

North Smithfield Zoning Board of Review
October 13, 2015, 7:00 pm
Kendall Dean School
83 Green Street, Slatersville, RI

The Chair called the meeting to order at 7:02 pm.

1. Roll Call

Present: Chair William Juhr, Steven Scarpelli, Scott Martin, Paul Pasquariello, Mario DiNunzio, Vincent Marcantonio and Robert Najarian. Also present was Town Solicitor David Igliozzi and Zoning Inspector, Carl Johnson. Absent: Asst. Town Solicitor Stephen Archambault

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

3. Approval of minutes, August 18, 2015 and August 25, 2015

Mr. Marcantonio made a motion to approve the August 18, 2015 and the August 25, 2015 minutes. Mr. Scarpelli seconded the motion, with all in favor.

4. Vote to approve the written decision for Briarwood Child Academy, requesting a use variance to operate "Camp Briarwood," a day camp for children ages 5-15 with indoor and outdoor activities Section 5.4.5, Open Recreation, (9) Day Camp located at 200 Industrial Drive, AP 08, Lot 300. Zoning District: Manufacturing (M).

5. Vote to approve the written decision for the application of Victoria Hueston, requesting a special use permit to operate a sports medicine & physical therapy business from section 5.4.7, (1) Health & Fitness Facility, at 445 St. Paul Street, AP 03, Lot 164, Zoning District: Limited Commercial (LC).

6. Vote to approve the written decision for the application of DAS Contracting Corporation requesting a Dimensional Variance to construct a 120-unit assisted living/age restricted (55+) adult, active community complex consisting of four (4) separate structures located at 1118-1156 Victory Highway, AP 1, Lots 127, 134, 330, Zoning District: RU-20 from Section 5.5.1, Section 5.6.3.7 and Section 6.19.10.

Mr. Juhr stated the written decisions for Briarwood Child Academy, Victoria Hueston and DAS Contracting Corporation were received last night at 8:51 p.m. by email and the Board did not have adequate time to review them. Mr. Marcantonio does not have email and needs a paper copy to his home. Mr. Juhr suggested the three decisions be carried over to the next meeting. A motion was made by Mr. Martin to carry over the written decisions to the next meeting on October 27, 2015, seconded by Mr. Marcantonio, with all in favor.

7. Continuation of the application for Sol Bright Renewable Energy, LLC as amended requesting a Special Use Permit and/or Use Variance to install and operate a 1,249 kilowatt DC

nameplate solar photovoltaic system on the property of Lyn & Michael Spinella identified as Brookside Equestrian located at 90 Tiff Rd, North Smithfield, AP 4, Lots 49, 319, 397, Zoning District: RRC from Section 5.7. For the purpose of the Zoning Ordinance, Zoning District RRC shall be synonymous with the previous names REA and REA -120.

Attorney for the applicant, Sol Bright, Paul Ryan, was in attendance.

Mr. Jühr stated the case is pending litigation in Superior Court. Mr. Jühr asked Mr. Ryan if the property owners were present, they were not. Mr. Jühr stated the property owners have not been present during the proceedings and the board has not received testimony from the owners. The applicants and the leasee are one in the same.

Mr. Ryan stated the applicant will be proceeding with a special use permit and not a use variance. Mr. Jühr said the board received a memo from the Solicitor based on the way the Ordinance is written that the board evaluates the application under a use variance based on the size of the solar panel farm which is not allowed in a RRC Zone. Mr. Ryan agreed from this point forward to evaluate the application as a special use permit for the solar farm on AP 4, Lot 49 and withdrawing the use variance. Mr. Igliazzi stated the application was properly advertised.

Mr. Ryan wishes to move forward as a special use permit according to 5.7 and read the case law listed in his memo pertaining to RI Superior Court “under RI law, courts “resolve all doubts and ambiguities contained in the zoning laws in favor of the landowner because these regulations are in derogation of the property owner’s common-law right to use her property as she wishes.” Mr. Ryan pointed out page 4 – Use Table No. 7. Renewable energy power generation plant, including solar, wind, water, and geothermal sources in RRC.

Mr. Jühr submitted the following Exhibit.

P19) SolBright Renewable Energy, LLC, Property of Lynn & Michael Spinella, no date, 4 pages.

Mr. Ryan stated the amendment to the application that will only apply to the term of National Grid for 15 year term with extensions of 3-5 years after the initial 15 years with National Grid and will be terminated at the end of the Power Purchase Agreement and the site will be dismantled, solar panels removed and restored the site to its previous condition.

Mr. Ian Campbell Palmer was sworn in.

Mr. Palmer stated the lease will run for a 15 year term with a 5 year renewal option with National Grid for a total of 20 years.

Mr. Edward Pimentel was sworn in.

Mr. Pimentel is the East Providence Zoning Official and has a consulting firm responsible for the interpretation of zoning regulations and comprehensive plans. National Certified Planner since 1996. Experience in the land use field for 25 years municipal and 14-15 years as a consultant. Testified before various cities and towns and worked in various cities and towns. Mr. Jühr will accept Mr. Pimentel as a witness not an expert witness. Mr. Pimentel viewed the property. The use schedule dictates where the use should and should not be.

Mr. Juhr submitted the following Exhibit.

P20) Solar Photovoltaic System Development Proposal Special Use Permit Application 90 Tiff Road – Assessor’s Plat 4, Lots 49, 319 and 397, prepared for Sol Bright Renewable Energy, LLC by Edward Pimentel dated September 25, 2015, 13 pages.

Mr. Scarpelli stated the board was not allowed to visit the site. Mr. Ryan suggested the board tour the property but not for the public. Mr. Juhr stated the landowner refused to allow an Open Meeting visit to the site and would only allow 3 board members to visit at a time. Mr. Juhr would like an open meeting visit so information learned would be on the record. Mr. Ryan stated the landowner would not allow an open meeting visit.

Mr. Pimentel stated the use schedule notes that a solar farm is permitted by Special Use Permit anywhere in town and doesn’t designate by size. Mr. Pimentel wrote the 1995 telecommunication act. The comprehensive plan notes support and has to be compliant state guidelines. Mr. Pimentel is not involved in the Superior Court case and Mr. Ryan did not work with him on the legal language identified in Exhibit 20.

Mr. Juhr asked about page 4-13 under Existing Condition in Exhibit 20 – (1) referencing a sand and gravel operation. Mr. Pimentel witnessed and not sure if still operating a sand and gravel operation only saw the equestrian center. (2) The ‘barn’ building approximately 23,000 square foot which is shown on the site plan which comes from the Town land use records. Mr. Pimentel saw the storage of 7 horses in the barn and someone taking a horse out of the barn. (3) Tiff Road dead-ends at the subject property. The parcel is a single-family cottage and accessory barn. Page 5 – The present horse paddock area-proposed solar array area-is situated in a depression that is some 23 to 25 feet below the immediate parcels situated to the south. As previously noted, there are few improved residences even remotely situated with proximate distance of the proposed solar array-none of which will have any direct line-of-site. The depression contributes to the placement of the solar panels. Mr. Juhr stated we heard prior testimony of a reclamation project and Mr. Pimentel recognized a sand & gravel operation was going on at one time.

Mr. Juhr referenced D-4.1 – “One of the referenced land uses is not only recognized by the Comprehensive Plan, but actually well-supported such that rezoning action is recommended-an action that should have long been pursued and approved pursuant to RI General Laws 45-22-2-6(b)(11). Mr. Pimentel stated the Town is working on an amendment to the comprehensive plan and state law makes sure the land use matches classifications. This property was to be rezoned and should have been done in the comprehensive plan. There are inconsistencies with the existing zoning map. Mr. Juhr stated the Planning Board is responsible for rendering consistency with the comprehensive plan.

Mr. Pimentel discussed the Section 9.2. Special-use permits; conditions governing applications; procedures.

(1) Ingress and egress to property: There are no safety related considerations either fire or otherwise associated with a solar photovoltaic system. Mr. Pimentel did not know about the bridge weight limitation. The only access to the site is through the driveway of Spinella’s home.

- (2) Off-street parking and loading areas ...noise, glare, or odor: did not experience safety or other items.
- (3) Refuse and service areas: N/A
- (4) Utilities, with reference to locations: refer to neighborhood analysis and comprehensive plan.
- (5) Screening and buffering: area is well screened and buffered. In East Providence the solar panels are low to the ground you would not know it is there.
- (6) Signs, and proposed exterior lighting: N/A
- (7) Required yards and other open space: Full compliance
- (8) General compatibility with adjacent properties: Refer to neighborhood analysis and comprehensive plan.

Mr. Pimentel stated this is a very reasonable use and using a portion of the property. Mr. Pimentel said spot zoning is when imposing a zoning designation on property. Mr. Jühr stated that there are three land uses on this property.

Mr. Ian Palmer stated that many solar projects located on landfills are on the cap and no danger to sites. Mr. Palmer stated the agreements with National Grid within 18 month to be built and materials (panels) were delivered to the site which was bad planning. The materials are still on pallets. Mr. Najarian asked about the bridge and the weight of vehicles to be in compliance with local ordinances. **Mr. Marcantonio asked Mr. Palmer if he knew the weight of the pallet with panels – he did not know.** The location will be on a level spot and will only need to put posts in the ground. **Mr. Marcantonio asked Mr. Johnson if there was a weight limit sign at the bridge – he did not know.** Mr. Johnson did not know what the weight limit was on the bridge.

Mr. Palmer showed a display of the property and location of the solar project. There will be 7' chain linked fence surrounding the project. Mr. Bator is the closest landowner his property line is south of the solar panel and there is no residence at this time. Mr. Najarian referenced Exhibit P9 which contradicts the layout of the display and is the controlling document. With reference to foliage and non foliage it would be a minor expense to put fabric on the chain link fence. Minor variations may occur. Mr. Palmer said final design has been completed. Mr. Jühr asked to provide the display to the board prior to the next meeting. Mr. Palmer said there is no noise – within 20-30 ft sounds like a hum. There is sun all day long.

Abutter, Steve Bator, stated that his family owns under 8 acres of property. The applicant is the only one in favor and no one else. They cannot get to their property only by boat for the past 10 years. Tiff Rd is blocked off at the bottom of Spinella's driveway and bolders appeared in front of the gate by the Spinella's and Holliston Sand & Gravel – claimed ownership of the road. The land is still being cleared. They have to enter on another person's property. The applicants are changing things as they go along – the landowner never came to a meeting and has not been a good neighbor to the abutters.

Mr. Robert Desrochers, abutter, was sworn in.

Mr. Desrochers has lived there since 2006 on 235 Black Plain Rd across the pond, 350-400 ft from the back side of the horse farm and 500 ft from where the solar farm will be. Sand and gravel operation is going on – can hear every day even on weekends and holidays – a lot of noise when going backwards - very annoying. In the summer, they have to close their windows due to the dust. He can see the equipment on the property when the leaves are off the trees. Bulldozers are there. They are using property that is not theirs – horses are on other property. Mr. Desrochers has not brought the information to the Town Administrator or Town Official. For 6 months out of the year when the foliage is down, the solar panels are visible from his property.

Mr. Najarian stated since the applicant will be providing the updated 90% drawing to make sure that it overlay the property line and lot lines with setback from the proposed location to the property line on P9.

Mr. Palmer stated they put grass coverage designed for shade under the solar panels.

The applicant requested that we continue the hearing to the next meeting date. A motion by Mr. Scarpelli, seconded by Mr. Martin to continue the hearing to October 27, 2015, with all in favor.

Mr. Ryan stated that any board member can visit the site on their own – no more than 2-3 board members. Mr. Juhr will not go so the abutters do not think they are circumventing the Open Meetings Act. Mr. Carl Johnson will help coordinate the arrangement to visit the site.

Mr. Juhr stated that he heard the Building Official resigned but the board members can contact Mr. Johnson to make arrangements to visit the site.

8. Application for Joseph W. Higginbottom, Jr., requesting a Special Use Permit to construct a 1.04 Mega-Watt, ground mounted, solar photovoltaic array from Section 5.7, (c), (2), located at 22 Christiansen Drive, AP 05, Lot 354, Zoning District: Manufacturing (M).

9. Application for North Smithfield Solar 1, LLC, requesting a Use Variance to construct a 2.5 Mega-Watt, ground mounted, solar photovoltaic array from Section 5.7, (c), (2), located at Pound Hill & Old Oxford Roads, AP 07, Lot 009. Zoning District: Rural Residential Conservation (RRC).

Mr. Juhr stated the application for North Smithfield Solar 1, LLC will be continued to October 27, 2015. An abutter in the audience stated she was not on the abutters list. Mr. Iglizzi stated if an abutter's name was not on the list and they show up then the technical defect is corrected but we should get her name and address for the record.

Mr. Martin made a motion to move up item #9 before item #8, seconded by Mr. Scarpelli, with all in favor.

Application for North Smithfield Solar 1, LLC, requesting a Use Variance to construct a 2.5 Mega-Watt, ground mounted, solar photovoltaic array from Section 5.7, (c), (2), located at Pound Hill & Old Oxford Roads, AP 07, Lot 009. Zoning District: Rural Residential Conservation (RRC) will be continued to Tuesday, October 27, 2015.

For the record, abutter, Michelle Perreault was at the meeting but was not on the abutter's list: Michelle Perreault, 13 Miller Street, 2nd Floor, Blackstone, MA 01504, Lot 51A. Ms. Perreault has been notified of the next meeting date, Tuesday, October 27, 2015.

A motion by Mr. Scarpelli, seconded by Mr. Martin, to continue item #9 application for North Smithfield Solar 1, LLC to Tuesday, October 27, 2015, with all in favor.

Application for Joseph W. Higginbottom, Jr., requesting a Special Use Permit to construct a 1.04 Mega-Watt, ground mounted, solar photovoltaic array from Section 5.7, (c), (2), located at 22 Christiansen Drive, AP 05, Lot 354, Zoning District: Manufacturing (M).

Mr. Juhr submitted the following Exhibits.

P1) Application for Hearing before Zoning Board of Review, Application No: ZC-15-39, dated August 21, 2015, Zone: M, Location: 22 Christiansen Drive, Plat 5, Lot 354 for Special Use Permit.

P2) Letterhead Town of North Smithfield, Office of the Building and Zoning Official, signed by the applicant, Application No: ZC-15-39, dated 8/20/15.

P3) Locus Map, 10 pages, stamped Marc A. DeBlasio, RI Professional Engineer, Remington, Vernick & Walberg Engineers 4907 New Jersey Avenue, Wildwood, NJ, dated 7-30-15, Smart Technologies Solar Array Project, Assessors Plat 5 – Lot 354, Drawn by J.D.H, Title Sheet 1 of 8; Pre-Development Drainage Area Map, Sheet 1 of 2, dated 7-30-15, stamped Marc A. DeBlasio, Remington, Vernick & Walberg Engineers.

P4) Remington & Vernick Engineers and Affiliates, dated August 20, 2105, 1 page, addressed to Mr. James Cambio, Building/Zoning Official, signed by Douglas A. Hopper, P.E., C.M.E., LEED AP, outline the documents in the packet.

P5) Map by MainStreetGIS, printed on 8/19/2015, outlining School St., N. Smithfield Industrial Dr., and Railroad St to Route 146.

Attorney Robert Stolzman, from Adler Pollock & Sheehan, representing Tecta Solar on the site for owner Joseph Higginbottom at 22 Christiansen Drive in the heart of the Industrial Park on Industrial Drive. Site is approximately 14 acres, currently vacant, enter from the cul-de-sac loose gravel, debris, solar panels will go on the flat low lying area is open, most forest area will stay. Proposing a 1.04 Mega-Watt, solar array in a Manufacturing Zone surrounded by Industrial property with residential across the pond.

Marc DeBlasio was sworn in.

Mr. Juhr submitted an Exhibit.

P6) Resume of Marc DeBlasio currently serves as Executive Vice President of Remington, Vernick & Walberg Engineers. Not an expert witness recognized as a professional.

Mr. Stolzman stated the project has gone before the Planning Board on September 3, 2015, heard testimony and they recommended approval. Mr. DeBlasio's testimony is informational. Mr. DeBlasio has worked on over 100 solar projects.

Section 9.2 Elements:

1) *Ingress/egress*: Mr. DeBlasio stated permanent access will be at the end of the cul-de-sac at Christiansen Drive that is a dead end and will be access for Public Safety and maintenance. An access road, temporary gravel road, was recommended by the Town and will be restored after completion of the project. The entire site will have a 6 ft high chain-linked fence surrounding the project with a 20 ft gate. The turning radius on the diagram is 60 ft and they are not changing the existing cul-de-sac.

2) *Off-street parking*: no off street parking is needed.

3) *Trash removal*: no operational trash

4) *Utilities*: the tie in will be at the entrance of the cul-de-sac, the conduit will be underground with no additional utilities. The site survey was completed by Scituate Surveys Inc. states iron rod with capset.

5) *Screening and buffering*: leaving all the existing vegetation and no need to eliminate any of the trees. The site sits low with a natural 200 ft wetland buffer; on the eastern side of the site as wetlands buffering; south side 30 ft grade differential and at end of cul-de-sac has trees and will have a 6 ft high chain-link fence and gate.

6) *Signs*: no signage

7) *Open Space*: have riverbank, wetland and streams. Gravel bed will eliminate erosion.

8) *General compatibility with surrounding properties*: the site sits low, it has a 30 ft differential with a 200 ft buffer across the river and the back of an industrial complex – well suited for this application.

Mr. Najarian asked if someone was renting an apartment at the top elevation of School Street would they see the panels – answer is no.

At 9:55 p.m., a motion was made by Mr. Pasquariello, seconded by Mr. Martin, to extend the meeting for 15 minutes with all in favor.

Mr. Stolzman stated the site is in a Manufacturing Zone and well suited to solar. Both Mr. Stolzman and Mr. DeBlasio have demonstrated all of the 8 components of Section 5.7 for a Special Use Permit.

Mr. Marcantonio asked Mr. Stolzman if Planning made any recommendations to the Zoning Board. Mr. Stolzman stated the Planning Board made a recommendation for the first step approval for the preliminary plan review but did not send the recommendation to the Zoning

Board. Mr. Marcantonio suggested the Planning Board recommendation be part of the decision even though they never received it.

Mr. Pasquariello asked if there is any saturation point with too many solar panels in an area. Mr. Stolzman stated there are three components 1) land use component, 2) regulatory standpoint National Grid is under PPA, 3) municipal or state regulations there is no cap on the number of solar arrays.

Mr. Najarian stated some documents contradict each other. Exhibit P2 has both Special Use and Use Variance checked off and the worksheet has both Special Use and Use Variance and P1 has only Special Use Permit checked off. P1 and P2 are being considered for Special Use Permit only. Mr. Juhr stated he will correct P2 to only reflect Special Use Permit. Mr. Juhr said there was an administrative error on P2 not by the applicant but at the Building Official level.

No abutters were at the meeting.

The Abutters List was part of the package for the board.
Mr. Juhr submitted the following Exhibit.

P7) Abutters list for 22 Christiansen Drive, 3 pages, 16 abutters.

P8) The Hearing Notice was advertised on October 1 and October 8, 2015 for North Smithfield Solar 1, LLC as a Use Variance and Joseph W. Higginbottom, Jr. as a Special Use Permit.

A motion by Mr. Pasquariello, seconded by Mr. Martin to extend the meeting 5 minutes with all in favor.

Mr. Juhr closed the public meeting at 10:14 p.m.

Mr. DiNunzio made a motion to approve the application of Joseph W. Higginbottom for a Special Use Permit for a solar array project at P 5, Lot 354 subject to the applicant meeting all the requirements of the Planning Board letter of recommendation, seconded by Mr. Scarpelli, with all in favor. Roll call vote was as follows: YES: Mr. Scarpelli, Mr. Martin, Mr. Pasquariello, Mr. DiNunzio, and Mr. Juhr. Motion passed unanimously, with a vote of 5-0.

10. Adjourn

Mr. Martin made a motion to adjourn at 10:20 p.m. Mr. Scarpelli seconded the motion, with all in favor.

Submitted by Diane Agostini