

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

ZBR MINUTES MAY 25, 2023

MEMBERS PRESENT : Mr. James Nott, Chair; Secretary Benjamin Furriel, Mr. Eric Raposa, and Mr. Charles Kevin Donovan.

MEMBERS ABSENT : Mr. John G. Borden, Vice-Chairman; Ms. Sue Horwitz, and Mr. Langdon Harris.

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

Mr. Nott called the meeting to order at 7:00 PM in the Town Council Chambers and acknowledged this meeting was being held to accommodate those petitioners who were affected by the cancellation of last week's meeting due to lack of quorum.

1. Minutes

Minutes were not available for approval.

2. Chairman Report

No update to provide.

3. Old Business

- a. Eric Offenbergs (applicant) representing 1127 RE Investment LLC (owner) for property located at 1172 West Main Road; being Tax Assessor's Map 44 Lot 3 (Zoned Light Industrial, I-L). The Applicant seeks a Special Use Permit (Article VI, Section C(1)) to alter existing buildings devoted to a non-conforming use. The applicant is also seeking Dimensional Variances for structures located in the setbacks (Article IV, Section B, C(5)).

Mr. Nott stated the applicant has requested a continuance to the June 15, 2023 ZBR meeting. Motion by Mr. Furriel to continue the application to June 15, 2023. Seconded by Mr. Raposa. VOTE: 4 - 0.

4. New Business

- a. Benjamin Chin (applicant and owner) for property located at 21 Mount View Road; being Tax Assessor's Map 1 Lot 3 (Zoned Residential, R-10). The Applicant seeks a Special Use Permit (Article VII, Section A(1)(c)) and Dimensional Variances (Article IV, Section B; Article VI, Section A(4)) to construct a front porch on a substandard lot of record.

Members participating in the decision were Chairman James E. Nott, Secretary Benjamin Furriel, Eric Raposa, and C. Kevin Donovan.

The Board heard testimony of Richard Bonvegna, petitioner's contractor, and considered the exhibits and materials submitted with the petition.

Mr. Bonvegna summarized the proposal consistent with the narrative of petitioner submitted with the application. Petitioner seeks to add a 6' x 22' front porch that will extend 6 feet out from the front of the existing house. There will be no further encroachment into the side setbacks. The lot is just 3,920 SF in an R-10 zoning district. The front porch will increase the total lot coverage by 3.36%. The chair elicited testimony addressing all applicable special use criteria.

The Board considered the petition and, based on the testimony and documents presented, found that the requests for dimensional relief were reasonable under the circumstances. Petitioner is constrained by the small size and configuration of the lot and the location of the existing structure. 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 the

proposal would meet the applicable criteria under Article VI, Section A.4 for dimensional variances on a substandard lot of record.

The Board further determined that the proposal would meet applicable special use permit criteria under Article VII. The Board concluded that the proposal 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 of 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. Furriel to grant petitioner a 2', 4" side yard setback variance to the east, a 1', 7" side yard setback variance to the west, a 6.9% lot coverage variance, and a special use permit to construct a front porch on a single-family home on a substandard lot of record, in accordance with the plans as submitted. Seconded by Mr. Donovan.

VOTE: 4 - 0.

- b. Richard P. D'Addario representing Byron G. Ehrhart (applicant and owner) for property located at 1134 West Main Road; being Tax Assessor's Map 44 Lot 18 (Zoned Light Industrial, I-L). The Applicant seeks Dimensional Variances (Article IV, Section B) to construct an accessory garage building and a Special Use Permit (Article VII, Section A(1)(d)) for an alteration to a non-conforming use.

Attorney Richard P. D'Addario represented the application on behalf of his client, being Byron Ehrhart. Atty. D'Addario explained the property owner is planning to construct an accessory garage building which will have a one-bedroom dwelling unit above. There will be dimensional variances required from the side setback requirement of 30 feet (five feet proposed) and the rear setback of fifty to 30 feet. The Board members discussed the application and commented that the application as presented was not the

least relief necessary. Based on the comments provided Atty. D'Addario requested to continue the application to the June 15, 2023 meeting.

Motion by Mr. Furriel to continue the application to June 15, 2023.

Seconded by Mr. Donovan. VOTE: 4 - 0.

- c. JPS Construction and Design (applicant) for Breakwater Properties (owner) for property located at 1046, 1048, and 1050 West Main Road; being Tax Assessor's Map 58 Lot 2 (Zoned Commercial, C). The Applicant seeks a Dimensional Variance (Article IV, Section B) for maximum percent lot coverage and Special Use Permits (Article V, Section E(14.3), Section G(4) and Section G(7)) to construct an additional structure for storage and light carpentry that is more than 30% over the size of the existing buildings.

Members participating in the decision were Chairman James E. Nott, Secretary Benjamin Furriel, Eric Raposa, and C. Kevin Donovan.

The Board heard testimony of Jamie Stebenne of JPS Construction & Design in support of the petition and considered the exhibits and materials submitted with the application.

Mr. Stebenne explained the proposal consistent with the detailed information set forth in the application. Petitioner seeks to construct a 42' x 80' single story building to be used for storage and a workshop for light carpentry work. The lot coverage relief is necessitated by the additional paved areas for parking and for compliance with chapter 189 of the Town Code of Ordinances ("Fire Lanes") and requirements of the Fire Department. It was noted that the Planning Board and Design Review Board have issued favorable advisory opinions for the project with certain recommendations.

The chairman asked if there were any abutters or interested parties who wished to be heard. Matthew Correia, 36 Clear View Avenue, asked questions about water runoff and lighting. The Secretary read a letter into the record from David Timberlake, 44 Jo Anne Avenue, who stated he had no objection to the proposal.

The chairman elicited testimony from Mr. Stebenne addressing all applicable special use criteria under Article VII, Section A.5 (a) through (j).

The Board voted unanimously to impose the following conditions on any grant of special use permit:

1. Gooseneck type dark sky lighting not mounted higher than 10 feet, downward pointing 90 degrees, with motion detectors, will be over all four garage bays facing west, will not shine on abutting properties, and will be set on energy saving timers so they will not be on at night;
2. Arborvitae plantings no less than 6' in height, and no less than 3' apart, will be planted all along the property line with Jo Anne Avenue; and
3. In accordance with the Fire Department's recommendation, the secondary access to the property will have a locked gate with a knox box for access by fire and emergency personnel only.

The Board then considered the petition and, based on the testimony and documents presented, found that the request for dimensional relief was reasonable under the circumstances. The areas of additional pavement were necessary to comply with the Town's fire lanes ordinance and fire department requirements. Petitioner is constrained by the small size of the lot and the location of the existing structure. 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 the proposal would meet applicable special use permit criteria under Article VII. The Board concluded that the proposal 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. Furriel to grant petitioner a special use permit and a 21.8% lot coverage variance to construct an additional structure for storage and a workshop for light carpentry work, in accordance with the plans as submitted, subject to the conditions imposed by the Board. Seconded by Mr. Raposa.

VOTE: 4 - 0.

- d. Cort Chappell (applicant) representing John and Denise Weishaupt (owners) for property located at 0 Park Avenue; being Tax Assessor's Map 21 Lot 55 (Zoned Residential, R-10). The Applicant seeks Dimensional Variances (Article III, Section D(2) ; Article IV, Section B ; Article VI, Section A(4)) to build a new single family residence on a substandard lot of record not fronting on a public street.

Petitioners were represented by Cort B. Chappell, Esquire. Members participating in the decision were Chairman James E. Nott, Secretary Benjamin Furriel, Eric Raposa, and C. Kevin Donovan.

The Board heard the presentation of Mr. Chappell and testimony of petitioner John Weishaupt, and considered the exhibits and materials submitted with the petition. No objectors were heard.

Mr. Chappell explained that the subject property is a small 4,848 SF substandard lot and is irregularly shaped. Petitioners are proposing to remove an existing garage and construct a new structure with a first level garage and a second level dwelling unit. Mr. Chappell submitted letters from two neighbors in support of the petition.

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

The Board then 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 found that petitioners are constrained by the small size and irregular shape of the lot. 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. Furriel to grant petitioners a 14.8' rear yard setback variance, a 6' side yard setback variance to the south, a 1% lot coverage variance, and a variance to construct a building on a lot not fronting on a public street, to construct a structure with a first level garage and a second level dwelling unit, in accordance with the plans as submitted. Seconded by Mr. Donovan.

VOTE: 4 - 0.

- e. Marco Di Mattino (owner) representing Anna D's Café (applicant) for property located at 954 East Main Road; being Tax Assessor's Map 57 Lot 4B (Zoned Residential, R-20). The Applicant seeks a Special Use Permit (Article V, Section C(5)) to hold a farmer's market on the property during the summer months.

Members participating in the decision were Chairman James E. Nott, Secretary Benjamin Furriel, Eric Raposa, and C. Kevin Donovan.

It was noted that petitioner had initially filed his petition under Article V, Section C.5 which allows “Agriculture-Special Events” by grant of special use permit. However, the definition of Agriculture-Special Events in Article II, Section B is limited to events held on parcels where farming takes place, i.e., such events “... shall be permitted only on parcels qualified to participate in either the state or the local farm tax exemption program....” The Board, therefore, turned to Article V.1 zoning ordinance, which provides:

1. Except as otherwise provided in this Ordinance, in each district no building, structure, or land shall be used or occupied except for the purposes permitted as set forth in the accompanying Table of Use Regulations, Section B.

Proposed uses not so listed may be presented to the Zoning Board of Review by the property owner. Such uses shall be evaluated by the Zoning Board of Review according to the most similar use(s) that is (are) listed, as well as the purposes and uses generally permitted in the subject use district. The Zoning Board of Review may approve the proposed use as permitted, or deny the proposed use as not permitted, or allow the proposed use subject to a Special Use Permit.

The Board applied the second paragraph of Article V.1 and determined by unanimous vote that petitioner’s proposed use is most similar to an Agriculture-Special Event use which is conditionally allowed under Article V, Section C.5 by a grant of special use permit. Accordingly, the Board proceeded to hear the petition for a special use permit.

The Board heard testimony of the petitioner, Marco Di Mattino in support of the petition and considered the exhibits and materials submitted with the application.

Mr. Di Mattino explained his plan for holding a series of farmer’s markets in the rear yard behind Anna D’s Café, **which has a large grassy area with** several picnic tables. The tables would be moved to the rear and farmers/vendors place folding tables under small individual tents in the

center of the yard. The events would be held one day per week, most likely on Mondays or Wednesdays from 2 - 6 pm. Mr. Di Mattino also proposed screening of movies projected on the rear of the building.

The chairman asked if there were any abutters or interested parties who wished to be heard. Patrick Turner, 113 Evergreen Drive, testified in opposition to the proposal. Mr. Turner said he lived directly behind petitioner's property and was concerned about noise.

Regarding the proposal to hold a series of weekly farmer's market events - and excluding the proposal to screen any outdoor movies in association with such events - the chairman elicited testimony from petitioner addressing all applicable special use criteria under Article VII, Section A.5 (a) through (j).

The Board voted unanimously to impose the following conditions on any grant of special use permit:

1. A porta-john shall be provided during any farmer's market to be located near the existing dumpster; and
2. The farmer's market events shall be allowed on a trial basis through December 31, 2023.

The Board then considered the petition and, based on the testimony and documents presented, determined that the proposal to hold a farmer's market (excluding the proposal to screen movies) would meet applicable special use permit criteria under Article VII. The Board concluded that the proposal 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 of 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. Furriel to grant petitioner a special use permit to hold a weekly farmer's market, in accordance with its proposal, subject to the conditions imposed by the Board. Seconded by Mr. Donovan.

VOTE: 4 - 0.

- f. Art Shenberger (applicant) for Bernard McKay (owner) for property located at 0109 Beach Road; being Tax Assessor's Map 74 Lot 5 (Zoned Residential, R-20). The Applicant seeks a Special Use Permit (Article VII, Section E) and a Dimensional Variance (Article IV, Section B) to erect an antenna over 35' within the rear setback.

Members participating in the decision were Chairman James E. Nott, Secretary Benjamin Furriel, Eric Raposa, and C. Kevin Donovan.

The Board heard testimony of petitioner Art Shenberger in support of the petition and considered the exhibits and materials submitted with the application. No objectors were heard.

Petitioner explained that the purpose of the proposal is to receive high speed internet service and TV programming on Prudence Island. The tower free-fall radius exceeds 125% of its height, or 56.25', in accordance with the ordinance. The dimensional variance is needed because the lot abuts a paper road and State land.

The Board considered the petition and, based on the testimony and documents presented, found that the request for dimensional relief was reasonable. 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 the proposal would meet applicable special use permit criteria under Article VII. The Board concluded that the proposal 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. Furriel to grant petitioner a special use permit to erect the proposed antenna tower, in accordance with the plans as submitted.

Seconded by Mr. Donovan.

VOTE: 4 - 0.

- g. Art Shenberger (applicant) for Prudence Island Water District (owner) for property located at 024 Homestead Avenue; being Tax Assessor's Map 38 Lot 7A (Zoned Residential, R-60). The Applicant seeks a Special Use Permit (Article VII, Section E) to erect an antenna over 35'.

Members participating in the decision were Chairman James E. Nott, Secretary Benjamin Furriel, Eric Raposa, and C. Kevin Donovan.

The Board heard testimony of petitioner Art Shenberger in support of the petition and considered the exhibits and materials submitted with the application. No objectors were heard.

Petitioner explained that the purpose of the proposal is to receive high speed internet at the Prudence Island Water District to monitor and maintain the water system on Prudence Island. The tower free-fall radius exceeds 125% of its height, or 112.5', from any structure designed for residential use. There is a pump house and shed within that area.

The Board then considered the petition and, based on the testimony and documents presented, determined that the proposal would meet applicable special use permit criteria under Article VII. The Board concluded that the proposal 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. Furriel to grant petitioner a special use permit to erect the proposed antenna tower, in accordance with the plans as submitted.
Seconded by Mr. Raposa.

VOTE: 4 - 0.

- h. Art Shenberger (applicant) for Town of Portsmouth (owner) for property located at 0 Hedley Street; being Tax Assessor's Map 38 Lot 7A (Zoned Light Industrial, I-L). The Applicant seeks a Special Use Permit (Article VII, Section E) to erect an antenna over 35'.

This application was withdrawn by the Applicant.

- i. AP Enterprise, LLC (applicant and owner) for properties located at 0 Walnut Street, 0 Highland Avenue, 0 Russel Avenue, and 0 Park Avenue; being Tax Assessor's Map 20 Lots 1, 3, and 13, and Map 25 Lot 2 (Zoned Commercial and Residential, R-10). The Applicant seeks a Special Use Permit (Article V, Section B(12)) to create an outdoor recreation facility. (Application has been continued to the June 15, 2023 meeting.)

The Applicant requested a continuance to the June 15, 2023 Zoning Board meeting. Motion by Mr. Furriel to continue the hearing to June 15, 2023.
Seconded by Mr. Donovan. VOTE: 4 - 0.

Motion to adjourn made by Mr. Furriel at 9:15PM, 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.