



Town of Portsmouth

ZONING BOARD OF REVIEW
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FEBRUARY 21, 2019

MEMBERS PRESENT: Mr. James Nott, Chair, Mr. John Borden, Vice-Chair, Mr. Benjamin Furriel, Secretary, Mr. Eric Raposa, and Ms. Sue Horwitz, First Alternate.

MEMBERS ABSENT: Ms. Kathleen Pavlakis.

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. Nott called the meeting to order at 7:05 p.m. in the Town Council chambers.

I. MINUTES

A motion was made by Mr. Borden and seconded by Mr. Furriel to approve the December 20, 2018 minutes as presented. The motion carried with all in favor.

II. CHAIRMAN'S REPORT

Mr. Nott announced there would be a change in the agenda: #3 in Old Business and #3 in New Business (both Global Partners LP (applicant) and Alwar Equities, Inc. (owner), would be heard at the end of the agenda.

New Business #2, "(R-10) Jennifer Weiffenbach (applicant) and Richard Baumert (owner) seeks dimensional variances for front, rear and two side yard setback encroachments (Art. V Sec. I.6.) and a special use permit to construct an 18-square foot chicken coop on a substandard lot of record (Art. VI, Sec. A.4) located at 88 Cottage Avenue (20-213)," was withdrawn verbally to Mr. Asciola.

A motion was made by Mr. Borden and seconded by Mr. Furriel to allow the petition of Jennifer Weiffenbach (applicant) and Richard Baumert (owner) to be withdrawn without prejudice. The motion carried 5 – 0 with all in favor.

III. OLD BUSINESS

1. (C-1) Sydney Portsmouth (applicant) and JKD, LLC (owner) seek a special use permit to construct a free-standing sign larger than the maximum area allowed (Art. IX Sec. B.6.c) under the ordinance at 8 Russo Road (44-18).

No one was in attendance to represent Sydney Portsmouth.

A motion was made by Mr. Borden and seconded by Mr. Raposa to continue the petition to the regular meeting of March 21, 2019 at 7:00 p.m. The motion carried 5 – 0 with all in favor.

2. (R-20) Vince Agliata (applicant/owner) and Kathleen Pavlakis (owner) seek dimensional variances for side and rear yard setbacks (Art. IV, Sec. B.), and a special use permit to expand a non-conforming use (Art VI Sec. C.1.) located at 255 Bristol Ferry Road (23-23B).

Attorney Cort Chappell, Chappell & Chappell, 171 Chase Road was present representing petitioners Vince Agliata and Kathleen Pavlakis. Emmett Little, RWL Construction was also present. Mr. Chappell said use of the lot for commercial purposes was a pre-existing, non-conforming use. There is a lack of storage in the existing building used for retail sales and the applicants are proposing a 20' x 26' garage to meet their storage needs for that business. It is a unique lot due to not only the shape, but also due to the location of a historic cemetery. Historic cemeteries have their own rules about setbacks that are above and beyond the Town's zoning requirements. Requirements are that building cannot take place within 25' of a historic cemetery because many times servants were buried just outside of the cemetery confines. Mr. Chappell said there can be some discretion used on the setback requirements by the building official, and the Portsmouth Building Official feels comfortable with a 20' setback.

The lot is L-shaped. There is a wall of arborvitae on the northern border of the lot. The septic system, which was installed in 2005, is on the east, with the leach field extending into the northeast. Due to the constraints of the cemetery, the leach field, the retail building, and the shape of the lot, the only location to place the garage is to go far enough to the north on the lot so it will not be on top of the septic system. They would like a 20' wide by 26' deep garage to meet their storage needs, with a 16' door. The petitioners would travel down the side of the lot where the cemetery is located and turn right to get into the garage to bring in items. Mr. Chappell asked Mr. Little to show Board members a picture of a similar building type to show the Board that the proposed garage would be esthetically pleasing.

Mr. Chappell went through the special use permit criteria and testified that the petition would meet all criterion in his opinion.

The Chair questioned Mr. Chappell about the garage's size and if it was the least relief necessary given what will be stored in the garage. Mr. Chappell said the store itself is small, so there are currently items outside that will be stored in the garage as well as other items they pick up. Mr. Chappell said they will clean up the lot and better it thereby. He stated that this is the type of business the Comprehensive Plan begs for.

The Chair went through the special use permit requirements with Mr. Chappell again and Mr. Chappell testified that the petition would meet the criterion.

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

Mr. Nott said Vince Agliata and Kathleen Pavlakis are before the Board for map 23, lot 23B seeking a special use permit and dimensional variances for a substandard lot of record.

Mr. Borden Approve/Approve:

I will take the relief requested one at a time. Regarding the special use permit, the petitioner walked

through all criterion and then again with the Chair and I am comfortable the criterion has been met.

Regarding the dimensional variances, the question of whether there is a hardship and if this is the least relief necessary has come up. I have been in the building and it is not big. There is no attic, no basement, and there is the cemetery and the septic to consider. The proposed 5' setback variance on the north and 16' rear yard setback variance requests, given this property – and not having a garage for storage would be more than a mere inconvenience.

They are not expanding the retail business, it is compatible with the comp plan, and I applaud the petitioner on going with a traditional sign and signage. Also, the petitioner's property is esthetically pleasing as well as the proposed garage, so I approve.

Mr. Furriel Agree/Deny:

I agree with Mr. Borden on the special use permit, but on the dimensional variance I do not agree. It does not meet the least relief necessary standard; it could be smaller. It is bumping up against residential. They could make use of offsite facilities and build a smaller structure, so I deny the dimensional variance.

Mr. Raposa Agree/Agree:

I agree with Mr. Borden I approve both the special use permit and the dimensional variances.

Ms. Horwitz: Agree/Agree:

I also agree with Mr. Borden and I approve both the special use permit and the dimensional variances.

Mr. Nott Agree/Agree:

The Chair agrees with Mr. Borden for both the special use permit and the dimensional variances. I would agree with Mr. Furriel if there was a lot coverage issue, but there is not plus next door is not 25' away. So the vote is 5 – 0 for the special use permit and 4 -1 for the dimensional variance.

IV. NEW BUSINESS

1. (R-20) Johnathan and Lauren Goulet (owner) seeks dimensional variances for lot coverage and rear yard setback encroachment (Art. IV, Sec. B.), building on a lot not fronting on a public street (Art. III Sec. D.2) and a special use permit to construct a two-bedroom single family residence on a substandard lot of record (Art. VI, Sec. A.4) located at 0 Bayview Avenue on Hog Island (69-11B).

Attorney Cort Chappell, Chappell & Chappell, 171 Chase Road was present representing Johnathan and Lauren Goulet. Mr. Chappell said there are height restrictions imposed in that area of Hog Island by the family that owns the land and sells it to other family members. It is an R20 zone and this lot is a 10,000-square foot pre-existing, nonconforming lot of record. The owner is seeking a dimensional variance for

the rear yard, but her parents' house is located on the lot behind. Due to the unique characteristics of the lot and the height restrictions placed on the property, they are requesting a lot coverage variance of 5%, a rear yard setback variance of 18.5' where 30 is required, and the ability to build on a lot where there is no frontage on a public road. The house is to be built cocked on the lot because of these issues.

Johnathan Goulet was present and sworn in. Mr. Goulet said his wife's family grew up spending summers on Hog Island. He and his wife have two children and they want to spend as much time as they can there also. It will be a seasonal home. There is no basement, so the generator and any utilities have to be located in and around the house; there is no easy way to bring things back and forth from Hog Island and the mainland, so they will need room in the house.

Mr. Nott led Mr. Goulet through the special use criteria. Mr. Goulet testified that the home would meet all special use criteria.

Mr. Furriel said there was a letter from an abutter and he read it into the record. The letter is from Patricia Fairchild of map 69, lot 6, who has no objection.

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

The Chair said that Johnathan and Lauren Goulet of map 69, lot 11B are before the Board seeking a special use permit to build on a non-conforming lot of record, a dimensional variance for an 18.5' rear yard setback variance, a 5% lot coverage variance, and to build on a lot that does not front on a public street.

Mr. Borden Approve/Deny:

I will take the relief requested one at a time. Regarding the special use permit, the petitioner walked through all criterion successfully and I approve.

Regarding no frontage on a public way – all should have the right to build on their property and I approve.

Regarding the dimensional variance and the lot coverage, I have a problem. The lot is a blank canvas and the proposal is 25% for lot coverage. It is a summer residence. They could build a house to comply with the Town's ordinance. The zoning goes with the land regardless of the owners. Regarding the setback and lot coverage, I don't believe it is the least relief necessary and I deny.

Mr. Furriel Approve/Deny:

I agree with Mr. Borden on the special use permit and approve, but I deny the dimensional variance.

Mr. Raposa Approve/Deny:

I also agree with Mr. Borden and approve the special use permit and deny the dimensional variance.

Ms. Horwitz: Approve/Deny:

I also approve the special use permit and deny the dimensional variance for reasons previously stated.

Mr. Nott Approve/Deny:

The Chair agrees with Mr. Borden. I think you can build and still conform. The big problem for me is the lot coverage variance. It must conform to the dimensional setbacks and the lot coverage.

The Chair called for a five-minute recess at 8:00 p.m.
The Chair called the meeting back into order at 8:04 p.m.

4. (C-TC) EMJ Services (applicant) and Portsmouth Plaza Associates (owner) seek special use permits to operate an indoor gym (Art V Sec. B.13.) in an existing commercial unit located at 2477 East Main Road (36-15).

Duane Polselli, 126 Lawrence Drive and Scott Polselli, 28 Gideon Lawton Lane, were sworn in. The Polsellis are the owners of the commercial unit and they are seeking a special use permit to operate an indoor gym in a Town Center zone.

Applicant Elizabeth Jehourian, 38 Chelsea Drive was sworn in. Ms. Jehourian would like to operate a Pitter Patter Playhouse at the location. It would be a play area for children ages 1 to 7 years and parents would stay with their children. There would be no electronic games, but there would be climbing structures and items to spark a child's imagination. Hours would be Monday through Friday from 9:30 AM to 4:30 PM, Saturday from 9:30 AM to 4:00 PM, and closed on Sunday for private events. Private events would be scheduled on Sunday for 11 AM to 1 PM or 2 PM to 4 PM.

Mr. Borden went through the special use permit criteria with the applicant. She testified that it would meet all criteria.

The Chair said that EMJ Services and Portsmouth Plaza Associates are seeking a special use permit to operate an indoor gym/recreational facility on map 36, lot 115.

Mr. Borden Approve:

A special use permit is their only request and the petitioner walked through the criterion. The petition met all the requirements and he does not see a need to place any conditions on the petition in his opinion – the hours are 9:30 AM to 4:30 PM.

Mr. Furriel Approve:

I approve the special use permit for reasons stated by Mr. Borden.

Mr. Raposa Approve:

I also approve the special use permit for reasons previously stated by Mr. Borden.

Ms. Horwitz Approve:

I approve based on reasons given by Mr. Borden.

Mr. Nott Approve:

The Chair also approves for reasons stated by Mr. Borden and I commend you.

OLD BUSINESS 3. AND NEW BUSINESS 3.

(C-1) Global Partners LP (applicant) and Alwar Equities, Inc, (owner) seek special use permits to redevelop and expand an automobile fueling station (Art V Sec. F.1.), convenience store and café (Art. V Sec. E.1., 3. and 14.3) located at 1568 West Main Road (51-34D).

(C-1) Global Partners LP (applicant) and Alwar Equities, Inc, (owner) seek a special use permits to install signage in excess of the maximum allowed under the ordinance (Art V Sec. F.1.) for their proposed automobile fueling station, convenience store and café located at 1568 West Main Road (51-34D).

Attorney Sean Bouchard, Silva, Thomas, Martland & Offenberg, Ltd., 1100 Aquidneck Avenue, Middletown was present representing Global Partners LP, applicant.

Mr. Bouchard said this will be the redevelopment of an existing site. Present with him tonight are Paul Silvia, Engineer, Maureen Chlebek, Traffic Engineer, and Nathan Godfrey, Real Estate expert.

Paul Sylvia, PE, Vice President of Ayoub Engineering, 414 Benefit St, Pawtucket was sworn in. Mr. Sylvia has over 35 years of experience in civil engineering.

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

Mr. Sylvia said there will be a complete redo of the entire site with new drainage, new catch basins, bio-retention to capture water, and oil and grease separators. The septic system will be a state-of-the-art bottomless sand filter because coffee grounds and milk are detrimental to septic systems. The two fuel tanks will be new 20,000-gallon tanks, that will hold the diesel and regular gas, and will be double walled with leak detection systems on them.

They have incorporated comments from the Design Review Board about the green buffer into the Landscape Plan, so Mr. Sylvia's Landscape Plan differed from the plan the Zoning Board members had. There will be no change to the traffic light.

Maureen Chlebek, P.E., McMahon Associates, Inc., 14 Breakneck Hill Road, Suite 201, Lincoln was sworn in. Ms. Chlebek has been a traffic engineer for over 31 years and has been an engineer since 1984. She presented her resume to the Board.

A motion was made by Mr. Borden and seconded by Mr. Raposa to accept Ms. Chlebek as an expert in traffic engineering. The motion carried 5 – 0 with all in favor.

Ms. Chlebek explained how she came to her conclusions about the future level of service at the site after the new construction, which included looking at three years of crash data and taking counts of peak weekday hours in 2017 and increasing them by 13%. She said the level of service would not be affected greatly. Discussion about the north curb cut on the site followed, with a few Board members strongly in favor of either removing the curb cut altogether or making it right turn only. Fuel truck circulation and safety on the site was brought up. Curb access permits by the RI Department of Transportation were discussed.

Nathan Godfrey, Real Estate expert, Newport Appraisal Group, LLC, 221 Third Street, Newport was sworn in.

A motion was made by Mr. Raposa and seconded by Mr. Borden to accept Mr. Godfrey as an expert in real estate. The motion carried 5 – 0 with all in favor.

Mr. Godfrey distributed his report on the property at 1568 West Main Road and whether it qualified in his opinion for a special use permit. Mr. Godfrey also explained to the Board how he came to his conclusions. He believes it does qualify for a special use permit and it will be a huge improvement to this building that has been there for 25+ years.

Mr. Bouchard asked the Board if the petition could be continued, but also if the Board would allow any abutters to speak now if they'd like, and also allow them another opportunity in the future to speak as well.

The Chair called for abutters or interested parties.

Jeffrey Cornell, 51 Flint Corn Road was sworn in. Mr. Cornell said he is right behind the site. He is concerned about lights, hours, runoff, landscaping, curb cuts, the HVAC, and the like.

There were no other abutters or interested parties that wanted to speak.

Mr. Nott said at the next meeting he wants testimony and/or plans from the petitioner that includes delivery times, the location of the dumpster, and details on the mechanicals and the HVAC. Mr. Furriel wants information on the rear fencing and Mr. Borden wants information from the traffic expert on what they would recommend for the exit and entrance for the north and south and what the DOT has to say about these curb cuts, and he would like to see more recent accident information, as well as detailed information on the signage that will be used.

A motion was made by Mr. Borden to continue the petition to the meeting of March 21, 2019. The motion was seconded by Mr. Nott for discussion. Mr. Nott said the motion includes both petitions being continued to the meeting of March 21, 2019. Mr. Raposa seconded the motion as amended. The motion carried 5 – 0.

A motion to adjourn was made by Mr. Borden and seconded by Mr. Furriel. The motion carried 5 – 0

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with all in favor. The meeting adjourned at 9:30 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary

Approved:  Date: April 18, 2019