



Town of Portsmouth

ZONING BOARD OF REVIEW
2200 East Main Road / Portsmouth, Rhode Island 02871
www.portsmouthri.com

(401) 683-3611

SPECIAL MEETING **FEBRUARY 11, 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: Town Solicitor Kevin Gavin was present as legal counsel for the Board, Building Official George Medeiros, and Barbara Ripa as recording secretary.

Mr. Edwards opened the meeting at 7:00 p.m.

I. MINUTES:

There were no minutes to approve.

II. CHAIRMAN'S REPORT:

There was no Chairman's report.

III. CONTINUED BUSINESS:

1. (R) A petition by Jean Marianne McLane, 272 Glen Farm Road, Portsmouth, RI for a variance to create a subdivision without frontage on a public way on tax assessor's map 62, lot 6, Art III, Sec D & Art IV, Sec B.

Attorney Laurent Rousseau, Moore Virgadamo & Lynch, Ltd., 97 John Clarke Road, Middletown was present to represent petitioner, Jean Marianne McLane. Mr. Rousseau gave an opening statement. Mrs. McLane owns 272 Glen Farm Road, map 62, lot 6. It is zoned R-60 and is 30.5 acres. Two nearby roads are Sandy Point Avenue and Glen Farm Road. The present use is a single family residence for Mrs. McLane. Mrs. McLane wants to subdivide to three lots, each in excess of 87,000 sf. She would need dimensional variances under Article III, Section D2 and Article IV, Section B because of the lack of frontage on a public street.

The new lots would be house lots and there is a letter from the Fire Department stating they would have no concerns provided the homes have sprinklers.

Paul Bannon will testify to the traffic issues on Glen Farm Access Road. His testimony is that two safety issues be addressed, a guard rail and a tree that should be taken down, both of which Mrs. McLane will do.

In accordance with statute requiring Planning Board and Zoning Board approvals, the Planning Board has approved and they issued their advisory opinion. There are two concerns from Peter Regan: 1) Procedure before the Planning Board: it is less than 5 lots so no public hearing is required, that is no abutters are required to be noticed under Article V, B1. 2) A prior plan had zoning conditions stating that no further subdivisions would take place. That was a condition. In 1984 she bought the property and in 1986 she brought a petition before the Zoning Board and that is when the Board imposed the condition of no further subdivision. This issue came up in 2007 when she chose to subdivide regarding the Mill House and it was decided that no prior Board can bind a future Board. You are bound to hear relevant facts, not bound by what a Board said 30 years ago. You must decide on the standards, and whether it is a hardship. Mr. Rousseau brought up the Ashley v. Kehew case on Selina Lane. Mr. Rousseau listed his witnesses.

Attorney Peter Regan, Sayer Regan & Thayer LLP, 130 Bellevue Avenue, Newport gave his opening statement. Mr. Regan said that he represents abutters Jeff and Jan Gordon, 185 Glen Farm Road. 1) Since the land has been acquired it has been subdivided four times. A past decision doesn't forever bind a future board, but while it does not, Glen Farm Road is not a safe and adequate roadway. 2) One of the standards of receiving a variance is showing that there is a hardship and that the hardship is not a self-created hardship. This was a 47 acre parcel and it had access to the public road system but the 1988 subdivision cut off access to the public road system. 3) The advisory opinion from the Planning Board only heard one side of the argument because none of the abutters were notified. Mr. Regan listed his witnesses.

Mr. Rousseau called Mrs. Marianne McLane, 272 Glen Farm Road who was sworn in. Mrs. McLane answered questions about her lot, frontage on Glen Farm Road and how Glen Farm Road is a private road, although the town does snow plowing.

Mr. Rousseau entered into evidence Mrs. McLane's deed to her property that is recorded in land evidence as Exhibit 1. The overall proposed plan as prepared by Northeast Engineers, drawing number L-1, sheets 1 and 2 were submitted as Exhibit 2.

Mrs. McLane stated that she wants to subdivide so people won't trespass in her woods and throw trash. She had two pages with 5 photos of vandalism, which Mr. Rousseau submitted as Exhibit 3.

As single family houses they will have the right of access over Glen Farm Road to Sandy Point Road or to Glen Road. Exhibit 4 is a double sided sheet dated 12/8/15 with the advisory opinion of the Planning Board. Mr. Rousseau also provided the Zoning Board with Exhibit 5, a preliminary plan decision dated 1/14/16 of the Portsmouth Planning Board.

Mrs. McLane said she would pay for the improvements suggested by Mr. Bannon. She said she doesn't have any use for the land and it's a liability when people come on her property.

There was discussion about the pictures; some were the Mill House property which is a different lot. Also, the Planning Board advisory opinion says she would "not" do improvements. Mr. Rousseau said that was a mistake. There is no town water on the lots so they will have wells.

Mr. Regan came forward. He distributed plat maps. He asked how many times the land had been subdivided. Mrs. McLane thought 3, he said 4.

In 12/87, Mrs. McLane subdivided 10 acres, which is the decision that stated she could not subdivide further. Mr. Regan submitted the warranty deed to the Board and it was labeled Exhibit A. The 10 acre subdivision drawing was labeled Exhibit B. That 10 acres was then subdivided by Reilly, who had purchased it.

In 1997, Mrs. McLane subdivided again by giving Duncan Ingraham 2.9 acres down by the beach but there was no frontage on the road, so that didn't violate the spirit of the previous decision as it was nonbuildable. Exhibit C, Board of Review decision dated 9/24/1997 was given to the Board.

In 2000, 1 acre of land was sold to a neighbor so there was no creation of a lot.

In 2006 there was the Mill House Subdivision – 6B – 3 ½ acres that fronts on Glen Farm Road. It has a barn on it and would have to be built on the same footprint. She dedicated a 12' strip at the road in case the town wanted to make it a public road.

Exhibit D is the Zoning Board of Review's decision of 4/20/06.

Mr. Rousseau called Geralyn Small, Northeast Engineers, 55 John Clarke Road, Middletown, who was sworn in.

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

Ms. Small testified that the site plan complies with zoning 100% outside of the private road issue and that the lots are developable. One lot may need permitting from CRMC for a stream. They did test holes that were witnessed by the State of RI and have four suitable test holes. The letter from the Deputy Chief of the Fire Department dated 12/15/15 was submitted to the Board as Exhibit 6.

Paul Bannon, Senior Traffic Engineer, BETA Engineering, 6 Blackstone Valley Place, Lincoln, RI was sworn in. Mr. Bannon's résumé was submitted as Exhibit 7.

A motion was made by Mr. Nott and seconded by Mr. Borden to accept Mr. Bannon as an expert in traffic engineering. The motion carried with all in favor.

Mr. Bannon said that he did a study of Glen Farm Road and reported on it in his report dated 1/20/16, which was submitted as Exhibit 8. Mr. Bannon said that he reviewed the plans, the property, did site visits, visited the project area, looked at physical traffic data, obtained accident information from the police department, and estimated the amount of traffic from the use and assessed the future. In three years there were only two accidents and one was a health issue – he fainted on the Sandy Point side, and the other was a person not familiar with the area.

Mr. Regan objected for the record.

Mr. Bannon said he put traffic counters down. Glen Farm Road is an access road to Glen Farm and it became part of town land to the south to Sandy Point. Abutting property had rights to access. North of the property is a private road – the Gordon’s own, but there are easements. Down by the “S” curve there are safety issues and he made recommendations to make it safer. It is a low volume road, only 80 trips per day. No congestion will be added. With recommended repairs there will be no safety issues. The mitigation he recommended is: to the south culvert north of the “S” they should install a guard rail 75-100’ long and there are a couple of large trees on the curve that should come down. Photos of the road along the property were turned in as Exhibits 9A & B. His conclusion is that it does not pose a safety hazard or congestion with improvements.

Mr. Regan asked if he took into consideration the recreation use of the Glen Farm fields and the Polo fields in the summer and how the traffic uses Glen Farm Road. Mr. Bannon said he did not. Mr. Bannon said that he does recommend that traffic from the new lots travel towards Sandy Point and not Glen Road; the area owned by the Gordon’s is in poor condition.

The Board took a break at 8:55 p.m.
The Board was called back to order at 9:05 p.m.

Nathan Godfrey, Newport Appraisal Group, 221 Third Street, Newport, RI was sworn in. Mr. Godfrey’s résumé was submitted as Exhibit 10.

A motion was made by Mr. Borden and seconded by Mr. Nott to accept Mr. Godfrey as an expert in real estate. The motion carried with all in favor.

Mr. Rousseau questioned Mr. Godfrey about the methodology he used in preparing his report, said report was submitted to the Board as Exhibit 11. Mr. Godfrey testified that the petition would not change the characteristics of the neighborhood and would not impair the intent or purpose of the Comprehensive Plan.

Mr. Regan said that Mr. Godfrey’s report did not take into consideration traffic and the lack of frontage on a public road due to a hardship created by a prior action on the part of the petitioner.

Mr. Rousseau objected to the statement as a gross misstatement of fact.

Mr. Regan stated that when the petitioner sold the 10 acre parcel, she eliminated access to a public road. The subdivision of the 10 acre parcel cut off access to a public road.

Mr. Regan called Janice Gordon.

Janice Gordon, 185 Glen Farm Road was sworn in. Ms. Gordon stated that they bought their property in 1983 and moved there in 1984. Ms. Gordon is opposed to the petition. She believes it will create an overburdening of the road and a safety issue. She said that you cannot make people from the new subdivision go towards Sandy Point rather than Glen Road.

Mr. Rousseau asked Ms. Gordon if she was a traffic engineer. She stated that she is not.

Kevin DeMers, Sr. Engineer, DiPrete Engineers, RI was sworn in. Mr. DeMers is an engineer trained in all aspects of site development including traffic. His résumé was submitted to the Board as Exhibit E.

A motion was made by Mr. Nott and seconded by Ms. Pavlakis to accept Mr. DeMers as a traffic expert. The motion carried with all in favor.

Mr. DeMers prepared a summary of roadway conditions of Glen Farm Road that was distributed to the Board as Exhibit F. He described the current conditions of Glen Farm Road and stated there were a number of choke points and described them. He said that he heard the testimony about the safety mitigation to the road but he does not believe that will take care of the safety issues. He believes traffic increase is inaccurate. He stated Mrs. McLane had access at Colonel Barton Drive.

Mr. Rousseau noted that most of the choke points were to the north. Mr. Rousseau elicited testimony that DiPrete Engineers typically uses Paul Bannon as a traffic expert. Mr. DeMers did not check on the fact that there were “no accidents” and did not check on the average speed.

Mr. Regan objected over the statement that there were “no accidents,” when there were two in the last three years.

Mr. Rousseau asked for clarification, if they added 20 cars per day, now there’s going to be accidents? Mr. DeMers said there would be a greater likelihood.

Mr. Regan said it is an unsafe road and this will exacerbate the situation.

Mr. Edwards called for abutters or interested parties.

Steve Walk, 96 Glen Farm Road spoke. Mr. Walk said that Glen Farm Road is a single-lane road. On Saturday mornings there are walkers, joggers, horses and people walking their dogs and if the Board allows more development that will be gone.

Jim Paradise, 294 Glen Farm Road spoke. Mr. Paradise has live there over 20 years. He said he sees people pull over to the side when driving when other vehicles come. The shoulders are swampy. He has seen cars hit the fences and leave.

A motion was made by Mr. Nott and seconded by Mr. Borden to continue the petition of Jean Marianne McLane, 272 Glen Farm Road, to the regular meeting of March 17, 2017 at 7:00 p.m. for a decision. The motion carried with all in favor.

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 9:56 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary