



# Town of Portsmouth

## ZONING BOARD OF REVIEW

2200 East Main Road / Portsmouth, Rhode Island 02871

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**APRIL 18, 2019**

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

**MEMBERS ABSENT:** None.

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

### **I. MINUTES**

No minutes were approved.

### **II. CHAIRMAN'S REPORT**

There was no Chairman's Report.

### **III. OLD BUSINESS**

1. (C-1) Sydney Portsmouth (applicant) and JKD, LLC (owner) seek a special use permit to construct a free-standing sign larger than the maximum area allowed (Art. IX Sec. B.6.c) under the ordinance at 8 Russo Road (44-18).

Jordan Boslego was present representing Sydney Portsmouth. Mr. Boslego said they are willing to place the sign between the two posts vertically like the previous owner (Subway) had his sign placed. There is no sign on the building, so the business has no visibility and needs signage. There are signs in the area that are similarly sized. The configuration of the lot is narrow and deep. The previous sign was there for years and was not approved by the Board, but he is asking for approval. He is allowed a sign with 13 square feet. The old sign was 32 square feet and was there for 8 years with no complaints. His sign in place now is 32 square feet and is temporary. They would replace it with durable material if approved.

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

The Chair said that Sydney Portsmouth is before the Board for map 44, lot 18 seeking a special use permit to construct a free-standing sign larger than the maximum area allowed.

Mr. Borden                    Approve:

I am probably one of the most outspoken people regarding signs and am in favor of traditional signage and not large signage, however it is not fair for Sydney Portsmouth to be punished and it is not fair that Subway had a sign that the Board would not approve for Sydney Portsmouth. Also, a sign 32 square feet appears to be compatible with the surrounding areas that have frontage, and it meets all other special use permit criterion, so I approve.

Mr. Furriel                   Approve:

I approve of the special use permit. Objectively, the sign does not appear large. It is compatible with neighboring signs.

Mr. Raposa                   Approve:

I approve for reasons previously stated by Mr. Borden and Mr. Furriel.

Ms. Horwitz                   Approve:

I approve of the special use permit for reasons previously stated.

Mr. Nott                      Approve:

The Chair approves of the special use permit and I agree with Mr. Borden and Mr. Furriel. The sign looks smaller vertically.

2. (C-1) Global Partners LP (applicant) and Alwar Equities, Inc., (owner) seek special use permits to redevelop and expand an automobile fueling station (Art V Sec. F.1.), convenience store and café (Art. V Sec. E.1., 3. and 14.3) located at 1568 West Main Road (51-34D).

Sitting on this application are Mr. Borden, Mr. Furriel, Mr. Nott, Mr. Raposa, and Ms. Horwitz.

Attorney Sean Bouchard, Silva, Thomas, Martland & Offenberg, Ltd., 1100 Aquidneck Avenue, Middletown was present representing Global Partners LP, applicant. Mr. Bouchard stated that the plans dated 3/13/19 are the current plans.

Paul Silvia, PE, was present to discuss the site development. Mr. Silvia had previously been sworn in. Mr. Silvia said that everything on site will be removed and it will be given a clean start. It will be a convenience store/gas station combination, with a state-of-the-art septic installed using bottomless sand filters. The tanks will be two new fiberglass double-walled tanks monitored continually. One will hold

regular gasoline, one will hold diesel and premium. Drainage on the property will be pretreated and the sand and oil will be separated out and go into infiltrators. Water will go into bioretention ponds. There are 23 parking spaces required and one handicapped space. The dumpster area will be enclosed and serviced. The owners pride themselves on well-maintained facilities. Mr. Silvia pointed out the landscaping plan, and how they met with the neighbors who wanted a chain-link fence and arborvitae. Tanker trucks that deliver gas will come from the north and travel to the south. They discharge from their passenger side, and then exit the site. The ISDS requires a maintenance agreement. They did incorporate all the Design Review Board recommendations.

Maureen Chlebek, Traffic Engineer, was present to discuss her findings on additional data. Ms. Chlebek had been previously sworn in. She compiled additional crash data from 2017 and 2018 for West Main Road and Stringham Road. The levels of service remained the same. There were no serious crashes and no significant impacts to public safety. Ms. Chlebek said it is best practice to have two curb cuts for the gasoline tanker trucks and the tanker trucks are not allowed to use the Dunkin' Donuts driveway to go to the light per the easement agreement, so the two curb cuts on the site must stay.

Mr. Bouchard told the Board that real estate expert Nathan Godfrey was present if they had questions for him, but he had submitted his report and testified previously.

Kevin Doyle, 86 Carleton Road, Millbury, MA was sworn in. Mr. Doyle testified that the existing hours are 24 hours, 7 days a week and he planned on keeping those hours the same. The kitchen/deli will have limited hours. There will be six deliveries per week of groceries and such during normal business hours and the fuel will come in the evenings on an as-needed basis at a slower time of day. Trash will be picked up two times per week during normal business hours.

Outside vending will consist of only a propane tank. The HVAC will be on the roof. Mr. Doyle does not believe the trucks or dumpster will bother abutters by noise or odor.

The Chair called for abutters or interested parties. There were none and no letters in the file.

A motion was made by Mr. Borden to propose the following conditions be placed on the petition should it be approved:

1. All recommendations made by the Design Review Board be submitted as conditions for approval of the petition.
2. All regular deliveries and trash pickups be during normal business hours, and no earlier than 7:00 a.m. or later than 9:00 p.m. This condition does not apply to fuel deliveries.

Mr. Nott amended the motion and added the following additional conditions be placed on the petition should it be approved:

3. There will be no outside vending machines.
4. The dumpster will be enclosed per the plan.
5. The landscape plan will be as shown including a chain-link fence with slats as screening for abutters east of the property.

6. Prior to a Certificate of Occupancy being issued, maintenance plans for the OWTS and pretreatment system for runoff will be filed in the Building Inspector's office.
7. The HVAC will be roof-mounted and there will be screening 4' in height around the perimeter of the roof.

The amended motion was seconded by Mr. Borden. The amended motion carried 5 – 0 with all in favor.

The Chair stated that Global Partners LP and Alwar Equities, Inc., map 51, lot 34D are before the Board seeking special use permits to redevelop and expand an automobile fueling station and convenience store and café.

Mr. Borden                      Approve:

Global Partners LP is before us for a special use permit. We have heard testimony over two evenings and the question is whether they meet the criterion. It is zoned commercial, so it's compatible. Will it create a hazard? No noise? We have placed conditions on the petition. We have heard an expert testify that regarding traffic it is adequate, and the data supports it. I am comfortable it will not create a nuisance or hazard. They have met the criterion and I approve.

Mr. Furriel                      Approve:

I approve the special use permit. They want to modernize the facility and there will be no more impact than there is currently.

Mr. Raposa                      Approve:

I also agree with Mr. Borden and Mr. Furriel and I approve the special use permit.

Ms. Horwitz                      Approve:

I approve the special use permit for reasons previously given by Mr. Borden and Mr. Furriel.

Mr. Nott                              Approve:

The Chair approves of the special use permit. It will be an improvement to the area and I agree with Mr. Borden.

3. (C-1) Global Partners LP (applicant) and Alwar Equities, Inc., (owner) seek special use permits to install signage in excess of the maximum allowed under the ordinance (Art V Sec. F.1.) for their proposed automobile fueling station, convenience store and café located at 1568 West Main Road (51-34D).

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Attorney Sean Bouchard, Silva, Thomas, Martland & Offenber, Ltd., 1100 Aquidneck Avenue, Middletown was present representing Global Partners LP, applicant. Also present is Kevin Doyle who will speak about the signage they are asking for at the location.

Kevin Doyle, 86 Carleton Road, Millbury, MA was sworn in. Mr. Doyle testified they are requesting installation of one 6'9" x 1'10" canopy sign and five blade signs to go above the fuel pumps. He is also asking for a fluorescent Alltown Fresh primary storefront sign on the non-door side of the building and an Alltown Fresh primary storefront sign over the doorway location. These two signs total 48 square feet, where 42.5 square feet is allowed. He is asking for these two signs and the 48 square feet to balance the building out by symmetry and also because it is part of their new look.

The Chair called for abutters or interested parties. There were none and no letters in the file.

The Chair stated that Global Partners LP and Alwar Equities, Inc., map 51, lot 34D are before the Board seeking special use permits to install signage in excess of the maximum allowed under the ordinance for their proposed automobile fueling station, convenience store and café.

Mr. Borden                      Approve with Limitation:

The freestanding sign on West Main Road does not need relief. The Mobil Station signs on the pumps are minimal, they are existing, and I approve. The two free-standing signs – Cumberland Farms has two and the Car Museum has two, but 42.5 square feet is enough, not 48 square feet.

Mr. Furriel                      Approve with Limitation:

I agree with Mr. Borden on limiting the two signs. The remaining signs are typical of this kind of operation and I approve.

Ms. Pavlakis                      Approve with Limitation:

I agree with Mr. Borden and Mr. Furriel.

Mr. Raposa                      Approve as Submitted:

I approve the sign submission as is.

Mr. Nott                              Approve with Limitation:

The Chair agrees with Mr. Borden. Reducing the sign won't be difficult. The other signs have been approved as submitted.

The Chair called for a five-minute recess at 8:26 p.m.  
The Chair called the meeting back into order at 8:34 p.m.

#### **IV. NEW BUSINESS**

1. (C-TC) Wind Rush Properties, LLC (owner) seeks a special use permit to develop a new retail and customer service complex (Art. V Sec. E.14) containing two (2) retail units and eight (8) tradesman units totaling 9,600 square feet of building floor area located at 2451 East Main Road (36-17). The proposal also requests to modify/vary the side yard setback of the use specific development standard of Article VII Section G.10.c).

John Borden recused himself from this petition. Hearing and deciding on this matter will be Mr. Furriel, Ms. Horwitz, Mr. Nott, Ms. Pavlakis, and Mr. Raposa.

Attorney Peter Regan, Sayer Regan & Thayer, LLP, 130 Bellevue Avenue, Newport was present representing the petitioner, Wind Rush Properties. Mr. Regan said this is a long, narrow lot and it meets all requirements of the Zoning Ordinance for Town Center Zoning except for the north side setback. They did change some things after meeting with the Design Review Board. The petition is consistent with the Comprehensive Plan. Mr. Regan submitted revised drawings of the building to the Board as Exhibit 1. Mr. Regan introduced Tom Principe as the engineer for the project.

Thomas J. Principe, PE, 27 Sakonnet Ridge, Tiverton was sworn in.

A motion was made by Mr. Raposa and seconded by Mr. Furriel to accept Mr. Principe as an expert in civil engineering. The motion carried 5 – 0 with all in favor.

Mr. Principe testified there are no sewers on site. Each of the stalls are treated like a single bedroom unit, so a four-bedroom family dwelling conventional system is being placed. He has the permit for the OWTS. It will be a tradesman center. There is existing water service and gas lines to the site. There were no revisions requested by the Fire Department to the plan. Mr. Principe has placed the drainage detention pond in the front of the lot because the lot slopes from back to front and the water will drain that way. It is a bio retention pond and is planted. They will plant on the north side of the existing stone wall. There is a 25' side yard which is the turning radius for trucks. There are 19 parking spaces required and he is proposing 21. The driveway will transition to gravel in the rear. The ingress and egress will be one, and they will utilize the existing curb cut but will make it wider.

Scott Naso, 144 Greystone Terrace was sworn in. Mr. Naso is the owner of Wind Rush. Mr. Naso has his own business and it will be in the front of the building as one of the “retail” units. The other front office may be a lawyer, architect, clothing or jewelry store. The bays may include an electrician, a plumber, a locksmith or the like, but the first bay will house his truck. His hours will be 9 a.m. to 9 p.m. and the tradesmen center from 7 a.m. to 7 p.m. The lighting plan is dark sky compliant. On the north side of the building he agreed to white clapboard and to the trees suggested by the Design Review Board.

Mr. Naso stated no business will be located in the center that will have combustible material. There will be no work done outside and no storage outside. There will be no dumpsters on the site.

James Houle, 198 Union Street, was sworn in. Mr. Houle's report titled "Relating to a Special Use Permit" was submitted to the Board as Exhibit 2.

A motion was made by Mr. Pavlakis and seconded by Mr. Raposa to accept Mr. Houle as an expert in real estate.

Mr. Houle testified that the property and suggested uses meet the special use permit criterion for the Town Center Zoning and the Town's Comprehensive Plan. He stated that the hardship the petitioner has is the unique characteristics of the land – it is such a long, narrow lot.

A motion was made by Mr. Nott to propose the following conditions be placed on the petition should it be approved:

1. The hours of operation be limited from 7:00 a.m. to 9:00 p.m. daily.
2. There will be no outside storage of any type.
3. Approval is contingent upon petitioner filing a letter with the Building Inspector's office from the Fire Department stating they believe there is safe ingress and egress from the property.
4. There will be no: manufacturing, auto repair, combustibles, marine services or any uses involving hazardous materials on the lot.
5. There will be no dumpsters on the property.
6. The recommendations of the Design Review Board are incorporated into these conditions. Most specifically, modifying the type of siding material from the porch roof and above and planting one or two large deciduous trees along the street in the level area of contour 134 for large tree canopy coverage.

The motion was seconded by Mr. Raposa. The motion carried 5 – 0 with all in favor.

The Chair stated that Wind Rush Properties, LLC, map 36, lot 17 is before the Board seeking a 4.5' side yard dimensional setback on the north and a special use permit because it is Town Center zoning.

Mr. Furriel                      Approve/Approve:

Regarding the special use permit, I approve. The planned usage satisfies the requirements in the Town Center area and the special use permit criteria. Regarding the dimensional variance of 19.4' vice the required 25' – he requires turnaround space for vehicles. It would be more than a mere inconvenience to deny. It could be a safety issue for larger vehicles without the variance.

Ms. Pavlakis                      Approve/Approve:

I concur with Mr. Furriel and approve the special use permit and the dimensional variance.

Mr. Raposa                      Approve/Approve:

I also agree with Mr. Furriel and I approve both the special use permit and the dimensional variance.

Ms. Horwitz            Approve/Approve:

I approve the special use permit and dimensional variance for reasons given by Mr. Furriel.

Mr. Nott                Approve/Approve:

The Chair approves both the special use permit and the dimensional variance. With the conditions the Board placed on the petition, I could not have said it any better than Mr. Furriel.

After voting, Mr. Borden joined the rest of the Board on the dais.

2. (R-10) Christine and Philip Gadbois (owners) seek a dimensional variance for side yard setback (Art. IV, Sec. B) and a special use permit to construct an addition on a nonconforming lot of record (Art. VI, Sec. A.4) located at 75 Fountain Avenue (21-166).

Christine and Philip Gadbois were present and represented themselves. Both Christine and Philip Gadbois, 75 Fountain Avenue were sworn in. They would like to bump out their kitchen 4' where a deck currently sits. Once completed, the addition will encroach less than the existing footprint because they will remove stairs.

Mr. Raposa recused himself from the petition.

The Gadbois continued. The existing deck is staying, but they will remove the stairs, thereby reducing the encroachment on their neighbor's property. Mr. Nott went through the special use permit criterion for a substandard lot of record and the Gadbois testified it would meet all.

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

Mr. Borden            Approve/Approve:

Mr. Borden said he would go through the requested relief one at a time. Regarding the special use permit for a substandard lot of record, Mr. Nott walked them through the criterion, there are no issues, and I approve. Regarding the dimensional variance, the question is whether they have a hardship. Having a kitchen that is too small is a hardship. They are not asking for lot coverage, just a side yard setback variance to the east of 5'. The current structure is within 2'6" and that will be removed. I believe it would be more than a mere inconvenience to deny and I approve.

Mr. Furriel            Approve/Approve:

I approve of both the special use permit and the dimensional variance for reasons given by Mr. Borden.

Ms. Pavlakis            Approve/Approve:

I approve of both for reasons previously stated by my colleagues.

Ms. Horwitz            Approve/Approve:

I also approve both for reasons previously stated.

Mr. Nott                Approve/Approve:

The Chair approves of both the special use permit and the dimensional variance. They are reducing the setback and it is reasonable.

3. (R-20) Shannon Paxton (applicant) and Hog Island Inc. (owner) seek a dimensional variance to build on a lot not fronting on a public street (Art. III Sec. D.2) to construct a three-bedroom, single-family residence located at 0 Bay View Avenue on Hog Island (69-172E).

Shannon Paxton, 20 Crescent Lane, Sudbury MA was sworn in. Ms. Paxton said she would like to build a single-family dwelling that will meet all zoning requirements except it will not front on a public street because there are no public streets on Hog Island. It would be more than a mere inconvenience to deny her the variance.

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

The Chair said that Shannon Paxton, map 69, lot 172E is before the Board seeking a dimensional variance to build on a lot not fronting on a public street on Hog Island.

Mr. Borden            Approve:

Hog Island has no public roadways, and she has a right to build a personal residence on her property. To deny her this right would amount to more than a mere inconvenience, so I approve.

Mr. Furriel            Approve:

I approve the dimensional variance for reasons given by Mr. Borden.

Ms. Pavlakis            Approve:

I approve for reasons previously stated.

Mr. Raposa            Approve:

I approve for reasons previously stated.

Mr. Nott                      Approve:

The Chair also approves for reasons stated. Otherwise she would not be able to enjoy the legally permitted use of her property.

4. (R-20) John and Susan Borden (owner) seek two dimensional variances to build on two proposed lots not fronting on a public street (Art. III Sec. D.2) off of Canonchet Drive (31-32B). The proposed development approval will be contingent on the pending subdivision approval before the Planning Board.

Mr. Borden recused himself from this petition because he is the petitioner.

Attorney Neil Galvin, Galvin Law, 10A Washington Square, Newport was present representing petitioners John and Susan Borden. Mr. Galvin submitted the following exhibits to the Board:

- Exhibit 1 Applicants' Petition to the Zoning Board of Review
- Exhibit 2 Applicants' Lot Plans Dated 3/21/19
- Exhibit 3 Planning Board Advisory Opinion Dated 3/26/19
- Exhibit 4 Prior Decision on this Property by the Zoning Board Dated 10/18/18
- Exhibit 5 A Letter from the Fire Marshal Dated 3/13/19
- Exhibit 6 Portsmouth Water & Fire District Minutes of 3/19/19 Approving Water to the Lots

Mr. Galvin said that the neighbors were fearful of what would happen with this property at every level of approval, but the applicants are taking steps now to save the neighbors. They are proposing a four-lot subdivision for four single-family homes.

John Borden, 41 Mill Lane was sworn in. Mr. Borden said the idea of this plan was to create minimum density. He said he has met with the Fire Marshal and the Fire Marshal was fine with a 20' wide road. The lots are all less than 30,000 square feet in order to avoid duplexes going in. This plan will place a small, private road for the houses and there are several private roads in Portsmouth, so it is not unique. They will have a homeowner's association in place. These homes will get water from the Portsmouth Water & Fire District. This will be a four-lot subdivision with single-family units. There will be a landscape buffer installed.

The Chair called for abutters or interested parties.

Susan Ryder Lewis, 28 Canonchet Drive was sworn in. Ms. Lewis said there will be a gravel road that will be dirty and dusty right in her back yard. She said there is a tree that has a great horned owl with babies in it that they cannot take down. Ms. Lewis was concerned that salt from the road used for maintenance would kill her grass. She said she has a lot of concerns.

Mr. Nott told her those things were all Planning Board issues. Ms. Lewis asked about Mr. Borden creating his own hardship because Mr. Borden owned the entirety of her lot, but before he sold it to her he cut out the “driveway” portion. Now he doesn’t have the frontage he needs on a public road. Mr. Nott said he could not speak to that.

There were no other abutters or interested parties.

Mr. Galvin said to deny the dimensional variance of not having enough frontage on a public road would be more than a mere inconvenience.

The Chair said John and Susan Borden, map 31, lot 32B, are before the Board seeking two dimensional variances to build on two proposed lots not fronting on a public street.

Mr. Furriel                    Approve/Approve:

I approve the variance given that the subdivided lot has no frontage on a public way and could not be built on without the variance.

Ms. Pavlakis                Approve/Approve:

I agree with Mr. Furriel and I approve.

Mr. Raposa                 Approve/Approve

I also agree with Mr. Furriel and I approve.

Ms. Horwitz                Approve/Approve:

I approve for reasons previously stated.

Mr. Nott                     Approve/Approve:

The Chair approves of the dimensional variance. It’s similar to others on Union Street and Mill Lane. To deny would deny the applicants the reasonable use of their property. I hope the Planning Board acknowledges the abutters.

A motion to adjourn was made by Mr. Raposa and seconded by Mr. Furriel. The motion carried 5 – 0 with all in favor. The meeting adjourned at 10:06 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary

Approved: Barbara A. Ripa                    Date: July 18, 2019