

**Town of Lincoln**

**Zoning Board of Review**

**100 Old River Road, Lincoln, RI**

**Minutes of August 3, 2010 Meeting**

**Present: Jina Karampetsos, John Bart, Mark Enander, David DeAngelis, Bernard McNamara, Lori Lyle, Joelle Sylvia (Solicitor)**

**Excused: Barry Nickerson**

**Minutes**

**Motion made by Member Enander and seconded by Member McNamara to continue acceptance of the July 2010 Minutes to the September agenda. Motion carried with a 5-0 vote.**

**Correspondence**

**None**

**Other:**

**Chair informed Board Members that tonight would be Attorney Joelle Sylvia last meeting and wished her much success on her new endeavors.**

**Applications:**

**Cox TMI Wireless, 1 Lacroix Drive, West Warwick, Rhode Island – Application for Use Variance for additional antenna to existing tower**

**located at 28 Breakneck Hill Road, Lincoln, RI.**

**AP 25, Lot 58 Zoned: RA 40**

**Represented by: Mr. Paynter, Cox Representative**

**Chair informed applicant that the Area Planning Concern Committee (APCC) had not had an opportunity to review the application and could not offer a recommendation. Mr. Paynter was not aware application needed to be reviewed by APCC. Chair told him Cox recently had other applications before this Board and they were aware of this requirement. Russell Hervieux, Zoning Official informed applicant that if they can get application to Town Planner within the next week for review they could be heard at the September meeting. Applicant asked for a continuance.**

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

**Satish & 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**

**Attorney for applicant stated new plans had been submitted to the**

**Board for review listing property/lot dimensions as requested at the last meeting. The deck at the rear of the property had been constructed two years ago prior to applicant purchasing it. Applicant did not find about the illegally built deck until the day of the closing. A neighbor had testified that builder knew he was in violation when he constructed the deck and the town was also aware of the situation.**

**Chair stated the issue of the illegal deck arose when a certificate of occupancy could not be issued. Attorney replied that the Tax Assessor records show that the property was assessed for two years with a deck on site. Applicant was not aware of the violation until he sat down at the closing.**

**Chair stated she was not sure if the issues address the dimensional standards. Provisions to withhold funds were made at the closing and applicant still closed knowing there was an issue. Solicitor informed the Board that the public part of the hearing was closed with abutters speaking in opposition of the application and the Board should not accept any new evidence on the matter. Attorney for applicant stated he did not recall any testimony in opposition to the application and had not had an opportunity to cross examine anyone.**

**He also had no objection to renote in order to submit new evidence. The building envelope is the entire house. Solicitor Joelle Sylvia stated it would be better to continue the application and amend it. Chair asked Attorney Krieger if he would like to proceed with the amended application or continue the matter to the September agenda to renote everyone. Attorney Krieger asked for time to confer with**

his client. Chair stated she would hear the next application.

**Gregory & Melissa Moore, 111 Jenckes Hill Road, Lincoln, RI – Application for Dimensional Variance seeking height relief for an accessory building.**

**AP 26, Lot 196 Zoned: RA 40**

**This application was continued from July’s Zoning Board hearing. Chair read into the record standards that need to be met for a Dimensional Variance. Member DeAngelis sat on this application.**

**Applicant made improvements to the home in 2001. He thought contractor had pulled permits for all the renovations but only pulled permit for the addition and not the shed. Submitted into the record correspondence from Alvin Tucker dated May 28, 2010 in favor of application (Exhibit #1). Applicant did not witness the signature. A permit was pulled for an inground pool on site. Neighbor complained about water runoff and Russell Hervieux, Zoning Official went to the site and saw the shed but could not find a permit on file for same. The addition and shed were built one month apart. Applicant asked contractor how much it would cost to shorten the roof height of the shed and the estimate was \$13,000. Shed is 2 stories high and is used strictly for storage with access to the second floor. Shed matches existing house. He did not have a written contact with builder – verbal agreement.**

**Chair read into the record Technical Review Committee (TRC) 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 seeking height relief for an accessory building. The site visit and application review noted that the accessory building has already been built. The Board feels that the application does not meet any of the standards for relief of a dimensional variance as presented in the Zoning Ordinance. The applicant did not offer any reasoning why the building can not meet the code. The Planning Board noted that modifications to the existing roof can be made that will enable the building to meet the zoning code. Therefore, 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.**

**Chair asked applicant if he had any discussions with contractor about fixing the problem as he had not pulled permit for shed construction. Applicant replied he had not spoken with him.**

**In Favor:**

**Karen Coopersmith**

**She felt any variance would not impair the area or affect the**

neighbors. The shed is pleasing and fits into the landscaping of the property. The neighbors have no objection and applicant was not aware that a permit had not been pulled for the work.

**Discussion:**

Chair stated this was a difficult application. She drove by the site and saw the shed. Felt if written plans had been submitted it would have shown the roofline was too high at 19 feet.

Chair made a motion to deny the application for height relief.

- The hardship from which the applicant seeks relief is not due to the unique characteristics of the subject land or structure. Applicant has not met the standards for Dimensional relief.
- 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. Contractor was an agent of the applicant and as such he is responsible.
- The granting of this variance will 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 not the least relief necessary. Applicant can reduce the roof height.
- The hardship does not amount to more than a mere inconvenience. Roof height can be lowered.

Motion to deny seconded by Member Enander. Motion to deny

carried with a 5-0 vote.

**Satish & 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**

**Attorney Krieger informed the Board applicant would like to proceed  
with the application. The new plans submitted to the Board show  
removal of the deck, installation of 3.5 foot stairs leading to a slab  
where deck is currently located. Deck will be removed and cement  
slab installed. What applicant is requesting is the least relief to use  
slider doors as egress to the proposed patio slab. If the application  
were denied applicant would not be allowed legal permitted use.**

**Chair read into the record TRC recommendation:**

**Members of the Technical Review Committee visited the site and  
reviewed the submitted revised plans and application. The Planning  
Board recommends Approval of the application for a corner lot  
setback relief for the construction of a patio. The applicant revised  
their plans which deleted the original deck and replaced it with a  
ground level patio. The proposed steps to access the patio would  
extend 3.5 feet from the house. The Planning Board feels that the  
revised site plan and application represent the least relief necessary**

**and is due to the unique characteristics of the subject land. 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.**

**No opposition present.**

**Motion made by Member Enander to grand 3.5 foot relief to allow access of stairs to ground level at rear of property from slider doors where deck is to be demolished. 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. Deck is being demolished to comply with town standards.**
- 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 McNamara. Motion carried with a 5-0 vote.**

**Terrence J & Darlene McManus, 8 Samuel Stevens Drive, Lincoln, RI – Application for Dimensional Variance seeking for side yard setback for the construction of an addition.**

**AP 29, Lot 127 Zoned: RA 40**

**Chair read into the record standards that need to be met for a Dimensional Variance. Member DeAngelis sat on this application.**

**Applicants want to expand the master bedroom and install a bathroom. The house is a 1955 style ranch and it is his childhood home which he purchased from his father. Exterior of addition will match existing house and they plan on residing entire structure.**

**Chair read into the record TRC recommendation:**

**Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The Planning Board recommends Approval of this application. The Planning Board feels that the proposed design and layout of the proposed addition is due to the unique shape of the existing lot. The Planning Board finds that the applicant presents a realistic site layout that meets the intent of the zoning and fits with the character of the surrounding neighborhood.**

**In Favor:**

**John Perreira, Neighbor**

**Has no problem with proposed addition.**

**No opposition present.**

**Motion made by Member DeAngelis to grant relief of 22 feet side yard, 4 feet on the east side and 25 feet from the garage 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. Applicant wants to build an addition and bring existing non-conforming structure into compliance.**
- 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 is seeking to improve the property.**
- 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. Applicant wants to expand master bedroom and add a bathroom.**
- 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. Applicant is looking to modernize the**

property.

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

**First Facility Lincoln LLC, c/o Richard R. Ackerman, 191 Social Street, Woonsocket, RI – Application for Use Variance for the installation of signage at the intersection of Albion Road and George Washington Highway, Lincoln, RI.**

**AP 41, Lot 44 Zoned: BL 0.5**

**Represented by: Richard Ackerman, Esquire**

**Chair read into the record standards that need to be met for a Use Variance. Member DeAngelis sat on this application.**

**Three years ago applicant was granted a special use permit to construct an Alzheimer's facility on Albion Road. Visitors have difficulty locating the facility because there is no signage at the end of the street at Route 116. There are two Albion Roads in Lincoln – this site is the one located behind the Lincoln Mall. Applicant is aware that the TRC voted to deny the application because they did not want to set a precedent for commercial signage. The proposed sign would be located on Town of Lincoln property and the Town Administrator is agreeable to a one year proposal for this signage.**

**Member Bart recused himself from this application because his company has a financial interest working with the applicant.**

**Witness:**

**Herbert George, Owner**

**This facility serves Cumberland/Lincoln/Woonsocket population. The facility employs 40 and is a special trained staff. This is the only Alzheimer facility in the State of Rhode Island. Submitted into the record packet including 11 photos of the site (Exhibit #1). Signage is necessary because visitors cannot find the site and often drive by only to make a u-turn down the road and return. The facility has been there for seventeen months. Submitted into the record a letter from an abutter, Richard Barbieri in favor of application. Letter was mailed to him and he did not witness the signature. Signage was not discussed at the permit stage of the project because he did not think it would be necessary. Sign will be approximately seventy-five feet from Rt. 116, white, two sided and thirty inches high by eight feet long. No exterior lighting will be used. There are no set visiting hours. Applicant has exhausted all other signage options.**

**Chair read into the record TRC recommendation:**

**Members of the Technical Review Committee visited the site and reviewed the submitted application for use variance for the installation of signage at the intersection of Albion Road and George Washington Highway. According to section 260-37 C (4), a use variance is needed if a proposed sign is proposed to be located on a parcel of land other than the lot that the use is performed. The Planning Board recommends Denial of this Use Variance application.**

**Currently, the property has one freestanding sign at the entrance of the property. The application does not present any hardship for needing additional signage on another property nor does it satisfy any other standard of relief required for a use variance. The Planning Board feels that allowing this use variance will set persistence for other commercial property owners. The Planning Board feels that this use variance will impair the intent and purpose of the zoning ordinance and the Comprehensive Plan.**

**Discussion:**

**Chair was concerned about the Town's position with this signage. The Board cannot put a time limit as a condition on the application. Feels the Town should make another recommendation or stand on what is being submitted this evening.**

**No opposition present.**

**Chair asked if the applicant would be willing to continue the application to the September agenda for clarification purposes. Applicant was agreeable.**

**Motion made by Member Enander to continue the application to the September agenda. Motion seconded by Member Lyle. Motion carried with a 5-0 vote.**

**Preferred Towing Recovery & Auto Sales LLC c/o Christine Marie**

**Labbe, 296 Angell Road, Lincoln, RI – Application for Use Variance for sale of repossessed vehicles at property located at 147/149 Reservoir Avenue, Lincoln, RI.**

**AP 06, Lot 347 Zoned: BL 0.5**

**Represented by: John Bevelaqua, Esquire**

**Although application was only noticed for a Use Variance, Attorney asked that two applications be heard. The Use Variance for the sale of automobiles and a Special Use for the storage of vehicles at the site. Chair was agreeable.**

**Chair read into record standards that need to be met for a Use Variance and Special Use Permit and stating application would be proceeding without TRC recommendations.**

**No modifications will be done to the existing building. In 2001, applicant purchased the property to operate a commercial towing operation under the name of Mobility Auto Sales LLC. Submitted into the record License as Exhibit #1. In 2003 a license was issued for towing use. Applicant currently has contracts with local institutions for repossession and sale of vehicles. State law allows the sale of vehicles is not claimed after towing. The use variance would allow for the sale of towed vehicles in storage. Preferred Towing is a LLC and Mobility has been dissolved. The license expired in 2004 but has been renewed.**

## **Witness**

**Mark Labbe, OwnerT since 2003 at which time he applied for a license and received Town Council approval. He never received a notice to renew his license from the Town of Lincoln. He came to town hall and was informed there was no license on file. He then spoke with Russell Hervieux, Zoning Official who told him to cease and desist selling vehicles. No vehicles have been sold since that time and they are all in storage. He was informed he needed a Use Variance to sell cars. There are other commercial properties in the area. A zoning change was passed in 2007. The RI Public Utilities Commission regulates towing and sale of vehicles. After days in storage, an ad is placed in the paper giving date public sale will be held. They do a lot of repossession work of vehicles that are in excellent marketable condition. Submitted into the record letter from the Town dated July 11, 2006 regarding zoning designation change as Exhibit #3. They also have different offsite storage locations to accommodate the overflow of vehicles. Vehicles on site are stored behind a locked fence and people are not allowed to enter because of insurance. They have never been served with any violations. In 2009 they were informed by the State that they needed a letter from zoning stating they were in compliance. A dealer's license is not required because they do not sell enough cars. In 2009 the state reinspected the property and they were told they should have dealership papers. They went top the Dealer's Commission before coming before Zoning. The company has a Rhode Island sales tax permit for Preferred Towing but they do not collect any sales taxes. There are**

**nineteen oversized parking spaces at the site. Discount Scooters which is vacant and located next door is also owned by applicant. They are contemplating also using that space in the future with same office size as Preferred (30'x35'). No additional employees – just applicant and his wife.**

**Attorney Joelle Sylvia stated they would need to obtain clarification on the number of parking spaces at the site – if nineteen was enough or if more was required. Attorney for applicant stated they would be willing to continue the application to the next agenda and return with a parking study.**

**Chair read into the record TRC recommendation for the Use Variance: Members of the Technical Review Committee visited the site and reviewed the submitted application for use variance for the sale of repossessed vehicles at property located at 147/149 Reservoir Avenue. The Planning Board recommends Denial of this use variance application. The existing property contains several existing retail businesses and their associated parking spaces per zoning. All of these businesses utilize one access point to and from Reservoir Avenue. The Planning Board has serious concerns about safe internal vehicular movement due to the limited size and layout of the property. The Planning Board also has concerns about the applicant's ability to continue to meet our parking requirements. The site plan provided in the application was not to scale. The application does not present any hardship or reasoning as to the need for neither**

**a use variance nor does it satisfy any other standard of relief required. The Planning Board feels that this use variance will impair the intent and purpose of the zoning ordinance and the Comprehensive Plan.**

**No opposition present.**

**In Favor:**

**Romeo DeCosta**

**He owns the property located behind Preferred Towing. Has been there 13 years and has no issues with applicant. They have been good neighbors.**

**Motion made by Member DeAngelis to continue the applications allowing the TRC to submit their recommendation for the Special Use permit. Motion seconded by Member McNamara.**

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

**Motion made by Member Enander to adjourn the meeting. Motion**

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

**Respectfully submitted,**

**Ghislaine D. Therien**

**Zoning Secretary**