

North Smithfield Zoning Board of Review
Special Meeting
May 31, 2016, 7:00 pm
Kendall Dean School
83 Green Street, Slatersville, RI

The Chair called the meeting to order at 7:03 pm.

1. Roll Call

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

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

3. Approval of minutes, April 12, 2016

Mr. Scarpelli made a motion to approve the April 12, 2016 minutes, seconded by Mr. Martin, with all in favor.

4. Vote to approve the written decision for the application of 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. Najarian made a motion to approve the written decision for Leszek Przybylcko, seconded by Mr. Scarpelli, with all in favor. 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. Application for Rotary Club of Woonsocket, requesting relief from previous stipulations for relief granted by a Special Use Permit for entertainment that was granted November 6, 2007, for Plat 005, Lot 300, 200 Industrial Drive, Zoning District: Manufacturing (M) pursuant to the provisions of the Zoning Ordinance and R.I.G.L. 45-23-57.

Mr. Jühr submitted the following Exhibits.

P1) Application for Hearing before Zoning Board of Review, Application No: ZC-16-26, dated 5-13-16, Zone M, Location 200 Industrial Dr., Plat 5, Lot 300

P2) Town of North Smithfield Office of the Building and Zoning Official letterhead, Application No: ZC-16-26, Zoning District: M, location 200 Industrial Dr., Plat 5, Lot 300.

P3) Hand-written Abutters list provided by Mike Dubois, Rotary Club, 2 pages for Plat 8, Lot 300. Mr. Chianese found an error after reviewing and certifying the document with four abutters not within the 200' radius identified with a yes (in the 200' radius) and no (outside the 200' radius.)

P4) 200' Radius Map, Pound Hill Business Park, Pound Hill Road, North Smithfield, RI, AP 8, Lot 300, right hand corner stamp by David M. D'Amico, Registered Professional Engineer, dated 8/22/07.

P5) The same 200' Radius Map with color codes: on right side pink= carnival midway, green= buy local tent and yellow= BBQ cook off. The top color codes: green = stage, tents and dressing, yellow = art village and pink = beer & wine stand (limited to music venue).

P6) Rotary Club of Woonsocket Letterhead, dated May 16, 2016 to the Town of North Smithfield Zoning Board, signed by Michael Dubois with an address on the bottom P.O. Box 154, Woonsocket, RI 02895-0780.

Exhibits from the Board:

B1) Minutes from ZBR meeting on September 18, 2007, 6 pages, numbered 383, 385, 386, 387, 388, 389, 390.

B2) Minutes from the ZBR meeting on November 6, 2007, 6 pages, numbered 349, 350, 351, stamped received Building Official Office Dec 20, 2007.

B3) Written decision granting and denying Special Use Permits at 1184 Providence Pike, Tax Assessor's Plat 5 Lot 300, for ZBR meetings held on September 18, 2007, October 16, 2007 and November 6, 2007, 6 pages, numbered 377, 378, 379, 380, 381. The application is hereby approved subject to 14 conditions as forms of entertainment listed on numbered page 381.

Sworn in: Michael Dubois from Bellingham, MA, I.P.P. Rotary Club of Woonsocket and Chairman of Woonsocket Rotary Days.

Mr. Dubois stated the Rotary Club of Woonsocket was granted an entertainment and liquor license from the Town Council on February 16, 2016 for the Blackstone Valley Music and Arts Festival event. A family-friendly festival with carnival rides to be held on June 3 – June 5, 2016 in North Smithfield. During the last three weeks was informed that zoning restrictions were placed on the property from selling beer and wine.

Mr. Jühr asked the applicant how the Town Council approved a temporary permit to serve alcohol when the deed of the property states they cannot serve alcohol. The owner of the property knows he cannot serve alcohol on his property. If the ZBR gives relief once, they give it forever in perpetuity. Mr. Jühr was not comfortable with this request because if you allow relief for one applicant others will want the same relief. Mr. Jühr stated that the majority of this board was on the ZBR in 2007. Back then the board did not want rock concerts with alcohol being served or a flea market with alcohol being served.

Mr. Najarian asked if the applicant is asking the board to amend a prior decision that was granted and if so, can they issue partial relief. The November 6, 2007 written decision indicates Item #14 states the consumption, sale and transporting of alcoholic beverages onto the property is prohibited.

Mr. Archambault stated this is a new application asking for relief from the conditions imposed in 2007. Under Zoning District M – the board has purview to allow for a particular event a one-day use and they could grant the use for one day and this would not be unreasonable.

Mr. Jühr stated the owner of the property was not at the meeting and the benefit is going to the owner. The board does not want to set precedence for one day or three days where other activities come before the board asking for the same relief. Mr. Archambault said this is policy analysis. Mr. Jühr said the minutes of the prior meeting state that the owner gave the board a letter once the original applicant was granted relief that they would not pursue other activities and that was part of the premise why relief was given in 2007.

Mr. DiNunzio stated another perspective. The board is not granting the right to serve alcohol – they are making it permissible. The Town Council grants a liquor license not the board. Mr. Jühr stated the board is being asked to amend item #14. He feels the Town Council made an error and that is why the applicant is before this board.

Mr. Dubois wants to serve alcohol to be consistent with similar events – music and alcohol. Mr. Dubois would not have chosen this site if he knew alcohol was not permissible. Mr. Dubois stated they went before the Town Council seeking a liquor license in February 2016 and did not realize there was a zoning issue until he received an email three weeks ago from the Town Solicitor and Mr. Chianese that there was a zoning issue.

Mr. Jühr stated the landowner is leasing the property to the Rotary Club for a three day event and knows that no alcohol can be served on the property.

Matt Moylan was sworn in.

Mr. Moylan stated the Town council gave them a liquor license for four days and an entertainment license in February 2016 and the Rotary Club marketed the event that way. If the Rotary Club knew they could not serve alcohol on the property, they would have changed the location. Mr. Jühr said it is the fault of the landowner not telling them that alcohol is prohibited. Mr. Moylan said there was a mistake in the process and this would be detrimental to the Rotary Club.

Robert Rinaldo, 697 Pound Hill Rd., was sworn in.

Mr. Rinaldo is a direct abutter located at 697 Pound Hill Rd. Mr. & Mrs. Rinaldo are upset about the entire process. They purchased this property as their retirement home with over 200' of frontage on Industrial Drive and this property is in their back yard. Granting alcohol opens Pandora's box of potential problems. Pound Hill Road is narrow, winding and heavily traveled and would be dangerous adding alcohol. The Rotary Club of Woonsocket has overly expanded

the definition of the decision made in November 2007. Family day is not a giant carnival and music festival as listed in the 14 conditions imposed in 2007. Amplified sound is not listed in the conditions in 2007. They are deprived of enjoyment of their homeowners' rights. Mr. Rinaldo asked the board to consider the following: 1) enforce the already existing prohibition of alcohol of any kind, as written in perpetuity; 2) enforce the already existing acoustic instruments intent of limiting noise levels as well noise and nuisance ordinances; 3) prohibit activities of the noise magnitude of a giant carnival; 4) enforce the already existing prohibition of parking on the residential side of Industrial Drive already marked by "no parking between signs" at all events; and 5) limit hours of activity and operation to begin at 8 a.m. and end at 8 p.m.; 6) require event sponsors of any planned event to notify all homeowners.

Mr. Jühr stated the board can only vote on whether or not alcohol can be served. All of the other issues are valid and a written complaint should be sent to the Town Council, the Building Official, Town Administrator and copy all of the Council members.

Mr. Rinaldo read an email dated May 30, 2016 from another neighbor, John Zambarano of 165 Comstock Road, who could not be in attendance. The Subject: Giant Carnival at Homestead Gardens.

Mr. Jühr submitted the following Exhibits.

A1) Letter to Town of North Smithfield Zoning Board, 2 pages, dated May 31, 2016 from Robert Rinaldo, 697 Pound Hill Road.

A2) Email from John Zambarano, dated May 30, 2016 at 1:47p.m., 2 pages, Subject Giant Carnival at Homestead Gardens.

Mr. Jühr referenced P5 regarding parking. Mr. Dubois stated there will be parking at North Smithfield High School and Middle School with 4 shuttle buses to the event. There will be 8 police officers on site and restricted parking on the southern side of Industrial Drive. The Police Dept. has signed off on parking. There will be no parking at Wide World of Sports. The hours of the event are: Thursday, June 2nd, 5p.m. – 10:30p.m., only the carnival no alcohol; Friday, June 3rd, 5p.m. – 11p.m. with last call for liquor at 10:15p.m.; Saturday, June 4th, noon – 11p.m. with last call for liquor at 10:15p.m.; and Sunday, June 5th, noon – 5p.m.

Mr. Najarian asked if they would consider modifying the hours to serve alcohol. This appears to be a miniature Autumn Fest. Mr. Dubois stated this is a revenue stream which is important in the budgeting of the event. There are some similarities to the Autumn Fest. This location is near Woonsocket, North Smithfield and Burrville.

Mr. Najarian stated that on June 4th, there will be 11-12 hours selling and consuming alcohol. Back in 2007, the board made the decision to deny the opportunity to sell alcohol. Mr. Dubois said there are different music genres all day and does not expect someone to come at noon and stay to 11p.m. The field of music is furthest from the abutters and the sound going out toward CVS. Mr. Dubois was not aware of any of these issues presented and went in with a plan based on the licenses approved by the Town Council. The beer tent will be gated and a ticket is needed

into the field of music area. There will be tip certified people running the beer tent. There will be crowd control and coolers will not be allowed. Only beer and wine will be sold.

Mr. Archambault stated this is a new application not an amendment with the leaseholder seeking limited relief. The applicant is not amending the decision of 2007.

Mark Pezza, 791 Pound Hill Rd., was sworn in.

Mr. Pezza can hear everything and wants peace and quiet. He heard about this event on Sunday from Mr. Rinaldo and is not happy. This event is being promoted by 94HJY and concerned about the music.

Anthony Chernasky, 161 Comstock Rd., was sworn in.

The last event held on this property he could hear profanity in front of his house. He does not want this event directly in his backyard especially with alcohol.

Carol Nasuti, 5 Lincoln Dr., was sworn in.

Ms. Nasuti has lived in town all her life. She is not related to the Rotary Club but has worked with the gentlemen on events and they have been well run. The Town Council was wrong and should not have approved this and should have tabled this and asked for more information. The Rotary Club planned the event based on the approval of the Town Council and the event might end up in the red. The landowner is wrong. Advertising has been out for quite some time and Ms. Nasuti is concerned that this will be a black eye for the Town of North Smithfield if they said yes to serving alcohol and then changing it at the 11th hour. The Town made a commitment that they shouldn't have and asked if the board would make an exception for the Rotary Club.

The meeting was closed to testimony at 8:35p.m.

Mr. Jühr stated three current board members were on the board in 2007. At the time there were three full meetings to collect information, gather all the facts and make an informed decision – they approved and denied some things. The group that was leasing the property at the time was including the buildings and would be on the premise every day and that is why the list of 13 activities was formed. They did not want loud concerts, flea markets and would need to be approved individually. No alcohol was being served or brought on the property. The landowner is not here and it is he that will benefit from this decision. Mr. Jühr stated he will be voting against this application.

Mr. Scarpelli said they did not want night club events at this property back in 2007. The Rotary Club is in the middle and the process failed. The blame is on the landowner and he was part of this process and limitations.

Mr. DiNunzio stated he is torn – the abutters have ample reason to challenge holding this event according to the restrictions that are on the books. The board cannot enforce the rules. The Town has created a hardship for the applicant and the applicant did not create. Mr. Jühr said the board

should not correct the mistake by the Council. The landowner is aware of the 14 restrictions and should have been told to those leasing the property.

Mr. Najarian stated the Zoning Use Table under Section 5.4.5 in Zoning District M, a carnival or circus is “not allowed” (N) and should not have been granted in the first place. The Rotary Club made an effort of due diligence back in February and not sure why three months went by before they were notified of a conflict. If the Rotary Club walks out of the meeting with a no decision they would suffer a significant loss and 50% of the people may not attend. Mr. Najarian would like one time to find a way to make an exemption.

Mr. Archambault stated this is a new application not an appeal based on further relief from originally granted in 2007 specifically #14 that you couldn't sell alcohol. The issue before the board for this event is whether they can sell alcohol during the hours of this event. There is no legal precedent. The board can limit the scope of their approval to just three days and it wouldn't run with the land or bind the land or owner for further events.

Mr. Jühr stated back in 2007 the stipulations were made in perpetuity. Mr. Archambault stated he disagrees with the legal advice the board received in 2007. The board can grant a Special Use Permit within the confines of any parameters and tailored to the event. The board is only being asked to grant relief for alcohol for this application.

Mr. DiNunzio presented a resolution.

A motion by Mr. DiNunzio, seconded by Mr. Scarpelli, that the application of the Rotary Club of Woonsocket for temporary relief for this event and this event only providing for the sale of beer and wine at the Blackstone Valley Music and Arts Festival from June 3 – June 5, 2016 and only on those dates and only during the following hours: June 3 – 5p.m.- 11p.m.; June 4 noon-11p.m.; June 5 noon-5p.m. at 200 Industrial Drive, Plat 5, Lot 300 be approved. The board's intent is that this onetime relief sets no precedence. Roll call vote was as follows: YES: Mr. Scarpelli, Mr. Najarian, and Mr. DiNunzio. NO: Mr. Martin and Mr. Jühr. Motion failed with a vote of 3-2.

5. Adjourn

Mr. Scarpelli made a motion to adjourn the meeting at 9:00 p.m. Mr. Najarian seconded the motion, with all in favor.