

## **Town of Lincoln**

**100 Old River Road, Lincoln RI**

**Zoning Board of Review**

**October 2, 2007 Minutes**

**Present: Raymond Arsenault, Gabriella Halmi, Arthur Russo, John Bart, Jina Karampetsos, John Bart,  
Town Solicitor Anthony DeSisto, Kristen Rao, David Gobeille**

### **Minutes**

- Motion made by Member Halmi to accept the September 2007 Minutes as presented. Motion seconded by Member Karampetsos. Motion carried with a 5-0 vote.**

### **Applications**

**Charles Bishop, Jr., 30 Walker Avenue, Lincoln, RI – Special Use Permit application to expand existing residential use of property for 5 additional residential units.**

**AP 3, Lot 171 Zoned: RG 7**

**Charles Bishop, Jr., 30 Walker Avenue, Lincoln, RI – Dimensional Variance application for lot width relief to expand existing residential use of property for 5 additional residential units.**

**AP 3, Lot 171 Zoned: RG 7**

**Chairman read into the record notarized correspondence from applicant dated September 27, 2007 requesting that both applications be withdrawn without prejudice.**

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

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

**James A. Dupuis, 10 High Street, Manville, RI – Dimensional Variance application seeking rear and side yard relief for the construction of a deck.**

**AP 37, Lot 266 Zoned: RL 9**

**Chairman Arsenault stated this application was continued to afford applicant time to return with a site plan showing correct meets and bounds Applicant has made revisions to dimensions and is back this evening for hearing. He is asking for rear yard relief and this is not a corner lot (lot size 8,065 square feet). Chairman asked Russell Hervieux, Zoning Official if the Technical Review Committee had a chance to review the revised plans and he replied "no" – as of the last**

**meeting it was not on their agenda.**

**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 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 has sufficient room to the rear-left of the property to locate a deck 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 Gobeille to approve an 18 foot right rear and 26 foot other rear yard setback. Motion seconded by Member Karampetsos. Member Rao stated that perhaps it would be better to amend the motion to stipulate direction of relief on lot.**

**Motion made by Member Gobeille to amend his motion to grant 18 foot relief on AP 37, Lot 16 side and 26 foot relief on Plat 37, Lot 16 side of the property stating:**

- **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 to amend seconded by Member Karampetsos.**

**Member Gobeille made a motion to amend his approval to include the deck as proposed on submitted plan. Motion seconded by Member Karampetsos. Motion carried with a 5-0 vote.**

**Benderson Development Co., LLC, 570 Delaware Avenue, Buffalo, NY/640 GWH, LLC, 640 George Washington Highway, Lincoln, RI – Special Use Permit application for mixed use office and hotel on property located at 640 George Washington Highway, Lincoln, RI as authorized under Section 260-9F of the Lincoln Zoning Ordinance.**

**AP 31, Lot 12 Zoned: ML 0.5**

**Represented by: Wyatt Brochu, Esquire from the law office of Peter Ruggiero, Esquire**

**Benderson Development Co., LLC, 570 Delaware Avenue, Buffalo, NY/640 GWH, LLC, 640 George Washington Highway, Lincoln, RI – Dimensional Variance application seeking front setback relief for property located at 640 George Washington Highway, Lincoln, RI.**

**AP 31, Lot 12 Zoned: ML 0.5**

**Represented by: Wyatt Brochu, Esquire from the law office of Peter Ruggiero, Esquire**

**Chairman Arsenault stated these applications had been continued to afford applicant to return with a traffic study, depiction of what the site would look like, a lighting plan, and a site plan showing elevations.**

**Witness:**

**Paul J. Bannon, President of RAB Professional Engineers, Inc.**

**Route 116 was recently reconstructed by the Department of Transportation and is now 4 lanes wide. Route 116 handles 20,000 vehicles per day during peak hours which averages to 1,600 per hour and 2,200 in pm peak hours averaging 50 trips in am peak and 58 in pm peak. It is his conclusion that this project will not have an adverse affect on traffic in the area. Member Russo stated he was concerned about access east side on Route 116 for u-turns and**

possible access through Blackstone Valley Place. Witness replied there is no legal access through Blackstone Valley Place and they are working with the Department of Transportation to share an access through an existing easement when Blackstone Valley Electric was there. Attorney stated they have spoken with AMICA and they are unwilling to grant access to the site through Amica Boulevard.

## **Witness**

**Jeffrey Hanson, P.E. - Caito Engineering**

He submitted a lighting plan for review. Lighting will be on foot candles from 11'8" high to 20'8" high. There will be a total of 30 fixtures with "0" lumens out to Route 116. Wattage will vary from 70-400 on single head fixtures and wall mounted fixtures over entrances for security.

Member Russo asked about the AMICA storm water easement. Attorney replied they are working with AMICA's engineers regarding the storm water basin they will share. There will be a buffer between the highway and the building which not be mounded. Outer edge of the parking lot to the highway is over 100 feet.

Motion made by Member Russo to approve the Special Use Permit with conditions that applicant obtains a storm water easement from AMICA and physical alteration permit from the Department of Transportation. He further stated:

- That the Special Use is specifically authorized under this Ordinance

- That the Special Use meets all the criteria set forth in this Ordinance authorizing such special use
- That the granting of the Special Use will not alter the general character of the neighborhood or surrounding area
- That the granting of the Special Use will not impair the intent or purpose of this Ordinance nor the Lincoln Comprehensive Plan

**Motion seconded by Member Karampetsos. Motion to approve carried with a 4-1 vote with Members Arsenault, Bart, Karampetsos and Russo voting aye and Member Halmi voting nay.**

**Motion made by Member Russo to approve the Dimensional Variance application for 21 foot relief with conditions that applicant shall obtain a storm water easement from AMICA and physical alteration permit from the Department of Transportation. He 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 Bart. Motion to approve carried with a 4-1 vote with Members Arsenault, Bart, Karampetsos and Russo voting aye and Member Halmi voting nay.**

**Michael Trenteseau, 500 Great Road, Lincoln, RI - Dimensional Variance application seeking front, side and rear yard setback relief for the existing house.**

**AP 22, Lot 11 Zoned: RL 9**

**Represented by: John Shekarchi, Esquire**

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

**Applicant lives in the home and has access to town water and sewer. It is applicant's intention to subdivide one buildable lot of 10,161 sq.ft. There will be 4,794 sq.ft. more than what is required. Existing structure is 267 years old and is legal nonconforming. It is the Town's position that they require dimensional relief from the setbacks to the grandfathered structure. Wetlands are not a problem at the site. He is looking for 5.5 foot side yard/37 foot rear/and 6 foot front yard setbacks from the existing home to the lot line. Nothing applicant is proposing will interfere with the preexisting condition**

relevant to the home. He has appeared before the Planning Board and was approved. Title search shows they meet all setbacks as a result of eminent domain taking by the State of Rhode Island when they created Lincoln Woods to widen the road. One of burdens applicant needs to prove is the hardship is not the result of any prior action of the applicant. Submitted into the record State of Rhode Island map of area (Exhibit A) showing the creation of Lincoln Woods.

**Witness**

**Edward Pimentel, AICP**

He has appeared before this Board in the past. He examined the site and did an analysis. Submitted his report dated October 2, 2007 into the record (Exhibit B). Property has approximately 24,000 sq.ft in an RL 9 zoning district. The house is a historic home. Proposed Lot #2 complies with the subdivision regulations. When State widened the road they took additional land area from the front resulting in front deviation. Before the taking, the land was equally rectangular in shape but not longer is. This is an older substandard neighborhood. None of the deviation are the result of the applicant. Both lots comply with lot area requirements. Witness addressed the standards that need to be met for a Dimensional Variance (Page 12-14 of his report). Applicant's actions are not due to the physical economic of the applicant. Applicant is only seeking permission to utilize his property and subdivide.

**Witness**

**Donald G. Morash, Jr., RE Broker Abbott Properties**

**Submitted his report dated October 2, 2007 into the record (Exhibit C).**

**He has testified before other commissions and has 30 years experience in the real estate field. Motion made by Member Rao to accept Mr. Morash as an expert witness. Motion seconded by Member Karampetsos. Motion carried with a 5-0 vote.**

**He is familiar with the site and area and does not feel what applicant is proposing will affect the value of abutting property owners or have an adverse affect on the existing house or area. He then addressed standards that need to be met for a Dimensional Variance. Feels this would be positive for the area with new construction being an indication of stability. Member Halmi disagreed with his stability statement. If you are intensifying the area's population it may not add value to the area.**

**Attorney Shekarchi questioned if applicant should even be before the Board but out of an abundance of caution they are appearing to ask relief. Hardship was not the result of applicant's actions but the State's taking of property.**

**Chairman 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 building**

**was platted and developed 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.**

**Opposed:**

**Ann Marie DeConti, 503 Great Road, Lincoln**

**Has lived across the street for 19 years and dividing the lot will result in a new house being built changing the neighborhood which is rural and historic. This conflicts with efforts to preserve the area and disagrees this will not alter the neighborhood and may compromise the value of historic homes.**

**Opposed:**

**Bruce McCabe, 474 Great Road, Lincoln**

**He is a photographer for the Valley Breeze and this is a scenic area. Has lived on Great Road for 20 years and there are not many historic homes around. A contemporary home would not fit into the area.**

**Mr. Pimentel stated they could totally comply with the subdivision regulations if the State had not taken property and could subdivide by right. There is no designated historic zone. There are a lot of substandard lots in the area. No one wants change but they do comply with all the requirements. The Comprehensive Plan talks about protecting historical structures – there is no protection for this**

structure. Applicant could pull a demo permit and tear down the house.

Member Russo asked would the applicant be here this evening seeking this type of relief if not for the subdivision. Mr. Pimentel replied the answer would have to be yes. Attorney Shekarchi stated the only reason he is here not for the subdivision is because the State and DOT created a hardship by taking of land. Member Russo replied that only reason applicant is here tonight is for the greater financial gain of the subdivision. Mr. Pimentel replied that the only other option is to cure the deviations. Attorney DeSisto stated this house is a prior non conforming use, a legal non conforming use. The proposal here is to create two new lo- the new side lot and the leave behind lot that will be a new lot. The grandfathering is lost and that's why they are here this evening before the Board.

#### **Discussion:**

Member Halmi stated she had a problem with the application. Mr. Trenteseau would not be here unless creating two lots from one resulting in financial gain. Member Rao felt dividing the property would alter the general character of the area and is not more than a mere inconvenience. Chairman Arsenault understands issues regarding development. He owns a historic house and has experienced development in his area. Applicant has the right to subdivide when it conforms to our regulations. Member Karampetsos agrees with Chairman Arsenault. It is a difficult emotional situation

**but they have property rights. Applicant could demolish the existing historic home and subdivide the lot. The situation applicant is in is due to the State taking by eminent domain in the past. This area is not zoned historic. Member Russo stated applicant is in his district and they have the right to subdivide so long as it is in conformance with creating two new lots. One lot is not in conformance. This is a historic district and it should be preserved.**

**Motion made by Member Karampetsos to grant 17.95 foot west side, 24.2 foot south side, 6.4 foot north side deviation stating:**

- 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 to approve seconded by Member Gobeille. Motion denied 3-2**

**with Members Arsenault, Gobeille, Karampetsos voting aye and Members Halmi and Rao voting nay.**

**Leo P. Correia, 141 Grandview Avenue, Lincoln, RI – Special Use Permit application for the construction of an in-law apartment.**

**AP 8, Lot 155 Zoned: RS 12**

**Chairman Arsenault read into the record standards that need to be met for a Special Use Permit**

**Application was continued from the September agenda because of notice deficiency but Russell Hervieux, Zoning Official informed the Board that applicant was now in compliance.**

**Applicant wants to add 790 sq.ft. so daughter and two granddaughters can move in with him. Addition will consist of a bedrooms and bathroom. Building permit was pulled two months ago and he has hired an architect. Roof will be raised and he will add 790 sq.ft over the garage. Addition will blend into the neighborhood and access will be through use of deck entrance.**

**Chairman 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 the Special Use Permit for the Accessory Family Dwelling Unit. The applicant proposes to add an additional**

**story to the existing residential house. The new level will be designated as the Accessory Family Dwelling Unit. The Board feels that the proposed building plans are realistic and that the site layout takes into consideration many factors relating to the site and the overall character of the area.**

**Motion made by Member Halmi to grant the Special Use Permit stating:**

- That the Special Use is specifically authorized under this Ordinance**
- That the Special Use meets all the criteria set forth in this Ordinance authorizing such special use**
- That the granting of the Special Use will not alter the general character of the surrounding area**
- That the granting of the Special Use will not impair the intent or purpose of this Ordinance nor the Lincoln Comprehensive Plan**

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

**Armand Brunelle, 7 Grandview Avenue, Lincoln, RI – Dimensional Variance application seeking side yard relief for the construction of an addition.**

**AP 16, Lot 36 Zoned: RS 12**

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

**Applicant's house sits in a 24,600 sq.ft lot and wants to expand kitchen on the first floor with master bedroom over the garage and kitchen and close in the breezeway. House was built in 1932 and he is the third owner. They also want to move the laundry room to the second floor. This will provide 1,000 sq.ft more living space in the house. Addition will match exterior of existing house and roof and will not change the footprint of the house.**

**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 and existing building was 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.**

**Motion made by Member Halmi to grant a 6.5 foot left side setback. 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 Karampetsos. Motion carried with a 5-0 vote.**

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

**Respectfully submitted,**

**Ghislaine Therien  
Zoning Secretary**