

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 July 21, 2009 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, Alternate: Robin Rousseau

EXCUSED: Carol Eaton, Alternate Derek Durbin

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I. OLD BUSINESS

- A. Approval of Minutes – April 28, 2009
- May 19, 2009

In separate motions, it was moved, seconded and passed to accept the Minutes for April 28, 2009 as presented and the Minutes for May 19, 2009 with a minor correction.

- B. Request for Extension – 24 Central Avenue

After consideration, the Board voted to grant an extension of the special exception granted April 21, 2009 through December 31, 2009.

- C. Request for Extension – 150 Route One By Pass

After consideration, the Board voted to grant a one year extension of the variance granted July 15, 2008, with the August 19, 2008 amendment, through July 15, 2010.

- D. 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, May 19, and June 16, 2009 meetings)*

The petition was postponed to the August 18, 2009 meeting at the applicant's request.

E. Petition of **CCV Group, LLC, owner**, for property located at **4 Sagamore Grove Road** wherein the following were requested to allow a 535 sf 1 ½ story addition with a basement and chimney to a previously approved single family dwelling in a Waterfront Business District: 1) a Variance from Article IV, Section 10-401(A)(1)(c) and to allow a residential use to be expanded in a Waterfront Business District, where such use is not allowed, 2) a Variance from Article III, Section 10-304(A) and Article IV Section 10-401(A)(2)(c) to allow: a) a 12'1"± left side setback where 30' is required, and b) a 26'± front setback where 30' is the minimum required; and, 3) a Variance from Article III, Section 10-301(A)(7)(a) to allow said addition to have a 75' setback from the salt water marsh wetlands and mean high water line where 100' is the minimum setback required for all. Said property is shown on Assessor Plan 201 as Lot 4 and lies within the Waterfront Business district. *(This petition was postponed from the June 16, 2009 meeting.)*

The Board voted to postpone the petition to the August 18, 2009 meeting at the applicants' request.

F. Petition of **Irving Canner and Victoria D. Canner, owners**, for property located at **229 Pleasant Street** wherein Variances from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 163 sf deck with a 5'8"± rear setback where 15' is the minimum required. Said property is shown on Assessor Plan 108 as Lot 6-4 and lies within the Mixed Residential Office district. *(This petition was postponed from the June 16, 2009 meeting)*

The Board voted to postpone the petition to the August 18, 2009 meeting at the applicants' request.

II. PUBLIC HEARINGS

1) Petition of **Portsmouth Navigation Corp. (Lot 45) and City of Portsmouth (Lot 46), owners**, for property located at **34 Ceres Street and the adjacent City owned property** wherein a Variance from Article III, Section 10-305(A) was requested to allow a lot line relocation resulting in the 172'± nonconforming street frontage of lot 45 to be decreased by 9.25' where 200' is the minimum street frontage required. Said property is shown on Assessor Plan 106 as Lots 45 & 46 and lies within the Waterfront Industrial, Municipal, Historic District A and Downtown Overlay districts.

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

- It will be in the public interest and the spirit of the ordinance to help facilitate the development of a public access park.
- The frontage dimension will be in keeping with this historic part of the City where it is difficult to meet the requirements and smaller frontages are common.
- This is the most reasonably feasible method to make these lots more serviceable.
- While lot 45 will lose some frontage, it will gain a little in lot coverage.
- Surrounded by similar lots, there will be no diminution in the value of neighboring properties.

2) Petition of **Michael A. Kuchtey and Barbara A. Kuchtey, owners**, for property located at **6 Sagamore Grove** wherein a Variance from Article III, Section 10-301(7)(a) was requested to allow the expansion of a structure within the 100' inter-tidal zone adjacent to Sagamore Creek (use variance); a Variance from Article IV, Section 10-401(A)(1)(b) is requested to allow a nonconforming use to be extended into another part of a building or structure; and a Variance from Article IV, Section 10-401(A)(2)(c) is requested to allow a nonconforming building to be added to or enlarged where such addition or enlargement does not conform to all regulations of the zoning district. Said property is shown on Assessor Plan 201 as Lot 5 and lies within the Waterfront Business district.

The Board voted to postpone the petition to the August meeting at the applicants' request.

3) Petition of **Tyler Hayes Kelly, owner**, for property located at **30 Sewall Road** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the expansion of a non-conforming building with a 27.5'± frontyard setback where a 30' side yard is required. Said property is shown on Assessor Plan 170 as Lot 16 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:

- The change should not harm the public interest in this residential neighborhood of similar homes and setbacks.
- The lot sits in an unusual position on an odd-shaped lot on a curve, limiting the expansion options.
- The ordinance was changed since the house was built, now requiring a greater setback.
- With the relatively small area of nonconformance, there is no benefit to the public in denying the variance that would outweigh the hardship on the applicant.
- Converting a single garage to a double and attaching it to the house will not negatively affect the value of surrounding properties.

4) Petition of **Timothy G. Griffin, owner**, for property located at **172 Elwyn Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow for the construction of a mudroom and stairs with a building coverage of

32% where 25% is the maximum allowable coverage. Said property is shown on Assessor Plan 112 as Lot 39 and lies within the General Residence A district.

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

- Granting the variances presents no danger to the public interest and no benefit would accrue if the variances were denied.
- The current configuration of the landing and stairs creates a snow and ice hazard and this was the most reasonably feasible of the alternatives to correct the situation.
- To minimize the impact, less relief has been requested than was granted in 2004.
- With the lot abutted on three sides by public streets and the placement as far as possible from neighbors, there should be no diminution in the value of surrounding properties.

5) Petition of **Michael Dickson and Tracey Graffam, owners**, for property located at **43 McNabb Court** wherein Variances from Article III, Section 10-302(A) and Article IV 10-401(A)(2)(c) were requested to allow an 8'± setback from the left side lot line where 10' is required. Said property is shown on Assessor Plan 112 as Lot 56 and lies within the General Residence A district.

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

- With the structures centered in the applicants' back yard, the public interest will not be affected and there is no overriding public interest that would argue against granting the variances..
- This is a small lot in a neighborhood of similar lots, with the side most affected facing on a dead end street.
- Extending the building along the same façade will allow the owners to expand without increasing the degree of nonconformance.
- The character of the home and neighborhood will not be changed so that the value of surrounding properties will not be diminished.

6) Petition of **Peter H. Rice and Meghan Milne, owners**, for property located at **196 South Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the expansion of a nonconforming building along with a right side yard setback of 4'2"± where a 10' side yard setback is required. Said property is shown on Assessor Plan 101 as Lot 67 and lies within the General Residence B district.

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

- The structure will be 14' away from the curbing and public space so that the public interest will not be adversely affected.
- Bringing a structure into greater conformity while allowing greater enjoyment of the property will meet the spirit of the ordinance.
- With the existing structure on the property line, any expansion would require a variance.
- There is no overriding benefit to the public in denying the variances.

- The improvement to the property should reflect the increased value of the home onto the neighboring properties

7) Petition of **Barbara H. Bickford, owner**, for property located at **45 Gardner Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the expansion of a nonconforming structure by creating a deck and steps with a side yard setback of 8'± where a 10' side yard setback is required and a rear yard setback of 4'± where a 25' rear yard setback is required. Said property is shown on Assessor Plan 103 as Lot 21 and lies within the General Residence B district.

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

- Making the steps a little bigger will not affect the public interest but will allow the applicant to safely enjoy the property.
- This is an existing nonconforming structure and there is no practical alternative to making the slight expansion to the stairs.
- Providing this safer egress will not impinge on the light and air protected by the ordinance or increase the volume of the structure.
- There is no reason to believe that the value of surrounding properties will be negatively affected.

8) **James A. Beal, owner**, for property located at **284-286 Cabot Street** wherein Variances from Article III Section 10-301(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the expansion of a nonconforming structure along with a 8'8" side yard setback where a 10' side yard setback is required. Said property is shown on Assessor Plan 144 as Lot 25 and lies within the Apartment district.

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

- With the structure located at the back of the building, there will be no detriment to the public interest.
- Any other stairway configuration would impede entry into the ground level apartment.
- It would be in the spirit of the ordinance to allow an improvement to the property while affecting the neighbors as little as possible.
- This design would be an improvement over the existing structure and should result in an increase in the value of surrounding properties.
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III. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 8:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary