

JAMESTOWN ZONING BOARD OF REVIEW

Minutes of the October 23, 2007 Meeting

A regular meeting of the Jamestown Zoning Board of Review was held at the Jamestown Town Hall, 93 Narragansett Avenue. The Chairman called the meeting to order 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  
Dean Wagner  
Richard Cribb  
Richard Allphin

Also present: Brenda Hanna, Stenographer  
Pat Westall, Zoning Clerk  
Fred Brown, Zoning Officer  
Wyatt Brochu, Counsel  
A. Lauriston Parks, Counsel

MINUTES

Minutes of the September 25, 2007 meeting.

A motion was made by Thomas Ginnerty and seconded by Don Wineberg to amend the minutes of September 25, 2007 on page 6 finding of fact item # 2 add "and", item #4 change "not to no", and item #6 add "" to applicants, and to accept the minutes as amended.

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.

Dean Wagner, Richard Cribb, and Richard Allphin were not seated.

CORRESPONDENCE

A letter from Joseph & Furhana DiBiase requesting an extension of a previously granted Special Use Permit for Plat 5, Lots 52 & 53.

A motion was made by Thomas Ginnerty and seconded by Richard Boren to grant the request of Joseph & Furhana DiBiase for a one-year extension of a Special Use Permit for Plat 5, Lots 52 & 53 originally granted November 28, 2006.

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.

Dean Wagner, Richard Cribb, and Richard Allphin were not seated.

Randall

A motion was made by Thomas Ginnerty and seconded by Don Wineberg to continue the request of Allan & Nancy Randall to the November meeting at the request of John A. Murphy, Esq.

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.

Dean Wagner, Richard Cribb, and Richard Allphin were not seated.

Harris

A motion was made by Thomas Ginnerty and seconded by Don Wineberg to continue the request of Martha Harris to the November meeting at the request of Peter J. Brockmann, Esq.

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.

Dean Wagner, Richard Cribb, and Richard Allphin were not seated.

Clancy reconsideration.

A motion was made by Thomas Ginnerty to deny the request of David M. Clancy and Jennifer R. Clancy, whose property is located at 382 North Road, and further identified as Tax Assessor's Plat 7, Lot 22 for a Special Use Permit, as provided under Article 3, Section 302 (District Dimensional Regulations), and Article 6, Sections 600, 601, 602 and any other relevant sections of the Zoning Ordinance.

This Board had determined that this application does not 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 RR200 zone and contains 65,340 sq. ft.
2. The applicants have owned the property located at 382 North Road for approximately ten years.
3. In 2003 they applied for dimensional relief and that matter is incorporated by reference hereto.
4. The present application was heard at the March Zoning Board meeting, March 22, 2005. Testimony in support of the present request or the request at that time was presented by Jennifer Clancy and two expert witnesses - George Durgin and Dennis Taber.
5. Mr. Taber testified as a traffic expert. He incorrectly stated that the area speed limit was 25 miles per hour. He was unfamiliar with lighting in the area; he was unfamiliar with road conditions or road contours in the area. He did not perform an on location study.
6. In fact, the speed limit is 40 mph, routinely exceeded, as most people who drive in that area will tell you. There is a single lane of travel in each direction. There is a single streetlight in the immediate area, the property is located at the crest of a hill - drivers approaching from either direction have reduced visibility of traffic ahead or approaching in the opposite direction. There are passing restrictions in effect in the immediate area.
7. There is nowhere to park safely on this road in the area of the subject property. The road has a small paved surface to each side of the travel lanes, much more narrow than the width of a car. Once off the pavement there is an unevenly graded dirt/gravel shoulder, some parts are trench like.
8. In conclusion, the testimony of Mr. Taber was not probative as to the issue of traffic; in fact his testimony was highly

misleading. The area near the subject property does not provide for a safe place to park on North Road and traveling would be endangered by vehicles stopping or slowing in the area for the purpose of visits to the subject property.

9. The testimony of George Durgin was equally unpersuasive. He was qualified in the area of real estate appraisal, but concentrated his testimony on the appropriate use of the subject property.

Accordingly, this Board makes the following determination:

That an application for a special use permit pursuant to Article 6, Section 601 and 602; the applicant has failed to sustain their burden of proof.

In particular, the applicants have not presented probative evidence that the relief sought would not result in a substantial health and safety problem relating to traffic operation at the North Road location as noted above, the speed of traffic in the area would result in danger to drivers confronted with slowing, turning and stopping vehicles. That visibility is limited by the road contours, as the subject property is located near the crest of a hill. That street parking is unavailable due to the road conditions, a single lane of travel in each direction, lack of a break down or parking lane and a small unstable dirt shoulder to each side of the road, and the area is poorly lighted.

Further, the granting of this application would substantially and permanently injure the appropriate use of the property in the surrounding area. That area, as well as the subject property, is designated as RR200, wherein permitted activities are primarily traditional agricultural pursuits.

That the granting of the relief sought would not be in keeping with the general purposes of the zoning ordinance or the comprehensive plan, in particular that a retail sales operation of any sort would be detrimental to the rural character and contrary to the plan and policy.

The motion was not seconded.

A motion was made by Richard Boren and seconded by Joseph Logan to grant the application with the following conditions:

1. The special use permit does not run with the land; that the permit terminates upon the sale of the transfer of the property from the Clancys to any other party, even if it were for the sale of glass products.
2. That the sale would only be June through December.
3. That it would only be Thursday through Sundays during June through December through December 15 to December 24 for any one-day period it would be every day; and it would be maximum hours of 11:00 to 5:00 p.m.; and all product sold must be manufactured on the premises. And I would repeat, as part of the condition that any parking required for conduct of such home occupation shall be provided off the street.

After discussion, Richard Boren made a motion to amend the motion at condition #3 to change the hours to 11:00 to 4:00 p.m.

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

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

Thomas Ginnerty and David Nardolillo voted against the motion.

Dean Wagner, Richard Cribb, and were not seated and Richard Allphin was recused.

The Chair stated that they reached an impasse.

### Johnstone

A motion was made by David Nardolillo and seconded by to Thomas Ginnerty to grant the request of Peter Johnstone, whose property is located at 40 Clarke St., and further identified as Tax Assessor's Plat 9, Lot 51 for a variance from Article 7, Sec. 705 & Article 3, Table 302 (District Dimensional Regulations) to construct a front porch which will be 6.3 ft. from the front property line, 15 ft. being required, and which will exceed the allowable lot coverage by 217 sq. ft.

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

In particular reference to ARTICLE 6,SECTION 606, PARAGRAPH 3.

This project must be constructed in strict accordance with the site and building plans duly approved by this Board.

This motion is based on the following findings of fact:

1. Said property is located in a R8 zone and contains 5,915 sq. ft.
2. The proposed addition would be in harmony with the existing homes in the neighborhood and in fact would enhance the area and keep character of the area intact.
3. There were two abutters and one letter in favor of the variance and none opposed.
4. The proposed addition is the least amount of relief required and contains only 24 sq. ft. of relief and would not encroach any more than the existing nonconformance.

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.

Dean Wagner, Richard Cribb, and Richard Allphin were not seated.

#### Ouimette

A motion was made by Don Wineberg and seconded by Thomas Ginnerty to deny request of Patricia Ouimette, whose property is located at 783 North Main Rd., and further identified as Tax Assessor's Plat 15, Lot 352 for a variance from Article 3, Section 82-302 to construct a 3 bedroom single-family residential home with attached garage located 20 ft. from the side lot lines instead of the required 40 ft. Also, due to the size of the existing lot, a building lot coverage variance is being requested from the required 5% to 8.6%. The existing house will be demolished.

This Board has determined that this application does not satisfy the requirements of ARTICLE 6, SECTION 600, SECTION 606, and SECTION 607, PARAGRAPH 2.

This motion is based on the following findings of fact:

1. Said property is located in a RR 200 zone and contains 24,050 sq. ft.
2. The Board believes that if the applicant consults an architect, they will be able to develop a plan site specific that meets their family's needs and will either need no zoning relief or much less zoning relief than requested in the current application. As a result, the relief requested is not the least relief necessary. Although the Board is sympathetic to the family's health needs, Section 606 (1) prevents us from granting relief based on a physical or economic disability of the applicant excepting those physical disabilities addressed in RI General Law 45-24-30 (16).
3. Both adjacent abutters objected to the application.

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.

Dean Wagner, Richard Cribb, and Richard Allphin were not seated.

### Wright

A motion was made by Dean Wagner and seconded by Richard Cribb to grant the request of Rod and Natalie Wright whose property is located at 20 Whittier Rd., and further identified as Tax Assessor's Plat 8, Lot 412 for a variance from Article 3, Section 82-302 (Table 3-2 District Dimensional Regulations) to construct a garage 3.5 feet from rear and west property lines (ten feet 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 project must be constructed in strict accordance with the site and building plans duly approved by this Board.

This motion is based on the following findings of fact:

1. Said property is located in a R20 zone and contains 16,031 sq. ft.
2. The applicant is seeking dimensional variances from the rear and left side setbacks to construct a garage.
3. No one spoke against the application.
4. Each of the abutters has submitted a letter in support of the application.
5. The proposed garage is located in the best location to mitigate the light and noise pollution caused by the non-residential abutter uses.
6. Specifically the paddle and tennis courts that abut the applicant's property cause significant noise and light pollution.
7. The use of the abutting non-residential property has intensified.
8. The garage is designed to serve as a buffer against the noise and light 50 feet from the applicant's house.
9. The location and size of the proposed garage is consistent with the general character of Shorby Hill.
10. Under the circumstances, the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to a more than mere inconvenience.

The motion carried by a vote of 5 - 0.

Thomas Ginnerty, Richard Boren, David Nardolillo, Dean Wagner, and Richard Cribb voted in favor of the motion.

Richard Allphin was not seated and Don Wineberg and Joe Logan were recused.

### Moorehead

A motion was made by Richard Boren and seconded by Don Wineberg to grant the request of Christina Moorehead whose property is located at 7 Watson Ave., and further identified at Tax Assessor's Plat 8, Lot 569 for a special use permit under Article 3, Table 3-1, Mixed Use and 82-1304 to construct a room in existing garage for use as an alterations boutique and install a 30" x 48" sign for said business.

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 conditions:

1. This project must be constructed in strict accordance with the site and building plans duly approved by this Board.
2. The sign will not be lit.

This motion is based on the following findings of fact:

1. Said property is located in a CL zone and contains 5,350 sq. ft.
2. The applicant is asking to take an existing garage attached to a house in a CL zone and divide the garage such that ½ will remain a garage and ½ will be used for studio space and storefront.
3. There will be no change to the exterior of the garage other than new doors.
4. The studio space will consist of 240 sq. ft.
5. There will be no parking problems or ingress and egress problems.
6. There was no one who testified in opposition.

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.

Dean Wagner, Richard Cribb, and Richard Allphin were not seated.

#### Executive Session

#### ADJOURNMENT

A motion was made and seconded to adjourn at 10:45 p.m.

The motion carried unanimously.