

By E-mail and by hand delivery

August 24, 2021

*Received
Aug 24, 2021*

Town of East Greenwich
Zoning Board of Review
c/o Lea Anthony Hitchens
Assistant Planning Director
125 Main Street
East Greenwich, RI 02818

**Re: Application of Pamela Unwin-Barkley for Property Owned
by Patricia Cardi, Trustee
30 Rector Street (Map 85, A.P. 1, Lot 414)
LETTER OF OBJECTION**

Dear Board Members:

We represent Seth and Sophia O'Donnell (the O'Donnells) who reside at 17 Marion Street. They own the parcel directly to the north of the Cardi parcel that is the subject of the above-referenced application. Mrs. Cardi's existing home sits just about off the property line separating the two properties.

The O'Donnells respectfully object to this application on the following grounds:

- Because the entire north elevation of the existing house on the Cardi property is almost right on the northerly boundary of the Cardi property (and the south boundary of the O'Donnell property) the house is non-conforming by dimension. Section 260-14B of the East Greenwich Zoning Ordinance requires that, "any extension, addition or enlargement of a nonconforming structure shall comply with the dimensional regulations ... [of the Ordinance]." Inasmuch as roughly a third of Mrs. Cardi's proposed addition would be situated within the 15' required side yard setback area, coming to within 6' of the north property line on the west side of the addition and within 5' on the east side, it clearly fails to meet the requirements of §260-14B.

- The proposal fails to meet the requirements for a dimensional variance. The Ordinance, Section 260-6 ("Terms Defined") describes a dimensional variance as being applicable only where "the applicant has shown by evidence upon the record that there is no other reasonable alternative way to enjoy a legally permitted beneficial use of the subject property unless granted relief from the dimensional regulations." Section 260-91 more explicitly permits dimensional variances only where, unlike here, there is no "hardship that will be suffered by the owner of the subject property if the variance is not granted ... amount[s] to more than a mere inconvenience," and where:

August 24, 2021

Page 2

- (1) That "hardship ... is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area and not due to the physical or economic disability of the applicant."
- * * *
- (2) "That the granting of the requested variance will not alter the general character of the surrounding area ... "; and
- (3) That the relief to be granted is "the least relief necessary" to remove the hardship.

- The application does not describe any of the above grounds. Rather, it acknowledges that the variance is sought "to help with future planning and aging", running afoul of the prohibition of dimensional variances that are based on physical or economic issues as opposed to some genuine, unique hardship that is "more than a mere inconvenience" associated with the subject property.

- Mrs. Cardi's lot contains 17,759 s.f. of area, plus a wood deck and shed located mostly within the side and rear setbacks, leaving more than 80% of the lot – and much more than 80% of the buildable area not constrained by setbacks – available. There is no genuine "hardship" that requires any of the proposed addition to encroach into only part of the setback area. Multiple design configurations are available that could place the proposed addition (at its currently proposed 624 s.f. size or greater) to the west and/or south of the existing residence without any such encroachment into any setback. Two examples are shown in red on the illustrations superimposed on Mrs. Cardi's set plan attached to this correspondence.

- Mrs. Cardi's significantly encroaching proposed location is clearly a design preference as opposed to something resulting from a genuine "hardship".

- For all the above reasons, the application also fails to satisfy the requirement that the relief requested be the "least relief necessary" to remove the alleged "hardship". Rhode Island law is well settled that design, locational, and dimensional preferences do not hit the mark of the "least relief necessary." In Alpert v. Middletown Zoning Board of Review, 2004 R.I. Super LEXIS 119* 14, 20, for example, the Superior Court overturned a dimensional variance that had more to do with the preferred shape and layout of the building than with any genuine unavoidable "hardship." The Court observed:

"The [applicants'] aversion to living in a home in which the rooms are strung along a single corridor does not amount to the hardship required for a dimensional variance ... The [applicants'] desire for a home with a different layout than one which would conform to the [Zoning] Ordinance's setback and lot coverage requirements is a difficulty no greater than that forced by the owner of a café too small to meet his business goals and does not meet the requisite burden."

August 24, 2021

Page 3

See also, Wall v. Minifie, 2004 R.I. Super. LEXIS 168 at *19 ("Absent evidence that a more conforming home could not be designed to eliminate the hardship, Applicant could not demonstrate that the proposal requested the least relief necessary"); Filicio v. Fleury, 557 A.2d 480, 482 (1989) ("The burden is on the property owner to establish that the relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is devoted").

Unlike the above cases, Mrs. Cardi does not have to make her addition smaller. She could actually make it even larger, but must orient it to the house through a design that does not encroach into the side setback. There is no genuine hardship at all that precludes that.

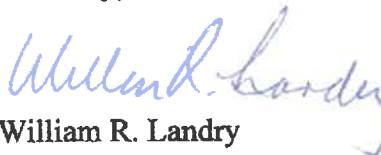
- Finally, the application fails, by a wide margin, to meet the requirement that the requested variance "will not alter the general character of the surrounding area." Rather, it would require a dramatic – and harmful – re-routing of the long-standing pole-to-house aerial electric service configuration as between Mrs. Cardi's property, the O'Donnell property, and yet a third property located to the east of the Cardi property.

Presently the aerial electric service for the three properties originates from a pole along Rector Street to the front of the Cardi property and crosses the northwest quadrant of that property to a pole on the O'Donnell property right near the northerly boundary of the Cardi property (*i.e.*, the southerly boundary of the O'Donnell property) near the northwesterly corner of her existing house. That line would now be interfered with by the portion of her proposed addition that would encroach into the north side setback. So she is working with National Grid to have her electric service come in elsewhere and force upon the O'Donnells (and the other neighbor to the east of the Cardi property) to have a separate unsightly electric line run from a new pole in front of the O'Donnell property across the southerly quadrant of their property. The O'Donnells have offered to cooperate in the erection of a new pole on their property a little further to the west along the same mutual property line to minimize the alteration of the existing conditions, but Mrs. Cardi has inexplicably refused. Respectfully, her neighbors should not be required to bear a new burden on their property in order to permit the creation of an addition in a place in which it does not belong, and with respect to which there are a plethora of less offensive alternatives.

I will be in attendance at this evening's hearing, along with the O'Donnells, to hopefully add greater clarity to this unfortunate situation.

Thank you for your consideration.

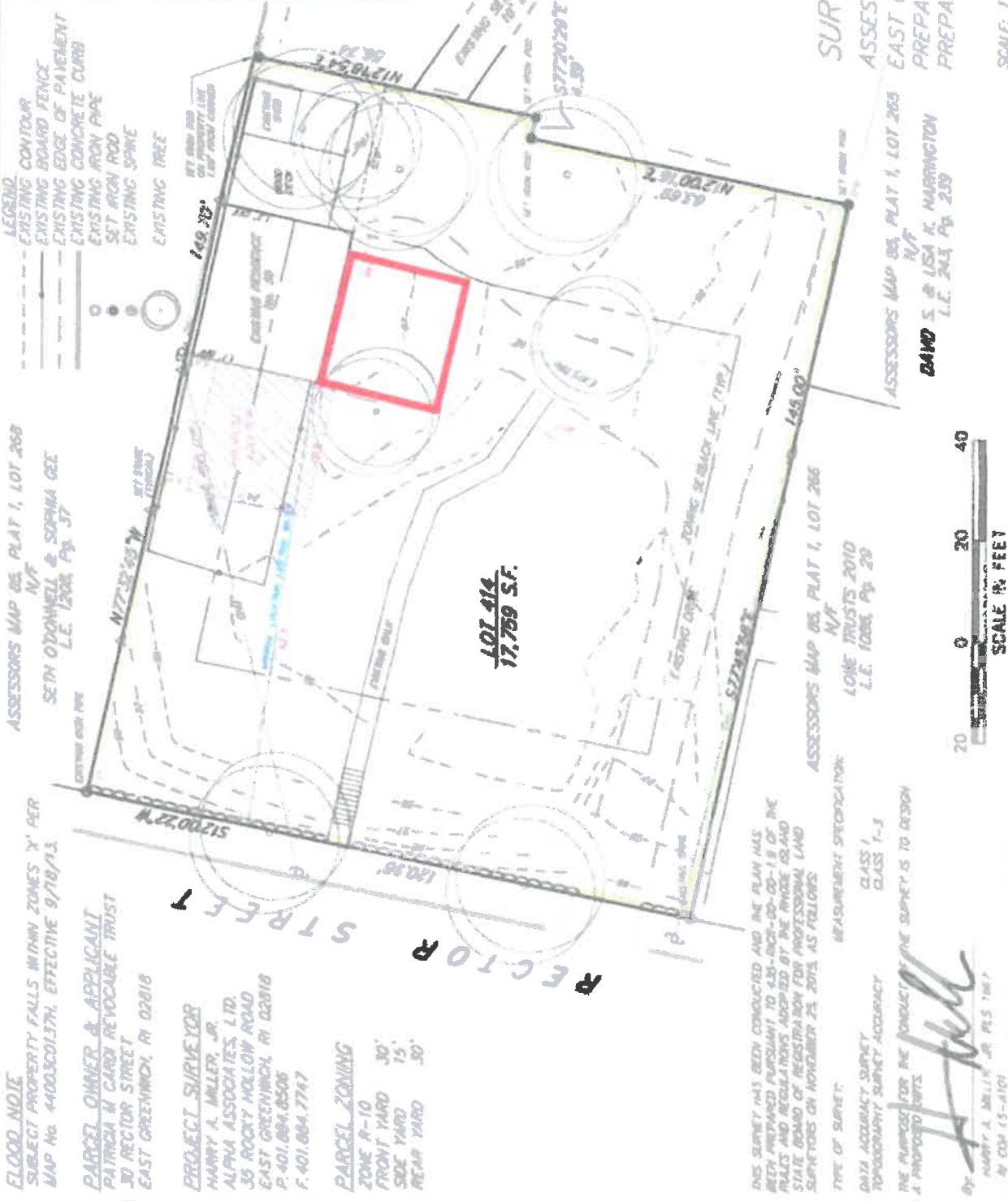
Sincerely,



William R. Landry

Enclosures

cc: Seth and Sophia O'Donnell



ASSESSORS MAP 05, PLAT 1, LOT 268
N/F
SETH O'DONNELL & SOPHIA OEE
L.E. 1208, Pg. 37

FLOOD ZONE
SUBJECT PROPERTY FALLS WITHIN ZONES X' PER
MAP No. 44003C0137H, EFFECTIVE 9/18/13.

PARCEL OWNER & APPLICANT
PATRICIA M. CARDI REVOCABLE TRUST
30 RECTOR STREET
EAST GREENWICH, RI 02818

PROJECT SURVEYOR
HARRY A. MILLER, JR.
ALPHA ASSOCIATES, LTD.
35 ROCKY HOLLOW ROAD
EAST GREENWICH, RI 02818
P. 401.884.8506
F. 401.884.7767

PARCEL ZONING
ZONE R-10
FRONT YARD .30'
SIDE YARD .15'
REAR YARD .50'

LOT 414
17,769 SF.

ASSESSORS MAP 05, PLAT 1, LOT 266
N/F
LONE TRUSTS 2010
L.E. 1088, Pg. 29

THIS SURVEY HAS BEEN CONDUCTED AND THE PLAN HAS BEEN PREPARED PURSUANT TO 426-RICH-00-19 OF THE RULES AND REGULATIONS ADOPTED BY THE RHODE ISLAND STATE BOARD OF REGISTRATION FOR PROFESSIONAL LAND SURVEYORS ON NOVEMBER 25, 2015, AS FOLLOWS:

TYPE OF SURVEY: MEASUREMENT SPECIFICATION:
CLASS 1, CLASS 1-3
DATA ACCURACY SURVEY: CLASS 1-3
TOPOGRAPHY SURVEY ACCURACY: CLASS 1-3

THE PURPOSE FOR THE CONDUCT OF THE SURVEY IS TO DESIGN A PROPOSED CURB.

By: *[Signature]*
HARRY A. MILLER, JR., PLS. 1167
RI DSM 15-1101

SURVEY & SITE PLAN

ASSESSORS MAP 05, PLAT 1, LOT 414
EAST GREENWICH, RHODE ISLAND
PREPARED FOR: PATRICIA CARDI
PREPARED BY: ALPHA ASSOCIATES, LTD.
35 ROCKY HOLLOW ROAD
EAST GREENWICH, RI 02818

SCALE: 1"=20' APRIL, 2021 SHEET 1 OF 1 REV. 5/28/21

