



Town of East Greenwich

Zoning Board

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ZONING BOARD OF REVIEW MINUTES - DRAFT
Tuesday, April 25, 2023 Meeting @ 7:00 pm
HYBRID IN-PERSON AND REMOTE VIA ZOOM
125 Main Street, Town Council Chambers

Present: Melody Alger, Jody Sceery, Barry Golden, Richard Land, Chairman;
David Collier (Alternate)

Absent: Christopher Mulhearn, Vice Chairman; and Robert Brooks (Alternate).

Staff: Al Ranaldi, Planning Director; Christina Marseglia, Planning Analyst;
and Andy Teitz, Legal Counsel.

Note: These minutes are supplemented by the Zoning Board Agenda, Staff Report, Zoning Board Application Package Materials, and Video and Audio Recordings. These materials can either be accessed on the Town's website or by contacting the Planning Department.

Mr. Land, Chair of the Board, called the meeting to order at 7:00 PM and introduced the members and staff present. He then read the Board's procedures into the record. Each person addressing the Board will first state his or her name and address for the record. The applicant and his or her legal representative will present the case and witnesses may be called to testify. Such testimony must be relevant to the application. Expert witnesses will be sworn in and there will be no prejudgment as to the expertise of any witness. Pictures, diagrams and other documents given to the Board as evidence will be appropriately marked as exhibits and will be retained by the Board for the record. Upon completion of the applicant's presentation all other persons wishing to offer evidence in favor of the application may then do so one at a time. Following that all persons wishing to offer evidence against the application may then do so one at a time. It is asked that comments are confined to the zoning matter being heard and that repetitive remarks are avoided. Cross examination or rebuttal may be allowed if the Board feels it would be appropriate and useful. All questions from the floor will be directed through the Chair only. After all relevant facts have been heard the Chair will call for a motion; the Board will then discuss the motion and the Chair will call for a vote. During the discussion among voting Board members, the Board will not accept

any new and further testimony unless it is specifically requested by a Board member. The Board will make every attempt this evening to render a decision. The written decision will be recorded in the Town Clerk's Office as soon as possible following the approval of the minutes of the meeting.

Zoning Board of Review Hearings – 7:00 PM

1. **Elizabeth Bancroft & Dan Pettersson** for property located at 162 Peirce Street; Map 075 A.P. 001 Lot 190 (Zoned Residential, R-10). The Applicant requires a Dimensional Variance(s) from Table-2 Dimensional Regulations of Chapter 260 of the Town Code, Zoning Ordinance. The Section sets forth the dimensional setbacks and height limits that are required for a lot. The Applicant is proposing to demolish and rebuild the garage while reconstructing the retaining wall at the above referenced location.

PROPOSAL: There is an existing long dry fitted field stone “retaining wall” along the eastern property line shared with Cathay Garden Restaurant which sits lower than the subject property. The field stone retaining wall has collapsed in several locations which has caused a significant undermining of the garage slab and associated damage to the building's walls.

In order to properly fix the situation, the existing stone wall will need to be replaced. This will require that a 6' wide trench of earth for the depth of the existing wall be removed on the uphill side of the wall. This will require the garage to be removed.

Due to the existing garage being intentionally demolished, it loses its nonconforming status. Once the ground work has been structurally restored the homeowner is requesting to construct a new garage, to be 12'x19.4' in size, which is the same as the existing garage. The new garage will not meet the side setback requirement of 5' nor will it meet the 30' front setback requirement; it will be 7.6' to 8' and 12' to 12.6' from the front yard setback and will be 1.8' from the side setback requirement.

RELIEF REQUESTED: A 3.4' Side-yard Setback Variance from Table-2 Dimensional Regulations of Chapter 260 of the Town Code, Zoning Ordinance. The required side-yard setback for an accessory structure for the zone is 5 feet. The applicant is proposing an accessory structure to be approximately 1.8' from the side-yard lot line.

A 22' to 22.6' and 17.6' to 18' Front-yard Setback Variance is being requested. The required Front-yard Setback for the zone is 30 feet. The Applicant is proposing 7.6' to 8' and 12' to 12.6' from the front-yard lot line.

The Applicant seeks Dimensional Variances under Chapter 260 of the Town Code, Zoning Ordinance:

Section 260-8(f) notes Accessory structures shall only be permitted in rear yards in the building envelope and shall not fall within any required side or front setbacks. Such structures may be no closer than five (5) feet from the rear lot line in the R-10 zone. On corner lots where no rear yard lot line is present, accessory structures may be permitted to be sited within the side setback, subject to the five-foot limitation. **Relief is needed to allow the detached garage to be located in the front and side setbacks.**

Other applicable zoning regulations include **Section 260-14(A)**, Nonconforming by Dimension, which states any structure or building lawfully existing at the time of adoption or amendment of the zoning ordinance but which is nonconforming by dimension shall be permitted to continue in the same manner. If said legally nonconforming structure or building is intentionally destroyed, relocated or altered, it shall lose its nonconforming status. However, if such destruction, relocation or alteration is the result of fire or a natural catastrophe, the legal nonconforming improvement may be rebuilt in its previous configuration.

MR. PETERSSON of 162 Peirce Street was present and sworn in. He stated that he would like to rebuild the garage in the existing footprint and the previously approved plans called for a larger garage that sat in the middle of the yard. Additionally, he stated that the project that must be done is the rebuild of the old stone retaining wall, that has washed out in (3) places which is undermining the existing foundation of the garage. In order to rebuild the wall, the garage must be demolished.

He asked the (3) following questions:

- 1) Is a Class I survey needed to show the distance from the existing garage and the street/sidewalk to pull permits?
- 2) Or can that information be included on the proposed engineering plans that will be drawn up?
- 3) Or is both needed?

MR. LAND asked whether any members of the board had any questions for the applicant.

None noted.

MR. LAND asked whether there was anyone present or online in favor or against the application.

None were noted.

MR. LAND stated that the application as completed meets the standards of relief for a dimensional variance. Those standards being: the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area; the hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain; granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan; the relief to be granted is the least relief necessary; the hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

MR. RANALDI stated that the applicant will need a Class I survey and Architectural plans for the garage.

MS. ALGER made a motion to approve the application as submitted.

MR. COLLIER seconded the motion.

On a vote, the application as presented was approved unanimously.

VOTE: Mr. Land: YES, Mr. Golden: YES, Ms. Alger: YES, Ms. Sceery: YES, and Mr. Collier: YES (5 – 0 in favor of the motion).

2. **Gerald Paul Zarrella, Jr.** for property located at 815 South Road; Map 010 A.P. 018 Lot 017 (Zoned Farming, F-1). The Applicant requires Dimensional Variances from Table-2 Dimensional Regulations of Chapter 260 of the Town Code, Zoning Ordinance. The Section sets forth the dimensional setbacks and height limits that are required for a lot. The Applicant is proposing to construct an accessory structure and a swimming pool at the above referenced location.

(Continued from March 28, 2023 Zoning Board Meeting)

PROPOSAL: The Applicant is proposing to construct an accessory structure and a swimming pool at the above referenced location.

RELIEF REQUESTED: A 15.5' Left Side-yard Setback Variance, a 9' Right Side-yard Setback Variance, and a 15.4' Rear-yard Setback Variance. The applicant is also requesting a 13' Height Variance from Table-2 Dimensional Regulations of Chapter 260 of the Town Code, Zoning Ordinance.

The required Side-yard Setback for the zone is 30' (14.5' and 21' requested), the Rear-yard Setback is 45' (29.5' requested), and the maximum height allowed in the zone for an accessory structure is 15' (28' proposed).

MR. LAND stated that the matter was continued from last month's meeting due to a notice issue.

He stated that in the recommendation, it appears that the requested relief is not necessarily all required, the application had originally indicated that the accessory structure would be approximately 25' tall with an additional 2' to 3' tall stone fireplace. However, fireplaces, chimneys, and smokestacks do not factor in to the height of a structure when determining building height. For this reason, Staff has indicated that the if the Zoning Board were to determine the height of the structure meets the relevant standards, the height variance request would be reduced to 10 feet.

In addition, the applicant has requested a 29.6' Rear-yard Setback Variance. Per the Zoning Official, and Section 260-8 (F) of the Zoning Ordinance, accessory structures have a modified setback of 10' for the rear-yard setback. For this reason, Staff does not see the need to grant a rear-yard setback variance and therefore recommends that the Board not grant rear-yard setback relief. But to be clear that is because the applicant is proposing that the accessory structure be within the footprint permissible without a variance. No rear-yard relief needs to be sought.

Staff further recommends that the accessory structure not be converted into an accessory dwelling unit.

The application is being modified because the applicant does not need to seek the additional relief.

MR. ZARRELLA was sworn in and stated that the dimensional relief he is seeking is no longer in the rear. It will just be the side-yard setbacks.

MR. LAND stated that for the record, the applicant has submitted (2) documents.

Applicants 1: is a letter addressed to himself and other members of the board signed by the neighbor on the left, Mr. Karapatakis.

Applicants 2: is a drawing or schematic property that is highlighted in multiple colors, notations, elevations, roadways, open space, the applicant's home, and the roadway adjacent to the applicant's property on South Road.

MR. ZARRELLA stated that the area highlighted in green depicts open space. However, that is not entirely accurate and he had chased back property deeds in the recorded land evidence and is not owned by the town but owned by each member of the cluster subdivision.

Mr. Zarrella stated that in speaking with the abutting neighbors, some of the concerns were erosion during construction, construction vehicles within the open space, and water being shed onto their property. He advised the neighbors that he would be hiring a land surveyor/ engineer to stake the property lines and would do his erosion control along those property lines. He also commented that he will keep everyone in compliance to make sure no one impedes on that meadow. Concerning water, sediment, and on-site water mitigation, state law stipulates that water must be contained and cannot be discharged onto neighboring property. He reiterated that he was only requesting 9 ft on the right side of the property and will use the remaining 21 ft to include a very attractive landscape.

MR. LAND asked if there any members of the board had any questions for the applicant.

None noted.

MR. LAND stated that as he understands, the structure will be on the northwest side of the home, there will be a large patio between the structure and the home, and the pool will be directly behind your home but require a side setback relief on the pool side? And then on the east side, you would create a landscape buffer to hinder the view from the opposing neighbors. With respect to any erosion during construction, you are proposing an erosion control plan and a water control plan. Also, if there is any water runoff, this will be controlled within your property and any construction vehicles remain on your property.

MR. LAND asked if there were any members present or online to speak in favor of the application.

None noted.

MR. LAND read the note from Mr. Karapatakis which stated “I am the owner at 851 S. Road. My home is a direct abutting neighbor to Jerry Zarrella. I’ve met with Mr. Zarrella to discuss this application to construct a pool and cabana and he has shared all of his building plans, landscape plans, perspective plan showing cabana, swimming pool and other property improvements. I have no objection to this application and property plans and I feel as though it will further serve as an improvement to the neighborhood. If the town, needs anything further from me, I am happy to comply. Thank you for all your service. Sincerely, Mr. Karapatakis.”

MR. LAND asked if there were any members present or online to speak against the application.

MR. EDMOND LOISELLE, was sworn in and stated that he represented the Huguenot Farm Homeowner’s Association. He advised the homeowner has failed to meet the hardship requirements under Rhode Island General Law 45-24-41 Section D. The hardship is not due to the land having any significant characteristics, the parcel is almost a perfect rectangle on approximately one acre, the hardship is the result of prior actions done by the applicant, and granting the variance will significantly alter the general character of the surrounding area.

MR. LAND stated for the record, Mr. Loiseau and I are friends. But also, business colleagues. We do not work together but we have had common clients and he does not believe that is a conflict of any kind but wanted to make sure that it makes the record.

He asked Mr. Loiseau whether the applicant's commitment to maintaining appropriate controls, such as water and erosion controls, after the project was finished, as well as his acknowledgement that there would be no construction vehicles on the adjacent property, helps satisfy any of his concerns.

MR. LOISELLE advised that the objection is much broader in the fact that the plan for that site to remain as “farmland” was critical and the extent of that variance would alter that view and arrangement.

MR. LAND stated that the applicant has sought (2) dimensional variances, one for each side of the property. Conceivably, he could redesign this in a manner in which no relief has been requested and make it as visible and less appealing to the neighbors than what he has presented here.

Mr. Land allowed a brief recess for opposing members of the public and the applicant to discuss the application and see if they could come to a resolution.

MR. LOISELLE asked for clarification on the variances being requested.

MR. LAND stated that there are (3) forms of relief being requested: the height variance has been reduced to 10' of relief, on the eastern side there is a request for a 9ft variance from the side setback, and on the west side of the property there is a request for a 12' variance from the side setback.

MR. ZARRELLA asked speculatively, on the off chance that he could adjust his application and eliminate the 9ft variance request on the east side, assuming that is the thing the neighbors were dismissing to.

MR. TEITZ stated that as long as you are removing/ reducing the request a new application does not need to be submitted.

MR. LAND allowed a brief recess for opposing members of the public and the applicant to discuss the application with the information discussed and see if they could come to a resolution.

MR. ZARRELLA gave the board a document showing the letter he sent out to the abutters at the last meeting.

MR. LAND stated this document will be listed as Applicants 3. Applicant 3 is a 2-page letter that Mr. Zarrella wrote inviting the neighbors to have some input on the design prior to this meeting.

MR. LOISELLE stated he believe there is room for negotiation, but is unsure whether there is enough time.

MR. LAND asked Mr. Zarrella whether he would like to continue the matter to discuss it further with the neighbors.

MR. ZARRELLA asked if the neighbors could speak to which variances they are objecting to.

MR. LOISELLE stated he received the letter Saturday afternoon and has not been presented with enough time to discuss the matter as a group.

MR. ZARRELLA stated he does not want to continue the matter and will remove the 9ft variance request to the East.

MR. LAND stated for clarification, the 9ft variance on the east side nearest to the abutting neighbors who are opposing the application is no longer being sought.

MR. BACIK was sworn in and stated that he never received a certified letter. He also commented that the neighbors got together last Thursday to speak about what their opposition is and what they are okay with.

He stated that they were out of the line of communication.

MR. DIZOGLIO was sworn in and stated that his personal objection is that the building is too big and he wants to preserve the rural nature of Western East Greenwich. It destroys the aesthetic look from that field.

MS. ALGER made a motion to approve the application as amended as to exclude the 9' setback on the eastern side.

MR. GOLDEN seconded the motion.

MS. ALGER commented that the relief being requested is very minimal for a relatively large parcel. The applicant has minimized the impact to the neighbors and she is impressed with the erosion plan, the plantings, none of which the zoning board has a right to order if in fact this variance were not requested. For a minor variance, the neighbors are getting a lot of value in terms of landscaping and erosion control and will be voting in favor of the application.

MR. LAND asked Ms. Alger if she believes that the application as amended meets the of relief for a dimensional variance.

MS. ALGER responded yes, I do.

MR. LAND stated for the record, those standards being: the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land and not the general characteristics of the surrounding area; the hardship is not the result of any prior action by the applicant and does not result primarily from the desire for greater financial gain; granting the request will not alter the general character of the surrounding area or impair the purpose or intent of the Zoning Ordinance or Comprehensive Plan; the

relief to be granted is the least relief necessary; the hardship suffered by the owner if the variance is not granted shall amount to more than a mere inconvenience.

MR. LAND stated that he believes the applicant could build something that is not as high as 10ft and not within the side setback. However, he believes that the applicant could build something more invasive and obtrusive. Also, that the 12.9' setback does not appear to have any impact on the neighbors or the land itself.

MS. ALGER stated she doesn't feel that the variances that the project necessitates will result in an alteration of the fundamental nature of the area.

MR. LAND asked Ms. Alger if her motion encompassed that the applicant must maintain erosion control during construction and included a water runoff plan upon completion that has full water mitigation to avoid any run off onto the adjacent property?

MS. ALGER It did.

MR. LOISELLE asked with respect to the water mitigation, what remedies do the homeowner's have if the water comes down?

MR. TEITZ stated that it would be a civil matter between the neighbors and the applicant.

VOTE: Mr. Land: NO, Mr. Golden: YES, Ms. Alger: YES, Ms. Sceery: YES, and Mr. Collier: YES (4 – 1 in favor of the motion as amended).

MR. LAND stated for the record, that he opposed the application because he has made it a practice that the applicant has to strictly meet the standards. Notwithstanding that, I'm not offended that the application was approved.

Zoning Board of Review Business

1. Minutes: Review/action on the following sets of minutes:

- March 28, 2023

Minutes were not circulated to board members due to staff error.

2. Adjournment:

Ms. Alger made a motion to adjourn the meeting.

Mr. Land seconded the motion.

On a vote, the motion to adjourn was approved unanimously.

VOTE: Mr. Land: YES, Mr. Golden: YES, Ms. Alger: YES, Ms. Sceery: YES, and Mr. Collier: YES (5 – 0 in favor of the motion).

Adjourn 8:15 p.m.