

**Town of Lincoln**

**Zoning Board of Review**

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

**Minutes of June 4, 2013 Meeting**

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

**Excused: Lori Lyle**

**Minutes**

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

**Correspondence**

**Applications:**

**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**

**This application was continued from the May 2013 agenda. Applicant employed a surveyor and showed Board members photos of the site. Clerk could not see photos during applicant's presentation. The size of the proposed deck is dictated by the elevation of the land. The old deck was over 1,800 sq.ft. and legal non-conforming. Abutters to the property are supportive of relief applicant is asking for...**

**Chair read into the record Technical Review Committee/Planning Board recommendation: Members of the Technical Review Committee visited the site and reviewed the submitted plans and application. The subject deck has been partially constructed without a building permit. The Planning Board recommends Denial of the application for a dimensional variance seeking rear yard setback relief for the construction of a deck. The Planning Board feels that the requested variance of 45 feet is excessive and that the application does not offer any compelling reasoning for this request. The submitted application does not meet any of the standards for relief of a dimensional variance as presented in the Zoning Ordinance. Land slopes at the rear of his property**

**However, the Planning Board did notice on the plans and during the site visit, that the applicant has sufficient room within the property's setbacks to re-orientate the deck in which a way that may require significantly less dimensional relief. The Planning Board feels that the current site plan and application does not represent the least**

**relief necessary and is not due to the unique characteristics of the subject land.**

**No opposition present.**

**Motion made by Chairman DeAngelis to grant application seeking 18.33 feet rear relief on the northeast corner; 2.81 feet rear on southeast corner; 38.46 feet rear northeast corner of proposed deck; and 45.73 feet rear southeast corner of proposed deck. 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.**

**Motion seconded by Member Bart. Motion carried by all present.**

**Joseph A. Turenne, 175 Hazel Street, Lincoln, RI – Application for**

**Special Use Permit for an accessory family dwelling unit (in-law apartment) within an existing home located at 1 Cedar Path, Lincoln, RI.**

**AP 45, Lot 82 Zoned: RA 40**

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

**Applicant purchased property with daughter so he can live with her. There will be no changes to the exterior of the house only interior modifications. There will be two means of egress.**

**Chairman read into the record Planning Board/TRC 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 submitted plans that would incorporate a proposed interior modification within 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**

**No opposition present.**

**Motion made by Member Bart to approve the application for Special Use Permit. He further stated:**

- That the Special Use is specifically authorized under this Ordinance**
- 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**
- That the granting of the Special Use will not impair the intent or purpose of this Ordinance nor the Lincoln Comprehensive Plan**

**Motion seconded by Member Nickerson. Motion carried by all present.**

**Sundar Sundaram, 1889 Old Louisquisset Pike, Lincoln, RI – Application for Dimensional Variance seeking front and rear relief on existing house for the construction of a deck on the rear of the property.**

**AP 27, Lot 71 Zoned: RA 40**

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

**Property runs along Route 146. The State took approximately 50 feet of frontage by eminent domain in early 1990's. Applicant presented**

**Board with copy of a map indicating the taking of the property by the State. Applicant purchased the property in 2000. Proposed deck would be located at the rear of the house.**

**Russell Hervieux, Zoning Official informed the Board that the lot does not front on Old Louisquisset Pike and is legal non-confirming structure. The deck will be 12 feet by 66 feet including the stairs. Applicant needs 22 feet front relief; 2.25 feet rear relief from the proposed deck; and 949 square feet on lot coverage.**

**Chairman read into the record Planning Board/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 according to the submitted plans for a dimensional variance from the front yard and rear yard setbacks for the construction of a deck on the rear of the property. The front yard dimensional variance was created when the State of Rhode Island, Department of Transportation took a portion of the property's front yard by eminent domain for the construction of Route 146. The proposed rear yard dimensional variance is needed for the proposed deck. The Planning Board finds that the applicant presents a realistic site layout that meets the intent of the zoning and is the least relief needed. The Board feels that granting the dimensional variances will not impair the intent or purpose of the Zoning Ordinance, nor the Comprehensive**

**No opposition present.**

**Motion made by Chairman DeAngelis to grant the Dimensional variance for 22 feet front relief; 2.25 feet rear relief from the proposed deck; and 949 square feet on lot coverage. 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.**

**Motion seconded by Member Barr. Motion carried by all present.**

**International Café, 1526 Old Louisquisset Pike, Lincoln, RI/Elia Nassios, 1 Riote Road, Smithfield, RI – Application for Dimensional Variance seeking parking relief for restaurant with expansion.**

**AP 42, Lot 19 Zoned: BL 05**

**Represented by: Joseph Tudino, Esquire, 915 Smith Street, Providence, RI**

Property is located 200 feet from Twin River Casino entrance. The restaurant has seating for 80 patrons and applicant would like to expand onto a patio.

**Witness:**

**Louis Calcogni, Surveyor**

He visited the site and prepared a survey of the parking area and building and has also spoken with Arthur Jacques who is the Fire Marshall regarding total capacity number for the site including the patio. Patio is 100 feet x 60 feet and would seat 70 additional patrons.

There are 33 existing parking spaces of which 2 are handicap for a total of 35 parking spaces. Additional parking cannot be added because a brook abuts the property.

Attorney DeSisto stated the Town considers the building a non-conforming use. The application calls for 80 seating and including the patio would bring seating to 150. Number of parking spaces should be based on 80 or the total capacity of the building. Russell Hervieux, Zoning Official informed the Board that a capacity of 150 would be determined by the fire code and the Board needs to look at the total square footage of the building. Zoning code requires one parking space for every four people plus employees. Applicant would need to provide parking for the number of parties in the building. Expansion needs to conform to current codes for parking which is based on total capacity.

## **Witness**

**Elia Nassios, Owner**

**He intends to have a fireplace and planters on the patio. Could put 60 – 70 seats outside and bolt them to the floor if necessary so patio is comfortable place for patrons. All restrooms are handicap accessible.**

**Member Kearns asked how the Board determines what the capacity should be for the patio. Reply was the outside architect could answer that question. Russell Hervieux replied the fire and building codes need to mesh. If applicant reduces the total capacity (150) the Board cannot place a condition in their decision that the maximum number is 150. The application before the Board is deficient regarding occupancy issue. Member Bart stated applicant needs to submit updated plans to Russell Hervieux, Zoning Official to determine the capacity of the building. Attorney DeSisto stated the application calls for capacity of 150 for interior and patio and if applicant goes with total capacity of 150 Board needs to determine if there is not sufficient parking at the site.**

**Chairman DeAngelis addressed applicant stating there is nothing before this Board that shows what the maximum capacity the patio could accommodate and they need that number to render an accurate decision. He asked attorney for applicant if they would agree to a continuance to the July agenda and return with accurate capacity**

**numbers**

**Opposed:**

**Larry Gemma**

**He is concerned not having seen any traffic studies for the area and is afraid adding more traffic would be dangerous. He would like to see applicant return with a traffic study.**

**Attorney for applicant requested the application be continued to the July agenda so he can return with updated capacity information.**

**Motion made by Chairman DeAngelis and seconded by Member Enander. Chair requested that applicant return with correspondence from the Fire Marshall indicating what the total capacity of the restaurant/patio is. He would also like to see a copy of plans for the exterior deck showing maximum capacity for the patio and restaurant.**

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

**Respectfully submitted,**

**Ghislaine D. Therien**

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**Recording Secretary**