



## TOWN OF PORTSMOUTH PLANNING BOARD

2200 East Main Road  
Portsmouth, RI 02871  
401-683-3717

### PORTSMOUTH PLANNING BOARD Regular Meeting January 11, 2023

**Members Present:** Edward Lopes, Luke Harding, David Garceau, Ryan Tibbetts, Kathleen Wilson, Chris O'Connell and Nora Kane-Daly

**Members Absent:** none

**Others Present:** Leon Lesinski, Administrative Officer, Portsmouth Planning Board, Lea Hitchen, Town Planner and Atty. Kevin Gavin, Town Solicitor

The Zoom meeting was called to order in the Town Council Chambers by Mr. Lopes at 7:00 p.m.

**1. Agenda Continuances/Modification:** none

**2. Approval of minutes for Planning Board meeting of November 9, 2022**

**MOTION:** Mr. Harding made a motion, seconded by Mr. Garceau, to approve the November 9, 2022 minutes. All in favor. So voted.

**3. Applicant: International MFG Services, Inc., Owners: Silvia Holdings, LLC, Terra Cotta Associates, LP and International MFG Services, Inc. - AP47-2A, AP 53-18J, AP53-18D and AP 53-18 (Schoolhouse Lane) - Request to merge existing lots and create easement plan by relocating property lines between the owners**

Mr. Tibbetts recused himself due to a minor business relationship with a family member of the applicants/owners.

Joseph Malo, P.E., Narragansett Engineering, Inc. 3102 East Main Road, Portsmouth, RI appeared to speak on the engineering aspects of the applicant.

Neil Hingorany, MS, PLS, Narragansett Engineering, Inc. 3102 East Main Road, Portsmouth, RI appeared via Zoom to explain the application, which is a request for an administrative subdivision in which two parties, International MFG Services, Inc. (IMS), (the Silvia family) and Terra Cotta Associates, LP (the Cotta family) are seeking a land swap in which IMS will gain a portion of AP53, Lot 18 from the Cotta's in order to facilitate the construction of a building addition to their manufacturing facility and the Cotta's will gain a portion of AP47, Lot 2A to construct an access roadway to Schoolhouse Lane, a state public road with connection to East Main Road. To conduct the swap, the three lots of record owned by IMS, AP47, Lot 2A, AP53, Lot 18J and

AP53, Lot 18D are merged and are all zoned light industrial, LI. Referring to the proposed plan, Mr. Hingorany highlighted the portions of land involved in the swap, which can be completed by right. Mr. Hingorany gave background information on the history and operations of IMF. Referring to Sheet C-101 of the proposed plan, he explained that the Cotta family intends to construct an access road to Schoolhouse Lane in the future. He noted that IMS will retain an easement over the proposed road which will be part of the future facility expansion roadway and parking plan. He noted that the existing access points to the IMS campus will remain unchanged. He also noted that the addition and expansion of the IMS facility will be presented in another application to the Planning Board and possibly to the Zoning Board of Review for approval of a special use permit. Mr. Hingorany explained that there is a 12.5+ square foot, dimensional non-conformity with the geometric standards of the proposed right-of-way at the northwest corner with Schoolhouse Lane, which requires relief. He explained that the roadway paving would conform with the town standards and that the plan indicates a 10-foot wide, green buffer along the western edge of the roadway for the residential abutters and a shifting of the roadway to the east as far as possible.

Mr. Malo stated that he successfully modeled the turning movements for all possible vehicles in the proposed roadway. He confirmed that the roadway meets all the town standards for layout. Mr. Hingorany explained that the proposed roadway edge is set back an appropriate distance from the abutters' driveway and that appropriate sight distances are also met with the layout.

In response to Mr. Lopes, referring to Sheet C-101 of the proposed plan, Mr. Hingorany explained how the swap provides sufficient land to support more than adequate parking and loading area for the future IMS facility expansion. Mr. Hingorany also stated that the buffer strip would be planted prior to the construction of the proposed road which requires RIDOT approval. Mr. Lopes called for public comment to which there was none in person or on Zoom.

**MOTION:** Mr. Harding made a motion, seconded by Ms. Wilson, to approve the administrative subdivision for the land swap and to approve the 12.5+ square foot, dimensional non-conformity with the geometric standards of the proposed right-of-way at the northwest corner with Schoolhouse Lane for *Applicant: International MFG Services, Inc., Owners: Silvia Holdings, LLC, Terra Cotta Associates, LP and International MFG Services, Inc. - AP47-2A, AP 53-18J, AP53-18D and AP 53-18 (Schoolhouse Lane)*. All in favor. So voted. Mr. Tibbetts abstaining.

**4. Applicant: Prescott Point, LLC, Owners: Prescott Point, LLC and Prescott Point Investor, LLC – AP55 Lot 1A (25476 West Main Road) - Request for Major modifications to the Final Plan Decision (Second Amendment) and the Development Agreement (Second Amendment)**

Atty. Jay Lynch, Moore, Virgadamo & Lynch, LTD, 97 John Clarke Road, Middletown, RI appeared representing the applicants with a request for a second amendment to the final plan decision and Development Agreement for the Prescott Point Planned Resort

Development located at 2547 West Main Road, Portsmouth, RI (with a portion in Middletown, RI.) He reviewed a “cheat sheet” that summarizes the requested modifications and variances outlined in his Narrative Report, which is attached to the application, as follows:

1. A modification to increase the building footprint for the remaining seventy-one (71) homes from 1,100 square feet to 1,800 square feet
2. A variance to increase the building height above natural grade from 35 feet to 50 feet due to the necessary soil remediation to take place on the site with the requirement that the proposed height of residential buildings will not exceed 35 feet above the finished grade
3. A modification to the Phasing Schedule outlined in the Development Agreement in which there are four remaining phases, 3, 4, 5, 6. Phases 5 and 6 are combined to show that the 18 single family units in Land Unit 7 and the 16 single family units in Land Unit 9 are constructed in the same phase
4. A variance for 8 lots, Lots 9-5 through 9-8, 9-14, 6-31, 6-32 and 6-33, for 55 foot building setback from the interior roadway
5. Relief in the Architectural Standards from “vinyl products not suitable” to “vinyl permitted”
6. Relief in the Architectural Standards for roof pitches from “8/12 to 15/12” to “5/12 to 15/12”, (\*not necessary should the Planning Board approve the variance to increase the building height above natural grade in #2.)

Atty. Lynch noted that the Design Review Board approved the use of vinyl products for certain elements but not for siding. The DRB in its advisory opinion, dated January 9, 2023, endorsed the standard use of wood clapboard siding or the alternative Hardy Board. Atty. Lynch also spoke on two letters from RIDEM. The first, dated January 9, 2023, pertains to an Environmental Land Use Restriction (ELUR) on a portion of the development property. The second, dated January 31, 2022, pertains to a non-conformance with the Insignificant Alteration Permit and the RIPDES permit. Atty. Lynch stated that Mr. Christopher Bicho, the project developer and Ms. Lyn Small, the project engineer will address these letters in their testimony.

Ms. Lyn Small, P.E., Northeast Engineers & Consultants, Inc., 6 Valley Road, Middletown, RI addressed the engineering aspects and issues pertinent to the development. She stated that the soil arsenic blending will result in the elevation of the grade and an increase in the size of the proposed houses. She reviewed the existing Wetlands Permit that she is working to alter to account for changes in the stormwater direction when the fill is added in the course of the blending. She emphasized that this submission does not change the drainage. With regard to the RIDEM letter of January 31, 2022, Ms. Small explained the erosion controls that failed and how they were fixed before the follow-up RIDEM inspection which was satisfactory and resulted in no instated violation. She noted that the Wetlands Permit for the increase in house size would never have been issued if the erosion control problems were not resolved to RIDEM’s satisfaction and serves as evidence that RIDEM does not have a pending violation with the Wetlands Program and the project site. Referring to the requested variance for the building setback, Ms. Small stated that the 8 lots and the road are

configured in a way that limits the homes meeting the 50-foot setback from the centerline of the roadway. She explained the soil blending necessary to meet the State's permissible arsenic levels, answering questions from the Planning Board members. She explained that the grading for the blending is being conducted to a worst-case scenario, which could result in the movement of upwards of 70,000 yards of soil. She stated that the intent is to conduct enough grading so as to make the lots appear uniform. She noted that the change in topography may be noticeable within the site but not from an off-site view.

With regard to the January 31, 2022 letter, Mr. Tibbetts asked Ms. Small if she had a letter or email from RIDEM stating that the project was not in violation with its erosion controls. Ms. Small said that she may have an email but noted that the Wetlands Permit, received the following May, supports that the project was in compliance with its issued permits. Mr. Tibbetts stated that he could be satisfied with correspondence from RIDEM that closes the erosion control matter.

In response to Mrs. Kane-Daly, Ms. Small could not provide the exact distance needed for the 50-foot setback from the roadway center for the 8 lots. She stated that the driveways must be deep enough for one to two cars and the houses will be at least 25 feet back. She noted that the building inspector signs off on the house location at an administrative level and there is no need to come back to the Planning Board after the variance approval. In response to Mr. Lopes, Ms. Small verified that the requested change to the building footprint does not affect the wastewater treatment design and that there is no increase in the number of bedrooms.

Christopher Bicho, Owner, Prescott Point, LLC, 96 Dianne Avenue, Portsmouth, RI explained that after the large assisted living facility concept was abandoned, the site was re-designed with housing lots and 1800 square foot building footprints. He explained that the request for the increase in building footprint allows for consistency with the constructed units in the front half of the development which are single story, 1800 to 2300 square foot homes. He noted that double car garages take up approximately 600 square feet and a second story will then yield about 1800 square feet of living space. He explained that RIDEM mandates that all soils in the blending must remain on site which forces the natural grade to rise about 10 to 11 feet and that the building heights will not be over 35 feet from the finished grade. He stated that the increase in the building height over the natural grade allows the retention of the higher roof pitch, consistent with the constructed units in the development. He explained that the combination of the last two construction phase allows for a broad selection of houses for buyers. With regard to the request for vinyl siding, Mr. Bicho noted that consumers are looking for maintenance free siding and that options for vinyl siding are of better quality and look than in the past. He noted that he is bound by the approval to include a number of Low to Moderate income (LMI) housing units in the development and to use Hardy board or wood siding is cost prohibitive. In response to questions and comments from Planning Board members, Mr. Bicho explained that the vinyl siding he is proposing is builder grade, similar to a Certain Teed product. He stated that he

provided the DRB the specification cut sheets for the proposed products but not samples of the products.

Mr. Bicho addressed the RIDEM letter of January 9, 2023 concerning the ELUR. Referring to item 2 of the letter, he explained that the public offering statements, which are required by state statute to be issued to all buyers, include notifications of the ELUR. He stated that these will be sent to RIDEM in the formal response to the letter. Referring to item 1a of the RIDEM letter, Mr. Bicho explained that 23 lots within the ELUR were sold to another construction firm who did not close out the remediation they completed at the time that they built houses on those lots. The necessary closure documentation will be sent to RIDEM in the response to the letter. Mr. Bicho stated that item 2b of the letter pertains to areas outside the ELUR upon which structures were built, one of which was constructed by his firm which rendered satisfactory arsenic soil test level results which will also be submitted to RIDEM. Mr. Bicho also explained that in 2016, his firm sold a parcel of land called Land Condominium Unit 3 on AP55, Lot 1A to West Main Partners, LLC, who built and sold 6 units on the parcel but failed to address and close out their remediation with RIDEM which they must do by February 8, 2023, according to the letter. He noted that Prescott Point, LLC is responsible for submitting the purchase and sales agreement with West Main Partners which is also included in Prescott Point, LLC's response to RIDEM.

Mr. Lynch presented a letter from RIDEM, dated May 18, 2022, for a Wetlands Insignificant Alteration Permit which he noted is subsequent to the RIDEM letter of January 31, 2022.

**MOTION:** Mr. Tibbetts made a motion, seconded by Ms. Wilson, to enter into the record as Exhibit 1, a letter from RIDEM to Prescott Point, LLC, dated May 18, 2022, which issues the Wetlands Insignificant Alteration Permit for the Prescott Point Development. All in favor. So voted

In response to Mrs. Kane-Daly, Atty. Lynch verified that the 7 LMI units referred to in the Development Agreement are slated for construction in the current Phases 6 and 7 which will be combined should the Planning Board approve the request. Mr. Bicho noted that he is required to hire a monitoring agent, as he previously has in other developments, to oversee the purchase compliance of the LMI units. He noted that the town building official has to enforce the Development Agreement and thus the construction of the LMI units.

Mr. Tibbetts and Mrs. Kane-Daly entered into a discussion with Mr. Bicho and Atty. Lynch regarding the remediation compliance issues outlined in both the RIDEM letters as to whether those issues could hold up Planning Board approval of the proposed amendments. Mr. Harding suggested that the approval could be conditional upon RIDEM's acceptance of the remediation.

In response to Mr. Garceau, Mr. Bicho verified that he has not yet used vinyl siding in the development. He noted that the extreme rise in the cost of wood shingles has precipitated the consideration of vinyl siding.

Frank Munro, Chairman, Portsmouth Design Review Board, 43 Attleboro Avenue, Portsmouth, RI noted that the current DRB membership has significant experience in the trades and are familiar with vinyl and Hardy Board siding products. He spoke on the merits of Hardy Board which the DRB endorses as a better look. He noted that Hardy Board is low maintenance. He highlighted projects in town that used vinyl siding and fall short in meeting design review standards. He noted that the DRB requested the soil reports in order to better understand the need for the variance for height. In response to Mr. Lopes, Mr. Munro stated that he is familiar with Certain Teed vinyl siding, noting that from a distance the product looks like wood but he concerned about vinyl siding blowing off during high winds and that the seams are visible. He said that the DRB is trying to hold to a standard that is met by Hardy Board. He confirmed that the DRB approves the proposed building materials listed in Item 2 of the advisory opinion. Mr. Lopes called for public comment.

Patricia Steele, 45 Freedom Trail Drive, Portsmouth, RI, resident of Prescott Point commented on the difficulties she and other residents have had with poorly constructed chimneys and the lack of monitoring of proper construction in the development.

Robert Steele, 45 Freedom Trail Drive, Portsmouth, RI, resident of Prescott Point made a lengthy comment in which he listed several concerns with the proposed amendment requests including number of bedrooms in the remaining homes, effect of school bus circulation throughout the private roads in the development, the condition of the bridge over the stream at the bottom of the development, the effect of the use of vinyl siding on property values, town enforcement of approved building sizes, alternative emergency vehicle access and general changes to the conceptual intent of the development. The Planning Board and Mr. Bicho responded to Mr. Steele's questions and concerns. Mr. Bicho noted that the bridge is maintained and inspected on a regular basis. He spoke on plans to have a gated emergency vehicle access installed off of Burma Road. He noted the current difficulties determining the size of the remaining units due to the unknown topography changes associated with the arsenic soil blending. He confirmed that the remaining units will not have more than 3 bedrooms. He confirmed that he is not involved in the first phase Homeowners Association or the problems with the chimneys in that phase.

Andrew Kelly, abutter, 200 Redwood Road, Portsmouth, RI expressed concern that development land between his home and the wastewater treatment plant could be clear cut to the stone wall behind his property. Mr. Bicho stated that the land referenced by Mr. Kelly is wetlands that is designated open space by a RIDEM covenant and cannot be clearcut or touched in any way. He also explained that the treatment plant is deemed in compliance by RIDEM inspection and that paperwork for phase 2 of the plant is underway. Mr. Bicho confirmed that the wastewater treatment is conducted in 8

underground tanks, with no associated odor output. As a former school committee member, Mr. Kelly commented that school buses will travel down private roads.

In response to Mr. Harding, Mr. Bicho confirmed that the town has a \$100,000 savings account to be used to construct a traffic light at the development intersection with West Main Road at the determination of RIDOT.

In the Zoom meeting, Brandon Ritt, abutter, 190 Redwood Road, Portsmouth, RI inquired as to whether there would be an increase in storm water run-off to the Redwood neighborhood associated with the increased elevation from the soil blending remediation. Ms. Small noted that peak run-off under proposed conditions cannot exceed that of existing conditions. She noted that the Redwood neighborhood is separated by a wetland from the land in the proposed phase of development and thus the two are not hydraulically connected. She also noted that arsenic is not soluble and once capped on site, will not move across land.

Mr. Lopes closed the public comment portion of the hearing.

Atty. Lynch argued that, under the Zoning Ordinance or the Planning regulations, there is no classification for major vs. minor modification. Referring to the ordinance section on "Change to Plan", Atty. Lynch further argued that the modification is a minor change to the original project. Mr. Harding argued that the requested increase in building footprint by 700 square feet is substantial. Atty. Lynch stated that the Development Agreement addresses building footprint and not square footage of living space and that the development plan limits the number bedrooms, the building height and roof pitch. In response to Mr. Harding's reference to an original 600 square foot footprint, Atty. Lynch argued that that limit was never set under the current development plan and that an 1100 square foot footprint is the starting point.

Mr. Bicho reviewed the approval process for the remediation plan and noted that the remediation could take years to complete.

After some discussion on the appropriateness of acting on the amendment modification requests and seeking advice from Atty. Gavin, the Planning Board made the following motion:

**MOTION:** Mr. Tibbetts made a motion, seconded by Mr. Harding to approve the modifications to the Final Plan Decision (Second Amendment) and the Development Agreement (Second Amendment) for Applicant: Prescott Point, LLC, Owners: Prescott Point, LLC and Prescott Point Investor, LLC – AP55 Lot 1A (25476 West Main Road), subject to the response from RIDEM demonstrating compliance with the remediation regulations and other permits notwithstanding, according to a list of said modifications presented by the applicant's attorney with the removal of the request to permit vinyl siding under the Architectural Standards so as to comply with the Design Review Board recommendations and with the removal of the request to permit a 5/12 to 15/12 roof

pitch under the Architectural Standards as deemed unnecessary, resulting in the approval of the following modifications:

1. A modification to increase the building footprint, for the remaining seventy-one (71) homes from 1,100 square feet to 1,800 square feet.
2. A variance to increase the building height above natural grade from 35 feet to 50 feet due to the necessary soil remediation to take place on the site with the requirement that the proposed height of residential buildings will not exceed 35 feet above the finished grade
3. A modification to the Phasing Schedule outlined in the Development Agreement to which there are four remaining phases, 3, 4, 5, 6. Phases 5 and 6 are combined to show that the 18 single family units in Land Unit 7 and the 16 single family units in Land Unit 9 are constructed in the same phase. The 7 LMI units shall also be constructed during said phase
4. A variance for 8 lots, Lots 9-5 through 9-8, 9-14, 6-31, 6-32 and 6-33, for building setback from the interior roadway, which shall be no closer than 35 feet to the interior roadway.

And further in consideration of the findings of facts, the approved modifications do not impair the public benefit or the mitigations provided under the original plan and that the benefits provided remain equal to those originally approved. All in favor. So voted.

**5. Discuss process for approving and recording written Planning Board Decisions (past and future practice)**

**MOTION:** Ms. Wilson made a motion, seconded by Mr. Harding to continue Agenda item 5, *Discuss process for approving and recording written Planning Board Decisions (past and future practice)* to the February 8, 2023 regular meeting. All in favor. So voted.

**6. Approve January 11, 2022 Monthly Project Status Report, Administrative Subdivisions, Plat Plan Recording and status of new road construction.**

**MOTION:** Mr. Garceau made a motion, seconded by Mr. Harding, to accept and place on file the November 9, 2022 Monthly Project Status Report, Administrative Subdivision, Plat Plan Recording and status of new road construction. All in favor. So voted.

At 9:36 p.m., a motion was duly made and seconded to adjourn the meeting. All in favor. So voted.

Respectfully submitted:  
Dede Walsh  
Recording Secretary for:

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Leon Lesinski  
Administrative Office



