

**SEEKONK ZONING BOARD
REGULAR MEETING
MINUTES**

July 1, 2019

Present: Roger Ross, Gary Sagar, Keith Rondeau, Shane Halajko and Donald Robillard

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

Ch. Ross: This is the meeting of the Town of Seekonk Zoning Board of Appeals, July 1, 2019. It is 7:00 pm and the meeting is now in order. I am going to go over our procedures; I will read the agenda for the public hearings for this evening and call the cases in the order in which they appear on the agenda. At some point various members of the Board may have questions of the witnesses and we will ask them and get the appropriate responses. We will ask if there are any members of the public who would like to speak in favor of or in opposition all questions shall be directed to the chair and answered.

As the cases are presented, the owner, petitioners and/or their representatives, will represent the case and the Board may have some questions and we expect that those questions will be answered. After the petitioner has presented his case, anyone who wants to speak either in favor of or in objection to the petition, we will hear. All witnesses, except attorneys, if there are any this evening, will be sworn in and all testimony will be taken under oath. If there are questions from anyone in the audience, all those questions should be directed to the Chair, there will be no colloquy between a witness and a member of the audience. At some point, we will close the public hearing; there may be some discussion between members of the Board, we may ask for some clarification. It is typically the practice of this Board to take a vote tonight on a matter but we are not required to do so. There may be times and circumstances that arise where we will delay a vote. If the vote is taken, the decision of the Board will be reduced to writing and posted in accordance with M.G. L. Any person or entity who feels they are aggrieved by the decision of the Board has the right to appeal to the appropriate courts of jurisdiction of the Commonwealth but I caution anyone who elects to do so that they are limited by very strict time requirements and I advise any such person to either consult the laws or an attorney if they choose to file an appeal. Having said that, I will read the agenda for this evening.

(Chairman Ross read the agenda into the record)

2019-06: Michael & Lanon Neary, 195 Jacob Street, Seekonk, MA 0277,1 Owner/Petitioner, requesting a Special Permit under section 4.2.1 Agricultural Uses of the Town of Seekonk zoning bylaws in order to allow the keeping of chickens as an accessory use on the property located at 195 Jacob Street, Plat 17, Lot 63 in the R-2 zone containing 1.8 acres.

Ch. Ross: Explained to Mr. Neary that there was a technical error in the Sun Chronicle ad. It did not address the petitioner's appeal of the Building Inspector's decision. He advised this issue was addressed with Town Counsel, and there is case law from Mass Supreme Judicial Court that states, it is sufficient, it is not misleading, and it is not fatal to the application as

long as the abutters received the hearing notice and the owner/petitioner was requesting a special permit. Ch. Ross also advised that if anyone makes an appeal, there are no guarantees how Superior Court or Land Court might rule. Ch. Ross asked if Mr. Neary would like the Board to hear his petition this evening.

Mr. Neary: Asked if they were to move forward if someone could appeal the decision and take it to a higher court.

Ch. Ross: Explained if the Board either upholds or reverses the Building Inspector's findings, or if we approve or deny the permit, you have the right to appeal. If anyone who received notice (within 300') can also appeal the decision. An appeal can be filed within 20 days from the date the decision was filed in Town Hall.

Mr. Neary: Ok. He also wanted to clarify that the notice reads 1.3 acres but there is 1.8 acres

John Aubin: Stated the original posting of 1.37 acres did not include the abutting property which totals 1.8 acres.

Ch. Ross: Asked Mr. Neary to sworn in.

Michael Neary of 195 Jacob Street submitted 3 letters from neighbors who could not attend tonight and have no issues with the chickens on his property.

Ch. Ross entered the letters as Petitioner's Exhibits A, A1, and A2 into the record.

Ch. Ross: Asked Mr. Neary to explain to the Board why he believes they should be exempt from the By-law.

M. Neary: Summarized the location of where the chickens are located on the property, as well as his previous experience raising chickens. The chickens are considered pets and provide nourishment for his family. Both his wife and daughter have celiac disease. The chickens are not free ranged. They have a 6x6 contained chicken coop with a run. They have owned chickens for eight years overseas while he was stationed in Germany, New York, and here. He has not received any complaints in regard to disease or smell. Chickens have a noise decibel lower than a dog bark so they have minimal noise. The nearest neighbor is 65' from the closest neighbor.

Ch. Ross: Explained in order exempt from the Zoning By-law, the property must have at least 5 acres and this is the reason the Neary's were asked to request a special permit. Ch. Ross asked if he was requesting the special permit and not appealing the Building Inspector's decision. He continued to explain that due to the property being a corner lot, the side yard is treated like a front yard and it requires more than a 35' set back from the property line to the location of the coop.

M. Neary: Said that with the guidance of Mr. Abelson, he moved the chicken coop back to 35 ft. and appealed his decision.

- Ch. Ross: Asked Mr. Neary thought he should be exempt.
- Mr. Neary: Replied yes and he fits in the guidelines.
- Ch. Ross: Explained to be exempt, the property would have to be 5 acres.
- M. Neary: Said since he moved the coop, he thinks he should be exempt, but he is not appealing the 5 acre requirement.
- Ch. Ross: Said a special permit is needed to maintain chicken coop 35 ft. from the property line. He was not 35' initially, therefore that is why he is there now requesting a special permit to continue to operate the coop. Mr. Ross asked how many chickens are currently located on the property.
- M. Neary: Replied currently 6 chickens at this time.
- Ch. Ross: Asked how many chickens he intends to own.
- M. Neary: Said he would not have any more than 6 chickens.
- Ch. Ross: Read portions of the letters sent on behalf of the applicant into the record stating they had no objections of them keeping the chickens.
- Exhibit A: Visnick
Exhibit A1: Mills
Exhibit A2: Lantry
- Ch. Ross: Asked for comments from the Board.
- S. Halajko: Asked how long have they resided at 195 Jacob Street.
- M. Neary: Answered 1½ years, October 2017.
- S. Halajko: Asked how long they had the chickens.
- M. Neary: Said since April 2019.
- S. Halajko: Asked where they were initially housed.
- M. Neary: Said they were in the house for two months.
- S. Halajko: Asked when he built the coop.
- M. Neary: May.
- K. Rondeau: Asked what was the maximum number of chickens they have had.

M. Neary: Said initially they started with 10 to 9 then to 6. He explained chickens are fragile and they understood they would end up with less.

K. Rondeau: Asked for his history raising chickens.

M. Neary: Explained while in the military he had 7-8 chickens. When they moved, he gave them away. They did the same when he was stationed at West Point.

Ch. Ross: Asked Mr. Neary to address his dietary concerns since it was addressed in his petition (and it was public record).

M. Neary: Said his wife and child have celiac disease which is sensitive to cross contamination.

Ch. Ross: Asked if anyone who would like to speak in favor of the petition.

Christana W. McKnight of 104 Lincoln Street said she is not sure why Seekonk has this By-law considering most surrounding towns allow chickens.

Ch. Ross: Explained By-laws are approved at town meeting and the Board has to interpret and apply those By-laws as written.

There were no other speakers spoke in favor of the petition.

Ch. Ross: Asked for anyone who spoke in opposition of the petition.

Mark Goodheart of 25 Lincoln Street said that his property is closest neighbor to the Neary's (65'). He said Mike Neary came to him about a year ago. Mr. Goodheart said they did not have a problem, at that time, with chickens. After he spoke with his wife, she put a letter in the Neary's mailbox stating the chickens were ok as long as they did not see, hear, or smell them. He said this spring, Mr. Neary built the chicken coop and felt he ignored their requests since they now see and hear them. He hopes not to smell them if this passes. He asked why he chose to put the coop near their house opposed to his own house considering he has such a large lot.

Ch. Ross: Asked Mr. Neary to explain why he put the coop where he did.

M. Neary: He said because of the practicality, especially in snow or if there was an issue with the chickens, or if the kids want to go out and see them. It was also placed by a water source, the irrigation system, since they require a lot of water. Mr. Neary used the plans in the packet to show why they could not locate it near the pool and did not any other piece of flat land. He did not save the Goodheart's letter and does not remember seeing if they asked for it not to be close to their house.

Lanon Neary from 195 Jacob Street was sworn in. She reiterated they did receive a letter from The Goodhearts and they did put it as far away as possible from their property. Visually, they did paint it similarly to their house and they do have a 6' fence. As far as the noise, she hears dogs bark all day and chickens make less noise. That is why they got rid of the rooster because they didn't want to bother our neighbors.

Ch. Ross: Asked if the hens roam around the yard.

L. Neary Stated they are always contained in the run. They are not free roaming chickens.

Ch. Ross: Asked if the Goodhearts had anything else they wanted to add.

M. Goodheart: Stated he and his wife do not have issues with chickens in the vicinity. They just do not particularly like the location of the coop. If they agree to move it, he would have no problem.

Ch. Ross: Asked if there was any odor with the chickens.

M. Goodheart: Stated none at this time.

Ch. Ross: Asked if anyone else was in opposition of this petition.

G. Sagar made a motion to close the public hearing and D. Robillard seconded and it was unanimously approved.

VOTE: 5 – 0

G. Sagar: Said there was a drawing that accompanied the notification in the mail of where the coop was at that time. He asked if it could show exactly where the coop is on his lot at this time.

Ch. Ross: Asked Zoning Enforcement Agent, Neal Abelson, if he could describe where the coop is now located on the property.

N. Abelson: Said he has not been *on* the property to verify, but it appears to be moved in compliance with the By-law.

G. Sagar: Asked if the coop could be moved away from the Goodheart property.

M. Neary: Said he spent 2 days moving coop 8 ft. He does not think he could move it 100' without taking it completely apart. He asked how to keep it out of sight. They have a 6' fence. How does he determine whether it can be seen from a second floor. Should he move it closer to another neighbor or the near pool which could compromise the integrity of the pool. Due to a metal fence that is concreted in, the driveway, garden areas, and the front yard, he doesn't think it's practical to move it anywhere else. He reviewed the plans with Mr. Sagar and said the plans are of the coop after it was moved 35' (if not more) from the Lincoln Street property line.

Ch. Ross: Asked the board if they had any more comments.

D, Robillard: Asked Mr. Neary if they would have a problem if the Board stipulated they could only have 6 chickens on the property.

M. Neary: Replied no.

G. Sagar: Asked Mr. Aubin the Town Planner if the By-laws stated anything regarding odor.

J. Aubin: Said the Development Design Standards in Section 8.12.1.2 mentions odor, however, that is in the Industrial Districts. Residential Districts address noise, but not odor.

Ch. Ross: Said the appeal is moot since Mr. Neary stated they are not pursuing the issue of the exemption under Mass General Law.

G. Sagar moved to uphold the decision of the Building Inspector as to the exemption of this property. K. Rondeau seconded; and it was unanimously approved.

VOTE: 5-0

Ch. Ross: Asked if there was a motion on the special permit application.

S. Halajko: Explained why he is leaning more for the petitioner: They have more support than against, the gentleman who is not in favor of it has stated there is no odor, they have made accommodations to appease the neighbors, and the family's health issue and dietary needs.

Ch. Ross: Asked if he wanted to make a motion based on his reasons.

S. Halajko made a motion to approve the special permit and D. Robillard seconded.

K. Rondeau: Said he has concern since 1.8 acres is short of the 5 acre standard, it's also on a corner lot. No matter where you put it, it's not the right thing to do. The current neighbors may not object to it, but there may be issues when they sell. He also mentioned other permits they denied. He has a hard time supporting the petition.

G. Sagar: Said he would like the chicken coop moved, limit the number of chickens, no roosters on site; and add language about having no odor.

D. Robillard: Agrees but asked how to determine a way to limit odor.

M. Neary: Said he spoke with the Board of Health who has said that it is a normal compost material and not toxic. Since it's not toxic, how do they measure odor.

D. Robillard: Said he understands that, but what happens in winter when there is no garden to use the compost.

M. Neary: Said everything has an odor.

Ch. Ross: Asked if it was an offensive odor.

J. Aubin: Asked how much compost is kept on the property.

M. Neary: Said 6 chickens don't produce that much and is contained in the coop area. It can be disposed of in the back side yard by the trees that are about 300' from their property.

Ch. Ross: Reiterated why this petitioner had to come before the Board for a special permit. In order to be exempt, the Zoning By-laws require 5 acres.

Ch. Ross Asked for any comments or if any amendments to the motion would be made.

G. Sagar made motion to approve the petition, grant the special permit, with the following stipulations: 1) No more than 6 hens on the property at one time; 2) Under no circumstances will there be roosters maintained on the property; and 3) The petitioners, Mr. and Mrs. Neary, will take whatever measures are necessary, if any, to prevent any objectionable odors that emanate from the chicken coop.

Ch. Ross: Asked for a roll call vote

Roll call vote: G. Sagar-yes; D. Robillard-yes; S. Halajko-yes; K. Rondeau-No; Ch. Ross-yes.

Motion passes 4-1

Work Session:

Discussion: Update Rules and Regulations

-new electronic permitting and submission of electronic documents guidelines

J. Aubin provided an update to the Board in regard to the Town's new on-line permitting program.

Adjournment:

D. Robillard made a motion to adjourn the meeting; it was seconded by S. Halajko; and it was unanimously approved.

VOTE: 5-0

The Meeting adjourned at 8:03 p.m.

Respectfully submitted by:

Kristen L'Heureux, Administrative Assistant