



Town of Portsmouth

ZONING BOARD OF REVIEW
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(401) 683-3611

SPECIAL MEETING **SEPTEMBER 29, 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:

There were no minutes to approve.

II. CHAIRMAN'S REPORT:

There was no Chairman's Report.

III. CONTINUED 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 that his client and the objecting abutting neighbors, Cara Millett and Bryce Helie, being represented by Attorney Evan Leviss, 15 Old Beach Road, Newport have achieved a resolution, and the neighbors are withdrawing their objection.

Mr. Leviss came forward and stated that his clients are withdrawing their objection to the Plumb's request for a variance and the notice of violation.

For the record, there are currently Exhibits 1 – 8 from the petitioner and one Exhibit A from the objecting abutter. A letter of support from Mr. and Mrs. Barry O'Neill was entered as Exhibit 9.

Mr. Galvin had two additional witnesses. First to be sworn in was Blake Henderson, 250 Fisher Circle. Mr. Henderson is a registered professional engineer and the founder of Northeast Engineers, although he no longer is with the company.

A motion was made by Mr. Hall and seconded by Mr. Nott to accept Mr. Henderson as an expert in engineering and traffic. The motion carried 5-0.

Mr. Henderson testified that there are no developed properties downhill from the court. He said Glen Road is in a traffic sensitive overlay district and there are large peak volumes of traffic that travel at twice the posted speed. He stated that he has never counted basketball courts toward lot coverage on any projects he has done.

Mr. Galvin then called James Houle. James Houle was sworn in before the Board stating that his address was 198 Union Street. He said that he is a real estate appraiser and has testified before this Board.

A motion was made by Mr. Nott and seconded by Mr. Borden to accept Mr. Houle as a Real Estate expert. The motion carried 5 – 0.

He stated that he has done appraisals in Portsmouth involving basketball courts and he has never seen them included in lot coverage.

The Chair called for abutters or interested parties.

Michelle Foster, 111 Glen Road spoke.

Herbert Nicholson, 156 Glen Road spoke.

Board member James Hall said that someone anonymously dropped pictures off in an envelope and he distributed them to the Board members. Mr. Hall said the court during construction looked like a structure. Mr. Henderson refuted that and said that was the preferred way to build a driveway.

Mr. Galvin disclosed that the abutter and petitioner came to their agreement due to generous vegetative screening which will be paid for by the petitioner and no lighting on the court.

Mr. Galvin gave his closing argument to the Board.

The Chair stated that if a Board member votes to deny, they are agreeing that the Zoning Enforcement Officer was correct in providing a notice of violation. If they vote to approve, they are agreeing with the appellant that the Zoning Enforcement Officer erred.

Mr. Nott: Deny:

I vote to deny the appeal. I do not think the Zoning Enforcement Officer erred at all. It comes down to whether it is a structure or not and I believe that the court is a structure. The petitioner can seek a variance for 2.2% lot coverage.

Mr. Hall: Deny:

I too vote to deny the appeal. It is a lot coverage issue and so he got a notice of violation.

Ms. Pavlakis: Deny:

I agree with Mr. Nott and Mr. Hall and I vote to deny.

Mr. Borden: Deny:

I'm a little troubled by the sequence of events and how he (Mr. Plumb) was treated by town officials, but at the end of the day the building permit was not followed and question is, did the Building Officer act properly from his interpretation and does it exceed 20% lot coverage? Based on definitions, it exceeds. Based on strict interpretations, our Building Official acted correctly. I vote to deny.

Mr. Edwards: Deny:

The Chair will also vote to deny. Not clear cut because of the State Enabling Act but there is a difference between Portsmouth and the State Enabling Act. Portsmouth has always included patios, porches, steps, etc., in lot coverage.

2. (R) A petition by Ralph and Lauren Plumb, 151 Glen Road, Portsmouth, RI 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.

Mr. Galvin asked that all testimony from the appeal be incorporated into the request for a variance.

A motion was made by Mr. Nott and seconded by Mr. Borden to incorporate all the testimony and all the evidence that was presented in the appeal process for Ralph and Lauren Plumb, map 59, lot 29b into this petition. The motion carried 5 – 0.

For the record, Mr. Galvin stated that he is looking for 2.2% lot coverage variance for the patio, pool and basketball court. No new testimony was given.

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

The circumstances of this petition request are that the pool, the patio and the basketball court are already constructed, and the petitioner is seeking a 2.2% lot coverage variance.

A motion was made by Mr. Borden and seconded by Mr. Nott that if the petition is passed, the following conditions be placed on it:

- 1) The petitioner shall install screening for the west abutters and the petitioner pay for it, and
- 2) There be no exterior lighting on the basketball court.

After discussion, a motion was made to amend the conditions by Mr. Borden and seconded by Mr. Nott to read:

- 1) The petitioner will pay for the installation of vegetative screening of the west abutter's choice on the west abutter's property.
- 2) At no time shall the basketball court on the grantor's premises be illuminated by artificial light by any source whatsoever.

The motion to place conditions as amended should the petition pass was passed 5 – 0.

Mr. Nott: Approve:

Ralph and Lauren Plumb, 151 Glen Road, map 59, lot 29b are before the Board for a 2.2% lot coverage variance. The conditions already exist. It is a paved basketball court. Testimony has been given that the Town had somewhat erred. To deny amounts to more than a mere inconvenience, now, so I vote to approve.

Mr. Hall: Approve:

I think Mr. Nott said it correctly. If he had come to the Board originally, we may have said no, but there were questions on how this was handled, so I vote to approve.

Ms. Pavlakis: Approve:

I agree with Mr. Nott and Mr. Hall and I vote to approve.

Mr. Borden: Approve:

I agree with my colleagues. I agree with Mr. Nott and I apologize to the petitioner for the Town due to what happened. The way we interpret under the ordinance is as a structure. It would amount to more than a mere inconvenience to deny.

Mr. Edwards: Approve:

Lot coverage of 2.2% is not much and I will vote to approve. Mr. Plumb's intent was to make it smaller than it turned out. I agree with Mr. Nott.

A motion to adjourn was made by Mr. Nott and seconded by Mr. Borden. The motion carried 5-0. The meeting was adjourned at 8:25 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary