

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 May 19, 2009 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Vice-Chairman David Witham, Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternate: Robin Rousseau

EXCUSED: Alternate Derek Durbin

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I. OLD BUSINESS

A) Approval of Minutes – April 21, 2009

It was moved, seconded and passed by unanimous voice vote to accept the Minutes with as amended.

B) Petition of **Jonathan Schroeder, owner**, for property located at **324 Maplewood Avenue** wherein the following were requested: 1) Variances from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) to allow a two story addition on an existing garage/storage building to house two additional dwelling units on a 3,210 sf lot (that also contains a second building with a commercial use on the 1st floor and a dwelling unit on the 2nd floor) with: a) a 5.47'± left side setback where 10' is the minimum required, and b) a 1'± rear setback where 15' is the minimum required; and, c) 1,070 sf of lot area per dwelling unit where 7,500 sf of lot area per dwelling unit is required for a total of three dwelling units on the property requiring 22,500 sf of lot area. 2) a Variance from Article XII, Section 10-1201(A)(3) to allow the required parking spaces to back out onto the street where such parking layout is not allowed; and 3) a Variance from Article III, Section 10-301(A)(2) to allow dwelling units in two separate buildings on a lot where all dwelling units shall be located in one building. Said property is shown on Assessor Plan 141 as Lot 1 and lies within the Mixed Residential Office and Historic A districts. *(This petition was postponed from the April 21, 2009 meeting)*

This petition was postponed to the June meeting at the applicant's request.

II. PUBLIC HEARINGS

1) Petition of **Goodman Family Real Estate Trust, owner, Paul Vrusho d/b/a Granite State Greenhouse & Nursery, Inc., applicant**, for property located at **1850 Woodbury Avenue** wherein the following were requested: 1) a Variance from Article II, Section 10-208 to allow the outdoor sales of plants, produce and nursery products in a district where outdoor sales are not allowed, and 2) a Variance from Article IX, Section 10-908 Table 14 to allow two 32 sf freestanding A-frame signs (64 sf total) creating: a) 156 sf of aggregate signage where 102 sf is the maximum allowed; and b) a 1'± front setback where 20' is the minimum required. Said property is shown on Assessor Plan 239 as Lot 9 and lies within the General Business district.

After consideration, the Board voted to grant part 1) of the petition as presented and advertised with the following stipulations:

- That no trees or shrubs between this site and Lo's Seafood will be cut.
- That no chemicals or pesticides will be used on the property which would negatively impact the abutting wetland.
- That the old light poles located on the property will not be used due to safety considerations.
- That, if new light poles are proposed, then Dark Sky Friendly standards will be met and the applicant may be required to seek the approval of the Technical Advisory Committee for placement and foot candle standards.

Part 1) of the petition was granted for the following reasons:

- The public interest will not be harmed by the outdoor sales of these products.
- There is no fair and substantial relationship between the restriction on the property and the general purposes of the ordinance as the property is intended to be used for sales.
- It will be consistent with the spirit of the ordinance to allow a new business to operate in a reasonable manner.
- With the protection of the stipulations, the use will cause no diminution in the value of surrounding properties.

Part 2), sign request: The Board voted to grant one sign located in the center island and placed as far off the property line as possible.

Part 2) of the petition was granted for the following reasons:

- A portable sign, removable at night, will not be contrary to the public interest.
- The zoning restriction interferes with a reasonable ability to advertise what is for sale on the site.
- It is in the spirit of the ordinance to allow a business to promote itself.
- The sign is appropriate for the use and, given the hours of operation the unlit sign will have minimal impact on the surrounding properties.

2) Petition of **David P. MacDonald and Nancy T. MacDonald, owners**, for property located at **28 Ball Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow an 8' x 12' one story porch addition to the left

side of the existing dwelling with a 6'± front setback where 30' is the minimum required. Said property is shown on Assessor Plan 207 as Lot 54 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:

- This is a modest extension of a pre-existing nonconforming structure which will allow a reasonable use of the property.
- The addition will be further from the property line than the existing building so the nonconformity will not be intensified.
- The way the house is situated with regard to the property line creates a hardship and, set away from adjacent properties, this is the best location for the addition.
- Justice will be done by allowing the applicants to improve their property.
- There is no indication that the value of surrounding properties will be diminished.

3) Petition of **Thomas S. Carpenter and Karen G. Carpenter, owners**, for property located at **139 Brackett Road** wherein the following were requested: 1) a Variance from Article IV, Section 10-402(B) to allow an 10' x 16' storage shed with: a) a 5'± rear set back, and b) a 5'± right side setback where 10' is the minimum required in each instance, and 2) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow a 10' x 10' front entry porch with an 18.1'± front setback where 30' is the minimum required, and b) 27.5% building coverage for all where 20% is the maximum allowed. Said property is shown on Assessor Plan 206 as Lot 15 and lies within the Single Residence B district.

After consideration, the Board voted to grant the petition as advertised and presented with the requested building coverage amended to 24.7%. The petition was granted with the following stipulation:

- The storage shed will be no larger than 10' x 12', with the building coverage as presented being reduced accordingly (to 24.1%).

The petition, as amended, was granted for the following reasons:

- With adequate lawn area in front, the proposed porch will not be contrary to the public interest.
- A hardship is created by the odd shape of the lot, its small size, and the way the house sits on the property so that there is no more feasible location for the structures.
- While adding new structures, front stairs and a rear deck will be removed to lower the degree of nonconformance.
- It will be in the spirit of the ordinance to allow the owners a reasonable use of their property.
- There will be no benefit to the public in denying the variance and the value of surrounding properties will not be diminished.

4) Petition of **Antoine Albathany, owner**, for property located at **999 Woodbury Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c)

were requested to allow: a) a 6’ x 31’ farmers porch addition to the front of the single family dwelling with a 25’± front setback where 30’ is the minimum required, and b) 20.6%± building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 219 as Lot 32 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:

- This is a simple porch which will have no impact on the public interest.
- There is no other way to have a front porch which, at 6’ wide, is not excessive.
- The amount of relief requested is small and will not be against the spirit of the ordinance.
- The structure will be in harmony with the surrounding area and the value of surrounding properties will not be diminished.

5) Petition of **Clear Channel Broadcasting Inc., owner, FLO TV, Inc. f/k/a Mediaflo USA, Inc., applicant**, for property located at **815 Lafayette Road** wherein a Variance from Article II, Section 10-208 was requested to allow a 12.2’ x 0.7’ x 2.7’ antenna attached to the existing guyed tower and associated 10’ x 19’10” equipment shelter with two dish antennas mounted to the roof and two GPS antennas mounted to the new cable bridge for live mobile tv in a district where such use is not allowed. Said property is shown on Assessor Plan 245 as Lot 3 and lies within the General Business district.

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

- It will be in the public interest to have broadcast coverage increased at this site rather than adding another tower in a different location.
- It is a reasonable use of the property to add the antennas and equipment to the existing tower.
- The restriction in the Zoning Ordinance on this use of the property was previously lifted to allow the tower and the additional equipment will not be contradictory to that intent.
- The public and private rights of others will not be injured as this will not result in an excess of “clutter” on the tower.
- The value of surrounding properties will not be diminished by this minimal request.

III. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 8:15 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary