

JAMESTOWN ZONING BOARD OF REVIEW

Minutes of the June 28, 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 7:05 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
Dean Wagner

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

MINUTES

Minutes of the May 5, 2005 meeting.

A motion was made by Thomas Ginnerty and seconded by David Nardolillo to accept the minutes of the May 5, 2005 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 and Dean Wagner were not seated and Raymond Iannetta was absent.

Minutes of the May 24, 2005 meeting.

A motion was made by Thomas Ginnerty and seconded by Richard Boren to accept the minutes of the May 24, 2005 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 and Dean Wagner were not seated and Raymond Iannetta was absent.

CORRESPONDENCE

Cingular Wireless

A motion was made by Thomas Ginnerty and seconded by Don Wineberg to continue the application of Cingular Wireless to the July 26, 2005 at the request of the applicant, to provide the requested information.

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

Dolos

A motion was made by Thomas Ginnerty and seconded by Don Wineberg to continue the application of Maria Dolos to the July 26, 2005 meeting at the request of her attorney, as they are awaiting developmental plan review.

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

Arthur

A motion was made by Thomas Ginnerty and seconded by Joseph Logan to continue the application of Doris Arthur to the July 26, 2005 meeting at the request of her attorney.

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

STD Builders

A motion was made by Thomas Ginnerty and seconded by David Nardolillo to continue the application of STD Builders to the July 26, 2005 meeting at the request of their attorney.

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

OLD BUSINESS

Town of Jamestown (water tower)

A motion was made by Richard Boren and seconded by Thomas Ginnerty to grant the request of Town of Jamestown, whose property is located at 96 Howland Ave., and further identified as Tax Assessor's Plat 9, Lot 152 for a variance and a special use permit from Article 3, Section 82-305 and 82-306 and Article 6, Section 82-600 to construct a new one million gallon storage tank.

Regarding this request, this Board has determined that this application does satisfy the requirements of ARTICLE 6, SECTION 600.

Regarding the request for a Variance, this Board has determined that this application does satisfy the requirements of ARTICLE 6, SECTION 606, PARAGRAPHS 1 through 4, and SECTION 607, PARAGRAPH 2.

Regarding the request for a Special Use Permit, this Board has determined that this application does satisfy the requirements of ARTICLE 6, SECTION 602.

This Variance is granted with the following conditions:

- a) That this variance incorporates by reference the conditions of approval set for the in the 6/14/05 Planning Commission Memorandum and the site plans identified and testified to on 6/28/05, which are likewise incorporated by reference into this decision.
- b) That the hedge shall not be trimmed or maintained below the height of the adjacent fence.

This motion is based on the following findings of fact:

1. Said property is located in a Public Zone and contains 23,397 sq. ft./ 0.54 acres of land.
2. The findings of fact by the Planning Commission are incorporated herein.
3. The Town and abutters attended a Tree Preservation Committee and reviewed and improved the planting schedule.
4. There were no abutters testifying against the application.
5. The compressor will be of a new design and quieter.
6. There is presently a distribution system storage deficiency.
7. There is a need for more water fire protection.
8. The existing tank is not adequate for redundancy in case of failure.
9. Preventative maintenance on one tank is difficult.
10. A ground storage tank is not a reasonable alternative.
11. Fay, Spofford, and Thorndike evaluated 7 alternative designs and 3 different sites.
12. The new tank is the least relief necessary to:
 - a) Correct fire flow deficiencies.
 - b) For emergency storage.
 - c) For flexibility for maintenance.
 - d) For peak flow.

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

Robertson

A motion was made by Don Wineberg and seconded by David Nardolillo to grant the request of Susan Robertson, whose property is located at 1323 North Main Rd., and further identified as Tax Assessor's Plat 1, Lot 51 for a variance from Article 3, Table 3-2 (District Dimensional Regulations) to construct an addition 24 ft. from the front lot line instead of the required 40 and 24 ft. from the east side lot line instead of the required 30.

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 restriction that the exterior of the house shall be either cedar shingles or wood clapboard.

This motion is based on the following findings of fact:

1. Said property is located in a RR80 zone and contains 10,716 sq. ft.

2. The relief required on the front of the house continues the existing front line of the house, and only for a length of 6’.
3. The side relief required is only six feet, leaving a 24’ side yard on the east side of the house.
4. The design of the house as proposed is consistent with the architecture of the neighborhood, whereas the mere addition of a second floor over the existing house would create a symmetrical box at odds with the primarily Victorian houses of the rest of the neighborhood.

The motion carried by a vote of 4 – 1.

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

Thomas Ginnerty voted against the motion.

Elizabeth Brazil and Dean Wagner were not seated and Raymond Iannetta was absent.

Corredora

A motion was made by Richard Boren and seconded by Thomas Ginnerty to accept documents from Corredora’s attorney as exhibits even though the testimony is closed.

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

A motion was made by Richard Boren and seconded by Joseph Logan to sustain the appeal of Lino Corredora (Beatrice C. Scholle, owner a/k/a Beatrice C. Burns) whose property is located between Hull and Stern Streets, and further identified as Tax Assessor’s Plat 14, Lot 80, of the April 15, 2005, decision of the Zoning Enforcement Officer. That decision states that the applicant’s new, revised development plan application (for a special use permit to install a new ISDS) cannot be heard by the Zoning Board within 12 months of that Board’s decision that failed to grant the previously requested use variance to install a new ISDS. The applicable section of the Zoning Ordinance is 82-505.

This motion is based on the following findings of fact:

1. Said property is located in the R40 district and contains 14,400 sq. ft.
2. On 1/25/05 the applicant appeared before the Zoning Board seeking a use variance to install a 3 bedroom ISDS on that lot.
3. A motion was presented to grant the application. The motion contained findings of fact.

4. The motion was denied on a 3 – 2 vote. However, the members voting to deny the motion did not make any findings of fact on which they based their denial. Under the doctrine of administrative finality, when an agency receives an application and denies it, a subsequent applicant for the same relief may not be granted absent a showing of a change in material circumstances during the time between the two applications. This rule applies as long as the outcome sought in each application is substantially similar. Administrative action is not final, however, if the first decision was invalid. Although based upon the facts and established case law, *Vendettuoli v. Zoning Board Cranston*, and *Farmer v. Zoning Board Providence*, the relief sought is substantially similar, and absent invalidity, there would be administrative finality. However, since there were no findings of fact denying the application of 1/25/05, neither administrative finality nor section 505 is applicable.

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

Richard Boren and Joseph Logan voted in favor of the motion.

Thomas Ginnerty, Don Wineberg, and David Nardolillo voted against the motion.

Elizabeth Brazil and Dean Wagner were not seated and Raymond Iannetta was absent.

A motion was made by Don Wineberg and seconded by Thomas Ginnerty to deny the appeal Lino Corredora (Beatrice C. Scholle, owner a/k/a Beatrice C. Burns) whose property is located between Hull and Stern Streets, and further identified as Tax Assessor's Plat 14, Lot 80, of the April 15, 2005, and to sustain the decision of the Zoning Enforcement Officer. That decision states that pursuant to Section 505 of the Zoning Ordinance the applicant's new, revised development plan application (for a special use permit to install a new ISDS) cannot be heard by the Zoning Board within 12 months of that Board's decision that failed to grant the previously requested use variance to install a new ISDS because the new application was similar to the one denied previously.

This motion is based on the following findings of fact:

1. Said property is located in the R40 district and contains 14,400 sq. ft.
2. The second application involved the same lot and was only 67 square feet smaller in footprint and 187 square feet smaller in living area.

The motion carried by a vote of 4 – 1.

Thomas Ginnerty, Don Wineberg, Joseph Logan, and David Nardolillo voted for the motion.

Richard Boren voted against the motion.

Elizabeth Brazil and Dean Wagner were not seated and Raymond Iannetta was absent.

Sheehan

A motion was made by Thomas Ginnerty and seconded by David Nardolillo to continue the application of Kerry Sheehan to the July 26, 2005 meeting to allow Elizabeth Brazil to get an Ethics Commission ruling or another abutter to testify.

The motion carried by a vote of 5 – 0.

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

Elizabeth Brazil was recused, Dean Wagner was not seated and Raymond Iannetta was absent.

Town of Jamestown (animal pound/shelter)

A motion was made by David Nardolillo and seconded by Thomas Ginnerty to grant the request of the Town of Jamestown, whose property is located at 44 Southwest Ave., and further identified as Tax Assessor's Plat 9, Lot 22 for a special use permit under Article 3, Table 3-1, IV. No. 10, Government, Educational, Institutional, and a dimensional variance under Article 3, Table 3-2, to change the use of an existing storage building to a municipal animal pound and shelter. The building, located behind the Town Offices Building, is 3 feet from the southerly lot line, 50 feet being required.

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 following restrictions:

1. Dogs will not be kept over night or penned outside.
2. A 6' fence is to be built between Mr. Clarke's property and the shelter.
3. A 24-hour call list will be posted and available at appropriate locations.

This motion is based on the following findings of fact:

1. Said property is located in a CL zone and contains 63,000 sq. ft.
2. The proposed use will not be detrimental to surrounding areas or the health and welfare to the Town of Jamestown or its residents.
3. The proposed use will address a need of the Town by helping to control stray animals.
4. The proposed site is temporary, and is to be replaced when or if the property is sold.
5. The project will not incur added expenses to the town and will supply an office for the animal control officer.

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

ADJOURNMENT

A motion was made and seconded to adjourn at 9:55 p.m.

The motion carried unanimously.