

## **North Smithfield Zoning Board of Review**

### **Meeting Minutes of November 20, 2007**

**The North Smithfield Zoning Board of Review met on Tuesday, November 20, 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 when the court stenographer arrived at 7:10 pm.**

#### **I. Call of the Roll**

**Chair Stephen Kearns called the roll of the members. Present: Stephen Kearns, Vincent Marcantonio, Steven Scarpelli, Guy Denizard, William Jühr, Dean Naylor, and Mario DiNunzio. 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. Approval of Minutes – October 16, 2007**

**Mr. Marcantonio made a motion to approve the minutes of October 16, 2007. Mr. Scarpelli seconded the motion, with all in favor.**

### **III. Approval of Minutes – November 6, 2007**

**Mr. Marcantonio made a motion to approve the minutes of November 6, 2007. Mr. Scarpelli seconded the motion, with all in favor.**

**IV. Report from the Chair: 1) transcripts for the portion of the meeting of September 18, 2007. 2) Workshop on Making Good Land-Use Decisions – Request to the Town Council, 3) Request to Town Council for copies of the Comprehensive Town Plan.**

**The Chair updated the Board as to the status of some previous discussions and requests. 1) He stated that Mr. Benoit had gotten approval to pay for the portion of the transcript of the September 18, 2007 meeting dealing with zoning enforcement issues. The Chair had received the transcript, copied it, and submitted copies to the Board. He would like the Board to review it and bring forth any discrepancies between the transcript and the previously prepared minutes. At the December 4, 2007 meeting, the Board will discuss how they would like to amend the September 18, 2007 minutes, based on the information in the transcript.**

**2) The Chair appeared before the Town Council to seek funding for the Board members to attend a workshop on making responsible land use decisions, which is sponsored by Grow Smart RI. The total cost for all 7 members is \$630. The Town Council stated that there was no money in the budget for this expense, but Town Planner Michael**

**Phillips stated that the Planning Department has some money set available for training. He offered to send 2 members of the Zoning Board, along with 2 members of the Planning Board to the workshop. The Board decided that Mr. Marcantonio and Mr. Naylor would attend the workshop and report back to the rest of the Board members. The Chair stated that he will look into having money set aside for future training of Board members. He feels that this is very important for all Board members, no matter what background and experience they may have.**

**3) Copies of the town's Comprehensive Plan have been obtained and given to each Board member. The Chair thanked Mr. Benoit for helping to obtain these copies and stated that this document will be very helpful in making informed decisions.**

**V. Ratification of the written decision denying the application of Creative Home Improvement Builders, Inc., requesting a dimensional variance for frontage requirements, per section 5.5, subsection 5.5.1. Locus is Black Plain Road, Plat 7, Lot 52.**

**Mr. Scarpelli made a motion to approve the written decision denying the application of Creative Home Improvement Builders, Inc. Mr. Marcantonio seconded the motion, with all in favor.**

**VI. Request of Bucci Development and Dowling Village to correct a typographical error in the written decisions of November 9, 2004 and**

**January 18, 2005.**

**Michael Kelly, attorney for Bucci Development, requested that the Board correct typographical errors found in written decisions dated November 9, 2004 and January 18, 2005. Mr. Kelly stated that these errors came to light when some proposed tenants of Dowling Village were doing research into financing. He stated that he had sent a letter in June about the errors, but never heard back. He submitted a second letter on November 9, 2007, requesting that the Board correct the errors.**

**Mr. Kelly asked the Board to correct the written decision granting a special use permit, dated November 9, 2004, to include Assessor's Plat (AP) 21, Lot 30 in place of Lot 309. Mr. Kelly submitted copies of the original application, approved plans, and the hearing transcript, which all include AP 21, Lot 30, with no reference to AP 21, Lot 309. The Chair stated that it is clear from these documents that the correct lot to be included in the decision is AP 21, Lot 30 and that AP 21 Lot 309 should be taken out.**

**Mr. Jühr stated that he had received a copy of the application for the dimensional variance a few days before this hearing, which was not dated. This evening he received another copy of the application, which was dated April 9, 2004. He asked Mr. Benoit if the date was added in within the past week. Mr. Benoit stated that he did add the date in prior to distributing copies to the Board members at this**

meeting. Mr. Juhr asked if both the undated and dated copies of the application could be submitted as exhibits to remain part of the record. The undated copy was labeled exhibit Z2 and the dated copy was labeled exhibit Z1.

Mr. Scarpelli made a motion to change the written decision, dated November 9, 2004 (recorded on November 12, 2004) to reflect AP 21, Lot 30 in place of AP 21, Lot 309. Mr. Denizard seconded the motion. Zoning Board vote was as follows: AYE: Mr. Juhr, Mr. Marcantonio, Mr. Kearns, Mr. Scarpelli, Mr. Denizard. Motion passed, with a vote of 5-0.

Mr. Kelly asked the Board to correct the written decision relating to some modifications on conditions to a sign variance, dated January 18, 2005, to include AP 13, Lot 18, which was left off the written decision, and to change AP 13, Lot 52 to AP 13, Lot 53. AP 13, Lot 52 should not be included in the decision. Mr. Kelly submitted copies of the original application, approved plans, and hearing transcript which show that AP 13, Lot 18 and AP 13, Lot 53 should be included in the written decision. He stated that, as documented in the transcript, the clerk left out Lot 18 when she read the list of lots, but that Ms. Joyal corrected her to include AP 13, Lot 18.

Mr. Marcantonio made a motion to correct the written decision of January 18, 2005 to include AP 13, Lot 18 and replace AP 13, Lot 52 with AP 13, Lot 53. Mr. Scarpelli seconded the motion. Zoning Board

**vote was as follows: AYE: Mr. Jühr, Mr. Marcantonio, Mr. Kearns, Mr. Scarpelli, Mr. Denizard. Motion passed, with a vote of 5-0.**

## **VII. Adjourn**

**Mr. Marcantonio made a motion to adjourn at 7:40 pm. Mr. Scarpelli seconded the motion, with all in favor.**

## **VIII. Call to Order of the Workshop Session**

**The Chair called the workshop session to order at 7:40 pm. He stated that this session is for open discussion among the Board, with no legal hearings, binding authority, or legal repercussions. The purpose of the workshop session is for the Board to discuss plans for the future, including possible rule changes.**

**IX. Discussion of fee structure under the Zoning Ordinance, Discussion of recording requirements i.e. minutes, transcripts, tapes, etc.**

**Mr. Benoit distributed copies of the existing fee structure. The applicant's cost for a zoning hearing includes a \$25.00 application for Certificate of Zoning Compliance fee and a \$225.00 application to appear before the Zoning Board of Review fee, for a total of \$250.00.**

**The town's expenses include the following (all costs, except for the court stenographer fee, are averages per application): advertising \$350, court stenographer \$300, certified mail \$91.50, and Zoning**

**Board secretary \$135.00, for a total of \$876.50. This total, less the applicant's fees, results in the town's expenses averaging \$626.50 per application.**

**Mr. Benoit stated that the \$25.00 application for Certificate of Zoning Compliance fee had been raised from \$15.00 in 2001, but the \$225.00 application to appear before the Zoning Board of Review fee has been the same for at least as long as he has been in his position (24 years).**

**The Board discussed the court stenographer's fee and what services were included in that fee. The fee of \$300 is just for the stenographer to attend the meeting, record the meeting, and type the transcript. It does not include copies of the recording or the transcript. These must be ordered separately, if needed, and will add a significant expense to the town. The stenographer stated that the transcript price is approximately \$4-5 per page. Mr. Benoit stated that he has seen some transcripts, for a 3-hour meeting, cost \$800. Mr. Jühr asked the stenographer how long the tapes of the meeting were kept. She replied that she believes the state law requires the company to keep copies of tapes for 7 years. Mr. Jühr stated that there would be no record of the meeting if it was needed in 10 years. Mr. Rossi stated that the minutes would still be available. The Chair stated that it is hard to know what is sufficient in terms of a record of the meeting and what is excessive.**

**In discussing the applicant's fee for the hearing, Mr. Juhr pointed out that the applicant only pays the fee once, while the hearing may continue over 4-5 meetings.**

**Mr. Marcantonio informed the Board that he had been researching the fees of nearby towns for their zoning board applications. He stated that Smithfield requires the applicant to pay for all advertising and mailing. They also charge fees, prorated by size of project, ranging from \$300-\$1000. This fee schedule allows small residential projects to remain accessible for the average homeowner. He will continue looking into fees charged by other Rhode Island towns and report his findings to the Board. Mr. Juhr stated that he has no problem with having applicants pay more for a hearing, and he would also like to find a way to get a full transcript of each meeting. He suggested that applicant's be responsible for paying for the portion of the transcript concerning their application.**

**The Chair stated that the Board should work together to come up with a definite proposal for a change in the fee structure. Mr. Rossi stated that the fee structure is part of the Zoning Ordinance; therefore the Town Council will have to be asked to entertain a change in the fee structure. He also stated that under a new statute that prevents increasing the tax level by more than a few percent per year, an added burden has been put on towns like North Smithfield. This would be a legal standpoint to justify raising the cost of the hearing. The Board also discussed other charges involved in a Zoning Board**

hearing, such as lights and heat for the building. Mr. Benoit stated that the issue of raising fees has been brought up in the past, but nothing has been done yet. He also added that if the applicant is the one who requests a continuation, they are responsible for the court stenographer's fee for the next meeting. If the Board suggests the continuation, the town is responsible.

Mr. DiNunzio stated that he does not want to make the fee so onerous that it discourages residents of the town to apply for relief. He stated that adding the price of the transcript to the additional fees could result in a very high cost. He suggested that the applicant not be responsible for the additional fees if the request is denied. Mr. Rossi stated that it is a good idea, but he does not think there can be any conditions on the fee structure. Mr. Jühr stated that the Board may actually get more people coming before them, if they thought they would not have to pay for a denied request.

Mr. Benoit clarified for the Board that the stenographer's fee is a flat fee of \$300 for 3 hours, no matter if the meeting adjourns prior to 10:00 pm. If the meeting runs over 3 hours, an additional charge of \$100 applies.

Mr. Denizard asked if there was a way to compute costs of light, heat, and other overhead costs. Mr. Benoit stated that the town has looked at these costs as a service provided to the town. Mr. Rossi stated that when money from the state was more plentiful, towns were able

to provide more services, but now it may be reasonable to have these expenses factored into the fee schedule.

Mr. Marcantonio stated that if the fee is not raised, but the applicant is responsible for mailing and advertising, it would save the town approximately \$450 per application. Mr. Jühr stated that he thinks there is a lot more that can be done in adjusting the fee structure. The Chair stated that the decision would be well served by more research. He stated that he will continue to place this issue on the agenda for future meetings, so the Board can continue discussions until a new fee structure is developed, which can be presented to the Town Council for approval.

The Chair asked Mr. Jühr for suggestions on how the fee for the transcription can be worked out so they would have an idea of what the town would absorb as part of the cost. (For portions of the meeting that do not pertain to an application.) Mr. Jühr stated that he will contact the stenographers' office to find out costs for an average meeting. He suggested that during the meeting the clerk take account of the time that each application runs, which will help come up with an average cost per application.

Mr. Benoit stated that in addition to the \$250 total fees, the applicant is also responsible for providing the list of abutters and a radius map.

These costs can run between \$500 and \$700. The Chair added that some applicants are required to do much more, such as pay for a

**traffic study, etc.**

**The Chair stated that Mr. Marcantonio and Mr. Denizard will continue researching fee structures of other towns. Mr. DiNunzio suggested that while they are conducting their research, they should inquire about what each town requires as far as obtaining transcripts of the meetings. Mr. Juhr also suggested asking if any towns use video to record the meetings, instead of transcripts.**

## **XI. Maintaining and Preserving an Accurate Record of the Hearing (Bob Rossi)**

**Mr. Rossi addressed the Board to discuss maintaining and preserving an accurate record of each hearing. He stated that this has nothing to do with transcripts, minutes, and videotapes, but rather what the Board says and how they say it. The transcript is used in Superior Court to allow the judge to obtain all information as if they were present at the meeting. The best transcripts will be a 98-99% accurate representation of the meeting.**

**The first rule is for all members to speak clearly and loudly. He stressed that all Board members use the microphone and speak one at a time. The stenographer can only take a record of one person at a time. This is the same for witnesses and audience members. He instructed the Chair to use the gavel to be sure that this is followed.**

He stated that often applicants submit maps, plans, and drawing, which they refer to during the hearing. He asked Board members to be clear when referring to these exhibits, using specific references, as opposed to general terms, like “over here” or “near the bottom of the map.” Give specific locations, noting what property the area abuts, etc. Mr. Denizard added that if the plans are prepared using good engineering practice, they should be labeled with coordinates. Therefore, they could refer to the plans by “A3” or “D7,” (for example), giving exact locations on the plans or map. Mr. Rossi also asked the Chair to help clarify in cases when an applicant is testifying. Some applicant’s may not use proper terminology because they are not familiar with engineering terms or plans. In these cases, the Chair should state something like, “for the record, the applicant is point to ...”

Mr. Rossi stated that many times attorneys come up to the table to refer to exhibits or point things out on maps. People in the audience and at the desk cannot see relationships to abutting lots. Sometimes this is necessary, but when the discussion concludes, the Chair should summarize what occurred. He should also try to keep approaches to the table at a minimum.

Mr. Naylor suggested having a set of documents set aside to be marked up at meetings. Anything the applicant or the Board members refer to on the document can be clearly marked on these documents and saved for the record. The Chair agreed this is a good

**idea, especially in the case of some applicants who bring a large poster board copy of plans. If they had an extra set to submit, these can be marked and kept in the hearing file. Mr. Rossi also stated that the record should be clear as to where and why these documents are marked. All this will help create an accurate record of each hearing. He also stated that the date of each plan be mentioned when referring to plans, as often applicants bring in several revisions of plans. Revision dates should be clearly marked on the plans.**

## **XII. Discussion of other proposed changes to operations of the Zoning Board**

**The Chair stated that at future meetings, these issues will continue to be discussed. Mr. Benoit asked the Chair to submit a letter with the request for funding for training, because he is starting to work on the budget.**

**Mr. Scarpelli made a motion to adjourn the workshop session at 8:44 p.m., seconded by Mr. Naylor, with all in favor.**

**Respectfully submitted,**

**Angela Pugliese**

**Zoning Board Clerk**