

Town of Lincoln

100 Old River Road, Lincoln RI

Zoning Board of Review

December 9, 2008 Minutes

Present: Jina Karempetsos Chair , Gabriella Halmi, John Bart, David Gobeille, Arthur Russo, Jr., Lee Blais, Town Solicitor Anthony DeSisto

Minutes

Motion made by Member Bart to accept the November 2008 minutes as presented. Motion seconded by Member Russo. Motion carried with a 5-0 vote.

Correspondence

No correspondence.

Miscellaneous

Chair Karampetsos welcomed Lee Blais to the Board.

**Andover Way d/b/a Storage America, 3900 NW 2nd Avenue, Miami, FL
– Application for Special Use Permit for the installation of signage on property located at 100 Higginson Ave, Lincoln, RI.**

AP 1, Lot 133 Zoned: MG 0.5

Chair informed the Board that she rents storage space from applicant and has no financial interest in this application.

Russell Hervieux, Zoning Official informed the Board there were two notice issues presented at the September 2008 meeting. Because of a lack of quorum, the application was continued to October 2008 and again to the December 2008 agenda. Abutters were re-noticed via regular mail with no returns. Re-notice should have been sent by certified mail. Chair suggested continuing the application to the next meeting so proper notice could be mailed.

Motion made by Member Blais to continue the application to the next meeting. Motion seconded by Member Gobeille. Motion carried with a 5-0 vote.

Russell Hervieux, Zoning Official addressed the Board stating the applicant has erected signage at the site without town permission. They have an existing special use permit which was granted in 2004 and are in violation. The special use permit was for one building with one free-standing sign. They currently have two signs in place and have been noticed about the existing violations. Chair informed applicant they need to contact the Zoning Official and clear up all issues before returning at the next meeting.

John & Sandra Petrarca, 2 Michael Drive, Lincoln, RI – Application for

Extension of Decision on Dimensional Variance application dated June 5, 2007.

AP 45, Lot 339 Zoned: RA 40

Represented by: Peter Petrarca, Esquire

Chair Karampetsos and Member Russo recused themselves from this application. Town Solicitor DeSisto informed the Board the Rule of Necessity allows the Board to move forward on this application with Member Russo sitting with no conflicts.

Applicant is seeking an extension of a decision rendered on June 5, 2007 and recorded with the Town Clerk in September 2007. Ledge on the property changed the dynamics of their proposed design and applicants expect to break ground in spring of 2009. A six month extension would be sufficient time.

Chair read into the record Technical Review Committee recommendation:

Members of the Technical Review Committee reviewed the submitted application for extension of a decision on a dimensional variance. The Planning Board recommends Approval of the time extension. According to §260-71 of the Zoning Ordinance, the Zoning Board may, upon written request of the applicant, for good cause shown, extend the decision of the applicant for a period not to exceed six months.

Motion made by Member Blais to grant a six month extension to expire June 2009. Motion seconded by Member Bart. Motion carried with a 5-0 vote.

Metro PCS, Mass.LLC. 285 Billerica Road, Chelmsford, MA/St. James Church Corp., 33 Division Street. Manville, RI – Application for Use Variance for a wireless communication facility on property located at 33 Division Street, Manville, RI

AP 37, Lot 198 Zoned: RG 7

Metro PCS, Mass.LLC. 285 Billerica Road, Chelmsford, MA/St. James Church Corp., 33 Division Street. Manville, RI – Application for Dimensional Variance seeking height relief.

AP 37, Lot 198 Zoned: RG 7

Represented by: Jackie Sloga, Esquire

Russell Hervieux, Zoning Official stated at the last meeting there was a notice issue with several notices coming back undeliverable. A new abutter's list was provided and new notice sent with two returns. Addresses listed were pulled from town records. Attorney DeSisto informed the Board that proper notice was mailed.

Chair read into the record standards that need to be met for a Use Variance and Dimensional Variance.

Attorney Sloga submitted into the record revised abutters list and

radius drawing as Exhibit #1 and two certified mail return receipts as Exhibit #2. Applicant has a FCC license and offers service with free and unlimited minute access to its customers. Six antennas will be placed on a church steeple that has existing antennas for another carrier. Four cabinets and cables will be located in the church's basement for servicing. Applicant chose the church because of the steeple height and the other carrier already in place. What they are proposing will not impose on the area. They would like to launch the network in 2009. There is a hole in the coverage area which would be serviced by this location.

Witness

Ajay Savant, Radio Frequency Engineer employed by Metro for eight years. He has an Electrical Engineering degree and has worked with other carriers. Motion made by Member Gobeille to accept Mr. Savant as an expert witness. Motion seconded by Member Blais. Motion carried with a 5-0 vote.

Witness addressed the Board and presented a map showing what areas will be covered by this service. Applicant is working on installing antennas in other communities in the areas that have a gap in coverage. This site would be ideal as they are looking for existing buildings to avoid building new towers. Church steeple has sufficient height to provide adequate coverage. Currently looking at additional sites in North Smithfield but services will not be available until February of 2009. First provider on steeple has been informed of

their interest. There is a rare chance of interference because they work off different frequencies. A distance of ten feet is required between the antennas. If there is interference it would need to be cured. Antennas will be four feet tall and six inches wide and that is why applicant is also seeking height relief. Batteries will be stored in the church basement.

Chair read into the record Technical Review Committee/Planning Board recommendation for the Use Variance:

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 proposed project represents the installation, operation and maintenance of a wireless communications facility on the property. The applicant is proposing to install color and texture coordinated telecommunication antennas onto the church steeple. All other equipment will be located within the existing church facility. Based on a site visit, the Planning Board feels that the applicant presents a realistic site layout that meets the intent of the zoning with special consideration given to the Article 11.A.7.14. The Planning Board feels that the telecommunication installation will not be detrimental to the surrounding residential neighborhood. The Planning Board feels that the use variance will not alter the general character of the surrounding area and will not impair the intent or purpose of the zoning ordinance, nor the Comprehensive Plan.

Chair read into the record Technical Review Committee recommendation for Dimensional Variance:

The proposed dimensional height 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 proposed use will not extend above the existing height of the steeple. 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.

Opposed:

Jim Spooner

He appeared when the first carrier came before the Board and was opposed to it. He is concerned about the décor. The first carrier has a similar application for installation at St. Jude Church. How many people will benefit from this service and what is the coverage area.

Opposed:

Dean Lees

Asked who pulled the application – Chair replied Metro. He further asked how a hardship can be shown if you do not own the property. Attorney DeSisto informed Mr. Lees that the lessee joined on the application. Mr. Lees questioned the Area Planning Concern (APC) committee's validity of the document that was advertised on 11/24/08

and was it properly noticed. Attorney DeSisto informed him that the APC is advisory in nature and the application is decided on grounds other than those in the APC recommendation. Mr. Lees replied that telecommunication towers are not allowed under Section 260-14-(m).

In Favor

Charles Turner

Lessee is a non-profit entity and the additional income would be welcomed.

Discussion:

Attorney DeSisto

The ability to grant the use comes from the Zoning Enabling Act. Applicant would need to prove that all beneficial use would be lost. Telecommunications Act of 1996 47-USC Section 332 allows this type of use. The government does not preempt control over towers and communities cannot ban towers. Applications must be processed reasonably; denials must be in writing and supported; and Zoning Boards cannot prevent cellular service in areas.

Chair Karempetsos

A Use Variance was granted to another carrier for this site and she is concerned about existing antennas on the steeple.

Attorney Slaga

The applicant has been before other boards with similar applications which have been approved. They are looking for existing structures rather than building new towers. The Board needs to factor in the Telecommunications Act.

Motion made by Member Gobeille to approve the Use Variance with a condition that the antennas be painted to match the existing exterior and texture of the building. 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 subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the Zoning Ordinance**

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

Metro PCS, Mass.LLC. 285 Billerica Road, Chelmsford, MA/St. James

Church Corp., 33 Division Street. Manville, RI – Application for Dimensional Variance seeking height relief.

AP 37, Lot 198 Zoned: RG 7

Motion made by Member Gobeille to grant application for Dimension Variance seeking 22 foot height relief to the center line of the antenna under the Telecommunications Act of 1996. 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 Blais. Motion carried with a 5-0 vote.

John Young, 7 Lampercock Lane, Lincoln, RI – Application for Special

Use Permit for the construction of an addition as an accessory family dwelling unit.

AP 28, Lot 70 Zoned: RA 40

Chair read into the record standards that need to be met for a Special Use Permit.

Applicant wants to build an addition to existing house for his mother-in-law who is 77 years old. She is independent and needs her own kitchen. Addition will consist of two rooms. Chair asked if the application was filed 4/28/08. Russell Hervieux, Zoning Official replied that applicant came into Town Hall with plans but the state building code does not allow for kitchens and applicant eliminated it from their plans but now want to include a kitchen.

Applicant stated the original intent was to have both parents move in but father is now in a nursing home. They originally offered mother-in-law her own living quarters with use of their kitchen. Existing house is gambrel style. Addition will match existing exterior and roof with a common entrance and mud room separating the living quarters. Garage will be located under new bedroom with access to the garage off the porch. Building Inspector has viewed the site and approves.

Chair read into the record TRC/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 convert a new section of the existing house into an accessory family dwelling unit. The entire house site is located within the lots established setback and no variances are required. 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 and purpose of the zoning ordinance and the Comprehensive Plan.

In Favor

Charles Turner

Applicants are good neighbors and has no problem to proposed addition with kitchen for mother-in-law.

In Favor

Charles Spooner

Thinks it is admirable to take parent in.

Motion made by Member Blais to grant the application for Special User Permit with the condition that applicant file on a yearly basis an affidavit with the Town Clerk's office stating the addition is occupied by a family member and after five years needs to reappear before this Board.

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

Oliver & Jo-Ann Perry, 1674 Louisquisset Pike, Lincoln, RI – Application for Dimensional Variance seeking rear yard setback for the construction of an owner occupied single family dwelling.

AP 10, Lot 88 Zoned: RL 9

Represented by: John Shekarchi, Esquire, 132 Old River Road, Lincoln, RI

Chair read standards that need to be met for a Dimensional Variance. Member Russo sat with full privileges.

A home sits on abutting lot and applicants want to build a single family home on lot 88. Applicants came before this Board on May 6, 2008 and were under contract to buy the lot which is irregular shaped.

Home will have town water and sewer and have received Department of Environmental Management approval. Lot meets all other requirements. Submitted into the record Superior Court Decision filed May 19, 2006 (Jaworski vs. Zoning Board of Review of the Town of Lincoln PM/05-4834) as Exhibit #1 and Department of

Environmental Management approval letter as Exhibit #2.

Witness

Edward Pimentel,

He has appeared before this Board on several applications. Motion made by Member Halmi to accept Mr. Pimentel as an expert witness. Motion seconded by Member Blais. Motion carried with a 5-0 vote. Mr. Pimentel submitted his report into the record as Exhibit #3.

Mr. Pimentel is familiar with the site and prepared the report submitted as Exhibit #3. He has also reviewed the application and court case submitted as an exhibit. This is a prior recorded lot and single family homes are a permitted use. Property in question is an irregular shaped lot with six property boundaries. They are seeking rear yard relief because of the property angle which is 9,900 square foot lot. A standard lot in area is 2,475 square feet or 27.5% of the lot. The subject lot is 1,250 square feet. He looked at adjoining lots which are also substandard lots of record. The application meets all standards for Dimensional Variance. He identified 30 other lots in the area which are substandard. The footprint of this lot is average with the neighborhood.

Witness

Oliver Perry, Owner

He wants to keep construction in compliance with other homes in the neighborhood. Proposed single family house will be owner

occupied.

Chair read into the record Planning Board recommendation:

The Planning Board recommends Approval of this application for a Dimensional Variance from the rear yard setback. The TRC reviewed the submitted site plans and visited the site. The Planning Board determined that the layout of the proposed single family house is limited due to the unique lot setback configuration. The Planning Board finds that the applicant presents a realistic site layout that meets the intent of the zoning and is the least relief needed. The Planning Board feels that granting this dimensional variance will not impair the intent or purpose of the Zoning Ordinance, nor the Comprehensive Plan.

Opposed

James Burgess, 42 Boulevard Avenue, Lincoln, RI

He is an abutter and lives opposite the property. Feels there are conflicting surveys and the one used by the applicants comes four feet onto his property. Applicants want to cut trees down and he feels area should be left green. Reiterated he is concerned about the accuracy of the survey submitted to the Board.

Attorney Shekarchi informed the Board that the submitted survey is a class survey performed by Steven Long dated 10/27/08 and is accurate.

Mr. Burgess replied the old stakes from a January 2006 survey done by Lewis Fredericks, Assoc. were removed and replaced with new ones when the latest survey was done. Barbara Burgess stated they would like to see a 10-15 foot buffer set up to keep the environment natural.

Motion made by Member Blais to grant 23.82 rear yard setback.

- 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 Gobeille. Motion carried with a 5-0 vote.

Omnipoint Communications, Inc. a wholly owned subsidiary of T-Mobile USA, Inc., 15 Commerce Way, Suite B, Norton, MA/St. Jude

Church, 299 Front Street, Lincoln, RI – Application for Special Use Permit for the operations of a telecommunications tower on property located at 301 Front Street, Lincoln.

AP 10, Lot 57 Zoned: RL 9

AP 9, Lots 1/2/3/4/5/6/7

Omnipoint Communications, Inc. a wholly owned subsidiary of T-Mobile USA, Inc., 15 Commerce Way, Suite B, Norton, MA/St. Jude Church, 299 Front Street, Lincoln, RI – Application for Dimensional Variance for height relief and setback relief the operations of a telecommunications tower on property located at 301 Front Street, Lincoln.

AP 10, Lot 57 Zoned: RL 9

AP 9, Lots 1/2/3/4/5/6/7

Applications were improperly advertised as a Special Use Permit – should have been advertised as Use Permit. Chair recommended continuing both applications to the next agenda so proper advertising and notice can be mailed.

Motion made by Member Bart to continue both applications to the next agenda. Motion seconded by Member Blais. Motion carried with a 5-0 vote.

Motion made by Chair Karampetsos to nominate Member Gabriella Halmi as Vice Chair of the Lincoln Zoning Board. Motion seconded

by Member Bart. Motion carried with a 5-0 vote.

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

Respectfully submitted,

Ghislaine D. Therien

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Recording Secretary