

# ZONING BOARD OF REVIEW

## Barrington, Rhode Island

### February 18, 2016

APPLICATIONS #3831, #3832, #3833 and #3835

#### MINUTES OF THE MEETING:

At the call of the acting Chairman, Thomas Kraig, the Board met with Mark Freel, Peter Dennehy, Elizabeth Henderson and Ladd Meyer.

Also present were Solicitor Andy Teitz, Building Official Bob Speaker and secretary Mary Ann Rosenlof.

At 7:04 P.M., Mr. Kraig called the meeting to order.

#### MINUTES OF THE PREVIOUS MEETING:

**MOTION:** Mr. Dennehy made a motion to approve the January 21, 2016 minutes as written. Ms. Henderson seconded the motion and it carried unanimously (4-0), with Mr. Freel not voting.

**Application #3832, Parker Construction, 320 Narragansett Park Dr., East Providence, RI, applicant, and Barbara Goldner (Trust), 2 White Birch Ln., Barrington, RI, owner, for permission to install 5' black vinyl chain link pool fence. Assessor's Plat 11, Lot 6, R-40 District, 2 White Birch Ln., Barrington, RI, requiring dimensional relief for front yard setback.**

Present: Adam Vanacore, Parker Construction  
Glen Parker, Parker Construction  
Catherine Weaver, Tupelo Gardenworks

The applicant is required to erect a five foot fence as protection for the pool they are installing, and they would also like to enclose the back yard since the far end is fairly isolated. They would like to employ one fence to accomplish both objectives, but that requires relief for being too close to Rumstick Drive, a small, minimally used road. If they were to set the fence back the required 50', that would produce a 50' wide strip of land that they couldn't really use, and that would be difficult to maintain. In addition, since they are going to be putting plantings on both sides of the fence, essentially enclosing it, the plantings will grow tall enough that a four foot fence and a five foot fence would appear the same. They feel that to erect two fences, one along the perimeter of the property at four feet, and another just around the pool at five feet high, would be wasteful and disrupt the yard.

The applicant distributed **Exhibit A**; a brochure by Tupelo Gardenworks, LTD, showing samples of plantings that would be used to screen both sides of the fence, and **Exhibit B**; a photo of the view along Rumstick Drive. The applicant also noted that in addition to Rumstick Drive being minimally

used, there is not a house on the far side of the road, and there was no one to object to their proposal. The fence would be approximately 12' from the road.

MOTION: Mr. Meyers made a motion to approve this application with the following *condition*:

- That the vegetation is high enough and dense enough on both sides of the fence so even in the winter, the branches will blend in with the fence making it virtually unnoticed.

Ms. Henderson seconded the motion and it carried unanimously (5-0).

#### **REASON FOR DECISION:**

It was the judgment of the Board that the standards in § 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 because this is an isolated lot that fronts a somewhat private road and the visual effect of 5' fence surrounded by vegetation would be essentially the same as the effect of a 4' fence; 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 because this fence is for the safety of the pool and the property; 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 because fences are common, a 5' fence is required for a pool, and because of the isolation of Rumstick Drive, there will be essentially no effect; D) that the relief to be granted is the least relief necessary because of the unique large property with two frontages, and the negative effect of requiring two fences. 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 because they would be required to build a second fence around the pool which would change the layout and make-up of their back yard.

**Application #3831, Frederick Almeida, 65 Bay Spring Ave., Barrington, RI, applicant, and Anoka Real Estate, LLC, 65 Bay Spring Ave., Barrington, RI, owner, for permission to unmerge lots to their original property lines and build two single family homes. Assessor's Plat 29, Lots 203 & 204, R-25 District, 160 Sowams Rd., Barrington, RI, requiring a special use permit to unmerge lots.**

Present: S. Paul Ryan, Esq., 201 Washington Road, Barrington, RI  
Frederick Almeida, applicant

Mr. Ryan explained that the applicant purchased lots 203 & 204, which contain the volunteer fire department building. The lots were never merged on the assessor's Plat map, but under Barrington's Zoning Ordinance in 1994, the R-25 frontage requirement became 140' as opposed to the prior 120' merging the lots. Mr. Ryan submitted **Exhibit A**; update of the original engineering drawing.

Mr. Ryan said that the fire station would be demolished and two single family homes built. Each home would have a standard width driveway of approximately 22' to fit 2 cars side by side and be colonial style with 3 or 4 bedrooms each. Mr. Ryan noted that as unmerged, the resulting lots would be of a size generally in conformance with the size of developed lots in the immediate vicinity – in fact, the

square footage of the lots would be greater than that of most lots in vicinity, and the frontage would also be greater than that of most of those lots.

Mr. Ryan addressed an email from abutters on lot 001, Carroll & Philip Garland, 152 Sowams Rd., Barrington, RI that was received by the Building Official's office on February 18, 2016 and was distributed to the Board members prior to this meeting. The Garlands noted the poor drainage that exists along the current "ditch" that runs between their property and the applicant's property, and asked that any additional runoff created by new houses be addressed.

The applicant explained that water drains away from Sowams Road, and there is a "flat" spot between the properties through which water drains. The only wetlands are in the woods behind the subject property, are not flagged, and will not be affected by the development of the properties. The applicant agreed not to disturb the vegetation toward the back of the property or the vegetation between the subject property and the Garland's lot, to site the proposed houses toward the center property line, and build the house that will be closer to the Garland's at least 35' from the property line. The applicant also agreed to a condition that the property might not be further subdivided.

It was noted that the two driveways proposed would have less asphalt than is currently on the property, potentially improving drainage.

**MOTION:** Mr. Freel made a motion to approve the application with the following **conditions:**

1. The house to be built on lot 203 be no closer than 35' to the Garland's property (lot 001)
2. There shall be no structures or disturbance of any kind within 20' of the Garland's property
3. There shall be no further subdivision of these two parcels

Mr. Dennehy seconded the motion and it carried unanimously (5-0).

**REASON FOR DECISION:**

It was the judgment of the Board that the standards in § 185-73 have been met: A) that the public convenience and welfare will be substantially served; there will be no negative impact on the public because there will be no adverse effect and the drainage concerns have been addressed by imposing conditions; B) that it will be in harmony with the general purpose of this chapter, and with the Comprehensive Community Plan because the resulting size of these unmerged lots both with respect to their frontage and overall size is very much in conformity with the surrounding area and zone, and two new single family homes will be an improvement over the existing fire station; C) that it will not result in or create conditions that will be inimical to the public health, safety, morals and general welfare of the community because the only issue raised was with drainage and that has been addressed; D) that it will not substantially or permanently injure the appropriate use of the property in the surrounding area or district for the reasons noted and because replacement of the fire station with two new homes will likely increase values.

It was the judgment of the Board that the standards in § 185-29 for a special use permit have been met because the applicant has demonstrated that the size of the resulting unmerged lots will be of a size generally in conformance with the size of developed lots in the immediate vicinity. As demonstrated by plans submitted along with the application, all lots in the immediate vicinity, with the exception of

the Garland's lot, have smaller non-conforming frontages and are not any larger than these two lots will be following the unmerger.

**Application #3833, Thomas Leonard, PO Box 16512, Rumford, RI, applicant, and S&T Investments, LLC, PO Box 16512, Rumford, RI, owner, for permission to erect a full 2<sup>nd</sup> floor, attached 2 car garage, and a deck in rear yard. Assessor's Plat 28, Lot 106, R-25 District, 20 Lillis Ave., Barrington, RI, requiring dimensional relief for front and side yard setbacks.**

Present: Thomas Leonard, applicant  
Peter Casale, consultant

In the audience: Theresa Brooks, 18 Lillis Ave., Barrington, RI

Mr. Casale explained that the applicant wished to add a garage with a mudroom and lavette at the back, and transform the currently inadequate second floor – with low ceilings and inadequate space – by expanding and raising the existing second floor and add a master bedroom / bathroom over the new garage. In order to accommodate the bedrooms above the existing first floor, there would need to be a two foot extension beyond the first floor, requiring relief for the front yard setback. In addition, the garage would extend into the front yard setback one foot farther than the existing house does: it would not be possible to move the entire garage farther back from the front without destroying the ability to utilize the proposed mudroom as the access from the garage into the house. The proposed garage is only 18' 6" across and requires no side yard relief, but the upstairs on the far side of the house would extend into that side yard setback, but no more than the existing house does – the addition is only going up on that side. The two existing out-buildings will be removed from the back yard.

The hardship with this property results from an existing non-conformity due to the house being too close to the front and on an undersized lot – the remodeled house would not be closer to the street than other houses on the street and would fit within the character and fabric of the neighborhood.

The Board discussed the blank facade (no windows) on the side elevation as shown in A8 of the plans. The applicant indicated a willingness to add windows to that side of the house.

Ms. Brooks, an abutter next door, voiced concern about a tree between her property and the applicant's property, on the side away from the garage addition. The applicant assured her that if anything were to be done to the tree, he would discuss it with her first.

MOTION: Mr. Freel made a motion to approve the application with the following **condition**:

- The applicant must add no less than 4 windows, at least two on each level, on the side elevation of the new addition facing east - the garage side of the house.

Mr. Henderson seconded the motion and it carried unanimously (5-0).

**REASON FOR DECISION:**

It was the judgment of the Board that the standards in § 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 because the house already encroaches on the front yard setback and one side yard setback, greatly limiting options for expansion; 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 because the applicant did nothing to create the situation and their desire is to improve the house; 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 because the size and setbacks for the resulting house would be in keeping with other houses in the neighborhood; D) that the relief to be granted is the least relief necessary because (i) with respect to the side yard setback, they are going no closer than the existing house already is, (ii) in the front, there are minimal changes of an additional two foot variance for the second floor improvement and a one foot additional variance in the center where the kitchen is located, and (iii) not granting the variance required for the garage would severely interfere with the flow and functionality of both floors. 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 because the existing house is clearly inadequate by today's standards and the proposed additions / changes are reasonable.

**Application #3835, Chip Muller, 9 Humphreys Rd., Barrington, RI, applicant, and M&C Enterprise, LLC, 21 Jenny's Ln., Barrington, RI, owner, for permission to change use from residential to law office. Assessor's Plat 23, Lot 185, NB District, 47 Wood Ave., Barrington, RI, requiring a special use permit for number and size of parking spaces.**

Present: Chip Muller, applicant

Mr. Muller explained that he plans to purchase and convert the use of this property from a residence to a law office. This is a house of approximately 1,297 square feet of living or working space zoned in the neighborhood business district, allowing residences such as this one to convert to a business use with permission. Normally, Mr. Muller plus three employees will be at the office.

The lot is very small and the parking requirements of a building of this size require four (4) parking spaces, as noted in an email dated February 18, 2016 from the applicant to Mr. Speaker; this email serves as an amendment to the application and includes the correct parking requirements – four spaces rather than three. Due to the size and shape of the parcel, the parking requirement cannot be met solely with onsite parking. The driveway is 40' long and at least 10' wide but can only accommodate two stacked cars. The applicant plans to lease two parking spaces from nearby landowners to satisfy the requirement for 4 parking spaces, and seeks approval under § 185-78E for shared parking. The property is on a road that allows parallel parking on the street. Sidewalks are to be installed on Wood Avenue in 2016.

Mr. Muller said that he has had a discussion with the town planner who said that this fits in with the future plan for the town. There will be little visitor traffic to the office - frequently just one client visit at a time and/or per day.

MOTION: Mr. Freel made a motion to approve the special use permit for this application subject to the following **condition**:

1. Prior to the issuance of a building permit and/or CO (Certificate of Occupancy), the applicant must submit to Mr. Speaker evidence of a written lease arrangement whereby he has two additional leased parking spaces available to him within the required distance, and once Mr. Speaker is satisfied by that; only then can the applicant proceed with occupancy or alterations.

Ms. Henderson seconded the motion and it carried unanimously (5-0).

**REASON FOR DECISION:**

It was the judgment of the Board that the standards in §185-73 have been met: A) that the public convenience and welfare will be substantially served; there will be no negative impact on the public because the inclusion of a business of this nature and size in the downtown neighborhood district is consistent with what the town is trying to accomplish, and will have no adverse impact other than parking and the conditions imposed will satisfy that impact; B) that it will be in harmony with the general purpose of this chapter, and with the Comprehensive Community Plan because this type of business is in accordance with the community plan and encouraged in that part of town; C) that it will not result in or create conditions that will be inimical to the public health, safety, morals and general welfare of the community because the only impact is parking which will be satisfied by the condition established; D) that it will not substantially or permanently injure the appropriate use of the property in the surrounding area or district because this is a request being proposed in a location where they are approved by zoning and there is no evidence of any adverse impact.

The Board found that the standards of §185-78: **Off-street parking requirements for specific uses** will be met: §185-78E (2b): Submission of a reciprocal agreement executed by the owners and operators of the different sources or uses ensuring the long-term joint use of such shared parking, and defining the terms upon which the parking is shared, because a CO will not be issued until the required submissions have been received and permits issued by the Building Official. The agreement for off-site parking in the form of a written lease will be recorded in the Land Evidence room at Town Hall and identify the number and location of shared parking spaces and the businesses those spaces serve.

Additionally, §185-78E(3) **Decision** will be met: a) Once a leased lot is approved to provide parking for any building, an agreement acceptable to the Town that guarantees the required parking will be provided at the termination of the lease and be recorded in Land Evidence before any permit will be issued for the building. Once a privately owned lot is approved for parking for any building, it will not be converted to any other use without approval of the Planning Board or Zoning Board of Review after the Building Official makes a finding that the required parking is otherwise provided in accordance with this chapter.

The Board is approving a supplement to the application of two – stacked parking spaces 9’ wide and 20’ long as set forth in the letter (email) submitted by the applicant today, February 18, 2016.

**OTHER BUSINESS:**

**Continue to review the format of the official record of the Zoning meetings to include the discussion, written, and recorded portions of the meeting. Implement changes if applicable.**

The Board and Mr. Teitz continued the discussion of the process of ending actual public participation (without officially closing the public participation portion of a meeting) and proceeding toward making a motion, in an effort to create dialog among the Board members while still being able to obtain additional information from the applicant. Some members were concerned that the applicant and/or public body may try to interject/comment during the Board's discussion; it was suggested by Mr. Teitz that the Board advise that it is now time for the Board to have its discussion.

Mr. Teitz suggested that the Board incorporate the "because" after stating each zoning standard in order to capture all of the findings/reasons for approval or disapproval so all can all be found together within the "Reason for Decision" portion of the minutes. This is subsequently used for the written Decision.

Mr. Teitz said that the reason for this discussion stemmed from a court decision to remand a Zoning Board's written Decision back to the Board because the court was not able to find sufficient reasons (the because) in the initial portion of the written Decision. Consideration is being given to hiring a stenographer with the cost offset by an increase in the zoning application fee. This would insure a complete written account of the entire hearing and be available for future reference.

**ADJOURN:**

There being no other business, Mr. Dennehy moved to adjourn at 9:47 p.m. and the meeting was adjourned.

Respectfully submitted,

Mary Ann Rosenlof, secretary  
Thomas Kraig, Acting Chairman

cc: Andrew Teitz, Solicitor, Amy Goins, Assistant Solicitor