



# Town of Portsmouth

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

(401) 683-3611

## MARCH 21, 2019

**MEMBERS PRESENT:** Mr. James Nott, Chair, Mr. John Borden, Vice-Chair, Mr. Benjamin Furriel, Secretary, Ms. Kathleen Pavlakis, Mr. Eric Raposa, Ms. Sue Horwitz, First Alternate and Mr. William Wladyka, 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. Nott called the meeting to order at 7:06 p.m. in the Town Council chambers.

### **I. MINUTES**

A motion was made by Mr. Borden and seconded by Mr. Raposa to approve the January 17, 2019 minutes as presented. The motion carried with all in favor.

The recording secretary found that the audio recorder was not recording at this time and it was restarted.

### **II. CHAIRMAN'S REPORT**

Mr. Nott announced to the audience that no cell phones should be on in the hearing room and the Board would meet until 10 p.m. only.

Mr. Nott also announced that Bill Wladyka had joined the Board as the new alternate member and he welcomed him.

### **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).

Jordan Boslego contacted Mr. Asciola and requested the petition be continued to the April meeting because he is out of the country. He did delegate Michaela Busier, who was in the audience, to speak for him if the Board would not continue the petition.

A motion was made by Mr. Borden and seconded by Mr. Raposa to continue the petition of Sydney Portsmouth one more time only to the regular meeting of April 18, 2019 at 7:00 p.m. The motion carried 5 – 0 with all in favor. Regular Board members will vote this evening, no alternates, except for Old Business #2 and 3.

2. (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).
3. (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).

Sitting on this application are Mr. Borden, Mr. Furriel, Mr. Nott, Mr. Raposa, and Ms. Horwitz.

Attorney Sean Bouchard, Silva, Thomas, Martland & Offenber, Ltd., 1100 Aquidneck Avenue, Middletown was present representing Global Partners LP, applicant. Mr. Bouchard asked for a one-month extension because his engineer was unable to attend this evening. Mr. Furriel said he will be gone the next three months, however, so the petitioner would have to restart the petition. Mr. Bouchard agreed to do so.

A motion was made by Mr. Borden and seconded by Mr. Raposa to continue the petitions of Global Partners, LP (applicant) and Alwar Equities, Inc., (owner) to the regular meeting of April 18, 2019. The motion carried 5 – 0 with all in favor.

#### **IV. NEW BUSINESS**

Before starting New Business, Mr. Nott broke from the agenda to address New Business #5. Gerard Galvin, Esq., 10A Washington Street, Newport had submitted a letter requesting a special meeting for: Donovan Gray Distributing, LLC (applicant) and Van Hoff Land Associates (owners), 54 Bristol Ferry Road, map 28, lot 17.

There was discussion about the date for the meeting. Eventually April 4, 2019 at 7:00 p.m. was chosen and the petitioner will hire a transcriptionist as the recording secretary will not be able to be present.

Nancy Howard, 16 Dianne Avenue interrupted the proceedings to say that she did not believe New Business #5 had been advertised properly. Mr. Gavin, Town Solicitor, assured her that the Zoning Board hearing had been advertising as usual and it was in the correct format.

A motion was made by Mr. Furriel and seconded by Mr. Raposa to schedule a special meeting for Donovan Gray Distributing, LLC (applicant) and Van Hoff Land Associates (owners) on April 4, 2019 at 7:00 p.m. The motion carried 5 – 0 with all in favor.

1. (R-10) Peter Roberts (owner) of 80 Ormerod Avenue (20-60) and 0 Mason Avenue (20-66) seeks to appeal the issuance of a notice of violation issued by the zoning enforcement officer (Art. XIV Sec. B.1.) dated October 16, 2018 related to the location of a chicken enclosure less than 50 feet from the property boundaries.

Attorney Allyson Quay, 3852 Main Road, Tiverton was present representing Peter Roberts. Town Solicitor Kevin Gavin had written a memo to the Board regarding what the Board needed to decide, which is, did Mr. Roberts file an appeal of the notice of violation issued on October 16, 2018 from Matthew Kent in a timely manner? Filing a petition for a variance is not considered an appeal. The appeal was filed on February 12, 2019. If the Board decides it was not filed in a timely manner, (i.e., an untimely manner) then the matter is dismissed. If the Board decides the appeal was filed in a timely manner, the hearing could continue.

After a fair amount of discussion, a vote was taken as to whether the Board members thought the appeal was filed in a timely or untimely manner:

- Mr. Borden: Untimely – Mr. Roberts had from October 16, 2018 to February 12, 2019 before he filed.  
Ms. Pavlakis: Untimely – I agree with my peers.  
Mr. Furriel: Untimely – It was four months; it was not filed timely.  
Mr. Raposa: Untimely – It was not filed timely.  
Mr. Nott: Untimely – I agree with Mr. Borden, there was more than enough time.

The appeal was dismissed by the Board as they found the appeal was filed in an untimely manner.

2. R-10) Mary English (owner) seeks a dimensional variance for lot coverage (Art. IV, Sec. B) and a special use permit to construct a 17' x 20' garage on a nonconforming lot of record (Art. VI, Sec. A.4) located at 81 Seaconnet Blvd (21-130).

Attorney Eric Chappell, Chappell & Chappell, 171 Chase Road was present representing Mary English. Mr. Chappell said that Ms. English is requesting a variance for lot coverage and for a special use permit in order to build a single car garage. She is located in an R-10 district and her lot is a pre-existing substandard lot of record.

Mary English, 81 Seaconnet Boulevard was sworn in.

There was discussion about the lot coverage calculation on the petition. It was incorrect.

A motion was made by Mr. Borden and seconded by Mr. Furriel to allow Ms. English to amend her petition to change the lot coverage variance request to 15.85%, bringing the total lot coverage to 35.85%. The motion carried 5 – 0 with Mr. Nott, Mr. Borden, Mr. Furriel, Ms. Pavlakis, and Mr. Raposa in favor.

Under questioning by Mr. Chappell, Ms. English testified that the property is perfect except that it does not have a garage. The garage will not have a second floor. It will be 17' x 22". The garage will meet

the side setbacks that currently exist. The average front yard setbacks of the two adjacent properties has been used to determine the front setback, and that averages 9', while Ms. English will have 14', so a variance is not required for the front setback.

Exhibit 1 given to the Board is a photo of the existing porch and stairs. Exhibit 2 is the septic layout. She also currently has a large concrete patio on her property that counts towards lot coverage..

Mr. Nott went through the special use permit criteria with Ms. English. She testified the garage would meet all special use criterion.

The Chair called for abutters or interested parties. There were none and no letters in the file.

The Chair summarized that Mary English is before the Board for map 21, lot 130 to request a special use permit for a nonconforming lot of record and a 15.85% lot coverage variance.

Mr. Borden                    Approve/Approve:

Regarding the special use permit, the Chair walked the petitioner through all criterion successfully and I approve.

Regarding the dimensional variance – there are no setbacks requested, but there is lot coverage. Although it might seem excessive, she is eliminating a concrete barrier, and a garage is an acceptable accessory use. To deny would amount to more than a mere inconvenience, and I approve.

Mr. Furriel                    Approve/Approve:

I approve of the special use permit for reasons given by Mr. Borden and I approve the dimensional variance for reasons given for a garage.

Ms. Pavlakis                    Approve/Approve:

I approve of the special use permit and the dimensional variance for reasons previously stated by Mr. Borden.

Mr. Raposa                    Approve/Approve:

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

Mr. Nott                        Approve/Approve:

The Chair approves of the special use permit and I agree with Mr. Borden on the dimensional variance. A garage is an acceptable accessory use and it would amount to more than a mere inconvenience to deny.

The Chair called for a five-minute recess at 8:00 p.m.

The Chair called the meeting back into order at 8:11 p.m.

3. (R-20) Robin Weber (owner) seeks a special use permit to develop a natural burial cemetery (Art. V Sec. B.3.) on approximately 3.2 acres in the South Point area on Prudence Island. A dimensional variance is also requested to develop the property without frontage on a public road (Art. III Sec. D.2.). The proposed development currently consists of five (5) parcels identified as 0 Broadway (84-60), 0 Broadway (84-183), 0 Broadway (84-184), 0 Alden Avenue (84-184A) and 0 Hornbine Avenue (84-183A).

Robin Weber, 0119 Hillside Road, Prudence Island was present representing herself. Ms. Weber said that she is seeking a special use permit to develop an active burial ground in the South Point area of Prudence Island. This would be a green burial area with native plants where people from Prudence Island or elsewhere could have a natural burial. Plots would be 4' X 8' and there would be 2,000 plots. No embalming, nothing toxic, no cement used in burial, no nonbiodegradable materials are allowed in any burial. This is a watershed area, and the human body is not toxic unless toxic matter is put into it. Users of the burial area would be required to "formally agree to abide by the established Prudence Memorial Park Rules..." which lay out more specifically the details of acceptable materials to be used in burial and practices in the park.

Ms. Weber said that green burials are not a new idea and they are becoming more popular. This would meet the needs of many on Prudence that currently do not have an option as far as staying on Prudence. She has a business partner for business security and 20% of the burial sales would go into a perpetual care fund. Prompted by a question from the Chair, Ms. Weber said that animals do not dig beyond 18" and will not be a problem with disturbing graves. Cremains are accepted, but if they are in an urn the urn must be of biodegradable material. She does not perform cremations herself.

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

A motion was made by Mr. Borden and seconded by Mr. Furriel to place a condition on the petition should it pass. That condition is that all lots related to the natural burial ground be merged into one lot: map 84, lots 60, 183, 184, 183A, and 184A. The motion carried 5 – 0 with all in favor.

The Chair said that Robin Weber is before the Board seeking a special use permit to place a green burial ground on Prudence Island and is seeking a variance for a lot not fronting on a public way on map 84, lots 60, 183, 184, 183A, and 184A.

Mr. Borden                      Approve/Approve:

I will take them one at a time. Regarding the dimensional variance, to house this cemetery not on a public way – there are no public roads on Prudence Island, so it is reasonable and to deny would amount to more than a mere inconvenience, so I approve.

Regarding the special use permit criterion - the petitioner went through all the criterion. The effect on the abutting properties, she said they are all in favor and there is no one here to object. The

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Comprehensive Community Plan includes burial grounds on the mainland, but none on Prudence Island currently, so I applaud the petitioner and I approve.

Mr. Furriel                    Approve/Approve:

I approve the dimensional variance, it is reasonable for reasons given by Mr. Borden. Regarding the special use permit, a cemetery is a benign, low impact use and it affords the public an option with minimal impact and I approve.

Ms. Pavlakis                Approve/Approve:

I agree with Ben and John and approve both – I think it’s great.

Mr. Raposa                 Approve/Approve:

I agree for reasons previously stated and I approve.

Mr. Nott                    Approve/Approve:

The Chair also approves for reasons stated. There are no public roads and you’ve met all the special use permit criteria, so I approve.

A motion to adjourn was made by Mr. Borden and seconded by Mr. Raposa. The motion carried 5 – 0 with all in favor. The meeting adjourned at 8:48 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary

Approved: Barbara A. Ripa                    Date: April 18, 2019