

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 November 17, 2009 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternates: Derek Durbin

EXCUSED: Vice-Chairman David Witham, Carol Eaton, Alternate: Robin Rousseau

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I. APPROVAL OF MINUTES

A) September 15, 2009

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

II. NEW BUSINESS

A. Draft - Revised Board of Adjustment Rules and Regulations

The Board was advised that the draft was provided for their review and discussion at the scheduled work session on December 1, 2009. No action was needed that evening.

III. OLD BUSINESS

7) Case # 10-7

Petitioner: Jon Schroeder

Property: 324 Maplewood/ Assessor Plan 141, Lot 1

Zoning district: Mixed Residential Office

Request: Variance Requests

Article III, Section 10-301 (A)2 to allow a dwelling unit in each of two (2) free-standing buildings on the same lot.

Article III, Section 10-303 (A) to allow 1,780 square feet of lot area per dwelling unit, where 7,500 square feet of a lot area is required.

Article III, Section 10-303 (A) to allow a rear yard setback of 5.47 feet where 15 feet is required; a right side yard setback of 1 foot where 10 feet is required; and a left side yard setback of 6.21 feet where 10 feet is required.

Article IV, Section 10-401 A (2)(c) to allow expansion of a non-conforming structure by addition of a second story. 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.

The petition was further postponed to the December 15, 2009 meeting at the request of applicant's counsel.

8) Case # 10-8

Petitioner: Donna L. Morse

Property: 249 Clinton St. Assessor Plan 159, Lot 11

Zoning district: General Residence A

Requests: Variance Request

Article IV Section 10-401(A)(2)(c) to allow the expansion of a nonconforming structure

The Board acknowledged the applicant's request to withdraw the petition.

9) Case # 10-9

Petitioners: David J. Tooley and Vasilina Tooley

Property: 166 New Castle Ave. Assessor Plan 101, Lot 24

Zoning district: Single Residence B

Requests: Variance Requests

Article III Section 10-302(A) Table 8 to allow a rear yard setback of 10' where 30' is required

Article III Section 10-302(A) Table 8 to allow a side yard setback of 8'5" where 10' is required

Article III Section 10-302(A) Table 8 to allow a building coverage of 50% where 20% is required

Article III Section 10-302(A) Table 8 to allow open space coverage of 32% where 40% is required

Article IV Section 10-401(A)(2)(c) to allow the expansion of a nonconforming structure

The Board acknowledged the applicant's request to withdraw the petition.

IV. PUBLIC HEARINGS

1) Case # 11-1

Petitioner: J.P. Nadeau owner, and Witch Cove Marina Development, LLC

Property: 187 Wentworth House Road Assessor Plan 201, Lot(s) 12, 17 and 18

Zoning district: Waterfront Business District

Request: Variance Requests:

From Article II, Section 10-208, Table 4, to allow 4 single-family dwellings in the Waterfront Business District where residential uses are not allowed;

From Article III, Section 10-301(7)(a) to allow construction of a yacht club structure and 3 single-family dwellings as well as a 600 square foot garage within the 100' inter-tidal zone adjacent to Sagamore Creek;

From Article III, Section 10-304(A), Table 10, to allow a structure with a left side yard of 12 feet where the side yard requirement is 30 feet;

From Article XII, Section 10-1201(A)(1)(b) to allow 25 required off-street parking spaces to be located more than 300' from the use that they serve.

From Article IV, Section 10-401(A)(2)(c) to allow for the vertical expansion of two (2) nonconforming structures; and

Special Exception Request:

Under 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 acknowledged that the petition had been withdrawn at the applicant's request

2) Case # 11-2

Petitioner: Jeffery A. Koss

Property: 102 Dennett Street Assessor Plan 140, Lot 16-2

Zoning district: General Residence A

Requests: Variance Request

From Article III, Section 10-301 (A)(7)(b) to allow a structure within 100 feet of the mean high water line of the North Mill Pond

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

- This basic infill deck between the stairs and the primary building will not be contrary to the public interest.
- The property is unique for the area and the zoning restriction as applied would interfere with a reasonable use.
- The structure will only be seen from the water side within the view of few neighbors so that the public and private rights of others will be protected.
- It is consistent with the spirit of the ordinance and substantial justice will be done by allowing a small infill which will not affect abutting properties.
- Nothing was presented to indicate any negative effect on surrounding property values.

3) Case # 11-3

Petitioners: Tara E. Olson & Kenneth R. Olson

Property: 1 Forest Street Assessor Plan 210, Lot 12

Zoning district: Single Residence B

Request: Variance Requests:

From Article IV Section 10-401(A)(2)(c) to allow the expansion of a nonconforming structure;

From Article III Section 10-302(A) to allow for the construction of a 24' x 24' garage with a 20' frontyard setback where 30' is required;

From Article III Section 10-302(A) to allow for the construction of a 20' x 16' room with a 24' frontyard setback where 30' is required.

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

- With the proposed layout of garage and connecting room, there will be no detriment to the public interest.
- The way the house is situated on the lot and the frontage on a “paper street” are special conditions to be considered in placing a garage.
- The applicants outlined a number of other options considered before selecting this configuration as the most reasonably feasible.
- Granting the variances would be consistent with the spirit of the ordinance and there would be no benefit to the public in denying the variance.
- There will be no diminution in the value of surrounding properties and indication of the support of several abutters was provided.

4) Case # 11-4

Petitioner: James Robertson/Gelmar Realty Associates

Property: 865 Islington Assessor Plan 172, Lot 11

Zoning district: Business

Requests: Special Exception Request

From Article II Section 10-208 Table 4 Use (34) to allow a veterinary clinic in the Business Zone and;

Variance Request:

From Article II Section 10-208 Table 4 Use (34) to allow a veterinary clinic in the Business Zone within 200' of a Residential district.

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

- With regard to the special exception, the clinic as described will present no hazard to the general public or adjacent properties.

- There is a mix of businesses and industry in the neighborhood so there will be no detriment to property values or change in the essential characteristics of the area.
- No increase in traffic or hazard will be created by this type of operation and it will not generate additional noise or pollution.
- This is an existing building and no unsightly outdoor storage will result nor increased runoff onto property or the street
- Granting a variance and enabling a reasonable use of the property will not be contrary to the public interest or the spirit of the ordinance.
- A special condition of the property is that, while it is within 200’ of a residential area, there are already a number of businesses between the property and the residences nullifying any possible effect.
- In the justice balance test, there will be no detriment to the public by granting a variance for this type of facility and nothing has been presented to argue that surrounding property values would be diminished.

5) Case # 11-5

Petitioner:Brady J Byrd/Brian L Neste

Property: 184 Walker Bungalow Road Assessor Plan 223, Lot 19

Zoning district:Single Residence B

Request: Variance Requests:

From Article III Section 10-302(A) to allow the following for a proposed 1½ sto garage: a 16.1’ front yard setback where 30’ is required; a 4.1’ rear yard setback where 30’ is required; and 24.4 % lot coverage where 20% is required;

From Article III Section 10-302(A) to allow the following for a proposed 2nd story addition: a 13.4’ front yard setback where 30’ is required and a 20.8’ rear yard setback where 30’ is required;

From Article III Section 10-302(A) to allow for a proposed roof over an existing door with a 20’± front yard setback where 30’ is required; and

From Article IV Section 10-401(A)(2)(c) to allow the expansion of a nonconforming structure

After consideration, a motion to grant all of the variances failed to receive four affirmative votes and the petition was denied. All the criteria for granting the variances were not met. In particular, it was felt that a structure 4.1’ from the rear property line could negatively affect surrounding properties.

6) Case # 11-6

Petitioners: Jay McSharry/ Leonard Cushing

Property: 142-146 Cabot Street Assessor Plan 145, Lot 79

Zoning district:Apartment

Request: Variance Requests:

From Article III Section 10-302(A) Table 8 to allow for 4 units on a lot of 8,255 square feet where 14,000 square feet would be required; and

From Article IV Section 10-401(A)(2)(c) to allow the expansion of a nonconforming structure.

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

- There will be no detriment to the public interest by this number of units as the use is well established on this property and in this area.
- A hardship would be created by not allowing the 4 units on a property where they existed for a number of years on a lot whose size cannot be changed.
- There is no other way to keep the previously established number of units without a variance.
- There is no overriding public interest which would argue against approval of the variances.
- The spirit of the ordinance will be served by allowing the upgrading of an existing property which will only benefit the neighborhood and, if anything, will increase the value of surrounding properties.

7) Case # 11-7

Petitioner: Nancy Bogenberger

Property: 953 State Street Assessor Plan 156, Lot 15

Zoning district: Apartment

Request: Variance Requests:

From Article XII Section 10-1201(A)(3)(a)(3) to allow required off street parking spaces to maneuver from said parking space without requiring the moving of any other vehicles or the passing over any other parking space.

From Article XII Section 10-1201(A)(3)(a)(4) to allow vehicles parked on a residential parcel with more than two units to back out onto a street where only forward maneuvering is allowed.

After consideration, a motion to grant the petition failed to pass and the petition was denied. All the criteria necessary to grant the variances were not met. It was felt that this proposal would be contrary to the public interest, represented an over-intensification of the lot, and presented a public safety issue.

8) Case # 11-8

Petitioners: Sureya M.Ennabe Liv Trust/C.N. Brown

Property: 800 Lafayette Road Assessor Plan 244, Lot 5

Zoning district: General Business

Requests: Special Exception of Article II Section 10-208 Table 4(36) Motor vehicle service stations and Convenience Goods I & II as accessory uses

Variances:

From Article III Section 10-301(A)(7)(a) to allow a tidal wetland setback of 50' where 100' is required;

From Article III Section 10-301(A)(8) to allow a 30' front yard setback for the Pump Island canopy where a special setback of 105' is required along Lafayette Road;
From Article III Section 10-304(A) Table 10 to allow the following setbacks to occur in relation to the canopy structure: a right sideyard setback of 26' where 30' is required; a left sideyard setback of 23' where 30' is required; and a frontyard setback of 30' where 70' is required.

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

- There will be no hazard to public or adjacent properties from fire, explosion or release of toxic materials by a filling station constructed to code.
- This is a well established use in this location and there are similar operations in the neighborhood so that there will be no change in the essential characteristics of the area.
- For the same reason, it is not expected that there will be any increase in traffic, creation of a traffic safety hazard or increase in the demand for municipal services.
- This plan would improve the green area so the amount of runoff onto adjacent properties or the street should actually decrease.
- Property values should be improved by upgrading the property.
- The public interest will be served and the spirit of the ordinance met by elimination of some of the pavement and the safe provision of services.
- The 50' right of way and the history of the property with this use are special conditions so that literal enforcement of the ordinance would create a hardship.

9) Case # 11-9

Petitioner: 355 Pleasant Street LLC

Property: 355 Pleasant Street Assessor Plan 103, Lot 64

Zoning district: General Residence B

Request: Variance Request

From Article III Section 10-302(A) Table 8 to allow a two family unit to be constructed in the GRB zone on a lot with 9,245 square feet of area where 10,000 square feet is required.

After consideration, a motion to grant the petition failed to pass so the petition was denied. All the criteria necessary to grant the variance were not met. There was no hardship in the land or special conditions which would warrant a two family unit and it was felt there were alternatives which could be pursued other than the variance.

V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:10 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary