

Town of Lincoln

Zoning Board of Review

Sitting as Planning Board of Appeals

Town Hall, 100 Old River Road, Lincoln, RI

April 1, 2008 Minutes

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

JCM, LLC, 3437 Mendon Road, Cumberland, RI/Melissa McKee, 3437 Mendon Road, Cumberland, RI – Application for appeal of Planning Board denial of the Master Plan for JCM, LLC located on Jenckes Hill Road, Lincoln, RI

AP 26, Lot 2 Zoned: RA 40

Represented by: Michael Kelly, Esquire

Chairman Arsenault cited standards that need to be met for an appeal of a Planning Board decision.

Attorney Kelly addressed the Zoning Board stating Planning Board denied appellant's master plan to subdivide the property into two lots – one lot has an existing house and create a second lot. Appellant appeared before the Planning Board with a plan dated August 16, 2007 for 50 foot frontage for the lot to be created – code requires 150 feet. Parcel one with the house has required 150 foot frontage but

proposed new lot on parcel 2 has 50 feet. This project came before this Board in the past and on September 26, 2006 the Planning Board denied a subdivision of this property which proposed a short street to service the house and met all of the subdivision regulations and all zoning requirements. The Planning Board denied the subdivision at that time because it did not comply with the Comprehensive Plan and the Planning Board did not feel it was a good plan to create a street for one house. The Technical Review Committee found it met all subdivision requirements the Planning Board denied the subdivision. They appealed to this Board who denied the appeal and that matter is now before the Superior Court on appeal.

The appellant submitted a new plan which does not require the creation of a new road but second lot needs frontage relief. The lot meets the area requirement of code and subdivision regulations. Planning Board decision dated December 19, 2007 states under subsection 1 that the plan does not have sufficient frontage and requires a variance; number 2 on page 2 states does not have sufficient frontage; number 3 that there would be no negative environmental impact; number 4 states that it is not consistent with zoning ordinance; number 5 states the plan would need a dimensional variance to have access; number 6 requires a variance; number 7 the subdivision will provide safe circulation of vehicular traffic and adequate surface water; number 8 irregularly shaped lot.

Appellant submitted a new plan to subdivide without creating a street

but needs frontage relief. Planning Board created a situation causing appellant to seek a variance and that is why they are appealing the Planning Board decision. Plan does not create an environmental impact and provides safe vehicular access by creating a driveway instead of a road. Planning Board made a prejudicial error by denying the subdivision and appellant is here before the Zoning Board asking for a reversal of their denial. Planning Board and Technical Review Committee looked at the project and felt the design was an imposition on the Town regarding services; 66% of the front yard needs a variance; and is not good planning. If reversal is not granted they will appeal to the Superior Court resulting in two cases before the Superior Court.

Al Ranaldi, Town Planner addressed the Board regarding the motion to deny and gave background on the application. The Planning Board and Technical Review Committee looked at this project and felt that there is lot with an existing house that conforms to all the rules but this does not even with the road. With the road it was one road for one house with full beneficial use and the town felt it was an imposition for public services and not good planning. 66% of the front yard needs a variance and 100 foot variance is excessive.

Discussion:

Chairman Arsenault believes the Planning Board did not err with their decision. Meets a substantial amount of the technical requirements of subdivision regulations it does not meet requirements of zoning

code. Member Halmi agreed with the Chairman in that the denial is proper and the Planning Board did not err. Except for the requested dimensional relief, 66% of the lot requires frontage relief and they do have beneficial use of the existing lot. Member Karampetsos stated many subdivisions have come before this Board seeking dimensional relief. The application was denied on the basis of a dimensional variance and if that is the sole basis for denial then it seems improper because that is a question for the Zoning Board. Chairman asked Town Solicitor why the application would have been filed before requesting dimensional relief. Attorney DeSisto stated that under the regulations the order of precedence of relief is you go before the Planning Board with master plan and if zoning relief is needed it goes before the Zoning Board. If that is granted it goes back to the Planning Board for preliminary plan approval. Reason dimensional variance was filed is if the application is granted under the enabling act it goes to where it would be in stage of Planning Board proceedings and if master plan granted they go ahead with dimensional variance and if variance is granted the application goes to preliminary plan review. The real issue tonight is it is an irregularly shaped lot and how does it get subdivided.

Motion made by Member Halmi to deny the request for reversal of the Planning Board decision dated December 19, 2007 stating:

- The Planning Board decision was supported by their reasoning.
- There was no clear error and nothing was prejudicial.
- The requested dimensional relief is excessive.

Motion seconded by Member Rao to deny reversal. Motion to deny reversal of Planning Board decision carried with a 4-1 vote with Members Arsenault, Gobeille, Halmi and Rao voted to deny the appeal with Member Karampetsos voting to reverse the decision.

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

Respectfully submitted,

**Ghislaine Therien
Zoning Zecretary**