

**SEEKONK ZONING BOARD
REGULAR MEETING
MINUTES**

September 9, 2013

Present: Ch. Edward F. Grouke, Robert Read, Gary Sagar, Roger Ross, Neal Abelson, David Saad

7:08 Chairman Edward F. Grouke called the meeting to order.

Ch. Grouke This is the meeting of the Town of Seekonk Zoning Board of Appeals, September 9, 2013. I am going to go over our 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. The Board will ask questions of the petitioner and witnesses. Any questions from the podium will go through the Chair. 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 then take a vote. We also usually make a decision on the same night, although we are not required to do that. There are times that we may postpone a petition for another meeting either for a site visit or to gather some information. Once we have closed the public hearing and taken our vote, it is then reduced to writing and filed with the Town Clerk within 14 days of the date the vote is taken. Any person who feels that he is negatively affected by our decision, as long as he has the proper legal standing, has the right to appeal to the courts of the Commonwealth of Massachusetts; and anyone considering taking such an appeal has to comply with very strict time limitations that are applicable to a court appeal. The time limits are very strict.

2013-15 Christopher Silva, 97 Baker Street, Seekonk, MA, Owner and Petitioner requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Variance** under Sections 6.5 and 6.8 of the Zoning Bylaws to allow the construction of an attached two-car garage to an existing dwelling within the front and side yard setbacks at 97 Baker Street, Plat 25, Lot 98 in a R-1 Zone containing 15,000 sq. ft.

Christopher Silva 97 Baker Street, sworn in. We would like to build a two-car garage attached to the existing house on the right-side facing the house from the street; we need the 15' setback on the neighbor's side. I think I am encroaching by about 6.9 feet.

Ch Grouke Are there any questions for Mr. Silva?

Ch. Grouke Did you look into other alternative places where you could put the garage?

Chris Silva I looked on the left side of the house, and that's not really a good idea because of the leach field so the most optimal place is where I have it currently. I discussed it with my neighbor, and he is not here today but I asked him if he wanted to show up whether or not he has any objections because he'd be 15 feet from this. We have a verbal agreement as long as I don't move the existing fence, he has actually no objection to the two-car garage.

Neal Abelson I'm just trying to figure out where the hardship was to establish the need for a Variance. It wasn't created by zoning because it is an R-1 lot.

Chris Silva The garage is 24 feet wide, and it needs to be 15 feet off that line. It is just goes just past that 15 foot line by 6.9 feet; so basically I'm not over into his property but I am over that 15 foot line.

Neal Ableson There are setbacks that are designated for each zone, and R-1 is 15 feet. You have to show some kind of hardship, like the zoning change and you could make the 15 but it's supposed to be 20, and the zoning change that used to be R-1 has changed to R-2. I could see where that was a hardship created by a zone change, but I don't really see a hardship here though.

Chris Silva In terms of hardship, meaning if I'm going to be negatively affected by not getting my 24' garage?

Ch Grouke Yes, that is one aspect of it.

Chris Silva We currently have three vehicles.

Ch Grouke That is a large extension; if it were like a foot, maybe a foot and a half; but it is over 6 feet.

Chris Silva Part of the reason we wanted a two-car garage is to add value; a two-car garage raises the value of the property substantially vs. a single car garage. So, if you looking to increase the value of the property and where the garage sits vs. the setback, it is on the opposite side of where the current one is. The 15' where I'm encroaching is actually like this because (inaudible) the land goes like this. If you are in my driveway, it is almost

difficult to see their house. It is really not affecting them that much, and also their house is at the opposite end. I could understand if their house is right near, and I was getting really close to their house with the garage. That would be problematic to both of us. They did agree verbally that they did not have a problem with it.

Ch Grouke So, what is the distance going to be between the proposed garage and the property line?

Chris Silva Right now, it is a fenced area; it will be about 8-10 feet, there is a slight angle. So the current fence will be about 9.6. The existing fence—I had my property surveyed--and it turned out that the fence is actually not on the property line; their fence is encroaching on my property line, but I'm not going to move the fence for two feet.

Ch Grouke Right, but you're going not to the fence to measure the property line?

Chris Silva No, I'm measuring to the fence; the distance that would be left after the garage is built would be at least approximately 8 feet—between 8-10 feet, because of the angle of the fence.

R Ross That is not what the survey plan says, the way I read it. I see that at the northerly corner of the garage, it is 9.1 feet from the property line; and at the southerly corner, it is 8.9 feet from the property line, not to the fence.

Chris Silva It is probably 7-9 feet that will be left.

D Saad I stood where you are about twenty some years ago; and I was encroaching by 3 inches; my fireplace was 3" (inaudible); my neighbor said it was okay. They made me take the fireplace down. I understand where you are coming from. Could you build a smaller garage?

Chris Silva We could, but that is not what we want out of the property.

R. Read Could you tell us where the septic system is on the other side of the house?

Chris Silva It is just behind the house, 10 to 12 feet off the house. The leach field goes out toward the edge of the property, and I have two maples, and the leach field sits way under that.

R. Read Ten or twelve feet from the house?

Chris Silva Yes, I believe, from the back of the house. I have two maples, and they sit on the property line, right on the edge. I am assuming that is where it is.

R. Read That is 50-60' from the house.

Chris Silva I thought you were talking about the tanks, oh yes, that is 50-60 feet.

Neal Abelson You really could put the garage on the other side of the house if you wanted to. It would be far enough away from the leaching field and far enough away from the septic tank. I know it might not be exactly where you want it.

Chris Silva Part of the reason for building on that side of the house is that is currently where that driveway is. I would like to have a big yard, and I would not want to take out the yard. I have a really long driveway; I could probably park six cars.

Ch Grouke Is there anyone to speak in favor of the petition?

Mike Bourque, 103 Ellis Street, sworn in I am a direct abutter; my property is the last house on Ellis. Since they owned it, that property has never been better, upkeep, maintenance, as far as the look of the property. The hardship I think he would have is that, if he builds to the left, that doesn't leave any land left if the septic system fails. If he uses the whole side yard, if the septic system fails, where would he put it? On the right side, he'd be coming back here asking for a variance for the septic. The property value, if you look at that, I don't think it would hamper anything. The look of the property will be enhanced. Right now, the house is basically an old chicken coop that was converted back in the sixties; it actually came from Ledgemont Country Club on Brown Avenue in pieces. So that probably predated zoning; so where they plopped it down on that land is where it sets, they never gave any consideration for additions. This is probably the smallest property on Ellis and Baker; it was a postage stamp lot with a paper street at the end, which was supposed to cut Ellis, Baker, and (inaudible); the Town abandoned it and never did it. The bottom land to the left is not possible to develop a street. I am here in favor of the variance. I hope this sheds some light on the property.

Ch Grouke Is there anyone else to speak in favor of petitioner? None

Is there anyone to speak in opposition to the petition? None

Are there any more questions from the petitioner?

R Read I have some comments. In that particular area there are many house lots that are considerably smaller than his; and I didn't measure any of them, but I dare say a lot of those violate the side-yards' standards. His is one of the bigger lots; and the area in question on the other side would probably be also, a problem on that side, if his lot weren't so much bigger on that side, but he has one of the larger lots, probably the largest lot on that street. I like to look at the value; there is no question that a two-car garage would add to the value of his house and conversely the other houses on the street. I think we should have to take that into consideration.

Ch Grouke Mr. Bourque, would you like to say something else?

M Bourque I have lived on that street for 44 years, Ellis actually. The size of the lot, I'd be frank, Ellis (inaudible) Coleman which is in his backyard—absolutely the lots are smaller. None of these houses have garages. They are very, very small houses on Coleman, so there are small lots in the neighborhood. My lot is the biggest in that neighborhood; he does not have a lot of land to do very much with. When that plat was developed, the gravel was stripped. When you drive down the street, it drops. The gravel bank--McHale owned it. Every lot there is different, different sizes; they are all squared, but there was no zoning to say every lot has to be a different size, setbacks weren't a consideration.

R Read As he just said, many of the lots particularly on the next street are 80 feet. If his lot were 80 feet, it would be about right at the edge of his house so there would be no question about the look of the garage on the other side. His lot is 150 feet; 80 feet is half of that. I think we should take that into consideration, too.

Ch Grouke Sure. I think this Board in the most recent past has taken a more expansive view of granting variances, unlike twenty years ago as Mr. Saad pointed out, and things like where the house having been set down on the lot in a certain way in which it affects what you can do with it now. That is something—those kinds of factors are things we would take into account in determining whether there is a hardship to sufficiently grant a variance. By the same token, we do like to ask people if they have looked at other alternatives, could they cut down on the size or put the garage at another location to try to minimize the amount of the encroachment given. That are just a couple of comments I had. Under all the circumstances in

this particular neighborhood, I think in the big scheme of things that what the petitioner is requesting is not out of line and something we could consider. How do the other members of the Board feel? One thing we could do is to ask Mr. Silva maybe to look at his petition again and come back with an alternative plan to minimize the amount of the encroachment; we wouldn't be giving him everything that he wanted if he were to build a smaller garage; but it might bring the size of the variance down.

N Abelson My only issue is like, I mean if he were on a smaller lot, it would probably be one thing, but he does have the space. I know it is not where he necessarily wants to put it, but there is more than adequate room on the other side. It wouldn't be encroaching at all.

R Read We are talking about 6' here.

Chris Silva It is aesthetically more pleasing to put it on the right side so we don't have two broken up pieces of the yard; if it were on the left side, now I would have this building in the middle with smaller yard areas on either side. This maximizes the yard.

Ch Grouke It's the more appropriate place, given the way things are set up.

D. Saad What side is the kitchen on?

Chris Silva The kitchen is on the right side; where we want to put.

D. Saad That would be another reason to keep it there.

Chris Silva Yes, if we put it on the left side, we would have to shift everything around, put another driveway in, another entrance, a curb cut.

D Saad I am sensitive to what Mr. Bourque said about the septic; if he did put it on the left side, would that affect the septic system?

Chris Silva I would be in a lot of trouble I would think. There is an abandoned cesspool where my current driveway is; I would have to do something there to address that, because the septic that is currently there is new; and the old cesspool, I believe, sits under the driveway. I don't know if that is problematic.

D Saad If you did shrink this to a one and a half, that is not really not what you are looking for; you want a two-car garage.

Chris Silva As investigated, a two car garage is more valuable in terms of resale than a single, and it adds more value to the property.

D Saad It adds more tax revenue.

D Saad I was just trying to see what the hardship would be if you put in on the other side. The septic I'm very sensitive to, because I think it would give him a problem. It does add value to the property and adds value to the rest of the houses around it. I think it defeats the purpose if he puts it on the left-hand side.

R Ross The practical aspect of this, sighting it on the left side, you are either creating a driveway around the house to access the garage from the rear or across the front or driving across the lawn--one or the other; neither of which is particularly appealing. To comply with setbacks, you would have to have something less than an 18 foot wide garage, which is not very practical. It would not be appealing and this would not be detrimental to the neighborhood.

Ch Grouke Is there any other discussion? If, not, do I hear a motion relative to the Building Inspector's decision?

N. Abelson made a motion to uphold the Building Inspector's Decision, Seconded by R. Ross; **and so voted unanimously by:** Ch. Grouke, Roger Ross, David Saad, Robert Read, and Neal Abelson.

VOTE: (Approve 5-0)

R. Read made a motion to approve the petition as presented and grant the Variance, Seconded by D. Saad; **and so voted by:** Ch. Grouke, David Saad, Robert Read, and Roger Ross.

VOTE: (Approve 4-1) Neal Abelson opposed

2013-16 Darling Development Corporation, 940 Fall River Avenue, Seekonk, MA, Owner by Tyler Almeida, Dublin Hospitality, 532 Kinsley Avenue, Providence, RI, Petitioner requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Variance** under Section 12.4.2.1 of the Town of Seekonk Zoning Bylaws to allow a 7' diameter illuminated sign to be mounted on the face of the building exceeding the allowed 5% of wall face at 940 Fall River Avenue, Plat 7, Lot 64 in a HB Zone containing 399,455 sq. ft. +/-

Rob Davis InSite Engineering I am representing Dublin Hospitality Mr. Tyler Almeida, the owner of the property is Darling Development; the location is at 940 Fall River Avenue, which is located on Seekonk Assessors' Plat 7, Lot 64. It is the former location of DiParma's Restaurant. The property is located in a Highway Business District, containing about 399,000 sq. ft.; a little over 9 acres. It has frontage on two roadways, Fall River Avenue and also on Interstate-195. We are requesting an appeal of the decision of the Building Inspector and requesting a variance under Section 12.4.2.1 for a sign that exceeds 5% of wall face on which the sign is mounted. The sign will replace the existing DiParma sign, which is mounted on the building, approximately 16 ft. x 4 ft. or 64 sq. ft. It will be replacing the 7 ft. diameter sign which is shown here; 7 ft. round, 84 inches. It will be a poly carbonate sign, illuminated with white LEDs, it will be mounted on the existing bump out of the building here. We would like to address the regulations and sign bylaw. The portion of building where this sign will be mounted is actually approximately 100 ft. long parallel with Fall River Avenue. The height from the eaves or the plate as defined in the bylaw is approximately 90 ft. That surface area, not even counting the area that is the bump out is approximately 900 sq. ft. Five percent of 900 sq. ft. is 45 sq. ft. The 7 ft. diameter sign is about 38 ½, so I believe we are under that 5% bylaw. There was actually an initial application for a sign was submitted where there was no place for us to explain that. We made two attempts to go in to see the Building Inspector, Mary, who has recently left. We wanted to speak to her specifically on this point; we never had an opportunity to make our presentation to her to let her know (inaudible) that it was less than the 5% criteria. She said, in a letter, that we should go before the Zoning Board of Appeals. So we are here tonight I would like the opportunity for the Board to consider that it is less than 5% criteria, which would make her decision null.

Ch Grouke Do you think she just used the front façade that it sits on?

R. Davis Yes, she told me that she had looked at it and it is because the sign is mounted on this little architectural feature here, the bump out for the entrance, and if you are familiar with the DiParma Restaurant, that just provides access into the long corridor into the middle, but the building itself all the way up to the edge (inaudible) the Ramada; that face is approximately 100 ft long.

Ch. Grouke That circular sign has an area of 38 .5 sq. ft.?

R Davis Yes, 38.5, a 7 ft. diameter

Ch. Grouke How big is the DiParma sign?

R Davis It is about 64 sq. ft., it is approximately 16 ft. long and 4 ft. high.

Ch Grouke It was mounted on the roof?

R Davis Yes, sir. Through the magic of graphics and Photoshop it's been taken out but originally it was here.

Ch Grouke You don't intend to put a sign on the roof?

R Davis No, sir.

Ch Grouke That is the argument that is being made. He's asking to overturn the Building Inspector's decision as opposed to granting a sign variance.

N Abelson Because it is on the same plain, I would imagine that it would be, it faces the same direction, I would think that that would be the case.

Ch Grouke Right.

R. Ross For purposes of complaints with the Zoning Ordinance.

N. Abelson That little bump out is still on the same surface.

Ch Grouke That's correct.

Ch Grouke Is there anyone to speak in favor of the petition?

Joel Biliouris 53 Marlaine Drive, sworn in. I would like to see them continue to flourish as a restaurant and would like to welcome them to Seekonk.

Ch Grouke Is there anyone to speak in opposition of the petition? None. Are there any more questions for Mr. Davis? None.

N Abelson: I would like to make a motion to overrule the Building Inspector's decision.

R Ross I second the motion.

Ch Grouke Would you like to add to that?

R Ross Based upon uncontradicted testimony that we just heard from Mr. Davis which is sworn, that the total area of the whole surface sign is 38.5 sq. ft. and that it appears that it is fully compliant with Section 12.4 of the zoning ordinance, I would move to overturn the decision of the Building Inspector and amend the motion.

R. Ross made a motion to overturn the Building Inspector's Decision, Seconded by D. Saad; **and so voted unanimously by:** Ch. Grouke, Roger Ross, David Saad, Robert Read, and Neal Abelson.

VOTE: (Approve 5-0)

Ch Grouke All in favor? The Board voted 5 in favor and 0 opposed to your request to overturn the decision of the Building Inspector and thereby allowing the sign as presented and requested.

5 minutes recess; Ch Grouke will step down

G Sagar, Acting Chairman: As Chairman Grouke has alluded; he will not be sitting on the final two petitions because he feels he has a conflict, so he has opted to recues himself. The same rules apply to these hearings as he explained earlier, so with that being said:

2013-17 Ronald T. Lariviere, 40 Marlaine Drive, Seekonk, MA, 02771, Owner by Stephen E. Navega, Esq., 447 Taunton Avenue, Seekonk, MA, requesting an appeal of the Zoning Enforcement Officer's Decision, and if necessary, a **Special Permit** under Section 5.1 et. seq. and/or a **Variance** under Section 6.3 et. seq. of the Town of Seekonk Zoning Bylaws to allow the construction of a 26' x 26' garage and a 5' x 5' foyer to an existing dwelling on a legal, nonconforming lot at 40 Marlaine Drive, Plat 27, Lot 77 in a R-2 Zone containing 14,708 sq. ft.+/-

Atty. Navega, sworn in: I am an attorney with an office at 447 Taunton Avenue, Seekonk. I am also a town resident, residing at 175 Warren Avenue. I am here tonight representing Ron Lariviere and his wife, Maryanne. They purchased the property in question. Its address is 40 Marlaine Drive, Seekonk; and it is Plat 27, Lot 77, an R-2 Zone. Keep in mind during this discussion that this was originally an R-1 Zone. That whole area has undersized lots. As you know, an R-2 Zone requires 22,500 sq. ft. My client's property is only 14,708 sq. ft., so with that said; I requested a zoning determination from the Zoning Officer and she responded that a special permit and a variance were needed. I would suggest to you that realistically this is probably more a special permit request than a variance, because frankly we are preexisting legal nonconforming, so as a result of that, we cannot meet the setback requirements because of the lot in question has been changed in zone to R-2. It would be more appropriate to extend in the long run than a preexisting legal nonconforming use. So that is

what the situation is here tonight. My client is suggesting a 26' by 26' addition, straight off the house, and we don't meet the frontage, not that that is really an issue here; we can meet the side yard setback, which is with the addition 28'. We don't need that much. We can't meet the rear yard setback due to the current zoning. So I suggest here, my client has spent a lot of time, effort, and energy in this property; and he expects to improve it drastically, putting in a brand new start-to-finish septic system on the opposite side of the garage. I'll explain it to you a little bit later. He's going to have the exterior and interior done, the septic system like I said, a new roof, new siding, new electrical, new plumbing, interior kitchen, bathrooms, everything else that goes along with it, dramatically improving the area in question. So I would suggest to you that it is probably a special permit request as opposed to a variance but owing to the zone change and circumstances relating to the soil conditions, size shape and topography of the lot in question a literal enforcement of the bylaw results in a substantial hardship to my client and the relief requested does not affect the residential zoning district; it will not substantiate -- it is not detrimental to the public good. There is no nullification or substantial (inaudible) of the intent of the bylaws if you would allow the variance that the Building Inspector has suggested. On the other hand, this is straightforward special permit; the only issue relating to this would be is the request in harmony with the general purpose and intent of the bylaws. So I would suggest that you consider approving this request as submitted.

G Sagar According to the Zoning determination letter of August 2nd, the Building Commissioner has you in for two variances and two special permits, is that correct?

Atty. Navega Yes.

G. Sagar Are there any questions of Mr. Navega?

N Abelson Reverting back to the R-1, the setbacks, etc., so then you would need a variance; this is really an R-1 lot, so you really are encroaching on the front setbacks so you would need a variance. Your hardship is the fact that they changed the zone; the fact that they changed the zone, we should have to meet the R-1 setbacks, not that in this case we would have to, but I'm just saying, I think it would be a variance.

G Sagar No matter what, the 40' setback to the rear (tape change)

G Sagar Are there any other questions for Mr. Navega at this time?

None.

G Sagar Is there anyone to speak in favor of this petition? None. Is there anyone to speak in opposition of this petition?

George Morris 48 Marlaine Drive, Seekonk, a neighbor, sworn in. I have to look at the map detailing the changes, and I have a couple of questions. My first one is probably, because I don't know much about R-2, what does that mean in terms of distance between the houses?

G Sagar The difference in the current R-1 zone is 14,400 sq. ft.; an R-2 zone is 22,500 sq. ft. Every lot with the exception of one or two in this whole plat is nonconforming, because it was plotted many years ago and through Planning Board and Town meeting action the size of the lots was increased.

G. Morris I was looking at the relation between the new garage and my lot.

G Sagar They are showing the distance from the 28'; that would be same in an R-1 zone also.

G. Morris Now, R-2 is smaller then?

G Sagar R-2 is a bigger land area; but for a side yard setback, it's 20' plus 5'—it would be 25' because it's a two-story design that they are doing; they have 28' so they are within the limits. They made it by 3 feet.

G Morris The second question that I have, as you know in Seekonk we have a lot of water problems. We are not free of that; when you get a big storm; you get water where the cellar floor meets the wall. When you get a big hurricane you get water in there. That's probably the same in everyone else's house; but now when you add the new garage, it comes straight over to my house. My question is how will that impact because of its position relative to the leach field beside it, how will it impact the drainage of water to that leach field?

G Sagar Mr. Navega stated that they are putting in a new septic system so that will take in all the updates to Title 5 which has been updated since this plat was originally put in. New water table readings would be taken into accommodation, and the grading by an engineer will be taken into account when this system is installed.

G. Morris So you are telling me that part of this garage was sitting on the leach field?

G Sagar It can't sit on top of the leach field; they are moving it. You cannot put a structure on top of the leach field. Mr. Navega stated they were putting a new septic system. Is that to the rear of the house, Mr. Navega?

- Atty. Navega To the rear. (Atty. Navega showed a map of the area) Right now he has a T into a cesspool. It will be on the west side. I understand it has already been approved by the Board of Health.
- G Morris If that impacts the drainage out of the leach field, that is my question; it seems to me that water will be heading to my property, and I don't like that.
- G Sagar The best advice I can give you then is that if they have approved the new septic system-- if you could go to the Board of Health, they would have a plan.
- G Morris I went there today, and they said to talk to you folks. They are putting a new leaching field in the rear of the yard.
- N. Abelson They are going to abandoned that leaching field; it can't be underneath the garage. That leaching won't be in existence anymore. The new leach field and tank will be behind the proposed garage and house.
- R. Read Whereabouts behind the houses?
- G Sagar Isn't it a fact, sir, that they have a cesspool there now? And they are going to put in a Title 5 septic system? That will be a significant improvement.
- G Morris I hear what you are saying, but I'm still having trouble where it will be, because it is free to drain.
- G Sagar You cannot put a structure on top of a leaching field.
- Atty. Navega A new state-of-the-art up to code is going into the back yard. It is not going to be underneath in this area.
- G Sagar If that current cesspool is where the proposed garage is going, that will have to be abandoned. It will be pumped out and filled and a new septic system, which you are telling me is in the rear of the lot, Mar. Navega?
- Atty. Navega It will be behind the house.
- R. Read Will it be behind the proposed garage as well?
- Atty. Navega Yes.
- G. Morris Here is the leach field now. That leach field leaches underneath that area where that garage is. It doesn't know which way to go.

- G. Sagar If it's a cesspool, it's just a big hole in the ground; basically; and it goes into the ground.
- G. Morris My leach field is behind my house; it is 18 feet wide, 35 feet long. So don't just say it is staying there. It goes where it's got to go, and that will be heading toward my property. This is the new garage? (inaudible) They are going to put in a new system, right? But that is still going to drain underneath.
- N. Abelson Nothing's going into it though—there will be no septic or sewerage going into it because it will be abandoned.
- R. Read But he's concerned about the new septic system draining toward his house. It only can drain down, can't it?
- G. Sagar I think you will see when that septic system goes in, you will see a major excavation in the rear of the property; and they will remove a lot of the current material because the material in that area is not very good. They will put in some sandy gravel, and it will definitely help the drainage. They have an engineer designing the whole thing. Have you any problems with your system?
- G. Morris No.
- Joel Biliouris 53 Marlaine Drive, Seekonk, speaking for Morris: I guess what he's asking is the fluid dynamics; how is that being addressed? Will it be positive or negative? We just can't say we don't know.
- G. Sagar Can I say one thing. You have to consult the engineer that going to design it.
- J. Biliouris So in the meantime, this will (inaudible), is that correct?
- G. Sagar It still has to pass Title 5. Title 5 is the health regulations board to design septic systems.
- J. Biliouris So, before they dig the thing up and put it in, it has to go through that system?
- G. Sagar There is going to be a new system, yes. They will have to design; they will have to go out to do some perc tests, which involves an engineer and the health agent going out there and they dig some holes and they do soil profiles and water tables and from that they would design.
- J. Biliouris Nothing would start prior to that?
- G. Sagar Correct, I believe they would need that before they could get a building permit to see if they were successful in getting the relief they seek here.

R. Ross And the design has to be approved.

G. Sagar Absolutely. Could I ask Mr. Navega—has the system been designed?

Atty. Navega Yes, it's been designed and approved by the Board of Health.

G. Sagar Who did you speak to today, sir?

G. Morris I don't know; it was one of the secretaries.

G. Sagar Was it Denise? She would have the plans. They would be better off to answer your questions from that perspective.

G. Morris That sounds familiar. But will they do anything in the meantime towards construction, that is my concern?

G. Sagar If they are successful tonight in getting the relief they request, we have 14 days to reduce it to writing; and then there is a 20 day appeal period. So if everything was a go, there are still at least 35 days away.

G. Morris They have already dug out the hole for the garage; the pile of cement is this thick, and now they have dug a hole on the side of the house so they are starting construction right now. So probably by the time those 30 days goes by that you mention, they could be well underway.

G. Sagar They might be doing some preparatory work, but I would assume without this relief thing tonight they cannot get a building permit; so you are not going to see any formal construction begin there.

G. Sagar There are two issues I want to make sure that we are clear on. There is the issue of zoning, which is the reason they are here; and you have a concern certainly with water and drainage. That is your bigger concern?

G. Morris Absolutely.

G. Sagar So on the record, your concern is water and drainage. Assuming that is satisfied, do you have an issue with what they are petitioning and asking this Board to do?

G. Morris No.

G. Sagar Do you understand what we've explained so far?

G. Morris Yes. Since they started a lot of construction of the interior of the house, they are well under way. So looking at the way the construction as it is, I wouldn't be surprised if they started next week on the outside.

Atty. Navega They have a building permit for windows, doors, and roof.

G. Sagar Mr. Navega, could you ask your client at some point to share the septic design with his neighbor?

Atty. Navega Absolutely

(inaudible chatter)

G. Sagar Is there anyone else to speak on this petition?

Mark Gardner 35 Marlaine Drive, Seekonk, sworn in. A couple of concerns I have is that the proposed structure is 26' by 26' garage with a 5' by 5' foyer; now I understand that they are eliminating the foyer. Maybe they should submit some new plans.

Atty. Navega I didn't submit the plans with the 5' by 5' foyer. I asked Mary for a determination with the 5' by 5' foyer but the plans submitted didn't have it.

G. Sagar If they were going to go forward with the 5' by 5', I would absolutely asked for a new plan to show it; but seeing that it isn't be asked for...

M. Gardner The other concern I have is-- I'm all for the property being fixed up--the property already has a two-car garage, so to get a variance or a special permit to add another two-car garage is excessive to me. My concern is the setbacks, the front setback, if you look at Marlaine Drive, that property sits on a sharp corner. And if you come around that corner and I have small children. Typically you have a garbage truck or some passenger car speeding coming down that hill around that corner either in the middle of the road or left of center and you're trying to avoid them coming down that hill because of limited visibility, so my concern is that ,if there is a bigger structure, it's going to impede the visibility even more.

G .Sagar They are utilizing the same driveway.

M. Gardner So, if I read this correctly, the new structure is going to bump out in the front.

N. Abelson No, it's even with the house.

(Inaudible)

R. Ross I think more significantly in this particular case is that the subdivision was laid out when the house was built, when property was zoned R-1 in which point it would have been compliant. The zoning was changed after the house was constructed, which is why they have an undersized lot. They are grandfathered in.

M. Gardner It's a small lot. They do own it. They know the size of the lot; they knew the zoning when they bought the house. My concern is, they bought the house, are they going to live there? Are you going to grant a special permit or variance for someone who is going to sell the property?

- R. Ross We have to look at the land
- G. Sagar Any questions for Mr. Gardner?
- D. Saad Where is your property?
- R. Read Across the west side.
- G. Sagar Is there anyone else to speak either in favor or against the petition? None
- R. Read I have a question; Mr. Gardner says there is already a two-car garage there; could you explain that for me?
- Atty. Navega The two-car garage is under the structure. It's not going to be four cars.
- Joel Biliouris, 53 Marlaine Drive, For clarification, I understand that the top of the house is still the top of the house; the house is still the same height?
- G. Sagar From the plans that I saw, yes.
- J. Biliouris Secondly, George is my neighbor; I have walked that property; there has been no new construction; you did mention windows, but that house has been gutted down to studs and yes, all that concrete is out up there as a result of another use for that area instead of a two-car garage.
- G. Sagar Let me just explain that if I may from the Zoning Board's perspective. He is allowed to do the renovations of windows, doors, and roof, and any interior alterations he wants to do. If he changes the footprint, he needs to come before us.
- J. Biliouris I have no problem; just from a pedestrian standpoint that I haven't seen any construction going on—just superficial windows and issues like that. George has one problem with fluid dynamics, and I understand that is going to be addressed. I'd like to welcome my new neighbors.
- G. Sagar Is there anyone else who like to speak? Seeing none, I like to close the hearing.
- R. Ross Before you make a motion, could you entertain motions Mr. Navega, to keep the record clean, I suggest you move to amend your application on the 5' x 5' foyer to withdraw that portion of your request.
- Atty. Navega I ask the Board to consider deleting the 5' x 5' foyer from the actual petition.
- G. Sagar Is that your motion?
- R. Ross That is his request; I motion that his request be granted.

R. Ross made a motion to allow the applicant to withdraw the request for the 5' x 5' foyer from the petition, Seconded by N. Abelson; **and so voted unanimously by:** Gary Sagar, Roger Ross, David Saad, Robert Read, and Neal Abelson.

VOTE: (Approve 5-0)

The Chair would entertain a motion to close the public hearing.

N. Abelson made a motion to close the public hearing, Seconded by D. Saad; **and so voted unanimously by:** Gary Sagar, Roger Ross, David Saad, Robert Read, and Neal Abelson.

VOTE: (Approve 5-0)

G. Sagar The Chair would entertain a motion to uphold the decision of the Zoning Enforcement Officer.

R. Ross made a motion to uphold the decision of the Zoning Enforcement Officer, Seconded by D. Saad; **and so voted unanimously by:** Gary Sagar, Roger Ross, David Saad, Robert Read, and Neal Abelson.

VOTE: (Approve 5-0)

N. Abelson Are we granting a variance?

G. Sagar According to Building Inspector, there are two variances and two special permits. Front, rear, area and to extend a nonconforming use. Do you have any thoughts on this Mr. Ross?

R. Ross I think I agree with Mr. Navega's position on variances that it is a legal nonconforming use and this is an intensification or expansion of a legal nonconforming use which comes under the rubric of a special permit as opposed to a variance; it is not a true variance.

G. Sagar The variance would come in on the rear yard setback; the front yard would need a variance too—a dimensional variance--two dimensionals and one as a minimum lot area, under 5.2.3. So two variances and one special permit? Do we all agree on that?

Everyone is in agreement.

G. Sagar Why don't we take it on the variance on the front yard setback. What is the feeling of the Board on the 5 feet?

N. Abelson made a motion to grant the Variance on the front yard setback, Seconded by R. Read; **and so voted unanimously by:** Gary Sagar, Roger Ross, David Saad, Robert Read, and Neal Abelson.

VOTE: (Approve 5-0)

G. Sagar The rear yard setback is 50, we've been shown 40; so is there a motion?

N. Abelson made a motion to grant the Variance on the rear yard setback, Seconded by R. Read; **and so voted unanimously by:** Gary Sagar, Roger Ross, David Saad, Robert Read, and Neal Abelson.

VOTE: (Approve 5-0)

G. Sagar To make it easy for the special permit for the expansion of the existing structure on a nonconforming lot.

N. Abelson made a motion to grant the Special Permit for the expansion of the existing structure on a nonconforming lot, Seconded by D. Saad; **and so voted unanimously by:** Gary Sagar, Roger Ross, David Saad, Robert Read, and Neal Abelson.

VOTE: (Approve 5-0)

G. Sagar Mr. Navega, the Board has voted 5 to 0 to grant you both variances and a special permit as needed.

2013-12 Keith Rondeau, 17 Shady Lane, Seekonk, MA, Petitioner by Donald MacManus, Esq, 546 Arcade Avenue, Seekonk, MA, Appealing the failure of the Inspector of Buildings/Zoning Enforcement Officer to enforce the Seekonk Zoning Bylaws as requested under G.L. Chapter 40A, Sections 7&8, and Seekonk Bylaws Section 14.2.1. The action requested is relative to enforcement of the Seekonk Zoning Bylaws limiting commercial activities at and behind the premises at 392, 394 & 400 Taunton Avenue, Plat 19, Lots 434-440, 490-491, 465-471, 525-526 and 487 in a Local Business and R-1 Zone. (continued from August 5, 2013)

G. Sagar It was originally scheduled on a public hearing open on July 1st. It was continued so we could have five members, so we are here this evening on the third public hearing. At the suggestion of Town Counsel, all five members sitting at this table have filled out a disclosure form under the conflict of interest law which so states that we

are aware that the petitioner is a member of this Board and that our relationship with him will not impact our decision on this petition. We heard at the last meeting in August extensive testimony; we had quite a few exhibits, and there were documents presented by our Building official, Mrs. McNeil. Mrs. McNeil is no longer employed by the Town, so she will not obviously be here this evening. For this evening anyone who would like to speak, it is going to be limited to new information and material only; and we are not doing the August hearing over again. I will limit anyone to new information, testimony and printed material or otherwise. At the conclusion, I will allow the two attorneys to make closing arguments if they would like to. Is there anyone who would like to speak either in favor or opposition to this petition who has any new material that has not been heard in the past?

John Munson

A lot of people know me as Jack, I am the owner, along with my wife Annette and my son, John, of Town Sanitation. I live on Maple Lane, Rehoboth; I own property in Seekonk. Sworn in. I just wanted to say before I know just about what is going to go on here tonight, my business has been getting dragged through the mud for the last few years with no defense on our side. Town Sanitation has been in this Town since 1985. We have always provided a good service; we do about 80% of the pumping in the Town of Seekonk. We are well known, and we get along very well with the Town employees, police and fire, etc. What has been going on for the last few years with this arguing back and forth, I understand the neighbors with the smell, but what can I do about it? This is not the only town that this goes on; if you go up the street and you see what is going on in Rehoboth, the exact same thing; if you go to Taunton, right downtown, there is a company with eight trucks, the exact thing. You could go on and on and on; so it is not like this is just to the Town of Seekonk. It's a service we are providing; it's a much needed service since the townspeople voted down sewers in 1989 five to one. I have tried to get along with the people there as far as the smell; I understand what they are talking about. I purchased smell boxes--all kinds of stuff. I told the guys no pumping this hour or that hour. My son John and this gentleman got into it a few years ago, and it has been a personal vendetta ever since. I just want to say that whatever anyone decides tonight, it doesn't look very good; there is not much I can do about it. I'm just a renter; I would like to stay there. We've been there since 1989; before that I was in Attleboro; but because of this conflict with these two gentlemen, it just turned into a personal vendetta. I am sorry it went that way. There is nothing I can do about it; as I say I am just a renter. I am just here in defense of Town Sanitation; we've been in this Town a long time, providing a good service and a much needed service; it's not like we are out there saying we are going to start up the pumps just to get the people mad. When the guys' trucks fill up, they come back and empty it out. They are gone in ten minutes; they might do it 2-3 times a day; and unfortunately it causes a smell. I understand that, so I told them to stop the pumping last month, and I have a temporary place -- one of the trailers--that the guys go there and empty out. So now the trucks are sitting in the yard. When they are sitting hard, there is no smell. So now you are telling me that as long as we get out, everything else will cease. Why can't we leave our trucks there? That's what I'd like to know. If they are sitting there hard and their pumps aren't running--you can go there right now, you won't smell anything. The storage trailer is gone; that's the one that the latches used to be open at the top. That is in another location; so if you don't have that

over there, the trucks are just sitting there parked. I will do whatever has to be done. Town Sanitation will survive. We've got over seven thousand customers in the computer, so we are not going anywhere. I would like to stay in this spot if I could and just continue doing that disposal at another site—for the transfer I should say. The way it's going now, it seems to be working out good; everything is quiet. They unload over there; I pick up the trailers, go empty them, drop it back off at the same spot and they just keep doing their thing. That way the smell has been gone since we did that. Other than that, I think I have done work with just about everyone in this room tonight. I worked with your dad on the railroad years ago; I was a railroad employee; I just like to leave it at that; I think I know where this going. Unfortunately, it came to this position, but I would like to be able to stay there with the trucks with no transferring. I don't know why I have to leave and other trucks can stay. I've been there the longest.

G. Sagar Are there any questions or comments for Mr. Munson? None.

Is there anyone else who would like to speak?

Ron DiPietro 47 Leann Drive, Seekonk, sworn in. I spoke with John since the last meeting. He is no longer transferring the product since last meeting. He agreed to move the storage trailers to another site; the trucks are parked; and unless he has a flat tire, he brings them to the back of the building inside. Last month there was no smell. He said there will be no more pumping on the property.

G. Sagar Are there any questions for Mr. DiPietro?

R. Read The trucks are just parked there over night and on weekends, is that right?

R. DiPietro Yes, 'til the next morning.

John Munson For years I had an agreement with JR and also with Beth Hallal recently. After a certain time of the day, there will be absolutely no pumping over there; I don't want to get the residents riled up. I can understand what they are going through; also. Saturdays, absolutely there will be no pumping on Saturdays. I don't care what is going on. It's been like that for years over there. I won't allow them to pump on Saturdays; if they do, it's because something over on Route 6 was backing up—Outback Steak House or something like that; and we had to get a truck over there right away, and we had no empty trucks. That would be the only time; it would be an emergency. I don't want to get the residents upset. I was trying to keep it down, but I do have four guys working for me; and then we took the blame for all of the noise in the back, all the drinking, the swearing-- my guys don't drink because they are CDL truck drivers. There are a lot of other people back there that are doing that; it's not us, but somehow we got the blame for it. My guys are up in the front in the garage; the swearing and the drinking was never us; but as far as the pumping--we are not there to stink the place up, that's not what we are there for. We are there to provide a service to the Town, a much needed service; and there is not too much I can do about it.

G. Sagar Is there anyone else who would like to speak?

Richard Machowski sworn in previously. I would just like to make a couple of points. I don't think there are any personal vendettas involved in this; up until this (inaudible) I wasn't aware of it. This is just an issue of being fair, protecting the property. I work hard for what I have; it's not the Taj Mahal, but it's my castle—my family's castle. We take good care of it; and I'll go to the law to protect it. That's where I've been since day one with this thing in what you know has been a long journey. This is the first time, and I have to agree with Mr. Munson, this isn't only his issue. He has a business to run; and, if he can run it in a certain way and it's profitable, that's very good business. I understand all of that. But the people who own that property for the last 8-10 years same family different owner; he doesn't seem to care about the people around him. He is concerned about the almighty dollar at anybody's expense except his own. He has done nothing to enhance that property. There are people who are much closer than I am who live in hell because of what goes on at that piece of land. You've spoken over the years two or three times about what goes on; none of us were born yesterday. Most of the stuff that goes on here goes against zoning, but, you know, the live and let live concept applies in that neighborhood. I am tired of that. You guys are making a few dollars, good. Is it quite right? No, it's not right. None of us are perfect. But no effort has been made recently until tonight. I haven't seen or heard of anyone making an attempt to come over and say "can we talk, can we do something to make it better", not a word. Only until the strings are getting a little tighter have we heard a reaction from the other side. I think that is very unfortunate. I think it explains itself why we are so upset especially when you hear comments that are made to the effects of "this is my land, and I'll do what I want with it". I like that kind of thinking; but not today. It doesn't work that way anymore, unfortunately; like it's been said here many times against what I was trying to say, "well, we have rules"; well, guess what, we all have to play by the rules. If we could do something about this where there could be no losers that would be to everyone's advantage. But in this case, I would ask this Board to vote according to your bylaws, the way you have written them over the years, where R-1, R-2, R-3, and R-4 and all the rest of those fancy numbers mean something. I want you to hold it—this property owner--to the extent of the law; because if you don't and we compromise, he will take full advantage of every little loophole that you give him.

G. Sagar Is there anyone else who wishes to speak?

R. DiPietro It's local business back there for the first hundred feet after Pearl Street; these vehicles are just parked there. There is no transfer of product, just storage of trucks. The crowd that was screaming and swearing hasn't been there for five years. I am in the front; I can't hear. (Inaudible-tape change)

Mr. MacManus Just to address some of the things that he said--there is a trucking operation going on there. Talk about not pumping the trucks there, obviously it is not allowed in that zone. The tankers for septage, the tankers they have for fuel—all of which should not be in either a residential zone or a local business zone. It was hinted allowing the trucks to stay there without pumping; we find that totally unacceptable. The problem we have

been having over the years is that the Town never comes out when someone comes out complaining about the pumping going on, so allowing the trucks to sit there only allows that to go on. You have had testimony of people going over there seeing trucks leaking whether they are pumping or not, causing hideous odors to neighbors, this is not something that can go on. As far as the vendetta goes, there have been a lot of people testifying.

G. Sagar Mr. MacManus, when the petition was filed there were seven items you wanted addressed; the seven are still the active part of the petition, is that correct?

Mr. MacManus Yes, they are; as a matter of fact, I submitted a request for a ruling that it is not allowed in the zone and that specifically there is no reason to allow it on this particular piece of property. I do have a closing statement: At the hearing there was overwhelming evidence that this Board heard regarding this operation going on in and around a residential neighborhood. The satellite pictures, the ground level pictures showing growing industrial operation going on there--tankers of all kinds moving in and out in both a residential and a local business zone. Numerous residents appeared talking about disgusting odors, fuel trucks parked near their houses; they were forced to live inside their houses in the summertime because of the smells; they were unable to use their yards, the devaluation of property; they complained over and over again to the Town. They have allowed the trucks to sit there for how many years--it's not even clear. There have been complaints to the Selectmen, the Board of Health, the Building Inspector; and the complaints have landed on deaf ears. We are not talking a fine line here with maybe one truck or something like that; we are talking about a wide-scale operation that we have seen plenty of evidence for. It is operating in both a residential and a local business zone. The local business zone, what is allowed there, I would ask you to look at that again, would allow retail stores all operating internally, restaurants, offices and banks, principal activities which are (inaudible), management and financial activities, funeral homes—that's what is allowed in that zone. I'm not going to waste your time telling what is allowed in the residential zone; I'm sure you know; it is just residences. The operation they have got running over there--yes, it is a necessary operation to be done for people in this Town, but it shouldn't be done where it's being done. It should be done in an industrial zone. I think the Board would have to agree that there is no way that that should be allowed there. Over the years there have been arguments that have been raised about this that it is a long-term use. Well, if it's a long-term use, it doesn't give you any rights under the statute. If it's not a legal nonconforming use, it can't be used. This operation has been going on; we gave you information on Exhibit A on the ownership of the property. It does not predate zoning in that area. There is also been that argument that the Board--the neighbors should have appealed the 2011 letter of the Building Inspector but there is also a 2010 Building Inspector letter in the residents' favor, which has never been appealed and there is a 2006 enforcement order from the Building Inspector which was never appealed or enforced saying that this operation should stop back then. There has been talk about this 2004 special permit that was an argument for why it should be allowed. But there was a special permit hearing—you can't grant use variances under the current zoning bylaws; if you can't agree with the variance to take that use on that property, then there can't be a special permit because it is not a proper legal nonconforming use. The Building Inspector last time said one of the reasons that she

thought that she couldn't enforce the bylaw was because of the ten-year statute of limitations of the zoning statute; well there is a statute of limitations but it has to do with the removal of buildings, nothing to do with anything to do with uses. I have a copy of that statute; I'll pass it out to the Board (submitted). I think this all goes to what we are talking about-- there seems to be some—I don't know what the reason is--why this bylaw hasn't been enforced over the years. Is it misinformation? Is it lack of diligence on the part of the Town employees? Is it budget cuts that require the right number of people to go out and enforce these bylaws? Whatever it is, these people who have lived in that neighborhood have been wronged for many years; what they want at this point is some kind of action. This Board has the privilege tonight of taking that action, giving them something that the resulting bylaw promises to people in this Town that they will have enjoyable, happy, healthy homes. They won't be interfered with by commercial operations in the neighborhood, and this Board was established to enforce that law; and that is why we are here tonight. That is what the people want.

G. Sager Are there any questions for Mr. MacManus? None.

Atty. Navega It is interesting, but—I'd like to point out to you, I think I mentioned it in testimony last time I was here, but your zoning decision, 2004-27, my Exhibit One, you acknowledged on more than one occasion specifically in that written decision; you found that the trucking uses operating at the site prior to the enactment of the zoning bylaws, so factually it is a preexisting legal non-conforming use, but the trucking uses were established prior to zoning. As a matter of fact, a lot of the ancillary uses that were there, the auto body shop, the welding, salvaging trucks and cars, automobile painting, storage trailers, detailing automobiles—they all have been existing prior to zoning. What I would suggest to you is this: The problem in my estimation is solved. If there is no transfer of septage between vehicles-- hence, no odor; hence, no complaint; because the chief complaint, frankly the only real complaint with any substance, was the odor that the neighbors couldn't enjoy their property. If the trucks are parked there and there is no transfer of any septic between the trucks, there will be no odor. I would suggest to you that, if we preexist zoning like you said we do and those trucks are all parked in a local business zone, then we are perfectly legal. Now we want to make the neighbors happy, so there will be no transfer of any kind of septage between the vehicles. As far as the gasoline tankers are concerned, they are annually inspected, pressured tested by the Federal DOT, because they have to be annually, so they can't be in any way hazardous to fire purposes because they are just sitting there and annually tested. I am sure the neighbors will acknowledge that there is no more odor there due to the fact that there is no transfer. I believe the testimony here last time was not that a trailer was leaking, but someone left the spigot open or something was left open. I will make sure that the client will use due diligence that all the trucks are sealed up tight. I would urge you not to take any further action, and I would again reiterate my objection to the entire proceedings in the sense that I don't believe that the Zoning Board has any authority under the bylaw or under the general laws to hear this matter. It has already been heard by the Conservation, Board of Health, Building Inspector, all the various agencies in the Town and they have always ruled that it was an allowable use. As a matter of fact, I believe if you make any kind

of decision, you will be exceeding your authority as the Zoning Board of Appeals. Remember, if anyone comes in with a complaint for any reason, way, shape, or form related to zoning, you rightfully so would refer that person to the Zoning Officer, which in this case is the Building Inspector. You are not the Zoning Enforcing Officer; the Building Inspector is. That is where you would refer a zoning complaint. You are allowing the neighbors to come here and have their day in court; when in fact, they have already had all the opportunity to do so. They failed to file their appeals; and everybody that they have asked of has investigated, detailed a decision as to why it should be here. So I would urge you to allow the use here; my client on the record on your decision, whatever you decide to do, would agree that there would be no transfer under any circumstances, under any time frame, under any days of the week, or any kind of situation, for the transfer of septage between vehicles, merely a storage place; in addition to that they utilize the garage for repairs, there is a garage in back and two bays in front behind there—they have two 12 foot doors. They can get the trucks inside there, they do repairs, service, oil change, brakes—that kind of thing they do there to begin with. So I urge you to consider that and allow the trucks to continue to be parked there.

K. Rondeau still sworn in...I just want to say that all arguments just made are factually incorrect. Over the course of the last few hearings as well as the past several years, you have heard the testimony of many neighbors regarding 400 Taunton Avenue and the businesses operating there in violation of Town bylaw. Tonight we ask that you carefully consider all of the testimony given and summon all your wisdom to give a right and just decision based on the Town of Seekonk bylaws and Mass 40A, especially in regards to the language and spirit of the laws that is expressed in both 40A and the zoning bylaws--that the purpose of zoning is to “promote and protect the health, safety, and general welfare of the community and the present and future inhabitants of the Town of Seekonk”. To paraphrase the previous speaker from a previous hearing, “clearly this is not in harmony with the general intent of the Seekonk bylaws”.

G. Sagar Are there any questions for Mr. Rondeau? None.

Mr. MacManus One of the main points here is that these complaints have not been investigated. There has been no thorough investigation. Testimony has been presented over and over again, and there has been no evidence presented to you about a prior nonconforming use. Whether some of the Board feel that (inaudible) I don't know, but we have presented evidence to say why it is not a prior non-conforming use.

G. Sagar Are there any questions for Mr. MacManus? None.

Seeing none, the Chair will entertain a motion to close the public hearing.

R. Ross made a motion to close the public hearing, Seconded by D. Saad; **and so voted unanimously by:** Gary Sagar, Roger Ross, David Saad, Robert Read, and Neal Abelson.

VOTE: (Approve 5-0)

- G. Sagar As far as upholding the decision of the Zoning Enforcement Officer, there was no decision; so there was nothing to uphold.
- G. Sagar As part of this process following the August public hearing, Ms. Testa created a very accurate set of minutes; and those minutes along with all the documents that were part of the Building Inspector's file were forwarded to our Town Counsel Ilana Quirk, Koppelman and Paige; and Ilana did a comprehensive review of everything and she made some determinations and some suggestions and some recommendations. As part of this process also I reached out to Mr. Ross, who is an attorney with extensive experience in real estate issues. I asked if he would work with Chris in coming up with some findings of facts. Mr. Ross, I will turn it over to you if you would like to make any comments.
- R. Ross I have three separate motions, and I will make them in order if you would.

Proposed Findings of Fact.

1. Ronald J. and Velta L. DiPietro are the owners of property known as 400 Taunton Avenue, Seekonk MA which property comprises several assessors' lots.
2. Several of the lots are located within a "Local Business" zoning district and several other lots are located within an "R-1" (residential) district.
3. On August 30, 2004, a public hearing was convened by the Zoning Board of Appeals upon the Petition of the DiPietros of an appeal from a decision of the Building Inspector and, if necessary, on an application for a Special Permit to extend or alter what was characterized as a legal non-conforming use. Case No. 2004-21. At the request of counsel for the DiPietros, the Zoning Board agreed to a withdrawal of that pending application without prejudice.
4. On November 15, 2004, in that matter in Case No. 2004-27, the DiPietros re-filed a substantially similar petition to Case No. 2004-21. After public hearing, the Zoning Board upheld the decision of the Building Inspector and granted the applicants' petition for a Special Permit, based, at least in part, on the following findings of fact:
 - a. Petitioner was to raze two houses located on their property.
 - b. The existing buildings were to be replaced.
 - c. Petitioners were to construct new gas and diesel pumps.
 - d. Petitioner was to construct a new convenience store at the location with a drive-through facility and a car wash.
 - e. Petitioner was to construct a building to house the vehicles and equipment of its tenant.

5. The Zoning Board's decision in Case No. 2004-27 was never recorded with the Bristol County Registry of Deeds.
6. The Petitioners did not exercise the rights granted by the Board's decision by performing the work set out in finding No. 4 of this motion or by applying for the permits necessary to do so within one (1) year from the date of posting of the Board's written decision and begin construction thereon.
7. On July 6, 2006, Michael Crisafulli, then the town Zoning Enforcement Officer (ZEO) issued a Notice of Violation and Cease and Desist Order against the owners of the subject property, namely for use violations in both the Local Business and Residential portions of the subject property.
8. The July 6, 2006, Notice of Violation was never withdrawn or rescinded by Michael Crisafulli or his successor ZEO in office.
9. On or about April 28, 2009, one Tara Bisson filed a complaint with the ZEO in respect to the subject property.
10. On or about April 29, 2009, (the following day), the same Tara Bisson filed another complaint with the ZEO in respect to the subject property.
11. By letter dated July 27, 2009, Mary McNeil, then the ZEO, wrote to the DiPietros stating that the subject property was in violation of Section 7.1 of the Town's zoning by-laws.
12. The July 27, 2009, letter by the ZEO was written after a site visit to the subject property on July 7, 2009, in which she was accompanied by one or both of the DiPietros.
13. By letter dated August 12, 2009, counsel for the DiPietros responded to the ZEO's July 27th letter stating the ZEO's position was "arbitrary, unsupported by any facts" and furthermore that Section 7.1 was "vague and non-descriptive".
14. One week later, by letter dated August 19, 2009, counsel for the DiPietros wrote to the ZEO requesting, in relevant part, that the appeal period to the notice of violation set out in her July 27, 2009, letter be extended for a period of 45 days.
15. By letter dated September 9, 2009, the ZEO agreed to an extension of the appeal period provided the appeal was filed "prior to October 26, 2009".
16. By letter dated November 3, 2009, the ZEO notified the DiPietros, with a copy to their counsel, that the extended appeal period has elapsed without the filing of an appeal.
17. By letter dated November 6, 2009, counsel for the DiPietros wrote to the ZEO and stated that in his opinion (a) the July 6, 2006, Notice of Violation was "stale" and "was never delivered to the DiPietros except by you in August of 2009, a full 37 months after it was issued" and (b) the subject property was the subject of a favorable zoning variance in 2004. [The 2004 decision was actually the granting of a special permit, not a variance.]

18. On May 17, 2011, Richard Machowski filed a written complaint with the ZEO relative to the subject property.
19. On June 7, 2011, the ZEO wrote to the DiPietros in respect to the subject property. The letter stated in relevant part:
 - a. The 2004-27 Zoning Board decision “confirmed the established benefits of non-conforming structures and uses on the parcels”.
 - b. “Therefore they are protected from zoning enforcement”.
 - c. The ZEO stated that she found no zoning violations at the subject property.
 - d. Notified the DiPietros of the right of appeal the findings of this letter.
20. The ZEO’s June 7, 2011, letter was, by its own terms, copied to the DiPietro’s legal counsel, the Board of Selectmen, Board of Appeals, the Town Clerk, and Complainants identified as Complainant #1 and Complainant #2.
21. At a public hearing on August 5, 2013, Mary McNeil, then the ZEO, identified Complainants #1 and #2 as Tara Brisson and Richard Machowski, respectively.
22. By letter dated January 10, 2013, counsel for several residents of Shady Lane in Seekonk, including the petitioner here in the matter before us this evening, filed a complaint with the ZEO in respect to the subject property alleging seven (7) separate use violations under the zoning bylaws. The alleged violations are specifically identified as:
 1. Commercial storage of septage waste.
 2. Commercial transfer of septage waste to and between vehicles.
 3. Maintenance of septage hauling vehicles
 4. Commercial storage of portable toilets.
 5. Pumping and maintenance of portable toilets.
 6. Storage of building materials for commercial purposes
 7. Storage of commercial vehicles.
23. Not having received a response to his January 10, 2013, letter, counsel for the residents by letter dated April 12, 2013, addressed to and hand delivered to the ZEO, counsel for the Shady Lane residents demanded at that time enforcement of the zoning by-laws of the use violations as alleged in his January 10th letter.
24. Counsel for the Shady Lane residents has received no written response to either of the two letters referenced above.

25. On June 6, 2013, one Keith Rondeau filed an appeal to the Zoning Board from the failure of the ZEO to enforce the zoning by-laws in respect to the subject property as demanded in the April 12, 2013, letter from his legal counsel.
26. On August 5, 2013, a public hearing was convened by the Zoning Board upon the appeal filed by Keith Rondeau.
27. At the hearing, the DiPietros and the residents of Shady Lane were represented by respective legal counsel, both of whom were heard. Other residents testified, as did Mary McNeil, the ZEO.
28. Counsel for the DiPietros objected to the hearing being convened based, in part, for the same reasons stated in his earlier correspondence with the ZEO and as set out and referenced in these findings of fact.
29. Mary McNeil substantially reiterated her positions during testimony on the subject property as she had previously set out in her June 7, 2011, letter to the DiPietros.
30. On August 5, 2013, prior to the Zoning Board meeting being convened, the members of the Zoning Board, with the authorization of the land-owner, made a site visit to the subject property. During the visit, the members observed thirteen tanker trucks parked on the premises, at least two of which bore out-of-state registration plates. The Zoning Board members also observed the storage of a very large number of port-o-johns on the subject property.

Those are the findings of fact that I propose that this Board make in fact as findings of fact in the matter currently before the Board

R. Ross made a motion that the Zoning Board make and adopt the findings of fact, Seconded by N. Abelson; **and so voted unanimously by:** Gary Sagar, Roger Ross, David Saad, Robert Read, and Neal Abelson.

VOTE: (Approve 5-0)

R. Ross My second motion, Mr. Chairman, is to move that this Board adopt the following proposed conclusions of law in the matter currently before us.

CONCLUSIONS OF LAW:

- A. The Petitioner is an “aggrieved party” in this matter in that he owns property within the 300 feet jurisdictional area from the subject property and, therefore has the requisite standing to file an appeal from the decision of a Building Inspector on an enforcement request *Warrington v. Zoning Board of Appeal*, 78 Mass. App. Ct. 903 (2010).
- B. The Zoning Board has the jurisdiction to hear an appeal from the Building Inspector’s decision on a request for enforcement of the zoning by-laws. *Warrington v. Zoning Board of Appeal*, 78 Mass. App. Ct. 903 (2010).
- C. Inasmuch as the Petitioner has never received a response to the request for enforcement action filed with the Building Inspector, the appeal was timely filed. *MGL c. 40A, Section 7*
- D. The Zoning Enabling Act provides that the local zoning by-laws must provide that the granting of a Special Permit shall lapse “within a specified period of time, not more than 2 years if substantial use, which in the case of construction has not begun within such date except for good cause”. *MGL c. 40A, section 9*
- E. The Seekonk zoning by-laws, in compliance with C. 40A, section 9, provides that a grant of a Special Permit shall lapse within one (1) year of the granting if substantial use thereof has not commenced within that period or, if in the case of construction, if construction has not commenced within by such date except for good cause. *Seekonk Zoning By-laws, Section II—Special Permits, Subsection 11-4.*
- F. The enabling act provides that the granting of a Special Permit shall not be effective until a copy thereof is recorded with the Registry of Deeds in the County where the subject property is located. *MGL c. 40A, section 11.*
- G. In case No. 2004-27, the applicant did not exercise the rights granted under the Special Permit or begin the construction referred do in the decision within one (1) year of the effective date of the decision, nor did the applicant show good cause why the construction did not commence by that date.
- H. The failure to record the decision of the Zoning Board in Case No. 2004-27 within one (1) year from the effective date thereof resulted in a “lapse” of the rights granted by that decision. *Cornell v. Board of Appeals of Dracut*, 453 Mass. 888 (2009).
- I. The failure to exercise the rights granted the petitioner in Case No. 2004-27 within one (1) year from the effective date thereof, or begin the construction referred to in that decision by that date, or demonstrate good cause why it did not, resulted in a “lapse” of the rights granted. *Cornell*. Footnote No. 5
- J. The legal meaning of the term “lapse” signifies and means “ a termination or failure of a right or privilege through neglect to exercise within some time limit” and thus will “automatically become void” *Hunter’s Brook Realty Corporation v Zoning Board of Appeals of Bourne*, 14 Mass. App. Ct. 76 (1982).

- K. The Special Permit granted in Case No. 2004-27 is therefore was automatically void one year from the effective date thereof and therefore the rights granted may only be re-established by the filing of a new petition with this Board. *Hunter's Brook Realty Corporation v Zoning Board of Appeals of Bourne*, 14 Mass. App. Ct. 76 (1982).
- L. The seven distinct allegations of the zoning violation itemized in counsel's January 20, 2013 and April 12, 2013 enforcement requests do constitute violations of the Seekonk zoning by-laws for the same reason stated.

That is the totality of the recommended conclusions of law that the motion asks this Board to adopt.

R. Ross made a motion that the Zoning Board make and adopt the conclusions of law, Seconded by N. Abelson; **and so voted unanimously by:** Gary Sagar, Roger Ross, David Saad, Robert Read, and Neal Abelson.

VOTE: (Approve 5-0)

R. Ross My third motion is short.

R. Ross made a motion for the findings of fact stated and adopted and the conclusions of law stated and adopted; that the Board adopts the following resolution: That the appeal to this Board is SUSTAINED. That the failure of the Building Inspector to enforce the Zoning By-laws as requested in the Petitioner's written request is reversed and the Building Inspector, or acting Building Inspector, is directed to issue a Cease and Desist Order against the owner of the subject property for the maintenance of all unauthorized activity on the said property, all as set out in the Findings of Fact previously adopted. Seconded by N. Abelson; **and so voted unanimously by:** Gary Sagar, Roger Ross, David Saad, Robert Read, and Neal Abelson.

VOTE: (Approve 5-0)

G. Sagar Mr. MacManus, you've heard the decision of the Board.

Work Session

R. Ross We have a pending application that we have to schedule.

G. Sagar Have Chris contact the regular members and schedule a meeting.

G. Sagar I think that it was only right to involve town Counsel in this. Roger, thank you very much for your help. The gasoline stored there in speaking with Fire Department, Highway Service has storage permits from the BOS to store gasoline in whatever quantities that they are. It is the opinion of the fire Department through the Fire Marshall's office that because of the added storage, even through its in trailers, it's on site; they would have to come back and amend licensing, to store it, that would create another problem because they would have to come back to the ZEO anyway. Storage permits give you a certain capacity; once you exceed it then you have to get new permits. The permits are for the property.

Adjournment:

Neal Abelson made a motion to adjourn the meeting, Seconded by R. Ross; **and so voted unanimously by:** Gary Sagar, Robert Read, Roger Ross, Neal Abelson and David Saad

VOTE: (Approve 5-0)

Meeting adjourned at 9:25 PM

Respectfully submitted by:

Christina Testa, Secretary