

# ZONING BOARD OF REVIEW

Barrington, Rhode Island

SEPTEMBER 17, 2009

**APPLICATIONS: #3515, 3539, 3546 & 3547**

## MINUTES OF THE MEETING:

At the call of the Chairman, Thomas Kraig, the Board met with Larry Bacher, Mark Freel, Neal Personeus, David Rizzolo and Stephen Venuti.

Mr. Ridlon arrived at 7:34 P.M.

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

At 7:08 P.M. Mr. Kraig opened the meeting and the Board proceeded to hear the first matter, the continuation of Application 3515. Following closing arguments, at 7:58 P.M. the Board temporarily closed the public portion of the meeting to deliberate the first matter. The meeting was then re-opened at 9:15 P.M. and the Board proceeded to hear the remaining matters. At 10:02 P.M. the public participation portion of the meeting was once again closed and the Board proceeded to deliberate and vote on the remaining applications.

**Continuation of application #3515, Montessori Centre of Barrington, 303 Sowams Road, Barrington, RI 02806, applicant and owner, for permission to expand its use as a day care/private school; Assessor's Plat 30, Lot 64, Neighborhood Business Zone, 303 Sowams Road, Barrington, RI 02806, requiring a Special Use Permit for expansion of use as well as for relief from parking requirements contained in Article XV of the Zoning Ordinance.**

Before the matter began, Mr. Ridlon recused himself.

Present: Anthony DeSisto, attorney for the applicant, DeSisto & Feodoroff, 450 Veterans Memorial Parkway, Suite 10, East Providence, RI  
John Revens, attorney for abutting neighbors, Revens, Revens & St. Pierre, 946 Centerville Road, Warwick, RI

Before the proceedings began, Mr. Kraig noted that while this application had begun in January 2009 and testimony had been entered in May and June of 2009; the application itself had been revised and re-advertised in July of 2009. Therefore, Mr. Kraig added to the record the following items:

- The July 1, 2009 Legal Ad run in the Barrington Times
- The amended application
- The transcripts of the May and June Zoning Board meetings
- The minutes of the May and June Zoning Board meetings

Mr. DeSisto opened by explaining that the application had been revised to add relief from §185-80, parking size requirements, and §185-78c, parking in the front yard setback; a copy of a 2006 memo

from the Building Official noting that a loading zoning would not be required for this use of the building was also included.

Mr. Revens began his closing arguments, stating that the building originally housed a daycare on the first floor and a dance studio on the second floor, and the applicants are seeking to increase the space they are using as well as the total number of students served. He noted that there had been a lot of testimony that the Montessori Centre was a good school; however, he asserted that the quality of the school was irrelevant to the requirements of the zoning laws. Mr. Revens noted that the applicants have met none of the parking requirements. In fact, Mr. Revens noted that the morning drop off plan utilizes some of the parking spaces, therefore rendering them unusable.

Mr. Revens stated that there had been no testimony supporting a 60-child drop off plan, nor was there an engineer who spoke in support of a 60-child plan, or any way to direct the flow of traffic. Mr. Revens also noted there was no provision for snow removal, nor was any lease agreement for parking on neighboring sites presented. For these reasons Mr. Revens urged the Board to deny the application.

Mr. Freel asked Mr. Revens how many abutters he represented. Mr. Revens replied that currently he represents Mr. & Mrs. Kenneth Skelly on 18 Oak Grove Avenue and Meredith Skelly and Christopher Pascale at 14 Oak Grove Avenue. Mr. Revens stated that originally there had been more residents involved; however, due to a "slap suit" by Ms. Garcia-Mills, several of the other neighbors have felt intimidated and declined to participate further.

Mr. DeSisto began his closing arguments by stating that Robert Poitozo, traffic engineer for the objectors, had stated that he had not done a full traffic study of the site; however, Paul Baynon, recognized as a traffic expert by the Board, had done a full study and concluded that the site could handle the increase in traffic.

Regarding the question of whether Montessori was a "good school" was to be a concern of the Board; Mr. DeSisto asserted that it was a function of the Board to determine if a proposal was beneficial to the public welfare and if it provides a service for the Town. It was his view that the purpose of the Board is to determine if an application has sufficient evidence to make a positive motion.

Mr. DeSisto stated that of the 19 spaces provided, 6 would be used for staff, including 4 stacked spaces, leaving 13 open to fulfill his client's parking needs. The pick up times are staggered since parents do not all come at the same time, and there is not sign in/out procedure at the school; therefore, any delays at pick up time should be minimal.

Mr. Revens closed by noting that the Superior Court did not approve the plan; the Court said that the Planning Board's decision was advisory only and could not be appealed. Mr. Freel said that it was his understanding that the Superior Court reversed the Planning Board's decision to deny. Mr. Revens explained that it only related to the land use portion of the application, not the parking plan.

Upon a motion by Mr. Freel, with a second by Mr. Personeus, the Board unanimously (5-0) voted to close the public participation portion and begin deliberation for this application.

Deliberation began with the question of the use of the second floor. If the application were denied, could the current school utilize the second floor, or would it have to remain unused. It was determined

that it could be used, regardless of the decision of the Board, so long as there was no increase in the total number of students.

The main point of deliberation was if the site could support a total of 60 students. It was noted that the site was unique in that it sits on the corner of a busy road, Sowams Road, and small, narrow side road, Oak Grove Avenue, whose only exit is by the school.

Mr. Kraig noted that he was struggling with his decision; if this were a new building that was proposed, of this size on this site, he would be in opposition; however, since there is an existing building which is currently functioning with the proposed use, and there are not many locations in Town where a use like this can be sited, expanding that use seems to make sense.

With the exception of Mr. Personeus, the Board felt that the drop off plan as proposed has been shown to be successful, and with the proposed number of students and the extended times for drop off and pick up, the plan should continue to function well and have minimal impact on the traffic on Sowams Road.

Mr. Personeus expressed concerns, based on his observation of the site, with the limited space for snow removal/storage. He also felt that the business has outgrown the site and would be better served by a different site rather than expanding at this one. Mr. Personeus noted that he has observed cars moving very quickly down Sowams road, which could create a hazardous situation if the traffic was backed up at the Montessori site.

The Board then held a discussion and informal vote to see if the standards in §185-73 had been met:

- A. The public convenience and welfare will be substantially served.
  - It was the opinion of the Board that was a need for this type of service on this end of Town, and that this standard will therefore be met.
- B. It will be in harmony with the general purpose of this chapter, and with the Comprehensive Community Plan.
  - It was the opinion of the Board that the proposed use is in harmony with general purpose of this chapter and the Comprehensive Plan, and that this standard will therefore be met.
- 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.
  - It was the opinion of the Board that the proposed use will not create adverse conditions for the community, and will not be inimical to the public health, safety, morals and general welfare of the community, and that this standard will therefore be met.
- D. It will not substantially or permanently injure the appropriate use of the property in the surrounding area or district.
  - It was the opinion of the Board that the proposed use will not substantially or permanently injure the appropriate use of the property in the surrounding area or district, and that the anticipated impact on the traffic in the area will be minimal, and that this standard will therefore be met.

The members voted on the informal vote as follows:

Larry Bacher – Yea  
Mark Freel – Yea  
Thomas Kraig – Yea

Neal Personeus – Nay  
Stephen Venuti. – Yea

The Board then held a discussion and informal vote to see if relief could be granted from the standards in §185-75:

- 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.
  - Mr. Speaker's 2006 memo was referenced, noting that he would not require loading spaces for this use; the Board further felt that strict application of the parking 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.
  - There would be no public benefit from enhancing the visual appearance of the site, as the business exists and there would be no noticeable change in conditions. In addition, curbing and planting would inhibit the drop off plan and impede the traffic flow. The Board also noted, as discussed before, that the proposed use would serve a clear public benefit.
- C. That the safe and proper operation of the business will in no way be compromised.
  - The applicant has demonstrated that by adhering to the proposed drop off/pick up plan, the safe and proper operation of the business would not be compromised.

The members voted on the informal vote as follows:

Larry Bacher – Yea  
Mark Freel – Yea  
Thomas Kraig – Yea

Neal Personeus – Nay  
Stephen Venuti. – Yea

The Board noted the need for the following conditions:

- The drop off plan as presented must be adhered to
- The four stacked parking spaces must be reserved for employees only
- The owner must make best effort to remove snow from all parking spaces and from the edge of the right-of-way within a reasonable amount of time following a snowfall.

**VOTE:** Mr. Freel moved to direct the Solicitor to draft a motion approving the Special Use Permit, in accordance with the deliberation of the Board. Mr. Venuti seconded the motion and it carried 4-1.

Mr. Freel moved to continue the application to a special meeting to be held on September 21, 2009. Mr. Venuti seconded the motion and it carried unanimously (5-0).

**Continuation of application #3539, Gerald and Adele Carlson, 81 Cove Avenue, Barrington, RI 02806, applicants and owners, for permission to construct an 11' x 12' deck; Assessor's Plat 35, Lot 70, R-25 District, 81 Cove Avenue, Barrington, RI 02806, requiring relief for being within 100' of a wetlands/waterbody, within 100' of the wetlands overlay district, exceeding lot coverage as well as relief for front yard setback.**

Present: Gerald & Adele Carlson, 81 Cove Avenue, Barrington, RI

In the audience:

Ed Ionata – Barrington Conservation Commission  
Sandra Wyatt – Barrington Land Conservation Trust

The applicants began by explaining that, based upon input from the Board at their prior hearing, they have moved the entrance to the deck to the front of the house; however, the size and elevation of the proposed deck remain the same. The applicant's elderly mother lives with them and they are seeking to construct a more stable, level entranceway to the home. Currently there exist concrete steps and gravel. The Board asked about other ingress/egress to the house, and it was noted that there was another front entry as well as sliding doors to the rear deck.

Mr. Kraig read into the record a letter from the Conservation Commission recommending approval of the proposal with conditions. Mr. Kraig also read into the record a letter from the Land Conservation Trust opposing the proposal.

Mr. Ionata for the Conservation Commission stated that while the Commission felt that the proposed deck was a little large for its intended purpose as an entryway, since the applicants are proposing a pervious structure, the Commission does not feel there will be a significant impact on the wetlands.

Ms. Wyatt spoke in opposition, noting that the 100-foot setback has been determined to be the minimum distance necessary to have the least negative impact on the salt marsh behind the property. She stated that a pervious deck would be more desirable than a patio; however the Land Trust would prefer that no further building be done at this location, as it will add to the storm water runoff. Ms. Wyatt also noted that the proposed deck seemed excessive for its purpose as an entryway, and the home already has a deck on the waterside.

The Board asked the applicants about the size of the proposed structure and they replied that they felt the deck fit the area and they did not want to disturb to rocks that are beneath where it would be built.

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

**DISCUSSION:**

The Board members stated that they supported denying the application for the following reasons:

- The proposed structure is excessive for an entryway
- The home has an existing deck
- There are other entryways to the home

**REASON FOR DECISION:**

It was the judgment of the Board that the following standard in Section §185-69d have NOT been met: 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.

**Application #3546, Tanja and Daniel Kubas-Meyer, 40 Centennial Avenue, Barrington, RI 02806, applicant and owner, for permission to construct a two-story addition to the north side of the building; Assessor's Plat 22, Lot 412, R-10 District, 40 Centennial Avenue, Barrington, RI 02806, requiring dimensional relief for the setback from Foote Street.**

Present: Tanja & Daniel Kubas-Meyer, 40 Centennial 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 build a small two-story addition in order to create a dining room on the first floor and an office/study on the second floor. They noted that their property is unique in that there is an oversized garage that they share with another family, preventing expansion to that side, and the house is situated very far back on the property, preventing expansion to the rear of the house. They removed a 10' x 9' porch/entryway and intend to create the addition over the space it used to occupy, extending approximately three feet further than the slab. The proposed addition size is the minimum size required to create functional space on the second floor.

While there was no one to speak for or against the matter, it was noted that they have spoken to their immediate neighbors and they had no objections.

**VOTE:** Mr. Personeus moved to approve the application. Upon a second from Mr. Ridlon, the Board unanimously (5-0) voted to grant the application.

**DISCUSSION:**

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

- The proposal is modest, and anything smaller would not be functional
- There will still be nine feet from the edge of the addition to the street
- The addition will be a visual improvement to the house
- The proposed location is the only logical location for the addition
- The lot is a corner lot, which has two front yard setback requirements
- The home currently does not have a dinning room

**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 #3547, Gus C. Morelli, 20 Spring Street, East Providence, RI 02915, applicant and owner, for permission to demolish existing dwelling and garage and construct a new home with attached garage and auxiliary apartment; Assessor's Plat 22, Lot 417, R-10 District, 186 Foote Street, Barrington, RI 02806, requiring a Special Use Permit for the auxiliary apartment.**

Present: Gus C. Morelli, 20 Spring Street, East Providence, RI  
Bruce Morris, 101 Narragansett Ave, Barrington, RI

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

The following exhibit was submitted for the record:

- Ariel view of property

The applicants explained that they are seeking to remove the existing structures on the property at 186 Foote Street and construct a two-story home with an auxiliary apartment so that Mr. and Mrs. Morelli can live on the first floor; their daughter and her family will live on the second. The house has been designed to meet all setback requirements, the auxiliary apartment will be less than 40% of the total living space, they share a common area; a staircase, and there is ample parking for at least four cars.

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

**DISCUSSION:**

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

- The existing structure is non-conforming; the new structure will adhere to the setback requirements
- The proposal is within the intent of the Comprehensive Community Plan
- The house will appear to be a single-family home
- The proposal meets the criteria for an auxiliary apartment
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Mr. Kraig noted that while he supported the application, he was concerned with the overall size of the auxiliary apartment. The proposed apartment appeared to be substantially larger – because of the allocation of space adjacent to the unit to utilities, and because it contains two bedrooms - than was likely contemplated when the auxiliary apartment provision was enacted; however, if that question is to be addressed, it must be by a change to the Zoning Ordinance, since this application complies with all existing requirements.

**REASON FOR DECISION:**

It was the judgment of the Board that the standards in Section §185-73 have been met: That 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 and D) It will not substantially or permanently injure the appropriate use of the property in the surrounding area or district.

Additionally, the standards in §185-143 have also been met. That A) An auxiliary apartment shall be located entirely within or attached to an owner-occupied single-family dwelling, which dwelling

contains no less than 2,000 square feet of living space. Any auxiliary apartment shall occupy no more than 40% of the total living space of the dwelling, exclusive of the basement, and shall contain no less than 450 square feet, and no more than 900 square feet of living space. Any residence qualifying for an auxiliary apartment shall have no more than one such apartment. B) No auxiliary apartment shall be located above the second floor, and all auxiliary apartments shall have at least two means of egress, C) The auxiliary apartment shall be designed for year-round occupancy for family members as defined in § 185-5, D) The lot or parcel of land on which the residence containing an auxiliary apartment sits shall have the minimum area and setbacks prescribed for the district in which the dwelling is located. The Zoning Board of Review may grant relief from this section; provided, however, that no lot, regardless of the district in which it is located, shall be less than 10,000 square feet, E) The auxiliary apartment shall be connected to the sewer system of the Town of Barrington, and to the water system of the Bristol County Water Authority, or the successor thereto, when accessible or available to the original dwelling, F) One parking space for each bedroom in the auxiliary apartment shall be provided in addition to the minimum required for the original dwelling, G) Exterior alteration of an existing dwelling structure must conform to all zoning regulations, including setback and height restrictions and H) The auxiliary apartment and the original dwelling shall fully comply with all applicable state and local codes, ordinances and regulations.

**MINUTES OF THE PREVIOUS MEETING:**

A motion was made by Mr. Freel and seconded by Mr. Ridlon to accept the August 20, 2009 Zoning Board of Review minutes with changes. The motion carried unanimously (5-0).

**ADJOURN:**

There being no other business, Mr. Ridlon moved to adjourn at 10:28 P.M. Mr. Freel seconded the motion and the meeting was adjourned.

Respectfully submitted,

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