



Town of Portsmouth

ZONING BOARD OF REVIEW
2200 East Main Road / Portsmouth, Rhode Island 02871
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(401) 683-3611

REGULAR MEETING MINUTES

JANUARY 16, 2020

MEMBERS PRESENT: Mr. James Nott, Chair, Mr. Benjamin Furriel, Secretary, Ms. Kathleen Pavlakis, Mr. Eric Raposa, Ms. Sue Horwitz, First Alternate and Mr. William Wladyka, Second Alternate.

MEMBERS ABSENT: Mr. John Borden, Vice Chair.

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 7:00 p.m. in the Town Council chambers.

I. MINUTES

II. CHAIRMAN'S REPORT

Chairman Nott sent condolences to Vice Chair John Borden at the loss of his mother, who had attained the age of 105 years old.

III. BOARD ELECTIONS

The Chair announced elections of officers and asked for nominations for Chair.

A motion was made by Ms. Pavlakis and seconded by Mr. Furriel to nominate Mr. Nott as Chair of the Zoning Board of Review. The Chair called for other nominations. There were none. The motion to elect James Nott as Chair carried unanimously with all in favor.

A motion was made by Mr. Nott and seconded by Mr. Raposa to nominate Mr. Borden as Vice Chair of the Zoning Board of Review. The Chair called for other nominations. There were none. The motion to elect John Borden as Vice Chair carried unanimously with all in favor.

A motion was made by Mr. Nott and seconded by Mr. Raposa to nominate Mr. Furriel as Secretary of the Zoning Board of Review. The Chair called for other nominations. There were none. The motion to elect Benjamin Furriel as Secretary carried unanimously with all in favor.

REQUESTS FOR CONTINUANCES AND AGENDA BREAKS

OB 1. (R-10) Mary Ellen Grosvenor (owner) seeks dimensional variances for side and rear yard setbacks and lot coverage (Art. IV, Sec. B) and a special use permit to construct an 18.5' x 17.5' deck on a nonconforming lot of record (Art. VI, Sec. A.4) located at 50 Coral Street (20-185).

Mr. Nott said that **Old Business 1** was asking for permission to continue to the regular meeting of February 20, 2020.

A motion was made by Mr. Raposa and seconded by Ms. Horwitz to continue the petition of Mary Ellen Grosvenor to the regular meeting to be held on February 20, 2020. The motion carried 5 – 0 with Mr. Nott, Mr. Furriel, Ms. Pavlakis, Mr. Raposa, and Ms. Horwitz in favor.

NB 6. (R-30) David and Delores Gabriel (owners) seek dimensional variances for rear and two (2) side yard setbacks (Art. IV, Sec. B) to construct protective netting on a nonconforming lot of record (Art. VI, Sec. A.4) located at 293 Union Street (57-23).

Mr. Nott said that **New Business 6** would like to continue their petition to the regular meeting of February 20, 2020.

A motion was made by Mr. Furriel and seconded by Mr. Raposa to continue the petition of David and Delores Gabriel to the regular meeting to be held on February 20, 2020. The motion carried 5 – 0 with Mr. Nott, Mr. Furriel, Ms. Pavlakis, Mr. Raposa, and Ms. Horwitz in favor.

Mr. Nott said they would break the agenda to hear New Business 1.

NB 1. (R-20) Steve Simoni (owner) seeks a one year extension for previously approved dimensional variances for front yard and a rear yard setback encroachments (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 one bedroom single family residence on a substandard lot of record (Art. VI, Sec. A.4) located at 0 Riverside Dr. on Hog Island (69-17A).

Attorney Eric Chappell, Chappell & Chappell, 171 Chase Road was present representing Steven Simoni. Mr. Simoni is seeking a one-year extension on his previously approved dimensional variances and special use permit. He has been waiting for CRMC approval on his application with them.

Abutters were present that wanted to speak.

Michael Antonio, 5 Starr Lane, Rehoboth, MA was sworn in and said he has concerns with water. He told Mr. Nott he was not present for the original hearing. Mr. Nott told Mr. Antonio the variances had already been granted and this was simply a request for an extension only.

Jonathan Roberts, 20 Mt. Hope Avenue, Swansea, MA was sworn in. Mr. Roberts asked about the number of extensions that can be requested, which is two for one year each. Mr. Roberts did not make it to all the meetings, whether town, CRMC, or DEM, but he wanted the Board to know Mr. Simoni will be about 20' away, there is no electricity on Hog Island, and they will have wells. His home will also be quite different from the others.

A motion was made by Mr. Furriel and seconded by Mr. Raposa to grant a one-year extension for previously approved dimensional variances and a special use permit for map 69, lot 17A. The motion carried 5 – 0 with Mr. Nott, Mr. Furriel, Ms. Pavlakis, Mr. Raposa, and Ms. Horwitz in favor.

IV. OLD BUSINESS

- 2. (R-10) Tammy McVay and John Muench (owners) and PRR Construction (applicant) seek dimensional variances for front and side yard setbacks (Art. IV, Sec. B) to construct an addition and wrap-around deck on a nonconforming lot of record (Art. VI, Sec. A.4) located at 181 Brownell Lane (22-4B).**

Cort Chappell, Chappell & Chappell, 171 Chase Road was present representing Tammy McVay and John Muench. Mr. Chappell said the petition had been approved in September, but the actual construction that took place was different than what the Board approved. Mr. Chappell had the old plan with the current configuration on it, which was confusing, and tried to explain the changes to the Board, but it was difficult to envision. Mr. Nott said he would like to view a clean plan.

A motion was made by Mr. Raposa and seconded by Ms. Pavlakis to continue the petition of Tammy McVay and John Muench to the regular meeting to be held on February 20, 2020. The motion carried 5 – 0 with Mr. Nott, Mr. Furriel, Ms. Pavlakis, Mr. Raposa, and Ms. Horwitz in favor.

V. NEW BUSINESS

- 2. (R-10) John and Pauline Burgess (owners) seek dimensional variances for front yard setback and lot coverage (Art. IV, Sec. B) to construct an addition on a nonconforming lot of record (Art. VI, Sec. A.4) located at 72 Rhode Island Blvd. (4-41).**

John Burgess, 72 Rhode Island Blvd., was sworn in. Mr. Burgess said his wife's sister has permanently injured her leg and has come to live with them. It is tight in the house, so he would like to construct a 10' x 14' addition. His house is on a corner lot, so he has two front yards for setback requirements. The front yard setback relief he is seeking is 10', where 20' is required, but he will still have 17' of land that goes to the road.

Mr. Burgess said that many homes are nonconforming in the area. He gave a packet to the Chair that was submitted as **Exhibit 1**. He has retained an architect. He said the impact will not be adverse to the neighborhood but will add value. The property behind his extends 15' leaving only a 5' setback and his will not encroach as much. He gave more pictures to be added to **Exhibit 1** of other houses in the area.

He said if he were not on a corner lot, he would only need a 10’ variance. He also needs a 4.6% lot coverage variance, an additional 3% from what exists now.

The Chair walked through the special use permit criterion with Mr. Burgess and he testified the petition would meet all criteria.

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

Mr. Nott said John and Pauline Burgess of map 4, lot 41 are before the Board seeking a **special use permit, a front yard setback variance of 10’ and a 4.6% lot coverage variance** to construct an addition.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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Mr. Furriel	Approve	Approve	Approve
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Regarding the lot coverage, I approve. The applicant needs to add an extension to his house, it is nothing that he did, and it is a 4.6% increase, which is small and is reasonable. The 10’ setback variance I approve. Other lots are closer than his. The special use permit I vote to approve. The addition is a reasonable response to the needs of his family.

Ms. Pavlakis	Approve	Approve	Approve
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I approve of the lot coverage, the special use permit and the dimensional variance for reasons given by Mr. Furriel.

Mr. Raposa	Approve	Approve	Approve
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I approve of all three for reasons given by Mr. Furriel.

Ms. Horwitz	Approve	Approve	Approve
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I approve of the special use permit and the two variances for reasons previously stated.

Mr. Nott	Approve	Approve	Approve
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The Chair approves of both the dimensional variance and the lot coverage, he has a hardship and it is more than a mere inconvenience to deny. He is saddled with a corner lot and has 27’ to the pavement. I also approve the special use permit because he met the criteria.

- 3. (R-10) Kyle & Valerie Tokarz (owners) seek dimensional variances for side yard setback and lot coverage (Art. IV, Sec. B) to construct a deck on a nonconforming lot of record (Art. VI, Sec. A.4) located at 327 Riverside Street (15-41).**

Dr. Kyle Tokarz, 45 Hidden Lane, East Greenwich was sworn in. Patrick Connors, Brewster Thornton Group Architects, 317 Iron Horse Way, Providence was sworn in. Mr. Connors gave **Exhibits 1 – 8** to the Board, which were photos of the back and side yard “as is” and getting the new sand filter septic system.

Petitioners were before the Board two years ago and the owners had a legal septic system at the time. They since decided to invest in a new sand filter system on the eastern portion of the lot. It is a raised system. It has been installed, so they have modified the deck design.

They are not taking advantage of the variance given by the Board and as shown by the pictures. They are proposing removable decking to go over the sand filter. Their hardship is they have lost their firepit and some use of their yard. They were previously granted 53% lot coverage, but the proposal now will be reduced to 51%. They require the 51% lot coverage variance, a special use permit and a 9.75’ side yard setback. He says it will reduce the setback to the property line, which is a next to a right-of-way to the water.

Mr. Nott went through the special use permit criteria and Mr. Connors said it would meet all criteria.

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

Mr. Nott said Kyle and Valerie Tokarz, map 15, lot 41 seek a **9.75’ side yard setback variance** for removable decking and a **special use permit**. A lot coverage variance was previously approved at a higher amount than what is now required so is not necessary.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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Mr. Furriel	Approve	N/A	Approve
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We have a special use permit and a dimensional variance, but no lot coverage variance is required. Regarding the dimensional variance, I approve. The applicant installed wastewater treatment and it needs covers with the deck. It is reasonable. It protects and adds space. The special use permit I approve. He is updating with the deck and the improved wastewater system – it is no detriment to the community.

Ms. Pavlakis	Approve	N/A	Approve
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I approve of the dimensional variance and the special use permit for reasons previously stated.

Mr. Raposa	Approve	N/A	Approve
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I approve of the special use permit and variance for reasons previously stated.

Ms. Horwitz **Approve** **N/A** **Approve**

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

Mr. Nott **Approve** **N/A** **Approve**

The Chair approves of the special use permit for reasons previously stated. The dimensional variance, he put a septic in now, which was wise, and 53% lot coverage is what is down there and it is now reduced. The decking will add access, so I approve.

The Chair called for a recess at 8:12 p.m.

The Chair called the meeting back into order at 8:18 p.m.

4. (R-10) Gary Jefferds (owner) seeks dimensional variances for rear yard setback and lot coverage (Art. IV, Sec. B) to construct an addition on a nonconforming lot of record (Art. VI, Sec. A.4) located at 82 Raynham Avenue (4-229).

Gary Jefferds, 82 Raynham Avenue was sworn in. Mr. Jefferds would like to expand his garage so he can fit his truck and his wife's vehicle into it and also to create an office space above so he and his wife can work at home at times, while being separated from the rest of the house. They would like to attach the house to the garage as well. The existing garage was built in 1954 and it is too small for his entire truck to fit inside. They have a pool that is being filled in, in the process. They would like to keep the existing garage and the new addition would be 20' x 22'.

Mr. Jefferds says he has five vehicles, including his truck, his wife's vehicle and recreational vehicles. His home is four bedrooms built on a crawl space, so the current garage is used for storage. The existing garage is 25' x 20'. The Jefferds also would like to put a recreational area in the addition.

The Chair called for abutters or interested parties. There were none. There was a letter from Phyllis Cloutier, 22 Short Street, in the file, which Mr. Furriel read into the record.

Mr. Nott asked about his septic system. Mr. Jefferds said they went through the inspection process, but he is not looking to add any more bedrooms. The plans do not require an architect's seal. The garage will remove the cars currently parking on the street. Mr. Jefferds was reminded that runoff to other properties cannot be increased by his construction.

A motion was made by Mr. Nott and seconded by Ms. Horowitz to place the following condition on the petition should it be approved:

- Approval is contingent on review by the Portsmouth Fire Department for concurrence that there is adequate space once the garage is built per the special use permit criteria.

The motion to place the condition carried 5 – 0 with Mr. Nott, Mr. Furriel, Ms. Pavlakis, Mr. Raposa, and Ms. Horwitz in favor.

A motion was made by Ms. Horowitz and seconded by Mr. Nott to place the following condition on the petition should it be approved:

- The garage cannot be used for commercial purposes.

The motion to place a second condition carried 5 – 0 with Mr. Nott, Mr. Furriel, Ms. Pavlakis, Mr. Raposa, and Ms. Horwitz in favor.

The Chair walked through the special use permit criteria with Mr. Jefferds. Mr. Jefferds testified the garage addition would meet all special use permit criteria in his opinion.

Mr. Nott said that Gary Jefferds, map 4, lot 229, is before the Board seeking a **special use permit** and a **15’ rear yard setback variance**, but he will not encroach further than existing, and a **10.3% lot coverage variance** to construct an addition on a nonconforming lot of record.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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Mr. Furriel	Approve	Approve	Approve
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Regarding the dimensional setback variance, I approve. He is not changing the existing setback. The size of the garage appears problematic, but I will ok the lot coverage and I approve the special use permit.

Ms. Pavlakis	Approve	Approve	Approve
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I concur with Mr. Furriel and approve the dimensional variance, the special use permit and the lot coverage variance.

Mr. Raposa	Approve	Approve	Approve
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I approve the variance and the lot coverage for reasons previously stated. I also approve the special use permit.

Ms. Horwitz	Approve	Approve	Approve
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I approve the special use permit and the two variances for reasons previously stated.

Mr. Nott	Approve	Approve	Approve
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The Chair denies the special use permit due to the fire protection issue, but it is approved anyway. The dimensional variance, you are not encroaching any further and the lot coverage variance, you can't do

anything out there without lot coverage relief, so I approve. You are approved pending Fire Department approval.

5. (R-10) Paul Maleck & Maria Rodriguez-Maleck (owners) seek dimensional variances for front and side yard setbacks (Art. IV, Sec. B) and relief to construct a shed within the front yard (Art. IV, Sec. C.5.) located at 75 Hummock Avenue (9-32).

Paul Maleck, 43 Rogers Avenue, West Springfield, MA was sworn in. Maria Rodriguez-Maleck, 75 Hummock Avenue was sworn in. The Malecks are part-time residents. They purchased the home in 2007. There is an existing 8' x 15' shed near the front. They want to replace it with a 12' x 16' shed. There is no attic or basement in the house, and they need it for storage. They approached their neighbor and he was granted relief to do the same thing. There is no garage. The neighbor's shed is in the same location so the backs of the sheds would be abutting. There will be no plumbing in the shed.

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

Paul Maleck and Maria Rodriguez-Maleck, map 9, lot 32, are before the Board seeking an **18' front yard setback variance**, an **8' side yard setback variance** on the south, **relief from Article IV, Section C.5., putting a 12' x 16' shed in the front yard**, and a **5.04% lot coverage variance**.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Art. IV, Sec. C.5. Relief - to Construct Shed in Front Yard
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Mr. Nott	Approve	Approve	Approve
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The applicant has testified they will be making this house their permanent residence and the house lacks storage. To deny their request amounts to more than a mere inconvenience. To put the shed in the front yard is in keeping with the neighborhood. I approve of the setback variances, the lot coverage variance, and approve of putting the shed in the front yard.

Mr. Furriel	Approve	Approve	Approve
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I approve all variances for reasons given by Mr. Nott.

Ms. Pavlakis	Approve	Approve	Approve
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I approve the dimensional variances and the Article IV relief for reasons given by Mr. Nott.

Mr. Raposa	Approve	Approve	Approve
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I approve all relief for reasons previously stated.

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Ms. Horwitz

Approve

Approve

Approve

I approve all the requested relief for reasons previously stated.

A motion to adjourn was made by Mr. Raposa and seconded by Mr. Wladyka. The motion carried with all in favor. The meeting adjourned at 9:00 PM.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary

Approved:  Date: June 18, 2020