

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

ACTION SHEET

TO: John P. Bohenko, City Manager

FROM: Mary Koepenick, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment at its regular meeting on March 19, 2019** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Vice Chairman Jeremiah Johnson, John Formella, Jim Lee, Christopher Mulligan, Peter McDonell, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

EXCUSED: Chairman David Rheume

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I. APPROVAL OF MINUTES

A) February 20, 2019

Action:

The Board voted to accept the Minutes of the February 20, 2019 Meeting with minor changes.

B) February 26, 2019

Action:

The Board voted to accept the Minutes of the February 26, 2019 Meeting with minor changes.

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II. PUBLIC HEARINGS – OLD BUSINESS

A) Case 2-1

Petitioners: Frank AJ Veneroso and Roslyn Weems
Property: 53 Austin Street
Assessor Plan: Map 127, Lot 26
Zoning District: General Residence C
Description: Proposed Inn

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from the following:
a) from Section 10.440, Use #10.30 to allow an Inn in a district where the use is not permitted in the district.

Action:

After consideration, the Board voted to further **table** the petition to the April meeting requesting that the applicant provide additional information which, at a minimum, should include the following:

- A clear explanation of how the proposed project meets all the criteria necessary to grant a variance including a more comprehensive narrative addressing how the hardship test is met with information on how this property is distinguished from other multi-family properties in the area.
- More information to support the argument that the value of surrounding properties will not be diminished.
- Information on the historic nature of the property and the specific features of this property that make it uniquely suited to support an inn use.
- Details on how the inn will function, with floor plans including the reception sign-in area, a plan for the proposed signage, food service and how the inn will be advertised.

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III. PUBLIC HEARINGS – NEW BUSINESS

1) Case 3-1.

Petitioners: Stacie A. Yonkin and Eric L. Moyer

Property: 196 Sherburne Avenue

Assessor Plan: Map 112, Lot 30

Zoning District: General Residence A

Description: Demolition and replacement of existing house. Existing garage and rear addition to remain.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:

- a) from Section 10.521 to allow 32%± building coverage where 25% is the maximum allowed.
- b) from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance.

The Board voted to **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed as increasing the lot coverage as proposed will not irrevocably alter the essential character of the neighborhood nor would the health, safety or welfare of the public be threatened.
- Granting the variance will result in substantial justice. There is no benefit to the general public that would outweigh the loss to the applicant if the petition were denied.
- Granting the variance will not diminish the value of surrounding properties. This appears to be a code-compliant, tastefully designed project which will improve the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property which include the relatively small lot size and the challenge to the applicant in attempting to stay within the existing footprint and not increase any of the setbacks. The property is also unique in that it is accessed through what appears to be a paper street or private right-of-way off a public right-of-way. Due to these special conditions, there is no fair and substantial relationship between the purpose of the building coverage requirement and its strict application to this property. The residential use in a residential zone is reasonable.

2) Case 3-2.

Petitioners: Bethel Assembly of God, owner and Chase Drive, LLC, applicant
 Property: 200 Chase Drive
 Assessor Plan: Map 210, Lot 2
 Zoning District: Gateway Center District (G2)
 Description: Construct a mixed use building with office space and 21 residential units.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
 a) from Section 10.5B33.20 to allow a front lot line buildout of 15% where 75% is required;
 b) from Section 10.5B34.80 to allow a 56', 5-story building where the maximum building height allowed is 50 feet and 4 stories;
 c) from Section 10.5B34.80 to allow 22%± façade glazing where 50% minimum is required; and
 d) from Section 10.5B22.20 to allow a 56' tall building to be within the set back and step back area.

Action:

The following actions were taken by the Board:

1. The Board **acknowledged** that the applicant had withdrawn their request for relief from the maximum building height requirement.
2. The Board voted to **table** the petition to the April 16, 2019 meeting to allow time for the applicant to prepare and provide additional information that would enable the Board to make an informed decision, including at a minimum the following:

- A clear representation of the mass, materials and design of the proposed building.
- The changes resulting from reducing the proposed height of the building, including the impact on the number of proposed units.
- Elevations or computer generated depictions comparing the height of the proposed building to the height(s) of the neighboring structures.
- Information on the units per acre requirement and how that factored into the easement arrangement.
- The reasoning behind the easement to include, if possible, the actual language of the easement.
- Whatever additional information that would address the overall comments made and concerns raised by the Board during their discussion of the merits of the proposal.

3) Case 3-3.

Petitioners: Happy Dreams, LLC/Resport L.L.C. c/o Ocean Properties, LTD
 Property: One International Drive
 Assessor Plan Map 303, Lot 2
 District: (Pease) Airport Business Commercial District.
 Description: Encroachment of constructed foundation for hotel addition.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
 a) from Section 304.04(e) of the Pease Development Ordinance to allow a 49'± rear yard where 50' is the minimum required.

Action:

The Board voted to **recommend** to the Pease Development Authority that the variance be granted as presented and advertised.

Review Criteria:

The petition was recommended for approval for the following reasons:

No Adverse Effect of Diminution in Values of Surrounding Properties

- Granting the variance would have no adverse effect on, or diminution of, values of surrounding properties. The encroachment has a small impact on the setback and will not be noticeable from any of the other properties.

Granting the Variance Would Be of Benefit to the Public Interest.

- It will not benefit the general public to require the applicant to tear apart an already-laid foundation and rebuild it to be completely in compliance.

Denial of the Variance Would Result in Unnecessary Hardship to the Applicant.

- Denial of the variance would result in unnecessary hardship to the applicant due to the special conditions of the property which include its significant green space and buffering and the fact that the neighboring properties are essentially parking lots. Due to these special conditions, there is no fair and substantial relationship existing between the general public purposes of the ordinance provisions and their specific application to the project.

Granting the Variance Would Be Substantial Justice.

- Granting the variance would do substantial justice because there is no benefit to the abutters or the general public that would be outweighed by the harm to the applicant if the variance were denied.

The Proposed Use is Not Contrary to the Spirit of the Ordinance.

- The proposed use will not be contrary to the spirit of the ordinance. The overall project was previously approved but the foundation was just slightly over what was originally considered. The essential character of the neighborhood will not be altered by the slight adjustment.

4) Case 3-4.

Petitioners: Samantha Finigan and Peter Gorman
 Property: 29 Sparhawk Street
 Assessor Plan: Map 160, Lot 6
 District: General Residence A District
 Description: Construct a replacement rear deck with stairs.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
 a) from Section 10.521 to allow 28%± building coverage where 25% is the maximum allowed; and
 b) from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance.

Action:

The Board voted to **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. The character of the neighborhood will not be altered by replacing an existing deck with one that is smaller and configured differently, nor will the health, safety or welfare of the general public be threatened.

- Substantial justice will be done as granting the variances will benefit the property owner with greater functionality with no injury to the general public.
- Granting the variances will not diminish the value of surrounding properties as replacing a derelict deck with one that is new and up to code can only benefit the owner and the neighborhood.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property, which include a drop-off affecting where structures are placed. It is a reasonable use of the property to have another means of access and egress from the home.

5) Case 3-5.

Petitioners: Litchfield Portsmouth, LLC, owner, and New England Sporting Goods, LLC/
Portsmouth Strategic Partners, LLC, applicants

Property: 170 West Road

Assessor Plan Map 252, Lot 2-14

District: Industrial District

Description: Sports training facility.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:

- a) a special exception under Section 10.440, Use #442 to allow a sports training facility where a health club or similar use is allowed in this district by special exception.

Action:

Due to the length of the meeting, the Board voted to **postpone** the petition to a continued meeting on March 26, 2019

6) Case 3-6.

Petitioner: Noele M. Clews Estate, Christopher Clews, Trustee

Property: 799 South Street

Assessor Plan Map 132, Lot 24

District: General Residence A District

Description: Subdivide one lot into three lots.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:

- a) from Section 10.521 to allow 95'± continuous street frontage where 100' is required.

Action:

Due to the length of the meeting, the Board voted to **postpone** the petition to a continued meeting on March 26, 2019

7) Case 3-7.

Petitioners: Thirty-Six Ruby Road Trust, Phillip J. Stiles, Trustee
Property: Thirty-Six Ruby Road
Assessor Plan: Map 220, Lot 51
District: Single Residence B District
Description: Create a buildable residential lot.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) from Section 10.521 to allow a lot area and lot area per dwelling of 11,844± s.f. where 15,000 s.f. is required for each.

Action:

Due to the length of the meeting, the Board voted to **postpone** the petition to a continued meeting on March 26, 2019

8) Case 3-8.

Petitioners: Weeks Realty Trust, Kaley E. Weeks, Trustee and Chad Carter, owners and Tuck Realty Corporation, applicant, for property located at
Property: 3110 Lafayette Road, Lafayette Road, and 65 Ocean Road
Assessor Plan 292, Lots 151-1, 151-2 and 153
District: Single Residence B District
Description: Merge lots and construct four story mixed use building containing 30 apartments and professional/medical offices.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) from Section 10.440 to allow professional, business and medical office uses where the uses are not allowed in the district;
b) from Section 10.533 to allow a front yard setback 27' from the side line and 70' from the centerline of Lafayette Road where 30' from the sideline or 80' from the centerline is the minimum required;
c) from Section 10.521 to allow a building height of 51'± where 35' for a sloped roof is the maximum allowed; and
d) from Section 10.521 to allow a lot area per dwelling unit of 2,722± s.f. where 15,000 s.f. per dwelling unit is required.

Action:

Due to the length of the meeting, the Board voted to **postpone** the petition to a continued meeting on March 26, 2019.

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IV. OTHER BUSINESS

No other business was presented.

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V. ADJOURMENT

It was moved, seconded and passed to adjourn the meeting at 10:51 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary