

JAMESTOWN ZONING BOARD OF REVIEW

Minutes of the January 24, 2023 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:

Richard Boren, Chair
James King, Member
Jane Bentley, Member
Judith H. Bell, 1st Alternate
John Shekarchi, 2nd Alternate

Also present: Peter Medeiros, Zoning Officer
Peter Ruggiero, Counsel
Brenda Hanna, Stenographer
Denise Gamon, Clerk

MINUTES

Minutes of December 20, 2022

A motion was made by James King and seconded by Jane Bentley to accept the minutes of the Dec. 20, 2022 meeting as presented.

The motion carried by a vote of 5 -0.

Richard Boren, James King, Jane Bentley, Judith H. Bell and John Shekarchi voted in favor of the motion.

Dean Wagner and Terence Livingston were absent.

CORRESPONDENCE

All correspondence was in reference to items on the agenda.

OLD BUSINESS

Ross Appeal

A motion was made by Richard Boren and seconded by James King to sustain the appeal 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.

The sustaining of this appeal is based upon the following findings of fact and conclusions of law.

1. First and foremost, the decision of the Zoning Officer is not arbitrary nor capricious, but the Zoning Board reaches a different interpretation and conclusion based on the facts and law.
2. On 9/23/22 applicants filed an application for a dimensional variance to erect a 140 sq. foot shed 7.5 feet from the side yard, where 15 feet is required. Applicant states "out of abundance of caution, applicant also seeks relief from 82-302 to permit a shed in front yard where no front yard setback for accessory structures is provided - however, minimum setback for principal building is 40', and shed will be 60 feet."
3. On 10/25/22, before any testimony, the Zoning Board members raised the issue whether a shed could be erected in the front yard, where there is no front setback listed for accessory structures, but 40' minimum for principal structures.
4. Zoning Board continued the matter to 11/15/22 and invited both the Building Official and attorney for the applicant to submit any opinions or memoranda.
5. On 10/26/22 Attorney Christian Infantolino submitted a memorandum on behalf of the applicant.
6. On 10/28/22 Peter Medeiros the Building Official, submitted an opinion "there are no front setbacks listed for accessory, therefore accessory structures are not permitted in front yard setbacks."
7. On 10/31/22 applicants considered the 10/28/22 letter of Peter Medeiros, Zoning Official to be a decision or order of the Zoning Official and filed an appeal for hearing (12/20/22).
8. On 11/15/22 Zoning Board requested that before 12/20/22, Town Solicitor provide an opinion.
9. On 12/6/22 Peter Ruggiero, Town Solicitor provided an opinion "The Appellants (Ross) argument impermissibly reverses the

burden of interpretation that the Zoning Enforcement Officer must apply. The Zoning Ordinance need not list every prohibited use or activity. Unless specifically permitted by right or by conditional or special use, any use not specifically included in the use provisions... is prohibited. As such, the determination of the Zoning Enforcement Officer was not arbitrary or capricious”.

10. On 12/20/22, the attorney for the applicant introduced as Exhibits:
 1. Definitions and Ordinance Provisions
 2. Bibliography of RI Case Law
 3. FEMA “Accessory Structure” definition and examples which include detached garages, storage sheds, gazebos.
11. In addition, the following were introduced as Exhibits:
 4. Collingsworth Zoning Decision dated 9/22/20 granting front setback relief for an accessory structure while acknowledging that accessory structures are regulated by the minimum front yard setbacks of the zoning district for which the land is zoned. (Book 976 at Page 293)
 5. RR80 table used for the above-mentioned zoning matter.
 6. 196 Highland tax card for the above-mentioned zoning decision.
 7. Planning recommendation letter to allow a pool in the front yard on West Bay View Drive dated May 20, 2015 - Cammans.
 8. Cammans zoning decision dated May 27, 2015 granting relief to have an accessory structure (pool and terrace) in the front yard. (Book 847 at Page 107)
 9. Highlighted tax assessor maps (2). The highlighted properties are a sampling of the properties viewable from the street where there are accessory structures located within the front yards.
 10. A photo sampling (approximately 36) properties throughout Jamestown that have accessory structures within the front yard.
12. It is the legal conclusion of the Board that 82-302, Table 3-2 for R40 zone use that even though accessory building use does not discuss the minimum setback for the “front” yard, an accessory structure can be located and/or erected with a front yard setback, governed by the principal building setback.
13. In a R40 zone, any accessory structure is subject to the 40 foot setback of the principal building.
14. The American Planning Association, in similar fashion to the FEMA Accessory Structure Definition (Ex.3), accessory structures can be detached garages, detached carports, storage sheds, art studios, workshops,

greenhouses, swimming pools and cabanas, tennis courts, and gazebos.

15. This Board, in the past, as precedent has approved applications for accessory structures, such as detached garages, storage sheds, mail storage huts, and swimming pools to have a front yard setback.
16. A few examples are Exhibits 4, 6, 7, and 8.
17. In fact, 82-316 swimming pools and tennis courts shall meet setbacks for accessory buildings and shall be included as part of lot coverage calculations. The Board has approved swimming pools with a front yard setback.
18. It is the legal conclusion of the Board that the storage shed being proposed to be erected by the applicant with a front yard setback, can in fact be erected, subject to all applicable setback requirements, wherein as set forth in the Table under accessory setbacks or principal building setbacks.

The motion carried by a vote of 5 -0.

Richard Boren, James King, Jane Bentley, Judith H. Bell and John Shekarchi voted in favor of the motion.

Dean Wagner and Terence Livingston were absent.

Ross

A motion was made by James King and seconded by Jane Bentley to grant the request 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 relief granted under Article 6, Special Use Permits and Variances, Section 600 and 606. This application is made pursuant to the provisions of section 82-302, Table 3-2, District Dimensional Regulations for the R40 Zoning District of the zoning ordinance. The Applicant seeks side yard setback relief of 7.5 feet where 15 feet is required. In an abundance of caution, the application also seeks relief from Article 3 Section 82-302, Table 3-2 to permit an accessory structure in the front yard where no front yard setback for accessory structure is provided in Table 3-2 however the "Minimum Yards, Front" for the R40 District is 40' and the proposed tool shed will be over 60 feet off the front yard line. The relief granted is for the applicant to place a premade 10 foot by 14 foot tool shed on the property.

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 an R40 zone and contains 53,700 square feet.
2. Mr. Ross is in need of space for yard maintenance equipment.
3. Mr. Ross stated it is the smallest shed feasible to house his equipment.
4. The shed will be roughly 8 feet from the garage as represented by the picture submitted as an exhibit.
5. Based upon a driveway and access paths to the backyard it represents the most logical location with the least relief necessary.

This motion carried by a vote of 5 - 0.

Richard Boren, James King, Jane Bentley, Judith H. Bell and John Shekarchi voted in favor of the motion.

Dean Wagner and Terence Livingston were absent.

NEW BUSINESS

35 Sloop St.

A motion was made by John Shekarchi and seconded James King by to grant the request of 35 Sloop, LLC whose property is located at 35 Sloop Street, and further identified as Jamestown Tax Assessor's Plat 3, Lot 471 for a Special Use Permit granted under Article 6 Section 82-600 and 602, pursuant to Article 3 Section 82-314, High Groundwater Table and Impervious Overlay District Sub-District A. This application also seeks relief granted under Article 6 Section 82-600 and 602 pursuant to Article 3 Section 82-314, High Groundwater Table and Impervious Overlay District Sub-District A to have the impervious lot coverage be 10.3% where the maximum allowable coverage is 10% and the existing impervious

coverage is 20.1%. The Applicant seeks to construct a new 2 bedroom dwelling while decreasing the amount of impervious coverage area.

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 restriction/condition(s):]

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 an R-40 zone and contains 8,177 square feet.
2. Applicant and its' expert presented testimony information into the record that demonstrated that all the relevant condition as required by the ordinance and the relevant states have been satisfied for this conditionally permitted use.
3. The (2) bedroom present dwelling will be razed, the proposed dwelling will be (2) bedrooms.
4. The proposal is to reduce the foot print of the existing building.
5. The concrete driveway will be removed
6. There are no wetlands on the property
7. There will be a new advanced treatment OWTS system and rain garden
8. The proposed dwelling will be less nonconforming
9. The height of the new building will be under 35 feet
10. This will be the least disturbance necessary
11. The Planning Commission has approved the application, the Planning recommendations and conditions are incorporated by reference

This motion carried by a vote of 5 - 0.

Richard Boren, James King, Jane Bentley, Judith H. Bell and John Shekarchi voted in favor of the motion.

Dean Wagner and Terence Livingston were absent.

Knowles

A motion was made by Richard Boren and seconded by John Shekarchi to have Alexander and Linda Knowles, who property is located at 108 Southwest Avenue, and further identified as Assessor's Plat 9, lot 26 submit a new application and the 1 year filing requirement will be waived. The applicants are seeking to add 4 feet to the height of a proposed outbuilding that was approved by the Jamestown Zoning Board of Review in June 2022. The plans for the proposed outbuilding as originally submitted for approval included a building height of 16 feet 3 inches. The applicants have revised the building plans to raise the building height to 20 feet 3 inches. Article 3, Section 82-302 (Table 3-2), of the Revised Code of Ordinances for The Town of Jamestown, RI, specifies that properties designated R20 adhere to a maximum building height of 25 feet. The applicant's new plans are within the building provisions as established by section 82-302.

The motion carried by a vote of 5 -0.

Richard Boren, James King, Jane Bentley, Judith H. Bell and John Shekarchi voted in favor of the motion.

Dean Wagner and Terence Livingston were absent.

Harvey

A motion was made by Judith H. Bell and seconded by Jane Bentley to continue the Harvey application to the February 28, 2023 Zoning Board meeting.

The motion carried by a vote of 5 -0.

Richard Boren, James King, Jane Bentley, Judith H. Bell and John Shekarchi voted in favor of the motion.

Dean Wagner and Terence Livingston were absent.

Philbrick

A motion was made by Judith H. Bell and seconded by Jane Bentley to grant the request of Harry Philbrick and Carolyn Coleburn whose property is located at 26 Green Lane, and further identified as Tax Assessor's Plat 9, Lot 241 for a Variance from Article 3, Section 82-302, District Dimensional Regulations, Table 3-2 to remodel an existing Studio outbuilding to include a bedroom and bathroom, and to construct an addition to an existing dwelling to connect said outbuilding to the dwelling. The Applicant seeks to maintain the existing rear yard setback of 11.2 feet where 30 feet is required, and the existing side-yard setback of 4.9 feet where 7 feet is required for the remodeling of the existing outbuilding and connection to the existing dwelling.

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 following restriction/condition(s):]

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 R-8 zone and contains 21,344 square feet.
2. One neighbor wrote a letter of support for the project.

The motion carried by a vote of 5 -0.

Richard Boren, James King, Jane Bentley, Judith H. Bell and John Shekarchi voted in favor of the motion.

Dean Wagner and Terence Livingston were absent.

Town of Jamestown

Chairman Boren noted that the original application sought both a variance and a special use permit. He found as both a preface and as a fact, that Mr. Gray testified that in conjunction with Peter Mederios, the Building Official, the variance from Section 82-1203 Minimum off street parking is not required as the 2008 calculations were not correct.

A motion was made by Richard Boren and seconded by Judith Bell to grant the request of Application of the Town of Jamestown, whose property is located at 5 Freebody Drive (Jamestown Highway Garage), and further identified as Tax Assessor's Plat 7, Lot 1 seeks the following relief for the proposed new Workshop Building.

- a. An amendment to an existing special use permit in accordance with Section 82-302 (District Dimensional Regulations), Table 3-1, IV Gov't, Education, Institutional (1) Gov't Owned utility facility.

Regarding this request , this Board has determined that this application does satisfy the requirements of Article 6, Section 600

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 Special Use Permit is granted with the following restriction(s):

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 PUBLIC zone and contains 25.62
2. Mr. Gray testified that in conjunction with Peter Mederios, the Building Official, the variance from Section 82-1203 is not required because the 2008 calculations were not correct.
3. The proposed workshop/storage building will provide much needed space for the workshop
4. Since 2009, project have been completed in the existing highway garage using unheated bays.
5. The Town carpenters need their own dedicated work space.

6. The Town Council approved the site plan for the construction of a new building for the Public Works Department.
7. The proposed building will be 32' x 65', which is the approximate foot print within the existing highway garage dedicated to the workshop.
8. There will be no changes for ingress and egress.
9. The new building will be constructed along the edge of the existing paved area along the highway garage.
10. The proposed building will be serviced by a proposed driveway and loading area for deliveries.
11. Surface water run-off for the proposed building will be collected in existing drainage swales.
12. Additional evergreen plantings will serve as screening and buffering.
13. The addition of a new workshop is consistent with the present use of the property as a public works facility.
14. The granting of the Special Use Permit will not result in conditions inimical to the public health, safety, morals and welfare of the community.

The motion carried by a vote of 5 -0.

Richard Boren, James King, Jane Bentley, Judith H. Bell and John Shekarchi voted in favor of the motion.

Dean Wagner and Terence Livingston were absent.

Carney

Christian Infantolino, attorney for the applicant, Sanderson H. Carney, Trustee of the Sanderson H. Carney Indenture of Trust requested the application be continued to the next regular meeting of the Zoning Board on February 28, 2023

A motion was made by John Shekarchi and seconded by James King to continue the application of Sanderson H. Carney, Trustee of the Sanderson H. Carney Indenture of Trust to the February 28, 2023 Zoning Board meeting.

The motion carried by a vote of 5 - 0

Richard Boren, James King, Jane Bentley, Judith Bell and John Shekarchi voted in favor of the motion.

Dean Wagner and Terence Livingston were absent.

ADJOURNMENT

A motion was made and seconded to adjourn at 9:15 p.m.
The motion carried unanimously.