

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 regular meeting** on February 19, 2008 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Vice-Chairman David Witham, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternates: Derek Durbin, Robin Rousseau

EXCUSED: Carol Eaton

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I. NEW BUSINESS

A) Election of Officers

A motion was made, seconded, and passed by unanimous voice vote to re-elect Mr. Charles LeBlanc as Chairman and Mr. David Witham as Vice-Chairman.

II. OLD BUSINESS

A) Approval of Minutes – January 15, 2008

A motion was made, seconded, and passed by unanimous voice vote to accept the Minutes with minor corrections.

B) Request for Rehearing regarding property located at 4 **Sagamore Grove Road.**

After consideration, the Board voted to deny the Request for Rehearing as correct procedure had been followed in arriving at their decision and no new information had been provided to warrant a rehearing.

III. PUBLIC HEARINGS

1) Petition of **Paul H. White, Trustee of the Paul H. White Realty Trust, Janet H. White-Nay, Trustee of the Janet H. White-Nay White Revocable Trust of 1992, Paul H. White and Janet H. White-Nay, Co-Trustees of the Jean H. White Revocable Trust of 1992, owners, and Zachery H. and Nicole R. Gregg, applicants**, for property located at **13 Salter Street** wherein Variances from Article III, Section 10-304(A) and Article IV, Sections 10-401(A)(1)(c) and 10-401(A)(2)(c) were requested to allow: a) a 12' x 30' 2 story addition to the left side of the existing building with a 26'± front yard where 30' is the minimum required, and b) an irregular shaped 683.5± sf attached garage with a 2nd floor apartment to the right side of the existing building with a 16.5'± right side yard where 30' is the minimum required. Said property is shown on Assessor Plan 102 as Lot 28 and lies within the Waterfront Business and Historic A districts.

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

- The conditions of the site creating a hardship include a tidal waterway on one side, proximity to an intersection on another, and a utility pole, all involving regulation from outside agencies.
- Considering the agencies' requirements, as well as engineering and architectural perspectives, these are the best locations for an addition and garage.
- The light and air protected by the ordinance will be preserved and the public interest not adversely affected by granting the petition.
- The changes will have a positive influence on neighboring property values.

2) Petition of **Kendall P. and Sarah N. Faulstich, owners**, for property located at **267 Broad Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 12' x 28' attached garage with 2nd floor study and bathroom and a 3.5' x 15' one story connector with: a) a 3'6"± right side setback where 10' is the minimum required, and b) 30% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 131 as Lot 18 and lies within the General Residence A district.

The Board determined that the case of Fisher vs. Dover applied to this petition and declined to hear the variance request as it was similar to the variance requested in May, 2007.

3) Petition of **Bursaws Pantry LLC, owner**, for property located at **3020 Lafayette Road** wherein a Variance from Article II, Section 10-207(2) was requested to allow an existing 2,111 sf Convenience Goods I store to be changed to a 2,111 sf Convenience Goods II store in order to allow the sale of prepared food for consumption off the premises where the maximum area for such a store is 2,000 sf. Said property is shown on Assessor Plan 292 as Lot 152 and lies within the Mixed Residential B district.

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

- That there be no grilling or frying on the premises.

The petition was granted for the following reasons:

- This type of store serves the public interest and there are no close residences to be affected.
- While the maximum area for a Convenience Goods II store is slightly exceeded, this is a reasonable use of the property on a primarily business street.
- With no close abutters, the public and private rights of others will continue to be protected.
- The building area is 2,111 s.f. and there is no reasonably feasible way to reduce the size to the allowed maximum.
- It is in the spirit of the ordinance to promote businesses that serve the public.
- Surrounding property values will not be diminished by a minor change in an operation that has been in place for a number of years.

4) Petition of **R and D Living Trust, owner, Raymond Drapeau and Donna Drapeau Trustees**, for property located at **1 Polk Avenue** wherein a Variance from Article III, Section 10-302(A) was requested to allow an 8' x 10' shed creating 20.7% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 251 as Lot 34 and lies within the Single Residence B district.

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

- Located in the rear of the lot, the shed will have no effect on the public interest.
 - There is a minimal amount of square footage on this small lot to accommodate the shed sought by the applicant.
 - The amount of relief requested is small and the light and air provided for in the ordinance will be protected.
 - The surrounding property values will not be diminished by an attractive shed of a reasonable size
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5) Petition of **Kyle Engle, owner**, for property located at **24 Hunking Street** wherein a Variance from Article III, Section 10-302(A) was requested to allow a 6' x 7'6" shed: a) with a 2'± rear setback where 5' is the minimum required, and b) creating 36.5% building coverage where 30% is the maximum allowed. Said property is shown on Assessor Plan 102 as Lot 10 and lies within the General Residence B and Historic A districts.

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

- The public interest will not be harmed by this reasonable request.
 - With the size of the lot and the siting of walkways, this is the most appropriate location for the shed.
 - The relationship to the setbacks is typical of many in the area and will not increase the density which the ordinance seeks to control.
 - Denying this Variance would not benefit the public, but would create a hardship for the homeowner.
 - With care taken to minimize the effect on abutters, there will be no diminution in the value of surrounding properties.
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6) Petition of **Lea H. Aeschliman Trust, owner, Lea H. Aeschliman Trustee**, for property located at **314 Middle Street** wherein the following were requested 1) a Variance from Article XII, Section 10-1204 to allow no parking to be provided for an 854 sf professional office where 4 parking spaces are required, and 2) a Variance from Article IX, Section 10-908 to allow a 4 sf freestanding sign (2.5'± from the front property line) in a district where freestanding signs are not allowed. Said property is shown on Assessor Plan 136 as Lot 6 and lies within the Mixed Residential Office and Historic A districts.

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

- There is adequate public parking available in the area.
 - With only one or two clients at a time, traffic will not be negatively impacted.
 - The signage is minimal and will fit in with a neighborhood with other professional and home offices.
 - The property has contained a professional office for many years in the past and presented no problems for the public or neighbors.
 - The value of surrounding properties will not be diminished and the only abutter presenting an opinion strongly supported the application.
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7) Petition of **Ronald C. Ulrich and Rebecca G. Blaine, owners**, for property located at **46 Baycliff Road** wherein a Variance from Article II, Section 10-206 was

requested to allow the 2nd floor of the detached garage to be used as a sleeping room with a full bathroom where such use is not allowed in an accessory building. Said property is shown on Assessor Plan 207 as Lot 45 and lies within the Single Residence B district.

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

- That there will be no kitchen facilities in the garage.
- That the Variance shall survive only so long as Dolores Blaine has a continuing need to use the premises.

The petition was granted for the following reasons:

- There will be no adverse effect on the public interest with this limited use.
- Pursuant to RSA 674:33, Section V, the hardship criteria need not be met in this situation.
- With the stipulations, this will not interfere with the purposes of the Zoning Ordinance in a Single Residence District.
- The impact on the applicant in denying the petition outweighs any possible negative impact on the public.
- As evidenced by an abutters' petition of support, there will be no diminution in the value of surrounding properties.

8) Petition of **Madison Commercial Group, LLC, owner**, for property located at **72 Mirona Road** wherein a Variance from Article XII, Section 10-1204 was requested to allow a two story addition to the existing building (51,042 sf) for 2,844 sf of retail space on the 1st floor and 2,914 sf of office space on the 2nd floor including a 2 car garage requiring a total of 216 parking spaces where 201 parking spaces are provided. Said property is shown on Assessor Plan 253 as Lot 3 and lies within the General Business district.

The petition was withdrawn at the applicant's request.

9) The Portsmouth Board of Adjustment, acting pursuant to NH RSA 12-G:13 and Chapter 300 of the Pease Development Authority Zoning Requirements, reviewed and made a recommendation to the **Board of Directors of the Pease Development Authority** regarding the following petition of **Two International Group LLC, applicant**, for property located at **100 International Drive** wherein a Variance from the Pease Development Authority Zoning Ordinance Article II, Section 303.04B was requested to allow: a) a 5,900 sf dermatology office on the first floor, b) a 6,900 sf professional engineering office on the second floor; and, c) a 5,430 sf professional engineering office on the third floor in a district where professional offices are not

allowed. Said property is shown on Assessor Plan 306 as Lot 2 and lies within the Industrial district.

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:

- A professional office use in an office building is a reasonable and acceptable use.
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10) Petition of **Old Tex Mex LLC, owners**, for property located at **3510 Lafayette Road** wherein a Variance from Article II, Section 10-206 was requested to allow: a) 1,570 sf in the basement to be used for office/assembly, b) 2,160 sf in the existing garage addition for a landscaping business including inside storage of equipment with a 288 sf office on the mezzanine; and, c) 314 sf of office space on the mezzanine of the existing ICI space within the garage. Said property is shown on Assessor Plan 297 as Lot 8 and lies within the Single Residence A district.

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

- That there will be no outdoor storage of materials or products.

The petition was granted for the following reasons:

- The public interest will not be adversely affected by the nature of these changes.
 - In this area, with only one residence, there is no substantial relationship between the purposes of the zoning ordinance and the restriction on the property.
 - The change in tenants will not injure the public or private rights of others and may result in less traffic.
 - There is no benefit to the public in denying the petition that would outweigh the hardship on the landowner in not continuing an existing operation.
 - There is no indication that surrounding property values will be diminished and the sole abutting resident has indicated he has no objection to the petition.
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11) Petition of **Griffin Family Corp, owner, Andrew J. Boyt, Hannaford Bros. Co., applicant**, for property located at **800 Islington Street** wherein a Variance from Article II, Section 10-208(54)(b) was requested to allow a 12' x 20' exterior produce cooler temporarily until December 2008 during internal renovations to the grocery store. Said property is shown on Assessor Plan 154 as Lot 1 and lies within the Business district.

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

- That a \$500 bond be posted to ensure removal of the cooler within the approved timeframe.

The petition was approved for the following reasons:

- The cooler will be sheltered from public view.
- The temporary cooler is necessary to allow ongoing business during the needed renovations to the store.
- The protection in the ordinance against temporary structures becoming permanent will be maintained by the posted bond.
- There would be no negative effect on the public that would outweigh the benefit to the applicant in granting the petition.
- Surrounding property values will not be diminished by this temporary structure.

IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:35 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary