



# Town of Portsmouth

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

(401) 683-3611

## JANUARY 17, 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, Vice-Chair called the meeting to order at 7:05 p.m. in the Town Council chambers.

### **I. MINUTES**

There were no minutes to approve.

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

Mr. Nott announced that after 20 years on the Zoning Board, Mr. Jamie Edwards has decided to take a break from the Board and resign. Mr. Nott wanted to publicly thank him and acknowledge what a great service he has done for the Town. He told the audience it is strictly a volunteer position and there are times where meetings can be two or three times a month. He said that he told Mr. Edwards that in a couple of years he would miss it being on the Board and would volunteer again.

Mr. Borden also wanted to publicly acknowledge his contribution to the Town of Portsmouth for so many years.

### **III. OFFICER ELECTION**

The election of officers was to be on the agenda anyway, so Mr. Nott opened the floor up for nominations for Chair.

A motion was made by Mr. Borden and seconded by Mr. Furriel to nominate James Nott for the position of Chair. Mr. Nott asked if there were any other nominations for Chair. Hearing none, the Board voted on the nomination of James Nott for Chair. The motion carried 5 – 0 with all in favor.

A motion was made by Mr. Furriel and seconded by Mr. Raposa to nominate John Borden for the position of Vice-Chair. Mr. Nott asked if there were any other nominations for Vice-Chair. Hearing none, the Board voted on the nomination of John Borden for Vice-Chair. The motion carried 5 – 0 with all in favor.

A motion was made by Mr. Nott and seconded by Mr. Borden to nominate Ben Furriel for the position of Secretary. Mr. Furriel said he would accept the nomination as long as the Board was aware he would miss a few meetings. That was acceptable with the Board. Mr. Nott asked if there were any other nominations for Secretary. Hearing none, the Board voted on the nomination of Ben Furriel for Secretary. The motion carried 5 – 0 with all in favor.

Mr. Nott now sat as Chair of the Board. Before beginning Old Business, he stated that Sean Beauchard, Esq. had sent an email requesting that New Business #6, 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. & 14.3) located at 1568 West Main Rd. (51-34D) be continued to the February 21, 2019 meeting. Mr. Nott read the email into the record.

A motion was made by Mr. Borden and seconded by Mr. Furriel to continue the petition of Global Partners LP to the regular Zoning Board meeting of February 21, 2019. The motion carried 5 – 0 with all in favor.

#### **IV. OLD BUSINESS**

1. (R-10) Peter Roberts (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 a 9 square foot chicken coop with a 95 square foot fenced-in chicken yard on a substandard lot of record (Art. VI, Sec. A.4) located at 80 Ormerod Avenue and 0 Mason Avenue (20-60 and 20-66).

Peter Roberts, 80 Ormerod Avenue was reminded he was still sworn in. Mr. Roberts brought in the buckets that he provided food and water for his chickens to demonstrate that no food or water spilled to draw any rodents. He also brought pictures. He testified that the chain link goes underground, and everything is closed off, locked up and safe. Mr. Roberts said these chickens are his wife's pets and reiterated there are no problems with his neighbors. He provided the Board with three pages of pictures of his coop and the chickens' food and water and another letter from abutter Lourdes Stahlhut, 77 Ormerod Avenue who does not have an objection to the chickens.

The Chair called for abutters or interested parties.

Donna Farrea, 86 Mason Avenue was sworn in. Ms. Farrea said she is across the street and her back yard faces his house. She faces the chicken coop all day and has never seen a rodent there. She has no objections to the chickens.

Theresa Binette, 82 Mason Avenue was sworn in. Ms. Bennett said she lives across the street from the coop and she sees no problem and has no objections to the chickens.

Jim McRoy, 114 Mason Avenue was sworn in. Mr. McRoy said he is the last house next to the playground. His hound dog cornered a fox. He put out green cubes of poison and killed three rats since November. This past summer there was a coyote in the back yard. The people behind him had chickens. He has seen rats, a fox, and coyotes and is concerned with that.

Marla Francis, 72 Ormerod Avenue was sworn in. Ms. Francis has no problems with the chickens. Ms. Francis said many people have trash pickup and she believes that may be what has changed in the

neighborhood and what is drawing rats, although she herself has not seen any rats. She thinks the chickens sound lovely.

Lindsay Hill, 59 Walnut Street was sworn in. Ms. Hill was opposed to the variance being granted because she has seen rats, coyotes and foxes, and is concerned with rabies. Also, to grandfather something in it has to be there for a long time. She said it is not fair to make others get rid of their chickens when the Roberts get to keep theirs. Animals are coming into the neighborhood now, drawn by the chickens, she believes, and the chickens may be safe, but she doesn't feel safe.

Denise Roberts, 80 Ormerod Avenue was sworn in. Ms. Roberts testified that they (she is Peter Roberts' daughter) moved back in 1997 and her grandfather was living at the property until he passed in 2002, so the house was not empty. She said the influx of vermin could be from dumpsters, open garages, and garbage and people should stop feeding wildlife.

Mr. Roberts had gotten form letters signed by his neighbors if they had no objection to him having chickens. The following signed form letters from neighbors/abutters were in the record from:

Marla Francis, 72 Ormerod Avenue who had no objection to the chickens.

Cynthia Wynegar, 88 Ormerod who had no objection to the chickens.

Stephen Alix, Sr., 74 Mason Avenue who had no objection to the chickens.

Teresa Binette, 82 Mason Avenue who had no objection to the chickens.

Donna Farrea, 86 Mason Avenue who had no objection to the chickens.

Albert Goddu, 92 Mason Avenue who had no objection to the chickens.

Letters were read into the record from:

Madeleine and John Pencak, 98 Mason Avenue, who testified at the hearing in December. The Pencaks are concerned with what the chickens are attracting, such as rats, coyotes and foxes, but especially rats and the diseases they spread. They object to the chickens.

Jim McRoy, 114 Mason Avenue who would like the request denied and the chickens removed.

Donna Roberts, 88 Ormerod Avenue was sworn in and discussed a fox picture where the fox attacked and caught a chicken from a neighbor. Ms. Roberts said the fox was interrupted by the picture taker and he didn't eat the entire chicken, so she took it home and disposed of the remainder.

Jen Weiffenbach, 88 Cottage Avenue was sworn in. Ms. Weiffenbach said she is a wildlife rehabilitator. Ms. Weiffenbach said she was impressed with the Robert's setup, especially the feeding bucket, and she is concerned with the human behavior going on here – poison doesn't just kill rodents. She said chicken eat mice and juvenile rats. Mice, rats and coyotes are drawn by trash and other human behaviors.

A motion was made by Mr. Borden and seconded by Mr. Raposa to close the hearing to further testimony. The motion carried 5 – 0 with all in favor.

Mr. Nott said that Peter Roberts, map 20, lots 60 and 66 are before the Board seeking a special use permit and dimensional variances to have a chicken coop and chickens.

Mr. Borden                    Deny/Deny:

We have heard pros and cons – this is a difficult petition. The special use permit criterion asks if granting the petition will alter the character of the neighborhood and will it have an adverse effect on the neighborhood. The Roberts have done everything in their power not to impact the neighbors. These chickens are pets to Mrs. Roberts. Unfortunately, due to some neighbors’ testimonies, and since the Board denied the Berman request last month, my concern is setting a precedent in an R-10 neighborhood. I have to deny both the special use permit and dimensional requests. Maybe you can relocate the chickens to Escobars Farm or to an R-40 zone.

Mr. Furriel                    Deny/Deny:

Mr. Roberts’ petition for dimensional variances in an R-10 zone shows he needs 50’ setback and he is asking for variances of 11 ½’ to 41’, which speaks to the small size of the lot. I appreciate all who came out to speak. The Roberts won’t be harmed if the chickens have to go, but neighbors feel they are harmed if the chickens stay. Coyotes will come due to the chickens. I deny.

Mr. Raposa                    Deny/Deny:

I agree with Mr. Borden and Mr. Furriel. They don’t belong in an R-10 and I deny.

Ms. Horwitz:                    Deny/Deny:

I deny for reasons previously stated.

Mr. Nott                        Deny/Deny:

I also deny. I sympathize with Mrs. Roberts and Mr. Roberts, you have gone out of your way to try to minimize the impact. We don’t make the rules. You are asking for a substantial request for a variance for the coop. I can’t say the coop caused the vermin problem but we’re not here about vermin – we are here to see if it’s a reasonable request and if it’s more than a mere inconvenience to deny. It is not.

## **V. NEW BUSINESS**

1. (R-40) John Stalkus (appellant) of 79 Mohawk Drive (68-94) appeals (Art. XIV Sec. B.1) the issuance of building permit number 18-544B for construction at 112 Indian Avenue (68-59).

Attorney Cort Chappell, Chappell & Chappell, 171 Chase Road was present representing the buyer. He said that everything has been worked out. Attorney Evan Leviss, 15 Old Beach Road, Newport, RI was present representing John Stalkus. Mr. Leviss said he is authorized to withdraw the petition with prejudice, which means “I’m not coming back to introduce this again.”

A motion was made by Mr. Borden and seconded by Mr. Raposa to accept the withdrawal of the petition with prejudice. The motion carried 5 – 0 with all in favor.

2. (R-20) Steve Simoni (owner) seeks 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 a one bedroom single family residence on a substandard lot of record (Art. VI, Sec. A.4) located at 0 Riverside Drive on Hog Island (69-17A).

Attorney Eric Chappell, Chappell & Chappell, 171 Chase Road was present representing Steve Simoni, applicant. Mr. Chappell said that unbeknownst to him prior to the November Zoning Board meeting, Mr. Simoni had told his neighbors not to bother coming to the meeting due to bad weather, so they are re-doing the petition from the beginning.

A motion was made by Mr. Borden and seconded by Mr. Raposa to rescind the prior approval and restart the petition. The motion carried 5 – 0 with all in favor.

Geralyn Small, Northeast Engineers, 55 John Clark Road, Middletown, RI 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 all in favor.

Petitioner Steve Simoni, 4209 Rosa Court, Dallas, TX 75220 was also sworn in.

Mr. Chappell presented Exhibit 1 to the Board, a plat map from the Town of Portsmouth of map 69. Exhibit 2 is the proposed lot layout with the proposed building, setbacks, well location and shed location.

Mr. Chappell said that Mr. Simoni owns the lot on map 69, lot 17A and is seeking three forms of relief from the Board: front and side yard setbacks, a variance to build on a lot where there is no public road, and a special use permit to build on a legal, non-conforming substandard lot of record. In 2002 the matter was before the Board, but the house was never built because his request for water was denied. In 2014 he had almost an identical situation. He has reduced the house and pulled it back to get it back from the flood line. The house is smaller than his neighbors' houses.

Ms. Small said that Mr. Simoni needs a private well, so they have designed a one-bedroom septic and they will use a composting system. With this type of system, it is required they have 100' between it and the well, but they only have 80' so they had to get relief from DEM. Ms. Small said she does not believe there will be any contamination, but if there were, it would be Mr. Simoni's well affected. Mr. Borden asked if the well water is tested and Mr. Chappell said that it is tested on purchase.

Mr. Simoni testified to the special use permit criteria. He said that the home would fit in with the neighborhood. He is requesting a 20.3' front yard setback. There is no fire department, so the home would not interfere. He does not need a lot coverage variance. He does plan on having solar panels and a generator, but the generator will conform to the noise ordinance, and about half of the homes on Hog Island have a generator because there is no electricity there.

Mr. Nott inquired about the septic issue and Ms. Small said the state looks at other well locations within 200' through the variance process.

The Chair called for abutters or interested parties.

Bruce Fairchild, 77 Water Street, Warren, RI was sworn in. Mr. Fairchild is the president of Hog Island, Inc., which is in charge of the property that is not platted. Mr. Fairchild said he believes there are arguments in place to reject the petition. He said he has not seen the architectural drawings, but he assumes the house will be similar to Mr. Simoni's other house, which is 35'. He knows this house will be a two-story house and assumes it will be the same height. He said that other homes in the area have a height restriction of 21' placed on them, which is not the Town's restriction, but is Hog Island, Inc.'s restriction. Although there is no requirement in Mr. Simoni's deed to restrict him to 21', Mr. Fairchild would like the Board to impose that requirement on Mr. Simoni. Mr. Fairchild also would like the Board to place a condition that, if approved, the house would not be brought forward to the 9.7' where the stairs are located in Mr. Simoni's proposed plan. The Chairman said the petition would need to be amended to change his variance request.

Mr. Nott read into the record letters in the file from abutters Dwight Coleman, owner of map 69, lot 178 and Sabino and Diane Romano, owners of lots 69-10 and 18, both of whom object against the variances requested by Mr. Simoni.

Mr. Chappell said Mr. Simoni would request that the Board allow him to amend the petition to remove his request for a variance on the north and increase the front yard variance to 21.3'. He will also stipulate that he will not build the house footprint larger than 20' x 25'.

Mr. Chappell gave the property tax cards for lots 17A and 17B. He thought that the home built on 17B looked taller than 21'. However, it was decided that 17B was probably lower than 21'.

A motion was made by Mr. Borden and seconded by Mr. Raposa to allow the petitioner to amend his petition so that he no longer seeks a front yard variance to the north. The motion carried 5 – 0 with all in favor.

Mr. Nott said that Steve Simoni, map 69, lot 17A is before the Board seeking a special use permit to construct a single-family home on a non-conforming lot of record, a 20.3' front yard setback variance on the south, and to build on a lot that does not front on a public way.

Mr. Borden                      Approve/Approve/Approve:

Regarding the special use permit, the petitioner has met all criterion – for light and air, access for the fire department, it is compatible with the neighborhood, and it will not be a nuisance or hazard. For the variance requested for not fronting on a public way, there are no publicly accepted roads on Hog Island, so I approve. Regarding the dimensional variance, one front yard variance of 20.3' on the south, he is constrained by the size of the lot, which is his hardship. The house will only be 500 square feet, that is a hardship. He had an expert in civil engineering come and testify about the composting toilet for a one-bedroom system. I approve.

Mr. Furriel                      Approve/Approve/Approve:

Mr. Borden explained the reasons for approving well. The owner is constrained by the size and geometry of the lot. He has gone to some lengths to meet zoning. Questions were raised regarding environmental damage and septic systems and wells and those questions have been answered by experts and the state

will review. I approve the special use permit and the dimensional variance as well.

Mr. Raposa                    Approve/Approve/Approve:

I approve. It was well put by Mr. Borden and Mr. Furriel.

Ms. Horwitz                   Approve/Approve/Approve:

I approve based on reasons given by Mr. Borden and Mr. Furriel.

Mr. Nott                        Approve/Approve/Approve:

The Chair agrees with his colleagues and approves based on reasons given by Mr. Borden and Mr. Furriel.

The Chair called for a five-minute recess at 8:40 p.m.

The Chair called the meeting back into order at 8:46 p.m.

Mr. Nott broke the agenda to have Attorney Cort Chappell address the Board on New Business 5., (R-20) Vince Agliata (applicant/owner) and Kathleen Pavlakis (owner), who 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). Mr. Chappell asked to continue this item to the regular meeting scheduled in February.

A motion was made by Mr. Borden and seconded by Mr. Raposa to continue the petition of Vince Agliata and Kathleen Pavlakis to the regular Zoning Board meeting of February 21, 2019. The motion carried 5 – 0 with all in favor.

3. (I-H) Newport Indoor Golf, LLC (applicant) and 1947 West Main, LLC (owner) seek a special use permit to operate a golf simulator facility (Art. V Sec. B.13) in a portion of an existing building located at 1947 West Main Road (50-1B).

Attorney Cort Chappell, Chappell & Chappell, 171 Chase Road was present representing both the applicant and the owner. Max Buerman, son of the owner of 1947 West Main, LLC, was sworn in.

Mr. Chappell said that the Newport Car Museum Building is a 110,000 square foot building located in a heavy industrial zone. Max has leased 4,500 square feet of the building. No variance is required, but a special use permit is needed because there is nothing in our zoning that addresses simulators. There are plenty of parking spaces; a total of 392 for the entire facility. The golf simulators are already up and running. Everything is inside. The Car Museum has car simulators already.

Mr. Chappell submitted Exhibit 1 to the Board, a layout showing the building with an area shaded in red that was proposed to be leased by 1947 West Main, LLC. Exhibit 2 is an area outlined in green that is shaped a little differently from the area in Exhibit 1, but is the space leased by Newport Indoor Golf. It is approximately 4,500 square feet and has an independent entrance. Newport Indoor Golf will share bathroom facilities with the Car Museum. The golf simulator shows high definition video of golf courses

throughout the world. When “playing,” you hit a ball into the screen, and it shows the ball “going” onto the green. The simulator tells you how you did. It is much more of a social event than actual golfing because you are only about a foot away from each other at all times. They assume 20 cars maximum at a time, so there is definitely enough parking, with 195 spaces available to Newport Indoor Golf. Regarding the special use criteria, there is nothing being built, it is a commercial activity in a heavy industrial zone, there will be no noise, smoke, or odors and there is easy traffic access already at the traffic light at Raytheon. For example, the Car Museum has been open for less than 17 months and over 51,000 people have gone through it without disruption to the area because there is a traffic signal. The addition of Indoor Golf will not be a hazard.

Mr. Chappell began discussing signage and the desire for an awning over the entrance door. Solicitor Gavin said that the agenda did not include any mention about signs and it could not be discussed. There was also no common signage plan included in the packet given to the Board members.

Exhibit 3 is a picture of the interior of the building and the exterior of the building showing the entrance for Newport Indoor Golf. Exhibit 4 is four pages of sign-related information for the Newport Car Museum, including one sign that is a combination sign for Newport Car Museum and Newport Indoor Golf, and a fifth page that shows rulers against bricks.

Mr. Nott told Mr. Chappell before they discussed signs, he would like to see what was approved for the Newport Car Museum, what has actually been done, any violations at the location, what Mr. Chappell is asking for now, and what he is planning to do to remediate any violations or changes from the approved signs.

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

Mr. Nott said that Newport Indoor Golf, LLC and 1947 West Main, LLC are seeking a special use permit to operate indoor golf simulators in a part of the building located at on map 50, lot 1B.

Mr. Borden                    Approve:

Regarding the special use permit for an indoor golf simulator facility, it meets all the criteria. There is no noise, smoke, or odors, and the Comprehensive Plan supports business development and growth. There is no reason not to approve, and I approve.

Mr. Raposa                   Approve:

I agree with Mr. Borden and I approve.

Mr. Furriel                   Approve:

I agree for reasons given by my colleagues.

Ms. Horwitz            Approve:

I agree with the others, and I approve.

Mr. Nott                Approve:

It will be an added attraction in Town, and I approve.

4. (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, 8 Russo Road was sworn in and was present representing Sydney Portsmouth. Mr. Boslego said that Sydney Portsmouth has leased the space from Subway and they would like to use the existing Subway sign's posts but turn the sign horizontal and place it towards the top of the posts. The square footage would remain the same, but the sign would allow for more visibility for vehicles traveling West Main Road and would still provide the needed advertising and location marking of the business.

According to the file, Subway never received a permit for the existing sign present on the property, and it is too large according to Portsmouth's ordinance. The Board discussed the allowable signage with Mr. Boslego.

After some discussion, Mr. Boslego asked the Board for a continuance to the next meeting of the Board in February so he could decide how he wanted to proceed.

A motion was made by Mr. Raposa and seconded by Mr. Borden to continue the petition of Sydney Portsmouth to the regular meeting in February. The motion carried 5 – 0 with all in favor.

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 10:05 p.m.

Respectfully submitted,

Barbara A. Ripa, Recording Secretary

Approved:  Date: March 21, 2019