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Zoning Board Members
Anthony Pillozzi
Joseph Anzelone

Alternate Board Members
Bernard Frezza
Costanzo Caparelli, Sr.

Recording Secretary
Susan Leonardi

JOHNSTON ZONING BOARD OF REVIEW

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MINUTES

November 29, 2007

The Zoning Board of Review held its monthly meeting on the 29th day of November, 2007, at 7:00 p.m., in the library at the Ferri Middle School, 10 Memorial Avenue, Johnston, RI. All persons interested in the following proposals had been requested to be present at this time.

Present: Chairman Kenneth Aurecchia, Vice Chairman Richard Fascia, Anthony Pillozzi, Bernard Frezza, Joseph Anzelone

Also present: Joseph R. Ballirano, Town Solicitor, Susan Leonardi, Recording Secretary, Bernard Nascenzi, Building/Zoning Official and Dianne Edson, Stenographer

Mr. Fascia made the motion to accept the minutes of the October, 2007 meeting. Mr. Pillozzi seconded the motion. A voice vote was taken, all in favor.

Mr. Pillozzi made the motion to discuss the Calendar of Meetings for 2008. Mr. Aurecchia stated that the Board usually eliminates the August meeting. Mr. Anzelone made the suggestion to eliminate the December meeting instead. Mr. Frezza stated that when meetings are eliminated, the calendar backs up. Mr. Fascia stated that if the December meeting was eliminated, business from 2008 would carry over until 2009. Mr. Aurecchia made the suggestion to leave the calendar as it stands and revisit the issue of eliminating a meeting at a later date. Mr. Pillozzi made the motion to accept the calendar as it stands. Mr. Frezza seconded the motion. A voice vote was taken, all in favor.

File 2007-60

Owner/Applicant:	Anthony and Diane Merola
Location:	21 Tara Street; AP 21/Lot 525; AP 20-2 / Lot 35
Lot Dimensions:	Area: 43,645 sq. ft.
Zoning District:	R-15 (Residential – 15,000 sq. ft.) Zone
Surveyor:	Louis Calcagni, P.L.S.
Architect:	Joseph Simeone
Existing Use:	Single Family Dwelling
Development	
Proposal:	Construct a detached garage 28' x 32' (896 sq. ft.) Dimensional Variance petitioned under Article III, Section G 7 (c) – Accessory Structures Larger than 150 sq. ft.

Louis Calcagni, surveyor for the project, and Anthony Merola, were duly sworn. Mr. Calcagni explained the project to the Board. The owners wish to construct a detached garage on the property. Mr. Pilozzi verified that the only relief being requested was for an accessory structure larger than 150 sq. ft. No abutters appeared for or against. Mr. Frezza made the motion to grant. Mr. Pilozzi seconded the motion. A voice vote was taken, all in favor.

File 2006-48 Extension of Prior Approval

Owner/Applicant: United Better Homes, LLC
 Location: Greenville Avenue; AP 50 - Lot 1
 Lot Dimensions: Frontage: 317.76± feet; Depth: 332.25 ± feet; Area: 50,954± sq. ft.
 Zoning District: R-40 (Residential, 40,000 square feet) Zone
 Existing Use: Vacant Land
 Development
 Proposal: 2200 sq. ft Single Family Dwelling

Dimensional Variance petitioned under Art. III, Section F, Table III-F-1

Front Setback Required: 40 feet; Proposed front setback: 28 feet; Relief requested for 12 feet.

Brian Coutcher, after being sworn, stated that he is requesting a six-month extension for his project. Mr. Coutcher stated that he hired a “lousy” engineer at first and the engineer took nine months to look at the plans. He has now hired a new engineer. Mr. Pilozzi stated that no modifications to the original plans can be made; he must stay within the original approval. Mr. Coutcher agreed. Mr. Coutcher stated that he is waiting for DEM approval on the septic system. No abutters appeared for or against the project. Mr. Pilozzi made the motion to approve the extension. Mr. Frezza seconded the motion. A voice vote was taken, all in favor.

File 2007-27

Continued from the September 27, 2007 meeting

Owner/Applicant: VicGenka Realty, LLC.
 Location: Ridgeway Avenue, AP 45/1 - Lot 79
 Lot Dimensions: Frontage 51.37’±; Depth: 100’±; Area: 5,137± acres
 Zone: R-40 (Residential – 40,000 sq. ft.) Zone
 Attorney: William Gallogly, Esq.
 Surveyor: Daniel Cotta, P.L.S. – American Engineering, Inc.
 Present use: Vacant Land
Development
 Proposal: Construct a 32’ x 24’ (768 sq. ft.) single family dwelling

Dimensional Variance petitioned under Article III, Section F, Table III-F-1

Minimum Lot Size Required: 40,000 sq. ft.; Proposed Lot Size: 5,137 sq. ft.; Relief requested for 34,863 sq. ft.

Minimum Lot Frontage Required: 140 ft.; Proposed Lot Frontage: 51.37 ft.; Relief requested for 88.63 ft.

Minimum Lot Width Required: 140 ft.; Proposed Lot Width: 51.37 ft.; Relief requested for 88.63 ft.

Minimum Front Yard Setback Required: 40 ft.; Proposed Front Yard Setback: 24 ft.; Relief Requested for 16 ft.

Minimum Rear Yard Setback Required: 75 ft.; Proposed Rear Yard Setback: 44 ft.; Relief Requested for 31 ft.

Minimum Left Side Yard Setback Required: 35 ft.; Proposed Left Side Yard Setback: 13.67 ft.; Relief Requested for 21.33 ft.

Minimum Right Side Yard Setback Required: 35 ft.; Proposed Right Side Yard Setback: 13.68 ft.; Relief Requested for 21.32 ft.

William Gallogly, attorney for the applicant, stated that he has the engineer for the project present. Daniel Cotta, engineer, was duly sworn. Mr. Cotta stated that he is a license professional engineer by the State of Rhode Island and owns his own engineering firm. Mr. Pilozzi made the motion to accept Mr. Cotta as a qualified witness. This was seconded by Mr. Aurecchia. A voice vote was taken, all in favor. Mr. Gallogly submitted a zoning certificate for the property as Exhibit 1 for the applicant. Mr. Pilozzi made the motion to accept the certificate as Exhibit 1. This was seconded by Mr. Aurecchia. A voice vote was taken, all in favor. Mr. Gallogly then submitted a copy of the original plat map when the lot was created in 1932. Mr. Pilozzi made the motion to accept the map as Exhibit 2 for the applicant. This was seconded by Mr. Aurecchia. A voice vote was taken, all in favor. Mr. Gallogly asked Mr. Cotta about a third document. Mr. Cotta stated that it is a map his firm prepared showing the inventory of the wells in the area. Mr. Pilozzi stated that the Board has not seen the map. Mr. Gallogly stated that he has copies for the Board. Mr. Aurecchia asked why this was not previously provided to the Board. Mr. Gallogly stated that some of the engineering was not completed in time. Mr. Aurecchia stated that having these documents submitted at the meeting slows down the meeting. Mr. Cotta stated that there are no wells within 100 feet of the septic system. Mr. Pilozzi asked Mr. Nascenzi if he has reviewed this information. Mr. Nascenzi stated that he no prior knowledge of this. This should have been submitted prior to the meeting so he could have gone to the site to verify the information. Mr. Aurecchia stated that it would be better for everyone if this application were to be continued to give the Board members time to review all the documents. Mr. Gallogly agreed. Mr. Pilozzi made the motion to continue the application to January to give the Board time to review all documents. Mr. Frezza seconded the motion. A voice vote was taken, all in favor.

File 2007-44 Continued from the September 27, 2007 meeting

Owner/Applicant: David L. Acciaro
Location: Old Pocasset Road, AP 44/4 - Lot 68
Lot Dimensions: Area: 5.77± acres

Zone: R-40 (Residential – 40,000 sq. ft.) Zone
 Attorney: Frank Manni, Esq.
 Surveyor: James Flynn, P.L.S. – Flynn Surveys
 Present use: Vacant Land
 Development
 Proposal: Divide existing lot into two lots and construct a 30' x 50' (1500 sq. ft.) single family dwelling on each.

Dimensional Variance petitioned under Article III, Section F, Table III-F-1

Minimum Lot Frontage Required: 140 ft.; Proposed Lot Frontage Requested: 88 ft.; Relief Requested for 52 ft.

Minimum Lot Width Required: 140 ft.; Proposed Lot Width Requested: 88 ft.; Relief Requested for 52 ft.

Frank Manni, attorney for the applicant, explained the project to the Board. Mr. Pillozzi verified that if relief were to be granted, the project would then go to the Planning Department to have the existing lot into two separate lots with a house on each. Mr. Manni agreed. Mr. Anzelone stated that he thought the project had to go to the Planning Department before coming to Zoning. Mr. Nascenzi stated that the system is being reformed to make it easier for the applicants. The project first will come to Zoning to get the dimensional relief needed, then would go to Planning for the division. Mr. Manni showed the plans to the Board and the relief being requested. Mr. Anzelone stated that there are wetlands on the lot. Mr. Aurecchia stated that the wetland issue is between the applicant and DEM. Mr. Anzelone asked if the homes were going to be sold. Mr. Acciaro stated that the homes were for his daughters.

Charles Blackman, attorney for abutter, Mr. Maloney, stated that he believed the Board was incorrect in having the applicant come to Zoning before Planning. He quoted RIGL 45-23-61, which states that when the applicant requires a variance from both local Zoning Ordinance and Planning Board approval, the applicant must first obtain an advisory recommendation from Planning before it comes to Zoning. Mr. Blackman also stated that Mr. Acciaro is creating his own hardship by dividing. The lots will be undersized. Mr. Pillozzi stated that the lots will not be undersized, they will each be more than 40,000 sq. ft. If the fire department says a vehicle can get in the lot in emergencies, it is acceptable. Mr. Blackman quoted the Viti Doctrine which states that a more profitable use is not a mere inconvenience.

Mr. Nascenzi stated that the applicant had been for an advisory opinion. The applicant had met with Mr. Nascenzi and the Planning Department already. Mr. Blackman stated that if this lot is divided, it will cause a hardship for his client. When his client purchased the lot, it was with the expectation that only 1 single family house would be built. Mr. Fascia stated that possibly Mr. Maloney could work with Mr. Acciaro and make the situation comfortable for everyone.

Mr. Fascia made the motion to grant approval conditioned upon the Planning Board granting the division into 2 lots. Mr. Aurecchia seconded the motion. A roll call vote was taken. The votes are: Mr. Frezza, aye; Mr. Pillozzi, aye; Mr. Anzelone, aye; Mr. Aurecchia, aye; Mr. Fascia, aye.

File 2007-46

Owner/Applicant: Gualter J. Botas
Location: 11 East Scenic View Drive; AP 46/Lot 159
Lot Dimensions: Area: 11,484 sq. ft.
Zoning District: R-40 (Residential – 40,000 sq. ft.) Zone
Existing Use: Single Family Dwelling
Development
Proposal: Breed and sell dogs

Special Use Permit petitioned under Article III, Section D, Table III-D-1; Subsection 1 (2) to breed and sell dogs

Special Use Permit granted on April 26, 2007 to own more than 3 dogs but no more than 6 dogs and to build kennel in rear of home.

Gualter Botas was duly sworn. Mr. Botas stated that he was granted a special use permit to own more than 3 dogs in April, 2007. He is now before the Board to request permission to breed the dogs he owns. Mr. Frezza verified that Mr. Botas would not own more than the six dogs allowed by the previous special use permit. Mr. Fascia asked how many litters would be bred at one time. Mr. Botas stated that usually not more than one, but that is difficult to plan. The animals would be placed after they have reached an age of about eight to ten weeks old. Mr. Pilozzi asked how often female dogs go through heat. Mr. Botas said about every 6 to 8 months, but it isn't regular and hard to determine. Mr. Nascenzi stated that the structure that was approved has been expanded. The current structure has a roof and sides. The kennel is now an accessory structure. Mr. Nascenzi stated that he was never called for a final zoning inspection. Mr. Botas stated that the roof and the sides are temporary for the winter. The canvas will come off in the spring.

Mr. Nascenzi stated that when a pitched roof is added to a kennel, it becomes an accessory structure. It has been extended beyond the 5 feet off the fence. There is an additional plastic structure on the property. Mr. Botas stated that the plastic structure is actually storage boxes for dog food. Mr. Anzelone stated that the lot is too small for something this large.

William Bagley, abutter, was duly sworn. Mr. Bagley stated that he has a petition signed by the neighbors. Mr. Pilozzi made the motion to accept the petition as Exhibit 1 for the abutters. This was seconded by Mr. Fascia. A voice vote was taken, all in favor. Grace Bagley was duly sworn. She had thought that the kennel would be placed in a different part of the yard, based on the April meeting. Mr. Nascenzi stated that the placement of the kennel is fine; but the extension of the rocks around it makes it less than 5 feet off the property lines. Mr. Botas has gone beyond Zoning approval. Mr. Frezza asked if Mr. Nascenzi considered the rocks part of the structure, not just landscaping. Mr. Nascenzi stated that the rocks are covering water pipes. The slab was supposed to contain everything. No final zoning inspection was done. Mr. Botas stated that he could remove the rocks and stepping stones and he could move the storage boxes. Mr. Nascenzi stated that the rocks are not the problem. The rock was used to cover the extension to the kennel. The water pipes were supposed to be contained within the slab. Mr. Aurecchia asked about the collection system for waste. Mr. Nascenzi stated that Mr. Botas has the appropriate collection system.

Mr. Aurecchia asked how many dogs were currently on the premises. Mr. Botas stated that there are currently four dogs on the premises. Two are his and two belong to someone else that will be leaving soon. Mr. Bagley asked if the dogs would be trained as attack dogs. Mr. Botas stated that there would be no training whatsoever. Mr. Bagley stated that the dogs are quiet at night and occasionally hears them during the day. Mr. Fascia asked Mr. Botas if the dogs used bark collars. Mr. Botas stated that they do, but once in a while he lets them out without them. The dogs sleep in the house at night and will be bred in the house. Mrs. Bagley asked if both females could be pregnant at the same time. Mr. Botas stated that he knows his limitations. He does not have the room for two litters at once. As of right now, he only has 1 female. If the one dog had 8 puppies, that would be fourteen dogs on the property for about 8-10 weeks. Mrs. Bagley stated that the structure is an eyesore and would lower the value of her property if she were to try and sell.

Alfred Masciarelli, abutter, after being duly sworn, stated that he is opposed to any business in a residential area. If Mr. Botas is allowed to do this, it will open the door to other businesses that wanted to come into the area. Mr. Botas stated that most of the dogs will be shipped to the new owners, but there will be some local people coming to the house to look at the dogs. Mr. Botas stated that he is confused, since Mr. Masciarelli is running a business out of his garage. He is running a pool cleaning business. Mr. Masciarelli denied it. Stating he has retired from that.

Edward Mitson, abutter, after being duly sworn, stated if the Board approves the petition, he would like a stipulation made that no training can be done. He has no problem with the breeding or the selling.

Mr. Botas stated that the Town Council approved his kennel license for 6 dogs, 4 females and 2 males. Mrs. Manzi, Town Council Member, stated that the Council did not stipulate the sexes of the dogs. Mr. Botas said that his license states the number and the sexes. A copy was provided to the Zoning Board.

Mr. Nascenzi stated that the issue is two-fold. First is breeding and the second is the commercial business of selling in a residential area. Mr. Botas would have to apply for a business license to sell the dogs.

Stefanie Manzi, after being duly sworn, stated that the Town Council granted the kennel license with the stipulation that there would be no breeding. If there had been breeding allowed, she would have voted against it. She verified with Mr. Ballirano that Mr. Botas would have to come back before the Town Council for a business license.

Mr. Fascia stated that at the prior meeting, it was stipulated that there would be no breeding of dogs. The approval was for keeping of 6 dogs only. Mr. Aurecchia stated that he has owned dogs. When the females were in heat, strange dogs were sniffing around looking for her. This will bring strange dogs around.

Mr. Anzelone made the motion to deny the application under Section P, Special Use Permits. The use does not conform to the neighborhood, it will adversely affect the surrounding neighbors and their enjoyment of their property. Mr. Frezza seconded the motion. A roll call vote was taken. Mr. Frezza, nay; Mr. Anzelone, nay; Mr. Pillozzi, nay; Mr. Aurecchia, nay; Mr. Fascia, nay.

File 2007-61

Owner: Mario Perri
 Applicant: Jason Corvese
 Location: Dayton Avenue; AP 45 / Lot 18
 Lot Dimensions: Width: 50 ft.; Depth: 160 ft.; Area: 8,000 sq. ft.
 Zoning District: R-40 (Residential – 40,000 sq. ft.) Zone
 Surveyor: Richard Bzydra, - P.L.S. Ocean State Planners.
 Architect: DLR Dimensions
 Existing Use: Vacant Land
 Development
 Proposal: Construct a 57' x 30' (1,722 sq. ft.) single family dwelling

Dimensional Variance petitioned under Article III, Section F, Table III-F-1

Minimum Lot Size Required: 40,000 sq. ft.; Proposed Lot Size Requested: 8,000 sq. ft.; Relief Requested for 32,000 sq. ft.

Minimum Lot Frontage Required: 140 ft.; Proposed Lot Frontage Requested: 50 ft.; Relief Requested for 90 ft.

Minimum Lot Width Required: 140 ft.; Proposed Lot Width Requested: 50 ft.; Relief Requested for 90 ft.

Minimum Front Yard Setback Required: 40 ft.; Proposed Front Yard Setback: 25 ft.; Relief Requested for 15 ft.

Minimum Right Side Setback Required: 35 ft.; Proposed Right Side Setback: 8 ft.; Relief Requested for 27 ft.

Minimum Left Side Setback Required: 35 ft.; Proposed Left Side Setback: 10 ft.; Relief Requested for 25 ft.

Maximum Lot Coverage Allowed: 15 %; Proposed Lot Coverage: 21%; Relief Requested for 6%.

Vickie and Jason Corvese were duly sworn. Mr. Corvese stated that he wishes to build a single family dwelling on the vacant lot next to his grandfather. His grandfather is getting older and isn't able to take care of himself and his property. Mrs. Corvese stated that they also want to start their own family. Mr. Aurecchia verified that the applicant had not already purchased the property. Mr. Nascenzi stated that he has not visited the property. But he knows that some of the lots surrounding this property are small, too. It was a recorded lot prior to 1994. Mr. Aurecchia verified that the home would be a long, narrow one to fit the lot. Mr. Frezza verified which lot was the subject lot on the map. Mr. Anzelone verified that there would be three bedrooms in the home. Mr. Anzelone verified the side yard relief being requested. Mr. Fascia asked if there was any way he could purchase additional land from his grandfather to bring the lot more conforming. The request to move the lot line would have to go through planning. Mr. Fascia stated that the relief being requested is more than a mere inconvenience.

Mr. Fascia stated that most of the lots in the area are small. Mr. Nascenzi stated that DEM will determine how many bedrooms the septic system can handle. The septic system will take up quite a bit of the lot.

Marylou Houlihan, abutter, after being duly sworn, stated that the proposed house will be too close to her home. She doesn't want this new house built. John Gould, abutter, after being duly sworn, stated that he is against the new house because of the drainage problems in the area. John Messier, abutter, after being duly sworn, stated that he is the only resident in the area with a working well. He is nervous about another septic system being near his well. DEM uses his well to check the water in the area. Mr. Aurecchia stated that the new septic systems are safer around wells. It would be partially above ground because it also treats the waste. It is monitored and has an alarm system if it should fail. The system would have to be fenced in. Mr. Gould stated that he had asked at the Building Inspector's office and the lot sizes cannot be changed. The grandfathers' lot is not large enough to split to give Mr. Corvese more land. Mr. Pillozzi stated that Mr. Corvese has a legal, recorded, nonconforming lot. He is allowed to build there. If not, it is tantamount to confiscation. Mr. Nascenzi stated that it is a legal, nonconforming lot of record; however he has to get relief for the zoning regulations. He has to comply with current zoning regulations. He cannot build if the Board cannot grant relief. Mr. Pillozzi stated that the applicant may have to make the house smaller. Mrs. Manzi, after being duly sworn, stated that there are several small lots in the area currently before the Board. This lot is actually larger than the others. There are drainage and water problems in the area.

Mr. Aurecchia stated that the Zoning Ordinance speaks specifically to the enjoyment of an owner's lot. There is no hardship because Mr. Corvese does not own the lot. The home being proposed would encroach on the neighbor's property lines. There are other lots in Johnston and in the rest of Rhode Island that do not present the kind of problems that this lot does. Mr. Corvese stated that those lots are not next door to his grandfather. Mr. Fascia asked if this lot represented the only solution to the applicants having their own house. The Corvese's replied that it was. Mrs. Corvese stated that there are no homes available in their price range. Mr. Corvese added that he wants to be next door to his grandfather. Mr. Nascenzi suggested putting an addition onto his grandfathers' home as an in-law apartment. Mr. Corvese said he could not afford to buy his grandfather's home.

Mr. Pillozzi stated that the house is a little large for the lot. The applicant might be better served by asking for a continuance and getting professional guidance. Mr. Ballirano stated that if they chose to go forward and were denied, it is a two year wait to come back before the Board. Mr. Nascenzi stated that a smaller home would decrease the size of the septic system. Mr. Corvese requested a continuance to redesign the home. Mr. Fascia made the motion to grant the continuance; seconded by Mr. Aurecchia. A voice vote was taken, all in favor.

File 2007-62

Owner/Applicant: Danae Calise
Location: 27 Albermarle Avenue; Plat 15 - Lot 446
Lot Dimensions: Frontage: 60± feet; Depth: 70± feet; Area: 4,200± sq. ft.
Zone: R-15 Zone (Single Family Residential, 15,000 sq. ft)
Present use: Vacant Land
Proposed: Construct a 1120± sq. ft. single family home with an attached 170± sq. ft. attached sun room.

Dimensional Variance petitioned under Article III, Section F, Table III-F-1, Section L-1 (b-1).

Minimum Lot Size: Required 15,000 sq. ft.; Proposed 4,200 sq. ft.; Relief Requested for 10,800 sq. ft.

Minimum Lot Frontage: Required 100 feet; Proposed 60 feet; Relief Requested for 40 feet.

Minimum Lot Width: Required 100 feet; Proposed 60 feet; Relief Requested for 40 feet.

Minimum Front Yard Setback: Required 25 feet; Proposed 20 feet; Relief Requested for 5 feet.

Minimum Rear Setback: Required 45 feet; Proposed 10 feet; Relief Requested for 35 feet.

Minimum Side (Left) Setback: Required 20 feet; Proposed 10 feet; Relief Requested for 10 feet.

Minimum Side (Right) Setback: Required 20 feet; Proposed 10 feet; Relief Requested for 10 feet.

Maximum Lot Coverage 25%; Proposed Coverage 35%; Relief Requested for 10%.

Danae and Steven Calise, were duly sworn. Mr. Calise stated that they had approval previously but it expired due to contractor problems. He had visited the Zoning Office for an extension, but was told that he would have to go through the entire process again because the approval period had passed. Mr. Nascenzi stated that the plans are the same as the original application. Mr. Pilozzi made the motion to grant the application. This was seconded by Mr. Fascia. A voice vote was taken, all in favor.

Mr. Fascia made the motion to adjourn the meeting. This was seconded by Mr. Aurecchia. A voice vote was taken, all in favor.

Adjourned at 9:17 p.m.