

North Smithfield Zoning Board of Review

Meeting Minutes of January 15, 2008

The North Smithfield Zoning Board of Review met on Tuesday, January 15, 2008 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, and a court stenographer from Allied Court Reporters. Absent: Robert Benoit, Building and Zoning Official

The Chair reviewed procedures of the board for all present.

The Chair reported that he had sent letters to Town Administrator Bob Lowe, Town Council Chair Linda Thibault, and Finance Director Jill Gemma, asking for funding for training for Zoning Board members. The letters were addressed to the address listed on the town's website, but were all returned to the Chair, marked address unknown. He stated that the information should be updated on the

town's website. He said he did fax a copy to the town administrator, but asked the clerk to deliver the hard copies of the letters as well.

II. Board Organization—Election of Chair and Vice Chair for 2008

The Chair stated that he had been made aware earlier in the afternoon that the Board intended to nominate another member to replace him as Chair. He stated that he did not think this was in the best interest of the Board. He considers a change in leadership a vote of no confidence, and stated that, given the problems with the Board in the past, he believes a change in leadership is sending the wrong message to the town. Mr. Jühr responded that he thanks and commends Mr. Kearns for a great job as chair during the past year. He thinks the Board accomplished a lot and made many improvements. Mr. Jühr feels it is important to give more members leadership opportunities, so the Board will have more experienced members. In case the Chair cannot make it to a meeting, Mr. Jühr stated it would be helpful to have another member with experience to run the meeting. He asked Mr. Kearns to consider taking the Vice Chair position for the upcoming year. The Chair stated that he would not like to be considered for any other leadership positions for the upcoming year, but he would continue to serve on the Board.

Mr. Scarpelli stated that he agrees with Mr. Jühr, that Mr. Kearns did a great job as chair and this is not a vote of no confidence, but he too thinks it's a good idea to give more members a chance to fill the

leadership positions. Mr. DiNunzio also stated that he also feels that Mr. Kearns did a great job as Chair and asked him to reconsider taking a leadership position for the upcoming year. Mr. DiNunzio also asked if the alternates vote, but Mr. Rossi stated that only the members vote, since none were absent from this meeting.

The Chair responded that if it was the wish of the Board to have a rotating chair, he feels that he should have been involved in that discussion. He was surprised to find out at such a late hour that he would not be nominated to continue as chair. He stated that at the past few meetings there have been discussion on rule changes to the Board and he thinks this issue could have been addressed at one of those meetings. Mr. Jühr stated that the Board has functioned as a team over the past year and that nothing will change. The Chair stated that he was taken aback by the whole thing and had fully intended to continue as chair. He stated that he feels that discussion had already taken place among other members and not discussed as a board. He stated that if the Board would like to continue with a rotating leadership, it should be incorporated as part of the rules.

Mr. Denizard nominated Mr. Marcantonio as Chair. Mr. Jühr seconded the motion. Vote was as follows: AYE: Mr. Jühr, Mr. Marcantonio, Mr. Denizard, Mr. Scarpelli. Mr. Kearns abstained from the vote. Motion passed, with a vote of 4-0.

The meeting continued, with Mr. Marcantonio as chair. Mr. Jühr

nominated Mr. Kearns as Vice Chair. Mr. Kearns stated that he declines the nomination. Mr. Jühr nominated Mr. Scarpelli as Vice Chair. Mr. Kearns seconded the motion, with all in favor. Motion passed, 5-0.

III. Revision and Approval of the Minutes of September 18, 2007

Mr. Kearns made a motion to attach the court transcript of the enforcement discussion portion of the meeting as an addendum to the minutes of September 18, 2007. Mr. Scarpelli seconded the motion, with all in favor. Motion passed, 5-0.

IV. Approval of the Minutes of December 4, 2007

Mr. Scarpelli made a motion to approve the minutes of December 4, 2007. Mr. Kearns seconded the motion, with all in favor.

V. Ratification of written decision approving the correction of typographical errors in the written decisions of November 9, 2004 and January 18, 2005. Requested by Bucci Development and Dowling Village.

Mr. Kearns made a motion to approve the written decision approving the correction of typographical errors in the written decisions of November 9, 2004 and January 18, 2005. Mr. Scarpelli seconded the motion, with all in favor.

VI. Ratification of the written decision granting the applicant Chris Dandeneau, a Special Use Permit to open and operate an indoor youth sports facility per section 5.4.6 (7) of the current zoning ordinance. Locus is 473 St. Paul Street, Plat 2, Lot 64.

Mr. Scarpelli asked for clarification that all approved activities were included in the list on the decision. Mr. Rossi stated that the list is complete. The Chair stated that under stipulations, item D should include fire codes, as well as building codes. Mr. Kearns also stated that the date at the beginning of the decision is stated as September instead of December.

Mr. Juhr made a motion to approve the written decision granting the applicant Chris Dandeneau, a Special Use Permit to open and operate an indoor youth sports facility per section 5.4.6 (7) of the current zoning ordinance, with all necessary corrections discussed above. Mr. Scarpelli seconded the motion, with all in favor. Motion passed, 5-0.

Mr. Denizard asked if he could discuss the use of the building. Mr. Rossi stated that he did not think it was appropriate to speak of the use of the building without notice to the owner, since the matter is not listed on the agenda.

VII. Ratification of the written decision granting the applicant The

Homestead Group Special Use Permits for an attached dwelling for owner or operator per section 5.4.2 (5) and entertainment, performances, theatrical productions, wedding receptions, and parties per section 5.4.4 (18). Locus is 200 Industrial Drive, Plat 5, Lot 300.

The Chair asked Mr. Rossi if the attached dwelling, as approved in the Board's decision, is a legal dwelling according to the building code. Mr. Rossi stated that the application was approved under that section of the zoning ordinance (5.4.2(5)). Mr. Juhr stated that the decision wasn't ratified yet. Mr. Rossi stated that the decision is made when the vote is taken. The ratification of the written decision is to explain the Board's reasoning for the decision.

Mr. Scarpelli made a motion to approve the written decision granting the applicant The Homestead Group Special Use Permits for an attached dwelling for owner or operator per section 5.4.2 (5) and entertainment, performances, theatrical productions, wedding receptions, and parties per section 5.4.4 (18). Mr. Kearns seconded the motion, with all in favor. Motion passed, 5-0.

VIII. Adjourn formal meeting

Mr. Juhr made a motion to adjourn the formal meeting of the Zoning Board of Review at 7:38 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 7:38 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.

Mr. Juhr asked why the court stenographer had not been cancelled for the meeting. Mr. Rossi stated that the responsibility should be with the chair to let the building official know if a court stenographer is needed. The court stenographer stated that her office calls the Building Office to confirm. The clerk stated that Mr. Benoit is on vacation this week, so his secretary may not have known that the stenographer was not needed for this meeting. In the future, the Chair should speak with the Building Official, or directly with Allied Court Reporters to confirm the stenographer.

X. Update on fee structure of the North Smithfield Zoning Ordinance—Vincent Marcantonio and Guy Denizard

Mr. Denizard stated that he had read an article in The Valley Breeze this week stating that the town had a budget surplus which resulted in part from higher than expected building permit revenues. He questioned that given this budget surplus, whether it is reasonable to try to change the fee structure at this time. Mr. Juhr replied that the zoning hearing fees have not changed in 20 years. He also questioned why the Board's request for \$1000 for training was denied

when the town has a half million dollar surplus.

The Chair distributed copies of Smithfield's zoning hearing fee structure, which relates the fees to the size of the project. They also require applicants to pay for their mailing and advertising. The Chair also reported on the fees for Johnston, Foster, Cumberland, Scituate, Lincoln, and Burrillville. The fees for these towns vary, but most towns charge the applicant for mailing and advertising. He also stated that certified mailing may not be necessary, since many communities send out abutters' notices by first class mail. Mr. Scarpelli agreed that at the very least, North Smithfield should be charging applicants' for mailing. He suggested coming up with a list of changes the Board would like to make to the fee structure. Mr. Juhr suggested getting a printed report from the Building Official with actual expenses related to zoning applications. He stated that the Board should then go through each item to see where our expenses are greater than the revenue to see where we're behind.

The Chair stated that if the fee structure was related to the size of the project, the cost to single-family residences may be reduced, while the rest of the fees will be increased. Mr. Rossi stated that the fees must be reflective of the actual cost to the town, but, in his opinion, to raise them to the point where the applicants' are responsible for all costs (mailings, advertising, transcripts, etc.) may be prohibitive. He did agree that the larger the project, the more extensive the review, therefore a higher cost is justified.

Mr. Jühr suggested adopting a fee structure very similar to Smithfield's, and in addition, add in a fee for the cost of the court transcribed record. The Chair stated that other than Smithfield, no other area towns have a progressive fee scale, but all do make the applicant responsible for the cost of mailings.

Mr. Rossi stated that some applicants bring their own stenographer, so then the question comes up as to what the official record is (in case of discrepancy). The Chair stated that a case like that would require an arbitrator. Mr. Jühr stated that the official record should be word-for-word, so that should not happen. Mr. Rossi replied that it shouldn't happen, but it sometimes does. The Chair asked if the transcript issue could be addressed separately from the fee structure.

Mr. Jühr stated that the Board should present it as a whole. Mr. Rossi stated that if an applicant comes before the Board, but does not appeal its decision, there is no need for a transcript. The stenographer is required in case there is an appeal. Mr. Jühr stated that once the stenographer runs out of room on her laptop, then no record exists. He thinks that a fully transcribed record is necessary for all applications.

Mr. DiNunzio questioned whether it is fair to charge an applicant for a relatively simple variance with no appeal \$300 for a transcript. Mr. Rossi stated that an applicant could be responsible for a portion of the \$300 required to have a stenographer present. The Chair stated

that the portion of the stenographer's fee could be incorporated into the application fee. Mr. Jühr asked why the stenographer was necessary if no one gets the transcripts. Mr. Rossi replied that it is part of the appellate process. Mr. Jühr asked what would happen 2-3 years down the road if no transcript were available. Mr. Rossi stated that it is irrelevant because the appeal period would be long expired. The Chair asked what would be the longest period of time that they would legally need a transcribed record of a meeting. Mr. Rossi stated that 6 months, at the most would be necessary. After that, the appeal process would be expired.

The Chair asked if he should meet with Jill Gemma to work up a new fee structure. Mr. Rossi stated that the Board and the Building Inspector should work out the fee structure to be presented to the Town Council. The Chair asked if they should present a dollar amount, or a philosophy (i.e., progressive scale). Mr. Denizard asked if anyone had an idea of what some big projects cost for the review process. Mr. Rossi stated that there is probably no data available, but the applicant's fees should be somewhat reflective of the actual costs incurred by the town. Mr. Kearns stated that some mill projects require 3-5 meetings to completely review the application.

Mr. Naylor questioned what the fee would be for an application for something like a cell tower. Mr. Jühr stated that he would like a report from the Building Inspector on the actual costs for an application, then work out a fee structure and put it in place for a

year, then revisit whether it needs to be revised. Mr. Scarpelli stated that the Board had received a report of the average fees from Mr. Benoit. Mr. Jühr stated that he'd like a computer-generated report of actual fees, if possible. Mr. Naylor suggested that the Board go back to the past year and list all the cases, categorize them in a fee structure such as that of Smithfield, and compare the two numbers (what North Smithfield charged vs. what Smithfield would have charged). Mr. Jühr suggested including the number of hours each case took. Mr. Rossi stated that the ordinance stated that the fee cannot exceed actual fee incurred. Mr. Denizard stated that the accounting system should be changed to reflect revenue from the Building Office (as opposed to some items going to the general fund).

The Chair stated that he would speak to Mr. Benoit about the actual expenses/revenues. Mr. Jühr asked to put it on the record that he is requesting a record of expenses of zoning applications for the past year, and in lieu of that, the best estimation of actual expenses.

The Chair made a motion to adjourn the workshop session at 8:45 pm, seconded by Mr. Scarpelli, with all in favor.

Respectfully submitted,

Angela Pugliese

Zoning Board Clerk