



Town of Portsmouth

ZONING BOARD OF REVIEW

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OCTOBER 18, 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: 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. Edwards called the meeting to order at 7:13 p.m. in the Town Council chambers.

I. MINUTES

A motion was made by Mr. Nott and seconded by Mr. Raposa to accept the minutes of the September 6, 2018 meeting as presented. The motion carried with all in favor.

II. CHAIRMAN'S REPORT

Mr. Edwards said that there is an opening on the Zoning Board of Review for a member if anyone in the audience is interested.

III. OLD BUSINESS

1. (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 was Todd Greene, P.E., GZA GeoEnvironmental, Inc., 530 Broadway, Providence, RI and Andrew Bernstein, Kearsarge Energy, LP, 1200 Soldiers Field Road, Suite 202, Boston, MA.

Kearsarge Energy submitted a package on October 4 that provided how they calculated lot coverage – one of the questions carried forward from the last meeting. Mr. Bernstein said lot coverage was calculated consistently with the manner other solar arrays previously approved in the town were calculated. He pointed the Board members to Kearsarge's letter dated August 22, 2018 that specifies how the petition meets the special use permit requirements and the plans dated August 2018, specifically Sheet C-5, which gives lot coverage calculations showing 23% lot coverage.

The Chair called again for abutters or interested parties.

David Croston, 118 Sweet Farm Road, was reminded that he is still sworn in. Mr. Croston said he is not against the array if the density was proper. A main point put forth by Mr. Croston was that he believes lot coverage will be 85% and he believes the front of the lot will be developed.

Julie Munafo, Jamestown is an interested party. Ms. Munafo was reminded that she is still sworn in. A main point put forth by Ms. Munafo was that she is not for siting solar arrays in woodlands or residential areas.

Bruce Fay, 84 Sweet Farm Road was sworn in. Mr. Fay is confused about what is going on and why he has to testify again.

Lark Roderigues, 73 West Passage Drive had a letter read into the record by Ms. Pavlakis.

Board members were concerned about what portion of the lot Kearsarge would have control over. Mr. Greene told the Board that they will have control over the entire lot and they calculated lot coverage consistently with the other arrays approved in town, such as the Chase Farm array and the Jepson Lane array.

Mr. Greene said they would offer a 50' vegetative buffer around the array as a condition on the petition. Mr. Bernstein said they would put up slat fencing as a condition for screening purposes.

Discussion commenced among Board members about how to calculate lot coverage, whether each individual array should be measured, or the perimeter of the array field should be used.

A motion was made by Mr. Borden and seconded by Ms. Pavlakis to amend the petition, that even though the petitioner calculated the lot coverage based on individual panels, in Mr. Borden's opinion the entire array field should be included in the lot coverage calculation, so therefore lot coverage is 50%. The motion carried 5 – 0 with Mr. Borden, Mr. Edwards, Mr. Furriel, Ms. Pavlakis, and Mr. Raposa in favor.

A motion was made by Mr. Borden and seconded by Mr. Furriel to put the following conditions in place should the petition be approved:

1. The required 30' side yard vegetative buffer shall be increased to 50', which the petitioner has offered.
2. Vegetative buffers shall be such that screening will be solid in winter when deciduous trees have no leaves. Evergreens will be planted so the array is not visible to abutters.
3. The entire lot will be used by the petitioner. There will be 2% available lot coverage in front (commercial section) if a use intends to go forward there.

A motion was made by Mr. Edwards and seconded by Mr. Borden to amend the conditions to add the following conditions to the petition should it be approved:

4. The decommissioning plan will be provided for by a line of credit in escrow.

5. There will be no other lighting except convenience lighting at the transformer.

The motion as amended carried 5 – 0 with Mr. Borden, Mr. Edwards, Mr. Furriel, Ms. Pavlakis, and Mr. Raposa in favor.

Mr. Gavin advised the Board not to vote as there were inconsistencies and recommended asking for a continuance.

Ms. Pavlakis stated that she wanted specifications on the fence and the size of the trees that will be planted.

Mr. Furriel voiced his opinion that the Board should render their opinion tonight.

A motion was made by Mr. Borden and seconded by Mr. Edwards to continue the petition to the regular meeting of November 15, 2018 at 7:00 p.m. to allow the petitioner to respond to details about the array, lot coverage, and to amend the petition properly. The motion failed 2 – 3 with Mr. Furriel, Ms. Pavlakis, and Mr. Raposa voting against and Mr. Borden and Mr. Edwards in favor.

Mr. Borden Deny:

The petitioner is seeking a special use permit to construct a solar array in a light industrial parcel that also includes commercial zoning. Have they met the special use criterion for approval: it 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 in the neighborhood; and it will be in conformance with the comprehensive plan? The question remains as to whether they have met the lot coverage criterion. Under the Board's determination, the lot coverage would exceed the allowed, and the coverage would be excessive. There are lots of issues still regarding the comprehensive plan and solar uses that need to be worked out. Right now, we have this evidence in front of us. They have not met the criteria and I deny.

Ms. Pavlakis Deny:

I agree with Mr. Borden. It is not fair to the neighbors not to know what they are getting, and I deny.

Mr. Furriel Deny:

I vote to deny because this solar array development is not in compliance with the intent of the Comprehensive Community Plan. The Comprehensive Community Plan was developed without consideration of commercial solar arrays. These installations have characteristics unique to themselves and not in common with other uses specifically called out in the Town Zoning Regulations. Lot coverage calculations are one example in which solar arrays appear different than other structures. The people of Portsmouth deserve the opportunity to debate, discuss and decide how these facilities should be regulated.

Mr. Raposa Deny:

Due to the lack of enough information and lack of information on screening and lack of a landscape plan, I deny.

Mr. Edwards Deny:

The petition lacks the information necessary for the Board to make a decision, such as the screening and buffering plans. There was no testimony from a landscape architect. There is overdevelopment on the site, way more in excess of 23% lot coverage, and I vote to deny.

The Board broke for a recess at 8:20 p.m.

The Board was called back into session at 8:30 p.m.

IV. NEW BUSINESS

1. (R-20) Evelyn Schulz Life Estate (owners) seek a dimensional variance for minimum lot size (Art. IV, Sec. B) to subdivide a 38,562 square foot parcel to create two parcels with one of the parcels becoming a substandard lot of record. The property is located at 44 Mare Terrace. (22-14).

The Board was informed that not all abutters were noticed of this petition, and the petitioner asked for a continuance, so they could notice all abutters properly.

A motion was made by Mr. Nott and seconded by Mr. Borden to continue the petition to the regular meeting of November 15, 2018 at 7:00 p.m. The motion carried 5 – 0 with Mr. Borden, Mr. Edwards Mr. Nott, Ms. Pavlakis, and Mr. Raposa in favor.

2. (R-30) Lawrence and Celine Wesson (owners) seek a dimensional variance for front yard encroachment (Art. IV, Sec. B) to construct an addition and front porch at 280 Carriage Drive (57-109).

Spencer McCombe, architect, Cordtsen Design, 42 West Main Road, Middletown was sworn in. Mr. McCombe said there should be authorization in the records allowing him to speak on the Wessons' behalf.

Mr. McCombe said the family was before the Board in 2017 but they have scaled back their project and the year has lapsed. There is no pool in the back. They would still like to build the addition to the living room/dining room/master bedroom suite, expand the existing back deck patio area, and build a front porch, which was planned from the beginning of building.

They are asking for an 8' front yard setback variance.

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

Mr. Nott Approve:

Spencer McCombe is before the Board representing Lawrence and Celine Wesson, map 57, lot 109, who is seeking an 8' front yard variance to extend the front porch. In January 2017 the applicants were before the Board and we granted a 7'10" variance and a rear yard setback, so they are adding an additional 2" to the front yard request and one year has lapsed. It is a reasonable request. The Board has granted before. To deny amounts to more than a mere inconvenience and I approve.

Mr. Raposa Approve:

I agree with Mr. Nott and I approve.

Mr. Borden Approve:

I agree with my colleagues and I approve.

Ms. Pavlakis Approve:

For reasons previously stated I approve.

Mr. Edwards Approve:

The Chair agrees, for reasons previously stated, and I approve.

3. (R-40) Thomas and Andrea Kinsley (owners) and J2 Construct, Inc. seek a dimensional variance for rear yard encroachment (Art. IV, Sec. B) to construct an addition and deck on a corner lot located at 338 King Charles Drive (37-94).

There was no one present to speak to the petition.

A motion was made by Mr. Nott and seconded by Mr. Borden to continue the petition to the regular meeting of November 15, 2018 at 7:00 p.m. The motion carried 5 – 0 with Mr. Borden, Mr. Edwards Mr. Nott, Ms. Pavlakis, and Mr. Raposa in favor.

4. (R-10) Fredrick Vogt (owner) seeks dimensional variances for three (3) front yard and a rear yard setback encroachments, minimum lot coverage (Art. IV, Sec. B.), and frontage on a public way (Art. III Sec. D.2), as well as a special use permit to construct single family home on a substandard lot of record (Art. VI, Sec. A.4) located at 0 Mount View Terrace (2-9).

Attorney Cort Chappell, Chappell & Chappell, 171 Chase Road was present representing Fredrick Vogt. Mr. Chappell said this petition was presented to the Zoning Board by attorney Vernon Gorton in 2014 with the same conditions. Two years later they received the assent from CRMC, but the dimensional variance had lapsed by that time.

Everything requested is the same as the previous request and approval except the Vogts have purchased lot 8 and are asking that the Board make as a condition of approval that they put a deed restriction on lot 8 that there be no building on it. They will then have deed restrictions on lots 8, 12, and 13. The Vogts do not want to go back to CRMC to obtain a changed assent because of how long it would take. They will merge lots 8 and 9 after. The house will be 456 square feet and the deck will be 550 square feet.

The Chair called for abutters or interested parties. There were none.
The Chair asked Mr. Furriel to vote on this petition.

Mr. Chappell gave the Board testimony that this petition would meet all the special use permit criteria and said it met the criteria last time it was before the Board as well.

Mr. Nott Approve/Approve:

The Vogts are before the Board with map 2, lot 9 for a dimensional variance and special use permit. They were before the Board in 2014 for the exact same thing, but due to the CRMC approval process, the variance approval lapsed. I approve the petition based on exactly the same grounds as the June 19, 2014 petition including any and all conditions.

Mr. Borden Approve/Approve:

I agree with Mr. Nott. No conditions have changed. All the reasons why we would have granted before exist now. I approve.

Ms. Pavlakis Approve/Approve:

I approve for reasons previously stated.

Mr. Furriel Approve/Approve:

I also approve for reasons previously stated.

Mr. Edwards Approve/Approve:

It is the same exact petition as previously, so I approve.

A motion to adjourn was made by Mr. Borden and seconded by Mr. Nott. The motion carried 5 – 0. The meeting was adjourned at 8:59 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary