



# Town of Portsmouth

ZONING BOARD OF REVIEW  
2200 East Main Road / Portsmouth, Rhode Island 02871  
www.portsmouthri.com

(401) 683-3611

## HYBRID IN-PERSON/ZOOM MEETING

### MINUTES

JUNE 17, 2021

At 7:00 p.m., James Nott, Chair, announced to the audience the Board was waiting for one additional member in order to have a quorum and the meeting would start when the quorum was attained. At 7:07 Mr. Nott opened the hybrid in-person/Zoom meeting of the Zoning Board of Review in the Town Council chambers with roll call.

#### I. ROLL CALL

**MEMBERS PRESENT IN PERSON OR VIA ZOOM:** Mr. James Nott, Chair, Mr. John Borden, Vice Chair, Ms. Sue Horwitz, Mr. Eric Raposa, and Mr. William Wladyka, First Alternate

**MEMBERS ABSENT:** Mr. Benjamin Furriel, Secretary

**OTHERS PRESENT IN PERSON OR VIA ZOOM:** Town Solicitor Kevin Gavin was present as legal counsel for the Board, Michael Asciola, Assistant Town Planner and Barbara Ripa as recording secretary.

#### II. MINUTES

There were no minutes to approve.

#### III. CHAIRMAN'S REPORT

There was no Chairman's Report.

#### IV. OLD BUSINESS

Prior to beginning Old Business, Mr. Nott broke the agenda to discuss agenda changes.

Mr. Nott said a request has been made for a continuation of New Business V.III., Christopher and Debra Burnett, to the regular Zoning Board meeting of July 15, 2021 as the Burnetts have retained an attorney.

A motion was made by Mr. Raposa, seconded by Mr. Borden, to continue New Business V.III.,

Christopher and Debra Burnett, to the regular Zoning Board meeting of July 15, 2021. The motion carried 5 – 0 with Mr. Borden, Mr. Raposa, Ms. Horwitz, Mr. Wladyka and Mr. Nott in favor.

**IV.I. (R-10) Noelle Claveloux (Owner) Seeks a Special Use Permit to Convert a Nonconforming 18.33' X 19.75' Detached Garage Into a Cabana (Art. VI, Sec. C.3) Located at 134 Greenfield Avenue (4 - 84).**

Noelle Denise Claveloux, 134 Greenfield Street was sworn in over Zoom. Ms. Claveloux stated she was confused by the Building Department's actions and decisions. She has a building permit issued by the Building Department from August 2020 for a cabana to replace an existing, neglected garage. She said she has been cooperative with the Building Department and given them everything they have required. Ms. Claveloux hired a contractor who has ordered supplies and hired subcontractors to begin her project. She has invested approximately \$30,000 in this project and then in May 2021 her building permit was revoked. She's incurred financial loss and does not understand why this has happened.

A question was posed by the Board to the Zoning Officer about why the permit was revoked. Mr. Asciola said this is a nonconforming detached garage and because it is nonconforming, the use cannot be changed without a special use permit.

There was quite a bit of discussion about 134 Greenfield Street being a short-term rental rather than Ms. Claveloux's residence. Ms. Claveloux said she rented her property but was very professional and conscientious about the care of her property and lived there during the off season. When asked about a bedroom for the cabana, Ms. Claveloux said the intended cabana never included plans for a bedroom. The cabana does have a bathroom and shower in it, however, and Ms. Claveloux said she has a new 3-bedroom septic and a 2-bedroom home, so the cabana has a shower in it because it would be a good idea to have another bathroom with a shower since she only has one bathroom in the house. The cabana would have a wet bar and a recreation room. There is also a concrete patio just outside the garage that can be utilized and a fire pit. She said she does not need another garage as her home already has a garage underneath the house.

The Chair called for abutters or interested parties.

The following spoke against allowing the cabana to be built, although they felt Ms. Claveloux was a good neighbor:

Dana Yeager Squires, 129 Greenfield Avenue. Main comments: Ms. Claveloux does not reside at the location; seeking zoning relief for financial benefit; frequent short-term rentals increases traffic and risk for children on the street; small lot and with cabana it could possibly be rented to two parties at one time.

Kathy Wright, 106 Common Fence Blvd. (technical difficulty hearing all comments) Main comments: additional traffic and concerned it is a rental property instead of a primary residence.

Nancy E. Arruda Nary, 132 Greenfield Avenue. Main comments: Garage is approximately 7’ from her house, 1.66’ from her property line; rentals began in 2018; she spoke with Building and Zoning Departments beginning in February 2018 and Ms. Claveloux in September 2018 regarding the change of use issue and in March 2020 said she spoke with Ms. Claveloux again saying the building had to be attached or needed a special use permit. Ms. Nary said the problem is, once a special use permit is issued you can’t go back – it stays with the property, no matter who owns it. Ms. Nary said she did not approve of the variance in 1982 as was said by Ms. Claveloux because she did not live there at the time, she has never used Ms. Claveloux’s patio despite Claveloux’s testimony, and they have never complained about her renters to date.

There was a letter from John G. Arruda, 126 Greenfield Avenue. Mr. Nott read it into the record. Mr. Arruda does not want approval of a special use permit given.

Mr. Borden said he had a problem with the financial hardship Ms. Claveloux has suffered and asked the Town Solicitor about her options. Mr. Gavin said it was up to her to consult her own attorney if she wished.

Mr. Nott read the special use permit criteria this permit must meet:

The Zoning Board of Review shall consider whether such variance:

- a) Would allow adequate space for fire protection;
- b) Provide adequate light and air between buildings;
- c) Would alter the character of the neighborhood, or adversely affect neighboring property;
- d) Would create lot coverage and setbacks less than the average lot coverage and setbacks of adjacent properties;
- e) Would impose a substantial detriment to the public or to immediate neighbors.

Noelle Claveloux is before the Board with map 4, lot 84 seeking a **special use permit** to convert a nonconforming detached garage into a cabana.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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<b>Mr. Borden</b>	<b>Not Applicable</b>	<b>Not Applicable</b>	<b>Deny</b>
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Mr. Borden said Ms. Claveloux is seeking special use permit relief for the purpose of creating a cabana with rec room in a nonconforming detached garage. He sympathizes with the petitioner, but the Board’s job is to interpret the Ordinance based on the facts of the petition. Any change in a nonconforming use shall be more in keeping with the characteristics of the neighborhood. She could

sell tomorrow or the next day to someone not as considerate as she. It could affect the quality of life in the neighborhood – there is already additional traffic in the neighborhood. There is the potential for noise and other special use permit criterion to be broken. Mr. Borden said the petition does not meet criterion for approval of a special use permit and he denied.

**Mr. Raposa**                      **Not Applicable**                      **Not Applicable**                      **Approve**

Mr. Raposa approved of the special use permit although he agreed with some of Mr. Borden’s points. He thinks if it was connected it would be approved, so he approved, even though the cabana will not be connected.

**Ms. Horwitz**                      **Not Applicable**                      **Not Applicable**                      **Deny**

Ms. Horwitz voted to deny the special use permit for reasons previously stated by Mr. Borden.

**Mr. Wladyka**                      **Not Applicable**                      **Not Applicable**                      **Deny**

Mr. Wladyka voted to deny the special use permit for reasons previously stated by Mr. Borden.

**Mr. Nott**                      **Not Applicable**                      **Not Applicable**                      **Deny**

Mr. Nott denied the special use permit for reasons stated by Mr. Borden and said the petition does not meet the special use permit criteria.

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The Chair called for a break at 8:17 p.m.  
The meeting was called back into order at 8:25 p.m.

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**V. NEW BUSINESS**

**V.I. (I-H) Bradley and Carol Asness (Owners) Seek to Amend a Special Use Permit for The Carnegie Harbor Village Condominium Development Which was Approved Initially on October 4, 2001 and Further Amended on January 23, 2003 and October 15, 2009. The Proposed Amendment is to Merge a Vacant Adjacent Limited Common Elements Identified as Unit 2B-7 Into Units 2B-6 and 2B-8 of The Cottages at Carnegie Master Condominium Located on Carnegie Abbey Lane (26 - 2B-7).**

Attorney Cort Chappell, 171 Chase Road was present on Zoom representing petitioners Bradley and Carol Asness. Mr. Chappell said all lots in the Carnegie Harbor Village Condominium Development were approved by special use permit and this would just be an amendment of the special use permit because

it is more fitting to create larger lots. Bradley and Carol Asness own map 26, lot 2B-8 and their neighbors, who own Map 26, Lot 2B-6 will split map 26, lot 2B-7, located between them and currently owned by Bradley and Carol Asness. The lot will be divided in accordance with “the plan” and each owner will enlarge their lot. Map 26, lot 2B-7 will be removed. The Master Condominium Unit has approved of this plan.

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

Bradley and Carol Asness are before the Board to **modify a previously issued special use permit** with map 26, lot 2B-8 seeking to divide map 26, lot 2B-7 with the owner of map 26, lot 2B-6 according to “the plan” and both increase their lots and remove lot 7.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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<b>Mr. Borden</b>	<b>Not Applicable</b>	<b>Not Applicable</b>	<b>Approve</b>
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Mr. Borden said the Board doesn’t have to go through the special use criterion as it is more fitting to create a larger lot and remove one lot, so he approves.

<b>Ms. Horwitz</b>	<b>Not Applicable</b>	<b>Not Applicable</b>	<b>Approve</b>
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Ms. Horwitz voted to approve the special use permit for reasons previously stated.

<b>Mr. Wladyka</b>	<b>Not Applicable</b>	<b>Not Applicable</b>	<b>Approve</b>
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Mr. Wladyka voted to approve the special use permit for reasons previously stated.

<b>Mr. Nott</b>	<b>Not Applicable</b>	<b>Not Applicable</b>	<b>Approve</b>
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Mr. Nott voted to approve the special use permit for reasons previously stated by Mr. Borden.

<b>Mr. Raposa</b>	<b>Not Applicable</b>	<b>Not Applicable</b>	<b>Approve</b>
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Mr. Raposa, who was having difficulty with his microphone, approved the special use permit by writing his vote and holding it up to his camera. Mr. Nott read his vote aloud.

**V.II. (R-20) Stacy Howard and Anthony Natale (Owners) Seek a Dimensional Variance for Side Yard Setback (Art. IV, Sec. B) to Enclose an Existing Patio and Construct a 26.5’ X 6.75’ Porch Located at 55 Annette Drive (49 - 69).**

Stacy Howard, 10 Weston Avenue, Foxboro, MA was sworn in over Zoom and Tony Vitali (her husband and co-owner of the property), 10 Weston Avenue, Foxboro, MA was sworn in over Zoom.

Daniel Herk, Herk Works Architecture, 36 Aquidneck Avenue, Middletown was sworn in. Mr. Herk said the petitioners are seeking to enclose an existing patio with a screened-in porch. They will not be encroaching any further than currently exists. There is a set of stairs they will remove and replace with plantings. The existing side yard setback variance for the patio on the north is 6’8”.

The Chair called for abutters or interested parties.

Janet Harrison, 43 Annette Drive asked about the elevation and if there would be a second floor porch added on which does not currently exist. Mr. Herk said it will be added on over the enclosed screened-in porch.

Stacy Howard and Anthony Vitali are before the Board with map 49, lot 69, seeking a 6’8” **side yard setback variance to the north** that currently exists to enclose an existing patio and make a screened-in porch.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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<b>Mr. Borden</b>	<b>Approve</b>	<b>Not Applicable</b>	<b>Not Applicable</b>
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Mr. Borden said the petitioner is seeking dimensional relief for a screened-in porch, which is a reasonable, permissible use. To deny would be more than a mere inconvenience and Mr. Borden approved.

<b>Mr. Raposa</b>	<b>Approve</b>	<b>Not Applicable</b>	<b>Not Applicable</b>
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Mr. Raposa approved of the dimensional variance for reasons stated by Mr. Borden.

<b>Ms. Horwitz</b>	<b>Approve</b>	<b>Not Applicable</b>	<b>Not Applicable</b>
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Ms. Horwitz approved the dimensional variance for reasons previously stated by Mr. Borden.

<b>Mr. Wladyka</b>	<b>Approve</b>	<b>Not Applicable</b>	<b>Not Applicable</b>
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Mr. Wladyka approved the dimensional variance for reasons previously stated.

Mr. Nott	Approve	Not Applicable	Not Applicable
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Mr. Nott approved the dimensional variance for reasons stated by Mr. Borden.

**V.III. (R-20) Christopher and Debra Burnett (Owners) Seek a Special Use Permit to Construct a Small Solar Energy System (Art. V, Sec. J.3.) Located at 415 Sea Meadow Drive (42A - 55).**

*This petition was continued prior to beginning Old Business.*

A motion to adjourn was made by Mr. Raposa and seconded by Mr. Borden. The motion carried 5 – 0 with Mr. Borden, Mr. Raposa, Ms. Horwitz, Mr. Wladyka and Mr. Nott voting in favor. The meeting adjourned at 8:45 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary

Approved:  Date: October 21, 2021