

# **ZONING BOARD OF REVIEW**

**Barrington, Rhode Island**

**June 18, 2009**

**APPLICATIONS: #3515, 3525, 3527, 3529, 3532, 3533, 3534;  
Appeal of Joseph Silvera Trust & Appeal of Dean Robinson**

## **MINUTES OF THE MEETING:**

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

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

At 7:02 P.M. Mr. Kraig opened the meeting. At 7:12 P.M. the meeting was temporarily adjourned in order to sit as the Zoning Board of Appeals. At 7:25 P.M. the Zoning Board of Review reconvened and the Board proceeded to hear the following matters. At 12:05 A.M. the public participation portion of the meeting was closed and the Board proceeded to deliberate and vote on those applications it had heard that had not been continued.

**Continuation of application #3515, Montessori Centre of Barrington, 303 Sowams Road, Barrington, RI 02806, applicant and owner, for permission to expand day care/private school; Assessor's Plat 30, Lot 64, Neighborhood Business Zone, 303 Sowams Road, Barrington, RI 02806, requiring a Special Use Permit.**

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  
Skyler Mills, architect, 303 Sowams Road, Barrington, RI  
John Revens, attorney for abutting neighbors, Revens, Revens & St. Pierre, 946 Centerville Road, Warwick, RI  
Robert Poitozo, engineer, Pare Corporation, 8 Blackstone Valley Place, Lincoln, RI  
Peter Scotti, MAI, Peter M. Scotti & Associates, 246 Hope Street, Providence, RI

In the audience:

Kim Zeleznik, 3 Ida Court, Barrington, RI

Mr. Revens submitted the following items as exhibits:

- Barrington Zoning Ordinance §185-78 B
- Barrington Zoning Ordinance §185-79 D
- Barrington Zoning Ordinance §185-79 E
- Barrington Zoning Ordinance §185-86
- Barrington Zoning Ordinance §185-80
- C.V for Robert Moitozo, P.E.
- Real Estate Report prepared by Peter M. Scotti & Associates

Mr. DeSisto began by introducing Mr. Mills, the engineer who prepared the site plan. Mr. Mills reviewed the plan, explaining the drop off plan as well as the parking plan. Upon questioning, Mr. Mills noted that the parking spaces and parking plan do not comply with the Barrington Zoning Ordinance requirements.

Mr. Revens began cross-examining Mr. Mills, with Mr. DeSisto objecting to the direct cross-examination. It was explained by the Board's solicitor that while direct cross-examination might not be appropriate for a lay witness, it was a logical and appropriate process for use with expert witnesses. Mr. Revens read aloud each of §185-78 B, 185-79D-E and 185-86, and asked Mr. Mills if the proposal meets the requirements in those standards. Mr. Mills stated that they did not.

Mr. Revens began his presentation by introducing traffic expert Mr. Moitozo, who had reviewed the proposal and had gone to the site on two occasions to observe the drop off program and traffic situation. Mr. Moitozo stated that traffic was briefly impeded during a small back-up on site, and explained in response to a question from the Board, that in making a left turn to enter the drop-off area, a waiting vehicle has pulled across the oncoming traffic lane, briefly blocking both lanes. He also noted that when he went to the site in January, he observed a large pile of snow that impaired visibility at the corner of Sowams Road and Oak Grove. Mr. Moitozo went on to note that none of the parking spaces met the requirements of the Zoning Ordinance.

Mr. Revens then introduced Mr. Scotti, who had brokered the sale of the property in 2000. Mr. Scotti stated that he believed that the proposed changes would have a negative impact on the values of the surrounding homes; however, he noted that he could not place a specific dollar value on that impact.

Ms. Zeleznik stated that she supports the proposal and feels that the Montessori school provides a positive benefit to the Town, and it has been her experience that the drop off plan is safe and effective.

In summation, Mr. Revens stated that he is opposed to the proposal as none of the parking spaces comply with the applicable standards, there is no center aisle, and no effort was made to comply with those standards. Mr. Revens asserted that those standards must be met in order to offset the impact of the expansion on the surrounding homes.

Mr. DeSisto countered that the building itself is not expanding, as the second floor had been historically used as a dance studio; therefore the existing non-conformity extends to this proposal. The site and drop-off plan has been in use for some time and has been shown to be safe, and he noted that Special Use Permits have been granted for parking on many sites around town. Mr. DeSisto noted that his clients would be amenable to a condition that snow removal must be either contained onsite or removed off-site.

Mr. Revens stated that since this proposal was for a change of use, all parking requirements must be met, including the loading space requirement. The need for a loading space was questioned by the Board, as the operation will not be receiving goods or equipment.

Ms. Letendre advised that the request for parking relief was not part of the legal advertisement that ran in the January *Barrington Times*; therefore, the matter should be re-advertised. Counsel for both the applicant and the abutters agreed, and agreed with Ms. Letendre's suggestion that the matter be

continued, with the current record incorporated in the next meeting. Mr. Revens also requested that information be provided about the actual use of the second floor during recent years.

**VOTE:** Mr. Personeus moved to continue this matter to the July 16, 2009 meeting. Mr. Freel seconded the motion and it carried unanimously (5-0).

**Continuation of application #3525, The Icon Companies, 1418 Elmhurst Road, Elk Grove Village, IL 60007, applicant, Joseph R. Paolino/ACP Shopping Center Associates, LP, 76 Dorrance Street, Providence, RI 02903, owner, CVS Pharmacy #210, 180 County Road, Barrington, RI 02806, lessee, for permission to add three 12-inch non-illuminated lettersets with gooseneck light fixtures, exceeding permitted square footage; Assessor's Plat 24, Lot 107, Business District, 180 County Road, Barrington, RI 02806, requiring a Special Use Permit.**

Mr. Freel and Mr. Bacher recused themselves from this application.

Due to the lack of quorum of attending members, this matter was continued to July 16, 2009.

**VOTE:** Mr. Freel moved to continue this matter to the July 16, 2009 agenda. Mr. Personeus seconded the motion and it carried unanimously (5-0).

**Continuation of application #3527, Jason and Heather Erler, 176 Foote Street, Barrington, RI 02806, applicants and owners, for permission to construct a garage addition with an auxiliary apartment; Assessor's Plat 22, Lot 352, R-10 District, 176 Foote Street, Barrington, RI 02806, requiring dimensional variances as well as a Special Use Permit.**

Mr. Kraig read into the record a letter from the applicant requesting this matter be continued to the July 16, 2009 meeting.

**VOTE:** Mr. Ridlon moved to continue this matter to the July 16, 2009 agenda. Upon a second by Mr. Personeus, the Board unanimously (5-0) voted to continue the application.

**Continuation of application #3529, Sue Andrade/Meridian Custom Homes, 1 Richmond Square, Providence, RI 02906, applicant, Antonio Palazzo, 71 Hardy Hill Road, Lebanon, NH 03766, owner, for permission to construct a single-family home; Assessor's Plat 23, Lot 199, Neighborhood Business Zone, Waseca Avenue, Barrington, RI 02806, requiring dimensional relief for front yard setback and side yard setback.**

**Present:** Sue Andrade, Meridian Custom Homes, 1 Richmond Square, Providence, RI  
Chris Kelly, Meridian Custom Homes, 1 Richmond Square, Providence, RI  
Mike Faria, In-Site Engineering, Seekonk, MA

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

The applicants reviewed the site plan, noting that there was a 6-inch indentation in a portion of the site that facilitates drainage into an invert pipe that ties into the Town system. The applicants asserted that new construction would not have a negative impact on the drainage to the invert. The Board expressed concern about the impact on the surrounding properties as well as the street, since of necessity the mounding required for the location of the proposed house would reduce the area that is currently

servicing to collect storm water before it drains into the invert pipe. The Board noted that it would probably be desirable to have an additional swale along the west side of the subject lot to direct water away from the neighboring lot and toward the invert, and requested the applicant to provide the following information prior to the next meeting:

- Engineer's drainage calculation certifying that the catchment area will be suitably drained off by the drainage plan shown
- A letter from the DPW director noting his review and approval of the plan
- Elevations of the neighboring property to demonstrate the water will not flow onto the neighbor's property
- Indication of the location of the suggested additional swale on the site plan
- Roof run-off calculations and location

**VOTE:** Mr. Freel moved to continue the application to the July 16, 2009 meeting. Mr. Personeus seconded the motion and it carried unanimously (5-0).

**Joseph W. Silvera Trust, Maria Silvera Trust and Sowams Nursery, 84 Sowams Road, Barrington, RI 02806, from a Decision of the Zoning/Building Official; Assessor's Plat 28, Lots 72, 73 and 246, R-25 District, 84 Sowams Road, Barrington, RI 02806.**

Present: Maria Silvera, 84 Sowams Road, Barrington, RI  
Joseph Silvera Jr., 84 Sowams Road, Barrington, RI  
Bruce Cox, Sleprow, Sleprow & Associates, 1481 Wampanoag Trail, East Providence, RI  
Alfred Bettencourt, Jr., Rhode Island Farm Bureau  
Robert Speaker, Building Official, Town of Barrington

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

The applicant submitted the following items as exhibits:

- Copy of Rhode Island Permit to Make Sales at Retail
- Biography for Alfred R. Bettencourt, Jr.

Mr. Cox began by noting that the applicants have removed the signage that was in violation of the Town code. He went on to explain that the Silvera's have been selling both on a retail as well as a wholesale basis at that location since the 1950's, noting that they hold a permit for retail sales issued by the State of Rhode Island. Mr. Cox said that the owners had another retail location in Swansea that had recently closed; however, sales at this location were limited to plants. The Board asked if the retail business was conducted year-round, with two members noting that there had been occasions when they had been turned away from making retail purchases at that location and that they felt that retail was only available during one weekend per year. The applicants explained that while there were times when they were overwhelmed with the wholesale business and would turn away retail clients, retail sales were generally available throughout the growing season.

Mr. Speaker stated that he had sent the violation notice in response to a complaint from an abutting neighbor. In his research, Mr. Speaker had documents from a 2001 Zoning Application, noting that in that application the applicants were seeking relief for a building to be used only for a wholesale business. Mr. Cox countered that that limitation only applied to that 'field office' building on that lot, not the entire nursery.

**VOTE:** Mr. Freel moved to overturn the Building Official's determination, with the stipulation that sales must be limited to plants and plant-related material, specifically excluding items that might ordinarily be sold at a retail garden center, such as garden hoses, pesticides and fertilizer. Mr. Bacher seconded the motion and it carried unanimously (5-0).

**DISCUSSION:**

The Board members stated that they were in favor of overturning Mr. Speaker's decision for the following reasons:

- There is historic evidence that plants have been sold at this location to both wholesalers as well as the general public
- The use of this property is neither 'Wholesale' nor 'Retail', but rather it falls under 'Commercial Nursery/Greenhouse', therefore the sale of plants is allowable.

Mr. Kraig indicated that he agreed with the Board's decision, but did not accept the conclusion that the use was necessarily 'Commercial Nursery/Greenhouse' – the particular uses to which this property has been put, and which appear to predate the zoning ordinance, appear to be outside the definitions of any particular provision of the table of uses in the zoning ordinance.

**Dean Robinson, 404 New Meadow Road, Barrington, RI 02806, from a Decision of the Zoning/Building Official; Assessor's Plat 35, Lot 128, R-25 District, 404 New Meadow Road, Barrington, RI 02806.**

Present: Dean Robinson, 404 New Meadow Road, Barrington, RI  
Robert Speaker, Building Official, Town of Barrington

In the audience:  
Carmen DiMatteo, 9 George Finnerty Road, Barrington, RI  
Marc DiSalvo, 7 George Finnerty Road, Barrington, RI

The following item was submitted as an exhibit:

- Photograph of existing conditions at the corner of George Finnerty Road and New Meadow Road

Mr. Robinson stated that he had never been approached by his neighbors regarding any vision impairment caused by his bushes; the first time he was informed of a problem was in December 2007, when he received a violation notice from Mr. Speaker. At that time he called Mr. Speaker and asked for an extension of time to comply, as the ground was frozen. Mr. Speaker agreed, noting that it needed to be taken care of by the spring. In April of 2008 Mr. Robinson removed four plants from the corner of the property.

In March of 2009 Mr. Robinson received a new notice of violation regarding vision clearance at the corner of George Finnerty Road and New Meadow Road. Mr. Robinson expressed frustration with the situation, noting that there was a telephone pole creating visibility problems at that location, and with the fact that Mr. Speaker did not come to the location to demonstrate which bushes needed to be cut back, nor did he re-inspect the site after the original violation notice and plant removal. Mr. Robinson also noted that he had requested a copy of the complaint which gave rise to the notice of violation; however, he was advised that both complaints were verbal, so there was no record of them available.

Mr. Speaker responded that he was never contacted when the bushes were removed in 2008; therefore, he did not re-inspect the property. Mr. Speaker also noted that along with the violation notice, a copy of Zoning Ordinance §185-19 was included, which states, “In all districts, at street intersections of less than 135°, no structure shall be erected and no vegetation shall be planted or maintained in the space between the heights of 2 ½ and 10 feet above the street level in the triangle formed by the two street lines and a third line joining points on the street lines 30 feet from the point of intersection of the extension of said street lines.” Mr. Speaker asserted that it is the homeowner’s responsibility to comply with the regulations and the intent of the ordinance is to protect the public safety.

Mr. DiMatteo and Mr. DiSalvo spoke in opposition to the appeal, noting that in order to clearly see on-coming traffic it is necessary to pull out into New Meadow Road. They are both concerned that there is great potential for an accident because of the bushes blocking their view.

**VOTE:** Mr. Bacher moved to uphold the Decision of the Building/Zoning Official. Mr. Freel seconded the motion and it carried unanimously (5-0).

**DISCUSSION:**

The Board members stated that they were upholding Mr. Speaker’s decision for the following reasons:

- The appellant has not presented legally sufficient reasons to overturn the decision of the Building/Zoning Official
- The bushes have created a public safety hazard
- The arguments presented did not provide a rationale for not complying with the ordinance

**Application #3532, Dean Robinson, 404 New Meadow Road, Barrington, RI 02806, applicant and owner, for permission to allow bushes beyond the required height; Assessor’s Plat 35, Lot 128, R-25 District, 404 New Meadow Road, Barrington, RI 02806, requiring relief from Section 185-19 – Vision Clearance at Corners.**

Present: Dean Robinson, 404 New Meadow Road, Barrington, RI

In the audience:

Carmen DiMatteo, 9 George Finnerty Road, Barrington, RI  
Marc DiSalvo, 7 George Finnerty Road, Barrington, RI

The Chairman noted that the factual discussion from the appeal from the decision of the Building/Zoning Official was incorporated into the record of this application.

Mr. Robinson is requesting relief to permit him to maintain the existing conditions in regard to his bushes located at the corner of George Finnerty Road and New Meadow Road. Mr. Robinson reviewed the standards for approval outlined in §185-69 as well as §185-71 and asserted that his proposal meets those standards.

Mr. DiMatteo opposed the application, noting that the bushes have created a hazardous situation at that corner.

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

**DISCUSSION:**

The Board members stated that they were in favor of denying the application because the application fails to meet the standards of Section §185-69:

- By planting the bushes within the setback, the owner created the hardship
- Removal/reduction of the bushes is no more than a mere inconvenience
- The request for relief does not fulfill the ‘least relief necessary’ requirement
- The vision clearance is necessary for the general safety of the area

**REASON FOR DECISION:**

It was the judgment of the Board that the following standards at least in Section §185-69 have NOT been met in that: A) that the hardship from which the applicant seeks relief is not due to the unique characteristics of the subject land or structure, nor is it due to the general characteristics of the surrounding area, nor is it due to an economic disability of the applicant; B) that the hardship is the result of a prior action of the applicant; 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 or 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.

**Application #3533, Lanette V. Budovsky, 11 Boxwood Court, Barrington, RI 02806, applicant and owner, for permission to construct a two-story addition; Assessor’s Plat 25, Lot 307, R-25 District, 66 Rumstick Road, Barrington, RI 02806, requiring a dimensional variance for front yard setback.**

Present:           Lanette Budovsky, 11 Boxwood Court, Barrington, RI  
                      Matthew Sleprow, Sleprow, Sleprow & Associates, 1481 Wampanoag Trail, East  
                      Providence, RI  
                      Patrick Connors, architect, 12 Ellis Street, Barrington, RI

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

The applicant desires to construct a two-story addition; however, the house is on a corner lot, so it has two front yard setbacks. The existing house is 17’ 10” from Thomas Street at the closest point – the house is not parallel to that street, since Thomas Street does not make a 90 degree angle with Rumstick Road. Under the proposal, the setback encroachment to Thomas Street will be 16’ 3”, with a 1’9” overhang on the second floor. Additionally there is a 12’ section on the eastern side to which the applicant desires to add a second floor, continuing the existing nonconformance but creating better symmetry for the house. Mr. Sleprow reviewed the standards of approval and stated that the application fit within these guidelines, noting that the proposal will highlight the historical house as well as provide a positive impact on the neighborhood.

**VOTE:**           Mr. Bacher moved to grant the application. Upon a second by Mr. Freil 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 house is set where it is set
- The proposal will have a positive impact on the surrounding neighborhood
- The applicants are avoiding a teardown, keeping some historical integrity to the home

**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 #3534, Francis J. Cummings, 14 Manor Road, Barrington, RI 02806, applicant and owner, for permission to construct ramp and enlarge landing; Assessor's Plat 25, Lot 298, R-25 District, 14 Manor Road, Barrington, RI 02806, requiring relief for setback from Riverside Drive, rear yard setback and exceeding lot coverage.**

Present: Francis and Lori Cummings, 14 Manor Road, Barrington, RI

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

The applicants explained that they are seeking to gain better use of their backyard, however, Mr. Cummings has difficulty with uneven surfaces. Therefore they are seeking to construct a ramp from the rear exit that would angle down to a one-foot high hardwood platform. They would like to utilize that platform as a deck in order to spend more time in the yard. The size of the deck is necessary to be able to utilize the space with a wheelchair in the future. The Board noted that at an elevation of one-foot, the platform would be essentially invisible to anyone not on the property.

Mr. Kraig read into the record a letter from an abutting neighbor supporting the application. The applicants also noted that they have spoken with their rear neighbor, who would be the most impacted by the proposal, and who has no objection.

**VOTE:** Mr. Personeus moved to grant the 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 home is on a corner lot; therefore, it has two front yard setbacks
- The handicap ramp and useable area is a necessity for the homeowners
- There will be little or no impact on the neighborhood

- No one spoke in opposition to the application
- The proposed location is the most logical location

**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.

**MINUTES OF THE PREVIOUS MEETING:**

A motion was made by Mr. Freel and seconded by Mr. Ridlon to accept the May 21, 2009 Zoning Board of Appeals minutes as written. The motion carried unanimously (5-0). A motion was made by Mr. Freel and seconded by Mr. Ridlon to accept the May 21, 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 12:58 A.M. Mr. Freel seconded the motion and the meeting was adjourned.

Respectfully submitted,

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