



Town of Portsmouth

ZONING BOARD OF REVIEW
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JANUARY 19, 2017

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.

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

Mr. Edwards called the meeting to order at 7:00 p.m. in the Town Council chambers.

I. MINUTES

A motion was made by Mr. Nott and seconded by Mr. Borden to accept the minutes of the regular meeting of December 15, 2016 as presented. The motion carried 5 – 0.

II. CHAIRMAN'S REPORT

The Chair had no report, except to say that the Board was still short one member if anyone in the audience was interested.

III. CONTINUED BUSINESS:

There was no continued business.

IV. NEW BUSINESS

1. (R) A petition by George Silvia, Jr., 41 Baker Road, for a variance (Art. IV, Sec. B) and special use permit (Art. VII, Sec. A.1.c) to construct stairs within the required yard setback and exceed maximum lot coverage on Tax Assessor's Map 16, Lot 12.

George Silvia and Beth Hebert-Silvia, 41 Baker Road were sworn in. They stated that they wanted to build a set of stairs off the deck for a second set of egress. The kitchen is on the second floor and there is more chance of having a fire on the second floor so they need a second egress. They have a small back yard and the stairway would be steep so they have to do multiple landings. They purchased the house in the current configuration and thought they could live with it but have become more and more concerned with safety issues.

A letter from Paula Loscocco and Andrew DaSilva, 53 Baker Road was read into the record.

Relief needed is a special use permit for a substandard lot of record and a dimensional variance of 8' for

a side yard setback on the west, as well as a lot coverage variance of 3%. Mr. Edwards walked the petitioners through the special use permit criterion and the petitioners stated that all criteria would be met.

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

Mr. Nott Approve/Approve:

George and Beth Silvia, map 16, lot 12, 41 Baker Road are here seeking a special use permit, a 3% lot coverage variance and a side yard variance of 8' for the purpose of egress from the second floor. The dimensional variance is due to the unique characteristics of the land and it is not of their doing. They have met all of the criteria for a variance and a special use permit so I approve.

Mr. Hall Approve/Approve:

I vote to approve the dimensional variance and the special use permit. All houses in that area are similar, so I vote to approve.

Mr. Borden Approve/Approve:

I agree with Mr. Nott. Regarding the special use permit, the Chair went over the criteria with them. Regarding the dimensional variance and the 3% lot coverage, they're constrained by the lot. It is not excessive; it's reasonable. The 8' setback still leave 7' and it's enough for someone to access the lot for safety and fire protection, so I vote to approve.

Ms. Pavlakis Approve/Approve:

For all the reasons previously stated, I vote to approve.

Mr. Edwards Approve/Approve:

For all the reasons previously given, I also agree and vote to approve.

2. A petition by Lawrence W. and Celine Leger-Wesson, 280 Carriage Drive, for a variance (Art. IV, Sec. B) to construct additions to dwelling, an in-ground swimming pool, patio and relocate a shed within the required front yard setback and exceed maximum lot coverage on Tax Assessor's Map 57, Lot 109.

Mr. Borden stated that he sold the house to the petitioner, but he believes he can be objective on the petition. There was no objection to Mr. Borden sitting on the petition from either Neil Galvin, who is representing the petitioner, or from any abutters or interested parties.

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

is representing the petitioners. He stated that if there is no objection with the Board, subsequent to filing, the petitioners worked on revising their plan and they have eliminated the lot coverage variance. There was no objection from abutters, and because it was less relief requested, the Board did not need to vote on it.

Mr. Galvin called Celine Leger-Wesson, 280 Carriage Drive, to testify. Ms. Leger Wesson was sworn in. She told the Board that her and her husband have two children at home and her husband has arthritis and difficulties with walking up the stairs in the interior of their home. They also have two adult children who frequently come home. She would like to add an elevator for her husband and a pool for his arthritis therapy and an addition to the house to add two more bedrooms to the existing three-bedroom house.

Mr. Galvin submitted Exhibit 1, which are the revised plans with the mudroom in the garage and a smaller patio around the garage, negating the need for a lot coverage variance.

Regarding the porch on the front, currently there is only a large rock as a step so they do not use the front door.

The relief needed is a 7'10" front yard setback and a 9'11" rear yard setback.

Architect Spencer McCombe, 7 Thurston Avenue, Newport, was sworn in.

A motion was made by Mr. Hall and seconded by Mr. Nott to accept Mr. McCombe as an expert in architecture. The motion carried 5 – 0.

Mr. McCombe stated that he incorporated the change in plans; pulled the pool closer to the house and pulled the footprint to 20% lot coverage. He stated the porch fit the architectural style and the pool in the rear faces a wooded lot.

Real Estate Appraiser James Houle, 198 Union Street, Portsmouth, RI was sworn in.

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

Mr. Houle's résumé was submitted to the Board as Exhibit 2.

Mr. Houle stated that he reviewed the petition and visited the site and the neighborhood. He looked at the buildable area; the site is wide and narrow in depth. He did not see any negative aspects to the petition and believes the hardship is due to the unique characteristics of the lot. It is not the applicant's fault nor a fault of their prior action. Granting of the relief will not alter the surrounding area; it will not impair the intent of the Zoning Ordinance. He believes it is the least relief necessary.

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

Mr. Borden Approve/Approve:

The septic had to be in back and the house had to be built where it is. It would be more than a mere inconvenience to deny the expansion to a five bedroom. Regarding the pool in the rear, it is a pool and not really a structure. Regarding the porch, the road curves and a porch makes perfect said. To deny would be to deny the right to enjoy the full permitted use of the property. It would be a hardship.

Ms. Pavlakis Approve/Approve:

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

Mr. Nott Approve/Approve:

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

Mr. Hall Approve/Approve:

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

Mr. Edwards Approve/Approve:

For all the reasons previously given by Mr. Borden I also vote to approve.

3. A petition by Donald Whitmarsh, 26 Sagamore Road, for a variance (Art. IV, Sec. B) to construct a garage with living above within the required yard setback and exceed maximum lot coverage on Tax Assessor's Map 4, Lot 311.

Donald Whitmarsh, 26 Sagamore Road, was sworn in. Mr. Whitmarsh stated that he wants to build a garage with living space above it because he will be giving up a bedroom in the house in order to build the garage. He will require a 2' rear yard setback to the west and a lot coverage variance of 4.6%. The garage will be attached to the house. There will not be any exterior stairs or cooking facilities. The proposed garage will also be used as a workspace for his wife.

The Chair called for abutters or interested parties.

Matthew McNamara, 799 Anthony Road stated that he lives behind him and that he believes 28' x 28' is sizeable and will be close to the property line. He thinks it should be on the other side. Mr. Whitmarsh said the leach field is on the other side and that is why it cannot go there. Mr. McNamara felt he would lose privacy.

Attorney Cort Chappell said that his daughter Kateri owns next door to this property and he does not believe it will be a problem.

Discussion followed on why Mr. McNamara needed a 28' x 28' garage and why it needed to be two-story. It was explained that the stairs will be inside, reducing room. Because it will be a workspace they will need the room, and it will be used for storage and a garage, as well as removing the bedroom to attach it to the house.

Mr. Hall Approve/Approve:

Mr. Whitmarsh is here for relief from the Board. After listening to testimony, the lot coverage makes sense and it is the least relief necessary. I approve.

Mr. Borden Approve/Approve:

This was a close one. Is it a hardship more than a mere inconvenience? To deny the accessory use of a garage would be a hardship, but does he need a 28' x 28' garage? He does because he's eliminating part of his living space to accommodate the garage. He's got a problem with lot coverage requirements since he has 10,500 sf lot in an R10 zone. The petitioner has marginally met the hardship test. In addition, he listed an above ground pool under lot coverage and that is perhaps not needed.

Ms. Pavlakis Approve/Approve:

For reasons previously stated by Mr. Borden, I approve.

Mr. Nott Approve/Approve:

I agree with Mr. Borden. It is a hardship amounting to more than a mere inconvenience due to the lot configuration, and I vote to approve.

Mr. Edwards Approve/Approve:

I also vote to approve. He has a one story house. He can't put the garage on the other side. He's building an addition. He has a smaller house. It's not unreasonable. The lot coverage is not excessive.

The Board called for a recess at 8:00 p.m.

The Board was called back into session at 8:07 p.m.

4. A petition by Portsmouth Solar, LLC and Seabury Apartments, LLC for a special use permit (Art. V, Sec. B.5) to construct a 2.9MW solar photovoltaic system development at 259 Jepson Lane, also identified as Tax Assessor's Map 60, Lot 3.

Attorney Cort Chappell, 171 Chase Road, was present representing the petitioner. Mr. Chappell said that Attorney Jeremiah Lynch of Moore Virgadamo & Lynch Ltd, 97 John Clarke Road, Middletown was present and that Mr. Lynch had sent a letter to the Zoning Board arguing that the petition had not been properly advertised and should not be heard. The Board did not have the letter. Mr. Chappell said

that Mr. Lynch did not believe this item fell under Art. V, Sec. B.5 as it was not a utility. Mr. Chappell thought the Board should decide that issue before hearing the petition.

Mr. Chappell believes that this petition is the closest to a utility - a non-regulated utility - and that it should be heard under Art. V, Sec. B.5. Mr. Chappell stated that the town already had a solar farm and it had been advertised under Art. V, Sec. B.5. That solar farm is located behind the Cox building.

Mr. Lynch, who represents the Fontaines and the Mendoncas, disagreed with Mr. Chappell and said that the owner of the solar farm, Cox, is already a utility and therefore is able to put in the panels. They are also using the electricity generated from those panels for their own use, not to sell back to the grid.

Mr. Chappell introduced Jayme Fordyce, 343 Pearl St, Cambridge, MA, who was sworn in. Mr. Fordyce is a member and manager of East Light Solar LLC, the entity that wholly owns Portsmouth Solar LLC. Mr. Fordyce said they have a certificate of eligibility from RIPUC.

Mr. Lynch submitted Exhibit A, a list of definitions under RI General Law. He stated that the Board has to determine whether this is a utility or if not, what it falls closest to under zoning for a special use permit.

A motion was made by Mr. Borden and seconded by Mr. Nott that Portsmouth Solar, LLC, after hearing discussion, debate, and testimony, it is his belief that they are most similar to a public utility and this petition should proceed under Art. V, Sec. B.5 with special use criterion in residential zones being applicable. The motion carried 5 – 0.

A letter of objection dated 1/17/16 was submitted by Mr. Lynch and was labelled Exhibit B.

Mr. Chappell said that this petition will satisfy the a. – j. criteria of the special use permit criteria and the only problem that will arise will be one of esthetics. However, if the farm is blocked by trees and the neighbors can't see it, that should eliminate the esthetics issue. This is a 29-acre tract of land with the Seabury Apartments next door.

Mr. Fordyce stated that he has been with East Light Solar for five years and has done 10 projects, with one-third of them in residential areas. They do them to increase the renewable energy supply. National Grid is required to buy from them. They have a positive relationship with the owner of this property. Regarding maintenance on the property, it will be passive use. Construction will take approximately six months. There will be annual maintenance and quarterly reviews. There will be no noise, no omissions, and the common practice is to reseed with low growth grass and to mow biannually. Panels are 7' tall. There is no sheen off the panels; they absorb sunlight. There is no glare. Access and egress will be off Perreault Street. It will be a 2.9 megawatt utility. Dartmouth Solar, which he also did, is located in a residential district. The contract rate is 14.65¢/kw hour with National Grid. This is their first project in RI.

Alan Benevides, 75 Benard Rd, Marlborough, MA is the civil engineer on the project. Mr. Benevides was sworn in. He has been practicing for 30 years. He has done 29 solar arrays in MA, RI and CT.

A motion was made by Mr. Borden and seconded by Mr. Hall to accept Alan Benevides as an expert in civil engineering. The motion carried 5 – 0.

Mr. Benevides has been to RIDEM and has done a topographic survey; he has reviewed wetlands regulations and then he sat down with officials to understand the regulations. As a result, they formulated a plan. They have met all setback requirements. They have done drainage calculations, and their goal is to keep water exactly where it falls today. They have looked at all storms up to a 100-year storm. Soil erosion controls and RIPDES applies. Panels are manufactured elsewhere. They are bolted together at the site and it is a quiet process, although it is a construction project of short duration. Concerns would be that once every three months there will be someone coming to look at the site and do maintenance if needed, twice a year they will come and cut grass. It is not necessary to clean panels and they do not clean them in winter. Panels are designed for hurricane force winds. Esthetics are the issue – they will maintain the grades, so the panels are 7' in height which are a low profile, they will leave the existing vegetation along the roadway and will add 231 6'-tall evergreen trees starting on the southwest corner so year 'round there will not be a problem with esthetics. They will trim those trees at about 15' height, however, so they will not shade the array.

Exhibit 1 was submitted by the petitioner which is a new set of plans.

The Board called for a recess at 9:30 p.m.

The Board was called back into session at 9:36 p.m.

Mr. Benevides discussed glare on the panels. He stated that they absorb light and there is anti-glare on the panels. He said the panels would not be a public nuisance, there is no sound, odor, it is not detrimental to the surrounding neighborhood, there is no traffic, no shadow, and there will be no effect on neighbors' solar rights. They are not dangerous or cancer-causing. A fence will surround the panels inside the buffer. There will be 8,400 panels. A concrete footing is almost never needed. They do a "wobble test" to ensure that they will not come out in high wind conditions.

The Board had concerns about the poles and wanted more details about the poles and how and why they are safe in high wind conditions.

The Chair called for abutters or interested parties.

Cyrus Gibson, 360 Jepson Lane asked about an animal corridor for passage through their habitat. The petitioner said the fence will be built just where the panels are, leaving a corridor. There will be no external lighting on the project.

A motion was made by Mr. Nott and seconded by Mr. Borden to continue the petition of Portsmouth Solar, LLC and Seabury Apartments, LLC to the regular meeting of February 16, 2016. The motion carried 5 – 0.

Zoning Board of Review
January 19, 2017

A motion to adjourn was made by Mr. Borden and seconded by Mr. Nott. The motion carried 5 – 0. The meeting was adjourned at 10:04 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary