



**SOUTH KINGSTOWN PLANNING DEPARTMENT  
PROJECT REVIEW MEMO**

**Driscoll**

**Major Multi-Household Land Development Project  
Preliminary Plan Reinstatement**

January 24, 2023

Project Type:	<b>Major Multi-Household Land Development Project</b>		
Review Stage:	<b>Reinstatement request to previously approved Preliminary Plan Approval</b>		
Address:	<b>507-509 High Street</b>		
Plat:	<b>48-3</b>	Lot:	<b>150</b>
Parcel Size:	<b>~0.36 Acres</b>	Zoning District:	<b>CD</b>
Applicant:	<b>Glenn and Gretel McCrory 200 Lavan Street, Unit 1 Warwick, RI 02888</b>	Owner:	<b>Same</b>

**Project Description & History (as presented by the applicant)**

This property is located immediately to the north of Flatt's Smokehouse restaurant (former Giro's Restaurant). The property currently includes a structure with three existing residential units abutting High Street. The remainder of the 15,560 sq. ft. lot is undeveloped.

In July of 2005, the former owners of 507-509 High Street, Dan and Renee Driscoll, received Preliminary Plan approval for a proposed eight-unit (three existing units, five new units) multi-household, detached structure development project. The decision was recorded on July 18, 2005 and has been included with this application.

Glenn and Gretel purchased the property on January 31, 2019, at the time of their purchase, due to tolling as a result of the financial crisis in 2008-2009, the Preliminary Plan approval had not expired. Glenn and Gretel then moved forward with the required Dimensional Variance application before the Zoning Board of Review ("ZBR" or "Zoning Board"). The Zoning Board granted the required dimensional relief on June 19, 2019. The decision was recorded on June 27, 2019.

Unfortunately, following the Zoning Board decision in June of 2019, Glenn and Gretel did not realize that the Preliminary Plan was set to expire at the end of 2019. At the end of 2019 a Final Plan was not submitted for administrative review and unbeknownst to them the Preliminary Plan expired.

On February 16, 2022, Glenn and Gretel appeared again before the Zoning Board of Review (the 2019 ZBR approval expired after one year). The ZBR approved the required dimensional variances (locating more than one principal residence on one lot, rear yard set-back, and dwelling on the first floor in the Commercial District). The decision granting the requested relief was recorded on February 23, 2022.

Glenn and Gretel then approached the Building Official for building permits. They then realized that both the Preliminary Plan had expired and the Final Plan had neither been submitted nor approved. Quite frankly, Glenn and Gretel were in a state of shock.

At this point, due to the circuitous path of this project, Glenn and Gretel are respectfully requesting reinstatement of the Preliminary Plan pursuant to the Subdivision and Land Regulations - Article VIII Section C.

### Required Findings

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Reinstatement of approvals are governed by Article VIII. Waivers and Modifications, Section C. of the South Kingstown Subdivision and Land Development Regulations. The Regulations allow reinstatement of approvals upon affirmative findings by the Planning board that the following conditions have been met:

1. The project remains consistent with the Comprehensive Community Plan;
2. ***The Regulations are substantially the same as they were at the time of original approval;***
3. The zoning of the parcel is substantially the same as it was at the time of original approval;
4. Physical conditions on the parcel are substantially the same as they were at the time of original approval;
5. ***Any applicable State or federal regulations are substantially the same as they were at the time of original approval;*** and
6. Any required fee, including Fair Share Development Fees, is the same as it was at the time of the original approval.

### Staff Comments

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The Preliminary Plan Approval for this project was granted on July 12, 2005 and was subject to a 1-year vesting period (the law that doubled the initial vesting period to 2 years was not enacted until 2008). Therefore, when the tolling statute was enacted in 2009, the preliminary plan was already expired as of 1 year from the date of recording in 2005. This contradicts what the applicant is asserting in regard to the project approval being 'tolled' through the time the applicants purchased the property on January 31, 2019.

Shortly after the Preliminary Plan was approved in 2005, the Town of South Kingstown adopted an Inclusionary Zoning Ordinance in August of 2006 in accordance with the Comprehensive Housing Production and Rehabilitation Act of 2004. As outlined in Section 502.6 (Inclusionary Zoning) of the Zoning Ordinance, the purposes of inclusionary zoning are:

1. To promote affordable housing production in the town in accordance with the goals and policies of the South Kingstown Comprehensive Community Plan's Housing Element and Affordable Housing Production Plan;
2. To encourage the development and availability of housing that qualifies as low and moderate income housing as mandated by G.L. 1956, § [Ch.] 45-53, the Rhode Island Low and Moderate Income Act, and the Rhode Island Comprehensive Housing Production and Rehabilitation Act of 2004, as amended;
3. To promote mixed income household occupancy in new subdivisions and land development projects throughout the town;
4. To encourage and perpetuate the historic diversity of the community through the development of housing and housing for all populations within the town, including, but not limited to, housing for the resident workforce and housing for special needs populations;
5. To allow landowners and/or developers a reasonable return on their investment through the provisions of density bonuses to write down land and infrastructure development costs as part of a municipal subsidy program for the construction and/or rehabilitation of affordable housing units.

The fundamental purpose of inclusionary zoning is to allow the development of affordable housing to become an integral part of other kinds of development taking place in a community. Inclusionary housing provisions promote the production of affordable housing by requiring developers to set aside a certain percentage of the housing units in a proposed development to be priced affordable to low- and moderate-income households.

Since one of the requirements for reinstatement requires the Planning Board to make a positive finding that the regulations are substantially the same as they were at the time of original approval, Staff is of the opinion that this request does not qualify for reinstatement. Inclusionary Zoning would require an affordable component to this application, the previous approval did not consider or include any affordable units within the project.

Further, Staff acknowledges that the RIDEM Wetland regulations, as well as RIDEM Stormwater regulations, have been modified/amended since the time of the original Preliminary Plan approval in 2005. Staff is not sure how these regulatory changes impact the permitting for the subject property, however Staff would like to note that the applicant provided a February 22, 2021 Insignificant Alteration Permit from RIDEM for the subject property.

### **Draft Motion for Consideration**

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*The following motion is being provided as Staff does not believe the Planning Board can make the requisite positive findings to approve or otherwise affirm this reinstatement request.*

“The South Kingstown Planning Board hereby denies the applicant’s request to reinstate the July 12, 2005 Preliminary Plan approval for the Driscoll Multi-Household Land Development Project, a proposed 8-unit multi-household land development project located on Assessor’s Map 48-3, Lot 150, located at 507-509 High Street. This decision is based on the following Findings:

- A. The Preliminary Plan approval for this project was recorded on July 18, 2005 and was subject to a 1-year vesting period which expired on July 18, 2006. A Final Plan application was not submitted in that time period nor were any Preliminary Plan extensions requested. At the time the tolling statute was enacted in 2009, the Preliminary Plan was already expired. As such, the Preliminary Plan approval effectively expired more than 16 years ago.
- B. Local regulations, specifically the Town of South Kingstown Zoning Ordinance, are not the same as they were at the time of original approval. The Town of South Kingstown adopted Inclusionary Zoning regulations (Section 502.6) in August of 2006, a little more than a year after the July 18, 2005 Preliminary Plan approval. The Inclusionary Zoning regulations would require that affordable units be dedicated within a project of this type, the previously approved project did not include any affordable units.
- C. State regulations, specifically the *Rules and Regulations for Governing the Administration and Enforcement of the Freshwater Wetlands Act* and the *Rhode Island Stormwater Management, Design, and Installation Rules*, are not the same as they were at the time of original approval. Although it’s unknown to what extent these amendments and/or changes relate to the prior approval, the Planning Board recognizes that both of these regulations have changed and would apply to the proposed development.