

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 Pillozzi
Joseph Anzelone

Alternate Board Members
Bernard Frezza
Costanzo Caparrelli, Sr.

Recording Secretary
Susan Leonardi

JOHNSTON ZONING BOARD OF REVIEW

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MINUTES

August 28, 2008

The Zoning Board of Review held its monthly meeting on the 29th day of August 28, 2008, at 7:21 p.m., at the Johnston Senior Center, 1291 Hartford Avenue, Johnston, RI. All persons interested in the following proposals had been requested to be present at this time.

Present: Vice-Chairman Richard Fascia, Anthony Pillozzi, Bernard Frezza, Joseph Anzelone, Secretary Douglas Jeffrey. Also present: Joseph Ballirano, Town Solicitor, Bernard Nascenzi, Building Official, and Dianne Edson, Stenographer

Mr. Frezza made the motion to approve the minutes of the July 31, 2008 meeting. Mr. Jeffrey seconded the motion. A voice vote was taken, all in favor.

A. File 2008-28 – Continued from July, 2008 meeting

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| Owner: | Alfred Guidone Estate |
| Applicant: | Spa Shanti |
| Location: | 265 & 267 Greenville Avenue, AP 34 - Lot 215 & 216 |
| Lot Dimensions: | Area: 7,537± sq ft |
| Zone: | B-1 (Neighborhood Business.) Zone |
| Attorney: | Alfred A. Russo, Jr., Esquire |
| Surveyor: | International Mapping and Surveying Corp. |
| Engineer: | Joseph Casali - Casali and D'Amico Engineering, Inc. |
| Present use: | Multi-family dwelling and florist shop |
| Development | |
| Proposal: | Convert dwelling portion of building to spa – florist shop to remain. Dimensional Variance petitioned under Article III, Section F, Table III-F-1 Minimum Front Yard Setback Required: 20 ft.; Minimum Front Setback Requested: 1.63 ft.; Relief Requested for 18.37 ft. Minimum Rear Yard Setback Required: 35 ft.; Minimum Rear Setback Requested: 7.54 ft.; Relief Requested for 27.46 ft. Variance petitioned under Article III, Section G (10) – Vision Clearance at Corners |

Variance petitioned under Article III, Section H (2)(d), Section H (4)(a), and Section I (3)(b) – Parking and Off-Street Loading Requirements

Al Russo, attorney for the applicant, presented the case to the Board.

Mr. Fascia stated that he was not present to hear the original testimony and asked Mr. Ballirano for legal clarification and opinion as to whether or not a quorum exists. Mr. Ballirano stated that Mr. Fascia could hear testimony, but out of abundance of caution, abstain from the vote. Mr. Fascia stated that the matter would be heard and that he would abstain from the vote.

Mr. Russo stated that the applicant wishes to open a day spa at the subject location. When the matter was heard previously, there were questions regarding parking, property boundaries, and the type of business to be operated. It is a B-1 Zone, a day spa is allowed there.

Mr. Nascenzi stated that there has been confusion on the application. Ms. Fairbanks came to my office requesting to open her business. The property as is, is a legal non-conforming use because it is a residence in a business zone. The Board needs to know that once the property becomes a legal use, it cannot revert to the non-conforming use. Mr. Nascenzi stated that his office will do a complete review, along with the Town Engineer. It is illegal for the Board to deny her to the use of her property. It is unconstitutional for her to change it back to residential once it becomes commercial.

Mr. Jeffrey verified that it is illegal for the Board to deny Ms. Fairbanks a beneficial use of her property. Mr. Nascenzi stated that it is illegal for the Board to deny Ms. Fairbanks a legal use of her property. If she were here for a special use permit, the Board could say yes or no at their discretion.

Mr. Russo stated the he would ask the Board to approve the site for use as a day spa.

Mr. Pillozzi verified that the application does not have to be amended. Mr. Nascenzi stated that it does not.

Mr. Jeffrey asked about the parking. Mr. Russo stated that the applicant can expand her parking capability, if requested. Mr. Nascenzi stated that there is no issue with the parking situation.

Mr. Anzelone asked what the sense was in hearing the application. If the Board cannot review the parking or any other point, why are we going forward? If you have a residential house, you can turn it into a business. Mr. Nascenzi stated that the Town changed the Zoning Districts in 1994. She is here only to legalize the use. If there are any further requirements once the review is finished, then they will be addressed at that time.

Christopher Maselli, Esq., representing an abutter, Mr. Giovanni Conti, stated that his client agrees with the applicant. He believes that the Town cannot stop someone from operating a business that is compatible in the zone. His client does have issues with parking and traffic.

Mr. Fascia stated that legal counsel has advised him that 5 voting members are required. Because he feels that he has heard enough testimony and information, he will not recuse himself. He will vote on this issue.

Mr. Frezza made the motion to approve certifying this property as a business use. This was seconded by Mr. Jeffrey.

Abutter, Anna Surato, stated that she is in favor of the project. She lives next door. She feels it is an improvement to the neighborhood. She would like a privacy fence so she does not have to look at the parking lot.

A voice vote was taken, all in favor.

B. File 2008-36

Owner/Applicant: David F. Carrara
Location: 1225 Atwood Avenue, AP 24 - Lot 112
Lot Dimensions: Frontage: 100 ft; Depth: 130 ft; Area: 13,000 ± square feet.
Zone: B-1 (General Business) Zone
Attorney: Collerri & Tenre
Present use: Auto repair on first floor; Office Space on second floor
Development
Proposal: Convert office space on second floor into an apartment
Dimensional Variance petitioned under Article III, Section D,
Table III-D-1, Subsection 2.12

David Carrara, after being duly sworn, presented the application to the Board. He would like to convert the office space into an apartment for his son. There was confusion with the prior Building Official. In 2000, he submitted paperwork for a permit. The plans were approved by the Fire Department and the Building Department but he was unable to secure financing so the project was not completed. Mr. Pilozzi asked if no one from the Town told him it was illegal to have an apartment at the location. Mr. Carrara stated that Mr. Corrente had visited the site and assisted him with the parking. At that time, there was no second floor on the building.

When the project was started, all the Town Inspectors were there and approved everything. When the time came to get the Certificate of Occupancy, the Building Inspector stated that he could not issue it. It was illegal to have an apartment in a B-1 Zone. This was the first I had heard this. If someone had stated this previously, I would have never gone forward with the project.

Mr. Pilozzi asked if anyone has ever lived there. Mr. Carrara stated that his son has lived there for 13 months. The Building Inspector suggested that they gut the kitchen. It was photographed that way, then he didn't care what we did. Mr. Carrara stated that he was appalled at the suggestion and called a meeting with Mayor Macera. Everyone met for about 45 minutes.

Mr. Carrara stated that he has a building permit dated June 24, 2003.

Mr. Nascenzi stated that the dates were changed on the original building permit. This was all prior to him serving as Building Official. His records state that no official inspections were done. The permit was issued with a kitchen upstairs with the intent to occupy the second floor. The second set of documentation was changed and stamped again by the prior Building Official. If the Board sees fit to deny the application, then the application must dismantle the kitchen upstairs. The space does meet fire codes for a residence.

Mr. Nascenzi stated that this is considered to be a Use Variance, not a special use permit. His application should be amended to reflect this. Mr. Carrara requested that his application be amended to request a Use Variance, not a Special Use Permit. Mr. Pilozzi made the motion to accept the request to amend. Mr. Jeffrey seconded the motion. A voice vote was taken, all in favor.

Mr. Pilozzi verified that the use does not travel if the building is leased or sold. The space would revert back to office space.

Mr. Jason Carrara stated that he would live there alone. Mr. Fascia verified that there is a separate entrance to the apartment.

Jude Carrara, after being duly sworn, stated that she is related to the applicants. She is in favor of the project.

Dianne Malcuit, after being duly sworn, stated that she has known the applicant and was aware of the project from the beginning. She knows he was given erroneous information from the beginning. Mr. Pilozzi stated that the applicant should have never used the apartment without a C.O. Ms. Malcuit stated that Mr. Carrara was not treated fairly.

Joseph Criscuolo, abutter, was duly sworn. Mr. Criscuolo stated that there are people already living in the apartment. He wants to know why he was never notified when the second floor was built. Mr. Pilozzi stated that it was part of a prior administration and the Board does not know. He stated that a band rehearses there. He stated that the property looks like a junkyard. Mr. Criscuolo submitted photographs to the Board. Mr. Pilozzi stated that the cars in the photo are customers' cars. There should be a solid fence abutting residential land. Mr. Jeffrey stated that it does not abut residential land. Mr. Nascenzi agreed. Mr. Criscuolo stated that he has to look at the cars when he goes out his front door.

Mr. Criscuolo stated that the band was practicing until after 11 p.m. Several neighbors called the police. Mr. Jeffrey asked what the Town Ordinance was for noise. Mr. Jason Carrara stated that it is 11 p.m. He has several police reports from the neighbors, the latest time being 8:45 p.m. Mr. Jeffrey suggested practicing somewhere else.

Mr. Frezza suggested putting up a solid fence to appease the neighbors. Mr. Frezza asked if the Board can put a stipulation in the decision that there must be a solid fence. Mr. Ballirano stated that the Board can put in that stipulation.

Mr. Frezza made the motion to approve the application with the stipulation that the applicant install a solid fence to screen the cars.

Mr. Anzelone made another stipulation. He would like to verify that the use reverts back to office space if the building is sold, rented or leased to someone else. Mr. Ballirano confirmed that this stipulation is automatic.

Mr. Frezza amended his motion.

Mr. Pilozzi brought up the issues of occupancy and noise. Mr. Pilozzi asked the applicant to keep the noise level down. Mr. Jason Carrara stated that the band only practices during the allowed times. They are not violating any rules or regulations.

Mr. Ballirano stated that it is an enforcement issue. If a neighbor has an issue, they can call the police. Mr. Ballirano suggested a maximum of 3 occupants unrelated by blood.

Mr. Pilozzi stated that he is uncomfortable with this situation. Mr. Ballirano stated that there is still a motion and a second in place. A vote needs to be taken.

Mr. Jeffrey votes aye; Mr. Fascia votes nay, stating that his findings of fact under Section P, Subsections A and G regarding neighboring uses and safety.

Mr. Pilozzi asked Mr. Jason Carrara about the band. Mr. Carrara replied that the band has not practiced there at all in 2008. He has a drum set that he moved to another room, farther away from the abutter's

house. There shouldn't be a noise issue any further. Mr. Pilozzi voted to approve the application with the stipulation that the noise stops at a decent hour.

Application is granted, vote is 4 to 1. Mr. Fascia stated that the application is approved with the stipulations of no more than 3 unrelated occupants and a solid fence will be installed to screen the cars from the neighbors. The applicant has 90 days to install a 6-foot high solid fence.

C. File 2008-41

Owner/Applicant: Johnston Groves, LLC
 Location: 125 Federal Way; AP 44/3 - Lot 79
 Lot Dimensions: Area: 47.63 ± acres.
 Zone: R-10 (Residential – 10,000 sq. ft.) Zone
 Attorney: David Igliazzi, Esq.
 Surveyor: DiPrete Engineering, Inc.
 Present use: Multi-family apartment complex with clubhouse and meter building
 Development
 Proposal: Construct a (25' x 20') 500 sq. ft. accessory maintenance building
 Dimensional Variance petitioned under Article III, Section G (7)(c), Section K(13) – Separation of Structures and Section H(2)(g) – Off-street parking requirements

David Igliazzi, attorney for the applicant, presented the application to the Board. Mr. Pilozzi verified that the building would be used to store plows and other maintenance equipment.

Joseph Pingitore, III, after being duly sworn, stated that he has a situation with kids coming onto his property. He has trucks, trailers and other equipment stored there. Mr. Pilozzi asked if Mr. Igliazzi was aware of the situation.

Marc Rothberg, a Dolben Company representative, was duly sworn. Mr. Rothberg stated that this is an issue the property manager should address.

Mr. Pingitore stated that there used to be a natural buffer, but some of it was removed during construction. He would like a fence installed so that the kids cannot trespass on his property and possibly get hurt. Mr. Rothberg agreed to discuss it. Dolben Company and Mr. Pingitore will meet outside of this venue to resolve the situation.

No other abutters appeared for against the application.

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

D. File 2008-37

Owner/Applicant: Allied Associates, LLC
 Location: 1510 Atwood Avenue, AP 53- Lot 33
 Lot Dimensions: Area: 1.21± acres
 Zone: B-2 (General Business) Zone
 Attorney: Steven B. Merolla, Esq. and Gregory S. Schultz, Esq.
 Surveyor: DiPrete Engineering, Inc.

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| Present use: | Vacant Land |
| Development | |
| Proposal: | Construction of a 40' x 60' commercial building and paved lot for use as an automobile dealership Special Use Permit petitioned under Article III, Section D, Table III-D-1, Subsection 10.11 |

Gregory Schultz, Esq., attorney for the applicant, presented the application to the Board. Mr. Pilozzi asked why cars were presently on the property. Mr. Schultz explained that a Purchase and Sales Agreement was in place, contingent upon receiving Zoning approval.

Mr. Pilozzi stated that a few years ago, the Town ordered all cars removed from that lot. Why are there cars there now? Mr. Schultz stated that he had spoken with the Zoning Department and agrees that there is nothing in the Ordinance allowing storage of vehicles in a B-2 Zone. The addendum to the application requests that cars be allowed to be stored there while final approvals are being sought.

Mr. Pilozzi asked who would be indemnifying the Town? What if someone were to get hurt or the cars caught fire?

Mr. Schultz stated that because this use is not stated in the matrix of allowed uses, the applicant is here seeking permission. Mr. Pilozzi asked why the cars have been there for two months.

David Angelone, representative of Allied Associates, was duly sworn. Mr. Angelone stated that the automobiles belong to someone else. His company has asked them to remove them on numerous occasions. They take them away and then put them back. They are trespassing on the property. This issue has also been before the Municipal Court.

Mr. Jeffrey stated that the property looks like a junkyard. The cars are always there with no license plates. Mr. Pilozzi suggested calling the police and having them towed. When the owner of the vehicles has to pay towing charges, he will stop putting the cars there. You are in violation of Town Ordinances and you come before the Board requesting a Special Use Permit.

Mr. Angelone stated that the cars are not always there. Mr. Pilozzi stated that there is a business being operated there without a license. The property owner is in violation of a Court Order.

Mr. Fascia stated that he was reluctant to continue hearing the matter while the owner is in violation of a Court Order.

Mr. Angelone stated that they are before the Board in order to clear up the situation. If the owner can obtain the Special Use Permit, everything becomes legal.

Mr. Schultz suggested that the Board make a stipulation on the Special Use Permit that the owner be allowed a reasonable amount of time to seek injunctive relief in Superior Court. Mr. Pilozzi stated that he was not open to that suggestion. It implies that the Board is in agreement and allows the project to continue.

Mr. Schultz stated that he did not fully understand the impact of those vehicles. Taking that issue off the table, the project meets the requirements of the Ordinance. Mr. Pilozzi stated that the area in question is going through a renovation. Condominiums, retail space, and such. A used car lot is not in conformance with the currently proposed projects. Mr. Schultz stated that there are some unique characteristics of the property which make it difficult to use the property. Mr. Pilozzi disagreed. Almost any business could use that lot.

Mr. Pillozzi stated that the Town Council has a moratorium on car licenses unless it is a transfer within Johnston.

Mr. Angelone stated that the Town license is not a contingency of the Purchase and Sales Agreement.

Mr. Anzelone stated that the lot is not big enough for trucks to get in and out safely. Mr. Pillozzi stated that it is a safety issue with the Fire and Police Departments located very close. Flat bed trucks move slowly and if a fire engine had to get out, there could be a problem.

Mr. Pillozzi asked if they had the DOT permit, Narragansett Bay hook-up or a traffic study. Mr. Schultz stated that they do not have any of those at this time.

Mr. Schultz stated that the traffic generated by this use would be much less than other retail or business uses.

Mr. Schultz asked to amend the application to show that all vehicles currently on the property will be removed within 30 days. He would also ensure that the final plan would allow for a car carrier ample ingress/egress from the site.

Mr. Fascia stated that a traffic study needed to be done. There are several factors which must be looked at and the Planning Board needs to give their approval because of the complexity of the location. If this application is voted down this evening, it is two years before you can come before this Board again.

Mr. Schultz agreed to accept the recommendation to go before the Planning Board.

Mr. Anzelone made the motion to refer the applicant to the Planning Board for an advisory opinion.

Mr. Frezza seconded the motion.

A voice vote was taken, all in favor.

Mr. Fascia stated that he will contact the Police Chief and make special notice of those cars. If they are considered to be abandoned, they will be towed.

D. File 2008-43

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| Owner/Applicant: | Joseph and Nina Vinagro |
| Location: | Shun Pike, AP 32 – Lots 11, 12, 17, & 20 |
| Lot Dimensions: | Frontage: 870 ft; Depth: 920 ft; Area: 24.95 ± acres |
| Zone: | R-40 (Residential – 40,000 sq. ft.), Industrial and Industrial – Light Zone |
| Attorney: | Frank Manni, Esq., |
| Surveyor: | N. Veltri Survey, Inc. |
| Present use: | Recycling Operation (RI DEM Approved) |
| Development Proposal: | Construct a (505' x 150') 75,087 sq. ft. metal building over the recycling operation Dimensional Variance petitioned under Article III, Section F, |

Table III-F-1, Section D, Table III-D-1, Subsection 12.1

Frank Manni, attorney for the applicant, presented the application to the Board.

Adjourned at 7:56 p.m.