



# Town of Portsmouth

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

**JULY 19, 2018**

**MEMBERS PRESENT:** Mr. James Edwards, Chair, Mr. James Nott, Vice-Chair, Ms. Kathleen Pavlakis, Secretary, Mr. James Hall, and Mr. Benjamin Furriel, Second Alternate.

**MEMBERS ABSENT:** Mr. John Borden and Mr. Eric Raposa, First Alternate.

**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 7:03 p.m. in the Town Council chambers.

## **I. MINUTES**

A motion was made by Mr. Nott and seconded by Mr. Furriel to accept the notes of the June 21, 2018 regular meeting as presented. They were not minutes because a meeting was not held since there was not a quorum. The motion carried 5 – 0.

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

There was no Chairman's Report.

Mr. Edwards said that Sakonnet Bluffs is seeking to withdraw their application under Old Business and he asked for a motion from the Board.

A motion was made by Mr. Hall and seconded by Mr. Nott to allow Sakonnet Bluffs to withdraw their petition for special use permits without prejudice. The motion carried 5 – 0.

Mr. Edwards said that there was an email request from Tyrrel Steward, #3 under New Business, who asked to be continued to the August meeting due to his work schedule.

A motion was made by Mr. Nott and seconded by Ms. Pavlakis to continue the petition of Tyrrell Steward for map 68, lot 80 to the regular meeting of August 16, 2018. The motion carried 5 – 0.

## **III. OLD BUSINESS**

There was no Old Business since Sakonnet Bluffs withdrew their petition.

## **IV. NEW BUSINESS**

1. (R-20) Matthew and Chery DeAngelis (owners) seek a dimensional variance for lot coverage (Art. IV, Sec. B) and a special use permit to construct a 10' x 12' shed on a nonconforming lot of record (Art. VI, Sec. A.4) located at 13 Karen Street (49-40).

Matthew DeAngelis, 13 Karen Street, was sworn in. Mr. DeAngelis said that he has a nonconforming lot and would like a 10' x 12' shed on his property located on his side yard, rather than the back yard because of the slope of his lot. He would require a 5.8% lot coverage variance, which would be 1.8% over current coverage. The Chair went over the special use permit requirements with him. Mr. DeAngelis testified that the shed would meet all special use permit requirements.

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

Mr. Nott                      Approve/Approve:

Matthew DeAngelis, map 49, lot 40 is seeking to put a 10' x 12' shed on his property. Sheds are allowed as a matter of right, but he has a substandard lot of record and would like to put it in the side yard. He meets the special use permit criteria and with 1.8% over lot coverage from what exists today, to deny would amount to more than a mere inconvenience. I approve.

Mr. Hall                      Approve/Approve:

Mr. Nott has stated the facts correctly. I agree, and I approve.

Ms. Pavlakis                Approve/Approve:

I concur with Mr. Nott and I approve.

Mr. Furriel                Approve/Approve:

I approve for reasons given by Mr. Nott.

Mr. Edwards               Approve/Approve:

The Chair approves as well. I agree with Mr. Nott.

2. (C-1) Portsmouth Water & Fire District (applicant) and 2340 West Main Realty, LLC (owners) of 2340 West Main Rd (56-6) seek a special use permit to construct a water pumping station for a public utility use (Art. V Sec. B.5.).

Attorney David F. Fox, 850 Aquidneck Avenue, Middletown was present representing the Portsmouth Water & Fire District. Mr. Fox said the District is present seeking a special use permit for a pumping station in a commercial district. In the audience is Phil Driscoll, Chair of the Portsmouth Water & Fire District Board, Jessica Lynch, PE, General Manager, Nathan Godfrey from Newport Appraisal Group and Joshua Rosen, PE. The resumes for Ms. Lynch and Mr. Rosen were given to the Zoning Board members as Exhibit 1 (Lynch) and Exhibit 2 (Rosen).

A motion was made by Mr. Nott and seconded by Mr. Hall to accept Jessica Lynch and Joshua Rosen as experts in engineering and Nathan Godfrey as an expert in real estate appraisal. The motion carried 5 – 0.

Jessica Lynch, 16 Lilac Lane, was sworn in. Ms. Lynch said that the Town of Portsmouth buys all of its water from the City of Newport and it goes through the existing pump station that was built in 1966. That pump station is ending its useful life and this new pump station will also improve operations. The specific location is along the road about 50' away from the existing pump station. The goal was easy access to the current facility. They carved out a lot out of the gas station property. There is no way to add any new buildings to the old pump station because that lot is too small. Once the tanks are full the pumps turn off, so there is no noise. The existing pumps will be demolished and filled in after the new pump station is tested and they are comfortable that it is running correctly. The noise emitted by the new pump will be similar, if not less, than the current because it will be more efficient. There will be no smoke or smells and no chemicals. There will be a backup emergency generator. There is an emergency generator in the building currently. There will be a separate area for the generator at the new pump station and a person will be on-call to come start up the generator; it will not automatically come on. If there is no pump, there will be no water for the Town. There will be exterior lighting, but they have not yet decided on what type yet, they are working on that and landscaping. It is required to be fenced and alarmed. The fuel source for the generator is natural gas and there will be external power lines. They have not determined whether the power will be underground or above ground yet. They expect to be able to pump 3 ½ million gallons of water per day. Currently they can produce 2 million gallons a day. The proposed will be two pumps with an additional one as a backup, or three altogether. The current building would be used for storage. They would need to shut down for a short amount of time in order to switch over to the new pump.

Joshua Rosen, PE, Principe Engineering, 27 Sakonnet Ridge Drive, Tiverton was sworn in. Mr. Rosen described the location of the 20,000 square foot lot for the new pump facility. He said there would be a 50' right of way between it and the existing land. The layout of the property is shown on sheet 3 of 5 dated 5/1/18 in the packet, which also shows the property boundaries and setbacks. Sheet 4 of 5 dated 5/1/18 shows the future right of way which will be utilized to access the property. There will not be an additional curb cut. There will be an infiltration trench. No OWTS is needed, just gray water for the sampling sink. The boundary of the property must be fenced. Mr. Fox said they are still considering what type of fence to install.

Nathan Godfrey, Real Estate Appraiser, Newport Appraisal Group, LLC, 221 Third Street, Newport was sworn in. Mr. Godfrey said that Portsmouth Water & Fire is dedicated to the Town's water quality and supply and water is vital and necessary according to the Portsmouth Comprehensive Community Plan. Mr. Godfrey did a nine-step test and has determined that the new pump station meets the criteria necessary for a special use permit. His report was distributed to the Board members.

Mr. Fox said acting Fire Chief Howard Tighe said the Fire Department has no issues with the proposed use of the property and supports the use.

The Chair asked for abutters and interested parties.

Conni Harding, 884 Union Street was sworn in. Ms. Harding said that she would like to see the building made with hardy board, something more Portsmouth-looking. Her main concern is another curb cut.

No other abutters or interested parties wanted to speak at this time.

Mr. Nott said that the Zoning Board members would like to receive an Advisory Opinion from the Design Review Board, a landscaping plan that is in relation to Benzine's (the gas station's) landscaping plan, and a lighting plan, but it is up to the petitioner if they would like to continue the petition. Mr. Fox asked for the petition to be continued.

A motion was made by Mr. Nott and seconded by Mr. Hall to continue the petition of Portsmouth Water & Fire District to the regular meeting of August 16, 2018. The motion carried 5 – 0.

4. (R-10) Gary Ross and Angelica Alvarez (owners) seek dimensional variances for lot coverage, front, side and rear yard setbacks (Art. IV, Sec. B) and a special use permit to construct a 7' x 8' deck, 15' x 12' deck and 5' x 15' deck on a nonconforming lot of record (Art. VI, Sec. A.4) located at 15 Canton Ave. (3-52).

Gary Ross, 15 Canton Avenue, was sworn in. Mr. Ross said he would like to build a new deck in the back yard and to rebuild the front steps with a slightly larger landing. He said it would provide a little more ease in getting in and out. He has a very small lot and most abutters have decks. Part of the deck will be over where his septic is located, but the footings will not be located on top of it. He has a privacy fence. He will need a 4' front yard setback variance for the front steps, a 3' rear yard setback variance and a 5' side yard setback variance for the side/back yard deck. Mr. Ross would also need a lot coverage variance of 11.5% and a special use permit. He testified that he met all special use permit criteria.

The Chair called for abutters or interested parties.

Ms. Pavlakis said that there is a letter in favor of the petition from a neighbor in the file.

Ken Fontaine, 22 Canton Avenue was sworn in. Mr. Fontaine said that it would he thought the proposals would be a good idea.

Mr. Nott                      Approve/Approve:

Gary Ross, map 3, lot 52 which is an R-10 district, is seeking a dimensional variance and a special use permit to add a deck in the back of his house and to rebuild the front steps. Mr. Nott went through the special use criteria and said that Mr. Ross has met the criteria. He is seeking a 4' front yard variance, a 3' rear yard variance and a 5' side yard variance for the right side for the back-yard deck. Mr. Nott approves. Mr. Nott said the 31.5% lot coverage seems excessive but considering everything and what the neighbors have, it is not, so he approves.

Mr. Hall                      Approve/Approve:

I approve the special use permit, the dimensional variances and the lot coverage variance – it is done hundreds of times down there.

Ms. Pavlakis                      Approve/Approve:

I agree with Mr. Hall and Mr. Nott. Mr. Ross should be able to use his property.

Mr. Furriel                    Approve/Approve:

It is a reasonable use of property and considering the size of the property, there is no better way to propose the stairs and deck. I approve.

Mr. Edwards                    Approve/Approve:

For reasons previously stated by my colleagues, the Chair also approves. It is the least relief necessary, in fact, he is going over his own septic tank with the deck.

The Board broke for a recess at 8:29 p.m.

The Board was called back into session at 8:36 p.m.

5. (C-1) Fair Oaks Limited Partnership (owners) request a dimensional variance for minimum lot frontage (Art. IV Sec. B) as part of a zoning change and minor subdivision application, which was preliminarily approved by the Planning Board on June 13, 2018. The property is located at 2951 and 2967 East Main Road (31-32 and 31-32A). The newly created parcel will access the existing residential building utilizing Canonchet Drive.

Attorney Neil Galvin, Galvin Law, Ltd., 10A Washington Square, Newport was present representing Fair Oaks Limited Partnership. Mr. Galvin stated that this meeting was preliminary before going to the Town Council to request a zoning change, and that it was rare to see commercially zoned land changed to residential. The petition has been before the Planning Board and the Planning Board's favorable advisory opinion is in the packet. The petitioner submitted:

- Exhibit A            Land to be Rezoned
- Exhibit B            Planning Board Advisory Opinion Dated June 21, 2018
- Exhibit C            Principe Engineering's Detailed Subdivision Plan
- Exhibit D            Colorized Plat Map Version of Commercial vs Residential to Show Symmetry

John Borden, 41 Mill Lane, was sworn in. Mr. Borden is a general partner and his wife is a limited partner in Borden Family Partnership. Mr. Borden testified that the property is in a commercial zone and it is a pre-existing, non-conforming use of the property. There is a six-unit apartment building in front of the lot and a three-unit multi-family in the rear of the lot. Mr. Borden's mother is in a nursing home and \$150,000 worth of repairs need to be made to the 1865 Victorian in the front, so he needs to sell the back to get cash for the repairs. The front home is in the Historical Register in Portsmouth. Mr. Borden wants to preserve the barn and does not want to develop it commercially in his lifetime, but perhaps have shops in the outbuildings. He could, by right, build something like Clements' Marketplace in this spot. He thought that subdividing and selling the rear portion would be the least significant historical piece and thought making the rear portion residential would be the most compatible with the area. Mr. Borden owns 28 Canonchet Drive, and he could install a driveway right now to the rear portion of the lot, if he chose to do so. There are three properties in town that have similar frontage/access – Exhibit E was then

submitted with copies of these properties – one on Middle Road, one on Mill Lane and one called Moniz Way, off Union Street.

The Principe Plan contained minor modifications requested by the Fire Marshal to the parking plan. The current use and future use of the property is the same - a three-unit multi-family house. If a buyer wanted to make any changes to what currently exists they would have to go back before the Board and neighbors would have to be notified. The existing driveway from East Main Road to the lot in the back would be torn up and seeded and fencing would be put in to clearly delineate between the lots.

Nathan Godfrey, real estate appraiser, was introduced.

A motion was made by Mr. Nott and seconded by Mr. Hall to accept Mr. Godfrey as an expert in Real Estate Appraisal. The motion carried 5 – 0.

Mr. Godfrey said that the actual frontage on the lot will be less than required by zoning, only 43'. The ordinance says that six standards must be met to grant a special use permit, and he believes this request has met them all. Mr. Godfrey pointed the Board's attention to the color-coded map. He said he's never seen anyone go from commercial zoning to residential, but it will maintain the appropriate zoning up front. The hardship is the unique characteristics of the land and the relief will be the least necessary. Mr. Godfrey believes the rezoning is appropriate and it will have a positive impact. Mr. Godfrey's report was entered into the record as Exhibit F. Mr. Godfrey explained how he believed the property met the special use criteria.

Mr. Nott read aloud the businesses that would be allowed by right in a commercial zone.

The Chair called for abutters or interested parties.

Jeff Lewis, 28 Canonchet Drive was sworn in. Mr. Lewis said that he is opposed. He said he lives in lot 69 that was purchased from Mr. Borden. He said that Mr. Borden has stated that he has plans for seven units on the property. Mr. Lewis said that Mr. Borden previously owned 28 Canonchet, and had the frontage he needed but he sold it – why did he do that? Mr. Lewis' daughter is deaf, and he is concerned about the traffic. Six homeowners of the eight houses around the area are here to speak. Real estate appraiser Jim Houle is also present to speak on their behalf.

The Chair paused the hearing because it became apparent to him that NB 6 and 7 would not be able to be heard tonight before 10 p.m.

A motion was made by Mr. Nott and seconded by Mr. Hall to continue the petition of Dominic and Emily Devaud, map 65, lot 10A, to the regular meeting of August 16, 2018 and the petition of Anita Oliver, map 1, lot 41, to the regular meeting of August 16, 2018. They will be items 2 and 3 on Old Business. The motion carried 5 – 0.

The hearing continued.

A motion was made by Mr. Hall and seconded by Mr. Nott to accept Mr. Houle as an expert in Real Estate Appraisal. The motion carried 5 – 0.

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Mr. Houle's report was submitted as Exhibit 1. Mr. Galvin filed in opposition as he believes irrelevant information is in Mr. Houle's report.

Mr. Houle said his basic finding is impact – he doesn't know that the subdivision meets the criteria for a variance because the primary problem is access.

Alexander Hall, 36 Canonchet Drive was sworn in. Mr. Hall said his concern is that if it is residential zoned, they've seen a plan with up to 8 – 12 units, and it would change Canonchet. Mr. Hall provided the plan that he had been given to the Board.

A motion was made by Mr. Nott and seconded by Mr. Hall to continue the petition to the regular meeting to be held August 16, 2018. The motion carried 5 – 0.

A motion to adjourn was made by Mr. Nott and seconded by Mr. Hall. The motion carried 5 – 0. The meeting was adjourned at 10:00 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary