

Town of Lincoln
Zoning Board of Review
100 old River Road, Lincoln, RI
Minutes of October 5th, 2021 Meeting

Present: David DeAngelis- Chairman, Kazem Farhoumand, Lori Lyle- Vice Chairperson, Frank Spezzano, John Mancini, Stephen Kearns Attorney DeSisto

Excused: Charles Ruggerio

Minutes

August minutes approved

Correspondence: Held until application comes before The Board, regarding to Cumberland Farms application.

Application:

Cumberland Farms, 165 Flanders Rd., Westborough, MA. 01581- Application for Special Use Permit to allow a gasoline filling station with accessories, no auto repair for a new commercial facility located at 644,646, and 648 George Washington Highway, Lincoln, RI. 02865.

AP 31, Lot 8,9,10

Zoned: BL-0.5

Cumberland Farms, 165 Flanders Rd., Westborough, MA. 01581- Application for Special Use Permit for increased signage for new commercial facility located at 644,646, and 648 George Washington Highway, Lincoln, RI. 02865.

AP 31, Lot 8,9,10

Zoned: BL-0.5

Chairman: Two pending applications both for Special Use Permits, however are not ready for us to hear yet.

Zoning Official Hervieux: Representing Attorney Rocha for Cumberland Farms application. Email was sent from the attorney requesting to continue for 90 days, due to the Planning Board's denial of application. Zoning Official Hervieux received an application to appeal and a request to continue depending on the outcome of the appeal. Which would be leading into the January meeting for both applications

Chairman: Won't be exact 90 days but will reflect on meeting time.

Zoning Official Hervieux: Appeal application will be heard well before that.

Attorney DeSisto: Zoning Board stands as Planning Board of Appeal when Planning Board rejects an application.

Chairman: Asks if anyone from the public is here for the Cumberland Farms matter, because the project was turned down from planning, it will not be heard tonight. The

appeal will be heard on a separate night, between tonight's date and November (when the room is available and everyone is able to meet).

Zoning Official Hervieux: There will be no public forum, you are sitting strictly as The Board of Appeal, and there will be a public notice. No mail notice, but will be posted and advertised.

Chairman: Will be at a date to be determined. What is the best way for the public to be notified of the date for the Appeal?

Zoning Official Hervieux: The Secretary of States website or in the Valley Breeze.

Attorney DeSisto: 45-23-69 The Board of Appeal shall have a public meeting within 45 days of the receipt of the appeal. Notice to the public, and have a decision 10 days after hearing.

Member Mancini: Have we received a formal request for this to be considered?

Zoning Official Hervieux: Yes, application was in on Thursday just not on agenda yet.

Chairman: Any questions in regards to Cumberland Farms?

Attorney DeSisto: Advises to make a motion to continue the matter until such time that when the appeal is decided and then we can have a date for a future meeting to be held because it might not be the exact 90 days.

Zoning Official Hervieux: can we have an open ended continuance?

Attorney DeSisto: You can, but if in fact there is a hearing I advise that it be re-noticed so the public knows, at the cost of the applicant.

Chairman: Present a motion to continue the two Cumberland Farms Special Use Permit applications for a date to be determined, while the appeal of The Planning Board decision is heard. Then once it is rendered what the decision will be, there will be a date should there be one.

Motion Seconded by Member Mancini

All in favor aye, all members aye.

Application will be until a date to be determined, Zoning Official Hervieux will notify the applicant.

Antonio and Alice Duarte, 1 Winterberry Rd., Lincoln, RI. 02865 – Application for Dimensional Variance for front setback relief located at 1 Winterberry Rd, Lincoln, RI 02865.

AP 45, Lot 386

Zoned: RA-40

Chairman: Application for Antonio and Alice Duarte, at 1 Winterberry Rd an application for Dimensional Variance seeking front setback relief for property at 1 Winterberry Rd. is the applicant present?

Speaking for applicant: William Stark Architect, David Andreae.

Chairman: Swears in an Architect. Your client is requesting to construct a dining area and kitchen, to the North side of the existing house. The proposed addition is going to

be 25.8 feet from the front property line and the Town ordinance of 40 ft. is required so the applicant is seeking 14.4 feet of relief.

Architect: This lot sits on a corner lot that ends on a cul de sac, the home sits beyond the 40 ft. setback and the farmers' porch that is going on the front of the home will still be outside the 40 ft. setback. We are keeping addition in alignment to the home.

Chairman: The porch on the Winterberry portion of the home, and a pool house to the rear. 25.8ft from the bulb of the cul de sac for the pool house and supposed to have 40ft. Any overhang on the porch is also part of the foot print. Will it still be at 40ft?

Architect: We believe we are, and will confirm and modify.

Chairman: That's an ordinance thing. In addition to the Board granting Dimensional Variance we also need to consider a percentage of lot coverage when it comes to how much stuff is set on the lot (house, garage, shed, pool house etc.). We don't have an accurate lot coverage percentage of how much lot will be covered, with the addition of the pool house and pool. Looking at the plans you probably not over percentage, but we need those amounts calculated in, in order to solidify that.

Architect: Wasn't realizing that was needed.

Chairman: I would like to finish this app, but may have an implication on lot cover. Make a condition that lot coverage is met.

Member Farhoumand: How do you know the property line? It looks like you're measuring from the pavement?

Architect: We are, based on conversations we had with the town. We are using the roadway and edge of the road as the property line.

Attorney DeSisto: May I ask, who at the town said so?

Architect: I would have to dig through emails. Due to the fact there was an architectural site plan, a full survey was not needed.

Attorney DeSisto: I agree with **Member Farhoumand:** Usually there is a gap in between the edge of pavement and property for sidewalks.

Member Mancini: Usually it does not go all the way to pavement. Asked about measurements.

Architect: Typically property lines go up until the roadway and then there is a right-of-way that encroaches on the right-of-way.

Attorney DeSisto: The right of way and then there is a paved portion. Pavement typically does not go to the right-of-way, even on a cul de sac.

Member Farhoumand: It is almost never the case that the property owners own all the way to the pavement.

Chairman: This board cannot grant the amount of relief because we don't have that second boundary. It will be recorded with the deed forever. The relief that this board gives must be accurate due to recordings with the Town.

Zoning Official Hervieux: The decision of The Board is recorded with the land evidence records, even if it is incorrect.

Chairman: It has to be 100% accurate.

Architect: Full survey will be needed. Only way to determine what you are asking will be with a full survey and deed records search. Everything now in front of you is based on the GIS website.

Chairman: It is an issue this Board is trying to work through, to determine exactly what is reasonable to accept for a mechanism for which someone presents measurements. Right now the best way is through a survey. We are trying to explore other situations/ exceptions. As a Board we are trying to rethink this so it is fair and keep measurements as accurate. At this point we cannot continue,

Architect: The only way to continue is through deed research.

Zoning Official Hervieux: This project would need a survey regardless, it is required for a Building Permit by State Law. I did accept the plan because it was from an architect and I assumed the office did proper research. Using the website GIS is useless as it is a guide and picture of the Town, there is no accuracy by using it. There is a disclaimer on our website stating not to be used for Dimensional purposes. Better using documentation and original site plans from when it was built. Accepted application because it was a professional drawing.

Chairman: Continue application.

Architect: My applicant requests a continuance, with a civil engineering site plan prepared.

Chairman: The house is not that old, a site plan may suffice. Cannot continue with this app, but not sure how November looks and if you can get what we need by then. Want to try December.

Architect: I will reach out to the client and decide.

Chairman: It is 60 days I believe you can get what you need by then, but if you can't just get in touch with Zoning Official Hervieux.

Vice Chairperson Lyle: Will we also get coverage?

Chairman: Yes, the full survey will be completed, what is the date in December?

Member Kearns: If you get dimensions you're looking for with the 40ft just confirm that with the surveyor. You can keep the design and if you wanted another half foot of relief, you'd have to amend the request to include x amount of relief for the porch.

December meeting, December 7th

Chairman: Motion to move application of Antonio and Alice Duarte to December 7th as a placeholder hopefully we can do it by then. Is there a second?

Seconded by Member Kearns

All in favor, aye

Timothy O'Halloran, 37 Lakeview Ave, Lincoln, RI. 02865-Application for a Dimensional Variance for minimum relief for extending depth of existing deck located at 37 Lakeview Ave, Lincoln, RI. 02865.

AP 17, Lot 100

Zoned: RS-12

Chairman: The next application is for Timothy O'Halloran, a September application but since the Board did not meet then, we are hearing it tonight. This falls within Vice Chairperson Lyle's district. Application is requesting a Dimensional Variance to an addition to an existing deck, a proposed deck in the rear further into the yard. The deck is 33.8 ft from the rear of the yard and 37.5ft is required therefore the difference of 3.7ft of relief is needed. The property does meet the lot coverage needed. Is the applicant present? Swears Timothy O'Halloran in. So the applicant wants to extend the deck even further and will get closer to the back property line. Standards are read into the record:

1. Is there a hardship due to unique characteristics of land that is not any physical or economic disability?

2. Is that there's a hardship that results and it's not from any prior action of yourself, and it does not result from the desire to realize any greater financial gain.

3. Granting of the variance will not alter the general character of the neighborhood.

4. What is asked of the Board is reasonable and least relief necessary.

5. For a dimensional variance is there a hardship that's more than a mere inconvenience, which results in you needing this variance

Applicant: my deck extends 6 ft right now. Fits only two chairs and a side table, would like to be able to have people over and entertain more with more room. Where the deck is, this is the only place where we could potentially extend the deck. Looking to get a larger table and chairs on the deck.

Chairman: Voting members are Vice Chairperson Lyle, myself, member Kearns, member Mancini and member Spezzano, and then next application member Farhoumand, Vice Chairperson Lyle, myself, member Kearns and member Mancini.

Member Mancini: Depth of the deck?

Applicant: 6ft by 10ft

Member Mancini: Extending by what?

Applicant: 4 more feet, not going up any higher.

Chairman: When you bought the house the deck was already on it.

Applicant: yes.

Vice Chairperson Lyle: How many people in your family? Looking to just entertain? Is there any other place to put the deck?

Applicant: Just me and my wife now, just looking to entertain for right now. There isn't anywhere else to extend, the other side is over the garage and driveway, and this is the only place.

Chairman: Any other questions.

Vice Chairperson Lyle: same material?

Applicant: Replaced with something that will last longer

Chairman: You will follow through with building permits and all necessities. Lastly, is the deck currently 6ft by 10ft?

Applicant: Yes, new deck will be 10ft by 16ft

Vice Chairperson: There is a cement block. Is that going to interfere with the deck?

Applicant: no.

Chairman: Read into record the Technical Review Committee members of the Technical Review Committee reviewed the submitted plans and application seeking a Dimensional Variance for minimum relief for extending the length and width of an existing deck located at 37 Lakeview Ave, Lincoln, RI. 02865. The Planning Board recommends Approval of this Dimensional Variance. The existing deck can only accommodate two chairs. The Planning Board feels that the application presents the least relief needed. The Planning Board feels that granting the dimensional variances will not impair the intent or purpose of the Zoning Ordinance, nor the Comprehensive Plan.

Anyone present in the public to speak? Records indicate there is no one here from the public to speak.

Vice Chairperson Lyle: Motion to approve application Timothy O'Halloran, 37 Lakeview Ave. AP 17, Lot 100.Zoned: RS-12. Application for a Dimensional Variance to extend the existing deck and is requesting 3.7ft of rear relief. Is there a hardship due to unique characteristics of land that is not any physical or economic disability? The current deck is 10ftX6ft, extending to 10ftX16ft would allow the applicant to have more room for more people to have on the deck. Is that there's a hardship that results and it's not from any prior action of yourself, and it does not result from the desire to realize any greater financial gain. It is simply to accommodate more people on deck. Granting of the variance will not alter the general character of the neighborhood. What is asked of the Board is reasonable and least relief necessary. It is the only place to put the deck and it makes sense to extend the deck. For a dimensional variance is there a hardship that's more than a mere inconvenience, which results in you needing this variance to provide more space on the deck for the applicant.

Seconded my Member Kearns. The Chairman calls The Board.

Member Spezzano: Aye

Member Mancini: Aye

Vice Chairperson Lyle: Aye

Member Kearns: Aye

Chairman: Aye

Chairman: Application has been granted.

Rui and Aldora Duarte, 1837 Old Louisquisset Pike, Lincoln RI 02865- Application for Dimensional Variance for side setback relief to enlarge a pool house/cabana- an existing accessory building located at 1837 Old Louisquisset Pike, Lincoln RI 0286.

AP 25, Lot 163

Zoned: RA-40

Chairman: Rui and Aldora Duarte. Request for Dimensional Variance for addition to an accessory building, applicant has an existing pool house which is less than 500sq/ft. The applicant is proposing to increase the size of that pool house to 754 sq/ft. The pool house is 11ft from side and 35ft is required, difference of 24ft of side relief for pool house, property is 100ft from rear which well exceeds the required rear setback.

Zoning Official Hervieux: This application did not go to the Technical Review Committee or The Planning Board and still agreed to come here tonight.

Chairman: Let the record show there is no TRC review.

Chairman: Read into the record the standards; again it is Farhoumand, Vice Chairperson Lyle, myself, member Kearns and member Mancini on this application.

1. Is there a hardship due to unique characteristics of land that is not any physical or economic disability?
2. Is that there's a hardship that results and it's not from any prior action of yourself, and it does not result from the desire to realize any greater financial gain.
3. Granting of the variance will not alter the general character of the neighborhood.
4. What is asked of the Board is reasonable and least relief necessary.
5. For a dimensional variance is there a hardship that's more than a mere inconvenience, which results in you needing this variance.

Attorney **Joseph Raheb** speaking for the applicant: right now we have a 1 acres, single family residence that has a pool and a small pump and utility house, 11ft by 14 ft. and 1ft from the property line and that's ok because it is accessory use, my client would like to increase by adding a cabana and changing room and that extension is to the South but because we are staying within that 10ft, from the property line.

Chairman: Clarifying, the existing structure is 500 sq. /ft.?

Joseph Raheb: 11ft by 14ft

Zoning Official Hervieux: 154 sq. /ft.

Joseph Raheb: At its closest point it is 11ft away from the property line, the property is curved.

Chairman: and that's ok because why

Joseph Raheb: Because it is under 500sq./ft., and accessory use.

Zoning Official Hervieux: It is under 6 ft., if it is an accessory building and less than 500sq/ft,

Chairman: now you want to extend it to 754 sq. /ft. and that moves you over to 35 ft. away from the property line.

Joseph Raheb: but the addition is going to be on the South side of the pool house, getting no closer to the property line, we have spoken to both property owners to the North.

Chairman: How did you achieve those calculations because they are even numbers?

Joseph Raheb: We got a survey. Two abutters to the north have letters of no objections.

Member Mancini: 8ft fence around the pool house?

Chairman: Swears in applicant for the record.

Member Mancini: You have shrubs, how high?

Applicant: 9 ft.

Chairman: How long have you been in this house?

Applicant: 35 years

Chairman: Did you build the pool?

Applicant: Yes.

Chairman: 154 sq. /ft. that houses the pump, why are we changing it now?

Applicant: Grand kids go in the pool and come into the house wet.

Chairman: Do any of your neighbors have pools?

Applicant: Yes one on the North side

Chairman: Above/ in ground?

Applicant: In ground

Chairman: Do they have a cabana?

Applicant: No, deck

Chairman: And what are the proposed measurements of the pool house?

Applicant: 20ft by 30ft added to the current pool house.

Chairman: Have you done any modifications in the past 35 years

Applicant: No

Chairman: Any other questions?

Farhoumand: On the sketch there is a survey from 1999 and some additions added, those are for what is existing and what is being added, how did you measure that?

Chairman: Closest point.

Zoning Official Hervieux: I cannot attest to the 11 ft., it looks like it is to the closest point. It is typically to the closest point of where the structure is going to be. That would be the proper way to measure it.

Chairman: Are we content with the measurement process?

Farhoumand: What about building permits?

Applicant: Yes

Farhoumand: Would they need a survey at that point?

Zoning Official Hervieux: We would allow you to use the survey because it was a previously stamped survey and they are not going beyond what already exists towards the property line.

Joseph Raheb: Two letters from abutters to the North.

Chairman: Let the record indicate the council presented to The Board two documents, exhibit 1 and exhibit 2. Any other questions?

Member Spezzano: Asked if the applicant did the sketch himself?

Chairman: No TRC,(Members of the Technical Review Committee reviewed the submitted plans and application seeking front setback relief located at 1 Winterberry Rd, Lincoln, RI 02865. The property is located at the end of a cul-de-sac. Setbacks for the property curve with the radius of the cul-de-sac causing a need to request a dimensional variance. The Planning Board recommends **Approval** of this Dimensional Variance. The Planning Board feels that if the house was located on a straight thoroughway rather than at the end of a cul-de-sac, a dimensional variance would not be required. The Planning Board feels that the application presents the least relief needed. The Planning Board feels that granting the dimensional variance will not impair the intent or purpose of the Zoning Ordinance, nor the Comprehensive Plan.) Anyone from

the public wishing to speak on behalf of this application? Let the record indicate there is no one here present who wishes to speak. Any questions or clarifications? Read into record Exhibit 1: "I Stephen Lennon owner of the property at 1839 and 1841 Old Louisquisset Pike in Lincoln, R.I have no objection to the Rui Duarte at 1837 Old Louisquisset Pike Lincoln, RI. Zoning request. -Stephen Lennon 10-5-2021" Exhibit 2: Different font and different paper. "Zoning Request 10-4-21 I Merleann Poulton have no objection to the pool house extension for Rui Duarte at 1837 Old Louisquisset Pike Lincoln, RI 02865- signed Merleann Poulton 1843 Old Louisquisset Pike Lincoln, RI 02865"

Joseph Raheb: Lennon is directly to the North.

Chairman: Make a motion to approve the request of Dimensional Variance seeking 24ft of side relief for extension of already existing structure for applicant at 1837 Old Louisquisset Pike application of Rui Duarte. This motion will grant 24 ft of side relief. Is there a hardship due to unique characteristics of land that is not any physical or economic disability? Lot take ribbon shape and has unique shape to it. There is a hardship there. Is that there's a hardship that results and it's not from any prior action of yourself, and it does not result from the desire to realize any greater financial gain. Applicant is not seeking any financial gain, is just trying to improve the pool house for his growing family. Granting of the variance will not alter the general character of the neighborhood, we heard from two abutters who do not have problem with the addition. What is asked of the Board is reasonable and least relief necessary. Modest size addition compared to what is trying to be achieved. For a dimensional variance is there a hardship that's more than a mere inconvenience, which results in you needing this variance. It hasn't been upgraded in 30 years and if the Dimensional Variance was not granted, it would have to remain as is and he would have to entertain in such a manner that his group would not be able to stay outside.

Seconded by Member Kearns

Chairman polls The Board

Farhoumand: Aye

Vice Chairperson Lyle: Aye

Member Mancini: Aye

Member Kearns: Aye

Chairman: Aye

Chairman: Project has been approved.

Discussion of application process and requirements, discussion of standard clarification for Dimensional Variance, and clarification of Zoning Board member nomenclature.

Chairman: Discussion of processes and requirements may need to be pushed out due to Member Ruggerio being absent from the meeting. Roll of this Board as the Planning Board of Appeals. The Planning Board denied the Cumberland Farms request, and the first step is for this Board to act as the Board of Appeals.

Attorney DeSisto: Based on section 45-23-70, The Board of Appeal should not substitute their own judgement for those of the Planning Board, but must consider findings.

Chairman: So this is not a rehearing, it is based on if the process was handled the right way by The Planning Board.

Attorney DeSisto: This is an Administration appeal, this is not a public hearing, the public can come but they cannot comment. You're deciding whether The Planning Board made the right decision with the record they had before them.

Member Mancini: This is when it gets a little sticky because it is hard to determine thoughts of the Planning Board

Chairman: Do the Planning Board have standards like we do?

Attorney DeSisto: Yes the standards being employed is what will be looked at. There are two sets. One of them was relied upon, most were met by the applicant but The Planning Board looked at all of the standards. Can't substitute Zoning Board judgement with those of The Planning Board, was there prejudicial procedural error. Something in the process was wrong, a clear error, or lack of support of evidence in the decision. Sum or any evidence rule; any evidence that would support the decision of The Board is there or isn't. Two arguments; for and against. In some cases, Boards keep the solicitor or choose different attorneys to stand in for each Board.

Farhoumand:: can we have this discussion if it's not on agenda?

Attorney DeSisto: Yes because it is part of procedures.

Chairman: We will get transcripts?

Attorney DeSisto: yes.

Chairman: And the attorney for the applicant is going to say this is why I am appealing and planning will say their side and will we get a chance to discuss as a whole board? Will we get to confer?

Chairman: Yes, and you will need to get the appeal written and the reason and sent by certified mail or hand delivered. First you need appeal, and all papers, documents and plans constitutes the action being appealed. You each need a copy, you'll need some time to review this.

Zoning Official Hervieux: Appeal came in last Thursday.

Attorney DeSisto: Public hearing within 45 days of received appeal. 40 days from today.

Member Mancini: Is there a possibility we may have to continue to another night if there is so much?

Attorney DeSisto: Yes it is possible

Chairman: Two dates? One for appeal and one to render a decision?

Attorney DeSisto: I wouldn't advise to schedule two dates you'll be able to make a decision then

Chairman: what are the possible outcomes from this board?

Attorney DeSisto: The decision is a three out of five vote. 45-23-70 subsection C, outcomes are to go along with the decision of The Planning Board, send it back to The Planning Board, or uphold it. Master plan was denied, if it was not denied it would have gone to the Zoning Board and so forth.

Farhoumand: I thought there were no testimonies, just the two sides?

Attorney DeSisto: yes, whether or not there is sufficient evidence to support the decision.

Farhoumand: Just looking at procedures followed

Chairman: How many for Zoning for November?

Zoning Official Hervieux: 5

Farhoumand: Can we have a "cheat sheet" for next time?

Zoning Official Hervieux: I have almost everything, I am just waiting for the brief. And I will hand deliver to each member and I will make sure everyone has them in their hands. I would ask, it is a press worthy application and you probably will be getting calls and questions from the public, anything you get you cannot respond to, you need to forward it myself or to **Attorney DeSisto**. We don't want to discuss it prior to the meeting.

Attorney DeSisto: Vote is a way of motion, you have to set out reasons based on the statutes because the next step could be an Appeal to Superior Court.

Discussion of public concern of public speaking.

Attorney DeSisto: They understand the process, no requirement to send to abutters but cost of notice is borne by the applicant.

Chairman: Date? When do you think we will have packets?

Zoning Official Hervieux: A week from tonight. The 26 or 28 this room is available, however we will need to get on there.

Chairman: How about the 28th?

Zoning Official Hervieux: Clarifying date is October 28,

Vice Chairperson Lyle: 7 pm?

Chairman: Yes, as far as other discussions should we move out to another date?

Attorney DeSisto: I think we should wait until Member Ruggerio is here,

Zoning Official Hervieux: When it comes to survey if you're putting concrete in the ground under RI Building Code it requires site plan, which requires a survey. If someone comes before The Board they will have to get a survey because they are already too close to the property line.

Chairman: Discussion of Town employing a list of surveyors,

Zoning Official Hervieux: It is a liability, and difficult because then you would have to have every surveyor on the list to recommend. We will not be doing that.

Chairman: Meet October 28th at 7pm in the capacity of The Appeal Board, Zoning Official Hervieux will get the documents to us in about a week. Which would give everyone ample time. We will also be meeting in November for our normal meeting which will have the discussion afterwards, and **Attorney DeSisto** will give us the regulations. And if anyone has any questions after looking at the document from The Planning Board, if someone needs clarification?

Attorney DeSisto: They can consult with the Solicitor under the Bodofisher case, just contact me directly.

Member Kearns: Do you want to know if someone from the public contacts us?

Attorney DeSisto: Yes, I do.

Chairman: If anyone gets contacted just refer them to Zoning Official Hervieux or Attorney DeSisto.

Motion to adjourn by Member Mancini and Seconded by Member Kearns.

All approved.