

Minutes for Town of North Smithfield Planning Board

Primrose Fire Station, 1420 Providence Pike

August 4, 2016

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

1. Roll Call: Present: Dean Naylor, Lucien Benoit, Scott Lentz, and Gary Palardy. Absent: Dinna Finnegan, Michael Fournier and David Punchak. Also in attendance were Town Planner Robert Ericson, Assistant Town Planner/GIS Analyst Bobbi Moneghan and Town Solicitor David Igliazzi.

2. Disclosure: There were no disclosures.

3. Minutes: June 16, 2016 and July 7, 2016.

June 16, 2016

Dr. Benoit requested that the statements made for the five required findings for subdivision approval be changed to be in the positive on pages 6 and 8. The Board discussed other minor corrections to the minutes.

Dr. Benoit made a motion to accept the minutes of June 16, 2016 as corrected. Mr. Palardy seconded with AIF (all in favor).

July 7, 2016

Chairman Naylor specified that the meeting place should be Primrose

Fire Station at 1420 Providence Pike not Kendall Dean School. He also specified that the footprint for the new building at Boardwalk Storage Solutions should be 90,000 square feet instead of 90 square feet. Mr. Lentz pointed out other corrections including on page 7 where when talking about RI state law and the possibility of eliminating tangible taxes on solar arrays, the word should have been exempted instead of permitted. Mr. Lentz clarified his comments regarding the measurement of sound coming from solar installations. Other minor modifications were suggested. Dr. Benoit made a motion to approve the minutes of July 7, 2016 with corrections. Mr. Palardy seconded with all in favor.

4. Decisions: None

5. Pre-Application Minor Subdivision Plan with Public Improvements

Applicant: William Peloquin Location: Pound Hill Rd and Trout Brook Lane

Assessor's Plat 7 Lot 28

Zoning: RA-65 and REA-120

This plan is for a minor subdivision of 4 lots, using access from the street extension of Trout Brook Lane.

Mr. Ericson explained that this subdivision has been discussed for some time. Mr. Iglizzi explained that this plan includes a prior Planning Board approved right-of-way (ROW) between the end of Trout Brook Lane and the property line. He said that the previous

owner and developer deeded away that portion of the ROW to the abutting land owners. He also said that such a subdivision is void and illegal under the Town's regulations. He said the subdivision is unenforceable and the PB should respect the ROW as a PB approved ROW. He stated that as far as this plan is concerned the PB should consider this an approved ROW with no subdivision. He said that this subdivision may lead to litigation because of actions by the previous developer.

Attorney Kelly Morris was present representing the applicant Mr. William Peloquin, who was also present. Ms. Morris agreed with the statements made by Mr. Igliozzi and added that she researched Taylor Construction Co, Inc., the previous developer, on the RI Secretary of State website, and found their charter articles were revoked before the land was deeded to the abutters. She said the company is not permitted to do business. She expects that when the abutting property owners are notified of this new subdivision, it will be brought to court.

Mr. Morris explained that this is an extension of Trout Brook Lane and the applicant plans to subdivide the lot into four lots. She went on to say that the zoning is split within the lots and she went on to explain which zoning requirements the applicant will be adhering to for each proposed lot. She said there are wetlands within lot 3 and it is possible the lots will be reconfigured to take those into account.

Mr. Ericson explained the changes to the RIDEM wetland regulations that will be going into effect January 1, 2017. The change will specify that the 50 foot wetland buffer is no longer counted as 'not buildable'. Mr. Ericson stated that it would be possible to obtain preliminary plan approval before the regulation is in effect and wait to file the final plan until after January 1.

Chairman Naylor asked for clarification from Mr. Iglizzi that the extension of the cul-de-sac complies with the original plan and approved ROW. Mr. Iglizzi said the plan shows the approved ROW for this specific purpose. Ms. Morris showed the previous plans to the PB.

Referencing the new plan, Dr. Benoit brought up that there are building encroachments onto the ROW and asked if the roadway can be shifted. Ms. Morris said she will look to see if a building permit was obtained to build the encroaching garage. She also said that the road cannot be shifted without encroaching on other abutter's properties.

Mr. Palardy asked when the garage was constructed. Ms. Morris said there is no adverse possession over a town road.

Dr. Benoit stated the ROW is 50 feet wide but the pavement does not have to be that wide. He suggested possibly the road could be shifted to allow the garage to meet the setback requirements. Ms. Morris

said the applicant would be amenable to this as long as there is no encroachment onto other abutter's property.

Mr. Iglizzi reiterated that when the property in the ROW was deeded to the abutting owners, they had knowledge that this property was a ROW.

Ms. Morris told the Board that when the surveyors for the applicant went to the property, the abutting neighbors summoned the police.

Dr. Benoit asked if Ms. Morris could supply the closing documents for the ROW. Ms. Morris said she will send that information to Bobbi Moneghan to be distributed to the PB. Chairman Naylor asked that Ms. Morris also include any information she obtained concerning the credibility of the developer to be distributed to the PB.

Ms. Morris said that the land deeded to the abutters has never been taxed and the lots lines were not changed on the Town maps.

Mr. Lentz asked about what the new length of Trout Brook Lane will be after the subdivision is completed. Ms. Morris did not know and Mr. Lentz told her the limit is 600 feet in the LD&SR. Ms. Morris said the applicant may have to ask for a waiver for length. Mr. Iglizzi stated that the safety personnel such as fire and police will have important input into the decision on the length of the road. Mr. Lentz asked about added traffic to connector roads but stated no traffic

study is required. Ms. Morris said that the applicant will address all of these concerns.

Dr. Benoit pointed out that the fire department may require the addition of a cistern.

Chairman Naylor clarified that the property lines for Plat 7 Lot 140 and Plat 7 Lot 139 are the outer ROW lines.

Chairman Naylor asked if this project will be litigated before or after putting plans forward. Ms. Morris stated that the ROW is legal and the deeds to the abutters are void. She hopes to deal quickly with any legal issues brought on by the abutters before returning to the PB with the preliminary plan.

Dr. Benoit asked about adverse possession and Dr. Iglizzi restated that there is no adverse possession on a town road.

Mr. Palardy asked about what will happen with the garage. Mr. Iglizzi believes there will be some type of litigation for the ROW and the garage will be addressed at that point.

Chairman Naylor reiterated that he would like all documents discovered by Attorney Morris be sent to the Planning Department to be distributed to the PB.

Mr. Ericson informed the PB that the town Building Inspector/Zoning Official and Building Inspection Department clerk are no longer working for the town. He said there in an interim Inspector and building clerk. Mr. Ericson will ask the interim clerk to locate the building permit for the garage in question if there is one.

Chairman Naylor asked Mr. Ericson to look into any documents that would be pertinent to this project, such as building permits. Mr. Ericson assured the PB that he would.

Dr. Benoit asked if there was a soil evaluation done to date and Ms. Morris said it will be done before the next phase of the project.

Mr. Peloquin, the applicant, addressed the Board and said that police have been called when he made attempts to enter his property.

Mr. Palardy asked Mr. Peloquin about accessing his property by Pound Hill Rd. Mr. Peloquin and Ms. Morris said that there are wetlands on the property in the area of Pound Hill Rd.

Ms. Morris stated that she would like to have a document stating that the ROW is town property to make it easier to enter the property. Mr. Igliazzi said that the PB has no authority to accept a road but the applicant can submit a request to the Town Council to accept the road. Mr. Lentz asked if there is anything the Town can give the applicant to aid in accessing the property. Mr. Igliazzi said that the

abutters have a purported deed and only a judge will be able to rule on this. He said that if the TC accepts the road, the applicant must build it and bond it and this cannot be done until the plans are approved.

Mr. Iglizzi suggested it might be quicker for the applicant to go to court and get a declaratory judgement. He believes this project is going to require court action.

Chairman Naylor asked Mr. Iglizzi to confirm the access to the property is private. Mr. Iglizzi said the police are going to rely on the deed until it is overturned in court. Ms. Morris said it will be taken care of this by the applicant.

Mr. Ericson told Ms. Morris that the road width is 25 feet instead of 26 feet as he stated earlier.

Ms. Morris said the applicant does not expect to have to go before the ZBR. Mr. Ericson said the applicant may have to request a waiver from the PB for the length of the cul-de-sac.

Mr. Iglizzi suggested combining master and preliminary plan if possible.

6. Major Subdivision Master Plan. This includes an informational meeting.

Applicant: James Carey Location: 119 Sayles Hill Rd

Assessor's Plat 17 Lot 1 & 127

Zoning: RS-40 (Residential Suburban)

This plan proposes an additional building lot.

Mr. Ericson explained that this is a simple project where the dwellings and utilities already exist and the applicant is asking to move the lot lines so that each lot contains one dwelling. He explained that this subdivision came before the Planning Board three years ago for Pre-Application approval. The applicant then went before the ZBR and obtained a waiver on the frontage.

Chairman Naylor asked if Mr. Ericson had reviewed the checklists submitted by the applicant. Mr. Ericson answered affirmatively and stated that one box on the Master Plan application was missed and the applicant would have to fill it in correctly, which he did and initialed. Mr. Ericson said he will place the corrected application into the project file.

Applicant James Carey appeared before the Board members and explained the subdivision. He explained that there were two dwellings on one lot, his own and a three-family home. The homes were close to each other so he received a building permit and removed part of the three-family closest to his home providing more distance between the dwellings (40 feet). Mr. Carey said that he then built onto the other side of the three-family home and converted it to a single family. He

specified that the homes now had the appropriate side depths required for zoning.

Mr. Ericson said that by only demolishing half of the three-family, Mr. Carey was able to retain one wall for the new single family home, so it is considered as a rebuild. He also said that the town will benefit from increased taxes.

Mr. Lentz asked if each residence had a well on their own property and Mr. Carey said they do, with one well inside the dwelling at 119 Sayles Hill Rd.

Dr. Benoit questioned the number of test holes on the plan and asked if Mr. Carey plans to add an additional lot farther to the right on the plan. Mr. Carey answered that he possibly may subdivide again but at a later date. He said that he would have the frontage required.

Mr. Ericson stated that if Mr. Carey wants to create another lot, a building on lot 127 would have to be demolished.

Chairman Naylor asked for clarification on how another lot can be created with appropriate frontage and Mr. Ericson pointed out the lot lines being removed. A building would have to be torn down to attain the appropriate frontage.

Dr. Benoit motioned to open the public informational meeting at 8:03

pm and Mr. Palardy seconded with all in favor. There were no comments from the public.

Dr. Benoit made a motion to close the public informational meeting at 8:04 pm and Mr. Palardy seconded with all in favor.

Mr Lentz made a motion to approve the Major Subdivision Master Plan for Applicant: James Carey, Location: 119 Sayles Hill Rd, Assessor's Plat 17 Lot 1 & 127, Zoning: RS-40 (Residential Suburban) as presented, plan dated May 12, 2016, prepared by Leddy Land Surveying Company and revised to July 13, 2016. Mr. Palardy seconded. Roll call vote: Chairman Naylor: Yes, Dr. Benoit: Yes, Mr. Lentz: Yes, Mr. Palardy: Yes. No: None. Motion passed 4-0.

7. Major Subdivision Preliminary Plan. This includes a public hearing.

Applicant: James Carey Location: 119 Sayles Hill Rd

Assessor's Plat 17 Lot 1 & 127

Zoning: RS-40 (Residential Suburban)

This plan proposes an additional building lot.

Mr Ericson explained that this is the plan previously discussed on agenda item #6. Mr. Ericson said he did not see any problems with this plan. Mr. Igliazzi stated that the minutes from the Master Plan discussion should be incorporated into this discussion.

Mr. Lentz made a motion to include the previous discussion of the

Master Plan into this Preliminary Plan review for major subdivision of Applicant: James Carey, Location: 119 Sayles Hill Rd, Assessor's Plat 17 Lot 1 & 127, Zoning: RS-40 (Residential Suburban). Mr. Palardy seconded. Roll call vote: Chairman Naylor: Yes, Dr. Benoit: Yes, Mr. Lentz: Yes, Mr. Palardy: Yes. No: None. Motion passed 4-0.

Dr. Benoit motioned to open the public hearing at 8:08 pm and Mr. Palardy and Mr. Lentz seconded with all in favor. Mrs. Chamberland of 118 Sayles Hill Rd asked how many houses Mr. Carey plans to build in the rear portion of lot 127. Mr. Carey responded that he would put one single family home with a driveway from Sayles Hill Rd. He said there will be no road created.

Dr. Benoit asked if Mr. Carey would be creating two new lots and a road and Mr. Carey said no. Dr. Benoit stated that common driveways are not permitted by the LD&SR.

Dr. Benoit made a motion to close the public hearing 8:11 pm and Mr. Lentz seconded with all in favor.

Mr Palardy made a motion to approve the Major Subdivision Preliminary Plan for Applicant: James Carey, Location: 119 Sayles Hill Rd, Assessor's Plat 17 Lot 1 & 127, Zoning: RS-40 (Residential Suburban), plan revised July 13, 2016, prepared by Leddy Land Surveying Company. Mr. Lentz seconded. Roll call vote: Chairman Naylor: Yes, Dr. Benoit: Yes, Mr. Lentz: Yes, Mr. Palardy: Yes. No:

None. Motion passed 4-0.

Mr. Ericson stated that the consideration of subdivision fees will be discussed at the next PB meeting.

Dr. Benoit asked Mr. Ericson what the fee charges have been for this application and Mr. Ericson stated the major subdivision fees were charged. Dr. Benoit asked if two fees were charged one for master and one for preliminary and what the actual fee was. Mr. Ericson stated that the applicant was charged \$600 or \$625 for each phase and a final plan fee will be charged also.

Chairman Naylor asked for a legal opinion from Mr. Igliozzi concerning special considerations for subdivision fees when minor subdivisions are bumped up to major because of ZBR variance requirements. Chairman Naylor said that state law requires a minor subdivision become a major subdivision when a ZBR variance is necessary. Mr. Ericson stated that the determining factor is the time spent on the review of the plans. Mr. Igliozzi said he would give legal advice on this subject.

Chairman Naylor stressed that the Planning Department verify all checklists are completed properly by the applicant. He objected to the applicant correcting the application at the meeting.

8. Proposed Zoning Ordinance Amendments for review:

Section 5.7 Ground-mounted Solar Photovoltaic Installations

Section 5.4.9 Service Industries use table

The Planning Board may submit additional recommendations per local ordinance for 5.4.9 and 5.7.

Section 5.7 Ground-mounted Solar Photovoltaic Installations

Mr. Ericson told the PB that at the last discussion of Section 5.7, the PB did not vote if the ordinance was consistent with the Comprehensive Plan (Comp Plan).

The Board discussed the 250 megawatts lower limit for ground mounted solar photovoltaic installations.

Chairman Naylor said the 250 megawatt requirement eliminates the residential use of ground-mounted solar photovoltaic systems.

Chairman Naylor asked how this ordinance related to the Comprehensive Plan. Mr. Lentz said there is nothing in the Comp Plan related to this ordinance.

Mr. Palardy asked if residents are currently allowed to install ground-mounted solar systems. Mr. Lentz said that they are as stated in the current solar ordinance.

Mr. Ericson said that there is nothing in this ordinance, Section 5.7 that is inconsistent with the Comp Plan and he does not think this

ordinance is well written. Chairman Naylor stated the ordinance is not inconsistent with the Comp Plan.

Mr. Palardy made a motion to find the ordinance Section 5.7 Ground-mounted Solar Photovoltaic Installations consistent with the Comp Plan. Dr. Benoit seconded with AIF.

Chairman Naylor asked the PB if they wanted to add any recommendations along with this finding. Mr. Palardy and Mr. Lentz stated that recommendations were discussed at the last PB meeting on July 21, 2016 and extensively documented in the minutes from that meeting. Mr. Palardy stated the recommendation was to remove the 250 kW minimum from section 5.7b.

Mr. Ericson said there is an inconsistency in the ordinance on when the installation has to be taken down and he suggested that be changed.

Chairman Naylor said that the motion at the last meeting was to remove the inconsistencies.

Mr. Palardy asked how this information will get to the TC. Mr. Ericson said he will forward the information to the TC. The next TC meeting will be August 15.

Section 5.4.9 Service Industries use table

Mr. Ericson said that the PB completed this and found out that a letter was sent to the TC from the ORC stating why they thought this section was considered consistent with the Comp Plan. He went on to say that the TC has the final say in consistency with the Comp Plan and the Planning Board is not the final arbitrator.

Chairman Naylor said the PB did what was required of them.

9. Proposed Amendments to Land Development & Subdivision Regulations: This item was continued to the next PB meeting.

Dr. Benoit reiterated his previous request to add a discussion of properties where sewerage is being installed but residents were using wells and the effect on the water table to the next PB meeting. Dr. Benoit had previously suggested the PB discuss a mandate to bring water in when small lots are being developed.

10. Planning Update:

Mr. Ericson informed the Board of the vacancies in the Building/Zoning Department.

11. Adjournment

Dr. Benoit made a motion to adjourn and Mr. Palardy seconded with all in favor. (9:00 PM)

Submitted by Bobbi Moneghan on August 12, 2016

Approved by the Planning Board on September 1, 2016