

North Smithfield Zoning Board of Review

Meeting Minutes of December 4, 2007

The North Smithfield Zoning Board of Review met on Tuesday, December 4, 2007, at 7:00 PM at Kendall Dean School, 83 Greene Street, Slatersville, RI 02876.

Call to Order: The Chair called the meeting to order at 7:00 pm.

I. Call of the Roll

Chair Stephen Kearns called the roll of the members. Present: Stephen Kearns, Steven Scarpelli, William Juhr, Dean Naylor, and Mario DiNunzio. Absent: Vincent Marcantonio and Guy Denizard. Also present were the Assistant Solicitor, Robert Rossi, Esq.; Robert Benoit, Building and Zoning Official; and a court stenographer from Allied Court Reporters.

The Chair reviewed procedures of the board for all present.

II. Revision of the Minutes of September 18, 2007

Mr. DiNunzio made a motion to table this agenda item until the next scheduled meeting so Mr. Marcantonio and Mr. Denizard can be present for the discussion and decision. Mr. Scarpelli seconded the motion, with all in favor.

III. Approval of revised Minutes of September 18, 2007

Mr. Juhr made a motion to table this agenda item until the next scheduled meeting so Mr. Marcantonio and Mr. Denizard can be present for the discussion and decision. Mr. Naylor seconded the motion, with all in favor.

IV. Approval of the Minutes of November 20, 2007

Mr. DiNunzio made a motion to approve the minutes of November 20, 2007, with one correction (change advertising fee on p. 3 from \$300 to \$350). Mr. Scarpelli seconded the motion, with all in favor.

V. Ratification of the written decision granting the application of Robert C. and June E. Quinn, requesting a Special Use Permit per section 4.5, non-conforming uses of structures or of structures and premises in combination, subsection C. Locus is 1184 Providence Pike, Plat 11, Lot 225.

Mr. Scarpelli made a motion to approve the written decision granting the application of Robert and June Quinn. Mr. DiNunzio seconded the motion. Roll call vote was as follows: AYE: Mr. Juhr, Mr. Kearns, Mr. Scarpelli, Mr. DiNunzio. Mr. Naylor did not vote, since he did not vote on the decision granting the application.

VI. Ratification of the written decision denying the application of Daniel Geer and Debra McManus for Omnipoint Communications, Inc., requesting to install a wireless communication facility (cell tower), which requires a Special Use Permit under Section 5.4.7, subsection 19(A) & 19(B), Section 5.6.3.10, subsection 6, and a dimensional variance under Section 5.6.3.10, subsection 7 (A-1). Locus is 260 Pound Hill Road, Plat 9, Lot 150.

The Chair stated that he has been asked to make a change to the written decision and that Mr. Marcantonio and Mr. Denizard have asked to be present to provide input and participate in the discussion. Mr. Naylor made a motion to table this agenda item until the next scheduled meeting. Mr. Jühr seconded the motion, with all in favor.

VI. Continued application of Darcy Chiulli Realty Trust, LLC, requesting to open a storage facility. This will require the granting of a Special Use Permit by the Zoning Board of Review; per section 5.4.8, subsection 9. Locus is 35 Railroad Street, Plat 4, Lot 229.

The Chair read a letter from the applicant, asking to withdraw his application, due to the applicant's investing partner withdrawing from the project. Mr. Naylor made a motion to accept the applicant's withdrawal of his application. Mr. Jühr seconded the motion, with all in favor.

VII. Application of Chris Dandeneau, requesting to open and operate an Indoor Youth Sports Facility. This will require the granting of a Special Use Permit, per section 5.4.6 (7) of the current zoning ordinance. Locus is 473 St. Paul Street, Plat 2, Lot 64.

Christopher Dandeneau was sworn in by the court stenographer. He addressed the Board to state that he is requesting a special use permit to open a batting cage facility for the use of the youth of North Smithfield and surrounding communities, such as East Woonsocket. He is the president of the North Smithfield Little League and has many contacts throughout the area who have expressed interest in a facility to provide pitching, batting, fielding, and catching clinics. He stated that the facility would be used mainly during the winter, after school and at night. He anticipated the business would have approximately 7-10 cars parked during these hours. Most sessions run 1-2 hours, so there would not be a lot of people parked and waiting for a batting cage. The customers would show up at their appointed time. He stated there are 18 parking spaces available for his business, with a total of 44 spaces at the building (shared with adjoining businesses). He also stated that his business hours would be different than that of the adjacent businesses, so he does not anticipate many cars parked during his business hours.

Mr. Dandeneau stated that the large garage door would remain closed during the colder months; with the possibility of leaving it open during the summer months. He stated it would be mainly a winter

facility, with Pacheco Park being used during the summer. During the summer, the facility would be in use on rainy days. He also stated that if neighbors had complaints of noise with the garage door opened, he would agree to keep them closed.

The Chair stated that any approval would include a condition that the business be inspected by the fire marshal and up to fire code. Mr. Jühr asked about the lighting for the parking lot. Mr. Dandeneau stated that there is a spotlight on the front left and right corners and a street light.

The Chair asked if there would be any other activities offered in the facility. Mr. Dandeneau stated that the cages could also be used for soccer and golf practice. Mr. Jühr stated that he did not want the business to turn into a huge sports facility, such as The Habitat in Uxbridge. He would like to limit the size and scope of the services offered. The Chair suggested limiting the special use permit to the space requested; if more space in the adjacent businesses became vacant, the applicant would need to return before the Board if they wished to expand the business. Consulting the plans, the Chair stated that the space considered in the application is not more than 4000 square feet.

The following exhibits were entered into the record:

P1—zoning application

P2—letter from applicant (description of proposal)

P3—abutters list

P4—building plan with tenant layout

The Chair stated that he did not see any environmental impacts associated with the proposed use, but did have a concern about the noise impacts. Mr. Jühr stated that perhaps 9:00 pm would be a more appropriate closing time. The Chair stated that with the doors closed, and the Town Council working on a town-wide noise ordinance, he thinks that a 10:00 pm closing time is fine. Mr. Dandeneau stated that during the winter months, children will have other sports, so they would not be coming in until around 5:30 p.m., so closing at 9:00 would be kind of limiting to the business. Mr. Jühr asked if the decision could be worded that the time may be adjusted in the future, in case there are complaints about noise and the parking lot becoming a hangout for kids. Mr. Rossi stated that it would be tough to include that in the decision. He added that once the special use permit is granted, but there is enforcement available by the Town Council and the police if there are noise complaints or hangout issues.

Mr. DiNunzio stated that “sports activities” is a bit broad and asked if the decision could include a list of permitted activities. He was concerned that the future uses could include table games, such as billiards or video games. Jay LaPlante was sworn in by the court stenographer. He and Mr. Dandeneau discussed possible permitted activities for the business. They stated that though the cages are

removable, it is not something they are looking to do. They would limit the activities to sports that can use the cages. The Board suggested that karate is not an appropriate sports activity for the facility, because it usually involves lessons and classes that will draw a lot more people than the activities that use the batting cages. The Chair stated that capacity would be set by the fire marshal and that parking is related to the capacity set for the business. Mr. Naylor asked if any on-street parking would be allowed. Mr. Rossi stated that he is not sure if there is any available in that area, and if so, it would be a police matter to enforce that.

The Chair stated for the record that no one was present in the audience to express opposition to the application.

Mr. Scarpelli made a motion to approve the application of Chris Dandeneau, requesting to open and operate an Indoor Youth Sports Facility. This will require the granting of a Special Use Permit, per section 5.4.6 (7) of the current zoning ordinance. Locus is 473 St. Paul Street, Plat 2, Lot 64, with the following conditions:

- 1) the use is limited to the following sports: baseball, golf, softball, soccer, basketball, volleyball, tennis, and football
- 2) hours of operation will be 7:00 am to 10:00 pm, 365 days a year
- 3) no outside activities are allowed
- 4) the facility must conform to existing local/state building and fire codes
- 5) all necessary licenses and permits required by the Town of North

Smithfield, including hours and days of operation must be obtained. Town regulations take precedence over hours of operation listed in these conditions.

Mr. DiNunzio seconded the motion. Roll call vote was as follows: AYE: Mr. Jühr, Mr. Kearns, Mr. Scarpelli, Mr. Naylor, Mr. DiNunzio. Special Use Permit was granted, with a vote of 5-0.

VIII. Adjourn formal meeting

Mr. Naylor made a motion to adjourn the formal meeting of the Zoning Board of Review at 7:50 pm. Mr. Scarpelli seconded the motion, with all in favor.

IX. Call to Order of the Workshop Session

The Chair called the workshop session to order at 7:50 pm. He stated that this session is for open discussion among the Board, with no legal hearings, binding authority, or legal repercussions. The court stenographer was dismissed from the workshop session.

X. Update on Land Use Workshop—Vincent Marcantonio and Dean Naylor

The Chair asked Mr. Naylor to update the Board on the Land Use workshop he attended. Mr. Naylor attended the first of 3 sessions this week. The session focused on planning and the board's role as a public official. The workshop provided information on the state's

plan for land use. The state evaluates how each town's comprehensive plan fits in with the state's plan. Once the town's plan has been approved by the state, it is the board's responsibility to apply what is set forth in the comprehensive plan to the zoning ordinance. An attorney gave a presentation that included information on recusal and ethics questions. This included information on how/when to recuse. There are instances in which a board member may have a relationship with an applicant, but still remain unbiased. In these cases, the board member should state the relationship for the record, but may participate in the hearing. In other cases, the board member may stay at the table but abstain from the vote. Mr. Naylor received a book with this information, which he will share with the other members. He will ask if he is allowed to copy it and distribute copies to the other board members.

The Chair stated that he will talk to the town administrator about getting training for all board members. The board will remain the same for at least one more year and the chair feels it would be very beneficial for all board members to have the opportunity to attend training. The Chair stated that some issues, such as ethics, can get complicated. Mr. Naylor stated that Cumberland sent all the town council, planning board, zoning board, and the planning official to the workshop. The Chair agreed that providing training for board members will result in good decision-making bodies for the town.

XI. Update on fee structure of the North Smithfield Zoning

Ordinance—Vincent Marcantonio and Guy Denizard

Both Mr. Marcantonio and Mr. Denizard were not present this evening, so this agenda item was skipped.

XII. Update on meeting recording requirements—Bill Juhr

Mr. Juhr addressed the board with the results of the research he had completed on transcripts and recording requirements. Mr. Juhr spoke with Diane Lapore at Allied Court Reporters. Ms. Lapore explained the fee structure for the court stenographer. There is a \$300 appearance fee for each meeting. This fee includes three hours of time from the court stenographer. The transcription fee is \$4.00 per page. A 3-hour meeting averages 120-150 pages of transcription, depending on how quickly the speakers and session move along. At this rate, a transcript from a typical Zoning Board meeting would run approximately \$400-450. (\$480 for a 120-page transcription.)

Mr. Juhr stated that Ms. Lapore told him that state-related transcripts are held for 7 years. For local government, there is no set time for holding paperwork/transcriptions. Ms. Lapore implied that it was up to the individual stenographer. She also stated that it has been a long time since the town has requested a transcript. The 23-page transcript portion from the September 18, 2007 Zoning Board meeting cost \$120.

Mr. Juhr stated that he feels that \$450 is reasonable to be divided among 3 applicants. He also said that the transcripts can be

delivered electronically, through a user name/password system online. Mr. Scarpelli suggested asking Shelly Deming (Allied Court reporter) how long she usually keeps the records from the Zoning Board meetings. Mr. DiNunzio asked if it was possible for her to record the meeting on a disk and deliver it to the Board. Mr. Jühr replied that the meeting is transcribed from shorthand to longhand, and requires an additional fee for that service (the \$4 per page fee). He stated that Ms. Lapore informed him that there is a great deal of education required in becoming a court reporter and it is very hard to find someone willing to do whole meetings.

Mr. DiNunzio asked about creating a tape record for each meeting. Mr. Jühr stated that the meetings are taped now, but this is not a legal record. Mr. Rossi stated that there is an inherent problem in just recording the meetings. The tape is helpful in writing minutes, but not for a stenographic record. The stenographer relying on only tapes will have difficulty recognizing voices, and sometimes a full transcript is not requested for months following the meeting. Mr. Rossi stated that he has checked the statute, and all proceedings of applications are required to be stenographically recorded. He stated that it is possible to segregate each hearing and have the applicant pay for their portion of the meeting. Mr. Jühr added that they could streamline the amount of transcript by limiting it to just application-related material. He stated that he would like each application item to be transcribed and a separate transcript be obtained for each application.

The Chair stated that it would be very helpful for each board member to have a password and a way to access the transcripts. He said this will require storage space and someone to organize the information. Mr. Jühr responded that the information could be kept on a hard drive and not printed unless requested. Mr. Benoit stated that he is not sure if the computer capabilities for this are available in town. Mr. Jühr stated that it is the same as tax records and could be easily done. The Chair stated that it may require a new job for someone to organize this information. Mr. Jühr said that it is not necessarily a new job, but rather a better organize way to keep track of the information that is already being filed for each application.

Mr. Scarpelli started a discussion on how to bill each applicant for the transcript. If the transcript fee is added to the application after the hearing is completed, it will be very hard to collect the fee. The Board agreed with this. Mr. Jühr stated that the best way is to come up with an average fee for each transcript. Mr. Benoit stated that the fee must be collected up front, before the hearing. The Chair stated that this cost could be added into the new fee structure, which should also include the cost of mailing and advertising. He stated that the applicant heard at this meeting would have had to come up with approximately an additional \$160 for the transcript. Mr. Jühr responded that this is not unreasonable, since for that fee he obtained a special use permit to run his facility for life.

The Chair stated that Mr. Marcantonio has sample fee structures of other towns, which base the fees on the size of the project/structure. For some small projects, the fee may be lower than it is now, but for very large projects, the fee will be much greater. Mr. Jühr also suggested looking into if fees are paid in other municipalities for the formality of approving decisions. The Board replied that if the application is denied, applicants won't pay for the decision. Mr. Jühr stated that large projects, such as the Omnipoint cell tower application, are exactly the type of applicants that should be paying for the transcripts. They appeared before the Board over several sessions, and having a transcript of each session would have been very useful in reviewing past testimony. Mr. Naylor suggested collecting a retainer fee and not ratifying decisions until all fees are paid. Mr. Scarpelli questioned whether the accounting involved was feasible. The Chair suggested not opening deliberations until all fees were paid. Mr. Jühr stated that once a few more applications are heard, it will be easy to mathematically determine an average transcript fee for each application. Mr. Rossi agreed that the accounting involved in trying to collect money after the application is not possible.

The Chair suggested continuing this workshop session for at least one more meeting and try to get something in writing to present to the Town Council. Mr. Jühr suggested trying to do this before March when the budget process will be taking place. Mr. Naylor asked what the budget of the Zoning Board is compared with the revenue from

application fees. Mr. Benoit stated that the Zoning Board budget is approximately \$10,000 for the year (approximate costs include: \$5500 for stenographer, \$2400 for secretary, \$250 for office supplies). He stated that he is not sure of the revenue, because that money goes into the general fund, not back to the Zoning Board. Mr. Jühr asked if Mr. Benoit could find out how much money is taken in each year through fees. Mr. Benoit said he would look into it. He stated that there are approximately 15 new applications each year. This year there have been 17.

XIII. Discussion of other proposed changes to the operation of the Zoning Board.

Mr. Rossi informed the Board that at the next meeting a chair and vice-chair will be elected. The Chair stated that they usually do vote at the first meeting in January. Mr. Benoit asked the Board that in discussing proposed changes; please include any additional materials that they would like applicants to submit for a hearing. The Chair suggested making a checklist-type document. Mr. Benoit stated that there is a checklist now, but the Board may want to review the checklist and add additional required documents. Mr. Jühr asked Mr. Benoit to submit a copy of the checklist to the Board members. Mr. Benoit also stated that each applicant receives a packet, which includes a copy of all pertinent sections of the zoning ordinance. Mr. Benoit will get a copy of the packet for the Board to review.

Mr. DiNunzio made a motion to adjourn the workshop session at 8:33

pm, seconded by Mr. Scarpelli, with all in favor.

Respectfully submitted,

Angela Pugliese

Zoning Board Clerk