



Town of South Kingstown, Rhode Island

BUILDING AND ZONING DEPARTMENT

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INST# 10639
TOWN OF SOUTH KINGSTOWN, RI

Date November 30, 2020

NOTICE OF DECISION SOUTH KINGSTOWN ZONING BOARD OF REVIEW

The following motion, made by Mr. Daniels and duly seconded by Mr. Mark

Motion passed 3-2

(T. Daniels-Aye, W. Mark-Aye, R. Rosen-Aye, R. Jurczak-Nay, R. Cagnetta-Nay)

At a meeting held on October 21, 2020 regarding the petition of Daniel J. Cunningham, 3986 B1 Tower Hill Road, South Kingstown, RI for an **Appeal of a Zoning Decision of the Zoning Enforcement Officer (ZEO)** under the Zoning Ordinance as follows: Petition of Daniel J. Cunningham, 3986 B1 Tower Hill Road, Wakefield, RI, for an Appeal of a Decision of the Zoning Enforcement Officer (ZEO) in a letter dated August 14, 2020. Premises located at 35 Fire Lane Two, South Kingstown, RI, Assessor's Map 82-1, Lot 1-1 and is zoned R-80. This appeal centers on the ZEO's interpretation of Sections 203 and 905 of the Zoning Ordinance as they relate to the premises. Owner of land is Jerry Brown Farm Association, Inc., and the owner of the dwelling is Daniel J. Cunningham for premises located at 35 Fire Lane Two, South Kingstown, RI, Assessor's Map 82-1, Lot 1-1 and is zoned R-80.

Attorney John Kenyon represented the applicant in this matter. Special Legal Counsel Amy Goins articulated the arguments in support of the ZEO's decision. The question presented by this appeal is the proper interpretation of Sec. 203(A), which states as follows:

As a special use in compliance with the provisions of [Article 9](#) of this Ordinance, the lawful nonconforming use of a building, structure, or land may be added to, enlarged, expanded, or intensified provided that such addition, enlargement, expansion or intensification shall not exceed 50 percent in excess of the existing floor area, land or intensity used for the nonconforming use at the time the use became lawfully nonconforming. Said increased use shall comply with all other dimensional and area requirements of this Ordinance. In granting such a special use permit, the Zoning Board may place such restrictions on such increase as it may deem necessary to minimize its effect upon neighboring property and uses. Additional special use permits may be granted provided that the cumulative effect is not more than 50 percent.

The Appellant/Petitioner has submitted an application for a special use permit which proposes an expansion of his dwelling area in excess of the 50 percent limit set forth in Sec. 203(A). The question is whether the 50 percent limit should be applied to each individual dwelling unit on the property (which is known as Jerry Brown Farm) or applied overall to the total square footage of the various dwelling units on the property. The reason for the Board's decision is that it cannot be said that the "existing floor area, land or intensity used for the nonconforming use at the time the use became lawfully nonconforming" is attributable solely to the dwelling unit of the Appellant/Petitioner, because it was not the Appellant/Petitioner's dwelling unit alone that made the property as a whole nonconforming, but rather the fact that the property contains multiple dwelling units on one lot, in excess of what is permitted by the Zoning Ordinance. Therefore, for purposes of this appeal, as well as for purposes of the special use application submitted concurrently by Mr. Cunningham, the 50 percent limit does not apply to his individual dwelling unit, but rather applies cumulatively to the floor area of all the dwelling units on the property.

Respectfully,

James Gorman,
Interim Building Official & Zoning Clerk
Town of South Kingstown