

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

ACTION SHEET

TO: John P. Bohenko, City Manager

FROM: Mary Koeppenick, Planning Department

RE: Actions taken by the Portsmouth **Board of Adjustment regular meeting** on August 18, 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, Arthur Parrott, Alternates: Derek Durbin, Robin Rousseau

EXCUSED: Charles LeMay,

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I. OLD BUSINESS

- A) Approval of Minutes – June 16, 2009
- July 21, 2009

It was moved, seconded, and passed by unanimous voice vote to accept the June 16, 2009 minutes as presented and the July 21, 2009 minutes with the editorial changes submitted to the Board earlier that day.

- B) Case 7-10
Petitioners: Maria Elena Koopman & James Peterson
Property: 335 Maplewood Avenue Assessor Plan 141, Lot 26
Zoning district: Mixed Residential Office
Request: Request for Rehearing and/or Modification of Stipulations

After consideration, a motion to amend the stipulations failed to pass and the request was denied.

- C) Case # 4-4
Petitioner: Jonathan Schroeder
Property: 324 Maplewood Avenue Assessor Plan 141, Lot 1
Zoning district: Mixed Residential Office & Historic A
Requests: 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,
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) 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.

3) 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.

(This petition was postponed from the April 21, May 19, June 16, and July 21, 2009 meetings)

After consideration, the Board voted to deny the petition as it failed to meet the criteria for granting a variance. The proposal would result in over-intensification of the property for this area and there was evidence that the value of surrounding properties would be diminished.

D) Case # 6-5

Petitioner: CCV Group, LLC

Property: 4 Sagamore Grove Assessor Plan 201, Lot 4

Zoning district: Waterfront Business

Request: The following 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) 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) 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.

3) 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.

(This petition was postponed from the June 16, and July 21, 2009 meetings.)

After consideration, the Board voted that the case of Fisher v. Dover applied to this application and declined to hear the petition.

E) Case 6-7

Petitioners: Irving and Victoria D. Canner

Property: 229 Pleasant Street

Zoning district: Mixed Residential Office

Request: 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. *(This petition was postponed from the June 16, and July 21, 2009 meetings)*

The Board voted to postpone the petition to the September 15, 2009 meeting at the applicants' request.

F) Case # 7-2

Petitioner: William Pingree

Property: 6 Sagamore Grove Assessor Plan 201, Lot 5

Zoning district: Waterfront Business

Request: 1) Variance from Article III, Section 10-301(7)(a) to allow the expansion of a structure within the 100' inter-tidal zone adjacent to Sagamore Creek.

- 2) Variance from Article IV, Section 10-401(A)(1)(b) to allow a nonconforming use to be extended into another part of a building or structure.
 - 3) Variance from Article IV, Section 10-401(A)(2)(c) 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.
- (This petition was postponed from the July 21, 2009 meeting)*

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

- Located out of general view, it would be hard to see a public interest in this addition.
- With an existing structure that is already nonconforming in its relationship to the creek, even a modest expansion would require a variance.
- It would be in the spirit of the ordinance to make the home more usable with a vertical, essentially infill, addition.
- There would be no benefit to the public in denying the variance and any impact on the neighbors would be favorable.

G) Case #7-9

Petitioners: J.P. Nadeau & Witch Cove Marina Development, LLC

Property: 187 Wentworth House Road

Zoning district: Waterfront Business Assessor Plan 201, Lots 12, 17 and 18

- Request: 1) Variance from Article II, Section 10-208 Table 4 to allow 5 single family dwellings in the Waterfront Business District, where residential uses are not allowed.
- 2) Variance from Article III, Section 10-301(7)(a) to allow a yacht club structure and 2 single family residences to be constructed within 100 feet of the mean high water line of Sagamore Creek where structures are not allowed.
- 3) Variance from Article III, Section 10-304(A) Table 10 to allow a relocated residential structure with a front yard of 14' where 30' is required and a left side yard setback of 12' where 30' is required, and a right side yard setback of 24 feet where 30 feet is required.
- 4) Variance from Article XII, Section 10-1201(A)(1)(b) for 10 parking spaces which lie outside the 300' distance of the subject property.
- 5) Special Exception from Article XII, Section 10-1201(A)(1)(b) to allow parking on another lot in the same ownership; provided all spaces lie within 300 feet of the lot in question.

The Board voted to postpone the petition to the September 15, 2009 meeting at the applicants' request.

II. PUBLIC HEARINGS

1) Case # 8-1

Petitioners: Martin L. Ryan

Property: 221 Woodbury Ave. Assessor Plan 175, Lot 10

Zoning district: General Residence A

Request: Variance from Article III Section 10-302(A) to allow for a new lot with 60.45'± of frontage where 100' is required

After consideration, a motion to grant the petition failed to pass and the request was denied.

- 2) Case # 8-2
 Petitioner: Cross Roads House, Inc.
 Property: 600 Lafayette Rd. Assessor Plan 243, Lot 2A
 Zoning district: General Business
 Requests: Variance from Article III Section 10-304(A) to allow for a 5' ± left side sideyard setback where 30' is required to expand the dumpster pad for the placement of a backup generator

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

- Allowing the facility to stay open in emergency situations should enhance the public interest.
- This is the best location for the generator which will keep it away from other buildings.
- There would be no benefit to the public in denying the variance
- This location would lessen the impact of any sound problems and should not affect the value of surrounding properties.

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- 3) Case # 8-3
 Petitioner: Nancy B. & John E. Howard
 Property: 179 Burkitt St. Assessor Plan 159, Lot 10
 Zoning district: General Residence A
 Request: Variance from Article III Section 10-301(A)(7)(b) to allow for the construction of an accessory structure within 100' of North Mill Pond

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

- There will be no public interest in this deck at the back of the existing home.
- The unique setting of the property is that it is on fill land adjacent to a pond, from which the structures are set back a reasonable distance.
- Granting this variance would not set a precedent so that there would be no violation of the general purposes of the ordinance or injury to the rights of others.
- It would be in the spirit of the ordinance to allow the owners to make improvements while increasing the footprint only slightly.
- There is no overriding public interest which would argue against the granting of a variance.
- The improvement should add value to the home and reflect favorably on the surrounding properties.

III. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:00 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary