



**TOWN OF PORTSMOUTH
PLANNING BOARD**

2200 East Main Road
Portsmouth, RI 02871
401-683-3717

**PORTSMOUTH PLANNING BOARD
Regular Meeting
February 10, 2021**

Members Present: Guy Bissonnette, Luke Harding, Edward Lopes, Kathleen Wilson, David Garceau, Ryan Tibbets and Seth Pilotte

Members Absent: none

Others Present: Leon Lesinski, Administrative Officer, Portsmouth Planning, Gary Crosby, Town Planner, Michael Asciola, Assistant Town Planner and Atty. Kevin Gavin, Town Solicitor

The Meeting was called to order by Mr. Bissonnette at 7:00 p.m.

1. Agenda Continuances/Modifications: none

2. Approval of minutes for Planning Board meeting of January 13, 2021

MOTION: Mr. Harding made a motion, seconded by Ms. Wilson to approve the January 13, 2021 meeting minutes with the following corrections: Pages 2, 3 and 4, change "Lark Rogers" to "Lark Roderiques" and Page 2, change "Jason Carvalho" to "Jay Carvalho". All in favor. So voted.

3. Applicant: Theodore Pietz, Owner, Duane Horton, AP 29, Lot 113B (corner of East Main Road and Hillside Road) – Request for Advisory Opinion to Zoning for the Construction of building to host electrical equipment.

Tom Principe, P.E., Principe Company, Inc., Engineering Division, 27 Sakonnet Ridge Drive, Tiverton, RI appeared representing the applicant, Theodore Pietz with a design plan and a request for an advisory opinion for special use to the Zoning Board of Review. The parcel, located at East Main Road and Hillside Road, is 7400 square feet and zoned C1. The design indicates a 600-square foot, telecommunications building. Mr. Principe noted that the plan has a RIDEM permit for an OWTS designed for one bathroom. He noted that parking is minimal based on the use and includes 2 spaces off a driveway to the north near Hillside Road. He explained that roof runoff will be collected in 2 bio-retention rain gardens and a landscape buffer of arbor vitae trees is indicated along the eastern boundary line for screening from potential future residential development. He noted the site will have propane tanks, concrete transformer pads, and a generator pad for back-up power. Mr. Principe noted that the design was heard

by the Design Review Board (DRB). He noted that the proposed signage complies with town regulations.

Ted Pietz, Applicant, 85 Glen Road, Portsmouth, RI noted that the building is meant to keep the telecommunications equipment in a special location for an internet provider in the Portsmouth area. He does not anticipate a lot of vehicular traffic to the site. The garage doors are to allow ease in getting equipment in and out of the building. Mr. Pietz stated that the service to and from the site will operate at a low profile.

In response to Mr. Pillotte, Mr. Principe noted that the plan proposes a convenience bathroom for which the septic system is over-designed. He also noted that the site and associated service is not intended for a full-time employee. He noted that the bathroom will be on the architectural drawings when he submits for the building permit. Mr. Pillotte expressed satisfaction with the roof run-off, rain garden design. Mr. Principe confirmed that the rain gardens will have native plants if possible.

In response to Mr. Bissonnette and Mr. Pillotte, Mr. Pietz confirmed that the proposed plan meets all the setback requirements for the parcel. Mr. Principe confirmed that the only variance required is for use and that the plan meets all other zoning requirements.

Atty. Gavin explained that public utility use is allowed by the special use process in all commercial zones.

In response to Mr. Tibbetts and Mr. Bissonnette regarding the design review, Mr. Principe stated that he had not yet received the copy of the advisory opinion from the DRB. Mr. Asciola noted that he had just received that document and would send it to Mr. Principe directly.

Mr. Bissonnette read a portion of the DRB *Summary of the Advisory Opinion*, page 2, February 1, 2021.

In response to Mr. Tibbetts, Mr. Principe stated that he and the applicant are amenable to the recommendations set forth in the DRB advisory opinion.

Mr. Bissonnette called for public comment to which there was none.

MOTION: Mr. Harding made a motion, seconded by Ms. Wilson, to make a favorable recommendation for special use to the Zoning Board of Review for Theodore Pietz, Owner, Duane Horton, AP 29, Lot 113B (corner of East Main Road and Hillside Road) conditional upon the plan's incorporation of the recommendations set forth in *Town of Portsmouth, Design Review Board, Advisory Opinion*, February 1, 2021. All in favor. So voted.

4. Town Council request that the Planning Board assess the recommendations to the Solar Ordinance made by Scott Millar from Grow Smart Rhode Island.

Mr. Bissonnette invited Gary Crosby, Town Planner to comment on the suggestions regarding the solar ordinance, set forth in a letter, dated November 23, 2020, from Scott Millar, Director Community Assistance and Conservation, Grow Smart Rhode Island to Kevin Aguiar, President, Portsmouth Town Council.

Mr. Crosby stated that Mr. Millar's comment on adding a definition of utility scale, SES (comment 2) is worth considering. Referring to comment 1, Mr. Crosby agreed with an incentive or encouragement of solar facilities in specific areas, as listed by Mr. Millar, at a 50% lot coverage, however he does not think this approach is very feasible due to the fact that most land is zoned residential in Portsmouth. He agreed with considering a definition of solar lot coverage as specified in comment 3 of the letter. With regard to comment 5, Mr. Crosby stated that he derived the language and specifications on lot coverage from the State's model language and he does not see the need to change the setback requirements in the Portsmouth ordinance. He agreed with the recommendation in comment 7 to expand the decommissioning and surety requirements.

Mr. Pillotte expressed support for the 200-foot setback requirement as suggested by Mr. Millar. He noted that the developers in the two concept solar designs heard by the Planning Board proposed setbacks greater than the 50-foot requirement in the Portsmouth ordinance. However, noting that he lives in the area of the proposed sites, he feels that 200 feet may not be enough to protect viewshed for the residential neighbors.

Mr. Lopes expressed agreement with comment 4 which suggests a height requirement higher than 12 feet for solar canopies particularly in commercial areas.

Mr. Asciola clarified that solar canopies would be allowable by right above the 12-foot requirement because they would involve roof mounted systems on car ports in which case zoning requirements for building height would apply.

In response to Mr. Harding, Mr. Asciola noted that car port solar canopy systems would be subject to the same setbacks as ground mounted solar systems.

Mr. Tibbetts commented that the number and size of available parcels for solar development in Portsmouth is limited and requiring setbacks of 150 to 200 feet might not be feasible. He stated that hypothetically, a commercial property owner could opt for a different type of development and clear cut their site up to the property lines and develop activities, noise and lighting that could be more disturbing than a solar energy site.

Mr. Harding commented that he could see a 200-foot setback requirement with a

stipulation for exceptions where that wide a distance is not necessary, in order to allow the property owners to further their investment in their solar development.

Mr. Lopes agreed with Mr. Tibbetts' comment that a 200-foot set back is too much, particularly in a commercial zone and that residential abutters could end up next to a much more objectionable use than a solar system. He suggested that the proper approach might be to determine required setbacks on a case-by-case basis.

Mr. Pillotte commented that he understands the counterpoints made by Mr. Tibbetts and Mr. Lopes, however the 200-foot requirement at least gives the Planning Board a chance to consider decreasing setbacks on a case-by-case basis. He specified shortcomings with the setbacks proposed in the concept designs heard by the Planning Board. He expressed his support for solar development but emphasized that location and parcel configuration is an important consideration.

Mr. Harding agreed with Mr. Pillotte's comments.

Mr. Bissonnette called for public comment.

Atty. Cort Chappell, Chappell & Chappell, 171 Chase Road, Portsmouth reviewed how he co-drafted that solar ordinance with Mr. Crosby and Mr. Asciola, along with input from the Planning Board. He noted that the Town Council passed the ordinance in April 2020 and it was subsequently challenged. Due to delays related to the COVID-19 pandemic, the Town Council heard the matter again in November 2020, again passing the ordinance. However, in light of Mr. Millar's letter, council members moved to send the ordinance back to the Planning Board requesting an assessment of Mr. Millar's recommendations. Atty. Chappell then reviewed the specific points made by the Planning Board members with regard to Mr. Millar's comments as follows:

1. The height requirements for canopy systems, referred to as Building Mounted SES, is governed by the building height requirement for the zoning district, not by the twelve-foot limitation as for ground mounted SES (Article XX, Section E, subsection 1, item b.)
2. Any building permit, including a building with a solar canopy, would have to meet the setbacks for the site's zoning.
3. In residential zones, SES proposals require a special use permit and a hearing by the Planning Board on a full site design.
4. In addition to the minimum 50-foot setback requirement, the ordinance, in the case of Medium and Large SES proposals, allows the Planning Board and the Zoning Board of Review full authority to stipulate the width, plantings and

planting heights for buffer areas and screenings on a case-by-case basis as indicated in a required landscape plan by a registered landscape architect (Article XX, Section G, subsection f.)

Atty. Chappell commented on the considerable discussion that occurred at the Town Council hearing with regard to the new Navy SES on West Main Road, noting that development on federal property is outside the Town's purview and ability to control. He raised objection to a 200-foot setback because the feasible parcels for solar development in Portsmouth are different than those in towns like Exeter, Rhode Island. He noted that this is the rationale behind the language in the ordinance that mandates Planning Board review and oversight. He gave an example of how a 200-foot setback would reduce the developable land on a 36-acre site to 6 acres along West Shore Road. Responding to fears expressed that solar development is overrunning the town, Atty. Chappell noted that there is a fixed amount of space in the National Grid system for solar energy and that has a limiting effect on solar development. With regard to the ordinance requirements on decommission plans, he felt the Planning Board should allow for one or two SES development approvals to decide if the language has failed. He expressed that the required bond and a subsequent lean stipulated by the ordinance are strong elements to cover decommissioning.

In response to Mr. Harding, Atty. Chappell stated that according to his understanding, a solar development petition must undergo an interconnection study conducted by National Grid to determine if the company systems can support the solar energy generated by the development and to also determine if there is a need for that energy.

Mr. Harding asked Atty. Chappell if there is potential for a solar energy petition associated with the Navy tank farms to be rejected by National Grid based on an interconnection study in the future. He stated that the tank farm property poses a good opportunity for solar development because of its location.

Atty. Chappell stated that there is a petition for the tank farms, the energy from which was to be sold to five Rhode Island colleges. The Jepson Lane transfer station has the capacity to handle the derived energy but there are other issues yet to be worked out for this petition.

Mr. Harding asked Atty. Chappell to quantify by percentage, the impact of the potential energy, that would be derived from the two concept plans previously heard by the Planning Board, on the energy capacity associated with the National Grid system.

Atty. Chappell stated that each of the individual transfer stations have a capacity which can be increased at the cost of the developer. Further he noted that petition approvals involve acceptance of an end user component. He emphasized there hasn't been a rush to present solar energy petitions under the

new ordinance. He argued that the Planning Board is enabled to set procedure, precedent and limitations on a case-by-case basis, given the stipulations set forth by the ordinance. Mr. Chappell also commented that, with regard to National Grid's capacity at any given time, the Planning Board will be able, within the approval proceedings, to ask questions on current capacity and make determinations based on the answers to those inquiries on a case-by-case basis.

Mr. Crosby noted that the tank farms will likely remain federal land until sometime in the future. He noted that the Town has expressed to the U.S. Navy that it does not want to become a land development agent and would support endeavors to sell that property in a public sale. He noted that future owners of the tank farms who are interested in solar development would have to determine if such ventures are viable given compliance with the town ordinance.

Mr. Pillotte commended Atty. Chappell for his analysis of the issues. He inquired as to what measures the Planning Board could take if a petition indicated a 50-foot setback but the Planning Board, based on public concern, determined that increased setback should be stipulated.

Atty. Chappell stated that Article XX, Section G, subsection f gives the Planning Board the authority to require a strong landscape plan that provides the best buffering and shielding for the abutting properties.

Mr. Bissonnette called for public comment.

Robin Younkin, 49 West Passage Drive, Portsmouth commented that she believes that the town does run the risk of being overrun by solar development. She thanked Mr. Pillotte for voicing his concerns, which she shares. She said she is putting her faith in the Planning Board and others who make decisions to protect town residents from shouldering the burden of fighting off lawyers, developers and big utility companies in solar development. She stated that counter to the argument that commercial property owners who pay taxes and should be able to develop their land, residential abutters pay taxes too. She stated that the Town should protect itself and the residents by requiring more than a 50-foot setback in the ordinance.

Louis Letendre, 94 Sweet Farm Road, Portsmouth stated that he is an abutter to one of the concept solar petitions and he was very concerned when he saw the minimum, 50-foot setback requirement in the ordinance. He was pleased to see the developer propose a 150-foot, no cut zone. While he would prefer a 200-foot setback, he understands Mr. Chappell's analysis of the developable land that would be lost with such a mandate. He inquired as to whether the developer could move things around in the design in order to appease the abutters and neighbors.

Mr. Bissonnette stated that the Planning Board members could not answer his

questions without seeing the actual plan which is not yet before the Board for approval.

In response to Mr. Lentendre, Mr. Asciola explained that the developable land of any given parcel in a solar petition is located outside the buffer zones and also determined by the stormwater management requirements for the site.

Mr. Letendre stated that he would appreciate a larger minimum setback requirement in the solar ordinance.

Lark Roderiques, 73 West Passage Drive, Portsmouth thanked the Planning Board for listening to residents' comments. She noted that if the increased minimum setback is not in the ordinance to begin with, then abutters will have to watch and scrutinize every petition. She feels that the ordinance protects the developer more than the neighbors and she is counting on the Planning Board to look out for the neighbors.

David Howard, 36 Mariel Rose Drive expressed appreciation for Mr. Pillotte's point of view in looking out for the residents, however he acknowledged landowners' rights. He expressed confidence in the Planning Board and the Zoning Board of Review that those members will manage solar petitions in the interest of the town and the residents. He noted that he does have concerns and that people are upset with the Navy solar project on West Main Road. He noted that sites being considered for solar development are in a small, concentrated area of town, near residential developments. He feels that this development could change people's perception of the town. He feels that the west side of Portsmouth could be saturated with solar panels and he asked the Planning Board to consider the effects of this trend.

Mr. Bissonnette closed the public comment portion of the hearing.

Mr. Crosby indicated that the Town Council expects the Planning Board to provide comments and recommendations for amending the solar ordinance.

Mr. Bissonnette commented that he is comfortable with the solar ordinance as it stands. However, given the comments from Scott Millar, Grow Smart Rhode Island, he admits that he is not an expert on solar development and that there could be more for the Planning Board to consider with regard to the ordinance. He stated that while he appreciates Atty. Chappell's position on the ordinance, he objects to the insinuation that the Planning Board should leave the ordinance as is, until it has failed. He stated that if there is a problem with the ordinance, the Planning Board should address it in anticipation of dealing with further issues. He suggested continuing the agenda item on the solar ordinance for one month. During this time, Mr. Crosby can review the ordinance in light of items that he feels should be scrutinized and then bring forward to the Planning Board specific language and changes to the ordinance.

Mr. Pilotte suggested that Mr. Crosby present a step-by-step description of the Planning Board's ability to control the approval process in solar development applications, as suggested by Atty. Chappell.

MOTION: Mr. Harding made a motion, seconded by Mr. Pilotte, to continue *Agenda item 4. Town Council request that the Planning Board assess the recommendations to the Solar Ordinance made by Scott Millar from Grow Smart Rhode Island* to the next regular meeting scheduled for March 10, 2021 in order to provide the Town Planner the time to review the items within the solar ordinance that he feels should be scrutinized, to recommend specific language changes to the solar ordinance, and further to present to the Planning Board a description of measures within the Planning Board's authority to control the approval process for solar development applications on a case by case basis. All in favor. So voted.

5. Review Proposed Amendments To Sign Ordinance, Article IX, Section B of Portsmouth Zoning Ordinance. Approve Proposed Amendments And Transmit To Town Council With Request For Public Hearing and Adoption

Atty. Gavin and Mr. Asciola presented the Planning Board with an *Amendment to the Sign Ordinance, Chapter 405. Zoning, Article IX. Specific Development Regulations, Section B. Signs*, the intent of which is to update the ordinance and bring it in compliance with *No. 13-502, REED ET AL. v. TOWN OF GILBERT, ARIZONA, ET AL., Supreme Court of the United State (2015)*. Atty Gavin requested that the Planning Board send a letter to the Portsmouth Town Council proposing the adoption of the amendment and the holding of the associated public hearing. In response to Mr. Bissonnette, Atty. Gavin confirmed that the main additions and changes include *Subsection 1. Findings, Subsection 8, General provision, item d, Noncommercial signs*, and a renumeration of the subsections. Atty. Gavin also noted an additional change to *Subsection 7, Signs prohibited in all districts, item g* in which the term "content" is stricken from the wording.

Ms. Wilson requested that the Sign ordinance be amended to include yearly inspections of electrical signs. Mr. Asciola commented that an inspection process would pose a substantial amount of work for the inspection department. Atty. Gavin commented that the intent of the amendment is to eliminate wording that is "content-based" in nature according to the Supreme Court directive in *Reed vs. The Town of Gilbert* and that time for wholesale changes to the Zoning Ordinance will be after the enactment of the new Comprehensive Community Plan. Mr. Bissonnette call for public comment to which there was none.

MOTION: Mr. Lopes made a motion, seconded by Ms. Wilson, to accept the changes to the Sign Ordinance, Article IX, Section B of Portsmouth Zoning Ordinance as presented by Michael Asciola, Assistant Town Planner and Atty. Kevin Gavin, Town Solicitor and to send a letter to the Portsmouth Town Council

proposing the adoption the amendment and the holding of the associated public hearing. All in favor. So voted.

6. Approve February 10, 2021 Monthly Project Status Report, Administrative Subdivisions and Plat Plan Recording.

MOTION: Mr. Harding made a motion, seconded by Ms. Wilson, to accept the Portsmouth Planning Board Monthly Project Status Reports, Administrative Subdivisions and Plat Plan Filings, February 10, 2021 and to place it into the record. All in favor. So voted.

At 8:28 p.m., a motion was duly made and seconded to adjourn the meeting. All in favor. So voted.

Respectfully submitted:
Dede Walsh
Recording Secretary for:

Leon Lesinski
Administrative Officer