

North Smithfield Zoning Board of Review

August 25, 2009, 7:00 pm

Kendall Dean School

83 Greene Street, Slatersville

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

1. Roll Call

Present: Chair Vin Marcantonio, Bill Jühr, Stephen Kearns, Steven Scarpelli, Guy Denizard, Mario DiNunzio, Paul Pasquariello. Also present were Building Official Bob Benoit, Assistant Town Solicitor Bill Savastano, and Allied Court Reporters stenographer Shelley Deming.

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

3. Approval of minutes—July 28, 2009 & August 4, 2009

Mr. Kearns made a motion to approve the minutes of July 28, 2009.

Mr. Denizard seconded the motion, with all in favor.

Mr. Kearns made a motion to approve the minutes of August 4, 2009.

Mr. Denizard seconded the motion, with all in favor.

4. Approval of the written decision for the application of Lees Farm

Commons, Inc, (dimensional variance from Section 5.5.1 for frontage requirements and a variance from Section 6.2 for street access to buildings). Locus is Log Road, North Smithfield, Plat 18, Lot 32 (Zoning RA-65).

Mr. Kearns made a motion to approve the written decision for the application of Lees Farm Commons, Inc. Mr. Scarpelli seconded the motion, with all in favor.

5. Approval of the written decision for the application of Joe Jenks (owner Mary Zurowski), for a Special Use Permit, per section 5.4.4, subsection 5 to construct a building to be used as a religious institution. Locus is 1054 Victory Highway, Plat 1, Lots 141 & 151.

Mr. DiNunzio made a motion to relocate the following language under #2 of the Findings of Fact to the closing paragraph of the Administrative Record:

The Zoning Board's concern for traffic safety at the sight was based on sight visitation and on the report of Commonwealth Engineers submitted to the Board on November 18, 2008, which states in its summary the following:

- “1. Proposed light on pole 20 be installed at applicant's expense.**
- 2. That site proposed clearing/vegetative planting limits including maintenance for sight lines be a condition of approval and that the sight line area be indicated on final project plans.**

3. That advance, NB warning signage on Victory Highway meeting MUNCD guidelines be included in the final project Physical Alteration Permit submittal to the RIDOT/ State Traffic Commission.

4. That the final project plans, and Physical Alteration Permit submittal to RIDOT includes Victory Highway Parking Prohibition signage for RIDOT/ State Traffic Commission approval.”

Although the Zoning Board continued to sustain concerns over traffic safety, according to legal advice given to the Board, the final decision on traffic questions rested with state authorities, overriding the concerns of the Board.

Mr. Kearns seconded the motion, with all in favor (please note that Mr. DiNunzio is voting in place of Mr. Scarpelli on this motion). Mr. DiNunzio made a motion to approve the written decision for the application of Joe Jenks, as amended. Mr. Kearns seconded the motion, with all in favor.

6. Continued application of Jeffrey Piette, requesting a dimensional variance from Section 5.5.1 (front and side building setbacks). Locus is Annette Ave., Plat 9, Lot 191. (Zoning RU-20).

Attorney Eric Brainsky addressed the Board for the applicant. He explained that it was his intention to present Marc Nyberg as his main witness, but Mr. Nyberg was unable to attend the meeting due to illness. Project Manager Erin Gallogly is here in place of Mr. Nyberg. Mr. Brainsky presented the Board with a brief history of the application. The applicant appeared before the Board several years

ago, but his application was not approved. The decision was appealed and Superior Court ruled that the applicant had the right to improve Annette Avenue. The applicant appeared before the Planning Board for its recommendation on the roadway improvement and is now back before the Zoning Board for a decision on the requested dimensional variance. In the original application, the applicant had requested variances for both front and side building setbacks, but due to concerns raised by the Planning Board, the plans have been revised. The plans now propose a single-family dwelling with a footprint of 18' x 26'. The front setbacks now meet the requirements of the Zoning Ordinance, but the applicant is seeking a variance of 4' on each side setback.

The following exhibits were entered into the record for this application:

P1 DEM Insignificant Alteration Permit, dated August 6, 2008, signed by Martin Wencek and approved site plans

P2 Zoning Compliance Application packet submitted June 15, 2009

P3 Letter of amendment to original application, dated July 30, 2009

P4 Revised project plan, dated July 29, 2009

P5 Four pages of color copies of photographs depicting neighboring houses, taken in July 2009

P6 Photographs of Plat 9, Lot 191, (2 pages, 3 photographs)

P7 Certificate stamped by Surveyor Marc Nyberg, showing that property elevation is 3' higher than Zone X

P8 Letter from Town Planner Robert Ericson, dated August 25, 2009, with Planning Board's favorable recommendation on the application

Mr. Denizard asked if the Board was given copies of the plans with DEM approval. Mr. Brainsky stated that plans were submitted as part of the application. Mr. Denizard clarified that the letter (P3) refers to revised site plans and he would like to be sure that the DEM has reviewed the revised plans and given their approval. Mr. Brainsky explained that the revised plans call for an 18'x26' building footprint, so the new plans are less intrusive than those DEM approved. He added that the new ones will be sent to DEM. Ms. Gallogly had a copy of the plans that were stamped by the DEM and submitted it to the Board for review (P1).

Mr. Scarpelli asked if there are any plans for the structure to overhang the foundation (i.e., any bumpouts). The Board discussed that they would like the structure to have the same dimensions as the footprint so the building does not further intrude upon the side yards.

Mr. Brainsky stated that Mr. Piette would agree to that and that if anything is to be added to the front or back of the structure, it will comply with zoning regulations.

Erin Gallogly sworn in by stenographer to give details of the drainage system (pointed out manholes on plan) and the road profile.

Jeffrey Piette, owner of the property, was sworn in by the court

stenographer. He stated that he purchased the property in April 2005 and was aware that it was a pre-existing nonconforming lot. Mr. Piette presented the Board with color copies of some pictures of the homes in the surrounding neighborhood (P5). He stated that the pictures were taken in July 2009. Next to each picture was the lot number so the Board could reference each property on the radius map. He explained the location of each picture and the type of dwelling as the Board referred to the radius map. Most of the houses are single-family with 1-2 stories, with some 3-story home. Mr. Piette stated that he is proposing an 18'x26' 2-story home. He testified that if the variance is denied, he will be unable to use the land. He stated that the proposed dwelling is smaller than the surrounding houses. He also submitted pictures of the lot in question (Plat 9, Lot 191).

Mr. Pasquariello asked if Mr. Piette will be using the suggestions of the Planning Board in designing the home. Mr. Piette stated that he is considering all the suggestions, but will most likely not be including the farmer's porch.

Mr. Kearns asked about the agreement on the improvement of Annette Avenue and who would be responsible for the maintenance of the road. Mr. Brainsky stated that they had presented the Planning Board with the option of constructing a 20' gravel drive that the owner of the property would maintain, but the Planning Board instead recommended paved 20' wide road with the Town responsible for maintenance. The road will be constructed per the recommendation

of the Planning Board and the owner will maintain it until the Town inspects and accepts it.

Ms. Gallogly stated that the single-family home will be serviced by municipal sewer and a private well. She stated that a larger proposed dwelling (24'x36') was approved by the DEM. She stated that she (along with Marc Nyberg and Professional Engineer Ronald Kershaw) had reviewed the Zoning Ordinance and the Comprehensive Plan and that the applicant is taking steps to mitigate drainage concerns. They have reduced the footprint, added a swale to 20' paved road, and have been given a positive recommendation from the Planning Board. Ms. Gallogly stated that the hardship for the applicant is due to the unique characteristics of the property that it is not the result of any prior action by the applicant as it is a substandard lot of record. She also testified that the proposed dwelling will not alter the characteristics of the surrounding area since all of the surrounding houses are single-family dwellings, and this one has a smaller footprint than the other houses.

Mr. Juhr asked Mr. Piette if he was going to be using the new dwelling as his own residence. Mr. Piette stated that he is not planning on living there. Mr. Brainsky stated that Mr. Piette is looking to use his property and that the court has upheld his right to build on it. Mr. Kearns stated that he does not know why the ordinance includes the wording of "does not result primarily from the desire of the applicant to realize greater financial gain." Mr. Brainsky agreed, stating that the

applicant is not subdividing a large piece of land into a bunch or nonstandard lots.

Mr. Denizard asked about Zone X and the floodplain. Ms. Gallogly stated that the zone is drawn on the plan and pointed out the line on the plan that represents Zone X. Mr. Denizard stated that an aerial photograph is not as accurate as an elevation map and stated that Cherry Brook meanders; it is not in a straight line. Ms. Gallogly stated that the elevation certificate is determined by isolating elevations. She stated that Zone X=229', and the lowest point on this property is 232'.

The Chair opened the meeting to the public. Pauline Hauck, 17 Lamoureux Blvd., stated that she is the direct abutter to the property. She said that the application has been denied repeatedly, and when she bought her home in 2005, she was told it was conservation land and wouldn't be developed. Mr. Kearns asked if she had or was aware of any documents to show that it is a conservation lot. Ms. Hauck stated that she doesn't know of any documents, but she was told that because of Cherry Brook the property was unbuildable. She stated that she is not in favor of a home being built so close to her property and that if a variance is needed, it's not big enough to build on. The Chair stated that even bigger lots need variances, and that the Board works to keep variance to the least necessary but that the owner has the right to use the property. Mr. Kearns stated that he is bothered by the small lot, as it is only a quarter of what is required in

an RU-20 zone, but agreed that the owner has the right to use his property. He added that only a 12'-wide house would fit without granting variances, which is just not a realistic option. With no one else present to speak, the public hearing was closed at 8:14 pm.

The Board discussed a way to be sure that the building to be constructed not overhang the area of the foundation. After discussion, the following motion was made:

Mr. Scarpelli made a motion to approve the application of Jeffrey Piette, requesting a dimensional variance from Section 5.5.1 (front and side building setbacks). Locus is Annette Ave., Plat 9, Lot 191. (Zoning RU-20). The Board grants a variance of 4' on each side of the dwelling, with the stipulation that the structure does not exceed the specified footprint (18' x 26'), extending to the full height of the building, with the exception of normal roof eaves (no construction bumpouts in the building envelope where the variances have been granted).

Mr. Kearns seconded the motion.

Zoning Board roll call vote was as follows: YES: Mr. Marcantonio, Mr. Juhr, Mr. Kearns, Mr. Scarpelli. NO: Mr. Denizard. Motion passed, with a vote of 4-1.

Mr. Kearns made a motion to adjourn at 8:30 pm. Mr. Scarpelli seconded the motion, with all in favor.