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**Douglas Jeffrey .**

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**Bernard Frezza**

**Counsel for the Board**

**Alfred P. Cianci**

**Joseph R. Ballirano, Esq.**

**Recording Secretary**

**Susan Leonardi**

**MINUTES**

**March 29, 2007**

**The Zoning Board of Review held its monthly meeting on the 29th day**

of March, at 7:04 p.m. in the Library, at the Ferri Middle School, 10 Memorial Avenue, Johnston, RI. All persons interested in the following proposals requested to be present at this time.

**Present:**

**Chairman Kenneth Aurecchia, Vice Chairman Richard Fascia, Anthony Pillozzi, Joseph Anzelone, Bernard Frezza, Alfred Cianci, and Bernard Frezza**

**Also present: Joseph R. Ballirano, Town Solicitor, Susan Leonardi, Secretary, and Dianne Edson, Stenographer**

**I. Old Business**

**SITTING AS THE ZONING BOARD OF REVIEW**

**A. ZBR-2003-40**

**Owner/Applicant: Hartford Avenue Associates**

**Location: 1450 Hartford Avenue; AP 44-3/Lot 86**

**Lot Dimensions: Area: 10.89 acres.**

**Zoning District: B-2 (General Business) Zone**

**Existing Use: Retail shopping space**

**Development**

**Proposal: Retail shopping space**

**Special Use Permit was originally granted by the Johnston Zoning Board of Review on December 23, 2003. This granting was upheld by the Superior Court of RI on February 8, 2006. Applicant requests a 6-month extension because the lengthy appellate litigation caused a disruption in the project schedule and tenant relationships.**

**William Landry, attorney for the applicant, presented the case to the Board. Hartford**

**Avenue Associates is requesting an extension of the Special Use Permit that was**

**granted in 2003. He stated that the approval took a long time at the Town level, was contested; there were several hearings over a period of months. A competing developer appealed to Superior Court and then Supreme Court, which concluded in their favor in February of 2006. This delay caused a disruption in tenant relationships.**

**Hartford Avenue Associates is requesting a 6-month extension. Mr. Pilozzi verified that the original terms of the Special Use Permit would be adhered to. Mr. Landry stated that Hartford Avenue Associates is requesting an extension of the precise relief that was previously granted. Mr. Nascenzi stated that any change to the original plan will require a new application before this Board. Steve Izzi, attorney for Alfred Carpionato, another developer, stated that his client is objecting the extension of the variance. Mr. Izzi stated that requests for extensions must be done before the original one year has expired.**

**He asked when the request for extension was received at the Zoning Office. Mr. Nascenzi stated that the Zoning Office received the**

request on January 30, 2007. Because of timing issues, the matter was not put on the February Agenda. Mr. Izzi stated that his client's second objection is related to the requirement of good cause. He stated that Mr. Landry has not given reasons for good cause. He questioned whether there has been good faith compliance with the requirement to prosecute the building variance and the Special Use Permit that was granted in 2003. Did the applicant manifest a good intention to comply with applicable procedures within a reasonable extended period and whether the applicant acted in willful disregard or reckless noncompliance as opposed to good faith in meeting the original deadline? Mr. Izzi stated that there are allegations of disrupted tenant relationships. Since there are no tenants, what relationships were disrupted? He also questioned why the building schedule was disrupted. Mr. Landry stated that the record speaks for itself. Mr. Carpionato has made every legal effort not to make this project an easy one. He has successfully delayed the process long enough that Hartford Avenue Associates lost BJ's as a tenant. My client has not enjoyed carrying the costs on an empty plaza for so many years. No retail operation would consider utilizing the site while there was ongoing litigation. Mr. Anzelone made a motion to extend the Special Use Permit on the grounds that the matter was delayed in the Courts. Motion to extend for 6 months. Motion seconded by Mr. Fascia. A voice vote was taken, all in favor.

## **II. New Business**

**A. File 2007-08**

**Owner/Applicant: Joan Faiola**

**Location: 86 Leading Street; AP 15/Lot 28**

**Lot Dimensions: Area: 10,440/9720 sq. ft.**

**Zoning District: R-15 (Residential – 15,000 square feet) Zone**

**Existing Use: Two Single Family Dwellings on one lot**

**Development**

**Proposal: Referral from Planning Board as part of Minor Subdivision Approval. Once subdivision is recorded, each dwelling will be on a separate lot.**

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

**Minimum Front Setback Required: 25 feet; Proposed Front Setback: 19.9 feet; Relief Requested for 5.1 feet**

**Minimum Rear Setback Required: 45 feet; Proposed Rear Setback: 4.8 ft/27.4 ft; Relief Requested for 40.2 ft/17.6 ft**

**Minimum Left Side Setback Required: 20 feet; Proposed Left Side Setback: 10.6 feet; Relief Requested for 9.4 feet**

**Joseph Ballirano, attorney for the Zoning Board, stated that he will recuse himself from this applicant. His brother, Daniel Ballirano, will be presenting the application.**

**Daniel Ballirano, attorney for the applicant, presented the application**

to the Board. Ms. Faiola owns a lot with 2 dwellings on it. She has been before the Planning Board to divide the lot so each home will be on its own lot. The Planning Board has approved the subdivision based upon Zoning Board approval. He states that the application presented to the Board is incorrect and overstates the amount of relief needed. He stated that Lot B will need no relief at all. The plans are being changed so each lot will have 10,000 sq. ft. each. The applicant is actually adding approximately 1,500 – 2,000 sq ft. in order to improve Lot A. Ms. Faiola, after being duly sworn, stated that she needs more room, her kids are moving back home. Mr. Ballirano stated that there are separate utilities. After the subdivision, there will be separate water and sewer. Mr. Fascia verified which lot Ms. Faiola would be living on. Ms. Faiola would be living on Lot B. Norma Beaulieu and Scott Logan, after being duly sworn, stated that they are abutters to the property. Mr. Logan submitted pictures for the Board to review. A motion to accept as Exhibit 1-3 was made by Mr. Anzelone, seconded by Mr. Fascia. A voice vote was taken, all in favor. Mr. Logan stated that when he bought his property, he was told that the subject property could not be changed. He states that the house is too close to his property. The other home on the lot was abandoned when he moved in, since then it has been redone and is now being lived in. Mr. Ballirano stated that the addition to the dwelling on Lot B will be constructed so that it does not come closer to Mr. Logan's dwelling. Mr. Logan stated that he is worried that Ms. Faiola will not follow the approvals that may be granted. Mr. Nascenzi stated that all approvals will be adhered to or the building permit will

not be issued. Mr. Logan does not want to see any of the open space taken up by a bigger home. Mr. Fascia asked Ms. Faiola why she wants to expand the dwelling. Ms. Faiola stated that she is willing to put the addition anywhere, she just needs more room for her family. She was told by the Planning Board that she cannot demolish the existing structure. Mr. Nascenzi stated that the second (smaller) dwelling is technically an accessory structure to the main house because it does not have separate water and sewer. Mr. Jeffrey verified how long Ms. Faiola had owned the property. She replied that she has owned it for three years. Mr. Ballirano stated that the prior owner had tried to divide the lots, but was unsuccessful. Mr. Logan also stated that there is a water problem in the area and has pictures of that, too. Photos accepted as Exhibits 4-6. Mr. Aurecchia verified that if Ms. Faiola is allowed to build the addition, the Building Department will ensure that the water does not run off onto anyone else's property. Mr. Nascenzi stated that the Town has a "zero run-off" policy that Ms. Faiola must adhere to. Ms. Beaulieu stated that she gets a lot of water on her property. Ms. Beaulieu has asked Ms. Faiola to put in a retaining wall so the water does not come on her property. Ms. Faiola stated that she has never before spoken to Ms. Beaulieu. Mr. Anzelone verified where the addition would be built. Mr. Nascenzi stated that if Ms. Faiola demolished the smaller building, she would lose her pre-existing condition rights. She would then have to comply with current codes in regard to drainage and run-off to abutting lots. Mr. Nascenzi stated that he has never had a complaint submitted to his office in regard to this property. Ms.

**Beaulieu stated that the complaint was submitted a long time ago, over 2 years. Mr. Anzelone stated that the application states that no changes are proposed to the current dwellings. Mr. Ballirano stated that the surveyor filled out the application and it is incorrect. Mr. Cianci stated that Ms. Faiola will have to bring plans for the house to the Board. If the Board approves this tonight, based on the application, no changes of any kind would be allowed. Discussion followed on which house would be changed. Mr. Ballirano stated that Lot B is currently a two-family dwelling. Ms. Faiola stated that she lives on one floor and her daughter on the other. Mr. Logan asked if this was approved tonight, could she build anything she wanted. Mr. Fascia stated that she could not. Mr. Ballirano asked if the applicant could request a continuance to bring the house plans and amend the application. Mr. Anzelone made the motion to continue the matter, seconded by Mr. Jeffrey. A voice vote was taken, all in favor.**

## **B. File 2007-09**

**Owner/Applicant: Eron F. and Kimberly E. Reagan**

**Location: 11 Jenckes Street; AP 39/Lot 109**

**Lot Dimensions: Area: 24,858 sq. ft.**

**Zoning District: B-2 (General Business) Zone**

**Existing Use: Single Family Dwelling**

**Development**

**Proposal: Construct a 15' x 23' (345 sq. ft.) addition for additional living space.**

**Dimensional Variance petitioned under Article III, Section F, Table III-F-1 and Enlargement of Non-Conforming Development per Article III, Section N (1)**

**Minimum Front Setback Required: 40 feet; Proposed Front Setback: 13 feet; Relief Requested for 27 feet**

**Orlando Andreoni, attorney for the applicant, presented the application to the Board. The applicant wishes to enlarge their home to provide more space for their family, with another bedroom and bathroom. No abutters appeared for or against the petition. Mr. Fascia made the motion to grant the application, seconded by Mr. Jeffrey. A voice vote was taken, all in favor.**

**C. File 2007-10**

**Owner/Applicant: Gina-Marie Hunt**

**Location: 51 Homeland Street; AP 22/Lot 622**

**Lot Dimensions: Area: 6,900 sq. ft.**

**Zoning District: R-15 (Residential – 15,000 sq. ft) Zone**

**Existing Use: Single Family Dwelling**

**Development**

**Proposal: Convert attic space to additional living space.**

**Dimensional Variance petitioned under Article III, Section F, Table III-F-1 and Section L (1)**

**continued**

**Minimum Lot Frontage Required: 100 feet; Proposed Lot Frontage: 69 feet; Relief Requested for 31 feet**

**Minimum Left Side Setback Required: 20 feet; Proposed Left Side Setback: 10 feet; Relief Requested for 10 feet**

**Minimum Right Side Setback Required: 20 feet; Proposed Right Side Setback: 13 feet; Relief Requested for 7 feet**

**Minimum Lot Size Required: 15,000 sq. ft.; Proposed Lot Size: 6,900 sq. ft.; Relief Requested for 8,100 sq. ft.**

**Anthony Drumheiser, Terry Logan, and Gina-Marie Hunt were all duly sworn. Mr. Logan presented the application to the Board. He stated that they have three children and would like to put a master bedroom, bathroom, and sitting area upstairs so the children can have their own rooms. Mr. Aurecchia verified that the applicant was going to raise the roof to do this. Mr. Logan explained that a full dormer was going on the back of the house. Mr. Zabatta, abutter, after being duly sworn, asked if the addition was going up or out. Mr. Logan stated that they were only going up. Mr. Zabatta looked at the plan and stated he had no more questions. Mr. Anzelone made the motion to approve the application, seconded by Mr. Fascia. A voice vote was taken, all in favor.**

**D. File 2007-11**

**Owner/Applicant: Michael and Traci Pavia**

**Location: 3 Cady Street; AP 41/Lot 140**

**Lot Dimensions: Area: 25,600 sq. ft.**

**Zoning District: R-40 (Residential – 40,000 sq. ft.) Zone**

**Existing Use: Single Family Dwelling**

**Development**

**Proposal: Construct 2 dormers to provide additional living space**

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

**Minimum Front Setback Required: 40 feet; Proposed Front Setback: 37.4 feet; Relief Requested for 2.6 feet**

**Minimum Lot Size Required: 40,000 sq. ft.; Proposed Lot Size: 25,600 sq. ft.; Relief Requested for 14,400 sq. ft.**

**Michael and Traci Pavia, after being duly sworn, stated that they wished to add two dormers to raise the roof to provide additional living space. There will be a bedroom, bathroom, and an office. Mr. Frezza asked why the applicants needed to come to the Zoning Board if they were only raising the roof. Mr. Nascenzi stated that it is a non-conforming expansion. They have a small lot in an R-40 zone. Motion to approve application is made by Mr. Anzelone and seconded by Mr. Pillozzi. A voice vote was taken, all approve.**

**E. File 2007-12**

**Owner/Applicant: Wayne and Susan R. Cousins**

**Location: 1275 Central Avenue; AP 43-2/Lot 597**

**Lot Dimensions: Area: 40,000 sq. ft.**

**Zoning District: R-40 (Residential – 40,000 sq. ft.) Zone**

**Existing Use: Single Family Dwelling**

**Development**

**Proposal: Construct an additional bay to the existing 2 car garage and extend existing driveway to include turn-around for safety purposes.**

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

**Minimum Right Side Setback Required: 35 feet; Proposed Right Side Setback: 25.06 feet; Relief Requested for 9.94 feet**

**Bill Baldwin, architect for the project, presented the application to the Board. He stated that the applicant wishes to extend the existing two-car garage into a three-car garage and construct a driveway turnaround for safety reasons. Mr. Anzelone made the motion to approve the project, seconded by Mr. Pillozzi. A voice vote was taken, all in favor.**

**Mr. Pillozzi made the motion to adjourn as the Zoning Board of Review and convene as the Zoning Board of Appeal. Seconded by Mr. Fascia.**

# **SITTING AS THE ZONING BOARD OF APPEAL**

## **A. POPPY HILLS ESTATES**

**Owner/Applicant: Poppy Hills Development Group, Inc.**

**Location: Tulip Hill Road/Poppy Hill Drive**

**Lot Dimensions: AP 55 – Lots 19 & 34; 28.41 ± acres**

**Zoning District: R-40 (Residential – 40, 000 sq. ft.) Zone**

**Existing Use: Vacant land**

**Development**

**Proposal: Residential Subdivision – 9 house lots**

**Appeal to the Zoning Board of Review of Planning Board Decision posted on February 23, 2007.**

**Approval: Planning Board Approval of 8 house lots**

**Appeal Petition: Appeal per Town of Johnston Subdivision Regulations, Section V, Article E, Subsection 6 of Regulations dated August 7, 1997.**

**Recording of Planning**

**Board Decision: 2-23-07; Land Evidence Book # 1804, Page 192**

**Deadline for Filing**

**Appeal: 20 days after Decision is recorded**

**Date Appeal filed with**

**Johnston Zoning Board**

**of Appeal: February 27, 2007**

**Matthew Leonard, attorney for Poppy Hills, presented the appeal to the Board. He stated that the project began in 2002. It consists of 28.41 acres of land. It is the development of 9 house lots. In conjunction with the house lots, there is an administrative subdivision which would alter the property lines so that the 9th lot would be in its final state for completion. Mr. Pilozzi verified that the property has two lot numbers and the administrative subdivision would make it all one lot. Mr. Leonard stated that the developer is requesting approval of the administrative subdivision; approval of the 9th lot; and certain waivers. Mr. Pilozzi asked what the Planning Board did grant. Mr. Leonard replied that the Planning Board granted 8 lots. Their reasoning was, "they just didn't like it". It was an arbitrary and capricious decision. Mr. Leonard explained the site plan to the Board. Mr. Pilozzi verified that there is no problem with D.E.M. Mark Conboy, engineer for the project, after being duly sworn, stated that the lot is over 3 acres, with a buildable area of 5,200 sq. ft. Mr. Pilozzi verified that septic system and well can be located one hundred feet from each other and one hundred feet from the house. Mr. Conboy stated that the septic and wells do not have to be one hundred feet from the house, just 100 feet from each other. The applicant has received septic suitability from D.E.M. Mr. Aurecchia asked about the waivers. Mr. Leonard stated that the applicant is**

asking for a waiver on the road width of no more than 24 feet. Tulip Hill Road is currently 27 feet wide. D.E.M. requested a narrower road on the crossing of the wetlands. There would also be less intrusion to abutters and a better aesthetic. The Planning Board denied the request for a waiver to have the road less than 30 feet. When Tulip Hill Road was built, it received permission to be 27 feet wide. Mr. Pillozzi stated that if the waiver for a 27 foot wide road was given in the 80's, it should apply to the extension of the same road. Mr. Leonard stated that the other waiver was for curbs and sidewalks. None exist currently in this development; the Planning Board wants them in the new phase of this development. The waiver was previously given for the original portion. Mr. Anzelone asked about the length and width of the cul-de-sac. Mr. Nascenzi stated that the fire apparatus has to be able to turn around in the cul-de-sac. He also stated that he was present at the Planning Board meeting and he believes that the 27 foot wide road is reasonable. Mr. Nascenzi also stated that the Planning Board is also concerned about run-off from the 5,200 sq. ft. buildable portion of the lot. Mr. Anzelone stated that the cul-de-sac is large enough and none of the other areas in the development have sidewalks or curbs. Mr. Nascenzi agreed. Mr. Cianci verified the drainage area of the project. Mr. Conboy explained on the site plan where the drainage areas would be located. Mr. Leonard stated that the Planning Board required the applicant to install a dry water line in the event that public water supply is ever brought to the area. Mr. Jeffrey asked if it was common practice to install dry water lines. Mr. Conboy stated he had never been asked to

**do it before. Mr. Pillozzi asked Mr. Leonard why the appeal filed in 2002 was never brought to the Zoning Board. Mr. Leonard replied that it was never docketed and never countered, despite numerous requests. That appeal was filed by prior counsel. In 2006, the development was delayed due to lack of administrative officer. Jeanne Tracey-McAreavey, the Town Planner at the time, was an ab**