

SEEKONK ZONING BOARD REGULAR MEETING

MINUTES September 19, 2011

Present: Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read, and Jeffrey Creamer (for Ron Blum)

7:02 Chairman Edward F. Grouke called the meeting to order.

This is the meeting of the Town of Seekonk Zoning Board of Appeals, September 19, 2011. First I am going to read the Rules and Regulations. I am going to read each petition as it was advertised and call upon the petitioner or their representative to present their case. All testimony, including the testimony and statements of the petitioner and/or the representatives or witnesses will be taken under oath. We will hear from anyone in the audience to speak either in favor of or against the petition or with any questions. At the close of the evidence, we have a discussion and we also usually make a decision on the same night although we are not required to do that. We may take a petition under advisement and give a decision at a later date. It is our practice to decide it on the night of the hearing. It is reduced to writing and filed with the town clerk within 14 days. There is an appeal that is available to the Superior Court by the petitioner or other parties who have the proper legal standing and has to apply with the very strict time limitations. That appeal is governed by very strict time limitations. If anyone is considering an appeal, they have to be very careful to meet the time limitations that are set forth in the law.

2011-18 Alain F. & Pamela J. Paradis, 19 Kent Drive, Seekonk, MA, Owners and Petitioners, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 5.3 and a **Variance** under Sections 6.3, 6.4, 6.5 and 6.6 to allow a 10' x 14.3' addition and a 14' x 16' deck at 19 Kent Drive, Plat 25, Lot 180 in an R-1 Zone containing 10,000 square feet.

Alain Paradis Sworn in.

Pamela Paradis Sworn in. The addition is for an existing galley kitchen we want to renovate the kitchen and put a deck off the back.

Ch Grouke You have an undersized lot, it is 10,000 sq ft and the petition says you want to go beyond the setback, correct?

P. Paradis Correct.

- P Paradis The drawing is not correct though, we would rather have a 14' x 16' deck because it eliminates a lot of waste and with the board lengths it is a lot easier.
- K Rondeau On the site plan it showed a 10' x 2' addition so you are looking for the addition, the 14' x 16' deck and the 10' x 12.3' addition. All three of these changes require a special permit. They all have to be mentioned in the special permit.
- Ch. Groucke And the variance comes in for the rear setback. Is there anyone here to speak in favor of the petition?
- F Cavaco Francis Cavaco 12 Kent Drive, member of the Board of Selectmen, sworn in. They have been my neighbors for over 8 years, they are good neighbors, hard working people and want to beautify their property they want to put an addition on their deck, I live across the street from them and I have no problem with them doing this.
- Ch. Groucke Is there anyone else in favor of the petition? No response. Is there anyone in opposition of the petition? No response. Are there any further questions for the petitioner? None.

G. Sagar made a motion to close the public hearing, seconded by J Creamer Sagar **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

G. Sagar made a motion to uphold the decision of the Zoning Enforcement Officer, seconded by K. Rondeau **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

G. Sagar made a motion to grant the relief as requested referring to the plan of 5/04/2011 with the modification that the proposed deck is 14' x 16', seconded by J. Creamer **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

2011-20 Scott & Sherry Allen, 400 Warren Avenue, Seekonk, MA, Owners and Petitioners, requesting an appeal of the Inspector of Buildings Decision and, if necessary a **Special Permit** under Section 6.2 to allow a private kennel at 400 Warren Avenue, Plat 1, Lot 27 in an R-3 Zone containing .56 acres in Seekonk.

Scott Allen 400 Warren Avenue sworn in.

Sherry Allen 400 Warren Avenue sworn in.

Scott Allen We received a letter stating that we are in need of a kennel permit because we have more dogs than what is allowed in town. (Inaudible) 4 dogs and we need a permit based on that versus removing our dogs. The town has taken into account that we have .56 acres in Seekonk but we also have abutting land in Swansea so our overall land is well over .56 acres.

Ch. Groucke How much land do you have altogether?

S. Allen We have 1.12 acres all together.

Ch. Groucke Could you tell us something about the set up you would like to have for the dogs?

S. Allen Right now, I have a two car garage, it is an old barn converted to a 2 car garage with a third garage on the side that acts like a shed. I have indoor and outdoor kennels built onto the back of the garage; there would be nothing for me to change. I make sure they are put out every morning and not barking, I make sure neighbors are looked out for.

Ch. Groucke How many dogs do you have?

S. Allen I have 4 dogs right now but I have a couple that I co-own. That's kind of like, I breed, show, and train Rottweilers, I have competed all over the country and Germany. In dogs, occasionally you will co-own a dog and a co-owner will come depending on show schedules. Right now there are 4 dogs at my house. I have a stud-dog and occasionally I will have someone who will want to breed their female, and I will have that female until breeding takes place, that is why I want to make sure I have a buffer to have a little bit of room. I don't want to commit to four and not have the room. With all due respect, I didn't know about this prior. I have been living in this home for 9 years and have never had an issue with the neighbors, Animal Control any of that. I am making sure we are doing all of that. I am just trying to do what I am supposed to do. This is all fenced. When we bought the home, there was no fence on the whole property, we fenced the whole

property and they have their individual kennels, and outside fence, three layers of protection.

G. Sagar Are you aware of the kennel requirements in Swansea?

S. Allen I am not. I will say that I did ask when that whole process came up because I had to get a list of abutters for Swansea.

G. Sagar Have you seen the recommendation of the animal control officer?

S. Allen No, sir. I have not.

G. Sagar She does not feel there is enough land to support 10 dogs, she recommends 5.

S. Allen I don't know her personally, but I know she used to work for Doctor Cournoyer over at East Bay but I have never had any issues.

G. Sagar Mr. Chairman, I believe that the Animal Control Officer will be here about 7:30. May I suggest we question her on that?

S. Allen We put 10 in as a buffer in case anyone wants to send a female for breeding.

K. Rondeau This aerial photo is your property, this fence is on the back of your property?

S. Allen Yes, (discussion ensued about the location of the fencing and location of kennels on property).

Ch. Groucke Ms. Hall, we are considering the petition for Mr. and Mrs. Allen 400 Warren Avenue to be able to maintain a kennel at that property, would you mind coming forward? We have a letter from you dated September 13, 2011 and it looks like you visited the property and it didn't look like there was enough land to support 10 dogs.

Sharon Lynne Hall sworn in. I did go to the property but there was no one home and there was a gate and it said do not enter. 10 dogs is a lot from what I see on the aerial, 5 would be sufficient, they are large dogs and from what I could see 10 is a lot on that small lot.

G. Sagar Sharon, did you see that site plan they have?

S. Hall No, that was not shown to me.

G. Sagar They have additional land, the total land that is bisected by the Town of Swansea, they have additional land in Swansea, do you think your opinion might change if you had the opportunity to visit, inspect it and review it?

- S. Hall Yes, my opinion would change if I could inspect it and view it.
- G. Sagar Do you think it would be in everybody's best interest for you to go out there, take a look and come back and make a recommendation?
- S. Hall I could do that.
- R. Read How many acres did they say?
- S. Allen 1.12 acres.
- R. Read They have 1.12 acres including the both towns as opposed to the .56 acres in Seekonk.
- S. Hall That is all I saw was the .56.
- S. Allen Also, just keep in mind that whole area is fenced. What we do on a daily basis is they have their own indoor outdoor kennels and they are allowed to run and the acre is a lot. (Mr. Allen showed the Board on the site plan the perimeter of his property.) The fence actually stops right at the road.
- R. Read Is the town plot plan accurate as far as you can see?
- S. Allen Yes. There is actually a fence that goes across, that is the town line.
- G. Sagar I think it would be in everybody's best interest for Ms. Hall to inspect the property and come back and advise us.
- K. Rondeau Do you think there would be any benefit of making this an official site visit?
- J. Creamer I think if Animal Control feels okay then it would be fine.

G. Sagar made a motion to continue the public hearing until October 24, 2011 to allow Sharonlynn Hall, Animal Control Officer to make a site visit and make recommendations based on that inspection, seconded by J. Creamer **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

2011-21 Robert DiPietro, 4150 McConnell Blvd, Los Angeles, CA, Owner & Petitioner, requesting an **Appeal** of the Inspector of Buildings Decision to allow construction of a single family home on a lot with less than the required lot area at 0 Avon Street, Plat 12, Lots 365, 366, 367, and 368 in an R-1 Zone containing 12,000 sq. ft.

2011-22 Robert DiPietro, 4150 McConnell Blvd, Los Angeles, CA, Owner and Petitioner, requesting an appeal of the Inspector of Buildings Decision and, if necessary a **Variance** under Section 6.3 to allow construction of a single family home on a lot with less than the required lot area at 0 Avon Street, Plat 12, Lots 365, 366, 367, and 368 in an R-1 Zone containing 12,000 square feet.

Eric Brainsky I am an attorney on behalf of the applicant with an office address of 100 N. Main St. Providence, RI. This is an application for both an appeal and a request for a variance on four lots of record, substandard lots if you will. Each of which is 3,000 square feet, for a total 12,000 together. My client is requesting to have a 2,400 sq ft variance granted under zoning bylaw for ability for single family lot this is a nonconforming lot, it dates back to 1913 and I provided plans in your application package. There are 4 lots that were merged into 1 lot and that would make it buildable with a Variance. There is a deed provided (inaudible).

Ch Grouke The deed you supplied refers to it being a portion of a previous transaction.

E. Brainsky Yes, Mr. Chairman.

Ch. Grouke It appears it was part of a larger lot.

E. Brainsky It appears it was part of a larger lot, it is not uncommon for deeds of record to reference a larger property, and it is referenced in the deed, you can see these cookie cutter lots that date back to 1913. (Mr. Brainsky approached the Board with a map). This is the town plat map, attached to my memorandum, there was a plan "J. W. Wilbur".

Ch. Grouke Are you arguing that you are entitled to this as a "grandfather" or are you looking for a Variance?

E. Brainsky Out of an abundance of caution, we are looking for Variance, what I can tell you is in Rhode Island, these things are typically grandfathered. Case law states grandfather status (inaudible) your town Bylaws says is, if you look at Section 4.2.2, it doesn't state you need a variance but it states that in cases with these substandard lots, you can't build on it without approval of the Zoning Board of Appeals. It doesn't actually say Variance it says approval but pursuant to 4.2.2 it accomplishes same goal.

Ch. Grouke The house lots in the neighborhood, are they a relative similar size?

- E. Brainsky Yes, I looked at the area when presenting this application, the neighborhood consists of similar lots where we have the same scenario, they have 2,000 square foot lots next to each other and somebody at some time came and (inaudible) my client's intent of course is to keep it consistent with the neighborhood and he wants to meet the requirements of the Zoning Board.
- G. Sagar Are you familiar with section 5.4.3 of the Zoning Bylaws? I had asked Chris to provide the Board with a copy of a previous case that we had decided in 2005 that was similar in nature. It was the Board's opinion at the time to overturn the decision of the building inspector because Section 5.4.3 applied, it was the same situation, it was an undersized lot. I would question if that applies in this situation also.
- K. Rondeau If I remember, Arcade Avenue was a nonconforming lot because of the Zoning Bylaws and the building had been existing on it for many years and then it burned and then it was vacant. It was before us because they wanted to build a home.
- G. Sagar But it was a grandfather issue, it was vacant from 1976-2005.
- K. Rondeau But the use was already there.
- E. Brainsky Section 5, I think what Mr. Rondeau is getting at, is applicable for nonconforming uses. What you have here is not a nonconforming use, you have a substandard lot. This isn't a situation where we have a building with an industrial use in a residential zone which is nonconforming because at some point the zone changed to residential. You are actually talking about nonconforming uses which grandfathered is typically falls under uses of land that pre-exist the bylaw. What we have here is a series of substandard lots platted in 1913 that clearly were in common ownership, this is the last 4 lots that are next to each other in this neighborhood from what I can see. That is why I think under 4.2.2 you have a section governing nonconforming of record, substandard lots of record. The courts have basically said, when you have these substandard lots of record situations, the applicant is entitled to seek a variance to allow for a better use of his property in this case building a home, otherwise you get into a situation where the property is unusable and basically it is a taking. If you say to the applicant, we are not going to grant you the building permit for whatever reason, the applicant has no more use of his property and it is sitting there. I think that is the distinction of nonconforming uses vs. substandard lots. I know it is a subtle distinction but....
- G. Sagar It is still a nonconforming use. The zone is residential use, but it is a nonconforming lot because of the size. If it has grandfathered rights, that would be the subject of the appeal, it doesn't have to conform because it is a nonconforming lot.

E. Brainsky It accomplishes the same goal. Whether you say it is grandfathered or overturn the Building Inspector and say he is allowed to do it because he is grandfathered.

G. Sagar If we uphold the Building Inspector or overturn her, you have the second application for a Variance, either way, your goal is relief this evening. My issue is that we rule on something that is parallel to 2005, we should show some consistency. In fairness, I don't think the Building Inspector is aware of this because it predates her.

K. Rondeau I think we are dealing with 2 separate issues. The other petition, we had the use, we had the lot, there was a house on the lot and it burned down and it went through all those zoning changes and they did nothing with it for a number of years. In this instance there has been nothing here I think there are two different issues. I don't think the Cole decision of 2005...

G. Sagar I view it that in 2005 we ruled on a vacant piece of land and now we are ruling on a vacant piece of land.

J. Creamer It is a question of when does something become a vacant piece of land when it had a structure on it prior?

G. Sagar I would think 30 years...

K. Rondeau But the use hadn't changed and the zoning hadn't changed in the mean time.

G. Sagar Same thing here.

K. Rondeau But there wasn't any structure on it.

G. Sagar That was 30 years ago.

K. Rondeau I don't think the number of years makes any difference.

E. Brainsky My experience is once you have a structure and it is destroyed by fire there is a law that states that whatever structure is destroyed by fire, you can put up the same use...

INAUDIBLE – TAPE CHANGE

E. Brainsky I think there is a distinction there, but whichever way the Board chooses to go, my client just wants to use his property.

G. Sagar My issue being that, not just what we do here, but we had this one on Arcade Avenue, this one on Avon Street, there will be others down the road, the bylaw is the bylaw, I think we need to show some consistency. In fairness to this

discussion too, I would like to provide this to the Building Inspector for her opinion.

E. Brainsky What you could do for consistency sake is (inaudible) put it in the exhibit.

Ch Groucke When I looked at the deed, it looks like the deed from 1972, it was carved out of a larger piece, it was created in 1960. We do not have all the history, it is not the textbook grandfather case, it did not predate the bylaws. I think the Arcade Avenue case did predate the zoning bylaw and I think that is what we hung our hat on and the fact that it previously had a house on it and allowing another house to go on it was the same use on what was a pre-existing nonconforming lot. This was not quite that and his argument is that this 4.2 says that because it is a recorded lot, we have the ability to grant a Variance because this isn't a lot that they recorded themselves, they are recorded lots.

K. Rondeau It borders on the Merger Doctrine that we have been consistent with voting against.

Ch. Groucke If you look around, they are all DiPietro, but they are not the same people.

E. Brainsky The four lots issued before you are the remainder of one of the brothers' property. That is probably why you see other DiPeitros, but they are relatives but they are still those cookie cutter lots. The lots would be merged by use as soon as you put a house there.

G. Sagar Could I ask a comment of the Building Inspector?

Mary McNeil Building Commissioner Sworn in. Case 2005-14; you granted this under Section 5.4.3. At the time of endorsement this parcel on Arcade Avenue was not held in common ownership with any adjacent land. I think that is the difference.

G. Sagar As long as we can make a distinction that they are not the same for future reference, I think they are entitled to relief in whatever form. Going forward so we are consistent in what we do.

Ch. Groucke Is there anyone to speak in favor of petitioner? None. Is there anyone to speak against the petition? None. Are there any questions about the petition? None.

G. Sagar This first petition is solely an appeal of the Building Inspector's decision.

G. Sagar made a motion to close the public hearing on petition 2011-21, seconded by J. Creamer **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

G. Sagar made a motion to uphold the decision of the Building Inspector and deny the APPEAL on petition 2011-21, seconded by K. Rondeau **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

G. Sagar made a motion to close the public hearing on petition 2011-22, seconded by K. Rondeau **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

G. Sagar made a motion to grant the Variance as requested on petition 2011-22,

FURTHER DISCUSSION ON THE MOTION:

K. Rondeau The situation is that it appears this was carved off in 1972, postdating all the zoning that was applicable at that time. This should be subject to the Merger Doctrine stating that you can't carve off something and make small nonconforming lots, however I think I need to see where it came from.

R Read It conforms to the area. The lots are similar.

E. Brainsky The deed itself states that the portion of the premises described in the deed (inaudible) then there is a legal description of the lots. It is not uncommon to describe portions of land and have legal descriptions in them. I think the document you really need to look at is the plat of record, which is the J.W. Wilbur plat, which has these 4 three thousand square foot lots. I know we are looking at this like one big piece but what you really have in front of you this evening is four separate plat of record. The record plat of lots 365, 366 367 and 368 had existed in this configuration of 3,000 square foot lots since 1913 so it is not that they were carved out and created in 1972, there were other smaller lots that were merged back then but the lots of record are small cookie cutter lots.

Ch. Grouke You are bringing us to the last sentence of 4.2.2 which says "if such combination or portion does not contain sufficient area to permit conformance with Section 6, a structure may be constructed thereon, subject to the approval by the Board of Appeals." That is the opening.

K. Rondeau Assuming that this lot has been broken off since 1913, with all that said, we are talking 2,400 square feet in an area where all the lots around are equal or less, this

would be in keeping with the neighborhood if we gave him a variance, I want to make sure our reasoning is intact.

G. Sagar In looking at the 1972 deed, they talk about the 1960 date. Frank and Mary Dipietro had three sons, Salvatore, John and Benedict and gave each one some land. Benedict passed away and the applicant is the son of Benedict and inherited this from his father's estate. It was in 1960 when they did that and at the time the lot sizes were 10,000 square feet, it wasn't until 1963 that they increased the lots from 10,000 to 14,400 square feet. At that time, it was a legal, conforming lot. It was the Zone Change that initiated it being a nonconforming lot. It is certainly in keeping with the neighborhood.

Ch. Grouke Okay, so a motion has been made and then there was discussion. Is there a second?

K. Rondeau seconded the motion made by G. Sagar and added that the Variance of 2,400 sq. ft. would be resulting in a lot that would be in keeping with the neighborhood, **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

2011-23 Town of Seekonk, a Municipal Corporation with its principal business address at 100 Peck Street, Seekonk, MA, 02771, Owner, by Sharonlyne Hall, Animal Control Officer, Petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, to nullify, amend or supersede decisions #80-8, #80-23, and #81-7 and request if necessary, a **Special Permit** under Sections 5.2.1, 5.3 and, if necessary Section 6.2.13 to allow the relocation of an existing shed, the addition of a 14' x 24' car port, and a 42'x 30' addition to the existing Animal Shelter at 100 Peck Street, Plat 18, Lot 11 in a R-2 Zone containing 21.7 acres.

David Bray Caputo and Wick, Ltd. 1150 Pawtucket Avenue, Rumford Rhode Island. Sworn in. The Animal Control Officer needs additional space for the center next door they are proposing to extend the use of the property, and add on an addition with a connecting hallway. The new addition will provide some visiting rooms, more storage, more area for the animals, some bathroom facilities, carport and some office space. The existing building is in need of repair as well. What they would like to do is get this building erected, get it established and then renovate the existing building as well. We have put a site plan together showing the addition 30' x 42', a little over 1,200 square feet. The connecting hallway of the animal shelter (inaudible) and then an expansion of the parking lot to provide more

spaces for volunteers, visitors and employees. That will be off of the existing driveway that is there now. They would like to relocate the existing shed and add a carport for the Animal Control Vehicle so the vehicle is out of the weather in the winter time. Quite a few times the Animal Control Officers had to go out there and clear off snow and the van is tall and difficult for her to get at, it would be a lot easier if it is out of the weather and to get the animals in and out of the building. It is my understanding that there is a possibility that the senior center will be here, that the Zoning Board will issue a permit for that but their parking area will be in this area here and would not be in conflict with the area shown here. That is basically their petition. I have Mrs. Hall here as well as members of the committee.

G. Sagar Have you discussed this site plan with the Town Planner?

D. Bray Yes, Mr. Hansen and I both went over the plan together. I showed him the layout I also coordinated with Jim Miller who has put together some plans for the senior center and John Hansen has seen his revised plan that correlates with ours. We want to get approval from Zoning Board to allow the extension of this building. At that point in time, the building will get designed in further detail. Then we go before the Planning Board for site plan approval and at that time we will address the grading and the drainage.

R. Read It is a separate building not an addition.

D. Bray All we are doing is putting the building up and connecting the two together with a hallway. They feel this is the most cost effective way. They are doing all this through fund raising, it services the community in town, it is a benefit to the town to have a facility available.

G. Sagar Mr. Chairman, I have to say, today Mr. Read and I visited the Animal Control Office. I would like to really compliment the staff that includes previous staff members, and especially Save-a-Pet, for all the hard work and the money they raised and the great job they do on behalf of the town. I was taken aback going to that building; it is in deplorable condition, and Mr. Read is of the same opinion. It is sinful to see, from the health perspective, asking our employees to work in a building that has terrible ventilation. I think this is a great opportunity to finally address that. Again, I give accolades to all the previous people that have been involved in that effort. Looking at the decision back to the '80s, I don't know if everybody is familiar with the history of that building but I know Mr. Bowden is. The original animal control building was supposed to be on Water Lane. It was permitted but never built and then the decision was to move it here. The first petition that came before the ZBA was denied, then under our section under repetitive petitions, it came back in and they allowed it and then the two members that were opposed to it and two members wanted the access driveway and that is the part that made it go forward. Reading the decisions, and I respect what they did back in the '80s, I would really think, I own two dogs myself and based on

one of the conditions of the whole operation all the animals have to remain outside, I think that is wrong. I would like to amend that so that so they could have those dogs outside at some part of the day. I recognize that in the 1980's it was the neighbors that came in and were opposed to it. I wouldn't want to be living next to a bunch of barking dogs but we have permitted kennels in this town with far more dogs than what they have today when we were there and I think we should take a look at that and maybe work with them to see if there is something we could do to relieve some of the conditions that were put on. We were very adamant when we met with the Senior Building Committee that went before us that we wanted to see a building that was in harmony with what is here now. This building has been renovated and the Fire Department, I think that we should stick with the standard, I am willing to give them a permit but I think we should impose the same conditions that we did for the Senior Center that they have to come back to us with the full plan specifications. I think we need to give them some direction of what we would be looking for.

K. Rondeau The current building houses animals, supplies, offices, etc., what are the plans for current building once the new building is built?

S. Hall It would be for quarantined animals holding period, house some more storage and it will be my kennels, we are not moving the kennels.

K. Rondeau That building is just deplorable.

R. Read Do you think you could tell us a little more about the other animals you mentioned to us this morning that are in that building.

S. Hall We have uninvited animals, snakes in there, mice in copy machines, the roof is leaking.

G. Sagar It is time the Town...

K. Rondeau I can appreciate what your plans are but would it be worthwhile to raze the building and construct a new building, something that is better for the animals and keep unwanted animals out?

S. Hall We don't have the funds to do what you are saying or making it bigger.

K. Rondeau Not necessarily bigger but water tight, critter proof. I am looking to replace the shell of the building if that is possible.

D. Bray They have outgrown the size of the building, what they need would be about 4,000 sq ft. but they don't have the funds to make the ideal building that they need it is pretty much funded privately not by the Town.

- G. Sagar They have done a great job raising money. I would like to see us work with them a bit, help explore giving them additional relief from the 1982 decision.
- Ch. Grouke They did ask to nullify those decisions.
- G. Sagar Do you have a construction schedule or time line, are you ready to break ground?
- D. Bray Not yet. They have raised about ½ the money for this project and they are hoping to raise the other half once they actually have a project. In the ideal world, they would like to start in the spring. One thing I want to note regarding the kennels; back when I met with Pat Cloutier early on this year about this whole project one thing I noted when she told me about the kennels inside that building, I don't know about you but any night I have ever been here and I have been coming to this Town Hall for almost 20 years and I have come out of here at all different hours and never once have I heard an animal from that building. I don't think noise will ever be a factor.
- R. Read It's true.
- G. Sagar We are meeting on the 24th I would like to continue this until then and to do a visit there at 6:30.
- R. Read How much you think this project will cost?
- D. Bray The project budget is about \$130,000, maybe a little more than that. Some of it is donations of materials as well outside of that figure.
- G. Sagar In our discussion with Sharon today, did I understand that you would welcome the opportunity to bring the animals outside on a regular basis?
- S. Hall That would be nice. To at least get a couple maybe two runs to let them out.
- G. Sagar I would like to suggest to the Board that we continue it and re-notify the abutters that we are looking to drop that stipulation and see if anyone shows up and if they have any concerns.
- E. Grouke Lets see if there is anyone here tonight. Is there anyone here to speak in opposition of the petition? None. Is there anyone here to speak in favor of the petition?
- Dave Bowden 170 Walker Street, sworn in. This is long overdue. The original building was built there because the water district didn't want it on Water Lane. The building was built from concrete and dogs slept in 55 gallon barrels; this was a Godsend to the Animal Control Officer. The town has not put a lot of money in the building, this committee along with Save a Pet is doing this and it is time we did something.

Ellie Wiseman sworn in. Of all the times I have been here I have never heard a peep from a dog or cat. They need money.

Pat Cloutier Newman Avenue sworn in. President of Save A Pet and Chairperson of the Animal Shelter Building Committee. This project is all donated money. We are limited in our funds. In the mean time, we would like to get this project started. I don't know if we can back up to our original petition and then go before you again for kennels and such. A new building would be a long time down the road.

G. Sagar I would think it is in your best interest to delay 30 days, if the board could authorize Mr. Read and I to meet with the building committee, re-notify the abutters...you have done a wonderful job.

R. Read I assume this addition could be built so that if in the future we add a building and raze the building, could you extend the new building?

D. Bray It can be done but the existing building is so old.

G. Sagar made a motion to continue until 24 October, 2011 at 7:00 pm and re-notify abutters that part of our deliberation is that the entire operation to be indoors, and authorize me and Mr. Read to meet with the Animal Shelter Committee.

FURTHER DISCUSSION ON THE MOTION:

Ch Groucke That was part of the original application and legal notice.

K. Rondeau I have been to the animal shelter numerous times, I have seen it just recently, I think I could make a decision tonight, is there anything from keeping us from making a decision tonight?

G. Sagar I would like to do his once, get more detail on the look of the building; I would like a clearer view of what is going on.

D. Bray We don't have any floor plans.

G. Sagar amended his motion and withdrew the recommendation to re-notify abutters but moved to continue the public hearing until October 24, 2011 and meet with the Animal Shelter Committee

FURTHER DISCUSSION ON THE AMENDED MOTION:

K. Rondeau Has there been any meeting with the Board of Selectmen to get the funds to do something with the building?

G. Sagar Have they done anything to patch the leaking roof?

S. Hall They have patched where the tree came down, they are trying to fix that hallway, move the fridge out there so it is in an area for us to use for all the animals.

J. Creamer seconded the motion **and so voted unanimously by:**
Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

2011-24 822 Fall River Ave. Realty Company, 375 Broadway, Menands, NY, 12204, owner, by Nicole Handricken, Sign Design, 170 Liberty St., Brockton, MA, 02301 petitioner, requesting an appeal of the Z5oning Enforcement Officer's Decision and if necessary a **Variance** under Sections 12.3.3.13 and 12.2.8, to allow an electronic message center on a freestanding sign at 822 Fall River Avenue, Plat 8, Lots 7A & 113 in a Highway Business zone containing 70,250 square feet.

2011-25 822 Fall River Ave. Realty Company, 375 Broadway, Menands, NY, 12204, owner, by Nicole Handricken, Sign Design, 170 Liberty St., Brockton, MA, 02301 petitioner, requesting an appeal of the Zoning Enforcement Officer's Decision and if necessary a **Variance** under Sections 12.6.1.1 and 12.4.7, to allow an electronic message center on a wall sign affixed to the exterior of the building at 822 Fall River Avenue, Plat 8, Lots 7A & 113 in a Highway Business zone containing 70,250 square feet.

E. Brainsky The petition is to allow electronic message centers in its sign at the former CITGO Gas Station on Fall River Avenue. The applicant was previously before you and the Planning Board over the course of the last two years for the demo of what was then the existing CITGO gas station for the construction of a 7,500 square foot gas station/convenience store with an auto shop and car wash. Construction is coming along very well; it is in the final stages of construction. What we have before you is really the last phase of approvals, other than the Certificate of Occupancy, necessary for the finalization of this project which is for the signage that would be affixed to the building and free standing sign that would be located at the (inaudible) site. Both signs are proposed to have electronic message centers which require variances from this Board. The sign that would be affixed to the building would be roughly 50 square feet, we submitted renderings as well as dimensions to the Board. The free standing sign is roughly 20-21' tall which is roughly the same size as the existing sign out there except, again, we will have an electronic message center. There are few electronic message centers that

are not quite as sophisticated as what these folks are proposing here located throughout town, I have done a little research, one is located at MTTI School, Memorial Baptist Church, Rumford Pet Centers, Gasbarros Liquors, obviously each one of those signs varies and this sign is really state of the art, this is high def, color, state of the art. I have with me this evening three people, one is Lisa Mann from Sign Design, they put together the renderings you have in front of you; the other is Bob Messier from Dac Tech which is the sign manufacturers, they will tell you each one of these signs has electronic programmable system software you can program to have any sort of color, display, timing which I know has been an issue before of how often signs can change whatever advertisement or message that you display. The third person is a representative from the company, the applicant Mr. Dan Carbone who has 30 years experience with gas station/convenience stores as well as marketing, and construction and the overall entity of these types of businesses. He will tell you that almost without fail these new gas stations in this region, this is where they are going, it operates as a benefit for public, free coffee advertisement to get messages out to folks driving by. I would welcome any questions. I have those three representatives.

Groucke You are applying under moving flashing sign, are you applying for larger size and additional size?

E. Brainsky No. The size is in accordance with the Zoning Bylaws. This is only for the electronic message portion.

R. Read I am not sure where those signs are going to be.

E. Brainsky One is on the pitch of the roof, the other is on the southerly edge of the site. The new pylon sign will come down and the new sign will go up.

Ms Lisa Mann Sign Design, Brockton. Sworn in.

Bob Messier Dac Tech Sign 164 Cross Street Hanson, Massachusetts. Sworn in.

Lisa Mann The pylon sign is simple, clean, and effective it is not gaudy. It is the same with the building sign. It is a clean building sign, nothing over the top. It is an opportunity for tenants to advertise. The digits change every day and a message center on the pylon sign.

J. Creamer Are they a moving message?

Lisa Mann They are not moving, they are changeable.

E. Brainsky They have the opportunity to be changed.

B. Messier Basically this is an electronic message center, not scrolling, just a static message that displays for a period of time and changes every 15 seconds.

K. Rondeau So a new message would appear every 15-20 seconds?

E. Brainsky I advised my client Seekonk is not going to want flashing signs. They were thinking 15-20 seconds. Only changing once a day is a lot to ask of them.

B. Messier Do you have anything in an ordinance?

K. Rondeau We have been very direct and forward with the stipulations, the compromise was that they change only once per day. I am going to end up not supporting these signs if I see more of this. I believe we have another one of these instances that we addressed.

E. Brainsky I can see the concern when the ZBA approves a petition, Mr. Carbone is one of the managers of the company, it is not going to behoove us to have this thing flashing.

Mr. Daniel Carbone 375 Broadway Menands NY, sworn in. It would be beneficial for us to have a sign, "free cup of coffee with fill up" as long as possible to give everybody the chance to see the sign, not to confuse them, it would be the last thing we would do, it is for maximum exposure for more people to come there. That is not our intention.

G. Sagar You could live with changing the sign only once per day?

D. Carbone Yes I could.

G. Sagar If we did anything different then everybody will be coming in.

D. Carbone If we have a promotion that is working, we might keep it up for a week. Not everybody drives by every day. The one on the building, those are for the people who are sitting there pumping the gas, they can look at something. We are a small company, this keeps us in business. We couldn't keep up with the expense of the garages. We have no choice that is what is happening in our industry. These signs, our pumps are the latest and greatest pumps; we are introducing flex fuel. We will put that up on the sign. If we can't keep up with the technology and the guys with the pocketbooks, we will be put out of business.

G. Sagar Why didn't you ask for the signs when you first came through with this?

D. Carbone I can't answer that.

E. Brainsky I was here when we first came through and what often happens is signage is the last thing on everybody's mind when you are designing the building....the

Planning Board wanted certain building design. Sometimes, they get to this point and you get here at the last moment for signage, it is nice to do it all at once but this is not uncommon. My client is willing to go with what you are saying.

J. Creamer I believe what we do is in the best interest of the town.

M McNeil The signage they present with the restriction of changing once per day, I can live with that.

G. Sagar Once we permit them do we have a right to rescind them?

M. McNeil You can call them back in.

J. Creamer In order for Mary to enforce this, can Mary just send them a letter?

M. McNeil You can call them back in.

K. Rondeau There have been some that have been exemplary, the Luxury Box is only once per day; there are a couple of others that abide by the stipulations.

Ch. Groucke Is there anyone to speak in favor of petitioner? None. Is there anyone to speak against the petition? None. Are there any questions about the petition? None.

G. Sagar We have approved these signs in the past with the following stipulations:

- a. There will be no change of script except daily;
- b. No intermittent illumination or traveling, flashing or animated lighting is allowed;
- c. The sign will be made available for emergency public messages. The petitioner will inform the fire chief and police chief in writing of this provision;
- d. To the extent possible, the sign shall be rustic in nature;
- e. The hours of operation shall be in compliance with the by laws;
- f. The sign by law shall apply in all other respects;
- g. The sign will be equipped with automatic photo cell dimming during darkness

One of the other requirements is that they be made available to the Town for emergencies.

G. Sagar made a motion to close the public hearing, seconded by K. Rondeau **and so voted unanimously by:** Ch. Edward F. Groucke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

G. Sagar made a motion to uphold the decision of the Building Inspector, seconded by K. Rondeau **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

G. Sagar made a motion to grant the relief as requested with the stipulations listed and discussed above for both signs, seconded by K. Rondeau **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

Approval of Minutes:

K. Rondeau made a motion to table the approval of minutes until October 24, 2011 seconded by G. Sagar, **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

Discussion:

G Sagar suggested the ZBA post agendas and minutes on the Town's Website.

The Board discussed adopting one official newspaper perhaps the Sun Chronicle, applicants would pay their own fees.

G. Sagar made a motion to adjourn the meeting, seconded by K Rondeau, **and so voted unanimously by:** Ch. Edward F. Grouke, Gary Sagar, Keith Rondeau, Robert Read and Jeffrey Creamer.

VOTE: (Approve 5-0)

Meeting adjourned at 9:15 PM

Respectfully submitted by:

Christina Testa, Secretary