

Town of Lincoln

100 Old River Road, Lincoln RI

Zoning Board of Review

April 4, 2006 Minutes

Present: Raymond Arsenault, Kristin Rao, Arthur Russo, Jr., David Gobeille, Nicholas Rampone, Gabriella Halmi, Attorney Mark Krieger

Minutes

Chairman Arsenault asked if there any corrections to the March 2006 Minutes. Minutes approved as presented with a 5-0 vote.

Correspondence/Miscellaneous

Chairman Arsenault introduced the new member of the Zoning Board, Jina Petrarca-Karampetsos.

Chairman Arsenault read into the record letter dated April 3, 2006 from Peter Ruggiero, Attorney of record for Albion Place LLC, asking that their application be withdrawn without prejudice. Motion made by Member Russo to accept withdrawal of application without prejudice. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Town of Lincoln, 100 Old River Road, Lincoln, RI – Presentation of proposed Zoning Ordinance update.

Albert Ranaldi, Town Planner and Russell Hervieux, Zoning Official

presented to the Board a letter dated April 4, 2006 with attached proposed amendments to the Zoning Ordinance and a summary breaking down the proposed amendments by code. Mr. Ranaldi informed the Board that a public hearing was scheduled for May 25, 2006 to address the amendments and invited members of the Board to attend. Mr. Hervieux informed Chairman Arsenault that they would be presenting the amendments to the Town Council on April 11, 2006 and the Planning Board on April 26, 2006.

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

Applicant wants to create additional dwelling units on existing property. He appeared before the Planning Board and Town Council

in 2005 for a zone change. When applicant appeared before this Board in February 2006, Member Halmi brought up a problem with the lot width for property in a RG 7 zone. Application was continued to this evening to address that issue. Lot width is 122' and RG requires 170'. Applicant is asking for 48' lot width relief.

Chairman Arsenault read into the record Planning Board recommendation for the Special Use Permit:

Members of the Technical Review Committee visited the site and reviewed the submitted project plans and application. The Planning Board recommends Approval of this application. Based on a site visit, the TRC and the Planning Board feel that the applicant presents a realistic site layout that meets the intent of the zoning and would not be detrimental to the surrounding residential neighborhood. The Planning Board feels that the special use permit will not alter the general character of the surrounding area and will not impair the intent or purpose of the Zoning Ordinance, nor the Lincoln Comprehensive Plan.

Motion made by Member Halmi to grant application for Special Use Permit to allow the construction of six (6) additional dwelling units on AP 6, Lot 437 subject to the following conditions:

- Applicant will construct six (6) new dwelling units in addition to the six (6) existing dwelling units and shall designate two units as low or moderate income dwelling units.**
- Apartment number signage shall be installed on the building.**

- **Proposed ingress and egress to the property shall be as recommended by the Planning Board**

She further stated:

- **That the special use permit meets all the criteria set forth in the zoning ordinance authorizing such special use**
- **That the granting of the special use permit will not alter the general character of the surrounding area; and**
- **That the granting of the special use permit will not impair the intent or purpose of the zoning ordinance nor the Lincoln comprehensive plan.**

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

Chairman Arsenault read into the record Planning Board recommendation for the Dimensional Variance:

The proposed dimensional variance is required due to the recent zone change of the above noted parcel. When the parcel was zoned BL-0.5, it met all of the zoning requirements. Recently, the parcel was changed to RG-7 which caused the existing lot width to be nonconforming to the new zone requirements. Members of the Technical Review Committee visited the site and reviewed the submitted project plans and application. The Planning Board recommends Approval of this application. The Planning 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.

Motion made by Member Halmi to grant applicant a forty eight (48) foot dimensional variance from the lot width requirement in an RG-7 zone to allow the construction of six (6) additional dwelling units on AP 6 Lot 437 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 Gobeille and carried with a 5-0 vote.

Bank RI, One Turks Head Building, Providence, RI – Dimensional Variance for front yard setback to subdivide property to spin-off excess land to current coffee shop owner and retain remainder land area for eventual merger with adjoining bank operations center for property located at 629 George Washington Highway, Lincoln, RI.

AP 28, Lot 51 Zoned: BL 05

Represented by: Peter Ruggiero, Esquire

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

Applicant acquired property when it went into receivership and would like to use the site for parking. They currently lease the property where the bank is located.

Witnesses:

Elizabeth Carroll, Sr. Vice President Bank RI

Bank RI moved their operations from East Providence to Lincoln three years ago. They lease the property where they are located and have an opportunity to purchase the property they currently at the end of 2006. In April of 2005, they acquired the proposed back lot through receivership and would like to convert it into a parking area. Owners of lot they lease from are not interested because of their own plans to sell off the financial planning center and applicant is allowed by contract to buy it. Owners of front parcel (Dunkin Donuts) also have a timing issue and would like to buy the back lot for their own plans. They would like to sell off the two front lots and keep the back lot. They currently own the lot before the Board this evening (Lot #1)

and lease the adjacent property where their operations are located. They want to subdivide the lot and sell Lot #2 (Dunkin Donuts) and Lot #3. The lots will not be combined but separated. Applicant will retain Lot #1. The applicant will place restrictions on Lot #1 that it not be developed. Applicant will go before the Planning Board for the total subdivision. Planning Board approved the plans subject to the Zoning Board's action on the application.

Nicole Wilkinson, EIT (Joe Casali Engineering, Inc.)

She is an engineer in training. Submitted resume as Exhibit #1. Witness has been the project manager on this application and has been in correspondence with the Planning Board, Zoning Office and the utility companies for this project. Chairman Arsenault stated that it has been the Board's standard to only recognize licensed professionals as expert witnesses. Attorney Krieger replied the Board can qualify her as an engineer in training and accept her qualifications and give her testimony the weight they deem appropriate. Chairman Arsenault recommended the Board accept her as an engineer in training. The Board carried his recommendation with a 5-0 vote.

Applicant is proposing to subdivide the lot into 3 individual lots. Lot #1 will be used for parking. All three lots conform to zoning requirements except for the frontage on Lot #1. Applicant is proposing a 40 foot right of way to Lot #1 from George Washington Highway through Lot #2. Lot #1 has an existing sewer access across

the rear of Lot #1. In order to provide gas and water to Lot #1, they are proposing a 30 foot wide utility easement through Lot #2. The Lincoln Water Department has asked that they provide an easement through Lot #1 for future routing of the water main from George Washington Highway to Wake Robin. Water main and gas lines are active servicing Dunkin Donuts. The Lincoln Water Department has made it a condition of their approval that if Bank RI ever put a building on the lot that they would require as part of the construction that the water main be looped.

Attorney Krieger stated that one of the premises of the application was that they would forever waive their right to develop Lot #1. Attorney Ruggiero replied that between now and when Bank RI closes on the property a condition would be that if it were not merged with the adjoining property it could not be used. The Planning Board was concerned that the creation of a lot that might later be developed for a building that had no other access and that frontage not be landlocked. Bank RI has no intentions of constructing a building on the lot – it would only be used for parking. One of the conditions during receivership proceedings was in order to acquire this property it would need to be subdivided. Applicant has an agreement with Dunkin Donuts to sell them the front lot subject to getting approval for subdivision. Applicant's option to purchase leased property expires December of 2006 and they must close by March 31, 2007.

Witness further stated that Lot #2 has all utilities with an existing

sewer connection into the main at Lot #1. They have provided a 25 foot sewer easement through Lot #1. Lot #3 has an existing water and gas lines. To provide sewer for Lot #2 an easement through Lot #1 and an additional 25 foot easement through Lot #2 for future sewer connection. Sewer access comes through Wake Robin Road and not George Washington Highway. Attorney Krieger informed applicant he still had questions about the easements on the property The 40 foot right of way - is it extinguishable? Attorney Ruggiero replied that the Planning Board may want the easements maintained on the property so people could enter the bank property and exit at the light across from the mall. The water easement will probably stay in place forever. Applicant would be willing to submit copies of the easements to the Town Solicitor's office for review and acceptance prior to recording.

George Caldow, Caldow Associates, Inc.

Submitted resume as Exhibit #2. Witness has testified before this Board in the past. He found that the proposed subdivision and development plan concept for the subject property is consistent with the germane goals and objective statements of the Lincoln Comprehensive Plan, that these goals and objectives are generally supportive of an application for frontage variance and that the request will not impair the stated purposes of the Zoning Ordinance or alter the general character of the surrounding area. The applicant is seeking full use of the premises within the framework of zoning

requirements in recognition that an anticipated merger of ownership of proposed Lot #1 with adjacent Lot #55 will satisfy Lincoln zoning requirements for lot frontage and public street access.

Member Russo asked if the bank does not purchase the lot, what its marketability was. Witness replied in his opinion, it is a non-buildable lot and nothing could be constructed on the lot. They could possibly merge it in the future.

Chairman Arsenault read into the record Planning Board recommendations:

Members of the Technical Review Committee visited the site and reviewed the submitted project plans and application. As stated above, the dimensional variance is needed for relief from the frontage standard to subdivide property to spin-off excess land to current coffee shop owner and retain remainder land area for eventual merger with adjoining bank operations center for property located at 629 George Washington Highway, Lincoln, RI. This subdivision has received Master Plan approval by the Planning Board on February 22, 2006. The Planning Board recommends Approval with Conditions. The applicant has presented a realistic site development proposal that will ultimately merge the back lot into the adjoining bank lot. The Planning Board feels that proposed temporary nature of the landlocked lot 1 is not guaranteed. In order not to create potential problems in the future, the following (potentially defeasible) easements must be granted in the private 40 foot wide right of way

shown on the presented plans:

- 1. Vehicular/pedestrian access to and from George Washington Hwy for lot 1 across lot 2.**
- 2. Vehicular/pedestrian access to and from George Washington Hwy for lot 3 across lot 2.**
- 3. Sanitary sewer connection for lots 2 and 3 through lot 1.**
- 4. Water service for lot 1 through lot 2.**

If the Zoning Board feels fit to approve this dimensional variance request, the above noted easements can be reviewed by the Town during the Planning Board's preliminary plan review stage.

Russell Hervieux, Zoning Official informed the Board that certain conditions needed to be imposed to make sure the lot remains unbuildable. One of the concerns has to do with the defeasible easements on the lot. They kept addressing the issue of if this does not happen, the town needs access to the lots. Lot #3 right of way will always need accessibility – the 40 foot right of way will probably be a permanent easement. As to Lot #1, once merged with existing lot they will not need that right of way unless they choose to use a traffic pattern that would be safer to the bank. All other easements for utilities will be created. He is concerned about the issue of not building anything on the lot. Once merged into the operation center, they will be able to place a primary/accessory building for use on the lot. If the Board chooses to approve the application, conditions should be in place.

Chairman Arsenault asked that a motion be made on the application.

Motion made by Member Rao to grant applicant a one hundred (100) foot dimensional variance from the lot width requirement in a BL 05 zone to allow the subdivision of AP 28 Lot 51 into three (3) lots, subject to the following conditions:

1. Applicant shall file revised site plans delineating easements with the Zoning Official and final easements shall be reviewed and accepted by the Town Solicitor prior to recording for the following easements:

a. Vehicular/pedestrian access to and from George Washington Highway for lot 1 across lot 2.

b. Vehicular/pedestrian access to and from George Washington Highway for lot 3 across lot 2.

c. Sanitary sewer connection for lots 2 and 3 through lot 1.

d. Water service for lot 1 through lot 2.

2. Applicant shall record a restrictive covenant on lot 1 prohibiting the construction of any building or structure on the premises until lot 1 is merged with an adjacent lot, the merger of which would produce a lot in conformance with the zoning ordinance lot width requirements and all other dimensional requirements. The Town Solicitor shall approve of the restrictive covenant prior to recording.

She 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 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 and carried with a 5-0 vote.

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

Respectfully submitted,

**Ghislaine D. Therien
Recording Secretary**