

North Smithfield Zoning Board of Review

March 22, 2011

Kendall Dean School

83 Green St., Slatersville, RI

The Chair called the meeting to order at 7:00 pm. Before starting the meeting, he announced that due to a scheduling mix-up, there is no stenographer present at this meeting. He asked that everyone speak clearly into the microphone and identify themselves in order to make the tape recording clear.

1. Roll Call

Present: Chair Stephen Kearns, Steve Scarpelli, Guy Denizard, Bill Juhr, Paul Pasquariello, Mario DiNunzio, Scott Martin. Also present were Building Official Bob Benoit and Assistant Town Solicitor Bill Savastano.

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

3. Approval of minutes of the Zoning Board Meeting of March 8, 2011.

Mr. Scarpelli made a motion to approve the minutes of March 8, 2011 as amended. Mr. Denizard seconded the motion, with all in favor.

4. Application of Mars Realty, LLC, proposing to operate a 5-pump fueling station. This request will require the granting of a Special Use Permit, per section 5.4.7(6) of the current zoning ordinance. Locus is 35 Eddie Dowling Highway, Plat 21, Lot 67.

Attorney Elizabeth Noonan addressed the Board for the applicant. She gave a brief summary of the request, which is to open and operate a 5-pump Stop & Shop fueling station. The property is zoned Neighborhood Business (BN). The applicant meets all of the dimensional requirements as to parking, building set-backs, building height, floor area ration, lot area and lot width and is not requesting any relief for signage at this time. She informed the Board that the application has been reviewed by the Planning Board and that they have received Master and Preliminary Plan approval.

The following exhibits were entered into the record:

P1) Curriculum vitae of Conor P. Nagle, PE

P2) Curriculum vitae of William S. Taber, PE

P3) Curriculum vitae of Robert J. Clinton, PE

P4) Traffic Analysis Technical Memorandum, Proposed Stop & Shop Fueling Facility Eddie Dowling Highway (Route 146A), prepared by Vanasse Hangen Brustlin, Inc. (VHB), June 2010

P5) Copy of Physical Alteration Permit issued by RIDOT, November 23, 2010

P6) Real Estate Survey for Property Located at 35 Eddie Dowling Highway, Sweeney Real Estate & Appraisal, February 23, 2011

- P7) RIDEM Underground Storage Tank Approval of New Installation, December 3, 2010**
- P8) RIDEM Insignificant Alteration Permit, December 13, 2010**
- P9) Maintenance of Stormwater Management Systems, VHB**
- P10) Traffic Gap Analysis & Delay Study, VHB, January 3, 2011**
- P11) Site Plan, VHB, June 30, 2010, rev. December 15, 2010, stamped and dated by Conor Nagle, PE**
- P12) 200' Radius Map, February 4, 2011 and abutters list**
- P13) Town Zoning Compliance Application, February 8, 2011**
- P14) North Smithfield Planning Board Major Land Development Preliminary Plan Decision of Approval, recorded on February 22, 2011, Book 524, Page 195, Document # 00017735**
- P15) Letter to the Zoning Board from Town Planner Robert Ericson, February 17, 2011**
- P16) Stop & Shop Safety Features Color Visual**

Conor Nagle was sworn in by the Assistant Town Solicitor. He gave a brief summary of his qualifications, which are also listed on his resume (P1). He stated that he has worked on this plan from conceptual level all the way through the planning and design process, which included obtaining Planning Board Preliminary Plan approval and all necessary state permits. He pointed out the site on an aerial photo. It is adjacent to the Stop & Shop property where a furniture showroom was once located. The property grades back from the road. The plan is to construct 10 fuel dispensers and a 120 square foot kiosk under a canopy. There will be two underground fuel tanks.

There will also be a vending pad with soda and ice machines, as well as an air machine. A dumpster will be located in a landscaped fenced area. There will be 3 parking spaces. The site will have the same drainage pattern as exists currently. There will be a slight increase in runoff which will be mitigated by having water infiltrated to a landscaped area. There will be a catch basin with an oil/water separator. There will also be a shallow swale. There will be a shallow detention basin, with water dispersing through a level spreader. The revised stormwater plan, dated January 19, 2011, was prepared by Mr. Nagle, with calculations in compliance with the latest DEM regulations. The new more stringent regulations are effective January 2011.

Mr. Nagle stated that there are no dimensional variances needed and state permits have been obtained. [RIDEM insignificant alteration permit (P7), RIDOT physical alteration permit (P5)] There are existing water and sewer connections and no natural gas is needed. There are no special signage or lighting requests. The lighting design is part of the site plan submitted to the Board. Mr. Nagle reviewed the Special Use Permit requirements. As to refuse and service areas, there is a dumpster located at the rear of the site which will be picked up with the Stop & Shop refuse. Noise, gas, odor—photometrics have been submitted. There is no light spill off the property. There is no intercom or PA system, no video or radio playing, and the proposed screening and buffering is detailed on the landscape plan.

Mr. Denizard asked how the facility will provide 3 grades of fuel with only two tanks. Mr. Nagle replied that mid-grade fuel is a mixture of regular and premium, and said the Mr. Taber will be able to answer questions on the tanks and fuel. The Chair asked if the fire marshal had reviewed the application. Mr. Nagle stated that during Preliminary Plan filing to the Planning Board, the fire marshal did review the request. There is no written documentation, but he did not have a problem with the proposal. At the Building Permit stage, the fire marshal will sign off on the plan.

William Taber was sworn in by the Assistant Solicitor. He gave a brief summary of his credentials, which are outlined in his curriculum vitae (P2). He stated that there are no significant environmental issues with this proposal. There will be two underground storage tanks. The tanks are double-wall fiberglass tanks. The interstitial space (between inner and outer wall) is filled with a brine solution. IF there is a break in either wall, the level of the brine solution will change, which sets off an alarm (a 92-decibel horn if the station is closed for the night), which is connected via modem to a 24/7 facility. This design is above the industry standards and is much easier to monitor. He stated that most leaks that he has encountered were early in his career and were due to corroded single-wall steel tanks. DEM has to approve all underground tanks. This approval was obtained. [Underground Storage Tank approval (P8)]

Mr. Taber detailed the many safety features in place. These include

the brine system as described above, as well as stage 1 & 2 vapory recovery system, overflow protection valves, spill containment manholes and buckets (any spill into these is pumped back into the tank), water tight piping sumps with electronic monitoring, leak detector for fuel pump line, dispenser shear valve (fire protection), double-ended poppet valves, break-away valves, positive limiting barriers, camera monitoring system, and fire suppression fire alarm (shuts the system down). All kiosk operators attend a training program on all features and mechanisms. There is a shut off or “panic” button in case of extreme emergency.

Mr. Taber also explained how the dispenser blends the regular and premium fuels to create mid-grade fuels. The specialized computer system can give almost any blend, but usually the octanes provided are 87, 89, and 93. The Chair asked if there is an agency that monitors the quality of the fuel and the measuring system. DEM does the fuel checks and the Town has someone who is in charge of weights and measures. Mr. Pasquariello asked about the potential for a failure of the tanks. Mr. Taber stated that he has never seen it with a tank in operation, but sometimes the tanks are delivered with damage. However, tanks are fully-inspected and will not be installed if they are not functioning properly. The problem will be repaired then tested and recertified (for 30 years) before installation. An engineer is onsite during installation to observe. Installers are certified and trained and have a checklist for the contractor. The fire department also observes the installation and DEM inspects it.

Robert Clinton was sworn in by the Assistant Solicitor. He summarized his experience, as detailed in his resume (P3). He stated that he had prepared a traffic report (P4) and followed up with a gap and delay analysis (P10) per the request of the Planning Board. His report analyzes existing traffic counts, historic DOT data, and future conditions (looking at known projects and historic build-out. Dowling Village was included at full-capacity analysis). In preparing the gap and delay analysis, Mr. Clinton used the adjacent driveway (Citizens Bank) to look at actual gaps for a left turn out. Traffic was calculated in each direction. The actual delays were less than the calculated delays, as the calculated delays don't fully take into account the positive impacts of traffic light at the Stop & Shop intersection or the center turning lane. With the center turning lane, a car only needs to go across two lanes of traffic and wait for a gap from the other direction.

As detailed in P4 and P10, Mr. Clinton explained that the traffic study also uses the Institute of Transportation Engineers trip generation manual. They looked at similar business in the area, peak periods (4-6 pm weekdays and mid-day on Saturday). With the season adjustment, the traffic was calculated at 2% less than the counts taken in December, but the most conservative numbers were used in the study. Another consideration is that a fuel station is not a destination, but rather a drive-by type business, so there will be limited new traffic for the site. The conclusions of the study are that the facility will

minimally impact the current traffic conditions. Based on the studies conducted, Mr. Clinton stated that for a left turn out of the site, there will be a Level of Service B.

Mr. Clinton also spoke about internal traffic at the site. There will be one entrance and one exit and there will be adequate queuing room behind each pump.

Mr. Pasquariello asked if the analysis of potential traffic caused by the build-out of Dowling Village used existing data or if they generated their own data. Mr. Clinton stated that they verified the existing data and looked at their own trip generator. The higher number was used in this study, but both sets of data were comparable.

Thomas Sweeney was sworn in by the Assistant Solicitor. He summarized his qualifications, which are detailed in P6. Mr. Sweeney stated that this is a retail center with very little residential property in the area. There was a gas station located very close to this location for many years. The fueling station use is very compatible with the area. Proposed buffering and screening, lighting, and signing are all harmonious with the surrounding area.

The Chair asked about the hours of operation of the station and the hours of fuel delivery. Ms. Noonan stated that they usually follow the hours of operation of the Stop & Shop store, so typically 7 am – 10

pm. There are no 24-hour stations. Fuel delivery is scheduled through a computerized system. Stop & Shop will schedule fuel delivery when it's needed, and it is done off peak traffic times.

Mr. Juhr stated that Mr. Sweeney referred to a former fuel station in the immediate vicinity and asked why that property wasn't used. Ms. Noonan stated that it was preferred but was not available. The applicant inquired about it, but they could not work it out. Mr. Juhr asked if there were still tanks in the ground there. Mr. Nagle stated that DEM requires tank removal within six months of station closure. Attorney S. Paul Ryan was also present with the applicant. He stated that he had previously worked with Exxon Mobil and though the tanks should have been removed, he wanted to point out that brand new tanks were put in shortly before the station closed, so if they are still there, they are not old and in danger of leaking.

The Chair asked if anyone was present to speak for or against the application. There was no one present. The public hearing was closed at 8:18 pm.

Mr. Juhr thanked the applicant for providing the material in a timely manner. He stated that all materials and the presentation were very thorough and informative. The Chair agreed with Mr. Juhr and stated that the thorough presentation addressed all areas of concern for the Board.

Mr. Scarpelli made a motion to approve the application of Mars Realty, LLC, for a Special Use Permit, per section 5.4.7(6) of the current zoning ordinance, to operate a 5-pump fueling station at 35 Eddie Dowling Highway, Plat 21, Lot 67. Mr. Juhr seconded the motion. The Chair stated that the testimony by the witnesses and evidence presented into the record substantiate the approval. Roll Call vote was as follows: AYE: Mr. Kearns, Mr. Juhr, Mr. Scarpelli, Mr. Denizard, Mr. Pasquariello. Motion passed, with a vote of 5-0. The Special Use Permit was granted.

5. Report from the chair re: Discussion with Town Solicitor about duties of the assistant solicitor and writing of zoning board decisions.

The Chair informed the Board that he had spoken with Town Solicitor Rick Nadeau about the role of the Assistant Solicitor with regard to the writing of Zoning Board decisions. The solicitor said that writing the decisions is not part of the assistant solicitor's duties, but he should review the written decision before the Board votes on its approval. Mr. Nadeau also said that the Board should be able to write a good decision by using the exhibits, testimony, meeting minutes, and input from the Chair to come up with the Findings of Fact to support the decision.

Mr. Juhr stated that he had spoken with attorney S. Paul Ryan, who works with Warren, Bristol, and Scituate, about the process those

municipalities use in writing decisions. Mr. Ryan said that the process varies from town to town. Some have the attorney write the decision; others have the Board write the decision with attorney input. He said that he has a decision format that can be adapted to any town and will be defensible in court. He stated that courts want to see well-written decisions, rather than have to rely on going through minutes, transcripts, or tapes. He will forward the format to Mr. Savastano, who will then forward it to the clerk and the Chair. Once the blueprint is set up specific to North Smithfield, the Chair will work on compiling a list of findings of fact, and with the clerk, he will get the findings of fact into the decision format. This will be reviewed by the Assistant Solicitor then forwarded to the Board for approval. Mr. Ryan said that the format was a cooperative effort and will stand up from court. He also stated that having the format ahead of time makes it easier to take notes during the meeting. Mr. Jühr stressed that it is important to have legal counsel review or write the decision so that it will stand up to the court's stringent system.

The Board then briefly discussed the processes of the Planning and Zoning Boards and stressed that by going to Planning first, the applications that come before the Zoning Board are much more thorough and easier to review. It is sometimes hard for the Zoning Board to reach a decision based on vague concept plans.

6. Update on proposed workshop on the open meetings act.

The Chair informed the Board that he had spoken with Town Administrator Paulette Hamilton. There is an Open Meeting Workshop Forum planned for April 26, 2011, at 5:30 pm. Other town boards will also be invited to attend.

Mr. Scarpelli made a motion to adjourn at 8:45 pm. Mr. Pasquariello seconded the motion, with all in favor.