

North Smithfield Zoning Board of Review

Meeting Minutes of October 24, 2006

The North Smithfield Zoning Board of Review met on Tuesday, October 24, 2006, at 7:00 PM at the Kendall Dean School, 83 Greene Street, Slatersville, RI.

Present: Emilie Joyal, Chairwoman, Cornelia Laprade, William Juhr, Stephen Kearns, Vincent Marcantonio. Absent: Linda Vario, William Halliwell

Also present were the Assistant Solicitor, Richard Nadeau, Esq.; Robert Benoit, Building and Zoning Official; and, a court stenographer from Allied Court Reporters.

Call to Order: The Chair called the meeting to order at 7:03 pm at Kendall Dean School.

The Chair addressed upcoming meetings with Board members, as follows: November 8, 2006 at 7:00 pm at Primrose Fire Station; and, November 14, 2006 at 7:00 pm, at Kendall Dean School.

The Chair reviewed the procedures of the Board for all present.

Applicant is Bernabel Martinez requesting a Special Use Permit under Section 5.4.4, Subsection 5 from the North Smithfield Zoning

Ordinance to open a religious institution/bible study. Locus is 175 Eddie Dowling Highway, Plat 13 Lot 2.

The Chair announced that per the amended ordinance, every special use permit requires a site plan review from the Planning Board. In light of the fact that the Town Planner chose not to move forward with a site plan review for the application of Bernabel Martinez, the Chair accepted a motion by Mr. Marcantonio to waive the site plan review requirement so Mr. Martinez's application hearing could proceed. Under discussion, the Chair noted that the location of the proposed religious institution would be within an existing plaza that did go through its own site plan review prior to its construction. Mrs. Laprade seconded the motion; all Board members voted Aye. Site plan review requirement was waived.

Joseph Carroll, attorney for the applicant, called Mr. George Blacksmith as his first witness. Mr. Blacksmith, owner of the property, was sworn in by the court stenographer. Mr. Blacksmith testified that the use of the plaza at 175 Eddie Dowling Highway is mostly commercial with 11 units in this existing plaza. The applicant wishes to provide a space for religious worship and proposes to use Unit 3 for a bible study/religious program. Unit 3 is approximately 1,200 square feet. Mr. Blacksmith testified that most of the units already within this plaza are open from approximately 8:30 a.m. to approximately 5:00 p.m. Hours do vary among the businesses. Mr. Blacksmith testified that there are over 120 parking spaces on the

property. In his opinion, Mr. Blacksmith believes there will be no noticeable traffic problems. Due to the varying business hours, not all parking spaces are be utilized at the same time.

The Chair asked Mr. Blacksmith for more specifics on the hours of operation of the karate studio and the restaurant. Mr. Blacksmith stated that the karate studio is sometimes open as late as 9:00 p.m., and Littlefield's restaurant is open some nights until 1 a.m.

Ms. Laprade asked about the hours of operation for the proposed bible study. Mr. Carroll stated that the hours would be Tuesday and Thursday 7:30 pm to 9:30 pm and Sunday 10:00 to noon.

Mr. Kearns asked about any anticipated traffic problems. Mr. Blacksmith stated that on Tuesday and Thursday evenings, the other businesses will be closed, and on Sundays, the only other business that is open is the restaurant. Mr. Carroll added that the restaurant does not open on Sunday until after 12:00 pm.

Mr. Bernabel Martinez was sworn in by the court stenographer. Mr. Martinez testified that he has been a minister for the Assembly of God for about 5 years. He testified that his intended use for Unit 3 of the property is bible school for approximately 15 adults and 15-17 children. Unit 3 will have benches and a desk and may be used as his office during the day. During the day, Mr. Martinez will be the only person using the space. Mr. Martinez testified that the services

scheduled will be Tuesday and Thursday evenings from 7:30 pm to 9:30 pm and Sunday from 10:30 am to 12:00 pm. Mr. Martinez testified that the congregation has about 30-32 regularly attending members. He testified that the maximum number of parking spaces to be used during services would be 12. He testified that the services may include music, using a guitar with amplifier. He stated that other business will be closed during the services, and he would keep the door closed to keep the sound inside.

Mr. Marcantonio asked about the length of the lease Mr. Martinez has signed. Mr. Martinez testified he will begin with a one-year lease.

Mr. Kearns asked about the capacity of the space according to the fire code. Mr. Benoit will address the fire safety issues.

Mr. Carroll stated that the special use permit, if granted, is not inconsistent with the town's comprehensive plan. There are no anticipated traffic problems and no anticipation of the congregation growing very much in the near future.

The Chair asked Mr. Robert Benoit, town zoning official, about the capacity of the unit, with regard to the fire code. Mr. Benoit stated that he is not sure about the capacity of the space, but estimated it to be about 116 people. He will check with the fire marshal as to the capacity of the space, as well as the means of ingress and egress in the interest of fire safety.

Mr. Juhr asked if the special use permit is based on this tenant only, or if it would apply to the entire property and any future tenants. Attorney Richard Nadeau stated that the special use permit is granted to the property. Mr. Juhr asked if it was possible to grant the special use permit only for the term of the applicant's lease. Mr. Nadeau and the Chair both stated that it is not permissible. The special use permit will apply to the property.

Chairwoman Joyal stated: In the petition of Bernabel Martinez of 175 Eddie Dowling Highway, Plat 13 Lot 2, for a special use permit, under section 5.4.4, subsection 5 of the North Smithfield Zoning Ordinance, to open and provide a religious institution/bible study, I find the following findings of fact:

- 1. Mr. George Blacksmith testified that the nature of the subject real estate is mostly commercial with 11 units in this existing plaza. Unit 3 of the plaza located at 175 Eddie Dowling Highway is proposed to house a bible study/religious program. Unit 3 is approximately 1,200 square feet in size.**
- 2. Mr. Blacksmith testified that the applicant wishes to provide a space for religious worship.**
- 3. Mr. Blacksmith testified that most of the units already within this plaza are open from approximately 8:30 a.m. to approximately 5:00 p.m., but that hours do vary. One business is open until approximately 9:00 p.m., and a restaurant is open until the latest 1**

a.m.

4. Mr. Blacksmith testified that there are approximately 120 parking spaces, but there may be a few more. Mr. Blacksmith testified that, in his opinion, there are no noticeable traffic problems. Due to varying business hours, not all parking spaces are being utilized at the same time.

5. Mr. Bernabel Martinez testified that he has been a minister for the Assembly of God for approximately 5 years. Mr. Martinez has entered into a 1-year lease with Mr. Blacksmith for Unit 3, 175 Eddie Dowling Highway.

6. Mr. Martinez testified that he wishes to provide a bible study program for young people and adults. Within this unit, there will be benches, a pulpit, and a desk. Mr. Martinez testified that services will be held Tuesday evening from 7:30 p.m. to 9:30 p.m., Thursday evening from 7:30 p.m. to 9:30 p.m., and Sunday morning from 10:30 a.m. to 12:00 p.m.

7. Mr. Robert Benoit, North Smithfield zoning official, testified that he will alert the town fire marshal to this business so the capacity of this space can be specified so as not to exceed legal capacity for fire safety. The fire marshal will also check for proper ingress to and egress from the space.

Based on the aforementioned findings of facts, the Chair moved to approve the special use permit with no stipulations. Ms. Laprade seconded the motion. Mr. Kearns asked about the previous question that Mr. Jühr brought up about the special use permit, if granted,

would be applicable to the entire plaza. After discussion between Mr. Kearns and Mr. Nadeau, the Chair amended the motion to provide a stipulation of no more than 1,500 square feet of the property could be used for the purpose provided by the special use permit, unless the future applicant comes before the board. Ms. Laprade amended her second of the motion to include this stipulation. Mr. Marcantonio stated that he would like to limit the space in the stipulation to the area of Unit 3. Mr. Carroll stated that the owner and applicant do not know the exact square footage of the space, but that it is approximately 1,200 square feet. Mr. Kearns suggested that the square footage stipulated in the motion be 1,400 square feet. The Chair again amended her motion to stipulate the special use permit be granted for a space no larger than 1,400 square feet. Ms. Laprade again amended her second of the motion. Roll call vote was as follows, Aye: Mr. Juhr, Ms. Laprade, Mr. Kearns, Mr. Marcantonio, Ms. Joyal. The special use permit was granted.

Next applicant on agenda was Ms. Rita Turcotte, appealing the Zoning Official's decision under the provisions of Section 8.4 of the North Smithfield Zoning Ordinance. Site is located at Rue de St. Jude, Plat 17, Lot 183, 184, & 185.

Ms. Rita Turcotte was sworn in by the court stenographer.

The Chair asked Ms. Turcotte if she was familiar with a case *Skelly v. Zoning Board of South Kingstown*, a court case often referred to in

merging lot provisions. Ms. Turcotte testified that she was not familiar with the case. The Chair read from the Rhode Island Zoning Handbook, “under the typical merger provision, if separately recorded adjacent lots, at least one of which is substandard, are acquired by a single owner, after the adoption of an ordinance containing a merger provision, the lots are automatically combined and cannot be separately built upon unless a special exception or variance is granted. The same principle applies where one who holds title to nonconforming adjacent lots before the adoption of the zoning merger provision continues to own the lots on the effective date of the merger provision, the lots are automatically combined by operation of law. If the owner thereafter attempts to partition the combined lot by selling one of the originally platted lots, the purchaser does not acquire a buildable nonconforming lot, but rather is barred from developing a lot without first obtaining a special exception or variance.”

The Chair informed the applicant that it is not usually the Board’s practice to overrule the ordinance and cautioned the applicant that merged lots have been subject to a number of hearings, and the Board has not historically redivided many lots. The Chair gave the applicant the opportunity to amend her application, so that instead of an appeal of the town zoning official’s decision, she could apply for a variance.

Ms. Turcotte testified that she was basing her appeal on the definition

of a lot as it is stated in the North Smithfield Zoning Ordinance. In the zoning ordinance, a lot is defined as having frontage on an improved road. Ms. Turcotte testified that lots 184 and 185 had no frontage on any type of road (improved or otherwise) at the time of conveyance to her from her mother. Therefore, the applicant testified, she is not challenging the merger of lots, she is challenging that the lots in question do not meet the definition of having frontage on an improved road.

Ms. Turcotte testified that she had filed the appeal on the advice of the town planner and zoning official. The Chair asked Ms. Turcotte if she had applied for an administrative subdivision. Ms. Turcotte testified that an administrative subdivision had been granted by the planning department but is not being recognized by the tax official due to the merged lots provision. Discussion ensued between the applicant, the Chair, Attorney Nadeau and Mr. Benoit. The Chair called for a 5-minute recess at 7:56 pm to allow Ms. Turcotte to conference with Attorney Nadeau.

The Chair called the meeting back to order at 8:02 pm. Attorney Nadeau addressed the Board and told them he would contact the tax assessor tomorrow to see that the administrative subdivision be recognized. The applicant will seek to amend the present filing to include dimensional release for a buildable lot. Attorney Nadeau advised the Board to continue the hearing and advised the applicant to submit a revised application. The Chair called for a motion to

dismiss the application of Ms. Turcotte without prejudice. Mr. Kearns made a motion to dismiss the application without prejudice. Mr. Marcantonio seconded the motion. Roll call vote was as follows, Aye: Mr. Jühr, Ms. Laprade, Mr. Kearns, Mr. Marcantonio, Ms. Joyal. The applicant of Ms. Rita Turcotte was dismissed without prejudice.

The next agenda item was the application of the Town of North Smithfield, requesting a Special Use Permit per section 5.4.4 (1), public and private schools, and a Dimensional Variance, per section 5.5.1 of the Zoning Ordinance, location 412 Greenville Road, Plat 15, Lots 44, 45, 46 & 57, Zoning District RA-25.

The Chair stated that per the amended ordinance, every special use permit requires a site plan review, which was been submitted to the Board by the Town Planner, via Mr. Benoit, the evening of this hearing.

Architect Mr. Steven Hughes of Robinson Green Beretta Corporation was sworn in by the court stenographer. The Chair asked Mr. Hughes for drawings and other materials, as no renderings, drawing, etc. were submitted with the application. Mr. Hughes stated that he had submitted all materials to the Planning Board for site plan review. Mr. Benoit informed Mr. Hughes that materials submitted to Planning do not get passed along to the Zoning Department. Mr. Jühr suggested postponing the hearing until the Board members are able to obtain copies of drawings and other materials. The Chair and Ms. Laprade

agreed that it would be best to continue the hearing in order to give the Board time to review the applicant's materials and be better able to give an informed decision. The Chair made a motion to continue the hearing to November 8, 2006. Mr. Jühr seconded the motion. Mr. Kearns asked if any audience members had concerns about the application. One audience member asked exactly what permit is being sought by the applicant. The chair addressed the audience, informing them that the applicant is seeking a height variance and a special use permit, which is required for this particular zone. Roll call vote was as follows, Aye: Mr. Jühr, Ms. Laprade, Mr. Kearns, Mr. Marcantonio, Ms. Joyal.

The chair adjourned the meeting at 8:25 pm.

Respectfully submitted,

Angela Pugliese