

ZONING BOARD OF REVIEW

Barrington, Rhode Island

September 19, 2013

APPLICATIONS: #3562, #3715, #3723, #3725, #3726

MINUTES OF THE MEETING:

At the call of the Chairman, Thomas Kraig, the Board met with Paul Blasbalg, Peter Dennehy, Mark Freel, Elizabeth Henderson, David Rizzolo and Stephen Venuti.

Also present was Solicitor Andy Teitz, solicitor, Building Official Robert Speaker, and secretary Audra Raleigh.

At 7:07 P.M. Mr. Kraig called the meeting to order.

Continuation of application #3723, Mohamed J. Freij, 326 Sowams Road, Barrington, RI 02806, applicant and owner, for permission to unmerge two non-conforming lots located at 144 Roffee Street and Whipple Avenue (on the south side of Whipple Avenue between South Street and Walter Street), Barrington, RI 02806, with existing dwelling to remain on first lot at 144 Roffee Street, and build a 22' x 36' single family house on "new" lot on Whipple Avenue, which will meet all minimum setback requirements; Assessor's Plat 22, Lot 196, R-10 District, 144 Roffee Street and Whipple Avenue (between South Street and Walter Street), Barrington, RI 02806, requiring a special use permit.

Present: Mohamed Freij, 326 Sowams Road, Barrington, professional engineer and surveyor
Richard Johnston, attorney for applicant, 2363 Post Road, Warwick, RI
Ed Pimental, AICP
Barry Sullivan, realtor, appraiser

Mr. Johnston questioned Mr. Freij about his plans for the proposed unmerged lots. The plan is to retain the existing house on the lot, and build a new house on the newly unmerged lot. Mr. Johnston noted through his questioning that each of the proposed lots will be 3700 square feet. The new house will meet all setback requirements and will not require a variance to build. The existing house is in good condition and will be renovated as needed. A Class 1 survey was done on this property. Mr. Johnston entered into the record the following exhibits:

- Exhibit 1 – Existing plat map
- Exhibit 2 – Recorded lots diagram
- Exhibit 3 – Draft site plan
- Exhibit 4 – Existing house

Mr. Pimental prepared a report with his analysis of the neighborhood, and stated that what he termed a “blanket” merger provision doesn’t make sense. His analysis found that only 14% of the properties in the neighborhood, which is zoned R-10, actually comply with the R-10 regulations in terms of lot size. The average lot size is 7400 square feet, and there are many similar lots in the neighborhood, most of which are non-conforming. Mr. Pimental stated that the original lots of record for this particular part of town were 3700 square feet each and houses were built to fit in that envelope. Current R-10 zoning allows for another house to be built on the unmerged lot and still meet all minimum setback requirements. He felt that the benefits of unmerging these lots would be elimination of a through lot and adding a moderately priced house to the area.

Mr. Sullivan, realtor/appraiser, believed the value of the existing house to be about \$200,000. He prepared a report which showed comparative analysis on neighborhood lots around the proposed lot. He stated that building a new house on the new lot would not have any adverse effect on the neighborhood.

It was noted that Town documents state that there is not a lot of land to develop in Barrington, but there is a growing number of residents who need “affordable housing”, need to downsize, etc. There is a need for the proposed type of housing in Barrington.

Kate Weymouth, 79 Alfred Drowne Road, Barrington, stated that one goal of the Town’s Comprehensive Plan is to spread affordable housing throughout Barrington. “Affordable housing” is deed restricted, which would not be the case with the house proposed to be built on the unmerged lot...

Mr. Kraig closed the public hearing at 8:25 p.m.

MOTION: Mr. Venuti made a motion to deny this application. Mr. Dennehy seconded the motion and it passed with a (4-1) vote, with Mr. Freel in opposition to denying the application.

DISCUSSION:

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

- They felt that granting the unmerger would create two sub-standard lots.
- They felt that it didn’t meet the current criteria of Section 185-73-A.
- In particular, they felt that the unmerged lots would not be of a size generally in conformity with other lots in the area.
- They did not feel that the unmerger would be in accordance with the Comprehensive Plan, and in particular would not advance the objective of creating more “affordable housing” in accordance with RI law.

In support of his opposition to the motion to deny, Mr. Freel felt that:

- When the Board had denied unmerger applications in the past, it was because the proposed unmerged lot would be substantially smaller than any other lots in the vicinity, and that would not be the case with this application.
- As stated by the applicant, the house proposed to be built on the unmerged lot would conform to all zoning regulations without the need for zoning relief.

REASON FOR DECISION:

It was the judgment of the Board that the applicant has not shown compliance with Section §185-29 in that the unmerged lots would not be of a size generally in conformance with the size of developed lots

in the immediate vicinity. In addition, the Board found that, with respect to the requirements of Section §185-73 A, that the public convenience and welfare will not be substantially served because unmerger would increase the density and be inconsistent with the objective set forth by the Town in designating the area as an R-10 zoning district.

Application #3727, Gerald and Cynthia Coyne, 8 Newbrook Drive, Barrington, RI 02806, applicants and owners, for permission to construct a 384 sq. ft. addition to the rear of the house and to construct a 64 sq. ft. covered entrance on the front of the house; Assessor's Plat 32, Lot 486, R-25 District, 8 Newbrook Drive, Barrington, RI 02806, requiring dimensional relief for exceeding 20% lot coverage.

Present: Gerald Coyne, 8 Newbrook Drive, Barrington

Mr. Coyne addressed the Board and explained that he sought to make a small mudroom to accommodate his family, which has grown from 4 to 6 people. They are in an R-25 District, but their lot is 10,000 square feet. They have spoken to neighbors, none of whom had any objections.

There was no one in the audience to speak in favor or opposition to this application.

Mr. Kraig closed the public hearing at 8:50 p.m.

MOTION: Mr. Freel made a motion to approve this application. Mr. Rizzolo seconded the motion and it carried unanimously (5-0).

DISCUSSION:

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

- The neighbors had no opposition.
- They are confined to a smaller lot in R-25 zoned district.
- Their family is bigger now and they do not want to leave the neighborhood.
- The addition in the back of the house squares it off to be more aesthetically pleasing.

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.

Remand for deliberation and voting on application #3562, Ernest E. Ryden, Jr., 22 Spicer Lane, Osterville, MA 02655, applicant and owner, on remand from the Rhode Island Superior Court to complete proceedings from April 8, 2010; subject property located at Assessor's Plat 32, Lot 237, R-10 District, Arvin Avenue, Barrington, RI 02806. Although deliberation and voting will take place, the public hearing was closed in 2010 and remains closed. Thus comments cannot be accepted from the public.

Present: Ernest Ryden, Jr., 22 Spicer Lane, Osterville, MA

Members Voting: Kraig, Freel, Rizzolo, Venuti, and Dennehy.

Mr. Teitz noted that he had previously sent the Board a CD ROM with an audio recording of the hearing of 3-18-2010, when this matter was originally heard. He explained that the Town had not been able to successfully copy the deliberations of this matter, but that they were not relevant to the matter since there will be no deliberation on the dimensional variance and full deliberation on the special use permit. Mr. Teitz confirmed that all voting members had listened to the recording (either on the CD or in the office) and reviewed the Record from 03-18-2010. Mr. Teitz confirmed that Mr. Ryden's attorney had also received the materials.

Mr. Teitz then explained the procedure for the deliberation and voting. Ian Ridlon, the member who abstained, is no longer on the board. Thus the vote falls to the first alternate at the time who participated in the first hearing, Peter Dennehy, for the front yard dimensional variance. Following his vote, the entire Board will still need to consider the remainder of the application. Based on the consensus of the discussion at the Board's August meeting, and without objection from the Applicant's attorney, the order of procedure will be:

1. The Public Hearing was completed and closed in 2010 and remains so closed. No public comment will be accepted (and this fact has been noted on the Agenda and advertisement).
2. The first vote will be the completion of the front yard dimensional variance vote. The existing vote is 3 votes in favor and 1 vote against. None of those votes can be changed. The deciding vote will be cast by Mr. Dennehy. There will be no discussion among the Board members since the discussion had already ended at the first hearing. Mr. Dennehy will give his reasons and any findings that he chooses to make, as part of his vote.
3. If Mr. Dennehy's vote on the front yard dimensional variance is in the affirmative, it will pass by a 4-1 vote, and the Board will then go on to discuss (with all eligible members participating), and then vote on the wetland setback dimensional variance and the special use permit.
4. Even if Mr. Dennehy's vote on the front yard dimensional variance is in the negative, thus denying it by a 3-2 vote, the Board will still go on the discuss and make findings of fact, and then vote on the wetlands setback dimensional variance and the special use permit, and thus create a record for a judge to rule on the entire application if a new appeal should ensue.

VOTE:

On the Motion made on April 8, 2010, on the dimensional variance for front yard setback, Section §185-17. and before the Board on remand, Mr. Dennehy voted to deny this part of the application based on the findings set forth (under REASONS) below. Accordingly, that portion of the application for the dimensional variance is DENIED, having received only three affirmative votes and two negative votes (Rizzolo and Dennehy).

DISCUSSION:

None, due to the remand, as discussed by Mr. Teitz above.

REASONS FOR DECISION:

1. Mr. Dennehy agreed with the previously expressed findings of David Rizzolo, the other negative vote on this motion, that if the variance were granted, the front yard setback of the new structure would be in conflict with the general character of the surrounding neighborhood. Based on Mr. Dennehy's personal inspection and knowledge of the neighborhood, most of the existing homes are approximately twenty-five feet back from the road.
2. Mr. Dennehy also agreed with the concerns of the majority of the Conservation Commission as expressed in its report to the Board in 2010, recommending disapproval.
3. Mr. Dennehy also found that the concerns from neighbors regarding drainage in this low lying area were valid, based on his own inspection of the area, and because the surveyor who testified in 2010 did not adequately address the off-site drainage concerns.

The next item to be voted on is the dimensional variance related to Section §185-22 for the 100' setback from the wetlands/waterbody.

MOTION: Mr. Freel made a motion to approve the dimensional variance related to the 100' setback from the wetlands/waterbody. Mr. Venuti seconded the motion, Mr. Dennehy voted against the motion and it was granted (4-1).

DISCUSSION:

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

- The closest the applicant is going to the waterbody is 35 feet.
- The applicant has struck the appropriate balance between the distance from the wetlands and the front yard setback, and has also downsized the house considerably from the original plan.

REASON FOR DECISION:

The Board found that in granting relief from the requirements of Section §185-22, the requirements of 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.

The next item to be voted on is the special use permit related to Section §185-174 for the 100' setback from the wetlands/waterbody.

MOTION: Mr. Freel made a motion to deny the special use permit related to the 100' setback from the wetlands/waterbody. Mr. Venuti seconded the motion which carried unanimously (5-0).

DISCUSSION:

The Board took into consideration the Conservation Commission report, as required by §185-174, and noted the divided opinion of the Conservation Commission, including the minority recommendation in favor of the application. The Board also discussed, pursuant to §185-174, that the application attempted to minimize, to the degree possible, the negative impacts to the wetlands values. However, when the Board reviewed the specific mandatory development standards of §185-174(A) through §185-174(G), the board noted that only Standard (A) was met because of the immediately previous grant of relief from the 100 foot setback. The Board discussed that no expert witness had testified at the hearing other than Richard Lipsitz, who is a surveyor (and may be an engineer) but who has no professional qualifications as a wetlands biologist and or hydrologist, which is what would be necessary to make positive findings for Standards (B) through (G). There was no other written evidence in the record that demonstrate that such Standards had been met. Thus the Applicant failed to meet his burden of proof.

REASON FOR DECISION:

In the absence of any competent evidence produced by the applicant with respect to several elements of Section §185-174, it was the judgment of the Board that the standards in Section §185-174 have not been met:

- A) The Board found that all new structures and expansion, paved areas and land disturbances will not be set back at least 100 feet from the wetland edge but that this Standard was met by virtue of the previous motion;
- B) The Board found that the proposed project may obstruct floodways in a detrimental way, or decrease the net capacity of the site and adjoining properties to retain floodwaters, because the applicant had not presented any competent evidence to show that this standard would be met. The Board also based its finding on this Standard on the testimony of neighbors about the flooding of the cove at high tides, and the Board's own inspection of the site;
- C) The Board found that the proposed project may cause sedimentation of wetlands, and will not include all necessary and appropriate erosion and sediment control measures, because the applicant had not presented any competent evidence to show that this Standard would be met;

- D) The Board found that the proposed project may reduce the capacity of the wetland to absorb pollutants, because the applicant had not presented any competent evidence to show that this Standard would be met;
- E) The Board found that the proposed project may directly or indirectly degrade the water quality in any wetland or water body, because the applicant had not presented any competent evidence to show that this Standard would be met;
- F) The Board found that the proposed project may reduce the capacity of any wetland to recharge groundwater, because the applicant had not presented any competent evidence to show that this Standard would be met; and
- G) The Board found that the proposed project may degrade the value of any wetland as a spawning ground or nursery for fish and shellfish or habitat for wildlife or wildfowl, because the applicant had not presented any competent evidence to show that this Standard would be met. The Board also based its finding on this Standard on the testimony of neighbors about the flooding of the cove at high tides, and the Board's own inspection of the site.

MINUTES OF THE PREVIOUS MEETING:

MOTION: Mr. Rizzolo made a motion to approve the minutes for the July meeting. Mr. Freel seconded the motion and it carried unanimously (5-0).

MOTION: Mr. Rizzolo made a motion to approve the minutes for the August meeting. Mr. Dennehy seconded the motion and it carried unanimously (5-0).

ADJOURN:

There being no other business, Mr. Kraig adjourned the meeting at 9:26 P.M.

Respectfully submitted,

Audra Raleigh, Secretary
Thomas Kraig, Chairman

cc: Andrew Teitz, Solicitor