

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

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MINUTES

October 25, 2007

The Zoning Board of Review held its monthly meeting on the 25th day of October, 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: 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

A. 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. Mr. Fascia turned the meeting over to Mr. Jeffrey to act as Chair for this application.

Frank Manni, attorney for the applicant, stated that the applicant wishes to continue the matter for one month. He is under the care of a cardiologist for a heart condition. He has already had three open heart surgeries and Mr. Manni presented a letter from Dr. Joseph Tertalo, M.D. to the Board. Mr. Jeffrey read the letter into the record. Mr. Pilozzi made

the motion to accept the letter as Exhibit A for the applicant. Mr. Frezza seconded the motion. A voice vote was taken, all in favor.

Mr. Manni stated that his client is requesting the continuance because he could not be present at the meeting. His client attempted to resolve issues with the neighbors during the previous continuance, but it was not possible. Mr. Ballirano stated that it is the Board's option whether or not to grant a continuance. In dealing with issues like this, you have to weigh the resident's inconvenience versus the right to seek relief for this individual applicant. There is no inconvenience to the applicant to withdraw his application other than a pecuniary one. If the applicant were to withdraw, he can re-file at any time. The neighbors would be re-noticed or the Board can grant the continuance. Mr. Manni stated that it is his understanding that if the Board grants the continuance, the applicant would have to pay another advertising fee and the neighbors would be re-noticed.

Mr. Anzelone asked why it was continued last month if the applicant was present. Mr. Manni stated that his office was hired at the last minute and he was not prepared to go forward last month. Mr. Anzelone stated that the neighbors are present, the attorney is present, and why can't the Board proceed. Mr. Manni stated that he always prefers to go forward with the client present. Mr. Pillozzi stated that the Board should hear the application and if it comes to a point that cannot be resolved, continue the matter at that time. Mr. Pillozzi asked for a show of hands of neighbors that are present for Jasmine Lane. Several people raised their hands. Mr. Anzelone stated that either the Board hears it in its entirety or continue it. Mr. Ballirano asked Mr. Manni if the applicant was present; Mr. Manni stated that he is not. Mr. Ballirano stated that Mr. Manni is not able to testify as to his client's intent and purposes may be. Mr. Manni stated that if the application were to be withdrawn and re-filed, another application fee would have to be paid. Mr. Jeffrey stated that the Board cannot waive that and if it is a financial hardship, he is sorry to hear that. The Board needs to do the fairest thing to the applicant and the neighbors. Mr. Ballirano stated that the same issue with his health could be a problem next month. The applicant is not bed-ridden. Mr. Nascenzi stated that if the application is withdrawn, that action gives him the right to immediately order the applicant to cease and desist in regard to the number of dogs.

Mr. Manni stated that he is able to state the facts of the case and what was submitted on the application. He is unable to withdraw because his client would be in more of a bind in regard to the dogs. Mr. Manni agreed to go forward with the application. Mr. Frezza stated that Mrs. Briggs could have appeared if Mr. Briggs was unable to. Mr. Manni stated that he will proceed without the applicant being present.

Mr. Manni stated that applicant wishes to own more than 3 dogs at his residence. Per the Johnston Zoning Ordinance, he must request a kennel license to have that many dogs. He has also submitted plans for a kennel to be constructed in the rear of his property. During the day, the 6 dogs are kept indoors. The dogs are let out at certain times during the evening. The rear yard of the property is fenced. Mr. Pillozzi asked how many dogs were currently on the property. Mr. Manni stated that his client told him that there are three dogs on the property. Mr. Pillozzi asked where the other three were. Mr. Manni stated that the other 3 dogs are being housed at a neighbors' home.

Erin Medeiros, Animal Control Officer for the Town of Johnston, after being duly sworn, stated that there are 7 dogs on the property. To the best of her knowledge, all seven live at the applicant's home. Mr. Pillozzi asked if the dogs were properly licensed. Ms. Medeiros stated that three of the dogs are licensed to the neighbor. 3 of the dogs are licensed to 11 Jasmine Lane and 3 are licensed to 12 Jasmine Lane. One is unlicensed. Mr. Pillozzi asked why Mr. Briggs needed a kennel if he only owns 3 dogs. Ms. Medeiros stated that even though the dogs are licensed to 11 Jasmine Lane, they reside at 12 Jasmine Lane. Mr. Manni stated that if the kennel license is granted, Mr. Briggs would take ownership of all the dogs. Mr. Pillozzi asked where the hardship was. Mr. Briggs does not own more than 3 dogs according to the licenses. He is trying to circumvent the law. He gave 3 dogs away to his neighbor; he has no hardship. Mr. Pillozzi asked where the seventh dog was being housed. Ms. Medeiros stated that to the best of her knowledge, all seven dogs reside at 12 Jasmine Lane. Mr. Pillozzi asked if Mr. Briggs had ever been cited. Ms. Medeiros stated that he has been cited twice. The case went to court and was thrown out because the neighbors were not subpoenaed and the judge wanted them present. Mr. Manni stated that he handled that for Mr. Briggs and the judge threw the case out for lack of evidence.

Mr. Pillozzi verified that Mr. Briggs would not be selling or breeding the dogs. Mr. Pillozzi stated that he has read the police reports. Mr. Briggs must keep the dogs quiet. Because the dogs are licensed to different locations, Mr. Briggs only owns 3 dogs. In the future, if Ms. Medeiros or a neighbor takes a photo and there are more than 3 dogs, Mr. Briggs will suffer the consequences. Mr. Pillozzi stated that the dogs are adult dogs and they appear to be barkers. Granting the kennel license is not going to solve the problem with the neighbors. Mr. Frezza asked Mr. Nascenzi if there have been problems in the neighborhood. Mr. Nascenzi stated that there have been problems in the neighborhood and there are dogs that are hidden. Mr. Nascenzi stated that he has personally visited the site and heard dogs barking from inside the house. Pictures that Ms. Medeiros submitted clearly show seven dogs. There have been multiple complaints regarding this property and the Minimum Housing Inspector has visited the home several times. Mr. Frezza asked how many dogs Mr. Briggs could own if he were to be granted this license. Ms. Medeiros stated that Mr. Briggs has stated in the past that he would like to own up to fourteen dogs. A kennel license would give him that right.

Mr. Pillozzi asked Mr. Manni if he would like to have the petition in favor of the kennel accepted as an exhibit for the applicant. Mr. Manni confirmed. Mr. Anzelone made the motion to accept the petition signed by the neighbors in favor of the kennel as Exhibit B-1 for the applicant. This was seconded by Mr. Frezza. A voice vote was taken, all in favor. The petition against the kennel was accepted as B-2.

Mr. Jeffrey asked Ms. Medeiros if there was anything else she felt was imperative to the application. Ms. Medeiros stated that some breeds of dogs needed to be watched more closely than others. There are a lot of children on this street and having this many dogs in the neighborhood could cause a huge safety issue if they were to get loose. The dogs are half Doberman Pinscher and half German Shepherd. She recently had a problem with a different German Shepherd that attacked a man over 6 feet tall, dragged him 50 feet and exposed bones in his body. That was a full grown man, never mind a small child.

Peter Del Ponte, Minimum Housing Inspector for the Town of Johnston, after being duly sworn, stated that he has a question related to the application. He has heard testimony this evening that the owner is petitioning to own more than 3 dogs; he has also heard testimony in regard to a kennel license. Is the Zoning Board a licensing authority? Mr. Nascenzi stated that in order to house more than 3 dogs, you must have a kennel license. The structure itself goes along with that license. Mr. Del Ponte stated that he is a little confused. It is his understanding that a kennel license can only be issued for commercial purposes by the State guidelines. He requested legal counsel check that fact.

On September 17, 2007 at 7:00 a.m., he witnessed six dogs exiting the rear of the house into the backyard to run. They appeared very well trained. Mr. Del Ponte stated that he was in the woods behind the house and there were no trees to block his view. On September 20, 2007, at 6:40 a.m., he witnessed Mr. Briggs walking one dog from his house to his neighbors at 11 Jasmine Lane where they're supposedly being housed and kept. At 6:44 a.m. he returned to his own house. At 6:45 a.m. he brought a second dog to 11 Jasmine Lane and returned to his own home at 6:48 a.m. Mr. Briggs got in his car and drove around the block where he saw me parked and observing the activity and kept driving around the block until I left the area. At this point I went to 11 Jasmine Lane and took photos of the two dogs that were in the rear yard enclosure. On September 19, 2007, I visited 11 Jasmine Lane and requested to look at the kennel in the rear yard. The wife allowed me access to the yard. The water dish had not seen water since the last rain storm, nothing was disturbed, no fecal matter on the premises; no physical evidence of any dogs residing on the premises.

Richard Fascia, after being duly sworn, stated that he is a resident of Jasmine Lane. In years past, he has raised show dogs. Mr. Fascia has stated that he has lived on Jasmine Lane for 10 years. The neighbors have always gotten along. The majority of the homes do not have fences. A lot of the residents have dogs. The dogs have all escaped at one time or another. Dogs of this breed tend to run in packs. If they were to escape, he cannot image the damage that 7 dogs would do to a child. The application states that 20' x 35' cement slab for the kennel. Mr. Fascia's garage is not that big. He believes that this could be a commercial business very easily. This would generate traffic. Per Section P, Subsection 2 A, the code speaks to the impact and enjoyment of property. He lives five houses away from the subject property and can hear them fighting. They do not fight often, but when dogs get into this state, it can impact safety in the neighborhood. He has seen one dog housed in the kennel at 11 Jasmine Lane, never three. In his opinion, the applicant is attempting to deceive the Board. Mr. Fascia has never seen three animals in the enclosure at 11 Jasmine Lane. The granting of the kennel license will lower property values. There is not adequate land area to accommodate that many dogs.

Mr. Jerome Leddy, abutter at 17 Peppermint Lane, after being duly sworn, states that he has a heart condition that is inoperable and has been ordered to bed rest. His bedroom window is directly outside where the kennel is going to go. The barking does bother him. The names on the favorable petition are not directly abutting the subject property. He is awakened by barking at 6:15 every morning. Mr. Leddy stated that he had 5 men installing a deck on the rear of his home. The carpenters had a radio and nail guns. The carpenters complained that they could not hear the radio over the barking. The dogs have

been on the property for almost a year. Mr. Leddy stated that the Briggs' have cameras installed on the outside of the house and the dogs are brought in when the Briggs' see the dog officer coming. Mr. Leddy stated that there are plat restrictions in their deeds. There is a limit of 2 dogs per household. Mr. Jeffrey stated that the deed restrictions are a civil matter and the Board cannot get involved. Mr. Fascia stated that the restrictions are deed restrictions, not plat restrictions. He presented a copy of the deed to the Board. Mr. Pillozzi made the motion to accept the copy as Exhibit C. This was seconded by Mr. Anzelone. A voice vote was taken, all in favor.

Robert Bain, after being duly sworn, stated that he has known Mr. Briggs since he was 6 years old. He is a next door neighbor and was the Best Man at Mr. Briggs' wedding. Because of this friendship, he has tried to work with Mr. Briggs regarding the dogs. He has always had issues with the dogs barking. Mr. Briggs claims he cannot hear the dogs barking because his bedroom is on the other side of the house. Mr. Bain has never called the police or the dog officer. On one occasion, Mrs. Bain called Mr. Briggs at 3:30 a.m. and politely asked Mr. Briggs to bring the dogs inside. The dogs were barking and keeping her awake. She was nine months pregnant and needed her sleep. After 20 minutes, Mr. Briggs brought the dogs inside. Mr. Briggs called Mrs. Bain and stated that the dogs are now inside. The most recent issue Mr. Bain has had with the dogs was in December, 2006 or January, 2007. Mr. Briggs installed an electronic dog door so the dogs can come and go as they please. The dogs wake up his family at 3:30 a.m. Mr. Bain waited until the morning and called Mr. Briggs. Mr. Bain stated that he asked Mr. Briggs, as his friend, to please shut off the door at night or put it on a timer so the dogs are inside from 11:00 p.m. until 6:00 a.m. Mr. Briggs refused. By the time Mr. Bain got the kids back to sleep, it was time to get up for work. At that time it was 2 dogs and 6 puppies.

Mr. Bain stated that Mr. Briggs had 2 other dogs that have since passed away. One was handicapped and Mr. Briggs would walk him through the neighborhood. The dog would defecate on the neighbor's property and Mr. Briggs did not clean it up. He is concerned that if the kennel license is granted, the dogs will bark all day and night. He is also concerned about the size of the kennel and his property value. Mr. Bain planted shrubbery between his property and Mr. Briggs' to screen his family from the dogs. Mr. Bain owns 2 dogs of his own. One of Mr. Briggs' dogs did come onto Mr. Bain's property and fought with one of his dogs. Mr. Bain's dog required veterinarian attention. Mr. Bain had an invisible fence installed to keep his dogs on his own property.

Kevin Lavergne and Paula Lavergne, after being duly sworn, state that they live two houses from the subject property. They have lived on Jasmine Lane for twelve years. Mr. Lavergne submitted photos to the Board showing four to seven dogs on their property for over a year. The photos were submitted to the Board. Mr. Pillozzi made the motion to accept the photos as Exhibit A for the abutters. This was seconded by Mr. Frezza. Mr. Lavergne stated that the neighbors at 11 Jasmine Lane almost never have these dogs on their property. Mr. Lavergne has seen Mr. Briggs walk the dogs to 11 Jasmine Lane in the morning and his wife bring them back in the evening. Mr. Lavergne submitted photos taken on September 12, 2007 of six of the dogs being housed at 12 Jasmine Lane. Mr. Pillozzi made the motion to accept the photos as Exhibit B for the abutters. Mr. Frezza seconded the motion. A voice vote was taken, all in favor. Mr.

Lavergne stated that his family has been awakened on several occasions by the barking. They cannot use their rear property on the weekends because of the barking. Mr. Lavergne stated that when he first started complaining about the dogs, the Briggs made false accusations regarding the Lavergne's property. Mr. Briggs has allowed his animals to defecate on his lawn and did not clean it up. The Briggs' are not responsible for their pets. They have no concern for the safety or well-being of the neighborhood.

Frank Pontarelli, after being duly sworn, stated that he did a sign a statement in favor of the kennel. When he received a copy of the statement it had been notarized stating that he had personally appeared before the notary. He did not. Mr. Pillozzi stated that the notary could lose his license, but the Zoning Board can do nothing about it. Mr. Pontarelli is no longer in favor of the kennel.

Stephanie Manzi, Town Council Member, after being duly sworn, stated that Mr. Briggs has told her that he does own more than 3 dogs at his home. She believes the situation is a public health and safety issue.

Mr. Jeffrey asked for abutters in favor of the dog kennel.

Mr. Eugene Willette, after being duly sworn, stated that he lives at 11 Jasmine Lane and did register 3 dogs to his address. He feels that he has done everything he could to help Mr. Briggs. Mr. and Mrs. Briggs do not have children. These dogs are their children. They have automatic feeders and waterers. They have beds to sleep in at night. The situation on Jasmine Lane has escalated into a feud. Mr. Willette admitted to being the notary that notarized the signatures. Mr. Willette claims that the dogs are not heard very often. It is his opinion that the Briggs' will do whatever the Town asks. Mr. Anzelone asked if Mr. Willette would be willing to formally adopt the three dogs that are currently licensed to his home. Mr. Willette confirmed that he would. Until such time as the dogs became a problem, then he would have to get rid of them. He does want to give the dogs back to Mr. Briggs.

Mary E. Ouellette, after being duly sworn, stated that she has known the applicants for many years. Ms. Ouellette has had a meeting with Officer Medeiros and knows her to be a good person who loves animals. She has known Mr. Briggs for 20 years in her capacity as Commander of the Scituate Ambulance Corps. Mr. Briggs is a volunteer in the Corps. Ms. Ouellette stated that she has raised dogs in the past. It is a very difficult thing to do in a neighborhood. She has over 35 acres of land. The property in question is very small. She told Mr. Briggs when he called her and told her that 6 puppies were born that it would be very difficult to have that many dogs on that size property. When Mr. Briggs' dog was dying, she went to the house to give him I.V.'s and Mr. Willette gave the dog mouth to mouth resuscitation. The applicant has spent thousands of dollars on these animals. He will do whatever the Town asks. The applicant even put an in-ground pool in for the dogs. Mr. Caparrelli asked if all the dogs were spayed or neutered. Ms. Ouellette stated that they are. Mr. Caparrelli asked how Mr. Briggs could control the dogs if he was in such poor health. Ms. Ouellette stated that within the confines of the home Mr. Briggs can control them.

Mr. Jeffrey stated that the Board has a responsibility to the Town and the abutters. There are concerns about public health and safety and the quiet enjoyment of property. Mr. Pilozzi stated that Mr. Briggs must comply with the law. Mr. Briggs gave 3 dogs to Mr. Willette. The law says the dogs cannot bark and annoy the neighbors.

No other abutters appeared for or against the application.

Mr. Anzelone made the motion to deny the application on the basis of noise, health and safety of the neighborhood and the property values. This motion was seconded by Mr. Frezza. A voice vote was taken, all in favor of denying the application.

B. File 2007-57

Owner/Applicant: James and Danya Izzo
 Location: 2111 Plainfield Pike, AP 30- Lot 5
 Lot Dimensions: Frontage: 1310 ft.; Depth: 826 ft.; Area: 21 acres
 Zone: B-2 (General Business) Zone
 Surveyor: Nicholas Veltri, P.L.S.
 Present use: Single Family Dwelling/Agriculture
 Development
 Proposal: Construct a 150' x 60' (9,000 sq. ft.) storage building
 Dimensional Variance petitioned under Art. III, Section G, Section 7 (c)

Costanzo Caparrelli, stated that he is related to Mr. Izzos' wife and is a long-time friend of the applicant. Mr. Caparrelli stated that the recusal paperwork will be filed with the state.

James Izzo, after being duly sworn, stated that the building will be for storage only. He intends to use half of the building and lease out the other half. The use will be consistent with the area. There will be manufacturing done in the building. No abutters appeared for or against the application. Mr. Pilozzi made the motion to grant the application. This was seconded by Mr. Fascia. A voice vote was taken, all in favor.

At this time, Mr. Pilozzi excused himself from the Board due to a family commitment. Mr. Caparrelli will sit in his place.

C. File 2007-14

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 requested a 6-month extension because the lengthy appellate litigation caused a disruption in the project schedule and tenant relationships. 6-month

extension granted at the March 29, 2007 Zoning Board of Review. Decision posted on April 12, 2007. 6-month extension expired on October 12, 2007.

Applicant now requests a regulatory variance from the Zoning Ordinance allowing a time extension. Applicant is requesting a one-year extension of original approval.

William Landry, attorney for the applicant, presented the application to the Board. Mr. Landry stated that the applicant is requesting a one-year extension of the approval due to the difficulties in commercial leasing. The difficulties arose from numerous appeals through Superior and Appellate Court. Now that the appeals have been decided, it will be easier to obtain a tenant for this space. No abutters appeared for or against the application. Mr. Frezza made the motion to grant the extension; seconded by Mr. Jeffrey. A voice vote was taken, all in favor.

D. File 2007-59

Owner/Applicant: Stephen and Dorothy Mallane
 Location: Simonsville Avenue, AP 44/1- Lot 118 and 441
 Lot Dimensions: Area: 18,800 sq. ft.
 Zone: B-1 (Neighborhood Business.) Zone
 Surveyor: Lori Ann Pearson, Ocean State Planners
 Architect: Ted Paul, R.D. GAS
 Present use: Parking Lot
 Development
 Proposal: Construct a 3-car garage 36' x 40' (1,140 sq. ft.) for personal use
 Dimensional Variance petitioned under Article III, Section G 7 (c) –
 Accessory Structures Larger than 150 sq. ft.

Stephen Mallane, after being duly sworn, stated that the garage will be for personal vehicles, no commercial vehicles. Mr. Mallane stated that the lot housed gasoline tankers and submitted photos to the Board. Mr. Jeffrey made the motion to accept the photos as Exhibit A for the applicant. Mr. Frezza seconded the motion. A voice vote was taken, all in favor. Mr. Frezza asked if any soil clean-up needed to be done. Mr. Mallane stated that there has been no leakage or problems with the gasoline tankers. Mr. Anthony Ricci, abutter, after being duly sworn, verified where the garage would be placed on the lot. Mr. Fascia showed Mr. Ricci the site plan. Mr. Ricci stated that he has had an issue with the applicant in the past regarding setbacks. That issue was settled in court. Mr. Fascia verified with Mr. Mallane that the garage will be at least five feet off all property lines. Mr. Mallane confirmed. Mr. Fascia verified that Mr. Nascenzi had visited the site and the only issue he has is that the structure will be larger than 150 square feet and that is why Mr. Mallane is appearing before the Board. Mr. Jeffrey made the motion to grant the application; seconded by Mr. Anzelone. A voice vote was taken, all in favor.

Mr. Frezza made the motion to approve the minutes of the September, 2007 meeting. This was seconded by Mr. Anzelone. A voice vote was taken, all in favor.

E. File 2007-55

Owner/Applicant: Vincent and Kathleen Francis
 Location: 3 Cleveland Avenue, AP 22- Lot 714
 Lot Dimensions: Area: 9,900 square feet
 Zone: R-15 (Residential – 15,000 sq. ft.) Zone

Surveyor: Richard T. Bzdyra, P.L.S. – Ocean State Planners
 Present use: Single Family Dwelling
 Development
 Proposal: Construct a 2 story sunroom 16' x 20' (320 sq. ft.) addition - replacing existing deck
 Dimensional Variance petitioned under Article III, Section F, Table III-F-1
 Minimum Lot Size Required: 15,000 sq. ft.; Proposed Lot Size Requested: 9,900 sq. ft; Relief Requested for 5,100 sq. ft.
 Minimum Lot Frontage Required: 100 ft.; Proposed Lot Frontage Requested: 79 ft.; Relief Requested for 21 ft.
 Minimum Lot Width Required: 100 ft.; Proposed Lot Width Requested: 79 ft.; Relief Requested for 21 ft.
 Minimum Front Yard Setback Required: 25 ft.; Proposed Front Yard Setback Requested: 21 ft.; Relief Requested for 4 ft.
 Minimum Left Side Yard Setback Required: 20 ft.; Proposed Left Side Yard Setback Requested: 9 ft.; Relief Requested for 11 ft.

Vincent and Kathleen Francis, after being duly sworn, stated that they are requesting to enclose the existing deck and space below with a sunroom. Mr. Fascia verified the dimensional relief needed. Mr. Nascenzi stated that he has reviewed the plans and visited the site. There will be no heat in the sunroom. No abutters appeared for or against. Mr. Anzelone made the motion to approve the application; seconded by Mr. Frezza. A voice vote was taken, all in favor.

F. File 2007-52

Owner/Applicant: Douglas Kent
 Location: 80 Lookout Avenue, AP 9 - Lot 160
 Lot Dimensions: Frontage: 120 ft; Depth: 100 ft; Area: 12,000 square feet
 Zone: R-15 (Residential – 15,000 sq. ft.) Zone
 Present use: Single Family Dwelling
 Development
 Proposal: Construct a multi-section deck between house and above ground pool 16' x 14'; 16' x 11'; 8' x 8' (464 total sq. ft.)

Dimensional Variance petitioned under Article III, Section G 7 (c)

Douglas Kent, after being duly sworn, stated that he wished to build a multi-section deck between the house and the swimming pool. Mr. Nascenzi stated that he has visited the site. Mr. Fascia verified that the pool will have a locked gate. No abutters appeared for or against the project. Mr. Jeffrey made the motion to approve the project. Mr. Frezza seconded the motion. A voice vote was taken, all in favor.

G. 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:	Construct a 56' x 28' addition to existing 20' x 22' single family dwelling
	Dimensional Variance petitioned under Article III, Section F, Table III-F-1.
	Minimum Rear Setback Required: 45 feet; Proposed Rear Setback: 26.6 ft; Relief Requested for 18.4ft
	Minimum Left Side Setback Required: 20 feet; Proposed Left Side Setback: 10.6 feet; Relief Requested for 9.4 feet

Joan Faiola, after being duly sworn, stated that her lawyer did not show up for the meeting and she will go forth without him. Mr. Fascia offered Ms. Faiola a continuance. Ms. Faiola declined. Ms. Faiola stated that this is her third appearance before the Board and she would like to finish it this evening. Mr. Nascenzi stated that he has visited the site; the applicant just needs dimensional relief to build the addition. Mr. Fascia stated that he is concerned about water in the area and stated that the Town has a zero-runoff policy. Ms. Faiola stated that there is already a water problem in the neighborhood. Mr. Jeffrey stated that Ms. Faiola cannot add to the water issue. Mr. Nascenzi stated that when plans are submitted for building permits, water and soil erosion will be addressed. Mr. Jeffrey verified that the plans submitted are the same as the previous appearance before the Board. Ms. Faiola stated that the only difference between this appearance and the prior appearance is that she no longer wishes to divide the lot. She is only looking to add to the house.

Chris Shea, Norma Beaulieu, and Janice Spagnolo were duly sworn. Ms. Shea stated that she is a Registered Professional Engineer with the State of Rhode Island. She submitted a plan to the Board that shows the contours of the area before some of the additional development. Mr. Anzelone made the motion to accept the plan as Exhibit 1 for the abutters. This was seconded by Mr. Frezza. A voice vote was taken, all in favor. Mr. Fascia asked if Ms. Shea was present in the capacity as an abutter or as a professional hired by the abutters. Ms. Shea stated that she is present in support of her mother, Norma Beaulieu. Ms. Shea stated that the water used to flow naturally into the street, but since some of the development and since Ms. Faiola started filling in some of her land, the water now goes into her parents' property. Ms. Faiola stated that she has not filled any of her land. Ms. Beaulieu stated that there was construction; debris and tree stumps were put in the yard. Mrs. Beaulieu stated that Ms. Faiola filled in two-thirds of her yard until she called the Town and the Town made her stop. Mr. Frezza asked if Mr. Nascenzi was aware of this situation. He stated that he was not. Ms. Faiola stated that she was not aware of it, and she lives there. Ms. Faiola stated that she had dirt delivered when she was planting grass seed on the other side of the property.

Ms. Shea stated that a prior Town Engineer, Laura Aibel had visited the site and the former Building Official had also visited the site. Mrs. Shea stated that Ms. Faiola was given a Cease and Desist Order. Ms. Faiola agreed. Mrs. Shea stated that the addition would obstruct the natural flow of water and direct it to her parent's home. Another neighbor had blocked off a portion of his property, which exacerbated the problem. Ms. Faiola stated that that issue has nothing to do with her and her proposal. Ms. Faiola stated that she wanted to fix her property but could not because of the water problem. Mr. Anzelone asked if there was a berm in front of Mrs. Beaulieu's home. She stated that there was.

Mrs. Faiola stated that she gets water in her basement. Whenever there is a heavy rain, she has to call the fire department to pump out her basement. Mrs. Faiola stated that she is willing to do whatever is required to help alleviate the water issue and will not add to the water problem. Mrs. Shea stated that Mrs. Faiola did not create the problem, but she added to it when she started filling in her yard. The water has no path, but into her parent's yard. Mrs. Faiola stated once again that she is willing to help alleviate

the problem. Mrs. Beaulieu stated that she has spoken to Mrs. Faiola about the situation in the past. She had asked Mrs. Faiola to put in a wall to help direct the water into the street. Mrs. Faiola had agreed to put it in, but the proposed addition is going on the other side of her property and she has to fix that side of her property first.

Mr. Jeffrey verified which lot Mrs. Beaulieu owned and which lot Mrs. Spagnolo owned. Neither one is near the proposed building site. They all agreed that there are wetlands in the area. Mr. Nascenzi stated that Mrs. Faiola has not done any work on the property. Mr. Nascenzi explained that water cannot be directed on to other lots or into the street. Mrs. Faiola will have to comply with all building codes, including those regarding drainage. Mrs. Faiola stated that she is willing to install French drains for the new addition, which will help alleviate the water problem for her neighbors. Mr. Nascenzi stated that the Building department will require a drainage plan. Mr. Nascenzi explained that the Building Department will look at the lot as it stands and then again during and after construction. Mrs. Faiola cannot add to the problem.

Mrs. Spagnolo verified how far the addition would be from her property line. Ms. Shea verified that this home would not be sold or additional rental units. Mr. Jeffrey stated that the new addition will only increase property values.

The Board discussed the required drainage plan that the Town will require and the current water problem in the area.

Mr. Jeffrey made the motion to grant the application with the stipulation that the owner submits a comprehensive engineering and drainage plan prior to the issuance of a building permit. Mr. Anzelone seconded the motion. A voice vote was taken, all in favor.

Mr. Jeffrey made the motion for a break. Recess taken from 9:35 p.m. to 9:47 p.m.

H. 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

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.

Mr. Frezza questioned why the application was on the agenda. The Zoning Ordinance requires a two year wait before re-appearing. Mrs. Leonardi stated that the Board voted at the September, 2007 meeting to hear the application.

Frank Manni, attorney for the applicant, presented the application to the Board. He stated that the Board denied the application at the September, 2006 meeting. Mr. Manni stated that he did not represent the applicant at the prior hearings. He was told by Alfred Russo, Esq., who did represent the applicant, that the motion to reconsider was granted last month. Mr. Ballirano stated that the Board did vote last month to reconsider the application; this is on page 8 of 16 of the minutes of the September, 2007 meeting. Mr. Frezza asked if it was a vote to reconsider. Mr. Ballirano stated that it was.

Mr. Manni stated that the applicant is requesting to build a single family home on the lot. He explained the dimensional relief being requested. Mr. Manni stated that there is a water problem in the area. His client is willing to install the proper drainage system. Mr. Fascia stated that there are water problems in the area.

Mr. Nascenzi stated that he has visited the area. The lot is not consistent with other lots in the area. The relief requested is not conforming to the area.

Mr. Manni stated that if the Board were inclined to deny the application, please grant a one-month continuance so Mr. Russo may appear before the Board. Mr. Fascia asked if there were anyone in the audience to speak against the petition. No one appeared. Mr. Frezza asked if the abutters were notified. Mrs. Leonardi stated that notices were sent out by first class mail and none have been returned to the Zoning Office by the post office.

Stephanie Manzi, (previously sworn), stated that she had received a few calls from abutters and they are concerned about the water problem. One neighbor stated that if the applicant controls the water on this lot, they have no objection.

Mr. Anzelone made the motion to continue the application to the December agenda. Mr. Frezza seconded the motion. A voice vote was taken, all in favor.

I. File 2007-02-IN

Owner:	Kenneth A. LaFazia
Applicant:	R.C. Builders, Inc.
Location:	Ostend Street, AP 15- Lot 28
Lot Dimensions:	Area: 13,080 square feet
Zone:	R-15 (Residential – 15,000 sq. ft.) Zone
Surveyor:	Richard T. Bzdyra, P.L.S. – Ocean State Planners
Present use:	Vacant Land
Development Proposal:	Construct a 24' x 44' (1,056 sq. ft.) single family dwelling

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

Minimum Lot Size Required: 15,000 sq. ft.; Proposed Lot Size Requested: 13,080 sq. ft.; Relief Requested for 1,920 sq. ft.

Minimum Right Side Yard Setback Required: 22 ft.; Proposed Right Side Yard Setback: 20 ft.; Relief Requested for 2 ft.

Michael Costello and Kenneth LaFazia were duly sworn. Mr. Costello stated that the lot is undersized by 1,950 square feet. It is an undersized lot of record and was platted in 1911. Mr. Jeffrey asked about the wetland edge delineation data form from DEM. Mr. Costello stated that they have received DEM approval. Mr. Jeffrey stated that in December 2005, when DEM visited the site, the DEM report states that the site was under water and that hydrological indicators pointed to flooding and drainage patterns. Mr. Costello stated that this was correct. The abutting neighbors have a sump pump in their basement that drains onto the lot in question without a drainage easement. This is against State Law and the DEM Regulations. Mr. Costello stated that he visited DEM approximately one month ago and was told that DEM was preparing to cite the neighbor. Mr. Costello asked them to wait until the outcome of this hearing. He wants to cooperate with the neighbor and help them.

Ray Carroccia, after being duly sworn, stated that he has a letter from DEM giving approval for this site. Mr. Carroccia handed the letter to the Board. Motion to accept letter as Exhibit 1 for the applicant was made by Mr. Frezza. This was seconded by Mr. Jeffrey.

Mr. Costello stated that there are sewers in the street and Town water. The subject lot does not have a water problem because the Town installed a drainage pipe within the last two years.

Mr. Nascenzi stated that he has not visited the site, but is aware of the drainage problem. There have been violation notices issued regarding the sump pump.

Mr. Jeffrey stated that the Board does not hold DEM approval as gospel. He is also not sure that the sump pump from the neighboring property is responsible for the subject lot being under water. Mr. Costello stated that only a portion of the lot is under water, not the entire lot. The lot is only under water when neighbors are using their sump pump.

Mr. Fascia asked how long Mr. Costello had owned the lot. Mr. Costello stated that he and the other men held the mortgage and were forced to foreclose on the property. The house will be built on spec or contract.

Mr. Costello stated that only a portion of the lot is low and wet. DEM gave approval; the Town Engineer has no objection. He believes that there is a law in Rhode Island that states because he lives in Florida most of the time and the lot has been declared unbuildable, the Town must buy it from him. Mr. Fascia stated that no one has built a house on this lot since 1911. Mr. Carroccia stated that there is a brook that runs across the back end of the lot, where it is low. The upper end of the lot is dry. Mr. Costello stated that the applicants are willing to assist the neighbor with the sump pump. The neighbor stated that he had \$75,000 worth of damage due to water. If the lot were completely under water, Mr. Costello stated, he would never put a house there.

Heather and Fred Manuppelli, after being duly sworn, stated that the application submitted to the Board is not correct. According to Town records, these men do not own the lot. Mr. Jeffrey asked Mr. Costello about this situation. Mr. Costello stated that they took deed in lieu of foreclosure. He is not sure if it has been recorded yet. Mr. Costello handed the Board a copy of the deed. This was submitted as Exhibit 1 for the abutters. Ms. Manuppelli stated that she went to the Town Clerk's office last week and these men are not shown as owners of this lot. Mr. Anzelone made a motion to accept a field card from the Town Hall as Exhibit 2 for the abutters. Seconded by Mr. Frezza. A voice vote was taken, all in favor. Mr. Manuppelli stated that the

application states that the property is not a corner lot. It is on the corner of Ostend Street and Antwerp Street. Antwerp Street is a paper street.

Mr. Manuppelli stated that the DEM paperwork was filed in the prior owners' name and it is not transferable according to DEM. Also, according to DEM, they have no other applications on file for this property. Mr. Carroccia stated that he is holding an application for ownership to be sent to DEM after tonight's hearing. Mr. Costello stated that they went to DEM to get the application. After the fee is paid, the ownership is transferred after 10 days. It is transferable with their permission.

Mr. Manuppelli stated that the application reads that they have owned the lot for 3 years. Mr. Manuppelli stated that he has a copy of the foreclosure and these gentlemen's names are not on it. The foreclosure was submitted to the Board. Mr. Anzelone made the motion to accept as Exhibit 3 for the abutters. This was seconded by Mr. Frezza. A voice vote was taken, all in favor. Mr. Fascia stated that the document is only a notice and it has not been recorded yet.

Mr. Manuppelli stated that he is an abutting neighbor. He stated that DEM had previously flagged the site. Three years ago someone tried to build a house on the subject property. No permits were pulled and the Building Official stopped the job. There is a high water table on the subject lot. It has flooded our lot and our basement. We did not pump anything onto that lot, it is the reverse. Mr. Manuppelli stated that his lot is to the left of the subject lot.

Mr. Manuppelli stated that there are problems with the pumping station and the sewers. Several streets use the same pumping station. They have 4 8-inch lines coming into it. The pumping station is actually located in the middle of the paper street. There is only 1 14-inch line pumping out. Mr. Manuppelli stated that he had 8 inches of contaminated water in his cellar once. There was \$75,000.00 worth of damage. Mr. Costello stated that these problems are not because of the subject lot.

Mr. Manuppelli stated that he was never cited by DEM. The sump pump is there to keep water out of his basement and out of his yard. The Town has been to his home many times and twice has paid him for damage caused by water coming through the subject property onto his property. The pumping station shuts down because it cannot handle the volume of water. Even though he has a back flow, but it doesn't matter. The water and sewage still comes in. The Town had told him to put an 8-inch valve in the street. Mr. Manuppelli stated that he will not put the valve in the street and have to go out and open and shut it every time he needs to use the bathroom. His house is the lowest point, he has French drains, sump pumps and a 6-foot deep sewer ejector in the basement. All the precautions we could possibly have been taken. Once the subject lot fills up, it comes on to my lot and fills up my basement. The biggest problem occurred in 2000. Mr. Jeffrey and Mr. Manuppelli looked at the map and verified which lot belonged to Mr. Manuppelli. Mr. Manuppelli produced photos of the water on his lot. Mr. Anzelone made the motion to accept the photos as Exhibit 4 for the abutters. This was seconded by Mr. Jeffrey. A voice vote was taken, all in favor.

Mr. Carroccia stated that he plans a house on slab, there will be no basement.

Mr. Manuppelli explained the photos to the Board. The pump in the picture is to keep the water off of his property. There is a partial wall in the photo, which Mr. Manuppelli explained that he was building. The direction of the water was verified. Mr. Manuppelli stated that the Town purchased the lot behind him and will not do anything until it is sold and sewers are extended further. Mr. Manuppelli has lived in the house his entire life. The issues did not start until the Town put the pumping station in.

Mr. Costello stated that the application is before the Board for zoning relief, not for drainage issues. If the application is denied and they must appeal, he wanted that information on the record.

Mr. Jeffrey stated that he has a responsibility to make sure that he protects the health and safety of the abutters. When he hears that raw sewage is leaking into a basement, he is concerned. He has to err on the side of caution.

Mr. Costello stated that the Town installed a drainage pipe for surface water, not sewage. There is no raw sewage going across his property to the abutting lot. DEM has more power than this Board to him. The DEM will not tolerate raw sewage going on any land.

Mr. Jeffrey stated that Mr. Costello is before the Board seeking a variance on a piece of property and the immediate abutter has concerns regarding drainage. Mr. Jeffrey is concerned. Mr. Costello stated that the abutter should take his concerns up with DEM and the Town Engineer. Mr. Jeffrey stated that he isn't implying that Mr. Costello won't address the problem, but the Board has to err on the side of caution. Ms. Manuppelli stated that the proposed dwelling will compound the issues with the pumping station. Mr. Jeffrey stated that he understood, but that isn't Mr. Costello's fault. Mr. Fascia stated that prior to the pumping station, there were no water problems in the area. Mr. Manuppelli stated that the problems started when other streets connected to the pumping station.

Mr. Fascia stated that both the owners and the abutters have raised numerous issues which require further consideration. Mr. Fascia believes that it is not outside the Board's realm to request a continuation pending an engineering report as well as a comprehensive drainage plan, including an inspection by the Town Engineer and the Building Official. Mr. Anzelone made the motion to continue the application. This was seconded by Mr. Frezza. A voice vote was taken, all in favor. Mr. Fascia stated that the deed and any other paperwork must be completed before they re-appear before the Board.

J. File 2007-58

Owner/Applicant:	Terence and Margaret Costa
Location:	153 Central Avenue, AP 11- Lot 96
Lot Dimensions:	Frontage: 100 ft.; Depth: 150 ft.; Area: 15,000 sq. ft.
Zone:	R-15 (Residential – 15,000 sq. ft.) Zone
Surveyor:	Walter Skorupski, P.L.S.
Present use:	Single Family Dwelling
Development Proposal:	Construct a 30' x 40' addition with decks. Addition to include living room, media room, and second floor for future expansion.
	Dimensional Variance petitioned under Article III, Section F, Table III-F-1
	Minimum Front Setback Required: 25 ft.; Proposed Front Yard Setback Requested: 7.4 ft.; Relief Requested for 17.6 ft. (Central Avenue frontage)
	Minimum Front Setback Required: 25 ft.; Proposed Front Yard Setback Requested: 3.5 ft.; Relief Requested for 21.5 ft. (Charter Street frontage)

Terence Costa, after being duly sworn, stated that his home is one of the oldest on Central Avenue. He would like to build an addition for media room, living room and reserving the second floor for future expansion. Mr. Fascia verified that the addition would not be an apartment. The second floor will eventually be bedrooms. Mr. Nascenzi verified that the second floor would be studded and sheet rocked. Mr. Costa stated that the rooms on the second floor will be studded and sheet rocked, but there are no plans to use them in the foreseeable future. No bathroom or separate utilities will be there. Mr. Fascia stated that if the Board does approve this plan, it will have to be submitted to the Town Engineer for approval.

Rose Marie Esposito, Anthony Martone, and Anna Martone were duly sworn. Mr. Martone stated that he would like a clarification of the Public Hearing Notice he received. He is here to verify that it is not a commercial building or manufacturer. It is a residential addition. It is not going to be rented out.

Mr. Frezza made the motion to approve the application. This was seconded by Mr. Jeffrey. A voice vote was taken, all in favor.

C. File 2007-56

Owner:	Mirza Montenegro
Applicant:	Complete Contractors, LLC
Location:	24 Merino Avenue, AP 14- Lot 284
Lot Dimensions:	Frontage: 80 ft.; Depth: 120 ft.; Area: 7,345 square feet
Zone:	R-15 (Residential – 15,000 sq. ft.) Zone
Surveyor:	Richard T. Bzdyra, P.L.S. – Ocean State Planners
Architect:	Karen Hughes
Present use:	Single Family Dwelling with 1 car detached garage
Development Proposal:	Construct a second floor addition to existing garage for office and bathroom. Construct deck and outside stairway on garage.
	Dimensional Variance petitioned under Article III, Section F, Table III-F-1
	Minimum Lot Size Required: 15,000 sq. ft.; Proposed Lot Size Requested: 7,345sq. ft.; Relief Requested for 7,655 sq. ft.
	Minimum Lot Frontage Required: 100 ft.; Proposed Lot Frontage Requested: 80 ft.; Relief Requested for 20 ft.
	Minimum Lot Width Required: 100 ft.; Proposed Lot Width Requested: 80 ft.; Relief Requested for 20 ft.
	Minimum Rear Yard Setback Required: 45 ft.; Proposed Rear Yard Setback Requested: 25 ft.; Relief Requested for 20 ft.
	Minimum Left Side Yard Setback Required: 20 ft.; Proposed Left Side Yard Setback Requested: 9 ft.; Relief Requested for 11 ft.

John Chaves and Brad Boulris were duly sworn. Mr. Chaves stated that is the contractor for the addition. The homeowner would like to put a second floor on the garage for a home office. Not a commercial office. Mr. Jeffrey asked if the owner lived at the property. Mr. Chaves stated that her son does. The footprint of the building will not change. Mr. Fascia asked if this was going to be an apartment. Mr. Chaves stated that it was not. It is an office for personal use. Mr. Nascenzi stated that he has visited the site and is concerned with the traffic. As long as there is not a full bath, just a lavette, his office has no problem.

Mr. Fascia stated that the garage is not attached to the house. Mr. Nascenzi stated that the contractor will have to comply with Fire Codes. Mr. Chaves stated that the addition will have electric baseboard heat. It is one large room with a half-bath. Mr. Frezza verified that the garage does not have separate utilities. Mr. Fascia stated that if the Board does grant the application, it will be with the stipulation that the addition does not now or ever in the future become an apartment. Mr. Chaves stated that he will convey that to the homeowner. The deck is actually a 14-foot long and 4 ½ foot wide walkway from the house to the garage.

James Buckley, after being duly sworn, stated that it is not a single family home, it is currently a two family. There are two meters for electric and gas. The cellar is in the process of being renovated. There are currently two families living in the house. Mr. Nascenzi told Mr. Buckley to come to the Building Department and fill out a complaint form and the situation will be investigated. Mr. Buckley was concerned about all the different variances being requested. Mr. Fascia explained that most of the variances were granted when the house was built. Mr. Buckley stated that if this application is granted the taller garage will block his view from his family room.

Mr. Jeffrey stated that since the owner is not present, there is no way the Board can ask her questions under oath. We cannot ask the contractor to vouch for certain things. Mr. Fascia stated that it is not the Board's job to tell applicants what to do. He suggested that Mr. Chaves request a continuance so the owner can be present. Also, an inspection of the existing structure by the Building Official and the Town Engineer will need to be done before the matter can be heard again.

Mr. Buckley asked if certain neighbors had been notified. Mr. Fascia stated that the neighbors were notified according to the paperwork provided to the Board.

Phyllis Marshall and Irene Ennis were duly sworn. Mrs. Marshall stated that it is not a single family home. There are at least three families in the dwelling. She is going to report the situation to the Minimum Housing Officer. She is sure that the space over the garage will be an apartment.

Mr. Fascia stated that the Board has no proof of that. Mr. Chaves stated that he has never been in the main house. His contract is only for the garage.

Mr. Chaves requested a continuance so that the owner could be present at the hearing and that Town Officials could inspect the property.

Mr. Anzelone made the motion to continue the application. This was seconded by Mr. Frezza. A voice vote was taken, all in favor.

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

Adjourned at 11:13 p.m.