

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 reconvened meeting on April 26, 2005** in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Alain Jousse, Alternate Steven Berg and Alternate Duncan MacCallum

EXCUSED: Nate Holloway, Robert Marchewka

I. OLD BUSINESS

5) Petition of **Strider and Rose Sulley, owners**, for property located at **46 McNabb Court** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the following: a) a 12' x 24' 1 ½ story addition with dormers with a 4' right side yard where 10' is the minimum required; b) a 4' x 12' 1 story rear addition with an 18' rear yard where 20' is the minimum required; c) a 4' x 12' left side porch with an 8' left side yard where 10' is the minimum required; d) a 4' x 12' two story right side addition with a 4' right side yard where 10' is the minimum required; and, e) 32% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 112 as Lot 59 and lies within the General Residence A district. Case # 4-5. Tabled from the meeting of April 19, 2005.

The Board approved the applicant's request that the application be **tabled** until the May 17th meeting.

6) Petition of **Melissa Bicchieri, owner**, for property located at **206 Northwest Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) a 16'2" x 19'8" 2 story addition with a 6'± front yard where 15' is the minimum required; and, b) a 12'3" x 15'6 ¾" 2 story addition with a 13'8"± rear yard where 20' is the minimum required. Said property is shown on Assessor Plan 122 as Lot 6 and lies within the General Residence A and Historic A districts. Case # 4-6. Tabled from the meeting of April 19, 2005.

Considering the items separately, the Board voted to **grant part a)** of the petition, as presented and advertised, for the following reasons:

- The property is near the end of a small side street and the proposal would not have an adverse impact on the public's interest.
- Special conditions exist creating a hardship and necessitating a variance to enable the proposed use of the property, one being the fact that if the addition were moved back, it would be intruding into the shoreland zone, which is less advantageous. Also, the existing main house is closer to the street than the proposed addition.
- The benefit sought could be achieved by another means but that would involve building in a shoreland zone which would not be environmentally feasible.

- The variance is consistent with the spirit of the ordinance, respecting light and air as well as the shoreland zone.
- Substantial justice is done as the location of the addition presents an obvious progression to the existing structure.
- With the planning put into the proposal, there will be no diminution in value of surrounding properties.

The Board considered part b) separately and voted to **grant part b)** as presented and advertised for the following reasons:

- The variance will not be contrary to the public interest and the value of surrounding properties will not be diminished for the same reasons cited in the granting of part a).
- The irregular shape of the lot is a special condition that results in hardship if the ordinance is literally enforced. The shape of the property, with one line serving as both side and rear, forces a reasonably placed addition into the setback and prevents it from being in full compliance.
- The most feasible method to achieve the sought benefit is to square off the structure as proposed.
- With minimal encroachment into the setback, the spirit of the ordinance will be served and there will be no harm to the public or surrounding properties.
- Given the lot shape and the minimal intrusion into the setback, substantial justice would be done by allowing the addition.

7) Petition of **Mark C. Adamy and Holly Lowe, owners**, for property located at **350 Broad Street** wherein a Variance from Article IV, Section 10-402(B) was requested to allow a 14' x 26' detached garage with a 6'± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 221 as Lot 69 and lies within the General Residence A district. Case # 4-7. Tabled from the meeting of April 19, 2005.

The Board approved the applicant's request that their petition be further **tabled until the May 17th meeting.**

A) Amend Section V(1) of the Board of Adjustment Rules and Regulations.

The Board **approved the proposed amendment** which removed a detailed fee structure and substituted wording indicating that fees would be set by the City Council, with none charged for an Appeal from an Administrative Decision.

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II. PUBLIC HEARINGS.

8) Petition of **Richard M. and Lee Ann Riley, owners**, for property located at **470 Banfield Road** wherein a Variance from Article II, Section 10-206 was requested to allow a 10' x 10' office on the lower level of the existing single family dwelling to be used for the business of purchasing vehicles at auction, no storage of said vehicles will be conducted on the property. Said property is shown on Assessor Plan 265 as Lot 2B and lies within the Single Residence A district. Case # 4-8

After consideration, the Board voted to **grant** the petition, as presented and advertised, with the following stipulations:

- That any and all vehicles purchased, held, or being sold in conjunction with this business shall not be stored, repaired or displayed on the property.
- That the owner maintain compliance with the requirements of Home Occupation I of the ordinance.
- That the Home Occupation I activity be limited to the 10' by 10' lower level of the dwelling as shown on the submitted plan.
- That there will be no signage.
- That there will be no other employees.

The variance was granted for the following reasons:

- This would not be contrary to the spirit of the ordinance as it complies with all of the reasons we grant a home occupation use. Most of the business activity will be conducted on the telephones and computer
- With the protective stipulations, the activity will not hurt the public interest.
- The special condition that results in a hardship by applying the ordinance is that, while this use is non-intrusive, it is not specifically allowed by the ordinance.
- With no deliveries or signage, and with the stipulations, the value of surrounding properties will not be diminished.

9) The Portsmouth Board of Adjustment, acting pursuant to NH RSA 12-G:13 and Chapter 300 of the Pease Development Authority Zoning Requirements, will review and make a recommendation to the Board of Directors of the Pease Development Authority regarding the following petition of **Seacoast Newspapers, Inc., applicant**, for property located at **111 New Hampshire Avenue** wherein a Variance from the Pease Development Authority Zoning Ordinance Section 304.03(c) was requested to allow a 63,255 sf building footprint (17,500 sf 2nd floor) with a 40'± front yard where 70' is the minimum required. Said property is shown on Assessor Plan 302 as Lot 4 and lies within the Industrial district. Case # 4-9

After consideration, the Board voted to **recommend the granting** of the petition, as presented and advertised, **to the Board of Directors of the Pease Development Authority**. The recommendation was made for the following reasons:

- The design is well thought out and will not be contrary to the public interest or diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in a hardship due to special conditions of the property, which is at the confluence of three zoning districts. Additional problems are created by the wetlands to the side and back.
- There was expert testimony to the fact that all alternatives were considered and, with the problems inherent in the site, this was the most reasonably feasible design.
- Substantial justice would be done as the applicant met with the city to develop a proposal which requires the minimum relief.

10) Petition of **Anthony J Balakier and Cherie L. Geiger, owners**, for property located at **490 Islington Street** wherein a Variance from Article XII, Section 10-1201(A)(2) was requested to allow a 15' wide travel aisle where a 24' wide travel aisle is required in conjunction with the addition of two dwelling units. Said property is shown on Assessor Plan 156 as Lot 1 and lies within the Mixed Residential Business district. Case # 4-10

After consideration, the Board voted to **deny** the petition as the type, number, and location of the necessary parking spaces would create a safety hazard, as well as snow storage and removal difficulties.

11) Petition of **Wal-Mart Real Estate Business Trust, David N. Glass Trustee, owner**, for property located at **2460 Lafayette Road** and **Jokers Realty One LLC et al, owner** for property located at **2460A Lafayette Road** wherein a Variance from Article IX, Section 10-908 Table 14 was requested to allow 365.95 sf of attached signage where 300 sf is the maximum allowed. Said property is shown on Assessor Plan 285 as Lots 16-1 and 16-2 (to be combined) and lies within the General Business district. Case # 4-11

At the applicant's request, the Board voted to **table** the petition to the May 17th meeting.

12) Petition of **Robert J. Bossie Revocable Trust and PK Brown, owners, and Greenway Financial LLC, applicant**, for property located at **625 Islington Street** wherein a Variance from Article XII, Section 10-1201(A)(2) was requested to allow allow a 20' wide travel aisle where a 24' wide travel aisle is required in conjunction with the conversion of an existing building with 2,000 sf of warehouse space, 1354 sf of retail space and 4 apartments to 3,200 sf of retail space and 6 apartments. Said property is shown on Assessor Plan 164 as Lot 6 and lies within the Business district. Case # 4-12

After consideration, the Board voted to **grant** the petition, as presented and advertised, for the following reasons:

- The variance would not be contrary to public interest and will be consistent with the spirit of the ordinance as the property will yield the conforming number of clearly delineated parking spaces and the 20 foot travel, or maneuvering, area will be adequate for safety concerns in this low-speed location.
 - The way the building is situated and the depth of the lot, which leave only a 20 feet travel aisle in areas, represent special conditions that present a hardship if the ordinance is literally enforced.
 - It would not be reasonably feasible to cut 4 feet off the building, which is the only other method for the applicant to pursue in providing the required number of parking spaces and adequate travel aisle.
 - Substantial justice is done in allowing the use of this portion of the lot and, with the placement and planning of the parking, there will be no diminution of property values. The project as a whole should enhance values.
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13) Petition of **Six Hundred Six Realty Trust, C J Annis and D I Rolde Trustees, owners**, for property located at **606 Greenland Road** wherein a Variance from Article II, Section 10-206(22) was requested to allow 5 horses to be kept on the property and in a barn that is 18' from the left property line where relief is needed to keep horses and a 100' set back is required for any shelter for such horses and storage of manure or other noxious substances. Said property is shown on Assessor Plan 258 as Lot 3-1 and lies within the Single Residence B district. Case # 4-13

At the request of the applicant, the Board voted to **table** this petition to the May 17th meeting.

14) Petition of **HCA Realty, Inc, owner**, for property located **off Borthwick Avenue** wherein a Variance from Article XII, Section 10-1204 Table 15 was requested to allow 243 parking spaces to be provided for a 52,101 sf (gross floor area) medical office building with lower level parking where 261 parking spaces are required. Said property is shown on Assessor Plan 234 as Lot 7-4A and lies within the Office Research district. Case # 4-14

At the request of the applicant, the Board voted to **table** this petition to a future date.

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III. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 10:05 p.m.

Respectfully submitted,

Mary E. Koepenick
Secretary

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