

North Smithfield Zoning Board of Review
April 12, 2016, 7:00 pm
Primrose Fire Station
1470 Providence Pike, North Smithfield, RI

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

1. Roll Call

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

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

3. Approval of minutes, January 26, 2016

Mr. Marcantonio made a motion to approve the January 26, 2016 minutes, seconded by Mr. Scarpelli, with all in favor.

4. Application for Leszek Przybylcko, requesting an appeal to reverse the Town Planners decision to deny the August 31, 2015 Administrative Subdivision Plan for AP 3, Lots 66, 70, and 292, pursuant to the provisions of the Zoning Ordinance and R.I.G.L. 45-23-57, located at Mendon Road and Middle Street, Zoning District: RU.

Mr. Juhr submitted the following Exhibits.

P1) Town of North Smithfield Office of the Building and Zoning Official letterhead, Application No: ZC-16-5, Zoning District: RU-20, dated 2-11-16, Plat 3, Lots 66, 70, 292, location Mendon Road and Fountain Street.

P2) Application for Hearing before Zoning Board of Review, Application No: ZC-16-5, dated 2-11-16, Zone RU-20, dated 2-11-16, Plat 3, Lots 66, 70 & 292 for an appeal. Attached letter, 2 Pages, Brainsky Levinson, LLC letterhead, dated 2-11-16, subject Application for Appeal from the Town of North Smithfield Planning Board Administrative Officer's Decision to Deny the August 31, 2015 Administrative Subdivision Plan for Assessors' Plat 3, Lots 66, 70 and 292, signed by Michael F. Ferragamo.

P3) Abutters list, 3 pages for Lots 66, 70, 292.

P4) Site Plan with each lot and abutters list: Plat 3, Lot 66; Plat 3, Lot 70; and Plat 3, Lot 292, 6 pages.

P5) Appellant's Supporting Memorandum, 2 pages, from Eric S. Brainsky, Esq.; Michael F. Ferragamo, Esq., dated February 11, 2016 with the description of the situation.

P6) Cover page Exhibit A, page 2 Town of North Smithfield Planning Board Administrative Officer Administrative Subdivision Plan Decision to Deny stamped received for record Jan. 26, 2016 8:23A, Book 700, Page 181, Doc # 00030950, 3 pages.

P7) Cover page Exhibit B, Marc N. Nyberg, stamped, Professional Land Surveyor, Administrative Subdivision for Liddle, Blouin & Przybylcko, AP 3, Lots 66, 70 & 292, June, 2015.

P8) Cover page Exhibit C, minutes of the North Smithfield Zoning Board of Review, dated January 25, 2011 at Primrose Fire Station, 4 pages and cover page.

P9) Town of North Smithfield Planning Board Administrative Officer Administrative Subdivision Plan Decision to Deny stamped received for record Jan. 26, 2016 8:23A, Book 700, Page 181, Doc # 00030950, same as P6 document, double sided one page.

P10) Written Decision on January 25, 2011, Application of Gerard and Christine Berthelette, requesting a dimensional variance, per section 5.5.1, Frontage Requirements. Locus is Mendon Road & Middle Street, Plat 3, Lot 286. Zoning: RU-20, Urban Residential, 3 pages, signed by Zoning Board Chair, Stephen Kearns.

P11) Title 45 Towns and cities Chapter 45-23 Subdivision of Land Section 45-23-37, double sided on page.

Attorney Eric Briansky presented the history of this property. The proposal for the administrative sub-division, the applicant sought to transfer 0.12 acres of land to Lot 70 and 0.24 acres to Lot 66. Prior owners, Gerard and Christine Berthelette, received a conditional Master Plan approval for a two lot Major Subdivision Plan to create Lots 66 and 292. Due to the lack of frontage for Lot 292, the prior owners applied for and received a dimensional variance from the Zoning Board of Review with a condition that the subdivision not be expanded in any way from its currently proposed two lots. The Board was concerned that the property has no further subdivision then two lots. Refer to Exhibit P8, page 3 of the Jan. 25, 2011 minutes, Mr Juhr asked if they would stipulate that only two lots will ever be created out of the existing property. Mr. Briansky agreed to this, stating the Planning Board will not approve more than two lots. The Chair suggested that the conditions that the driveway entrance be modified so as to not encroach on Thomas Cabral's land and that the subdivision not be expanded in any way from its currently proposed two lots. The motion passed with a vote of 5-0.

Administrative subdivision does not create new lots - taking a piece of one property and taking parcels of that property to sell to neighbors and moving the lot lines. The condition put on by the Zoning Board for the variance had nothing to do with the administrative subdivision. The procedural issue – the applicant has a right to be before the Zoning Board of Review R.I.G.L. § 45-23-66 Article 10 a party aggrieved by a decision of the administrative officer shall have a right to appeal.

Mr. Briansky stated the goal is to get this approval and clarify what the Zoning Board of Review meant back then and send a memo to the Planner. Mr. Juhr was approached by the former

Building Official, Mr. Cambio and Zoning Inspector Mr. Johnson, to meet with Mr. Nyberg, and/or the applicant via an email request from the Town Planner sent through the Building Official's office to give an opinion outside the ZBR proceedings. Mr. Jühr felt this request needed to go before the full board to hear all the facts on the prior decision that was made by another board. Mr. Jühr requested this meeting.

Mr. Najarian asked was the original action – the relief granted in 2011, was it acted upon. Mr. Briansky stated the subdivision was completed and the property sold. Mr. Najarian asked if the only reason they are here is that this action was denied by the Planner and he was only referencing the relief that was granted in 2011 stating that no further subdivision could occur. None of the action requesting would change – relief and/or appealing, would change the lots (subdivision) would remain as two lots. Mr. Jühr stated the applicant is only changing the boundaries and lot sizes, but there are still only two existing lots, (i.e. Lots 66 & 70) as per the prior decision of January 25, 2011.

Mr. Briansky stated Mr. Przybylcko is selling his property, AP 3, Lot 292 and two neighbors want additional property – Lot 70 to merge 0.12 acres of land from Lot 292 and Lot 66 to merge 0.24 acres from Lot 292.

Mr. Archambault stated there is a conflict in the state law – all matters decided by the Planning Board are appealable to the Zoning Board then in the second subsection of law administrative subdivisions are not appealable you have to follow a different process. Mr. Briansky wants clarification on the January 25, 2011 decision on the scope of the original relief and it says two lots. Mr. Jühr said this is just an adjustment to the boundaries and only two lots – stipulation 9 has been met.

Mr. Archambault stated Mr. Briansky is looking for a memorandum - a motion to clarify the scope of relief that was intended in the original decision of January 25, 2011 with respect to the board's decision. Mr. Briansky requests the board to clarify and remand the matter to the Town Planner.

Mr. DiNunzio presented a memorandum of clarification.

A motion by Mr. Najarian, seconded by Mr. Martin, that the Zoning Board of Review hereby remands to the Town Planner his decision of January 25, 2016 concerning AP-3, Lots 66, 70, 292 to adjust the boundaries with the following clarification. The Zoning Board of Review decision of January 25, 2011, was intended to limit the development to two lots 292 and 286 in perpetuity but was not intended to ban further administrative subdivisions which might simply adjust boundaries. Roll call vote was as follows: YES: Mr. Scarpelli, Mr. Martin, Mr. DiNunzio, Mr. Najarian, and Mr. Jühr; Motion passed unanimously, with a vote of 5-0.

5. Adjourn

Mr. Scarpelli made a motion to adjourn the meeting at 7:45 p.m. Mr. Martin seconded the motion, with all in favor.