

ZONING BOARD OF REVIEW MINUTES
Tuesday October 28, 2014 Meeting 7:00 pm
Town Council Chambers, Town Hall

Present: Richard Land, Chair; Renu Englehart, Vice-Chair; Ashley Cullion, Jody Sceery, Christopher Mulhearn, and Barry Golden (Alternate).

Staff: Lea Anthony Hitchen, Assistant Town Planner; and Peter Clarkin, Town Solicitor.

Mr. Land, Chair of the Board, called the meeting to order at 7:00 PM and introduced the members and staff present. He then read the Board's procedures into the record. Each person addressing the Board will first state his or her name and address for the record. The applicant and his or her legal representative will present the case and witnesses may be called to testify. Such testimony must be relevant to the application. Expert witnesses will be sworn in and there will be no prejudice as to the expertise of any witness. Pictures, diagrams and other documents given to the Board as evidence will be appropriately marked as exhibits and will be retained by the Board for the record. Upon completion of the applicant's presentation all other persons wishing to offer evidence in favor of the application may then do so one at a time. Following that all persons wishing to offer evidence against the application may then do so one at a time. It is asked that comments are confined to the zoning matter being heard and that repetitive remarks are avoided. Cross examination or rebuttal may be allowed if the Board feels it would be appropriate and useful. All questions from the floor will be directed through the Chair only. After all relevant facts have been heard the Chair will call for a motion; the Board will then discuss the motion and the Chair will call for a vote. During the discussion among voting Board members, the Board will not accept and new and further testimony unless it is specifically requested by a Board member. The Board will make every attempt this evening to render a decision. The written decision will be recorded in the Town Clerk's Office as soon as possible following the approval of the minutes of the meeting.

Zoning Board of Appeal Hearings – 7:00 PM

- 1. Eric and Rachel Busch** for property located at 31 Harwood Road; being Map 84 A.P. 9 Lot 47 (Zoned Residential, R-30). The Applicant seeks a Dimensional Variance from Table 2 of Chapter 260 of the Town Code; Zoning Ordinance, Dimensional Regulations by Zone and Section 8(f) of the same chapter pertaining to the siting of accessory structures. The Applicant seeks to construct a shed and pool within the side setback of this legally nonconforming lot.

Mr. Eric Busch, owner of the property, represented the application. He explained that he would like to install a shed and pool next spring or summer and is looking to construct the shed about 8' from the side boundary and the pool will be about 10'-12' from the same side boundary. Mr. Busch noted that he started the process in August by drawing out the site plan, taking photographs and walking house to house around the neighborhood and even had a couple of abutters walk through the backyard to take a look at the proposed project. He confirmed to date there have not been any objectors but only supporters. Mr. Busch submitted a letter of support from an abutter across the street, David Reardon of 56 Harwood Drive (marked as Exhibit 1) as well as several return receipts.

Ms. Englehart asked if the Applicant is aware that Staff is requesting a Class I survey be done. Mr. Busch noted that a Class I survey has not been done; he had a conversation with the Building Official for clarification on what was needed as he felt the property lines are very well delineated with staked boundaries and a mature hedge. Mr. Busch thought in his opinion that the side property line was very well delineated in the front and back yard but if the need continues to perform the survey then he would be happy to do the survey; but he would rather avoid it as it may be unnecessary.

Mr. Land questioned if there are two boundary markers or just one with a hedge line. Mr. Busch explained there is a boundary marker in the rear as well as one in the front and the hedge line.

Ms. Englehart questioned if the direct abutter at 21 Harwood Road saw the proposal. Mr. Busch stated the Friedemann's were the first neighbors he

showed the site plan to who had no objections. He added that he has a good relationship with them; they have been in the backyard a number of times and seen where everything is staked out.

Mr. Land noted that in reviewing the submitted photos it appears where the drawn circle and rectangle are positioned they would be aligned back from the edge of the house on the side. Mr. Busch advised that in actuality the shed as proposed would be about 6'-1' outside of the boundary of the house. Mr. Land asked if it would be seen from the front of the house. Mr. Busch confirmed that there is currently mature growth there now but if that were to be removed then the shed would be visible.

Ms. Hitchen clarified that the existing house and garage are located in the setback.

Atty. Clarkin asked why the pool and shed could not be located more towards the middle of the backyard. Mr. Busch explained that he spent a lot of time creating a grassy backyard and did not want to infringe into the wooded area on the opposite side either which provides a nice buffer; he was simply trying to preserve some grass and trees.

Ms. Englehart questioned if the shed is more of a pool house. Mr. Busch confirmed that the first few feet of it will be used as a changing room for the pool.

Ms. Englehart noted she was unsure of why the Class I survey was being required. Mr. Busch said he met with the Building Officer in his office briefly. Mr. Busch stated that it is his own opinion that there are markers there and the Building Official has not been out to verify.

Ms. Englehart questioned if the markers have been found. Mr. Busch said yes. Ms. Englehart asked if the Friedemann's confirmed that those boundary markers are correct. Mr. Busch stated not explicitly as he and the Friedemann's have never had the conversation.

Ms. Sceery questioned if Ms. Friedemann ever asked where the markers were or ever had any interest to know where the markers were located. Mr. Busch

stated no, the only reason he knew where the markers are located is when the home was purchased at the end of 2012 it was walked with the prior owner who pointed them out.

Ms. Sceery asked if the Friedemann's support the application. Mr. Busch said yes.

Ms. Englehart said she was in support of a survey being done because sometimes the hedge is not necessarily where the property line is; the Board has seen this situation before particularly in older neighborhoods.

Ms. Hitchen explained the survey is being required due to Town staff making it become standard practice that whenever an application requires dimensional relief in the setback a survey be submitted.

Mr. Land advised that if the Board were to make a motion it would be subject to the Applicant having it surveyed for when the pool and shed are installed they are appropriately delineated from the survey line. He added that this is simply so the structures do not accidentally exceed more than the relief that was obtained. He also verified that the Applicant will not have to return to the ZBR.

Mr. Busch questioned if he was able to verify with the abutting neighbor (Friedemann) that if both parties agree that the existing markers/posts in the ground are the correct boundary would a survey still be necessary. Atty. Clarkin understood the Applicant's point of view but advised that the Town is reviewing this from a long range perspective while the Applicant is looking at this from while he is living there.

Mr. Land confirmed from Staff that the request for a survey is at the recommendation of the Building/Zoning Official for all setback matters. Ms. Hitchen asserted any request that requires dimensional relief, i.e. to allow a structure to be located within any setback must provide a Class I survey.

With no further questions from the Board, Mr. Land opened the hearing for public comments.

With no public comments, Mr. Land asked for a motion.

Motion by Ms. Englehart to approve the application as submitted with the condition that a Class I Survey must be submitted prior to applying for a building permit delineating the verification of the pool and shed as well as property lines. Seconded by Ms. Sceery.

VOTE: 5 – 0.

2. **River Stone Group LLC** for property located at 69-75 Main Street; being Map 85 A.P. 1 Lot 235 (Zoned Commercial Downtown, CD-1). The Applicant seeks Dimensional Variances under Article VI of Chapter 260 of the Town Code; Zoning Ordinance, Off-Street Parking Regulations, Section 260-20 Required Off-Street Parking Spaces; Section 260-22 Parking Lots In or Near Residential Areas; and Section 260-24 Off-Street Loading Areas. The Applicant plans to convert first floor retail space to a restaurant and the change of use necessitates relief since there is a lack of on-site parking and dimensional non-conformities already exist.

Mr. Mulhearn disclosed that he had an unrelated business venture with the Applicant's partner, Mr. Rocco Quattrochi, about 18 months to 2 years ago. Mr. Mulhearn asserted that he knows Mr. Quattrochi and the Quattrochi family personally and sought Council's advice as to whether there was a conflict of interest. Atty. Clarkin advised it was Mr. Mulhearn's personal call but did not see this as an issue. Mr. Mulhearn also believed a conflict did not exist as he is not familiar with this project.

Mr. Patrick Merner and Mr. Andrew Marr of River Stone Group, LLC represented the application as well as Attorney Philip Laffey from the law firm of Marshall & Laffey, office located at Three Regency Plaza, Suite 3, Providence, RI 02903, who represented the Applicant.

Atty. Laffey explained the existing use of the building, having 4 residential units and the retail ground level floor – the retail will be leaving and in its place the Applicants would open a restaurant by restaurateur Rocco

Quattrochi. The envisioned restaurant would serve new American cuisine, farm to table with a selection of upscale beers and foods to attract a more upscale clientele. Atty. Laffey highlighted the fact there will be no karaoke or entertainment to upset the abutting neighborhood. He advised that the HDC has conceptually approved the exterior renovation and that this will be a place for residents and nonresidents alike to come and spend money in a safe and friendly environment. Atty. Laffey noted that the restaurant will be opened by an experienced restaurateur who already has an established tavern located in Smithfield, RI.

Atty. Laffey advised that his clients were present specifically for parking relief; there is an existing 11 space parking lot behind the building to serve the subject lot. Atty. Clarkin queried as to how many spaces are required. Atty. Laffey stated 29 spaces for the residential and commercial spaces. Atty. Clarkin asked about occupancy. Atty. Laffey stated there will be 49 seats.

Ms. Hitchen inquired if Atty. Laffey received a copy of the staff report. Upon his negative answer Ms. Hitchen gave him a copy to review.

Mr. Land inquired if the total capacity included the outdoor seats. No answer. Ms. Englehart asked where the employees/staff would park. Atty. Laffey suggested staff/employees could park on-site and/or take advantage of the public parking in the vicinity of the subject lot just like the other restaurants in Town. Mr. Merner commented that he anticipated having 6 or 7 employees at one particular time and he just started having conversations with valet services.

Mr. Mulhearn noted that if this application were approved a condition to be considered is having the applicant obtain a valet service and/or parking lease agreement on another lot located not more than 500' radially from the subject lot. He asked Atty. Laffey to apprise the Board of what, if anything has occurred in that regard.

Atty. Laffey noted his clients have had discussions with a valet service. Mr. Patrick Merner spoke further explaining that he spoke with United Parking LLC who service local restaurants and could take on and handle this

restaurant's parking. Additionally he has had preliminary discussions with neighbors who suggested they might have available leased parking but nothing confirmed, just exploratory.

Mr. Mulhearn questioned the timeframe for when the process could be advanced and determined. Mr. Merner stated he will continue working on the issue.

Ms. Sceery pointed out that the Applicant is requesting a lot of relief; the Zoning Board welcomes businesses and restaurants on Main Street but an applicant has to meet us half way – meaning the applicant needs to reduce the relief as much as possible by acquiring a valet service and/or obtaining a parking lease agreement.

Ms. Englehart asked if there will be live entertainment and for further details about the restaurant. Atty. Laffey stated there will be no live entertainment and the proposed restaurant diverges quite a bit from the Fat Belly's "recipe" so to speak in that there will be live entertainment, it will be promoted as a farm to table restaurant using the local farms with upscale drinks and marketed to an older crowd.

Ms. Englehart queried if the Applicants anticipate the restaurant to be crowded at 11 PM. Atty. Laffey responded that neither the Applicant nor Mr. Quattrochi want to see the restaurant turn into a late night bar. Ms. Englehart also asked for further details regarding the dumpster. Atty. Laffey stated the plans do provide for a dumpster to be relocated in order to accommodate parking to the rear of the facility near the granite retaining wall; the proposed dumpster location is closer to the building and it will be properly enclosed.

Town Solicitor Clarkin questioned how one gets from the kitchen to the dumpster. Atty. Laffey explained there is a walkway from the kitchen to the back of the building for access through the bulkhead. Mr. Clarkin also noted that the restaurant would be open from 11-1 but questioned when the food service would end. Atty. Laffey said 11 PM.

Ms. Cullion referred to the staff report noting the parking lot shall meet town requirements of proper paving and bumper guards. Atty. Laffey noted his clients were willing to proceed with the requirements. Ms. Cullion inquired about any plans for a loading dock or lack thereof. Atty. Laffey explained the loading/drop off plan is to use the back entrance/parking lot which has access from Montrose Street.

Ms. Hitchen asked if comments have been received from the hired code consultant. Mr. Merner noted the code consultant will be performing a site survey next week and they have only done a site analysis to date but he is under contract to move forward to have the code consultant do the necessary work.

Mr. Land commented that it appears in terms of code requirements the Applicant should get that all figured out first regardless of zoning approvals. Ms. Hitchen agreed noting it is too premature to go forth with zoning relief; the building and fire code issues should be dealt with prior to appearing before the Zoning Board.

Mr. Land stated this matters appears to be a “cart before the horse;” the Applicant is obliged to continue a matter if more due diligence is need in order to present more material to the Board – it appears based on comments that a continuance is recommended.

Mr. Clarkin suggested having a definite number as far as number of people in the building, whether a second means of egress is necessary so that parking can be directly tied to occupancy; a finite number is far better than a floating number.

Atty. Laffey requested to continue the hearing in order to have more time to perform the code analysis of the building.

Ms. Sceery summarized some of the key issues the Board will be looking for at the next meeting including a valet and/or lease agreement, plan for the dumpster, how the parking lot will comply with Town standards, all the details in order for the Board to make a decision – the more information the Applicant supplies the better off the Applicant is.

Motion by Mr. Mulhearn to continue the application to November 25, 2014.
Seconded by Ms. Englehart.

VOTE: 5 – 0.

3. ZBR Workshop Session

Atty. Clarkin gave a brief summary of the Zoning Ordinance, the general and state law references as well as the differences between use and dimensional variances and special use permits. He also explained new zoning ordinances, the open meetings act and the Code of Ethics and when to recuse from an application.

Zoning Board of Review Business

1. Minutes: Review/action on the minutes of the September 23, 2014 meetings.

Motion by Ms. Cullion to approve the September 23, 2014 minutes. Second by Ms. Sceery. Motion supported 5 – 0.

With conclusion of all business, there was a motion by Ms. Englehart, second by Ms. Cullion to adjourn at 8:20 PM. Motion supported 5-0.

Minutes respectfully submitted by:

Lea Anthony Hitchen,
Assistant Town Planner

For more information, please refer to the recording available in the Planning Department.