



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

(401) 683-3611

MAY 19, 2016

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

MEMBERS ABSENT: Mr. Eric Raposa, First Alternate and Mr. Paul Henriques, Second Alternate.

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

Mr. Edwards called the meeting to order at 7:03 p.m.

I. MINUTES:

A motion was made by Mr. Nott and seconded by Mr. Hall to accept the minutes of the April 21, 2016 meeting as presented. The motion carried with all in favor.

II. CHAIRMAN'S REPORT:

The Chair said that Mr. Raposa was away due to wedding activities, however, Mr. Henriques, has not been sworn in yet despite attempts to contact him.

A motion was made by Mr. Nott and seconded by Mr. Hall to have a communication go from the Town Administrator to Mr. Henriques to determine if he is interested in serving as second alternate. The motion carried with all in favor.

III. CONTINUED 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 assessor's map 51, lot 17, Art V, Sec C & Art VII, Sec A.1.

Michael Flynn, Middletown, was back before the Board, having been previously sworn in. Mr. Flynn distributed packets of information to Board members. He stated that D & S Cotta LLC would like to host five weddings per calendar year at the farm with a maximum of 200 people attending and a maximum tent size of 5,500 sf. There would be live music or a DJ that would not exceed the Town's 65 decibel level and would go no later than 10 p.m. Lighting would be in the tent except for one light that already exists on the barn that they will surround with i.e.d. solar lights for the pathway to guide people on the path. The schematic of the lumens are

provided in the packet of information. Mr. Flynn has met with Chief Lee and agrees that a party of over 100 guests should have a police detail. He also met with Fire Marshall Andrew White and Fire Marshall White has provided the Board with a letter. Alcohol will be provided by TIPS certified caterers only. Events will not begin before noon. The Chair went through the special use permit criterion and Mr. Flynn believes it will meet all special use permit criterion.

Exhibit 1 was entered, which was the packet of information Mr. Flynn gave the Board – four pages of information – a letter outlining what they wish to do, a color google photograph, and two cut sheets of information about the lighting.

Exhibit 2 was entered, which is the letter dated 5/19/16 from the Fire Marshal saying he has no opposition to the special use permit.

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

A motion was made by Mr. Nott and seconded by Mr. Borden to place conditions on the petition should it pass. The conditions were as follows:

1. Events will be limited to five per year.
2. The maximum number of guests will be 200.
3. Hours of events are no earlier than 12:00 p.m. and must end by 11:00 p.m.
4. Live or amplified music must end by 10:00 p.m.
5. Tents must be no larger than 6,000 square feet.
6. Lighting must be per Exhibit 1.
7. An event with more than 100 persons requires a police detail.
8. Alcohol must be served by a TIPS certified vendor.

The motion to place conditions on the petition should it pass carried with all in favor.

Mr. Nott: Approve:

David and Sandra Cotta, represented by Mr. Flynn, are before the Board seeking a special use permit to allow weddings. They have met the special use permit criteria and with the conditions placed the Board has some control over the events. I vote to approve.

Mr. Hall: Approve:

It's the second case involved and it's good for everybody. I vote to approve.

Mr. Borden: Approve:

It's good for Portsmouth, it's good for farms, there are no abutters present and I am pleased. Great job. I vote to approve.

Ms. Pavlakis: Approve:

I concur with my other Board members and vote to approve.

Mr. Edwards: Approve:

I also agree with the other Board members and I vote to approve.

2. (R) A petition by Kelli & Ryan Kirwin, 58 Bancroft Drive, Portsmouth, RI for a variance to allow a subdivision without adequate frontage on tax assessor's map 56, lot 18, Art IV, Sec B.

Attorney Eric Chappell, Chappell & Chappell, 171 Chase Road represented Kelli and Ryan Kirwin. Ryan Kirwin, 20 Ocean Heights, Newport was sworn in as was Matt Viana, PE, Millstone Engineering, 250 Centerville Road, Warwick, RI. Mr. Viana's résumé was submitted to the Board.

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

The subject property is in a watershed district and is under five acres. Exhibit 1 shows a full subdivision, however that is not what they wish to do. They are proposing an environmentally friendly, shortened cul-de-sac with three lots at this time; they may later divide the lot with the house into two lots, but they would have to come back before the Zoning Board for a frontage variance.

Proposed lot 1 will have 22' of frontage and needs 125', so needs a 103' frontage variance. The other two subdivided lots have enough frontage. The Planning Board would regulate the drainage of a four-lot subdivision in a Watershed District should they plan to divide further in the future.

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

Mr. Borden: Approve:

The proposed subdivision is reasonable. The proposal is to minimize pervious surface and that makes perfect sense for the district. The acreage is in excess of required for each lot. I vote to approve.

Ms. Pavlakis: Approve:

I approve for reasons given by Mr. Borden.

Mr. Nott: Approve:

I agree with Mr. Borden. If you were to read the Watershed section, you'd see they are more in compliance with the smaller cul-de-sac, so I approve.

Mr. Hall: Approve:

I vote to approve for reasons previously stated.

Mr. Edwards: Approve:

The Chair votes to approve for reasons previously stated.

3. (R) A petition by Jonathan H. Harris (applicant) and Joan M. DeMello Trust (owner), 346 Vanderbilt Lane, Portsmouth, RI for a variance to allow a subdivision without adequate land area on tax assessor's map 54, lot 17, Art IV, Sec A(4)(f) and B.

Attorney Peter Regan, Sayer, Regan & Thayer, LLP, 130 Bellevue Avenue, Newport was present representing Jonathan Harris (applicant) and Joan DeMello Trust (owner). Mr. Regan discussed the time it has taken for the property to get all the approvals from the various state agencies. The Portsmouth Water and Fire District is asking them to loop the water main to Sunrise Drive. This requires them to provide an easement through proposed Lot 7. Proposed lot 7 will then have developable land less than 40,000 square feet required by ordinance, requiring a variance. The hardship is, if the variance is not granted, engineering will have to be redone, permits will have to be requested again and it will take another 6-8 months of time to get permits from state agencies.

Lyn Small, P.E., Northeast Engineers & Consultants, Inc., 55 John Clarke Road, Middletown was sworn in.

A motion was made by Mr. Borden 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 to the difficulty of the modifications of the permits and the time length it has taken and will take if the variance is not granted. She testified to the soils found on the site.

The Chair called for abutters or interested parties.

Stephanie Martland, 91 Sunrise Drive spoke to ask where the easement would go.

Denis Martland, 91 Sunrise Drive spoke.

Mr. Borden: Approve:

The petitioner is proposing a 7 lot subdivision and the petitioner is requesting dimensional relief for Lot 7. The question is whether there is a hardship more than a mere inconvenience. In my opinion, the town is benefiting substantially from the water loop. It will be safer and improved water service, so I vote to approve. You will not be able to see that the lot is different from any other lot by looking at it.

Ms. Pavlakis: Approve:

I agree with Mr. Borden. It is a reasonable request and I approve.

Mr. Nott: Approve:

I approve for reasons given by Mr. Borden. The Planning Board is behind this. To deny amounts to more than a mere inconvenience.

Mr. Hall: Deny:

This property is a clean state and there is more than enough acreage to do what they need to do. It's obvious this is a mistake on someone's part. It will cost them time and money, which this Board is not supposed to take into account. Ms. Small and Northeast Engineers have worked with Portsmouth Water and Fire District many times and knows their requirements.

Mr. Edwards: Approve:

I approve for reasons given by Mr. Borden. There will be no change other than underground and it is a reasonable request.

The Board went out of session at 8:08 p.m.
The Board was called back in session at 8:15 p.m.

IV. NEW BUSINESS:

1. (R) A petition by Wayne Coulombe, 324 Turnpike Avenue, Portsmouth, RI for a variance to construct a barn closer to property lines than zoning allows on tax assessor's map 30, lot 19, Art IV, Sec B.

Wayne Coulombe, 5 Lincoln Street, Newport, was sworn in. Mr. Coulombe said his daughter resides in the residence and he would like to construct a barn on the long, skinny lot to put his boat in so he can tinker with it and to store garden and yard tools. He would like a 15' rear yard setback variance so he can try to hide the barn a little with the slope of the land and sit it back towards the vegetation on the lot. He's not certain what type of material the barn would be made

out of at this time, it could be metal. He's thinking perhaps a green roof with red siding. The size would be about 50' x 20' with an "L" and a 16' high peak.

The Chair called for abutters or interested parties.

Michael Caron, 7 Brown Terrace said his concern is that it could be noisy if it's made from metal and he'll be looking out his kitchen window at the back of it and also the electric.

Andrew Vanier, 187 Seaconnet Blvd said he had no objection and that he also owned 19 Brown Terrace.

A motion was made by Mr. Nott and seconded by Mr. Borden to place the following conditions on the petition should it pass:

1. Sound reducing insulation must be used in the barn.
2. No exterior lighting on the south or rear side shall be used.
3. No animals shall be allowed in pens or runs in or attached to the barn.

The motion to place conditions on the petition should it pass carried with all in favor.

Mr. Nott: Approve:

Wayne Coulombe is before the Board seeking a 15' rear yard setback to install a barn structure, but is it the least relief necessary? He has the lot coverage. Trying to place it any place is not easy. I will approve it with the conditions in place.

Mr. Hall: Approve:

It's a reasonable request and I vote to approve.

Mr. Borden: Deny:

I sympathize with the petitioner but variances go with the land and the ordinance states that it should be the least relief necessary. He could build a smaller barn or move it forward because he is asking for 50% relief from the dimensional variance. I don't think he's met the criterion, so I will deny.

Ms. Pavlakis: Deny:

I agree with Mr. Borden. Rules are made for reasons. It is too much to ask for, and I will also deny.

Mr. Edwards: Deny:

The Chair will also deny. The plan did not show why you couldn't move the barn. It was not the least relief necessary.

2. (R) A petition by Sean and Kirsten Casey, 1012 Anthony Avenue, Portsmouth, RI for a variance and special use permit to construct a garage which would exceed allowable lot coverage closer to property lines than zoning allows and to re-align lot lines on tax assessor's map 2, lot 2, Art IV, Sec B. and Art. VI, Sec. A-C.

Attorney Eric Chappell, Chappell & Chappell, 171 Chase Road represented Kirsten and Sean Casey, who were also present and sworn in. Mr. Chappell said that when the Caseys got a Class 1 survey done, they realized that some of their improvements were on Common Fence Point Improvement Association (CFPIA) land. Mr. Chappell said that they now have a friendly lawsuit – they are not attempting to take any land that is not theirs in an adverse possession action – and they would like to swap land with the Common Fence Point Improvement Association in an equal land swap. The Caseys would add a one-car garage but remove their garage/boat house and that land would become the CFPIA's land. They will also move their fence.

They are before the Board seeking a special use permit and a dimensional variance for lot coverage of 5.37%, an increase over existing of 2.5%. The property lines would have to be changed by Superior Court via the lawsuit in order for any of this to take place and for the Board's variances, if approved, to go into effect.

Ms. Casey testified that the garage and moving the property lines would meet all special use permit criterion.

The Chair called for abutters or interested parties.

Brenda Barclay de Tolly, 1003 Anthony Road spoke against the petition.

Paul Barclay de Tolly, 1003 Anthony Road spoke against the petition.

Larry Alofsin, 37 Island Road asked the Board if they have granted conditional variances previously.

Three Trustees of the Common Fence Improvement Association Trustees of the Land (currently 4 with only 3 in town) spoke: Carol Nicolau, 1326 Anthony Road, Mike Zani, 1304 Anthony Road, and Jonathan Gewirz, 44 Narragansett Road. After much debate, they approve the concept of an equal land swap that will clean up the encroachments and avoid potential legal action. They've looked at the zoning ordinance and support their plan. They feel it does not change the intended use of the land. They've done swaps in the past. They have had a conservation biologist look at the land they will be getting minus the boathouse and it will have conservation value. It will be permeable.

Bob Napier, 975 Anthony Road spoke and wanted the decision deferred.

Ms. Pavlakis read letters from the file into the record from Alofsin, Joan Brogan, 20 Island Road, Jacqueline Shearman, 17 Island Road, and Karen Laskarzewski, 30 Island Road.

Mr. Nott: Approve/Approve:

Kirsten and Sean Casey, Map 2, Lot 2, are before us seeking a special use permit and a 5.37% lot coverage variance for the purpose of constructing a one-car garage on land they may own in the future. They meet special use permit criteria. They already have a garage, but if the swap happens there will not be much difference from what they have. They will take down one building and put up another. I approve.

Mr. Hall: Approve/Approve:

I vote to approve both for reasons previously stated.

Mr. Borden: Approve/Approve:

Regarding the special use permit – it's a substandard lot of record and they walked through the special use criterion and the project met all criterion, so I approve. Regarding the dimensional relief, is there a hardship that is more than a mere inconvenience? They have no basement and will have no shed and no storage, so it's reasonable. The lot is substandard and it is only a 2.5% increase so it is consistent with property in that area. Regarding the swap of property, it is not relevant to what the Board is deciding.

Ms. Pavlakis: Approve/Approve:

I agree with reasons previously stated by Mr. Nott and Mr. Borden.

Mr. Edwards: Approve/Approve:

I also agree to approve. Three of four Trustees of the Land said to approve. The fence will be moved and the existing garage will be removed, so I approve.

3. (C) A petition by Sean Napolitano, 1627 West Main Road, Portsmouth, RI for a special use permit to allow the storage of construction equipment on tax assessor's map 51, lot 12, Art V, Sec I.11.

Attorney David Martland, Silva, Thomas, Martland & Offenbergl, Ltd., 1100 Aquidneck Avenue, Middletown represented Sean Napolitano. Sean Napolitano, 2 Maloney Lane, Middletown was also sworn in. Mr. Napolitano owns A-1 Roofing. He wants to have office space and the right to have construction equipment in the rear of the building on map 51, lot 12. Storage of construction equipment needs a special use permit.

Exhibit 1 included three pictures. These were pictures of the rear of the building at this time. Exhibit 2 was a Google Maps picture. The fence that was shown in Exhibit 1 will be maintained.

Possibly two other offices would be in the building with him. Light equipment to be stored

would include ladders, empty rollofs, and staging. Mr. Napolitano said that there would be no heavy construction equipment, no landscaping material such as gravel, or loam or hazardous chemicals and hazardous materials. There would be roofing materials.

Real estate expert Nate Godfrey submitted his report to the Board.

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

A motion was made by Mr. Edwards and seconded by Mr. Borden to place conditions on the petition should it pass. The conditions were as follows:

1. The fence along the westerly boundary be maintained along with any plantings along the fence that separate it from the residential neighbor.
2. There be no storage of hazardous materials outside.
3. A barrier be erected at the southeast corner of the parking lot that prevents parking that obstructs the view of people exiting the lot onto West Main Road.

The motion was amended to add:

4. No heavy construction equipment be stored on the lot.

The motion to place conditions on the petition should it pass, as amended, carried with all in favor.

Mr. Hall: Approve:

Sean Napolitano, applicant and JoAnn Sabatino, owner, 1627 West Main Road are before the Board for a special use permit for accessory use of the storage of construction equipment. The petitioner gave testimony as to what they plan on doing and what they don't plan on doing and I think it's straightforward and I'm glad to see activity there, I think they meet all special use permit criteria and I approve.

Mr. Nott: Approve:

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

Mr. Borden: Approve:

I also vote to approve for reasons stated by Mr. Hall.

Ms. Pavlakis: Approve:

I vote to approve for reasons stated by Mr. Hall.

Zoning Board of Review
May 19, 2016

Mr. Edwards: Approve:

The Chair also votes to approve for reasons previously stated by Mr. Hall. I agree. A-1 has a nice business and does a nice job.

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 9:54 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary