



Town of Portsmouth

ZONING BOARD OF REVIEW

2200 East Main Road / Portsmouth, Rhode Island 02871

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SPECIAL MEETING **SEPTEMBER 6, 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 (recused) 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 7:00 p.m. in the Town Council chambers.

I. OLD BUSINESS

1. (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.

Chairman Edwards said at the meeting of July 19, 2018, the Board had heard testimony and received Exhibits A through F from the petitioner. Abutters and interested parties had begun to speak. Real estate appraisal expert James Houle had been retained by abutters and gave testimony. Abutters and interested parties, including Mr. Houle, previously submitted Exhibits 1 and 2 to the Board. Chairman Edwards called for any additional abutters or interested parties.

John O'Brien, 51 Canonchet Drive, was sworn in and presented his résumé to the Board. His résumé was labelled Exhibit 3. Mr. O'Brien asked to be considered an expert in planning. His résumé indicated that he had been employed in planning from 1974 through 2006 and was Chief in the Rhode Island Statewide Planning Program from January 1999 through July 2006.

A motion was made by Mr. Hall and seconded by Mr. Nott to accept John O'Brien as an expert in planning. The motion carried 5 – 0.

Mr. O'Brien read from a prepared statement. He said that the entire Borden Farm of 6.2 acres is on the Historic Register, not just the house in the front. This designation may add to the desire to build on the location. Mr. O'Brien stated that regarding the relief for a 43' frontage for a 2.2-acre parcel – this requires evidence of a hardship that was not the result of anything the applicant did, and he cannot ask for it for financial gain. But the petitioner did incur financial gain when he purchased lot 69 in 1998, carved out the driveway and then sold the remainder of lot 69 in 1999.

Mr. O'Brien said an alternative is to rezone both lots as R-20, rather than just the rear lot, and continue to use East Main Road as access to the rear lot. Mr. O'Brien submitted the copy of his testimony to the Board.

Both Mr. Hall and Mr. Nott questioned Mr. O'Brien on his testimony and discussed other situations in Portsmouth, such as the house near East Main Road in front of Atria, which has never been rehabilitated, moved, or sold.

Attorney Neil Galvin, Galvin Law, Ltd., 10A Washington Square, Newport, representing the petitioner, asked to cross-examine Mr. O'Brien. He asked Mr. O'Brien how often he has testified as an expert. Mr. O'Brien said that he could not testify as an expert as it would have been a conflict of his state position.

Susan Ryder Lewis, 28 Canonchet Drive was sworn in. Ms. Lewis said she purchased her property from Mr. Borden. She believes he caused his own problems (with the 43' driveway because it was carved out of the lot he sold her) and she has seen another plan that he had drawn up. That plan had numerous units on it. Ms. Lewis said this petition would impact her property, that she is an asthmatic and her daughter is deaf, and the driveway directly abuts her lot.

Raymond Benkosky, 43 Canonchet Drive was sworn in. Mr. Benkosky believes the variance request is a self-imposed hardship, that Mr. Borden broke up a larger lot.

Kelley Pakenham, 3 Seneca Road was sworn in. Ms. Pakenham has concerns with the driveway on Canonchet Drive. She said that Canonchet is very busy and is a high traffic area. There are many young children and she is concerned with the potential of deaths. She said that many people must park on the street.

Scott Pakenham, 3 Seneca Road was sworn in. Mr. Pakenham said that the entire block has nine houses on Canonchet and the plan they saw had nine houses for that one lot (the Borden lot to be made residential). There are lots of kids out there. He is concerned about safety. Acreage in Portsmouth is diminishing, and he is concerned about that as well.

Allyson Harple, 84 Canonchet Drive was sworn in. Ms. Harple said the neighborhood has a good feeling about it. There is a farm behind it. There are many children and there are already a lot of cars. They are afraid the neighborhood will change.

Mr. Hall asked Ms. Harple if she realized that at one point, there was just farm in the neighborhood and perhaps other people didn't want the neighborhood to change then, but it did and hopefully the people in Mr. Borden's back lot were just as nice as she is. Ms. Harple and Mr. Hall exchanged words and the exchange became heated.

The Board broke for a recess at 8:11 p.m.

The Board was called back into session at 8:22 p.m.

Mr. Edwards apologized for how emotional discussion had gotten and asked everyone to remain calm.

Richard Weida, 206 Canonchet Drive was sworn in. Mr. Weida said he has lived there for 40 years and has six grandchildren. He believes the zoning change will be a benefit to the neighborhood if this lot is rezoned residential. He believes that use will be less intrusive and is a gift.

Karen Shea, 33 Canonchet Drive was sworn in. Ms. Shay has lived there for three years. The neighborhood, she said, is one home and one yard, and in her opinion, the strip that is the driveway was unethical and a bad decision that did not consider the remainder of the neighbors. It was wrong to begin with, it doesn't fit in the neighborhood, and none of you (Board members) would want to live with it.

Michelle Pope, 6 Canonchet Drive was sworn in. Ms. Pope has lived there since the 1980s. She said traffic has been much busier in the last few years. Additional traffic would be a hardship for the neighborhood.

Heather Hall, 36 Canonchet Drive was sworn in. She said she lives behind the farmhouse. Ms. Hall said: 1) She believes the request is not in keeping with the character of the neighborhood. 2) Why does the town have a zoning ordinance if the town keeps making exceptions to it? 3) This problem was created by the petitioner's own actions.

Mr. Galvin gave his closing statement. First, he introduced into the record Jeff Lewis' 6/15/06 Zoning Board decision for a pool where, he said, Mr. Borden spoke favorably.

Mr. Galvin said that regarding Mr. O'Brien's statement that the entire parcel should be rezoned residential, doing that would actually be considered spot zoning, and that is not allowed.

Mr. Galvin said regarding the self-imposed hardship and financial gain issues, the Zoning Ordinance states, "That the hardship is not the result of any prior action of the applicant **and** (emphasis added) does not result primarily from the desire of the applicant to realize greater financial gain." There is an "AND" in the middle of the statement. The driveway was done over 20 years ago. The passage of time mitigates the prior action. In addition, Mr. Borden doesn't want greater financial gain. His real estate expert said the property value would be greater if it remains commercial. What is being proposed is beneficial to the neighborhood and the property owner. The residential lot in the rear is surrounded by other residential properties. Even the abutter's expert said residential is better for them and that it is unusual to go from commercial zoning to residential zoning. Mr. Borden could use the driveway right now.

Mr. Galvin said he believes the testimony shows this is the minimum relief necessary to make reasonable use of the applicant's property. It has been granted by the Board in the town many, many times before. The Planning Board has recommended preliminary approval. The applicant

has met all standards for relief. It has been supported by expert testimony. Approval would be subject to the Town Council changing the zoning to residential from commercial.

A motion was made by Mr. Nott and seconded by Ms. Pavlakis to close the hearing to testimony. The motion carried 5 – 0.

A motion was made by Mr. Nott and seconded by Mr. Hall to make any decision favorable to the applicant tonight only in effect if the Town Council approves the zoning change. The motion carried 5 – 0.

Mr. Nott Approve:

Fair Oaks Limited Partnership is before us, map 31, lots 32 and 32A requesting to subdivide with less frontage than required – only 43’ rather than 110’, so is seeking a 67’ variance.

It requires Planning Board and Town Council approval. I will take a minute to address the audience – Immokolee Drive where I grew up was once a dead-end road and there were 15 kids on the road ages 3 -15. Then Fox Run condominiums were built at the top of the street, and then Peggy Lane came. It all worked. This is a rare opportunity. Your houses are abutting commercially zoned property, and now that property would be residential. The hardship is due to the unique characteristics of the property. Is it due to applicant’s actions AND his desire to realize financial gain? No. Residential will be next to residential. The petition meets all the criteria to approve and I approve.

Mr. Hall Approve:

I have a unique perspective because my family’s business will be 100 years old next year and they have put roads in and through most of the farms around here. Every time a new road or lot went in maybe people didn’t want them to be there. I approve for reasons previously stated.

Ms. Pavlakis Approve:

I agree with Mr. Nott. Looking at the plat map, the lot is large and could make millions of dollars and he just wants to keep the farmhouse. I approve.

Mr. Furriel Approve:

He is asking for a variance for lot frontage for a three-family home. There will be little or no stress on the existing street. Future development, density and design can only be considered later if it comes before us. I am in favor.

Mr. Edwards Deny:

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Mr. Borden has the most integrity of almost anybody I've met but I have to vote against. I think that it will create more traffic than the property can handle, and it would change the neighborhood.

The petition has been approved 4 – 1 but now it must go before the Town Council for a zoning change.

A motion to adjourn was made by Mr. Nott and seconded by Mr. Furriel. The motion carried 5 – 0. The meeting was adjourned at 9:02 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary