

Town of Lincoln

Zoning Board of Review

100 Old River Road, Lincoln, RI

Minutes of September 6, 2011 Meeting

Present: David DeAngelis-Chair, Mark Enander, Barry Nickerson, Lori Lyle, John Barr, Ronald Del Vecchio, Anthony DeSisto, Esq. (Town Solicitor)

Excused: John Bart

Minutes

Motion made by Member Enander to approve Minutes from the August 2, 2011 meeting as presented. Motion seconded by Member Del Vecchio. Motion carried by all present.

Correspondence:

Chair read into the record correspondence from Reverend Richelle Russell and Dr. Paula Carmichael dated August 10, 2011 thanking the Board for denying the application of Gloria Cavanaugh at the August meeting.

Applications:

Jeanne Poirier, P.O. Box 284, Millville, MA – Application for Dimensional Variance to correct existing dimensional non-conformities on house and garage as part of a subdivision for

property located at 141 Old Main Street, Manville, RI

AP 36, Lot 75 Zoned: RG7

Member Barr recused himself from this application because he had performed work in the past for this applicant. Members Del Vecchio and Lyle sat on this application with full privileges.

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

Property is now a 2-family and applicant wishes to subdivide and create an empty lot in case she wants to do something with the property in the future. She has had the lot surveyed. Attorney DeSisto informed the Board that applicant had visited the Planning Board on this matter and received conditional master plan approval but needs dimensional approval from the Zoning Board to correct existing non-conformance issues. She is seeking 9.4 feet rear relief and 2 feet front relief for the stairs. Russell Hervieux, Zoning Official informed the Board applicant needs relief on the garage – southwest corner 1.7 feet to the property line and southeast corner of 1.6 feet to the property line. A detached structure needs 6 feet.

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

Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The proposed

dimensional variance is to clear up pre-existing non-conforming variances of record associated with the existing house and garage. The proposed subdivision has not created the need for the applicant to request dimensional relief. However, it is the Town's policy to clear up any pre-existing variances on a property when the property owner seeks permission to do something to their property. The Planning Board recommends Approval of this application. The Planning Board feels that the proposed subdivision has not created the need for dimensional variances. The variances represent pre-existing dimensional non-conformities on the house and garage. 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.

No opposition present.

Motion made by Member Nickerson to approve the Dimensional Variance application for 4.3 feet side relief southwest corner of garage; 4.4 side relief from the southeast corner of garage; 9.4 feet rear relief for bulkhead door of house; and 2 feet front relief for stairs of house. 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 Enander. Motion carried by all present.

Christopher R. Kirby, 32 Wilbur Road, Lincoln, RI – Application for Use Variance seeking relief to construct an accessory structure (garage) in the front yard.

AP 27, Lot 40 Zoned: RA 40

Christopher R. Kirby, 32 Wilbur Road, Lincoln, RI – Application for Dimensional Variance seeking side and rear yard relief for the addition of a covered porch on existing house and side relief for the construction of a garage.

AP 27, Lot 40 Zoned: RA 40

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

Member Lyle sat on this application with full privileges. Chair read into record standards that need to be met for both applications.

Attorney Shekarchi addressed the Board asking that both applications be heard as one. Attorney DeSisto informed the Board the applications should be heard separately as the second application is dependent upon approval of the first. Chair concurred that the applications should be heard separately.

Use Variance Application

Attorney Shekarchi submitted into the record photos of the house as Exhibit #1 and garage as Exhibit #2.

The Use Application is to construct a new 24'x24' garage on a legally permitted lot. The porch needs 41 feet rear relief, 33.3 feet each side of the house, and would result in 94% lot coverage. Existing accessory structure will be demolished and replaced with a new two-car garage. Property has Town water and sewer.

Witness

Edward Pimentel, AICP

Mr. Pimentel has testified before this Board as an expert on past applications. Motion made by Member Lyle and seconded by Member Enander to accept Mr. Pimentel as an expert in his field. Motion carried by all present.

The proposed accessory structure is permitted with limitations of no more than 15 feet in height and 500 sq. feet. It is his opinion that the garage is an accessory use to the single family dwelling. He does not feel the use variance relief is required. The garage is a permitted use in this zone for this type of property.

Attorney DeSisto asked if he was saying the application does not meet Use Variance standards. Will an argument be made or any evidence be presented for the Use Variance? Section 260-28(B) prohibits an accessory structure in the front yard. Chair stated the Board will act as if there is a use issue for the construction of a garage.

Mr. Pimentel informed the Board there is no existing easement on the property and the garage will be used for storage space. He looked at 100+ properties in the area and garages are commonplace. Average garage is 636 square feet. The actual proposed 24'x24' garage footprint with the overhang is 576 square feet. The lot is bowling alley shaped. Average lot sizes in the area is 1.81 acres. The lot in question was established in the 1800s as was the house. The proposed wrap around porch will remain open. Submitted into the record photos of existing garages in the area as Exhibit #3. Mr. Pimentel referred to page 6 of his report which listed relief applicant is seeking.

Russell Hervieux, Zoning Official addressed the Board stating the

relief listed on Mr. Pimentel's report was incorrect. This lot is substandard and side and rear dimensions are allowed to be reduced creating a buildable envelope on the property.

Attorney Shekarchi and Mr. Pimentel asked for a short recess so they could meet with Mr. Hervieux and review the plans and return before this Board seeking proper dimensional relief.

Meeting adjourned at 7:44pm. Meeting reconvened at 7:57pm.

Upon returning, Attorney Shekarchi and Mr. Pimentel concurred with Mr. Hervieux that applicant should be asking less relief for the porch and no relief for the garage. 21% of the principal setbacks and reducing the garage to 20'x24' would cure all dimensional criteria. As a result, no dimensional relief would be required other than what may be a lot coverage issue. The porch would require no rear yard relief and 5.65 feet off both sides. If approved, a condition could be placed on the record that the porch would not be enclosed. Mr. Hervieux stated the condition is an enforcement issue for future owners which he is not in favor of.

Attorney Shekarchi introduced into the record notarized correspondence from Edward Bakleh, 32 Wilbur Road, Lincoln, RI and Vicki Burke, 32 Wilbur Road, Lincoln, RI as Exhibit #4 and #5 stating they had no objection to the applications.

Chair read into the record Planning Board/Technical Review Committee 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 use variance to construct an accessory structure (garage) in the front yard. The Planning Board feels that the application does not meet all of the standards for relief of a use variance as presented in the Zoning Ordinance. The Planning Board feels that the proposed garage size and location is not the least relief necessary. More specifically, the proposed garage size will reduce access to the existing house located in the rear portion of the property. The access path between the proposed garage and the property line would be reduced to 10 feet 4 inches. Members of the Planning Board raised concerns about how accessible the house would be in cases of emergency.

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 dimensional variances seeking side and rear yard relief for the addition of a covered porch on the existing house and side relief for the construction of a garage.

The Planning Board feels that the application does not meet all of the standards for relief of a dimensional variance as presented in the Zoning Ordinance and that the proposed size of the covered porch and garage are not the least relief necessary. More specifically, the

proposed garage size will reduce access to the existing house located in the rear portion of the property. The proposed covered porch will almost eliminate access to the back of the house. The Planning Board feels that the proposed sizes and locations of the covered porch and garage are excessive and may create safety issues in the future. The Planning Board feels that the applicant can easily downsize both structures and gain the same benefits they are seeking with the proposed structures.

In Favor:

Mark Fiero, 1896 Louisquisset Pike, Lincoln, RI

Saw the proposed plans and has no problem. He is an abutter and property lines run east of his land.

Paula Plouffe, 33 Wilbur Road, Lincoln, RI

She lives across the street from applicant. She saw the plans and feels they do not impact her property.

Thomas Lisi, 14 Wilbur Road, Lincoln, RI

He has known applicant for 20 years. He feels they are an asset to the neighborhood. His house does not have a garage or basement.

Opposed:

Gregory Dale, 36 Wilbur Road, Lincoln, RI

He found errors on the application. The existing accessory structure is a shed not a garage. The dimensions on the plans show 8,000

square feet but has been published as being 9,168 square feet in the past. The lot has been misidentified on all the applications. He is most affected by the application and his property is to the west.

Mr. Hervieux informed the Board that the Tax Assessor's office shows the lot as being 8,050.62 square feet. The lot is listed as being 8,450 in Mr. Pimentel's report and asked that the applicant supply new survey plans with accurate square footage if the application is continued. The plans before this Board are not 100% accurate.

Mr. Dale stated he felt the applicant was running a lawn care business from this site and that may be why he wanted to construct a garage to store the equipment. He has photos of what equipment was currently being stored on the property. Applicant referred to the proposed porch as a mere cosmetic work to the house. Part of the existing driveway on Lot 81. There is an elm tree on applicant's property that is also on his property. The left side of applicant's house cannot be maintained without coming onto his property. Emergency services could not access the rear of the house if they needed to respond. Submitted into the record photos of applicant's property as Exhibit #6. The house was originally a milk shed and became a house in the 1940s.

Chair asked Mr. Hervieux if there was language in the ordinance regarding sheds and garages. Mr. Hervieux replied that sheds and garages are considered accessory structures. Mr. Dale replied the

Planning Board informed him it makes a difference. Member Barr asked if a car could pull into the existing shed and applicant replied no. Chair asked Mr. Shekarchi what was the actual purpose of the existing shed. Applicant replied it has a number of uses. Chair asked if he stored lawn care business equipment and the reply was “no”. He is a full time firefighter.

Mr. Dale informed the Board that a couple of weeks ago vehicles and equipment disappeared from the property, possibly in anticipation of the hearing. Applicant advertises lawn care services in The Valley Breeze and a sign that was placed on his front lawn has been removed. A retaining wall was erected after applicant purchased his property. Applicant also did not like a chain link fence on Mr. Dale’s property and asked him to take it down.

Chair made a motion to deny the application for Use Variance for the construction of a garage. Motion to deny seconded by Member Enander. Motion to deny carried with a 5-0 vote.

Dimensional Variance Application

Motion made by Chairman DeAngelis to approve the Dimensional Variance application for 6.35 feet northwest corner; 5.55 feet southwest corner; 4.95 feet northeast corner; 5.65 feet southeast corner; and, 16.2% lot coverage for the construction of a covered front porch with a condition that the porch remain open and not enclosed. 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**

Russell Hervieux, Zoning Official stated that the 16.2% includes an existing shed with no requirement to remove the shed.

Motion to approve seconded by Member Nickerson. Motion carried by all present.

Motion made by Member Enander to adjourn the meeting. Motion seconded by Member Nickerson. Motion carried by all present.

Respectfully submitted,

Ghislaine D. Therien

Zoning Secretary