

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 May 24, 2005** in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Nate Holloway, Alain Jousse, Robert Marchewka, Arthur Parrott, Alternate Steven Berg and Alternate Duncan MacCallum

EXCUSED: None

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I. OLD BUSINESS

A) Request for Extension of Time to meet stipulation in the Petition of **Patrick H. McCartney, owner**, for property located at **120 Kane Street** wherein a Variance from Article III, Section 10-302(A) was granted with stipulation to allow an 8' x 10' shed with 35.3% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 142 as Lot 14 and lies within the General Residence A district. Case # 12-3

After consideration, the Board voted to **grant an extension of time**, to August 1, 2005, to tear down the existing barn, as stipulated in the granting of the variance on December 21, 2004.

Messrs. Jousse and Marchewka stepped down for the hearing and vote on this request.

B) Motion for Rehearing, by counsel for the applicants, of the 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) is 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 request as no new information had been presented which was not available at the time of the original hearing and no error had been made in the application of the law.

C) Petition of **Jeffrey F. and Deborah S. Purtell, owners**, for property located at **31 Pleasant Point Drive** wherein a Variance from Article III, Section 10-302(A) is requested to allow the following after demolition of the existing single family dwelling: a) a 26' x 56'10" two story single family dwelling with a 25.3'± front yard where 30' is the minimum required, a right side yard less than 10' where 10' is the minimum required; and , rear yard less than 30' where 30' is the minimum required, b) an attached 326 sf front porch with a 6.1± right side yard where 10' is the minimum required, c) a 12' x 16' one story rear addition with an 10'± rear yard where 30' is the minimum required; and, d) a 24' x 26' garage and connector (720 sf) with living space above creating 23.7% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 207 as Lot 27 and lies within the Single Residence B district. Case # 5-5

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

- The safer structure which the new foundation will allow will not be contrary to the public interest.
- The unique shape of the corner lot, the lack of a rear setback, and the excavation which is already done for the current structurally unsound foundation are special conditions which require a variance to enable the proposed use.
- There is no other reasonably feasible alternative to pursue other than a complete new excavation, which could disturb septic and leach field systems.
- The petition is consistent with the spirit of the ordinance and substantial justice is achieved by allowing a structure to be built on the existing footprint with the only new encroachment being a section of open porch not affecting light and air.
- The value of surrounding properties will not be diminished by an attractive structure, and no neighbor has appeared in opposition to the proposal.

D) Petition of **K & S Energy Group Inc., owner**, for property located at **1400 Lafayette Road** wherein Variances from Article III, Section 10-304(A) and Article IV, Section 10-401(A)(2)(c) are requested to construct a 10' x 48' one story addition to the rear of the existing convenience store with: a) a 30' rear yard where 50' is the minimum required, b) an 11' left side yard where 30' is the minimum required; and, c) a 15' right side yard where 30' is the minimum required. Said property is shown on Assessor Plan 252 as Lot 7 and lies within the General Business district. Case # 5-6

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

- That an engineered plan will be provided to the City so that current boundaries can be delineated.
- That the building will be brought into compliance with the requirements of the Americans with Disabilities Act.

The petition was approved for the following reasons:

- The variance will not be contrary to the public interest as the lot is in a commercial setting and the provided services are a well established combination of gas and light groceries.
- The location, small size and odd shape of the lot are special conditions requiring a variance to enable the proposed use.
- The lot is fully developed and there is no reasonably feasible alternative to expansion of the store as proposed.

- It is consistent with the spirit of the ordinance to promote and help small businesses to prosper.
- Substantial justice would be done by allowing the applicant to be more competitive and fully comply with the requirements of the Americans with Disabilities Act.
- A more modern and functional operation at this location will not diminish the value of surrounding properties.

E) 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 **200 International Group, applicant**, for property located at **200 International Drive** wherein a Variance from the Pease Development Authority Zoning Ordinance Section 303.4 is requested to allow an educational use (Seacoast Career Schools) in an existing building occupying 14,869± sf where such use is not allowed. Said property is shown on Assessor Plan 312 as Lot 7 and lies within the Industrial district. Case # 5-4

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.

Mr. Berg stepped down for this petition.

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I. PUBLIC HEARINGS.

8) 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 **NH Avenue Retail Center LLC, applicant**, for property located at **30 Manchester Square** wherein the following are requested from the Pease Development Authority Zoning Ordinance: a) a Variance from Section 306.01(d) to allow 530.9 sf of aggregate signage where 200 sf is the maximum allowed, and 2) a Variance from Section 306.04(c) to allow light source to be visible above 3’. Said property is shown on Assessor Plan 302 as Lot 4 and lies within the Industrial district Case # 5-8

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, for the following reasons:

- The variance will not be contrary to the public interest and the value of surrounding properties will not be diminished as the development has been well designed and the amount of signage is similar to that allowed by the zoning ordinance of the City of Portsmouth.
- Strict enforcement of the ordinance would cause an unnecessary hardship by not allowing signage appropriate to retail use.
- The variance is consistent with the spirit of the ordinance as retail development is allowed but no specific provision has been made for appropriate signage.

9) Petition of **Manuel S. Garganta Revocable Trust and Donna J. Garganta Revocable Trust, owners** for property located at **471 Colonial Drive** wherein a Variance from Article IV, Section 10-402(B) is requested to allow an 8' x 12' shed with a 3' left side yard where 5' is the minimum required. Said property is shown on Assessor Plan 260 as Lot 40 and lies within the Single Residence B district. Case # 5-9

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

- With the location of the shed tucked behind a tree, the variance will not be contrary to the public interest.
- The special conditions requiring a variance to enable the proposed use are that there would be an adverse impact on the usable yard as well as the view from the street if the shed were relocated to comply with the ordinance.
- The applicant has explored a number of alternatives which are not reasonably feasible to pursue other than what is proposed.
- The petition is consistent with the spirit of the ordinance and substantial justice is achieved by allowing the applicant to rebuild a usable structure.
- The value of surrounding properties will not be diminished by an attractive new structure, and a number of neighbors have signed a petition in support of the proposal.

Mr. Parrott stepped down for this petition.

10) Petition of **535 Peverly Hill LLC, owner and Sun Woo Park d/b/a Park's Taekwondo, applicant**, for property located at **535 Peverly Hill Road** wherein a Variance from Article IX, Section 10-908 is requested to allow a 2' x 20' sign on the front roof of the building and a 4' x 8' sign on the end wall of the building in a district where such signs are not allowed. Said property is shown on Assessor Plan 244 as Lot 9 and lies within the Single Residence B district. Case # 5-10

After consideration, the Board voted to **grant** the petition, with the following stipulation:

- That the total amount of signage will not exceed 14.4 s.f.; will be limited to the area below the eaves; and will not be lighted.

The variance was granted for the following reasons:

- The variance will not be contrary to the public interest with signs kept to a fairly small size in accordance with the attached stipulation.
- There is no other method to pursue other than a variance as the ordinance would allow no signs, presenting a hardship in the operation of this business. We have allowed the proposed use and some signage is needed.
- With the attached stipulation, the variance will be consistent with the spirit of the ordinance and substantial justice will be done as the interests and rights of all parties have been considered and balanced.
- With appropriate signage, the value of surrounding properties will not be diminished.

11) Petition of **Michael J. and Leanne A. Edwards, owners**, for property located at **64 Brackett Road** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) a 6'6" x 18' irregular shaped front porch and stairs with a 17.7'± front yard where 30' is the minimum required, b) a 12' x 27' irregular shaped deck and stairs with an 18.1'± rear yard where 30' is the minimum required, c) a bay window extension in the kitchen addition protruding into the proposed deck within the required 30' rear yard; and, d) 31% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 206 as Lot 22 and lies within the Single Residence B district. Case # 5-11

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

- The variance will not be contrary to the public interest as most of the proposed expansion will be to the rear, abutting a large expanse of school property which will not be developed.
 - Literal enforcement of the ordinance creates a hardship due to the small size of the lot which limits expansion options.
 - The applicant has explored a number of alternatives, none of which are reasonably feasible due to the size of the existing, non-conforming lot and the rear slope.
 - The variance is consistent with the spirit of the ordinance and substantial justice is done by allowing reasonable expansion which, with the open area to the rear, will not negatively impact light and air.
 - As testified to by a number of abutters, the value of surrounding properties will not be diminished.
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12) Petition of **Ronald G. Smith, owner**, and **Donald D. Williams, applicant**, for property located at **1338 Woodbury Avenue** wherein a Variance from Article II, Section 10-207 is requested to allow a 14' x 56' mobile home replacing a 10' x 56' mobile home that was destroyed by fire. Said property is shown on Assessor Plan 237 as Lot 70 and lies within the Mixed Residential Business district. Case # 5-12

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

- There is no public interest concern other than health and safety access to the balance of the park, which has been satisfied.
 - Special conditions requiring a variance to enable the use of the property are that the previous mobile home was destroyed and homes are no longer manufactured in that size.
 - There is no other feasible method to achieve the benefit and the applicant chose a replacement closest in size to the previous home.
 - It is in the spirit of the ordinance and substantial justice will be done by continuing a use which has been in place for forty or fifty years.
 - The value of surrounding properties will not be diminished by the replacement with an updated dwelling.
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13) Petition of **Daniel James LaCava, owner**, for property located at **72 Lincoln Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to

allow a 6' x 20' porch with a 13'± front yard where 15' is the minimum required. Said property is shown on Assessor Plan 113 as Lot 1 and lies within the General Residence A district. Case # 5-13

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

- That the existing and proposed porches will not be enclosed to use as part of the interior living space.

The petition was granted for the following reasons:

- The variance will not be contrary to the public interest as the extension of the porch will be a minor change.
- The special condition requiring a variance and the reason another method cannot be found to achieve the benefit is that the existing, non-conforming porch is in disrepair and there is nowhere else feasible to build it.
- It is consistent with the spirit of the ordinance to grant this minimal relief and allow improvement of the dwelling.
- The value of the surrounding properties will not be diminished by a newer, visually balanced, and functional porch.

14) Petition of **Christopher J. Marelli, owner**, for property located at **635 Maplewood Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 7'3" x 19'4" one story addition with a 3'± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 209 as Lot 10 and lies within the Single Residence B district. Case # 5-14

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

- That the zoning officer for the City of Portsmouth determine that the rebuilt addition occupies essentially the same footprint as the old foundation and is no closer to the property line.

The variance was granted for the following reasons:

- This is, in effect, a replacement in kind with no further impact on the public interest.
- The special conditions requiring a variance to allow the proposed use are that this was a gradual rebuild of an existing structure which had been penetrated by rot.
- There is no other feasible method for the applicant to pursue as this was an in-place replacement of a non-conforming structure.
- It is in the spirit of the ordinance, and substantial justice, to allow a property owner to bring a structure up to code.
- The value of surrounding properties will not be diminished by a newer, safer replacement structure.

Messrs. Holloway and Berg stepped down for this petition.

15) Petition of **Brora, LLC, owner**, and **ProCon Construction, applicant**, for property located **off Dunlin Way aka Portsmouth Boulevard** wherein a Special Exception as allowed in Article II, Section 10-209(38) is requested to allow a portion of the vacant lot to be used for the temporary

outdoor storage of raw or partially finished material, machinery, equipment and vehicles in conjunction with the construction of the Hilton Garden Inn and adjacent condo's off Hanover Street.

Said property is shown on Assessor Plan 213 as Lot 11 and lies within the Office Research district.
Case # 5-15

After consideration, the Board voted to **table** the petition until the June 21, 2005 meeting in order to have someone present to speak to the petition.

17) Petition of **Robin M. Hackett and Patti S. Palen, owners**, for property located at **46 Ridges Court** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) 14' x 17' deck with a 5' right side yard where 10' is the minimum required, and b) 28.2% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 207 as Lot 64 and lies within the Single Residence B district. Case # 5-17

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

- The variances will not be contrary to the public interest. The abutter most affected, who has not spoken against the petition, has an elevated driveway on the deck side, minimizing impact.
 - Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of a narrow lot and the location of the house, stairs and bulkhead on that lot.
 - The applicant has considered other options but there is no other practical configuration that would provide the same benefit.
 - The variance is consistent with the spirit of the ordinance by allowing the homeowner to increase the safety, function and visual balance of the deck.
 - The value of surrounding properties will not be diminished as this is a modest deck expansion very consistent with the pattern in the neighborhood.
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18) Petition of **Tony LaCava, owner** and **Bret Taylor d/b/a Taylor Lobster Company, applicant**, for property located at **95 Mechanic Street** wherein a Special Exception from Article II, Section 10-208(41) is requested to allow the existing wharf area to be used for the landing of commercial fishing craft for water related uses such as the buying of lobsters off said craft and the sale of bait to fishermen. Said property is shown on Assessor Plan 103 as Lot 29 and lies within the Waterfront Business and Historic A districts. Case # 5-18

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

- That the hours of operation will be limited to 6:00 a.m. to 6:00 p.m.
- That there will be no trucks or reefer units running while parked for deliveries or pick-ups.

The special exception was granted for the following reasons:

- There will be no hazard to the public or adjacent property from potential fire explosion or release of toxic materials.
- As demonstrated by abutters, property values have increased with proximity to a working waterfront district and this type of business fits in exactly with the essential characteristics of the neighborhood.

- Possible noise, odor, parking and outdoor storage issues have been adequately addressed by the applicant.
- With limited deliveries and pick-ups, as well as the types of vehicles used, there will be no traffic hazard created or increase in congestion.
- There will be no excessive demand for municipal services and no runoff of water to adjacent properties.

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III. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 11:35 p.m.

Respectfully submitted,

Mary E. Koepenick
Secretary

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