal control officer, it's not our prevue to know if the cages are big enough or small enough. We have zoning issues; this petitioner is here at the instructions of the zoning, of the animal control officer, so first time we've ever had that. And I know you referenced earlier the building inspector, He was never involved in this.

Ch. Ross: Was never involved in this, there is no letter of determination.

S. Navega: No letter from him

Ch. Ross: And no letter from, (inaudible)

G. Sagar: Under our zoning, you can't have a kennel in an industrial zone, and I'm a firm

believer, knowing this operation, cause I've driven by it, since they been in operation, it is not a kennel, under our zoning, it is exactly what they originally applied for in '97. If now under a different entity within government says no it's a kennel and they need a kennel license under the animal control officer, that is something separate and distinct from zoning, it has nothing to do with us, now we'll go back when the town's animal control facility next door, came in at the same time when another facility on Warren Avenue. Mr. Read and I did a lot of work and research on that, and we quoted a lot of the C.M.R's and those are the laws you're talking about changing. I don't see where they're applicable to this petitioner. She runs a school, and a very nice school. Mr. Read and I happen to go there one day, and we took a tour of it. So I would, where the argument could be made that they don't even need to be here, I think the cleanest thing we can do, is they applied for it, is give them the special permit and eliminate some of the unnecessary requirements that are on it, and let them go about and do what they've been doing, they're a great asset to the town, and I just, think, that, they deserve our support and get through this maze of regulatory junk.

Ch. Ross: Well, I am of the same mind, as you are in this sense. As I suggested to Mr.

Navega, I think they have a legal non-conforming use, whether it is pre or post the amendments of 2012. Having said that, I agree, again, I don't think they have to be here. I'm very reluctant as a policy issue, to be granting special permits when

special permits are not required. That's just bad practice,

S. Navega: Mr. Ross, with that said, then a good suggestion might be for the board to

consider would be to bring forward '97-21 just nullify paragraph E and

Ch. Ross: Well, the problem with that Mr. Navega, and I rely on Mr. Sagar because I didn't

do the research, if the 1997, was not recorded at the Registry of Deeds,

S. Navega: I don't know

Ch. Ross: Yeah, did you research it, and it was not recorded in 1997

B. Garrity: No, I didn't find it, I can see if I can find it

Ch. Ross: If that's the case, then there is nothing for us to amend.

S. Navega: We've had this discussion before but frankly, I think that if you, I the board votes

a variance or a special permit, that doesn't get recorded I still think it's the law,

fact that it's not recorded is just an administrative

Ch. Ross: It's more than that, I think it's much more than that.

G. Sagar: after 2 years, it doesn't exist.

Ch. Ross: There's case law on that as I think you know.

G. Sagar: So I mean, I'm all in favor of whatever we can do to help this business clean it up

and just let them move forward and do what they've been doing. And if there is a

kennel license that the state requires, that is a separate

S. Navega: Separate issue

Ch. Ross: That's a separate issue, I'm inclined to suggest one of two things, and I don't

want to shift the burden on you and your client, Mr. Navega, either withdraw the petition without prejudice or we would simply dismiss it as in providently filed

and say it's a non issue. So do you have any comment on either of those?

S. Navega: I prefer the board dismiss it out of hand, rather than...

Ch. Ross: I think that would be my preference but I'm certainly open to suggestion.

R. Read: Say that again

S. Navega: If the board dismisses the matter out of hand, rather than me asking for a

Ch. Ross: Withdrawal

S. Navega: Withdrawal without prejudice

G. Sagar: In '97, was an appeal from the decision of the inspector of buildings, for a dog

training and care facility? Ok, that's, other than the hours being extended from what the original special permit was, I don't see where anything really changed

that.

Ch. Ross: Yup

S. Navega: No, nothing changed

G. Sagar: You recognize too that, if it does become a kennel and you board overnight, then

you are in violation of the zoning by law

S. Navega: The fact of the matter is, this is always an industrial zone, and a kennel is never

allowed in an industrial zone, even back n 1997

G. Sagar: Even though there's one that Mr., the owner of the industrial park was the clerk of

the works for the city of Attleboro, within eyeshot and considered to be a parties in interest 'cause they are abutters and 1.2 million dollars, it's a beautiful facility.

Ch. Ross: So, in my view, it's either permitted by right, or worse case scenario, its legal non

conforming, and you don't have to be here. And I would certainly entertain a

motion to dismiss the case as not being within our jurisdiction.

R. Read: Well, can you clear this up for me? If we just erase everything that's happened,

which is basically what you're saying, they're still in a incorrect zone, don't we

have to give them

Ch. Ross: No

S. Navega: We're not a kennel

Ch. Ross: Not a kennel, that's the crux of Mr. Navega's argument, they board, they train,

short term day care, it's day care is not overnight, they're not kennels, they're

training, day care.

R. Read: So that can be an industrial use then?

Ch. Ross: I think so

S. Navega: That's what you fellows said back in '97, that's what I'm saying now, nothing's

changed.

G. Sagar: But they felt in 1997, a special permit was necessary, or, we could issue a special

permit under the private/parochial schools, well, no really, when you look at back in '97, the bylaw read, "educational" facilities, and that's why their sign says "defiantly a dog school". I mean, you know. I can tell you of another school that's in an industrial zone, but it's a dancing school so, a school, is a school, it's not defined. So I'd like to do whatever is the cleanest and accommodates the

business owner.

Ch. Ross: I don't...

S. Navega: (inaudible) we're here because the animal control required us to be here
Ch. Ross: As far as I am concerned these are animal control enforcement issues, if any,

S. Navega: If any

Ch. Ross: And it has nothing to do with us.

G. Sagar: If we're going to say that, I'd like to have a decision of this board, saying such,

that they can record, so that in future they don't have to come back and have other boards, if the board changes, they've got a document that certifies them going

forward.

Ch. Ross: I, mean

K. Rondeau: Can I just ask a question?

Ch. Ross: Sure,

K. Rondeau: Does this fall under "commercial recreation"? Outdoor commercial recreation?"

Ch. Ross: No. I don't think so. I think, (inaudible) recreation

G. Sagar: For the dogs,

K. Rondeau: For the dogs, yeah,

G. Sagar: You can either say it's recreation for the dogs, or a school for the dogs.

Ch. Ross: I think we are being too creative now.

K. Rondeau: Nah, I'm just asking

S. Navega: That's what happened in '97.

Ch. Ross: I'm sorry?

S. Navega: That's what happened in '97

K. Rondeau: I was just asking the question, that's you know

Ch. Ross: I'm perfectly willing to entertain a motion if someone chooses to make it, that it is

the determination of this board that Mrs. Buckley's operation is operating legally, as a matter of right, in an industrial zone, provided that she is not operating a

kennel, if we have that vote, I would be glad to record that.

G. Sagar: Ok, so first we have to close the public hearing.

Ch. Ross: Yeah, I understand that,

G. Sagar: If it's agreeable with everyone else

Ch. Ross: I understand it, and we will listen to anyone that wants to speak.

R. Read: You didn't ask anybody from the audience.

Ch. Ross: That's what I said; we have to do that first, before we act on the public hearing.

So if you'll take a seat and bear with us,

S. Navega: Thank you,

Ch. Ross: Thanks, Mr. Navega. Ok is there anyone in the audience who wishes to speak in

favor of the Canine Mastery Inc, application? Good evening

B. Ward: Good Evening, my name is Bill Ward

Ch. Ross: Bill Ward?

B. Ward: Yes,

Ch. Ross: And your address, sir?

B. Ward: I'm a principal owner of the building itself.

Ch. Ross: Of Orion Realty?
B. Ward: Orion Realty

Ch. Ross: Ok, will you raise your right hand please, and do you swear or affirm that the

testimony you are about to give will be the whole truth?

B. Ward: Yes

Ch. Ross: Thank you, go ahead

B. Ward: I was here, before this board, perhaps 19 years ago, when Kathy originally

approached us about leasing the building from us, up until this point, I know there was an incident a month or two back, and this has raised a lot of concerns, I guess through the animal control officer, until that point, we never really had any issues here, I can attest to the fact that it seems like their operation actually works very good for other people in the industrial park, which it seems they get busy perhaps in the afternoon, people come in after work for dog training, and stay until 8 or 9 o'clock or something, and then on the weekends, they're fairly busy there, they do a lot of training, you'll see a lot of people there on a Saturday, they seem to be busy when everyone else is, perhaps, gone, we've never really had any issues, we've been there for 18-19 years so I just wanted to state the fact it hasn't been an issue up until an incident occurred and I guess it's been brought before the animal

control officer so

Ch. Ross: None of that is an issue for you as the landlord

B. Ward: No, Ch. Ross: Okay,

B. Ward: Any questions you may have about the building or site, I'd be more than happy to

answer them

Ch. Ross: I'm all set on that, if anyone has any questions

G. Sagar: I think it's a perfect location for that use

Ch. Ross: Yeah, I agree

B. Ward: I know they do a good job there, I have taken two of my dogs there to be trained,

one did well, one didn't. They do a good job, I know they do care about the animals, they've got a little set up out there, they actually have agility training and there's quite a crowd there on the weekends, so they do a great job. I'd hate to

lose them as a tenant, they're good people, they do a good job.

Ch. Ross: Great, Thanks Mr. Ward

B. Ward: Thank you

Ch. Ross: Is there anyone else 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 this petition? Hearing none, seeing none, I'll entertain a motion, unless anyone has any questions on the public hearing?

G. Sagar: Move we close it Ch. Ross: Hold on Mr. Navega

S. Navega: The only thing I was going to suggest is that, like Mr. Sagar urged the board to

consider that, I'd like something to record, so that we don't have to worry about

coming back again, without time (inaudible)

Ch. Ross: We're going to deal with that. Ok. There's been a motion made to close the public

hearing, do I have a second?

S. Halajko: Second it,

Ch. Ross: All those in favor of closing the public hearing signify by saying Aye, opposed

No, ayes have 5 to nothing, there is no determination to uphold or reverse. Do I have a motion on our determination of the legality of the current use by the

petitioner?

G. Sagar: Mr. Chairman, I would move that we would issue a decision of this board that the

use is allowed by right and that no further special permits are necessary under its current use, provided you articulate the decision so it can be recorded in a proper

form.

Ch. Ross: Okay, I think that's fine, would, I think that's fine for the motion. Do I have a

second on that motion?

R. Read: Can I ask question?

Ch. Ross: Sure,

R. Read: Should we somehow state that we're eliminating what happened before this?

Ch. Ross: I don't think that is necessary, the motion now, is today,

R. Read: I understand

Ch. Ross: that use is legal as a matter of right, under the current zoning by laws.

G. Sagar: We could say it supersedes all previous

R. Read: I would be happy with that

Ch. Ross: Fine

G. Sagar: Would you second it Mr. Read?

R. Read: I'll second it

Ch. Ross: Just to be clear, the motion is, as I understand it, that it is the determination of this

board that the current use at the property 102 A Pond Street, Seekonk is permitted by right under the current zoning by laws, and any determination of the previous, of any previous zoning board as to special permits or variances are void. Do I

have a second?

G. Sagar: Mr. Read seconded

R. Read: I seconded

Ch. Ross: Ok do I have any discussion on the motion? Hearing none, on the pending motion,

all those in favor signify by saying Aye, opposed No, Ayes have it 5 to nothing.

S. Navega: Thank you very much

Ch. Ross: Okay Mr. Navega, Thank you

S. Navega: Good by now.

Ch. Ross: Good Luck Ms. Buckley

K. Buckley: Thank you

So we have approval of the June 6th minutes, we had only 4 members, I was Ch. Ross:

absent so I will recuse and Mr. Sagar, if you would.

We move, I will entertain a motion that we approve as circulated of the June 6, G. Sagar:

2016 zoning board meeting.

Second K. Rondeau:

G. Sagar: Any discussion? All those in favor? Opposed, so voted. 4-0-and one abstention.

Ch. Ross: Ok, 2014-26 that's the Alves case that we all recall, on 47 River. This was

brought to my attention by Bridget, because she got a visit from Mr. Alves, and I did a little work, I took it upon myself and had it circulated to the members of the board, for review and discussion, and just to get the sense of the board as to, assuming you read it, very, very briefly, he was in for a zoning variance, special permit. Mr. Alves was under the impression that the two year period applied and the minutes don't reflect, do not reflect that the variance was only for one year, the fact that the minutes don't reflect that, I don't think is determinative because it is the law. So the issue becomes, in the magic words of the law, the actions on either the variance or the special permit "must be exercised within one year" and it all pivots around, what is an exercise of a variance? In a typical case it would be pulling a building permit, and then we're all set. This board knew at the time, because it was part of the original petition that there was an existing residence, which was, from what I can gather, in rather terrible shape that had to be razed, cleared, the lot had to be prepared for the new construction. For reasons that are not clear to me, the removal or razing of that old building took more time than anticipated, but it started in September of 2015, which was like 7 months after the variance was granted. Is acting on the razing of the house a sufficient exercise of the variance under these circumstances and these facts, to total the one year. My

sense is that it is, under these facts.

I would agree too R. Read:

G. Sagar: I read your memorandum; I thought it was very well thought out, and written, and

absolutely.

What I don't understand is how he was able to raze the building without a the K. Rondeau:

Ch. Ross: He pulled a demolition permit

K. Rondeau: He got that

Ch. Ross: he got the demolition permit in August of 2015, so that was 7 months after the

variance was granted and matter of fact, I asked Bridget to check that, to me the pulling of the demolition permit is what triggered this whole thing, and I think

he's ok.

I would think would, that was part of the whole K. Rondeau:

Typically if you had G. Sagar: Part of the whole plan K. Rondeau:

Had one year, if you on the day before it was going to expire pull a building G. Sagar:

permit, you get at least another 6 months.

That's right Ch. Ross:

G. Sagar: He's certainly showed his intentions, he's certainly exercised it, so I have no issue

That's my view as well. Anyone opposed to that view? Ch. Ross:

G. Sagar: Does he need something for the building inspector, or? Ch. Ross: We probably should just in case in the absence of a full time building inspector, so if I would suggest a motion that the issuance of the demolition permit, on August 8 of 2015, based upon the February 12, 2015 grant of the variance would be sufficient to told the one year, requirements to exercise the variance under the general laws and the by laws G. Sagar: So moved K. Rondeau: I would add that it was part of the plan that was submitted Ch. Ross: That is correct, that was part of the application, K. Rondeau: Part of the application, we should add that in, G. Sagar: Sure. As part of the motion K. Rondeau: G. Sagar: So moved. Ch. Ross: Second? R. Read: Second Any discussion? Further discussion? All those in favor of the motion as stated, Ch. Ross:

J. Alves: John Alves, 25 River Street, you saved a marriage. Thank You Ch. Ross: Good Luck. Do we have a motion to go into executive session?

G. Sagar: Mr. Chairman, that is on the agenda, but I don't see the need, and I'll say that only because we were given just an outline of the two things we have pending and

signify by saying Aye, opposed no, ayes have it 5 to nothing, Ok.

there's nothing that needs to be discussed behind closed doors

Ch. Ross: That's right.

G. Sagar: Just on the record, as you alluded to early in the meeting, the selectmen have

voted to replace existing Kopleman and Paige but I believe they will be finishing

up what they had started.

Ch. Ross: Yeah, That makes sense, So Devereaux, Lopes, and whatever the new partner is,

is coming on effective July 1st.

G. Sagar: July 1, I believe so.

Ch. Ross: Okay, do I have a motion to adjourn,

G. Sagar: So moved, Ch. Ross: Second? S. Halajko: Second

Ch. Ross: All in favor, Aye, opposed No, we are adjourned.

The public meeting was recessed at 8:10 PM.

Respectfully submitted by:	
Bridget Garrity, Clerk	