

North Smithfield Zoning Board of Review

Meeting Minutes of February 5, 2008

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

I. Roll call

Present: Mr. Marcantonio, Mr. DiNunzio, Mr. Juhr, Mr. Kearns, Mr. Scarpelli, Mr. Naylor, Mr. Denizard. Also present were the Assistant Solicitor, Robert Rossi and Building and Zoning Official Robert Benoit.

II. Approval of Minutes-January 15, 2008

Mr. Scarpelli made a motion to approve the minutes of January 15, 2008. The motion was seconded by Mr. Denizard, with all in favor.

III. Ratification of written decision for Omnipoint Communications.

Mr. Scarpelli made a motion to approve 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 motion was seconded by Mr. Kearns, with all members voting aye. Motion

passed, 5-0.

IV. Election of Secretary.

Mr. Denizard nominated Mr. Juhr as secretary of the Zoning Board. Mr. Scarpelli seconded the motion, with all members voting aye. Motion passed, 5-0.

V. Mr. Scarpelli made a motion to adjourn the formal meeting at 7:12 pm, seconded by Mr. Kearns, with all in favor.

VI. Call to order of Workshop Session

The Chair called the Workshop Session to order at 7:13 pm.

VII. Proposed Fee Structure

The Chair distributed copies of the proposed fee structure worksheet to board members. He worked with Mr. Benoit, using the Smithfield Zoning Board's fee structure as a model. The Chair reviewed the proposal with the Board, highlighting the recommended fees for the proposed fee changes. The proposed changes also include the addition of vertical structures (cell towers, water towers, windmills, antennae, etc.).

The result of the discussion is the following fee schedule:

Residential:

Single Family Dwellings: \$225.00

Two Family Dwellings: \$300

Multi Family/Condominiums: \$600 + \$45 per unit

Signs:

Residential Zoning Districts: \$225

Commercial/Industrial Zoning Districts: \$250

Commercial/Industrial Buildings:

Buildings up to 5,000 sq. ft.: \$300

Buildings 5,001-10,000 sq. ft.: \$500

Buildings in excess of 10,000 sq. ft.: \$1,000 + \$0.10 per square foot thereafter

Vertical Structures:

(towers, cell towers, windmills, antennae, etc.): \$750

Appeals:

Appeal of Building Zoning Official: \$250

Appeal of Planning Board: \$750

The Board also stated that the new fee structure shall give responsibility for all mailing and advertising fees to the applicant. In addition, the applicant will be responsible for all costs when requesting transcribed minutes or stenographic record of their

portion of any meeting.

The Board also clarified that fees for commercial/industrial building fees are all per building, with square footage referring to building footprint. The Board also discussed the \$600 fee + \$45 per unit for Multi-family/Condominiums to clarify that even for very large projects, such as mill complexes, the applicant would be paying the base fee, plus the per unit fee. Mr. Kearns stated that for a large project with 200 units, the total fees would be approximately \$9,000, which would not be unreasonable for a project of that size. He pointed out that the total cost of the project could be approximately \$40 million, so \$9000 is a small percentage of that cost. He also pointed out that an application of that size usually requires three or more meetings to fully review and make a decision.

The Chair stated that he had spoken with the Providence Journal regarding legal ads, which at \$4.11 per line x 2 weeks, amount to about \$400 for the typical application. That fee, plus that of mailing certified letters to abutters can run quite high. He stated that under the new fee structure, the town will not be making money, but will certainly be able to recover some of the costs.

Mr. Naylor asked how the fees for advertising would be assessed when there are two applicants at one meeting. The Board decided that each applicant pays for their own portion of the advertising cost. Mr. Rossi suggested revising the “Note” paragraph at the end of the

fee schedule sheet to state each applicant is responsible for costs when requesting a “stenographic record and/or transcribed minutes.” Mr. Scarpelli asked how the cost of mailing and advertising would be determined and collected. Mr. Benoit stated that the Building Office will figure out costs and collect money up front, but the Zoning Board clerk will still prepare and send the mailings and place the legal advertisement with the Providence Journal. In the case of more than one application per meeting, the information would be combined into one ad.

Mr. Denizard asked about outdoor furnace fees. Mr. Benoit stated that there is no need of a Special Use Permit, so that would not be included in the fee schedule. He added that the town has put a moratorium on new ones for now.

Mr. DiNunzio started a discussion on the \$1000 fee for Industrial /Commercial buildings. The Board discussed different ways to adjust the fee to account for very large buildings and/or projects with many buildings. They decided to make the fee per building, and to add an additional fee of \$0.10 per square foot for buildings over 10,000 square feet. Mr. Denizard suggested clarifying that square feet refers to the footprint of the building.

Mr. Scarpelli asked about the fees for appeals. He asked if all evidence is reviewed again in the case of an appeal of a Planning Board. Mr. Rossi stated that the Board needs to consider whether the

Planning Board's decision was reasonably based, but that no new testimony should be heard. The Board discussed that some appeals, such as for smaller residences take much less time to review than larger projects. He suggested different fees for appeals of the Zoning Official's decision and appeals of the Planning Board's decision. Mr. Rossi stated that every application is different, but if the Board can come up with something reasonable that reflects the cost to the town, it should be appropriate to assess different fees. The Board decided to assess a fee of \$750 for a Planning Board appeal and a fee of \$250 for a Zoning Official appeal.

The Chair stated that he would like to get the proposal in to the Town Council soon. Some of the Board members asked to review the final document before presenting to the Town Council. Mr. Benoit said that he will have it sent out for review within the next few days.

VIII. Zoning Maps

The Chair informed the Board that he has a set of official zoning maps and that they will be available if needed at every meeting.

IX. Rules and Regulations

The Board reviewed the Zoning Board Rules and Regulations and made some minor clarifications to the list. These clarifications included changing the place of meetings from Municipal Annex to

Kendall Dean School, changing notification to the Board of meetings from a postcard to “by email or regular mail,” and stating that the Rules and Regulations will be available in the Municipal Annex and the Building Inspector’s Office. They also changed rule 9 to state that all exhibits or technical documents presented by the applicant shall be submitted at least 14 days before the hearing.

Mr. Benoit reviewed with the Board what each applicant is given when they apply for a Zoning Board hearing. He stated that he will revise the document to include an itemized list of all materials needed. He also has a cover sheet for them to sign to say that they've received the material.

Mr. Juhr stated that in the Zoning Ordinance, section 9.2 gives the Zoning Board the right to request opinion from the Planning Board. He stated that in cases where the applicant comes to this Board before the Planning Board reviews the application, it is very difficult for the Zoning Board to make a decision without a complete plan. Mr. Rossi stated that the Development Plan Review had been revised to allow an applicant to come to the Zoning Board first. Mr. Kearns said that needs to be corrected, because the Zoning Board is not able to make a good decision based on a partial plan. Mr. Rossi stated that it may be in state law too (that the applicant can choose to come before the Zoning Board first). In these cases, the Board should just look at criteria for the special use; it should be an abbreviated review. Mr. Juhr asked if the Zoning Board would be allowed to approve the

special use, pending plan approval by Planning Board. Mr. Rossi stated that it's implied that the Planning Board will conduct a complete review if the Zoning Board decides if use fits in with area, etc. Mr. Kearns stated that if an applicant decides to come before the Zoning Board first, they must bring all necessary materials, based on 5 criteria outlined in Zoning Ordinance.

Mr. DiNunzio suggested adding in "participating members" will vote for rule #12,. Mr. Jühr asked Mr. Rossi to clarify who votes in Board elections. Mr. Rossi said that he will research this. The Chair stated that at every meeting he will state who the voting members are for each application.

The Chair suggested adding something into the rules that states that Board members may conduct a visit of a site in question on an application. Mr. Naylor suggested adding a permission statement for such a visit to the cover sheet that an applicant signs when completing a Zoning Board hearing application. Mr. Rossi stated that he did not think it is appropriate to add into the Rules and Regulations of the Board, as these deal more with procedural things. He added that he did not think it was necessary to have an applicant sign a permission form, since it is already legal for anyone to view a property from a public street. He informed the Board that any such visit would only be to take a view of the property in context to analyze evidence presented, not to gather evidence. He also informed the Board that for an appeal, the Board is only to review the record. Mr.

Rossi stated that he will come up with appropriate language, if the Board wants to include some information about site visits on the application cover sheet.

X. Procedures of the Board

The clerk distributed an updated list of procedures for applications and hearings. New information included is that the clerk will be responsible to confirm the court stenographer for each hearing and that no drafts of minutes or decisions shall be made available to any parties other than the Board members, the Assistant Solicitor, the Building Official, or the clerk before the approval of the Board.

The Chair suggested adding in that any requested transcripts shall be made available before the next meeting. Mr. Benoit stated that this cannot be guaranteed, because any time the Board requests a copy of the court stenographer's transcription, the expense must be approved before it can be ordered. The Board decided to leave this out of the procedures, but Mr. Benoit would try to obtain any requested transcripts as soon as possible after the request. The Board also asked Mr. Benoit to try to get some funds made available as a line item in the upcoming year's budget for transcript expenses.

XI. Zoning Enforcement Issues

The Board discussed the Renaud case. The Chair distributed the

most recent information to the Board members. Mr. Jühr stated that he has heard that the Tremblay property is for sale. Mr. Benoit stated that a notice of violation has been placed on the deed. Mr. Benoit informed the Board that this is one of three zoning violation cases that he has given to the Town Solicitor. At this point, it is up to the Solicitor to bring the matter to court. Mr. Denizard suggested that the Board recommends to the Town Council that they create an enforcement group and have the Assistant Solicitor pursue the cases of violation. He asked if the police could do anything. Mr. Benoit and Mr. Rossi responded that this is not a police matter, and it is currently being handled through the channels available for zoning violations. The Board asked Mr. Rossi if he would be willing to take the case, if the Town Council agrees. Mr. Rossi stated that he would. The Board asked the Chair to pursue the matter with the Town Council president.

The Board asked about the other two cases. Mr. Benoit stated that they are the Donald case and the Perreault case on Elizabeth Avenue. There have not been notices of violation placed on these two deeds, because the houses are not on the market, however, Mr. Benoit stated it could be done.

XII. Update on Ordinance Review Committee

The Chair distributed the most recent proposed ordinance changes to the Board and asked them to review them and give feedback to the

Chair.

XIII. Update on Land Use Workshop

Mr. Naylor distributed outlines he made that summarized the information he received at the land use workshop he attended. The Board reviewed the outline together. Mr. Naylor provided the Board with information on the state planning guide and the town's comprehensive plan. He stated that the ordinances should support the town's comprehensive plan.

Mr. Naylor also provided information on ethical behavior and related issues including the following: recusal, abstention from vote, ex parte conversations, and outside conversations among Board members that may violate open meetings laws. Mr. Naylor pointed out information in his outline on the record of a meeting. Mr. Jühr asked Mr. Rossi to clarify exactly what is considered the record of a meeting. Mr. Rossi stated that the record is whatever the stenographer has taken down and any exhibits that have been labeled and entered into the record.

Because the meeting was running long, the Chair stated that all members should keep the outlines to review the remaining information provided by Mr. Naylor.

Mr. Naylor made a motion to adjourn at 10:10 pm. Mr. Scarpelli

seconded the motion, with all members voting in favor.