

JAMESTOWN ZONING BOARD OF REVIEW

Minutes of the May 25, 2004 Meeting

A regular meeting of the Jamestown Zoning Board of Review was held at the Jamestown Library, 26 North Road. The meeting was called to order by the Chairman at 7:00 p.m. The clerk called the roll and noted the following members present:

Thomas Ginnerty
Don Wineberg
Richard Boren
Joseph Logan
David Nardolillo
Elizabeth Brazil

Also present: Brenda Hanna, Stenographer
Pat Westall, Zoning Clerk
Fred Brown, Zoning Officer
Carolyn A. Mannis, Counsel

MINUTES

Minutes of the April 27, 2004 meeting.

A motion was made by Don Wineberg and seconded by Richard Boren to accept the minutes of the April 27, 2004 meeting as presented.

The motion carried by a vote of 5 – 0.

Thomas Ginnerty, Don Wineberg, Richard Boren, Joseph Logan, and David Nardolillo voted in favor of the motion.

Elizabeth Brazil was not seated and Raymond Iannetta was absent

CORRESPONDENCE

A letter from Quentin Anthony with a Withdrawal With Prejudice Of Appeal To Zoning Board Of The Town Of Jamestown of Kenneth and Linda Vario by their attorney Mark C. Hadden.

A letter from Mary M. Webster requesting an extension of a previously granted variance.

A motion was made by Joseph Logan and seconded by Don Wineberg to grant a one-year extension to Mary M. Webster of a previously granted variance.

The motion carried by a vote of 5 – 0.

Thomas Ginnerty, Don Wineberg, Richard Boren, Joseph Logan, and David Nardolillo voted in favor of the motion.

Elizabeth Brazil was not seated and Raymond Iannetta was absent.

A letter from John A. Murphy, attorney for Mr. and Mrs. Hugh Balloch, requesting an extension of a previously granted variance.

A motion was made by Richard Boren and seconded by Don Wineberg to table the request of Mr. and Mrs. Balloch and ask the applicant to come before the Board on June 22, 2004 to explain the necessity of extending their previously granted variance. The current variance will be extended until they appear.

The motion carried by a vote of 5 – 0.

Thomas Ginnerty, Don Wineberg, Richard Boren, Joseph Logan, and David Nardolillo voted in favor of the motion.

Elizabeth Brazil was not seated and Raymond Iannetta was absent.

NEW BUSINESS

STD Building

A motion was made by Richard Boren and seconded by Thomas Ginnerty to **deny** the appeal of STD Building Corp. applicant, Mary Lou K. Ball, owner, whose property is located on Ferry Street, and further identified as Tax Assessor's Plat 5, Lot 58 for an appeal under Article 5, Section 503 in regards to the decision of Administrative Officers classifying property as Sub District A, in the High Ground Water Impervious Layer Overlay District (Article 314).

This motion is based on the following findings of fact:

1. Said property is located in an R40zone and contains 14,400 sq. ft.
2. In 2/02, STD Builders signed a purchase and sales agreement subject to ISDS approval.
3. As of the date of hearing this appeal, STD Builders still does not own the property.
4. On 3/27/02, Chris Duhamel, a Class IV soil evaluator prepared and completed a DEM site evaluation report which states that 3 test holes were drilled on 3/20/02. The results were as follows for Estimated High Water Tables:

TH1 = 16"
TH2A = 16"
TH2B = 20"

5. On 3/27/02 a DEM Inspector completed an inspection report with the following findings:

TH1 = 16"
TH2A = 16"
TH2B = 20"

6. On 8/30/02, STD through its engineer, Chris Duhamel filed an application with RI DEM for an ISDS. The application stated "Depth to Verified Water Table 10" How determined: Soil Evaluation" "Test Hole #2. Date Excavated 6/12/02".
7. It appears from the ISDS application that DEM approved the ISDS on 5/13/03 with terms of approval.
8. There has been testimony that DEM is concerned with water quality while the town is concerned with flooding.
9. On or about 8/5/03, Mr. Duhamel, on behalf of STD filled out a Section 314 High Ground Water Table Worksheet. Para. 3 entitled "Seasonal High Ground Water Table" indicates 20" para. 17 entitled Test Pit 2A indicated DEM GWT (ground water table) confirmed 16".
10. On 3/11/04 the Building Official and the Town Planner determined the project should be reviewed as Sub-District A and rejected administrative review.
11. On 3/19/04, STD appealed the Sub-district A determination.
12. On 2/10/03, after STD entered into the P & S agreement, the test holes were drilled, but before DEM approval for the ISDS, and before STD filled out a Section 314 Worksheet, the Town Council adopted the High Groundwater Table and Impervious Layer Overlay District.
13. STD has stipulated through Counsel's argument that STD is subject to the 2/10/03 ordinance, but argues STD is not subject to the 3/22/04 amendment.

14. The 2/10/03 Ordinance and the 3/22/04 Amendment defines “Seasonal High Ground Water Table” in an identical manner.
15. The 2/10/03 Ordinance and the 3/22/04 Amendment defines Sub-district A identically i.e. those areas to be less than or equal to 18”.
16. The 3/22/04 amendment has added a Section to Section 314 which provides “the decision whether a lot is located in A or B is made by the zoning enforcement officer and where the testing of multiple areas of a lot yield different results shall make a determination inter alia that the lot is in A if any of the multiple areas examined or tested meet the sub-district A criteria.”
17. Although DEM granted ISDS approval, that approval is not determinative of whether the lot is a sub-district A or B, either under 2/10/03 ordinance or the 3/22/04 amendment.
18. Whether STD is subject to the 2/10/03 Ordinance or the 3/22/04 Amendment, 2 of 3 test holes did not meet the criteria for sub-district B, but are subject to Sub-district A.
19. Under the 2/10/03 Ordinance, the lot in question is reviewable as a sub-district A.
20. Five abutters testified in opposition to the appeal of SDT and testified concerning flooding, ponding, and well contamination.

The motion carried by a vote of 5 – 0.

Thomas Ginnerty, Don Wineberg, Richard Boren, Joseph Logan, and David Nardolillo voted in favor of the motion.

Elizabeth Brazil was recused and Raymond Iannetta was absent.

Goode-Deveillis

A motion was made by Joseph Logan and seconded by Don Wineberg to grant the request of Catherine A. Goode-DeVellis, whose property is located at 27 North Road, and further identified as Tax Assessor’s Plat 8, Lot 86 for a special use permit under Article 3, Section 82-301 Table 3-1 (Permitted Uses I. Residential, #10. Mixed Use) to allow for a specific mixed use permit to use the property as residential and two office areas.

This Board has determined that this application does satisfy the requirements of Article 6, Sections 600 and 602.

This motion is based on the following findings of fact:

1. Said property is located in a CL zone and contains 15,658 sq. ft.
2. There will be sufficient parking (4 spaces) for the proposed use and cars will be able to turn around on the property.
3. Planning and Water & Sewer have given approval.
4. Two neighbors expressed concern over parking.

The motion did not carry by a vote of 2 – 3.

Don Wineberg and Joseph Logan voted in favor of the motion.

Thomas Ginnerty, Richard Boren, and David Nardolillo voted against the motion.

Elizabeth Brazil was not seated and Raymond Iannetta was absent.

Lush

A motion was made by David Nardolillo and seconded by Joseph Logan to grant the request of Anthony & Nancy Lush, whose property is located at 17 Bay St., and further identified as Tax Assessor's Plat 8, Lot 508 for a special use permit under Article 7, Section 704 (Alteration of a Non-conforming Use) to replace the existing attached greenhouse on the main structure with a two-story addition.

This Board has determined that this application does satisfy the requirements of Article 6, Sections 600 and 602.

This special use permit is granted with the restriction that the property is restricted to the two dwelling units now in existence.

This motion is based on the following findings of fact:

1. Said property is located in a R20 zone and contains 18,400 sq. ft.
2. The proposed alteration will not extend into the existing non-conforming areas.
3. The proposed addition will improve the appearance of the dwelling and neighborhood.
4. The proposed alteration will be constructed within all required yard set backs: side yard set back approx. 45' (10' required), front yard set back approx. 40' (30' required).
5. The only reason for the applicant's appearance in front of the zoning board is because the dwelling is presently non-conforming.

The motion carried by a vote of 5 – 0.

Thomas Ginnerty, Richard Boren, Joseph Logan, David Nardolillo, and Elizabeth Brazil voted in favor of the motion.

Don Wineberg was recused and Raymond Iannetta was absent.

Porcaro

A motion was made by Don Wineberg and seconded by Thomas Ginnerty to **deny** the request of Felix A. et ux Lori A. Porcaro, whose property is located at 2 Coulter St., and further identified as Tax

Assessor's Plat 7, Lot 67 for a variance from Article 3, Section 302 (District Dimensional Regulations) to construct a three car garage (with living space above) on an existing foundation which is 16.75' from the front (westerly) lot line, 40' being required, and 9' from the side lot line (southerly) 20' being required. Proposed garage will be attached to a new dwelling, existing dwelling to be razed.

This Board has determined that this application does not satisfy the requirements of Article 6, Section 600, Section 606, and Section 607, Paragraph 2.

In particular reference to Article 6, Section 606, Paragraph 4.

This motion is based on the following findings of fact:

1. Said property is located in a R40 zone and contains 23,460 sq. ft.
2. The applicant admitted that their building needs could be met by building exclusively within the envelope permitted by the zoning ordinance without variance, thus the relief requested is not the least relief necessary as required by Section 606, Paragraph 4.
3. Preserving the garage by incorporating it into the new house construction encroached on the front yard set back, therefore obscuring more bay views than if no relief were granted, especially since the proposed plan is already at the maximum permitted height and width.
4. The Zoning Board has repeatedly expressed its concern and belief that the massing of many new houses in Jamestown exceeds the goals of the Zoning Ordinance and we decline to grant relief when requested for the primary purpose of accommodating large-scale structures.

The motion carried by a vote of 3 – 2.

Thomas Ginnerty, Don Wineberg, and Richard Boren voted in favor of the motion.

David Nardolillo and Joseph Logan voted against the motion.

Elizabeth Brazil was not seated and Raymond Iannetta was absent.

ADJOURNMENT

A motion was made and seconded to adjourn at 9:58 p.m.
The motion carried unanimously.