

DONALD G. MORASH, JR.
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CHAIRMAN
MAYOR



CITY OF WARWICK
ZONING BOARD OF REVIEW
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WARWICK ZONING BOARD OF REVIEW
MINUTES OF THE AUGUST 8, 2017 MEETING

A regular hearing of the Warwick Zoning Board of Review was held on Tuesday, August 8, 2017 at 6:00 P.M. in the Warwick City Council Chambers, Warwick City Hall, 3275 Post Road, Warwick, Rhode Island. The meeting was called to order by Chairman Donald Morash.

The Secretary called the roll and noted the following members present:

Donald Morash, Chairman
Mark McKenney
Fred Sarno
Beverly Sturdahl
Paul Wyrostek

Absent: Everett O'Donnell
Julie Finn

Also present: Diana Pearson, Asst. City Solicitor
William DePasquale, Warwick Planning Department
Amy Cota, Secretary
Mary Ellen Hall, Stenographer

The Chairman declared a quorum.

The Chairman stated the minutes from the July 11, 2017 hearing would be approved at the next hearing.

The Chairman asked if there were any petitions to be WITHDRAWN or CONTINUED.

The Chairman called the first petition.

Petition #10469

Ward 9

4272 Post Rd.

The petition of Salon Jaz, LLC, 4272 Post Rd., Warwick, RI, request a dimensional variance to construct a 20' x 42' addition to the existing salon. Subject property being legal non-conforming by use and dimension. Proposed addition having less than required front/corner side yard setback. Assessor's Plat 222, Lot 42, zoned Office (O).

Rhonda Knight, 95 Delaware Rd., Cranston, RI, was sworn in by the Chairman.

John Kupa, Esq. was present and representing the petitioner.

Attorney Kupa stated they are seeking a variance for the front/corner side street setback (from Elisha Street). He stated the salon is surrounded by roadways on three sides and the Amtrak train to the rear. The addition will increase productivity. Mr. Kupa stated the existing salon is 400 square feet.

The Chairman asked about parking on the street. The petitioner stated she has plenty of parking, and her clients do not park in the street.

The Chairman asked if there was anyone there in opposition or in favor of the petition. There being none, Mark McKenney stated it appears reasonable, it will encourage business, it's appropriate for the area, there are no abutters present to object, and moved to approve the petition, seconded by Fred Sarno and passed unanimously by the Board that the petition be GRANTED.

Petition #10470

Ward 8

650 Bald Hill Rd.

The petition of AMCB RI Mall Owner, LLC, 411 Theodore Fremd Ave. suite #300, Rye, NY, request a dimensional variance to install a multi-tenant free-standing ground sign higher and larger than allowed by ordinance. Subject property containing more than one free-standing ground sign. Assessor's Plat 264, Lot 6, zoned General Business (GB).

William DePasquale from the Planning Department read his recommendations into the record.

K. Joseph Shekarchi, Esq. was present and representing the petitioner.

Attorney Shekarchi stated the petitioners came before the Board in March 2017 and this is just a modification to that petition. Mr. Shekarchi stated they have been working with

the Planning Department staff and his clients are in agreement with the Planning Department stipulations.

The Chairman stated it seems pretty straight-forward and has been scrutinized by many people before it came before the Board.

Mark McKenney asked if this was pertaining to the free-standing sign or the signs on the building. Mr. Shekarchi stated this is for the free-standing sign only, the wall signs were previously approved by the Board.

The Chairman asked if there was anyone there in opposition or in favor of the petition. There being none, Paul Wyrstek made a motion, he stated there is a desire to see more business in the City of Warwick, and made a motion to approve as presented, seconded by Fred Sarno, and passed unanimously by the Board that the petition be GRANTED WITH STIPULATIONS.

Petition #10471

Ward 9

21 Crestwood Rd.

The petition of Eric Johnson & Mia Caetano Johnson, 21 Crestwood Rd., Warwick, RI, request a dimensional variance to construct a 24' x 10' pool cabana, a 3' x 8' pool equipment pad and an in-ground pool. Proposed cabana, equipment pad & pool having less than required rear/front yard setback (Post Rd.). Assessor's Plat 235, Lot 35, zoned Residential A-15.

Eric Johnson, 21 Crestwood Rd., Warwick, RI, was sworn in by the Chairman.

Mia Caetano Johnson, 21 Crestwood Rd., Warwick, RI, was sworn in by the Chairman.

The Chairman asked the petitioners to explain what they are proposing.

Eric Johnson stated they would like to add a pool and a cabana. While laying out the design, they considered Post Road a rear yard and found out it is actually a front yard. They are asking to position the pool at a 24' setback (30' required), seeking 6' relief. The cabana will be have a rear setback of 10' setback (20' required), and the equipment pad/filter will have a rear/street setback of 10' (15' required for filter).

The petitioner stated they can't access Post Road from their property, there is a wall along the rear property line. He submitted a photo showing the stone wall in the rear of his property from Post Road, marked as Petitioner's Exhibit #1. He also submitted two photos showing the stone wall in the rear of the property from Post Road, marked as Petitioner's Exhibit #2.

The Chairman asked if the petitioner spoke with his neighbor's. Mr. Johnston stated his neighbor's to the east are present tonight. The next door neighbor is in full support.

Mark McKenney asked if they had a survey done to look at the grade. The petitioner's stated they did and there is a pitch that goes up, so they couldn't move the pool closer to the house.

The Chairman asked if there was anyone there in opposition or in favor of the petition.

Patricia Vient-Sacha, 11 Crestwood Rd., Warwick, RI, was present and sworn in by the Chairman. Ms. Vient-Sacha was present in favor of the petition.

Mark McKenney stated the relief is appropriate, and in order to enjoy and enhance the property, he moved to approve, seconded by Fred Sarno and passed unanimously by the Board that the petition be GRANTED.

Petition #10472

Ward 5

100 Carder Rd.

The petition of Paul Olivieri, 100 Carder Rd., Warwick, RI, request for an amendment to a previously granted petition to construct a new single family dwelling with an attached garage. Subject property being an undersized non-conforming lot. Proposed dwelling having less than required rear yard setback, front yard setback and Coastal feature setback. Assessor's Plat 358, Lots 372 & 373, zoned Residential A40 (formerly A-7). Seeking removal of stipulations #4 & #5.

William DePasquale from the Planning Department read his recommendations into the record.

Paul Olivieri, 100 Carder Rd., Warwick, RI, was sworn in by the Chairman.

The Chairman asked the petitioner if the CRMC violations have been removed. The petitioner stated the violations have been removed.

The Chairman stated the merger will still be required. William DePasquale stated it is required by State law and makes it easier to have one lot.

Mark McKenney asked Mr. DePasquale if he is satisfied with the violations released by CRMC. Mr. DePasquale stated CRMC will be involved at one point, the petitioner would not be exempt even if a building permit is issued. Mr. DePasquale stated they wouldn't object to the removal of stipulation #4, as long as the merger is done. Mark McKenney moved to remove stipulation #4, while maintaining the merger, stipulation #5, seconded by Fred Sarno and passed unanimously by the Board that the petition be GRANTED.

Petition #10474

Ward 3

1689 Post Rd.

The petition of Rocky Point Clam Shack, 253 Bellman Ave., Warwick, RI, and WJG Realty Company LLC, 385 Hancock St., Quincy, MA, request a special use permit/dimensional variance to have a temporary outdoor Halloween maze from Sept. 28, 2017 to Nov. 1, 2017. Also seeking a special use permit to have live entertainment.

Subject property containing more than one non-residential use, and having less than required landscaping and parking. Assessor's Plat 322, Lot 209, zoned General Business (GB).

K. Joseph Shekarchi, Esq. was present and representing the petitioner.

Mr. Shekarchi stated the petitioner has been before the Board previously. They are now looking to have a temporary Halloween maze within a small area of their leased property, from September 21, 2017 through November 1, 2017.

Fred Sarno asked if the maze would have a roof over it. Mr. Shekarchi stated there is no roof over it.

The Chairman asked if there was anyone there to speak in opposition of the petition.

Steve Laramee, representative of Ann & Hope, 224 Talcott St., Woonsocket, RI, was present and in objection of the petition. Mr. Laramee stated they have a condo with WJG Realty, owner of the property WJG Realty does not intend to give them permission to host this. The petitioners will be receiving a letter in the mail from their landlord that they do not have permission to apply for the variance for the maze or live entertainment.

The Chairman asked Attorney Shekarchi if he was aware of this. Mr. Shekarchi stated he was not aware of this.

Mr. Shekarchi stated he did not negotiate the lease between the parties, but suggested if the Board felt comfortable enough to approve this tonight, they could try to work something out. But ultimately this may be a private dispute between the landlord and the tenant, or we can continue this until the next meeting on September 12, 2017.

Fred Sarno suggested the Board do the latter and continue this petition.

The Chairman asked Mr. Laramee why the landlord was not present. Mr. Laramee stated they did not know about this petition until he brought it to their attention at 2:00 P.M. on the day of the meeting. He stated he received an email from them that they were never even made aware the request was being made. The tenant never contacted the landlord. Mr. Laramee stated he has an email from the company stating they do not intend to approve it and will not ascertain it.

Mark McKenney suggesting continuing the petition to see if the parties can work out an agreement, and moved to continue the petition, seconded by Fred Sarno, and passed unanimously by the Board that the petition be CONTINUED.

Petition #10475

Ward 9

Love Lane

The petition of Steven Criscione, 1031 Town Farm Rd., Coventry, RI, request a dimensional variance to construct an accessory dwelling unit (in-law apartment) on a proposed new single family dwelling. Subject property being a vacant legal con-forming lot. Proposed accessory dwelling unit being larger than allowed and having a separate entrance. Assessor's Plat 222, Lot 155 (vacant lot - Love Lane), zoned Residential A-40.

William DePasquale read his recommendations into the record.

Paul Wyrostek had a question as to whether this petition should be before the Board.

K. Joseph Shekarchi, Esq. stated Richard Crenca, who is no longer in the Planning Department initially supported this application. So, Mr. Criscione spent the money to move forward. Mr. Shekarchi stated he believes with the Planning Department's alternative stipulations indicate the Zoning Board has jurisdiction.

Mr. Shekarchi stated the difference between this application and the application that went before the City Council, is that this is for one house/unit. The application before the City Council was for multi-family/multi-units. This application is for a man who paid a lot of money for the land and would like to build a home, and would like to move his parents in. To force someone to go through the Planning Department and the City Council is an unbelievable hardship and a burden. Mr. Shekarchi stated he believes the application before the Board is proper, and he thinks the Board can vote no if they want to, or they can vote yes if they want to. He believes the difference between this application and the application before the Council was that he was asking for eight units, and it was a commercial adventure. But this gentleman is asking for one in-law unit that is allowed, it's just a little bit bigger of what's allowed and the location of the exterior doors by what the Ordinance allows.

Mr. Shekarchi stated if you look at the recommendations by Mr. DePasquale, these are five stipulations that are very strict. His client can meet all of the requirements.

The Chairman stated the concern with the Planning Department is this being converted to a two family. Mr. Shekarchi stated you can put a stipulation on this approval that once his parents no longer live in the home, that it will revert back to a single family use only. It will never be rented out. He wants his elderly parents to live with him.

Mr. Sarno stated he agrees that times have changed with bringing in parents. As he understands it, when the owner sells the property, a new Certificate of Occupancy should be issued. He stated the RIGL allows the Board to place stipulations on use, occupancy and limitations on time, called sunset provisions.

Mark McKenney asked if what is being suggested is upon transfer it would revert to a single family. Mr. Shekarchi stated they would have no objection to that.

The Chairman stated the in-law is larger than what is allowed, but it is in scale with the main dwelling. Mr. Shekarchi stated this is in an area of the City where there are very large homes on very large lots.

William DePasquale stated he wanted to clarify the City does support how we take care of our parents, and is in the Zoning Ordinance for a reason. The process is very important. Mr. DePasquale stated they will withdraw their objection if there is a stipulation that the property will not be rented out in the future as a two family or as a bed & breakfast.

The Chairman stated they can also have Mr. Criscione testify to what his intent is.

Steven Criscione, 1031 Town Farm Rd., Coventry, RI, was sworn in by the Chairman.

The Chairman asked the petitioner if he will be moving into this new home and if he intends to move his parents into the in-law unit. Mr. Criscione replied yes he will be moving in and his intent is to have his parents live there.

The petitioner stated his parents live in his condo in South Carolina in the winter, and he likes to mimic the look of the condo.

The Chairman asked Mr. Criscione if he understands that when the property is sold, the new owner will have to come back before the Board, and that the property can't be used as a bed & breakfast in the future. Mr. Criscione replied yes, he understands all of the restrictions.

The Chairman asked if there was anyone there in opposition or in favor of the petition. There being none, Mark McKenney asked William DePasquale from the Planning Department if he was satisfied that if they approve this, it wouldn't be any concern about precedent. Mr. DePasquale stated he is confident in the stipulations. Mark McKenney suggested adding stipulation #6 that states upon transfer of the property, it shall revert back to a single family dwelling or a new request can be made to go before the Zoning Board of Review.

After further discussion about the stipulations, the Board added two additional stipulations to the approval.

Stipulation #6 – upon transfer of the property, the new owners shall require a new Certificate of Occupancy to be issued by the Building Official, who may require adequate supporting documentation to prove that all of the conditions herein have been satisfied. The Certificate of Occupancy shall state on its face that its validity is limited to the named owner or occupant only, and that any subsequent owner or occupant will be required to apply for a new certificate.

Stipulation #7 – The property can never be occupied as a bed & breakfast.

Mark McKenney made a motion to approve the petition subject to the stipulations set forth with the addition of stipulations #6 and #7, seconded by Fred Sarno and passed unanimously by the Board that the petition be GRANTED WITH AMENDED STIPULATIONS.

Petition #10477

Ward 8

Tingley St.

The petition of Jose Suarez, 154 Chapins St., Providence, RI, and WY Group, LLC, P.O. Box 25, Bedford, MA, request a dimensional variance to sub-divide one lot with an existing single family dwelling to create two (2) lots. One (1) new conforming 9,192 sq. ft. lot with an existing single family dwelling and one (1) new 9,250 sq. ft. lot for the development of a new single family dwelling on a dimensionally conforming lot having less than required improved roadway frontage. Assessor's Plat 273, Lot 246 (vacant lot behind 39 Greenwich Ave), zoned Residential A-7 with Historic overlay.

K. Joseph Shekarchi, Esq. was present and representing the petitioner.

William DePasquale from the Planning Department read his recommendations into the record.

Mr. Shekarchi stated the applicant has been before the Planning Board and is in the process of sub-dividing the property. He stated because of the unique characteristics of the property, the road and the geographical terrain, they are asking to improve only 50' of roadway instead of the required 70'. The reason for this is because the road drops off significantly and has no practical effect. The Planning Board granted their approval subject to coming before the Zoning Board. They will meet all the required setbacks for the new lot and the existing lot. They are only here seeking approval for the improved roadway.

The Chairman asked if there was anyone there in opposition or in favor of the petition.

There being none, Fred Sarno made a motion to approve as stipulated by the Planning Department, seconded by Paul Wrostek and passed unanimously by the Board that the petition be GRANTED WITH STIPULATIONS.

Petition #10476

Ward 5

68 Randall Ave.

The petition of Arthur R. Lyckland, 68 Randall Ave., Warwick, RI, request a dimensional variance to construct a 38' x 38' detached three car garage. Subject property being a legal conforming lot. Proposed garage having less than required side yard setback and being higher than allowed by ordinance. Assessor's Plat 378, Lot 83, zoned Residential A-40.

Arthur Lyckland, 68 Randall Ave., Warwick, RI, was sworn in by the Chairman.

Mr. Lyckland stated he is looking to build a three car garage and is seeking relief from the side yard setback from 15' to 5', and from the required height of 20' to 24'. He states he needs the height for storage of his antique car parts and accessories.

The Chairman stated the petitioner has a pretty good size piece of land and asked if there was a better location on the property the garage could be constructed without seeking relief from the Board. The petitioner stated there are other locations but the septic system is in the way. This is the best location for him.

The Chairman asked where the septic is located. The petitioner stated it is the front of the house to the left, which was one of the places he thought about putting the garage. He would have to move the septic system and put a driveway across the lawn to put the garage there.

The chairman stated as opposed to going higher can the petitioner go longer. The petitioner stated he can't, as he wouldn't be able to use where he parks his car now. He stated he has two driveways.

The Chairman stated what concerns him is how substantially larger this garage is over the house. The petitioner stated he could do the height at 21' with the pitch.

The petitioner stated there are a lot of large garages and carriage houses in the neighborhood, it wouldn't be the only large structure.

The Chairman asked if he construct the garage in the area of the existing carport. The petitioner stated he wants to still use the carport. He stated the yard is terrace with stone walls as you go down.

Fred Sarno asked the petitioner to be more specific on what antiques he will be storing.

Mr. Lyckland stated he has two (2) 1940's vehicles, and a one (1) 1969 vehicle. Mr. Sarno asked if he has a restoration business. Mr. Lyckland replied no, it is a hobby.

The Chairman noted his concern that the petitioner has all this other land and is requesting relief. The petitioner stated that is the best location as far as site work and the septic.

The Chairman asked if anyone had any questions.

William DePasquale read his recommendations into the record.

Fred Sarno stated based on the Planning Department stipulations the fact that it's a retractable hatch and not stairs for access to the second floor shows it won't be occupied because it's pull down stairs.

The Chairman stated he just thinks it's overly large and not the least relief with all the land here. There is some opportunity adjacent to your home, so I'm not sure how the rest of the Board will feel about this, and we need to speak to the neighbors as well, I suspect they are here in opposition.

The Chairman asked if there was anyone there to speak in opposition of this petition.

David Revens, Esq. was present and representing opposing neighbor, Valerie Records.

Valerie Records, 46 Randall Ave., Warwick, RI, was sworn in by the Chairman.

Attorney Revens stated his client abuts the property, and he would like to first address the Planning Department comments. He stated in the Planning Departments recommendations it indicates the garage is 38' x 38', that's 1,444 square feet. He stated it is a mystery to himself and his client that it is labeled as a three car garage, and states the parking space size required is 9' x 18', which equals 162 sq. ft. per parking space, and if you multiply 162 x 8, that equals 1,296 square feet, so if you take a chicken and call it a turkey, it's still a chicken. So you can't call this building a three car garage when it isn't because there isn't a three car garage in Rhode Island that is 1,444 square feet, unless it's more than a three car garage. So the 38' depth of this structure would easily allow two cars of any size that's made and sold in America to be parked in front of each other. At a minimum we could put six cars in here easily, and if you had the doors positioned correctly you could easily fit eight cars in this structure. In square footage, it's almost double the size of the house. Mr. Revens stated it's so far out of proportion, that is was very surprising to his clients to see this come before the Board. They have a good relationship with their neighbor, Mr. Lyckland and would like to continue their relationship, but are quite upset about the mammoth to use the planning departments word in their report, the size of this building and the second story which effectively make it the size of a principal residents, and as you know, detached garages are meant to be subordinate to the principle use. This isn't. By way of explaining that off, his client

prepared an exhibit. Ms. Records stated she came down to the City Hall and got a copy of the survey submitted by the petitioner. She took the exact dimensions of the proposed garage and placed it on the property below his house and she was able to get at least nine of those buildings on that lot.

Mr. Revens : Are these blue shapes which are the same shape & dimensions as the proposed garage, is that correct.

Valerie Records: Yes it is. Exactly.

Mr. Revens: and does everyone one of those nine you placed on there meet the fifteen (15') setback requirement in an A-40 zone for a garage?

VR: Yes it is.

Mr. Revens: So there are at least nine other places on this property where Mr. Lyckland can build this garage without needing to come before the Zoning Board for setback relief?

VR: That is correct.

Mr. Revens noted to the Chairman that on the plan, that accompanied Mr. Lycklands application, you will note there is a driveway on the west side of the house, there is also a driveway on the east side of the house which would lead to proposed garage which is further evidence that there are other places on this property to put the garage, and there is no evidence, absolutely none in front of the Board, as to where the septic system is on this property.

The Chairman stated when he visited the property prior to the meeting, it was quite evident that there was other land there available.

Mr. Revens submitted three Objector's Exhibit's. Objector's Exhibit #1, a plan showing nine other locations the proposed garage could be located on the subject property. Objector's Exhibit #2, a list of abutter's garage sizes listed by plat, lot and address. Objector's Exhibit #3, copies of the Assessor's reference for each property.

Mr. Revens stated all the other garages in the area are in proportion to the house. The building can't be incidental to the principal use when it's this large. Per section 906.3 of the Zoning Ordinance, stipulates the applicant must demonstrate a hardship for which they are seeking relief is due to the unique characteristics of the subject land or structure. There is no hardship, they are only here asking for relief because of the action of the applicant in choosing to place the garage in a place it's not allowed. Typically when you get a request for setback relief for a garage, it's because there is no other place to put it on the property. This is self-imposed by the owner and doesn't really belong here. He stated you also need to demonstrate a hardship, and that there is no other reasonable alternative of the use of the subject property. There is no hardship. You couldn't possibly need this much space for three antique vehicles. The applicant is also required to demonstrate the least relief necessary. That hasn't been demonstrated. For all of those reasons his client opposes this application.

The Chairman asked if there was anyone else to speak in opposition of the petition.

Albert McCreery, 30 Randall Ave., Warwick, RI, was present, and in objection of the petition. He was sworn in by the Chairman.

The Chairman asked him where he lives in relation to the petitioner. He stated he lives next door to Valerie which is one house down from the Arthur, who he has known for fifty years, they have been friends and he would love for Arthur to build a garage to work on his cars, but just not so big and not where it is. He stated he is concerned with what it would do to the neighborhood.

John Wright, 115 Balcom Ave., Warwick, RI, was present and in objection of the petition. He was sworn in by the Chairman.

Mr. Wright stated his only objection was it is not in keeping with the neighborhood and it is quite large.

Alan Marshall, 133 Balcom Ave., Warwick, RI, was present and in objection of the petition. He was sworn in by the Chairman.

Mr. Marshall stated he was opposed of the garage because it is no in keeping with the neighborhood and it is very large.

The Chairman asked if there was anyone else to speak in opposition. There being none, the Chairman asked if there was anyone there to speak in favor of the petition.

Fred Sarno asked the petitioner when was the first time he saw the plan with the nine other garages on the property. Mr. Lyckland replied tonight. Mr. Sarno asked when was the first time these neighbors were contacted by him about the proposed garage. Mr. Lyckland stated with the letter from the Zoning Board. He stated because there was opposition to the garage he figured he would just come before the Board and see how it went. Mr. Sarno stated even with the same dimensions of the proposed garage, had the petitioner chosen a different location predicated on where ever the septic system is, and he met all the setback requirements and the height requirements, he wouldn't need to come to the Zoning Board of Review to ask for relief.

Mr. Lyckland stated he is under the assumption that he can build this garage as long as he meets the 15' side yard setback on the side , and do not go over 20' in height. The Board stated if he meets all the requirements he doesn't need to be before the Board.

The Chairman stated his first thought when he drove by the property, because that is what the Board members do, they go by the properties to get an idea of what they are looking to do, but his first thought was there is so much land there, why is he looking for relief.

Mr. Lyckland stated he knows the structure is big for three cars but he has five cars, two that he drives every day. He has turned down buying additional cars because he has nowhere to put them.

The Chairman stated he understands the petitioner likes to collect cars and can appreciate that, this just seems a little out of character for the neighborhood.

Mark McKenney asked the petitioner if he is correct in thinking the petitioner can take another look at this and consider whether he should do this without having to ask for setback relief. The petitioner replied that is correct. Mark McKenney suggested continuing this petition and allow it to either be resolved or withdrawn. If there is no reason for the Board to give a determination and that would give time for discussions with neighbors. He stated he isn't sure they need to go to a negative vote if in fact this can be done without having to get a determination by the Board.

The Chairman stated if it was a negative vote, he can still apply for a building permit if he meets the setback & height requirements.

Mr. Lyckland stated he if doesn't get the variance approved tonight, he is going to abide by the side setback & height requirements.

Mark McKenney asked him if he would rather the Board make a determination on the petition tonight. Mr. Lyckland stated yes he would like to know.

Fred Sarno stated based on the fact the least relief necessary has not been sought, he moved to deny the petition, seconded by Mark McKenney, and passed unanimously by the Board that the petition be DENIED.

A motion was made by Mark McKenney to adjourn the meeting, seconded by Paul Wyrostek and passed unanimously by the Board that the meeting be adjourned at 8:07 P.M.

BY ORDER OF THE ZONING BOARD OF REVIEW, WARWICK, RHODE ISLAND

Donald G. Morash, Jr., Chairman