

**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 reconvened meeting on March 26, 2019** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

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

**EXCUSED:** None

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**I. PUBLIC HEARINGS – NEW BUSINESS**

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:

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

Review Criteria:

The petition was granted for the following reasons:

- The standards as provided by the Ordinance for the particular use permitted by Special Exception are met.

- Any installed mechanical equipment will require the oversight and approval of the Inspection Department so that there will be no hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.
- There will be no detriment to property values in the vicinity or change in the essential characteristics of the area from the location or scale of buildings or other structures, parking areas, accessways, odor, smoke or other pollutants, noise, glare heat or other irritants or unsightly outdoor storage. It was represented that some type of chiller might be installed but it would not affect the building's exterior.  
There will not be an overbearing amount of noise and it will be mitigated by the warehouse and production space nature of the adjacent properties as well as a wide open space behind the property. The Board's previous experience with hockey/skating rinks similar to what the applicant is proposing has been that some noise might be generated but the concerns raised about the potential impact of noise levels had not proven out.
- There will be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity. The prior use in the building resulted in no problems and there are two entrances into the parking lot. While there might be some overlapping traffic in the 2:00 pm. to 5:00 p.m. time period, there is adequate available parking and many parents are expected to carpool or drop off children.
- Granting the variances will not result in an excessive demand on municipal services including, but not limited to water, sewer, waste disposal, police and fire protection. With this particular use, most of these will not be affected. With regard to water and sewer, it was represented that the rink would be filled once and then maintained. The Inspection Department will monitor the number and type of plumbing fixtures and ensure there are adequate facilities. The Board recommended adding a changing room.
- With no changes to the parking lot or exterior changes to the building, there will be no significant increase in storm water runoff onto adjacent property or streets.

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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:

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

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest and the spirit of the ordinance is observed. Looking at the entire neighborhood, and considering the nature of the required relief, the essential character of the neighborhood will not be altered. This is one lot in a proposed three-lot project where all lots will exceed the minimum lot area requirement in this district and are close to meeting the total 300' frontage required for three lots. Any drainage concerns will be addressed during the building permit process so that the public health, safety or welfare will not be threatened or public rights injured.
- Substantial justice is done. Granting the required relief will benefit the applicant with no resulting harm to individuals or the general public.
- There is nothing in the proposal that will diminish the value of surrounding properties in any way.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include a proposed large lot with an existing large house in the center. With 95' of continuous frontage on this lot and the two companion lots meeting the frontage requirement, there is no fair and substantial relationship between the general public purposes of the 100' frontage requirement and the specific application of that provision to the property.

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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:

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

Review Criteria:

The petition was granted for the following reasons:

- A lot that is somewhat substandard in size under current zoning but is similar to other lots in the area will not alter the essential character of the neighborhood so that granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed.

- Granting the variances would do substantial justice as denial of the petition would leave the applicant with no use for the lot, while there would be no gain to the general public from a vacant lot.
- The value of surrounding properties will not be diminished as the new construction will enhance and strengthen values.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions, which include a vacant lot that was created as a buildable lot and had a structure on it for several decades, and is burdened by a utility easement. With these special conditions there is no fair and substantial relationship between the purpose of the lot size requirement in the ordinance and its specific application to the property. The proposed use is reasonable in a residential district.

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:

The Board voted to **postpone** the petition to the April 16 meeting at the request of the applicant.

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**II. OTHER BUSINESS**

No other business was presented.

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**III. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 8:38 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary