

Town of Lincoln

Zoning Board of Review Minutes

August 2, 2005 Meeting

Present: Raymond Arsenault, Kristen Rao, Gabriella Halmi, David Gobeille, Arthur Russo, Jr., Nicholas Rampone, Jim King, Town Solicitor Roger Ross

On a motion made by Member Halmi and seconded by Member Rao, the Zoning Board unanimously voted to adjourn to executive session per RIGL 42-46-5 (a)(2) to discuss Norman Beretta vs. Town of Lincoln Zoning Board of Review. On a roll call vote, the Zoning Board unanimously voted to seal the minutes of executive session per RIGL 42-46-7(c). Motion made by Member Halmi to authorize the Assistant Town Solicitor to settle the litigation between Norman Beretta and the Town of Lincoln Zoning Board of Review as discussed in executive session. Motion seconded by Member Russo. Motion carried with a 5-0 vote.

Minutes

Chairman Arsenault asked if there were any revisions or corrections to the July Minutes. Russell Hervieux stated he was listed as the Building Official on page 1 and his title is Zoning Official. Secretary will make change. Motion made by Member Russo to accept the Minutes with the above change. Motion seconded by Member Halmi. Motion carried with a 5-0 vote.

Miscellaneous

Chairman Arsenault introduced Jim King who was recently appointed by the Town Council and he will be sitting on the Board as an alternate member.

Applications

Ferreira Concrete, 7 Tallman Avenue, East Providence, RI/Liquid Blue, 1 Crownmark Drive, Lincoln, RI – Dimensional Variance for rear yard setback for the construction of an addition.

AP 28, Lot 67 Zoned: MG- 0.5

Solicitor Ross informed the Board that principals of Ferreira Concrete are clients of his and recused himself from advising on the application. Paul Brule, Esquire will hear and advise the Board.

Russell Hervieux, Zoning Official addressed Chairman Arsenault informing him that applicant had a notice problem – one notice was returned because it listed the wrong zip cod and the address was not consistent with the Tax Assessor’s records. Law requires notice be sent to address listed in the Tax Assessor’s office. Chairman Arsenault recommended an extension to the September meeting so proper notice could be mailed. This is the second time this application has been continued because of improper notice.

Motion made by Member Halmi to continue the application to the

September agenda. Motion seconded by Member Rao. Motion carried with a 5-0 vote.

Sayles Mill Realty, 1136 Lonsdale Avenue, Central Falls, RI – Use Variance for dance studio and industrial incubator space for property located at 85 Industrial Circle, Lincoln, RI.

AP 2, Lot 88

Zoned: MG 05

Represented by: Peter Ruggiero, Esquire

Russell Hervieux, Zoning Official informed the Board that one notice was returned AP 2, Lot 78 – name was correct but address was wrong. Attorney Ruggiero informed Chairman Arsenault that he contacted the abutter (Ambientale Realty LLC) who faxed him a letter stating he had no objection to the application and asked that the letter be entered into evidence (Exhibit A). Solicitor Ross stated the letter is sufficient to operate as a waiver of defective notice. Motion made by Member Russo to move forward with the application. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Applicant will return before the Board later in the evening.

A.F. Homes LLC, 114 Harcourt Avenue, Pawtucket, RI/NAFTA Mills, LLC, 215 Singleton Street, Woonsocket, RI – Special Use Permit for 44 condominium units age restricted for 55 and over at for property located on Old River Road, Manville, RI.

Russell Hervieux, Zoning Official informed Chairman Arsenault that this application had a notice issue – 4 envelopes were returned. He notified Solicitor Ross who contacted applicant about the defective notice.

Represented by: Michael Kelly, Esquire

Attorney Kelly stated he was notified last week that there was defective notice regarding the application. He sent four notices via certified mail, return receipt requested. One of the addresses on the Tax Assessor's list was a post office box which cannot be used for certified mail delivery so it was hand delivered. Attorney Kelly asked that an affidavit from Sean P. Keough who works in his office be submitted into evidence (Exhibit A) stating notice was sent via Certified Mail to Brian Deventhal, 11 Mussey Brook Road, Manville, RI and Nafta Textile Mills, 215 Singleton Street, Woonsocket, RI which were signed for on August 1, 2005. Attorney also spoke with Francis and Joan Hill, P.O. Box 3, Glendale, RI who confirmed receipt of notice and were aware of the meeting this evening. Solicitor Ross read the affidavit into the record. Solicitor Ross informed Chairman Arsenault that Attorney Keough's Affidavit is sufficient to move forward on this application.

Motion made by Member Russo to move forward with the application.

Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Applicant will return before the Board later in the evening.

John & Elizabeth A'Vant, 29 Mark Drive, Lincoln, RI – Dimensional Variance for side yard setback for the construction of an addition.

AP 19, Lot 80

Zoned: RS 20

Applicant appeared before this Board at the June and July meetings. She met with the Town Planner and was asked if she could scale down the size of the addition to fit within the building envelope. New plans for a smaller addition will maintain the integrity of the house. Applicants have revised their plans and now need a five-inch variance. Roofline is for a cathedral ceiling. Ledge and utilities are located on the left side of the property and back has a deck and pool. Roofing and exterior materials will match existing house.

Chairman Arsenault read into the record Planning Board recommendations:

Members of the Technical Review Committee visited the site and reviewed the revised site plans and application. Based on the revised plans, the proposed addition, consisting of a master bedroom suite and hallway, will be located in the rear of the right hand side of the property. The Planning Board recommends Approval of this dimensional variance. The Board feels that the revised plans represent the least relief required, will not alter the general character of the surrounding area and will not impair the intent and purpose of

the Zoning Ordinance and the Comprehensive Plan.

Motion made by Member Russo to grant a 5-inch side yard dimensional variance stating:

- Hardship from which the applicant seeks is due to the unique characteristics of the subject land and not due to the general characteristics of the surrounding area and not due to a physical or economic disability of the applicant**
- Hardship is not the result of any prior action or the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.**
- Granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Comprehensive Plan.**
- Relief requested is the least relief necessary.**
- Hardship amounts to more than a mere inconvenience.**

Motion seconded by Member Halmi. Motion carried with a 5-0 vote.

Jacob & Nina Litmanovich, 52 Blodgett Avenue, Pawtucket, RI/Dimitry & Elena Litmanovich, 20 Linfield Circle, Lincoln, RI - Dimensional Variance for side yard setback for the construction of an addition at 20 Linfield Circle, Lincoln, RI.

AP 45, Lot 205

Zoned: RS 20

This application was continued from the July agenda because of a

notice problem. Applicant is seeking relief for a 12 foot front yard setback. Chairman Arsenault informed applicant what standards needed to be met for a Dimensional Variance. Applicant wants to extend their garage 12 feet to provide a walkway to a lower level of the house and so grandchildren can have a play area. Current access is through an unheated garage which is cold in the winter. The addition will create a heated walkway and play area. Back yard drops sharply and this is best placement for the addition. Member Russo informed the Board that this was once his aunt's house and he is familiar with the layout. He asked why they need 12 feet and applicant replied car won't fit in the garage otherwise. They want an enclosed area for the grandchildren and access to the basement. Living room is very small and there is not much room for grandchildren to play. Garage is currently 26 feet deep. Member Halmi informed applicant if they made the addition two feet shorter they would not need to be before the Board this evening. Member Halmi stated she had trouble justifying granting what applicant was asking for when all she had had to do was make addition 2 feet shorter. Applicant was adamant she wanted to keep the plans as presented to the Board.

Chairman Arsenault read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted site plan and application. Based on the submitted plans, the proposed addition, consisting of an extension of the existing garage will be located in the front of the property. The

Planning Board recommends Denial of this dimensional variance. The Board feels that this plan does not represents the least relief required, will alter the general character of the surrounding area and impair the intent and purpose of the Zoning Ordinance and the Comprehensive. The applicant has significant room in the back yard area to accommodate their needs.

Chairman Arsenault stated he was not been convinced that this application should go forward and recommended that the application be denied because the standards have not been met. This is clearly not the least relief required.

Member Russo made a motion to deny the application. Motion seconded by member Rao. Motion carried with a 5-0 vote.

Sayles Mill Realty, 1136 Lonsdale Avenue, Central Falls, RI – Use Variance for dance studio and industrial incubator space for property located at 85 Industrial Circle, Lincoln, RI.

AP 2, Lot 88

Zoned: MG 05

Chairman Arsenault informed applicant what standards needed to be met for a Use Variance.

Represented by: Peter Ruggiero, Esquire

Existing mill has 140,000 sq.ft. of floor space which is more conducive for rental than manufacturing. Applicant has two tenants

who would like to rent floor space from him – one would be a dance studio (5,000 sq.ft. on first floor) and the other a pilates studio (2,000 sq.ft on the second). There is also 12,000 sq.ft. on the second and third floors which he may eventually divide into smaller areas and rent out. Incubator space on the third floor would be divided into rental space. Applicant plans on doing physical improvements to the site. Applicant is before the Board this evening for the dance and pilates studio space. Applicant will increase amount of parking in the area. Real estate listing agent has been trying to rent out the space but has been unsuccessful.

Witness

Ben Benoit, Owner

There were no tenants at the site when he purchased the property. Applicant put rental signage in front of the business but was unsuccessful in renting space out. Site does not work for manufacturing business. Proposed tenants for the dance and pilates studios will commit to a long term lease. He plans on upgrading the fire alarm systems and has been working with the local fire department. Applicant submitted a letter from the Saylesville fire department (Exhibit B) with regards to bringing the facility up to current safety codes prior to the space being occupied. Chairman Arsenault read the letter into the record. Applicant has many vacant spaces in the building which could be rented month-to-month. He wants long term tenants in the building so he can upgrade the site. Applicant showed Board members before and present photos of what

the site looked like 10 years ago when he purchased the building and as it looks now (Exhibit C & D). Landscaping will be done at the site.

Chairman Arsenault asked applicant if he had any proposed floor plans and Mr. Benoit presented them to the Board for their review. Plans for the lot and second floor were included with the application. Applicant has temporary tenants on the first floor. Corridors on the first floor will be eight feet wide and will subdivide rear per tenant requirements. Facilities on the right hand side of the building are handicap accessible. Building has five sprinkler zones which applicant plans on upgrading as they renovate the building.

Pilates studio will be located on the second floor right hand side. They also will have an eight foot wide corridor with an exit at both ends. Meets all fire codes. Building will be metal stud construction with plank flooring which is not heavily saturated. There are structural poles in place which cannot be moved and they are ten feet apart. Existing tenants include a cleaning company, cabinet shop and granite shop. There are enough parking spaces which will be assigned to tenants. 35% of the building is currently vacant and applicant is starting to get calls about available rental space. Elevators are state inspected and certified. There is a freight elevator but it is only used to bring in materials.

Member Russo stated one of the unique characteristics of the building were the structural poles and asked if any other areas of the

building have them. Applicant replied other areas of the building were more open with no columns. Member Russo further asked what type of relief applicant was looking for. He replied at this time it was only for the dance and pilates studios.

Witness

Norbert Therrien, BA Engineering

Has been doing site development for 33 years and is self employed. Motion made to Member Rao to accept Mr. Therrien as an expert witness. Motion seconded by Member Russo. Motion carried with a 5-0 vote.

Witness did a site review and parking issues have been addressed using two parking lots. 108 cars can park on one lot and 52 cars on the second lot. The larger lot has existing lighting and an additional flood light will be attached to the building. The other lot to the left of the building (Lot 88A) needs parking stripes. Lot 88 is overgrown and will be cleared, paved and striped. Crosswalk will be painted, striped and lighted for tenant safety. Entrance and alleyway is 20 feet wide and 356 feet long and will not be used for vehicular traffic. Existing loading dock will be striped for pedestrian safety. Applicant will do all snow removal at the site. Only vehicles using the alleyway would be delivery trucks. Alleyway has existing lighting and applicant will be installing additional lighting and a second means of egress. Applicant is willing to limit loading hours for pedestrian safety. If trucks are making deliveries at the loading dock, there is ample room

for pedestrian traffic on a designated striped walkway. Member Halmi expressed concern about pedestrians and children in the alleyway during truck deliveries. Technical review committee has already reviewed the application. Fire trucks can access the alleyway in case of an emergency as it is wide enough. Applicant does not presently have any signage plans but would comply with the zoning ordinance should he decide to do so in the future.

Chairman Arsenault read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted site plan and application. Based on the submitted package, the Planning Board could not offer a recommendation on this application. While the Planning Board in general liked the proposed reuse of the building, several concerns were expressed that the application did not address. The concerns are as follows: the Board does not know what “industrial incubator space” is and what types of uses will utilize this space, the Board is concerned about the amount of parking spaces needed for these uses, the Board is very concerned about fire safety within and around the buildings especially the long side of the building facing the pond, the Board is concerned about the amount and location of new signage, and the Board is concerned about how the adjacent parking lot was going to be developed. The Planning Board would appreciate the opportunity to review a more detailed site plan and application that addresses these concerns.

In Favor

Douglas Marcotte

His wife is the owner of the dance studio and feels this is an ideal spot for her business. She has been teaching dance for 15 years. They are looking for a long term lease. He has lived in Lincoln 34 years. Feels this proposal will help clean up the area and renovate the mill.

John R. Hunt

Feels concept is good for the area. Has been in Lincoln 30+ years and proposed tenants would be a good use for the mill and is the way of the future. Board could grant the application with restrictions for pedestrian safety.

Jennifer Gelles

She would run the dance studio which currently has 140 students. The business is growing and they need space. Fall registration is coming up and safety is her first priority. Structural poles would not be an issue as they plan on breaking down the space into 3 large classrooms. She has viewed the alleyway at night and lighting would not be an issue. Likes the idea of assigning special delivery hours for the loading dock and alleyway. Her hours of operation are 3:30-9:00pm Tuesday through Friday and 8am-4pm on Saturday.

Attorney Ruggiero closed by stating that the application meets all

standards for a Use Variance. His applicant would be agreeable to conditions being placed for delivery hours and marking the alleyway for pedestrian use. Also agreeable to the Technical Review Committee reviewing the plans with conditions in place. Applicant would also like to amend his application for the record to state that there will be no incubator space at the site.

Motion made by Member Halmi to grant the application for a dance and pilates studio under Article 3.10 Indoor Recreation with the condition that application return to the TRC and return with their final design taking into consideration pedestrian traffic safety and limiting hours of traffic dock operation and further stating:

- Hardship from which the applicant seeks is due to the unique characteristics of the subject land and not due to the general characteristics of the surrounding area and not due to a physical or economic disability of the applicant**
- Hardship is not the result of any prior action or the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.**
- Granting of this variance will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Comprehensive Plan.**
- Relief requested is the least relief necessary.**
- Hardship amounts to more than a mere inconvenience.**

Member Russo stated he was concerned about the mechanics of the

conditions. In the past, the Board has continued matters so they can go before the Technical Review Committee and return to this Board with their findings. If the TRC is unhappy with it how does it come back to this Board? Attorney Ross stated making it a condition to the TRC is the end of the line. He is concerned about even taking a vote unless the Board can revisit the application after the TRC takes a second look. A vote tonight by the Board is a firm approval. Chairman Arsenault stated all the TRC will be reviewing is the technical aspects and has nothing to do with approval of the use variance itself. Attorney Ross replied the two issues of great concern are the division of the pedestrian walkway and hours of operation for the loading dock. This is something the Board can address this evening and set in place with conditions: Routes of trucking, demarcation of pedestrian walkway, alleyway lighting.

Attorney Ruggiero asked for a short recess so he could consult with his client. Chairman Arsenault granted a 10 minute recess.

Member Halmi made a motion to withdraw her previous Motion. Motion to withdraw seconded by Member Russo

A.F. Homes LLC, 114 Harcourt Avenue, Pawtucket, RI/NAFTA Mills, LLC, 215 Singleton Street, Woonsocket, RI – Special Use Permit for 44 condominium units age restricted for 55 and over at for property located on Old River Road, Manville, RI.

AP 34, Lot 14

Zoned: RG 7

Represented by: Michael Kelly, Esquire

Applicant wants to construct 44 condominiums for residents aged 55+. Attorney asked that Planning Board recommendations dated August 1, 2005 be submitted as Exhibit B and Department of Transportation preliminary approval for a curb cut on Old River Road be submitted as Exhibit C. Property was previously zoned M1 but Town Council approved a zone change to RG 7. Planning Board and Technical Review Committee issued a recommendation to the Town Council that the change was in conformance with the Town's Comprehensive Plan. Granting the Special Use Permit will not alter the character of the area as there are multi family residences in the area. All special use and density requirements have been met and the proposed use is allowed. Member Rao asked if any restrictions would be in place and attorney replied the units would be rented by residents aged 55+. This is also listed in the condominium restrictions. There will be no low/moderate income units at the site.

Witness

Michael W. Desmond, PE – Vice President/Regional Transportation Manager of Bryant Associates

Motion made by Member Rao to accept Mr. Desmond as an expert witness. Motion seconded by Member Halmi. Motion carried with a 5-0 vote.

He conducted a traffic study at the site focusing on am and pm traffic

because that is the time of day when there is most traffic. 44 units would generate 27 trips in the am and 31 trips in the pm. Standards were determined using most current edition (7th edition) which they have been using for two years. They take into consideration speed limits, existing condition of roadway, and left and right hand turns. Traffic generated by this development is minimal. Levels of service will not change.

Witness

Armand Ferland (Developer of the site)

Entrance will be on the first level with kitchen and living room with 2 bedrooms and a loft on the second floor. 7 units will abut the edge of the buffer with 23 visitor parking spaces. All units have a one car garage and one outside space. Signage will be at the entrance on a brick/stone wall. Tree buffer at the front of the projection Old River Road will be maintained and landscaped.

Chairman Arsenault read into the record Planning Board recommendation:

Members of the Technical Review Committee visited the site and reviewed the submitted site plans and application. The special use permit is for the construction of 44 condominium units that will be age restricted for 55 and over adults in a RG-7 zone. Based on the submitted plans, the Planning Board recommends Approval with Conditions of this special use permit. The Planning Board feels that the proposed density is appropriate for the site and that existing and

proposed site conditions provide significant protections to abutting property owners. The proposed project has eliminate the manufacturing zone located in the middle of a residential area and will offer additional housing options for the Town. The recommended conditions of the approval are that applicant fully address and/or exceed the conditions placed on the zone change by the Town Council and any conditions placed on the project during the Planning Board's land development review. The Planning Board feels that the special use permit is consistent with the general and specific goals and policies of the Comprehensive Plan, represent the least relief required, will not alter the general character of the surrounding area and will not impair the intent and purpose of the Zoning Ordinance.

In Favor

John Kratman, Mussey Brook Drive, Manville, RI

Feels this project will clean up the area and improve the old mill site. Traffic should be mininal and is looking forward to its completion. All construction trucking will use Old River Road and not cut through Mussey Brook Road.

Dennis Brennan

The tax revenue from these units will benefit the town.

Attorney Kelly addressed the Board stating the reports and testimony presented this evening shows applicant has met all requirements under Article 9. Applicant knows it needs to go back before the

Planning Board two more times and is confident that they will meet all standards and receive approval.

Motion made by Member Russo to approve the application with the condition that applicant will adhere to the conditions imposed by the Town Council when they approved the zone change. Motion seconded by Member Rampone. Motion carried with a 5-0 vote.

Sayles Mill Realty, 1136 Lonsdale Avenue, Central Falls, RI – Use Variance for dance studio and industrial incubator space for property located at 85 Industrial Circle, Lincoln, RI.

AP 2, Lot 88

Zoned: MG 05

Represented by: Peter Ruggiero, Esquire

After conferring with the client, applicant has modified his plans (submitted to the Board as an Exhibit) to reflect proposed lighting at five different locations be placed along westerly face of the building, will expand and paint crosswalk to accommodate pedestrian traffic crossing Industrial Circle, will install a chain fence along westerly five feet of existing alleyway segregating pedestrian traffic from the alley used for the loading dock, and loading dock will restrict delivery between the hours of 7am to 2pm.

Member Halmi amended her previous motion to grant a Use Variance incorporating the newly submitted design plan for pedestrian traffic, lighting and limited hours of operation for the loading dock. Motion

seconded by Russo. Motion carried with a 5-0 vote.

Member Halmi made a motion to adjourn. Motion seconded by Member Russo. Motion carried with a 5-0 vote.

Respectfully submitted,

Ghislaine D. Therien

Recording Secretary