



# Town of Portsmouth

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

(401) 683-3611

## ZOOM MEETING

### MINUTES

SEPTEMBER 17, 2020

Mr. Nott called the virtual Zoom meeting to order at 7:00 p.m. in the Town Council chambers.

#### I. ROLL CALL

**MEMBERS PRESENT:** Mr. James Nott, Chair, Mr. John Borden, Vice Chair, Mr. Benjamin Furriel, Secretary, Ms. Kathleen Pavlakis, Mr. Eric Raposa (7:38 p.m.) and Ms. Sue Horwitz, First Alternate and Mr. William Wladyka, Second Alternate (7:38 p.m.)

**MEMBERS ABSENT:** None

**OTHERS PRESENT:** Town Solicitor Kevin Gavin was present as legal counsel for the Board via Zoom, Michael Asciola, Assistant Town Planner and Barbara Ripa as recording secretary.

#### II. MINUTES

#### III. CHAIRMAN'S REPORT

#### IV. OLD BUSINESS

##### **IV.I. (R-40) Timothy and Anne Marie Corbett (Owner) Seek a Variance to Construct a Pool Without the Required Six-Foot Fence (Art. V Sec. I.5.) Located at 156 Fischer Circle (62 - 74).**

Attorney Cort Chappell, 171 Chase Road was present on Zoom representing petitioners Timothy and Anne Marie Corbett. Mr. Chappell presented a changed petition to the Board members, with the petitioners no longer asking for an infinity pool, but a large 14.5' long x 7.5' wide spa, that is 4'10" deep and would be flush with the deck. The spa will have an automatic cover. They have put landscaping and a 4' fence around the area, which Mr. Chappell believes meets the criteria of safety.

The Chair called for abutters or interested parties.

Rob Petrie, 153 Fischer Circle was sworn in on Zoom. Mr. Petrie expressed concern again about safety and said that 24" of water requires 6' fencing in the Town's code.

Carol Petrie, 153 Fischer Circle was sworn in on Zoom. Ms. Petrie asked who has liability if something does happen?

Mr. Nott indicated the code in Portsmouth is old and being re-written, and common sense must be taken into account, which is why the Zoning Board of Review is there.

Kathleen Tirrell, 189 Fischer Circle was sworn in on Zoom. Ms. Tirrell expressed she still has serious reservations about the request.

Mr. Nott said Timothy and Anne Marie Corbett are before the Board with map 62, lot 74 seeking a **2' fence height** variance to install a **4' fence around a spa** rather than the **required 6' fence**.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Fence Height Around Spa	Special Use Permit
---	---	--------------------

<b>Mr. Borden</b>	<b>Not Applicable</b>	<b>Approve</b>	<b>Not Applicable</b>
-------------------	-----------------------	----------------	-----------------------

Mr. Borden thought it was an interesting petition. The petitioner is requesting a dimensional variance for a 2' fence height variance and the Board cannot ignore safety. The petitioner has forgone the infinity pool and amended their request for a spa, so in his opinion the 14.5' long x 7.5' wide spa that is 4'10" deep and flush with the deck is no longer an attractive nuisance. In Mr. Borden's opinion, it is unlikely anyone would climb a 4' fence and traverse the landscaping to get to the spa; it is a relatively safe property, and it would be more than a mere inconvenience to deny the variance and it is the least relief necessary, so he approves.

<b>Mr. Furriel</b>	<b>Not Applicable</b>	<b>Approve</b>	<b>Not Applicable</b>
--------------------	-----------------------	----------------	-----------------------

Mr. Furriel voted to approve the dimensional variance, and believes the fence is satisfactory and it would be more than a mere inconvenience to deny.

<b>Ms. Pavlakis</b>	<b>Not Applicable</b>	<b>Deny</b>	<b>Not Applicable</b>
---------------------	-----------------------	-------------	-----------------------

Ms. Pavlakis denied the petition. She does not believe there is a compromise on safety.

<b>Ms. Horwitz</b>	<b>Not Applicable</b>	<b>Approve</b>	<b>Not Applicable</b>
--------------------	-----------------------	----------------	-----------------------

Ms. Horwitz approved for reasons given by Mr. Borden.

<b>Mr. Nott</b>	<b>Not Applicable</b>	<b>Approve</b>	<b>Not Applicable</b>
-----------------	-----------------------	----------------	-----------------------

The Chair concurs with Mr. Borden and votes to approve the dimensional variance.

It was noted at about 7:38 p.m. that Board Member Eric Raposa and Second Alternate William Wladyka had previously joined the meeting.

**IV.II. (I-L) William Breyer IV (Applicant) and Jerome Kirby (Owner) Seek a Special Use Permit to Construct an 1,800 Square Foot Building to Operate a Gunsmith Service Business (Art. V Sec. E.5) in the Portsmouth Industrial Park at 0 High Point Avenue (38 - 16).**

Henry William Breyer IV, 129 Indian Avenue was sworn in on Zoom. Mr. Breyer was also represented on Zoom by Attorney Michael Murray, 37 Mill Street, Newport.

Mr. Breyer spoke about what he envisioned his business to be like – a type of one-person machine shop and wood shop.

Geralyn Small, PE, Northeast Engineers & Consultants, Inc., 6 Valley Road, Middletown was sworn in.

A motion was made by Mr. Borden and seconded by Mr. Furriel to accept Ms. Small as an expert in civil engineering. The motion carried 5 – 0 with Mr. Borden, Mr. Furriel, Ms. Pavlakis, Mr. Raposa and Mr. Nott in favor.

Ms. Small discussed drainage, the site plan, the DEM application, and runoff into the detention basin. There will be no pipes under the ground.

John Vitkevich, 119 Hummock Avenue was sworn in. Mr. Vitkevich is the Developer and said this will be an 1,800 square foot building. They have an approved landscape plan and have been to the Fire Department already.

Mr. Murray asked the Board of Review to accept the Planning Board's favorable Advisory Opinion and the Design Review Board's Advisory Opinion as well and have them put into the record. He said the petitioner has met all the requirements in those opinions.

The Chair called for abutters or interested parties. There were none, but there was a letter from Nancy Shaw Burgess, formerly Nancy Shaw McMahon, 112 Pleasant Street. Mr. Nott read Ms. Burgess' letter out loud.

Mr. Nott said William Breyer is before the Board with map 38, lot 16, seeking a **special use permit** to construct a building to operate a gunsmith service in the Portsmouth Industrial Park.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
---	--	--------------------

**Mr. Borden**                      **Not Applicable**                      **Not Applicable**                      **Approve**

Mr. Borden said the petition meets all special use criteria. There will be no live ammo in the building. The Planning Board, Design Review Board, and Fire Department all agree and petitioner has testified it meets special use permit criteria so he approved.

**Mr. Furriel**                      **Not Applicable**                      **Not Applicable**                      **Approve**

Mr. Furriel voted to approve. He felt LI zoning is tailor-made for this type of business and agrees with Mr. Borden.

**Ms. Pavlakis**                      **Not Applicable**                      **Not Applicable**                      **Approve**

Ms. Pavlakis approved the petition for reasons given by Mr. Borden.

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

Mr. Raposa agreed with his peers and approved of the special use permit.

**Mr. Nott**                      **Not Applicable**                      **Not Applicable**                      **Approve**

The Chair approved of the special use permit and listed the criteria he said it met.

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

The Chair called the meeting back into order at 8:17 p.m.

**IV.III. (R-10) Marc Smith (Owner) Seeks a Dimensional Variance for Rear Yard Shed Placement Requirement (Art. IV, Sec. C.5) to Construct an 8' x 12' Storage Shed Located at 23 Cove Street (20 - 357).**

Marc Smith, 23 Cove Street, was present and sworn in on Zoom. Mr. Smith has a shed in the side yard of his property. He said placement of the shed was initially approved by Town officials but then it was revoked. He wants to keep the shed where it is. In response to a question, he stated that he does have a summons to municipal court regarding this issue. He does not think he should have to bear the cost of moving the shed again as he already moved it once, and he was told he could put it where it is now.

There was quite a bit of discussion regarding how Mr. Smith ended up with the shed in the current location. Mr. Smith said the shed has been there for some time now and he does not want to move it.

The Chair called for abutters or interested parties.

John Eirich, 604 Boyds Lane spoke via Zoom as an interested party. He asked if the building permit got initially approved and if so, why? Mr. Asciola said it was approved in error. There was a misinterpretation of the Zoning Ordinance and when an abutter challenged it, the building permit was revoked.

Attorney Adam Thayer, Sayer Regan & Thayer, LLP, 130 Bellevue Avenue, Newport spoke on Zoom. Mr. Thayer represents the Edwards family. He submitted an objection memorandum. Dorothy Edwards owned the property abutting Mr. Smith and recently passed away. Allison Sanfillippo, Mrs. Edwards' granddaughter, is going to buy the property. They do not harbor ill will against Mr. Smith, but the criteria to qualify for zoning relief must be the least relief necessary and it must not be self-created. Mr. Thayer does not believe this issue is either the least relief necessary and he believes it is self-created. Mr. Thayer went through his arguments.

Allison Sanfillippo, 50 Lawnton Avenue, Tiverton was on Zoom and spoke to the Board.

Mr. Nott read letters into the record that were in the file from:

- Wayne Oldroyd, 460 Park Avenue
- Seth and Jillian Chiaro, 14 Cove Street
- Kristen Northrup, 61 Cove Street

Cindy Edwards, 48 Hope, Tiverton spoke on Zoom to the Board about how she thought the location of the shed was dangerous due to gas fumes, etc.

Steven Pappas, 8846 Southern Charm Circle, Brooksville, FL called in on Zoom. He said he was a former member of the Zoning Board and there is plenty of room for Mr. Smith to move the shed and it needs to be the least relief necessary.

Marc Smith, 23 Cove Street, map 20, lot 357 is before the Board seeking a variance for **placing a shed in the side yard approximately 4' from the property line.**

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Shed Placement	Special Use Permit
---	--	--------------------

**Mr. Borden**

**Not Applicable**

**Deny**

**Not Applicable**

Mr. Borden said Mr. Smith complied with the Town every step of the way but because of errors on the

part of the Town, he was told he could legally place the shed in the side yard. Mr. Borden said as a Board member he has to comply with the Zoning Ordinance, however, in Mr. Borden's opinion, it is not fair that Mr. Smith should have to spend another \$600 to move his shed again. He has to vote to deny Mr. Smith's request, even though he was misled by the Town of Portsmouth, and Mr. Borden apologized for the Town and wished Mr. Smith could be compensated by the Town for his expenses.

**Mr. Furriel**                      **Not Applicable**                      **Approve**                      **Not Applicable**

Mr. Furriel approved the variance as it was through no action of Mr. Smith's, but the action of the Town that caused the situation. Mr. Smith tried to do what was the least relief necessary.

**Ms. Pavlakis**                      **Not Applicable**                      **Approve**                      **Not Applicable**

Ms. Pavlakis agreed with Mr. Furriel and approved.

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

Ms. Horwitz voted to deny the dimensional variance. She has concerns for the neighbor and agrees with Mr. Borden.

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

The Chair denied the dimensional variance. He said safety is most important and with gas and fertilizer in the shed, it was too close to the abutter's home and should be moved.

The variance was denied.

**V. NEW BUSINESS**

**V.I. (R-20) Michael and Karen Mulligan (Owners) Seek a Dimensional Variance for Rear Yard Shed Placement Requirement (Art. IV, Sec. C.5) to Construct an 8' x 8' Storage Shed Located at 58 Mill Lane (51 - 238).**

Michael Mulligan, 58 Mill Lane was present on Zoom and sworn in. Mr. Mulligan started to discuss his petition, but he kept breaking up. Due to the technical difficulties, Mr. Nott gave him the phone number to call into the meeting instead of attending on video. Difficulties continued, however.

It was decided to move on to the next petition since Mr. Mulligan continued to have technical issues. Mr. Nott said, for the record, it was 9:20 and the Board only meets until 10:00 p.m., so it was clear the Board would be unable to hear all petitions tonight.

**V.II. (R-20) Donovan Gray Distributing, LLC (Owners) Seek an Amendment to a Special Use Permit for Agricultural Special Events Granted (Art. V, Sec. C.5.) on July 16, 2020 to Operate a Limited Series of Beer Gardens Located at 54 Bristol Ferry Road (28 - 17).**

Chair Jim Nott recused himself from this petition. Mr. Borden assumed control of the Chair.

Matthew Gray, Donovan Gray Distribution, 87 Col. Christopher Greene Road was sworn in on Zoom.

Mr. Gray said they have been approved for a microbrewery and a special use permit for beer garden events. Tonight they are asking for an extension of the special events use permit into October, as they would like to host events Thursday through Sunday in October to 8:00 p.m. Nothing else has changed.

The Chair called for abutters or interested parties.

Meghan Kissell was sworn in and spoke. Her parents live at 24 Bristol Ferry Road. She said a couple of things have changed. Some things in the petition are vague, she believes and there are strung lights that have been left on all night when the petitioner said there would be no lights. Also, they said events would end at 8:00 p.m. but events are not ending at 8:00, it is ending later.

Mr. Gray said he has closed every shift and they are ending at 8:00 p.m. No one has contacted him about lights. He said his petition allows them to serve until 8:00 and then they finish up with cleaning, etc. Also, his application for the full microbrewery will be open until 9:00 p.m.

Ms. Kissell said his petition says hours of operation are until 8:00 p.m. and there will be no lights. He should stick to what he says.

Mr. Borden said Donovan Gray Distributing is before the Board asking to amend a previously approved special use permit for agricultural special events to **add additional events through October** and to **include Thursday evenings**.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
---	--	--------------------

**Mr. Furriel**                      **Not Applicable**                      **Not Applicable**                      **Approve**

Mr. Furriel voted to approve the petition. Extending into October makes sense during this time of COVID.

**Ms. Horwitz**                      **Not Applicable**                      **Not Applicable**                      **Approve**

Ms. Horwitz voted to approve for reasons previously stated.

**Ms. Pavlakis**                      **Not Applicable**                      **Not Applicable**                      **Approve**

Ms. Pavlakis voted to approve for reasons previously stated.

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

Mr. Raposa voted to approve for all reasons previously stated.

**Mr. Borden**                      **Not Applicable**                      **Not Applicable**                      **Approve**

Mr. Borden said this is a passive use but the petitioner should try to accommodate neighbors. He voted to approve.

Mr. Nott resumed as Chair. He tried to reach Mr. Mulligan on Zoom, but got no response.

Mr. Nott said they would hear the petition of Elizabeth Shearer and Harold Conner, but that would be the last of the night. The petitions of John Jay and Helena Massa, Michael and Laurieanne Sarro, Newport Electric Construction and Bonnie Hole, Matthew Chase, and Mr. Mulligan will carry over to the regular Zoning Board of Review meeting of October 15, 2020.

**V.III. (R-10) Elizabeth Shearer and Harold Conner (Owner) Seek a Dimensional Variance for Side Yard Setback (Art. IV, Sec. B) to Construct a Carport Located at 47 Point Road (21 - 102).**

Elizabeth L. Shearer, 47 Point Road was sworn in on Zoom. Harold Conner, 47 Point Road was sworn in on Zoom.

Ms. Shearer said they would like to put an open carport in front of the house. There is no garage. They would need a 7’ side yard setback variance where 10’ is required. Otherwise, they meet the criteria.

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

Elizabeth Shearer and Harold Conner are before the Board with map 21, lot 102 seeking a **7’ dimensional variance** for a **side yard setback** for the purpose of constructing a carport.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
---	--	--------------------

**Mr. Borden**                      **Approve**                      **Not Applicable**                      **Not Applicable**

Mr. Borden said it was a reasonable request and to deny would amount to more than a mere

inconvenience, so he approved.

**Mr. Furriel**                      **Approve**                      **Not Applicable**                      **Not Applicable**

Mr. Furriel voted to approve the dimensional variance for reasons cited by Mr. Borden.

**Ms. Pavlakis**                      **Approve**                      **Not Applicable**                      **Not Applicable**

Ms. Pavlakis voted to approve the dimensional variance for reasons stated by Mr. Borden.

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

Mr. Raposa voted to approve the dimensional variance for reasons previously stated.

**Mr. Nott**                      **Approve**                      **Not Applicable**                      **Not Applicable**

The Chair voted to approve the dimensional variance for reasons stated by Mr. Borden.

A motion to adjourn was made by Mr. Borden and seconded by Ms. Pavlakis. The motion carried unanimously with Mr. Nott, Mr. Borden, Mr. Furriel, Ms. Pavlakis, Mr. Raposa, Ms. Horwitz and Mr. Wladyka voting in favor. The meeting adjourned at 9:55 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary

Approved: \_\_\_\_\_ Date: \_\_\_\_\_