

ZONING BOARD OF REVIEW
Barrington, Rhode Island
May 15, 2008

APPLICATIONS: The Appeal of Peter Erickson, #3462, 3476, 3477, 3478, 3479, and 3480

MINUTES OF THE MEETING:

At the call of the Chairman, Thomas Kraig, the Board met with Margaret Carlotto, Mark Freel, Gale Gennaro, Neal Personeus and Ian Ridlon.

Also present were solicitor Nancy Letendre and Robert Speaker, Building Official.

At 7:08 P.M. Mr. Kraig opened the meeting and the Board proceeded to hear the following matters. At 10:20 P.M. the public participation portion of the meeting was closed and the Board proceeded to deliberate and vote on the applications it had heard.

Continuation of the Appeal of Peter Erickson, 44 Woodland Road, Barrington, RI, from a decision of the Building Official to issue a permit for a fence; Assessor's Plat 24, Lot 82, R-25 District, 44 Woodland Road, Barrington, RI 02806.

Present: There was no one from the audience to speak for the matter.

Matthew Oliverio had submitted to the Board a draft written decision, as directed at the March 20, 2008 Zoning Board meeting.

VOTE: Upon a motion by Mr. Freel, with a second by Ms. Carlotto, the Board voted unanimously (5-0) to adopt the draft written decision, incorporating certain changes suggested by members of the Board, which changes were already incorporated in the written draft presented to the Board.

Continuation of application #3462, Elizabeth Clement, 47 Old Redding Road, Weston, CT 06883 and Martina Clement, 13 Vandeventer Avenue, Princeton, NJ 08542, applicants and owners, for permission to unmerge lots; Assessor's Plat 26 Lots 37 & 36, R-25 District, Libby Lane, Barrington, RI 02806, requiring a Special Use Permit.

Before this matter began, Mr. Freel recused himself.

Present: Bruce Cox, Sleprow Sleprow & Associated, East Providence, RI - attorney for the applicants
Stephen MacGillivray, Edwards Angell Palmer & Dodge, Providence, RI – attorney for an abutter
Anthony DeSisto, DeSisto & Federoff, Providence, RI – attorney for an abutter

The following exhibits were submitted:

By Mr. MacGillivray:

- Superior Court Case WC-01-0369
- Memo regarding Zoning Board Jurisdiction

By Mr. DeSisto:

- Offer for Dedication of Libby Lane
- Minutes of the November 10, 1980 Town Council Meeting
- July 20, 2006 Zoning Decision for Leone Smets

Before Mr. Cox began his presentation, Mr. MacGillivray introduced an argument stating that was his opinion that this matter should be a matter for the Planning Board, not the Zoning Board, because in his view this was a subdivision of land, not an unmerger of two lots. Mr. Cox countered that the Zoning regulations state that the Zoning Board has the ability to unmerge lots if the lots had been merged because individually they did not meet zoning standards.

Mr. DeSisto argued that the application had not been properly noticed. He stated that the application is not just for a Special Use Permit, but also requires a dimensional variance, which was not part of the advertisement. Mr. Cox conferred with his client and determined that the best course of action would be to request that the matter be continued, during which time he would re-advertise, including the request for dimensional variance. The Chairman directed that any additional written materials that may be submitted by the abutters must be submitted not less than one week prior to the meeting, and that any responses be submitted timely prior to the hearing.

VOTE: Mr. Personeus moved to continue the matter to a special Zoning Board meeting to be held on June 26, 2008. Ms. Carlotto seconded the motion and it carried unanimously (5-0).

Application #3476, Bob DeHart, 5 Anthony Road, Barrington, RI 02806, applicant, Esme DeVault and John Schieffelin 35 Spring Avenue, Barrington, RI 02806, owners, for permission to construct a 12' x 12' deck; Assessor's Plat 1, Lot 137, R-10 District, 35 Spring Avenue, Barrington, RI 02806, requiring a dimensional variance for side yard setback and exceeding lot coverage.

Present: Bob DeHart, 5 Anthony Road, Barrington, RI
John Schieffelin 35 Spring Avenue, Barrington, RI

There was no one in the audience to speak for or against this application.

The applicants explained that they are seeking to construct a 12' x 12' deck, including steps, in order to create a space for back yard entertaining on their 4,000 sq ft yard. The deck would be no closer to the side lot line than the existing house.

Mr. Schieffelin, the neighbor most affected by the plan, spoke in support of the proposal.

VOTE: Mr. Freel moved to grant the application. Mr. Personeus seconded the motion and it carried unanimously (5-0).

DISCUSSION:

The Board members stated that they were in favor of approving the application for the following reasons:

- The lot is very small, even for the R-10 Zone
- The deck will be no closer to the lot line than the existing house
- The applicants would like to be able to utilize their yard
- The deck will not be visible from the street

REASON FOR DECISION:

It was the judgment of the Board that the standards in Section §185-69 have been met: A) that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and is not due to an economic disability of the applicant; B) that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain; C) that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the comprehensive Plan; D) that the relief to be granted is the least relief necessary. Additionally, the standards for a dimensional variance set forth in Section §185-71 have been met because the applicant has proved that the hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience.

Application #3477, Vasco, Inc. 1460 Fall River Avenue, Seekonk, MA 02771, applicant, John Coster, 3 Karen Drive, Barrington, RI 02806, owner, for permission to construct renovations, addition and replace deck; Assessor’s Plat 9, Lot 283, R-25 District, 3 Karen Drive, Barrington, RI 02806, requiring a dimensional variance for rear yard setback.

Present: John and Catherine Coster, 3 Karen Drive, Barrington, RI
Greg Vasco, 1460 Fall River Avenue, Seekonk, MA

There was no one in the audience to speak for or against this application.

The applicants are seeking a variance to replace the existing, oddly shaped deck with a 14’x 25’ deck, which would better suit the family’s needs. The proposed deck would be 10 feet from the property line and the existing stonewall will remain. It was noted that the lot is wide and narrow, and any deck in the rear would require some form of relief.

VOTE: Mr. Personeus, with a second by Mr. Freel, moved to grant this application. With a unanimous (5-0) vote from the Board, the motion carried.

DISCUSSION:

The Board members stated that they were in favor of approving the application for the following reasons:

- The lot is oddly shaped
- The existing deck is not functional
- There was no opposition from the neighbors

REASON FOR DECISION:

It was the judgment of the Board that the standards in Section §185-69 have been met: A) that the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and is not due to an economic disability of the applicant; B) that the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain; C) that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the comprehensive Plan; D) that the relief to be granted is the least relief necessary. Additionally, the standards for a dimensional variance set forth in Section §185-71 have been met because the applicant has proved that the hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience.

Application #3478, Kids Quarters, Inc., 64 Bay Spring Avenue, Barrington, RI 02806, applicant and owner, for permission to construct an addition; Assessor's Plat 2, Lot 137, Neighborhood Business District, 64 Bay Spring Avenue, Barrington, RI 02806, requiring a special use permit for parking as well as for the expansion of the use.

Present: Katherine Federoff, DeSisto & Federoff, Providence, RI - attorney for the applicants
Hector Rios, Project Engineer

In the audience:

Chris Feeney, 20 Roberta Drive
Becky Bourdroeaux, Kid's Quarters employee

The following exhibits were submitted:

- Copy of license agreement with DOT
- Spreadsheet outlining the ratio of children to outdoor play space
- Letter of support from Assistant Director of Kid's Quarters
- Letters of support from Kid's Quarter's clients

Ms. Federoff began by explaining that Kid's Quarters was seeking to expand to help accommodate the increasing demand for childcare in the area, noting that many families were wait-listed for the program. The 1,056 square-foot addition would enable Kid's Quarters to increase their enrollment from 50 to 75.

They have proposed two parking areas: a main parking area that will also be used for drop off and pick up of students in the front of the property, and an employee parking area in the rear. The employee parking area will be constructed with a semi-pervious material that will allow grass to grow through it. Ms. Federoff noted that they have an agreement with the owner of the neighboring property at 60 Bay Spring Avenue to allow the employees to park there while the grass parking area is being established. The total parking plan for the site is one space short of the required number of spaces; however, the applicants contend that it is sufficient for needs of this business.

Ms. Federoff stated that the property is fenced and there will be bushes to screen the property from the Bike Path. They have proposed a sidewalk, and they will grant an easement to allow the sidewalk to go around the large tree at the front of the property. Additionally, at the request of the Planning Board, a bike rack has been added.

Mr. Feeney and Ms. Bourdroeaux both spoke in support of the application.

VOTE:

Ms. Carlotto moved to grant this application with the following conditions:

- The applicant shall provide temporary off-site parking spaces for employees to allow adequate time for the grass in the grassed parking area to be established.
 - The approval is contingent upon DOT's approval of utilizing its property for playground area
 - The applicant shall install bike racks for at least four bikes, location and installation specifications to be approved by the Town.
 - The applicant will provide documentation of the sidewalk easement for review and approval by the Assistant Town Solicitor.
 - The applicant will install a fence separating the play area from the rear parking area
- Mr. Personeus seconded the motion and it carried unanimously (5-0).

DISCUSSION:

The Board members stated that they were in favor of approving the application for the following reasons:

- The Town needs the services of this type of business
- The addition to the building will not adversely affect anyone
- The applicant is seeking relief for only one parking space
- The proposed traffic flow is well constructed

REASON FOR DECISION:

It was the judgment of the Board that the standards in Section §185-73 have been met: A) The public convenience and welfare will be substantially served; B) It will be in harmony with the general purpose of this chapter, and with the Comprehensive Community Plan; C) It will not result in or create conditions that will be inimical to the public health, safety, morals and general welfare of the community; D) It will not substantially or permanently injure the appropriate use of the property in the surrounding area or district.

Additionally, the standards in §185-75 have been met: A) That, based upon projected use and level of activity for a given development proposal, strict application of the parking and/or loading requirements would be excessive; B) That, as a result of such relief, the proposed development will be enhanced either in terms of visual appearance or through the provision of additional amenities, such as landscaping and buffering, walkways, bicycle racks and/or street furniture; or that there is some clear public or environmental benefit; C) That the safe and proper operation of the business will in no way be compromised.

Application #3479, Body Natural Fitness Center, 306 County Road, Barrington, RI 02806, applicant, Barrington Construction Company, 306 County Road, owner, for permission to convert main floor space occupied by gym to waiting area/refreshment stand and convert convenience store area to fitness area; Assessor's Plat 23 Lots 292 and 13, Business District, 306 County Road, Barrington, RI 02806, requiring a special use permit.

Present: Anthony DeSisto, DeSisto & Federoff, Providence, RI - attorney for the applicants
Jessica Carbone, employee, Body Natural Fitness Center, 306 County Road, Barrington, RI
Bret Azar, employee, Body Natural Fitness Center, 306 County Road, Barrington, RI

In the audience:

Jill Hederick – member, Body Natural Fitness Center, 306 County Road, Barrington, RI

The following exhibits were submitted:

- Site plan
- Petition of support

Mr. DeSisto explained that currently Body Natural has its cardio room located at the level of the front parking lot, and on the left side of the plaza at 306 County Road. The lower level has additional fitness equipment as well as space for classes. The applicants would like to utilize the space recently vacated by Sam's Food Stores as the new location for the cardio equipment and convert the space currently occupied by the cardio equipment to a welcome/waiting area that will serve pre-packaged health food, such as muffins and power bars, as well as smoothies. The lower level space will connect the two areas that are at the level of the front parking lot, as entrance and exit will be through the waiting area doors only. There are additional exits on the lower level.

VOTE: Mr. Freel moved to grant this application. Upon a second by Mr. Personeus the Board voted unanimously (5-0) to grant the application.

DISCUSSION:

The Board members stated that they were in favor of approving the application for the following reasons:

- The pre-packaged food is directly related to the current use of the space
- The expansion of use will be contained within the existing building
- The expansion will be beneficial to the community
- The proposed staging area will provide a better traffic flow in the space

REASON FOR DECISION:

It was the judgment of the Board that the standards in Section §185-73 have been met: A) The public convenience and welfare will be substantially served; B) It will be in harmony with the general purpose of this chapter, and with the Comprehensive Community Plan; C) It will not result in or create conditions that will be inimical to the public health, safety, morals and general welfare of the community; D) It will not substantially or permanently injure the appropriate use of the property in the surrounding area or district.

Application #3480, R. Bruce Morris, 101 Narragansett Avenue, Barrington, RI 02806, applicant, Diane Hutton, 88 Boyce Avenue, Barrington, RI 02806, owner, for permission to removes existing house and construct a 1,840 square foot house, 780 square foot garage and 750 square foot deck; Assessor's Plat 34, Lot 47, R-10 District, 101 Boyce Avenue, Barrington, RI 02806, requiring relief for rear yard setback, exceeding lot coverage, as well as being within 100 feet of the wetlands/waterbody.

Present: R. Bruce Morris, 101 Narragansett Avenue, Barrington, RI
Gordon and Diane Hutton, 88 Boyce Avenue, Barrington, RI

In the audience:

Peter Peterson – Barrington Conservation Commission
Sheila Mulcahy, 90 Boyce Avenue, Barrington, RI

Mr. Morris began by explaining that Hutton's have acquired the house at 101 Boyce Avenue and are desire to create a home that will suit their needs well into the future after retirement. The foundation is in disrepair, and so demolition of the existing structure and construction of a new foundation and home makes sense. In response to comments from the Board at the April meeting, they have altered the original plans, moving the house further away from the water, and they have reduced the overall size of the building to comply with the side yard setback. They are seeking to build a 1,840 square foot house, 780 square foot garage and 750 square foot deck.

Mr. Peterson stated that the Conservation Commission had no objection to this proposal. Ms. Mulcahy objected to the proposal, stating that she felt that the overall size and lot coverage was too much for the neighborhood. Mr. Hutton noted that he has spoken with other neighbors and they were in favor of the proposal.

The Board stated that since the applicants was removing the existing structure, they would have the opportunity to better conform to the dimensional requirements; therefore, the members of the Board had difficulty rationalizing the size of the project as being “the least relief necessary”.

VOTE: Ms. Carlotto made a motion to deny the application. Mr. Freel seconded the motion and the Board voted unanimously (5-0) to deny.

DISCUSSION:

The Board members stated that they were opposed to the application for the following reasons:

- The relief requested was not the least relief necessary
- There were concerns with the excessive lot coverage
- There was an objecting neighbor
- Because they are removing the existing structure, they have the opportunity better to comply with the setbacks.

REASON FOR DECISION:

It was the judgment of the Board that the following standards in Section §185-69 have NOT been met: A) that the hardship from which the applicant seeks relief is not due to the unique characteristics of the subject land or structure or the general characteristics of the surrounding area, or an economic disability of the applicant; B) that the hardship would be the result of any prior action of the applicant (demolition of the existing structure); C) that the granting of the requested variance will alter the general character of the surrounding area and will impair the intent or purpose of this chapter and the comprehensive Plan; D) that the relief to be granted is not the least relief necessary. Additionally, the standards for a dimensional variance set forth in Section §185-71 have not been met because the applicant has not proved that the hardship to be suffered by the owner, absent granting the relief, would amount to more than a mere inconvenience.

Cove Haven Marina – CRMC Application to Expand Marina – Advisory Review

Mr. Kraig noted that he was in receipt of a letter from the applicant stating that they would not be coming before the Zoning Board to present their application. Mr. Kraig explained to the audience that due to the fact that there was no one to present the application, the application was not before the Board, and because this matter was not a public hearing, the Board was unable to review or discuss the matter. He advised the abutters that they would have an opportunity to present their concerns to the Town Council during its June meeting.

MINUTES OF THE PREVIOUS MEETING:

A motion was made by Ms. Carlotto and seconded by Mr. Freel to accept the April 17, 2008 Zoning Board of Review minutes with changes. The motion carried unanimously (5-0).

ADJOURN:

There being no other business, Mr. Personeus moved to adjourn at 10:55 P.M. Mr. Freel seconded the motion and the meeting was adjourned.

Respectfully submitted,

Valerie Carroll, Secretary
Thomas Kraig, Chairman
cc: N. Letendre, Solicitor