

North Smithfield Zoning Board of Review
October 27, 2015, 7:00 pm
Kendall Dean School
83 Green Street, Slatersville, RI

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

1. Roll Call

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

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

3. Approval of minutes, October 13, 2015

Mr. Scarpelli made a motion to carry over the October 13, 2015 minutes to the next meeting date. Mr. Marcantonio 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).

Mr. Scarpelli made a motion to approve the written decision for Briarwood Child Academy. Mr. Martin seconded the motion, with all in favor. Roll call vote was as follows: YES: Mr. Scarpelli, Mr. Martin, Mr. Marcantonio, and Mr. Najarian. Motion passed unanimously, with a vote of 4-0.

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).

Mr. Martin made a motion to approve the written decision of Victoria Hueston. Mr. Marcantonio seconded the motion, with all in favor. Roll call vote was as follows: YES: Mr. Juhr, Mr. Scarpelli, Mr. Martin, Mr. DiNunzio, and Mr. Marcantonio. Motion passed unanimously, with a vote of 5-0.

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.

A motion was made by Mr. Scarpelli, seconded by Mr. Marcantonio to approve the written decision of DAS Contracting Corporation, with all in favor. Roll call vote was as follows: YES: Mr. Jühr, Mr. Scarpelli, Mr. Martin, Mr. DiNunzio, and Mr. Marcantonio. Motion passed unanimously, with a vote of 5-0.

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 Tifft 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. Ryan submitted a memorandum and dated it 10/27/2015 which referenced legal documents representing the Superior Court case with the neighbors. Mr. Archambault stated it is not necessary to enter the legal documents as an exhibit.

Peter M. Scotti was sworn in.

Mr. Scotti reviewed his qualifications as a qualified real estate broker and appraiser with over 40 years experience; Vice Chair of the RI Appraisal Board and expert witness for Dowling Village.

Mr. Jühr submitted the following Exhibit.

P21) Peter M. Scotti & Associates Real Estate letterhead, dated October 26, 2015, 5 pages, to Zoning Board with a description of the solar project. The last two pages are picture documents.

Mr. Scotti surveyed the property located at 90 Tifft Road, AP 4, Lots 49, 319 and 397 also known as the Brookside Equestrian Center consisting of 82.55 acres. The Brookside Equestrian Center is improved by a 23,000 square foot barn and stable. The property hosts an intermittent sand and gravel operation on its westerly side. The parcel is characterized by variable topography. The area immediately to the north and west of the subject is occupied by Holliston Sand. The nearest residence is approximately 1,000 feet from the subject. The area proposed for the ground mounted solar facility is in a depression that has a depth of approximately 20-25'. The proposed facility will not be visible from the distant residences. The proposed facility will not generate traffic, noise or odors. Mr. Scotti stated it meets all criteria for a Special Use Permit. There are many horses on the property; the soil is sandy and not a lot of grass. There is no activity at the sand & gravel operation. Mr. Scotti does not know if the deep depression was manmade. This facility will be invisible. Mr. Marcantonio went to the site and stated it is a good site for the project. Mr. Ryan said this project will provide solar energy to North Smithfield residents.

Mr. Ian Palmer provided updated engineering drawings of the location outlining the property per the request of the Zoning Board. Mr. Palmer stated there is a fence surrounding the area – Mr. Najarian asked if the green privacy screen will be added. Mr. Palmer said the solar project is on a

flat area of land. A satellite image (google) was presented with the property line outlined. Mr. Palmer stated the closest resident to the south side is 192 feet from the solar project. A surveyor has gone out to the property – no flags were placed yet. Mr. Palmer said dust would not be an issue for this project.

Chris Chianese, Building Official, stated the engineering package was delivered to the town but it was a little late of the deadline. Mr. Chianese advised the applicant that the board would need to review the documents. Mr. Palmer stated the engineering package is 90% designed documents and will be used when seeking a building permit. Mr. Najarian suggested making a stipulation if they take a vote, subject to the drawings - issues regarding zoning setbacks, location of panels and privacy screening.

Mr. Marcantonio stated there is no sign for the weight limit on the bridge. The Town Administrator, Paulette Hamilton, was in attendance and will check into the weight limit for the bridge on Tifft Road.

Mr. Ryan provided a brief summary on the elements Mr. Pimentel presented at the last meeting. The use is in a perfect location – screening and distance from neighbors, and is a benefit to the residents in North Smithfield.

Abutter, Steve Bator, stated there is no sign at the bridge – there is a sign after the bridge “Heavy Trucks prohibited 35,000 lbs fine \$500.00”. Mr. Jühr asked the Town Administrator if the sign could be at the bridge. Mr. Bator stated the Federal Government requires 9% of renewable resources and National Grid only delivers it. January 2015, RI can choose where they want to get their energy from. American Power Conversion is one company that you can sign up and may get a lower rate. The owners are not good neighbors to the Town or abutters.

Mr. Jühr submitted the following Exhibit.

A12) Photo of the sign at Tifft Road Bridge.

Colleen Lanoie, abutter, stated the Spinella’s are not complying with the 5 year contract. Mr. Jühr suggested the abutters contact the Town Administrator and the Building Official’s Office for issues the Zoning Board cannot consider. Mr. Jühr stated the board can only consider the criteria for the Special Use Permit.

Cheryl Bator, abutter, stated there has been decision given by the Zoning Board with the Building Inspector it even went to court for cease and desist order which the Spinella’s called landscaping. No one has checked on the landscaping. Since 1967, the Zoning Board met with residents and other people and even went to appeals court where the judge’s decision, “On Tuesday, June 22, 1999, the Zoning Board of Review through the Town of North Smithfield, the hearing was on the decision pending approval of MCS Enterprises – Judge Vogal made the decision where the cease and desist by the Building Inspector for the agriculture. There are approximately 5-10 horses being boarded, no agriculture or hay growing done on the property. Mr. Bob Benoit, Building Inspector, testified on April 12, 1999, that he issued a cease and desist order upon observing for the gravel being removed by Holliston Sand and Gravel. There were

no permits for what they did. Mr. Juhr suggested the abutters bring signed documents to the Building Official and Town Administrator and then to the Town Council for recourse. Mr. Scarpelli stated there has been sworn testimony from two witnesses that there are sand and gravel operations going on right now. Mr. DiNunzio said the Zoning Board makes decisions on the regulations and the Town has to enforce them. The board does not have the power to intervene. The Zoning Board can only review the criteria for the Special Use Permit.

Robert Desrochers, abutter, stated they are changing the landscaping – there is 400 feet from the barn to his property and they are clearing more trees by Tifft Road about 10-15 acres and tree lines are being cut. Mr. Scotti did not go to his house. Dust is the main issue - in the summer, they have to close their windows due to the dust. They are riding horses all over the woods on other abutter's property. Bulldozers and tractors are running all day long even on the weekends. Mr. Marcantonio suggested they go to the Town Council.

The hearing was closed for testimony at 8:25 p.m.

Mr. Juhr summarized the original application came as a Special Use Permit/Use Variance and the Building Official was not sure how to present the application. Since the project is located in a RRC Zone, it is not permitted because of the size so the board sent it back on the advice of the Asst. Town Solicitor, to be considered as a Special Use Permit. This came about because of litigation by the application. The Ordinance needs to be reviewed and needs to be vetted. The board offered to this applicant only as an option for a Special Use Permit or Use Variance. Mr. Ryan was hired as legal counsel for SolBright and decided to be considered under the criteria as a Special Use Permit and not as a Use Variance. The board can only consider the criteria for a Special Use Permit. The board will deliberate whether the solar farm should be granted at Spinella property on L 49 evaluate under the Special Use criteria. The vote has to pass with a vote of 4-1. One of the voting members, Paul Pasquariello, is not in attendance. The voting members are William Juhr, Vincent Marcantonio, Robert Najarian and Mario DiNunzio.

Mr. Juhr wrote stipulations on August 6, 2015 and discussed. Only AP 04, Lot 49 could be considered and Lots 319 and 397 would be denied.

1) The Solar farm cannot expand beyond the 8 acre size and location on AP 04, Lot 49 on the site plan in the southern portion of the property.

(2) The term would follow the lease.

(3) A trench will be allowed to be dug across Lots 319 and 397 to accommodate the necessary power connections to National Grid. All state and local guidelines and regulations must be followed.

(4) The Special Use Permit for this project will only be in effect for as long as the landowner's, Lynn & Michael Spinella, identified as Brookside Equestrian located at 90 Tifft Road, lease agreement with SolBright is in effect, not to exceed 20 years. This lease shall not be transferred to any other Energy provider without first getting approval from the North Smithfield Zoning Board of Review. Failure to do so will terminate the relief granted by this action.

(5) Once a year, on or before October 13th, during the first 5 years SolBright will be required to give a presentation to the ZBR as to how the project is doing, it's status, and how the project's relationship with the surrounding neighborhood is being received.

(6) Road access to and from the solar farm on AP 04, Lot 49 must have open ingress and egress at all times for emergency purposes and fire truck access on the private driveway – the mounds of gravel will not be blocking the access.

(7) A duly titled, stamped and dated Site Plan clearly identifying the approved location of the solar panels on Lot 49 shall be recorded with the Clerk's Office. Documentation of such recording must be provided to the Zoning Official and the Zoning Board prior to completion of the project. Failure to do so shall void the approved relief.

(8) Construction vehicles accessing the site are to abide by any and all applicable ordinances including weight limit restrictions posted for the bridge on Tiff Road.

(9) The landowner is to provide adequate dust mitigation procedures to minimize the amount of dust leaving the property and adversely impacting the abutting properties. The landowner shall submit a dust mitigation plan for review by the Zoning Official.

(10) Add fabric to the fencing.

Mr. DiNunzio has concerns about the stipulation reporting to the board. Mr. Juhr suggested item 5 - reporting to the board be stricken.

Mr. Chianese regarding 5.7 (c) – first step is a zoning certificate – Mr. Chianese spoke with the Planning Director and he said past practice has been overlooked regarding a zoning certificate and it is a requirement the Planning Board of Review by Ordinance is to give its decision on the application prior to the Zoning Board of Review hearing the application. Mr. Ericson indicated that an additional stipulation could be entered that the Planning Board would have the opportunity to make additional comments to finalize their portion of activity in this application.

A motion by Steven Scarpelli, seconded by Scott Martin, at 9:00 p.m., for a 10 minute recess to review the stipulations, with all in favor.

A motion by Scott Martin, to move up item #9 on the Agenda, seconded by Steven Scarpelli, with all in favor.

9. Application for Said Maroun, requesting a Dimensional Variance to construct a 7'-6" x 10' wide front entry to the existing dwelling from Section 5.5.1 located at 4 Deborah Avenue, AP 06, Lot 272, Zoning District: RA.

A motion by Steven Scarpelli, seconded by Scott Martin, to move item #9, Application for Said Maroun, requesting a Dimensional Variance to the next meeting date, November 10, 2015, as the second item on the Agenda, with all in favor.

At 9:15 p.m. the meeting was reopened.

A motion by Mario DiNunzio, that the application for a Special Use Permit for Sol Bright Renewable Energy, LLC for AP 4, Lots 319, and 397 is hereby approved. Hearing no second, the motion is denied.

A motion by Mario DiNunzio, that the application for a Special Use permit for Sol Bright Renewable Energy, LLC for AP 4, Lot 49 is hereby approved with the following stipulations:

(1) The Solar farm cannot expand beyond the 8 acre size and location as indicated on the site plan in the southern most portion/area of AP 4, Lot 49.

(2) A trench will be allowed to be dug across Lots 319 and 397 to accommodate the necessary power connections to National Grid. All state and local guidelines and regulations must be followed.

(3) The Special Use Permit for this project will only be in effect for as long as the landowner's, Lynn & Michael Spinella, identified as Brookside Equestrian located at 90 Tifft Road, North Smithfield lease agreement with SolBright is in effect, not to exceed 20 years. This lease shall not be transferred to any other Energy provider without first getting approval from the North Smithfield Zoning Board of Review. Failure to do so will terminate the relief granted by this action. The Use Variance rides with the Sol Bright lease agreement. If/when the lease is terminated by Sol Bright and/or the landowner the Use Variance is also terminated upon the same termination date.

(4) Road access to and from the solar farm on AP 4, Lot 49 must have open ingress and egress at all times for emergency purposes and fire truck access.

(5) A duly titled, stamped and dated Site Plan clearly identifying the approved location of the solar panels on Lot 49 shall be recorded with the Clerk's Office. Documentation of such recording must be provided to the Zoning Official and the Zoning Board of Review prior to completion of the project. Failure to do so shall void the approved relief.

(6) Construction vehicles accessing the site are to abide by any and all applicable ordinances including weight limit restrictions posted for the bridge on Tifft Road.

(7) Fabric screening shall be added to the perimeter fencing.

Robert Najarian, seconded the motion. Roll call vote was as follows: YES: William Juhr, Vincent Marcantonio, Mario DiNunzio, and Robert Najarian. Motion passed unanimously, with a vote of 4-0. Mr. Juhr stated the Special Use Permit for AP 4, Lot 49 on 8 acres for 1,249 kilowatt solar photovoltaic system is granted.

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 submitted the following Exhibits.

P1) Application for hearing before Zoning Board of Review, Application No: ZC-15-38, dated 8-24-15, Zone RRC, Plat 7, Lot 9.

P2) Town of North Smithfield Office of the Building and Zoning Official letterhead, Application No: ZC-15-38, Zoning District: RRC, dated 8-3-15, Plat 7, Lot 9.

P3) Letter dated August 3, 2015, subject Oxford Road Solar Development Application for Special Use Permit signed by Alan Benevides, PE, LSP.

Mr. Archambault stated the application identified as P1 for a Special Use Permit and P2 has both Special Use and Use Variance checked off.

Attorney, John Pagliarini, discussed Regulation Section 5.7(c) (3) Exemptions. Net metering solar photovoltaic installations for residential or commercial uses shall be allowed in all zoning districts as a matter of right. Nothing herein shall preclude the Town of North Smithfield from installing ground-mounted or other solar photovoltaic facilities on any town-owned or controlled property regardless of zoning district. Mr. Pagliarini feels the request is for a Special Use Permit. Mr. Pagliarini said this is the sixth solar project they have cited in the State of RI.

Attorney Pagliarini stated the applicant is going before the Town Council on Monday for the execution of a PPA where the Town will purchase the electricity.

Frank Epps was sworn in.

Mr. Epps is the Managing Director of Energy Development Partners, LLC and discussed net metering. The State of RI laws for net metering allows public entities defined as a municipality, state agency and school system to have net metering system without the associated load on the site and it will receive a monetary credit from the offsite meters.

Mr. Juhr discussed the criteria for the Special Use Permit vs. Use Variance. A solar project greater than 250 kilowatt is allowed by Special Use Permit in commercial zones and RRC Zone wasn't designed for this size project and therefore should be evaluated under a Use Variance.

Mr. Pagliarini stated the net metering project is exempt from the 250 kilowatt requirement, therefore, the Special Use Permit gives the Town control of 1-8 and the additional 1-5 of the Ordinance.

Mr. Juhr suggested we continue the meeting. Mr. Archambault said this will be a net metering project after Monday and the Town will be entering into the lease.

Mr. Epps said the PPA presented to the Town of North Smithfield offering power with two options: (1) Power can be purchased for a total cost of 12.5 cents per kilowatt and the meters at the Town would receive over 17 cent credit. The project has a 2% escalator on the rate on annual basis. The published rate across the entire nation is from the Dept of Energy with a 2.2% increase of the utility rates. Town would be saving a considerable amount of money. It would cut costs to the Town and School system.

A motion by Steve Scarpelli, seconded by Mario DiNunzio to continue the meeting to November 10, 2015, with all in favor.

10. Adjourn

Mr. Scarpelli made a motion to adjourn the meeting at 10:00 p.m. Mr. Martin seconded the motion, with all in favor.

Submitted by Diane Agostini