

NORTH KINGSTOWN ZONING BOARD OF REVIEW

March 13, 2007

The North Kingstown Zoning Board of Review convened in the Town Hall Conference Room, 80 Boston Neck Road at 7:00 p.m.

The following members were present:

Leon Pierhal, Chair

Edward Ekman, Vice Chair

Daniel Pirhala, Secretary to the Board

Kelly Leighton

Richard Nagle, Second Alternate

Also in attendance were Town Solicitor Robert Donnelly and Principal Planner Linsey Cameron. Tracey Shepherd was the Allied Court Reporter for this meeting.

Mr. Pierhal called the meeting to order and explained the proceedings as follows.

The applicant or their representative would be asked to come forward, be sworn in, and give a brief explanation of their application.

The Board will then ask questions of the applicant before opening the floor to public comment. After all has been heard, the public portion of the meeting will be closed.

Decisions are usually rendered the same evening; however, continuances for more information may occur.

There is a 20-day appeal period once the Minutes have been approved at the March 27, 2007 meeting. No building permits may be granted until after the appeal period.

Minutes, and a decision to each petition, are recorded in the Town Clerk's office.

Mr. Pierhal asked if the Agenda for tonight's meeting had been filed with the Secretary of State's Office. Ms. Cameron replied that it had.

The Board adheres to a 10:00 p.m. curfew.

Weitman, Randy – Tax Assessor’s Plat 68, Lot 227 for relief under Chapter 21, a dimensional variance from Section 326 Septic System Setback to locate a new ISDS system within 150’ of the delineated wetland edge and for relief under Section 311(g) and (h), a special use permit to construct a new single family dwelling on a legal non-conforming lot with less than 70’ frontage in a village residential zone (VR) at Sanford Avenue, Pole #3.

Don Gregory, attorney for the applicant, came forward. Applicant Randy Weitman, Biologist Brandon Faneuf and Engineer Daniel Kirkutis came forward and were sworn in. Mr. Gregory said that the applicant is asking for a dimensional variance to locate an ISDS near a wetland and a special use permit for a legal non-conforming lot. He indicated that Sanford Avenue is not a paved road. In the past, the former Town Solicitor has said that a special use permit is necessary when frontage is on an unpaved road. Mr. Gregory said that he objects to this because he could not find this requirement in the Town ordinances. He said that Sanford Avenue is a dead end street with several homes on it. Mr. Weitman’s property had originally been platted as 7 separate lots. The property has been in contiguous ownership since 1919. In 2005 Mr. Weitman requested that the 7 lots be merged into one lot. Mr. Gregory presented 2 photos of the property as Exhibit 1 and Exhibit 2. Mr. Pierhal questioned whether or not a special use permit is necessary. Mr. Gregory said that the Town is requiring special use not for lack of frontage but because of lack of pavement on the road, which was the former Solicitor’s interpretation of the ordinance. Mr. Donnelly said that he would research this.

Mr. Gregory asked questions of Mr. Kirkutis. Mr. Kirkutis said that he has been hired to design the ISDS, and he has conducted a preliminary survey. The topography of the land is at 5% gradually going to a 20% grade. The ISDS is the Advantex type. CRMC approval is not required. He explained the dimensional variance, and he said that this is the best location for the ISDS, as far away from the wetlands as possible. He explained the nitrate loading survey, and Mr. Gregory presented this survey as Exhibit 3. Mr. Kirkutis explained the groundwater and said that a 12 foot hole had been dug, and there was no seepage. Discussion followed of the dimensional variance and the measurement from the ISDS. Mr. Pierhal asked if the ISDS could leak. Mr. Kirkutis said that it is guaranteed watertight. Mr. Pierhal indicated that a 48’ dimensional variance is required.

Mr. Gregory asked questions of Mr. Faneuf. Mr. Faneuf said that he has flagged the wetlands, and he has developed a report. The wetland edge is clearly defined. The topography is flat at the top near the road and drops off near the wetlands at 20%. He explained the topography using the USGS map, which Mr. Gregory presented as Exhibit 4. He showed a colored aerial photo of the property, which was presented as Exhibit 5, and he explained the soil types. Mr. Ekman questioned whether or not DEM approval is necessary for this project. Mr. Faneuf said that it is not required because of the distance from the wetlands. He explained that the DEM has jurisdiction west of Route 1A, and the CRMC has jurisdiction east of Route 1A with similar requirements. Mr. Pierhal asked if the wetland edge is seasonal, and Mr. Faneuf replied that it is not and that it is a permanent wetland.

Mr. Gregory indicated that Sanford Avenue is an unpaved Town road that has Town water service. The special use permit is a technicality because of the unpaved road. There are other houses on Sanford Avenue. The applicant's lot is 38,000sf, which is a large lot in this neighborhood. The house would be at the southeast corner of the property, and the ISDS would be as far away from the wetlands as possible. He indicated that the nitrates are well below drinking water standards. The DEM standard for ISDS is 100' from a drinking water well. This ISDS would be 116' from wetlands. Mr. Pierhal asked how long the applicant has owned the property. Mr. Gregory said since December 2005, and the lots were consolidated at that time by application to the Assessor's office. Mr. Ekman asked if this property is for sale, and Mr. Gregory said that it is. Mr. Ekman asked if the applicant planned to build on the property, and Mr. Gregory said no.

Ms. Cameron said that the affidavits of notice have been filed. Mr. Pierhal opened the public portion of the meeting. Susan Gustafson of Buena Vista Drive came forward and was sworn in. She said that she is opposed to building on this property. The White Cedar Swamp in this area is teeming with wildlife and plants. The Advantex is a good system, but it would still impact the area. The other houses in this area were built long ago, but now we have the knowledge to preserve the environment. Chris Prata of Winsor Avenue came forward and was sworn in. He said that he agreed with Ms. Gustafson. We should be protecting the area and not building on it. Mistakes that have been made in the past should not be repeated. This would be new construction with a new ISDS and new landscaping. He said that he is not in favor of the project. John Hemmalin of Buena Vista Drive came forward and was sworn in. He said that he understood that a nitrate study had been done but questioned whether or not a phosphate study had been done. He asked if there is a remote sensor in case of failure of the ISDS and said that besides leaching there are other kinds of run off that can be damaging to the area. Mr. Kirkutis replied that a phosphate study had not been done. He said that there is a remote sensor on the system.

Mr. Ekman made a motion to close the public portion of the meeting. Mr. Leighton seconded, and the motion carried. Mr. Pierhal asked why a phosphate test had not been done. Mr. Kirkutis said that there would be no significant impact from the septic system by phosphate on the property. Mr. Ekman asked if the applicant lives in the area. Mr. Gregory said that he did. Mr. Donnelly questioned whether or not CRMC approval would be needed at some point. Mr. Gregory said that it would not be. Mr. Kirkutis indicated that CRMC jurisdiction is within 50' of the wetland edge. Mr. Gregory said that they have no reason to believe that CRMC approval is necessary. Mr. Leighton questioned the construction plans. Mr. Gregory said that the applicant is seeking approval for design and footprint including the Advantex system. Mr. Leighton indicated that the applicant may have to come back to the ZBR if changes were made. Mr. Gregory said that would be the case if the ISDS location were changed. Discussion followed of the property and the 5 bedroom structure.

Mr. Pirhala made a motion to approve the Weitman, Randy application – Tax Assessor’s Plat 68, Lot 227 for relief under Chapter 21, for a 48’ dimensional variance from Section 326 Septic System Setback to locate a new ISDS system within 150’ of the delineated wetland edge and for relief under Section 311(g) and (h), a special use permit to construct a new single family dwelling on a legal non-conforming lot with less than 70’ frontage at Sanford Avenue, Pole #3, based on the criteria set forth in Section 21-13, Section 21-14(a), Section 21-14(b) and Section 21-15(a) and (b) of the zoning ordinance. Mr. Ekman seconded, and all were opposed. The application was denied.

Mr. Pirhala said that there is an obligation to protect the sensitive habitat. He does not believe that the wetland edge is clearly defined. A large 5 bedroom house would put too much stress on the environment. Mr. Ekman said that he agrees with Mr. Pirhala. He respects the Conservation Commission’s concerns. A few weeks ago the ZBR rejected an application for the same swamp area. Mr. Leighton said that although he respects the scientific testing that has been done, it has been done for a profit-based motive. The only mechanism that would insure the footprint would be a notice of violation. Mr. Nagle said that he felt that there is not enough buffer from the wetlands. Mr. Pierhal said that he agrees with the other Board members, and the size of the structure would change the look and feel of the area. Mr. Gregory indicated that the Conservation Commission report had not been raised by the ZBR earlier. He said that the ZBR’s denying another application for the same area is a different matter. Mr. Gregory said that there is a very large house under construction on Sea View Avenue, which is next to a much smaller house.

Seafresh USA – Tax Assessor’s Plat 180, Lot 14 for relief under Chapter 21, a dimensional variance from Article IV, Table 2C, Dimensional Regulations for Industrial Districts to construct an addition to an existing structure in a general industrial zone (GI) located at 45 All American Way.

Nick Papiano, engineer with Garofalo Associates, came forward and was sworn in. He said that the Quonset Development Corporation (QDC) has asked Seafresh to come up with a way to address their wastewater issues. A building addition is necessary to house the tankage equipment needed for the treatment and recycling of the wastewater. They are asking for 11.1’ of relief for a 2460sf addition.

Jim Fox, owner of Seafresh, came forward and was sworn in. He said that they need the addition to house the tankage necessary for water treatment. Due to the layout of the drainage system on the property, this would be the only place to locate the treatment processing equipment. Mr. Nagle asked what they are currently doing with wastewater. Mr. Fox said that they discharge the water into the Quonset sewer system, but they have not been able to maintain the correct BOD level. With the new tankage they will be able to treat the wastewater. A final decision has not been made on the structure. A new dead end road will access the property, and it is not a high traffic area. Mr. Leighton asked about security. Mr. Fox said that that security would be same as it is now, a locked building.

Mr. Nagle asked how long the plant has been in existence. Mr. Fox replied it has been there for 3 ½ years. Mr. Pirhala asked if there are other tanks on the site. Mr. Fox replied that they have tanks that are underground. Mr. Leighton asked if there would be any fire hazard with the equipment. Mr. Fox replied that the addition would have a complete sprinkler system. Mr. Pierhal asked if the addition would be similar to the existing building. Mr. Fox said that it would be smaller than the existing building but cosmetically the same. Mr. Pierhal questioned whether or not there would be excessive noise, light or traffic. Mr. Fox said that there would not be.

Ms. Cameron said that the affidavits of notice have been filed. Mr. Pierhal opened the public portion of the meeting. There was no response to inquiry for public comment. Mr. Ekman made a motion to close the public portion of the meeting. Mr. Leighton seconded, and the motion carried. Mr. Nagle questioned who had proposed the addition. Mr. Fox said that the QDC is asking that the BOD be in compliance. He said that in most communities there is a surcharge for discharging water with a high BOD level. The QDC does not have a surcharge and is asking for compliance. Mr. Nagle asked if Seafresh is currently in compliance. Mr. Fox said that they are because they have a special permit.

Mr. Ekman made a motion to approve Seafresh USA application – Tax Assessor’s Plat 180, Lot 14 for relief under Chapter 21, for a 11.1’ dimensional variance from frontyard setback from Article IV, Table 2C, Dimensional Regulations for Industrial Districts to construct an addition to an existing structure located at 45 All American Way. Mr. Nagle seconded, and all were in favor.

Stuart, Lambert & Janice – Tax Assessor’s Plat 115, Lot 10, for relief under Chapter 21, a dimensional variance from Article IV Dimensional Regulations, Table 2A Residential Districts and Section 306(a)(1) Setback to construct an addition to an existing single family dwelling in a village residential zone (R20) located at 50 Himes Street.

Lambert and Janice Stuart came forward and were sworn in. Mr. Stuart said that they would like to add a family room to the side of their two story cape style house. They bought the house 1 ½ years ago and need room for family gatherings. Mr. Pierhal questioned that they are asking for a zero setback. Mr. Lambert said that he took measurements from the center of Hatfield Street. Mr. Ekman said that he could not agree with the numbers without seeing a survey. Mr. Pierhal said that asking to build on a lot line is not a usual request. Mr. Donnelly explained that the house is on a non-conforming lot, so a special use permit is necessary. Mr. Pierhal asked if the addition could be located at another part of the house. Mr. Lambert said that the leach fields are on the other side, and the driveway is in back. They have looked at all the possibilities.

Mr. Ekman said that a survey is needed to determine the Town property line. Mr. Donnelly indicated that a survey is necessary if there is a possibility that the application would be approved. Mr. Pierhal said that the ZBR does not have the proper data to make a determination. Mr. Donnelly said that the burden of proof rests with the applicant. Mr.

Pirhala asked about shortening the width of the addition. Mr. Lambert said that they have asked for what they believe is necessary. Mr. Pierhal questioned whether or not there have been similar situations where a building has been constructed at the lot line. The ZBR would not like to set a precedent.

Mr. Lambert questioned what they should do next. Mr. Ekman said that a survey is needed. Mr. Ekman asked if there are any issues with the neighbors over this addition. Mr. Lambert said that there have not been, and the next door neighbor said that he has no issues with the project. Mr. Nagle asked if they could add the family room on the second floor. Mr. Lambert said that would be very expensive, and they like the cape style house. He questioned if they have a survey done and there are no neighborhood objections, what point they would be at with the application. Mr. Pierhal said that the ZBR could not make a decision based on the data before them. Mr. Donnelly said that the applicant would have to supply proof that without the relief, they could not use the property. Discussion followed of the addition, dimensional variances and special use.

Mr. Leighton made a motion to continue the Stuart, Lambert & Janice application– Tax Assessor’s Plat 115, Lot 10, for relief under Chapter 21, a dimensional variance from Article IV Dimensional Regulations, Table 2A Residential Districts and Section 306(a)(1) Setback to construct an addition to an existing single family dwelling at 50 Himes Street to the April 10, 2007 meeting to allow time to reconsider the application and determine if a survey would be done. Mr. Ekman seconded, and all were in favor.

Redfern, John & Carolyn – Tax Assessor’s Plat 165, Lot 3 for relief under Chapter 21, a dimensional variance from Section 216 Dimensional Requirements for a conservation subdivision to relocate and renovate an existing residential dwelling unit and accessory structures in a rural residential zone (RR-80) located at 290 Fletcher Road.

Amy Sonder, engineer, came forward and was sworn in. Carolyn Redfern came forward and was sworn in. Ms. Sonder handed out a site map. Ms. Sonder said that the Planning Commission has approved the request for a conservation subdivision pending requested relief granted by the ZBR. Ms. Sonder said that the property contains two residential structures, a main house and a cottage, as well as a barn, garage and garden shed. Both of the existing residential units are on Parcel A. As part of the subdivision they would like to relocate the cottage and attach it to a section of the barn on the newly formed Parcel B. There would 3 inches of space between the garage that is attached to the dwelling on Parcel A and the barn on Parcel B. They are creating two separate lots and want to preserve the historic structures on the property and have full use of the structures from both properties.

Mr. Pirhala questioned the cottage relocation, and Ms. Sonder pointed it out on the map. She said that it would be attached to the easterly side of the barn, and the barn would be renovated. Mr. Pierhal asked if there would be a deed restriction for one family living on this compound. Ms. Redfern said that one residence would be sold. Ms. Sonder said that

the intent is to sell Parcel A. Ms. Redfern explained the historic background of the structures. They have restored the house and the cottage and would like to restore the barn. Mr. Ekman questioned the dimensional variances, and Ms. Sonder explained them.

Ms. Cameron said that the affidavits of notice have been filed. Mr. Pierhal opened the public portion of the meeting. Steven Wilbert, resident of Fletcher Road, came forward and was sworn in. He said that he has lived there since 1977. He does not understand why the applicants want to attach a house to a barn. This would interfere with vistas in the area. When he and his brother chose their lots at Fletcher Meadows, they chose them with the view in mind. He said the driveway would be on the property line. He questioned how the house attached to the barn is going to look, and they would be attaching a white house to a brown barn. Aesthetically, it would be an eyesore from Fletcher Road. He questioned why they do not renovate the barn and leave the house where it is. He said he would like to see a plan. He said that he does not understand how the driveway design will work. He does not want people driving on his property. He does not want car lights shining in his windows at night.

Mr. Ekman questioned the driveway, and Ms. Sonder explained it from the plan. Mr. Wilbert said that when work has been done on the property, workmen have driven on his property. Moving the house will change the landscape and obstruct his view. This is not what he had in mind when he bought the property. People would be living in the barn area near a hayfield. This could be a fire hazard area and may need a hydrant. Mr. Pierhal asked if he had voiced his concerns before the Planning Commission. Mr. Wilbert said that he had made a statement, but that it was not an open forum.

Ms. Sonder handed out pictures of the barn and the house. She said that any renovation to the barn or the house would conform to building codes. She said that there is no expansion of use. There are two houses now, and there will still be two houses. Mr. Wilbert questioned the emergency vehicle turn-a-round, and Mr. Pierhal said that it has been approved by the Fire Marshall. Discussion followed of the driveway. Mr. Leighton made a motion to close the public portion of the meeting. Mr. Pirhala seconded, and the motion carried.

Mr. Nagle asked if they could “condo” the structure. Ms. Redfern replied that they would like to preserve the historic structure. Mr. Nagle indicated that if they used a condo type design they would not need to apply for relief. Ms. Sonder said that in order to preserve all of the existing structures, there is no other option. Mr. Leighton questioned moving the building. Ms. Redfern said that the buildings they are moving are moveable, and the buildings they are not moving are not moveable. Mr. Leighton questioned whether or not the owner of Parcel A is under obligation to preserve historically when this parcel is sold. Ms. Redfern said that the owner would be. Mr. Leighton questioned the location of the shed and the location of the garage. Ms. Sonder said there could be some flexibility as regards the shed, and they would not ask for relief. Discussion followed of the zoning ordinance as it pertains to this application.

Mr. Ekman made a motion to approve the Redfern, John & Carolyn application – Tax Assessor’s Plat 165, Lot 3 for relief under Chapter 21, for a 35’ dimensional variance from right side setback Parcel A, a 35’ dimensional variance from rear yard setback Parcel A and a 35’ dimensional variance from side yard setback Parcel B from Section 216 Dimensional Requirements for a conservation subdivision to relocate and renovate an existing residential dwelling unit and accessory structures located at 290 Fletcher Road. Mr. Pirhala seconded and there was one vote in favor and four opposed. The application was denied. Mr. Nagle said that the applicant is asking for too much relief. There must be other ways to configure the property. Mr. Leighton said that he is concerned about preservation and history, but there is too much relief being asked for, and he believes there are other options. Mr. Pierhal said that he agrees that too much relief is being asked for. Mr. Pirhala said he does not believe that a hardship has been proven. They would be using a lot of land to selectively move buildings.

De Paola, Chris and Alan Post – Tax Assessor’s Plat 1, Lot 1 for relief under Chapter 21, a dimensional variance from Article IV Dimensional Regulations, Table 2A Residential Districts and Section 306(a)(1) Setback and a use variance from Section 21-22 Accessory Use to construct a storage barn in a rural residential zone (R80) located on Miner Road.

Chris Paola came forward and was sworn in. He presented a site map showing his legal conforming lot. He said that at present the state will not allow an ISDS on the property, so he could not build a house. There are wetlands and a pond on the property. He would like to build a 26’ x 48’ barn. The lot had previously been a dumping ground for the neighborhood. They have cleaned it up. There already is a large barn in the area, so they would not be setting a precedent, and variances have been granted for other construction in the area. He said that they are willing to have a deed restriction stating that there would never be a house on the property. CRMC approval is required for this application because of the wetlands.

Mr. Pierhal asked about the purpose of the barn. Mr. Paola said that it would be used for storage for his antique tractor and his partner’s antique cars. Mr. Pierhal asked if there would be running water in the barn. Mr. Paola said that there would not be. Mr. Leighton asked about a residence. Mr. Paola said that there is no residence on the property. Mr. Pierhal asked about the acreage. Mr. Paola said that there are 2.25 acres. Mr. Pierhal asked how long they had owned the property, and Mr. Paola said 3 ½ years. Mr. Nagle questioned the wetlands and Mr. Paola pointed them out on the map. Discussion followed of the dimensional variance needed. Mr. Pierhal asked about the barn construction. Mr. Paola said that it could be clapboard, but they have not yet decided. Mr. Pierhal asked if there would be a slab floor and a gravel driveway, and Mr. Paola said that there would be. Mr. Pierhal asked about the height of the barn, and Mr. Paola said that it would be 18’. Mr. Pirhala asked if any vehicle restoration would be done on the property, and Mr. Paola replied that there would not be.

Ms. Cameron said that the affidavits of notice have been filed. Mr. Pierhal opened the public portion of the meeting. Mike Hutchinson, representative of the abutter Casey Farms, came forward and was sworn in. He said that they have security concerns about the project. They are not interested in seeing another structure in that area. They do not want to see the wetlands disturbed. They are opposed to the application. Candace Cone of Rose Hill Road came forward and was sworn in. She said that it is a neighborhood with children and dogs, and the applicants would be bringing in mechanical devices, which would be foreign to the area and do not go with the neighborhood. Robert Scheib, a resident of Miner Road since 1942, came forward and was sworn in. He said that he lives directly across the street from this property, and the barn would be almost as big as his house. He believes there is zero water table where they would like to build the barn. He would be coming out of his driveway looking at a huge barn in a wetlands area. He would be worried about run off into ponds that have wildlife such as swans and egrets. He said that he is opposed to the application.

Debbie Marone, resident of Miner Road, came forward and was sworn in. She said that this area is a very small community with no commercial establishments. In the wet season the water runs into a culvert under the road and down to the ponds. A building such as this barn would break her heart. It would change the whole area. Michael Digiglio of Miner Road came forward and was sworn in. He questioned disturbing the land and said that the area needs to be saved. The ponds are a great place. Where there are cars, there is oil and grease, which could disturb the ponds. Mr. Ekman made a motion to close the public portion of the meeting. Mr. Leighton seconded, and the motion carried.

Mr. Paola said the barn would not be a commercial use of the property. They just want to enjoy the use of their property. The State would not allow an ISDS. They are willing to have a deeded restriction in regards to no residence. The icehouse building in the area is large and overwhelming, and it has probably affected the pond area more than their building would. He indicated that his vehicle has only a very small amount of oil leakage. Mr. Paola said that anything done on the property would be controlled by State regulations. He said that his aesthetic sense is refined enough to know what is appropriate and what is not. They would like to use the property. Mr. Pierhal explained that the ZBR must balance utilizing the land and the character of the neighborhood.

Mr. Pirhala made a motion to approve the Paola, Chris and Alan Post application – Tax Assessor’s Plat 1, Lot 1 for relief under Chapter 21, for a 10’ dimensional variance from front yard setback from Article IV Dimensional Regulations, Table 2A Residential Districts and Section 306(a)(1) Setback and a use variance from Section 21-22 Accessory Use to construct a storage barn located on Miner Road, conditioned on a deed restriction prohibiting an ISDS and residence on the property, and based on the criteria set forth in Section 21-13, Section 21-14(a)(1-4) and Section 21-14(b)(2) of the zoning ordinance. Mr. Leighton seconded. There were 3 votes in favor and 2 opposed. The application was denied.

Mr. Ekman said that that the approving the application would change the character of the neighborhood. He is concerned about the proximity of the pond and the gas and oil from the vehicles. He is also listening to the neighbors. Mr. Pierhal said that the barn is too tall at 18' and not appealing to the neighborhood.

Minutes

Mr. Pirhala made a motion to approve the corrected Minutes of the February 27, 2007 meeting. Mr. Ekman seconded, and the motion carried. The meeting adjourned at 10:00 p.m.

Joan Markert
Recording Secretary

Daniel Pirhala
Secretary to the Board