

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

ZBR MINUTES JUNE 15, 2023

MEMBERS PRESENT : Mr. James Nott, Chair; Secretary Benjamin Furriel, Mr. Eric Raposa, Ms. Sue Horwitz, Mr. Charles Kevin Donovan (1st Alternate) and Mr. Langdon Harris (2nd Alternate).

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

Mr. Nott called the meeting to order at 7:00 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. 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. (Applicant Has Requested A Continuance To The July 20, 2023 Meeting).

Mr. Nott indicated the Applicant has requested a second continuance and asked the hearing to be continued to the July 20, 2023 Zoning Board

meeting. Motion by Mr. Raposa to continue the hearing to July 20, 2023. Seconded by Mr. Donovan.

VOTE: 5 - 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.

(This hearing was continued from the May 25, 2023 ZBR meeting.)

Petitioner was represented by Richard D’Addario, Esquire and Crystal Collins, 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. D’Addario and testimony of David Casey, petitioner’s building contractor, and considered the exhibits submitted with the petition and during the course of the hearing. No objectors were heard.

Mr. D’Addario summarized the proposal to construct a 36’ x 24’ two-car garage as an accessory structure with a one-bedroom dwelling unit on the second level. The lot is located in a light industrial district which requires a minimum rear yard setback of 50’ and a minimum side yard setback of 30’. Petitioner seeks to locate the garage 5’ from the side lot line to the south, which needs a 25’ side yard setback variance, and 30’ from the rear lot line to the east, which needs a 30’ rear yard setback variance. The lot size is substandard with 18,952 SF, with a minimum lot size of 40,000 SF required in a light industrial district. Mr. D’Addario noted that due to the location of the septic system and the nonconforming lot size, there is no other reasonable location for the garage. Mr. D’Addario elicited testimony from Mr. Casey addressing all applicable special use criteria under Article VII, Section A.5 (a) through (j).

Board members raised questions as to the proposed size and 36’-width of the two-car garage and whether the proposal represented the least relief

necessary. Mr. Casey testified that the issue was providing access to the apartment but that it might be possible to reduce the proposal to some extent. Mr. D'Addario requested a continuance of the hearing to review petitioner's options in this regard.

Ms. Collins, representing the petitioner, submitted revised plan which reduced the proposed width of the garage from 36' to 24'. The side yard setback variance needed was, therefore, reduced from 25' to 15'. The Board voted unanimously to allow petitioner to amend his petition accordingly. The chair elicited testimony from Mr. Casey with regard to the applicable special use permit criteria.

The Board considered the petition and, based on the testimony and documents presented, found that the requests for dimensional relief, as amended, were reasonable under the circumstances. Petitioner is constrained by the nonconforming size and configuration of the lot, the location of the existing principal structure and septic system, and the minimum setback requirements in a light industrial zoning district. The Board determined that the proposal, as amended, 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, as amended, 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 15' side yard setback variance to the south and a 20' rear yard setback variance to the east, and a special use permit, to construct a garage with a second level, one-bedroom dwelling unit on a substandard lot of record, in accordance with the revised plans as submitted. Seconded by Mr. Raposa.

VOTE: 4 - 0.

- c. Eric Offenber (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)).

Petitioner was represented by David P. Martland, Esquire.

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

The Board heard the presentation of Mr. Martland, testimony of Eric Offenber and James Houle, and considered the exhibits submitted with the petition and during the course of the hearing. No objectors were heard.

Mr. Offenber testified that he is a principal of the petitioner, a limited liability company formed to own and operate the subject property, which for 60 years was operated as the "Sunset Cabins." Mr. Offenber described the existing conditions and history of the property as a campground with 8 cottages. The prior owner was transitioning the site to become an RV park and removed five of the cottages. Petitioner acquired the property last year with the intention to rebuild the five cottages that were demolished and restore the site to the condition that historically had existed. The two trailers at the northeast corner of the property will be removed. The

proposal requires a special use permit to alter a nonconforming use. Mr. Offenbergs stated that he met with the fire department to see if there were any concerns. Petitioner has agreed to construct a paved turnaround at the top of the hill, as required by the Portsmouth Fire Marshall, Captain Mark Reimels. A letter dated May 12, 2023 from Captain Reimels was read into the record and introduced as Exhibit 1. An updated site plan showing the paved turnaround was introduced as Exhibit 2. Mr. Offenbergs explained that two parking spaces needed to be moved further to the east to accommodate the paved turnaround. Mr. Martland elicited testimony from Mr. Offenbergs addressing all applicable special use criteria under Article VII, Section A.5 (a) through (j).

Petitioner also seeks a 22' front yard setback variance (with a 60' setback required by the zoning ordinance in a light industrial zoning district) and a 10' side yard setback variance to the south (with a 30' side setback required) for presently existing structures. There will be no further encroachment into the setbacks. No lot coverage relief is needed.

James Houle (of James A. Houle & Associates) was recognized and accepted as an expert in real estate. Mr. Houle's report dated June 15, 2023 (with attached curriculum vitae) was introduced as Exhibit 3. Mr. Houle explained his review of the proposal, the property site, the proposed buildings and uses, the surrounding neighborhood and uses, the zoning ordinance, and the comprehensive community plan. Mr. Houle summarized his analysis, findings and conclusions, which are set forth in detail in his written report. Mr. Houle testified that in his professional opinion, the proposal meets all applicable requirements and criteria for the granting of a special use permit and for the requested setback variances, as explained in detail in his written report.

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

1. No trailers, RVs or the like shall be allowed on the site; and
2. There shall be a paved turnaround installed in accordance with the requirements of the Portsmouth Fire Marshal and as shown on the updated site plan.

The Board considered the petition and, based on the testimony and documentation presented, including the expert testimony and report of Mr. Houle, found that the requests for dimensional relief were reasonable under the circumstances. Petitioner is constrained by the nonconforming size and configuration of the lot, the location of the existing principal structure and septic system, and the minimum setback requirements in a light industrial zoning district. The proposal is to restore and improve the property for use as a campground and for cottages, which existed on the site for approximately 60 years. 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 22' front yard setback variance, a 10' side yard setback variance to the south, and a special use permit, to restore and rebuild previously existing cottages and renovate the existing structures in accordance with the revised plans as submitted, subject to the conditions imposed by the Board. Seconded by Mr. Donovan.

VOTE: 5 -0.

4. New Business

- a. Jason And Sadie Peters (Applicants And Owners) For Property Located At 44 Valhalla Drive; Being Tax Assessor's Map 24 Lot 194 (Zoned Residential, R-20). 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 Partial Second Story Addition And A Front Porch With Stairs On A Substandard Lot Of Record.

Members participating in the decision were Chairman James E. Nott, Secretary Benjamin Furriel, Eric Raposa, Sue Horwitz, and Langdon Harris.

The Board heard testimony of petitioners and their building contractor, Jeff Moniz, and considered the exhibits and materials submitted with the petition and during the course of the hearing. No objectors were heard.

Petitioners explained that they lost their home to a fire last October and in rebuilding they wish to add a 6' deep front porch with a modest addition to open up the house to water views and provide a covered exterior space. Mr. Moniz testified that the lot is substandard, less than 10,000 SF in an R-20 zoning district. The vast majority of lots in the area are around 10,000 SF +/- in lot size whereas 20,000 SF is the minimum lot size in an R-20 district. The chair noted that the petition does not require any lot coverage variance. Mr. Moniz submitted a document presenting a survey of lots in the neighborhood (Exhibit 1) and photographs (Exhibit 2) showing that the petitioners' proposal is typical of the neighborhood with respect to lot size, porches, decks and other accessory structures. Mr. Moniz noted that the existing front stoop is located in the front setback area, and the 0.3' side yard setback variance is for the existing house and garage, with no further encroachment. The chair noted that there is a considerable amount of additional area between the front lot line and the paved surface of the road.

The chair read into the record letters received from three abutting property owners, supporting the petition, and elicited testimony from Mr. Moniz addressing all applicable special use criteria under Article VII, Section A.5 (a) through (j).

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. Petitioners are constrained by the small size which is less than have of the minimum lot size required by the zoning ordinance. The side yard setback encroachment presently exists. 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 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 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 9'3" front yard setback variance and a 0.3' side yard setback variance to the south, and a special use permit, to rebuild their home with a front porch and stairs and partial second floor addition, in accordance with the plans as submitted. Seconded by Mr. Raposa.

VOTE: 5 - 0.

- b. Douglas And Bernadette Bernon (Applicants And Owners) For Property Located At 13 Baker Road; Being Tax Assessor's Map 16 Lot 18 (Zoned Residential, R-20). 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 Roof Over An Existing Deck And Enlarge And Second Floor Deck On A Substandard Lot Of Record.

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

The Board heard testimony of petitioners and considered the exhibits and materials submitted with the petition. No objectors were heard.

Petitioners summarized their proposal consistent with the detailed written narrative and drawings submitted with their application. Petitioners explained that they have a first-floor and second-floor deck on the rear of their two-bedroom home. Both decks need work. Canvas awnings that have been used to cover the first-floor deck frequently get ripped and destroyed by the wind. Petitioners wish to construct a roof connecting to the upper deck to cover and protect the first-floor deck. The proposal will result in no further encroachment into the side setback. There will be no additional lot coverage and no lot coverage variance is needed.

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

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. Petitioners are constrained by the small size and configuration of the lot. The side yard setback encroachment presently exists. 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 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 6' side yard setback variance and a special use permit to enlarge a structure on a substandard lot of record, to construct the proposed roof over an existing rear deck, in accordance with the plans as submitted. Seconded by Mr. Raposa.

VOTE: 5 - 0.

- c. Wendy And Jeremy Shattuck (Applicants And Owners) For Property Located At 187 Cedar Ave; Being Tax Assessor's Map 20 Lot 136 (Zoned Residential, R-10). The Applicant Seeks A Dimensional Variances (Article IV, Section B, Section C(5)) To Construct A 7'6"X10' Shed Within The Front And Side Setbacks.

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

The Board heard testimony of petitioners and considered the exhibits and materials submitted with the petition. No objectors were heard.

Petitioners explained that they wish to position a 7'6" garden shed within the front and side yard of their property. They have no backyard and are also constrained by a steep slope to Blue Bill Cove. There is no other place

to locate the shed. There are similar sheds in the neighborhood that are located outside of the back yard.

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. Petitioners are constrained by the configuration and slope of the lot and the lack of a back yard to place a shed. 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.

Motion by Mr. Furriel to grant petitioners a 17' front yard setback variance, a 7' side yard setback variance, a 3.6% lot coverage variance, and a variance from the requirement that a shed must be located in the back yard, to allow petitioners the proposed storage shed in accordance with the plans as submitted. Seconded by Ms. Horwitz.

VOTE: 5 - 0.

- d. Mindy Zheng (Applicant And Owner) For Property Located At 26 Oak Street; Being Tax Assessor's Map 20 Lot 105 (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 Deck Off The Rear Of The Existing House On A Substandard Lot Of Record.

Members participating in the decision were Chairman James E. Nott, Secretary Benjamin Furriel, Eric Raposa, Sue Horwitz, and Langdon Harris.

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

Mr. Chappell explained that the petitioner's proposal is for a 12' x 33.5' (402 SF) rear deck that is significantly reduced in size from a previous petition by the prior owner who was not represented by legal counsel. Petitioner essentially has no usable back yard because it is taken up almost entirely by an AdvanTex septic system. The proposed deck would be installed over the septic system to create an area of usable back yard space for petitioner to enjoy her property for recreation, entertaining, and other customary residential uses. Mr. Zhang testified that he is petitioner's son, and he resides at the property. The deck will be accessed from an existing patio door. The subject property is 6,350 SF in an R-10 zoning district and is irregularly shaped. The additional lot coverage will be 6.3%. The property to the south is the Island Park playground. Mr. Chappell elicited testimony from Mr. Zhang on all the applicable criteria for dimensional relief and for a special use permit under Article VII, Section A.5 (a) through (j).

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, and AdvanTex septic system which essentially makes the back yard unavailable for typical residential uses. 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 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 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 6.3' rear yard setback variance and an 11.7% lot coverage variance, and a special use permit, to construct a rear deck on a substandard lot of record, in accordance with the plans as submitted. Seconded by Mr. Harris.

VOTE: 5 - 0.

- e. Bill Caragianis (Applicant And Owner) For Property Located At 0 Union Street; Being Tax Assessor's Map 56 Lot 7 (Zoned Commercial, C). The Applicant Seeks A Special Use Permit (Article VI, Section A(3)(B)) And A Dimensional Variance (Article IV, Section B) To Enlarge A Non Residential Structure On A Substandard Lot Of Record.

Petitioner was represented by Cort B. Chappell, Esquire

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

The Board heard the presentation of Mr. Chappell and testimony of petitioner Bill Caragianis and Tom Principe, P.E., and considered the exhibits and materials submitted with the petition. No objectors were heard.

Mr. Chappell and Mr. Caragianis summarized petitioner's proposal consistent with the written narrative submitted with the petition. Petitioner purchased the subject property (Lot 7) from the Portsmouth Water & Fire District and there is a former pumping station located on the property. Petitioner owns abutting property (Lot 8) where he operates his existing business. Petitioner seeks to enlarge the existing structure on Lot 7. Petitioner plans to file for an administrative subdivision to add land from Lot 8 to make the property and the proposed structure more conforming with the zoning ordinance and to minimize the amount of dimensional relief

needed. Petitioner's architect, Chris Fagan, was engaged to design a barn-style building that is attractive and in keeping with the neighboring properties. There will be no change to petitioner's existing business operations. Tom Principe, P.E. testified regarding the plans to relocate the lot line, and issues involving septic, drainage and utilities. Parking will be in the rear for safety reasons and to utilize an existing paved parking area that will be added from Lot 8.

The Board voted unanimously to impose the following condition on any grant of a special use permit and dimensional variance:

1. Petitioner shall obtain the necessary approval and file an administrative subdivision for Lots 7 and 8 that is identical to the plan submitted with the petition.

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. 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 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 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 13.2' front yard setback variance, and a special use permit to enlarge a structure on a substandard lot of record, in accordance with the plans as submitted, subject to the condition imposed by the Board. Second by Mr. Donovan.

VOTE: 5 - 0.

- f. Stephen And Kara Fitzpatrick (Applicants And Owners) For Property Located At 19 Sloop Drive; Being Tax Assessor's Map 23 Lot 77 (Zoned Residential, R-20). The Applicant Seeks A Dimensional Variance (Article IV, Section B) To Construct An Above-Ground Pool Within The Rear Setback.

Members participating in the decision were Chairman James E. Nott, Secretary Benjamin Furriel, Eric Raposa, Sue Horwitz, and Langdon Harris.

The Board heard testimony of petitioner Stephen Fitzpatrick and considered the exhibits and materials submitted with the petition.

Petitioner explained that he and his wife wished to install a 21' round above-ground swimming pool in their back yard. They propose to locate the pool 4' from the rear property line, which requires a 26' rear yard setback variance. No lot coverage relief is needed. Petitioner testified that they are constrained by the location of the home, patio and septic system and there is no other reasonable place to locate the swimming pool. He testified that almost half of the homes in the neighborhood have swimming pools. A satellite image of the property and surrounding area was shown, and Board members asked questions as to why the pool could not be located in the large side yard area. Petitioner stated that there is a 6' elevation change which would make it difficult to locate and use the pool in that area. They also wish to have the pool in their back yard in closer proximity to the rear entry to their home.

Paul St. Laurent, 48 Schooner Drive, testified that he is the direct abutter behind the petitioners' lot where the proposed pool would be located 4' from the property line. Mr. St. Laurent read a statement of several concerns. He stated that there simply may not be adequate area to install the pool where it has been proposed. He was concerned about potential negative effect on water runoff onto his lot. His primary concern was the potential for added noise negatively impacting him and the use his property. He suggested that petitioners review his concerns and that there should be either a smaller pool or an alternative location selected. The Board asked petitioner further question as to why he could not have a smaller, rectangular-shaped pool in the back yard or locate the pool in the side yard.

The Board then considered the petition and voted unanimously to deny the petition. Based on the testimony and evidence presented, the Board found that petitioners had alternatives available to them to locate the swimming pool further away from the rear lot line, to be more in conformance with the ordinance and less impactful on their neighbor to the rear. The Board found that the request for relief was unreasonable and excessive, that petitioners had not sought the least relief necessary, and that petitioners had not established that denial of their request for relief would cause a hardship amounting to more than a mere inconvenience. Petitioners had failed to satisfy the criteria for the granting of the dimensional variance requested.

Motion made by Mr. Furriel to deny the 26' rear yard setback variance.
Seconded by Ms. Horwitz.

VOTE: 5 - 0.

Motion to adjourn made by Mr. Furriel at 9:30PM, 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.