



**Town of Portsmouth**  
Zoning Board of Review  
2200 East Main Road/Portsmouth, Rhode Island 02871  
www.portsmouthri.gov

**FEBRUARY 16, 2023**

**MEMBERS PRESENT:** Vice Chairman John G. Borden, Secretary Benjamin Furriel, Sue Horwitz, Kevin Donovan, and Langdon Harris.

**MEMBERS ABSENT:** Chairman James Nott

**OTHERS PRESENT:** Aaron Lindo, Assistant Town Planner; Kevin Gavin, Town Solicitor; Teresa Monterey, Recording Secretary

**I. ROLL CALL**

Mr. Borden, as acting chair, called for a roll call and the Board members introduced themselves.

**II. MINUTES**

No minutes were prepared for approval.

**III. CHAIRMAN'S REPORT**

1. The Narragansett Electric Company (applicant) for Aquidneck Island Gas Reliability Project at 111 Old Mill Lane; being Tax Assessor's Map 68 Lot 74 (Zoned Residential, R-40). At the direction of the Rhode Island Energy Facilities Siting Board, the applicant is seeking an advisory opinion for a Special Use Permit for the mobilization of liquid natural gas equipment to support the natural gas supply to Aquidneck Island. The applicant has requested a new date be set for the hearing to acquire additional information regarding noise. The Board is asked to set a date in February for when the item is to be heard.

Staff commented that the applicant would not be ready to present their application in March and advised the Board to schedule a date to hear the application at the March meeting.

**IV. OLD BUSINESS**

1. Shull Architecture (applicant) for Judith Smith (owner) for property located at 216 Common Fence Blvd; being Tax Assessor's Map 3 Lot 80 (Zoned Residential, R-10). The Applicant seeks a Dimensional Variance (Article IV, B) and a Special Use Permit (Article VII, A1(c)) for an addition on a substandard lot of record.

Members participating in the decision were Vice Chairman John G. Borden, Secretary Benjamin Furriel, Sue Horwitz, C. Kevin Donovan, and Langdon Harris. Mr. Borden chaired the hearing (in Chairman Nott's absence).

The Board heard the testimony of Brian Shull, the architect for the property owner Judith Smith, and considered the exhibits submitted with the petition and during the course of the hearing. No objectors were heard.

Mr. Shull explained that petitioner seeks to enlarge her existing home by constructing a two-story addition to the rear of the structure that enlarges both a small existing dining room and a small existing bedroom. The lot is 4,314 SF in size and nonconforming. The proposed addition will increase the existing lot coverage by 3% and bring the total lot coverage up to 35%.

It was noted that because the lot is a substandard lot of record, petitioner would have to meet special use criteria under Article VI, Section A.4 in order to obtain dimensional relief. The Chair elicited testimony from Mr. Shull addressing all applicable special use criteria.

The Board considered the petition and, based on the testimony and documents presented, found that the request for dimensional relief was reasonable under the circumstances. Petitioner is constrained by small lot size, and the additional lot coverage requested is moderate. The Board determined that the proposal would have no negative impact on any abutters or the neighborhood. The Board determined that petitioner had requested the minimum relief necessary and that the hardship that necessitated the request for relief was not the result of prior action of petitioner but was due to the unique characteristics of the land and structures in question. The Board determined that granting the requested relief would not alter the general character of the surrounding area or impair the purpose or intent of the ordinance or the Comprehensive Community Plan, and that denial of the relief requested would result in more than a mere inconvenience to petitioner.

With regard to the request for a special use permit, the Board considered the criteria of Article VI, Section A. 4 and determined that the proposal would allow adequate space for fire protection and adequate light and air between buildings, would not alter the character of the neighborhood or adversely affect neighboring property, would not create lot coverage that is more, or setbacks that are less, than the average of adjacent properties, and would not impose any substantial detriment to the public or to immediate neighbors.

Accordingly, the Board voted unanimously to grant petitioner a 15% lot coverage variance to construct a two-story addition in accordance with the plans as submitted.

VOTE: 5 - 0 in favor of approval of the application.

## **V. NEW BUSINESS**

1. Glenn Smith (applicant) for Jennifer Viveiros (owner) for property located at 341 Union Street; being Tax Assessor's Map 57 Lot 20 (Zoned Residential, R-20). The Applicant seeks a Dimensional Variance for a second curb opening in a traffic sensitive overlay district (Article 3, Sec. G(3)a).

Members participating in the decision were Vice Chairman John G. Borden, Secretary Benjamin Furriel, Sue Horwitz, C. Kevin Donovan, and Langdon Harris. Mr. Borden chaired the hearing (in Chairman Nott's absence).

The Board heard the testimony of Glenn Smith, the contractor for the property owner Jennifer Viveiros, and considered the exhibits submitted with the petition. No objectors were heard.

Mr. Smith explained the application, as summarized in his letter which accompanied the petition. He is currently in the process of completing a single-family home which will be occupied by the owner Jennifer Viveiros, her husband and two children, as well as her parents. Ms. Viveiros' father is disabled and must use a walker and a wheelchair to get around and will eventually be confined to a wheelchair due to his medical conditions. The existing driveway allows for only two vehicles to navigate safely in and out of the property without having to back out onto Union Street. Upon moving into the new home, there will be the need to accommodate four vehicles, two for her and her husband, one for her parents, and one for their oldest son. Petitioners wish to build a circular driveway and create a second curb cut onto Union Street to allow for an additional means of vehicular access to and from the property. This will allow for at least two of the vehicles to park on the circular driveway and keep the main driveway accessible for emergency vehicles to pull up to the handicap ramp in the front of the house should the need arise. Union Street is within the traffic sensitive district which allows only a single curb cut for each lot and, therefore, a variance is needed. Mr. Smith noted that there currently are five properties on Union Street that have two curb cuts.

The Board considered the petition and, based on the testimony and documents presented, found that the request for dimensional relief was reasonable under the circumstances. Petitioner established valid safety concerns and the proposal would enhance traffic safety. The Board determined that petitioners had requested the minimum relief necessary and that the hardship that necessitated the request for relief was not the result of prior action of petitioners but was due to the unique characteristics of the land and structures in question. The Board found that other properties in the area have a second curb cut. The Board determined that granting the requested relief would not alter the general character of the surrounding area or impair the purpose or intent of the ordinance or the Comprehensive Community Plan, and that denial of the relief requested would result in more than a mere inconvenience to petitioners.

Accordingly, the Board voted unanimously to grant petitioners a dimensional variance to allow a second curb cut in a traffic sensitive district, in accordance with the plans as submitted.

VOTE: 5 - 0 in favor of approval of the application.

2. 76 Summit, LLC (applicant and owner) for property located at 76 Summit Road; being Tax Assessor's Map 2 Lot 138 (Zoned Residential, R-10). The Applicant seeks a Dimensional Variance (Article IV, B) and a Special Use Permit (Article VII, A1(c)) to rebuild and enlarge a single-family dwelling in the rear setback on a substandard lot of record.

Petitioner was represented by Richard P. D'Addario, Esquire. Members participating in the decision were Vice Chairman John G. Borden, Secretary Benjamin Furriel, Sue Horwitz, C. Kevin Donovan, and Langdon Harris. Mr. Borden chaired the hearing (in Chairman Nott's absence).

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The Board heard the presentation of Mr. D'Addario and testimony of Marek Chilomer, owner of 76 Summit, LLC (the property owner) and Jeff Moniz of 2Hands Studio, the project architect, and considered the exhibits submitted with the petition and during the course of the hearing. No objectors were heard.

Mr. Chilomer testified that the existing house on the lot was substantially destroyed by a fire in January 2022. Petitioner purchased the property in June 2022 and seeks to rebuild a home on the existing foundation and footprint. The lot size is substandard with 5,200 SF of area in an R-10 district. The foundation and proposed structure are located on the rear lot line and a 20' rear yard setback variance is therefore required. The abutting lot to the rear is also owned by petitioner. Mr. Chilomer stated that there is a rock behind the rear lot line that cannot be built on.

There was considerable discussion among board members, including Ms. Horwitz who is an **architect by profession, that the proposed home exceeded 2½ stories, the maximum allowed** under the ordinance. Mr. Moniz answered questions from the Board and attempted to clarify the building design. The Board voted 4-1 (with Ms. Horwitz opposed) to allow petitioner to amend **the application to limit the home to no more than 2½ stories. Ms. Horwitz stated that she would need to see actual revised drawings.**

It was noted that because the lot is a substandard lot of record, petitioner would have to meet special use criteria under Article VI, Section A.4 in order to obtain dimensional relief. The Chair elicited testimony from Mr. Moniz addressing all applicable special use criteria.

The Board voted to impose the following conditions on any grant of dimensional variance:

1. The basement level must be unfinished and have no bathroom, and used only for storage and mechanical equipment; and
2. The third floor must have a maximum of 4-foot walls, in accordance with definition of a half-story under the ordinance.

After closing argument by Mr. D'Addario, the Board considered the petition and, based on the testimony and documents presented, voted 4-1 to deny the amended petition for dimensional relief because of the issues and concerns over the number of stories. Mr. Borden voted to approve based on the two conditions imposed by the Board.

After further discussion, the Board voted 4-1 (with Ms. Horwitz opposed) to reconsider the petition and re-vote solely on the request for a 20' rear yard setback variance to rebuild a structure on the same footprint and foundation, without considering the issues involving the number of stories. The members voting to approve found that the request for dimensional relief was reasonable under the circumstances. The Board found that because the prior structure was substantially destroyed by fire, petitioner had a right under the ordinance to rebuild on the same footprint. The Board determined that the proposal would have no negative impact on any abutters or the neighborhood. The Board determined that petitioner had requested the minimum relief necessary and that the hardship that necessitated the request for relief was not the result of prior action of petitioner but was due to the unique characteristics of the land and structures in question. The Board determined that granting the requested setback relief would not alter the general character of the surrounding area or impair the purpose or intent of the ordinance or the Comprehensive Community Plan, and that denial of the relief requested would result in more than a mere inconvenience to petitioner.

With regard to the request for a special use permit, the Board considered the criteria of Article VI, Section A. 4 and determined that the proposal would allow adequate space for fire protection and adequate light and air between buildings, would not alter the character of the neighborhood or adversely affect neighboring property, would not create lot coverage that is more, or setbacks that are less, than the average of adjacent properties, and would not impose any substantial detriment to the public or to immediate neighbors.

Accordingly, the Board voted 4-1 to grant petitioner a 20' setback variance to reconstruct a home on the same footprint and foundation of the previous structure that was destroyed by fire.

VOTE: 4 - 1 in favor of approval of the application, with Ms. Horowitz dissenting.

3. Gary and Kerry Hahn (applicants and owners) for property located at 41 Arrowhead Lane; being Tax Assessor's Map 12 Lot 84 (Zoned Residential, R-20). The Applicant seeks a Dimensional Variance (Article IV, B) and a Special Use Permit (Article VII, A1(c)) to construct an addition to an existing dwelling on a nonconforming lot of record. The Applicant had received approval for this modification in July 2020, but the decision expired.

Members participating in the decision were Vice Chairman John G. Borden, Secretary Benjamin Furriel, Sue Horwitz, C. Kevin Donovan, and Langdon Harris. Mr. Borden chaired the hearing (in Chairman Nott's absence).

The Board heard the testimony of petitioner Gary Hahn and considered the exhibits submitted with the petition. No objectors were heard.

Petitioner explained that they wished to construct an addition on the rear of their home to provide additional needed living space. The addition will go straight back in line with the existing side yard setbacks. There will be no further encroachment. The lot size is 15,246 SF in an R-20 district. They were granted approval in July 2020, but their permit expired. They are no longer seeking setback relief to the north side, which was previously approved.

It was noted that because the lot is a substandard lot of record, petitioners would have to meet special use criteria under Article VI, Section A.4 in order to obtain dimensional relief. The Chairman elicited testimony from petitioner addressing all applicable special use criteria.

The Board considered the petition and found that the request for dimensional relief was reasonable and not excessive under the circumstances. Petitioners are constrained by the nonconforming lot size and the location of the existing house. There will be no further encroachment into either of the side setbacks. The requested setback variance was previously granted in July 2020 but has expired. The Board found that the proposal will have no negative impact on any abutters or the neighborhood. The Board determined that petitioners had requested the minimum relief necessary and that the hardship that necessitated the request for relief was not the result of prior action of petitioners but was due to the unique characteristics of the land and structures in question. The Board determined that granting the requested relief would not alter the general character of the surrounding area or impair the purpose or intent of the ordinance or the Comprehensive Community Plan, and that denial of the relief requested would result in more than a mere inconvenience to petitioners.

With regard to the request for a special use permit, the Board considered the criteria of Article VI, Section A. 4 and determined that the proposal would allow adequate space for fire protection

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and adequate light and air between buildings, would not alter the character of the neighborhood or adversely affect neighboring property, would not create lot coverage that is more, or setbacks that are less, than the average of adjacent properties, and would not impose any substantial detriment to the public or to immediate neighbors.

Accordingly, the Board voted unanimously to grant petitioners a 1', 0" side yard setback variance to the south, and a special use permit, to build the proposed addition in accordance with the plans as submitted.

VOTE: 5 - 0 in favor of approval of the application.

A motion to adjourn was made by Mr. Furriel to adjourn and was seconded by Mr. Harris. The meeting was adjourned at 8:10 PM.

Minutes respectfully submitted by Aaron Lindo, Assistant Town Planner. Please contact the Planning Department for further information.