

JAMESTOWN ZONING BOARD OF REVIEW

Minutes of the December 13, 2005 Meeting

A regular meeting of the Jamestown Zoning Board of Review was held at the Jamestown Library, 26 North Road. The Chairman called the meeting to order at 7:04 p.m. The clerk called the roll and noted the following members present:

Thomas Ginnerty  
Don Wineberg  
Richard Boren  
Joseph Logan  
Elizabeth Brazil  
Dean Wagner

Also present: Brenda Hanna, Stenographer  
Pat Westall, Zoning Clerk  
Fred Brown, Zoning Officer  
Jennifer Azevedo, Counsel

MINUTES

Minutes of the November 8, 2005 meeting.

A motion was made by Thomas Ginnerty and seconded by Richard Boren to accept the minutes of the November 8, 2005 as presented.

The motion carried by a vote of 5 – 0.

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

Dean Wagner was not seated and Raymond Iannetta and David Nardolillo were absent.

Minutes of the November 22, 2005 meeting.

A motion was made by Thomas Ginnerty and seconded by Joseph Logan to accept the minutes of the November 22, 2005 meeting.

The motion carried by a vote of 5 – 0.

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

Dean Wagner was not seated and Raymond Iannetta and David Nardolillo were absent.

OLD BUSINESS

## Cingular Wireless

A motion was made by Don Wineberg and seconded by Joseph Logan to continue the request of Cingular Wireless PCS, LLC to the January 24, 2006 meeting as no one was present to represent the applicant.

The motion carried by a vote of 5 – 0.

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

Dean Wagner was not seated and Raymond Iannetta and David Nardolillo were absent.

## ANDRES

A motion was made by Richard Boren and seconded by Thomas Ginnerty to **deny** the appeal of Frank and Magdalena Andres, whose property is located at 13 Clinton Ave., and further identified as Tax Assessor's Plat 9, Lot 213 pursuant to Article 5, Section 503 to appeal issuance of Building Permit #B05-673 to Windridge Properties, LLC, for property located at 14 Clinton Ave., Jamestown, Plat 9, Lot 201. Said property is located in a CD zone and contains 12,605 +/- sq. ft.

This denial is based upon the following findings of fact:

1. On 9/23/05, Frederick Brown, the Building Official issued a building permit to Windridge Property to construct a wood frame commercial building per approval re: development plan approval.
2. The Planning Commission after many hearings and agreed upon modifications by the applicant, voted unanimously to approve the present application.
3. An appeal was timely filed based upon 3 issues, Section 82-301, Table 3.1 i.e.: not a permitted use; Section 82-704 and Section 82-1203 (minimum parking) and 82-304 (Screening of residential areas).
4. Section 82-301 provides inter alia any use not specifically included is prohibited, unless the zoning official rules that such use is included in any of the general classifications set forth herein.
5. The zoning officer has testified that the applicant intends an electrical contracting business, which is not a defined use. The heading "electrical contractor" is not specified.
6. The zoning officer testified that if a use is not prohibited, he would try and determine if the use is either prohibited in some category or permitted in some category.
7. In the opinion of the zoning official the closest category is VI Commercial, Retail, Subsection 2 "heating, plumbing, electrical or hardware".
8. Section VI Commercial, Retail, Heavy Equipment includes not only sale of heating, plumbing, electrical, or hardware but includes construction equipment such as John Deere, lumber sales such as Arnold Lumber and equipment rental agency such as Taylor Rental.

9. Each of the above businesses are defined as Commercial Retail, but could sell Wholesale.
10. The term retail is not defined in our Zoning Ordinance, but retail commonly includes the definition of selling to the ultimate consumer.
11. Windridge Properties as an electrical contractor will be selling to the ultimate consumer, whether it is a business or home; therefore, they are a commercial retail establishment.
12. Even Mr. Lachowicz could only say that the closest “electrical contractor” comes to in the zoning ordinance is \_\_\_\_\_. Mr. Lachowicz did not testify that “electrical contractor” definitively falls in a specific category.
13. Based upon the evidence presented and the permitted use, the permit complies with sec. 82-704 and 82-1203 and 82-1207.
14. Based upon the evidence presented and the definition of “adjacent” as set forth in Exhibit #14 the applicant, Windridge Properties, has complied with Section 82-304.
15. The Andres home and the proposed use do not have a common endpoint or border, and are not adjoining or contiguous.
16. William Kelly, a former Planning Commission member, testified in opposition to the appeal.
17. The Zoning Official testified that the Town historically has treated the construction trades as permitted uses in commercial districts.

The motion carried by a vote of 5 – 0.

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

Dean Wagner was not seated and Raymond Iannetta and David Nardolillo were absent.

### MENDELSON

A motion was made by Don Wineberg and seconded by Joseph Logan to grant the request of Daniel & Nadine Mendelsohn, whose property is located at 29 Marine Ave., and further identified as Tax Assessor’s Plat 9, Lot 442 for a variance from Article 3, Table 3-2 (District Dimensional Regulations) to install a chimney chase on the south side of the house, 6’ from the property line where 10’ is required.

This Board has determined that this application does satisfy the requirements of ARTICLE 6, SECTION 600, SECTION 606, and SECTION 607, PARAGRAPH 2.

This Variance is granted with the following restrictions:

1. Final grading and guttering of the addition should not direct run-off into the street.
2. The exterior concrete stairs must be removed.

This motion is based on the following findings of fact:

1. Said property is located in a R20 zone and contains 9,000sq. ft.
2. The exterior chimney chase is minimal in size, will replace unsightly concrete stairs and, when shingled, will improve the appearance of the house.

The motion carried by a vote of 5 – 0.

Thomas Ginnerty, Don Wineberg, Joseph Logan, Elizabeth Brazil, and Dean Wagner voted in favor of the motion.

Richard Boren was not seated and Raymond Iannetta and David Nardolillo were absent.

### ADJOURNMENT

A motion was made and seconded to adjourn at 9:00 p.m.

The motion carried unanimously.