

**PORTSMOUTH TOWN COUNCIL MEETING
OCTOBER 3, 2016
AGENDA**

7:00 PM - TOWN COUNCIL CHAMBERS, TOWN HALL, 2200 EAST MAIN ROAD

PLEDGE OF ALLEGIANCE

SITTING AS THE PORTSMOUTH TOWN COUNCIL

OLD BUSINESS

1. PUBLIC HEARING: Bill Sale's Firewood Sound Variance Application

Documents:

[Sound Variance Application.pdf](#)
[Chapter 257-18 And Amendment.pdf](#)
[Abutters Notice.pdf](#)

a. Petitioner's Memorandum 8/22/2016. / R. Lantz, Owner, Bill Sale's Firewood & A. Thayer, Esq., Sayer, Regan & Thayer

Documents:

[Petitioners Memorandum.pdf](#)

b. Objection To Sound Variance Request Of The Portsmouth Noise Ordinance - Bill Sales, Robert Lantz. / Mr. & Mrs. Waring, 30 Crossing Court

Documents:

[Objection.pdf](#)

FUTURE MEETINGS

October 11	7:00 PM - Town Council Meeting (Tuesday)
October 24	7:00 PM - Town Council Meeting
November 3	7:00 PM - Matrix Tank Farm Study Presentation - Brief Council
November 14	7:00 PM - Town Council Meeting

ADJOURN

The public is welcome to any meeting of the Town's boards or its committees. If communication assistance (readers/interpreters/captions) is needed or any other accommodation to ensure equal participation, please contact the Town Clerk's Office at 683-2101 at least (3) business days prior to the meeting.

POSTED 9/29/16

TOWN OF PORTSMOUTH, RHODE ISLAND



SOUND VARIANCE APPLICATION

DATE: 9-16-2016

\$100 FEE PAID: \$100 pd. Receipt 53744

APPLICANT: Bill's Sales Firewood (Robert Lantz, Owner)

ADDRESS: 1960 East Main Road, Portsmouth, RI 02871

CONTACT: Adam H. Thayer, Esq. PH: 401-849-3040 CELL: AThayer@srt-law.com

PROPERTY OWNER: Robert Lantz

ADDRESS: 1960 East Main Road, Portsmouth, RI 02871 PH: 401-683-1017

EVENT LOCATION: 1960 East Main Road, Portsmouth, RI 02871

EVENT DATES(S): N/A Mon-Fri: 7:00AM-6:00PM HOURS: Saturday: 8:00AM-4:00PM

EVENT DESCRIPTION (S): Operation of Existing Business

REASON/CIRCUMSTANCES FOR VARIANCE: See attached Petitioner's Memorandum

AUTHORIZED SIGNATURE: *Adam H. Thayer* TITLE: Attorney

FOR OFFICE USE ONLY:

Date Request Received: _____ Date of Town Council Meeting: _____

Town Council Conditions: _____

Advertising Fee: _____ Date Advertising Paid: _____ Date to be Advertised: _____

Newspaper: _____ Postage Fee: _____ Date Postage Paid: _____

TOWN OF PORTSMOUTH, RI

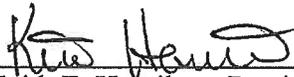
Ordinance # 2016-07-11

AMENDMENT TO THE NOISE ORDINANCE – §257-18 SOUND VARIANCES

BE IT ORDAINED by the Town Council of the Town of Portsmouth, Rhode Island, that Section C of §257-18 of Chapter 257 of the Portsmouth Code of Ordinances is hereby amended as follows:

- C. All applications shall be subject to an application fee of \$100 and an amount sufficient to cover the cost of advertising and notification to all residents and property owners within 100 feet of the noise source. Advertisement shall be made at least once, seven days prior to the public hearing, in a newspaper of general circulation in the Town. Notification shall be by regular mail at least seven days prior to the public hearing.

**ADOPTED BY TOWN COUNCIL
ACTION ON JULY 11, 2016**



Keith E. Hamilton, President
Portsmouth Town Council

Attest:



Joanne M. Mower, Town Clerk

The owner, possessor or keeper of any animal or bird shall be deemed to have violated this chapter if such animal or bird frequently or for a continued duration emits sound that is natural to the species, which sound exceeds the dBA level set forth in Table I.

§ 257-16 Implementation, administration and enforcement.

- A. This chapter shall be implemented, administered and enforced by the Police Department.
- B. The provisions of this chapter which prohibit a person from making or continuing noise disturbances, or causing the same to be made or continued, across a real property boundary or within a noise sensitive area shall be enforced by the Police Department.
- C. To implement and enforce this chapter, the Police Department shall have the power to:
 - (1) Conduct research, monitoring and other studies related to sound;
 - (2) Conduct programs of public education regarding the causes, effects and general methods of abatement and control of noise, as well as the actions prohibited by this chapter and the procedures for reporting violations;
 - (3) Coordinate the noise control activities of all Town departments;
 - (4) Review public and private projects, including those subject to mandatory review or approval by other departments, for compliance with this chapter, if these projects are likely to cause sound in violation of this chapter;
 - (5) Issue sound variances granted pursuant to § 257-18.
- D. Whenever a violation of this chapter occurs and two or more persons are present in or on the lot from which the sound emanates, and it is impossible to determine which of such persons is the violator, the owner of the lot, if present, shall be presumed responsible for the violation. In the absence of such owner, the tenant or tenants of such lot or any person present with the direct consent of the owner shall be held responsible for the violation.
- E. In the case of continuing violations, the Town Solicitor may institute an action for injunctive relief against the owner and/or tenant of the lot.

§ 257-17 Department actions.

All departments and agencies of the Town shall carry out their programs in furtherance of the policies set forth in this chapter.

§ 257-18 Sound variances.

- A. Council shall have the authority, consistent with this section, to grant sound variances from this chapter after public hearing.
- B. Any person seeking a sound variance under this section shall file an application with Council. The application shall contain information which demonstrates that bringing the source of sound or activity for which the sound variance is sought into compliance with this chapter would constitute an unreasonable hardship on the applicant, on the community or on other persons.
- C. All applications shall be subject to a fee of \$50 per day if granted and, whether granted or denied, an amount sufficient to cover the cost of advertising and notification to all residents and property owners within 100 feet of the noise source. Advertisement shall be made at least once, seven days prior to the public hearing, in a newspaper of general circulation in the Town. Notification shall be by regular mail at least seven days prior to the public hearing.
- D. In determining whether to grant or deny an application, or revoke a variance previously granted, Council shall balance the hardship to the applicant, the community and other persons, if the sound variance is not allowed, against the adverse impact on the health, safety and welfare of persons affected, the adverse impact on property affected, and

any other adverse impact, if the sound variance is allowed. Applicants for sound variances and persons contesting sound variances may be required to submit any information that Council may reasonably require. In granting or denying an application or in revoking a sound variance previously granted, Council shall place on public file a copy of the decision and the reasons for granting, denying or revoking the sound variance.

- E. Sound variances shall be granted by notice to the applicant containing all necessary conditions, including a time limit on the permitted activity. The sound variance shall not become effective until all conditions are agreed to by the applicant. Noncompliance with any condition of the sound variance shall terminate it and subject the person holding it to those provisions of this chapter regulating the source of sound or activity for which the sound variance was granted.
- F. Determination of modification of a granted variance shall be made in accordance with the rules and procedures set forth in the section for original applications.

§ 257-19 Violations and penalties.

- A. Violation of this chapter shall be punishable by a fine of not more than \$100 and/or imprisonment for not more than 30 days.
- B. Holders of alcoholic beverage licenses.
 - (1) In addition to any other penalty set forth herein, any holder of a Class A, B, B Ltd., C or D liquor license who shall be cited for violation of the provisions of this chapter twice within a period of six months shall, upon complaint by the Police Department to the Town Council sitting as a Board of License Commissioners, be summoned to appear before the Board to show cause why disciplinary action should not be taken against said license holder for violation of state or local laws, ordinances or regulations.
 - (2) The license holder shall be served with a notice of the date, time and place of any such hearing.
 - (3) The license holder has the right to be present at any such hearing, to be represented by counsel if he/she so chooses, to cross-examine witnesses and to present sworn testimony on his or her own behalf.
 - (4) After hearing, the Board may, if it finds that a violation has occurred, take disciplinary action against the license holder, including, but not limited to, suspension and/or revocation of the license.



Town of Portsmouth

2200 East Main Road / Portsmouth, Rhode Island 02871

Joanne M. Mower
Town Clerk

(401) 683-2101

September 20, 2016

Notice to Abutter:

In accordance with Chapter 257-18, Noise Ordinance, of the Portsmouth Town Code, notice is hereby given that the Portsmouth Town Council will conduct a Public Hearing to hear the petition of Bill's Sales Firewood for a sound variance to the Noise Ordinance for its operation of existing business.

This hearing will be held at the Portsmouth Town Hall, Town Council Chambers, located at 2200 East Main Road, Portsmouth, RI on October 3, 2016 at 7:00 PM.

All interested persons are invited to attend and be heard. The Town Hall is handicap accessible. TDD/Voice/Hearing impaired, please call the Town Clerk's Office at 683-2101 three business days prior to the Hearing.

Very truly yours,

Joanne M. Mower
Town Clerk

**EAST MAIN PLAZA
460 Sea Meadow Drive
Portsmouth, RI
02871**

**FERREIRA, TIMOTHY, GRAY, STEPHANIE A.
BLAKE, TRACEY A.
77 FERREIRA TERRACE
Portsmouth, RI
02871**

**WARING, TARNEY H. & BARBARA J.
30 Crossings Court
Portsmouth, RI
02871**

**CONDON, STEPHEN G.
56 Crossings Court
Portsmouth, RI
02871**

**PORTSMOUTH WATER & FIRE DISTRICT
PO Box 99
Portsmouth, RI
02871**

**LANTZ, ROBERT A. & MORGAN A.
1960 East Main Road
Portsmouth, RI
02871**

**LANTZ, ROBERT
1960 East Main Road
Portsmouth, RI
02871**

**GLA ASSOCIATES
11 Acorn Lane
Portsmouth, RI
02871**

**J & B REALTY LLC
c/o Jonathan P. Taggert
31 Grain Terrace
Portsmouth, RI 02871**

PETITIONER'S MEMORANDUM

TO: PORTSMOUTH TOWN COUNCIL

FROM: BILL'S SALES FIREWOOD, OWNER- ROBERT LANTZ
By: Adam H. Thayer, Esq.

SUBJECT: VARIANCE APPLICATION

DATE: AUGUST 22, 2016

ISSUE

In 1980, the Town rezoned Map 41, including the Bill's Sales Firewood ("Bill's Sales") property, from commercial to residential. In 1991, the Town passed the Noise Ordinance §257, which set the following decibel limits:

Maximum Sound Levels by Receiving Land Use

Location of Receiving Land Use	Time	Sound Limit (dBA)
Zoning district:		
Residential and Open Space	7:00 a.m. to 10:00 p.m.	65
	10:00 p.m. to 7:00 a.m.	55
Commercial and Waterfront	At all times	75

Despite rezoning portions of Map 41 back to commercial, Lot 52 (the Waring property) remains zoned residential. Accordingly, despite being a pre-existing commercial use for 40 years, along a very noisy state highway, Bill's Sales is limited to the residential noise limit along a portion of the northerly boundary of its property. Notwithstanding unduly burdensome, good faith efforts to reduce the sound emanating from its business, Bill's Sales is unable to entirely reduce its sound below the 65 dBA residential limit during daytime business hours.

RELIEF REQUESTED

Bill's Sales requests a variance to the sound limits set forth in §257, to allow the business to operate up to the commercial limit of 75 dBA, Monday through Friday from 7:00 AM to 6:00 PM and Saturdays from 8:00 AM to 4:00 PM.

ARGUMENT

Bill's Sales is not seeking any variance to the Noise Ordinance for evening or nighttime sound limits. Rather, it is seeking a variance to the residential limit of 65 dBA to allow the business to operate up to the commercial limit of 75 dBA during its normal business hours. As detailed herein and in the attached Exhibit B, the ambient noise from passing traffic, both at the property and throughout Town along East and West Main Roads, is well in excess of the residential noise limit and the average operating sound levels of Bill's Sales. Accordingly, such a reasonable variance granted to Bill's Sales will not harm any abutting property owners or the community at large.

Variance Procedure

Unreasonable Hardship and Equitable Resolution

Pursuant to §257-18 of the Noise Ordinance, an applicant for a variance shall file an application with the Town Council. "The application shall contain information which demonstrates that bringing the source of sound or activity for which the sound variance is sought into compliance with this chapter would constitute an unreasonable hardship on the applicant."

The goal of the variance procedure in §257-18 of the Noise Ordinance is to provide equitable resolutions to such hardships. Specifically, §257-18(D) states as follows:

"In determining whether to grant or deny an application, or revoke a variance previously granted, Council shall balance the hardship to the applicant, the community, and other persons, if the sound variance is not allowed, against the adverse impact on the health safety and welfare of the persons affected, the adverse impact on property affected, and any other impact, if the sound variance is allowed."

1. **Hardship to the Applicant if Variance is Denied:**

Bill's Sales has operated the same legal business at the location for over 40 years. It has expended millions of dollars to build its business and cement its foundations in the Town. However, through no action or inaction of the business, its decibel limits was reduced to 65 dBA due to the poor planning and haphazard zoning along East Main Road's primary commercial district. This is not a self-created hardship, but rather one that has been inflicted on the business by the Town. (Please see attached Exhibit A: Zoning History)

Nevertheless, Bill's Sales has recently poured tens of thousands of dollars and hundreds of man hours into reducing its noise limits. (See attached Exhibit B: Bill's Sales Firewood Remediation Efforts and Noise Levels) As can be seen by the attached sound readings, these good faith efforts have been largely successful. However, as detailed herein and as testified to by the sound engineer from Vibra Sciences¹ at the February 8, 2016 Town Council meeting, forcing the

¹ <http://www.vibrasciencs.com/default.asp>

business to completely reduce its daytime operating sound limits below the 65 dBA residential limit would be a further unreasonable hardship.

2. Hardship to the Community if the Variance is Denied:

Bill's Sales Firewood is not only one of the Town's defining small businesses, it is a local landmark. It has operated successfully for decades, and grown to become a respected local employer that has contributed to the financial wellbeing of generations of Portsmouth residents. Please see attached Exhibit C for Petitions signed by both Portsmouth residents and residents of the surrounding communities voicing their support for the business's pursuit of a variance.

The Portsmouth's Comprehensive Town Plan advises that the Town should proceed in a manner "consistent with the character of the existing land uses and with the established community goals" including "economic development." (Land Use §I, A, 1). The Plan states that the Town should strive to maintain the balance of nonresidential and residential taxes bases to ensure the Town can successfully deliver services over the long term. (See Land Use §IV, B, 5). This is crucial for the continued success and prosperity of the Town and its residents as "[b]usiness and industry does not demand as much in services as they pay in taxes." (Economic Development §IV, A, 4).

Figure 18 from the Plan, details the Gain/Loss per Dollar Town Government Revenue. (See Economic Development §IV, B). As Figure 18 details, the Town loses approximately 16 cents per dollar collected from residential properties, but gains approximately 73 cents per dollar collected from commercial properties. In addition, the Plan opines that "[a]ny business type has a multiplier effect, such as related businesses generation and spin-off effects, like the ability of Town residents to pay their taxes and patronize consumer-related business." (Economic Development §IV, A, 4). Accordingly, the Plan advises "[a] continuing effort to increase the number of [] jobs that fit the Town's character and the skills of its labor force cannot be ignored." (Economic Development §IV, B). The Plan details the roles each layer of government should play toward that end, and states that as a municipality the "[t]own should take the initiative in attracting new business and in helping existing business." (Economic Development §IVD, 3, a).

This sentiment was echoed in the Plan by a survey conducted by the Portsmouth Citizen Advisory Committee which concluded that "[o]ver 82% [of respondents] strongly agreed that Town officials should guide economic development efforts to sustain growth in employment and the tax base by encouraging industry and commerce whose impact on the environment and character of the Town are 'within acceptable limits'." (See Economic Development §IV, E)

Accordingly, if the variance is not granted, Portsmouth will likely lose a foundational business in Town, which not only offers quality goods and services to great number of its residents, but also contributes to the Town's financial well-being through payment of municipal taxes.

3. Adverse Impact on the Health, Safety and Welfare of Persons Affected

At the December 14, 2015 Town Council hearing, a procession of abutters and Portsmouth residents voiced their strong support for Bill's Sales. In addition, abutters including the Portsmouth Water and Fire District, which abuts Bill's Sales to the south (and without the benefit of the sound barrier fence, concrete wall, and stockade fence), have written letters in full support. (See attached Exhibit D) The only person who has voiced opposition to Bill's Sales has been Mr. Waring.

In Mr. Waring's "Objection Comment" filed with the Town on December 7, 2015, and during his testimony before the Council on December 14, 2015, he made a series of false allegations and pursued lines of argument wholly irrelevant to the variance. First, Mr. Waring alleged that issues with the business began in 2010 after it had been zoned commercial for only 2 years. Bill's Sales was zoned commercial in 1975, and was a legal nonconforming use by right through 2008, when it was correctly rezoned commercial.

Second, Mr. Waring testified that there are ongoing issues with constant sounds, including nighttime noise, from the fan on the kiln used to dry the wood. This is simply incorrect. As our readings show, and as Mr. Waring eventually admitted, the sound emitted by the fan is well below residential limits, and does not even violate the 55 dBA nighttime limit.

Mr. Waring has claimed that the business has expanded and is not of the same character as when he purchased his property. Specifically, he states that the business expanded in 2012 and increased its noise output. As the owners of Bill's Sales testified at the December 14, 2015 hearing, the exact same equipment has been in use for many years. The only difference that occurred around 2012 was the construction of the current structure at the property which allowed the wood cutting and the equipment to be moved indoors. Although we do not have the benefit of sound reading immediately before and after that change, logic would dictate that the same activity would be less noisy to abutters when conducted indoors.

Similarly, Mr. Waring has alleged that the noise emitted by Bill's Sales has destroyed the peace and quiet he expected when he bought his property, and allegedly enjoyed until 2012. As detailed below and in Exhibit B, the average sound reading along East Main Road in front of the Bill's Sales and Waring properties was 77.44 dBA. This average is in excess of even the commercial noise limit. Although high, this noise level is typical for properties abutting the main thoroughfares in Town.

Comparative sound readings were also conducted at eight points along East Main Road and West Main Road:²

1) Morning

- A) 180 East Main Road.....Average 73 dBA
- B) 1322 East Main Road.....Average 72.8 dBA
- C) 2211 East Main Road.....Average 71.7 dBA
- D) Sea Fare Residences.....Average 69.5 dBA
- E) 739 West Main Road.....Average 68.8 dBA
- F) 1569 West Main Road.....Average 70.8 dBA
- G) 2221 West Main Road.....Average 71.5 dBA

2) Afternoon

- A) 180 East Main Road.....Average 70.9 dBA
- B) 1322 East Main Road.....Average 72.2 dBA
- C) 2211 East Main Road.....Average 72.3 dBA
- D) Sea Fare Residences.....Average 72 dBA
- E) 739 West Main Road.....Average 69.7 dBA
- F) 1569 West Main Road.....Average 71 dBA
- G) 2221 West Main Road.....Average 70.6 dBA

It is therefore clear that most residential properties along East and West Main Roads are subjected to constant noise levels well in excess of the residential limit. Accordingly, Mr. Waring's expectation of a noise limit on his property of 65 dBA during daytime hours was not and is not reasonable. Nevertheless, the daytime average noise level at the Bill's Sales/Waring property line is significantly less than any of these numbers, at 60.35 dBA.

Finally, at the July 11, 2016 Town Council hearing regarding the amendment to the variance fee Mr. Waring made a number of revealing and contradictory comments. First he objected to the reduction of the fee from \$50 per day to a \$100 flat fee. He argued that this number

² Approximately 15-20 readings were taken at each location between the hours of 8:00 AM – 3:00 PM and averaged.

was but a small fraction of the prior fee and that persons or businesses seeking an ongoing variance should be required to pay a substantial sum. Despite the Town Clerk's admission that to her knowledge the \$50 per day fee had never been collected, Mr. Waring insisted that such an arbitrary and burdensome fee was equitable. This is especially troubling as Mr. Waring had previously admitted to the Town Council that the noise issues he had complained about regarding Bill's Sales had been remediated to his satisfaction back in December of 2015. He nevertheless engaged in lines of argument attacking Bill's Sales and contesting the amendment to the variance fee at both the February and July, 2016 Town Council meetings.

He also argued that a business operating in excess of the residential limit should relocate to a commercial/business district within town. In doing so, Mr. Waring effectively argued for the variance. As has been stated numerous times, Bill's Sales has existed in the primary business district of Portsmouth for 40 years. It was Mr. Waring who decided to build his residence next door to the business and along busy East Main Road (presumably for a reduced purchase price). It was also Mr. Waring who made no objection to the noise for over a decade and voiced no concerns during the re-zoning hearing in 2008 and special use permit hearing in 2010. It is also Mr. Waring who now benefits from the considerable noise remediation efforts paid for by Bill's Sales which effectively buffer one side of his property from the ambient noise from East Main Road.

Accordingly, it is clear that the granting of a variance for Bill's Sales will not have any adverse impact on the health, safety or welfare of persons affected, including Mr. Waring.

CONCLUSION

Bill's Sales respectfully requests a variance to the residential limit of 65 dBA to allow the business to operate up to the commercial limit of 75 dBA, Monday through Friday from 7:00 AM to 6:00 PM and Saturdays from 8:00 AM to 4:00 PM. As detailed above, such a variance is just and proper, as it is clear that: 1) the hardship is not self-created; 2) denial of the variance would be catastrophic to the business, and 3) granting of the easement would have no negative impact on the persons affected or the town as a whole.

Respectfully submitted,
Bill's Sales Firewood
Robert Lantz, Owner
By His Attorney,

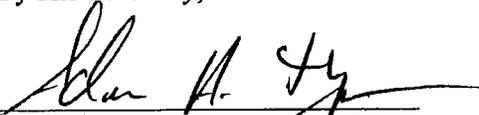

Adam H. Thayer, Esq. (#8853)
Sayer Regan & Thayer, LLP
130 Bellevue Avenue, Unit 2
Newport, Rhode Island 02840
(401) 849-3040

EXHIBIT LIST

A- Zoning History

B- Bill's Sales Firewood Remediation Efforts & Noise Levels

C- Petitions Signed By Local Residents in Support of Variance Application

D- Letters in Supports from Abutters

EXHIBIT A

ZONING HISTORY

In 1965, Portsmouth adopted its first Zoning Ordinance. The 1965 Ordinance established the "General Business District", which ran along both sides of East Main Road to a depth of 500 feet from the centerline of the street.

In 1975, Bill's Sales Firewood opened, selling firewood and wood products at 1960 East Main Road (Map 41, Lot 48). The entirety of the business was located within the 500 foot General Business District.

In 1980, the Zoning Ordinance was re-written, and completely superseded the 1965 Ordinance and the zoning districts established therein. Pursuant to the 1980 Ordinance, all parcels in the town were designated in one of four Residential Districts, except those parcels specifically listed by plat and lot as being in either Heavy Industry, Commercial, Light Industry or Open Space. No parcels on Bill's Sales' Map (Map 41) were designated to any of the aforementioned categories. Accordingly, Bill's Sales' property, and all of the other properties located in Map 41 were zoned residential by default.

There were, and remain to this day, several parcels across the street from Bill's Sales, located on Map 42, which were zoned Commercial.

A provision of the 1980 Ordinance allowed Bill's Sales to continue to operate its non-conforming commercial use on its residentially zoned property by right, as long as the use was not abandoned. The use has never been abandoned.

In 1991, the Town Council adopted the Noise Ordinance, which limited "Sound Levels by Receiving Land use (Zoning District)" to 65 dBA during the day, and 55 dBA during nighttime hours, at the boundary of any lot in a residential district.

In 1994, the Zoning Ordinance was again re-written, and completely superseded the 1980 Ordinance and the zoning districts established therein. In the 1994 Ordinance, all parcels on Bill's Sales' Map (Map 41) continued to be zoned residential until November of 1999, when the Town Council rezoned Map 41, Lot 29 to commercial. Again, the 1994 Ordinance allowed Bill's Sales to continue to operate its non-conforming commercial use on its residentially zoned property by right, as long as the use was not abandoned.

In 2008, the Town Council amended the 1994 Ordinance to change the zoning designation of Map 41, Lot 48 (the Bill's Sales property) and Lot 29A, and a portion of Lot 51 from residential to commercial. The amendment included conditions placed on the Bill's Sales property addressing fencing, hours of operation, lighting restrictions and outside storage. Most noteworthy is the fact that none of the conditions listed in the 2008 change addressed noise levels emanating from Bill's Sales. Further, this change was recommended by the Planning Board and "wholeheartedly supported" by William E. Clark, the Town's Director of Business Development.

In April 2010, Bill's Sales petitioned the Zoning Board of Review for a Special Use Permit to construct an approximately 7,900 square foot building and to demolish smaller buildings on the property, for the purpose of moving a major portion of their operations indoors. In a Zoning Certificate issued by zoning official, Mr. Medeiros stated that to the best of his knowledge, the property was in compliance with all applicable provisions and conditions of the zoning ordinance. Accordingly, the Board unanimously granted the petition with several conditions placed on the permit addressing the design of the building, signage, landscaping and lighting. Again, it is worth noting that none of the conditions placed on the property in association with the Permit addressed noise levels.

EXHIBIT B

BILL'S SALES FIREWOOD

REMEDIATION EFFORTS & NOISE LEVELS

Despite growing its business over the past 40 years, Bill's Sales has consistently reduced its noise output. In years past, both prior to and after the passing of the Noise Ordinance, Bill's Sales utilized chain saws to cut its firewood. Pursuant to OSHA, chain saws operate up to 125 dBA.¹ At present the business utilizes modern equipment, rather than chain saws, and moved said equipment indoors in 2010, drastically reducing its sound output.

In addition, over the past year, Bill's Sales has taken numerous additional measures to decrease its sound output, at considerable expense. They are as follows:

1. It discontinued the use of a large Green Spinner/Loader and moved the machine to the other side of the lot to be as far from the abutting residential property as possible.
2. Bill's Sales also completely removed its loading dock for the kiln dried firewood. This loading dock was critical to the loading of firewood bins, and as a result the business now loads them from the ground with added difficulty.
3. Bill's Sales also redesigned its skid steer so that the kiln dried bins will not rattle while being moved around the property. Specifically, they installed a hydraulic arm that grabs the baskets firmly, thereby eliminating much of the noise.
4. They installed a 10 foot fence and affixed it with Acoustifence, a noise barrier material, to the exterior catwalk to help reduce the sounds of logs being moved onto the trough and into the building.
5. Bill's Sales has also constructed a large 14 foot tall cement wall along the northerly property line abutting the residential property, composed of 2'x 2'x 8' blocks. They also positioned a trailer along the property line.
6. They added a hood to the exhaust fan for the kiln facing away from the residential property and added an electronic dimmer switch to slow the fan's speed to decrease its sound output.

As a result of these concerted, good-faith efforts, Bill's Sales has drastically reduced the sound output of its business. On January 7, 8 and 9, at five locations along the northerly boundary line of Bill's Sales property sound measurements were performed. (Copies of said readings have been previously provided to the Counsel, and are available again upon request.).

¹ <https://www.osha.gov/archive/oshinfo/priorities/noise.html>

Here are the averages of those measurements:

Location 1: Property Line with East Main Road

77.44

Location 2: Property Line with Lot 29A

63.58

Location 3: Property Line with Lot 29A

61.28

Location 3A: Property Line with Waring Property/ Lot 52

54.03

Location 4: Property Line with Waring Property/Lot 52

66.66

Location 5: Property Line with Lot 51

59.26

Location 6: Along Northerly Wall of Bill's Sales' building adjacent to locations 3A and 4

61.58

As can be seen from these readings, the average dBA along the Bill's Sales/Waring property line was 60.35. Further, the average reading along said property line during non-business hours was 45.88 dBA (discrediting Mr. Waring's assertion that the kiln fan produces a constant sound in violation of the Noise Ordinance).

Particularly telling are the readings from Saturday, January 9, 2016, taken while the business was loading baskets of firewood. From 9:26-9:31 AM, baskets were loaded and readings were taken at locations 3 and 3A. Location 3, east of the Bill's Sales/Waring property line (closer to East Main Road), and without the benefit of the cement wall, registered an average reading of 77.9 dBA. Location 3A, along the Bill's Sales/Waring property line, and with the benefit of said concrete wall registered an average reading of 62.9 dBA.

Accordingly, it is readily apparent that the noise reduction measures taken by Bill's Sales have been highly effective at reducing the sound being transmitted over the residential property line. Nevertheless, the reading at 9:31 AM at Location 3A was 69.5 dBA, which would constitute a violation of the Noise Ordinance.

EXHIBIT C

Portsmouth Residents Petition

	Name	Address
1	Raymond A. Zart	1378 E. MAIN RD.
2	Danell M. Dube	700 Park Ave - Apt 7
3	Greg Matulis	726 Park Ave Apt 7
4	Scott Shearman	177 Windward Dr.
5	Melissa J Benete	39 Wapping Rd.
6	Kathy Abbe	97 King Charles Dr.
7	Paul J. J.	1960 EAST MAIN RD
8	Josh Butterworth	27 Silus Ave
9	Vincent Truven	697 Bristol Ferry Road
10	John Truven	697 Bristol Ferry Road
11	Paul M. Cotta	895 Milla Road Portsmouth
12	Alcudany	Kristen Verdeaux 120 Foxboro Ave
13	Cliff Neilborn	87 ALAN AVE Ports.
14	Russell King	52 Broad Camp
15	Debra Peterson	114 PARK AVE Ports
16	Bill BAKER	30 WARNER AVE.
17	JEFF PITT	48 GILDAS LN.
18	Kirk GREFFEN	15 APPROXHEAD CIRCLE
19	Kyle Lambert	1579 East Main Road
20	Christina Lantz	1378 E. Main Rd.
21	Jane Ferris	7 Jeffers St
22	Joe Raposa	30 Water St. (308) 769-171
23	Lori SILVA	47 Ethel Dr. Ports. RI
24	George Ledue	35 McCarrie Lane
25	Mike Norton	116 Nolesman Dr Portsmouth 1401-781-2711

	Name	Address
26	Michael Hartnett	44 D Gles Meale Dr. Ports
27	Janie Layman	94 Long Meadow Rd Ports
28	Phien A Rego	75 Ticear Lane
29	Wayne Oliveira	169 Mill Lane
30	Georgine L. Miller	13 Fox Run Rd.
31	Tom Gilchrist	44 Selina LA.
32	Carol Selira	55 EVERGREEN DRIVE PARTS,
33		10 Johnnycake Ln Portsmouth
34	Joe McCarty	8 Flange Ave
35	JERRY CULVER	164 HERITAGE DR. PORTSMOUTH
36	Sidney Reposo	40 Point Rd Portsmouth
37	Veera Kewaty	308 Jepson Lane Portsmouth
38	Edward McEllan	154 Bayview Ave Portsmouth
39	Alice Lantry	1322 E. MAIN RD PORTSMOUTH
40	Cathy Pully	152 E Main Rd ports RI
41	Thomas Ohlgren	57ighton Ave Portsmouth RI
42	Scott Roman	48 Peaceful way Portsmouth RI
43	Bruce Van Alstyne	11 Lock Beacon 02871
44	Dances Johnson	23 Gildas lane Portsmouth, RI
45	William Catto	24 1/2 Carrie lane Rd
46	A.S. O'Sullivan	70 WREWS, Littleton RI
47	Jayne Amagh	40 Hargraves Dr. Portsmouth
48	Jane Wilson	21 3RD ST New
49		44 Hope Ave Portsmouth
50	Leah O'Leary	44 Hope Ave Portsmouth

name

Address

- 51 Deb Tavares
- 52 Brian Kane
- 53 James M Campbell
- 54 Robert Kiely
- 55 Myrna Blundal
- 56 Bonnett
- 57 Rich Garland
- 58 Kaural Saarey
- 59 Carl Orr
- 60 Megan Lee
- 61 Chip Prescott
- 62 Ed Ferreira
- 63 Jennifer Porscare
- 64 HARRY LEONARD
- 65 MINDA LEONARD
- 66 Patric Fenton
- 67 Scott Sherman
- 68 Jim Mulligan
- 69 Bonnie Hole
- 70 Kari Rezendes
- 71 Ken Ren
- 72 Lindsey Rezende
- 73 Chelsea Rezende
- 74 Mary D FERREIRA
- 75 Edward G Ferreira

- 64 Sherwood Terr
- 123 Viking Drive
- 127 Soares Drive
- 110 Prospect Farm Road
- 218 Carroll Ave N.Yt.
- 72 Kane Ave - in town
- 58 Albert St Portsmouth
- 40 Anselmo Dr Ports
- 116 Adams Dr Ports
- 39 Pine Tree Rd Ports
- 63 Crestview DR
- 447 Bristol Ferry Rd.
- 62 King Phillip St Ports
- 80 GATTIN TERR rd Ports
- 83 GATTIN TERR rd Ports.
- 18 John Kesson Ln Middleport
- 31 West Main Rd Portsmouth
- 44 PETAUNAWMET LN PORTSMOUTH
- 107 Meadowlark Ln Ports.
- 49 Anselmo Dr Portsmouth
- 49 Anselmo Dr. Ports
- 49 Anselmo Dr Ports
- 49 Anselmo Dr Ports
- 72 KERR Rd Ports
- 72 Ken Rd Ports

<u>Name</u>	<u>Address</u>
76 Joseph Mathias	180 East Main RD Ports RI
77 Ralph E Peckham	101 Pleasant St Ports RI
78 Edward T Lopez Jr	43 Hamilton Drive, Ports RI
79 DAVID Raymond	1597 WEST MAIN Rd Ports RI
80 Marianne Raymond	1597 West Main Rd Ports RI
81 William Waller	448 Eight Rod Way Tiverton RI
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Petition of Residents from Neighboring
Communities

	<u>Name</u>	<u>Address</u>
1	Laura Ymbolcan	28 Brackett Ave Tiverton
2	Debby Frost	73 Oak St, Middletown
3	Sharon Amaral	31 Freeborn St Newport
4	Joe Chaves, Jr.	31 Freeborn St. Newport
5	Deb Matok	5 Greenbrier Dr. Barnington
6		240 U Fare ave. warwick RI.
7		97 Ki.
8	Kathy Alford	74 Seymour St, Warren, RI
9	Adam Thayer	301 Bulgarmash Tiverton RI
10	Christopher Samulic	49 Richard Dr. Tiv.
11	Michael Flynn	90 Fayal Lane Middletown, RI
12	Ronald Middleton, Jr.	
13	Thomas O'Leary	446 Bellevue Ave NPT RI
14	Arthur T. Mikolcan	28 Brackett Ave Tiverton
15	Eleanor Baker	444 Madison Ave. Barrington RI
16	Mark Casey	5 Sunset View Dr Tiverton
17	John Bishara	77 Abalony Rd. NK
18	Joel Casar	240 Montgomeryst. Fall Riv, RI
19	Richard J. Mowley	133 Ferry Rd, Bristol RI
20	Ryan Moore	188 Briarwood Ave Tiverton, RI
21		5 SALISBURY ST. JAMESON, RI
22	Pauline	95 John Street
23	James Ford	72 Beagle Dr Middletown RI
24		4 King Philip Way Freetown MA
25	Jim Dabon	565 Tuckerman Ave Middletown

	<u>name</u>	<u>Address</u>
26	Alex Shapiro	561 West Main Rd. Littleton
27	Eriq Ferschte	404 Fisher RD North Portsmouth N.H.
28	Chad Jones	12 Hill St. Lakeville, MA 02347
29	John J McDonald	21 J.H. Dwyer Drive Middle
30	Gill	58 Greylock Rd Bristol, RI 02804
31	Edward Sma	2 Roseart Ter Middletown
32	[Signature]	7 Sycamore St. Newport, RI
33	Ken B Jones (KEITH B Jones)	59 MOUNTAIN AVE RIVERSIDE, RI 02915
34	James C Lipe	86 Hobson Ave Tiverton
35	Dave Castro	48 Dewey Ave Tiverton
36	John O'Keefe	35 Pelham St Newport, RI
37	Josh Mose	877 Progress Parkway - AT
38	NONI GIFFORDS	14 SHERWOOD RD MIDDLETOWN RI
39	Bob DeLoit	26 Hopkin Rd. Newport RI
40	Tom Doby	243 Albion Ave Middletown RI
41	[Signature]	Danvers St Newport
42	JAKE CATHERS	218 Meadow Ln Middletown
43	Cheryl Cooper	15 TYLER POINT RD. BARRINGTON
44	BERT SWIFT	SAME AS ABOVE
45	Chris Kane	174 Pasture Farm Pr. Middle
46	Pam Bertel	4 Isaac Drive Middletown
47	Paula Borek	4 USRB DR. MIDDLETOWN
48	Matthew Sacrey	11.11 ST APT 5104 Tiverton, RI
49	DAVID SPETS	27 CIRCLED R MIDDLETOWN RI
50	Stephen Land	27 William St Newport

p53
64

Name

Address

51	MICHAEL BOWERS	11 KAY STREET, NEWPORT RI
52	Heather Ferro	25 Teed Ave, Barrington RI
53	David Smith	26 High St. Midd. RI
54	James Colcoran	4 Ellery Rd Npt
55	Matias Wawro	4 Ellery Rd Newport, RI
56	[Signature]	19 LIVINGSTON PLACE
57	Brian Fida	6608 Indian Ave Middleboro, RI
58	Holly Borgveta	30 Stoney Hollow Rd.
59	Eric McNamee	222 Brookhaven Rd.
60	Leslie Nogueira	110 Storage Ave
61	Richard Mc Donald	12 Poplar Dr.
62	[Signature]	100 RIVERSIDE DR TIVERTON
63	THOMAS D Downes	
64	JOHN CRIMMINS	108 RIVERVIEW AVE MIDDOR
65	Alayne White	11 Constitution St. Bristol RI
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EXHIBIT D

Portsmouth Water and Fire District

1944 East Main Road
P.O. Box 99
Portsmouth, Rhode Island 02871-0099

(401) 683-2090
Fax (401) 682-1550
E-mail: info@portsmouthwater.org

October 7, 2015

Keith Hamilton, President
Portsmouth Town Council
2200 East Main Road
Portsmouth, RI 02871

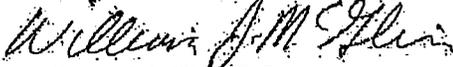
Re: Bill's Sales; Map 41, Lot 48 -- Sound Variance

Dear President Hamilton:

The Portsmouth Water and Fire District's property located at 1944 East Main Road, Map 41, Lot 29B, houses the District's main office building and two water storage tanks. This District property abuts the entire south property line of the Bill's Sales property.

The Portsmouth Water and Fire District does not object to Bill's Sales request to the council for a commercial sound variance for sound beyond its property line of 75 decibels from 7:00am and 6:00pm during their business days.

Sincerely,
PORTSMOUTH WATER AND FIRE DISTRICT



William J. McGlinn, P. E.
General Manager and Chief Engineer

cc: Bob Lantz

RECEIVED
PORTSMOUTH, R.I.
2015 OCT -7 PM 2:38
JOANNE M. HOWER
TOWN CLERK

July 16, 2016

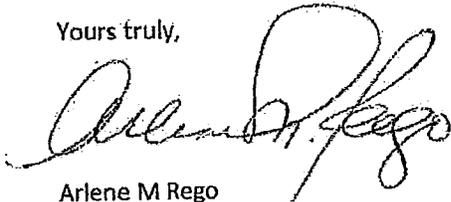
To Whom It May Concern:

I am writing this letter on behalf of Robert Lantz owner of Bill's Sales & Service since 1993.

I am located directly across the street from Bill's Sales at Ferreira's Package Store. Our relationship as neighbors has always been very agreeable. We have helped one another's business by giving referral's back and forth. We have always accommodated one another with needed situations that apply to business.

I think Mr. Lantz's business is definitely a plus for the town of Portsmouth. The appearance of the business is neat and clean. It is closed at a reasonable hour. Mr. Lantz has an excellent reputation as a businessman. It doesn't seem fair that the town is trying to cut into this man's livelihood with such exorbitant fines. A cap figure would seem like a reasonable solution. We would hate to lose such a good business in Portsmouth if this matter cannot be resolved.

Yours truly,



Arlene M Rego

Ferreira's Package Store

An Owner & Manager for 23 yrs

*Michael & Lisa Alves
47 Pine Tree Road
Portsmouth, Rhode Island 02871*

To whom it may concern:

I would like to take a minute and express our view on Bill Sales. I have lived in my home since 1978. I about the Portsmouth Water Department for the past 38 years. Bill Sales has been in business since I was very young, run by Bob Lantz's uncle.

My husband and I still reside on Pine Tree Road and we are both business owners in the town of Portsmouth and it's disgusting to think this family business has to spend hard earned money to keep a "Family business" opened.

We have no complaints of noise or disturbance of any kind in the past or today. I would like to say being so close to a busy business, Bill Sales has been nothing but a courteous and kind neighbor. The log truck passes my house daily with no issues.

Our hope is that the issue will resolve itself. Portsmouth is a great community to build a family business. The Lantz family has been an asset to our community for many years.

Thank You!
Michael & Lisa Alves

Ray's Auto Clinic, Inc

1970 E. Main Rd.

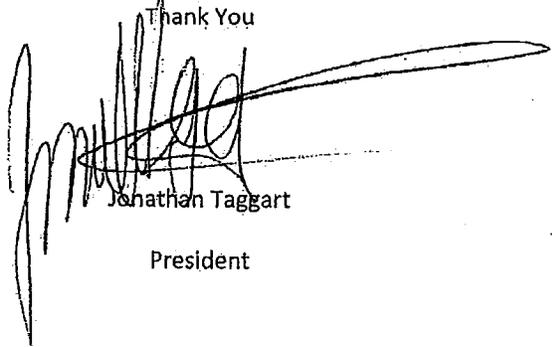
Portsmouth, RI 02871

(401) 683-5318

To Whom It May Concern:

We at Ray's Auto Clinic, Inc. 1970 E. Main Rd. are located right next to Bill's Sales. Bob Lantz has always done whatever he could do to help us, as a good neighbor does. We have no problems with the noises that come from his side of the fence.

Thank You

A handwritten signature in black ink, appearing to read 'Jonathan Taggart', with a long horizontal flourish extending to the right.

Jonathan Taggart

President

RECEIVED
PORTSMOUTH, R.I.
2016 SEP 27 A 11: 22

OBJECTION SUMMARY

09/27/2016

SOUND VARIANCE REQUEST OF THE PORTSMOUTH NOISE ORDINANCE-Bill's Sales, Robert Lantz

JOANNE M. FLOWER
TOWN CLERK

FROM : MR. and MRS. WARING of 30 Crossing Ct., Portsmouth, RI 02871

We object to the sound variance request by Bill's Sales, Robert Lantz for these reasons;

#1) We believe a permanent noise variance goes against the grain of the intent of the noise ordinance which is to protect it's citizens-not force long term noise on any residents. For example a company should be able to ask for a variance(for a specific purpose) if it was moving a large piece of machinery that would create excessive noise in the process. But allowing a company to obtain a variance for the operation of an existing business is way too broad and gives the company complete control to operate it's business in any manner as they wish(therefore eliminating the need for certain municipal laws that govern businesses). We believe this would compromise residents rights in the community afforded under the noise ordinance. This is not a good message to send for other businesses to follow suit.

The town should be committed to strengthen the statements in the noise ordinance -"to promote an environment free from excessive noise" and "each person has a right to an evironment reasonably free from noise which jeopardizes heath or welfare or unnecessarily degrades the quality of life" .

Some of these noises are totally unnecessary (high-pitch screeching, dropping of wood near the property line -instead of elsewhere and excessive banging. THIS UNNECESSARY NOISE HAS NOTHING TO DO WITH A COMPANY HARDSHIP BECAUSE THIS NOISE CAN BE CONTROLLED!

#2) This company has been fully aware of our concerns with these excessive banging noises , fumes and odors for 6 calender years. Yet this business continues to date making unreasonable, unnecessary, annoying and disturbing noises that WE DO NOT WANT TO HEAR inside our home or to deny enjoyment of our property. We are starting to feel the ill effects. Now that's not protecting public health! The picker which is a mobile construction crane that has a height of a 2nd story feeding logs into a machine and the company's garbage dumpster also included in these excessive noises. (METAL SOUNDING BANGING NOISE TO EMPTY A GARBAGE DUMPSTER 14 TIMES IN A ROW ON 6/2/16 NEED TO BE CORRECTED-DVD of this is on file with town - including town council)

#3) Based on statements in previous police reports this company indicated that business would keep noise down or stop particular noise only for that same noise to resurface. Also with the company's control of recent noise after some form of mitigation, the excessive noise would again resurface and continue to date.

#4) Please keep in mind that this company violated the noise ordinance numerous times even after decibel readings where recorded *but not cited* including but not limited to 10/9/2015 and 10/20/2015 which were 8 infractions over a 1/2 hour period each day and never was cited (copy

attached). Also keep in that we believe this company is in violation of the special use permit of 2010 .(attached is the petition dated 4/15/2010 Note: special use articles applied for; ART V , E (14.3); and ART VI, C (1) which neither of these articles expanded the non conforming use of this company as detailed in a (attached) decision letter dated 2/10/2016 from zoning office. We also believe there are noise provisions in both noise and zoning ordinances and are separate from each other). Looking at the noise ordinance definition for noise disturbance a little closer as defined in ordinance ,it appears that there are 3 provisions- a decibel/dBA provision, a unnecessary/unreasonable loud noise provision, and any noise to be detrimental to life, health & welfare provision with the last two provisions don't believe is tied to a decibel meter. (RI also has a state law for unreasonable, excessive and annoying noise)

Statements made by the company to the town in the special use permit-GROUNDS FOR SPECIAL USE concern's us. "The activities conducted on site will not change", "The proposal will not cause a nuisance or hazard", "Any objectionable feature such as noise, smoke or odor is controlled" (if this is true then why is company applying for a variance) The noise , vapors, and odors from the kiln we believe to be an industrial activity as well as the process used to extract components/moisture from this raw wood which creates unpleasant odors from certain types of wood.

#5) We strongly believe that this company should follow through on conducting business as agreed to in special use of 2010 instead of asking the town to force noise on the company's northern side which is our southern residential side to create noise in an area that is just too narrow and close to residential property thereby denying the right that each person has a right to an environment reasonably free from noise which jeopardizes health or welfare or unnecessarily degrades the quality of life. Hearing these unnecessary and disturbing noises are extremely stressful and is an intrusion of quality of life.

THERE IS A REASON WHY THIS COMPANY HAS AN EXISTING 95 VARIANCE WITH NO MACHINERY ON SUNDAY'S AND HOLIDAY'S AND HOURS LIMITED TO 8AM -7PM

THERE IS A REASON WHY THE FIREWOOD PROCESSOR COULD NOT BE OPERATED BEFORE 9AM ON SATURDAY MORNINGS 5/1 - 9/1 AND NOT BEFORE 8AM ON SATURDAY FOR THE REMAINDER OF YEAR IN (2008 ZONING ADMENDMENT) . **TO PROTECT RESIDENTS**

Efforts to mitigate the problem may not have been done the most economic - including the 14' wall (that's 14' in a small section with the rest grades down to existing 8' fence) The most consistent concerns of dropping of wood, high pitch screeching noise and excessive banging remain along with fumes and odors. **THIS CURRENT REQUEST WOULD CONFLICT THESE HOURS**

Portsmouth Zoning Board of Review
2200 East Main Road, P.O. Box 155
Portsmouth, RI 02871

PETITION

Hearing Date: 4/15/10

Continuance Date: _____

Applicant: Robert A. Lantz
Address: 1960 East Main Rd
Portsmouth, RI 02871

Owner: same
Address: _____

Subject Premises:
Address: 1960 East Main Rd.
Portsmouth, RI 02871

Tax Assessor's Map 41 Lot: 48
Zoning District: C-1

Present Use of Premises: retail sales with manufacturing and assembly
Proposed Use of premises: retail sales with manufacturing and assembly

Zoning Ordinance Section: _____ Special Use Permit: ART. V, E (14.3); ART. VI, C(1)
Dimensional Variance: _____

Relief Requested: Dimensional Variance _____ Special Use X Use Variance _____

Lot Size: 43,958 sq.ft. Lot Coverage 9520 sq. ft. Lot Coverage 21.6%
Lot Coverage Variance Requested: 0 %

Grounds for Variance: _____

Grounds for Special Use Permit: see attached

Robert A. Lantz
by: [Signature]
Applicant: _____
Vernon L. Gorton, Esq.

Robert A. Lantz
by: [Signature]
Owner: _____
Vernon L. Gorton, Esq.

Grounds for Special Use Permit

Applicant operates an existing retail sales business with manufacturing, assembly and outdoor display of merchandise on the premises. The retail sales are conducted in a small, 400 square foot, wooden building and a separate building in the rear serves as the site of the manufacturing and assembly activities and firewood preparation and sales, with some operations being conducted outside. Applicant seeks to modernize the operation by demolishing the two existing buildings and shed and replacing same with 7900 + square foot building to house the sales, manufacturing and assembly activities. The new building will provide a more attractive streetscape and a safer, more efficient facility which allow more activities to be performed indoors.

The property is located in a commercial district on busy main thoroughfare. It is bounded on the north by an existing auto repair business and on the south by the Portsmouth Water & Fire District Administrative offices and water tank. Across East Main Road is a commercial strip consisting of a small restaurant, commercial offices, liquor store, retail establishment and auto sales and repair business. An eight (8) foot high stockade fence separates the business from residential neighbors to the north, lot 52 and applicant owns lot 51. The activities conducted on the site will not change. The development will not have a detrimental effect on the surrounding area and will be compatible with surrounding land uses. The proposal will not cause a nuisance or hazard, safe vehicular access and parking is provided and provisions are made for the solar rights of abutters. Any objectionable feature such as noise, smoke or odor is controlled and the proposal is in conformance with the Comprehensive Community Plan and the purpose and intent of the zoning ordinance. The health, safety and welfare of the community are adequately protected.

09/02/2015

Responded to Waring's residence at 1040 hrs. and began sound meter readings after checking the meter for proper calibration. I stood in the southeast corner of Waring's property, approximately 10 feet from the stockade fence that divides the properties. The ambient sound level was approximately 53 decibels. The allowable decibel limit here is 65 decibels. All of the readings reported below have been truncated by removing any tenths of decibels. For example, 70.5 decibels appears as 70 decibels.

Weather information source: Wunderground.com

10:53 AM 78.1 °F - 69.1 °F 74% 30.01 in 8.0 mi South 8.1 mph - N/A Clear

10:42	chain sound/conveyor	60	decibels
10:42	logs dropping	62	decibels
10:43	chain sound/conveyor	62	decibels
10:43	diesel truck	62	decibels
10:44	logs dropping	76	decibels
10:44	metal bang	77	decibels
10:45	logs in bin	63	decibels
10:45	"tinny" banging	78	decibels
10:45	chain sound/conveyor	61	decibels
10:46	metal bang	74	decibels
10:49	logs in bin	62	decibels
10:50	diesel truck	63	decibels
10:50	metal bang	70	decibels

Total of 5 sound events in excess of 65 decibels on this day.

10/09/2015

Responded to Waring's residence at 1045 hrs. and began sound meter readings after checking the meter for proper calibration. These readings are taken after modifications have been made to the Bill's Sales property to mitigate the sound levels. I stood in the southeast corner of Waring's property, approximately 10 feet from the stockade fence that divides the properties. The ambient sound level was approximately 51-54 decibels. The allowable decibel limit here is 65 decibels. All of the readings reported below have been truncated by removing any tenths of decibels. For example, 70.5 decibels appears as 70 decibels.

Weather information source: Wunderground.com

10:53 AM 66.0 °F 60.1 °F 81% 29.96 in 10.0 mi South 13.8 mph - N/A Overcast

11:27 AM 66.0 °F 60.1 °F 81% 29.95 in 10.0 mi South 13.8 mph - N/A Overcast

10:48	chain sound/conveyor	54	decibels
10:48	logs dropping	60	decibels

Report 10F3

10:52	chain sound/conveyor	53	decibels
10:52	chain sound/conveyor	66	decibels
10:56	chain sound/conveyor	53	decibels
10:56	logs dropping	59	decibels
10:56	chain sound/conveyor	54	decibels
10:56	logs dropping	59	decibels
10:57	chain sound/conveyor	54	decibels
10:57	logs dropping	62	decibels
11:00	chain sound/conveyor	54	decibels
11:00	logs dropping	56	decibels
11:02	engine idling at high rpm	60	decibels
11:03	metal bang	62	decibels
11:04	metal bang	62	decibels
11:04	metal bang	63	decibels
11:05	metal bang	61	decibels
11:05	metal bang	62	decibels
11:05	logs dropping	64	decibels
11:05	metal bang	63	decibels
11:06	metal bang	63	decibels
11:06	metal bang	61	decibels
11:07	logs dropping	63	decibels
11:07	metal bang	64	decibels
11:08	metal bang	63	decibels
11:08	logs dropping	67	decibels
11:09	metal bang	64	decibels
11:10	metal bang	63	decibels
11:10	metal bang	62	decibels
11:10	metal bang	60	decibels
11:11	metal bang	63	decibels
11:11	logs dropping	63	decibels
11:12	metal bang	64	decibels
11:14	chain sound/conveyor	55	decibels
11:16	chain sound/conveyor	55	decibels
11:16	logs dropping	60	decibels

Total of 2 sound events in excess of 65 decibels on this day.

Contacted Waring at 1230 hrs. and advised him that I could take additional sound readings on this day at approximately 1300 hrs. He stated that the Bills Sales property was quiet at this time, and tomorrow late in the morning would be a better time to take sound readings.

report 2 of 3

10/20/2015

Responded to Waring's residence at 1100 hrs. and began sound meter readings after checking the meter for proper calibration. These readings are taken after modifications have been made to the Bill's Sales property to mitigate the sound levels. I stood in the southeast corner of Waring's property, approximately 10 feet from the stockade fence that divides the properties. The ambient sound level was approximately 51-52 decibels. The allowable decibel limit here is 65 decibels. All of the readings reported below have been truncated by removing any tenths of decibels. For example, 70.5 decibels appears as 70 decibels.

Weather information source: Wunderground.com

10:53 AM 61.0 °F 43.0 °F 52% 30.17 in 10.0 mi Variable 6.9 mph - N/A Clear

11:53 AM 61.0 °F 43.0 °F 52% 30.17 in - SW 9.2 mph - N/A Partly Cloudy

11:03	chain sound/conveyor	54	decibels
11:06	chain sound/conveyor	54	decibels
11:06	metal bang	62	decibels
11:06	metal bang	61	decibels
11:09	metal bang	60	decibels
11:11	logs (inside)	52	decibels
11:11	metal bang	58	decibels
11:11	chain sound/conveyor	55	decibels
11:15	chain sound/conveyor	53	decibels
11:17	engine idling at high rpm *	60	decibels

* This is the "picker" used to move large logs. It continued to run until I ended my reading at 11:30 am. The following readings are listed as general noise which is the result of the "picker" moving logs from one location to another. All of the following readings, as with most of the readings taken in the past, are the result of sounds less than one second in duration.

11:20	general noise	64	decibels
11:21	general noise	62	decibels
11:21	general noise	63	decibels
11:22	general noise	61	decibels
11:22	general noise	62	decibels
11:23	general noise	63	decibels
11:24	general noise	72	decibels
11:24	general noise	67	decibels
11:24	general noise	68	decibels
11:24	general noise	65	decibels
11:26	general noise	66	decibels
11:27	general noise	70	decibels
11:29	general noise	63	decibels
11:29	general noise	74	decibels

Total of 6 sound events in excess of 65 decibels on this day.

FEAR 3 of 3

ZONING

ARTICLE I. GENERAL PURPOSES

Section A. GENERAL APPLICATION OF THIS ORDINANCE

No building shall be erected or used, and no land shall be used, or lot created or divided unless in conformity with the regulations of this Ordinance or other Ordinances of the Town of Portsmouth. All other buildings, and all other uses of land or of buildings, are hereby expressly prohibited, except those already lawfully existing which by the provisions of this Ordinance, become lawfully non-conforming.

Section B. PURPOSES

This ordinance is designed to address the following purposes. The Town of Portsmouth recognizes these purposes, each with equal priority and numbered for reference purposes only:

1. Promote the public health, safety, and general welfare.
2. Provide for a range of uses and intensities of use appropriate to the character of the town, reflecting current and expected future needs, with reasonable consideration of the character of the districts and their peculiar suitability for particular uses.
3. Provide for orderly growth and development which recognizes:
 - a) The goals and patterns of land use contained in the comprehensive plan of Portsmouth;
 - b) The natural characteristics of the land, including its suitability for use based on soil characteristics, topography, and susceptibility to surface or groundwater pollution;
 - c) The values and dynamic nature of coastal and freshwater ponds, the shoreline, and freshwater and coastal wetlands;
 - d) The values of unique or valuable natural resources and features;
 - e) The availability and capacity of existing and planned public and/or private services and facilities, as well as the Town's ability to provide them;
 - f) The need to shape and balance urban and rural development, to prevent overcrowding of land; to avoid undue concentration of population; and
 - g) The conservation of the value of buildings.
4. Provide for the control, protection, and/or abatement of air, water, groundwater, and noise pollution, and soil erosion and sedimentation;
5. Provide for the protection of the natural, historic, cultural, and scenic character of Portsmouth and areas herein;
6. Provide for the preservation and promotion of agricultural production, forest, silvaculture, aquaculture, timber resources, and open space;
7. Provide for and protect the public investment in transportation, water, stormwater management systems, sewage treatment and disposal, solid waste treatment and disposal, schools, roads, recreation, public facilities, open space, and other public requirements;

10F4

- CONINING ZONING
- c) Would alter the character of the neighborhood, or adversely affect neighboring property;
 - d) Would create lot coverage and setbacks less than the average lot coverage and setbacks of adjacent properties;
 - e) Would impose a substantial detriment to the public or to immediate neighbors.

Section B. NONCONFORMING DEVELOPMENT

1. A non-conforming use of land lawfully existing at the time of the passage of this Ordinance may be continued provided that such non-conforming use of land shall not in any way be expanded or enlarged, except as provided in this Section.
2. A building or structure which is devoted to a non-conforming use existing at the time of the passage of this Ordinance that is lawfully destroyed or involuntarily destroyed, such as by fire or natural catastrophe, shall be completely repaired or completely reconstructed within two (2) years, provided it is devoted to the same use as was made of it before such partial or total destruction, in order to maintain legal non-conforming status.
3. When a non-conforming use has been abandoned for more than one (1) year, the building or structure or land that was devoted to such non-conforming use shall not thereafter be returned to such non-conforming use. Abandonment of a nonconforming use shall consist of some overt act, or failure to act, which would lead one to believe that the owner of the nonconforming use neither claims nor retains any interest in continuing the nonconforming use unless the owner can demonstrate an intent not to abandon the use. An involuntary interruption of nonconforming use, such as by fire and natural catastrophe, does not establish the intent to abandon the nonconforming use. However, if any nonconforming use is halted for a period of one (1) year, the owner of the nonconforming use will be presumed to have abandoned the nonconforming use, unless that presumption is rebutted by the presentation of sufficient evidence of intent not to abandon the use.
4. A building or structure that exists as a non-conforming use at the time of passage of this Ordinance, may continue to function as a non-conforming use of the same type or any other use that is permitted by this Ordinance, or other such use may be added to the existing use within the confines of the existing building, with the approval of the Zoning Board of Review.

Section C. ALTERATION OF NONCONFORMING DEVELOPMENT

1. With Board of Review approval as a special use permit, a building or structure which is devoted to a non-conforming use lawfully existing at the time of the passage of this Ordinance may be added to or enlarged provided that the front, side and rear yards, lot coverage, height of such enlarged building or structure and parking requirements meet the zoning requirements of the district in which is located.
2. No lot area shall be so reduced or diminished that the yards or other open spaces or total lot area shall be smaller than prescribed by this

Zoning

14. New retail business, office or consumer service development of over 5,000 gross square feet of floor area or over 20,000 square feet of total land area. (See Article VII. Section G.)

N N N N N S S S S S

14.1. Addition to new retail business, office or consumer service complex, as in 14, provided the additions increase the size of the buildings by no more than 30% over the size of the buildings as constructed under the first application approved under Section 14. Such additions need not be constructed at the same time.⁶

N N N N N Y Y Y Y S

E. RETAIL BUSINESS AND CONSUMER SERVICE ESTABLISHMENTS USES (cont.)

R10 R20 R30 R40 R60 C-1 I-L I-H WD TC

14.2 Addition to existing retail business, office or consumer service complex provided the addition increases the existing buildings by no more than 30% over the size of the buildings as existing at the time of the enactment of this amendment. Such additions need not be constructed at the same time.

N N N N N Y Y Y Y S

14.3 Addition to new or existing retail business, office or consumer service complex of more than 30% over the size of the buildings as existing at the time of the enactment of this amendment, or a Substantial Improvement, as defined in Article II. Such additions need not be constructed at the same time.

N N N N N S S Y Y S

14.4 New or expanded retail business, office or consumer service development totaling over 25,000 square feet building gross floor area of the first floor in one or more buildings as approved by the Planning Board as a Planned Retail/Service Development (See Article VIII. Section D).⁹

N N N N N Y Y Y Y Y

14.5 New or expanded single use retail business of over 45,000 square feet building foundation area in one building abutting the Traffic Sensitive District.⁹

N N N N N N N N N N

30F4

13. Mass Storage of fuel in tanks exceeding 50,000 gallons. ¹⁵	N	N	N	N	N	N	N	N	N	N
14. Mass Storage of fuel in tanks not exceeding 50,000 gallons. ¹⁶	N	N	N	N	N	N	S	S	N	N

H. OTHER PRINCIPLE USES

	<u>R10</u>	<u>R20</u>	<u>R30</u>	<u>R40</u>	<u>R60</u>	<u>C-1</u>	<u>I-L</u>	<u>I-H</u>	<u>WD</u>	<u>TC</u>
1. Any use that is hazardous, offensive or noxious by reason of potential of fire, noise or vibration, dust, gas, fumes, odor, smoke, cinders, flashing or excessively bright light, refuse matter or electromagnetic radiation.	N	N	N	N	N	N	N	N	N	N
2. Open lot storage, including unused vehicles not held for sale.	N	N	N	N	N	N	N	N	N	N
3. Sale of junk or salvage materials.	N	N	N	N	N	N	N	N	N	N
4. Any use hazardous to health because of danger of flooding, inadequacy of drainage or inaccessibility to fire fighting apparatus or other protective service or any use which creates excessive noise beyond the property line.	N	N	N	N	N	N	N	N	N	N

I. ACCESSORY USES

	<u>R10</u>	<u>R20</u>	<u>R30</u>	<u>R40</u>	<u>R60</u>	<u>C-1</u>	<u>I-L</u>	<u>I-H</u>	<u>WD</u>	<u>TC</u>
1. A private garage for residents of an existing dwelling on the same premises.	Y	Y	Y	Y	Y	Y	Y	Y	Y	S
2. More than one (1) commercial vehicle per lot in excess two (2) tons capacity.	N	N	N	N	N	Y	Y	Y	Y	S
3. A storage shed with a maximum of 120 sq. ft. area and no more than 12 ft. in height. Storage sheds of over 120 sq. ft. shall meet all dimensional requirements of the zoning use district in which it is located.	Y	Y	Y	Y	Y	Y	Y	Y	Y	S

I. ACCESSORY USES (cont.)

	<u>R10</u>	<u>R20</u>	<u>R30</u>	<u>R40</u>	<u>R60</u>	<u>C-1</u>	<u>I-L</u>	<u>I-H</u>	<u>WD</u>	<u>TC</u>
4. Private greenhouse, tennis court, or other similar building or structure for domestic use.	Y	Y	Y	Y	Y	Y	Y	Y	Y	S
5. Swimming pool enclosed by a six (6) foot fence and the pool area locked when not in use.	Y	Y	Y	Y	Y	Y	Y	Y	Y	S

40F4

Zoning

ARTICLE V - USE REGULATIONS

3. Bottling of beverages.	N	N	N	N	N	S	Y	Y	N	N
4. Plumbing, electrical or carpentry shop or other similar service or repair establishment.	N	N	N	N	N	S	Y	Y	Y	N
5. Place of manufacturing, assembly or packaging of goods, provided that all resulting cinders, dust, flashing, fumes, gases, odors, refuse matter, smoke and vapor be effectively confined to the premises or be disposed of in a manner that does not create a nuisance or hazard to safety or health, provided that food or animal waste processing is not less than fifty (50) feet from the property boundary ¹² .	N	N	N	N	N	N	S	Y	Y	N
6. Place of manufacturing, assembly or packaging of goods, provided that all resulting cinders, dust, flashing, fumes, gases, odors, refuse matter, smoke and vapor be effectively confined to the premises or be disposed of in a manner that does not create a nuisance or hazard to safety or health with no outside storage of goods or materials.	N	N	N	N	N	N	S	Y	Y	N
7. Wholesale business and storage in an enclosed and roofed structure.	N	N	N	N	N	S	S	Y	Y	N
8. Wholesale business, including outdoor storage.	N	N	N	N	N	N	S	S	S	N
9. Trucking terminals.	N	N	N	N	N	N	S	S	N	N
10. Extractive industries and earth removal. (See Ordinance No.107)	N	N	N	N	N	N	S	S	N	N
11. Planned Corporate Development as approved by the Planning Board. ¹³	N	N	N	N	N	N	Y	Y	Y	N
<u>G. INDUSTRIAL, WHOLESALE AND TRANSPORTATION USES</u> <u>(cont.)</u>	<u>R10</u>	<u>R20</u>	<u>R30</u>	<u>R40</u>	<u>R60</u>	<u>C-1</u>	<u>I-L</u>	<u>I-H</u>	<u>WD</u>	<u>TC</u>
12. Planned Industrial Development as approved by the Planning Board. ¹⁴	N	N	N	N	N	N	N	Y	N	N

Add'l ZONING

7/27/2016

Re: concerns

Email part #

From: tameynw <tameynw@aol.com>
To: rainer <rainer@portsmouthri.com>
Subject: Re: concerns
Date: Wed, Jul 27, 2016 7:08 pm

thank you for your response,

At the march 14 2016 hearing (please review recorded tape of meeting) I ALSO SAID AS LONG AS COMPANY STAYS TRUE TO FORM AND NOT DUMP AT FENCE COMPARED TO DUMPS IN FRONT (NOISE BY CHOICE) THE COMPANY STARTED BACK DUMPING IN THIS AREA (PLEASE REVIEW DVD GIVEN TO POLICE DEPT. AND CLIP GIVEN TO TOWN COUNCIL BEFORE THE 7/11/16 MEETING.

ALSO I WAS TALKING TO THE POLICE CHIEF TODAY 7/27/16 (AS A FOLLOW UP) ABOUT WHAT WAS SAID AT MEETING 11/25 WHEN IT WAS MENTIONED THAT THE OCTOBER CHARGE WAS GOING TO BE HELD IN ARRAIGNMENT FOR 6 MONTHS (REFERRING TO UPCOMING DEC. COUNCIL MEETING & NEXT MUNI COURT) (MY QUESTION WAS IF I WAS TOLD THIS THEN WHY DIDNT THIS HOLD FOR FUTURE ISSUES THAT DID HAPPEN OR INCLUDE IN THE 3RD MUNICIPAL COURT AS A NOISE ORDINANCE VIOLATION) I DID MENTION TO THE POLICE DEPT THAT I'M STILL HAVING ISSUES. BUT I DIDNT MAKE A COMPLAINT TODAY? I GAVE A REPORT IN JUNE. I DO HAVE TOTAL RESPECT TO WHAT THE POLICE CHIEF SAID AND I SAID I WOULD THINK AND I UNDERSTAND HIS COURSE OF ACTION. BUT I STILL THINK IF I WAS TOLD 6MOS IT SHOULD HOLD, ESPECIALLY WITH THESE ISSUES DATED BACK 4YRS BEING TOLD THAT THE DECIBEL READINGS WERE 75 AT ALL TIMES AFTER I KEPT REFERRING TO RESIDENTIAL LIMITS AND ABOUT WHAT SPECIAL USE PERMIT STATED AND WHAT TRANSPIRED AS WELL AS OTHER ZONING ISSUES (I ALSO HAVE THE 18 LETTERS PROVIDED TO TOWN FOR REVIEW)

THANK YOU - TARN WARING

—Original Message—

From: Richard A. Rainer <rainer@portsmouthri.com>
To: tameynw <tameynw@aol.com>
Cc: Cort Chappell <cort@chappellandchappell.com>; Kevin Gavin <kevingavinlaw@gmail.com>; Thomas Lee <TLee@portsmouthri.com>
Sent: Wed, Jul 27, 2016 3:43 pm
Subject: RE: concerns

Mr. Waring,

I received your email and your phone call.

I'll draw your attention to the timeline below. Your issues were heard by the Town Council and the minutes can be accessed via the links provided.

At the public hearing held March 14, 2016 you agreed there is *no reason now to complain that the activities and the noise resulting from Bill's Sales is a violation of the Noise Ordinance, that Bill's Sales has effectively corrected the problem.*

Public Hearing at TC Meeting December 14, 2015:

<http://www.portsmouthri.com/AgendaCenter/ViewFile/Minutes/12142015-593>

February 8 TC Meeting held February 10, 2016 due to inclement weather.

Public Hearing at TC Meeting February 10, 2016 rescheduled to TC Meeting March 14, 2016:

<http://www.portsmouthri.com/AgendaCenter/ViewFile/Minutes/02102016-609>

Public Hearing at TC Meeting March 14, 2016:

<http://www.portsmouthri.com/AgendaCenter/ViewFile/Minutes/03142016-613>

Excerpts from the March 14, 2016 public hearing:

Tarney Waring responded to President Hamilton that the noise level of the day to day operations has gone down with the new wall. The noise of the kiln fan is below the decibel levels but still goes throughout the night.

In response to Ms. Pedro, Mr. Waring stated that the Town should not amend the Noise Ordinance. As long as they stay true to form the noise has gone down.

In response to Mr. Robicheau asking Mr. Waring if he finds no reason now to complain that the activities and the noise resulting from Bill's Sales is a violation of the Noise Ordinance, that Bill's Sales has effectively corrected the problem, Mr. Waring answered, "right."

Mr. Waring stated that the business is certainly aware of past noise issues and consistent with past variances or special uses. There were conditions which should go into play, for example no machinery should be operational on holidays and Sundays a certain hour after the business day is done. Residents in the area need some peace.

President Hamilton stated that if we leave it the way it is and there are spikes we do not have enough police for monitoring that.

You called Chief Lee today with another noise complaint and did not accept his response and recommended course of action.

I've forwarded your email to Mr. Cort Chappell and the Town Solicitor, Mr. Kevin Gavin.

I hope they can provide you a more articulate response.

Sincerely,
Rich Rainer



Rich Rainer

Town Administrator
Portsmouth, Rhode Island
Office: (401) 683-3255
Mobile: (401) 787-1453

EMAIL part I

From: tarneynw@aol.com [<mailto:tarneynw@aol.com>]
Sent: Wednesday, July 27, 2016 2:43 PM
To: Richard A. Rainer <rrainer@portsmouthri.com>
Subject: concerns

Richard can you explain/or meet with me about issues I have

* after being told at meeting 11/25/16 that an October violation of town noise ordinance with bill sales was going to be presented at town meeting 12/14/16 and at next muni court as well as hold the charge in arraignment for 6mos (in case have future issues) if this was not to happen why was i told this

* Also if the town knows about zoning issues (also was mentioned 11/25/16 that Asst Town Solicitor knows of issues ,then why do i have to initiate a meeting and pay for something the town clearly know's about zoningwhy doesn't town initiate meeting with zoning per ART XVI because i also sent council letter as well about zoning concerns



Town of Portsmouth

INSPECTION DEPARTMENT

2200 East Main Road / Portsmouth, Rhode Island 02871

buildingofficial@portsmouthri.com

(401) 683-3611

Fax (401) 683-6804

Mr. Tarney Waring
30 Crossing Court
Portsmouth, RI 02871

February 10, 2016

Mr. Waring,

This letter is in response to your recent complaints regarding possible Zoning Violations at Bill's Sales at 1960 East Main Road (Plat 41 / Lot 48) in Portsmouth, RI. In your complaint you detailed issues of concern to you. It has been brought to my attention that these same concerns were previously addressed in a meeting between yourself, the Building Inspector and the previous Town Administrator (Mr. Klimm). A copy of your complaints is included.

They are:

- **NOISE VIOLATION** – This item is not part of the Zoning Ordinance. It is being addressed within the local judicial system and it is our understanding that a resolution will be presented by the Municipal Court Judge at the February 17, 2016 Portsmouth Municipal Court proceedings.
- **WHOLESALE OPERATIONS IN VIOLATION OF SPECIAL USE PERMIT** - I have addressed this issue with the owner of Bill's Sales and have been informed that the business is a Retail Operation that has, on some items, the availability of wholesale pricing as a convenience for their customers due to their capacity to create more than a single item for sale (i.e. firewood). Such references to wholesale is that any volume purchaser may be given a discount in price. In my opinion such occasional pricing does not constitute a wholesale business.
- **OFFENSIVE VAPORS AND ODORS** – You did not detail the exact nature of this complaint. The May 24, 2010 Decision by the Zoning Board of Review unanimously granted the expansion of the non-conforming use for retail sales with manufacturing and assembly. This Zoning Decision states as follows:

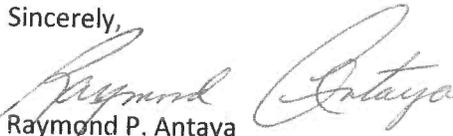
“ The board concluded that the desired use will not be detrimental to the surrounding area. It will be compatible with neighboring land uses. It will not create a nuisance or a hazard in the neighborhood. Adequate protection is afforded to the surrounding property by the use of open space and planting. Safe vehicular access and adequate parking are provided. Control of noise, smoke, odors, lighting and any other objectionable feature is provided. Solar rights of the abutters are provided for. The proposed special use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town of Portsmouth. The health, safety and welfare of the community are protected.”

Anyone that disagreed with this decision, under RI GL 45-24-69, had twenty days after the recording of the decision with the Town Clerk to appeal this decision to the Superior Court. No appeal was undertaken, hence your allegation in reference to Article V, Section H1 and H4 are contrary to the expressed findings of the Zoning Board of Review.

- HOURS OF OPERATION – Bill's Sales advertised hours of operation are Tuesday through Saturday from 10 a.m. to 7 p.m. The 1995 Variance that was permitted to Mr. Lantz was never initiated and, as a result, expired. Consequent to this expiration the conditions allocated as to hours of operation were not binding.

Respectfully, it is the opinion of this Zoning Enforcement Officer that there are no zoning violations at this time. You have the right to appeal my decisions before the Portsmouth Zoning Board. Applications for such an appeal are available in the Building Department Office.

Sincerely,



Raymond P. Antaya
Zoning Enforcement Officer

LAW OFFICE OF KEVIN P. GAVIN
31 Harrington Avenue, Portsmouth, RI 02871

Admitted in RI and MA

Telephone: 401-683-2044
Facsimile: 401-682-2122
Email: kpgavin@aol.com

February 23, 2016

Tarney Waring
30 Crossing Ct.
Portsmouth, RI 02871

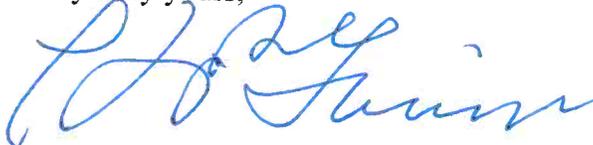
Re: Bill's Sales / Zoning Complaint

Dear Mr. Waring:

I have received your undated letter (copy attached), which enclosed a copy of the February 10, 2016 letter to you from Raymond P. Antaya, Zoning Enforcement Officer, issued in response to your zoning complaint regarding Bill's Sales. I see that Mr. Antaya has determined there are no zoning violations at this time concerning the operation of Bill's Sales. Mr. Antaya noted that you have a right to appeal his decision to the Portsmouth Zoning Board of Review. I understand that you were given an appeal form, for this purpose, at your February 17 meeting with the Town Administrator and other town officials. The appeal process can be found in Article XIV of the Portsmouth Zoning Ordinance.

As to your various other questions and assertions, I would suggest that it is not appropriate for me to give you legal advice on this matter. Obviously, you are free to retain your own private attorney to advise and/or represent you, should you choose to do so.

Very truly yours,



Kevin P. Gavin
Portsmouth Town Solicitor

cc: Richard Rainer, Town Administrator
Gary Crosby, Town Planner
Raymond Antaya, Zoning Enforcement Officer
Tom Lee, Police Chief

Town of Portsmouth

Attn: Town Solicitor Kevin Gavin

In response to your letter of 12/21/15 suggesting that I contact the Zoning Officer if I had any concerns about Bill'S Sales. I contacted zoning officer 2/1/16 which I received a response 2/10/16. I had issues with the reponse including inaccurate information so I set up apt with Town Administrator which he invited others which was ok. My issue is that I strongly feel that any letter coming from Town should contain accurate information however the letter first states that I had meeting with Building inspector and previous Town Administrator about these same issues before (incorrect). Also in this response letter it was stated the Board of Review unanimously granted the expansion of the non-conforming use of this company(I don't see any expansion as such only ART V E(14.3 and ART VI C(1)) Can you kindly point out where this is stated. Also Zoning Officer said that he received a letter from the owner of this company explaining that company did not initiate a 1995 variance. I asked earlier for Zoning file and this letter was not there. Can you explain(in the letter it appears structure to have been initiated then took apart).

In closing it was mentioned that I need to file appeal with Zoning Board with abbuters and \$150 Can you point this out as well.

Thank You in advance for your prompt reply.

Tarney Waring 30 Crossing Ct Portsmouth RI 02871



Town of Portsmouth

Post Office Box 207 / Portsmouth, Rhode Island 02871

Board of Review

(401) 683-3611

Petition of Robert A. Lantz
1960 East Main Road
Map 41, Lot 48
Zoned: R-20

DECISION

Petitioner conducts a business that is a pre-existing non-conforming use on the above property. He seeks a variance in the application of the terms of the Portsmouth Zoning Ordinance to build a pole barn ten feet closer to his north boundary than the ordinance allows.

On October 25, 1995, the Board of Review voted unanimously to grant the requested variance subject to the condition that no machinery be operated on Sundays and holidays and that hours of operation be limited to 8:00 a.m. to 7:00 p.m. The condition was approved 4-1. Voting in the affirmative were Chairman Wanda Coderre, Secretary Kathleen M. Melvin, Roy R. Twaddle and John Borden. Vice-chairman Robert D. Soares voted against the condition. The Board imposed the condition because the business is located in a residential zone.

The same Board members took part in the vote to grant the variance. The Board found that the business has operated on the subject property for several years. The lot is long and narrow. Therefore there would be a problem of maneuverability for trucks were the building further from the lot line. Petitioner has agreed to put a gutter on the building to protect abutting property. There will be adequate access for emergency vehicles.

The Board concluded that Petitioner demonstrated that the zoning ordinance restriction from which he seeks relief would present him with a hardship amounting to more than a mere inconvenience were he not allowed to build the proposed structure to store his equipment.


Kathleen M. Melvin
Secretary

Dated:



Town of Portsmouth

Post Office Box 207 / Portsmouth, Rhode Island 02871

Board of Review

(401) 683-3611

Petition of Robert A. Lantz
1960 East Main Road
Map 41, lot 48
Zoned: R-20

DECISION

Petitioner moves for reconsideration of a prior decision of the Board made October 25, 1995, by which Petitioner was granted a dimensional variance subject to conditions. He asks that the conditions be removed.

On April 18, 1996, the Board of Review voted unanimously to decline to hear the petition. Members participating were Chairman Wanda Coderre, Vice-chairman Robert D. Soares, Roy R. Twaddle, John Borden and James Edwards. The decision was based on the advice of the town solicitor that the Board has no jurisdiction to rehear a petition.


Robert D. Soares
Acting Secretary

Dated: 4/30/96

962721 Portsmouth, R.I.
Received for record 8-6-96
at 1:15 o'clock P M
and Recorded in Book No. 469
Page 328

Town Clerk

TOWN OF PORTSMOUTH, RI
ZONING ORDINANCE AMENDMENT

#2008-05-07 A

An Ordinance in Amendment to the Zoning Ordinance adopted effective July 1, 1994:

Be it ordained by the Town Council of the Town of Portsmouth as follows:

Section 1: "the Zoning Ordinance of the Town of Portsmouth, as amended, effective July 1, 1994, is hereby further amended as follows:

1. Article III, Section B4 is hereby amended to remove Lot 29A and Lot 48 in their entirety and the southerly 96 foot portion of Lot 51 on Map 41 from the designation of Residential and said Lot 29A and Lot 48, in their entirety, and the southerly 96 foot portion of Lot 51 on Map 41 shall hereafter be designated as Commercial subject to the following conditions:

The owner(s) of Lot 48 and Lot 51 on Map 41, including their successors and assigns, shall:

- a. Erect an 8 foot high opaque fence along the northerly boundary of said Lot 48, which boundary is common with the southerly boundary of Lot 52. Said fence shall continue in a westerly direction until it meets an existing shed on Lot 51. Furthermore, an existing 6 foot fence shall remain and continue to be maintained by the owner(s) of said Lot 48 and Lot 51.
- b. The firewood processor used in the existing commercial business located on Lot 48 shall not be operated before 9:00AM on Saturday mornings from May 1st to September 1st and shall not be operated before 8:00AM in the morning on the Saturdays of the remaining calendar year.
- c. The owner(s) of said Lot 48 and Lot 51 shall not install any new exterior lighting higher than 20 feet, which, if installed, shall be shielded and directed downward to illuminate the subject premises and not the adjacent neighborhood properties.
- d. The southerly 96 foot portion of Lot 51 shall be utilized only as storage accessory to the existing business presently known and being operated as Bill's Sales. Said accessory storage shall not be over 8 feet high, however, it may also allow limited parking of vehicles as it is presently utilized. If the present business operated and known as Bill's Sales shall cease, then said

Amendment 1 of 2

southerly 96 foot portion of Lot 51 shall be re-designated as Residential, rather than Commercial.

The owner(s) of Lot 29A, Map 41, including their successors and assigns, shall:

- a. Not install any new exterior lighting higher than 20 feet, which shall be shielded and directed downward to illuminate the subject premises and not the adjacent neighborhood properties.
 - b. Not allow the premises to be used for the sale of food, tobacco, alcohol, milk or gasoline.
 - c. Vehicles towed to lot 29A between 9:00 pm and 7:00 a.m. will be initially stored in the building or on the east and north sides thereof and not in the rear storage area, except in cases of emergency requiring storage in the rear storage area.
 - d. That test driving of cars or other vehicles on Crossings Court shall be prohibited.
 - e. Any additional curb cut onto Crossing Court from lot 29A shall require agreement of the owners of Lots 52 and 49 or permission of the Portsmouth Zoning Board of Review.
 - f. That the owner(s) of Lot 29A and Lot 52 shall agree upon the name of a professional land surveyor who shall locate the common boundary line between Lot 29A and Lot 52. And once located, if the existing fence has to be moved to comply with the common boundary line as so located, then the owner(s) of Lot 29A shall pay the expense of moving and relocating the existing fence to comply with the newly located common boundary line.
 - g. That the owner(s) of Lot 29A shall pay to the owner(s) of Lot 52 the sum of \$1,500.00, to be used in their discretion for additional landscaping along said common boundary line area.
2. Subject to the aforementioned conditions, the boundaries of the Zoning Ordinance as shown on the Zoning Map entitled "Town of Portsmouth Official Zoning Map," dated December 1991, and filed with the Town Clerk, hereinafter called 'Zoning Map', are hereby amended, and said Zoning Map is hereby modified to provide that Lot 29A and Lot 48, in their entirety, and the southerly 96 foot portion of Lot 51 on Map 41, as presently constituted, are hereby designated as Commercial.

~~Here back~~
~~2/2~~

7
~~2/2~~

Amendment 2 of 2

