

Town of Portsmouth  
Zoning Board of Review  
2200 East Main Road, Portsmouth, Rhode Island 02871  
[www.portsmouthri.com](http://www.portsmouthri.com)

**ZBR MINUTES APRIL 20, 2023**

**MEMBERS PRESENT** : Mr. James Nott, Chair; Vice Chairman John G. Borden, Mr. Eric Raposa, Ms. Sue Horwitz, and Mr. Charles Kevin Donovan.

**MEMBERS ABSENT** : Mr. Benjamin Furriel and Mr. Langdon Harris.

**OTHERS PRESENT** : Town Solicitor Kevin Gavin was present as Legal Counsel for the Board, Aaron Lindo, Assistant Town Planner, and Teresa Monterey as Recording Secretary.

Mr. Nott called the meeting to order at 7:02 PM in the Town Council Chambers.

**1. Minutes**

Minutes were not available for approval.

**2. Chairman Report**

No update to provide.

**3. Old Business**

- a. James And Kathryn Barry (Applicants And Owners) For Property Located At 0 Anthony Road; Being Tax Assessor's Map 1 Lot 19 (Zoned Residential, R-10). The Applicant Seeks Dimensional Variances (Article IV, Section B, Article VI, Section A(4)) To Construct A New Single-Family Dwelling Unit On A Pre-Existing, Non-Conforming Vacant Lot Of Record.

Members participating in the decision were Chairman James E. Nott, Vice Chairman John G. Borden, Eric Raposa, Sue Horwitz, and C. Kevin Donovan.

The Applicant was represented by Cort B. Chappell, Esquire and testimony was provided by Neal Hingorany of Narragansett Engineering in support of the application, and considered the exhibits and materials submitted with the petition.

Mr. Chappell explained that the subject property is a very small 2,105 SF substandard lot. The property is taxed as a buildable lot. Mr. Chappell explained that petitioners were proposing as small a house as possible with as small a septic system as allowed. He noted that the front yard setback variance actually needed for this proposal was 1', based on the average front setbacks of the adjacent properties, rather than the 12.1' setback relief as stated in the petition. The Board voted to accept Neal Hingorany as an expert witness. Mr. Hingorany testified as to the average setbacks and the front setback relief required. The Board voted unanimously to allow petitioners to modify their application to request a 1' front yard setback variance. Mr. Hingorany further testified regarding the rear and side yard setback relief and the lot coverage variance that were needed. He testified there would be a 24' x 4' rear patio at grade level, and he noted that rear yard abuts vacant land owned by the Common Fence Point Improvement Association.

It was noted that because the lot is a substandard lot of record, petitioner would have to meet additional criteria under Article VI, Section A.4 in order to obtain dimensional relief. Mr. Chappell elicited testimony from Mr. Hingorany which addressed all applicable criteria.

The Chair asked if any abutters or interested parties wished to be heard. The following individuals opposed the petition and asserted that the property was too small and should not be considered a buildable lot: George Bishop, 1265 Anthony Road; Melissa Santaniello, 1271 Anthony Road; Kenneth Read, 1271 Anthony Road; Deborah O'Hara, 1278 Anthony Road; and Kevin Weinfeld, 1250 Anthony Road. Mr. Donovan noted there also was a letter received from Cathy Singer, 1282 Anthony Road, objecting to the petition.

The Board considered the petition and, based on the testimony and documents presented, found that the requests for dimensional relief were reasonable and not excessive under the circumstances. The Board

determined that the lot is a legally existing substandard lot of record, and petitioners have a right to build on their property. Petitioners are constrained by the very small lot size of 2,102 SF. The Board determined that the proposal would 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. The Board further determined that all applicable criteria under Article VI, Section A.4 for dimensional variances on a substandard lot of record were satisfied.

Motion by Mr. Borden to grant petitioners a 1' front yard setback variance, a 2.7' side yard setback variance to the south, a 17' rear yard setback variance, and a 13.1% lot coverage variance, to construct a new single-family home with an 8' x 20' deck in accordance with the plans as submitted. Seconded by Mr. Donovan.

VOTE: 5 - 0.

#### **4. New Business**

- a. Nathan Tilman (Applicant And Owner) For Property Located At 2765 East Main Road; Being Tax Assessor's Map 34 Lot 27 (Zoned Commercial, C). The Applicant Seeks A Special Use Permit (Article VII, Section A(1)(C)) To Construct An Addition To A Building On A Substandard Lot Of Record. The Applicant Is Also Seeking Dimensional Variances For Lot Coverage And Parking (Article IV, Section B; Article IX, Section A(3)(A)).

Members participating in the decision were Chairman James E. Nott, Vice Chairman John G. Borden, Sue Horwitz, Eric Raposa, and C. Kevin Donovan.

The Board heard testimony of petitioner, Nathan Tilman, DDS, owner of Portsmouth Dental Associates, and considered the exhibits and materials submitted with the petition. No objectors were heard.

Petitioner testified that he seeks to remove an existing garage and build a 755 SF addition to allow space for an increased business office and dental treatment rooms. The net increase in lot coverage will be 297 SF or 2.8%, bringing the total lot coverage to 61.7%, which requires a 36.7% lot coverage variance. With the addition, the ordinance requires twelve parking spaces, but the lot size can only accommodate eleven spaces. Petitioner explained that the nature of the dental practice is such that eleven parking spaces is sufficient. There is an agreement with the neighbor at 2743 East Main Road to allow four spaces for shared parking. Petitioner requests a variance from the parking requirements to allow eleven parking spaces.

The Chair elicited testimony from petitioner regarding the items to be considered in granting a special use permit pursuant to Article VII, Section A.5 (a) through (j). It was also noted that because the lot is a substandard lot of record, petitioner would have to meet the criteria under Article VI, Section A.4 in order to obtain dimensional relief. The Chair elicited testimony from petitioner addressing all applicable criteria.

The Board considered the petition and, based on the testimony and documents presented, found that the requests for dimensional relief were reasonable. The Board determined that petitioner is constrained by the substandard size and configuration of the lot. The Board found that the additional lot coverage is minimal, and eleven parking spaces was sufficient under the circumstances presented. 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.

The Board further determined that petitioner met all applicable criteria under Article VI, Section A.5 (a) through (j) for a special use permit. The Board concluded that the proposed use will not be detrimental to the

surrounding area; that it will be compatible with neighboring land uses; that it will not create a nuisance or a hazard in the neighborhood; that adequate protection is afforded to the surrounding property by the use of open space and planting; that safe vehicular access and adequate parking are provided; control or noise, smoke, odors, lighting and any other objectionable feature is provided; that solar rights of abutters are not impacted; that the proposed use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town of Portsmouth and that the health, safety and welfare of the community are protected. The Board further found that all applicable criteria under Article VI, Section A.4 for dimensional variances on a substandard lot of record were satisfied.

Motion by Mr. Borden to grant petitioner the requested 36.7% lot coverage variance and the variance from the parking requirements to allow for eleven parking spaces, and a special use permit, to construction of an addition to a commercial building in accordance with the plans as submitted. Seconded by Mr. Raposa.

VOTE: 5 - 0.

- b. David Martland (Applicant) Representing Justin Tisdale And Courtney Garvey (Owners) For Property Located At 57 Cedar Avenue; Being Tax Assessor's Map 21 Lot 37 (Zoned Residential, R-10). The Applicant Seeks A Special Use Permit (Article VII, Section A(1)(C)) And Dimensional Variances (Article IV, Section B) To Construct A Deck Over Two Existing Patios On A Substandard Lot Of Record.

Members participating in the decision were Chairman James E. Nott, Vice Chairman John G. Borden, Eric Raposa, Sue Horwitz, and C. Kevin Donovan.

Petitioners were represented by David Martland, Esquire. The Board heard the presentation from Mr. Martland and considered the exhibits and materials submitted with the petition. No objectors were heard.

Mr. Martland explained that the proposed deck is no larger than the current patios and there will be no further encroachment into the setbacks. The lot is very small with 2,522 SF. He noted that the proposal is also subject to CRMC review and approval.

It was noted that the proposal needed a special use permit under Article VII, Section A.1(c) because it would enlarge a structure on a substandard lot. Petitioners would also have to meet the criteria under Article VI, Section A.4 in order to obtain dimensional relief on a substandard. The Chair elicited testimony from petitioner addressing the applicable criteria.

The Board considered the petition and based on the evidence presented, found that the requests for dimensional relief were reasonable and not excessive. The Board determined that petitioners are constrained by the substandard size and configuration of the lot. The Board found that the additional lot coverage is minimal and there will be no further encroachment into the setback areas. The Board determined that the proposal would 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.

The Board further determined that petitioners met all applicable criteria under Article VI, Section A.5 (a) through (j) for a special use permit. The Board concluded that the proposed use will not be detrimental to the surrounding area; that it will be compatible with neighboring land uses; that it will not create a nuisance or a hazard in the neighborhood; that adequate protection is afforded to the surrounding property by the use of open space and planting; that safe vehicular access and adequate parking are provided; control or noise, smoke, odors, lighting and any other objectionable feature is provided; that solar rights of abutters are not impacted; that the proposed use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town of Portsmouth and that the health, safety and welfare of the community are protected. The Board further found that all applicable criteria under Article VI, Section A.4 for dimensional variances on a substandard lot of record were satisfied.

Motion by Mr. Borden to grant petitioner a 20' rear yard setback variance, an 8' side yard setback variance to the south, a 24.53% lot coverage variance, and a special use permit, to construct the proposed deck on a substandard lot in accordance with the plans as submitted. Seconded by Ms. Horwitz.

VOTE: 5 - 0.

- c. Eric And Elizabeth Shealy (Applicants And Owners) For Property Located At 902 Wapping Road; Being Tax Assessor's Map 67 Lot 67A (Zoned Residential, R-40). The Applicant Seeks A Special Use Permit (Article VI, Section C(1)) To Alter An Existing Structure Devoted To A Non-Conforming Use.

Members participating in the decision were Chairman James E. Nott, Vice Chairman John G. Borden, Eric Raposa, Sue Horwitz, and C. Kevin Donovan.

Petitioners were represented by Cort B. Chappell, Esquire and testimony of petitioner Eric Shealy, and considered the exhibits and materials submitted with the petition. No objectors were heard.

Mr. Chappell explained that petitioners wished to renovate and enlarge an existing cottage on their property. The lot size is 217,797 SF. No dimensional variances are needed. The cottage is a second dwelling unit on the lot and, therefore, is a nonconforming use. A special use permit is needed to enlarge a structure devoted to an existing nonconforming use. Mr. Chappell elicited testimony from petitioner addressing all applicable criteria for a special use permit under Article VII, Section A.5 (a) through (j).

The Board considered the petition based on the evidence presented and found that the criteria for a special use permit were satisfied. The Board concluded that the proposed use will not be detrimental to the surrounding area; that it will be compatible with neighboring land uses; that it will not create a nuisance or a hazard in the neighborhood; that adequate protection is afforded to the surrounding property by the use of open space and planting; that safe vehicular access and adequate parking are provided; control or noise, smoke, odors, lighting and any other objectionable feature is provided; that solar rights of abutters are not impacted; that the proposed use will be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the Town

of Portsmouth and that the health, safety and welfare of the community are protected.

Motion by Mr. Borden to grant petitioners a special use permit to enlarge their existing cottage in accordance with the plans as submitted. Seconded by Mr. Donovan.

VOTE: 5 - 0.

Motion to adjourn made by Mr. Borden at 8:15PM, seconded by Mr. Raposa. The motion was unanimously supported.

Minutes respectfully submitted by Lea Hitchen, Town Planner. Please contact the Planning Department for further information.