

North Smithfield Zoning Board of Review  
August 27, 2013 7:00pm  
Kendall Dean School  
83 Green St., Slatersville, RI

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

1. Roll Call

Present: Chair William Juhr, Steve Scarpelli, Mario DiNunzio, Scott Martin, Vincent Marcantonio, and Susan Overfield. Absent: Paul Pasquariello. Also present were Assistant Town Solicitor Stephen Archambault and Building and Zoning Official Robert Benoit.

2. The Chair made disclosure of no compensation or pension credits are received by the board members.

3. Approval of minutes, July 15, 2013.

Mr. DiNunzio made a motion to approve the minutes of July 15, 2013. Mr. Marcantonio seconded the motion, with all in favor.

4. Application of Anthony and Elaine Pontarelli, requesting relief from section 5.6.2, also a dimensional variance from section 5.5, "District Dimensional Regulations", subsection 5.5.1, residential district. Locus is McCann Street, Plat 1, Lot 275. Zoning District: RS-40.

Mr. Benoit stated on April 23, 2013 a dimensional variance was granted to divide one lot into two lots but the Town Planner would not sign off. Originally the property consisted of three non-conforming lots and merged by the Town Tax Assessor in 2009. Mr. Pontarelli was seeking to divide his one lot into two lots and requesting relief from section 5.6.2, also a dimensional variance from section 5.5. Chair Juhr requested Mr. Benoit prepare a memo to the Zoning Board as to why the application did not go before the Planning Board first for a minor subdivision and provide all background and facts.

Mr. Archambault stated it is his position to render a legal opinion and providing advice on the proper procedure is not his responsibility. Mr. Archambault said he did submit a memo to the Town Planner and copied the Town Administrator and Zoning Board Chair as to what he thought it would take to remedy the application. Mr. Pontarelli would not incur any additional cost to resubmit the application. Mr. Archambault suggested the Zoning Board rescind the decision and go to the Planning Board first then resubmit the application at no additional cost to the applicant. Chair Juhr stated the Zoning Board is a volunteer board and it is up to the Building Official Mr. Benoit to review applications to determine the proper course of action prior to posting on the ZBR agenda. Chair Juhr requested a copy of the memo of 7/18/2013 from Mr. Archambault to the Town Planner for exhibit at the next meeting. Mr. Archambault said he forwarded the legal document to the Chair of the Zoning Board to disseminate to the board members. Chair Juhr stated that distribution of board documentation and general communications have been complicated since there was no zoning secretary during this time. Mr. Archambault stated the

application improperly went before the Zoning Board and state law requires it needs to go before the Planning Board. Section 93-1 granted relief. The remedy and cleanest and easiest method is to rescind the original decision, reapply without fees. See if it meets the relief for a dimensional variance. Mr. Archambault suggested a motion to rescind the decision with the same facts as the Planning Board needed to review.

Mr. Pontarelli stated he has been to the Planning Board on July 18, 2013 regarding the subdivision plan decision and was told to go before the Zoning Board. Mr. Ericson said if the Planning Board approves the subdivision he will sign off. Chair Juhur stated that Building Official Mr. Benoit has a difference of opinion. He also stated that some documents are missing in the application packet. Mr. Pontarelli stated that Mr. Ericson wanted an aerial view with abutters and he supplied everything he needed. Mr. Archambault said the application is now properly before the Zoning Board. Mr. Juhur stated that he checked the Secretary of State website and there were no Planning Board minutes listed for July 18, 2013. Chair Juhur requested the Planning Board minutes and Planning Board written decision be provided in a packet for the next meeting. The Zoning Board needs to review these documents prior to the next meeting.

Mr. Scarpelli made a motion to rescind the decision on 4/23/2013. Mr. DiNunzio seconded the motion. Roll call vote was as follows: YES: Mr. Scarpelli, Mr. DiNunzio, Mr. Martin, Mr. Marcantonio and Mr. Juhur. Motion passed, with a vote of 5-0.

Chair Juhur requested for the next meeting on September 10<sup>th</sup>, an official memo from Building Official Benoit to the Board on his opinion; written decision of the Planning Board on the preliminary subdivision plan and revised subdivision plan and official minutes from the Secretary of State website along with a copy of Mr. Archambault's memo. The Planning Board did not change a thing. Mr. Pontarelli stated the lot sizes are 12,000 and 10,000 and this was sent to the Zoning Board at the first meeting. Mr. Pontarelli does not need to provide anything.

A motion was made by Mr. DiNunzio, seconded by Mr. Martin to continue the case to the September 10th meeting with all in favor.

5. Application of Rockcliff Farms, LLC, seeks to modify the special use permit granted on April 10, 2003 for the construction of 71 two-bedroom condominium units and one 6000 sq ft, two-story commercial office building. Locus is 40 Old Louisquisset Pike, Plat 13, Lot 18. Zoning District: RS.

Attorney John Mancini, 128 Dorrance Street represented the applicant. The Applicant was granted a special use permit on April 10, 2003 for 71 two-bedroom condominium units, town house style and one 6,000 square feet, two-story commercial office building. Forty-six of the 71 units have been built. Phase 1 and Phase 2 received approval with 50 units would benefit from additional visitor and resident parking. The Applicant is looking for relief to Phase 3 that would eliminate the 6,000 square foot office building and provide 11 new additional single level units and an additional 32 parking spaces. These 11 units would be single level units, slightly smaller 2 bedrooms one level. A passive walking area will be created located in the center of the complex behind building 13 in a smaller space than what exist today.

The applicant seeks to modify the Special Use Permit to construct additional residential condominium units in lieu of the 6,000 square foot office building. Phase 3:

- The market for townhouse condominium units is difficult to sell in this economic climate. Single unit condominium units would sell for \$230,000-\$250,000.
- Exhibit P-1 application dated 5/29/2013
- Exhibit P-2 Application for Certificate of Zoning Compliance dated 6/25/2013
- Exhibit P-3 List of abutters (7 pages)
- Exhibit P-4 Plan SK-4C4 Concept Sketch, prepared by Millstone Engineering dated 2/28/13 (2 pages)
- Exhibit P-5 Letter from Attorney John Mancini, on behalf of the applicant dated 5/29/13 to Building Official Robert Benoit (2 pages, 1 page letter, 2<sup>nd</sup> page memorandum RE: Rockcliff Farm, no date) also attached are copies of pages 2 & 3 from April 10, 2003 ZBR written Decision)
- Exhibit P-6 Letter to Robert Benoit (4 pages total) from Mr. Mancini dated 6/20/13 (First 2 pages are Letter, with attached 2 pages same copies of pages 2 & 3 from April 10, 2003 ZBR written Decision as in P-5 above)
- Exhibit P-7 Rockcliff Site Plan Amendment Notes (3 pages) and Historic Office Market Statistics 2005 – 2011 (5 pages)

Mr. Mancini stated the demand for office space would re-shift office space from existing, abundant office space. It would be better to add 32 condominium units and increase lighting in the area. They will finish infrastructure roadway, water, sewer and parking lot which will be beneficial in netting additional annual income to the Town and Condo Association to propel sales. This will be done in sections. Approval is already done said Mr. Mancini they are just seeking to modify the special use permit to construct 11 additional units in lieu of the office building and asking for relief in that regard.

Special Use Permit entered as an Exhibit and the Zoning Certificate is done to memorialize the property which is grandfathered as Special Use Permit. They have not altered anything and the decision approved back in 2003 is listed in land evidence records. The Town Planner had said there is no need for Planning Board approval. The density doesn't change and still be less than that allowed by code. There were many questions about the mixed use element without the office building.

North Smithfield Police & Fire want a limit on street parking due to narrowing of the private roads for safety vehicles. The plan will address the parking issue. All units have two parking spots, a garage and driveway. The commercial office building will need dedicated parking. There is inadequate visitor parking and currently 16 spaces. Total parking spaces will be 50 and shown on the right cover of the plan submitted.

Mr. Juhr stated that the prior Zoning Board granted the Special Use Permit based on the premise of mixed use, professional services. Mr. Juhr stated “economic hardship” is not a test criteria to approve or disapprove a Special Use permit. Mr. Mancini stated that he agreed that economic hardship is not one of the evaluating criteria and they are not requesting hardship but findings that this proposal is more consistent with the Comprehensive Plan. Mr. Mancini discussed the Findings 1-7 on Exhibit A of the April 10, 2003 decision. He stated the Applicant is looking for modification to an existing Special Use permit. Mr. Mancini said he feels the proposed new Phase 3 is better than what they agreed to do 10 years ago.

Testimony was received from the abutters and public:

One abutter was sworn in by the stenographer, Cherylann Leaver, 40 Old Louisquisset Pike, Unit 603F. She stated in July 2007 she moved to Rockcliff Farm with her husband and was told there would be 71 units, two story luxury condominiums and probably the office space won't be built. She was told that they would never sell a condominium less than \$324,000 which is what they paid. She had concerns that traffic is hectic now and adding 22 more units will be unbelievable. They were guaranteed a beautiful place to live with trees. They would build in phases and build quality units. Rockcliff is in a rush to get this done because two years ago a husband and wife fell off a deck and have a lawsuit. Mrs. Leaver is looking for a breach of contract if this is approved.

Label Exhibit A-1, Abutters Sales Brochure for 71 luxury condominium units in a country setting. Submitted by Cherylann Leaver, 40 Old Louisquisset Pike

Mr. Mancini stated the original application had 21 condominium units and an office building and has permits. Phase 3 proposes 11 more units single level unit instead of the office building on the original plan. There is no time limit to finish Phase 3 and they will complete the original Phase 3 project if the Special Use modification is not granted.

Abutter, Theodore Knight, 40 Old Louisquisset Pike, Unit 101A was sworn in by the stenographer. His unit is closest to the potential office building and said there will be more of a traffic issue if they build the office space. He has no problem with them changing the units.

Abutter, Joan Pirraglin, 40 Old Louisquisset Pike, Unit 602F was sworn in by the stenographer. She spent six hours getting signatures for the Rockcliff Farm Residents Support the Trees Petition to postpone the vote to modify the original permit. Rockcliff wants to remove a vast majority of trees and change the country setting. Property values will be reduced and destroy the beautiful community they now enjoy. They were never presented options to accommodate the parking issue or the possibility of building something other than the office building. The modifications were presented to the residents in a very disorganized manner that started with 2 emails less than 24 hours before a casual meeting. The Petition was signed by 37 residents of which four are not registered voters and two are renters. She read the Zoning Ordinance Section 9.3.1. Chair Juhr asked if Ms. Pirraglin wanted to submit her petition to the Board as an exhibit? She stated it was her only copy and would send a copy to the ZBR secretary. Ms. Pirraglin also stated that

different By Laws were given to the tenants. Mr. Mancini said the new propose Phase 3 will have a reduction of trees but will keep the open space by adding a walking trail in a smaller space. Mr. Mancini stated twenty-two Condominium Association members voted to approve and eight were opposed. Only one vote per unit was allowed.. Mr. Scarpelli asked Mr. Mancini if 46 units are eligible to vote. Mr. Jühr stated if the abutters wanted to submit the signed petition as an exhibit the ZBR will need to receive a copy prior to the next meeting. Ms. Pirraglin stated she spent six hours up to 7:00 pm to get the signatures and will send a copy to the ZBR clerk. Mr. Mancini stated they are proposing to eliminate the office building and replace it with 11 condominium units to complete the residential community.

Mr. Mancini stated: (1) the Petition is not notarized; (2) not reflecting the By Laws of the Condominium Association; (3) the Applicant is not requesting a hardship only a simple elimination of office space and to be allowed to add 11 more single level units. Mr. DiNunzio requested rather than a back-en-forth format is might be better to hear from the public first then Mr. Mancini can respond. The Chair agreed.

Abutter, Christopher Gentile, 40 Old Louisquisset Pike, Unit 802 was sworn in by the stenographer. Mr. Gentile compared both plans and said he will deal with the blasting rock to put the building in and discusses where the building will be placed. The residents thought the vote was for manipulating the building for increased parking spaces not adding units. He agrees with the parking issue.

Abutter, Tedio Ciavarini, 40 Old Louisquisset Pike, Bldg. 10, Unit 1001 was sworn in by the stenographer. Mr. Ciavarini has objections to blasting of ledge as he already has cracks in his basement. He is not sure of the elevation of the ledge but it is close to his back door. He addresses the clearance of trees which provides beautiful, aesthetic privacy and shade.

Abutter, Cherylann Leaver, 40 Old Louisquisset Pike, Unit 603F would like to email someone the notification email entitled W/Attachment-Parking vote & Site Plan Viewing that was sent to the residents. Mrs. Leaver was instructed to email to the Zoning Secretary to include as part of the packet at the next meeting. Addressing this abutter's concerns, Chair Jühr stated the Applicant cannot change the original plan submitted and agreed to on April 10, 2003 without an approved modification to the existing Special use permit. The agreement stands with mixed use and was key to building this complex.

Mr. Paul Zwolenski, 7 Robin Way, was sworn in by the stenographer. Mr. Zwolenski stated he was providing comment as a North Smithfield resident and not as a member of the Town Council. Mr. Zwolenski was the Planning Board Chairman in 2002 and 2003 and was here to recollect the review process. He brought information when he was on the Planning Board. Mr. Zwolenski picked up the application dated 5/29 labeled Exhibit P-1 and noted that the Building Official noted the Zoning District as RS only and had not included the PS (Professional Services) designation as well. He said he thought the proper Zoning District was RS/PS? Mr. Benoit said he was not sure what the zoning district was and would have to research and look into it. Mr. Zwolenski stated traffic will be a concern with additional condominiums. Mr. Zwolenski read into record that Planning Board minutes dated December 4, 2003 before the decision was made to approve a private

development they did not have to adhere to land development subdivision regulations with roads and easements. Applicants came to the Town promising a private development. They sought and received waivers. Mr. Flaherty asked about property changes to the grass sidewalk. Mr. Zwolenski stated the project was to have cement sidewalks and granite curbing. In 2003, Mr. Caito, an Engineer for the project stated this does not meet ADA requirements. In 2003, Attorney Kelly representing the condominium would seek site plan approval on Dec. 4, 2003 and would agree to modify the grass sidewalk by adding 4' foot cement sidewalks. The plan amended to include (1) 4' foot cement sidewalk; (2) sewer design approved by the Town of North Smithfield Sewer Commission; (3) RIDOT physical alteration permit approval required for offsite as well as project side entrance; (4) utility duct shall be provided and approved by Town Planner. On April 10, 2003 at a Zoning Board Meeting a final decision was voted for approval. Mr. Zwolenski stated at that time, Mr. Kelly presented to the Zoning Board 20 acres: 13 developed and 7 open space with trees, screening and trails. Do we know if this has been done? The radius plan 5.6.1, subsection 2, streets, easements, monuments, wooded areas, etc. were not consistent with the Comprehensive Plan and a revision plan was done on March 12, 2003. At that time, Mr. Zwolenski showed 7 instances where the plan was not consistent with the Comprehensive Plan and the promise of an office complex and he was the only one who voted against it. Another plan was submitted in October 2003 after Planning Board approval. Phases off Mary's Way showed a 6,000 SF office complex required 15 parking spaces. Mr. Zwolenski is asking the question and not giving an opinion but do they have set back lines now after the build out? The Building Official Mr. Benoit was not sure. A revised plan dated after the approval of the Planning Board showed access to Mary's Way is sufficient land to build an 6,000 SF office building and parking with proper setbacks. Mr. Zwolenski said the 14% density proposed by the developer required relief for mixed use to enable high density condominiums.

Abutter, Dorothy Ciavarini, 40 Old Louisquisset Pike, Bldg. 10, Unit 1001 was sworn in by the stenographer. Mrs. Ciavarini and her husband are 80 years old. She requested the Zoning Board guarantee safety as their living room is 6' foot from the ledge where they are going to blast ledge and tow away stone debris. They already have cracks all over their condominium now from blasting in the area.

Mr. DiNunzio asked Mr. Archambault if the developer was in violation could the Town file a complaint. Mr. Archambault said the Town could seek an injunction for relief in Superior Court. Mr. Archambault said the Zoning Board can only grant or deny approval to a modification to the existing Special use permit.

Abutter, Jean Rondeau, 40 Old Louisquisset Pike, Unit 1201 was sworn in by the stenographer. Mr. Rondeau said the condominium fees are now \$160 and by adding 11 units will generate \$18,000 annually. Now they are proposing to build 6, 7, and 8 single level units per building. The Condominium Association wants to protect their investments. He objects to building units by the mail boxes (center open space area) as it will take away from the character of the complex and many of the trees that the community enjoys today will have to be cut down. Rockcliff had trouble selling six single units so they dropped the price.

Mr. Mancini said that Mr. Zwolenski's information regarding rights was not correct. They received a building permit and certificate of occupancy memorializing the decision of the Planning Board. This is an honorable developer and land evidence records indicate approval for the applicant which are grandfathered. The decision does not dictate location of the building, utilities or sewer. They received approval at a meeting on February 25<sup>th</sup>, April 8<sup>th</sup>, and April 10<sup>th</sup> rendered a decision for 71 condominium units in any style and one two story community office building. Zoning Board does not have the right to tell a developer where to put utilities. Planning Board does. They are proposing additional 11 condominium units in conjunction with 21 approved units. Minutes need to be part of land evidence records.

Mr. Scarpelli asked if removal of the trees were part of the original plan and how much open space was part of the Planning Board approval? Mr. Mancini said they are not changing the original plan. Blasting of the ledge will be heavily regulated.

Abutter, Susan Olson, 40 Old Louisquisset Pike, Unit D-402, was sworn in by the stenographer. She was told the office building would be there. Asked about their rights. Chair Juhr stated the residents have rights within the Condominium Association.

Mr. Zwolenski suggested a complete review be made for memorializing the Zoning Board decision of April 10, 2003 to see if the office building can be relocated. Mr. Zwolenski asked, will it meet the set back requirements? Mr. Mancini said yes.

Mr. Martin stated the plan does not show setbacks or drawings or pictures of the buildings. Mr. Archambault stated the Board only has under its review a propose modification to an existing Special use permit. A motion was made by Mr. DiNuzio, seconded by Mr. Scarpelli to continue the Public Hearing to the next meeting to be held on September 10, 2013. All in favor. 6-0

6. Mr. DiNunzio made a motion to adjourn at 10:00 pm. Mr. Scarpelli seconded the motion, with all in favor. 6-0