



Town of Portsmouth

ZONING BOARD OF REVIEW
2200 East Main Road / Portsmouth, Rhode Island 02871
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(401) 683-3611

SEPTEMBER 15, 2016

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

MEMBERS ABSENT: None.

OTHERS PRESENT: Town Solicitor Kevin Gavin was present as legal counsel for the Board, Building Assistant Timothy Gardiner, Town Planner Gary Crosby and Barbara Ripa as recording secretary.

Mr. Edwards called the meeting to order at 7:02 p.m.

I. MINUTES:

A motion was made by Mr. Nott and seconded by Mr. Borden to accept the minutes of the August 25, 2016 meeting as presented. The motion carried 5-0.

II. CHAIRMAN'S REPORT:

The Chair told the audience that the Zoning Board of Review is looking for another alternate.

III. CONTINUED BUSINESS:

1. (C) A petition by The Narragansett Electric, Portsmouth, RI for a special use permit and a dimensional variance to rebuild and upgrade transmission lines.

Attorney Peter Lacouture, Robinson & Cole LLP, One Financial Plaza, Suite 1430, Providence, RI 02903 was present representing Narragansett Electric. He stated that Narragansett Electric is seeking relief to rebuild and upgrade existing transmission lines between the Dexter substation and the Jepson substation in Middletown and to replace the Jepson substation in Middletown. They will also reconfigure the existing Dexter substation in Portsmouth to accommodate the upgrade lines and remove the existing Jepson substation in Middletown.

Mr. Lacouture called Project Manager Endrit Fiku, National Grid, 40 Sylvan Road, Waltham, MA 02451, to describe the project. Mr. Lacouture said that the applicant is seeking a special use permit to hold a public utility on the right-of-way and on the Jepson substation driveway, which is located in Portsmouth. Mr. Fiku was sworn in. He said that dimensional variances are required for the transmission towers, which will range in height from 86' – 106'. Current existing poles range in height from 45' – 65'. Most poles will be 86' – 96' with 2 poles near Jepson Lane at 101' and 106'. Mr. Fiku reviewed the material in Exhibit 1. Height restriction in Portsmouth is 35', so the

current poles already exceed the restrictions. A portion of a driveway for the Jepson substation will be located in Portsmouth and requires a special use permit.

It was noted:

- Two driveways were needed at the substation because of the size of vehicles that enter so they can drive around the substation.
- Once completed, there will be no personnel at the substation and it will be dark sky compliant.
- The higher poles are a requirement due to higher voltage lines and are the minimum height requirements for the new 115 kV lines.
- The company has done significant public outreach and education on the project.
- Regarding noise, there should only be noise generated from the wires if there is a broken insulator or dust in an insulator. The Jepson substation will generate some noise, but it will generate less than what exists currently.

Thomas Sweeney, Real Estate & Appraisal, 1 Turks Head Place, Suite 850, Providence, RI 02903 was sworn in. He reviewed his education for the Board. His report that he prepared was turned into the Board and labeled Exhibit 2.

A motion was made by Mr. Borden and seconded by Mr. Hall to accept Mr. Sweeney as an expert in real estate. The motion carried 5-0.

Mr. Lacouture discussed special use permit criteria with Mr. Sweeney. Mr. Sweeney replied that, in his opinion, this project meets all the special use permit criteria. Mr. Lacouture then discussed the standards for a dimensional variance and Mr. Sweeney replied that he believed this project met all the criteria to receive a dimensional variance and that it was the least relief necessary and the utility had a hardship amounting to more than an inconvenience.

Mr. Lacouture called Gerald Pepi, engineer, 274 Summit Street, Boston, MA. Mr. Pepi has designed transmission lines for 45 years.

A motion was made by Mr. Hall and seconded by Mr. Borden to accept Mr. Pepi as an expert in transmission lines. The motion carried 5-0.

Mr. Pepi stated that going from 69 kV lines to 115 kV lines requires a higher clearance above ground. He said that vertical construction of the lines is necessary, that it is safer in wind and ice. The poles will more or less be in the same place as they are now, but because they will be replacing the old poles, they will be about 20' along the lines.

The Chair called for abutters or interested parties.

Judi Staven, 51 Long Meadow Road was concerned about a pole falling and does not believe poles

of this height belong in Portsmouth.

Discussion followed regarding the issue of falling poles. The poles are designed to fail towards the next pole, but they're built onto concrete pads and are very safe. The only instance Mr. Pepi knows of one failing was under extreme conditions – the pole was of a different metal and in a saltmarsh for decades and then a snow and ice storm, combined with a wooden pole breaking, toppled the pole.

Allen Shers, 40 Roger Williams Court, said that this is an intensification of use and that these are towers, not poles. He asked how the poles would be brought in and wondered if the lines could be put underground.

The poles are brought in to the area in three pieces and will be constructed on the right-of-way.

A motion was made by Mr. Borden and seconded by Mr. Nott to include the following conditions should the special use permit and dimensional variance pass on the petition:

- Petitioner take into consideration in the design stage and the approval stage the location of all the poles and all existing homes within the 4.4 mile corridor and take into consideration the height of all the monopoles and make certain there is no chance a pole will hit an existing house should it fall.

The motion carried 5 – 0.

A motion was made by Mr. Edwards and seconded by Mr. Borden to place a second condition on the petition: that the petitioner will provide copies of environmental studies and results of the new and former Jepson Lane substation to the Town of Portsmouth. The motion carried 5-0.

Mr. Borden: Approve/Approve:

Regarding the special use permit for the access road, all special use permit criterion has been met and the petitioner went through them all. Regarding the dimensional variance, I agree with Ms. Staven, that these poles will be ugly, but when I look at the criterion for zoning approval, looks are not there. This is a public utility and the public good outweighs the esthetics, so I feel the dimensional relief criterion has been met and I approve.

Ms. Pavlakis: Approve/Approve:

I vote to approve the special use permit for the access road and the dimensional variance for all the reasons given by Mr. Borden. It's very unfortunate if you bought property by the easement.

Mr. Nott: Approve/Approve:

We have to look at the health, safety, and welfare of the community as a whole. A few years back we lost power for the better part of a day and it was not a lot of fun. It meets the special use criteria and it is the best for the public with the conditions placed on it.

Mr. Hall: Approve/Approve:

I couldn't say it any better than what my colleagues have already said, so I vote to approve both.

Mr. Edwards: Approve/Approve:

I also vote to approve. Lots of people will be affected, but this will be a benefit, a necessary evil.

Mr. Gavin remarked that the special use permit is not just for the driveway, but also for the entire 4.4 mile easement. He also mentioned that the Planning Board gave a favorable Advisory Opinion at their meeting the previous evening and that should be in the file.

Mr. Borden: Approve:

Mr. Borden stated that as an addendum to his original vote, he wanted to amend it to state that he is in favor in regards to a special use permit for the 4.4 mile corridor, with the conditions placed on the petition.

Ms. Pavlakis: Approve:

Ms. Pavlakis stated that she approves; it meets the standard.

Mr. Nott: Approve:

Mr. Nott stated that his original vote understood that the 4.4 mile corridor was included in the special use permit.

Mr. Hall: Approve:

Mr. Hall stated that his original vote understood that the 4.4 mile corridor was included in the special use permit.

Mr. Edwards: Approve:

Mr. Edwards stated that he approves the special use permit for the 4.4 mile utility along the corridor.

The Board called for a break at 8:27 p.m.

The Board was called back into session at 8:37 p.m.

IV. NEW BUSINESS:

1. (R) A petition by Ralph and Lauren Plumb, 151 Glen Road, Portsmouth, RI to appeal a letter from the Zoning Enforcement Officer dated August 9, 2016.

Neal Galvin, Corcoran, Peckham, Hayes & Galvin, P.C., 31 America's Cup Avenue, Newport was

present representing Ralph and Lauren Plumb. Mr. Galvin said he will present the appeal from the decision of the Building Inspector first and if the Board agrees he will continue with the regulatory petition. Mr. Galvin does not believe a paved area should be considered in lot coverage.

Mr. Edwards noted that a vote on a successful appeal was 3 in favor rather than 4, which is required for a variance or special use permit.

Mr. Galvin called Tim Gardiner, Assistant Building Inspector for the Town of Portsmouth, as his first witness. Mr. Galvin asked Mr. Gardiner several questions and entered the following exhibits:

- Exhibit 1 Definition of Building, Article II, Page II-3
- Exhibit 2 Definition of Lot Building Coverage, Article II, Page II-12
- Exhibit 3 Definition of Structure, Article II, Page II-21
- Exhibit 4 Original Building Permit Application with Sign off for Pool – Mr. Levis objected
- Exhibit 5 Plan Submitted and Approved that led to the Notice of Violation.

The original plan was marked “Void” and was replaced by “Exhibit 5” somewhere on or about July 8th.

- Exhibit 6 Notice of Violation
- Exhibit 7 Letter of Appeal from the Plumbs

The Plumbs contend that the paved area is a driveway and not a building or structure.

Mr. Galvin called Ralph Plumb as a witness. Ralph Plumb, 151 Glen Road was sworn in. Mr. Plumb said that Glen Road is a busy street and he shares a driveway. He has an 18 month old and sometimes a 5 year old and wanted a safe place to play for the kids. He wanted to build a 50’ x 100’ paved area to ride bikes, play tennis and pickle ball. Mr. Plumb said he spoke with the neighbors at 135 Glen Road, that he shares a driveway with, and at first they were supportive, but once the project started talks were no longer productive. Mr. Plumb said that he was told by the Building Inspector that a permit was not required for a paved section. The pool contractor pulled the permit and the contractor started work. They had cleared the area and were setting up to pour when on July 6 the pool contractor said the permit was being rescinded. Mr. Plumb said he spoke with Larry Desormier. Mr. Plumb then spoke with his wife. Mr. Plumb spoke with Gary Crosby and Denise Davis at the Town. He wanted to move the project along, so even though he disagreed, he shrunk the size of the court and the pool, which resulted in the modified plan. He called the contractors to tell them of the revised sizes. Subsequently, the Plumbs learned the contractor poured the court 45’ x 85’ instead of 38’ x 80’, which is what he told them to do. That was when they received the notice of violation from the Town. Mr. Medeiros came out in early August and inspected the pool and it passed inspection. Mr. Plumb said that he is aware of many homes in Portsmouth that have similar courts.

There was a break in testimony so a motion could be made by Mr. Nott and seconded by Mr. Borden to continue a petition by John Weishaupt, 548 Park Avenue, for a variance and special use permit to construct an addition and deck which will exceed allowable lot coverage on tax assessor’s

map 21, lot 53, Art IV, Sec B and Art. VI, Sec A. and a petition by Cumberland Farms Inc., 1812 East Main Road (owner) and The Chris Stefanopolous Living Trust, 1818 East Main Road (applicant), Portsmouth, RI for a variance and special use permit to demolish existing building and construct a new convenience store with gasoline and retail sales on tax assessor's map 45, lots 43 and 44, Art VII, Sec A, Art. VI, Sec D and Art. IX, Sec, A3 to the regular meeting of October 20, 2016 at 7:00 p.m. The motion carried 5 – 0.

There was a question as to whether Mr. Plumb was an expert on homes with courts in Portsmouth, and whether said homes had variances granted, or were grandfathered in. Mr. Galvin stated that it is on the record as an offer of proof.

At this time both Mr. Galvin and Mr. Leviss offered to step aside so the petition by Escobar Farmhouse Inn, LLC might be heard.

A motion was made by Mr. Borden and seconded by Mr. Hall to temporarily suspend testimony in the Plumb appeal in order to hear the Escobar Farmhouse Inn, LLC petition. The motion carried 5 – 0.

3. (R) A petition by Escobar Farmhouse Inn, LLC and Escobar Farm, LLC (applicant) and Louis and Jane Escobar (owner), 2072 East Main, Portsmouth, RI for a special use permit to allow agriculture-special event uses on tax assessor's map 41, lot 35, Art. V, Sec. C and Art. VII, Sec A.1.

Eric Chappell, Chappell & Chappell, 171 Chase Road, and Jane and Louis Escobar, 141 Middle Road were present to represent Escobar Farmhouse Inn, LLC. Jane and Louis Escobar were sworn in.

The Escobars want to have a wedding on September 24 and perhaps up to five in the next year. All parking will be on the Middle Road side. There will be a tent set up and food vendor trucks and a port-a-john for this wedding.

The petitioners suggested conditions in their petition to which they would adhere.

The Chair called for abutters or interested parties.

Conni Harding, 884 Union Street said that this was the bright light of the evening and she hoped the Board would endorse it.

A motion was made by Mr. Nott and seconded by Mr. Hall to place the following conditions on the petition should it be granted a special use permit:

1. That there be a maximum of five (5) events on the property per calendar year;
2. That events not begin sooner than 12:00 p.m. and end no later than 11:00 p.m.;

3. That live or amplified music end no later than 10:00 p.m.;
4. That events having more than 100 guests require a police detail; and
5. That all alcohol be served only by TIPS certified vendors.

The motion carried 5-0.

Voting on the petition was as follows:

Mr. Hall: Approve:

Jane and Louis Escobar, 133 Middle Road are here because they would like to carry out some weddings at the Escobar Farmhouse and they want to apply under the new ordinance and I vote to approve.

Mr. Nott: Approve:

The petition meets all the conditions, and it's basically the same as the two previously approved so I vote to approve.

Mr. Borden: Approve:

I agree with Mr. Nott. The petitioners have a proven record in Portsmouth of being good citizens, and I approve.

Ms. Pavlakis: Approve:

For reasons previously stated, I approve.

Mr. Edwards: Approve:

The Chair also votes to approve for reasons previously stated.

1. (R) A petition by Ralph and Lauren Plumb, 151 Glen Road, Portsmouth, RI to appeal a letter from the Zoning Enforcement Officer dated August 9, 2016. (CONTINUED)

The Board returned to the appeal of Ralph and Lauren Plumb.

Mr. Plumb stated that he'd always intended to have screening and to work closely with his neighbors.

Mr. Galvin called registered architect Spencer McCombe, 7 Thurston Avenue, Newport.

A motion was made by Mr. Borden and seconded by Mr. Raposa to accept Mr. McCombe as an expert in the field of architecture. The motion carried 5 – 0.

Mr. Galvin asked Mr. McCombe how often he has included basketball courts, tennis courts or patios in lot coverage when preparing a building permit application for the Town of Portsmouth. Mr. McCombe said he has never included any of these structures in lot coverage calculations.

Mr. Galvin submitted RIGL 45-24-31 as Exhibit 8.

Evan Levis, 15 Old Beach Road, Newport represents abutters Cara Millett and Bryce Helie. They wrote a letter that was delivered to Zoning Enforcement Officer, Raymond Antaya dated September 9, 2016. That letter was supposed to be given to the Board members but they did not have it. Mr. Levis gave it to them and it was labelled Exhibit A. Mr. Levis stated that Mr. Antaya told his clients that his job was ending and they would not be receiving a response from him.

Mr. Levis said that a tennis court is viewed as an accessory use, so why not a basketball court?

The Board decided to continue this petition to a special meeting.

A motion was made by Mr. Nott and seconded by Mr. Borden to continue a petition by Ralph and Lauren Plumb, 151 Glen Road, to appeal a letter from the Zoning Enforcement Officer dated August 9, 2016 and a petition by Ralph and Lauren Plumb, 151 Glen Road, for a variance to construct an inground swimming pool, patios and driveway extension/play area which will exceed allowable lot coverage on tax assessor's map 59, lot 29b, Art IV, Sec B to a special meeting to be held on September 29, 2016 at 7:00 p.m. The motion carried 5 – 0.

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 10:07 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary