

Town of Lincoln

100 Old River Road, Lincoln RI

Zoning Board of Review

February 2, 2010 Minutes

Present: Jina Karampetsos Chair, John Bart Vice Chair, Bernard McNamara, David DeAngelis, Barry Nickerson, Mark Enander, Attorney Joelle C. Sylvia (Town Solicitor Office)

Excused: Raymond Trabulsi

Chair welcomed new member Barry Nickerson.

Minutes

Correction: Attorney Sylvia asked that the last line of the Cotter's Dimensional Variance standards be stricken. Motion was made by Member DeAngelis not Member Enander. Secretary will make corrections and post on Secretary of State website.

Correspondence

Correspondence dated January 2010 received from Gabe Imondi, 26 Southwick Drive regarding an enforcement issue which is not within the Board's jurisdiction. Matter forwarded to Zoning Official for review.

Applications:

Bala & Jayne Sundaram, 16 Harris Avenue, Lincoln, RI – Application for Dimensional Variance seeking front and side yard setbacks for the construction of an addition.

AP 27, Lot 34 Zoned: R 40

Represented by: Scott Partington, Esquire

Application continued so applicant could provide plans showing specific measurements. They are seeking front and east side yard setbacks. Submitted new plans showing dimensional relief requested. Square footage of the addition is 1,152 sq.ft plus 511 sq.ft with the garage. The Technical Review Committee did not have the benefit of viewing the wetlands permit which was approved by DEM. The initial plans have been revamped and reduced in size. Applicant disagrees with the Technical Review Committee recommendation that the application did not meet the required standards but did not cite why they disagreed. Because of the house and lot size it is not uncommon to come before the Board seeking relief. Submitted into the record (Exhibit 6) copy of the Town's field cards which shows the square footage of other homes in the immediate area and correspondence from Richard and Brenda Verfaillie dated January 4, 2010 (Exhibit 7) stating they have no objection to the proposal. A Class I survey was performed and did not show any easements or right of ways on the property.

Chair asked Russell Hervieux, Zoning Official for clarification of what relief applicant was asking for. Mr. Hervieux replied with the new plan

before the Board they were seeking 18.73 feet on the east side yard from the addition, 27.43 feet from the stairway on the east side, 10.6 feet in the front for the new porch, 23.3 feet from the east side existing closed porch, 5.94 feet on the front of the existing house, and 21.76 on the east side for the porch. Member Enander asked if the new plans were recorded and the attorney replied yes.

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

Members of the Technical Review Committee visited the site and reviewed the updated plan and the current zoning application. The Planning Board recommends Denial of the application for dimensional variances. The Planning Board feels that the application still 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 based on the information supplied to date, the application does not represent the least relief necessary and is not due to the unique characteristics of the subject land. The Board feels that the applicant should have designed the proposed addition within the Zoning regulations. The information submitted did not contain a narrative or a proposed floor plan to support the need for the stated relief. The Board would also like to bring to the attention of the Zoning Board that there is a running stream in the backyard of this property. The buffer zone associated with this stream may make the proposed addition not feasible. The application does not make any representations that the applicant has consulted with the Rhode

Island Department of Environmental Management. The Planning Board feels that the dimensional variance will impair the intent and purpose of the zoning ordinance and the Comprehensive Plan.

Chair asked if there was any opposition present.

Opposed:

Robert Rivet, Rivet Drive

His grandfather owned the property in the 1950s and there is a right of way through the property onto property owned by the Town. Stated he felt the Solicitor should research to access to the town property would not be restricted. Chair asked where the right of way is located on the property and he replied on the east side. Chair informed Mr. Rivet that a right of way was not noted on the Class I survey and the existing closed off porch is the only area applicant is asking for relief to install stairs – no structure would encroach onto the right of way if one exists.

Opposed

Marion Fox

She stated she has a map showing the right of way. Applicant stated he wanted to put an apartment in the basement for his mother and there is an existing apartment in the basement. Chair replied she did not recall any testimony about putting an apartment in the basement for his mother. It is an RA 40 zone and not a multi family zone.

Motion made by Chair Karampetsos to approve the application for 18.73 square feet to the east side yard from the rear corner, 27.43 feet to the east side yard for the proposed stairs, 21.76 feet to the east side yard corner of the porch, 10.6 feet front relief on new porch, and 23.3 feet for the side existing porch. 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. Applicant's family has grown and requested relief is to accommodate the needs of the family.**
- 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. Proposed addition will not alter the character of the area.**
- The relief requested is the least relief necessary. Plans have been significantly scaled down per the Board's request.**
- The hardship amounts to more than a mere inconvenience. Applicant's family has outgrown the existing home.**

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

Great Road Realty LLC, 571 Middle Road, Colchester, VT –

Application for Extension of Decision rendered by the Zoning Board for a Dimensional Variance pending planning approval.

AP 23, Lot 51 Zoned: RS-20

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

Applicant is seeking extension of original Decision rendered on November 6, 2008 for rear yard relief. Applicant needs to remove ledge and needs Planning Board approval so subdivision can be recorded.

Motion made by Member DeAngelis to grant request for extension. Motion seconded by Member Bard. Motion carried with a 5-0 vote.

Meridian Custom Homes, 1 Richmond Square, Providence, RI and John & Robin Ryan/Robert & Camille Simonelli, 12 Whitman Way, Lincoln, RI – Application for Special Use Permit for the construction of a single family home with attached in-law apartment.

AP 29, Lot 384 Zoned: RS 12

Represented by: Chris Kelly, Director representing owners

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

He was the contractor for construction of the single family home with in-law apartment. The home is completed and occupied since last

summer. When applicant went into refinance the home they were informed they had an illegal in-law apartment. Required affidavit for an in-law apartment has not been filed with the Town Clerk's office. Applicants moved into the home August of 2009. Chair asked who spoke with the town officials during construction and he replied the project manager did. Mr. Kelly stated he is here representing the owners. Chair asked if the owners signed the application and he replied yes. Mr. Kelly stated he built the home to owner's specifications and has not built any other homes in Lincoln.

Chair asked Russell Hervieux, Zoning Official if he had any knowledge about the application. Mr. Hervieux replied he did. The plans laid out did not meet codes for an in-law apartment because of egress onto to the deck at the rear of the home and advised applicant they could not use the rear egress for the in-law apartment. Chair stated the plans she had before her showed an exit through the laundry room. Mr. Hervieux replied you cannot exit a home through a garage. It is legal to have two kitchens in a single family home but you cannot egress through a deck. Chair asked if the in-laws were living in the house and Mr. Kelly replied yes.

No opposition present.

Chair 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 took great care in the design of the accessory family dwelling unit so that the entire structure will continue to look like a single family house from the roadway. 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.

Motion made by Member Bart to grant the application stating:

- That the Special Use is specifically authorized under this Ordinance. It meets all criteria under Subsection 260-9L.**
- 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. Unit is separate from the house and has its own egress.**
- That the granting of the Special Use will not impair the intent or purpose of this Ordinance nor the Lincoln Comprehensive Plan. The proposed use conforms to the Comprehensive Plan.**

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

Anthony Toro, 8 Bernon Drive, Lincoln, RI – Application for Dimensional Variance seeking rear yard relief for the construction of

a shed.

AP 22, Lot 125 Zoned: RS 12

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

Applicant stated he needs the shed at the rear of his property for seasonal storage. He is presently using one side of his two car garage. Neighbors have no objection what the shed. Shed color matches existing house. Applicant purchased the home and did not build. Chair inquired about letters of approval from neighbors attached to the application. Applicant informed her he witnessed the signatures. He constructed the shed which is approximately 178 sq.ft., 16'x14'9' and is L-shaped and 8 feet high with no exterior lighting.

Chair read into the record Planning Board/Technical Review Committee 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 rear yard setback dimensional variance for the construction of a shed. 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. According to the photos contained within the application and site visit, the shed has already been built on the property. It appears that the construction of the shed is not finished. Therefore, the Board feels that the applicant should move the shed to be within the zoning setbacks according to the Zoning regulations.

Opposed

Ron Gagne Sr.

Read verbatim letter submitted into the record Exhibit #1. He is an abutter on the southern side of Bernon Drive and sees the back of the shed. Items are currently being stored behind the shed and he is concerned it is too close to the property line. Chair informed Mr. Gagne that the town requires sheds be six feet from the property line.

If his application were not approved, he could move the shed and other neighbors could then see it. Mr. Gagne would like to see a visual buffer on the property line to hide the shed.

Applicant stated it was his intention to plant arborvitaes behind the shed for a buffer but rear of the property slopes and is rocky limiting the planting of a buffer. He is willing to plant a buffer to help obstruct the shed.

Discussion:

Member Enander stated planting a natural buffer would be a possible solution to the problem. Member DeAngelis said specific conditions

could be made to address concerns of the neighbors. Chair would like applicant to reach an amicable resolution with the neighbors addressing their concerns. Would applicant be agreeable to a continuance so resolve issues with the neighbors and applicant said he would be willing.

Motion made by Chair Karampetsos to continue the application to the April agenda. Motion seconded by Member Enander. Motion carried with a 5-0 vote.

Motion made by Member Bart to adjourn the meeting. Motion seconded by Member Enander. Motion carried with a 5-0 vote.

Respectfully submitted,

Ghislaine D. Therien