

Town of Lincoln

Zoning Board of Review

100 Old River Road, Lincoln, RI

Minutes of April 2, 2013 Meeting

Present: David DeAngelis-Chair, John Bart–Vice Chair, Mark Enander, Stephen Kearns, Lori Lyle, John Barr, Barry Nickerson, Anthony DeSisto, Esq. (Town Solicitor)

Minutes

Motion made by Member Bart to accept the February 2013 Minutes as presented. Motion seconded by Member Enander. Motion carried by all present.

Correspondence

Motion to Reconsider - Michael V. St. Martin, 3 Longmeadow Road, Lincoln, RI – Application for Dimensional Variance seeking rear yard setback relief for the construction of a deck.

AP 28, Lot 92 Zoned: RA 40

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

The application was originally placed on the January 2013 agenda. Mark Krieger, Attorney for the applicant, was present and requested the application be continued to the February 2013 agenda. At that

meeting, the application was called for presentation by the Chairman – no one was present on behalf of the applicant to present the application because Attorney Krieger thought the hearing date was the following week. There were no notice issues. By majority vote, the Board denied the application due to lack of testimony.

Chairman read into the record applicant's Motion to Reconsider the vote denying the application. Attorney Shekarchi requested that the Board allow applicant to reapply. Town Solicitor Anthony DeSisto stated that no decision had yet been drafted or filed and the Board can entertain applicant's request to reopen the application and readvertise and renote. Member Bart felt the Board should consider applicant's request.

Motion made by Member Bart to place the application on the April agenda. Motion seconded by Member Barr. Motion carried by all present.

Applications:

BAM Realty LLC, 7 Industrial Drive South, Smithfield, RI – Application for Special Use Permit to allow an indoor recreational use of a party venue for property located at 40 Walker Street, Lincoln, RI.

AP 2, Lots 84/96 Zoned MG 05

BAM Realty LLC, 7 Industrial Drive South, Smithfield, RI – Application

for a Use Variance to allow parking on another lot other than the lot where the use is taken place. Proposed parking on lot 96 for use on Lot 84, Walker Street, Lincoln, RI.

AP 2, Lots

84/96 Zoned MG 05

Represented by: Attorney Robert Hurley

Chair read into the record correspondence to Russell Hervieux, Zoning Official dated April 2, 2013 requesting the applications be continued to the May agenda – this would be the third continuance for these applications. Applicant has met with Russell Hervieux, Zoning Official and the Town Planner and are awaiting a new site plan. Member Barr asked why there has been three continuance and still no updated site plan. Attorney for applicant replied he did not know but guaranteed there would be a site plan ready for the May meeting. Attorney DeSisto informed the Board they could place a condition on this latest request for a continuance that there will be no further continuances. If the application is denied without prejudice applicant could refile but there would be a need for a new filing fee. Attorney Hurley stated he had no problem with that condition being in place. He further stated that there is no financial issue that the site plan is not ready.

Motion made by Member Enander to continue the applications to the May agenda with a condition that this would be the last continuance. Motion seconded by Member Nickerson. Motion carried by all present with a condition in place.

Deborah A. Ingham, 15 Spring Green Road, Lincoln, RI – Application for Special Use Permit to add an attached accessory family dwelling unit to the existing single family house.

AP31, Lot 116 Zoned: RS-12

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

They purchased house in 2007 with an existing in-law apartment currently occupied by parents. Applicant was not aware she needed a permit for the apartment and that is reason she is present. There is adequate parking at the site.

Chairman informed applicant that if approved she would need to file an annual affidavit with the Town stating the individuals occupying the in-law apartment is a direct relative and no rental income was being received. He also informed her she needs to come before this Board every five years for renewal.

In favor:

William DiBiasio

He is an abutter to the property and stated they are good neighbors.

Carol Delisle

Stated to the Board that they are good neighbors and there is

adequate parking at the site.

No opposition present.

Chairman 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 Approval of the Special Use Permit for the Accessory Family Dwelling Unit. The applicant submitted plans that would incorporate a proposed interior modification to the existing house. The interior modification and original house 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 Nickerson to approve the application with a conditions that applicant file an annual affidavit with the Town Clerk stating the in-law apartment is occupied by a relative and also return before this Board every five years for renewal of the use.

Motion seconded by Member Enander. Motion carried by all present.

Presidio Partners, LLC, 1092 Great Road, Lincoln, RI – Application for Dimensional Variance seeking front and side yard relief for the

construction of a new home on a vacant lot located on Presidential Way.

AP 26 Lot 129 Zoned: RA 40

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

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

The original building envelope was established back in 2006. Administrative subdivision was approved and recorded. Applicant needs 11.76 feet relief from front to the stairs and 32.92 feet side yard relief. New survey different from that originally filed with the application (8 foot silt fence).

Submitted new site plan into the record as Exhibit #1. Chairman stated that the building envelope demonstrated on the new site plan will dictate relief.

Witness

Edward Pimentel

Current owner was advised he get administrative subdivision because it is a corner lot. Wetlands buffer the property and it is a contiguous wetland area. Only 3% of the lot is buildable. There are a lot of things wrong with this subdivision. Mr. Robidoux recommended building 8 feet from the silt fence.

Member Bart asked why not develop a house to fit on the existing lot. Russell Hervieux, Zoning Official stated the Planning Board never approved any restrictions and covenants were put in place. The Town cannot enforce covenants and they do not get brought into the planning process. Member Bart stated nothing says that a smaller house can be built on the lot. Russell Hervieux replied that was correct and this lot meet the 40,000 sq.ft. dry area. There are 3,000 sq.ft. homes in the area.

Witness

Steven Filippi, Owner

There are trees at the rear of the property and they cannot be cleared because of wetlands. Chairman asked him to clarify location of the 8 foot silt fence on the site plan. Chairman stated the Board needs to know what will be removed after construction. Owner stated restrictions were put in place after some 3,000 sq.ft. homes were built and that the Planning Board approved the restrictions.

Attorney DeSisto did not agree that the building envelope was approved by the previous owner and understands restrictions are based on the building envelope. The issue before the Board are:

- Applicant wants to build this size house**
- This is a straight dimensional variance case**
- Needs to use dimensional variance relief to build**

Chairman stated it seems from the present application before this Board that owner was misled and that the building envelope could accommodate a smaller structure. Chairman asked what weight does any Planning Board decision have. Russell Hervieux replied the Planning Board has no authority and cannot approve setbacks. Attorney DeSisto stated this is a dimensional variance request and applicant needs to meet the standards but the Board needs evidence before they render a decision – mass and size matters. Member Barr asked if neighbors have been notified of what is being proposed and Attorney Shekarchi replied in the affirmative. Member Keans asked if applicant could be more creative with the house design so it could fit into the envelope and did applicant have any alternate plans. Mr. Pimentel informed the Board that homes in the area are affluent. The hardship is that the lot is in excess of three acres and only 3% is buildable.

Chairman stated if the problem is with least relief necessary and why not seek relief on the front and less on the side. Applicant can do more with less and would like to see documentation that all options have been addressed. Chairman would like to see this application continued and hear the house designer testimony so the Board can get answers before rendering a decision. Applicant agreed to a continuance.

Chairman made a motion to continue the application to the May

agenda. Motion seconded by Member Enander. Motion carried by all present.

Motion made by Vice Chair Bart to adjourn the meeting. Motion seconded by Member Barr. Motion carried by all present.

Respectfully submitted,

Ghislaine D. Therien

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Recording Secretary