



**Town of Lincoln
Zoning Board of Review
100 Old River Road, Lincoln, RI
Minutes of January 4, 2021 Meeting
ZOOM MEETING**

Present: David DeAngelis-Chairman, Kazem Farhoumand, Lori Lyle, Stephen Kearns, Charles Ruggiero, David Hart, John Mancini, and Solicitor Anthony DeSisto

Excused: Member Hart

Minutes

December 2020 Minutes will be submitted for approval at the March 2021 meeting.

Applications:

William King, 37 Olney Avenue, Lincoln, RI – Application for Dimensional Variance seeking a side yard and height relief on a newly constructed single-family house located at 37 Olney Avenue, Lincoln, RI.

AP 17, Lot 96

Zoned: RS12

Represented by: John Shekarchi, Esquire

This application represents a request for a Dimensional Variance for a newly constructed single family home. The applicant built a single family home which needs side setback and height relief. The applicant supplied a site plan at building permit stage which showed that this house met the setbacks but was very close. The applicant was warned not to go over 25' in height because that would increase the side setback requirement. The applicant supplied an as-built survey at time of certificate of occupancy request which was rejected because it did not include height calculations. The updated as-built survey was never supplied however this application for dimensional relief was. According to the site plan supplied with this application, the house is at 36.31' high. The front corner of the house on the northwest corner is 25.16' from the side property line which 30' is required. Therefore, the applicant would need **4.84'** of side relief on the northwest corner. The side of the house on the north side is 24.89' from the side property line which 30' is required. Therefore, the applicant would need **5.11'** of side relief on the north side. The front corner of the covered porch on the southwest corner is 24.95' from the side property line which 30' is required. Therefore, the applicant would need **5.05'** of side relief on the southwest corner of the covered porch. The rear corner of the house on the southeast corner is 25.16' from the side property line which 30' is required. Therefore, the applicant would need **4.84'** of side relief on the southeast corner of the house. The chimney on the south side is 23.11' from the side property line which 30' is required. Therefore, the applicant would need **6.89'** of side relief for the chimney on the south side. The house is 36.31' high which 35' is the maximum height limit. Therefore, the applicant would need **1.31'** of height relief. The property has two accessory structures being constructed which have no permits. It is unknown if these structures meet the zoning setbacks. This is a large lot in the RS-12 zone. I would assume this property this property meets the lot coverage requirements but I can't assure that until the accessory structures are placed legally or removed. A new survey with height calculations must be submitted prior to issuance of certificate of occupancy.

Chairman read into the record standards that need to be met for a Dimensional Variance.

House is constructed and has a temporary certificate of occupancy from the Town. Applicant's brother constructed the house and did not use trusses per submitted plans but instead they built stick trusses. Height of the house is in excess of the 35 foot height restriction and needs 1.31 feet of relief. Applicant stated he did not intentionally build to the current height. Member Mancini stated based on the report before this Board applicant went ahead with construction. What is in place at the site is not what was submitted to the Town. Chairman stated to applicant that the Board looks at the standards and applicants need to prove the five required elements that need to be addressed. Registered builders should know what the rules and regulations are prior to construction. The Board does not automatically give forgiveness for errors of construction. Ed Pimentel, witness for the applicant, stated it is not easy for an applicant to ask for forgiveness but the Board should give consideration for the unique characteristics of the property. Asking applicant to deconstruct the third floor of the home or fill in the rear of the property and regrade and get rid of the decking would be expensive for applicant.

Mr. King said he spoke with the neighbors and they have no issues with the house as it stands. Russell Hervieux, Zoning Official stated the building permit on file is for a full building which was taken out in Mr. King's name. The building permit issued met setbacks. The house on the lot is not per the plans submitted for the permit. Member Lyle also stated it appears which is done is not legal. Mr. Hervieux was in touch with applicant who was aware he was not in compliance. There is also a shed at the rear of the property. The roof pitch is not correct and needs to be corrected. If necessary applicant will transform the third floor of the house into storage space and not for residential use. Chairman asked of the Fire Department signed off on the plans and applicant replied yes. There is heating and smoke detectors on the third floor.

Member Lyle asked what is necessary to bring the house into compliance and Attorney Shekarchi replied applicant would need a framer to look at the roof. Chairman stated the completed house is not the house on the submitted plans. Mr. Hervieux again stated original height on the plans was under 25 feet.

Member Shekarchi stated there are three solutions to the problem: obtain the requested relief, reconstruct the roof or grade the property at the rear of the house.

Chairman read into the record Planning Board/Technical Review Committee recommendation: Members of the Technical Review Committee reviewed the submitted plans and application seeking a Dimensional Variance seeking a side yard and height relief on a newly constructed single-family house located at 37 Olney Avenue, Lincoln, RI. The Planning Board recommends **Denial** of these dimensional variances. This is a newly constructed house. During the building permit review stage, the building officials noticed the possibility of the house being built over the maximum allowed building height. A note of caution was documented in the building permit file and presented to the contractor/homeowner. The Director of Public Works also expressed a number of occurrences where he had to point out deficiencies in site conditions during the construction of the house. The Planning Board feels that the application does not present the least relief needed. The applicant can reconstruct the roofing system, which will eliminate the need for these dimensional

variances. The Planning Board feels that granting the dimensional variance will impair the intent and purpose of the Zoning Ordinance and the Comprehensive Plan.

Chairman recommended continuing the application to the March agenda giving applicant ample time to present ample evidence regarding the roof from an architect/surveyor. Chairman also stated the Town will come to the property to take measurement ensure all codes are followed.

Attorney Shekarchi, attorney for applicant, requested a continuance to the March 2021 agenda so applicant can return with framer's as built height plans, have an architect review the plans and compare what is in place versus what applicant indicated on the plans submitted when the building permit was obtained and provide further testimony.

Motion made by Member Lyle to continue the application to the March 2021 agenda. Motion seconded by Member Farhoumand. Motion carried by all present.

Motion made by Member Kearns to adjourn the meeting. Motion seconded by Member Mancini and carried by all present.

Respectfully submitted,

Ghislaine D. Therien
Recording Secretary