

ZONING BOARD OF REVIEW
Sitting as the
PLANNING BOARD OF APPEALS
Barrington, Rhode Island

July 15, 2010

Appeal: Mark Zawatsky, 13 Half Mile Road, Barrington

MINUTES OF THE MEETING:

At the call of the Acting Chairman, Mark Freel, the Board met with Paul Blasbalg, Peter Dennehy, Ian Ridlon, David Rizzolo and Stephen Venuti.

Also present was Acting Solicitor Matthew Oliverio

At 8:51 P.M. the meeting was opened. Mr. Freel opened the meeting and the Board proceeded to hear the following matter. At 9:29 P.M. the public participation portion of the meeting was closed and the Board proceeded to deliberate and vote on the matter.

Before this matter began, Mr. Ridlon recused himself.

Appeal of Mark Zawatsky, 13 Half Mile Road, Barrington, RI 02806, from a Decision of the Planning Board; Assessor's Plat 24, Lot 96, 206 & 243, 70 West Street, Barrington, RI 02806.

Present: Mark Zawatsky, 13 Half Mile Road, Barrington, RI
Chris O'Connor, attorney for Mr. Zawatsky, Poore & Rosenbaum, 30 Exchange Terrace, Providence, RI
Nancy Letendre, council for the Planning Board, Ursillo, Teitz, & Ritch, 2 Williams Street, Providence, RI
Joshua Berlinsky, attorney for the YMCA, Darrow Everett, One Turks Head Place, Suite 1200, Providence, RI

There was no one in the audience to speak for or against this application.

Mr. O'Connor opened by expressing his concern that the YMCA application on the standard Zoning Board agenda should be stayed until the appeal has been decided. Mr. Freel agreed that it would be the appropriate action at this time. Mr. O'Connor also wanted it noted that he was concerned that Ms. Letendre would be representing the Planning Board, as she normally also serves as solicitor to the Zoning Board of Review. Mr. Freel assured Mr. O'Connor that this has been the normal procedure for many years, with Mr. Oliverio serving as council to the Zoning Board of Appeals.

Finally, Mr. O'Connor raised an issue regarding the fact that the Bristol County Water Authority had not been noticed on the application before the Planning Board, citing 200-14 B. Mr. Freel asked if this issue had ever been raised at the Planning Board meetings. Mr. Zawatsky asserted that while he had never raised the issue during the public hearings, he had mentioned it to the Town Planner during a visit to his office. Mr. Berlinsky countered that Mr. Zawatsky had the opportunity to raise the issue at four hearings, yet did not. Additionally the claim of lack of notice should be made by BCWA, not Mr. Zawatsky; therefore the lack of notice does not prove prejudice against Mr. Zawatsky. Ms. Letendre concurred with Mr. Berlinsky, also noting that Mr. Zawatsky does not have standing on the issue. Mr. Freel noted that the record had been made, however they would be proceeding with the appeal.

Mr. Zawatsky began his presentation by reviewing the concerns he raised at the December 3, 2009 Planning Board meeting (item #25 in the Planning Board record), noting many concerns including parking agreements, environmental impact and pool maintenance issues. Mr. Freel reminded Mr. Zawatsky that the task of the Zoning Board of Appeals is to consider issues of clear procedural or prejudicial error, not re-open the original discussion before the Planning Board.

Ms. Letendre requested that her memorandum be marked as part of the record. She noted that the concerns Mr. Zawatsky had raised at the December 2009 meeting had been addressed at subsequent meetings, as demonstrated on the revised plans dated March 23, 2010. Additionally the memorandum from the Town Planner dated April 7, 2010 outlines the evolution of the Master Plan, and Ms. Letendre assert that within what is required of the Master Plan, the YMCA responded to Mr. Zawatsky's concerns either via plan revision or justification for their action. In fact, the revised plan that was approved by the Planning Board is an improved plan, thanks in large part to Mr. Zawatsky's input. Ms. Letendre did note that environmental issues, such as dust plumes, are enforcement issues, not the purview of the Planning Board Mast Plan approval.

Mr. Berlinsky also countered Mr. Zawatsky's concerns by noting which items had been addressed in the revised plans, which items had become conditions of approval, and by noting the wetland buffer and which items were outside that buffer.

The Board asked Mr. Zawatsky if he felt he had been given an opportunity by the Planning Board to present his concerns, and he said he had. The Board also asked if he felt the Planning Board had demonstrated prejudice against him, or demonstrated legal error. In his summation, Mr. Zawatsky noted that he felt that the issues brought up in Alan Corvi's memorandum regarding pool remediation were not properly addressed. He also felt that the Planning Board erred in allowing the existing pavilion to remain.

Mr. Berlinsky stated that the structures in the wetlands were being removed, while the remaining pavilion is outside the wetlands setback. He also noted that the findings of fact, as outlined in the Planning Board decision support the approval.

MOTION: Mr. Venuti moved to uphold the Planning Board decision, requesting Mr. Oliverio to draft a formal decision to be adopted at the September 1, 2010 meeting. Mr. Dennehy seconded the motion and it carried unanimously (5-0).

DISCUSSION:

The Board felt that the appeal should be denied and the Decision be upheld for the following reasons:

- Mr. Zawatsky failed to show that the Planning Board had acted erroneously or failed to act appropriately
- The burden of proof of prejudicial error was also not met

Additionally, the Board noted that the approved Master Plan had been improved as a direct result of responding to Mr. Zawatsky's concerns.

ADJOURN:

At 11:15 P.M. Mr. Dennehy moved to adjourn the meeting. Mr. Venuti seconded the motion and the meeting was unanimously (5-0) adjourned.

Respectfully submitted,

Valerie Carroll, Secretary
Mark Freel, Acting Chairman
cc: Matthew Oliverio