

Town of Lincoln

Zoning Board of Review

100 Old River Road, Lincoln, RI

Minutes of September 3, 2013 Meeting

Present: David DeAngelis-Chair, Mark Enander, Lori Lyle, Stephen Kearns, John Barr, Barry Nickerson, Town Solicitor

Excused: John Bart

Minutes

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

Correspondence

None

Applications:

Steven Truesdale, Dexter Rock Road, Lincoln, RI – Application for Use Variance to construct a free standing garage in front of the house.

AP 23, Lot 261 Zoned: RA 40

Member Kearns sitting on this application. Chairman read into the

record standards that need to be met for a Use Variance.

Witness:

Amanda Truesdale

They own the property and are constructing a new home with a 2-car garage and would like to add a free standing garage which will be 200 feet off the street. Proposed garage will compliment the home and exterior will match the house. Proposed 3-car garage will be used primarily for storage of a boat with trailer and will peak at 20 feet. There is a substantial amount of ledge on the property and proposed site is the best location for the garage. Rear of the home is heavily wooded. House under construction is framed with a roof but no electricity.

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 Planning Board recommends Denial of the application for a use variance to construct a free standing garage in front of the house. The Planning Board feels that the application does not meet any of the standards for relief of a use variance as presented in the Zoning Ordinance. This parcel of land is a new building site.

The submitted building plans for the new house shows a two car garage intergraded into the house. The proposed free-standing

garage will be in addition to the future two car garage. The applicant does not offer any compelling reasoning as to why they need an additional three car garage on the property. While the Planning Board recognizes the property has difficult topography, the Board feels that the applicant could have incorporated their need for additional garage space while they were designing and placing the house on the site.

Attorney DeSisto (Town Solicitor) addressed the Board stating the applicant has a compelling case but an accessory use in a front yard is a violation of the Zoning Ordinance. There is a standard in the Enabling Act that prohibits this use. Applicant would need to prove that without the granting of this application there is no other beneficial use of land as a whole. By building a house on the property it shows that there is beneficial use of the land. Member Barr asked if it gives the Board any room to move on this application seeing as the property has wetlands at the rear and that the proposed location is the only option. Attorney DeSisto responded that the Enabling Act of 1991 sets standards that accessory structures are not allowed in front yards. Applications have come before the Board in the past and have been denied because of the standards.

Russell Hervieux, Zoning Official stated if the application were withdrawn without prejudice the applicant could return with a new Dimensional Variance application asking for relief for the same project. Chairman asked applicant if they would be willing to

withdraw the application before the Board this evening and to entertain returning with a Dimensional Variance application.

In Favor of Application:

Marcia Truesdale

They are the previous owners of the property and know there a great deal of ledge at the site. What applicant is proposing is the best location.

Deborah Archambault

Lives behind the applicant and knows that the proposed garage could not be constructed behind the house.

Donald Hanning

Proposed garage cannot be located behind the house and would like to see it constructed in front of the property.

Gary Comtois

He lives on Great Road and can envision what applicants are trying to do.

Attorney DeSisto informed applicant that he has the option of withdrawing the application without prejudice and return with a new Dimensional Variance application. It is difficult to continue this application.

Motion made by Chairman DeAngelis to deny the application 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. Request is due to the unique character of the land.**
- **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 looking to build a detached 3-car garage.**
- **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. Garage will not alter the area.**
- **The relief requested is the least relief necessary.**
- **The subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the Zoning Ordinance. Applicant did not show any evidence regarding loss of beneficial use of the property.**

Motion to deny seconded with a 4-1 vote. Members DeAngelis, Nickerson, Enander and Kearns voting to deny. Member Barr voted to approve application.

Member Kearns asked why applicant had not been informed about

the Enabling Act of 1991 prohibiting an accessory structure in the front yard prior to submitting his application. Chairman responded that page 2 of the application indicates the standards that need to be met. Member Barr stated someone should have told applicant he could not build in the front yard when he applied for the Use Variance

Edward and Patricia Fox, 10 Harris Avenue, Lincoln, RI – Application for a Dimensional Variance for side and rear yard setbacks for a free standing garage.

AP 27, Lot 97 Zoned RA-40

Member Lyle sitting on this application. Chairman read into the record standards that need to be met for a Dimensional Variance.

Applicants are looking for left side rear yard relief. Substantial amount of ledge located on the right side of the property. This is a single family home and they are looking to construct a 28'28' detached garage and need 21 feet side relief and 38 feet rear relief. House sits in its present location because of ledge and boulders on site. Proposed garage will be used for storage. There is no garage at the location. Exterior of house is brick – garage will be wooden.

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 Planning Board recommends Approval of this

application according to the submitted plans for two dimensional variances from the side and rear yard setbacks for the construction of a free standing garage. The dimensional variance is needed due to the challenging topography of the lot. The existing property has several ledge outcrops. There are areas of steep slopes around the property. According to the applicant's civil engineer, the placement of the garage in its proposed location would be the best location on the property. 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 Planning Board feels that granting the dimensional variances will not impair the intent or purpose of the Zoning Ordinance, nor the Comprehensive Plan.

No opposition present.

Motion made by Chairman to approve the Dimensional Variance application seeking 38 feet rear and 21 feet side relief. 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.**

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

Bernard A. Benoit, 85 Industrial Circle, Lincoln, RI – Application for a Use Variance for living space in a MG zone for live/work studios.

AP 2, Lot 88 Zoned MG-0.5

Applicant wants to refurbish the building and construct studio apartments for rental purposes. Market today is for work/live-in units.

Property is located in an enterprise zone and qualifies for work/live in units. He sold the property six weeks ago. Fire and sprinkler systems are up to code.

Attorney DeSisto stated the applicant referenced property is located in a mill conversion overlay district. Is the application before the Board for a mill conversion project or residential space? Applicant replied he originally asked for a Special Use but was told he needed a Use Variance.

Witness

Carl Benevides, New Owner

Informed the Board it is not a mill conversion. Looking to construct

the units to satisfy the needs of people looking for work/live in use. The mill is in great shape for the proposed use. Old mill buildings are not profitable. He has all the utilities in place. This is a statewide problem with old mills and there is a need for what he proposing.

Attorney DeSisto stated this application come under 260-9(c) and is in an overlay district. Applicant replied that the Technical Review Committee recommended approval of the application with conditions.

Member Enander recommended that from a legal perspective the Town Council needs to address this.

Russell Hervieux, Zoning Official disagreed with Attorney DeSisto. In a mill conversion overlay a mill is not necessary. This plat and lot is not considered a mill overlay district and applicant would need a specific plan brought before this Board and could blanket some uses.

The Town Ordinance is clear in what needs to be provided. Town Council could possibly change the ordinance to allow the proposed use. Applicant would need to present engineering plans. Owner stated he would do what ever needs to be done.

Chairman stated the most direct line would be to have an ordinance passed changing the charter and applicant should speak with his local Councilman and explain the hurdles he is facing and return to the Zoning Board to weigh the standards. Attorney DeSisto suggested withdrawing the application without prejudice to pursue other procedural avenues.

Applicant/Owner requested the application be withdrawn without prejudice.

Motion made by Member Enander to accept request to withdraw the application without prejudice. Motion seconded by Chairman DeAngelis. Motion carried by all present.

Motion made by Member Nickerson 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