

## **Town of Lincoln**

**100 Old River Road, Lincoln RI**

**Zoning Board of Review**

**May 1, 2007 Minutes**

**Present: Raymond Arsenault, Kristen Rao, Gabriella Halmi, Arthur Russo, Jr., David Gobeille, Jena Karempetsos, John Bart, Asst. Town Solicitor Mark Krieger**

### **Minutes**

**• Member Halmi informed members that there was an error with her Motion on page 6 regarding the Sylvia application. It was her recollection that she never stated “the subject land or structure cannot yield any beneficial use” and asked that it be deleted. Motion made by Member Gobeille to accept the April 2007 Minutes with Member Halmi’s correction. Motion seconded by Member Halmi. Motion carried with a 5-0 vote.**

### **Applications**

**JCM, LLC, 3434 Mendon Road, Cumberland, RI – Application for Dimensional Variance seeking lot width relief for the purpose of subdividing property located at Jenckes Hill Road, Lincoln, RI.**

**AP 26, AP 2 Zoned: RA 40**

**Represented by: Michael Kelly, Esquire**

**Attorney Kelly requested that the application be continued to the June agenda. Russell Hervieux, Zoning Official informed the Board that he objected to this application being continued because technically it should not be before the Board as it is more of a subdivision application that should be before the Planning Board as the lot does not require a dimensional variance for lot width. He has informed Attorney Kelly of that and wanted to proceed with the application. Chairman informed him that any member of the community has a right to file an application and come before the Board. Attorney Krieger stated he also spoke with Attorney Kelly.**

**Motion made by Member Karempetsos to continue the application.  
Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.**

**Edward and Linda Sliney, 1159 Smithfield Avenue, Lincoln, RI –  
Application for Use Variance for the construction of a 40'x26' two  
family home on a vacant lot located at Branch Avenue, Lincoln, RI.  
AP 2, Lot 103 Zoned: RG 7 and MG 0.5**

**Represented by: John Shekarchi, Esquire**

**Attorney Shekarchi addressed the Board asking that the two  
applications before the Board be withdrawn without prejudice. Robert  
Os, Attorney for abutters stated he had no objection to the withdrawal  
of the two applications without prejudice.**

**Motion made by Member Gobeille to accept withdrawal of the Use Variance application without prejudice. Motion seconded by Member Halmi. Motion carried with a 5-0 vote.**

**Edward and Linda Sliney, 1159 Smithfield Avenue, Lincoln, RI – Application for Dimensional Variance seeking lot width relief and rear yard setbacks for the construction of a 40'x26' two family home on a vacant lot located at Branch Avenue, Lincoln, RI.**

**AP 2, Lot 103 Zoned: RG 7 and MG 0.5**

**Motion made by Member Halmi to accept withdrawal of the Dimensional Variance application without prejudice. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.**

**Douglas Vaughan, 1036 Great Road, Lincoln, RI – Use Variance to convert first floor into two one bedroom residential units and maintain the third floor as a residential unit.**

**AP 34, Lot 191 Zoned: BL 05**

**Represented by: John Shekarchi, Esquire**

**Applicant requested that the application be withdrawn without prejudice.**

**Motion made by Member Gobeille to accept withdrawal of the Use Variance application without prejudice. Motion seconded by Member Karempetsos. Motion carried with a 5-0 vote.**

**Gary & Lori Rosa, 34 Westwood Road, Lincoln, RI – Dimensional Variance for front yard setback under Article VII F (1), (2), (7) and (8) to convert a two family residential dwelling into a one family; reduction of lot size, remove existing four stall garage and shed.**

**AP 16, Lot 164 Zoned: RS 12**

**Represented by: Michael Horan, Esquire, 393 Armistice Boulevard, Pawtucket, RI**

**Chairman read into the record standards that need to be met for a Dimensional Variance.**

**Applicant has appeared before the Planning Board and received approval to subdivide the existing lot into two lots which meet all of the dimensional requirements. Applicant agreed to change the existing use from a two family to a one family and remove the garage and shed. The only variance applicant is seeking is frontage on Westwood Road. Property exists non-conforming and Attorney Horan disagreed with the Zoning Official's request that the applicant appear before this Board for relief. Applicant is asking for relief due to the unique characteristics of the land and house and what is proposed will not change the area. To deny the application would be an inconvenience. Chairman asked Attorney Krieger if he concurred that an existing non-conforming use does not have to come before the Board. Attorney Krieger replied that he did not agree and the**

**application was properly before this Board.**

**Member Halmi asked how the existing house would be changed to a one family. Lori Rosa, applicant, replied they will remove the kitchen area and appliances from the second floor to comply with zoning requirements. The second floor has two existing bedrooms. Member Halmi asked applicant by removing the existing garage would the second house not have a garage? Attorney replied the new second lot depends on the plans submitted and they will have to meet all dimensional requirements if a garage is built. Member Halmi replied that majority of the homes in the area have garages and a house without a garage would not be consistent with the neighborhood. Member Halmi asked why the garage was being removed. Attorney replied with the new subdivision lines the garage would require other dimensional variance.**

**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 proposed dimensional variances are to clear up the pre-existing nonconformance of this parcel of land. This lot and existing buildings were platted and developed before present day zoning regulations. 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.**

**Question:**

**Brian Bouthillette, 39 Westwood Road, Lincoln, RI**

**Asked what is the size of the proposed second lot? Attorney replied 13,426 sq. ft.**

**Opposed:**

**Alan Sartini, 6 Carriage Drive, Lincoln, RI**

**Applicant will gain financially from this subdivision. Applicant bought the lot and thought they would subdivide and make money. There is problem with traffic on the street and other homes are being built on the street.**

**Opposed:**

**James Chien, 2 Carriage Drive, Lincoln, RI**

**Feels this will change the character of the neighborhood.**

**Opposed:**

**Russell Gleason, 43 Westwood Road, Lincoln, RI**

**What guaranty is there that the house will not be converted back to a two family if sold in the future and what is the hardship? Chairman replied that the Zoning Official will investigate any complaints filed**

and cite the new owner for illegal use. Chairman replied attorney for the applicant has addressed that issue.

**Opposed:**

**Bill Mercer, 32 Westwood Road, Lincoln, RI**

He lives adjacent to the applicant and feels he will be affected by this subdivision with the value of his property decreasing. He also does not see the hardship.

**Opposed:**

**Ted Fuller, 16 Carriage Drive, Lincoln, RI**

He also does not see the hardship. Adding three more homes with driveways on Carriage Drive will add to a dangerous intersection with children in the area. Feels hardship will be created for the neighbors and value of the properties.

Attorney Krieger addressed Mr. Fuller and informed him that only one new home was being proposed for this lot. Mr. Fuller replied that two other houses adjacent to the proposed lot were being proposed for construction. Al Ranaldi, Town Planner addressed the Board and informed them that the lot abutting this property has been subdivided and an existing house will be moved so there is one additional lot with one additional house being proposed.

**Opposed:**

**James Gorman, 35 Westwood Road, Lincoln, RI**

**Has lived in the area 35 years. When he bought the property there was a lot of open space and he would like to maintain the look of the area. He does not know what the hardship is.**

**Opposed:**

**Ingrid Mercier, 32 Westwood Road, Lincoln, RI**

**She has lived in the area for 30 years and owns two houses on the other side of the property. Feels what applicant is proposing would negatively affect the area. There is a separate stairway leading to the second floor. Member Russo asked if the first floor was accessible to the second floor. She replied there is a hallway with a stairway and you have to come out of the first floor apartment into the hallway to access the stairs.**

**Attorney Horan addressed the Board stating the only thing before the Board is the Dimensional Variance request relative to the existing house and the distance from Westwood Road. He feels applicant is grandfathered and they do not need to be here. The only hardship is the existing situation and that is all that is before this Board. If granted, applicant needs to go back and show they have reduced it from a two family to a one family.**

**Attorney Krieger addressed the Board informing them if they find the applicant has met all standards and criteria they would need to grant the dimensional relief.**

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

- The hardship from which the applicant seeks relief is not due to the unique characteristics of the subject land or structure and is due to the general characteristics of the surrounding area.**
- Hardship has not been established and is the result of a prior action of the applicant and does result primarily from the desire of the applicant to realize greater financial gain.**
- The granting of this variance will alter the general character of the surrounding area and impair the intent or purpose of the Lincoln Zoning Ordinance or the Lincoln Comprehensive Plan.**
- The relief requested is not the least relief necessary.**
- The hardship does not amount to more than a mere inconvenience.**
- Testimony of abutters who feel this would have a detrimental impact on their property and neighborhood decreasing property values.**

**Motion to deny seconded by Member Rao.**

**Discussion:**

**Member Russo lives on Carriage Drive and felt granting the application could change the character of the neighborhood. Applicants have not been cited for a non-conformance and are here to get a variance to realize greater financial gain. Member Halmi opinioned that it was very clear that applicant is doing this solely for financial gain.**

**Motion to deny carried with a 5-0 vote.**

**Daniel DeAmaral & Michele Mayer, 16 DuCarl Drive, Lincoln, RI – Dimensional Variance for side yard setback for the construction of a bedroom and bathroom.**

**AP 23, Lot 164 Zoned: RS 20**

**Russell Hervieux, Zoning Official addressed the Board stating he notified applicant that after reviewing the site plan he noticed the applicant needs additional variance which was listed on the application and they could modify their application this evening. The area is in front of the house on the DuCarl Drive side and a garage on the side yard.**

**Chairman read into the record standards that need to be met for a Dimensional Variance.**

**Applicant is seeking 21.4 feet from Applewood Lane and 4.7 feet relief on the DuCarl Drive side of the property. They would like to add a bathroom and bedroom to the existing house. Applicant feels the hardship has to do with the way the house is located on the property.**

**Russell Hervieux, Zoning Official addressed the Board stating the house was built in the 70s and could not find any zoning as to why the house is on the lot the way it is and thought it best to clear the record with corrected dimensional relief.**

**There are other houses in the area with two bathrooms. The existing bedrooms are very small. They have owned the property for nine years and an addition was added to the house two years ago. The house is a raised ranch and it makes more sense to build out than to the side where they have a three season patio room.**

**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 Planning 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 Committee feels that the applicant has sufficient room to the back 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.**

**Motion made by Member Halmi to approve a 21.4 feet on the Applewood Lane side; 4.7 feet fronting on DuCarl Drive; .3 feet on**

**DuCarl Drive front side of the garage; 12.9 feet rear side of the garage. She further stated:**

- The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant.**
- 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.**
- The 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 Lincoln Comprehensive Plan.**
- The relief requested is the least relief necessary.**
- The hardship amounts to more than a mere inconvenience, meaning there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property**

**Motion seconded by Member Karempetsos. Motion carried with a 4-1 vote with Members Arsenault, Karempetsos, Halmi and Gobeille voting aye and Member Rao voting nay.**

**Paul & Debra Demers, 30 Kennedy Boulevard, Lincoln, RI – Dimensional Variance for side yard setback to enlarge an existing garage.**

**AP 34, Lot 252 Zoned: RS 20**

**Represented by: John Shekarchi, Esquire**

**Chairman Arsenault read into the record standards that need to be met for a Dimensional Variance.**

**Applicant is seeking a side yard setback and would like to amend their application from 7.9 feet to 7.2 feet. Attorney Shekarchi submitted into the record:**

**Exhibit #1 Survey Plan prepared by Frank Waterman**

**Exhibit #2 Tax Assessor field card**

**Exhibit #3 Architectural Plan**

**Exhibit #4 TRC positive recommendation**

**House was built in the 60s and applicants purchased it in 2006 and would like to make improvements to the existing house. Applicant has spoken with abutters and they have no objections to what is being proposed.**

**Witness**

**Edward Pimentel, AICP**

**Mr. Pimentel has testified before this Board on past applications.**

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

**Mr. Pimentel submitted into the record a report he prepared as Exhibit**

**#5. The Tax Assessor card shows that the lot is irregular shaped with irregular dimensions. Lot is 100 feet by 175 feet in depth but is not rectangular shaped. Lot has a pre-existing condition unique to the structure and garage. He looked at other properties in the area and eight new homes have been built since 1994 averaging 2,000 sq.ft. each. What they are building now are two story homes. Hardship for the applicant is that both the lot and the house are unique in that they are pre-existing. Applicant purchased the home one year ago and is expanding to accommodate the family and is asking for one small variance. All burdens have been met by the applicant.**

**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 Approval of this application. The Planning Board feels that the proposed design and layout of the existing single family limits the owners to the area in which they can enlarge the garage. The Planning Board finds that the applicant presents a realistic site layout that meets the intent of the zoning and would not be detrimental to the neighborhood.**

**Motion made by Member Rao to approve a 7.2 foot variance on the south side lot line. She further stated:**

- The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to**

**the general characteristics of the surrounding area and is not due to a physical or economic disability of the applicant.**

- 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.**
- The 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 Lincoln Comprehensive Plan.**
- The relief requested is the least relief necessary.**
- The hardship amounts to more than a mere inconvenience, meaning there is no other reasonable alternative to enjoy a legally permitted beneficial use of the property**

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

**Motion to adjourn made by Member Karempetsos. Motion seconded by Member Bart. Motion to adjourn carried with a 5-0 vote.**

**Respectfully submitted,**

**Ghislaine D. Therien  
Zoning Secretary**