

ZONING BOARD OF REVIEW
Barrington, Rhode Island
March 20, 2008

**APPLICATIONS: The Appeal of Peter Erickson, #3451, 3462, 3463, 3464, 3465,
3467, 3468 and one-year extension of #3405**

MINUTES OF THE MEETING:

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

Also present were solicitor Nancy Letendre and Robert Speaker, Building Official. Acting Solicitor, Matthew Oliverio was present for the Appeal of Peter Erickson.

At 7:00 P.M. Mr. Kraig opened the meeting and the Board proceeded to hear the following matters. At 9:30 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: Peter Erickson, 44 Woodland Road, Barrington, RI
Steve Boyajian, attorney for Mr. Erickson
Robert Speaker, Building Official, Town of Barrington
Nancy Letendre, attorney for Mr. Speaker

In the audience:
William Friedman, 46 Woodland Road, Barrington, RI

The following exhibits were submitted:

- A copy of the 5/1/87 Building Permit, marked to reflect the fence location

Mr. Boyajian opened by explaining that there is an open adverse possession case regarding the property in question. They are not seeking to ask the Town to take a position regarding ownership of the land. They are appealing Mr. Speaker's letter dated June 6, 2007, which responded to Mr. Erickson's request to revoke the Building Permit that was issued on May 1, 1987.

Ms. Letendre stated that the permit had been issued in compliance with the standards set forth in 1-16-3 (b), noting that Mr. Speaker would only have been concerned with the height of the fence, not the location, as there was no way for him to know where the property lines were located. Furthermore, Ms. Letendre noted that this appeal, filed in November of 2007, was not filed in a timely manner, as required.

Mr. Boyajian stated that the application for the permit was inaccurate, stating that the application indicates that the fence would be located on his Mr. Friedman's property, and that in fact the fence was located on the property that is now owned by Mr. Erickson. Mr. Boyajian highlighted the site plan to demonstrate where the fence was located. He stated that because of the incorrect information the permit should be revoked.

Ms. Letendre stated that the permit was to permit the construction of the fence on the owner's property; therefore, as far as Mr. Speaker was concerned, the permit was correct. The question of lot lines is a civil matter, not a matter for the Building Official.

Mr. Friedman stated that there had been a deposition given over the summer regarding the adverse possession case and the building permit had been entered as evidence. He also noted that Mr. Erickson had removed the fence in 2004, thereby making the fence permit, and any question of its validity, a moot point.

In summation, Mr. Boyajian stated that the issue under consideration is if a building permit should be revoked when it appears that the application under which it has been issued contains inaccuracies.

Ms. Letendre stated that the Board does not have the jurisdiction to revoke the permit, that the appeal of Mr. Speaker's letter had not been filed in a timely manner, and that the permit had met the height requirements at the time it was issued, the only issue Mr. Speaker had addressed.

Mr. Oliverio advised the Board that they needed to consider if there was clear error in Mr. Speaker's letter of June 6, 2007.

VOTE: Mr. Bacher, with a second from Mr. Freel, moved to deny the appeal for the following reasons:

- There is no clear error in Mr. Speaker's decision letter of June 6, 2007
- The application for the permit, as presented, met the requirements at the time it was filed; therefore, there is no material zoning issue presented in the Mr. Erickson's request to Mr. Speaker, and the Zoning Board does not have jurisdiction over this matter
- The determination of lot lines is a civil matter; in addition, the Building Official's office would not have been able to determine the lot lines
- The fence has already been removed by Mr. Erickson

The Board asked Mr. Oliverio to draft a motion to deny for consideration and adoption by the Board at its next meeting. The Board voted 4-0 to deny, with Mr. Personius abstaining. The matter was continued to the April 17, 2008 meeting.

Continuation of application #3451, Anthony Cunha, 10 Carriage Trail, Barrington, RI 02806, applicant and owner, for permission to construct an in-ground swimming pool; Assessor's Plat 14, Lot 391, R-25 District, 10 Carriage Trail, Barrington, RI 02806, requiring variances for rear yard setback and for being within 100' of a wetlands/waterbody and for being within 100' of the wetlands overlay district.

Mr. Kraig noted that the Conservation Commission has requested the Board to consider continuing the matter in order to allow the applicant time to present additional material. Joelle Sylvia, attorney for the applicant, has also submitted a request for continuance for the same reason.

VOTE: Mr. Freel moved to continue the application to the April 17, 2008 meeting, with the stipulation that this will be the last continuance granted. If the applicant is not ready, the Board will be compelled to deny the application without prejudice and the applicant will need to refile when he have complied all the necessary information. Mr. Personeus seconded the motion and it carried unanimously (5-0).

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.

Mr. Kraig read a request from Bruce Cox, attorney for the applicant, requesting the matter be continued in order to allow time for the abutter's attorney to have an engineer review the plans prepared by the applicant. Mr. Cox represented that counsel for the abutters joined in the request for a continuance.

VOTE: Mr. Bacher moved to continue the application to the April 17, 2008 meeting. Upon a second by Mr. Freel the motion carried unanimously (5-0).

Application #3463, Capitol Building and Design, 585 Milford Road, Swansea, MA 02777, applicant, Joseph and Elaine Ross, 8 Westwood Road, Barrington, RI 02806, owners, for permission to construct a second floor addition: Assessor's Plat 35, Lot 168, R-25 District, 8 Westwood Road, Barrington, RI 02806, requiring a variance for being within 100' of a wetlands/waterbody.

Present: Dean Davidson, Capitol Building & Design, 585 Milford Road, Swansea, MA

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

Mr. Davidson explained that they are seeking to construct a second floor addition, as well as interior renovation, at 8 Westwood Road. They have proposed creating three bedrooms upstairs with a master bedroom on the first floor. Mr. Davidson stated that they would be building upwards only, and they would not be going any closer to the wetlands than the existing house.

Mr. Kraig read into the record a letter from the Conservation Commission recommending approval, with the conditions that erosion controls be used during all exterior work and that all equipment and materials are staged on the street side of the property.

VOTE: Mr. Freel moved to approve the application with the following conditions:
➤ Erosion controls must be used during all exterior work
➤ All equipment and materials are staged on the street side of the property.
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 addition will be the same distance to the wetlands as the existing house
- There is no other logical location for the addition
- The requested relief is modest

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 #3464, Robert and Margaret Vatter, 9 Adelaide Avenue, Barrington, RI 02806, applicants and owners, for permission to rebuild garage and mudroom and construct a second floor addition; Assessor's Plat 9, Lot 44, R-25 District, 9 Adelaide Avenue, Barrington, RI 02806, requiring a dimensional variance for side yard setback.

Present: Margaret Vatter, 9 Adelaide Avenue, Barrington, RI
Scott Weymouth - architect, 79 Alfred Drowne Road, Barrington, RI

In the audience:
Lynn Ewart-Paine, 5 Adelaide Avenue, Barrington, RI

The following exhibits were submitted:

- Comment in Opposition from Ms. Ewart-Paine
- Photos of existing conditions

The applicants explained that they are seeking to demolish and rebuild the existing garage, remaining within the existing footprint, and add a second story addition to the garage. The second story addition would be accessed via the main house and is necessary to accommodate their growing family. They are unable to reduce the size of the garage because it would become too small for two cars and the proposed location is the most logical location for the structure because of the existing garage, and they do not want to reduce the space in the back yard, as the family frequently uses that space.

Ms. Ewart-Paine stated that she was opposed to the proposal because she feels that the addition will encroach on her view and reduce the sunlight in her garden. She feels that the proposal is not the least relief necessary, especially considering that there are other areas where they could locate the addition, and that the standards in §185-69 have not been met.

VOTE: Mr. Freel moved to approve the application as described in the plans submitted to the Board. Mr. Personeus seconded the motion and it carried 4-1, with Mr. Bacher dissenting.

DISCUSSION:

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

- The homeowner needs additional space
- The proposed location is the most realistic location
- The proposal will have the least overall impact on the home and site
- The request is modest in size
- The impact on the neighbor will be minimal

Mr. Bacher was opposed to the application for the following reasons:

- There will be a strong impact on the neighbor, reducing the amount of light her property receives

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 #3465, Lorraine Keeney, 43 Third Street, Barrington, RI 02806, applicant and owner, for permission to construct an 8' x 10' deck; Assessor's Plat 2, Lot 28, R-25 District, 43 Third Street, Barrington, RI 02806, requiring a dimensional variance for rear yard setback and exceeding lot coverage.

Present: Lorraine Keeney, 43 Third Street, Barrington, RI
Scott Weymouth - architect, 79 Alfred Drowne Road, Barrington, RI

In the audience:
Joann Securo, 27 Pleasant Street, Barrington, RI

The applicants explained that they were seeking to construct a deck and landing that would be even with the back edge of the house. The proposed 8' x 10' size is the smallest possible size while still remaining useful as a deck.

Ms. Securo stated that she had no objection to the proposed deck; however, she was concerned about the location of the air conditioner compressor. Ms. Kenney assured her that the compressor would be located close to Ms. Kenney's house and would not be a noise problem for Ms. Securo.

VOTE: Upon a motion by Ms. Carlotto, with a second by Mr. Personeus, the Board voted unanimously (5-0) to grant this application.

DISCUSSION:

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

- The lot is a very small corner lot and the proposed location is the only logical location
- The homeowner needs proper access to the back yard
- The request is very minor, and the impact on the surrounding area will be minimal

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 #3466, Douglass DiOrio, 39 Townsend Street, Barrington, RI 02806, applicant and owner, for permission to install a new roof; Assessor's Plat 19, Lot 43, Neighborhood Business Zone, 448 Maple Avenue, Barrington, RI 02806, requiring a dimensional variance for side yard setback.

Present: Douglas DiOrio, 39 Townsend Street, Barrington, RI

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

Mr. DiOrio explained that he has recently purchased the building on 448 Maple Avenue and is renovating it for his business. He has found that the existing flat roof is inefficient and in need of repair, so he wants to construct a truss roof, which would be more effective and provide more visual appeal to the area. The new roof will overhang by 8 inches on the side, infringing slightly more on the side yard setback.

VOTE: Ms. Carlotto, with a second by Mr. Personeus, moved to grant this application. The motion carried unanimously (5-0).

DISCUSSION:

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

- There will be no negative impact, in fact it will be an improvement to the neighborhood; the minimal additional infringement on the side setback is inherent in use of the proposed style of roof
- The roof must be located as proposed

DISCUSSION:

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

- The lot is very narrow for an R-25 District
- The requested variance is minimal

The Board members voting against the application stated that they were in opposition for the following reasons:

- The applicant can reduce the size, design or orientation of the home to be within the setbacks
- The applicant has not provided enough proof of need

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 – but rather is due to the house size and design proposed; and D) that the relief to be granted is not the least relief necessary – in fact, adequate evidence was not presented to justify any relief. 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.

Application #3468, Steven M. Monti, 83 Alfred Drowne Road, Barrington, RI 02806, applicant and owner, for permission to construct second floor addition; Assessor's Plat 3, Lot 75, R-10 District, 83 Alfred Drowne Road, Barrington, RI 02806, requiring a dimensional variance for setback from Third Street.

Present: Steven and Deann Monti, 83 Alfred Drowne Road, Barrington, RI

In the audience:

Scott Weymouth, 79 Alfred Drowne Road, Barrington, RI

The applicants explained that there are currently in the process of renovating their house and they are seeking to add a 4' x 12' second floor addition over an existing bump out, remaining within the existing footprint of the house. This addition would serve to extend a bedroom and a bathroom and square up the house.

Mr. Weymouth stated that he had no objections to the proposal.

VOTE: Mr. Personeus made a motion to grant this application. Mr. Freel 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 applicant will not be going any closer to the lot line than the existing house.

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.

Request for a one-year extension of approval granted to application #3405, Chris & Sudi Digiovanni, applicants and owners, 46 Clarke Road, Barrington, RI 02806; Assessor's Plat 7, Lot 34, R-25 District, 46 Clarke Road, Barrington, RI 02806.

Mr. Kraig read into the record a letter from the applicant requesting a one-year extension of their approval.

VOTE: Upon a motion by Mr. Freel, with a second from Mr. Personeus, the Board voted unanimously (5-0) to extend the approval through March 28, 2009.

MINUTES OF THE PREVIOUS MEETING:

A motion was made by Mr. Bacher and seconded by Ms. Carlotto to accept the February 21, 2008 Zoning Board of Review minutes as written. The motion carried unanimously (5-0).

ADJOURN:

There being no other business, Mr. Freel moved to adjourn at 10:30 P.M. Mr. Personeus seconded the motion and the meeting was adjourned.

Respectfully submitted,

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