

Chairperson
Kenneth Aurecchia

Vice-Chairperson
Richard Fascia

Secretary
Douglas Jeffrey

Counsel for the Board
Joseph Ballirano, Esq.



Zoning Official
Bernard J. Nascenzi, C.B.O.

Zoning Board Members
Anthony Pilozzi
Joseph Anzelone

Alternate Board Members
Bernard Frezza
Costanzo Caparrelli, Sr.

Recording Secretary
Susan Leonardi

JOHNSTON ZONING BOARD OF REVIEW
100 Irons Avenue, Johnston, Rhode Island 02919
Tel: 401-231-4135; Fax: 401-231-4181

MINUTES

September 27, 2007

The Zoning Board of Review held its monthly meeting on the 27th day of September, 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, Secretary Douglas Jeffrey, Anthony Pilozzi, Bernard Frezza, Costanzo Caparrelli, Sr.

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

I. Approve of Minutes of the previous meeting (s)

Mr. Pilozzi made the motion to approve the minutes of the July 26, 2007 and August 23, 2007 meetings. This was seconded by Mr. Anzelone. A voice vote was taken, all in favor.

Mr. Aurecchia stated that there has been a request to hear one application out of order. The first application heard tonight will be 1302 Associates, Atwood Avenue, and then the rest of the Agenda will be heard.

II. Old Business

A. File 2007-41

Owner/ Applicant: 1302 Associates, LLC
Location: 1302 Atwood Avenue; AP 44 Lot 30
Lot Dimensions: Frontage: 130 ft; Depth: 426 ft; Area: 53,778± square feet
Zoning District: R-15/B-1 (Residential – 15,000 sq. ft. and Neighborhood Business) Zone
Existing Use: Single Family Dwelling
Development
Proposal: Demolish existing structure and construct a 92' x 43' (3,956 sq. ft.) retail store
Dimensional Variance petitioned under Article III, Section F, Table III-F-1 and Section H (5) - Parking

continued

Minimum Left Side Setback Required: 20 ft.; Proposed Rear Setback: 10 ft.; Relief Requested for 10 ft.

Frank Manni, attorney for the applicant, stated that this application was continued from the July 26, 2007 meeting. The Board and abutters had made some recommendations for changes. The applicant has met with the neighbors and discussed different possibilities; revised plans have been submitted to the Board. Mr. Manni stated that a major concern was if fire apparatus would be able to travel around the building. Mr. Manni stated that the applicant and the engineer have complied with all regulations regarding this issue. The next issue was the location of the dumpsters. The dumpsters will be enclosed and located at the rear of the parking lot. Mr. Manni stated that there were some concerns about an abutting day care center. There is a fence currently between the two properties. Mr. Jeffrey asked Mr. Manni if the applicant had addressed all the concerns brought about by Mr. O'Leary at the last meeting. Mr. Manni stated that the applicant, the engineer, Mr. O'Leary and his family met and discussed all issues and resolved them. Mr. O'Leary also had the opportunity to take a set of plans home and review them, he had no objections. Rebecca Macari, abutter, after being duly sworn, was concerned about noise and the dumpsters. Mr. Aurecchia stated that all refrigeration has been moved inside the building and the dumpsters will be enclosed. She then asked about the rear portion of the lot that is zoned R-15. Mr. Britto stated that the applicant is not looking to develop that portion of the lot at this time. Mr. Sylvia showed Ms. Macari the plans and explained the buffer that will screen the commercial building from the neighbors to the rear. Anthony Macari, Jr., abutter, after being duly sworn, asked about the residential portion of the lot. He asked how this could be approved if the road to the proposed home is not built. Mr. Sylvia stated that that portion of the project is not being considered at this point. Only the commercial building in the front of the lot. Mr. Macari asked about the square footage of the residential portion. Mr. Sylvia again stated that that project is not before the Board, but the area is 22,000 square feet. Ann Colafrancesco, abutter, after being duly sworn, asked about the residential portion of the lot. Mr. Britto stated that the residential portion of the project is not being done at this time. Only the commercial portion. Mr. Jeffrey made the motion to grant the application seconded by Mr. Fascia. A voice vote was taken, all in favor.

Mr. Aurecchia stated that two applications would not be heard tonight. LaFazia on Ostend Street and Kent on Lookout Avenue. The abutters will be notified if they are on the agenda next month.

B. File 2007-31

Owner/Applicant:	Joseph Santagata, Jr.
Location:	48 Golden View Drive; AP 45 – Lot 218
Lot Dimension:	Frontage: 200 ft; Depth: 200 ft; Area: 40,000± square feet.
Zoning District:	R-40 (Residential – 40,000 sq. ft.) Zone
Existing Use:	Single Family Dwelling
Development Proposal:	Construct an additional 75' x 30' (2,250 sq. ft.) single family dwelling.

Special Use Permit petitioned under Ordinance 2002-21, Buildable Lot Determination 2(3) – Relief from Merger Requirements
continued

Alfred Russo, attorney for the applicant, stated that his client would like a continuance. His client has decided to go to the Planning Department to split the lot before coming to the Zoning Board of Review for any required dimensional variances. He requested that the application be placed on the November, 2007 agenda. A voice vote was taken, all in favor.

C. File 2007-35

Owner/Applicant: Gordon Briggs, Jr. and Lynn Briggs
 Location: 12 Jasmine Lane; AP 43 – Lot 479
 Lot Dimension: Area: 20,724± square feet.
 Zoning District: R-40 (Residential – 40,000 sq. ft.) Zone
 Existing Use: Single Family Dwelling
 Development
 Proposal: Keeping of more than (3) dogs for recreation, no breeding or selling of dogs.

Special Use Permit petitioned under Article III, Section D, Table III-D-I, Section1; Subsection (2)(4)

Mr. Fascia stated that he will recuse himself for the application pursuant to the Rhode Island Public Ethics Law. The application has been submitted to the State and a copy is on file with the Zoning Clerk; however, he reserves his right to testify as a private citizen.

Frank Manni, attorney for the applicant, requested a continuance for one month. Mr. Nascenzi stated that the Zoning Office will be making an official notification to the Zoning Board of Review that the maximum applications on each agenda will be 10 per month. This will ensure that the hearing does not go beyond the state mandate of 10:30 p.m. ending. Mr. Aurecchia stated that if the October agenda has more than 10, this application will be moved to November. Mr. Aurecchia stated that Mrs. Leonardi will notify all interested parties of the new date. Mr. Anzelone made the motion to continue; seconded by Mr. Fascia. A voice vote was taken, all in favor.

D. File 2007-44

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.

continued

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.

Mr. Manni, attorney for the applicant, requested a continuance at this time. Mr. Aurecchia stated that Mrs. Leonardi will notify all interested parties of the new date. Mr. Anzelone made the motion to continue; seconded by Mr. Fascia. A voice vote was taken, all in favor.

Mr. Fascia stated that he will reseat himself as a member of the Zoning Board of Review.

IV. New Business

A. File 2007-53

Owner/Applicant: Robert L. Phillips
 Location: Anthony Street, AP 11- Lot 230
 Lot Dimensions: Frontage: 42 ft; Depth: 76 ft; Area: 3,562 square feet
 Zone: R-15 (Residential – 15,000 sq. ft.) Zone
 Attorney: John DiBona, Esq.
 Surveyor: Ocean State Planners
 Engineer: Casali & D’Amico Engineering, Inc.
 Present use: Vacant Land
 Development
 Proposal: Construct a 42’ x 26’ (1,092 sq. ft.) single family dwelling with 25.7’ x 5.7’ porch
 Dimensional Variance petitioned under Article III, Section F, Table III-F-1
 Maximum Lot Coverage Allowed: 25%; Proposed Lot Coverage: 31%; Relief Requested for 6%.
 Minimum Lot Size Required: 15,000 sq. ft.; Proposed Lot Size Requested: 3,562 sq. ft.; Relief Requested for 11,438 sq. ft.
 Minimum Lot Frontage Required: 100 ft.; Proposed Lot Frontage Requested: 42 ft.; Relief Requested for 58 ft.
 Minimum Lot Width Required: 100 ft.; Proposed Lot Width Requested: 42 ft.; Relief Requested for 58 ft.
 Minimum Rear Yard Setback Required: 45 ft.; Proposed Rear Yard Setback Requested: 8 ft.; Relief Requested for 37 ft.

continued

Minimum Left Side Yard Setback Required: 20 ft.; Proposed Left Side Yard Setback Requested: 7.24 ft.; Relief Requested for 12.76 ft.

Minimum Right Side Yard Setback Required: 20 ft.; Proposed Right Side Yard Setback Requested: 7 ft.; Relief Requested for 13 ft.

John DiBona, attorney for the application, presented the application to the Board. Mr. Anzelone stated that Mr. DiBona has represented a member of his family in the past. He has no problems with voting and hearing on this matter. Mr. Aurecchia stated that this was duly noted. Mr. DiBona stated that he has a copy of a report by Mr. Ed Pimentel, an expert planner, who is present this evening and will give testimony. Mr. Aurecchia stated that all materials are supposed to be in the office before the meeting. Mr. DiBona stated that the reports were not available at the time the packets went to the members. Mr. Aurecchia asked Mr. DiBona how the Board is supposed to make a sound judgment. The Board needs all documents before the meeting. Mr. DiBona stated that he will have Mr. Pimentel summarize his report and present a copy to the Board.

Mr. DiBona stated that the applicant wishes to construct a 1,092 sq. ft., three bedroom, single family dwelling on the lot. Relief is requested regarding lot size, lot width and frontage, rear yard and side yard requirements. The lot is a substandard lot of record. It was originally recorded in 1910. There is no contiguous lot ownership. Mr. Ed Pimentel, expert planner, was duly sworn. Mr. Pilozzi made the motion to accept Mr. Pimentel as an expert witness; seconded by Mr. Jeffrey. A voice vote was taken, all in favor. Mr. Pilozzi made the motion to accept Mr. Pimentel's resume and report as Exhibit A for the applicant; seconded by Jeffrey. Mr. DiBona stated that Mr. Pimentel did an analysis of the lot and the area in question at Mr. DiBona's request. Mr. Pimentel stated that he reviewed the Town's Comprehensive Plan paying special attention to the land use and housing elements. He then reviewed the proposal and compared it to the Zoning Regulations. He followed this up with a neighborhood analysis. The lot in question borders the City of Providence, so the analysis contains both municipalities. Mr. Pimentel passed out copies of his report to the Board. The average lot size in the area is 8300 square feet. The lot in question is 3562 square feet. The neighborhood is an old one with very few lots that conform to the R-15 requirements. 9% of the lots comply with the requirements. The average building footprint in the area is 1385 square feet. The proposed dwelling is 1242 square feet. The house will conform to the character of the neighborhood. There were twelve dwellings constructed in the area in the last 30 years. Three dwellings in the 1990's and 2 in the 2000's. All were built on substandard lots.

Mr. Pimentel explained that the building envelope is basically extinguished with the R-15 setback requirements. Mr. Pimentel explained the relief being requested for the side and rear yards. The relief being requested is consistent with the neighborhood. The Comprehensive Plan acknowledges the existence of substandard lots and helps to assist in developing infill lots. The Comprehensive Plan is concerned about encroaching into more rural areas. It supports development in the infrastructure; in areas that already have

continued

water and sewer present. The burdens that exist in regarding to the Zoning Ordinance are: 1. hardship that results from the unique characteristics of the lot; 2. No the result of any prior action of the applicant; 3. It would not alter the characteristic of the neighborhood. Mr. Pimentel stated that the house could not be any smaller without providing a reasonable amount of living space. Not granting the variance would amount to more than a mere inconvenience, it would make the lot unusable. Mr. Anzelone verified the amount needed for side yard relief. He thinks the house is too big for the lot. Mr. Frezza suggested a one or two-bedroom home instead of the three-bedroom being proposed. Mr. Jeffrey stated that the house plans are very detailed and very nice. He is familiar with the area. Mr. Jeffrey stated that from a real estate perspective, one or two-bedroom homes have become functionally obsolete. The proposed home is consistent with the area. Mr. Pilozzi stated that the Board has been to the area. In the past, the Board has denied the applications, they were appealed and the homes were built anyway. Denial of the application would be tantamount to confiscation. Mr. Pilozzi feels that the proposal is consistent with the neighborhood. Mr. DiBona stated that the applicant has met the requirements for a variance.

Brenda Muscara, abutter, after being duly sworn, stated that she is a direct abutter to the lot. She does not want a house built on the small lot. It will be too close. She has an in-law apartment in her garage. The proposed house would block the only window on that side. Ms. Muscara stated that the prior owner of the subject lot had sold her a piece of the lot, which is why the subject lot is irregularly shaped. Mr. Pilozzi stated that if the house were made smaller, it would devalue all the houses in the neighborhood. It is a substandard lot of record, it can be built on.

Mr. Anzelone stated that he thinks both of his colleagues are incorrect. The house is too large. Most of the other lots in the report are larger. Mr. Anzelone would rather deny the application. There is not enough room on the sides. Mr. Frezza agreed with Mr. Anzelone. Mr. Jeffrey stated that he agreed with Mr. Pilozzi. It is conforming to the neighborhood.

Ms. Muscara stated that it is a health and safety issue, also. Mr. Jeffrey stated that he understands her concerns. A smaller house would devalue her home. Mr. Anzelone does not want the house on the lot. Mr. Nascenzi stated that the Board can grant any setback they wish. However, as a house gets closer to the lot line, the building code has specific requirements that must be met. Edward Joseph, abutter, after being duly sworn, stated that he also directly abuts the subject lot. There has already been a fire in a home on the other side of him. He almost lost his home. The subject home is even closer. He does not want this house built. Mr. Joseph stated that he was told by the real estate agent when he bought his home, what his lot lines were. When the survey was done for the subject lot, he has less than he thought. Mr. Anzelone asked how long he was caring for the land. Only about 8 years, stated Mr. Joseph. Mr. Anzelone stated that if it had been 10 years, he could have taken it by adverse possession. Mr. Joseph stated that the location of the driveway is bad. It is on a steep hill and the driveway will be blind. The new home will also block his view. At night, you can see the whole city of Providence

continued

from his home. Michael Calvitto, abutter, after being duly sworn, stated that the house will be too close to the neighboring homes. He also thinks this house will devalue the neighborhood. Jessica Deremer, abutter, after being duly sworn, stated that there is not enough room between the houses; concerned about fire and safety.

Mr. Anzelone made the motion to deny the application on the basis of lot size, no hardship, and safety issues. No Board member seconded the motion; motion dies. Mr. Jeffrey made the motion to approve the application on the basis that the house conforms to the neighborhood and over 90% of the lots in the area are undersized. Mr. Pilozzi seconded the motion and agrees that the home conforms to the neighborhood. A voice vote was taken, voted as follows: Mr. Aurecchia, aye; Mr. Fascia, aye; Mr. Jeffrey, aye; Mr. Pilozzi, aye; Mr. Anzelone, nay. Motion passes 4 to 1.

B. File 2007-54

Owner: Michael and Lynda Giarusso
 Applicant: Valentino Cairo
 Location: Sprague Circle, AP 7- Lot 144
 Lot Dimensions: Frontage: 200 ft; Depth: 174.38 ft; Area: 15,007 square feet
 Zone: R-15 (Residential – 15,000 sq. ft.) Zone
 Attorney: Alfred Russo, Jr., Esq.
 Surveyor: Louis Federici, P.L.S.
 Present use: Vacant Land
 Development
 Proposal: Construct a 26' x 44' (2,288 sq. ft.) single family dwelling

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

Minimum Right Side Yard Setback Required: 20 ft.; Proposed Right Side Yard Setback Requested: 12.5 ft.; Relief Requested for 7.5 ft.

Mr. Russo, attorney for the applicant, presented the application to the Board. The subject lot meets all requirements for an R-15 zone except for 7.5 feet on the left side. There is a utility easement on that side and the house needs to stay away from the easement. Mr. Fascia verified the amount of relief required. No abutters appeared for or against the project. Mr. Jeffrey made the motion to approve the application; seconded by Mr. Fascia. A voice vote was taken, all in favor.

C. File 2005-57 – Referral to Zoning Board Attorney for Legal Opinion

Owner: John Ruggieri
 Applicant: Valentino Cairo
 Location: 43 Golden View Drive, AP 45 - Lot 232
 Lot Dimensions: Frontage 100'±; Depth: 200'±; Area: 20,000± square feet
 Zone: R-40 (Residential – 40,000 sq. ft.) Zone
 Attorney: Alfred Russo, Jr., Esq.
 Present use: Vacant Land
 Proposed: Single Family Dwelling, 1,410 ± square feet on a 20,000 square foot lot

continued

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

Required Left Side Setback: 35 feet. Proposed Left Side Setback: 28 feet. Relief requested for 7 feet left side.

Required Right Side Setback: 35 feet. Proposed Right Side Setback, 27 feet right yard, Relief requested for 8 feet.

Application previously denied at the September 28, 2006 meeting.

Al Russo, attorney for the applicant, presented the history of the application to the Board. The applicant has made changes to the plan and is requesting a legal opinion as to whether the application can come back before the Board before the two years has passed. Mr. Pillozzi stated that State Law states that if mitigating circumstances exist, the application does not have to wait two years. There are blatant mitigating factors. The residents in the area were promised an engineering determination in regard to drainage and never received it. The applicant was promised a building determination and never received it. I believe that the application should be allowed to come back before the two year period has passed. Mr. Ballirano stated that Mr. Pillozzi has already quoted the State Law and he concurs. Mr. Fascia made the motion to allow the application on the next possible agenda; seconded by Mr. Jeffrey. A voice vote was taken, all in favor.

D. File 2007-27

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.

continued

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 the size of the lot on the agenda is a typo. It should read 5,137 square feet, not acres. Mrs. Leonardi verified that it is a typo, the application is correct. Justin Keller, applicant, was duly sworn. Mr. Keller verified that the lot is undersized and has limited street frontage. It is a non-conforming lot dating back to the 1940's. Mr. Gallogly stated that the lot has received DEM approval for an ISDS system. Mr. Keller is requesting to build a 32' x'24' single family dwelling. Mr. Gallogly verified with Mr. Keller that the lot required relief on the frontage, front yard, rear yard and side yard setbacks. Mr. Gallogly stated that there will be more than 13 feet from the side lot lines to the house and the front yard will be 24 feet. This is in conformance with the rest of the neighborhood. Mr. Keller stated that the house will have 3 bedrooms and the lot coverage is less than 15%. Mr. Gallogly asked Mr. Keller if the lot would have any useful purpose if the variances are not granted; Mr. Keller replied that it would not. Mr. Fascia verified that the applicant was requesting 35,000 square feet of relief on the lot size. Mr. Gallogly stated that the area is an R-40 and the lot is only 5,137 square feet. It is a substandard lot of record. The information is correct. Mr. Pilozzi verified that the applicant did not own any other property in the area. Mr. Pilozzi asked Mr. Keller how long he had owned this property. Mr. Keller replied that he purchased the lot in January of 2007. Mr. Pilozzi verified that the house footprint is 768 square feet and the relief being requested. Mr. Pilozzi verified that the applicant would be bringing in the public water line. Mr. Pilozzi asked if the applicant had done a survey with the engineer to locate any neighboring working wells within 100 feet. Mr. Keller stated that the engineer had previously stated to him that there was nothing within 100 feet. Mr. Pilozzi said that the neighbors must be spoken to in order to verify if the wells are working or not. Mr. Jeffrey stated that he has two concerns with the subject lot. The first is that there are no other small lots comparable to the subject lot in the immediate area. Secondly, Mr. Jeffrey is concerned with run-off and drainage.

Mr. Gallogly stated that DEM issued the ISDS approval and they would not have done so if there were any working wells within 100 feet. Mr. Gallogly stated that he would be happy to request a continuance and bring the engineer in to testify.

Mr. Gallogly and Mr. Pilozzi discussed the lot sizes in the area. None of the lots in the neighborhood conform to the R-40 Zoning, according to Mr. Keller. Mr. Aurecchia stated that until the wells are identified and determined to be non-working, there will not be a vote on this application.

William Coyle, III, after being duly sworn, stated that he is employed as a real estate appraiser and consultant with William E. Coyle, Jr. and Associates. He has been employed in this capacity for 35 years. Mr. Pilozzi made the motion to accept Mr. Coyle as an expert witness; seconded by Mr. Aurecchia. A voice vote was taken, all in favor. Mr. Coyle stated that he has visited the property and the surrounding neighborhood. He has reviewed the site plan, house plans, and ISDS approval and plans. Mr. Coyle stated that it would amount to more than a mere inconvenience if the requested variances were denied. Mr. Fascia asked Mr. Coyle if he did the

continued

inspection of the area before or after the applicant purchased the property. Mr. Coyle stated that he did his inspection approximately one month ago; which was after the property had been purchased. Mr. Pilozzi stated that the surrounding lots are much larger than the subject property. Mr. Coyle stated that none of the small lots in the area have been merged. The characteristics of the land are such that it is buildable. The hardship is not a result of any direct action of the applicant. In Mr. Coyle's opinion, the granting of the variance would cause no harm, no decrease in home values.

Robert King, abutter, after being duly sworn, stated that the Board needs to see a plan by a professional engineer showing the layout of the building and the facilities, utilities, driveway and other provisions for parking. Parking is an issue in the area because the street is narrow. He thinks the house should be a single story and the Board should make a stipulation that no second story ever be added. The house will negatively affect property values. This lot recently sold at a tax sale for \$84.00. There has been police intervention in the area recently and he thinks this home will exacerbate the situation. He urged the Board to delay granting any variances until all considerations have been addressed. He knows of two wells in the area that may be affected by the ISDS system. Mr. Fascia verified exactly which lot Mr. King owned and lived at. Mr. Pilozzi asked if there was a water issue in the area in regard to drainage. Mr. King stated that he does not have a problem, but lots on Dayton Avenue do have a problem. Mr. Jeffrey asked about the police intervention. Mr. King stated that a neighbor has chosen to block his access to his own lot; he thought it was resolved, but it has returned. Mr. Jeffrey stated that the problem is not related to the lot in question. Mr. King stated that it relates to the parking situation in the area. Mr. Pilozzi made a motion to have Mr. King's letter accepted as an Exhibit for the abutters; seconded by Mr. Fascia. A voice vote was taken, all in favor. Mr. Fascia asked Mr. Keller if he purchased this lot for \$84.00. Mr. Gallogly stated that the tax sale took place many years ago and Mr. Keller purchased the lot for market value. A copy of the purchase and sale and the tax sale is in the file at the Zoning Office. Adam Rosenblatt, abutter, after being duly sworn, stated that he has a well in his front yard. He lives at 32 Ridgeway and is more than 100 feet away. He questioned the size of the house and verified that it would have a second floor. Mr. Gallogly showed Mr. Rosenblatt the house plans. Stephanie Manzi, after being duly sworn, stated that it appears that this application is being continued, she feels that the amount of relief being requested is severe. The street is not wide enough and there is a drainage issue in the area. In the wintertime the street is a sheet of ice. Mr. King stated that this house will have a steep incline towards the street. Brenda Melucci, after being duly sworn, stated that she owns property on Dayton Avenue. Mr. Jeffrey verified which lots Mrs. Melucci owned. Mrs. Melucci stated that almost all the lots in the area are larger. Mrs. Melucci stated that there is a well on a neighbor's property that is within 100 feet of the ISDS. Mrs. Melucci stated that the drainage problem in the area is severe. Joseph Morris, after being duly sworn, stated that he lives at 15 Rosemere Avenue on the corner of Dayton Avenue. Mr. Morris verified on the map where the subject property was. Mr. Keller stated that the grade of the property from front to back is 4 feet. Mr. Gallogly stated that based on concerns about the wells, he is requesting a continuance. Mr. Pilozzi stated that he is ready to vote this evening, based on testimony. Mr. Fascia stated that Mr. Keller could choose to withdraw the application. Mr. Pilozzi stated that he agreed with Mr. Jeffrey in regard to the fact that the house does not conform to the neighborhood. Mr. Fascia stated that the lots were not drawn up with any eye to consistency, they appear to be random. Mr. Aurecchia stated that he asked for a motion to continue and no Board member made the motion. He moves to ask for the question to approve or deny the application. Mr. Ballirano stated that the applicant requested the continuance, no motion is necessary. Mr. Pilozzi asked if this was based on past practice. Mr. Ballirano stated that if in past practice, the Board allowed an applicant to come back with their witness, they must continue that practice. Mr. Fascia made the motion to continue the application. Mr. Pilozzi seconded the motion. A voice vote was taken, all in favor.

E. File 2007-43

Owner/Applicant: Anthony and Margaret Fellela
 Location: 107 Peck Hill Road, AP 43 - Lot 156
 Lot Dimensions: Frontage 270.18'±; Depth: 1205.51'±; Area: 7.76± acres
 Zone: R-40 (Residential – 40,000 sq. ft.) Zone
 Surveyor: Angelo Raimondi, P.L.S. – Scituate Survey
 Present use: Vacant Land
 Development
 Proposal: Divide existing lot into two lots

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

Minimum Lot Frontage Required: 140 ft.; Proposed Lot Frontage Requested: 135.09 ft.; Relief Requested for 4.91 ft.

Minimum Lot Width Required: 140 ft.; Proposed Lot Width Requested: 135.09 ft.; Relief Requested for 4.91 ft.

Anthony and Margaret Fellela, after being duly sworn, stated that they wished to split the existing lot into 2 lots and give one to each son. They need relief for frontage. Mr. Pilozzi stated that the Zoning Board cannot split lots or assign lot numbers. The Planning Board does this. He is comfortable with the situation but thinks that the applicant is in the wrong Board. Mr. Nascenzi stated that the applicant is seeking the dimensional relief needed before having an Administrative Subdivision done. The applicant does not have to appear before the Planning Board, it is an in-house process. Mr. Pilozzi asked if the applicant had wells or public water. Mr. Fellela stated that they have public water and there is plenty of room for two septic systems. Mr. Pilozzi asked if the engineer for the project was present; Mr. Fellela stated that he was not. Mr. Fascia made the motion to approve the application; seconded by Mr. Pilozzi. A voice vote was taken, all in favor.

Mr. Fascia made the motion for a five-minute break; seconded by Mr. Pilozzi. Break taken from 9:08 p.m. to 9:23 p.m.

F. File 2007-45

Owner: Steven Carlino
 Applicant: Dominic DePasquale
 Location: Waterman Avenue, AP 16 - Lot 295
 Lot Dimensions: Frontage: 60 ft; Depth: 80 ft; Area: 4,800 square feet
 Zone: R-15 (Residential – 15,000 sq. ft.) Zone
 Attorney: Frank Lombardi, Esq.
 Surveyor: John P. Caito Corporation
 Present use: Vacant Land
 Development
 Proposal: Construct a 30' x 27.5' (825 sq. ft.) single family dwelling

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

continued

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

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

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

Minimum Rear Yard Setback Required: 45 ft.; Proposed Rear Yard Setback Requested: 27.5 ft.; Relief Requested for 17.5 ft.

Minimum Left Side Yard Setback Required: 22 ft.; Proposed Left Side Yard Setback Requested: 15 ft.; Relief Requested for 7 ft.

Minimum Right Side Yard Setback Required: 22 ft.; Proposed Right Side Yard Setback Requested: 15 ft.; Relief Requested for 7 ft.

Nicole LaBonte, attorney for the applicant, presented the application to the Board. The subject is a substandard lot of record. It is in an R-15 district. Ms. LaBonte presented the Engineer, John Caito to the Board. Mr. Caito was duly sworn. Mr. Fascia made the motion to accept Mr. Caito's C.V. as an Exhibit for the applicant; seconded by Mr. Pillozzi. A voice vote was taken, all in favor. Mr. Pillozzi made the motion to accept Mr. Caito as an expert witness; seconded by Mr. Fascia. A voice vote was taken, all in favor.

Mr. Caito stated that the lot immediately to the west of the subject lot was before this Board not long ago. It was approved for a single family dwelling. When the project is completed, the water and sewer lines will be extended and the road will be extended past the subject lot. The applicant is requesting relief on lot size, frontage, rear and side yard setbacks. Mr. Nascenzi stated that when the application was presented to the Zoning Office, no relief on lot coverage was requested. According to his calculations, the largest footprint the applicant would be allowed is 720 square feet. The application asks for 825 square feet. Mr. Pillozzi asked Mr. Ballirano if this could be corrected at the meeting or would the abutters have to be re-noticed. Mr. Aurecchia asked Ms. LaBonte if she understood the situation. She stated that she did not completely understand. Mr. Nascenzi explained the lot coverage ratio. In doing so, he realized that he was basing his calculations on an R-15 zone, not the R-40 zone the lot is in. He withdrew his comments and apologized to the Board and the applicant.

Mr. Caito stated that the relief requested is not due to any action on the part of the applicant, the owner does not own any contiguous lots in the area and does not result primarily from the desire to realize greater financial gain. The granting will not alter the general characteristics of the neighborhood. A smaller home would not conform to the neighborhood. Mr. Caito stated that the road is roughed in and will be extended, as will the water and sewer lines.

Domenic DePasquale, applicant, after being duly sworn, stated that he does not own any other property in the area. He does not own the subject property; he is under a purchase and sales agreement. No abutters appeared for or against the project.

Mr. Pillozzi made the motion to grant the application; seconded by Mr. Fascia.

G. File 2007-47

Owner/Applicant: William and Kimberly Mattera
 Location: 17 Green Valley Drive, AP 48/1 - Lot 293
 Lot Dimensions: Area: 13,197± square feet.
 Zone: R-20 (Residential – 20,000 sq. ft.) Zone
 Surveyor: Marcus Channel, P.L.S. – Atlas Land Surveying, LLC
 Architect: Michael DiNoble – MADD Designs
 Present use: Single Family Dwelling
 Development
 Proposal: Construct a 20' x 24' (480 sq. ft.) master bedroom over garage

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

Minimum Lot Size Required: 20,000 sq. ft.; Proposed Lot Size Requested: 13,197 sq. ft.; Relief Requested for 6,803 sq. ft.

Minimum Front Yard Setback Required: 30 ft.; Proposed Front Yard Setback: 17 ft.; Relief Requested for 13 ft.

Minimum Right Side Yard Setback Required: 25 ft.; Proposed Right Side Yard Setback: 16 ft.; Relief Requested for 9 ft.

William and Kimberly Mattera, after being duly sworn, stated that they wish to add a fourth bedroom to their home due to the expanding family. Mr. Mattera explained the relief being requested. Mr. Aurecchia verified that the addition over the garage would contain a master bedroom and bathroom. No abutters appeared for or against the project.

Mr. Pilozzi made the motion to grant the application; seconded by Mr. Fascia. A voice vote was taken, all in favor.

H. File 2007-49

Owner/Applicant: Stanley and Mary Ann Gregory
 Location: 24 Poppy Hill Drive, AP 55 - Lot 149
 Lot Dimensions: Frontage: 140 ft; Depth: 352 ft; Area: 49,280 square feet
 Zone: R-40 (Residential – 40,000 sq. ft.) Zone
 Attorney: Christopher DePalo, Esq.
 Surveyor: Richard T. Bzdyra, P.L.S. - Ocean State Planners
 Present use: Single Family Dwelling
 Development
 Proposal: Operate a phone-call only mortgage business within the home

Special Use Permit petitioned under Article III, Section D, Table III-D-1, Subsection 6.1

Mr. Fascia stated that he has known the applicant for almost 50 years. It will in no way affect his responsibility and objectivity.

Stanley and Peter Gregory, after being duly sworn, stated that they are before the Board to obtain a Special Use Permit to conduct a phone call only mortgage business out of their home. It will be based in their finished basement. There are three employees in the company. There will be no signage. Mr. Pilozzi asked if Mr. Gregory currently held a business license. Mr. Stanley Gregory replied that he did, at his current place of business. Mr. Pilozzi asked if he was closing that

continued

business. Mr. S. Gregory replied that he is only moving the office, not closing the business. Mr. Pilozzi asked if customers would be visiting the office. Mr. S. Gregory stated that there is no foot traffic. All business is conducted by telephone, email and postal mail.

Mr. Anzelone stated that by looking at the Use Chart in the Zoning Ordinance, it appears that this use is not allowed in the R-40 Zone. Mr. Jeffrey stated that there is a slight traffic flow to this type of business, it is limited. Mr. Jeffrey asked approximately how many loans are for Rhode Island based properties. Mr. S. Gregory stated that less than 20 percent. Mr. Jeffrey verified that closings are not done at his office or applications are not taken there. Mr. S. Gregory stated that closings are handled by attorneys and applications are sent electronically or by Priority Mail.

Mr. Fascia stated that Mr. Gregory would still have to appear before the Town Council for a phone call only business license. Mr. Nascenzi stated that he would also need a Business License Inspection of the structure. Mr. Anzelone stated that this is a non-permitted use. Mr. Nascenzi stated that it is a permitted use by Special Use permit. Mr. Nascenzi referred Mr. Anzelone to the correct location in the Zoning Ordinance where this was allowed. No abutters appeared for or against the project.

Mr. Fascia made the motion to grant the application; seconded by Mr. Jeffrey. A voice vote was taken, all in favor.

I. File 2007-51

Owner/Applicant: Jessica Faiola
 Location: 6 Borden Avenue, AP 12 - Lot 15
 Lot Dimensions: Frontage: 65.02 ft; Depth: 188.90 ft; Area: 12,280 square feet
 Zone: R-10 (Residential – 10,000 sq. ft.) Zone
 Attorney: Alfred Russo, Jr., Esq.
 Surveyor: Ocean State Planners
 Present use: Child Daycare Center
 Development
 Proposal: Construct a 70' x 28' (1,960 sq. ft.) addition to the existing daycare center

Expansion of Special Use Permit (previously granted) and Dimensional Variance petitioned under Article III, Section F, Table III-F-1

Maximum Lot Coverage Allowed: 25%; Proposed Lot Coverage: 38%; Relief Requested for 13%

Al Russo, attorney for the applicant, presented the application to the Board. Ms. Faiola is looking to extend her Special Use permit and expand her day care center. She is also requesting a variance on the lot coverage provision. The addition would bring her lot coverage up to 38%, the Zoning Ordinance allows for 25%. She is requesting relief for 13%. Jessica Faiola is duly sworn. Ms. Faiola states that the addition is only 1,600 feet, not 1,900 as originally presented. Angelo Lauro, after being duly sworn, states that he has concerns about parking. Ms. Faiola stated that she currently has five parking spaces and will be adding 5 more. The dumpster will also be fenced off. Mr. Pilozzi verified that the addition will extend into the play area and the play area will be moved to the new lot that was recently purchased and merged. Ms. Faiola agreed. Ms.

continued

Faiola stated that she is adding another preschool room and an infant room. Mr. Pillozzi asked what would be installed to keep cars from entering the play area. Ms. Faiola stated that the play area is fenced and curb stones will be installed. There will also be poles installed just behind the curb stones as an additional precaution.

Mr. Pillozzi made the motion to approve the application; seconded by Mr. Fascia. A voice vote was taken, all in favor.

J. File 2007-48

Owner: F. Stephen Serzan
 Applicant: 1481 Realty, LLC
 Location: Dayton Avenue, AP 45 - Lot 115
 Lot Dimensions: Frontage: 120 ft; Depth: 40 ft; Area: 4,800± square feet
 Zone: R-40 (Residential – 40,000 sq. ft.) Zone
 Attorney: Alfred Russo, Jr., Esq.
 Present use: Vacant Land
 Development
 Proposal: Construct a 44' x 24' (2,112 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: 4,800 sq. ft.; Relief Requested for 35,200 sq. ft.
 Minimum Lot Frontage Required: 140 ft.; Proposed Lot Frontage Requested: 120 ft.; Relief Requested for 20 ft.

Minimum Lot Width Required: 140 ft.; Proposed Lot Width Requested: 120 ft.; Relief Requested for 20 ft.

Minimum Front Yard Setback Required: 40 ft.; Proposed Front Yard Setback: 10 ft.; Relief Requested for 30 ft.

Minimum Rear Setback Required: 75 ft.; Proposed Rear Setback: 6 ft.; Relief Requested for 69 ft.

Maximum Lot Coverage Allowed: 15 %; Proposed Lot Coverage: 22%; Relief Requested for 7%.

Al Russo, attorney for the applicant, presented the application to the Board. Mr. Russo stated that the building plans were inadvertently left out of the packets for the Board Members. They were not identified when they were delivered to the Zoning Office. Mr. Aurecchia asked Mrs. Leonardi if this information is correct and if these plans were the correct plans. Mrs. Leonardi confirmed the information. Mr. Fascia made the motion to accept the building plans; seconded by Mr. Jeffrey. A voice vote was taken, all in favor. Mr. Russo stated that the applicant has received ISDS approval from DEM. Mr. Fascia made the motion to accept the approval as part of the record, seconded by Mr. Pillozzi. A voice vote was taken, all in favor. Mr. Russo stated that the lot is a substandard lot of record, non-conforming to the R-40 zone. His client is requesting to build a raised ranch home. Side setbacks are met. Front yard setback requires 40 feet; they are requesting 30 feet of relief. The rear required setback is 75 feet, we are requesting 6 feet. The

continued

applicant owns no other lots in the area. The home would conform to the neighborhood, has access to public water. Lee Bailey, applicant, after being duly sworn, stated that he chose this design so it would conform to the neighborhood. Shotgun ranches are unattractive and devalue the neighborhood. Mr. Bailey stated that he has built many homes over the last 10 years.

Mr. Fascia verified that the applicant is looking for 35,000 square feet of relief in regard to lot size. Mr. Russo confirmed. Mr. Fascia asked about any working wells within 100 feet of the ISDS. Mr. Russo stated that it would have been shown on the ISDS application. Mr. Fascia stated that the applicant needed to do an in-depth study of the area to locate any working wells.

Mr. Aurecchia asked how long the applicant had owned this lot. Mr. Russo stated that the applicant will purchase the lot if the application is approved. Mr. Russo stated that the owner of the lot has the hardship. Mr. Aurecchia asked how long the owner has owned the lot. Mr. Russo stated that he did not have that information this evening. Mrs. Leonardi stated that the owner has owned it for 32 years.

Joseph Daniel Morris, abutter, after being duly sworn, stated that there is a water problem in the area. He has 2 sump pumps in his basement and doesn't want to have to put in a third. The applicant is asking for a 10 foot front yard, when it snows the town pushes the snow at least 10 feet onto the lawns. The town over salts the road due to the water issue and the salt kills the lawn. Brenda Melucci, abutter, after being duly sworn, stated that the lot across the street was vacant when she bought her home. A few years ago a home was built and they had to build up the land. Now the water runs into her lot. She had to town come and put a berm in, including across her driveway. The berm has been installed twice. If this Board approves this application and the application for Ridgeway, the neighbors are all going to sell, because then it is the City of Johnston, not the Town of Johnston. Mark Pietros, abutter, after being duly sworn, states that he lives across the street from Ms. Melucci. The lot is too small and the house is too big. The water is an issue. A ten foot front yard is ridiculously small. He also said that he was never notified about the meeting, he bought his home recently and the notice went to the prior owner. He has public water and a septic system. His septic system will be very close to the subject lot's septic system. Ed Werbicki, abutter, after being duly sworn, states that he has a well but is not within 100 feet of the subject ISDS. Every time a house is built, the water problem gets worse. He also feels it is a safety issue with the position of the driveway. The street is very narrow. Judy Morris, abutter, was duly sworn. Mr. Fascia stated that he works for the same company as Mrs. Morris in the same building. This will in no way impact his objectivity. Mrs. Morris states that she has a working well and it is directly across the street from the subject property. She believes her well is within 100 feet of the proposed ISDS. Mr. Robert King, previously sworn, stated that he agrees with all of his neighbors on this issue.

Mr. Russo asked the Board for a continuance so that the issue of the wells can be resolved. Mr. Fascia made the motion to continue the application; seconded by Mr. Pillozzi. A voice vote was taken, all in favor.

Mr. Pillozzi asked Mr. Nascenzi about the memorandum from Makram Megalli. Mr. Nascenzi stated that it did not warrant discussion at this time, it is for informational purposes. It will be introduced at a later date for discussion.

Adjourned at 10:26 p.m.