

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

MINUTES

THE ZONING BOARD OF REVIEW  
OF BRISTOL, RHODE ISLAND

06 JUNE 2016  
7:00 PM  
BRISTOL TOWN HALL  
BRISTOL, RHODE ISLAND

BEFORE THE TOWN OF BRISTOL ZONING BOARD OF REVIEW:

MR. JOSEPH ASCIOLA, Chairman  
MR. BRUCE KOGAN, Vice Chairman  
MR. DAVID SIMOES  
MR. TONY BRUM  
MR. CHARLIE BURKE, Alternate

ALSO PRESENT: ATTORNEY AMY GOINS, Town Solicitor's Office  
MR. EDWARD TANNER, Zoning Enforcement Officer

Susan E. Andrade  
91 Sherry Ave.  
Bristol, RI 02809

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06 JUNE 2016

The regular meeting of the Town of Bristol, Rhode Island Zoning Board of Review was called to order at 7:00 p.m. by Chairman Joseph Asciola.

**1. APPROVAL OF MINUTES:  
16 MAY 2016**

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MR. ASCIOLA: First order of business will be the approval of the May 16, 2016 minutes.

MR. BURKE: I'd like to make a motion, Mr. Chairman. There was a Special Meeting last month with only two weeks to generate the minutes. I would like to make a motion that we postpone the approval until the next meeting.

MR. SIMOES: I'll second that.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

MR. KOGAN: Aye.

MR. BRUM: Aye.

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(THE MOTION WAS UNANIMOUSLY APPROVED)

(Minutes Continued)

**2. 2016-17  
GAIL STORMS**

**32 Anchorage Ct.: R-15  
Pl. 133, Lot 115**

Dimensional Variance to install a 6 foot high vinyl fence on top of an existing 2 foot height stone wall at a total fence height greater than permitted.

Ms. Gail Storms presented her Petition to the Board and explained that she needed a variance for her wall and fence. When she first moved in she obtained a permit to restore a stone wall; the stones were all on the property. She restored the wall in 1999 or 2000 and on top of that wall they put a wooden fence. The wooden fence lasted until about 2014 and then it was in very bad shape. They took the wooden fence down and had a vinyl fence put back up, because she felt the Vinyl would last better than the wooden fence had. The vinyl fence went up in August 2015; it was done by Fence Depot in Warren. There was a bad storm in February with 50 mph winds and the fence had fallen down and had taken the wall down with it; 70 feet of the 100 foot wall had fallen. Fence Depot came back and helped pick up the fence and put it on her patio for storage. She then started to work on rebuild the wall, as well as put the fence back up. Fence Depot decided that he should take the fence posts, put them into the ground before the wall was built; he put them two feet into the ground all the way along the 70 feet that had fallen; put concrete around the posts and then the wall was rebuilt the wall around the posts. They then put the fence from her patio put back up.

Upon questioning, Ms. Storms stated that the new vinyl fence was higher than the old wooden fence. She believes the stone wall has always been about two feet high. She confirmed that the stones used to build the wall were already on the property dividing the properties; but it was all in piles. She stated that when the man was erecting the stone wall in 2000, he put tubes in and worked with the wooden fence company to see how far apart the tubes should be; so that when the wooden fence went in, it went

into the tubes. She doesn't really recall how high the wooden fence was above the stone wall.

Mr. Kogan noted that the application indicates that there was a permit granted for the original wall back in 2000. Ms. Storms stated that was correct and it was also for the wooden fence on top of the wall. Ms. Storms confirmed Mr. Kogan's recapping that the original wall from 2000 was used in 2015 to put a vinyl fence up to replace the wooden fence that had deteriorated. And that vinyl fence was 6 feet in height, sitting on top of the wall. She did not come to Town Hall to get a permit to erect the replacement fence, because she didn't know she needed a new one; and did not talk to anyone in the Town about doing the work. The fence was in place from August of 2015 until February 2016. In February of 2016 there was a wind storm and the wind storm pushed over the vinyl fence and damaged the stone wall. When the work started on the putting the fence back up on the wall that's when someone from the Town Hall came by and instructed the workers to stop working because there was no permit and a question about the height of the fence.

Mr. Tanner confirmed that he did allow Ms. Storm to finish the work temporarily pending her coming before the Board. He explained that Mr. Falco, the Code Compliance Coordinator went out the site and it was determined that she only had another panel or two put up, so all the real work was done; so he told her she could finish it, but the Zoning Board may not let her keep it. Ms. Storms acknowledge that she understood that Mr. Tanner was not giving her permission to keep it at the 6 feet by allowing her to finish the work.

Mr. Kogan asked why she needs 8 feet between her property and her neighbor's property. Ms. Storm referred to the pictures she had submitted to the Board of her neighbor's property, which she finds offensive in its upkeep; in her opinion. She also explained that her neighbor's property is clutter with garbage, recycling bins, things that

the pictures don't capture. There is a commercial yellow truck usually kept near her wall; there is a business going on there, where they are constantly repairing vehicles during the day and night.

There was discussion of putting the fence on the other side of the wall, but Ms. Storm explained that it would then be on her neighbor's property; and if she put it on her side she wouldn't see the wall.

Mr. Robert Rude, 37 Smith Street stood to speak. Mr. Burke stated that he knows the witness; that he races against each other, but doesn't believe it will affect his ability to take part.

Mr. Rude stated that Ms. Storms is a neighbor, not directly, but nearby, and frequently calls on him to do some repairs because her husband passed away. He was the one who took the pictures that she submitted. There's no doubt in anyone's mind that she did not have the permit when she did this; but he thinks what she's trying to do is resolve an issue of just reconstructing a fence that was rotted and he would have followed the same situation; try to place the wall on the ground. But it can't be on one side because you lose the stone wall; if you put it on the other side, the stone wall goes up to the neighbor and then be construed as encroachment on property. He thinks what she did is legitimate, perhaps not legally legitimate, but what she wants is privacy and he thinks the wall gives her that privacy; even though there as a violation of not having the building permit before the work was done. He went over and looked at the wall and he would have done exactly the same thing. He testified that he didn't recall the wooden fence when it was erected, but he has seen pictures of it and it did seem from the pictures to be somewhat shorter than the new fence. As far as the unsightly condition of Ms. Storm's neighbor's property; he's two houses away, so he doesn't know the property condition.

Ms. Eva Gagnon, 29 Smith Street stated that she does abut Ms. Storm's property and presented a photo and said they are in an interesting situation because they still have a portion of the original wood wall on their property. She believes that the new fence is probably 8 to 10 inches now. The Board reviewed the picture with Ms. Gagnon at the bench. She stated that when Ms. Storms built the wall, her part was torn down, and at incredible expense she has had it all fixed. It's a huge improvement over what was there and they hope to actually replace there section and their section is only 8 feet. She thinks the dilemma at the time that she had it built was; the way that the sections of the fence are sold; so she had a choice between 4 feet or 6 feet; so the 4 foot would not have provided the privacy; and they also abut the property behind her. They're very nice people, but there's a lot of activity going on there. They have two teenagers who are up and down with all their friends and there's a lot of activity in the back yard. Ms. Storms is elderly, they're getting there and it's a privacy barrier and improved the property tremendously. She hopes to do the same to her and of course get the building permit first. Ms. Storms follows the rules but just didn't know she needed a new permit for the fence. She hopes the Board allows the fence and Ms. Storms doesn't have a lot of options now.

Mr. Chris and Ms. Kathleen Walden, 44 Anchorage Ct., stated that they do not about the property, but he walks the dogs by there all the time and he does see the fence and it is very attractive; it was tastefully done. But as the Board may recall, there's been some issues surrounding his property and individual members of the community that have helped them and some that have obstructed them in trying to come to a solution. But they were present as members of the community who would like to see if there's a way that they could assist in finding a positive solution and outcome for Ms. Storms. She's a good citizen, she keeps her property meticulously landscaped. He's unaware of anybody blocking anyone else's view.

Mr. Christopher Perry, 27 Smith Street for the last 52 years spoke against the Petition. He presented pictures to the Board from his property looking towards Ms. Storms' property. He stated that there is no work going on at his property, except his own, it's his hobby. He explained the pictures show that his water view that he had for 52 years is now being obstructed by the fence that was put up on Ms. Storms' property. When the wooden fence was up it was 4 feet with a 1 foot lattice on top of the wall; so it was a 5-foot wall on top of the 2 foot wall. He had no problem with the wooden fence because he still had his water view.

When asked what Mr. Perry feels the outcome should be, he stated that what they had there originally was beautiful; what they have there now looks like a drive-in movie. He has no water view, which depreciates the value of his property. It's an illegal fence on top of it. People move in and think it's a condo organization or something; he's been there all his life. Mr. Kogan asked the abutting witness (Mr. Perry) if he had generated income from his hobby of repairing/restoring snowmobiles, automobiles, etc. Mr. Perry responded that he had not.

Mr. Kogan asked how many feet of the fence is blocking his view. Mr. Perry stated about 40 feet; he wouldn't mind if they cut it down and he would get his water view back.

The Board, the applicant and the abutting property owner reviewed the fence construction in detail, trying to find a solution that works for everyone. It was determined that a site visit by the Board would be needed in order to determine how much of the fence would need to be lowered.

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MR. BURKE: I'll make a motion that we continue this application, pending a site review to be scheduled by Mr. Tanner to the July 11th meeting.

MR. BRUM: I'll second.

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MR. ASCIOLA: All those in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

MR. KOGAN: Aye.

MR. BRUM: Aye.

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(THE MOTION WAS UNANIMOUSLY APPROVED)

(Petition Continued)

**3. 2016-18 OPT PHYSICAL THERAPY & SPORTS MEDICINE, INC. 652 Wood Street: R-10SW Pl. 22, Lot 145**

Dimensional Variance to install two commercial signs; one 8 square foot projecting sign and one 24 square foot wall sign; with one more sign than allowed, and at sizes larger than permitted in a residential zoning district.

Ms. Amy Simmons, Director of Development for OPT and Clinical Director presented the Petition to the Board. She explained that they have been in business in Bristol for 8 1/2 years down on Hope Street. They've been fortunate to have great success in Bristol and have grown to the point where they actually need a larger space. We had looked into finding another spot and really wanted to stay in Bristol and finding something large enough and expand and make it open enough was really a challenge. When they were shown the facility at 652 Wood Street that had formally been Coastal Medical and entered into a complete rehabilitation of that building so that it could be utilized as a Physical Therapy practice. The northern portion of the building was knocked down and has been made into an on-site parking lot for the facility itself. The building itself has also been completely rehabilitated. They are attempting to now find a way that they can ensure that they are properly showing themselves and properly advertising themselves. They are looking to put the existing sign that they have out on 450 Hope Street is one that they had put through years ago to the Historical District and they would like to move that particular sign; it's currently hanging from an antique looking bracket, and they're hoping to take the sign itself, probably replace it with a bracket that's a little bit more in line with the particular building on Wood Street location and would be their projecting sign. And the roof line itself has a large gable in front and they were hoping so that they would have the ability to be seen from a number of different

directions, that they could put a sign approximately 6 feet wide by 4 feet tall there depicting just the company logo. They are moving off a major traveled roadway into a more obscure location and would like to be as visible as possible.

The Board reviewed the plans in detail with the Petitioner. The Board expressed that it is a very low impact traffic area and with the projecting sign people will be able to see it no matter which way they travel on Wood Street, as Wood Street only traverses North and South. And there are no other commercial enterprises in the immediate vicinity of this location, so the projecting sign will stand out more on Wood Street than it did on the elevated sidewalk along Hope Street. The purpose of the Ordinance would mandate that any signage in this residential area blend in with the area.

Mr. Burke asked Ms. Simmons if any marketing study or analysis had been conducted to determine the impact of the larger sign located on the gable façade. Ms. Simmons stated there had not.

In response by questioning by Mr. Kogan, Ms. Goins explained that Mr. Tanner had determined that the property was previously a legal non-conforming use and can continue as such; even though Coastal Medical vacated the building some time ago. Mr. Kogan stated that there is an abandonment provision of the Code and presumptively your non-conforming use is abandoned if the property is not used for the non-conforming use for a period of a year, unless there is some other demonstration that there was no intention on the part of the owner to abandon the non-conforming use. Ms. Goins stated that Mr. Tanner's Zoning Certificate issued in September 2015 comes to the conclusion that the use has not been abandoned. It's her opinion that a use is presumptively abandoned under the Ordinance if it's discontinued for whatever period of time, a year, or two years. So the Board may want to question Mr. Tanner. She's not sure that the Board tonight could over rule that determination. Mr. Kogan stated nobody has appealed that determination, he's was just sort of trying to get a background as to where

they stand legally on that issue of a physical therapy business coming in to the medical clinic that was operating as pre-existing nonconforming use. Mr. Tanner stated that it wasn't operating as a pre-existing nonconforming use, it was operating as a use in existence by Special Use Permit. It went from a clothing factory to a medical office building; and the Zoning Board in May 1991 gave them a Special Use Permit to convert the building to a Medical Office Use. Yes, that Use was abandoned, but it was a Use that was in existence by Special Use Permit, which is a little bit different section of the Zoning Ordinance. And he is saying it's a medical clinic.

Ms. Goins stated to clarify something about the 1991 Use Permit is that is her understanding is that it was a Special Exception, which is a defunct term for parking. So, is this the equivalent of a Special Use Permit? Her understanding is that a Special Exception is what a variance is today. Mr. Tanner stated that the Zoning Ordinance today allows a nonconforming use to be changed to either a conforming use or to another use via Special Use Permit, if the Board finds that it's more compatible with the neighborhood. He wasn't here in 1991, but he's assuming that the Zoning Board felt that better than a clothing manufacturer, a medical office was a better use in a residential neighborhood; so they gave them the equivalent of a Special Use Permit. And yes that use was abandoned, but the medical office was still there, he was in the building and they have been trying to find a tenant for at least 10 years. But it still looks and smells like a medical office.

Ms. Goins stated that then there would be a difference between a use that is nonconforming and has never received relief from the Zoning Board and a use permitted by Special Use Permit, which now she understand that's what this is. So, even though Coastal Medical stopped operating, the use of a Medical clinic is still permitted by Special Use Permit for this property.

Mr. Keith Cobb, 70 Munroe, stated he has no problem with them being there and he would like to thank them for the parking lot. But, from when he used to go the the medical center there, there was only one sign on the building and there was never a problem with people finding it. They're on a road that has like 1/8 the traffic that Hope Street has, so hanging a sign out front is not going to help. Nobody walks the street, except to go baseball games and neighbors. He's against two signs and he'd like to see just one sign on the building. The flat one on the eaves. He went to the bench to see the concept of the hanging sign; after viewing the projecting sign, he stated he had no problem with it and did not like the one on the eaves.

Mr. Frank Sylvia, 643 Wood Street stated asked the Petitioner that in they want to take the sign that's hanging on Hope Street, is it the exact sign. He was informed that just the bracket would change. Mr. Sylvia stated that he thinks the sign is tasteful. He thinks they did a marvelous job in rehabbing the property; but his objection is to the two signs. He has no objection to the hanging the sign that is currently on Hope Street; it would enhance the neighborhood rather than being a detriment to it.

Mr. Asciola read a letter from Carol Dulack, abutting property owner was read into the record opposing the two signs.

Mr. Tanner stated that the building sign in the drawing seems not to be to scale and perhaps Ms. Simmons would rather have a sign company or someone submit a better depiction of what they are looking for; because it may be a bit deceiving as presented. Ms. Simmons stated that one of the owners literally just took a picture and stuck it in there to give a general idea.

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MR. ASCIOLA: Does anyone else wish to be heard? Can we have a motion from the Board?

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MR. KOGAN: Mr. Chairman I'm going to make a motion that we in part grant, but in part deny the applicant's request for dimensional variances and variances with regard to the number of signs permitted. The motion that I would make is that the applicant be permitted to install one commercial sign; an 8 - square foot projecting commercial sign, which would be 4-square feet in excess of the normally permitted 4-square feet. And that the applicant's request for a second commercial sign, a wall sign, be denied. The reasons behind the motion that I've made are that this is a hardship arising as the result of unique characteristics of the subject land and structure. And particularly its commercial nature in the midst of a residential district. That set of unique characteristics placing of a medical clinic facility permitted by Special Use Permit in a residential neighborhood does dictate that the applicant would require some appropriate commercial signage to identify for potential clients of the physical therapy business; the location of the business. The projecting sign would accomplish that, given the location on a relatively low traffic and low speed location, where cars pass by at a relatively low speed. This location is significantly different than the applicant's present location on Hope Street, which is a high traffic volume, with a higher speed utilization by vehicles. This hardship is not the result of any prior action on the part of the applicant. The applicant did not erect the building as a commercial structure in a residential district. The applicant is just looking to expand the square footage off their existing and successful physical therapy building, presently located on Hope Street, to a more suitable location for a growing physical therapy practice. This hardship is not due to any economic disability on the part of the applicant, nor a desire to

realize greater financial gain. Rather the hardship is one of some level of visibility for their medical clinic physical therapy practice in a residential district. Granting the requested dimensional variance for the one projecting sign at 8-square feet, given the applicant's commitment to use the very artful and appropriately tasteful present sign that they have in their Hope Street location, leads me to conclude and therefore I would find that it will not alter the general character of the area. This is a largely residential location, but one which has had a commercial building in it for many decades. That neighborhood seemed to manage with a textile factory there and seemed to manage with a medical clinic, which operated there for several decades before it closed 10 years ago. So, reopening the medical clinic with one projecting tasteful sign will not have an adverse impact on the general character of the neighborhood.

Granting the requested dimensional variance for that single projecting sign will not impair the intent of the Town's Comprehensive Plan, which intends to make it possible for our businesses to succeed in harmony with the residential neighborhoods that they may be close to. And allowing one single sign would not impair the overall intent of the Comprehensive Plan. Granting the relief requested with respect to the projecting sign, is the least relief necessary; it's only 4-square feet of variance from the 4-foot normal size for a projecting sign; it's a relatively minimal amount in order to provide sufficiently sized projecting sign for clients to find that location. And it would amount to more than a mere inconvenience if no signage was allowed, or only an insufficiently large projecting sign, because the clients would have some difficulty in finding that business. So, for those reasons I move that we grant one of the variances. The

other variance I move that we deny given that the location doesn't seem to warrant a second sign; it certainly doesn't seem to warrant a sign of the size depicted in the submission by the applicant. And, the position of that sign parallel to the direction of the street doesn't really lend much in the way of additional visibility. And, as one of the other members of the Board noted, there is no perpendicular cross traffic coming up from the West that would be able to see that sign directly; there is not street that abuts it at that location. So, for all those reasons, I move that we grant in part and deny in part the application.

MR. SIMOES: I'll second that motion.

MR. ASCIOLA: All in favor?

MR. BURKE: Aye.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

MR. KOGAN: Aye.

MR. BRUM: Aye.

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(THE MOTION WAS UNANIMOUSLY APPROVED)

(Petition partially approved)

4. ADJOURNMENT:

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MR. BURKE: Make a motion to adjourn.

MR. SIMOES: Second.

MR. ASCIOLA: All those in favor?

MR. BURKE: Aye,.

MR. SIMOES: Aye.

MR. ASCIOLA: Aye.

MR. KOGAN: Aye.

MR. BRUM: Aye.

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(THE MOTION WAS UNANIMOUSLY APPROVED)

(MEETING ADJOURNED AT 8:25 P.M.)

06 JUNE 2016

RESPECTFULLY SUBMITTED,

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Susan E. Andrade  
Shorthand Reporter  
Notary Public

TOWN OF BRISTOL ZONING BOARD  
MEETING HELD ON: 06 JUNE 2016

Date Accepted: \_\_\_\_\_

Chairman: \_\_\_\_\_