

North Smithfield Zoning Board

Meeting Minutes of June 27, 2006

Present: Emilie Joyal, Chair, William Halliwell, Cornelia Laprade, William Jühr, Vincent Marcantonio, Stephen Kearns

Absent: Linda Vario

Call to Order: The Chair called the meeting to order at 7:00 pm in the Kendall Dean School.

Mr. Halliwell stated that we are sitting as the Zoning Board of Review and not as an appeals board.

Chair reviewed procedures of the board for all present.

Application of Raymond R. Houle, Sr. for Michael D'Andrea who is proposing to open and operate a swimming pool and supply company which requires a Special Use Permit per Section 5.4.7. sub section 4 and Section 5.4.8 sub section 3 of the North Smithfield Zoning Ordinance. Locus is 445 St. Paul Street, Plat 3, Lot 164.

Mr. D'Andrea stated he was waiting for his lawyer who just pulled into the parking lot.

Ms. Joyal stated we would take come of some other business while

we wait.

Mr. Halliwell made a motion to approve the minutes and decisions as submitted by the clerk in the package received for this hearing.

Mr. Marcantonio stated he wanted to amend the June 6th meeting minutes to include his questions to Mr. Marsella regarding the well capacity. Ms. Joyal stated that had been corrected and would be in the June 6th minutes. Mr. Halliwell amended his motion to include Mr. Marcantonio's correction. Ms. Laprade seconded the motion...all in favor.

Mr. Richard Kirby stated he was the attorney for Michael D'Andrea of D'Andrea Swimming Pool LLC. Mr. D'Andrea is seeking a special use permit for a retail sales office and outdoor storage of equipment.

Mr. Thomas Sweeney was sworn in by the stenographer. Mr. Sweeney stated he was a licensed R.E. appraiser and broker in RI since 1991. Mr. Sweeney was asked by Mr. Kirby's office to inspect the property and prepare a report. Mr. Sweeney stated this site is compatible with the neighborhood use and is also compatible with the North Smithfield Comprehensive Plan and Zoning Ordinance. It's his findings there would be no negative impact on the surrounding properties.

Exhibit P1 entered – Real Estate Survey of Property by Sweeney R.E.

Appraisal dated June 27, 2006.

Mr. Halliwell questioned Mr. Sweeney's comment that this property is compatible with the surrounding area. Mr. Sweeney stated that this site will be used for a commercial use which is similar to the adjacent property. Mr. Halliwell asked if this was an intensification of pre-existing use, Mr. Sweeney stated it was not an intensification of pre-existing use.

Mr. Marcantonio asked Mr. Sweeney if all of the building was going to be used, Mr. Sweeney stated he believed so.

Mr. Kearns asked what the prior use of this building was, Mr. Sweeney stated it was light manufacturing use. Mr. Kearns asked what the distance was from the building to the Blackstone River, Mr. Sweeney stated he believe it was over 400 feet.

Mr. Leo Lamoureux who is a neighbor of that property asked how much of the property was unusable. Mr. Sweeney stated he is not a surveyor but believes there is a significant amount in the back of the building.

Mr. Michael D'Andrea was sworn in by the stenographer. Mr. D'Andrea stated he is in the business of in ground and above ground and spa construction. Mr. D'Andrea stated he has been in this business for 34 years and has operated the same type of business in

North Smithfield for 15 years. The property is under a purchase and sales agreement. The property consists of approximately 8,000 sq. ft. of warehouse and office area, 2 garages, 3500 – 4000 sq. ft. of outdoor area for pool display. Mr. D'Andrea stated he will be displaying 3 pools in the front of this building. Mr. D'Andrea stated he will be storing vehicles and equipment on the site along with various pool supplies. His business would be open year round with a full staff from Mid April to Mid October. The heaviest traffic being in May thru the beginning of June. The retail space will be open 7 days a week with one late evening. The trucks operate Monday thru Friday from 8 – 5 PM and Saturday from 8 – 12 or 2 PM, no trucks on Sunday except for emergencies.

The display pools will consist of 2 above ground, one oval and one round and 1 in ground pool. The water is tanked in for these pools and they will be fenced in. These pools will require 5 to 700 gallons of water a week, due to evaporation, that will be supplied from the well on site.

At this time Mr. D'Andrea has no intention of expanding this building.

Ms. Joyal asked Mr. D'Andrea if he would be changing the lighting outside the building and Mr. D'Andrea stated no. Ms. Joyal asked who regulates the storage of chemicals on site. Mr. D'Andrea stated he believed it was the local Fire Department. Mr. Sweeney stated he believed it would RI DEM with the EPA. Mr. D'Andrea stated he does not carry bulk supply, he only carries enough to maintain the season and only keeps about a 4 week supply.

Mr. Halliwell asked if Mr. D'Andrea had gone before the Planning Board and he stated that he had received a vote. Mr. Halliwell asked if the ingress and egress would remain the same and Mr. D'Andrea stated that it would.

Exhibit P2 entered – Favorable letter from the Planning Board to the Zoning Board of Review dated June 26, 2006.

Mr. Halliwell asked Mr. D'Andrea if he would accept the following as a stipulation: Retail or Construction hours 7:30 am to 5 PM, Fridays until 6 PM, Saturday 7:30 to 5 PM and Sunday 10 am to 3 PM. Mr. D'Andrea stated yes. Mr. D'Andrea stated his workers show up at 7:30 but trucks don't roll out until 8 or 8:30 am.

Mr. Kearns asked about DEM or EPA permits. Mr. D'Andrea stated you only have to get permits and licensing on products that carry your name. The products and chemicals he will carry will have the manufacturers registration numbers on them. Mr. Kearns asked if this area was in a flood plain and Mr. D'Andrea stated no. Mr. Kearns asked if Mr.D'Andrea had any expansion plans and Mr. D'Andrea stated no.

Mr. Juhr asked if the chemicals were to be stored inside and Mr. D'Andrea stated yes. The largest contained is a 50 lb container. Mr. Juhr asked if these containers are stored on pallets and Mr. D'Andrea

stated yes. He would have approximately 5 or 6 pallets.

Mr. Lamoureux asked if there would be diesel fuel on site and Mr. D'Andrea stated no. Mr. Lamoureux asked if he would be drawing water from the well. Mr. D'Andrea stated only to refill sample pools on site, due to evaporation. All water for customers pools is tanked in. Mr. Lamoureux asked if there would be any tankers stored on site.

Mr. D'Andrea stated not at this time, but may be in the future. Mr. Lamoureux asked if there would be storage of fill or gravel for customers pools, Mr. D'Andrea stated no.

Mr. Halliwell, in the petition of Raymond Houle, Sr. for Michael D'Andrea seeking a special use permit from section 5.4.7. sub section 4 and section 5.4.8. sub section 3 lot 164, I find the following Findings of Fact:

1. Thomas Sweeney from Rodman Real Estate stated that the property is approximately 4.7 acres and the applicant seeks to locate a swimming pool operation on it. He stated that the use is compatible with the surrounding area.

2. Mr. Sweeney stated that in his opinion, the use is compatible with the Comprehensive Plan.

3. Mr. Sweeney stated that he believed that this is not an intensification of the previous use, and a lesser use.

4. Michael D'Andrea, a swimming pool contractor seeking a special use permit for the proposed property stated he has been in retail

sales and serviced pools and spas.

5. Michael D'Andrea stated that the building is approximately 8,000 sq. ft. with two garages that consist of approximately 4,000 sq. ft.

6. Michael D'Andrea stated that an outdoor display of three swimming pools were to be placed at the front of the building.

7. He further stated that an office of retail space will be approximately 1,000 sq. ft.

8. Mr. D'Andrea stated that a storage area for supplies and building storage would be approximately 1,000 sq. ft.

9. He stated that he would store trucks and equipment inside garages or to the rear of the building.

10. Mr. D'Andrea stated that the operations of this business would be from 7:30 am to 6:00 pm Monday through Friday, 7:30 am to 5 PM Saturday and from 10:00 am to 3 PM on Sundays.

11. Mr. D'Andrea stated that he had no plans to expand the building.

12. Mr. D'andrea stated that he is going to keep the present lighting that is already on the existing building

13. Exhibit P2 is a favorable recommendation from the Planning Board for the proposed use.

I moved to grant the request for a special use permit with the following stipulations:

1. The hours of operation will be from 7:30 AM to 6:00 PM Monday through Friday, 7:30 AM to 5:00 PM on Saturday and from 10AM to 3:00 PM on Sunday.

2. Mr. D'Andrea will not fill water tankers from the existing well on the property.

Mr. Marcantonio seconded that motion. Mr. Kearns asked Mr. Halliwell if he would amend his motion to include that Mr. D'Andrea will be open one hour later on Thursday evenings. Mr. Halliwell amended his motion to say that an extra house will be granted until 7:00 PM on Thursday. Mr. Marcantonio seconded that motion, the roll call vote was as follows, AYE: Mrs. Laprade, Mr. Kearns, Mr. Halliwell, Mr. Marcantonio, Ms. Joyal.

Mr. Halliwell made a motion for a 10 minutes recess at 8:04 PM, seconded by Mrs. Laprade, all in favor.

The Chair called the meeting to order at 8:10 PM.

Application of Daniel Becker appealing the opinion of the Building and Zoning Official regarding the expiration of a Sepcial Use Permit which was issued for Plat 13 Lots 17, 18, 20, 21, 44, 53, 76, 111, 112, 123 and 143 and Plat 21 Lots 25, 26, 29, 30, 31, 32, 50 and 61. Locus is Eddie Dowling Highway, Route 146A.

Ms. Joyal stated for the record that earlier this year a Zoning Board member had to seek the opinion of the RI Ethics Commission to whether or not he could sit on Dowling matters.

Ms. Joyal read the closing paragraph of this letter from the Ethics

Commission dated on or about January 25, 2006. It stated that his business relationship between himself and the Valley Alliance for Smart Growth is terminated accordingly provided any bills and fees due for prior services rendered by the petitioner to the Valley Alliance for Smart Growth are paid and provided they have no plans to conduct business in the future. The petitioners representation provide no apparent conflict of the code of ethics and petitioner may participate in and vote on the matters coming before the North Smithfield Zoning Board on the related Dowling Village project, the petitioner being William Juhr.

Mr. S. Paul Ryan, attorney representing Daniel Becker came forward and stated he and his client disagree with the opinion of the Zoning Official on when the 18 month period for special use permits or variances start. Mr. Ryan read from the North Smithfield Zoning Ordinance that the 18 month period starts from the date granted by the Zoning Board of Review. Mr. Ryan continued to read from section 9.4 of the North Smithfield Zoning Ordinance which states unless the applicant exercises the permission granted or receives a building permit to do so and commences construction and diligently prosecutes the construction until completed. No re-application for a special use permit or variance shall be granted without a hearing. Mr. Ryan stated no building official can extend a special use permit or variance on his own, it must come back before the board.

Mr. Halliwell asked Mr. Ryan if he had read the decision and

stipulation and Mr. Ryan stated yes. Mr. Halliwell stated that Dowling Village had a conditional approval letter that was presented to this board and it's noted in the Finding of Fact. Stipulation number 2 reads that the petitioner will obtain from the Planning Board all required approvals including but not limited to section 17 of the North Smithfield Zoning Ordinance. How can Dowling Village get a building permit before he is granted final approval by the Planning Board. Mr. Ryan said they cannot and should return to the Zoning Board every 18 months for an extension.

Mr. Robert Benoit, North Smithfield Zoning Board Official was sworn in by the stenographer.

Mr. Benoit referred to his opinion in a letter written to Attorney Michael Kelly on April 4, 2006. Mr. Kelly was questioning the determination on the 18 month time period. Mr. Benoit read from section 9.4 of the North Smithfield Zoning Ordinance previously mentioned in these minutes. Mr. Benoit read from the decision dated November 9, 2004 when the variance and special use permit were granted with 9 stipulations. Stipulation #2 states the petitioner will obtain from the planning board all required approvals including but not limited to section 17 which is our site plan review of the North Smithfield Zoning Ordinance. Stipulation #5, the final approval of the project is dependent upon the petitioner seeking approval from the RI DEM and RI DOT. Stipulation #6, approval of this petition is contingent upon the petitioner obtaining water rights from the City of Woonsocket and Sewer Rights from the Town of North Smithfield. As

of this date I have not received documentation that the applicant has satisfied all of the board's requirements as stated in the decision of November 9, 2004. In conclusion, the 18 months period will not begin its toll until all of the boards stipulations have been satisfied.

Mr. Halliwell asked Mr. Benoit if he had requested a status update on Dowling Village from the Town Planner. Mr. Benoit stated the Planning Board had granted conditional preliminary plan approval of Phase 1 on June 8. The Planning Board will be considering final approval of Phase 1 on July 20, 2006. Mr. Halliwell asked Mr. Benoit if he had asked the opinion of our Assistant Solicitor Mr. Rick Nadeau. Mr. Benoit stated that Mr. Nadeau did receive a copy of this letter addressed to Mr. Kelly and received not feedback. Mr. Halliwell asked Mr. Nadeau his opinion. Mr. Nadeau stated that there is no RI case law that governs this specific issue. Mr. Nadeau believes the board can uphold the decision of the Building Official.

Mr. Halliwell, in the appeal of Daniel Becker appealing the opinion of the building inspector regarding the decision in the 18-month time on the special permit and variances issued by the Zoning Board on 11/9/04 I find the following Finding of Fact:

1. Attorney Mr. Ryan stated that the 18-month decision should run from the day of the Zoning Boards decision. He stated that even though the applicant hadn't received all approvals from the town, the 18-month period should start as of 11/9/04.

2. Zoning Inspector Benoit, his opinion based on the decision of the 11/9/04 and the stipulations imposed by the Zoning Board. He stated that he would not issue a building permit because Dowling Village had not complied with the stipulations of the Zoning Board. Further, Mr. Benoit stated that Dowling Village has actively pursued obtaining all necessary approvals.

3. Solicitor Nadeau stated there was no Rhode Island case law on this subject but felt comfortable with Mr. Benoit's opinion on the North Smithfield Zoning Board decision matter.

4. Mr. Benoit read an update status of the North Smithfield Town Planner dated June 26th, it stated that the Planning Board gave a preliminary plan approval for Phase 1 on 6/8/06, and will consider final approval on 7/20/06.

Based on the findings of fact I move to uphold the Building and Zoning Inspectors opinion on the 4/26 letter to attorney Michael Kelley. Mrs. Laprade seconded that motion, roll call vote was as follows AYE: Mrs. Laprade, Mr. Kearns, Mr. Marcantonio, Mr. Halliwell, Ms. Joyal.

Mr. Halliwell made a motion to adjourn, Mr. Jühr seconded that motion, all in favor.

Meeting adjourned at 9:04 PM.

Respectfully submitted,

Kris Fanning

Clerk