

## **Town of Lincoln**

**100 Old River Road, Lincoln RI**

**Zoning Board of Review**

**June 6, 2006 Minutes**

**Present: Raymond Arsenault, Kristen Rao, Gabriella Halmi, Jina Karempetsos, Arthur Russo, Jr., David Gobeille, Solicitor Roger Ross**

**Excused: Nicholas Rampone**

**Motion made by Member Rao to enter into Executive session. Motion seconded by Member Halmi. Motion carried with a 5-0 vote.**

**Motion made by Member Rao to confirm vote taken in Executive session. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.**

## **Minutes**

**Chairman Arsenault asked if there any corrections to the May 2006 Minutes. Motion made by Member Russo and seconded by Member Gobeille to approve the Minutes as presented. Motion carried with a 5-0 vote.**

**Motion made by Member Rao to suspend the order on the agenda. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.**

## **Applications**

**Omnipoint Communications, Inc., 50 Vision Boulevard, East Providence, RI/St. James Church Corp., 33 Division Street, Manville, RI – Use Variance for the installation, operation and maintenance of a wireless communications facility on property located at 33 Division Street, Manville, RI.**

**AP 37, Lot 198 Zoned: RG 7**

**Omnipoint Communications, Inc., 50 Vision Boulevard, East Providence, RI/St. James Church Corp., 33 Division Street, Manville, RI – Dimensional Variance for front and rear yard setback and height relief for the installation, operation and maintenance of a wireless communications facility on property located at 33 Division Street, Manville, RI. –**

**AP 37, Lot 198 Zoned: RG 7**

**Represented by: Brian Grossman, Esquire**

**Chairman Arsenault informed attorney for applicant that one of the members who heard the applications at the May meeting was not present this evening and as a result a quorum was not present for him to present his case. At Attorney Ross' request, he informed Attorney Grossman that he could either continue both applications to the July agenda or present the applications again this evening from the beginning. Attorney Grossman requested that the applications be continued to the July agenda without prejudice.**

**Motion made by Member Halmi to continue the applications to the**

**July 24th agenda. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.**

### **Correspondence/Miscellaneous**

**Russell Hervieux, Zoning Official earlier gave the Board a package regarding Lincoln Mall signage which included a spreadsheet reflecting existing signage at the mall, a filed Decision, and a copy of approved Minutes from the September 7, 2004 Zoning Board of Review meeting. Applicant received a blanket variance for signage but they are out of compliance with the total square footage of the signage and there is an error in the Minutes thus affecting the Decision. The Minutes reflect that they were looking for a 735 square foot variance for an additional 2,705 sq.ft. of signage bringing the total signage to 2,775 sq.ft. which is incorrect. When he informed applicant they were in violation, they disagreed. Mr. Hervieux has been in discussion with applicant and their attorney and as of tonight, they are in violation. Some of the tenants have signage with no permits for same. The issue before the Board is there is a filed Decision for 2,705 sq.ft. with a total of 2,831 sq.ft. of existing signage at the mall. Even with the correction, applicant is still in violation.**

**Represented by: Joseph DeAngelis, Esquire**

**Applicant demolished the western portion of the mall and rebuilt. The eastern portion was not touched as were some satellite buildings. Submitted Report as Exhibit #1. He agrees that the Minutes need to be corrected and by his calculations signage is only off by 4 sq.ft.**

**The building signage table in the report only shows new construction with 735.8 sq.ft. of existing signage and they sought a special use permit for 2,737.5 sq.ft and believe they were approved by the Board in September. The confusion seems to be that there was about 1,047.61 sq.ft of existing signage that was allocated to Stop & Shop, Stop & Shop gas, Marshall's, Pay Half, Home Goods, Party City and Ocean State Job Lot. Applicant met with the Town Solicitor, Town Planner and Russell Hervieux on May 22, 2006 and the question was asked if could they live with 3443.3 sq.ft. of signage. The only difference between his figures and Russell Hervieux's figures is Mr. Hervieux is including the two pylon signs. They did not change those signs and were looking for building signage. He is here to assure the Minutes are corrected.**

**Chairman Arsenault informed Attorney DeAngelis that to the best of his recollection, he stated in the Minutes that what he was proposing that evening was an increase in the total building signage and now what is being presented is that the total building signage was actually almost 400 feet beyond what they approved that night. Attorney DeAngelis replied it is more like 700 sq.ft. more and the Minutes reflect 2,775 sq.ft. Chairman stated Minutes will be corrected to 3,443 sq.ft. and the figures do not reflect that they were excluding any existing signage except what was presented at 735.8 sq.ft. Chairman stated that words he used in the Minutes were "total building signage" meaning the entire mall.**

**Attorney Ross spoke with Attorney DeAngelis and they are entitled to 64sq.ft of signage and anything above that requires a variance. What the Board needs to know is how much of a total variance is applicant looking for. The Board thought applicant was looking for was a total of 7,035.8 sq.ft plus 2,707.5 sq.ft. for a total signage of 3442 sq.ft. which is not reflected in the Minutes.**

**Attorney DeAngelis stated the only issue is that may be some disagreement is the two pylons. His client takes the position that they did not increase the size of the pylons and if you deduct the size of the pylons they are only 4 feet in disagreement with Mr. Hervieux's figures.**

**Motion made by Member Gobeille to amend the September 7, 2004 Minutes to reflect total signage of 3,443.3 sq.ft. and not 2,775 sq.ft. Motion seconded by Member Russo. Motion carried with a 5-0 vote.**

### **Applications**

**Keith E. Beck, 8 Bridle Drive, Lincoln, RI – Dimensional Variance for side yard setback for the construction of an addition.**

**AP 26, Lot 133 Zoned: RA 40**

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

**This application was continued from the May agenda. Applicant met with the Zoning Official to go over the numbers. Total footage with**

**the addition is 6,000 sq.ft. for total coverage at 15%. His figures come to 5,992 sq.ft and Zoning Official figures come out to 6,112 sq. ft which includes a covered exit on the side of the house. Zoning Official explained to applicant that normally under lot coverage he would take the entire outside dimensions of the building which is why their figures are different.**

**Applicant would like to amend his application to include a variance for lot coverage relief of 111 sq.ft.**

**Motion made by Member Karempetsos to accept amendment of the application to include lot relief. Motion seconded by Member Halmi. Motion carried with a 5-0 vote.**

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

**Applicant wants to add a bedroom for his mother in law. Proposed plan is best way to construct because he has a pool at the rear of the house. Applicant has owned the house for 16 years. There are three existing bedrooms – one downstairs and two upstairs. Mother in law is in her 80s and would have difficulty accessing the upstairs bedrooms. He is asking for 111 sq. lot coverage relief and a 7.5' side yard setback. Closest abutter is about 120 feet from the house. There is an existing fence surrounding the pool which is 15 feet from the rear of the house and that is why he cannot expand to the rear of the**

house.

**Chairman Arsenault read into the record Planning Board recommendation:**

**Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board recommends Denial of the application for a dimensional variance. The Board feels that the application does not meet any of the standards for relief of a dimensional variance as presented in the Zoning Ordinance. More specifically, the Planning Board feels that the site plan and application does not represent the least relief necessary and is not due to the unique characteristics of the subject land. The Planning Board feels that the applicant has sufficient room to the rear of the property to locate an addition without having to request a variance. The Planning Board feels that the dimensional variance will alter the general character of the surrounding area and will impair the intent and purpose of the zoning ordinance and the Comprehensive Plan.**

**Member Karempetsos stated she agreed with the Planning Board that the least relief necessary was not due to the unique characteristics of the subject land. Attorney Ross asked if there were any findings of fact as to why they recommended denial. Chairman Arsenault asked applicant if he could identify the facts around the standards that were not met.**

**Applicant asked if his application could be withdrawn without prejudice. Chairman Arsenault replied that no motion had been made and he could make that request.**

**Motion made by Member Karempetsos to accept applicant's request to withdraw his application without prejudice. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.**

**Antonio A. Cruz, 4 Titus Avenue, Cumberland, RI– Dimensional Variance for front, side and rear yard setbacks for the construction of a single family home dwelling for property located on Olney Avenue, Lincoln, RI.**

**AP 17, Lot 91 Zoned: RS 12**

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

**Represented by: George Bettencourt, Esquire**

**Applicant wants to build a smaller home for himself and is looking for 25' lot width relief, 7.1" and 9.26' side yard setback and .84 foot setback from the northerly corner of the lot.**

**Member Rao asked why the house could not be moved back to avoid asking for all the relief. Attorney replied that the house would sit too far back on the lot and would not keep with the esthetic look of the neighborhood. Chairman Arsenault asked given the length of the lot,**

**what is the objection to building within the permissible setback. There is a footprint that a house could fit into. Attorney replied that the plan before the Board is what the engineer prepared for the applicant.**

**Applicant chose a house style that does not fit in the footprint. Chairman Arsenault informed applicant that the lot is a piece of land where a house could be built without requesting any relief. Applicant likes the house style he chose and does not want to make any changes to the proposed house plan. Applicant is aware that Planning Board recommended denial of his application. Zoning Official informed the Board that he could easily put a ranch home on the lot but it the style of the house is why applicant is asking for a variance and he still needs lot width relief. Chairman Arsenault asked applicant if he would like to go back and redesign the house to fit the lot and recommended he either continue the application or withdraw it without prejudice and return with a new plan. Applicant did not want to do either and wanted to go forward with the application before the Board as is. Attorney Ross informed applicant that if his application is denied this evening he must wait one year before coming back before the Board. Applicant understood.**

**Chairman Arsenault read into the record Planning Board recommendation:**

**Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board**

**recommends Denial of the application for several dimensional variances. The Board feels that the application does not meet any of the standards for relief of a dimensional variance as presented in the Zoning Ordinance. More specifically, the Planning Board feels that the site plan and application does not represent the least relief necessary and is not due to the unique characteristics of the subject land. The Planning Board feels that the applicant has sufficient room to the rear of the property to build a house. The Planning Board feels that the dimensional variances will alter the general character of the surrounding area and will impair the intent and purpose of the zoning ordinance and the Comprehensive Plan.**

**Motion made by Member Halmi to deny the application stating:**

- Relief requested is not the least relief necessary**
- Hardship from which the applicant seeks is not due to the unique characteristics of the subject land or structure**
- Hardship is not the result of any prior action of the applicant**
- Granting of this variance will alter the general character of the surrounding area**

**Motion to deny seconded by Member Rao. Motion to deny carried with a 5-0 vote.**

**David Uttley, 20 Dexter Rock Road, Lincoln, RI – Dimensional Variance for front yard setback for the installation of pre-cast concrete stairs.**

**AP 23, Lot 20 Zoned: RA 40**

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

**Applicant wants to replace existing stairs with pre-cast concrete stairs and is looking for a 10' 10" variance. When the house was built it was an extremely tight fit onto the lot. There was no room for a proper staircase at the front of the house. Entrance is on the second level and developer put a mound of dirt at the front of the house, placed an asphalt ramp and then placed small concrete stairs on top of the dirt. It was the only way contractor could meet setback requirements and it has been deteriorating over the years. The mound has settled, the retaining wall adjacent to the driveway has shifted, and the staircase is settling and pulling away from the house. Applicant feels it looks like an eyesore and wants to correct the problem by removing the stairs, wall, mound of dirt, and fix landscaping and driveway. He then wants to build a landing and straight staircase at the front of the house level with the driveway. Photos attached to application show the stairs pulling away from the house. There will be no overhang over the door.**

**Chairman Arsenault read into the record Planning Board recommendation:**

**Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board**

**recommends Denial of the application for a dimensional variance. The Board feels that the application does not meet the standards for relief of a dimensional variance as presented in the Zoning Ordinance. More specifically, the Planning Board feels that the site plan and application does not represent the least relief necessary. The Planning Board feels that the applicant can redesign and rebuild the existing landscaped area and retaining wall. The Planning Board feels that the applicant is creating the need for a dimensional variance by removing the existing landscape and proposing a staircase.**

**Motion made by Member Halmi to grant the application for a 10' 10" 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 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.**

**Gina M. Sahagian/Tina T.Grilli, Central Street and Spring Street, Manville, R.I. – Comprehensive Permit Recommendations for three lot subdivision.**

**AP 37, Lot 73 Zoned: RG-7**

**Zoning Board will act in an advisory capacity to the Planning Board on this application. No notices were sent and no Decision will be rendered.**

**Chairman Arsenault read into the record Title 45, Section 45-53-4 (v) Low and Moderate Income Housing findings.**

**Represented by: John Shekarchi, Esquire**

**Property currently is non-conforming use and is considered commercial property. It is applicant's intent to subdivide the property into three separate parcels and provide three low/moderate incoming housing units. Physical aspects of the property will not change. 33% of the units will be rented. Sewer, water and parking will be available.**

**Witness**

**Edward Pimental, AICP**

**Submitted resume for review by Board members. Motion made by Member Rao to accept Mr. Pimental as an expert witness. Motion**

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

**Mr. Pimental submitted a report dated April 18, 2006 for Board member review. Certain standards need to be met under RIGL 45-53-4(v) and they are asking for waivers as listed on pages 8 through 10 of his report. Many of these requirements are standard. Off street parking will be provided in sufficient quantity. The property is already being serviced by public sewer and water and connected to all pertinent utilities. 70% of the neighborhood is comprised of multi-family dwellings; 13 structures contain 3 or more units. By subdividing the property they are allowing it to become more residential and increase the statutory requirement to 6.67%. The present deficit combined with anticipated need results in an overall need of 767 units of affordable housing. The need is there for affordable housing in Lincoln. There are three buildings currently at the site with 3 units each on one parcel and the reason for the subdivision is to have 3 separate lots with 3 separate assessors lots per building to be sold off independently with one unit in each building being sold as low/moderate income housing.**

**Witness**

**Gerry Sahagian**

**Existing buildings are in excellent condition and circa 1900s. Nothing will be changing other than ownership of the buildings.**

**Attorney Shekarchi advised the Board that maintenance of the**

**buildings will be solely by the individual owners for their lot. The easement of record will reflect that everyone is responsible as a group to maintain the driveways.**

**The following recommendation is made to the Planning Board that Members of the Zoning Board based on a presentation of a Comprehensive Permit application of Gina M. Sahagian/Tina T.Grilli to create a three lot minor subdivision for AP 37, Lot 73 in a RG-7 zone which will create a subdivision which will result in three affordable housing units and 6 market rate units in three separate structures at the intersection of Central Street and Spring Street, recommends approval of the requested waivers of the Lincoln Zoning Ordinance as described n page 9 of Mr. Pimental's report who also recommends approval of the Comprehensive Permit Application. It is also recommended that the Planning Board waive the impact of the waivers against the low and moderate needs of the Town.**

**Motion made by Member Gobeille to accept the Zoning Board recommendations to the Planning Board. Motion seconded by Member Rao. Motion carried with a 5-0 vote. Town Solicitor will prepare written recommendation to the Planning Board.**

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

**Respectfully submitted,**

**Ghislaine D. Therien**

**Recording Secretary**