

# **North Smithfield Zoning Board of Review**

**December 29, 2009, 7:00 p.m.**

**Kendall Dean School**

**83 Greene St., Slatersville, RI**

**Vice Chair Steven Scarpelli called the meeting to order at 7:00 pm.**

## **1. Roll Call**

**Present: Bill Juhr, Stephen Kearns, Steven Scarpelli, Guy Denizard, Mario DiNunzio. Absent: Vin Marcantonio, Paul Pasquariello. Also present were Building Official Bob Benoit and Shelly Deming, court stenographer from Allied Court Reporters.**

**2. Disclosure of no compensation or pension credits received by the board members.**

## **3. Reorganization of the Board—Election of officers**

**Mr. Kearns made a motion to table this item until the next meeting. Mr. Denizard seconded the motion, with all in favor.**

**4. Application of Rita Turcotte, requesting to construct a single-family dwelling, which will require a dimensional variance for lot area, per section 5.5, subsection 5.5.1 of the Zoning Ordinance. Locus is Rue de St. Jude, Plat 17, Lots 184 & 185 (Zoning RS-40).**

**Applicant Rita Turcotte addressed the Board to present her request, as well as a summary of the history of the application. In March 2005, she was deeded Lots 184 and 185 from her mother, who owns Lot 183. She was granted an administrative subdivision by the Town and appeared before the Zoning Board in September 2006, and January and February 2007 to request a variance. The variance was denied and she then appealed to Superior Court. Based on additional information she has acquired due to research during the past year and a half, the suit was dismissed.**

**Ms. Turcotte stated that the Board's primary concern in their denial of her application was the potential failure of the septic system on Lot 183. She has been working on maneuvering parameters of the existing system, as well as a new system on the subdivided lots, and after working with DEM has come up with a proposal for a new septic system on Lot 183. Mr. Jühr stated that he does not think this information should be entered as an exhibit since it concerns Lot 183, which not the lots in question. He read Item #6 from the Findings of Fact from the February 20, 2007 decision of denial, "6. Philip Godfrin then testified on behalf of the Applicant noting that the distance between the cesspool on Lot 183 and the proposed well on Lot 184 is over 100 feet. Mr. Godfrin further testified that what happens on Lot 183 should not impact the Application. He further stated that any failure of the cesspool on Lot 183 would be the problem of the owner of that lot and that Lot 183 is not part of the Application," into the record and stated that he agrees with that statement, that what**

**happens on Lot 183 should not impact the application, and therefore, the new information is not relevant.**

**Mr. Kearns stated that at the time that the lots were deeded to Ms. Turcotte, the merger ordinance was in effect, and all three lots should have been merged; instead two substandard lots were created, which is not allowed under the state zoning handbook. Ms. Turcotte stated that the lots were not merged, and the subdivision was granted by the Town. Mr. Jühr asked if the conversation she had with Rick Nadeau regarding pursuing an administrative subdivision was conducted on or off the record. She replied that it may have been off the record, but she defers the answer until Mr. Nadeau can be present.**

**Mr. Jühr stated that the conditions of the application have not changed since the decision was made and read Section 9.5 of the North Smithfield Zoning Ordinance (Rev. May 1999, November 2006), Repetitive Petitions, “Where the Zoning Board of Review denies a request for a special-use permit, variance or otherwise rules against the applicant on other than procedural grounds, the Zoning Board of Review may not consider another application requesting any or all of the same changes, except:**

- a) where ordered to do so by a court order;**
- b) or where, after six months of the date of such denial or withdrawal, the application is accompanied by an affidavit setting forth facts, to the satisfaction of said Board, showing a substantial change of circumstances justifying a rehearing.”**

**He stated that he does not see any substantial change of circumstances and is ready to move to uphold the previous decision.**

**Mr. Kearns asked why the appeal to Superior Court was dropped. Mr. Scarpelli read a letter from Assistant Town Solicitor Bill Savastano to Bob Benoit, dated November 23, 2009 into the record. The letter stated: I am faxing you a copy of my letter dated November 23, 2009, to Town Solicitor Richard Nadeau, together with a copy of a Stipulation for Dismissal with prejudice, in the above-entitled matter, for your records.” The letter to Mr. Nadeau and copy of stipulation from dismissal with prejudice are part of Ms. Turcotte’s application packet. Mr. Jühr stated that there was nothing about an agreement in that letter, and that it is not up to Mr. Savastano to make a decision for the Board.**

**Mr. Scarpelli stated that one option is to postpone the hearing until an attorney for the Board can be present. Mr. Jühr made a motion to uphold the original decision. Mr. Kearns stated he would like more clarification as to why people are being recommended to make non-conforming lots, which is the opposite of the law. Mr. Jühr stated that Mr. Savastano is the Board’s attorney, not the applicant’s, and he should not be giving advice without consulting the Board.**

**Ms. Turcotte stated that whether it was done properly or not, there is no denying that the lots were merged and the subdivision was granted. Until 2006 there was no existing road, but now that there is an improved road, it conforms with zoning regulations. Mr. Kearns stated that only part of the zoning requirements is met; the lot is still too small. He stated that the zoning regulations were put in place to prevent tiny lots being created, as was done in the 1950’s. In his understanding of the law, all three lots should have been merged.**

**Ms. Turcotte stated that she was told that the administrative subdivision and application for a variance was a viable option, so she went with it. She stated that the Town agreed and recorded the subdivision. Since then she has made attempts for an area variance. She stated that she would like to make valid use of the lots. She thought the primary concern of the Board was failure of the septic system on Lot 183.**

**Mr. Jühr stated that 50% relief is too much and he sees no real hardship. Mr. DiNunzio asked about the appeal to Superior Court and whether they addressed the merger question. Ms. Turcotte stated that it was necessary to file the appeal in order to preserve her right to appeal, but that she dismissed the suit in order to address the septic concerns. She stated that she has a proposal in place with an approved septic system in place to be installed within a year, if the variance is approved. She spoke with Town Planner Bob Ericson in an attempt to resolve the problem within the town, without involving the court system.**

**Ms. Turcotte shared photographs of other homes in the area, accompanied by the square footage of each of those lots. Mr. Kearns stated that the situation was created back in the 1950's, which they are now trying to correct. He stated that now people sneak their little lots in by subdivision, and he believes that this is an illegal subdivision. Ms. Turcotte stated that the home built on Lot 181 was built in either 1999 or 2000 on an 11,000 sq. ft. lot. At the time, Ms. Turcotte had offered to sell him Lot 191 to allow him to get closer to the required lot size. He refused her offer, but the variance was**

granted. Mr. Scarpelli stated that this is a new Board and that they do not agree with a lot of what was done by previous boards.

Mr. Jühr stated that the Board is appointed to uphold the ordinance and this is too much relief. He stated that even if an administrative subdivision is granted, it does not mean that the lot is big enough to build on. He is concerned with the precedent that would be set. Ms. Turcotte replied that she just showed the Board four similar-sized lots with houses built on them. She stated that she just wants to build a small house on the lot adjacent to her mother's home. Mr. DiNunzio stated that he is sympathetic to her request, but he is concerned with precedent as well. He is concerned that it will open a parade of similar petitions. He added that the whole point of revising zoning rules is to prevent such situations.

Ms. Turcotte stated that she did what was advised by the Town and she should not be taken to task for that. If the variance is not granted, the Board is denying her beneficial use of her land. Mr. Kearns said he does not see it that way; he sees the three lots as one and that, by law, should never have been subdivided. Ms. Turcotte stated that though Mr. Kearns believes they should have been merged, the fact remains that they were not merged. Mr. Kearns replied that he may be wrong, but he is sticking by his belief. He also questioned what the role of the Zoning Board is and if they are expected to let people with substandard lots build on them. He stated that he has a problem with allowing people to build on tiny lots created on paper streets.

Mr. Benoit asked if it would be helpful to the Board to have the Planning Board review the request. Mr. Denizard stated that he would

**vote against that. Mr. Juhr stated that he would like to make a motion to uphold the original decision, and that Ms. Turcotte can go to the Planning Board on her own. He stated that there is no hardship, and a ¾-acre lot is too small to be split and have two homes on it.**

**Ms. Turcotte stated that earlier it was proposed that the application be continued until Mr. Nadeau can be present. Mr. Juhr made a motion to uphold the decision of February 20, 2007, word-for-word, as it is written. Mr. Scarpelli stated that this is not an appeal, so the motion would not be to uphold the decision, but to approve or deny the applicant's request. Mr. Juhr stated that no additional evidence has been presented and that the septic is not relevant, per Ms. Turcotte's own witness (during the previous application). Mr. Juhr made a motion to deny the applicant's request per the same findings of fact from the February 20, 2007 decision. Mr. DiNunzio suggested that they simply approve or deny the application based on no new evidence being presented. Mr. Juhr withdrew his motion.**

**Mr. DiNunzio made a motion to deny the request of Rita Turcotte to construct a single-family dwelling, which will require a dimensional variance for lot area, per section 5.5, subsection 5.5.1 of the Zoning Ordinance, based on that no new evidence has been presented to alter the Board's previous decision. Mr. Denizard seconded the motion.**

**Mr. Kearns asked if there were any legal ramifications regarding the appeal rights available to the applicant. In the absence of an attorney, he suggested that they table the motion until an attorney can be present. Mr. Juhr stated that he does not have any legal questions.**

**Mr. Kearns asked why the Town is having attorneys or administrators advising on things that are illegal. He asked if the Board is just a rubber stamp for the attorney's decisions. Ms. Turcotte stated that she appreciates Mr. Kearns' comments and that she would accept that she was given a fair hearing if the Town's attorney was present, especially Mr. Nadeau, since it was he who advised to file an administrative subdivision. Mr. Jühr asked if it was Mr. Nadeau's legal or personal opinion. Ms. Turcotte stated that she did not know, and that the Board would have to ask Mr. Nadeau.**

**Zoning Board roll call vote was as follows: YES: Mr. Jühr, Mr. Scarpelli, Mr. Denizard, Mr. DiNunzio. Mr. Kearns abstained from the vote. Motion passed, with a vote of 4-0.**

**Mr. Jühr made a motion to adjourn at 7:47 pm. Mr. Scarpelli seconded the motion, with all in favor.**