

Town of Lincoln
Zoning Board of Review
100 Old River Road, Lincoln, RI
Minutes of April 4th, 2023 Meeting

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

Excused:

Minutes: March Minutes

Correspondence:

Applications:

Motion to accept March minutes:

Correction made by Member Mancini- to correct page 4 “could” to “couldn’t”. Motion to accept minutes made by Secretary Kearns, Second by Member Mancini, all in favor.

Correspondence: Zoning Official Hervieux: Once piece of correspondence from one of the applicant and I will bring up at that time.

Sharon, William and Amanda Lima, 78 Prospect St., Manville, RI 02838- Application for 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

Zoning Official Hervieux: I have received an email from the applicants Sharon, William and Amanda Lima requesting to withdraw their application for a Use Variance.

Chairman: Regarding the application we will let the record indicate Zoning Official Hervieux has provided an email from sharonlima2010@gmail.com which indicates “Good Morning, we would like to withdraw our application for 365 Great Rd. Lincoln. Sincerely, Sharon, William and Amanda Lima.”. Mark this as exhibit 1. Asks solicitor if there needs to be a motion to accept withdrawal.

Solicitor: Yes

Member Mancini makes a motion to accept withdrawal on this application without prejudice, Second by Member Ruggerio. All in favor. Application has been withdrawn.

Maria’s Breakfast and Lunch, 616 Smithfield Ave., Lincoln, RI 02865- Application for Dimensional Variance for parking relief for restaurant located at 616 Smithfield Ave., Lincoln, RI 02865.

AP 06, Lot 426

Zoned: VCMU

Maria’s Breakfast and Lunch, 616 Smithfield Ave., Lincoln, RI 02865- Application for Special Use Permit to operate a breakfast and lunch restaurant with alcohol located at 616 Smithfield Ave., Lincoln, RI 02865.

AP 06, Lot 426

Zoned: VCMU

Chairman: Two applications for this property. First is for a Dimensional Variance where the applicant is seeking parking relief at the restaurant. There is a certain number of parking required based on the type of business it is. Seeking variance wanted which would reduce number of required ordinance parking. Second application Special Use Permit to permit a restaurant with alcohol.

Mary Shekarchi: For the applicant

Chairman: Read both the standards for the Special Use Permit 1. The use is permitted in the exact subsection in the ordinances that it's permitted in. 2. The Special Use Permit meets all the criteria in the Zoning Ordinance such as parking and lighting and various use regulations. 3. The Special Use Permit will not alter the general character of the neighborhood. 4. The Special Use conforms with the Comprehensive Plan and Zoning Ordinances. The Dimensional Variance 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: According to the breakdown of the application is that the Maria's proposal has 17 parking spaces fit onto the property right now and by ordinance 31 is required so the DV is seeking relief of -14 required parking spaces The SUP is the applicant is seeking to convert the existing bar to a different use 160-13B to a restaurant including liquor and or entertainment. Changing bar t restaurant with alcohol.

Member Mancini: the sign for Marias the last few days the sign has been gone. There has been a lot of renovations going on. Did you purchase this building, are the renovations in anticipation of us approving the application?

Applicant Attorney: yes, own the building.

Member Mancini: concerned about applicants going through process without approval. Point is if The Board doesn't approve it, what will happen to the building?

Chairman: to put on the record, if The Board approves this SUP with the resultant with liquor, that license would have to be granted by the Ton Council, but they can't grant it for a property that can't have it. Is there a liquor license to the property now?

Attorney DeSisto: I don't think the Brooksies license is active.

Applicant John Cattis: Sworn in

Is there and active liquor license at Brooksies?

Applicant: I do not think so, we bought the building.

Chairman: Is there anyone who can answer if the liquor license transfers with the purchase of the property.

Attorney DeSisto: With a liquor license no what would happen is with a new person the transfer has to be approved. Brooksies license is

According to the applicant it is a transfer subject to approval from the council.

Member Ruggerio: when Brooksies was operating did they have 17 or 31 parking spots.

Applicant: no more because of the gravel. Cannot answer 100%

Member Ruggerio: but you're not expanding to get rid of the parking that was previously there?

Applicant: correct, utilizing the same parking.

Attorney DeSisto: this applicant was at the March Town Council meeting the license is to be transferred to Maria's. Pending action to the Zoning Board.

Chairman: the transfer of the liquor license goes through with the sale and approved by the Town Council. The Town Council tabled it pending the decision this evening.

Attorney DeSisto: the process for a transfer of a liquor license is to obtain a liquor license. Notice to be sent out in the paper. A public hearing. Town Council wanted to know if Zoning had seen it yet

Chairman: This particular license request differs from the existing q license how? Because there's going to be food?

Attorney DeSisto: Yes.

Chairman: Or is it the use?

Applicant: They sold finger food. The difference is it is a new restaurant the liquor is unrelated to the zoning. The parking only allows for 17 spaces, the liquor is because of the food.

Attorney DeSisto: the current license is what is known as a BV license and that is a victual license B stands for retail. Food has to be served and the alcohol has to be incident to the food. Brooksies offered some food but didn't get away from the serving of alcohol. This is more of a sit down restaurant and the

alcohol is secondary. The parking did not comply with the Zoning Ordinance don't know if Brooksies was grandfathered in.

Mancini: Could you operate Marias without a liquor license?

Applicant: it is limited 7am-2pm, and yes we are expanding the business.

Member Ruggerio: the liquor license transferred is for the same license for Marias

Attorney DeSisto: yes, straight BV license.

Attorney for the applicant: is operating Marias for a number of years, it has burned down, would like to continue the restaurant here from 7am-2pm. No entertainment. Will not be opened late.

D'Amico: Engineer sworn in. Explain the site plan, no additions to the building other than a wheelchair ramp. TRC recommendations: original plan showed dumpster enclosed closer to Hopkins Street, it was recommended by the PDW Director suggestion we move at the Northeast section near the car lot. So we did that change, did not remove any parking- still stayed with the 17. In the exiting conditions this is an unusual lot with its size and shape, you don't want a lot shaped like this to get 31 parking spaces in here. It is all gravel and a mix of grass, people parked anywhere without any order. Without painted lines you can squeeze more but certainly not to code. We did the best we could for the layout for 17 spaces, ADA space and isle and maneuvering in and out. One aspect I do see is that the conditions don't change much from what was going on in that are different in the past and in the future.

Member Mancini: That is not true Brooksies was after 2pm, and Franks, was until 2pm so there was no conflict. Now there is two competing breakfast complete for parking. The church across the street you could consider for over flow, however we cannot.

D'Amico: I was looking at it from a traffic side. Smithfield Ave. is essentially the same condition all the way down. There are bars, restaurants that really doesn't change.

Chairman: your calculations and that resulted in 31 required parking. Mathematical with number of employees and the number of seats. What is the number of seats in the establishment?

D'Amico: I was told there would be max of 8 employees, plus 91 seats. $91/4 \text{ spots} + 8 = 30.75$ rounded to 31 spaces.

Secretary Kearns: the surface is going to be permeable?

D'Amico: yes

Secretary Kearns: what will be the material?

D'Amico: permeable pavement, water drains through it. It is a pavement that has enough ability to get 21 inches and hour that it can handle the flow. Little layer of gravel t layer it off crush stone reservoir to store runoff. Would reflect what is there now pretty much.

Compacted?

D'Amico: yes, looks a little rougher than a normal surface course. This is a courser looking, almost doesn't look finished. You can pour water right into it, less sand in it.

Secretary Kearns: dumpster right on top or a concrete pad?

D'Amico: concert pad. This proposed satisfactory to the standards.

Ed Pimentel: Sworn in. prepared a report and analysis on the property. This is a unique situation going from a pub a more intense incompatible verses a breakfast location. *passed out report. Brooksies has a liquor license and operated until one in the morning, 16 spaces unlike our proposal the spaces were not lined. Secondly if you look on the report at the surrounding uses, things operate on preexisting conditions, prior to the standards we know. I did an analysis of the neighborhood the surrounding restaurant utilize the Towns right-of-way for parking. If you're a pedestrian walking in the street these spaces are all aligned so you can egress and ingress in a rear fashion none of this is to code and none of this is safe.

Secretary Kearns: Is this near residential?

Pimentel: Yes.

Secretary Kearns: Fair number of people could walk from surrounding neighborhood.

Zoning Official Hervieux: Another bar could go here with the building as it is today.

Applicant: 67 seats in Pawtucket without employees. There was a fire in the old building, looking for a place to start new. Been in the restaurant business for over 20 years.

Chairman: when was the fire?

Applicant: August 23, 2022

Chairman: Reads the TRC recommendation: Finding that the special use permit request would not alter the general character of the surrounding area nor impair the intent or purpose of the Zoning Code nor Comprehensive Plan, the Planning Board forwards a *positive recommendation* on this application to the Zoning Board of Review. Considering the existing conditions and previous uses of the site the TRC finds that the relief requested would not alter the general character of the surrounding area nor impair the intent or purpose of the Zoning Code nor Comprehensive Plan. The TRC voted (6-0) to recommend that the Planning Board make a *positive recommendation* on this application to the Zoning Board of Review with the conditions that the dumpster be relocated to abut AP 6 Lot 25.

Public Portion:

Bethany Sculley: Sworn in.

Lived on Hopkins Street for 27 years. Brooksies and Franks worked opposite hours- morning v. later in the evening. Now another breakfast next to another similar business in a neighborhood without enough parking. Hopkins and Grafton St. only has parking on one side of the road. Concerned people will be parking in front of her house and children will not have places to park in front of their own house.

Questions "less intensity" Brooksies closed by 5pm over the past 5 years. Because it wasn't doing any business. It is similar to what is already there (Franks) it is already a very busy street, no sidewalks.

Curious with the relief of parking and line of people out the door. It is a residential area.

Chairman: Asked Zoning Official, if there can be a commercial business there. If a business wanted to open they wouldn't need parking relief.

Keith Shallcross: Sworn in.

Brooksies never parked on the street, they shared with Franks. Concerns about parking. Only one side of Hopkins with no sidewalks.

Chairman: Franks park on the street?

Keith Shallcross: Yes. Will call police if they park on street. Two establishments, same hours. Bank is now a church, can't park there. Parking is an issue.

Chairman: One side of Hopkins is allowed?

Keith Shallcross: Yes.

Andrew Zaharias: Sworn in.

Questions the last time for the business that was going to be there. The adult day care and the concern with parking for there. Didn't think The Board approved.

Chairman: The drop off situation to fit in with the lot and side street. They are asking The Board to reduce parking per number of seats, they need 31 and they are asking for 17. Adult day care was approved by The Board, it was just never followed through.

Sculley: They are asking for relief of 14 parking, where will everyone be parking? Issue with two businesses operating at the same time, compared to two different times- mornings and afternoon/evening.

Zaharias: Based it on the numbers, doesn't understand granting when it is half the proper number.

Applicants Attorney: The applicant has been in contact with the church, over flow parking will go into the church parking.

Attorney DeSisto: No written agreement/ document of evidence.

Applicant Cattis: 7 of the employees will park there (the church) except on Sundays.

Attorney DeSisto: Cannot account for the offsite parking, can discuss but cannot take it into account/ consideration.

Member Mancini: Cannot account agreement, but to be successful they are making sure parking for their customer (wherever that may be) I am sure there is parking without parking in front of anyone's house.

Chairman: Makes motion to approve Dimensional Variance.

Reads in standards: Standard 1- The hardship is due to unique characteristics of the subject land, not the general characteristics of the surrounding area and not due to the physical or economic disability of the applicant. Based on the site plan it is evident that the building is a unique shape, the parking area and the land surrounding the proposed business is irregularly shaped. Standard 2- The hardship is not the result of

any prior action of the applicant and does not result primarily in a desire to realize financial gain. Seeking to relocate an existing business to a new location due to losing his prior business in a fire. The neighborhood has a commercial as well as residential mix of uses. Standard 3- The granting of the variance will not alter the general characteristics of the surrounding area and the requests conform to the purpose and intent of the Lincoln Zoning Ordinance and Comprehensive Plan. This has been a commercial establishment, was Brooksies for decades. There were no marked parking spots on that property, so this application will be an improvement to what is there. Standard 4- The relief requested is the least relief necessary. Applicant has included as many parking spots as it can. Their engineer (D'Amico) testified that the applicant had moved the dumpster (condition of the TRC). Standard 5- More than mere inconvenience because if the variance was not granted Applicant would not be able to open its establishment. **Second by Member Mancini. All in favor.**

Chairman: Makes motion to approve Special Use Permit. Reads in standards Standard 1- This is a given; the special use is specifically authorized under sections 260-13(B) of the Ordinance. Standard 2- The special use meets all the criteria, including parking discussed during the application for the Dimensional Variance. Standard 3- The granting of the special use will not alter the general character of the surrounding area. For decades this was a commercial establishment. It was a customer based business. There were no marked parking spots on that property; this application will be an improvement to what is there. Standard 4- The special use will not impair the intent or purpose of the ordinance nor the Lincoln Comprehensive Plan; the comprehensive plan lists this area as a high intensity commercial location. **Second by Member Ruggerio. All in favor.**

Dimensional Variance and Special Use Permit both granted.

Carley McEnery, 1147 Great Rd., Lincoln, RI 02865- Application for Special Use Permit to locate a farm stand to sell flowers in yard at a single family residential home located at 1147 Great Rd., Lincoln, RI 02865.

AP 29, Lot 148

Zoned: RS-20

Carley McEnery, 1147 Great Rd., Lincoln, RI 02865- Application for Special Use Permit for 2-3 ducks to produce eggs for household consumption at a single family residential home located at 1147 Great Rd., Lincoln, RI 02865.

AP 29, Lot 148

Zoned: RS-20

Chairman: Application for a special use permit to allow the keeping of three ducks in a RS-20 zone. Reads standards Permit 1. The use is permitted in the exact subsection in the ordinances that it's permitted in. 2. The Special Use Permit meets all the criteria in the Zoning Ordinance such as parking and lighting and various use regulations. 3. The Special Use Permit will not alter the general character of the neighborhood. 4. The Special Use conforms with the Comprehensive Plan and Zoning Ordinances.

Carley McEnery: Sworn in.

Dakota Keller: Sworn in

Chairman and Attorney DeSisto questions restrictions on the property with Preserve RI. Discussion about Preserve RI regarding to the application and certain restrictions on the property.

Concerns that the proposed flower stand and duck enclosure could violate the easement.

Carley McEnery: Aware of the Historic easement. There was an inspection last week to make sure there were no alteration. If we wanted to change there are changes considered minor and major. Exterior we can do what we want as long as it doesn't obstruct the house. They (preserve RI) say we couldn't have them (flowers) biggest concern was signage.

Attorney DeSisto: Preserve RI has the ability to sign off on it. The Valentine Whitman house is the oldest in Rhode Island.

Chairman: Asks more about the flower stand, when it will be out temporary or permanent structure.

Carley McEnery: The structure would be temporary and would be movable (wheels), no permanent foundation. It would not be there during the winter, just when she has flowers from her garden to sell. The duck enclosure would be there all year round could be movable. The entire enclosure would be wires, underneath and above to prevent animals from getting in.

Member Ruggerio: Questions on Preserve RI- does The Board need an opinion from Preserve RI for the structures to be allowed on the property.

Attorney DeSisto: If this is approved / subject of approval from Preserve RI. Zoning Board can only enforce Zoning regulations. Ducks are considered fowl, Town regulations for chickens are the same for ducks.

Secretary Kearns: How long have you owned it?

McEnery: Since 2022

Member Ruggerio: Reside there?

McEnery: Yes.

Applicant asked about the flower stand.

McEnery: The flower stand will be near the pull off in the road, which is large enough for a large pickup. Stated she wanted a way to share her home, she knows how important the home is to the community.

Would have no more than 2-3 at max 4 ducks. None of the ducks will be males.

When asked about sound; stated ducks do make noises but would be minimal- compared to dogs barking.

Chairman: Reads TRC recommendation: TRC: Finding that the special use permit request is in keeping with the character of the area, is consistent with the Comprehensive Plan, and with the proposed condition would not have a negative impact to the abutters, the TRC unanimously (6-0) recommends that the Planning Board make a *positive recommendation* on this application to the Zoning Board of Review with the condition that the enclosure be designed as to prevent rodents and predators.

TRC: Finding that the special use permit request is in keeping with the character of the area, is consistent with the Comprehensive Plan, and would not have a negative impact to any abutters, the TRC unanimously (6-0) recommends that the Planning Board make a *positive recommendation* on this application to the Zoning Board of Review with the condition that the applicant abide by the easement recorded in Book 2445 page 130.

Public Comment:

Michael Damore: Asks how big the coop will be and the expansion procedure of the flower stand and the duck enclosure.

Chairman: It can never be more than 4 ducks.

Michael Damore: They could come back for more?

Attorney DeSisto: Yes

Michael Damore: Same with flower?

Attorney DeSisto: Yes.

McEnery: Enclosure would be 4x3x2 size of a bathtub. Once yard is completely fenced in they would roam.

Patrice Charnley: Asked is Preserve RI allows the yard to be fenced in.

McEnery: Yes.

Attorney DeSisto: That would be based on the easement.

Patrice Charnley: Neighbor had a chicken coop. concerns amount of foxes during the day. Bird flu is always a chance.

Patricia Choiniere: Has lived on Great Road for 44 years, was the chairperson for the Valentine Whitman house since 2001. Great Road can be dangerous for people to stop for the flower stand. Has seen a fox in the neighborhood and has heard coyotes; she stated that no matter how secure you make the structure they are going to get in.

Member Ruggerio: Motion to approve the special use permit for a flower stand subject to continued adherence to the preservation easement from preserve RI. Section 260-8-E. The special use is specifically authorized under sections 260-8(E). The special use meets all the criteria set forth in this chapter authorizing such special use. Specifically, the allowance of a special use permit for the selling and growing of flowers on the property. The granting of the special use will not alter the general character of the surrounding area. Member Ruggerio indicated that he is very familiar with the area. He indicated that he is familiar with other flower stands that exist on Great Road. The use of such a flower stand would not alter the general characteristics of the surrounding area. **Second by Member Mancini. All in favor.**

Member Ruggerio: Motion to approve the special use permit for the keeping of ducks for egg production for household consumption subject to compliance with the preservation easement currently on record. The special use is specifically authorized under sections 260-8(A) which authorizes the keeping of animals for home use. The special use meets all the criteria set forth in this chapter authorizing such special use. The testimony has demonstrated that applicant will use these two to three ducks for eggs for household consumption. The granting of the special use will not alter the general character of the surrounding area, Member Ruggerio is very familiar with the area as he drives by every day. Member Ruggerio indicated that the continued preservation and use of it, as it existed, will not alter the general characteristics of the surrounding area, as the land previously has been farmland and has been preserved by the Preserve RI easement. The special use will not impair the intent or purpose of the ordinance nor the Lincoln Comprehensive Plan. Testimony indicated that this use is consistent with the existing ordinance. It is an allowable use consistent with the general characteristics and the history of the property. Motion with the additional condition- applicant may not keep more than four (4) ducks.

Motion Second by Member Mancini. All in favor.

Motion to adjourn Member Ruggerio, Second by Secretary Kearns. All in favor.