



Town of Portsmouth

ZONING BOARD OF REVIEW
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SPECIAL MEETING **FEBRUARY 4, 2016**

MEMBERS PRESENT: Mr. James Edwards, Chair, Mr. James Nott, Vice-Chair, Mr. John Borden, Mr. James Hall and Ms. Kathleen Pavlakis, Second Alternate.

MEMBERS ABSENT: Mr. James Sherrod, Secretary.

OTHERS PRESENT: Building Official George Medeiros, and Barbara Ripa as recording secretary.

Mr. Edwards opened the meeting at 7:02 p.m.

I. MINUTES:

The minutes of the December 10, 2015 special meeting, December 17, 2015 regular meeting, January 14, 2016 special meeting, and January 21, 2016 regular meeting were presented for approval.

A motion was made by Mr. Borden and seconded by Mr. Hall to accept the minutes of the December 10, 2015 special meeting, December 17, 2015 regular meeting, January 14, 2016 special meeting, and January 21, 2016 regular meeting as presented. The motion carried with all in favor.

II. CHAIRMAN'S REPORT:

The Chair reminded the Board that there is a special meeting next Thursday. He told the audience that the Board is short-handed and they are looking for members.

III. CONTINUED BUSINESS:

1. (R) A petition by Hazel and Nazih Zebian, 57 Atlantic Avenue, Portsmouth, RI for a variance and a special use permit to construct an addition to dwelling closer to property lines than zoning allows on tax assessor's map 29, lot 75, Art IV, Sec B & Art VI, Sec A.

Hazel and Nazih Zebian, owners of 57 Atlantic Avenue were sworn in. They stated that they have a small two-story house with two bedrooms and a bathroom on the second floor. The bedrooms have slanted ceilings due to the roof, which has dormers, and she would like a full ceiling in order to utilize the space. Mrs. Zebian states it is cramped and they want to put insulation in to winterize the space. It would not encroach further as they are simply making the roof a full second story. They will need a 10.5' side yard setback to the south and a 7.5' side yard setback to the north, which already exist. They have a substandard lot of record, so will need a special use permit. The

home will remain a two-bedroom. The Chair reviewed the special use permit criteria and testimony was provided that it would meet the special use permit criteria.

The Chair called for abutters or interested parties. There were none.

Mr. Nott: Approve/Approve:

The Zebians are here, map 29, lot 75 and they have a small two-story house with two bedrooms and a bathroom on the second floor. They have an angled roof and they want insulation and a full ceiling due to cramped space. They need a 10.5' side yard setback to the south and a 7.5' side yard setback variance to the north, but there is no additional encroachment because they are going up. They meet all the special use criteria. It would amount to more than a mere inconvenience to deny, so I approve both.

Mr. Hall: Approve/Approve:

For all the reasons previously stated by Mr. Nott, I also approve the dimensional variances and the special use permit.

Mr. Borden: Approve/Approve:

The special use permit criterion has been met. There is a hardship amounting to more than a mere inconvenience, so I vote to approve the dimensional variances.

Ms. Pavlakis: Approve/Approve.

For reasons previously stated, I approve both.

Mr. Edwards: Approve/Approve:

I approve the dimensional variances and the special use permit for reasons previously stated by Mr. Nott and Mr. Borden.

2. (R) A petition by Dennis A. Macedo, 1188 Anthony Road, Portsmouth, RI for a variance and a special use permit to allow a shed in the side yard, closer to property line than zoning allows and to exceed allowable lot coverage on tax assessor's map 2, lot 44, Art IV, Sec B & Sec C.5 & Art VI, Sec A.

Dennis Macedo, 1188 Anthony Road was sworn in. Mr. Macedo has a 3' x 5' shed that is on the property line. He didn't think it was a necessity to get a building permit for it. Any structure under 64 sf does not need a building permit, but in the side yard it created a violation and the shed is on the property line. His lot is 40' wide. It will increase his lot coverage by .42%

A motion was made by Mr. Hall and seconded by Mr. Nott to allow the petition to modify his petition to add that he wants to put it on the side of his house rather than the back. The motion carried with all in favor.

Mr. Macedo said he could not put the shed in the back yard because of the concern of flooding. Discussion followed as to why Mr. Macedo could not move the shed to the other side of his dwelling. Initially, Mr. Macedo originally stated that there was too much vegetation to move the shed but eventually he stated that he would move the shed to the other side of his dwelling.

The Chair asked for abutters or interested parties.

Edward Demerest, 1190 Anthony Road stated that he lives north of the petitioner. He said that he has no problem if he moves the shed, but does have a problem if there is no time limit. Mr. Demerest showed pictures of his lot survey which showed the steps of the shed over his lot line.

Mr. Macedo came back before the Board to testify to the special use permit criteria. He testified that it would meet all special use permit criteria.

Mr. Hall: Approve/Approve:

The petitioner has agreed to move the structure in question to the south side to get it off the property line and he has answered all the special use permit questions so I approve.

Mr. Nott: Approve/Approve:

I agree with Mr. Hall. Now that Mr. Macedo has agreed to move the shed to the south he is more in conformance with the ordinance. He's .42% above lot coverage and has the shed in the side yard.

Mr. Borden: Approve/Approve:

He has an extremely small lot of 3,560 sf. This isn't really a shed, it's for the purpose of putting garbage out. To deny would be more than a mere inconvenience. He is only asking for .42% lot coverage which is minimal. I do not see it as a problem and all special use criterion has been met.

Ms. Pavlakis: Approve/Approve.

I concur with the other Board members, and I approve both.

Mr. Edwards: Approve/Approve:

The Chair also votes to approve; the petitioner's decision to move the shed to the other side of his house makes all the difference.

3. (R) A petition by Michael Sheehan, 0750 Narragansett Avenue, Prudence, RI for a variance and a special use permit to allow an addition to dwelling closer to property lines than zoning allows and to exceed allowable lot coverage on tax assessor's map 78, lot 52, Art IV, Sec B & Art VI, Sec A.

Michael Sheehan, 31 Appleton Street, Arlington, MA was sworn in. Attorney Eric Chappell, 171

Chase Road was present to represent him.

Mr. Chappell elicited testimony from Mr. Sheehan. He has a three-bedroom house that is 18' wide. He would like to add a second floor and add on a 5' foundation in order to add an upstairs bathroom, which he believes is a reasonable request. It does front on an accepted Town street.

Mr. Chappell went through the special use criterion and Mr. Sheehan testified that it would meet all criterion. Variances needed are a 19' side yard setback on the north, a 10' side yard setback on the south, a 24' front yard setback on the east, and a lot coverage variance of 9.1%, which is an increase of 3% over what exists currently. The setback variances already exist and he would not encroach further.

The Chair called for abutters or interested parties. There were none.

Mr. Hall: Approve/Approve:

Michael Sheehan, 750 Narragansett Avenue, Prudence Island is here for a special use permit and dimensional variances. Mr. Chappell covered the issues well. To deny would amount to more than a mere inconvenience, and I vote to approve both the special use permit and the dimensional variances.

Mr. Nott: Approve/Approve:

Michael Sheehan, Map 78, Lot 52 would like to remodel his upstairs. It is a substandard lot of record. The proposed addition would go over a crawl space and the proposed variances are not encroaching any closer than already exists, with an additional 3% increase in lot coverage. Many houses were built on substandard lots of record. He's done a good job to get a bathroom to fit in the upstairs, so I'm voting to approve.

Mr. Borden: Approve/Approve:

The petitioner is going to build up and not having a bathroom on the second floor of a three-bedroom is a hardship. He is not encroaching any closer. The standards have been met and I vote to approve.

Ms. Pavlakis: Approve/Approve.

For all the reasons given, I vote to approve.

Mr. Edwards: Approve/Approve:

The petitioner needs relief, and I agree with my colleagues, I vote to approve.

4. (LI) A petition by Gunther Buerman (applicant) and SBC Realty, LLC (owner), 75 High Point Ave, Portsmouth, RI for a special use permit to allow a private museum on tax assessor's map 38, lot 6, Art V, Sec B.6 & Art VII, Sec F.

Attorney Eric Chappell, 171 Chase Road was present to represent the applicant and Stephen Seiter of SBC Realty, LLC, 75 High Point Avenue was sworn in. Mr. Seiter said that currently the area is used as Park Place Holdings. Mr. Buerman would like to segregate a portion of the building to host a private, paying museum for the public. The building is just under 49,000 sf. It stores mainly cars. There have been no issues with zoning or police in 10 years. The original site plan called for 49 spaces and they could put in more if necessary.

The Chair called for abutters or interested parties. There were none.

Mr. Borden: Approve:

Based on the testimony from Mr. Seiter of SBC Realty, the proposed use of Park Place Holdings will change only slightly with the proposed auto museum. The use would not change the special use permit criterion. There will be no nuisance or hazard. It is compatible with the Comprehensive Plan. In my opinion it has met the conditions, so I vote to approve.

Ms. Pavlakis: Approve.

I concur with Mr. Borden and I approve the special use permit.

Mr. Nott: Approve:

I agree with Mr. Borden and I also approve. This might be much less impact than you think.

Mr. Hall.: Approve:

I vote to approve based on reasons given by Mr. Borden.

Mr. Edwards: Approve:

I agree with my colleagues and I vote to approve.

5. (R) A petition by Timothy P. Cathcart & Xiao Qin, Anthony Road, Portsmouth, RI for a variance and a special use permit to construct a dwelling closer to property lines than zoning allows and to exceed allowable lot coverage on tax assessor's map 2, lot 67, Art IV, Sec B & Art VI, Sec A-C.

Attorney Eric Chappell, 171 Chase Road was present to represent the applicant as well as Timothy Cathcart and Xiao Qin Cathcart, 49 Wheaton Street, Warren, RI, who were both sworn in.

Mr. Chappell stated that map 2, lot 67 is currently a vacant nonconforming lot and engineering has been done by Northeast Engineers. Lynn Small, P.E., from Northeast Engineers is present to give testimony. They are planning on building a house less than 35' tall, it is in a flood plain so it will be on piers, and it cannot exceed 2 ½ stories. It requires two front yard setbacks and a rear yard setback. They are seeking a 10' rear yard setback to the east, a .9' front yard setback on the south, and a 4.7' front yard setback on the west. There are two decks to get in the house and out of the

second floor of the house. Lot coverage would be 26.3%, so they would need a lot coverage variance of 6.3%. Special use criteria was discussed and Mr. Cathcart testified that it would meet all special use criteria.

Lynn Small, P.E., Northeast Engineers, 55 John Clarke Road, Middletown, RI was sworn in.

A motion was made by Mr. Hall and seconded by Mr. Nott to accept Ms. Small as an expert in the field of civil engineering. The motion carried with all in favor.

Ms. Small said that they discussed moving the house but they have to use a sand filter and it's the minimum distance from the street and the house. The house can't be smaller because of the mechanical room located in the house because they are in a flood zone. That is why they went over the lot coverage amount.

The Chair called for abutters or interested parties. There were none.

Mr. Nott: Approve/Approve:

The Cathcarts are here, map 2, lot 67 looking for a dimensional variance, a lot coverage variance and a special use permit for a substandard lot of record. As far as the special use permit, they have met all the criteria. To deny the variances would deny the petitioners' the beneficial use of their lot of record. I understand the concern of going over lot coverage, but because of the fact that they are in a flood plain, it is understandable. I approve.

Mr. Hall: Approve/Approve:

I vote to approve. It's a good point about the lot coverage, but we grant approvals to similar lot coverage all the time, so I approve.

Mr. Borden: Approve/Approve:

Regarding the special use permit for a substandard lot of record, I approve. Regarding the dimensional setback relief, I approve. Regarding the lot coverage, I have concerns that a smaller house could be built, however, we have heard testimony that there is a hardship due to the mechanicals in the living space and they have come to the Board with open arms and as was stated we have petitions approved on a regular basis. It would be more than a mere inconvenience to deny, so I approve.

Ms. Pavlakis: Approve/Approve.

It is reasonable, and I approve.

Mr. Edwards: Approve/Approve:

The petitioner has a hardship due to the unique characteristics of the lot. It is not their fault, so they need relief. To deny would deny the use of their lot and they have met the special use criteria

so I vote to approve.

The Board took a break at 8:32 p.m.
The Board was called back to order at 8:42 p.m.

6. (R) A petition by Gene & Linda Salvatore, 155 Hargraves Drive, Portsmouth, RI for a variance and a special use permit to construct a shed closer to property line than zoning allows on tax assessor's map 40, lot 9, Art IV, Sec C.5 & Art IV, Sec B.

Gene Salvatore, 155 Hargraves Drive was sworn in. Mr. Salvatore is seeking a 22' rear yard variance because he has a corner lot and he has three 30 yard setbacks that he has to meet. The yard also has a steep incline. He would like to put a 10' x 16' shed 8' off the southeast side of the lot.

The Chair called for abutters or interested parties. There were none.

Mr. Borden: Approve:

On the surface a 22' setback seems excessive, but the petitioner is constrained by the required setbacks. Due to the topography of his lot, multiple front and rear yard setbacks, and the petitioner needs a place to store furniture and his lawn tractor, there is a hardship that is more than a mere inconvenience, so I approve the setback variance and the lot coverage variance of .08% and I approve.

Ms. Pavlakis: Approve.

I agree with Mr. Borden and I approve for reasons previously stated.

Mr. Nott: Approve:

I also vote to approve for reasons previously stated by Mr. Borden.

Mr. Hall.: Approve:

I vote to approve based on reasons given by Mr. Borden.

Mr. Edwards: Approve:

I agree with my colleagues and I vote to approve.

7. (R) A petition by John and Kristin Moniz, 107 Holliston Avenue, Portsmouth, RI for a variance and a special use permit to realign property lines which would increase the non-conformity of tax assessor's map 4, lot 147, Art IV, Sec A.5 & B & Art VI, Sec A.

Attorney Eric Chappell, 171 Chase Road was present to represent the applicant and John Moniz, 905 Stafford Road, Tiverton was sworn in. Mr. Moniz owns three 4,000 sf dotted line lots and

when he had a survey done he discovered that a neighbor had encroached upon his land with a fence. Mr. Moniz hired Narragansett Engineers to change the lot lines so he would merge his three lots into two, in order to resolve the dispute regarding the fence. This will take land from one lot and add to the other, and both will still be nonconforming, but equal in size to others in the neighborhood. Map 4, lot 147 will need a 7.1' side yard setback variance on the north for the garage. The Planning Board gave a positive Advisory Opinion.

A motion was made by Mr. Borden and seconded by Mr. Nott to allow the petitioners to add the request to merge three lots into two to their petition because they have gone before the Planning Board already for an Advisory Opinion. The motion carried with all in favor.

The Chair called for abutters or interested parties. There were none.

Mr. Nott: Approve/Approve:

John and Kristin Moniz, map 4, lot 147 are here seeking a side yard setback of 7.1' on the north and a special use permit. I give him credit, this is the right thing to do. He is taking his three lots and merging them into two. I approve the dimensional variance and the special use permit.

Mr. Hall: Approve/Approve:

I vote to approve for reasons previously stated by Mr. Nott.

Mr. Borden: Approve/Approve:

It just makes sense and it's the right thing to do. It would be a hardship amounting to more than a mere inconvenience to deny. The reconfiguring of the lot lines makes sense. I approve both the dimensional variance and the special use permit.

Ms. Pavlakis: Approve/Approve.

I agree with my colleagues, it is prudent and I approve.

Mr. Edwards: Approve/Approve:

The petitioner has been well advised, he has solved a huge obstacle and I approve.

8. (R) A petition by Pamela Ferris, 153 Mussel Bed Shoal Road, Portsmouth, RI for a variance and a special use permit to allow a sunroom and deck closer to property lines than zoning allows on tax assessor's map 6, lot 1, Art IV, Sec B & Art VI, Sec A.

Pamela Ferris and Paul Hendricks, both of 153 Musselbed Shoal Road were sworn in. She wants to build a sunroom and deck on the back of the house to replace the existing one and just one corner needs a 1' setback variance.

A motion was made by Mr. Nott and seconded by Mr. Hall to amend the petition to make the required variance 2' instead of 1'. The motion carried with all in favor.

The Chair went over the special use permit criteria and they testified that it would meet all criteria. It is a one story, all window sunroom.

The Chair called for abutters or interested parties. There were none.

Mr. Borden: Approve/Approve:

Sunrooms and decks are permitted accessory uses. They are within lot coverage. Two feet is extremely minimal and reasonable. They met the special use permit criterion. I vote to approve.

Ms. Pavlakis: Approve/Approve.

I concur and I approve.

Mr. Nott: Approve/Approve:

I agree with what was so eloquently stated by Mr. Borden and I vote to approve.

Mr. Hall: Approve/Approve:

I vote to approve for reasons previously stated by Mr. Borden.

Mr. Edwards: Approve/Approve:

The Chair also agrees with Mr. Borden and I vote to approve.

9. (R) A petition by Kyle Hess, Gray Stone Avenue, Hog Island, RI for a variance and a special use permit to create a lot without frontage on a public way and to construct a dwelling without frontage on tax assessor's map 69, lot, 172, Art III, Sec D.2, Art IV, Sec B & Art VI, Sec A.

Attorney Kenneth Tremblay, 181 Chase Road was present representing petitioner Kyle Hess. Mr. Tremblay stated that the proposed lot does not front on a public way, because all of Hog Island is private.

Kyle Hess, 27 Poppasquatch, Bristol, RI was sworn in. Mr. Hess represents Hog Island Inc.

The Chair called for abutters or interested parties. There were none.

Mr. Hall: Approve:

Kyle Hess is before us, owner of map 69, lot 172 seeking a dimensional variances under Article IV, Section B and Article III, Section D2. It is more than reasonable and I vote to approve.

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Mr. Nott: Approve:

The petitioner wishes to construct a dwelling that does not front on a public way and there are no public ways. I vote to approve both variances.

Mr. Borden.: Approve:

I vote to approve for reasons given by Mr. Hall and Mr. Nott.

Ms. Pavlakis: Approve.

I agree with my colleagues and I approve for reasons previously stated.

Mr. Edwards: Approve:

To deny would be to deny the use of his property. I vote to approve.

A motion to adjourn was made by Mr. Nott and seconded by Mr. Borden. The motion carried with all in favor. The meeting was adjourned at 9:14 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary