

Town of Lincoln
Zoning Board of Review
100 old River Road, Lincoln, RI
Minutes of June 1, 2020 Meeting

ZOOM MEETING

Present: David DeAngelis- Chairman, Kazem Farhoumand, Lori Lyle- Vice Chairperson, Stephen Kearns, Frank Spezzano, John Mancini, Anthony DeSisto (Town Solicitor).

Excused: Charles Ruggerio,

Minutes

May minutes objected to member Spezzano in regards to the first vote being legitimate and the second vote being illegitimate in the application for Three Kids LLC, clarification by Chairman DeAngelis with minutes being a recording of events of the evening not on the process.

Attorney DeSisto Explains the process: those who get to vote for the minutes are the ones that actually participate in and if you've missed a meeting, or if you're recused from an application or if you didn't hear an application then it's not appropriate to vote on those particular minutes. Only those members that participated vote on that particular segment. If you don't participate in a particular application then it's not appropriate for the board member to vote on that part of the minutes.

Motion made by Member Farhoumand and seconded by Member Kearns to accept the May Minutes as presented. Motion carried by all present.

Applications:

Lincoln Mobile Estates, 27 Woodward Road, Unit #41, Lincoln, RI – Application for Use Variance to convert an existing single family home into a multi-family home which exists within a mobile home park located at 27 Woodward Road, Lincoln, RI.

AP 42, Lot 002

Zoned: RA-40

Chairman is in receipt of an email, which was forwarded by Zoning Official Hervieux, which was received from Vincent DeSimone, from Tuesday, May 25, 2021 at 9:10 in the morning.

Mr. Chairman read the email into record:

Good morning, Mr. Hervieux, Lincoln Mobile Estates 27 Woodward Road Unit 41 Lincoln Rhode Island would like to withdraw its application for Use Variance to

convert existing single- family home into a multi- family home, which exists within the mobile home park located at 27 Woodward Road Lincoln Rhode Island AP 42 Lot 2 Zoned RA- 40. We have not been successful in getting any new information to present to the Zoning Board for this application. We will pursue this application again in the future, after we learn more about the zoning requirements that would be in our favor to get this approved. Zoning Official Hervieux does not need to speak on their behalf as Chairman has read the email into record.

Chairman DeAngelis: Presented a motion to withdraw the application with the caveat that they are allowed to reapply in the future. Seconded by member Kearns.

Motion approved by all, application is withdrawn.

Jeffrey Castle, 689 Putnam Pike, Gloucester, RI – Application for Dimensional Variance seeking front setback relief for the construction of a new house on property located at Twin River Road, Lincoln, RI.

AP 45, Lot 356

Zoned: RA-40

Chairman: Because Member Ruggiero is excused from this evening's meeting an alternate member is appointed by Chairman to sit on the various applications this evening. Sitting on this application are the Chairman, Vice Chairperson Lyle, Member Kearns, Member Mancini, and Members Spezzano. Application of Jeffrey Castle, a continued application from April, presents a request for a Dimensional Variance. The calculations by which the applicant presented the amount of relief needed. Due to DEM restrictions and the applicant being a bit loose as far as how those calculations were concluded. There was no consultation with DEM as far as what actually was needed, as in the form of buffers or setbacks from the DEM point of view. Applicant introduced himself for the record and gave testimonial. Chairman concluded from April there were some questions about the amount of relief actually needed to accomplish what applicant is seeking and there was no information from DEM provided. Chairman confirms with applicant he has not provided any further information to the town, regarding the application.

Applicant agrees: He does not have any further information at this time. He has submitted an application to DEM, which had been denied, because it wasn't complete and did not have the narrative done by Scott Rabbidoux. Says he spoke with him today, quotes [Scott Rabbidoux] agree with the 20-foot setback relief. Only had verbal agreement, no documentation.

Chairman: Unfortunately, we cannot use verbal agreements. Asks if the applicant would like to continue the application open ended until hear back from DEM.

Applicant Castle: States he would like to just get the 20 feet approved, go to DEM to have a 20-foot approval and work with the site plan with them. Applicant states again he does not have any new information with DEM, states he was trying to get the variance first with the town. The House next door built in 2006 was granted 27 feet of relief, which is 13 feet off the property line. The road curves so the setback line is farther from the pavement then on the rest of the Twin River Rd. Applicant states he only needs 20 feet of relief.

Chairman states although the applicant claims he only needs 20 feet of relief, if it is found that what was completed could have been done with 19.5 feet of relief then the least amount of relief was not asked for. Standards have to be met and cannot go by arbitrary number.

Attorney DeSisto: Recommends that DEM approval be achieved first because of wetlands complex and see if the land is buildable and where the non jurisdictional land is, Zoning Board cannot make that determination until they hear from DEM.

Member Kearns: site plan, one location of upland pocket deep into the lot.

Applicant: Lot was approved through DEM in the 1970s up until 1986 when sewer was available on Twin River Rd. The whole lot is considered lowland. Will be minimally disturbing wetlands.

Chairman: Cannot go any further during this meeting

Applicant: Asks if we can continue for six months, in hopes of having DEM approval by then.

Attorney DeSisto: Advises to withdraw and reapply without prejudice but cannot put it down for a date uncertain, because do not know the length DEM will take.

Chairman: Advises as soon as applicant hears back from DEM contact Zoning Official Hervieux to be put on the schedule. At the request of Mr. Castle I'm going to present a motion that that we honor his request to withdraw the application, without prejudice, meaning that sometime in the future, whether it be two months, three months, six months, Mr. Castle will be able to resubmit this application, and it can be heard before the board. Motion seconded by Member Kearns. **Motion approved by all.**

Arthur Cimini, 1 Paul Street, Lincoln, RI – Application for a Special Use Permit, seeking approval for residential scale, ground mount solar panels located in backyard at 1 Paul Street, Lincoln, RI.

AP 42, Lot 016

Zoned: RS-20

Chairman: This applicant is proposing to locate two rows of 10 solar panels, to the rear of his house. This use would be allowed, with a Special Use Permit under Section 260-19AA of the Zoning Ordinance with conditions. However, the plan does not show any protective fencing, or the total height of the panels. The town would also need some documentation that the solar array does not produce any more than 125% of this property's electrical requirements, load calculations would need to be provided and a history of kilowatt hour usage.

Applicant introduces self. Nick Veltri, the applicant's surveyor, introduced himself and gave testimonial.

Chairman reads the standards of a Special Use Permit. The first standard is that the use is permitted in the exact subsection in the ordinances that it's permitted in. Standard two that the Special Use Permit meets all the criteria in the zoning ordinance such as parking and lighting and various use regulations. Standard three that the Special Use Permit will not alter the general character of the neighborhood. Standard four that the special use conforms with the Comprehensive Plan and

Zoning Ordinances. Chairman asks the applicant to explain what he is seeking to accomplish.

Nick Veltri, Surveyor: Original plan was to put solar panels on the roof, however the roof is facing the wrong direction. Suggested to put them on the ground at the rear of the house. Approximately 75 feet away from the nearest abutting property corner.

Chairman asks if the applicant already has an installation company set up.

Nick Veltri, Surveyor: Applicant has purchased the panels and the entire understructure from a company, and will install himself with proper angles.

Chairman: Explains there were some criteria lacking from the site plan that are required for solar installation. Fencing needs to be installed around the solar, such that no one could trespass and get hurt from any of the equipment and ask plans for fencing to be further explained.

Nick Veltri, Surveyor: Applicant will go along with required fencing to prevent probability of injury.

Chairman asks if the applicant has spoken to any neighbors about this, Surveyor responds with no, the closest dwelling is approximately 200-300 feet away.

Chairman asks Mr. Cimini size of electrical service he currently has, Mr. Cimini responds with 200 amp, average electric bill being \$500 or higher a month, averaging 13,000 kilowatts a month.

Zoning Official Hervieux: Clarifies fence height requirement is six foot fencing, high voltage needs to be marked. Also in the Zoning Ordinance documentation needs to be shown for the electrical requirements that this does not produce any more than 125%, six month average of bills, multiplied by two and what the power production is going to be for the proposed panel.

Applicant states they will be less than 80%. Zoning Official state this was put into the Zoning Ordinance to prevent turning a residential property into a utility.

Chairman states there will be a building permit required, as well as an electrical permit required. The specifications for the fencing fall within the building permit and the structure itself within the building permit. The electrical permit will govern the actual electrical connections to the house. Signage on the fence indicating high voltage will be installed and not to trespass.

Chairman asks if the applicant has contracted with a company to connect all the electrical, the applicant responds that he does have an electrical contractor when he fills out the electrical permit. Chairman asks if anyone in the neighborhood has solar, the applicant responds not close by. Chairman asks what made the applicant want solar, the applicant responds that his son sold solar out in California, and the combination with his high electric bill.

Chairman questions the height the panel will be off the ground. Applicants response: 17 degree angle, making it approximately 7 feet at the highest point, lowest point 2 feet off the ground. Chairman questions if this will be visible from the front of the house. Applicant responds with hardly the house is not even visible from the street, it sits so far back.

Chairman pauses for Board Member questions.

Member Farhoumand: Stream is shown on the plans, which is on this property minimum 100 feet required per DEM rules. Questions if DEM requires permits.

Nick Veltri, Surveyor (AC): States they have 75 feet based on the regulations it would be exempt being residential property, having 75 feet it is past the minimum. A regulation permit from DEM is not required. This is considered an auxiliary structure to the House and DEM will give you the relief of 50 feet.

Member Farhoumand: This is a big lot, does it have to go there, (75 feet away) or can be pulled back further away from that stream.

Nick Veltri, Surveyor (AC): If he goes further more towards the West of the land, it is where activity in the yard, away from the stream is going to encroach on the yard.

Member Farhoumand: Are they in compliance with all the dimensional distances that they need?

Zoning Official Hervieux: Yes they are

Member Farhoumand: Questions the existing barns' close proximity to the property lines.

Zoning Official Hervieux: Confirms this is a separate structure. Does not need to get relief as part of this application.

Member Kearns: Confirms Zoning Board is taking the applicants' assessment that the 50 foot is what the regulation says. Questions if that would be part of the Building Department to confirm the correct dimension.

Zoning Official Hervieux: The Town Engineer will vet that application. The Town Engineer, to make a determination of whether she needs the information or if it meets the DEM regulations, looks at any application that has any wetlands on the property. Part of the normal process and regulations with wetlands.

Attorney DeSisto: Recommends that if the motion is to approve that conditions on all necessary permits from DEM are complete, just to put the applicant on notice.

Member Kearns: If the measurements are different than what is on the plans, would he be able to make an adjustment to the plan without coming back to the board?

Attorney DeSisto: No, he would have to come back.

Vice Chairperson Lyle: Will we have that on record that it's not going to be producing more than 125% of per the properties electrical requirements? The applicant said it would be fewer than 80%.

Chairman: That would be a condition, should it go in that direction of approval. Those calculations will need to be furnished to Zoning Official Hervieux, average kilowatt usage per month, and then the math would be done from there.

Chairman: Reads into record Technical Review Committee report. Members of the Technical Review Committee reviewed the submitted plans and application seeking a Special Use Permit for the installation of a residential scale, ground mount solar panel located in the backyard at 1 Paul Street, Lincoln, RI. The Planning Board recommends **Approval** of this Special Use Permit. The installation will be located in the backyard of this residential property. The proposed installation will not exceed the permitted building height or zoning setbacks. The Planning Board feels that the Special Use Permit will not alter the general character of the surrounding area and will not impair the intent and purpose of the Zoning Ordinance and the Comprehensive Plan.

Moderator Potvin: Asks if anyone in the audience would like to speak on the behalf of this application. No one would like to speak.

Chairman: Ask if any members have any other concerns or questions.

Chairman: Present a motion to approve a Special Use Permit for the construction of a residential scale solar array the applicant Arthur Cimini at 1 Paul Street, Lincoln, Rhode Island. Chairman reads the standards of a Special Use Permit. The first standard is that the use is permitted in the exact subsection in the ordinances that it's permitted in. Standard two that the Special Use Permit meets all the criteria in the zoning ordinance such as parking and lighting and various use regulations, in this case parking and lighting does not apply. Standard three that the Special Use Permit will not alter the general character of the neighborhood. Based on the submitted site plan, we see that this is going to be located, to the rear of the property and it's fairly secluded property, we have no neighbors who came to speak regarding this so based on the neighbors there does not appear to be any concerns that this will have a negative effect of neighborhood. Standard four that the special use conforms with the Comprehensive Plan and Zoning Ordinances. And the fourth standard, Special Use conforms to the Comprehensive plan. The Comprehensive plan does include the renewable energy component, which, in fact, this project is, however, also included in the motion are some special conditions. The first condition will be that any permits, which are found to be required from DEM, need to be obtained in order to complete this project. The other conditions, fall within the Building Department, code of compliance, fencing needs to be installed and the proper electrical calculations, to be submitted and approved by the Town Building Department, such that the 125% power production rule does not get violated in this case.

Motion Seconded by Member Mancini.

Vice Chairperson Lyle- Aye

Member Kearns- Aye

Member Farhoumand- Aye

Member Mancini-Aye

Motion approved by All.

The Lodge Pub & Eatery, 40 Breakneck Hill Road, Lincoln, RI – Application for Dimensional Variance located at 40 Breakneck Hill Road, Lincoln, RI.

AP 25, Lot 044

Zoned: RA-40

Chairman: The application is to build a deck on an existing commercial building, a restaurant that is The Lodge at 40 Breakneck Hill Road in Lincoln. This falls within District Four which is usually represented by Members Ruggerio who is excused from this evening's meeting, Member Farhoumand is appointed to be the lead on this application this evening in place of Member Ruggerio. Sitting on this application is Member Farhoumand, Chairman DeAngelis, Vice Chairperson Lyle Member Mancini and Member Kearns. The applicant is proposing to reconstruct and enlarge an outdoor deck of an existing restaurant. The proposed deck is going to be 24 feet from the front property line and 40 feet is required, therefore, the applicant is seeking the difference, which is 16 feet of relief in the front. The

proposed deck is going to be 71 feet from the rear property line, in which 75 feet is required, therefore, the applicant is seeking the difference of 4 feet and a rear relief for the proposed depth if the property meets all of the lot coverage regulations.

Applicant David Lahousse introduction and testimonial. Brian Cote, Lodge Contractor introduced himself and provided testimonial.

5 standards read into record by Chairman DeAngelis

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

Chairman: Indicates that Member Spezzano is able to obtain information, encouraged to take notes and ask questions even though he is not a voting member. Alternate members are not excluded from participating.

Applicant: Because of outside dining becoming more popular, by adding a deck there it's not just going to give more seating but it also gives an area to give them a better ramp. The handicap ramp with two doors which will be on the ground with the ability to walk out the door up right onto the deck and two different areas, instead of one with easy access for the handicapped people and staff to go in and out.

Chairman: Questions about seasonal use, spring, summer and early fall?

Applicant: Spring, summer, fall but it'll always be used as a handicap area.

Chairman: Questions process, if it stemmed from Covid?

Applicant: The popularity of more outside dining was the catalyst. The trend is outdoor dining, if you don't do it you will lose out and it will hurt the business.

Chairman: So walk me through it, so I come in and I'm going to go up the existing handicap ramp and I'm going to be asked if I'd rather sit outside or the outside and have a separate entrance and reception hostess area.

Applicant: We will work that through as we go. We always have somebody out there, but if they walk up and somebody's not there, it is usually a please wait to be seated type thing but typically there'll be some type of policing of the area, whether it's the handicapped people coming up or just people coming for dining and most of the people that come for dining I still want to park on the left side of the building. Not the right side because I don't have a lot of parking, I can add a lot more parking if need be, but my parking lots to the left I have probably about 100 spots. They are spaced out, I could make them even tighter if I wanted to, but I never needed to. I want the flow of traffic to come through the front door except the handicap.

Chairman: As a result of the pandemic, did you have to reconfigure the tables inside or did you just put certain tables off limits?

Applicant: We did both, we took some out, we took the bar out for a long time, and as they let us open things up, we put plexiglass. We definitely lost seating. We only use 50% for quite a while and now, they went to 100%, which eliminated the three

foot distance. I still would like to space the place out even more, because most people don't want to be sitting on top of other people anymore.

Chairman: What do you think it's going to add as far as total capacity?

Applicant: About 40 more seats.

Chairman: Any Board questions for either applicant or contractor?

Member Kearns: The applicant noted that his existing building is closer to the road than the setback is required, will we need to correct that if we approve this?

Zoning Official Hervieux: Normally, we would, like an addition to a house, in this case I don't have that information to give you on the plan so I could not submit that information to you in the report, the plan only shows the dimensions for the deck to the property line I would defer to the Solicitor as to whether that's pertinent, in this case.

Attorney DeSisto: It has been the practice of the Board that when there is a prior legal non-conforming use that it has been approved in connection with applications be reluctant to do that here, if you don't know the exact dimensions.

Member Farhoumand: I think we need to distance in the back to this one corner of. The existing building is much closer than the deck to the back property line.

Chairman: With the recommendation from the Solicitor in this instance, we were going to deviate from the customary by this Board as far as bringing into conformance the previously existing structure, which is usually on the residential side. I think that the dimension of 71 feet, to pick up the depth, is an appropriate measurement.

Attorney DeSisto: The nonconformity remains in their current status, legal but still non-conforming.

Member Kearns: Shouldn't that angle, where the 71 feet is, be in a direction directly to the closest point of the property line.

Member Farhoumand: It should be perpendicular to the property line, like the 24 feet is.

Member Kearns: Right, which would make it different; it wouldn't make it 71 feet it would make it somewhat less.

Member Farhoumand: My other question is where the dimensions come from? Is this something that the surveyor did, because I don't see a surveyor plan or stamp.

Brian Cote, Lodge Contractor: These are measurements we took, we marked the deck out on the asphalt, and then we took the measurements to the property lines. Measured off stakes of the property line. It's measured straight but my secretary drew it crooked. To be honest, we weren't worried about the back of the building, we're worried about the front of the building where it is supposed to be 40 feet and we're only 24 feet.

Member Farhoumand: But we need to know exactly what it is because we're going to read it into the record. Is it 24 feet, is it 24.1?

Chairman: So the issue is, the manner in which the calculations are achieved because there's no actual survey presented to the Board. In fact this Board is in the process of revamping the application process. Considering the possibility of instituting a mandate that a professional land survey accompany these types of applications, so that there are no issues with crooked arrows and incorrect calculations.

Chairman: we're not going to be able to bring this application to the point of a vote this evening because a particular standard for which says the relief requested is the least relief necessary, the reason being also is because your requests for the amounts of relief is based on a tape measure. When this Board grants relief from setbacks, the amount of relief stays with the property forever and gets recorded by the Town and those calculations need to be exact.

Contractor asks if they can be granted an asbuilt.

Attorney DeSisto: Given the nature of the application if the Board is not comfortable in proceeding with the dimensions that had been presented then you can request that the applicant get the necessary survey to iron out some of these issues, which actually shouldn't take that long but that's in the discretion of the Board.

Chairman: Otherwise the relief granted would have to match with the dimensions in the asbuilt correct?

Attorney DeSisto: Correct.

Chairman: Asks if the members of the Board feel comfortable proceeding or would like to request further documentation for more exact calculations.

Member Farhoumand: Better off, getting the exact calculations and exact numbers as measured by a surveyor. May have a wider dimension to the road, than what is calculated.

Contractor: The plans are actually from when the state redid the road that's the set of plans that we took.

Chairman reads into the record the recommendation from the Technical Review Committee. Members of the Technical Review Committee reviewed the submitted plans and application seeking a Dimensional Variance seeking front setback relief for the construction of a deck on a commercial business. This application is actually a remodel and slight enlargement of an existing deck for a restaurant. The Planning Board recommends **Approval** of this Dimensional Variance. 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.

Chairman: Anyone who wishes to speak regarding this application.

Moderator Potvin: There is no one in the audience.

Chairman: Let the record indicate that there's no one from the public, which speaks regarding this application. We're going to have to ask you for a continuance for the opportunity to submit a more detailed site plan, which shows the exact calculations regarding the amount of relief that's requested. The best I can do is put you on the agenda for July, in the hope that you can get those documents to us prior to that. The July meeting the date is July 6 it will be an in person meeting at Town Hall in the Town Council Chamber.

Member Kearns: Should we request that they correct those two pre existing conditions that we spoke about earlier in their survey?

Chairman: I don't think it matters because any motion could basically have language that the existing nonconforming structure remains in its current state as advised by Attorney DeSisto. I'm not sure if it means expediting those documents to us would be just having calculations on the deck that's fine. If it includes

calculations on the existing structure then we could bring the existing structure into conformance as well because it's non-conforming as far as the current setbacks, but that really does not have much of a deciding factor with the petition or enlargement of the deck. I would say that it would be your (Applicant) call on that request if it means getting us the documents fastest of your (applicants) project could get potentially underway faster.

Contractor: Advises putting requirement of surveyor on application

Chairman: If you get that survey and those calculations, your application exists as it is. That survey would be a supplement document, which then Zoning Official Hervieux would provide recalculations to the amount of relief and we would amend the existing application with the different amounts of relief.

Member Farhoumand: Motion made to continue this application to July 6, 2021. Motion seconded by **Chairman DeAngelis**.

Vice Chairperson Lyle- Aye

Member Mancini-Aye

Member Kearns-Aye

Application approved by all to continue application to July meeting.

Chairman DeAngelis- July the meeting is on July Sixth, and it will be an in person meeting in the Town Hall Council chambers. Questions mask requirements in Town Hall.

Zoning Official Hervieux: The policy at Town Hall currently is if you're vaccinated you do not have to wear a mask. If you're not we ask you to wear a mask and that will be published with the advertisement. Honor system vaccination.

Member Kearns: Couple of things came up the past few weeks about some items that we may want to add to the agenda regarding discussion of the standards and requirements for a complete application. Perhaps we should have a couple of agenda items related to those, and have an open discussion.

Attorney DeSisto: Will explain some of the policies of the Board that members have shown interest in and will explain some of the requirements of the open meetings act, at the July meeting.

Discussion of documents from other Towns that are similar to Lincoln. To send to Solicitor from Members individually under the Fisher v. Charleston Zoning Board Case.

July meeting additional education: Do's and don'ts basic Zoning Board 101. Briefly going over some of the other standards as well for clarification.

Motion to adjourn made by Member Mancini and seconded by member Kearns. All present voted in favor.