

JAMESTOWN ZONING BOARD OF REVIEW

Minutes of the May 23, 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
Dean Wagner, Vice-Chair
Terence Livingston, Member
James King, Member
John Shekarchi, 2nd Alternate
James Sisson, 3rd Alternate

Also present:

Wyatt Brochu, Counsel
Peter Medeiros, Zoning Officer
Brenda Hanna, Stenographer
Pat Westall, Clerk

MINUTES

Minutes of April 25, 2023

A motion was made by Dean Wagner and seconded by Terence Livingston to accept the minutes of the April 25, 2023 meeting as presented.

The motion carried by a vote of 5 – 0.

Richard Boren, Dean Wagner, Terence Livingston, James King and James Sisson voted in favor of the motion.

John Shekarchi was not seated and Jane Bentley was absent.

CORRESPONDENCE

All correspondence was in reference to items on the agenda.

NEW BUSINESS

Sanborn

A motion was made by Richard Boren and seconded by Dean Wagner to deny the request of Mary Lou Sanborn, whose property is located at 21 Bay View Dr., and further identified as Assessor's Plat 8, Lot 519 for a variance from Article 3, Section 82-306 D to construct an acoustic fence approximately 20' in height on south and west sides of property.

This Board has determined that this application does not satisfy the requirements of Article 6, Section 600, Section 606, and Section 607, Paragraph 2.

1. On or about 2/15/2023, the applicant applied to the Zoning Board of Review for a dimensional variance to build an acoustical fence approximately 20 feet in height on the property line.
2. Zoning Ordinance 82-306D provides that fences and walls not exceeding six feet in height in any district may be constructed in any yard.
3. Sec. 82-606 Conditions for granting a variance.

Sec. 82-606. Conditions for granting a variance.

In granting a variance, the zoning board of review shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:

1. That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant;
2. That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;
3. That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the ordinance [this chapter] or the comprehensive plan upon which the ordinance [this chapter] is based; and
4. That the relief to be granted is the least relief necessary.

Sec. 82-607. Variances--Additional restrictions.

The zoning board of review shall, in addition to the above standards, require that evidence be entered into the record of the proceedings showing that:

In granting a dimensional variance, the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.

4. Attached to Ms. Sanborn's application, and accepted as full exhibits are the following:
 - a. Letter from Ms. Sanborn identifying the noise, odors, light and traffic since the opening of the restaurant, JB's On the Water at the Bay Voyage Inn.
 - b. An overhead photograph of Ms. Sanborn's residence with a proposed acoustic fence superimposed on the south and west side of her property.

- c. A photograph of a 20 ft. tall acoustical fence at “Masso’s Catering Orchard Garden.” On the right side of the photograph is a 6 foot tall fence adjacent to the 20 foot tall acoustical fence.
- d. Various photographs of the Bay Voyage Inn during the day and at night.
- e. Photographs of arborvitae trees on the border of Ms. Sanborn’s property line.
- 5. At the zoning board hearing on April 25, 2023, Ms. Sanborn offered no other exhibits and no other exhibits were introduced.
- 6. Ms. Sanborn was the sole witness on behalf of her application for a dimensional variance seeking a 20 foot acoustical fence, where 6 feet is allowed.
- 7. Ms. Sanborn testified that she purchased her residence in 2013 to down size. There was a restaurant at the Bay Voyage Inn when Ms. Sanborn moved into her adjacent residence. Since JB’s On the Water opened for business, the quality of life has deteriorated, according to Ms. Sanborn. She testified that JB’s is open 7 days a week, 10 to 12 hours a day. JB’s has added outdoor speakers. Ms. Sanborn can smell the odors from the exhaust fans. Ms. Sanborn testified that there has been restaurant trash disposal as late as 11:30 p.m. There is excessive lighting from the pool area. Ms. Sanborn testified that she suffers a hardship of noise and smell. Ms. Sanborn testified that her border of arborvitae are not sufficient to block the noise.
- 8. In response to questions from Zoning Board members, Ms. Sanborn testified as follows:
 - a. Ms. Sanborn purchased her residence on 11/30/12.
 - b. Ms. Sanborn has been a Jamestown resident for over 40 years and was aware that there were a number of restaurants at the Bay Voyage Inn over those years.
 - c. Ms. Sanborn seeks to install a 20 foot fence on her property, but does not know the length of the fence that she proposes.
 - d. Ms. Sanborn does not know the thickness of the proposed fence.
 - e. The restaurant, JB’s On the Water, is on the southern and eastern side of the Bay Voyage building.
 - f. Within the same building as JB’s to the north are rooms for guests.
 - g. North of the building and up to Ms. Sanborn’s property is a parking lot.
 - h. When Ms. Sanborn purchased her residence, a restaurant, rooms for guests, the parking lot and a swimming pool were all on the Bay Voyage property.
 - i. Ms. Sanborn does not know the distance in feet between the northern most point of the restaurant and the southern most point of Ms. Sanborn’s property line and/or residence.
 - j. Ms. Sanborn has neither determined nor engaged any expert to determine the sound level present either at the restaurant or her residence on different days and different hours of the day or night.
 - k. Ms. Sanborn did not present any testimony from the acoustical fence company regarding:
 - a) Noise survey
 - b) Length of fence
 - c) Fence composite
 - l. Most importantly, Ms. Sanborn presented no testimony regarding noise and/or light abatement of a 6 foot fence, a 12 foot fence, a 16 foot fence or a 20 foot fence were to be installed.
 - m. Ms. Sanborn presented no testimony that a 20 foot acoustic fence would abate more noise than a 6 foot fence.
 - n. Ms. Sanborn presented no testimony that any survey was performed regarding either efficiency of a 20 foot acoustical fence or that there were any such fences in Jamestown.

- o. Anecdotally, Ms. Sanborn believed that she was aware of a fence in Jamestown greater than 6 feet in height, but had not measured the fence and was unaware if the fence predated the zoning ordinance.
 - p. Ms. Sanborn presented no testimony based on any degree of certainty or probability that a 20 foot acoustical fence would eliminate all noise and/or light from the restaurant or any particular percentage of noise and/or light.
 - q. Ms. Sanborn has not filed any lawsuit based upon nuisance against JB's On the Water.
 - r. Ms. Sanborn has not looked into planting trees on a staggering basis to deflect noise and light.
 - s. Ms. Sanborn presented no testimony whether alternative options to a 20 foot fence, such as acoustic windows or acoustic insulation would be the least relief necessary.
9. Robert Peckham, 116 East Shore Road, testified without any evidence or survey that Ms. Sanborn's present arborvitae on the property line are actually over the property line and the proposed fence would therefore, not be on Ms. Sanborn's property.
 10. Peter Medeiros, Jamestown Zoning Official, testified that as far as he knows, JB's On the Water is in compliance with all Town and Zoning Ordinances.
 11. The granting of the requested variance will alter the general character of the surrounding area.
 12. The relief sought is not the least relief necessary.
 13. The applicant has failed to prove under her burden that any fence variance from and greater than six feet will causally impact sound and light from JB's On the Water.

The motion carried by a vote of 5 – 0.

Richard Boren, Dean Wagner, Terence Livingston, James King and James Sisson voted in favor of the motion.

John Shekarchi was not seated and Jane Bentley was absent.

Amsden

A motion was made by James King and seconded by Terence Livingston to grant the request of Ashley and Matthew Amsden, whose property is located at 29 Bayberry Rd, Jamestown, RI 02835, and further identified as Tax Assessor's Plat 12, Lot 61 for a Variance. This application seeks dimensional relief granted under Article 6 Section 82-600, 605, and 606, pursuant to Article 3, Section 82-302, District Dimensional Regulations, Table 3-2 for the R-40 Zoning District for a rear setback of the proposed deck of 14.4 ft where 30 feet is required and a front setback of 14 feet where 40 feet is required and the existing house is located 4.8 feet from the rear setback, 13.2 feet from the front setback and 9.6 feet off the side setback.

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 an R-40 Zone and contains 27,452 square feet.
2. The Board has previously approved the project but due to a notification issue the deck was withdrawn without prejudice.
3. Matthew Amsden testified to this fact.
4. In the February meeting a number of abutters testified in favor of the project.

The motion carried by a vote of 5 – 0.

Richard Boren, Dean Wagner, Terence Livingston, James King and John Shekarchi voted in favor of the motion.

James Sisson was not seated and Jane Bentley was absent.

Mizzen

A motion was made by John Shekarchi and seconded by Terence Livingston to grant the request of Mizzen Mast Properties LLC which owns property located at 32 Mizzen Ave., and further identified as Assessor's Plat 15, Lot 243 for a Special Use Permit from Art. 3, Sec. 82-314 (High Groundwater Table and Impervious Layer Overlay District) & Art. 6, Sec. 82-601 (Special Use Permits) to construct a two story addition on the south side of the existing home which addition is thirty feet wide and fifteen feet deep.

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):

1. This project must be constructed in strict accordance with the site and building plans duly approved by this Board.
2. The findings of fact, and recommendations of approval in the Town Planner's memorandum dated 4-20-23 are hereby incorporated by reference.
3. The operation and maintenance agreement (and the requirements listed) dated 2-2-2023 was submitted with the application is also incorporated by reference.

This motion is based on the following findings of fact:

1. Said property is located in a R40 zone and contains 14,400 sq. ft.
2. The request is for a special use permit, which is a conditionally permitted use.

3. The applicant has demonstrated by introduction of expert testimony that all the required burdens have been satisfied.

The motion carried by a vote of 5 – 0.

Richard Boren, Dean Wagner, Terence Livingston, James King and John Shekarchi voted in favor of the motion.

James Sisson was not seated and Jane Bentley was absent.

ADJOURNMENT

A motion was made and seconded to adjourn at 8:05 p.m.
The motion carried unanimously.