

# **North Smithfield Zoning Board of Review**

**June 26, 2012, 7:00 pm**

**Kendall Dean School**

**83 Green St., Slatersville, RI**

**The Vice Chair called the meeting to order at 7:04 pm.**

## **1. Roll Call**

**Present: Vice Chair Steven Scarpelli, Bill Juhr, Guy Denizard, 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, June 12, 2012.**

**This item was tabled because the minutes were not available to the Board for review.**

**4. Continued application of Kimberly Enterprises, Inc., requesting a dimensional variance for lot frontage, per section 5.5 "District Dimensional Regulations," subsection 5.5.1, "Residential Districts," and a variance from Section 6.2, "Street Access to Buildings." Locus is off Sayles Hill Road, Plat 17, Lot 236, Zoning: RS-40.**

**The Board entered a letter from Town Planner Robert Ericson, dated June 21, 2012, into the record as exhibit B2. Mr. Denizard stated that he took exception with some of the contents of the letter. He stated that they did not use correct engineering definitions (dry well, super-elevation).**

**Mr. Jühr stated that he had worked on some suggestions that would work for this application and help the other lots in the same subdivision. He stated that a 16' road is not wide enough for two vehicles to pass, and said that he is willing to propose that the Board approve the application with the following stipulations.**

**He stated: “The lot found in Plat 17, Lot 236 meets the minimum lot area square footage requirement of the North Smithfield Zoning Ordinance, so a Dimensional Variance for lot frontage, per Section 5.5 “District Dimensional Regulations,” subsection 5.5.1, “Residential Districts” is not required -- as long as a “24 ft right of way” can be agreed to and established throughout the entire subdivision to meet the requirements of Section 6.2, “Street Access to Buildings”. Street standards within the Town’s current Subdivision Regulations call for all subdivision roads to have a 50 ft right-of-way and a 30 ft paved travel surface. In relief of this requirement and to be granted a variance to Section 6.2, “Street Access to Buildings” the following stipulations must be agreed to and established for Zoning Board of Review approval:**

**Must receive an improved right of way agreement (increased from 12 ft to 24 ft minimum) from the Authier's that includes a 24 foot wide right of way that extends the full length of the subdivision from beginning of Sayles Hill road to the end properties, Plat 17 Lots 246 and 116.**

**The new right of way agreement will be recorded in the Town deed of land evidence records for each property in the subdivision that abuts the right of way. Plat 17, Lots 216, 229, 230, 236, 246 and 116. As shown on Exhibit P-4.**

**A 24 ft roadway will be built to town construction standards, with a Cul-de-sac at the ending developed property, in this case Plat 17, Lot 236, Zoning: RS-40**

**Each future developed property in this subdivision will be responsible for extending the road under the same standards to the end of their own property line with a new identical replacement Cul-de-sac built to the same standards as the previous Cul-de-sac.**

**Said Cul-de-sac's must be built to radius specifications and design set by the town Fire Department and meet final approval of the Town Fire Marshal; a minimum design must include a Fire Truck turnaround area.**

**Some form of country drainage must be permitted and installed; including super elevation of the road, must meet the specifications and both must meet approval of the Town of North Smithfield Planning Board.**

**All buildings on any subdivision property will have its roof drained to dry wells, per the specifications and approval of the Town of North Smithfield Planning Board.**

**A Drainage analysis/study of runoff must be provided to the North Smithfield Planning Board. Any issues found by this analysis/study must be mitigated in accordance to terms set by the North Smithfield Planning Board and said solution for any drainage runoff issues founds must receive final approval of the North Smithfield Planning Board.**

**All Onsite Wastewater Treatments/septic systems on any of the subdivision properties must meet RI State and local codes and receive permits as are required per RIDEM standards.**

**All future property developments within this subdivision must meet the same above requirements without exemption.**

**Mr. Jühr made a motion to approve the application with the above-listed requirements as stipulations. Mr. Denizard seconded the**

**motion. Mr. DiNunzio asked if it possible to make the stipulations as stated, since the right-of-way is not owned by the applicant. Mr. Savastano told the Board that they can only make stipulations on land owned by the applicant. Mr. Juhr stated that he is striving to find a solution that would be to the benefit of the entire subdivision. Since other property owners may come before the Board in the future, it would be best to set out a plan for the future of the subdivision, and allow the applicant to start using his property. Mr. Savastano said that since the right-of-way is not owned by Mr. Godfrin, Mr. Juhr's intentions are admirable but the Board cannot impose stipulations on other properties.**

**Mr. Scarpelli stated that according to the letter submitted by the applicant, the owner has only agreed to widen the right-of-way to 16 feet. Mr. Savastano added that the owner (Authier) did not testify. Mr. Juhr withdrew his motion. He then said that his Plan B is to deny the application or ask the applicant to negotiate an agreement with the owner for a 24' right-of-way and come back before the Board.**

**Mr. Savastano asked that since the subdivision is approved and the right of way is not owned by the applicant, why did the applicant come before the Board. He stated that he most likely would be allowed a building permit. Mr. Benoit stated that the road was never constructed, therefore there is no frontage on an improved street. Mr. Juhr stated that currently the right-of-way is just grass, and he would like the Board to help the applicant and solve the problem for the**

entire subdivision. He stated that he has tried his best to find a solution, but without the owner of the right-of-way testifying before the Board and with no improved road, he does not see how the land is buildable.

Mr. DiNunzio suggested approving the application with the stipulation that a 24' road be built up to the end of lot 236, which will establish precedent for future development, but will allow the applicant to go ahead with his project. Mr. Jühr stated that he would rather have the applicant negotiate the right-of-way and come back. Mr. Denizard asked if there will be any legal issues regarding maintenance of the right-of-way (plowing, etc.). Mr. Savastano stated that legal problems go back to the approval of the subdivision. He doesn't see why the applicant came to appear before the Board, as he believes the building permit should have been approved. He stated that any conditions may cause a lawsuit. He stated that there is no sworn testimony from the owners of the right-of-way and the letter submitted only states that they "may" agree to widen the road to 16 feet.

Mr. Scarpelli suggested approving the request with the road up to the end of lot 236. Mr. Jühr stated that there are also many reasons to deny the application, such as financial gain for the applicant and the fact that the applicant does not own the right-of-way. Mr. Savastano suggested not approving or denying the application at this meeting, but ask the applicant speak with the Authiers about widening the

**right-of-way.**

**Mr. Juhr made a motion that the applicant seek to negotiate an agreement with the applicant about widening the road from 12' to 24' from Sayles Hill Road to the end of Lot 236, with preparation for the future construction of a cul-de-sac and all other stipulations suggested earlier in the meeting and to continue the application to the first meeting in August. Mr. Godfrin asked for a copy of that list. The clerk will type up a list and send it to the applicant. Mr. DiNunzio seconded the motion, with all in favor.**

**Mr. Godfrin stated that he will come back, but that he knows that he will not be able to get the Authiers to agree. He stated that he has already submitted a letter from the fire marshal which states that the 16' right-of-way is acceptable. He added that he had measured the width of Iron Mine Hill Road at 4 separate locations, and found widths of 16', 18', 18', and 24'. From this he concluded that requiring 24' for 5 lots is a heavy burden.**

**Mr. Juhr asked Mr. Benoit why the road was never constructed. Mr. Benoit stated that the developer constructs the road and the town accepts the road after the lots are sold. Mr. Juhr stated that the applicant knew that he had bought a landlocked lot, so it is not up to the town to figure out how to access that land. Mr. Godfrin stated that he is seeking a street access variance, and that it is not in the Zoning Board's purview to figure out why or if a road gets improved; it is**

**their job to answer the applicant's request and either approve or deny the variance. He asked if any further evidence could be entered at the next meeting. Mr. DiNunzio stated that the Board can vote to reopen the public hearing. Mr. Nadeau stated that the meeting would have to be readvertised in order to reopen the public hearing. Mr. Benoit stated that as long as the applicant let him know if he will have any more testimony or evidence 2 weeks before the hearing date, the clerk will have time to readvertise. The Chair told the applicant that if he talks to the Authiers and cannot work out an agreement, they will not have to readvertise or reopen the public hearing.**

**Mr. DiNunzio made a motion to adjourn at 7:46 pm. Mr. Jühr seconded the motion, with all in favor.**