

Town of Lincoln
Zoning Board of Review
100 Old River Road, Lincoln, RI
Minutes of February 7th, 2023 Meeting

Present: David DeAngelis- Chairman, Lori Lyle- Vice Chairperson, Secretary Stephen Kearns, John Mancini, Frank Spezzano, Charles Ruggerio, Attorney DeSisto

Excused: Kazem Farhoumand

Minutes: January Minutes

Correspondence:

Applications:

Member Mancini: Motion to accept January minutes, Second by Member Kearns

Move Jackie and Felix Fernandes, 13 David Dr. first item on the agenda to be heard second. William and Tracey Cheney, 259 Railroad St- to be heard first.

William and Tracey Cheney, 259 Railroad St., Manville, RI 02838- Application for Dimensional Variance for front setback relief for construction of an addition on a two family residential located at 259 Railroad St., Manville, RI 02838.

AP 38, Lot 99

Zoned: RG-7

Chairman: Sitting on the application is Chairman, Vice Chairperson Lyle, Secretary Kearns, Member Mancini and Member Ruggerio

Applicant sworn in: William Cheney

Chairman: This application represents a request for a Dimensional Variance to construct an addition. The applicant is proposing to construct an addition to the right of the dwelling closer than the front setback. The addition is proposed to be 9.6' from the front property line which 20' is required. Therefore, the applicant would need **10.4' front relief** for the addition. The existing house has some dimensional nonconformities. The existing house is 8.41' from the front property on the west side which 20' is required. Therefore, the applicant would need **11.59' front relief** on the west side of the existing house. The existing house is 8.24' from the front property on the south side which 20' is required. Therefore, the applicant would need **11.76' front relief** on the south side of the existing house. The existing house is 2.36' from the side property on the west side which 13' is required. Therefore, the applicant would need **10.64' side relief** on the west side of the existing house. The existing house is 2.17' from the side property on the north side which 13' is required. Therefore, the applicant would need **10.83' side relief** on the north side of the existing house. The site plan shows a deck off the deck which appears to be or have been for a pool. There are no permits for this deck or dimensions to calculate lot coverage. The existing house, sheds and one deck equal 1,990 square feet which 2,500 is allowed on this property. The addition would add 475 square feet which would bring the total to 2,465 square feet which would meet the lot coverage requirements. However, this other deck and/or pool would put this property over the lot coverage limit.

Chairman: Reads in standards: 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.

William Cheney: It is a two family house, they have been there about 19/20 years. Planning to stay in that house, that is why I am proposing the addition. Right now the kitchen is 6ft x 7ft. provided picture of the existing house and the proposed addition on the front corner.

Chairman: So this proposal is strictly for a kitchen, no bathroom, and living area? On a slab?

William Cheney: Strictly for a kitchen, no bathroom or living space. It will be on a foundation.

Mancini: How old is the house?

William Cheney: Believes it was built in the 30s-40s. Some houses in the district are closer than my house. I understand the regulations. I pushed it back because of that.

Chairman: The purpose of this Board isn't to be a roadblock for projects, we like to help businesses and people achieve their proposed projects. I would say to you to say to The Board the house that had been there for 19 years that you have been there is closer to the property line than your addition.

Member Ruggerio: Question in regards to the building envelope, in the Zoning Report there was a deck attached to an outside deck connected to a pool? Is that out?

William Cheney: Yes, as of last night. I wanted to come to The Board with it all taken down. No pool there now, provided a picture of the yard without a pool. Pool was taken down that morning.

Chairman: Let the record indicate that there was a concern at the time of the original filing about a pool and deck. There is no longer a pool or second deck here anymore. Applicant provided photos exhibit #1. Color photos of demolition to the rear of the property thus destroying deck structure.

Vice Chairperson Lyle: I drove by the property and there was a dumpster, you haven't started the project? And it is a two family? You have a tenant? You will be the only one accessing the kitchen?

William Cheney: Yes, that was for the deck and pool. It is a two family. I have a tenant, but I will be the only one to have access to the kitchen.

Secretary Kearns: The location of the existing home is consistent with many of the homes in the area. Some houses are right on the sidewalk, or closer to the road. However, this application is consistent to the other homes in the area, although some of the homes seem to be in conformance with Zoning, his is not- but the garage across the street sits right on the sidewalk. This application fulfills the #3 standard, it won't alter the general character of the neighborhood. Looking at the plans it is clear that the kitchen is a reasonably sized kitchen, considering the current size of the kitchen. It is a reasonable request. The #1 standard the hardship due to unique characteristics of land meaning the location of the house you had no other choice because of how the house was built before Zoning took effect. #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. No prior action you made, you didn't put the house there. And finally #5 is there a hardship that's more than a mere inconvenience, which results in you needing this variance. Certainly there is no other place you could put this addition, it is reasonably sized and the plans/picture it is currently going to fit nicely in the neighborhood. The plan shows exact measurements and plans of what it will look like.

Vice Chairperson Lyle: Existing kitchen is that where you are putting the addition?

William Cheney: No, it is currently in the middle of the house.

Chairman: TRC: Application for a dimensional relief for a front setback encroachment on a corner lot to allow an addition (kitchen) on an existing two-family building. The proposed 25' x 19' kitchen addition is proposed at 9.6' from Railroad Street where a 20' setback is required in RG-7 zones. The subject property is a corner lot, also fronting on 4th Street. The TRC found that there is no alternative design that would comply with the setbacks due to the existing decks and pool in relation to the existing building. The existing nonconforming building already encroached into both front setbacks, and is further into the Railroad St setback (8.4' away) than the proposed addition. The TRC also noted that there are numerous structures built within the front

setbacks in the surrounding area, so relief would not impair the character of the area. Finding that the addition would be in character with the surrounding area, and finding that there are no compliant alternative locations on the subject site, the TRC unanimously (6-0) recommends that the Planning Board make a **positive recommendation** on this application to the Zoning Board of Review.

No one from the public wishing to speak.

Secretary Kearns: Motion to approve the Dimensional Variance. Refer to relief read into the record. Approve requested relief. This application fulfills the #1 standard the hardship due to unique characteristics of land meaning the location of the house you had no other choice because of how the house was built before Zoning took effect. #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. No prior action you made, you didn't put the house there. #3 standard, it won't alter the general character of the neighborhood. Looking at the plans it is clear that the kitchen is a reasonably sized kitchen, considering the current size of the kitchen. It is a reasonable request. #4 it is the least relief necessary- it is a standard size kitchen. And finally #5 Is there a hardship that's more than a mere inconvenience, which results in you needing this variance. Certainly there is no other place you could put this addition, it is reasonably sized and the current kitchen is 6x7ft. I move to approve this application.

Second Member Mancini.

Member Ruggerio: Aye

Member Mancini: Aye

Secretary Kearns: Aye

Vice Chairperson Lyle: Aye

Chairman: Aye

Application for Dimensional Variance granted.

Jackie and Felix Fernandes, 13 David Dr., Lincoln, RI 02865- Application for Dimensional Variance for side setback relief for an addition on single family residential located at 13 David Dr., Lincoln, RI 02865

AP 14, Lot 196

Zoned: RS-12

Being an abutter, Member Mancini recused himself from sitting on The Zoning Board for this application. Members hearing this application Chairman, Vice Chairperson Lyle, Member Spezzano, Secretary Kearns and Member Ruggerio.

Chairman: Started back in November. This Board did not meet in December, this application was heard again in January and then continued to tonight's meeting. This application is for a Dimensional Variance to an existing property on 13 David Dr. This application was continued from the January 3, 2023 meeting per the applicant request. This application represents a request for a Dimensional Variance to construct an addition. The applicant is proposing to add an accessory family dwelling unit addition to the left side of the existing house. This property is located on a corner even though the road is of the same name. Reads in standards: 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

John Shekarchi: The original application was for an addition to the left side- some concerns from the abutters, water runoff and being tight. We had talked to the neighbors and redesigned the project. What you have before you is a proposal that meets all the dimensional requirements. We meet everything but the lot coverage. Request for dimensional relief for lot coverage. The addition is for a family member. Calculation 5.1% for lot coverage in an RS-12 zone.

Chairman: Applicant has amended original application filed back in November, which included Dimensional Variance for building envelope encroachment and lot coverage. The project was reworked to be in the building envelope therefore not needed a DV. But seeking a variance of 5.1 % of lot coverage. What is allowed?

Zoning Official Hervieux: Allowed 20% of lot coverage. This particular lot is 12,043 sq. /ft. allowance for this is 2,490 sq. /ft. they would be allowed. The existing house, decks and shed add up to 2,255 sq. /ft. the addition they are proposing is 549 sq. /ft. and the new deck extending is 70.4 sq. /ft. which then totals 2875 sq. /ft. Difference of 620 sq./ft.

Chairman: Mr. Shekarchi, you conquer with the calculations?

John Shekarchi: Yes.

Secretary Kearns: The front steps are they within the setback?

Zoning Official Hervieux: Yes, we pulled the file in the original file for constructing the house there was an error on The Town side. We felt it would be unfair since they are not asking for Dimensional setback relief to ask for the relief because we don't have all the info.

John Shekarchi: From back in 1992.

Chairman: That covers the calculations, what are the reasons for the application?

John Shekarchi: The mom is going to live with them.

Chairman: Where does the mom live now?

John Shekarchi: With them. Just for more space.

Chairman: No finance gain because it is family, do they still have to fill out an affidavit?

Attorney DeSisto: No

Secretary Kearns: If this use is no longer in existence in this location do they have to make adjustments to the kitchen? If the use they are applying for is no longer in existence the kitchen would have to go.

Zoning Official Hervieux: Yes in the future to take off record. Enforcement.

Secretary Kearns: Good for owners to know in future.

Chairman: How would it affect how it looks in the neighborhood?

John Shekarchi: The addition to the West would not have an impact to the neighborhood or Comprehensive Plan. Less encroachment. 1. Is there a hardship due to unique characteristics of land that is not any physical or economic disability? This is for family purposes. 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. No financial gain, it's for the mom to have own space. 3. Granting of the variance will not alter the general character of the neighborhood. Will not alter characteristics, neighbors like the new plan.

Vice Chairperson Lyle: Three bedrooms now and adding a fourth, two level? Lower living room, kitchen and upper, bedroom, bathroom and office.

John Shekarchi: That is correct

Vice Chairperson Lyle: Will they have access to it?

John Shekarchi: Yes through the living room.

Member Ruggerio: Square footing of addition?

Zoning Official Hervieux: 549 sq. /ft. footprint, double that for living area.

Chairman: Application for a dimensional variance to allow a two-floor addition of an accessory dwelling unit that encroaches into the side setback. The TRC reviewed the submitted plans, application, and the surrounding area and found the proposed encroachment to be too significant for the character of the neighborhood and did not believe the request was the least

relief necessary. Based on the above findings and negative recommendation from the TRC, the Planning Board unanimously voted (6-0) to forward a **negative recommendation** on this application to the Zoning Board of Review. Based on the old original application, the original seeking encroachment, does not reflect the new work.

Zoning Official Hervieux: The new plan did not come in in time for the TRC meeting.

Public Portion; Frank Sales: 11 David Dr. In approval of current plans. Abutter to the left.

Chairman: Makes motion to approve the request of 5.1% Variance to the lot coverage. 1. Is there a hardship due to unique characteristics of land that is not any physical or economic disability? Original plan was reworked to make this work better. 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. No financial gain, it's for the mom to have own space, keeping the family together. 3. Granting of the variance will not alter the general character of the neighborhood. Will not alter characteristics, neighbors like the new plan Mr. Sales testimony. 4. What is asked of the Board is reasonable and least relief necessary, no Dimensional encroachments beyond the Building Envelope. 5. For a Dimensional Variance is there a hardship that's more than a mere inconvenience, which results in you needing this variance. If this wasn't approved then it would be difficult for the mom to have space.

Motion second by Member Ruggerio

Member Spezzano- Aye

Vice Chairperson Lyle- Aye

Member Ruggiero- Aye

Secretary Kearns- Aye

Chairman-Aye

Application granted

Member Mancini rejoins The Board.

Sharon, William and Amanda Lima, 78 Prospect St., Manville, RI 02838- Application Use Variance for change of existing commercial accessory building from office to dog grooming on a single family with commercial building located at 365 Great Rd., Lincoln RI 02865.

AP 09, Lot 057

Zoned: RL-9

Applicants sworn in: William Lima, Sharon Lima, Amanda Lima.

Chairman: This application represents a request for a Use Variance to convert an existing nonconforming office space to a nonconforming dog grooming business. The applicant is proposing to purchase a property which currently is a mixed use property of professional office and a single family residential. The applicant would like to convert the professional office to a dog grooming business, by appointment only, which falls under section 260-14H which is not an allowed use in the RL-9 zone which this property resides. Section 260-54 of the Zoning Ordinance regulates nonconforming properties by use and states that properties should eventually be brought into conformance and not intensified.

Attorney DeSisto: Because 260-54 is such a large section, subsection J- change of use, subsection 1. Within any residential zone a nonconforming use shall only be changed to a permitted use. A nonconforming use changed to a permitted use cannot be changed back to a nonconforming. The only reason I bring this in addition to the standards for granting a Use Variance, because this is a residential zone there are some special requirements that there can

be no change of the use unless it goes to a residential use. You cannot change from one nonconforming use to another nonconforming use.

Chairman: Right not is nonconforming?

Attorney DeSisto: Correct.

Chairman: So right now the use is nonconforming and one residential and one business. How did that happen? Pre-existing?

Attorney DeSisto: I'm assuming without doing the research that the use of the office was in existence at the time of the Zoning Ordinance coming into effect prior nonconforming use.

Chairman: Right now nonconforming use and so if someone wanted to change that use they would only be allowed to something allowed?

Attorney DeSisto: RL-9 only residential

Chairman: No one is allowed to convert that property to another nonconforming use if it is already a nonconforming.

Attorney DeSisto: Correct, that is in addition to section 260-65A Use Variance- stating land cannot yield any beneficial use if it is required to conform to the provisions of The Zoning Ordinance. Because it's existing use is now that really can't be met. In addition because it is a nonconforming use in a residential zone it can't be changed to another use unless it is residential.

Member Mancini: I've been here since 1967, and that has never been a residential- always a business.

William Lima: Daughter is a dog groomer looking for somewhere to start her own business with limited construction. Looking to buy the property and exploring what they can do with the property.

Member Ruggerio: What is there now?

William Lima: Vacant.

Member Ruggerio: What was last there?

William Lima: Real Estate office.

Chairman: Looking for a place for your daughter to set up dog grooming. This Board has standards we have to go by. First though it has to pass a series of checkboxes to see if it can be before this Board to hear. As the Town Solicitor explained how it fits in the Town Ordinance. It seems as though it doesn't even fit for us to hear it.

Attorney DeSisto: Yes, correct. I just asked the Zoning Official Hervieux all these uses did they get permission for that? The answer is no. Unlike this applicant wanting to do things the right way.

Chairman: Because of the type of property and the ordinance it won't allow for the building to be used the way you would like to use it.

Member Mancini: What are they doing here if there is no possibility for them to go into a nonconforming building? They should have been told that, instead of paying for the application.

Zoning Official Hervieux: Every applicant I give good news and the bad. But every applicant has the right to come in front of The Board and get a shot, everyone has the right to ask.

Chairman: If you wanted to buy and make a residence, but you can't buy and use it in a way that isn't defined to be used in that zone. It's not that the property is useless, it is just not valuable the way you would like to use it.

Member Ruggerio: I understand to get the properties conforming to the Comprehensive Plan and the appropriate zone. If the use is consistent to the prior nonconforming use, could you continue with that use upon a new ownership? If so it would be important to the prior nonconforming use.

Attorney DeSisto: It was a real estate office, however I heard testimony tonight that the use has been abandoned. If it is abandoned you lose the nonconforming use.

Chairman: This is a standard for Use Variance: does the applicant show evidence that the subject land/structure cannot yield any beneficial use if it is required to conform to Zoning

Ordinance. The Zoning Ordinance says use is residential. If anyone can explain to me how it can be done.

Attorney DeSisto: There are communities in the State saying you can move from nonconforming to another nonconforming use so long it is less intense. Here in Lincoln 260-64J subsection 2, residential zone and business zone you can move from one nonconforming use to another as long as it is less intense. Difficulty with this is in residential, the Ordinance says you cannot move from one nonconforming to another it has to be permitted.

Secretary Kearns: Square Footage of the building?

William Lima: 352 sq. /ft.

Secretary Kearns: Are you telling me a residential has to go there?

Attorney DeSisto: In an RL it is single family residential. It goes to the land not the building- they can tear it down and rebuild. It doesn't go to the building, it goes to the land where it is residential.

Sharon Lima: I could knock it down and build a house? What size house?

Chairman: You would have to ask the Zoning Official Hervieux. Let the record indicate Solicitor is consulting with Zoning Official Hervieux. Attorney DeSisto what is your recommendation?

Attorney DeSisto: There is currently a house on the lot now correct. That is the use of the property. Single family - can't use it for another business. A building that cannot be used but can use the property.

Sharon Lima: House is facing Lincoln Ave, commercial property is facing Great Rd.

Secretary Kearns: What can we do with the building?

Attorney DeSisto: Accessory structure to the house. Garage, storage, or tear it down. Can't use building as a business. Cannot be changed to anything else.

Chairman: Can proceed or withdraw. If you withdraw, you could reapply if the ordinance changed or something to that effect.

William Lima: Asks for a Continuance to March 7th.

Motion to continue by Member Ruggerio second by Member Mancini

All in favor

Continued to March 7th.

No correspondence this month. Next meeting March 7th.

Zoning Official Hervieux: Updating instructions and the Zoning Ordinance. That process will be starting this week with myself and The Town Planner. If anyone has anything in particular besides the instructions, we will be doing a Comprehensive Zoning update sometime this summer and clear up some stuff. State level stuff we have to fix for the Town.

Chairman: If someone has an idea and sends it to Zoning Official Hervieux: and share with everyone use reply all so others can tag on to it.

Motion to adjourn made by Member Ruggerio, Second by Member Mancini.

All in favor.