

North Smithfield Zoning Board of Review

August 4, 2009, 7:00 pm

Kendall Dean School

83 Greene Street, Slatersville

The Chair called the meeting to order at 7:10 pm.

1. Roll Call

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

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

3. Approval of minutes—January 20, 2009

Mr. Scarpelli made a motion to approve the minutes of January 20, 2009. Mr. DiNunzio seconded the motion, with all in favor.

4. Continuation of the application of Joe Jenks (owner Mary Zurowski), requesting to construct a building to be used as a religious institution, which requires a Special Use Permit, per section 5.4.4, subsection 5. Locus is 1054 Victory Highway, Plat 1, Lots 141

& 151.

The Chair stated that Steven Scarpelli will not be voting on this application; First Alternate Mario DiNunzio will vote in his place.

The following exhibits were entered into the record:

P-A Letter from Town Planner Robert Ericson, dated July 8, 2009

P-B Letter from Town Administrator Paulette Hamilton, dated July 8, 2009

P-C Minutes from the April 2, 2009 North Smithfield Planning Board meeting

P-D Minutes from the July 2, 2009 North Smithfield Planning Board meeting

P-E Rhode Island Department of Transportation Physical Alteration Permit Application, approved July 14, 2009

P-F Letter from Town Planner Robert Ericson, dated July 29, 2009

P-G Letter from the Rhode Island Department of Health, dated March 27, 2009

Attorney John Shekarchi addressed the Board for the applicant. He stated that the applicant had appeared before the Planning Board for their review and recommendation, as the Zoning Board had requested when rescinding their previous decision to deny the application. Mr. Shekarchi stated that since the hearing was previously closed and there is no further testimony to give, the applicant is here for the Zoning Board's decision. The Board discussed whether the public

hearing had been closed. Mr. Shekarchi stated that the applicant had no objection to reopening the public hearing. Mr. DiNunzio made a motion to resume the public hearing. Mr. Denizard seconded the motion, with all in favor. The Chair asked if there was anyone present to speak for or against the application.

Kent Brand, an abutter at 1068 Victory Highway, was sworn in by stenographer. He expressed concerns that he felt were not properly addressed by the Planning Board. His main concerns were the intrusive lighting and inadequate screening for his property. He stated that these issues were brought up at the Planning Board meeting, but not acted upon. Mr. Kearns read from the Planning Board minutes that Mr. Gibbs had made recommendations on lighting and buffering. Mr. Brand stated that the recommendations were made, but the applicant had no intention of changing the plans. Mr. Brand also stated that he had requested as much barrier on the property line as possible. He had requested a fence, but the one on the plan is placed further into the lot, not all the way up his property line. Mr. Kearns stated that the minutes from the Planning Board indicate landscaping as screening. Mr. Brand stated that he had researched and requested a willow hybrid as screening, which is a fast-growing shrub (4-8 ft. per year growth rate). He contacted the landscape architect, who said there is not a high enough water content in the soil for these plants, yet Mr. Brand stated that the property is loaded with ferns, which should indicate that there is a high water content in the soil. He stated that the landscape architect

never came back with an alternative, other than 3 very spaced apart shrubs. Mr. Brand also stated that he is concerned with the noise level of the commercial air conditioning units. He requested that they be completely enclosed to block the sound.

Another concern Mr. Brand had was that the property had a great number of ticks. He pointed out that during the site visits several people came away with ticks, which indicates that the property is a deer run. He asked for site to be treated before excavation, but stated that he had received no response.

Mr. Brand asked that the plan call for the maintenance of a 50' buffer between the asphalt and drinking water. Mr. Kearns stated that the issue is under DEM jurisdiction. Mr. Benoit stated that this is not town jurisdiction, but that they can check DEM requirements. The applicant's engineer, Eric Bazzett, stated that he had called DOT and DEM, and there is no such setback from pavement to a well. Mr. Jühr asked if this is true for new construction. Mr. Bazzett stated that he is not aware of a setback requirement. Mr. Jühr stated that he thinks a 50-ft. setback is required. Mr. Bazzett replied that there is some sort of well-drilling requirement when in proximity to a transportation corridor. He also stated that the drainage is designed so that run-off from the paved area is directed to back of property. Mr. Jühr asked if the Planning Board had addressed this. He said that the Zoning Board should have received back a bulleted list, but all they got were minutes and a letter from the Town Planner. Mr. Jühr asked how far

away the asphalt is from Mr. Brand's well. Mr. Bazzett stated that he can't be sure, because he is not sure where the well is located. Mr. Denizard asked, in the absence of a DEM requirement, is there any town requirement. Mr. Benoit stated it could be located as close as 10 ft. to the property line, and 50' from the edge of a highway or road.

Mr. Scarpelli read from minutes (Item # 6 April 2 minutes) which stated the Zoning Board's concern that there is a 50' buffer from any drinking water well to the parking lot. Mr. Jühr also restated this portion of the minutes. Mr. DiNunzio pointed out that the italicized portion (the applicant's response during the Planning Board meeting) stated that the 50' distance is "to the road." (Planning Board minutes indicate that Eric Bazzett's response was that the 50' buffer regulation refers to the distance of a well to the road.) Mr. Kearns stated that a groundwater protection area is designated by DEM, and that he does not know if there's any requirement here or not. Mr. Bazzett stated that Mr. Brand's well is 50' from the road. Mr. Brand stated that although he is not sure, he will take Mr. Bazzett's word for it, as he stood on well on the day of the site walk. Mr. Brand stated that he is still concerned because Victory Highway is not a small road—there is a high volume of vehicles. Mr. Kearns stated that the issue should be resolved by the appropriate authority. Mr. Shekarchi stated that the Department of Health (DOH) has jurisdiction over wells, and as part of the process of DEM approval, the DEM goes to the DOH for approval or a variance if the proper distance is not present on the site. Mr. Scarpelli asked if they look at pavement, not

just the property line. Mr. Shekarchi replied that they look at everything, including abutting neighbors. Mr. Brand asked if the applicant had been to the DOH. Mr. Bazzett stated that they had been months ago. Mr. Scarpelli stated that the applicant is required to follow the same rules as everyone else, and that the Board cannot impose additional requirements.

The Chair asked about the proposed fence, which he stated was originally on the site plan as 4', but is changed to 6', and asked where the fence started. Mr. Bazzett stated that an 8' fence is on the other abutters' property line, but on Mr. Brand's side, the fence starts further down near the parking lot. He also stated that the plan originally called for 4 cypress trees as screening, but that the applicant had agreed to double it to 8 cypress trees. The Chair asked if he could see an updated plan. Mr. Bazzett brought it to the desk and had the Board review it.

Mr. Scarpelli stated that one of the recommendations the Zoning Board had sent to the Planning Board (#5 from Planning Board April 2, 2009 minutes) was for a buffer of evergreen trees. Mr. Kearns asked if they could make a condition that the Planning Board approve a landscape plan to match these recommendations. Mr. Brand stated that he is concerned with how long the applicant will own the site, and if they outgrow the facility and the property is sold, who will maintain the landscape buffer. Mr. Kearns stated that it is a legitimate concern and the Board will address it. He stated that he would hate

for the stretch of road between Slatersville Plaza and Gator's Pub to turn into a mess like Mineral Spring Ave. in North Providence.

Mr. Brand stated that the Planning Board review seems to have been a formality, a staged meeting, and that they didn't touch base on the issues and didn't show concern.

Mr. Denizard stated that the plans should have been updated, with all changes highlighted. Mr. Bazzett stated that all update plans were submitted to Mr. Ericson, and he gave the Board a copy to review. The Chair stated that the peer review of the traffic suggested maintenance of sight lines and asked if this was shown on the final plans. Mr. Bazzett stated that it is not shown, but a note is required by DOT re: vegetation maintenance to maintain visibility. The Chair asked that the plans note this and identify who is responsible for the maintenance of the vegetation. Mr. Bazzett agreed to show it on the plans. Mr. Denizard stated that this set of drawings is different than anything he has seen and the Board never received these plans. He stated that the drawings do not show good location of the wells, and he wants to be aware of exactly what's going on at the site.

Mr. Brand asked that the issue of screening on his property line be addressed. Mr. Kearns stated that the Board will address this. As to the air conditioning units, Mr. Savastano stated that the Zoning Board has no jurisdiction to require the applicant to mount the units in the attic. Mr. Brand also restated that he is requesting a vinyl fence in

case the owners don't maintain the landscaping. He would also like information on the growth rate of proposed plantings, as he does not want to wait several years for the plants to grow. Mr. Juhr stated that all the landscaping is under the Planning Board jurisdiction. Mr. Brand asked if the Planning Board will allow public comment, as they had not previously been given the chance. Mr. Savastano stated that they would be able to speak at the Planning Board meeting.

Brad Sudol, an abutter at 1030 Victory Highway was sworn in by the stenographer. He stated that he had attended the Planning Board meetings and that hopefully he will be allowed to speak at the next meeting, as he has concerns with parking lot and its effects on his well water, wetlands concerns, lighting concerns, and noise concerns. Mr. Savastano suggested that these concerns be brought to Town Planner Bob Ericson before the Planning Board meeting. Mr. Juhr further recommended that the abutters write a letter to the Town Planner and send copies to the Town Administrator and all the Planning Board members. He stated that they should start a paper trail.

Katie Sudol was sworn in by the court stenographer. She stated that she didn't understand what happened with the previous vote that was retracted. Mr. Kearns replied that the Board had voted to deny the project, but were advised that they would be well-served to rescind that in order to let the Planning Board review it, as if it to appeal (as it most likely would have), the court would send it back to the Planning

Board. He stated that there is a strange quirk in the ordinance that lets the applicant decide whether to go to the Zoning Board first or the Planning Board. He stated that they chose to reverse their decision in order to save the Town money that would be spent on litigation. Mrs. Sudol asked if, at time of the decision, there was a different solicitor. The Board stated that no, Mr. Savastano was appointed assistant solicitor in December. She asked why the meeting at which they reversed the decision was not advertised in the newspaper. Mr. Jühr stated that all meetings are posted in town and on the state website, but are not always in the newspaper. Mrs. Sudol stated that she was extremely disappointed with the Board's decision to approve the special use permit.

Diane Guernon, an abutter at 1028 Victory Hwy., was sworn in by the stenographer. She stated that at the Planning Board meeting, one member said he had no problem with the application, then indicated that he was thinking of another site. Mrs. Guernon said he had no idea where the site was. She said later in the meeting, a member asked if there was a problem with traffic at the 146A location, which she said was not comparable to this site. She stated that she is concerned that we're relying on them (the Planning Board) and they don't care. The Chair stated that the Zoning Boards concerns were traffic and safety, but they were informed that they had no jurisdiction over the state highway, at which point their hands were tied.

Mr. DiNunzio stated that over time the Board has shown concern for

abutters and their greatest concern was traffic safety. This concern is what drove the initial vote. However, legal complications, with this being a religious institution, the positive Planning Board recommendation, and DOT determination that lights are not necessary cause the Board's objections of the past to be pulled out from under them. Mr. DiNunzio stated that he is very sympathetic to the deer tick situation, but it is outside of Zoning Board jurisdiction.

Mr. Kearns stated that this application has been a long ordeal, and it is particularly frustrating that the Board's concerns have been usurped by the legal process. He stated that though the Board had a lot of concern about the site, they have been advised to reconsider, and he will reluctantly vote for approval, though he still feels that the proposed property doesn't fit in the location, and he has concerns with development along Route 102.

Mr. DiNunzio made the following motion:

Despite the fact that traffic safety concerns have remained troubling to members of the Zoning Board, the Planning Board has voted 4-1 to recommend approval of a special use permit for Jehovah's Witness Kingdom Hall at 1054 Victory Highway, and despite the Zoning Board's concerns for public safety, the RI Department of Transportation staff engineers have stated that the location has an adequate line of sight by accepted design standard and will not approve a warning sign for the northbound lane approaching the site.

Therefore, it is resolved that the application of Joe Jenks (owner Mary Zurowski), requesting to construct a building to be used as a religious institution, which requires a Special Use Permit, per section 5.4.4, subsection 5, Locus 1054 Victory Highway, Plat 1, Lots 141 and 151 is approved with the following stipulation: that all legal and regulatory requirements concerning well protection of abutters, septic systems, and water runoff be met by the applicant. Further, the Zoning Board requests that the Planning Board consider landscape screening, lighting, and sound buffering mitigation as it relates to neighboring properties.

Mr. Kearns seconded the motion.

Roll call vote was as follows: AYE: Mr. Marcantonio, Mr. Jühr, Mr. Kearns, Mr. DiNunzio. NO: Mr. Denizard.

Motion passed, with a vote of 4-1. Special Use Permit is granted.

Town Solicitor Rich Nadeau explained that the Planning Board meeting was not a public hearing, therefore there was no public comment, however, the applicant has agreed that when they return to the Planning Board, they will not object to public comment.

Mr. Scarpelli made a motion to adjourn at 8:44 pm. Mr. Kearns seconded the motion, with all in favor.