COMBINED APPLICATION FOR A SPECIAL USE PERMIT &
A REGULATORY (DIMENSIONAL) VARIANCE

CITY OF NEWPORT, RI
ZONING BOARD OF REVIEW

DATE: January 27, 2020

Board Members:

The undersigned hereby petitions the Zoning Board of Review for a Special Use Permit and a
Regulatory (Dimensional) Variance in the application of the provisions or regulations of the Zoning
Ordinance affecting the following described premises in the manner and on the grounds hereinafter
set forth.

Location of Premises

Street & No.: 79-88 Dixon Street
Tax Assessor’s Plat: 35, Lot: 282

Petitioner Information

Applicants: Donald Toftias
Addresses: c/o J. Russell Jackson, Esq.
Miller Scott Holbrook & Jackson
122 Touro Street
Newport, RI 02840

Owner: Same
Leasee: N/A

Same
N/A

Property Characteristics

Dimensions of Lot: Frontage: 140.18 ft. +/-
Depth: 189.19 ft. +/-
Area: 27,733 sq. ft. +/-

Zoning District in which premises is located: R-60

How long have you owned above premises? 10 Years

Are there buildings on the premises at present? Yes

Total square footage of the footprint of existing buildings: 4,398 sq. ft. (16%)
Total square footage of the footprint of proposed buildings: 5,103 sq. ft. (18%)

Present use of premise: Two residential dwellings; a single family dwelling in the main residence (Clock Tower) and a detached single family dwelling in the cottage/guest house.

Proposed use of premises: The principal use will remain the same as indicated above, with the addition of two accessory structures.

Give extent of proposed alterations: The Applicant proposes to construct two new accessory structures, a garden tool shed and an artisan studio.

ZONING CHARACTERISTICS MATRIX SEE ATTACHED HERETO AS EXHIBIT A

Project Summary:

The Applicant seeks relief under Section 17.108.010 (Variances), Section 17.108.020 (Special Use Permits), Section 17.72.030 (Alteration to Nonconforming Development), Section 17.40.040 (B)(C) (R-60 Setback Requirements – Side Line & Rear Line) and Section 17.40.050 (R-60 Lot Coverage Requirements), for permission to construct two accessory structures. The first proposed building will be a small 65 sq. ft. tool shed adjacent to the gardens. The second building will be an artisan studio located at the rear of the estate. The Applicant proposes to build the artisan studio on an existing brick 640 sq. ft. foundation left from a prior potting shed or gardening building. The proposed development will result in a minor increase in lot coverage. Based on the irregular shape of the lot, and the proposed locations of these accessory structures, setback relief will also be required.

What provisions of the Comprehensive Land Use Plan are the applicable to this project?

The Applicants state that the proposed development is consistent with many provisions of the Comprehensive Land Use Plan, including, but not limited to the following:

Land Use:

Goal LU-1: To provide a balanced City consisting of residential, commercial, and employment uses consistent with the character, environmental resources and vision of the community.

Policy LU-1.4 The City shall maintain design standards to protect historic structures, maintain the heritage of the community, and maintain views and access to the harbor and waterfront areas.

Policy LU-1.7 The City shall protect the existing character of residential neighborhoods while encouraging local neighborhood business.
Housing:

Goal H-1: To preserve and protect existing housing resources in the community.

Policy H-1.3 The City shall continue to promote the repair, revitalization or rehabilitation of residential structures and neighborhoods.

Policy H-1.4 The City shall encourage resident involvement in identifying and addressing the maintenance of housing in their neighborhood.

Historical & Cultural Resources:

Goal HC-1: To identify, protect, and enhance the City’s cultural and historical resources.

Goal HC-3: To foster a climate that supports the continuation of Newport as a home for the artisan and creative artist.

What special conditions and circumstances exist which are peculiar to the land, structure or building involved, which are not applicable to other lands, structures or buildings in the same district?

The existing parcel is a legal non-conforming lot of record. It is irregular in shape and significantly sub-standard in size for the R-60 Zone. The existing main structure (Clock Tower) and the cottage/guest house were once part of the large estate on the abutting property to the south (Oakwood). The location of all the structures predated zoning restrictions. The existing structures were sited on the property contrary to the required setbacks and exceed lot coverage. For the reasons the property is a non-conforming development. As a result, any reasonable modification or alteration of the property requires zoning relief.

Explain how the literal interpretation of the provisions of this zoning code deprive the applicant of rights commonly enjoyed by other property owners in the same district under the provisions of this zoning code?

The Applicant proposes to construct two small accessory buildings. Because of the irregular lot shape and the significant setback requirements for the R-60, both the garden tool shed and the artisan studio will require setback relief. There will also be a small increase in lot coverage. The existing structures already exist within setbacks and exceed lot coverage. The proposed accessory structures will enhance the residential use and historic character of the property. This property is in the residential neighborhood to the west of Bellevue Avenue in a transition area adjacent to Spring Street and the Yachting Village. It is not uncommon for substandard lots to exceed lot coverage and require zoning relief. The literal interpretation of the zoning code, resulting in the denial of the relief requested, would unreasonably deny this Applicant and Owner the ability to make minor enhancements to the property. Dimensional non conformities exist with other properties throughout this neighborhood, especially along Spring Street. The planned improvements to the property by the Applicant are appropriate and not inconsistent with the surrounding neighborhood, or the rights enjoyed by other property owners in this area.
Explain why this is the minimum variance that will make possible the reasonable use of the land, building or structure:

The Applicants are before the Board for permission to construct two accessory buildings. They will encroach setbacks and increase lot coverage. The garden tool shed has been proposed in an area with vegetative screening. The artisan studio is at the rear of the property. Both structures have been located on site, so as not to interfere with or be disruptive to abutting property owners. The completed development of this parcel will not be inconsistent in size, scope and scale or use of other properties in the area. The Applicant requires minimal dimensional relief. The proposal represents a carefully developed plan which preserves open space and the gardens. The Applicant has taken care to seek the minimum relief necessary. Granting the request for dimensional relief is the minimum variance which will allow the Applicant to further enjoy the gardens and grounds of this special property. The proposed accessory structures are consistent with the neighborhood. Accordingly, the proposed use of the property and the relief sought by the Applicant will not be injurious to, or create a burden or hardship for abutting property owners, will be harmonious with the neighborhood.

The Zoning Boards Role

Special use permits shall be granted only where the zoning board of review finds that the proposed use or the proposed extension or alteration of an existing use is in accord with the public convenience and welfare, after taking into account, where appropriate:

1. The nature of the proposed site, including its size and shape and the proposed size, shape and arrangement of the structure;
2. The resulting traffic patterns and adequacy of proposed off-street parking and loading;
3. The nature of the surrounding area and the extent to which the proposed use or feature will be in harmony with the surrounding area;
4. The proximity of dwellings, churches, schools, public buildings and other places of public gathering;
5. The fire hazard resulting from the nature of the proposed buildings and uses and the proximity of existing buildings and uses;
6. All standards contained in this zoning code;
7. The comprehensive plan for the city.

The burden of proof in a special-use permit application is on the applicant. This means that if the applicant fails to present adequate competent evidence to prove the applicable standard for issuing a special-use permit has been met, the board must deny the application.

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

a) That the reasons set forth in the application justify the granting of the variance and that the variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building or structure;
b) That the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will not impair the intent or purpose of the zoning code or the comprehensive plan upon which this zoning code is based;

c) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not due to the general characteristics of the surrounding area; and

d) 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;

e) That 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.

By signing below, I hereby attest that the information provided is accurate and truthful. I also attest that I have read the section entitled “The Zoning Board’s Role”.

Applicants & Owners,
By Their Attorneys,
Miller Scott Holbrook & Jackson

[Signature]

J. Russell Jackson, Esq.
122 Touro Street
Newport, RI 02840
Tel: 401-847-7500
Fax: 401-848-5854
irjackson@millerscott.com
<table>
<thead>
<tr>
<th></th>
<th>Existing</th>
<th>Required/Allowed</th>
<th>Proposed</th>
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<tbody>
<tr>
<td><strong>Lot Size (sq. ft)</strong></td>
<td>27,733</td>
<td>60,000</td>
<td>27,733 No Change</td>
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<tr>
<td><strong>Lot Coverage</strong></td>
<td>16 %</td>
<td>10 %</td>
<td>18 %</td>
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<tr>
<td><strong>Dwelling Units</strong></td>
<td>2</td>
<td>1</td>
<td>2 (no change)</td>
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<tr>
<td><strong>Parking (# of spaces)</strong></td>
<td>&gt; 2</td>
<td>2</td>
<td>&gt; 2 (no change)</td>
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<tr>
<td><strong>Front Setback (ft.)</strong></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Clock Tower Residence</td>
<td>0.0 ft.</td>
<td>50 ft.</td>
<td>0.0 ft. (no change)</td>
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<tr>
<td><strong>Side Setbacks (ft.)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clock Tower Residence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cottage/Guest House</td>
<td></td>
<td></td>
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<tr>
<td>East = 39 ft. 9 in.</td>
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<tr>
<td>West = 26 ft. 9 in.</td>
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<tr>
<td>East = 16 ft. 6 in.</td>
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<td>West = 103 ft.</td>
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<tr>
<td>North = 10 ft.</td>
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<tr>
<td>Proposed Tool Shed</td>
<td>N/A</td>
<td>20 ft.</td>
<td>East = 5 ft. 4 in.</td>
</tr>
<tr>
<td>Proposed Art Studio</td>
<td>N/A</td>
<td></td>
<td>East = 13 ft. 6 in.</td>
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<tr>
<td><strong>Rear Setback (ft.)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Clock Tower Residence</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cottage/Guest House</td>
<td></td>
<td></td>
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<tr>
<td>East = 86 ft. 7 in.</td>
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<td></td>
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<tr>
<td>West = 58 ft. 6 in.</td>
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<tr>
<td>Proposed Tool Shed</td>
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<td></td>
<td>106 ft. 9 in.</td>
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<tr>
<td>Proposed Art Studio</td>
<td>N/A</td>
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<td>2 ft. 4 in.</td>
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<tr>
<td><strong>Height (ft.)</strong></td>
<td>Less than 35 ft.</td>
<td>35 ft.</td>
<td>Less than 35 ft.</td>
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