



Town of Portsmouth

ZONING BOARD OF REVIEW

2200 East Main Road / Portsmouth, Rhode Island 02871

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SEPTEMBER 20, 2018

MEMBERS PRESENT: Mr. James Edwards, Chair, Ms. Kathleen Pavlakis, Secretary, Mr. John Borden, Mr. Eric Raposa, First Alternate and Mr. Benjamin Furriel, Second Alternate.

MEMBERS ABSENT: Mr. James Nott, Vice-Chair.

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 7:10 p.m. in the Town Council chambers.

I. MINUTES

A motion was made by Mr. Borden and seconded by Ms. Pavlakis to accept the minutes of the August 16, 2018 meeting as presented. The motion carried with all in favor.

A motion was made by Mr. Furriel and seconded by Ms. Pavlakis to accept the minutes of the July 19, 2018 meeting as presented. The motion carried with all in favor.

II. CHAIRMAN'S REPORT

Mr. Edwards let the Board know that after many years serving on the Board, Jimmy Hall had resigned. Although there had been a controversy this past week (because of a heated discussion during a meeting), he wanted to extend his thanks to Mr. Hall for being on the Board and for his years of service.

Also, Denise Davis, who worked in the Building Inspector's office for 26 years and has been instrumental to this Board, has retired. Mr. Edwards wanted to thank her as well.

Mr. Borden wanted to say that although the last meeting was controversial, there were many meetings where Jim Hall attended, he was a volunteer and he stayed late.

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).

Tyrrell Stewart, 319 Old Mill Lane was sworn in. Mr. Stewart said there is no clear indication of where his leach field is on his property and that is what drove his decision to build the coop where it is. He also did not understand that the town had an ordinance relative to keeping chickens. He has 13 chickens

and no roosters. His children have helped raise the chickens. He does not believe they make much noise, just the first time they lay eggs. His hardship is that he is afraid to move the coop and dig into his septic system leach field by mistake. Also, the coop is 6'6" with a fence around it, and it is well-built and sturdily in place where it is.

The Chair called for abutters or interested parties.

Ms. Pavlakis said there was a letter from John Lyons dated August 14, 2018 in the file. The letter said that he did not like variances to be granted.

Don Burkhardt, 66 Mohawk Drive was sworn in. Mr. Burkhardt said the coop is too close to the property line and they should adhere to the zoning policy. He lives in the rear to the side.

John Lyons, 54 Mohawk Drive was sworn in. Mr. Lyons said that the coop is close to his kitchen, and that it should be near Mr. Stewart's kitchen.

The Chair went through the special use permit criteria with Mr. Stewart and Mr. Stewart testified that he believed his petition met the criteria. He said it also taught his children about responsibility.

A motion was made by Mr. Borden and seconded by Mr. Raposa to impose a condition upon Mr. Stewart should his petition be approved, and that condition is to limit him to no more than 13 chickens and no rooster. The motion carried 5 – 0.

Mr. Borden Approve Special Use Permit/Deny Variances:

Tyrrell Stewart is proposing a 38' side yard setback variance, a 44' rear yard setback variance and a special use permit for a substandard lot of record. Regarding the special use permit for the substandard lot – Mr. Stewart walked through the criterion with the Chair and I have no concerns about the special use permit and I approve.

Regarding the dimensional variances, we try to respect all property owners, and he is still held to a standard – that he has a hardship that is more than a mere inconvenience. He is a gentleman and I respect his values, but I am not sure that he's met the criterion, especially with the neighbors' complaints. The required 50' setback is in zoning for a reason. The requested setbacks are substantial, and I deny.

Ms. Pavlakis Approve Special Use Permit/Deny Variances:

I agree with Mr. Borden. We raised chickens ourselves, but I also deny.

Mr. Furriel Deny Special Use Permit/Deny Variances:

I deny for reasons stated. The 50' setback is designed to control odors and sound and the lot is large enough for him to move the coop, so I deny.

Mr. Raposa Approve Special Use Permit/Deny Variances:

For reasons previously stated I deny. The special use permit is okay, but I deny the variances.

Mr. Edwards Approve Special Use Permit/Deny Variances:

The Chair agrees with my colleagues and denies as well. You can come back within the year if you have a substantial change to the petition.

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).

Dominic Devaud, 429 Wapping Road was sworn in. Mr. Devaud said the house has a side door that is 3' off the ground and there is no deck or stairs to get down to ground level. It was like this when they purchased the home. A deck will not encroach further than the garage.

Although the garage encroaches into the setback and the buildings are already over lot coverage, there is no record of a previous variance being granted by the Board.

The Chair went through the special use permit criteria with Mr. Devaud and Mr. Devaud testified that he believed his petition met the criteria.

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

Relief requested is a 5.7% lot coverage variance, a 10' side yard setback variance on the south, and a special use permit to build a 10' x 26' deck on a substandard lot of record.

Mr. Borden Approve/Approve:

I will address the request for special use permit relief first. Mr. Devaud walked through the criterion with the Chair and I am comfortable with his testimony. I approve.

Regarding the dimensional variance, there is already an encroachment. The deck will be behind the garage and it just makes sense for safety. The lot coverage is already above 20% and the additional is only 2.2% more, so I believe he's met the criterion for the dimensional variances and I approve.

Ms. Pavlakis Approve/Approve:

I approve all three for reasons previously stated.

Mr. Furriel Approve/Approve:

A new deck is in line given the door situation, the lot coverage increase is minimal, and the setback request is minimal, so I approve.

Mr. Raposa Approve/Approve:

I agree with Mr. Furriel and I approve.

Mr. Edwards Approve/Approve:

The Chair also agrees with his colleagues and approves.

3. (R-20) Timothy and Kathryn Mercurio (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).

Timothy Mercurio, 70 Child Street was sworn in. Mr. Mercurio said he would like to put a shed in the back yard. He does not have a garage, so everything would go into the shed as storage, such as bikes, garden equipment and such. He is asking for a 10' x 20' shed to be placed 15' from the rear of his property instead of the required 30'.

The Chair went through the special use permit criteria with Mr. Mercurio. Mr. Mercurio testified that his petition met the special use permit criteria.

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

Mr. Borden Approve/Approve:

The special use permit criterion was walked through with the Chair and it has been met. I approve the special use permit for a substandard lot of record.

Regarding the 15' dimensional variance, he has no garage, no shed and no place in his house for storage. A hardship has been met and it is more than a mere inconvenience. I approve.

Ms. Pavlakis Approve/Approve:

I agree and approve both.

Mr. Furriel Approve/Approve:

I approve for reasons previously stated.

Mr. Raposa Approve/Approve:

I also approve for reasons previously stated.

Mr. Edwards Approve/Approve:

The Chair agrees for reasons stated by Mr. Borden and I approve.

A motion to break the agenda and hear New Business 1 before Old Business 4 was made by Mr. Borden and seconded by Mr. Raposa. The motion carried 5 – 0.

IV. NEW BUSINESS

1. (R-40) Kurt and Sarah Czepizak (owners) seek a dimensional variance for rear yard setback (Art. IV, Sec. B) and a special use permit to construct a deck on a nonconforming lot of record (Art. VI, Sec. A.4) located at 114 Sigourney Road (62-117).

Attorney Peter Brent Regan, Sayer Regan & Thayer, LLP, 130 Bellevue Avenue, Newport was present representing petitioners Kurt and Sarah Czepizak. Mr. Regan said that the Czepizaks would like to replace a nonconforming deck that will be more conforming on a nonconforming lot of record. They are located on a corner lot and have a hardship due to the unique characteristics of the lot. The old deck is in poor shape.

Kurt Czepizak, 114 Sigourney Road was sworn in. Mr. Czepizak said that the back deck was already built when he purchased the property. There are mature trees that screen the abutter. He has two doors off his kitchen area and one off his dining room that go onto the deck. He offered to plant additional trees for his neighbors. He could replace the deck “as is” if he wanted. The Chair discussed the special use permit criteria with him. Mr. Czepizak testified the petition met the requirements and it would be 75’ away from his neighbors.

The Chair called for abutters or interested parties.

Brian and Detcha Malone, 66 General Sullivan Circle were both sworn in. They said that the Czepizaks have multiple unpermitted structures, decks, and an outdoor shower, which he has been ordered to remove and has not. Regarding the shower, they said that their house sits higher than them and they can see into the shower. They see this as the perfect opportunity to build a compliant structure, and they object to it all – the size, scope, encroachment, and the shower. He has decks on both the front and rear and a combination – over 1,000 square feet. This will be the third version of this deck.

Mr. Regan said that Mr. Czepizak constructed the shower and everything else was pre-existing. This request is straightforward and reasonable – look at the survey provided, he is increasing the setback which is driven by the characteristics of the lot. He would lose his ability to access his deck from the kitchen and dining room without the deck and it would be more than a mere inconvenience for them. There is no negative impact to the neighbors. It is well screen and they have offered to do more.

Brian Hogan, 115 Sigourney Road was sworn in. He said that he has lived there for 25 years and he is in favor of the improvements that the Czepizaks have done.

A motion was made by Mr. Borden and seconded by Mr. Furriel to place a condition on the petition

should it pass, to have the petitioners provide additional 6' at planting arborvitae or evergreens in "bare or barren areas" where the deck may be visible. The motion carried 5 – 0.

Mr. Borden Approve/Approve:

The petitioner is seeking relief for expanding and replacing a deck and special use permit criteria relief for a substandard lot of record. I approve the special use permit. Regarding the dimensional variance, does the petitioner have a hardship? Clearly the deck has to be replaced. There is no way they would have gotten a permit, it must have been grandfathered in, and the petitioners did not create the situation. They can replace the deck in the same footprint. Regarding the decks taking up too much space, they are allowed to use 20% lot coverage and the existing lot coverage used is 11%. With the additional screening I believe the abutters are provided for.

Ms. Pavlakis Approve/Approve:

I agree with Mr. Borden and I approve.

Mr. Furriel Approve/Approve:

I agree with Mr. Borden and I approve.

Mr. Raposa Approve/Approve:

I also agree with Mr. Borden and I approve. I think you should work with your neighbor and suggest screening.

Mr. Edwards Approve/Approve:

Mr. Borden was very thorough. The hardship does come from the unique characteristics of the land. As Mr. Regan said, the existing structures must've predated the zoning ordinance. I agree with Mr. Borden, it will be an improvement and I approve.

The Board broke for a recess at 8:40 p.m.

The Board was called back into session at 8:50 p.m.

III. OLD BUSINESS

4. (C-1/I-L) Kearsarge Energy (applicant) and Allen Shers (owner) seek a special use permit (Art. V Sec. G.5) to construct a 3.0 MW solar photovoltaic development located at 1330 West Main Road (44-15).

Present to represent Kearsarge Energy were Todd Greene, P.E., GZA GeoEnvironmental, Inc., 530 Broadway, Providence, RI, Andrew Bernstein, Kearsarge Energy, LP, 1200 Soldiers Field Road, Suite 202, Boston, MA 02134, and Michael Lotti, LSP, LEP, Industria Engineering, 1 Ash Street, Hopkinton,

MA 01746. All were sworn in.

Mr. Greene submitted his résumé as Exhibit A.

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

Mr. Greene said plat 44, lot 15 is approximately 18.4 acres of vacant, wooded land with no current use. It is partially zoned commercial and partially light industrial. The solar array will be sited on the approximately 9.6 acres of light industrially zoned land, with the array extending 40' into the commercially zoned area. They will access the light industrial area through a new gravel driveway off West Main Road.

The area will be secured with security fence and the fence will not encroach into the buffer area. The interconnection for the facility will be on West Main Road and a portion will be underground on West Main Road. They are proposing to leave all vegetation within the setbacks and most of the vegetation in the commercially zoned acreage. There will be approximately 7.3 acres of vegetation existing. The solar array area will be cleared, grubbed, stumped and revegetated with a solar mix that is slow growing. A workshop was held with residents on September 11 and Kearsarge is considering a 50' vegetative buffer.

Mr. Bernstein, the founder of Kearsarge, recently completed a 3-megawatt solar array facility at the University of Rhode Island that is for public entities and schools. The project creates credits and they sell the credits. He said he is proud of their reputation.

Mr. Lotti spoke about the construction of the array. They will clear the trees and 4' around the fence area. The arrays are 3' x 6' and 8' off the ground. The front of each panel is 3' off the ground. They will probably drill the foundations for the posts because of the ledge. It is similar to a large erector set. Permits will be obtained prior to construction. Construction will take three to four months. A low-growth grass is planted, and a security camera is installed. There will not be an increase in water runoff. In each array there are four fans, but the noise is negligible and at 75' it is non-existent. They have had no complaints about noise. Kearsarge will commit to a 50' buffer all the way around the array if the Board desires. They will submit the RIPDES plan to the DEM. The fence will be 7' tall around the array. They will submit the plan for the rack type that they will use to the building inspector's department. There will only be a convenience light at the control panel. Mr. Lotti said he cannot say there is zero glare under every possible condition, but he said there will be no glare to the residential homes. The driveway will be gravel. There will be no exposed live wires. The rear of the lot is the light industrial portion and the front (abutting West Main Road) is commercial.

The Chair called for abutters or interested parties.

David Croston, 118 Sweet Farm Road, was sworn in and read from a long, prepared statement. Mr. Croston is against the array. A main point put forth by Mr. Croston was that he believes lot coverage will be 50%.

Thomas McGinley, 19 Chelsea Drive was sworn in. A main point put forth by Mr. McGinley was that the buffer trees are deciduous and not adequate for screening.

Lark Roderigues, 73 West Passage Drive was sworn in and read her prepared statement. Ms. Roderigues in against the array.

Bruce Fay, 84 Sweet Farm Road was sworn in. Mr. Fay is against the array. A main point put forth by Mr. Fay was that they were over lot coverage.

Robyn Younkin, 49 West Passage Drive was sworn in. Ms. Younkin is against the array. A main point put forth by Ms. Younkin was that the town should wait and learn more about solar arrays.

Eric Sundermann, 99 West Passage Drive was sworn in. Mr. Sundermann is against the array. A main point put forth by Mr. Sundermann was that he believes Kearsarge is using the entire property for calculations.

George Matthews, 48 West Passage Drive was sworn in. Mr. Matthews is against the array.

Julie Munafo, Jamestown is an interested party. Ms. Munafo was sworn in. A main point put forth by Ms. Munafo was that the solar arrays are taking over our state.

Louie Letendre, 94 Sweet Farm Road was sworn in. Mr. Letendre is against the array. A main point put forth by Mr. Letendre was that no one is happy.

Jesse McHugh, 48 Sweet Farm Road was sworn in. Mr. McHugh is against the array. A main point put forth by Mr. McHugh was that he closed on his property three months ago, and he would not have bought it if he had known that a solar array was going in.

Thomas Grieb, 110 Thayer Drive was sworn in. A main point put forth by Mr. Grieb was that he wondered if the solar panels would withstand a hurricane, because although the petitioner said they withstand “hurricane force winds,” that is only 74 mph winds and an actual hurricane can have much greater winds than that.

The Board members told the members of Kearsarge that they would like to see how they calculated their lot coverage, they would like a commitment to a 50’ buffer around the array, and the Board asked them to consider if they would be willing to augment the vegetative buffer.

A motion was made by Mr. Borden and seconded by Mr. Furriel to continue the petition to the regular meeting of October 18, 2018 at 7:00 p.m. The motion carried 5 – 0.

A motion to adjourn was made by Mr. Borden and seconded by Mr. Furriel. The motion carried 5 – 0. The meeting was adjourned at 10:23 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary