

**SEEKONK ZONING BOARD
REGULAR MEETING
MINUTES**

January 11, 2016

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

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

Ch. Ross This is the meeting of the Town of Seekonk Zoning Board of Appeals, January 11, 2016. It is 7:00PM and the meeting is now in order. I am going to go over our procedures; I will read the agenda for the public hearings for this evening and call the cases in the order in which they appear on the agenda. Counsel for the petitioner will be called to make a statement, if he/she deems it necessary and call the appropriate witnesses. At some point various members of the Board may have questions of the witnesses and we will ask them and get the appropriate responses. We will ask if there are any members of the public who would like to speak in favor of or in opposition all questions shall be directed to the chair and answered. 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)

The two matters appearing on the agenda this evening are Case number: **2015-16 Auger Realty LLC**, 48 Case Avenue, Seekonk, MA, 02771 Owner, by Matthew

Antonio, Palmer Construction Co., LLC, P.O. Box 41, Swansea, MA 02777, Petitioner, appealing the decision of the Zoning Enforcement Officer/Building Commissioner to allow a proposed new dwelling with a second kitchen at 1 Sunset Drive, Plat 27, Lot(s) 138 in a R-2 Zone district containing 24,330 sq. ft. of land this matter was tabled at the hearing of December 14, 2015 and continued to this evening.

The second matter is case number: **2015-17 Andrew Grossman**, 393 Fall River Avenue, Seekonk, MA, 02771 Owner and Petitioner, requesting a Variance under Zoning Bylaws Section 5.1.4 to allow the construction of an addition and second story within the side setback, 5' from the property line, at 393 Fall River Ave., Plat 11, Lot 4 in an R-3 Zone district containing 46,974 sq. ft. of land.

Those are the two matters that we have for public hearing; there after we will close the public hearing and we have a work session among the members of the board.

The first matter was a tabled matter from last month Auger Realty, LLC, Mr. Grouke I believe you represent the petition, the owner, if you are prepared to go forward, please step forward please.

Attorney Edward F. Grouke: Yes

Gary Sagar: Mr. Chairman, initially on the record could we clarify the ownership of this lot, please?

Ch. Ross: Ok, are you suggesting that Auger Realty LLC is not the record owner?

G. Sagar: That is correct

Ch. Ross: Ok

G. Sagar: If they are I cannot sit here

Ch. Ross: Ok, Mr. Grouke

Atty Grouke: Yes

Ch. Ross: Would you state for the record please, if the owner Auger Realty LLC, which appears as the owner on the agenda, is in fact the record owner with the registry of deeds?

Atty Grouke: No, the title to this has been transferred to a new buyer, I believe it is Palmer River Construction is the name of, I'm not sure if is LLC or Corporation, but I can (inaudible) information

Ch. Ross: Is that Mr. Antonio's limited liability company?

Atty Grouke: Yes it is, I see it Palmer Construction Co, LLC.

Ch. Ross: Ok, and that deed has been recorded in

Atty Grouke: Yes, I stand corrected, the owners of the, the eventual owners of the property are here and just been advised that they, they purchased the property.

?? (Inaudible) not palmer

?? They own the land?

Atty Grouke: Correct, and they are Dr. Chadi C-H-A-D-I Kaba K-A-B-A and his wife Donna Clegg, C-L-E-G-G.

Ch. Ross: C-L-E-G-G

Atty Grouke: C-L-E-G-G

Ch. Ross: Ok, and that deed from Auger Realty to Dr. Kaba is of record,

Atty Grouke: I believe so, yes, yes it is

Ch. Ross: Ok, are you ok Gary?

G. Sagar: Yup

Ch. Ross: Going forward

Atty Grouke: Ok, so

Ch. Ross: Just to keep the house in order,

Atty Grouke: Yes

Ch. Ross: Would you like to amend the petition to reflect the new ownership?

Atty Grouke: Yes I would

Ch. Ross: Ok, so the record will reflect that Dr. Chadi Kaba and Donna Clegg K-L-E-G-G are the owners of the property at 1 Sunset Drive, Seekonk MA.

Atty Grouke: Correct, C-L-E-G-G

Ch. Ross: C-L-E-G-G, ok I stand corrected

Atty Grouke: Ok, Thank you

Ch. Ross: Proceed

Atty Grouke: When we first came here there was some confusion as to what was being requested, why it was being requested and what the building inspector had determined and I believe that I have the information to clarify that, which is that, when the plans were presented to the building inspector, he, and they included the kitchen and the bathroom in that area, in the back of the plan, the building inspector saw that as having the characteristics of a separate dwelling unit. Though, and those characteristics being living space, sleeping space, kitchen eating area, sanitary bathroom. So, he observed those characteristics about that area and he concluded that it was a separate dwelling unit and that's why in his letter he says he's denying the petition as being a two family, now the applicant at the time did not want a two family. And never wanted a two family so that's why he didn't ask in his petition for any kind of variance or anything like that for a two family, even though that's what was denied, what he asked for was the right to construct a kitchen in that area and he the fact is that Dr. Kaba and his wife intend occupy the premises with their children and Dr. Kaba's mother and father, who indocently recently came to this country as a result of, really a political unrest in Syria, their house was literally bombed and they had to flee the country for their own safety. So now they are living here, and intend to live together, under this one roof, but it's going to be under one roof, it's not going to be a two family or even an in-law, and what it would point to as far, is that's concerned is, that mainly that there is access, really free and open access in the area in between the areas of the house. So if you look at the plans, I invite anyone else to come up and take a look if they want to, that it shows this area that's kind of connected, well it is connected, connecting these two areas of this house that's just free and open there's doors and that there just for convenience sake if you will but there's from the kitchen in the main unit it goes into a bathroom mudroom and then into a tiled entry and that's a free and open access between these two units, so that sense it's not, it's not a separate dwelling unit at all. The other thing about, this property is that it's, there's not going to be any separate utilities whatsoever, there's one heating system there's, it's one electrical system, one water service, so there's not like there's going to be two separate utilities feeding, the, you know, what is an entire one dwelling unit, so, in that sense it's also not a two family or anything like that, so...again the reason why the request was made for a kitchen is

based on what, how the building inspector saw this plan. Though it's our belief that the building inspector alone identified characteristics of a separate dwelling unit, and certainly he was correct in that but it's just not the whole story. It's not, in any way separate and it's not it's just not two dwelling units there and the applicant doesn't want that. There's always a question in this type of situation that the board might say or anyone might say that, well that's good for these people and we believe them, but what about the future? What about when this property is sold? And then it creates the possibility or the potential for a rental or two family which would not be allowed. Then, I would say that could be addressed, through stipulations, decisions would be recorded and the decision could reflect the fact that this is not a two family property it would not be marketed or sold as such, and it would not be allowed and that would be on record, so...it would show up in a title search for a future buyer.

Shane Halajko: Would you, would you make that a covenant (inaudible) property?

Atty Grouke: Well, absolutely, it would be a, whatever way that would ensure that in the future.

G. Sagar: Covenant or deed restriction?

Ch Ross: I think those two terms are terribly interchangeable, at least I do,

G. Sagar: Yes

Ch. Ross: That would run with the land

Atty Grouke: Yes

Ch. Ross: Can I ask you a really fundamental question?

Atty Grouke: Yes

Ch. Ross: Why a second kitchen?

Atty Grouke: Well because actually, Dr. Kaba could explain it to you that his parents are traditional people and his mother is going to spend a lot of time in the kitchen and she wants her own kitchen

Audience: Inaudible

Ch. Ross: Do you want to bring them up, and

Atty Grouke: Certainly

Ch. Ross: Have them the Dr. sworn in

Dr. Chadi Kaba: Good evening

Members: Good evening

Ch Ross: Would 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?

Dr. Kaba: I do

Ch. Ross: Thank you

Dr. Kaba: Thank you,

Ch. Ross: And for the record, your name please?

Dr. Kaba: My name is Chadi Kaba

Ch. Ross: And spell it? Would you spell it please for the record?

Dr. Kaba: C-H-A-D-I K-A-B-A

Ch. Ross: Thank you Dr., so the questions pending is why the second kitchen?

Dr. Kaba: My mom came from the old country, you probably know, she spends almost three quarters of her day in the kitchen, its' like she cooks and makes cookies, for all of the families for everybody else, and cleans, everything's got to be in the kitchen, so she, the kitchen is basically she spends half her time at least she's a house wife, she never worked all her life, that's all what she does, that's all what she knows, so I think it's just fair for them and for their own independence that to have some kind of sense of being independent and it's for their own integrity that they are living in a tradition to much similar to what we had in Syria, because we had a way higher standard, they were very well in Syria, but after their house was bombed they came here and they have certain standards, that sharing a kitchen for my mom is a little bit tough for her to not go, it's tough for her to share the kitchen, since she does most of her day is in the kitchen,

Ch. Ross: Thank you, I have couple of other comments but, once you proceed, I'll get to those later

Atty Grouke: Actually, the number of kitchens is not, you know, I believed chairman said it last time, you can have six kitchens if you want, so it's really the what is it what is the layout like what's the whole picture here? I think the important thing is access,

these are not separate independent areas, there's free access between these two areas, I think that's very critical to this petition. And with that free access that residents can go back and forth, and then it becomes, it's a home, a single family residential home. That is open to all residents there, there's no restriction, if it was restricted then with separate utilities, and you'd clearly have a separate billing address.

Atty Grouke: I just want to mention one more thing about the applicant, Mr. Antonio, he is, was unable to appear tonight. And I would prefer he'd be here, I'm you know, reluctant to ask for a postponement because this lack of presence if necessary and the board needs more information from him or has any questions of him I could try to reach him, but that there is possibility, that the request for more additional time, if the board needs more information.

Robert Reed: What is his role is he the?

G. Sagar: He's the builder

Atty Grouke: He's the builder

G. Sagar: He's the facilitator, I'm more interested in speaking with the occupants and they're here and I think that's.

Ch. Ross: Do you have anything else Mr. Grouke?

Atty Grouke: Not right now.

Ch. Ross: Ok, do you anticipate anything, do you know

Atty Grouke: No

Ch. Ross: Depending how,

Atty Grouke: No

Ch. Ross: Before we go to the public, do any members of the board have any questions of the owner or the council?

G. Sagar: Not at this time, no

Ch. Ross: Ok. Let's see if there's any, if there's anyone in the audience, is there anyone in the audience who wishes to speak in favor of the application? Hearing none.

?? Mr. Chairman, there is one

Ch. Ross: Oh there was?

Donna Clegg: In favor

Ch. Ross: Oh ok, step up please.

D. Clegg: I'm part owner,

Ch. Ross: You're the owner?

D. Clegg: Is that ok?

Ch. Ross: Do you have anything you want to say?

D. Clegg: Yes, I'd

Ch. Ross: Would you step up please, Ma'am before you start, would you raise your right hand please, and do you swear or affirm to tell the truth and the whole truth in the testimony you are about to give?

D. Clegg: Yes

Ch. Ross: Ok, thank you would you spell your name for the record please?

D. Clegg: Clegg, it's C-L-E-G-G, first name Donna,

Ch. Ross: Go right ahead

D. Clegg: I just wanted to say to, you know, the town and so forth that I really think it's important for our older adults have places to live such as in-laws or quote unquote if that's not the word to use, but like instead of going to a nursing homes or being by themselves especially if they need help but I just think it's very important for his parents to live with us and in the situation like this, and regards to the kitchen and so forth that's her lively hood she does it every day and we really, that's what she does to make her life feel fulfilled and feeds everybody, so I just really wanted to let you know it's very important to us.

Ch. Ross: Ok, Thank you,

G. Sagar: Mr. Chairman, can I ask a procedural question?

Ch. Ross: Sure

G. Sagar: At the end of the day what exactly are we going to be voting on?

R. Read: We've got to have stipulations of some kind

Ch. Ross: The matter before us as I understand and I'll stand to be corrected if I am in error, is the ultimate determination, is this a single family home or is this an in-law apartment? I mean I understand what the testimony is but based on the evidence, the plans, whatever comments that you want to bring to the table because it's clear, at least it's clear to me, that two kitchens is allowed as a matter of right in a single family home, that's your option, this might be a good time to just read into record an email from Dave Betts,

G. Sagar: He is present this evening.

Ch. Ross: Oh, he is? Ok, I want to read it into the record anyway and Mr. Betts I may ask you to come up, this is dated today at 12:21pm and it was sent to the clerk of the zoning board, Bridget Garrity, and it says;

“Good Morning Bridget,

The history of 1 Sunset Drive is as follows,

1. On 10/28/15 I received a permit application to build a single family dwelling at 1 sunset Dr.
2. On 10/30 (2015) a letter of denial was sent to the owner of the property stating that the dwelling was a two family and he would need relief from the ZBA.
3. On 10/30/15 I discussed the status of the permit application with Mr. Matt Antonio as result of this conversation, I issued a permit to build a single family home from a new set of drawings showing the area of the second dwelling “for future use” this would enable him to start construction while action was being taken to resolve the issue of the second apartment with the ZBA
4. There has been no work done on the home to date.

Ch. Ross: From that is what I infer that we are making the determination in the first instance, is this a so called in-law or is it just a single family home with two kitchens? If we determine the latter, then we may consider whatever restrictions or covenants stipulations or whatever we chose to call them, on the approval if the matter is approved. If the petition is approved

G. Sagar: Could you read that sentence again that had the word apartment in it?

Ch. Ross: Yeah, that would be number 3 “On 10/30/15 I discussed the status of the permit application with Mr. Matt Antonio, and he's the builder, On 10/30/15 I discussed the status of the permit application with Mr. Matt Antonio as result of this

conversation, I issued a permit to build a single family home from a new set of drawings showing the area of the second dwelling “for future use” this would enable him to start construction while action was being taken to resolve the issue of the second apartment within, with the ZBA

G. Sagar: By letter of that same date he references permit to the dwelling due to the fact that a two family dwelling unit is prohibited, so

Ch. Ross: Yeah

G. Sagar: Alright so we got two family dwellings, family dwellings, we’ve got apartments, there’s a lot of different terms thrown around here

Ch. Ross: Mr. Betts, would you mind coming up please, would you raise your right hand please? And would you, do you swear to tell the truth, or do you swear or affirm to tell the truth under testimony you’re about to give before the board?

Dave Betts: I do

Ch. Ross: And for the record, just state your name and affiliation

D. Betts: Dave Betts, Building official and zoning enforcement officer with the Town of Seekonk

Ch. Ross: I just read your email, maybe you can clarify for the board precisely what this means or what determinations you made on this application

D. Betts: I got a permit application in and I reviewed it and looking at the plans I determined that was two dwelling units which is not allowed by the board, the second dwelling unit had provisions for eating, sleeping, sanitary and all that, and also separate from the main dwelling, therefore it qualifies as two family –quote–two family.

Ch. Ross: If I could interrupt you, how is it separated on the initial set of plans?

D. Betts: On the initial set of plans

Ch. Ross: There was, go ahead

(Inaudible)

D. Betts: The apartment is this area (pointing to plans) and the main (inaudible). The apartment has a bedroom, bathroom living room and kitchen, all the criteria for a dwelling unit. The separation, you come through a mud room from the main

house and then you can either go outside and out or you can go through another door through a laundry room, through another opening then into the other space, or other dwelling. That's what makes my determination into a two family.

Ch. Ross: If I could interrupt you for one second that appears to be the set of plans I have in front of me.

D. Betts: You may have two sets of plans. One is proposed and the other the change.

G. Sagar: Is there a date on yours, Roger?

Ch. Ross: No, I was looking for a date, and I don't have it

G. Sagar: On the right hand corner, in the column, I've got issue date 8/14/2015

Ch. Ross: Ok, my 8/14/2015

G. Sagar: 8/4/2015

Ch. Ross: 8/4/2015, and I've got a revision date of 11/12, ok

R. Read: Where do you see that?

Ch. Ross: In the title block on the right hand side, sheet A1.1

?: I don't have that

Ch. Ross: It doesn't say revision but it says, dated 11/12/15, description, remove kitchen and bedroom

D. Betts: that would be the second plan, that I approved (inaudible) get going, moving on the house, we're going into November, winters coming, it's time to get building.

Ch. Ross: Ok, so we don't have the kitchen, and we don't have the bedroom on this one.

D. Betts: On the plan,

Ch. Ross: On the plan

D. Betts: On the plan the permit was issued for its correct, no bedroom no kitchen,

CH. Ross: So where the bedroom was it is now denominated office and where the kitchen was it is denominated future use. Is that?

D. Betts: Correct, that enabled me to issue a permit for construction to beat the winter, the weather, and have enough time to go through the appeal process.

Ch. Ross: Ok

D. Betts: That was the whole intent with meeting with Mr. Antonio to try and find a way to move the project forward.

Ch. Ross: Well

G. Sagar: That makes sense

D. Betts: Now, I think I if may, it's a wonderful idea, even an obligation for people to take care of their parents, unfortunately our by-laws does have the provision in it that I can allow, from my position I don't have the authority to say yes go ahead , that's why it wound up over here. There are certain things that can happen if that plan was to be modified without any obstructions from one part of the house to the other, in other words remove a door, you may fall under the definition of a single family home. The fact that there are two kitchens, there's absolutely no provision at all; you can have a dozen if you wanted to. There's nothing against multiple kitchens. In fact a lot of people do, when it comes time to make the tomato sauce and all that, a lot of people do that. So any way that was my intent. To give them, to get them going and then give them enough time to resolve the matter (inaudible)

Atty Grouke: May I ask a question of Mr. Betts

Ch. Ross: Sure

Atty Grouke: Mr. Betts, you just said that, if this plan were modified and you used the example to remove a door

D. Betts: Yeah, it's not a, right now they are separate; they are separated by a corridor and doors,

Atty Grouke: Right

D. Betts: You've got a door coming probably from mud room

Atty Grouke: This one right here (points to plans)

D. Betts: Into the laundry area

Atty Grouke: This one right here, ok

D. Betts: So that door can have a lock and separate

Atty Grouke: Ok

D. Betts: The two apartments, I haven't seen a hardware schedule yet so I can't say one way or the other. That looks like it could be a sliding door, right there also, so you know, if it is or it isn't, but all I'm saying is (Invaluable) walking through, that would actually cover the definition of a single family home, with (inaudible) we've got no problem, because they are not separated

Atty Grouke: Alright, so are there are any other modifications that would be necessary other than removal of that one door, and possibly a second one, the slider/

D. Betts: If they were removed, and this plan built, according to this plan, with a kitchen and a bedroom, I would issue a permit.

Atty Grouke: Thank you,

D. Betts: For a single family home

Ch. Ross: Let me make sure I'm correct in what I'm saying, the interior door marked D3, that's coming out of the mud room

D. Betts: That's correct

Ch. Ross: You've got the interior door, exterior door form the deck which is D6?

D. Betts: It's a D4 going out to the landing, oh the D6 on to the deck,

Ch. Ross: From the deck

D. Betts: That's correct

Ch. Ross: To what is now future use; are those the two doors that you're suggesting if they were removed?

D. Betts: No, that door is fine

Ch. Ross: Ok,

D. Betts: That door does not enter into the main house

Ch. Ross: That's right, it goes to the deck

D. Betts: Right

Ch. Ross: What's the second door?

D. Betts: D10, I believe, from the laundry room into the tiled entry

G. Sagar: Ok, yes I see that

R. Read: That's the only one

Ch. Ross: Ok, I don't see, can someone help me out?

Atty Grouke: May I,

Ch. Ross: Just, yeah,

All talking at once: unable to differentiate between all speaking

D. Betts: Right there (pointing to plans in front of Ch. Ross)

Ch. Ross: Ok, I see

D. Betts: You can walk from here through here right through in there that's like you're walking from one room to another

S. Halajko: So you're saying if that wasn't there?

D. Betts: If those two doors were not there then I could not say that it's a two family.

S. Halajko: If D10 wasn't there and what was the other

?: D3

S Halajko: D3,

D. Betts: D3,

S. Halajko: I see

D. Betts: From the mudroom into the laundry area

S. Halajko: I see

Ch. Ross: I guess what I don't understand is, by changing, by having the revised plan, remove the words, kitchen and bedroom and changing them to future use and office,

D. Betts: Yes

Ch. Ross: All you've done is change labels

D. Betts: That's exactly right

R. Read: Correct

Ch. Ross: I, mean it's the same house

D. Betts: Yes, by code, by law it I have everyone label every space in a house on a plan, and I cannot say that is a office, you might turn that into a bedroom, so there, I cannot say that, I have to take what is on the plan, but (inaudible)

K. Rondeau: So if that plan had instead of bedroom and office and instead of a living room say a study, when it was presented to you, if that had, instead of bedroom you saw office, and instead of living room you saw study, what would your, what would have been your opinion at that point?

D. Betts: I could not have called a second dwelling, because it does not fit the criteria.

K. Rondeau: Ok

D. Betts: There are legal case, where a building official

Atty Grouke: Stipulations

D. Betts: Stipulated on a two family home, there were four rooms upstairs, and two of them are labeled bedroom and another was labeled a den an another workout room,

K. Rondeau: Yes

D. Betts: The fire official made them put fire alarms in the work room

K. Rondeau: Sure

D. Betts: And the other room that was not labeled a bedroom. The owner took the building official to court and won. And the town had to pay for the fire alarms required in bedrooms so I do not go on what might be I have to go by what is

G. Sagar: Right, see the other problem we have is, that under M.G.L. 40A section 3 under zoning, no zoning by law can regulate the interior use

D. Betts: Right

- G. Sagar: Of a single family residences, if we made a finding that this is a single family residence, ok and put it as a stipulation that it could never be used as a two family, there's a former building inspector, that's of the opinion that if your parents live with you, they are part of your family,
- Ch. Ross: Oh yeah, I agree with that, I don't have a problem with that
- G. Sagar: So, I think
- Ch. Ross: I don't have a problem with that
- G. Sagar: To avoid getting into a big legal fight, and I agree with a lot of what Mr. Betts is saying, if we make a determination that this is only a single family, the present use I don't have an issue with, but put a stipulation in the deed, that they can't sell it, or if the parents move back to Syria, or whatever, they can rent it out as a separate unit.
- Ch. Ross: I agree with that, the only thing I can't, and I'm not trying to be obtuse, I just can't understand this, I think we're, you're in agreement that as a matter of right, they can have two kitchens
- D. Betts: Yes
- Ch. Ross: And as a matter of right they can have a bedroom in that wing if they wanted, so
- D. Betts: Correct, and withstanding any ruling from the board of health on the septic system, but that
- Ch. Ross: That aside, that's not within in your jurisdiction, so we are not addressing that
- D. Betts: Right,
- Ch. Ross: So it's not calling it a kitchen and a bedroom, upon which you determined it, was a two family house, it was really those two doors you mentioned
- D. Betts: Well
- Ch. Ross: The interior doors
- D. Betts: It met the criteria of a dwelling unit, all those items, sleeping, living, sanitary, and cooking, you meet that in a separate space, and that's the definition of a dwelling unit.

G. Sagar: Not to sound curt or facetious or anything but, another alternative is, yeah ok we'll do whatever you want they get their occupancy permit and they go in and install a few doors. And who's going to know, no harm no foul

Ch. Ross: Absolutely

G. Sagar: You know what I mean, so I think if we make the determination it can only be a single family and put the stipulation on the deed through a covenant or whatever then the town has done its job and we have interfered with them, and I think we support Mr. Betts, because I think he's right on point on what he's saying

Ch. Ross: Just a general question, we haven't voted on this, we don't know if it's approved, but since the issue has come up, would your client be willing to do a straw deed or however you want to do it, you're the attorney, re-conveying the property out and back to them or a deed from themselves to themselves putting that type of a deed restriction on the property that it's a single family home, will always be a single family home and that restriction will run with the land.

Atty Grouke: Yeah, that sounds fine, as long as it doesn't create any other

Ch. Ross: Title issues

Atty Grouke: Yeah title or marketing issues. Not marketing, I take that back

Ch. Ross: Ok

Atty Grouke: Title issues, really

Ch. Ross: I wouldn't think so I assume the title is insured, but they don't insure whether it's a single family or two family, they insure the land, as you know

Atty Grouke: They agree with that

Ch. Ross: We're not there yet

G. Sagar: My concern is not what they are using the house for,

(Inaudible)

Ch. Ross: Which is why?

G. Sagar: Because we got burnt in the past

Atty Grouke: Understood

Ch. Ross: If we do it by one or two deeds and you know Mr. Grouke would do that and we'd want evidence of that after it was recorded obviously. Then it runs with the land, so anybody who's doing a title search will pick up it's a single family home

Atty Grouke: Correct

Ch. Ross: And that's all it will ever be

Atty Grouke: Ok

Ch. Ross: But we're not there yet,

Atty Grouke: Absolutely

Ch. Ross: Thank you Mr. Betts, appreciate the clarification

D. Betts: Thank you,

Ch. Ross: Stand-by if you could

D. Betts: Yes, the builder or the owner will have to come in (inaudible)

R. Read: Don't forgot to ask for people against

Ch. Ross: We are not there yet

D. Betts: Or change or plans or whatever

Atty Grouke: Yes, sir

Ch. Ross: Ok, thank you very much, I've already asked once, but I'll ask again, is there anyone else who wishes to speak in favor of this petition (hearing none) is there anyone in the audience who wishes to speak in opposition? Sir in the back row, would you step forward please?

Michael Rego: Yes, Mr. Chairman,

Ch. Ross: Ok, would you raise your right hand please, do you swear or affirm that the testimony you are about to give is the truth?

M. Rego: Yes, I do.

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

M. Rego: Michael P. Rego, R-E-G-O

Ch. Ross: 30 Sunset?

M. Rego: Yes

Ch. Ross: Ok, thank you sir,

M. Rego: And since a lot of this, as you know I was at the last meeting with my wife and some other neighbors, a lot of this has been cleared up. I think the neighbor, I'm not going to speak against it, I just want to be clear that I think the neighborhood would be satisfied as long as the stipulations are on the deed, that protects all of us that it's a single family home that will never become, become marketable as a two family home, for obvious reasons. And that whatever the bedroom requirements are going to be they should probably in and up front because regarding the septic system for that, having known what I just went through when I remodeled my house, I had to build a new septic system so, again I think the neighborhood would be in favor of welcoming them to the neighborhood because my family were immigrants too.

Ch. Ross: Great

G. Sagar: I will tell you, based on what was submitted to us, the site plan does carry a four bedroom design for the septic, so they've taken that into consideration. And there is only one system; it's not a two separate

M. Rego: I think the neighborhood would welcome them,

Ch. Ross: Great, thank you very much Mr. Rego, is there anyone else in the audience who wishes to speak on this issue at all, on this petition? (Hearing none) Do I have a motion? Are there any further questions from any members of the board? Or the applicant Mr. Grouke? Or Mr. Betts

G. Sagar: No, I move to close the public hearing

Ch. Ross: Do I have a second?

S. Halajko: Second

Ch. Ross: All those in favor? Signify by saying by Aye, (all say Aye) Opposed No

G. Sagar: And I'd also like to

Ch. Ross: 5, ayes have it 5-0

G. Sagar: And I'd also like to uphold the decision of the Mr. Betts, where he said a two family dwelling unit is prohibited, under section 4.2.3 item # 3 in the October 30, letter

Ch. Ross: Do I have a second, on the motion to uphold the determination of the building official

K. Rondeau: Second

Ch. Ross: All those in favor signify by saying Aye (all say aye) opposed no. Ayes have it 5-0; there is another motion in order Mr. Sagar or anyone else

G. Sagar: We need to, we're not giving a special permit or a variance we're just making a determination that's going to go on file

Ch. Ross: That's, I think that's correct. We are just we are making a determination that we can't determine what the building permit will issue, that

G. Sagar: I say we make a determination based on what was presented to us

Ch. Ross: On the evidence

G. Sagar: That the number one sunset dr. will remain in perpetuity a one family dwelling unless changed by zoning or action of this board. And recorded a deed at the registry of deeds running with the land,

CH. Ross: And if I may suggest, that the board is willing to delegate that to the chair, Mr. Grouke, can submit to me, proposed language for the deed that I can review before you have it executed and recorded

Atty Grouke: Yes,

G. Sagar: That will be a part of my motion, too

Ch. Ross: I'll sign off on the language, is that acceptable to you?

Atty Grouke: Absolutely, and the we are going to submit a revised plan which will show those doors removed, and that will be submitted to Mr. Betts

R. Read: (inaudible) remove them now does he

G. Sagar: I don't think you need to

Ch. Ross: I don't think you need to

R. Read: (inaudible)

D. Betts: The building code would require it

Ch. Ross: Oh, it does?

D. Betts: Yes, sir

Ch. Ross: Oh, ok, then so the doors denominated D3 and D10 on your first revised set of plans will be removed

Atty Grouke: Yes

Ch. Ross: On your second revised plan

Atty Grouke: Yes

K. Rondeau: Did you make a second?

R. Read: Is it about Gary's

G. Sagar: Yes, it's about mine

Ch. Ross: That's after discussion, ok, any further discussion on the motion?

R. Read: I don't think we have a second yet, I, second it,

Ch. Ross: You, second it, ok, any discussion on the motion? All those in favor of the motion, stated by Mr. Sagar and amended signify by saying Aye (all Ayes) opposed no. Ayes have it 5-0 good luck Dr.

Dr. Kaba: Thank you

Atty Grouke: Thank you very much

Ch. Ross: Ted, just keep in touch

Atty Grouke: Will do, Thank you

Ch. Ross: Thank you

Ch. Ross: Next matter on the agenda is case 2015-17, I believe, right

B. Garrity: Yes

Ch. Ross: Andrew Grossman, 393 Fall River Avenue, Seekonk Massachusetts, you're Mr. Grossman I take it? If you'd step forward please, and would you raise your right

hand. And do you swear or affirm the testimony you are about to give will be the truth?

Andrew Grossman: Yes I do,

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

A. Grossman: Andrew Grossman

Ch. Ross: You are the owner of the property

A. Grossman: I am ok, I don't far if you guys are familiar with the history of this property, my house was originally of the martin property which consisted of, three separate dwellings, numerous outbuildings and a large parcel of land that was subsequently given to the Seekonk land trust, they subdivided the properties and so what was originally one property became three properties. Now the way that did that gave me what is considered an irregular, or non conforming lot, so I don't have 150' of frontage, the front of my house doesn't even face the road. Ok, the division of the property is really relatively arbitrary and squeezes my house into an odd portion of land and I did bring, I know that you guys have a plan, but I did this Google earth screen shot, if I can just show it to you and you can pass it around, you can see this (points to the area) this is my house, and this is my land, and this is my neighbor, who by the way is completely supportive of my proposal, and you can see what is right behind them, where I want to do the work, is his driveway, a garage and barn, so there are all a lot of dwelling and structures right against the property line, the other thing I want to point out, that I'll talk about later is that you can see that the property is very heavily landscaped, and there is a reason for that, I am a landscape designer and this property, maybe I should talk about that now, is really part of my business. So, I have, I purchased the property in 1998 it was basically derelict and I been transforming it ever since then, so that now the house is completely surrounded by gardens it is visited by numerous townspeople, I shoot a television show there called in the garden through Seekonk channel 9, it's been on numerous garden tours, this is actually a picture of part of my property, this is the garden conservancy open days program, which is a national program, that opens peoples gardens up to the public for tours. So this is a big part of my business. Here are pictures of my property in Fine Gardening magazine and you can just flip to the pink page and flip through it but

S. Halajko: This is right here

A. Grossman: This is right here in Seekonk

Ch. Ross: Did I hear you say you are running your business out of this location?

A. Grossman: I have an office

Ch. Ross: Oh, Ok.

A. Grossman: I have a office, so my office is here but clients come people from the town come, take wedding pictures, in the garden I was just the other day approached by HGTV who is interested in possibly doing a segment on it, so part of the issue with me putting an addition on my house is that the property is very much a part of my business, it is also since I moved in there, I removed derelict garages to make the whole side, I'm the one person that really abuts the wildlife sanctuary, and I have done everything possible to make that really beautiful, The other hardship is currently the house really only has one bedroom that's on the second floor, and on the first floor, it is now my office and which I have the board of health came and looked at my house and determined that it was technically a two bedroom and it's zoned for three bedrooms, I mean the septic is for three bedrooms so there is no problem as far as that is concerned the first floor office space which is, if you look on the plan, this square right here (pointing to office on plan) is my current office, that room has a tiny 2'6" x 4'6" half bathroom. My mother, who is sitting in the audience, that's Elizabeth Grossman, I would like her to be able to move in. the problem is that there is only one full bathroom and one real bedroom in the house, they are on second floor. I don't know if you guys are familiar with these old houses but this house is 160 years old, it has a very narrow, very steep staircase that she cannot navigate. So my proposal is to take what is now the office space, which is a single story, but the roof is pitched so it's basically almost as high as the main body of the house, which you can see in the photo there, make that two stories so that I can my office on the second floor, put a full bathroom where the office is

?: On the first floor?

A. Grossman: On the first floor, so the most logical place to do that is where there is already a bathroom plumbed. So there is already a tiny bathroom, that'd basically take the majority of that room and make it a full bathroom with a shower and a bathtub and a sink etcetera, but that doesn't solve the problem of where she can sleep. So that's the proposal for the one story addition going perpendicular, to the house, and that's really where I need the variance alleviation.

Ch. Ross: So you want to go both up and out? Correct?

A. Grossman: Correct, so basically what I want to do is, put a bedroom on the first floor and a bathroom on the first floor so that elderly person has a bedroom and a bathroom. I still need an office so that would be on the second floor. If you're wondering well why can't you put this addition someplace else, there really isn't any logical or reasonable place to put a ground floor addition on my house. If you look at the plan over here, (pointing to plan). This is a greenhouse room; this is for me, I start plants in the spring, I over winter plants, in the summer it has windows on all three sides to get as much sun as possible. If I were to build an addition attached to it would lose half of the sun, so it would no longer be usable for my business.

G. Sagar: You put that up?

Ch. Ross: You said this, but you were pointing to that

R. Read: Can I see the screen shot?

K. Rondeau: This area here (pointing to plans) is like a greenhouse

A. Grossman: Yeah, so this is currently office with a tiny half bath (pointing to area on plans)

Ch. Ross: That's the shaded area, on the left that you're pointing to?

R. Read: The little shaded area

ALL DISCUSSING

A. Grossman: I'm sorry I don't mean to... That

Ch. Ross: Yeah,

A. Grossman: Right, so that next to that in the house is the kitchen, ok and then this is a living room, which has no closet space two doors, it's really not suitable for a sleeping area because it has a fireplace in it, and there would be absolutely no privacy, you'd have to walk through it to get to the greenhouse space, etcetera. And you can see where how, they so arbitrarily did this I'm so squished against I mean I have all this land, this is a driveway, I removed this, and where this was, where is this is proposed, was a driveway. When I moved in it was a driveway that connected the front house with my house when it was one property.

G. Sagar: Yeah, indecently do you know when this was subdivided?

A. Grossman: It must have been in 1997, because I bought it in 1998 and it had never been on the market before.

G. Sagar: Well I think, I mean, as a point of information, I think the planning board really screwed this up, when they subdivided it up.

Ch. Ross: When they did approve it.

G. Sagar: Well they did, they took something that was legal, and made it one legal and one non legal.

Ch. Ross: Right

G. Sagar: They clearly screwed up

Ch. Ross: The planning board, created the non conformity

G. Sagar: That's neither, here nor there, it's been there since the 90's, so we're stuck with it,

Ch. Ross: That train has left the station.

G. Sagar: I do question though, and too bad Mr. Betts left, because this is not a candidate for a variance, this is a candidate for a special permit, because it's a non conforming use.

Ch. Ross: Right

G. Sagar: You look at, you don't have proper frontage, front yard setback is wrong, the side yard setback is wrong, and to extend a legally non conforming use is a special permit, not a variance.

Ch. Ross: Right

A. Grossman: I mean, I went to the...

G. Sagar: Oh, yeah, you did, it's nothing against you, sir,

Ch. Ross: No reflection on you

G. Sagar: Even as it sits right now, it's a non-conforming

Ch. Ross: Right

G. Sagar: Because of those two items

R. Read: Very much so

:: All speaking::

A. Grossman: The building department, they said that because it was non conforming they were automatically, regardless of what I wanted to do, going to stamp it no

G. Sagar: Right, You'd have to come here

A. Grossman: For a variance for it,

G. Sagar: The only thing I'm saying is that it's a candidate for a special permit because of the issues with it, rather than conditions. Do you agree with that Mr. Chairman?

Ch. Ross: Yeah, I do

R. Read: So what do we have to do?

G. Sagar: I think, at the proper time amend it

Ch. Ross: I'd be amendable to a motion to amend. I mean the facts of the petition don't change.

R. Read: Right now

Ch. Ross: Right,

G. Sagar: And the fact that the advertised for the higher, higher standard

Ch. Ross: Right, exactly, variance, just so you know a variance is, you have a higher burden on a variance that you do on a special permit. And that's not the reason we're having the conversation, this is in fact an application for a special permit on a variance

A. Grossman: Oh, ok

Ch. Ross: We would entertain, if you'd choose, if you to choose to make such a motion tonight, to amend your petition to reflect that you are seeking a special permit, and not a variance, in all the facts and all your exhibits, everything else stay's the same

A. Grossman: Ok

Ch Ross: But you'd have to tell me that

A. Grossman: Oh, yes, I'd like to do that, I would like to a

Ch. Ross: Amend your petition

A. Grossman: Amend my petition for a special permit

G. Sagar: I would, grant the gentlemen his wish and I make a motion that we amend the petition to reflect a special permit, not a variance

R. Read: Second

Ch. Ross: All those in favor of allowing the amendment to the petition pending before us, 2015-17, signify by saying aye (all: Aye) opposed no Ayes have it 5-0.

K. Rondeau: Mr. Grossman, continuing along the line of plenty of land here, can't find another place to build it? The building addition, just so I know, maybe for the rest of the board, your drive way is here (pointing to the plan), and becomes gardens

A. Grossman: It stops here (pointing to plan) and then it's all garden

K. Rondeau: And it's all garden, and it's all gardens with a walkway, and I saw a

A. Grossman: It's not even a walkway, it's just lawn

K. Rondeau: It's just all lawn?

A. Grossman: And the thing is, were I to build anyplace here (pointing to plan) on the ground floor, which is where it needs to be, then I would lose all the windows. It's all windows here (pointing to plan) like, all of these rooms are basically one room thick. So there is a window here, a window here, a window here, the reason I made this a little bit wider here, was because there was a window here, so any, if I were going to build, this would put an addition in front of the kitchen window, this would put an addition in front of all the greenhouse this would put an addition in front of all the windows (pointing to plan). So it would be a very odd thing to do to the house, to sort of cover up windows and make rooms not have access to light. Though that's the thing that's weird, it isn't a matter that I don't have land, it's a matter that the way, if this whole thing was just shifted there; I'd have no problem at all doing what I wanted to do. The problem is that is this, that they just made this very peculiar shape, squished me right into this really narrow space and there's really no other way to go. I mean I'm giving up a window here, but since this would become a bathroom (pointing at plan) that isn't such a big deal, basically the window will become a door, and this, I'm not even planning to put windows on this side of it, just on this side of it, since this just faces a fence and my neighbors

K. Rondeau: What is this all along, over here? (Pointing to plan)

A. Grossman: That's my neighbor

K. Rondeau: Is that a house right there?

A. Grossman: No the house, actually I brought this as well, this is old, but you can see this is what I got when I moved in. This is my property (pointing to plan) and originally my driveway went to this big ugly garages which I removed and pulled the driveway all the way back to here, this is my septic, the other reason, it's hard to go this way is this is my septic system, so this is my neighbor house, his drive way originally went all the way down to this garage (pointing to plan)

K. Rondeau: I see, so just like you said

A. Grossman: So, I'm right behind, there's a barn

K. Rondeau: There's a barn

A. Grossman: There's a barn here, there's a garage here, there's a fence right here, and I'm only proposing a single story here, so they'll barely even see it.

K. Rondeau: Thank you

Ch. Ross: Mr. Grossman, If I may ask you a question, if you know

A. Grossman: Yeah

Ch. Ross: Your neighbors on either side, that would be lots 3 & 6, one is Mark Young

A. Grossman: Yes

Ch. Ross: The other one is Patrick Kane

A. Grossman: Yeah, Patrick actually came, was briefly and he asked me "where do you want to put the addition?" and I told him "Oh, that's fine".

Ch. Ross: Ok, are those the three lots that were created out of that subdivision?

A. Grossman: Yes, and the rest of the land

Ch. Ross: Is a conservation area

A. Grossman: Is conservation area, so I really made the conservation area a lot nicer, by getting rid of ugly garages, getting rid of driveways things like that, I bought this property to do what is in the magazine, to do that, to it. So it's

Ch. Ross: You know Gary, if you look at the three lots as a whole, it makes a little bit of sense on the subdivision, it's what they did within the three, you know, if you look at the perimeter of lots 3, 4, & 6, from Fall River Avenue

G. Sagar: But they still took a conforming lot and made it

Ch. Ross: Yeah

G. Sagar: Non-conforming

Ch. Ross: Exactly, and they created this, not to offend you, this hockey stick lot,

A. Grossman: No I know, it's a really weird piece of property

Ch. Ross: Ok, but...it is what it is, anything else sir?

A. Grossman: No, that's about it

Ch. Ross: Ok, do any members of the board have any questions of Mr. Grossman?

G. Sagar: According to the assessors, just so that you know, it's their information; it says that the house was built in 1880,

Ch. Ross: So it's 135 years ago

A. Grossman: Yeah, and I completely restored it, and, I mean, it was basically derelict when I bought it, as was the land.

Ch. Ross: I've asked if any members have any questions, no one does. Are there any members of the audience that wish to speak in favor of this petition? Hearing none, are there, is there anyone in the audience that wishes to speak in opposition of this petition? Hearing none. I'll ask one more time, any questions by any members of the board?

R. Read: No

G. Sagar: I move we close the public hearing

Ch. Ross: Do I have a second on the motion

R. Read: Second

Ch. Ross: All those in favor of closing the public hearing, signify by saying Aye (all aye) opposed no. Vote is 5 to nothing

G. Sagar: I move, we amended the zoning determinations, so can we uphold something we amended?

Ch. Ross: We can't

G. Sagar: So we overturn

Ch. Ross: We overturn because

G. Sagar: I move that we overturn the decision of the zoning enforcement officer of the December 4, 2015, in favor of the amended petition.

Ch. Ross: I think we have to overturn it because it says he has to apply for a variance so we overturn it to that extent.

G. Sagar: Correct, overturn to reflect the amended petition to a special permit.

Ch. Ross: To a special permit, right. All those in favor of overturning the determination of the building inspector on that limited point as to the denial of, the recommendation to apply for a variance signify by saying Aye (all aye) opposed No. Ayes have it 5 to nothing.

G. Sagar: Mr. Chairman, I move that we approve the special permit for Mr. Andrew Grossman, based on plan, plot plan of 393 Fall River Ave, in Seekonk MA, prepared for Andrew P. Grossman on November 25, 2015 by Caputo and Wick, Limited.

K. Rondeau: I would also like to add, Gary, this is a classic size shape and topography of the lot, I think we should include that in our

G. Sagar: No, that's a variance standard

All speaking

K. Rondeau: That's also special permit too,

G. Sagar: No it isn't, just on a variance

Ch. Ross: Not that I know of

G. Sagar: This was created by the planning board, this wasn't created by anyone else, so if it was a variance, it was self created, if it was a variance it would be one thing, but a special permit,

Ch. Ross: Yes

R. Read: That's not necessary

Ch. Ross: I'm just looking for the relief sought, on the side yard setback and the second story, correct? I think there is a motion pending, do I have a second

R. Read: Second

Ch. Ross: All those in favor of granting the relief sort for the special permit, signify, with in conformity with the application and the plot plan, signify by saying Aye (all aye) Opposed no, Ayes have it 5 to nothing. Good Luck Mr. Grossman

A. Grossman: Thank you very much, my mother and I thank you.

Ch. Ross: Do you want to retrieve your Google earth photo?

A. Grossman: Yeah, thank you,

All speaking: Wishes well, and luck

Elizabeth Grossman: The gardens are beautiful, you should go see them

A. Grossman: So, do I need to now...will the building inspector will know that this is approved so I can just contact

Ch. Ross: He'll know it's approved but, you, well you don't have to, but you may want to consider until the decision is posted and letting the appeal period run, I know no one spoke against it

A. Grossman: Ok

A. Grossman: How long is that?

Ch. Ross: Twenty days

A. Grossman: Ok

Ch. Ross: Otherwise you can proceed at your own risk

A. Grossman: Ok, thank you very much.

WORK SESSION

On the request of the chairman, the board will take the work session matters, out of order.

Ch. Ross: I would like, as a board, motion to appoint Bridget Garrity as the zoning board clerk,

G. Sagar: so moved

R. Read: Second

Ch. Ross: all those in favor, signify by saying Aye (aye) opposed: 5-0.

John Aubin Jr: Town planner, he conducted a final review with regards to the M.G.L, added S.R.P.E.D.D as a listed applicant in accordance with state law provisions, manner of filing of an application there was some confusion, where the filing goes to the town clerk and then gets directed to the board members then abutters from there. Time limits: for approval by failure of the board to act that was something that was previously not addressed in the rule book, so that was added that would be in Chapter 40a in section 15.

Notices of decisions to parties of interest: discussion topic, he looked at the provisions and matched the Rules and regulations and the guides to that provisions. Appeals of final decision of zoning board of appeals,

Removed: notices of appeals under section 17, of 40a – those are appeals that are filed with the court appointed jurisdiction out of the purview of the board of appeals, any provision that would require notification of the parties of interest of that would be under the chapter 40a.

K. Rondeau: Can we get some Clarification on that, we don't have the ability to make it binding either?

J. Aubin: The application has been moved to the court system and the court system has their own notice of requirements that start under section 17 as well as their own procedural requirements, all subject to confirmation from town counsel, the board would have the authority to add a layer of approval on that. And the second question is: who would enforce that? Once it gets to that stage, there is no provision for the ZBA to act subject to post them making their decisions. So there wouldn't be any vehicle for it to come back before the board and you haven't conformed with this requirement.

Ch Ross: Once we have a final vote and decision is posted, our work is done; we've got nothing to add to the process after that, the state takes over.

J. Aubin: I understand in having that type of notice, I just don't see it provided for under Section 40a, as requirement of the ZBA

Ch. Ross: We can't amend general laws

K. Rondeau: It still leaves a hole. Someone leaves this room, thinking the decision is going one way and an appeal is filed and that person walks away thinking one thing has happened and yet later something else occurs.

J. Aubin: My reading of Section 17 it really puts the onus is on the individual to be appraised of the situation, it's something that has happened, here in Seekonk, as far as alteration of that, there's ways to amend general laws, and that goes through the general court.

K. Rondeau: I just find it hard to fathom that we can't just as a board, say that if a decision is made, we can alert the abutters, why we can't do that? Some of these things happen behind closed doors, and the abutters will not know about it,

J. Aubin: Other than the fact that an appeal has been filed and it's in the court process, and at that point, and an interested party would have the right to intervene into that process and can have a seat at that table, it seems to me, as far as General Laws goes, they put the burden on that party of interest, to stay involved and to inject themselves into that process

K. Rondeau: If it's all going on behind their backs, and they aren't made aware of it, that's the problem right from the beginning. If an appeal is made, the abutters aren't made aware.

R. Read: If an appeal is made, how does the applicant find out about it?

J. Aubin: The applicant is a party- they are notified by the court. Notice of court action,

Ch. Ross: The applicant would a party of it.

G.Sagar: They'd be notified by the courts.

Ch. Ross: They'd be a party, they'd be served

R. Read: They're notified by the court?

N. Ableson: Yeah

K. Rondeau: But the abutters aren't

J. Aubin: That's the issue we're really talking about, notice of a court action, where the ability of this body to put that requirement onto an applicant, because at that point, we're really stepping into to me, the jurisdiction of the courts.

- G. Sagar: But, if an appeal is filed, it's with the town clerk, why can't we put something in there that will make Town Clerk notify all parties of interest including abutters, of any appeals?
- R. Read: Including abutters
- N. Abelson: Then they have to follow to see
- G. Sagar: But they are notified, and another thing people don't realize is that water resource by law-will, people who woke up the next day and it had taken away their livelihood, they owned businesses, wait until some of the these people go to put additions on their houses, they have no idea what happened at Town Meeting. It's sad, I could, absolutely concur with Keith,
- J. Aubin: I certainly agree with Keith, as far as the issue, I think, after that is, who enforces that ? Whats the action for that?
- G. Sagar: As long as they (parties of interest) are notified, just send them a notice and they are in charge of their own destiny.
- N. Abelson: they need to follow up,
- G. Sagar: Oh absolutely
- K. Rondeau: I'm not saying, no one here has to hold their hand all the way through the process
- G. Sagar: If you think about it, if people were notified, if I want to build within 2' of my property line, everyone within 300' gets notified. So, if someone goes to get approved gets denied, to Keith's point, you leave there thinking it's a done deal, over, whatever way it went, yet behind the scenes there's another whole action and nobody knows anything about it. You're a prime example (speaking to Keith) you lived that, so if we can put in there somewhere that if an appeal is filed the town clerk shall notify all the abutters for that petition
- R. Read: Now what about the filing for the final decision?
- Ch. Ross: The zoning board clerk
- G. Sagar: No let the Town Clerk do it
- N. Abelson: She is the one that receives the notice of appeal,

G. Sagar: She's the one that gets notice. It's ultimately her responsibility to do it, she could ask Bridget to do it or somebody in her office to do it, but it's the Town Clerk that sends out, that's the keeper of the records,

Ch. Ross: Because Bridget has the abutters list

K. Rondeau: and Bob, to your question, I don't think the town has to hold the abutters hand all the way through the process

G. Sagar: No

R. Read: No, because of the fact that they know it's happening, they can follow after that

K. Rondeau: If it means them coming to town hall and making inquires or whatever

R. Read: Or going to the courts themselves

K. Rondeau: Or going to the courts themselves, and finding out, it's up to "them".

G. Sagar: In the past, and I'm glad that Chris is here, (asking Chris T in the audience) Aren't there people who would be asked to be placed on a mailing list, anyone in a public hearing can asked to be notified, is one of the changes made.

C. Testa: Not recently

G. Sagar: In the past, people would come in and want to be on a mailing list?

J. Aubin: Anyone can ask during a public hearing to be notified of the decision, it's one of the changes made. And

K. Rondeau: I think Gary's suggestion is perfect, and after that the abutters have to be on their own.

R. Read: That's good

K. Rondeau: To get some kind of notice

G. Sagar: Do you think we can stick that in there (the rules and regs) somewhere?

J. Aubin: That's what I'm looking for right now

G. Sagar: Page 15? Oh I'm sorry that something else

R. Read: 15 would be good

N. Ableson: Do we have the authority to do such a thing? Make her send out those notifications to all the abutters, or is that something...I'm just thinking about it, because it's a different department.

G. Sagar: Because, from that perspective too, Neal, if an appeal is filed there's no requirement that WE get notified.

J. Aubin: You're a party of interest

G. Sagar: We'd get served

J. Aubin: That's your notice, and my comments are limited to what is written under section 17, whether or not this is a valid issue. In my analysis I don't see it really within section 17 whether or not the board can adopt it, as part of the rules and regulations it's the board discretion to do that. My question would be, if someone didn't comply with, if we're asking the town clerk to do it, we're not going to run into that situation. What would be the enforcement end of it? As far as where to go, seeing the best place would be under

K. Rondeau: Page 11 under K?

R. Read: Maybe we need another section

J. Aubin: Page 9, under town clerk certification of recording. (Reading section) and add either a sentence or paragraph, "the town clerk shall provide notice to the party's of interest"

G. Sagar: As determined by the certified abutters list.

J. Aubin: We can just do a reference to section 11, that would cover that, if someone came in and requested notice under that provision.

Ch. Ross: Regular mail, right?

All: Yes

Ch. Ross: Let's make sure we so state,

K. Rondeau: But no sense in adding it

R. Read: There's cases where someone has sued the Board of Selectmen and the Board of Selectmen never hears the results. I know that for a fact

K. Rondeau: That's happened to us

- G. Sagar: There were several lawsuits that we were named and we never heard the final disposition of them;
- C. Testa: they still need to look over, I think, 15 Fall River Avenue,
- G. Sagar: The antique shop that should have been long gone through the courts
- R. Read: Wasn't the one on Taunton Ave, right on the town line, wasn't that in the courts too?
- G. Sagar: No,
- K. Rondeau: That was just non-compliance
- N. Abelson: What's going on there, do we know?
- R. Read: It's not a bad looking place now
- K. Rondeau: All the vehicles were registered in RI; he was running his business in RI and parked everything here,
- J. Aubin: I don't think we need to put that into the guide, as this is more a directive, I don't think it really adds anything to it.
- C. Testa: Can you add that the applicant gets additional labels
- Ch. Ross: In case they need them if not, so be it, makes sense
- J. Aubin: That's page 3, under certified list of abutters, form G, I'll change it to three copies. Other than that, Roger and I had a discussion with regards, to 15, or the fees, let's do the fees first
- Ch. Ross: The fees, and I have one real small thing, on the rules and regs, on page 4, this may be something that survived the revisions, number 7, why minimum of 300?
- J. Aubin: I can't lay claim to the word "minimum", I think its from the general laws. I can get rid of it
- Ch. Ross: It's not a big deal, I had stricken it from the other one, but it's not important, the fees are on the next page, I guess, they appear in both
- G. Sagar: There is a separate document that covers comprehensive permits, and this incorporates

J. Aubin: That's actually the second to the last section

Ch. Ross: Page 10 is it?

J. Aubin: Section 6 comprehensive permits.

K. Rondeau: If you want to go back to 7, just off of what might be the thinking on that, "the plans shall show abutting properties within a minimum distance of 300'" if you say within a distance of 300' that means the maximum line is at 300', but if you say it's within a minimum distance of 300', now you've moved it with a minimum

Ch. Ross: If it's within 300' of any property line of the subject property it's an abutter, "any portion of any lot, within 300' of any property line of the subject property is an abutter" or person of interest?

K. Rondeau: You don't think someone could take that meaning within the whole lot,

Ch. Ross: No, that's why it says from the property lines

K. Rondeau: I just want make sure

Ch. Ross: We did add "property lines" because of that potential ambiguity. Because that is where you measure from, the property line?

J. Aubin: From the property line 300' to any property that touches that. One of the two issues Roger, and I were going back and forth on, were on page 5, number 9 filing fee- we have had previous discussions about this, Bay Coast is a good example? Should each variance be required to be separated and charged a fee for each, or can the variances be filed under one application and listed separately and only one fee charged and collected? Easier from admin point of view, to have one application, but as far as the board goes, it's easier to have separate applications.

G. Sagar: If it's all under one file number, how do you approve some of it, and reject others? It does state that each one is supposed to be separate;

Ch. Ross: I don't think that requires all the same attachments to be filed with each application if all the supporting documents (evidence presented for each case) are the same for each item. List the case numbers in the notice (listing them all). If six variances are requested, then all would be listed. The facts of the case are all the same, but a filing fee would be applied to each.

J. Aubin: Is concerned about how to collect fee for each application of relief requested. That would be the intent, to have a separate application and filling fee for each relief requested. Clerk shall work with the applicant to avoid unnecessary duplication of documents submissions.

G. Sagar: The fees listed under the compressive permit, are they the existing fees that are there now?

J. Aubin: Save for typos that needed to be corrected and a second look at 40b, to see if any changes have occurred, not done as of 1.11.16. The other item had to do with section 15,

Notice of decision (written) of the board after final decision is made: there are a few different time frames.

1. Time frame from when applicant makes submission to town clerk
2. When public hearing convenes
3. Separate time frame for special permits (90 days) from when filing occurs not the hearing
4. 100 days for variances and appeals from the close of the hearing to make a decision

The section Roger and I discussed was section 15 (passed info to members) - time frame for the board to file a decision once a decision has been made. The problem lies with section 15 needing a paragraph break on second page "Begins all hearing, appeals shall be open to the public, decision of the board shall be made within 100 days after date of filing of an appeal" and that's the time frame I was just speaking about. Permit time limits, public hearing – written appeals, filed with the city or town clerk referring to a continuance. "Failure to for the board to act" should be a new paragraph. The next sentence should be "failure by the board to act within said 100 days or extended time if applicable shall be deemed a grant of an appeal, that's the situation if the board fails to act within those time frames, becomes an automatic approval. The next sentence provides a time frame of 14 days after when the board should have acted, for an applicant to come in a file. "The petitioner who seeks such approval by reason of the board's failure to act within the time prescribed shall notify the city or town clerk in writing within 14 days from the expiration of said 100 days, or extended time if applicable on such approval, that notice has been sent to the petitioner and parties of interest. Petitions should send notice to the parties of interest by mail and each notice shall specify that appeals if any shall be made pursuant to section 17 and shall be filed within 20 days after the date of the city/town clerk receives such written notice from the petitioner that the board failed to act within the time prescribed. After expiration of the 20 without notice of the appeal, pursuant to section 17 or if an appeal has been taken, after certified records of the court in which such appeal has been adjudicated indicating that such approval has been on file with the city/town clerk shall issue a certificate stating the date of approval, the fact that the board failed to take final action and that the approval results in such failure and has

become final, and such certificate shall be forwarded to the petitioner.” Now my position would be that that should end that paragraph because that speaks to where the board fails to act,

Ch. Ross: Fails to act

J. Aubin: In that 14 days what happens in that situation, where someone wants to cure their rights under that situation.

Ch. Ross: That has nothing to do with the board, that’s because the board failed to act and there is no decision. So that’s what the petitioner does

J. Aubin: Now, in the general courts divine wisdom, they jumped to the sentence that begins and speaks to the duties that are upon the board. “the board shall cause to made a detailed record of the proceeding, indicating the vote of each member, upon each question, or failure, if absent, the reason for its decision, and it’s official action which copies will be filed within 14 with the office of the city/town clerk and shall be public record.” Now if that 14, what Roger and I were discussing the applicability of that 14 days I just referenced, if that was referencing a situation where the board had failed to act, there would be any written notice of decision, documenting that. What I was stating was, once the board makes that decision within the other 90 or 100 day time frame there’s a 14 day window for the board to file with the town clerk a written notice of decision. Which then gets forwarded to the applicant and parties of interest, and that is where I was, and where I came from. I’m not sure if that answers your question,

Ch. Ross: So the way I read this, and I think what you are saying, just to make sure, we’ve got that, on page 8 of the rules and regs, we’ve got the three time frames within which the board must act. Assuming the board in fact acts within the respective time frame, and we take a final vote, that vote must be reduced, in writing within 14 days,

J. Aubin: That is my reading of that sentence

G. Sagar: That’s what we’ve been doing.

Ch. Ross: I agree with that

J. Aubin: There’s (2) fourteen days in there,

Ch. Ross: I was reading the other one and it does not apply because there is no decision, that’s on the petitioner, it has nothing to do with the board.

- J. Aubin: Keith, getting back to your issue, each notice of a decision shall specify that an appeal, if any shall be pursuant to section 17 and shall be filed within 20 days after the date of filing. I think, that's where the general court/general laws puts the onus on those parties of interest to take notice and go to the town clerk to see if an appeal has been filed.
- Ch. Ross: The question that's raised, it's really an academic point, back to the board fails to act the petitioner shall within 14 days of the expiration of 100 days let's assume the petitioner shows up in 120 days after the board's failure to act, and not within 14 days what happens?
- J. Aubin: It wouldn't seem to be valid relief; they wouldn't be able to cure that...
- Ch. Ross: The board still hasn't act, the board dropped it's board, the petition didn't act within the 14 days of the expiration of 100 days, has he lost the right to go to the town clerk and say...
- J. Aubin: Unless he's got a really good argument that he wasn't aware of
- Ch. Ross: So basically were back to square one
- J. Aubin: They would have to re-ile.
- G. Sagar: Something else I'd like to bring it up, in the computer the application, if you go on the website, and you want to download the forms, they are all PDF's, so it prevents you from typing them. We'd all like to see the applications typed, rather than hand written, if there's a way to change the forms on the website so they could be another type of document, I think we'd have a much nicer record before us.
- Ch. Ross: I wouldn't want to do a word document because, Bridget or we, would have to scrutinize every application to make sure it hasn't been tampered with. Now, what you can do, and this is what happens with the state, if you can click on the doc, you get a PDF icon and you'll get a fill in the blanks icon,
- G. Sagar: That's what I'm looking for, if we can get a fill in the blanks, are you familiar with that Bridget?
- B. Garrity: I am familiar with it, it depends on the document itself, but a lot of times it actually has, on the right hand side, you can click it and it has the option to add text or a signature or whatever, and you can hover over where you want it, that's something I can work on.
- Ch. Ross: I wouldn't want a word document online

- B. Garrity: There is a way to manipulate it, there's a way around it.
- K. Rondeau: On a PDF there's a tools icon that will drop right in and you click on it, and take the form to fill in the blanks.
- J. Aubin: With those changes, I can add them in there; I don't see we need another work session,
- Ch. Ross: I'm ok with the revised form, based on our discussion.
- G. Sagar: Why don't you send out the final draft, and schedule a public hearing for it, right?
- J. Aubin: The rules and regs need a public hearing, and then the only other question was, where the application was, I know we had had some discussion, we just had in general terms, where the final version was. I know I have one, you have one, Chris has one,
- Ch. Ross: I haven't really looked at it since last time we met
- J. Aubin: We'll coordinate and get that finalized, and it makes sense to have them together for adoption at the next meeting.
- J. Aubin: If the board directs the clerk to prepare the public hearing, I'll get the documents together, and we'll be good to go.
- K. Rondeau: Just a point of interest, John you did an outstanding job with this, just to make it part of the record.
- J. Aubin: I appreciate that.
- Ch. Ross: Our next meeting is March 7, 2016

Adjournment:

G. Sagar made a motion to adjourn, seconded by K. Rondeau **and so voted unanimously by** Roger Ross, Gary Sagar, Robert Read, and Neal Ableson

VOTE: (Approve 5-0)

The Meeting adjourned at 8:45pm

Respectfully submitted by:

Bridget Garrity, Secretary