



Town of Portsmouth
ZONING BOARD OF REVIEW
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APRIL 21, 2016

MEMBERS PRESENT: Mr. James Edwards, Chair, Mr. James Nott, Vice-Chair, Ms. Kathleen Pavlakis, Secretary, Mr. John Borden (8:00 p.m.), Mr. James Hall, Mr. Eric Raposa, First Alternate.

MEMBERS ABSENT: Mr. Paul Henriques, Second Alternate.

OTHERS PRESENT: Town Solicitor Kevin Gavin was present as legal counsel for the Board, Retired Building Official George Medeiros, new Building Official Larry Desormier and Barbara Ripa as recording secretary.

Due to a lack of quorum, Mr. Edwards did not call the meeting to order until 7:10 p.m. when a quorum was present. At that time, Mr. Edwards announced to the audience that there would be a change in the order of the agenda. Since Mr. Borden would not arrive until later, so the petition of Jean Marianne McLane would not be heard first because Mr. Borden was needed to sit on that petition.

I. MINUTES:

Minutes to be approved consisted of the special meetings of February 4, 2016 and February 11, 2016, the regular meeting of February 18, 2016, and the meeting that was only attended by Mr. Edwards, Ms. Ripa and Mr. Gavin to notify abutters of a continuation because of a lack of quorum on March 17, 2016.

A motion was made by Mr. Nott and seconded by Mr. Hall to accept all minutes as presented except for the minutes of February 18, 2016, which were referenced as a "Special Meeting" and were actually a regular meeting. The February 18, 2016 minutes were accepted with that one change. All voted in favor of the motion.

II. CHAIRMAN'S REPORT:

A motion was made by Mr. Nott and seconded by Mr. Hall to nominate Ms. Pavlakis as Secretary of the Zoning Board of Review. Ms. Pavlakis accepted the nomination, and the motion carried with all in favor.

The Chair stated that there are two new alternate members: Mr. Eric Raposa, first alternate and Mr. Paul Henriques, second alternate.

III. CONTINUED BUSINESS:

2. (TC) A petition by Rebecca Clinton (applicant) & Rite Aid Corp (owner), 2456 East Main Road, Portsmouth, RI for an evaluation to see if a dog day care is allow as a special use permit and if so a request for a special use permit to allow a dog day care on tax assessor's map 35, lot 26, Art V.1 & Art V, Sec E.8.

There was no one present to represent either Ms. Rebecca Clinton (applicant) or Rite Aid Corp (owner). Mr. Medeiros sent a letter after the February meeting notifying her of the meeting in March.

A motion was made by Mr. Nott and seconded by Mr. Hall to withdraw the petition of Rebecca Clinton (applicant) and Rite Aid Corp (owner), 2456 East Main Road, without prejudice. The motion carried with all in favor.

3. (R) A petition by David M. Gleason, 63 Massasoit Ave, Portsmouth, RI for a variance to allow an above ground swimming pool closer to property line than zoning allows on tax assessor's map 9, lot 3F, Art IV, Sec B.

David M. Gleason, 63 Massasoit Avenue was sworn in. An Advisory Opinion from the Ethics Commission stated that Mr. Gleason could represent himself before the Board.

Mr. Gleason said his lot is only 80' deep and the west side has his septic and the east side is his driveway. The south side in the rear he would like to put an 18' above ground pool but would need an 8.5' +/- dimensional variance. His neighbor on that side is National Grid. A fence would be built to code.

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

Mr. Nott: Approve:

David Gleason, Map 9, Lot 3F, 63 Massasoit Avenue is before the Board seeking a dimensional variance to install an above ground pool. We have heard testimony that it will be put in the rear of the property where the abutters are power lines and railroad tracks. It is a reasonable request. It will be fenced in. It is not a permanent structure. To deny amounts to more than a mere inconvenience.

Mr. Raposa: Approve:

I agree with what was previously stated and approve.

Mr. Hall: Approve:

I approve based on Mr. Nott's statements.

Ms. Pavlakis: Approve.

I second that and approve.

Mr. Edwards: Approve:

It will not interfere with anyone else. It is reasonable. I approve.

4. (R) A petition by Susan D. Lapham, 29 Aquidneck Ave, Portsmouth, RI for a variance and a special use permit to construct a second floor deck closer to property lines than zoning allows on tax assessor's map 24, lot 154, Art IV, Sec B. and Art. VI, Sec. A.

Attorney Eric Chappell, Chappell & Chappell, 171 Chase Road represented Susan Lapham. Steven Domingoes, 29 Aquidneck Avenue, friend of Ms. Lapham was also present and was sworn in.

Mr. Chappell distributed a photo of the house to the Board. It was labeled Exhibit 1. Mr. Chappell said that Ms. Lapham and Mr. Domingoes want to build a deck on the second floor. The prior owner received a variance. Mr. Chappell believes the prior petition was off a little in their setback requests, but he has corrected them. The deck will be built above the existing deck. There is no increase in lot coverage. They will not encroach further.

The Chair called for abutters or interested parties.

Ann LaFleur, 9 Bricknell Road, North Grafton, MA also owns 28 Aquidneck Avenue. She stated she has no objections.

Mr. Chappell went through the special use permit criterion. Mr. Domingoes testified that the deck would meet all criterion.

Mr. Nott: Approve/Approve:

Susan Lapham, 29 Aquidneck Avenue, map 24, lot 154, is before the Board seeking a second floor deck above the existing deck. It's really a technicality. All homes on Aquidneck Avenue encroach. Mr. Domingoes testified that it met all special use criterion and I approve the special use permit. To deny amounts to more than a mere inconvenience. I vote to approve the dimensional variance.

Mr. Raposa: Approve/Approve:

I vote to approve as well. It will be a nice addition.

Mr. Hall: Approve/Approve:

It is a reasonable request and I vote to approve both the special use permit and the dimensional variance.

Ms. Pavlakis: Approve/Approve.

I agree with Mr. Nott and I also approve.

Mr. Edwards: Approve/Approve:

I vote to approve as well, it is reasonable.

5. (R) A petition by Linda Medeiros, 93 Canton Ave, Portsmouth, RI for a variance and a special use permit to construct an addition closer to property lines than zoning allows and to exceed allowable lot coverage on tax assessor's map 3, lot 72, Art IV, Sec B. and Art. VI, Sec. A.

Linda Medeiros, 93 Canton Avenue was sworn in. Ms. Medeiros stated that her granddaughter is handicapped and in a wheelchair and she would like to put a handicap accessible bathroom on the first floor so she can come stay with her on the weekends. The Chair went through the special use permit criteria and Ms. Medeiros testified that the petition would meet the criteria.

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

Mr. Nott: Approve/Approve:

Linda Medeiros, 93 Canton Avenue, map 3, lot 72, is before the Board seeking a 5' side yard variance and a 9.8% lot coverage variance for a handicap bathroom on a first floor on a substandard lot of record. The 9.8% lot coverage is 4% additional. It is only 5' to the side and I'm concerned with the next door house being so close, however, she should not be penalized because they are so close in the setbacks, so I approve.

Mr. Raposa: Approve/Approve:

I vote to approve both, I don't see that there are too many other options for where she can put it.

Mr. Hall: Approve/Approve:

If there was ever a reason to approve a variance, this is the case, it's a tragedy for her family. I approve the special use permit and the dimensional variances.

Ms. Pavlakis: Approve/Approve.

For all the reasons previously stated, I approve.

Mr. Edwards: Approve/Approve:

The Chair will also vote to approve. It is a long, narrow lot and it is a reasonable request. It is only a 4% increase in lot coverage.

6. (C) A petition by Janice McLaughlin, Russo Road, Portsmouth, RI for a special use permit to construct a new commercial building on tax assessor's map 44, lot 18-C, Art V, Sec E.14 & Art VII, Sec G.

Janice McLaughlin, 85 Canton Avenue was sworn in. Tom Principe, Principe Engineering Co., 29 Silver Beech Road, Tiverton was sworn in. Chris Fagan, 7 Prescott Hall Road, Newport was sworn in.

Exhibit 1 was a package of 16 pages that was given to the Board.

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

Mr. Principe said that the design shows 20 parking spaces, a dumpster enclosed by a fence, evergreens along the Chelsea Drive area, and LED down lighting on the building will be wall-mounted sconces facing straight down. There will be no parking lot lights. There are solar panels on the building and it will generate its own electricity. The parking surface is porous and it will have a bio-retention swale and underground drainage. Ms. McLaughlin said that hours will be 7:30-4:00 Monday through Friday. Mostly work will be done within the building, rather than retail sales. Mechanicals will be within the building, except for the air conditioning, which will be on the north side of the building, probably close to the building and amidst landscaping.

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

Mr. Nott made a motion to place conditions on the petition if it should pass:

1. Screening to the east side of the property and abutting the residential property, shall be no less than 6' in height, shall be 3' apart and shall provide adequate screening from the abutting neighbors.
2. All exterior lighting shall be contained to the building, and fixtures shall be as proposed here and pointed 90° downward. Any additional lighting shall require Board approval.
3. Any external HVAC equipment shall be located on the north side of the building.

A second to the motion was made by Mr. Raposa. The motion carried with all in favor.

Mr. Nott: Approve:

Janice McLaughlin, Russo Road, map 44, lot 18-C wants to build a 4,896 sf building. Mr. Nott then went through the special use permit criteria, and stated he believes the petition meets the special use permit criteria with the addition of the conditions placed upon the petition, so he approved the special use permit.

Mr. Raposa: Approve:

I agree with Mr. Nott and I approve.

Mr. Hall: Approve:

I agree, it's a nice project and I approve.

Ms. Pavlakis: Approve.

I approve for reasons previously stated.

Mr. Edwards: Approve:

The Chair approves and appreciates the business continuing. You meet all special use permit criteria and I approve.

7. (R) A petition by Ann LaFleur, 28 Aquidneck Ave, Portsmouth, RI for a variance and a special use permit to construct an addition closer to property lines than zoning allows and to exceed allowable lot coverage on tax assessor's map 24, lot 164, Art IV, Sec B. and Art. VI, Sec. A.

Mr. Borden joined the meeting and sat on this petition.

Ann LaFleur, and Joe Forgione, 9 Bricknell Road, North Grafton, MA were both sworn in. They stated that they were back before the Board with a one car garage plan. They were before the Board in February and have since found out they are in a flood plain. It was recommended that they put their mechanicals in the garage, so the garage is slightly larger than a traditional one car garage to fit the utilities.

There was discussion about whether this was a substantial change from their last petition. A motion was made by Mr. Nott and seconded by Mr. Borden that it is a substantial change and the Board will hear the petition. The motion carried with all in favor.

It is now a one-car garage of approximately 18' x 20'. They are not exceeding the edge of the house. They will need a 19.7' front yard setback variance, a 6.2' side yard setback variance, and an 11.9% lot coverage variance. They need flood vents in their basement and cannot put their utilities in the basement. Part of the hardship is that the survey shows that they only have a 4,400

sf lot in an R-10 district. The tax card says they have a larger lot. The Chair walked them through the special use permit criteria and they stated it would meet all special use permit criteria.

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

Mr. Borden: Approve/ Approve:

I applaud the petitioner for better conforming to the Zoning Ordinance. Regarding the special use permit criterion, they walked through the criterion with the Chair and they testified that they met all criterion. Regarding the dimensional variances, lot coverage is 11.9%. The petitioner's hardship is that they have a 4,400 sf lot, less than one-half of the R-10 lot required. I vote to approve both the special use permit and the dimensional variances. They don't extend further than the existing footprint. They have to put their utilities somewhere.

Ms. Pavlakis: Approve/Approve.

I concur with Mr. Borden and vote to approve both.

Mr. Nott: Approve/Approve:

For reasons previously stated, and I was supportive of them coming back with a one car garage.

Mr. Hall: Approve/Approve:

I vote to approve both the dimensional variances and the special use permit.

Mr. Edwards: Approve/Approve:

The Chair also votes to approve both the special use permit and the dimensional variances for reasons previously stated.

The Board went out of session at 8:27 p.m.
The Board went back in session at 8:37 p.m.

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.

Closing arguments were presented by Attorney Peter Regan, Sayer, Regan & Thayer, LLP, 130 Bellevue Avenue, Newport, representing Janice and Jeffrey Gordon.

Closing arguments were presented by Attorney Laurent Rousseau, Moore, Virgadamo & Lynch, Ltd., 97 John Clarke Road, Middletown, representing Jean Marianne McLane.

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At 9:19 p.m., the Chair suspended closing arguments so a motion could be made by Mr. Nott and seconded by Mr. Borden to continue the petitions of Kelli & Ryan Kirwin, and Jonathan H. Harris (applicant) and Joan M. DeMello Trust (owner), to the meeting of May 19, 2016 at 7:00 p.m. The motion carried with all in favor. Immediately after the motion, closing arguments began again.

After all closing arguments, a motion was made by Mr. Borden and seconded by Mr. Nott to accept the following conditions if the petition is approved:

1. The recommendations of the December 15, 2015 letter from the Portsmouth Fire Department be followed, as detailed in Exhibit 6, specifically that "...any structure placed on the subdivision be required to have a sprinkler system installed and kept in service. The required sprinkler system would be designed and installed in compliance with NFPA 13R. Any architectural plans submitted to the Portsmouth Fire Department for construction on this subdivision shall include a NFPA 13R compliant sprinkler system to receive approval."
2. The guard rail be put in place under the supervision of the Director of Public Works, 300' north of the Sandy Point entrance to prevent a hazard from the stream, with the amount of lineal feet to be determined per the recommendation of the Public Works Director. This will be paid for by the petitioner.
3. Two of the trees close to the road at the same location (300' north of the Sandy Point entrance) shall be removed and the stumps shall be ground and this will be done at the petitioner's expense.

Mr. Nott: Deny:

There was a considerable amount of testimony. Is it more than a mere inconvenience? Ms. McLane said that she wants to prevent vandalism and provided the Board with pictures. I drove to the property and there were signs of vandalism, but it was by Mother Nature. There were no "No Trespassing" signs and no repairs had been done to fences. I would think one lot would help with vandalism anyway, rather than two. If you want to subdivide, come out with a plan; don't piecemeal it. I don't think there's more than a mere inconvenience. I deny the special use permit, it's not more than a mere inconvenience.

Mr. Hall: Approve:

Occasionally I disagree with Mr. Nott, and this is one time. It is hypocritical of us when we approve Prudence Island petitions all the time. I don't see a reason to be concerned. Ms. McLane has the right to use her property; it wouldn't be right to deny.

Mr. Borden: Approve:

Regarding Mr. Regan's idea that it's a self-imposed hardship based on a prior subdivision; I don't necessarily agree. I think the decision should be made on the merits given on February 11 and tonight. The criterion is the unique characteristics of the land – it is 30.5 acres, wooded, and it doesn't lend itself for classic subdivision. Will it change the character of the neighborhood?
No.

Is it consistent with the Comprehensive Community Plan? Yes. The request of relief from frontage is the only item not meeting the criterion. Is it a hardship amounting to more than a mere inconvenience? Yes, she has a hardship. Traffic and safety has been taken care of. I approve.

Ms. Pavlakis: Approve.

After carefully considering, I found Ms. McLane's a more compelling case. Mr. Borden has said what I wanted to say.

Mr. Edwards: Deny:

The Chair believes the road is impassable by two vehicles. Mr. Bannon stated that it is a two-way road and it's not. Most of that 30.5 acres is not meant for residences and that was known when it was purchased. I understand about Prudence Island, but not if the road is unsafe. I vote to deny.

IV. NEW BUSINESS:

1. (R) A petition by D & S Cotta LLC (applicant) and David and Sandra Cotta (owner), 885 Middle Road, Portsmouth, RI for a special use permit to allow agriculture-special event uses on tax assessors map 51, lot 17, Art V, Sec C & Art VII, Sec A.1.

David Cotta, 895 Middle Road was sworn in. Michael Flynn, Middletown, was sworn in. Mr. Flynn said that they have had a Christmas tree farm and they have not been replacing the trees. They would like to do a wedding. Their proposal is for five events with a maximum size of 100 people.

After discussion, a motion was made by Mr. Hall and seconded by Mr. Nott to continue the petition of D & S Cotta LLC to the regular meeting of May 19, 2016 at 7:00 p.m. The motion carried with all in favor.

A motion to adjourn was made by Mr. Hall and seconded by Mr. Nott. The motion carried with all in favor. The meeting was adjourned at 10:03 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary