

### **Notice of Hearing**

Application of Randy Ross and Jill D. Smith whose property is located at 2 West Passage Drive, and further identified as Tax Assessor's Plat 8, Lot 858 for the appeal of a decision made by the zoning officer pursuant to under Article 5, Zoning Board of Review, Section 82-503, Procedure(s) for appeals, special use permits, and variances. The applicant is aggrieved by the arbitrary and capricious decision made by the zoning officer who applied language from one section of the ordinance to a completely different section of the ordinance in an effort to come to the decision that accessory buildings/structures are not allowed in front yards where there is no explicit prohibition on the permitted use activity pursuant to the dimensional regulations of the ordinance.

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10-31-22 puw

TOWN OF JAMESTOWN  
ZONING BOARD OF REVIEW

**Application for Appeal of Zoning Officer Decision under the Zoning Ordinance**

Zoning Board of Review;

Jamestown, R.I.

Date: 10/31/2022

To Whom it may concern:

The undersigned hereby applies to the Zoning Board of Review for an exception or a variation in the application of the provisions or regulations of the zoning ordinance affecting the following described premises in the manner and on the grounds hereinafter set forth.

Applicant: Randy Ross and Jill D. Smith

Address: c/o Christian Infantolino, Esq.,  
77 Narragansett Avenue  
Jamestown, RI 02835

Owner: Same

Lessee: None

1. Location of premises: No. 2 West Passage Drive
2. Assessor's Plat 8 Lot 858
3. Dimensions of lot: frontage: +/- 154.22 depth: +/- 365ft. Area: +/-53,700 sq. ft.
4. Zoning Districts in which premises are located: Use:R-40 Area: 40,000 sq. ft. Height: 35 ft.
5. How long have you owned the premises? Purchased on 10/13/2004
6. Is there a building on the premises at present? Yes
7. Size of existing building: +/- 3,138 sq. ft.  
Size of proposed building or alteration: 140 sq ft shed (10x14)
8. Distance of proposed building or alteration from lot lines:  
**Required Accessory Structure:** Front: 40' rear: 10' side: 15'  
**Proposed:** Front: +/- 60' rear: +/- 262.5 Side: 7.5'
9. Present use of premises: Single family residence
10. Proposed use of premises: Single family residence  
Location of septic tank & well on lot: No Change

11. Give extent of proposed alterations: Applicant proposes to place a pre-made a tool shed off to the side of the main house.

12. Number of families for which building is to be arranged: 1

13. Have you submitted plans for above to Inspector of Buildings? Yes

Has the Inspector of Buildings refused a permit? Yes

14. Provision or regulation of Zoning Ordinance or State Enabling Act under which application for appeal is made:

This application seeks to appeal an arbitrary and capricious decision made by the Jamestown Zoning officer pursuant Article 5 Section 82-501. Procedure(s) for appeals, special use permits and variances.

15. State the grounds for Appeal in this case:

The Zoning Officer made a decision of applying language from one section of the ordinance to a completely different section of the ordinance. A clear reading of the ordinance, along with the associated definitions shows clearly that there is no explicit prohibition on accessory structures and/or buildings to be located in front yards. Without an explicit prohibition on the location, it is well within the powers of this board to grant relief, if needed.

Respectfully Submitted,

Signature: /s/ christian s. infantolino, esq., attorney for applicants

Address: 77 Narragansett Avenue  
Jamestown, RI 02835

Phone: 401-423-0400

**NOTE: A LOCATION PLAN AND SKETCH AND DRAWINGS NECESSARY TO GIVE FULL INFORMATION MUST BE FILED WITH THE APPLICATION**

## TOWN OF JAMESTOWN ZONING BOARD

IN RE: Jill D. Smith and Randy Ross, 2 West Passage Drive, Jamestown RI 02835

### MEMORANDUM

#### Question Presented:

Does the Jamestown Zoning Ordinance explicitly prohibit accessory structures from being located in front yards?

#### Answer:

No, the Jamestown Zoning Ordinance does not explicitly prohibit accessory structures from being located in front yards.

#### Facts:

1. **Section 82-103 (3) Accessory building:** "Any building which is customarily incidental and subordinate to the principal building and does not share a common wall and roof with the principal building. An accessory building shall be located on the same lot as the principal building. See Outbuilding"
2. **Section 82-103 (117) Outbuilding:** "An accessory building, *usually* located toward the rear of the same lot as a principal building, and sometimes connected to the principal building by a backbuilding." (Emphasis added).
3. **Section 82-103 (5) Accessory structure:** "Any structure constructed or erected which is customarily incidental and subordinate to the principal use of the land or building. An accessory structure shall be located on the same zoning lot as the principal building."
4. **Section 82-301. Uses and Districts:** "Any *use* which is not specifically included in the *use* provisions of *this section* is prohibited..." (Emphasis added)
5. **Section 82-301. Table 3-1. Permitted Uses:** Under the R 40 Zoning District a single family dwelling is a permitted use.
6. **Section 82-302. District Dimensional Regulations:** "The district dimensional regulations set forth in Table 3-2 shall be met for all *uses* of land permitted under this ordinance." (Emphasis added).
7. **Section 82-302. Table 3-2 for the R40 Zoning District:**

*See next page spreadsheet*



**Analysis:**

There is no gray area on the question as to if the Jamestown Zoning Ordinance prohibits accessory buildings or structures in front yards. Based on a literal reading of the definitions of accessory building, outbuilding, and assessor structure there are no prohibitions on the location. Although the definition of outbuilding does state "...usually located toward the rear of the same lot..." this is more of a suggestion and clearly allows for the building to be located in another location (i.e. front yard) by right assuming the building or structure meets all the other dimensional regulations.

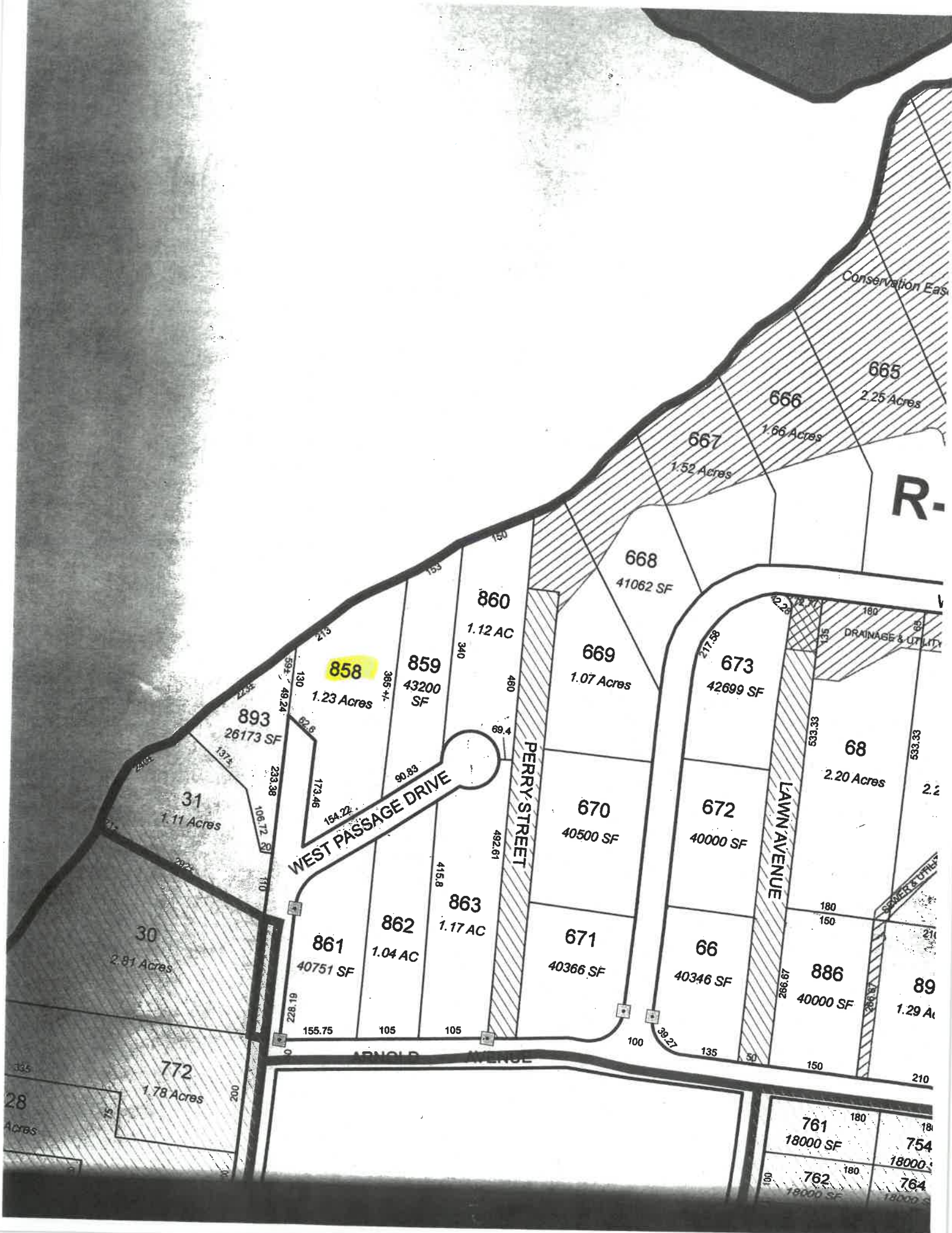
Although section 82-301. Uses and Districts does prohibit *uses* if they are not specifically mentioned, dimensional regulations fall under a completely different section of the zoning ordinance (Section 82-302) and within that section there is no explicit prohibition on accessory structures. Further, if you analyze the dimensional regulation chart for the R 40 district you will note that for the Minimum Yards there is no specific designation of principal buildings (like on building height). Rather there are specific setbacks for front, corner, side and rear lot lines and then there are different side and rear setbacks for an accessory building. A literal reading of this chart shows that for an accessory building the front setback in this district would be 40 feet, if there was a corner lot the front setback would be 30 feet and then the side and rear dimensions are different. This makes perfect sense as it provides flexibility for the homeowner to locate the accessory building in multiple locations on their property while acknowledging that the ordinance allows accessory buildings to be located closer to the rear lines and side lines as accessory buildings are typically smaller than principal buildings.

**Conclusion:**

Based on a literal reading of the Jamestown Zoning Ordinance there is no explicit prohibition on locating accessory buildings in the front yards. Based on the ordinance the front yard setback for an accessory building within the R40 district would be 40 feet. In the event that an applicant would want to located an accessory building in the front yard that is less than the minimum front yard setback it is clearly within the jurisdiction of the board to grant that relief upon evidence of meeting the criteria for any said deviation.

Respectfully submitted:  
Jill D. Smith and Randy Ross  
By their attorney,

*/s/ Christian S. Infantolino*  
Christian S. Infantolino, Esq.  
77 Narragansett Avenue  
Jamestown, RI 02835



Conservation Easement

R-

DRAINAGE & UTILITY

LAWN AVENUE

PERRY STREET

WEST PASSAGE DRIVE

ARNOLD AVENUE

665  
2.25 Acres

666  
1.66 Acres

667  
1.52 Acres

668  
41062 SF

669  
1.07 Acres

673  
42699 SF

68  
2.20 Acres

670  
40500 SF

672  
40000 SF

886  
40000 SF

89  
1.29 Acres

860  
1.12 AC

859  
43200 SF

858  
1.23 Acres

893  
26173 SF

31  
1.11 Acres

30  
2.81 Acres

862  
1.04 AC

863  
1.17 AC

861  
40751 SF

671  
40366 SF

66  
40346 SF

772  
1.78 Acres

761  
18000 SF

762  
18000 SF

754  
18000 SF

764  
18000 SF

28  
Acres