

Town of Lincoln

100 Old River Road, Lincoln RI

Zoning Board of Review

March 7, 2006 Minutes

Present: Raymond Arsenault, Kristin Rao, Arthur Russo, Jr., David Gobeille, Gabriella Halmi, Attorney Roger Ross

Excused: Nicolas Rampone

Minutes

Chairman Arsenault asked if there any corrections to the February 2006 Minutes. Member Rao stated there was a typographical error on page one and Russell Hervieux, Zoning Official informed the Board that under the Ricci application there were two addresses that should be listed as Old Louisquisset Pike and not Louisquisset Pike. Motion to accept the Minutes carried with a 5-0 vote.

Correspondence/Miscellaneous

Chairman Arsenault read into the record a letter dated 2/23/06 from Russell Hervieux, Zoning Official asking that the Town of Lincoln be placed on the April agenda to make a presentation to the Zoning Board of proposed ordinance updates. Chairman requested that the Recording Secretary add the Town's presentation to the April agenda. Chairman asked Mr. Hervieux if drafts could be placed in the member's folders for their review prior to the meeting and Mr. Hervieux stated he would do his best.

Chairman Arsenault informed the Board that he saw an article in the Providence Journal that the Conservation Commission is intent on becoming an advisory board to the Zoning Board. He contacted the chairman of the Conservation Commission and invited him to the April 4 meeting. The Chairman of the Conservation Commission would like to revise the code so that the Conservation Commission would have the responsibility of reviewing applications that have an environmental impact on the Town. Chairman Arsenault informed him that perhaps their input would be of more value to the Planning Board or Technical Review Committee.

Chairman read into the record correspondence from Albion Place LLC asking that their application on tonight's agenda be continued to the April meeting. Motion made by Member Halmi to continue the application. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Attorney Ross informed the Board that a Decision was rendered on the appeal of RBSE Properties, LLC where applicant was looking to tear down 5 units of rental apartments and construct a 6 unit condo on the same site. The application was denied by this Board and applicant appealed in the Superior Court. The court upheld that although there were a number of neighbors who objected to the proposal, their testimony was not legally competent because they were not qualified as experts in traffic and the Court found there was

no evidence before this Board to deny the application and reversed the Board's decision.

Applications

Joseph Kishfy, 22 Dennell Drive, Lincoln, RI – Special Use Permit to add six new dwelling units to six existing units for a total of twelve units, two of which shall be eligible for low or moderate income dwelling units on property located at 143 Reservoir Avenue, Lincoln, RI.

AP 6, Lot 437 Zoned: RG 7

Joseph Kishfy, 22 Dennell Drive, Lincoln, RI – Dimensional Variance for lot width relief of property located at 143 Reservoir Avenue, Lincoln, RI.

AP 6, Lot 437 Zoned: RG 7

Represented by: Peter Ruggiero, Esquire

Attorney Ruggiero mentioned that Member Russo was absent at the February meeting which only leaves 4 members present tonight. The Board needs 5 members to hear and vote on an application. Chairman Arsenault replied that he had hoped Member Rampone would be present. Attorney Ross suggested that applicant wait to see if Member Rampone attends the meeting or continue the application to the April agenda. Attorney Ruggiero stated they would wait 15 minutes to see if Member Rampone showed up.

**Dolores Guglielmi, 108 Orchard Meadows Road, Smithfield, RI –
Dimensional Variance for front and side yard relief for the
construction of a single family dwelling on Lennon Road, Lincoln, RI.
AP 42, Lot 81 Zoned: RA 40**

Represented by: Mary Shekarchi, Esquire

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

Applicant wants to build a single family home for herself and her handicapped husband who cannot climb stairs so a majority of the living space will be on the first floor. Lot dimension is 88,000 square feet with wetlands on the property. Went to Department of Environmental Management (DEM) for a wetlands permit in 2004 - was denied back in February of 2005. DEM suggested that the structure be moved to the southwest side of the property so it would be outside the actual wetlands and 100 year flood zone. DEM is satisfied with the plans before the Board this evening and they are willing to enter into a consent agreement with applicant but needs zoning approval. Member Arsenault asked if a copy of the agreement was available and Attorney Shekarchi replied that an agreement has not been entered into yet.

Witness

Jean Lambert, PE, SFM Engineering

Submitted resume as Exhibit #1. Motion made by Member Halmi to

accept her as an expert field engineer and witness. Motion seconded by Member Russo. Motion carried with a 5-0 vote.

She prepared the site work and submitted plans approved by DEM to the Board asking that they be introduced as Exhibit #2. 90% of the site consists of wetlands and the remainder is wooded swamp and river bank wetlands with 100 year flood plain. The original application to DEM complied with the town's setback requirements and was placed off Lennon Road with a 35 foot setback off the side yard which placed most of the property within the perimeter wetlands and a portion of it was within the jurisdictional wetlands to the northeast and a portion within the 100 year flood plain which required they provide compensatory area to compensate for filling in the flood plain. The denial letter from DEM requested that they move the house outside of the flood land. They are seeking relief due to the characteristics of the site; this is the least relief necessary; and, if granted will not alter the general character of the area.

Chairman Arsenault asked if this was a 2 acre site and witness replied "yes." He then asked how much upland there was available to build a house and witness replied approximately 2,500 square feet of upland area on the lot.

Witness

Robert DiGregorio

He has been a licensed realtor since 1989 and has appeared before

this Board in the past. Submitted his resume as Exhibit #3. Motion made by Member Russo to accept Mr. DiGregorio as an expert witness. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

He is familiar with the proposal, zoning codes, comprehensive plan, and surrounding area. He has walked and toured the lot twice. Area is typically upscale homes with a good mix. Submitted his Real Estate Summary as Exhibit #4. This report includes pictures of the lot in question. Most homes in the development are visible from the street and the proposed house would be consistent with homes in the general area. Application meets all standards for a Dimensional Variance.

Chairman Arsenault read into the record correspondence dated March 7, 2006 from Joseph P. McCue, Project Manager stating his opinion that the general character of the surrounding area would not be altered should the variance be granted (Exhibit #5).

Attorney for applicant read into the record an affidavit from abutters Carlo and Angela Ruggieri stating they did not have any objection to the application before this Board (Exhibit #6).

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 and their representation of extensive wetlands on this parcel of land, the proposed house can only be located on the lot as indicated on the plans. The Planning Board recommends Approval of this dimensional variance. The Planning Board feels that this plan represents the least relief required, will not alter the general character of the surrounding area nor impair the intent or purpose of the Zoning Ordinance, nor the Comprehensive Plan.

Motion made by Member Russo to grant a 20 feet side yard and 20 feet front yard setback with the condition that applicant furnish the Town with a copy of the Department of Environmental Management agreement once it is approved. He further stated:

- 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 of 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 Rao. Motion carried with a 5-0 vote.

Joseph Kishfy, 22 Dennell Drive, Lincoln, RI – Special Use Permit to add six new dwelling units to six existing units for a total of twelve units, two of which shall be eligible for low or moderate income dwelling units on property located at 143 Reservoir Avenue, Lincoln, RI.

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Chairman Arsenault requested that because Member Rampone was not present and a quorum of 5 not available to hear and vote on the applications, the two applications before this Board be continued to the April agenda. This continuance is not at the applicant's request.

Motion made by Member Rao to continue the applications to the April agenda. Motion seconded by Member Halmi. Motion carried with a 5-0 vote.

Victor Rodrigues, 24 Breakneck Hill Road, Lincoln, RI – Extension of decision rendered on 1/15/05 for a Use Variance.

AP 25, Lot 74 Zoned: RS 20

Chairman Arsenault read into the record letter dated February 21, 2006 from Russell Hervieux, Zoning Official asking for an extension of decision dated January 5, 2005. This correspondence informed applicant to apply for the extension out of an abundance of caution.

Applicant is doing his own work and needs more time to do additional house remodeling and that is reason why he is asking for a one year extension. Attorney Ross informed the Board that it is clear applicant has started the work and has 2 years from the granting of the decision to complete the work – one year to begin the construction and two years to complete the construction. Not sure why applicant is before the Board as he is within the time allowed and in full compliance with the ordinance. Russell Hervieux informed Chairman Arsenault that he reviewed the zoning ordinance and was confused by the section because it involved a use variance and a use variance does not involve construction. The construction is not what he asked relief for – the requested relief was for the location of a business within a home and understood the 2 year period to be for a dimensional variance. Attorney Ross replied that Article 11 does not make that distinction but speaks in terms of relief. He received the relief, construction was involved by virtue of what he was seeking in January 2005 and has until January 2007 to complete the construction. Proper permits have been pulled.

Applicant requested his application be withdrawn without prejudice.

Member Russo made a motion to accept withdrawal of the application without prejudice. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Eric Yeghian, 130 Angell Road, Cumberland, RI – Dimensional Variance for subdivision of lots.

AP 10, Lot 304 Zoned: RG7

Represented by: Peter Rotelli, Esquire

Applicant wants to subdivide the lot which has a pre-existing, non-conforming use on a garage which was built in 1930s or 1940s at 207 Chapel Street, Lincoln. He has appeared before the Planning Board which has recommended approval of the application. Chairman Arsenault informed applicant what standards needed to be met for a Dimensional Variance. A foot print already exists on the lot and he purchased the property as is. A new home is not being built on this lot. Driveway will be accessed from the street. Garage has an existing curb cut. Applicant submitted into the record a more detailed plan than what was attached to the application (Exhibit #1). If applicant were to remove the garage, he would not be here this evening.

Chairman Arsenault read into the record Planning Board recommendation:

The proposed dimensional variance is to clear up the pre-existing

nonconformance of this parcel of land. This lot was platted before present day zoning regulations. The Planning Board recommends Approval of this application. The Board finds that the relief requested will not alter the general character of the surrounding area or impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.

Open Question:

Christopher Ruhle, 209 Chapel Street, Lincoln

Property abuts his lot and he asked what the existing garage dimensions were. Chairman Arsenault replied the garage is 18'x 20', located 10 feet from the property line and 4 feet off the rear property line.

Member Halmi made a motion to approve a 9.45 inch side yard and 31.3 inch rear yard setback 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 Rao. Motion carried with a 5-0 vote.

Motion made by Member Rao to adjourn the meeting. Motion seconded by Member Russo. Motion carried with a 5-0 vote.

Respectfully submitted,

**Ghislaine D. Therien
Recording Secretary**