



Town of Portsmouth

ZONING BOARD OF REVIEW
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(401) 683-3611

ZOOM MEETING

MINUTES

JULY 16, 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 (7:15 p.m.) and Mr. William Wladyka, Second Alternate

MEMBERS ABSENT: Ms. Sue Horwitz, First Alternate

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

II. MINUTES

III. CHAIRMAN'S REPORT

IV. OLD BUSINESS

IV.I. (R-10) Nelia Cunha (Owner) Seeks Dimensional Variances for Front and Rear Yard Setbacks and Lot Coverage (Art. IV, Sec. B) and a Special Use Permit to Construct an Attached Garage to an Existing Dwelling on a Nonconforming Lot of Record (Art. VI, Sec. A.4) Located at 121 Rhode Island Avenue (4 - 107).

Nelia Cunha, 121 Rhode Island Avenue, was sworn in on Zoom. Her son-in-law, Gary DaSilva, 55 Maize Corn Road, was present representing Ms. Cunha and was sworn in.

Ms. Cunha's property is located on a corner lot. Her lot is also a nonconforming lot of record. Mr. Nott asked how close the house is to the actual paved road. Mr. DaSilva guessed about 22 to 23 feet. Mr. Nott made a point that the chance of the town ever further developing the road was nil. The garage will be in line with the house, so will not encroach any further.

Mr. Nott walked Mr. DaSilva through the special use permit criteria.

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

Mr. Nott said Nelia Cunha is before the Board with map 4, lot 107 seeking an **8% lot coverage variance, a 9.3' front yard variance, an 8.2' rear yard variance, a 3.2' rear yard variance,** and a **special use permit** to construct an attached garage and relocate a deck on a nonconforming lot of record.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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Mr. Borden **Approve** **Approve** **Approve**

A garage is a reasonable accessory use to a dwelling. The petitioner has requested the least relief necessary by asking for a 15' x 15' garage. She is constrained by a corner lot and the setbacks required. 28% lot coverage is not excessive, and she has to ask relief for two front yard setbacks. It is the minimum relief required, I approve the dimensional variances requested, the special use permit as she met all the criteria for a substandard lot of record, and the lot coverage variance.

Mr. Furriel **Approve** **Approve** **Approve**

I vote to approve the dimensional variances, the special use permit, and the lot coverage for reasons cited by Mr. Borden.

Ms. Pavlakis **Approve** **Approve** **Approve**

I concur with Mr. Furriel and Mr. Borden and approve of the dimensional variances and special use permit for reasons previously stated.

Mr. Wladyka **Approve** **Approve** **Approve**

I concur for reasons previously stated and approve the dimensional variances and special use permit.

Mr. Nott **Approve** **Approve** **Approve**

The Chair concurs with Mr. Borden and votes to approve the dimensional variances and special use permit as well.

It was noted that Board Member Eric Raposa joined the meeting. (7:15 p.m.)

V. NEW BUSINESS

V.I. (R-20) Kyle Fay and Katherine Manning (Owners) Seek a Dimensional Variance for Side Yard Setback (Art. IV, Sec. B) and a Special Use Permit to Construct an Addition and Deck to an Existing Dwelling on a Nonconforming Lot of Record (Art. VI, Sec. A.4) Located at 314 Middle Road (45 - 26).

Kyle Fay, 314 Middle Road, was present representing himself and his wife. He said the addition complied with zoning, but the bulkhead did not. There is no other access to the basement. It is a substandard lot of record, so it needs a special use permit for construction as well. Mr. Nott reviewed the special use permit criteria and Mr. Fay testified it would meet all the special use criteria.

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

Kyle Fay and Katherine Manning are before the Board seeking a **3’2” dimensional variance** for a **side yard setback** to construct a bulkhead on map 45, lot 26 as well as a **special use permit**.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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Mr. Borden	Approve	Not Applicable	Approve
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This is a reasonable request to enjoy a residential use. It is extremely minimal. The bulkhead is minimal, and lot coverage is in compliance. The side yard on the south needs a 3’2” variance and it meets special use criteria for a substandard lot of record, so I approve.

Mr. Furriel	Approve	Not Applicable	Approve
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I approve the special use permit and the dimensional variance for reasons cited by Mr. Borden.

Ms. Pavlakis	Approve	Not Applicable	Approve
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I approve of the special use permit and the dimensional variance for reasons previously stated by Mr. Borden.

Mr. Raposa	Approve	Not Applicable	Approve
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For reasons previously stated, I approve both.

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

I approve of the two side yard setback variances and the special use permit for reasons previously stated.

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

The Chair approves the 1' and 1'7" dimensional variances for reasons previously stated by Mr. Borden and the special use permit I also approve as it meets all criteria.

V.III. (R-20) John Loud (Owners) Seeks a Dimensional Variance for Rear Yard Setback (Art. IV, Sec. B) and a Special Use Permit to Construct a Deck to an Existing Dwelling on a Nonconforming Lot of Record (Art. VI, Sec. A.4) Located at 30 Quail Road (18 - 29).

John F. Loud, 30 Quail Road, was sworn in on Zoom. Mr. Loud said the designer, Todd Thomas, is also present to speak.

Todd Thomas, 60 Riverside Avenue was sworn in. Mr. Thomas said Mr. Loud had to remove an existing older deck to shingle the house and the house is on a corner lot. Mr. Thomas told the Board that most homes in the area have decks and the reason they propose enlarging the deck is so it can be a screen room and they can then put things under the deck.

Mr. Nott went through the special use criteria with Mr. Thomas and he testified the deck would meet all criteria.

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

John Loud is before the Board with map 18, lot 28 seeking an **11.63' dimensional variance** for a **rear yard setback** and a **special use permit** for the purpose of constructing a deck that is part screen room.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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Mr. Borden **Approve** **Not Applicable** **Approve**

The request for a deck and screen room is a reasonable request and is a permanent accessory use. A variance of 11.63' still leaves almost 20' Decks are prevalent in the neighborhood. Regarding the special use permit, it is a substandard lot of record but it meets criteria and I approve.

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

I vote to approve the special use permit and dimensional variances for reasons cited by Mr. Borden.

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

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

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

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

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

The Chair approves the special use permit and dimensional variance. All homes in the area have decks. It's a reasonable request. To deny amounts to more than a mere inconvenience.

V.IV. (R-20) Paula Loscocco (Owner) Seeks a Dimensional Variance for Rear Yard Shed Placement Requirement (Art. IV, Sec. C.5) to Construct a 10' x 12' Storage Shed Located at 53 Baker Road (16 - 9).

Paula Loscocco, 53 Baker Road was sworn in on Zoom. Ms. Loscocco is the owner of map 16, lot 9, which is a substandard lot of record and she said she wants the shed in the front yard, not the rear.

Andrew DaSilva, Ms. Loscocco's husband, 53 Baker Road was sworn in on Zoom.

They said the old shed is to be removed. To them and their neighbors, the ocean side is their front yard and the street side is the back yard. All sheds in the area are located on the street side so they don't get in the way of the view.

Mr. Nott went through the special use permit criteria with Ms. Loscocco and she stated the petition would meet all the criteria.

The Chair called for abutters or interested parties. There were none on the Zoom meeting, but there were five abutter emails in the file. Mr. Nott read them out loud. The emails were from:

- Amanda Carr, 42 Baker Road
- Bill Collins, 37 Baker Road
- Beth Hebert-Silvia and George Silvia, 41 Baker Road
- Debra Bair, 33 Baker Road
- Rusty Stieff, 65 Baker Road

All emails were in favor of granting the relief.

Mr. Nott said Paula Loscocco is before the Board with map 16, lot 9 seeking a **dimensional variance** from the **requirement that a shed must be in the rear yard** and a **special use permit** for a substandard lot of record.

Dimensional Variance(s) - Allow Shed in Front Yard	Dimensional Variance - Lot Coverage	Special Use Permit
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Mr. Borden **Approve** **Not Applicable** **Approve**

It is an extremely reasonable request. All the sheds down there are in the front yard. It is amazing, her lot coverage is in compliance. It is more than reasonable to request a shed, she has no garage, no storage and no basement. So, I approve. She has met all the special use criteria and I vote to approve that at well.

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

I vote to approve the special use permit and the rear yard requirement for the shed for reasons given by Mr. Borden.

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

I concur with both of my colleagues and I approve the special use permit and the setback.

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

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

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

The Chair approves the special use permit and dimensional variance. To deny amounts to more than a mere inconvenience.

V.V. (R-20) Marc and Joanne Alboum (Owners) Seek Dimensional Variances for Rear Yard Setback and Lot Coverage (Art. IV Sec. B) to Construct a 12' x 14' Storage Shed Located at 93 Schooner Drive (23 - 97).

Marc and Joanne Alboum, 93 Schooner Drive, were both sworn in on Zoom. The Alboums would like to construct a 12' x 14' shed but they would like to place it only 10' from the rear property line rather

than the required 30' due to its size. The Alboums said they needed a 12' x 14' shed due to pool furniture and a number of additional items to store.

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

Mr. Nott said Marc and Joanne Alboum of map 23, lot 97 is before the Board seeking a **20' rear yard setback** to place a 12' x 14' shed.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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Mr. Borden **Approve** **Not Applicable** **Not Applicable**

I could make an argument either way, but I think it's reasonable. Is it the least relief necessary? An additional 48 square feet is a reasonable request. I don't think it's excessive. They don't have lot coverage excesses. It would be more than a mere inconvenience to deny, so I approve.

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

I vote to approve. The Zoning Ordinance may have not considered larger lot sizes with pools, etc., so I think the shed is reasonable.

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

I concur with Mr. Borden and Mr. Furriel and I vote to approve.

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

I vote to approve the dimensional variance for reasons previously stated by Mr. Furriel and Ms. Pavlakis.

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

The Chair could go either way, but the way the house is situated on the property with the septic system in the front so it pushes the house back – I will vote to approve. To deny amounts to more than a mere inconvenience.

The Chair called for a break at 8:11 p.m.

The Chair called the meeting back into order at 8:16 p.m.

V.VI. (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).

The Board attempted to locate the Burnetts on Zoom but were unsuccessful.

A motion was made by Mr. Borden and seconded by Mr. Furriel to continue the petition to the next regular meeting in August. The motion carried with Mr. Borden, Mr. Furriel, Ms. Pavlakis, Mr. Raposa and Mr. Nott voting in favor.

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

Chair Jim Nott recused himself from this petition as his son is an abutter and left the meeting. Mr. Borden assumed control of the Chair.

Matthew Gray, 87 Col. Christopher Greene Road was sworn in on Zoom. Mr. Gray is one of the owners of the LLC. Mr. Gray said they have had challenges with COVID, and the distribution business has shut down. They don't have an outdoor space at the Industrial Park, where the business is currently located.

He and TR McGrath are hoping to set up a Beer Garden with a special events license. This would include a main tent, a small prep tent, Hallman would provide port-a-potties, and McGrath would basically run much of the show and would even buy Ragged Island beer through Allen's Liquors. There would be no more than 5 hours of service for each event.

Meghan Kissell was sworn in and spoke. Her parents live at 24 Bristol Ferry Road, and she said their porch is in direct line of sight of the proposed toilets and prep tent. Not only that, but others would have a direct line of sight to know when her parents are home or not at home, so she felt it would be a safety issue. She asked about food odor, she wanted the prep tent moved and the port-a-potties moved out of sight, asked about amplified music, and wanted the Board to limit the number of people.

Mr. Gray said he spoke with Ms. Kissell's father the day before at length about the landscaping, which will be the same as previously discussed. There will be no amplified music. There is a seating plan, with no more than 96 per tent and 200 per day. Reservations are required online and there are no walk-ins allowed. Reservations will all be done through McGrath's professional team. There will be pop-up tents for social distancing, and there would be no food service in those tents, just beverages.

Ms. Kissell asked the Board not to approve the petition in its current form. Twice.

Noreen Kissell, 24 Bristol Ferry Road spoke and was concerned there would be other food trucks going to the property in the future. Mr. Gray said there were no plans for other food trucks at this time.

Additional details of the events:

- There will be no outside lights as these events will be held during daytime hours;
- Lights will be inside the tents only;
- There will be no amplified music;
- The food preparation tent will have walls;
- Port-a-potties are approximately 100 yards to the property line;
- There will be some odors from cooking;
- The events would be on Fridays, Saturdays and Sundays from July through September 2020;
- Proposed hours of operation are Friday 3-8 p.m., Saturday 3-8 p.m. and Sunday 1-6 p.m.; and,
- As it gets darker earlier in September, the events will close earlier so no one will be walking in the dark.

The Chair asked if there were any other abutters or interested parties. There were none.

Mr. Borden said Donovan Gray Distributing, LLC is seeking a **special use permit** to allow a Beer Garden on Fridays, Saturdays and Sundays from July through September 2020. Proposed hours of operation are Friday 3-8 p.m., Saturday 3-8 p.m. and Sunday 1-6 p.m.

Dimensional Variance(s) - Setback(s)	Dimensional Variance - Lot Coverage	Special Use Permit
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Mr. Furriel	Not Applicable	Not Applicable	Approve
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I vote to approve this petition. Through no fault of their own, COVID-19 has had an impact on their business and the requested is minimal relief. The impact on the neighbor is mitigated by distance and I am satisfied there will not be a detrimental impact on the neighborhood.

Ms. Pavlakis	Not Applicable	Not Applicable	Approve
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I agree 100% with Mr. Furriel, and I vote to approve. Be flexible and kind.

Mr. Raposa	Not Applicable	Not Applicable	Approve
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I agree with Ms. Pavlakis and Mr. Furriel. I would like to see this business succeed. I am looking forward to it. I vote to approve.

Mr. Wladyka	Not Applicable	Not Applicable	Approve
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I approve for reasons stated by Mr. Furriel.

Mr. Borden

Not Applicable

Not Applicable

Approve

I vote to approve. I understand the abutters' concerns, but they don't rise to the standards of a nuisance or a hazard. The petition has met the criterion for a special use permit. It is compatible with the Comprehensive Community Plan, particularly with COVID-19 going on.

A motion to adjourn was made by Mr. Furriel and seconded by Ms. Pavlakis. The motion carried unanimously with Mr. Borden, Mr. Furriel, Ms. Pavlakis, Mr. Raposa, and Mr. Wladyka voting in favor. The meeting adjourned at 9:05 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary

Approved: _____ Date: _____

DRAFT