



Town of Portsmouth

ZONING BOARD OF REVIEW

2200 East Main Road / Portsmouth, Rhode Island 02871

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JANUARY 18, 2018

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

MEMBERS ABSENT: Mr. James Hall.

OTHERS PRESENT: Town Solicitor Kevin Gavin was present as legal counsel for the Board, Michael Asciola, Assistant Town Planner and Barbara Ripa as recording secretary.

Mr. Edwards called the meeting to order at 7:02 p.m. in the Town Council chambers.

I. MINUTES

A motion was made by Mr. Nott and seconded by Mr. Borden to approve the minutes of the regular meeting of December 21, 2017 as presented. The motion carried with all in favor.

II. CHAIRMAN REPORT

There was no Chairman Report.

III. OLD BUSINESS

1. (R-20) Jonathan and Vanessa Egan (owners/appellant) of 1206 Middle Rd (57-57) seek an administrative appeal (Art. XIV) of a Zoning Enforcement Officer's decision related to a notice of violation of Art. IX Sec. C, Vision Clearance; dated 10/3/2017.

Jonathan and Vanessa Egan, 1206 Middle Road were present and were advised they were still sworn in. The Egans said they checked with the police regarding accidents and there has been one accident in the last 20 years, but it was not on their side of the road and not due to the arborvitae obstructing views. They have gotten one quote to cut the trees down, but they have been unable to get an arborist out to the property. They asked if the trees were "grandfathered in" because they existed prior to zoning. Mr. Edwards said he did not think it mattered because they are a safety concern. The Egans asked for a continuance so they could gather more information.

A motion was made by Mr. Borden and seconded by Mr. Nott to continue the petition to the Zoning Board of Review meeting of February 15, 2017. The motion carried 5 – 0 with Mr. Edwards, Mr. Borden, Mr. Furriel, Mr. Nott, and Mr. Raposa voting in favor.

IV. NEW BUSINESS

1. (R-20) Jennifer and Greg Gempp (owners) seek a dimensional variance for a front yard setback

(Art. IV, Sec. B) to construct a 36' x 14' detached structure for the storage of an RV located at 0154 Atlantic Avenue (79-43).

Jennifer and Greg Gempp, 0154 Atlantic Avenue, Prudence Island were sworn in. They said they are looking to keep a "temporary" structure on their property that they erected before they realized that they needed a building permit. It will house an antique fire truck. The Gempps said that it is located on the only place that is flat enough on their property. It is on a fieldstone foundation. They require a 5' setback variance on the north side. The Gempps said they cannot move it because there are wires that go over the property and a septic system and leach field in the way. They are on a corner lot due to the existence of a paper road. There is a copy of a certified survey in the file showing the property boundaries.

The Chair called for abutters or interested parties.

Robert Garlick, 183 Bay Avenue, Prudence Island was sworn in. Mr. Garlick said that the structure was built without a permit and it was built on what he believes is Walnut Avenue. Mr. Garlick presented several maps and photographs to the Chair. Mr. Garlick said it the structure is built on top of a public water supply and it endangers the water supply.

Edward O'Rourke, 075 Atlantic Avenue, Prudence Island was sworn in. Mr. O'Rourke is a representative of the Prudence Park Water Association, which is a community-owned water company that provides water to 21 families. They wrote a letter to the Gempps to let them know that the company's water lines are directly underneath the structure the Gempps built. The water lines break frequently as they are only about 2" in diameter and are made of plastic piping. They were placed in the ground 38 years ago in the middle of what was then considered Walnut Avenue. Mr. O'Rourke does not have a Class 1 survey that indicates the water lines are on Prudence Park Water Association property.

Both Mr. Nott and Mr. Raposa noted that they believe this to be a private matter and the water lines should not be located on the property that belongs to the Gempps.

Shawen Williams, 035 Atlantic Avenue, Prudence Island was sworn in. Ms. Williams stated that she was involved in the donation of property to the Prudence Land Company. She said that an easement was given to the water company everywhere they had equipment. She said it may take more than one look to get a survey right.

Solicitor Gavin said the neighbors could bring the issue to court as a civil matter if they so desired, but the Board has a Class 1 survey before them in the file.

Mr. Asciola distributed two letters to Board members regarding the petition.

Raymond Jenness, 294 Stillwater Road, Smithfield, RI was sworn in. Mr. Jenness represents the Prudence Conservancy. He said he is looking for an amicable solution.

Mr. Nott told Mr. Jenness that they cannot delay the decision, but the Prudence Conservancy, or any individual, can appeal the Board's decision within the appeal period.

Mr. Edwards recapped that the Gempps were seeking a 5' side yard setback to allow an existing structure to remain, which is a storage facility of a fire truck, on 0154 Atlantic Avenue, Map 79, Lot 43.

A motion was made by Mr. Nott and seconded by Mr. Borden to impose the following condition if the petition passed:

1. The structure would be inspected by the Building Inspector to confirm that it meets building codes.

The motion to impose the above condition if the petition passed carried 5 – 0 with Mr. Borden, Mr. Edwards, Mr. Nott, Ms. Pavlakis and Mr. Raposa voting in favor.

Mr. Nott Approve:

The petitioner requests a 5' side yard setback to a structure that already exists to house a fire truck. At the end of the day the one piece of evidence we have is a Class 1 survey, so I have to go by that. The structure is on the petitioner's property. It is not blocking Walnut Street. I have seen many petitions like this. To deny amounts to more than a mere inconvenience. It is not malicious. If it does not meet building code, it will be taken down. I see the gravel road on the survey and see how the waterlines got there, with people thinking the gravel road was Walnut. I approve.

Mr. Raposa Approve:

I agree with Mr. Nott. Install the waterline better. We have to vote on the facts at hand. There is a Class 1 survey and I approve.

Mr. Borden Approve:

For a regulatory variance the burden is: is it more than a mere inconvenience to deny? They have two front yard setback requirements that are 30' so they are short 5'. I agree with Mr. Nott; he is spot on with the Class 1 survey and what we have to go on. There are no easements. It is civil litigation. The petitioner has met the more than an inconvenience proof. I approve.

Ms. Pavlakis Deny:

I disapprove. Too much is in question. It is egregious to build with waterlines for the community underneath and I deny.

Mr. Edwards Approve:

I approve. I agree with Mr. Nott and Mr. Borden, that it is based on the survey. You are approved 4 to 1.

2. Steven and Karen Meyers (owners) seek a dimensional variance for a side yard setback (Art. IV, Sec. B) to construct an addition to a single family residential structure located at 112 Indian Avenue. (68-59).

Karen and Steven Meyers, 112 Indian Avenue were sworn in. They stated that they would like to

construct an addition to the house to increase living space. Part of the house is two-stories and part is one-story. They will make it all two-stories and will add a 15' x 36' addition. They will need a 2.4' side yard variance.

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

Mr. Borden Approve:

The requested variance is extremely minimal and to deny would amount to more than a mere inconvenience. I approve.

Ms. Pavlakis: Approve:

I agree with Mr. Borden and I vote to approve.

Mr. Furriel Approve:

I also agree, it is a minor variance request brought on by the angle of the house on the lot.

Mr. Nott Approve:

I vote to approve for reasons previously stated by Mr. Borden and Mr. Nott.

Mr. Edwards Approve:

I agree with all of my colleagues and with Mr. Furriel's point about the angle of the house. It is not of their doing. I approve.

3. Philip Gadbois (owner) seeks dimensional variances for side and front yard setbacks (Art. IV, Sec. B) and a special use permit (Art. VI, Sec. A.4) to construct a dormer onto a single family residential structure on a nonconforming lot of record located at 75 Fountain Street. (21-166).

Philip Gadbois and Kris Gadbois, 75 Fountain Street were sworn in. They would like to put a full shed dormer on the front of the house. It would not affect the footprint in any way. It will extend the full length of the house. The back of the house needs repair as well. They'd need a 2' front yard setback variance on the north and a 1' side yard setback variance on the east. They also require a special use permit to build on a substandard lot of record.

Mr. Edwards walked them through the special use permit criteria. The Gadbois testified that their petition met all criteria.

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

Mr. Nott Approve/Approve:

Philip Gadbois, 75 Fountain Avenue, Map 21, Lot 166 is seeking to add a full shed dormer for more space. He's not going any closer to abutting property owners and there are many surrounding properties similar to them. It is the least relief necessary and to deny amounts to more than a mere inconvenience so I approve. They have met the special use permit criteria and I approve.

Mr. Raposa Approve/Approve:

It is a reasonable request and I approve. You will love the views.

Mr. Borden Approve/Approve:

I approve for reasons previously stated by Mr. Nott and Mr. Raposa.

Ms. Pavlakis Approve/Approve:

I agree for reasons previously stated by my colleagues.

Mr. Edwards Approve/Approve:

The Chair also approves for reasons previously stated by my colleagues and there are incredible views.

4. (R-10) Dr. Joan Tokarz (owner) and Kyle and Valerie Tokarz (applicants) seek dimensional variances for side, rear and front yard setbacks and lot coverage (Art. IV, Sec. B); as well as a special use permit (Art. VI, Sec. A.4) to construct a dormer onto a single family residential structure, relocation of front stairs, deck and patio on a nonconforming lot of record located at 327 Riverside Street. (15-41).

Mr. Edwards recused himself from this petition and sat in the audience. Mr. Nott took position as Chair.

Patrick Connors, AIA, 150 Chestnut Street, Providence was present to represent the Tokarzs. Also present and sworn in was Joan Tokarz, 11 Seal Island Road, Bristol and Kyle Tokarz, 45 Hidden Lane, East Greenwich. Mr. Connors distributed a new plan to the Board.

A motion was made by Mr. Borden and seconded by Mr. Furriel to allow the Tokarzs to amend the petition because there were minimum changes made, according to Mr. Connors. The motion carried 5 – 0 with Mr. Borden, Mr. Benjamin Furriel, Mr. Nott, Ms. Pavlakis and Mr. Raposa in favor.

Mr. Connors said they want to expand the second floor with a shed dormer and place a deck on the rear of the property. The deck height is to the first-floor level. The patio is at the basement level. Current lot coverage is 45%; proposed lot coverage would be 53%. The lot coverage seems excessive, but in context with the neighborhood it is not.

The petitioner is seeking a 17' front yard setback, a 2'6" side yard setback, a 9'6" rear yard setback and an additional 8% increase in lot coverage to 53%.

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

A motion was made by Mr. Furriel to place a condition on the petition prior to the petitioner constructing the deck. Mr. Furriel wants a review by the Portsmouth Fire Department to ensure there is and will be adequate space between 327 Riverside Street and the home to the west when the deck is built. Mr. Borden seconded the motion and the motion passed 5 – 0 with Mr. Borden, Mr. Furriel, Mr. Nott, Ms. Pavlakis and Mr. Raposa in favor.

Mr. Nott walked the petitioner through the special use permit criteria and the petitioner testified that the petition would meet all criteria.

Mr. Borden Approve/Approve:

Regarding the dimensional relief, it is a reasonable request to ask for dormers. With the exception of the front porch, they are not expanding the footprint, and it is reasonable. The lot coverage is extreme, however, based on the character of the neighborhood there is similar existing, so it is not that unreasonable to ask for dimensional relief for a deck and it would amount to more than a mere inconvenience to deny. Regarding the substandard lot of record, the Chair walked them through the special use permit criteria and with the condition placed and the right-of-way that exists there should be enough room for an emergency, and I approve.

Ms. Pavlakis Approve/Approve:

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

Mr. Furriel Approve/Approve:

I vote to approve; it is the least relief necessary. I have one concern with the deck, but not too much and it is in character with the neighborhood.

Mr. Raposa Approve/Approve:

It is in keeping with the neighbors and I vote to approve.

Mr. Nott Approve/Approve:

The Chair votes to approve. I agree with Mr. Borden. Lot coverage of 53% seems excessive, but look at the neighborhood. It is a very reasonable request.

Mr. Edwards took his seat as Chair.

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A motion to adjourn was made by Mr. Nott and seconded by Mr. Borden. The motion carried 5 – 0.
The meeting was adjourned at 8:48 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary