

Town of Lincoln

Zoning Board of Review

100 Old River Road, Lincoln, RI

Minutes of May 4, 2010 Meeting

Present: Jina Karampetsos, John Bart, David DeAngelis, Mark Enander, Bernard McNamara, Barry Nickerson, Joelle Sylvia (Solicitor's Office).

Excused: David DeAngelis

Correspondence

Letter from Member Trabulsi dated April 9, 2010 resigning from the Board.

Applications

Henry G. Magendantz, 1896 Old Louisquisset Pike, Lincoln, RI – Application for a Dimensional Variance seeking front, rear and side yard relief to subdivide lot.

AP 27, Lot 81 Zoned: RA 40

Applicant requested application be continued to the June agenda as he has not received Master Plan approval from the Planning Board.

Motion made by Chair Karampetsos to continue the application to the June agenda. Motion seconded by Member Bart. Motion carried with

a 5-0 vote.

Cox TMI Wireless, LLC, 5775 Peachtree Don Woody Road, Atlanta, GA/St. Jude Church, 299 Front Street, Lincoln, RI – Application for Use Variance to attach telecommunication antenna to existing church steeple for property located at 301 Front Street, Lincoln, RI.

AP 9, Lots 1, 2, 3, 4, 5, 6 and 7 Zoned: RL 9

AP 10, Lot 57

Cox TMI Wireless, LLC, 5775 Peachtree Don Woody Road, Atlanta, GA/St. Jude Church, 299 Front Street, Lincoln, RI – Application for Dimensional Variance for height relief to attach a telecommunication antenna to existing church steeple for property located at 301 Front Street, Lincoln, RI.

AP 9, Lots 1, 2, 3, 4, 5, 6 and 7 Zoned: RL 9

AP 10, Lot 57

Represented by: Joseph Giammarco, Esquire

These applications were continued from the April agenda because of a notice issue. Russell Hervieux, Zoning Official informed the Board that abutters were renoticed and no returns were received. Correct address of the premises is 301 Front Street.

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

Attorney previously submitted to the Board for their review amended drawings, design change to the antennae installation, vitae of tonight's witness and a corrected abutter's list. Three panel antennas will be installed on the church's 124 foot steeple spire and will be flush mounted. Co-axle will be encased in copper and run to the base of the spindle along the ridge line. Equipment will be stored in the basement and no generators or exterior lights will be on site. Maintenance for the facility will be monthly and applications meet all FCC guidelines. Submitted into the record vitae of proposed witness as Exhibit #1 and proposed coverage map as Exhibit #2.

Witness:

Chang Qu. Vitae submitted earlier by applicant for Board's review.

Motion made by Member Bart to accept Mr. Qu as an expert witness.

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

Witness reviewed proposed coverage area with the Board. If the antennae were lowered that what is proposed at 94.2 feet to the center line it would not provide sufficient coverage. T-Mobile has an existing installation on the steeple. Chair asked if the original application showed location of antennae at 100 feet. Witness replied they amended the drawings and the new height was 94.2 feet.

Attorney informed the Board that other sites were examined but the area is mainly residential properties. Applicant looks to existing

structures for the installation of new antennas. Chair asked if dimensional setbacks were resolved with T-Mobile. Russell Hervieux replied that setbacks do not need to be addressed and applicant asked for height relief out of an abundance of caution.

Chair read into the record APCC, TRC and Planning Board recommendations:

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 another 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. The supporting equipment will be located inside of the church building. The public will not be able to see this equipment as well as any maintenance activity that will be needed during the course of business. The Planning Board feels that the proposed installation of color and texture coordinated telecommunication antennas onto the church steeple and the supporting equipment located within the church will simply blend into the existing structure. The Planning Board feels that this proposed installation will not be detrimental to the surrounding residential neighborhood. The 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 or Comprehensive Plan.

Members of the Technical Review Committee visited the site and reviewed the submitted project plans and application for a dimensional variance for height relief to attach telecommunication antennas to the existing church steeple. All other supporting equipment will be located within the existing church facility. The Planning Board recommends Approval of this application. According to the submitted plans, the proposed antennas will not be installed above the existing height of the church steeple. 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 Board feels that the dimensional variance will not alter the general character of the surrounding area and will not impair the intent or purpose of the zoning ordinance or Comprehensive Plan.

Members of the Area of Planning Concern Committee visited the site and reviewed the submitted plans and applications. The APC also held a public meeting with the applicant on March 23, 2010. 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 into the existing church steeple. The applicant proposed to install a total of three antennas into the steeple. All other equipment will be located within the existing church facility. There will be no viable components of the proposed

facility located outside of the building. Based on a site visit, submitted applications, and the public hearing, the APC finds that the proposed telecommunication installation will not alter the general character of the surrounding area and is compatible with the neighboring land uses. Therefore, the Area of Planning Concern committee voted 5 to 0 to send a positive recommendation to the Zoning Board for their consideration. The APC also wants to call to your attention that according to §260-14N, “the use shall be considered commercial construction” within a residential area.

No opposition present.

Discussion:

Member Nickerson stated the revised plan presented makes sense. Chair agreed and stated the Town looks to existing structures for the installation of antennas. It is difficult to see the existing antennas and the applicant meets all FCC guidelines and addressed the gap in coverage. It was a well presented application and all her concerns were addressed.

Motion made by Chair Karampetsos to grant the application for Use Variance and 54.2 requested height relief. She further stated:

- 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 proposed antennae will blend into the area and the equipment has been moved**

inside the building.

- The relief requested is the least relief necessary. There is an existing T-Mobile antenna on the steeple at 72 feet and there will be 10 feet separation between the two antennas.**
- The subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the Zoning Ordinance.**
- 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 for applicant is the gap in coverage. Traffic concerns have also been addressed with one trip per month for maintenance of the site.**

Motion seconded by Member Bart. Motion carried 5-0 with Members Karampetsos, McNamara, Bart, Nickerson and Enander voting aye.

Cox TMI Wireless, LLC, 1 Lacroix Drive, West Warwick, RI/St. Ambrose Church, 175 School Street, Lincoln, RI – Application for Use Variance to install three wireless telecommunication antenna and associated cables/radio equipment to existing church steeple for property located at 175 School Street, Lincoln, RI.

AP 33, Lot 003 Zoned: RL 9

Cox TMI Wireless, LLC, 1 Lacroix Drive, West Warwick, RI/St. Ambrose Church, 175 School Street, Lincoln, RI – Application for Dimensional Variance for height relief to attach three wireless

telecommunication antennas to existing church steeple for property located at 175 School Street, Lincoln, RI.

AP 33, Lot 003 Zoned: RL 9

Represented by: Edward Pare, Esquire

These applications were continued from the April agenda because of a notice issue. Russell Hervieux, Zoning Official informed the Board that abutters were renoticed and no returns were returned.

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

Wiring will be installed within the steeple and existing shingles will be replaced with fiberglass material. Small GAP antenna will be located on outside perimeter of the steeple. Antennas will not be visible from the street and they have received Historical Preservation Commission approval. Affidavit from engineer detailed what the coverage area will consist of (similar to application for proposed antenna to be located on Front Street). Applicant seeks out existing structures to install antennas. There will be no coverage overlap with the St. Jude Church, Front Street application. Antenna will be located at 57 feet to the center line and need 24.25 feet height relief.

Witness

Mark Cook. Mr. Cook has appeared before this Board on past applications and is a site acquisition agent for Cox. St. Jude Church

is located in the southeast section of Lincoln and St. Ambrose is over four miles away in the northeast section of Town. Coverage will not overlap because of their distance away from each other.

Chair read into the record recommendations:

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 by the Technical Review Committee, 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 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 or Comprehensive Plan.

Members of the Technical Review Committee visited the site and reviewed the submitted project plans and application for a dimensional variance for height relief to attach telecommunication antennas to the existing church steeple. All other supporting

equipment will be located within the existing church facility. The Planning Board recommends Approval of this application. According to the submitted plans, the proposed antennas will not be installed above the existing height of the church steeple. Based on a site visit by the Technical Review Committee, 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 Board feels that the telecommunication installation will not be detrimental to the surrounding residential neighborhood. The Planning Board feels that the dimensional variance will not alter the general character of the surrounding area and will not impair the intent or purpose of the zoning ordinance or Comprehensive Plan.

Members of the Area of Planning Concern Committee visited the site and reviewed the submitted plans and applications. The APC also held a public meeting with the applicant on March 23, 2010. 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 into the existing church steeple. The applicant proposed to install a total of three antennas into the steeple. All other equipment will be located within the existing church facility. There will be no viable components of the proposed facility located outside of the building. Based on a site visit, submitted applications, and the public hearing, the APC finds that the proposed telecommunication installation will not alter the general

character of the surrounding area and is compatible with the neighboring land uses. Therefore, the Area of Planning Concern committee voted 5 to 0 to send a positive recommendation to the Zoning Board for their consideration. The APC also wants to call to your attention that according to §260-14N, “the use shall be considered commercial construction” within a residential area.

No opposition present.

Discussion:

Chair felt the application was thoughtful in the installation of antenna on existing structures and being unobtrusive.

Motion made by Chair Karampetsos to grant the application for Use Variance and 24.25 foot requested height relief. She further stated:

- 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 proposed antennae will blend into the area.**
- The relief requested is the least relief necessary. Wiring will be located within the steeple and not visible from the street.**
- The subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the Zoning Ordinance.**
- 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 for applicant is the gap in coverage.

Motion seconded by Member Enander. Motion carried 5-0 with Members Karampetsos, Nickerson, Enander, Bart and McNamara voting aye.

Deborah Harrold, 453 River Road, Lincoln, RI – Application for Dimensional Variance seeking front and side yard relief for the construction of an addition.

AP 21, Lot 18 Zoned: RS 12

Chair informed applicant that the Technical Review Committee did not give a favorable recommendation on her application and she was concerned about the size of the addition and felt that applicant did not meet the standards for her application. Chair asked the applicant if she would consider continuing her application to the next agenda and returning with new plans. Applicant asked for a continuance to the June agenda so she could speak with her contractor and revise her plans.

Motion made by Member Bart to continue the application. Motion seconded by Member McNamara. Motion carried with a 5-0 vote.

Satish and Sunitha Nutakki, 224 Old River Road, Lincoln, RI - Application for Dimensional Variance seeking corner lot setback relief

for the construction of a deck.

AP 31, Lot 26 Zoned: RS 12

Represented by: Mark Krieger, Esquire, 132 Old River Road, Lincoln, RI

Chair asked if applicants were aware that the TRC recommended denial of this application. Attorney Krieger replied they did not know until this evening.

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

Witness

Satish Nutakki, Owner

Applicants purchased property from Gaston Contracting on February 17, 2010 and have resided at this location for one month. Did not know there was a problem with the deck until day of closing. House had a temporary certificate of occupancy. Existing deck is accessed through sliding glass. If deck is removed will need relief to build stairs to access sliding doors. Other homes in the area have decks. Applicants would be agreeable to the Board imposing conditions if application were approved.

Chair asked if applicant had ever looked at the original building plans and he replied “no”. She further asked if he had a Purchase and Sale Agreement and answer was “yes” and if he was provide with an

explanation of what could happen with the deck if the application were denied. Applicant stated he was informed he would have to come before this Board for relief to keep the deck in place. Attorney Krieger informed the Board that funds have been placed in escrow in case the deck needs to be demolished. Chair asked if the deck was there the first time he viewed the house and he replied when he saw the house in December 2009 it was there. Attorney Krieger informed the Board he did not represent applicants at their closing. The builder came to the closing and if the funds in escrow are not used they will revert back to the bank. Russell Hervieux, Zoning Official informed the Board he did not view the original house plans only the site plan. Chair asked Attorney Krieger if the deck was on the house plans and he replied he had not viewed the plans. Russell Hervieux stated the site plan in the application packet does now show house plans.

Attorney Krieger addressed the Board stating applicant is an innocent party and the requested relief is not that great considering if denied applicant needs to demolish the deck to build a patio with only 2 feet difference. Applicant viewed the property with attached deck and did not find out until the day of closing that the deck was not part of the permit. His financial loss would be great if the deck needs to be removed.

Chair read into the record recommendations:

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 corner lot setback relief for the construction of a deck. 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 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 deck has already been built on the property. According to the building official, no building permit was taken out for this structure and the construction of the deck is finished. Other options exist for the homeowner that will not require a dimensional variance. These options are installing a ground level patio. Therefore, the Planning Board feels that the applicant should remove the deck and explore the options that exist to them.

Opposed:

Richard & Donna Bentfield, 266 Albion Road, Lincoln, RI

They can see the deck from their property and feels it invades their privacy and diminished the value of their home. Deck is located about 40 feet away from their deck to the property line. A 90 foot long by 6 foot high fence would be acceptable. When the contractor built the deck he knew it was in violation and told them he would be

installing a fence/buffer for privacy.

Discussion:

Chair feels the application is disturbing in that the building intended this violation. The house was built to setbacks and the site plan does not depict windows or doors. No permit was taken for construction of the deck. If the Board were to approve the application it might set a precedent and is not sure why a temporary certificate of occupancy was issued. Member Bart agreed with statement about the builder. Member Enander agreed that the building willfully built the deck. Attorney Sylvia suggested continuing the application or denying without prejudice so applicant can return and present proposal for construction of stairs in place of removal of the deck. Chair agreed. Attorney Krieger asked that the application be continued to the July agenda.

Motion made by Member Enander to continue the application to the July agenda. Motion seconded by Member McNamara. Motion carried with a 5-0 vote.

Minutes

Chair continued approval of the March and April Minutes to the June meeting.

Motion made by Member Bart to adjourn the meeting. Motion seconded by Member McNamara. Motion carried.

Respectfully submitted,

Ghislaine D. Therien

Zoning Secretary