



Town of Portsmouth

ZONING BOARD OF REVIEW

2200 East Main Road / Portsmouth, Rhode Island 02871

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(401) 683-3611

AUGUST 16, 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 6:59 p.m. in the Town Council chambers.

I. MINUTES

A motion was made by Mr. Borden and seconded by Mr. Nott to accept the minutes of the July 12, 2018 special meeting as presented. The motion carried 5 – 0. Mr. Raposa entered the meeting immediately after voting and did not vote on the minutes.

II. CHAIRMAN'S REPORT

There was no Chairman's Report.

It was decided to have a special meeting for Old Business 4, Fair Oaks Limited Partnership, on September 6, 2018. A motion was made by Mr. Nott and seconded by Mr. Furriel to continue the petition of Fair Oaks Limited Partnership to a special meeting to be held on September 6, 2018 at 7:00 p.m. The motion carried 5 – 0 with Mr. Edwards, Mr. Nott, Ms. Pavlakis, Mr. Raposa, and Mr. Furriel in favor.

III. OLD BUSINESS

1. (R-40) Tyrrell Stewart (owner) seeks dimensional variances for side and rear yard setbacks (Art. V, Sec. I.6.) and a special use permit to construct an enclosure for chickens on a nonconforming lot of record (Art. VI, Sec. A.4) located at 319 Old Mill Lane (68-80).

No one was present to represent Tyrrell Stewart.

A motion was made by Mr. Nott and seconded by Mr. Borden to continue the petition one additional time and for Mr. Asciola to send notice to the petitioner of the new meeting date of September 20, 2018 at 7:00 p.m. The motion carried 5 – 0.

2. (R-30) Dominic and Emily Devaud (owners) seek dimensional variances for lot coverage and side yard setback (Art. IV, Sec. B) and a special use permit to construct a 10' x 27' deck on a nonconforming lot of record (Art. VI, Sec. A.4) located at 429 Wapping Road (65-10A).

No one was present to represent Dominic and Emily Devaud.

A motion was made by Mr. Borden and seconded by Mr. Nott to continue the petition and for Mr. Asciola to send notice to the petitioner of the new meeting date of September 20, 2018 at 7:00 p.m. The motion carried 5 – 0.

3. (R-10) Anita Oliver (owner) seeks dimensional variances for lot coverage and front yard setback (Art. IV, Sec. B) and a special use permit to construct a 4.5' x 11.5' porch on a nonconforming lot of record (Art. VI, Sec. A.4) located at 1236 Anthony Road (1-41).

Anita Oliver, 1236 Anthony Road was sworn in. Ms. Oliver said she would like to build a small front porch with a little bit of an overhang for coverage. She is in an R10 district and would need a 9' front yard setback variance and a 6% lot coverage variance. Her lot is a small, substandard lot of record at 6,000 square feet. Her neighbors to the right and left both have porches. The Chair went through the special use permit criteria and Ms. Oliver testified that the project would meet all criteria.

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

Mr. Nott Approve/Approve:

Anita Oliver, map 1, lot 41 is seeking to build a new porch with a small roof. Evidence has been presented that her neighbors have porches. She is probably 19' from the town road and the town probably won't develop the road. Additional lot coverage is .8%. She has met the special use permit criteria. It would be more than a mere inconvenience to deny the variance, so I approve.

Mr. Borden Approve/Approve:

For reasons previously stated by Mr. Nott, and because it is the least relief necessary, I approve. It would be more than a mere inconvenience to deny.

Ms. Pavlakis Approve/Approve:

I concur with Mr. Nott and I approve.

Mr. Furriel Approve/Approve:

I vote to approve. It will prevent a repeat of the damage to the doorway and there will be no detriment to the neighborhood.

Mr. Edwards Approve/Approve:

The Chair approves as well. I agree with my colleagues. It will improve the property and the neighborhood.

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

The petition of Portsmouth Water & Fire District (applicant) and 2340 West Main Realty, LLC (owners) was started from the beginning because the same five Zoning Board members were not present tonight to continue the petition.

Attorney David F. Fox, 850 Aquidneck Avenue, Middletown was present representing the Portsmouth Water & Fire District. Mr. Fox said in attendance tonight, representing the District, is Tom Principe, PE, Nathan Godfrey, real estate expert from Newport Appraisal Group, and Jessica Lynch, PE, General Manager of Portsmouth Water. Mr. Fox said this matter has gone before the Planning Board and has gotten a favorable recommendation for the subdivision, which is 50' from the existing pump station.

The Chair said that Town Solicitor Kevin Gavin determined the building design did not have to be reviewed by the Design Review Board, however, if the Zoning Board decided they wanted the petitioner to go before the Design Review Board they could insist upon it. The Board was emailed the new design. Board members said they were satisfied with the new design and were not insistent that Portsmouth Water & Fire go before the Design Review Board.

The resume for Ms. Lynch was distributed to the Zoning Board members as Exhibit 1.

A motion was made by Mr. Nott and seconded by Mr. Raposa to accept Thomas Principe as an expert in civil engineering, Nathan Godfrey as an expert in real estate appraisal, and Jessica Lynch as an expert in civil engineering. The motion carried 5 – 0.

Jessica Lynch, 16 Lilac Lane, was sworn in. Ms. Lynch testified 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 1956 with an upgrade in 1989. Water is stored in two tanks in Portsmouth. The existing pump station is ending its useful life and the new pump station will improve operations and add additional capacity. There is no way to add new buildings to the old pump station because the lot is too small. The specific location for the new lot 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. The pump station will not be manned. It is controlled by water levels in the tanks so when the water level in the tanks decrease to a certain point the pump will automatically come on.

The petitioner distributed a rendering of the landscape plan to the Zoning Board members. They will have dusk to dawn lighting at the entrance. The fence will have barbed wire on the top, which is required by federal regulations. All entrances will be alarmed. There will be no signage. For the record, there may be hydrochloride on site, which is simply chlorine that treats the water, but probably it will not be located there. The generator outside will be enclosed. They will test the generator once a week. The generator is not set to be automatic. An operator will test it during business hours, and should there be an emergency, an operator must come out and start it. There will be no dumpster. There will be no

employees. The pumps and generator will create some noise, but it will not be any more than currently occurs and should be less because the machinery will be newer and more efficient. There will be no odors. The generator is run by natural gas and the pump station uses electricity. They have done borings at the site and they are not certain about whether they will need to do blasting.

Tom Principe, III, PE, 27 Sakonnet Ridge Drive, Tiverton was sworn in. Mr. Principe discussed drainage, which has an underground infiltration system. He said the plan is for a small driveway and asphalt for one parking space. They worked with the DEM and there is no OWTS necessary. There is a sampling sink that does not need to be treated. A slab will be on the grade. They do not anticipate blasting. Benzine is responsible for access to the lot via a right-of-way, so there will not be an additional curb cut. The fence will be a green vinyl coated chain link fence. The Board was provided a lighting plan as well as the landscaping plan.

Ms. Lynch said that they will be tapping into the existing water lines and the existing building will be removed. She said that Acting Chief Howie Tighe has no issues with the proposed use of the property and supports the use. She has spoken with Building Inspector Gareth Eames who agreed that no bathroom was needed.

Nathan Godfrey, Real Estate Appraiser, Newport Appraisal Group, LLC, 221 Third Street, Newport was sworn in. Mr. Godfrey said that he performs a nine-step process when he looks at a special use permit in this situation and looks at a “before and after” scenario. Mr. Godfrey believes this petition meets the criteria necessary for a special use permit and is in conformance with the Portsmouth Comprehensive Community Plan. He distributed his report dated July 16, 2018 to the Board.

A motion was made by Mr. Nott and seconded by Mr. Furriel to impose the following conditions should the petition be approved:

1. The generator shall be housed in a sound-dampening enclosure and powered with natural gas.
2. Lighting shall be at a 90% downward angle and shall have motion-sensor lights from dusk to dawn.
3. There shall be no long-term storage of chemicals on site.
4. Fencing shall be green vinyl coated as stated.

The motion carried 5 – 0.

The Chair asked for abutters and interested parties. There were none.

Mr. Nott Approve:

Portsmouth Water & Fire District, map 56, lot 6 is before the Board seeking a special use permit to construct a new water pumping station. We have a letter on file from the Planning Board giving the petitioners a favorable recommendation. If you go through the special use criteria: the desired use will not be detrimental to the surrounding area; it will be compatible with neighboring land uses; it will not create a nuisance or a hazard; adequate protection is afforded to the surrounding property by the use of open space and planting; safe vehicular access and adequate parking are provided; control of noise,

smoke, odors, lighting and any other objectionable feature is provided; solar rights of the abutters are provided for; the proposed special use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town of Portsmouth; and the health, safety and welfare of the community are protected, and they can only do so much planting because they are required to see the building, it is my opinion that they have met the criteria for a special use permit and I approve.

Mr. Raposa Approve:

I agree with Mr. Nott and I approve.

Ms. Pavlakis Approve:

I also agree with Mr. Nott and I approve.

Mr. Furriel Approve:

I approve for reasons previously stated.

Mr. Edwards Approve:

The Chair approves as well for reasons previously stated by Mr. Nott. I commend the petitioner for providing the landscape and lighting renderings.

IV. NEW BUSINESS

1. (R-10) Michael and Mary Beth McDonald (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 115 Cottage Avenue (20-235).

Michael and Mary Beth McDonald, 115 Cottage Avenue were sworn in. The McDonalds have a nonconforming lot of record and would like to put a shed on their property that will exceed allowable lot coverage.

A motion was made by Mr. Nott and seconded by Mr. Borden to allow the McDonalds to amend their petition to make the shed 10' x 12' because they had a 10' x 10' shed listed in their petition. The motion carried 5 – 0.

The shed would be 3' from the property line. The lot coverage would go from 39% to 42.7%. They do have a basement, but not much storage or a garage. The Chair went over the special use permit requirements with them. The McDonalds testified that the shed would meet all special use permit requirements.

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

Mr. Borden Approve/Approve:

The petitioners walked through the special use permit criteria with the Chair and I'm comfortable that they meet the criterion. They have a hardship, they do not have a garage or a shed to store a bike or a lawnmower. It is a 120 square foot shed, the least relief necessary, and I approve.

Ms. Pavlakis Approve/Approve:

I concur with Mr. Borden, and I approve.

Mr. Furriel Approve/Approve:

Given the lack of a garage, it is the least relief necessary and I approve.

Mr. Nott Approve/Approve:

It is a reasonable request and I approve for reasons given by Mr. Borden.

Mr. Edwards Approve/Approve:

The Chair approves as well for reasons given by my colleagues.

2. (R-20) Timothy and Kathryn Mecurio (owners) seek dimensional variances for rear yard setbacks (Art. IV, Sec. B) and a special use permit to construct a 10' x 20' shed on a nonconforming lot of record (Art. VI, Sec. A.4) located at 70 Child Street (29-115).

No one was present to represent Timothy and Kathryn Mecurio.

A motion was made by Mr. Nott and seconded by Mr. Furriel to continue the petition of Timothy and Kathryn Mecurio to the regular meeting of the Zoning Board of Review of September 20, 2018 at 7:00 p.m. The motion carried 5 – 0.

The Board broke for a recess at 8:10 p.m.

The Board was called back into session at 8:20 p.m.

3. (C-1/I-L) Kearsarge Energy (applicant) and Allen Shers (owner) seek a special use permit (Art. V Sec.1 and Art. V Sec. B.5) and dimensional variance for lot coverage (Art. IV Sec. B) to construct a 4.8 MW solar photovoltaic development located at 1330 West Main Road (44-15).

Todd Greene, registered civil engineer, 1200 Soldiers Field Road, Suite 202, Boston, MA 02134 and Andrew Bernstein of 1200 Soldiers Field Road, Suite 202, Boston, MA 02134 were sworn in and represented Kearsarge Energy. Mr. Greene said that 40' of commercial zoned property can be used as light industrial and that is what they intend to do. They have reduced their original plan by 37% so it complies with the zoning and the court order that recently decided that solar arrays were manufacturing.

Board members did not have a copy of the current reduced plan and did not want to hear the petition without having a new copy of the plans.

A motion was made by Mr. Nott and seconded by Mr. Borden to continue the petition to the regular meeting of September 20, 2018 at 7:00 p.m. The motion carried 5 – 0.

4. (R-40) Cort and Jamie Chappell (owners) seek dimensional variances for front yard setbacks (Art. IV, Sec. B) on a newly created lot formerly part of 20 Evans Way (16-40A) at the corner of Therien Road and West Shore Road.

Cort Chappell, Esq. was present with his daughter, for whom he would carve out the lot. Mr. Chappell is seeking a dimensional variance of 20' because Therien Road requires a 150' setback. The lot will have Evan's Way, which is a private road, cut through it. It is a corner lot. The lot has special setback requirements written into the deed, but Mr. Chappell has a letter from Bryon and Nancy Hall stating that they have no objection to the proposed plan.

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

Mr. Borden Approve:

The petitioner is seeking a 20' front yard variance from Therien Road. These lots were created as unique lots and setbacks are nowhere near 150' anywhere in town. It would be more than a mere inconvenience to deny; the setback is exorbitant. It is a reasonable request, and I approve.

Ms. Pavlakis Approve:

I agree with Mr. Borden and approve.

Mr. Furriel Approve:

I also agree for reasons previously stated and I approve.

Mr. Nott Approve:

I have knowledge of what happened and understand, so I approve.

Mr. Edwards Approve:

The Chair approves as well for reasons given by Mr. Borden.

5. (C-1) FS Supply, LLC (applicant) and East Main Associates (owners) request a special use permit (Art. V Sec. E.2) for outdoor merchandise display and storage. The property is located at 3034 East Main Road (31-30).

Eric Chappell, Esq., Chappell and Chappell, 171 Chase Road represented FS Supply, LLC, which is dba

ACE Hardware Store. Mr. Chappell said that ACE would like to move across the street. Presently the site is a day care and RITE Aid. Outside storage is not allowed currently, and he would need permission for outdoor storage and propane tanks.

Ed Siegal, 47 Bush Street, S. Dartmouth, MA was sworn in. Mr. Siegel said he is very happy where they are but does not think they have enough room where they are, which is only 4,000 square feet. There would be about 10,000 square feet in the new store. They would have an option to buy. They would need some outdoor storage and the propane tank. There would be no changes to signage and a little change to the façade. Their current propane tank will be removed. Hours will be 7 – 6 or 7 – 7 and 9 – 5 on Sunday. He will not sublease.

Neal Hingorany, professional land surveyor, Narragansett Engineering Inc., 3102 East Main Road spoke about the parking, which they will restripe to 33 spaces, the propane tank which will comply with zoning and be surrounded by vinyl fence and gate, and the lighting, which will be dark sky compliant with LED lights. Species of trees will change based on the landscape architect.

Deliveries of propane are usually 10 a.m. to noon during business hours and on an as-needed basis. There have been no safety issues with the propane.

Keith DelleChiaie, 17 Allan Avenue, Oxford, MA District Manager, was sworn in. Mr. DelleChiaie said that it will be a small, 1,000-gallon propane tank.

Nathan Godfrey, Real Estate Appraiser, 221 Third Street, Newport was sworn in.

A motion was made by Mr. Nott and seconded by Mr. Borden to accept Mr. Godfrey as a real estate expert. The motion carried 5 – 0.

Mr. Godfrey submitted his report on the petition with his opinion to the Board members. Mr. Godfrey believes that the petition as proposed will be in conformance with the Comprehensive Community Plan and meets all zoning requirements.

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

Mr. Nott Approve:

ACE Hardware is before us, map 31, lot 30, seeking a special use permit for the purpose of allowing outdoor storage and having an outdoor propane tank. They have given testimony about why they need to move. He has shown good business practices with his stores here and in Bristol, both of which are very clean. I believe the petition meets the special use permit criteria and I approve.

Mr. Raposa Approve:

I think it's a great thing. Your employees are great. I approve.

Ms. Pavlakis Approve:

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I feel the same. I have a husband that goes there all the time. You have great people there. Good luck.

Mr. Edwards Approve:

I agree with my colleagues. You do have great employees and it's nice to have a hardware store in town.
Good luck!

A motion to adjourn was made by Mr. Nott and seconded by Mr. Borden. The motion carried 5 – 0.
The meeting was adjourned at 9:35 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary