

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

### **Meeting Minutes of March 6, 2007**

**The North Smithfield Zoning Board of Review met on Tuesday, March 6, 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 7:06 pm.**

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

**Chair Stephen Kearns called the roll of the members. Present: Stephen Kearns, Vincent Marcantonio, William Juhr, Steven Scarpelli, Dean Naylor. Absent: Mario DiNunzio 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 stated that Mr. DiNunzio had informed the Board that he would not be present at the meeting this evening. The Chair stated that Mr. Denizard is expected and would need to be present for the vote on Mr. Laliberte's bond release request. Mr. Denizard arrived at the meeting at 7:10 pm.**

**The Chair reviewed procedures of the board for all present.**

#### **II. Approval of Minutes and Decisions—January 2, February 6, 2007**

**The Chair announced that the Board has been withholding approval of the decision of January 2, 2007 for a Special Use Permit for New**

England Self Storage, pending verification of the DEM permit that storage of gasoline on the site is allowed. The Chair stated that he feels the Board must move forward with the approval, as the enforcement of the decision is not a Board matter, but rather one for the Zoning Official. The Chair asked for a motion to approve the decision of January 2, 2007 for the application of New England Self Storage. Mr. Jühr asked Mr. Benoit if he had been out to the site to see about the rental vehicles being stored in the front of the building. Mr. Benoit stated that he had visited the owner about this issue and that the owner informed Mr. Benoit that the Planning Board had given approval to store one U-Haul vehicle in the front of the building. No member of the Board made a motion to approve the decision.

The Chair asked for a motion to approve the minutes of the February 6, 2007 meeting. Mr. Jühr made a motion to approve the minutes of February 6, 2007. Mr. Marcantonio seconded the motion, with all members in favor.

**III. Leon Laliberte—Request for bond release/drainage system, 229 Quaker Highway, Plat 1, Lot 16.**

Eric Brainsky, attorney for Leon Laliberte, addressed the Board to request the release of a cash bond, in the amount of \$20,000. Mr. Brainsky briefly reviewed the Board's requests from the February 20, 2007 meeting. The Board had asked the applicant to submit an engineer-stamped as-built survey of the drainage system on the site and a copy of a DEM inspection of the completed drainage system.

**The applicant submitted the stamped as-built survey for the Board's review. The applicant also submitted a letter from the Rhode Island DEM, which stated that the applicant had notified them that construction on the DEM-approved drainage system had been completed, but the DEM has opted not to conduct a final inspection. According to the letter, written by Sanitary Engineer Nick Cristofori, the DEM's conditions for approval have been met. The Chair read the letter into the record.**

**Based on the above evidence, Mr. Scarpelli made a motion to release the entire \$20,000 bond. The Chair seconded the motion.**

**Mr. Denizard asked that since the Planning Board had recommended releasing only \$15,000 of the bond, did the Zoning Board need to have the Planning Board's consent to release the entire bond. Mr. Rossi stated that the Planning Board was giving a recommendation, not a decision and the Zoning Board has the jurisdiction to release the bond.**

**Roll call vote was as follows: AYE: Mr. Kearns, Mr. Marcantonio, Mr. Denizard, Mr. Naylor, Mr. Scarpelli. The \$20,000 bond was released, by a vote of 5-0.**

**IV. Continued application of the Jeffrey Piette appealing the North Smithfield Planning Board's decision of July 20, 2006, which was recorded on October 6, 2006, and requesting a dimensional variance**

**from Section 5.5.1 “Building Setbacks” from Section 6.2 “Street Access to Buildings” of the North Smithfield Zoning Ordinance. Locus is Annette Avenue, Plat 9 Lot 191.**

**The Chair stated that the applicant has provided additional information since the last hearing, which includes the following:**

- 1) A letter from RGK Consultants regarding the proposed driveway.**
- 2) A letter from the North Smithfield Department of Public Works regarding the proposed driveway.**
- 3) A letter from the North Smithfield Fire Marshal.**

**The Chair stated that there has been some confusion as to jurisdiction on this application.**

**Attorney Eric Brainsky addressed the Board, stating that he has been privy to information that indicates the Board may have engaged in ex parte conversations regarding this application and that some members of the Board may have predisposition regarding the application. Mr. Brainsky stated that the applicant has a right to due process under the law, which includes an impartial adjudicator. Mr. Brainsky added that since the Zoning Board of Review is a quasi-judicial board, it must act with impartiality, and that this has been backed up by Supreme Court case law.**

**Mr. Juhr asked Mr. Brainsky if he had evidence of the Board engaging**

in discussions that were not open to the public. Mr. Brainsky stated that he has been provided with information, but is not providing evidence at this time. The Chair stated that he has spoken with Assistant Solicitor Rossi concerning questions on how the Zoning Ordinance should be interpreted. Mr. Brainsky stated that it is his duty to bring the issue to the Board's attention, but if they do not wish to address it, that is their prerogative.

Mr. Marcantonio inquired about the previous meeting's testimony, in which the applicant stated that he paid \$15,000 for the property, but that the deed shows that the purchase price was \$500. Mr. Brainsky stated that the applicant's testimony had been that he did not remember the purchase price, and when pressed stated he thought it was \$15,000. Mr. Brainsky stated that at the previous meeting, Mr. Juhr had jumped to conclusions based on this, but that there are many reasons for the discrepancy and they are looking into the matter.

Mr. Denizard asked if site visits were not allowed under the previous issue regarding ex parte communication and impartiality of the Zoning Board. Mr. Brainsky stated that this is not the case. Site visits are encouraged, but outside communication regarding the application would be against due process. He stated that the applicant is prepared to move forward with the application, but Mr. Brainsky, as a member of the bar, had to bring the matter to the Board's attention. Mr. Rossi stated that any allegations need to be

**substantiated, but since Mr. Brainsky is not providing evidence on this matter, all discussions on the issue should end.**

**The Chair stated that before going further with the application, he would like Mr. Rossi to address some jurisdictional issues. Mr. Rossi provided the Board with the following advice. First, in regard to the appeal of the Planning Board's decision, Mr. Rossi found that Mr. Piette had filed a request with the Planning Board to review a plan for the construction of a road laid out and designated on a plat recorded in or around 1925. No application was actually filed with the Board. The actual issue is whether the Planning Board had jurisdiction to approve the construction of a road on land now owned by the town. Mr. Rossi stated that he agrees with the assertions made at the last meeting by the applicant's counsel that there is no provision in the Subdivision Rules and Regulations that confer any jurisdiction on the Planning Board to either mandate the specifications for the building of roads on an existing subdivision on land already owned by the town or to provide the necessary permission to make a public improvement on town-owned land. Mr. Rossi stated that he could find no provision in the Zoning Ordinance that would confer any jurisdiction on the Zoning Board to set such specifications or to provide the necessary permission to construct a road on town land.**

**According to his review of the Town Charter as a whole and in particular, Article 4 Section 8 and Article 1 Section 6, Mr. Rossi stated that such authority and jurisdiction lies solely in the Town Council.**

**Only the Town Council controls and regulates land owned by the town. Since the Planning Board had no jurisdiction to determine whether a road could be constructed on town land and no jurisdiction to determine the specifications under which the road would be constructed, Mr. Rossi advised that the appeal should be denied without prejudice so that the applicant's right to present his request to the Town Council to construct the road and to obtain construction specifications will be unimpaired and unaffected.**

**In regard to the application for a variance, Mr. Rossi gave the following advice: "The lot in question currently does not abut an improved road as mandated by Section 6.2 and 20.1. The applicant is seeking a variance from Section 6.2 to build a gravel type road as a private driveway over town-owned land. I will note that Section 6.2 does not contain any specifications for road construction. It simply requires that the lot to be improved abut an improved public road. In addition, the applicant is seeking the grant of a dimensional variance for front and side yard setbacks.**

**"It would be premature at this point and a question of jurisdiction for this Board to consider these variances until the Town Council provides its review and approval for Mr. Piette to construct an improved road on town-owned land. Also, since the Town Council would have the authority to set the construction specifications for building the roadway we cannot know now what those specifications will be. In any event, any proposal to build a gravel road on town land**

**is within the jurisdiction of the Council. So at this point, a request for a variance to construct a gravel roadway is premature, at best, since the Town Council could theoretically approve and specify that type of construction. I will note again the issue of whether this Board would have jurisdiction to grant a variance on road construction specifications on town owned land under Section 6.2**

**“Finally, until the lot abuts an improved street or an approved plan to construct one, the consideration of the variance requested for side and front yard setbacks would be meaningless. Further, the type and ultimate location of any improved roadway as part of an entire plan proposal may impact the Board’s review of such variances and their necessity.**

**“In the interest of trying to gain some efficiency in this application process, I advise this Board to hold the application for a variance in suspension to allow Mr. Piette the necessary time to submit his request for the road construction on town land to the Town Council for their consideration.”**

**Mr. Rossi advised the Board that in making a motion on the appeal, the Board must be sitting as the Planning Board of Appeals. The Chair made a motion that the Zoning Board of Review constitute itself as the appellate board for the Planning Board. Mr. Scarpelli seconded the motion, with all in favor.**

**Based on the advice of Assistant Solicitor Rossi, Mr. Marcantonio made a motion to deny the appeal without prejudice. Mr. Denizard seconded the motion. Roll call vote was as follows: AYE: Mr. Jühr, Mr. Marcantonio, Mr. Kearns, Mr. Scarpelli, Mr. Denizard. The appeal was denied without prejudice, by a vote of 5-0.**

**The Chair made a motion to reconstitute as the Zoning Board of Review. Mr. Scarpelli seconded the motion, with all in favor.**

**In the request for a dimensional variance, the Chair made a motion to hold the application in suspension to allow Mr. Piette the necessary time to submit his request for the road construction on town land to the Town Council for their review and approval. Mr. Marcantonio seconded the motion.**

**Mr. Brainsky stated that the applicant holds the right to submit further evidence when the Zoning Board hears the application again.**

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

**Mr. Denizard made a motion to adjourn at 8:05 p.m., seconded by Mr. Marcantonio, with all in favor.**

**Respectfully submitted,**

**Angela Pugliese, Clerk**