

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 December 15, 2009 in Conference Room A, 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. APPROVAL OF MINUTES

A) October 20, 2009

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

II. NEW BUSINESS

None was presented.

III. OLD BUSINESS

A) Request for Rehearing
Case # 10-4
Property: 35 Swett Ave Assessor Plan 232, Lot 66

Article III Section 10-302(A) Table 8 to allow the creation of 2 nonconforming lots;
Lot 1 having less than the required minimum area by allowing 9,350 square feet where 15,000 square feet is required;
Lot 2 having 90' of frontage where 100' is required, 11,050 square feet of lot area where 15,000 is required, and a depth of 85' where 100' is required

After consideration, the Board voted to deny the request. No new information had been presented which was not available at the time of the meeting and there was no misapplication of the law in arriving at the Board's decision. With specific reference to one point in the request, it

was noted that the Board addressed both the Simplex and the Boccia standards in determining their position.

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- B) 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.

After consideration, the Board determined that Fisher v. Dover was not applicable to this request and it could be heard as a new application. The Board then voted to deny the request as all the criteria necessary to grant the variances had not been met. The proposal would result in over-intensification of the lot and interfere with the light and air protected by the ordinance. Back-out parking in this location presents a traffic safety issue for the general public.

IV. PUBLIC HEARINGS

- 1) Case # 12-1
Petitioners: Frederick Bailey III, Joyce Nelson along with DLP Restaurant, Inc.
Property: 520 US Route 1 By-pass Assessor Plan 175, Lot 11
Zoning district: General Business
Request: Variance to re-establish a restaurant with a bar/tavern to be located within 200' of a Residential or Mixed Residential zone. Article II Section 10-208(19)(a)

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

- That the fence along Centre Street be completed.

The petition, with stipulation, was granted for the following reasons:

- Re-establishing a restaurant in a location where there has been one for many years will not be contrary to the public interest.
- With sufficient distance between the restaurant building and the nearest residence, there will be no injury to the public or private rights of others or inconsistency with the spirit of the ordinance.

- Denying the variance would create a hardship for the property owner while not benefiting the public, as this is an established use appropriate to the property.
- With the changes limited to the interior, and the protection of the stipulation, there will be no diminution in the value of surrounding properties.

2) Case # 12-2

Petitioner: Joel E. Markey

Property: 1 Leavitt Ave. Assessor Plan 232, Lot 81

Zoning district: Single Residence B

Requests: Variance to expand the structure for additional enclosed porch space with a front yard setback of 9' where 30' is required and to allow for a building coverage of 22.4% where 20% is allowed. Article III Section 10-302(A) Table 8 and Article IV Section 10-401(A)(2)(c)

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

- There will be no public interest in a reasonable expansion resulting in a small encroachment and a minor increase in lot coverage.
- The house is sited close to the road and the 5' x 12' porch addition will not extend further into the setbacks than the existing building.
- There is no other reasonably feasible option to obtain this flow of space .
- It will be in the spirit of the ordinance and provide substantial justice to allow an enhancement to the home without affecting the light and air of neighbors.
- The small addition remains consistent with the neighborhood and will not affect the value of surrounding properties.

3) Case # 12-3

Petitioner: Virginia Copeland Owner, Davis Tire Company, Applicant

Property: 375 Banfield Road Assessor Plan 266, Lot 7

Zoning district: Industrial

Request: To allow an Automobile repair facility by Special Exception and Variance in the Industrial zone and to allow an Automobile repair facility within 200' of a Mixed Residential/ Residential zone. Article II Section 10-209 Table 5 (13)

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

- With a well established use in that location, there will be no hazard to the public or adjacent properties by fire explosion or release of hazardous materials.
- The use will result in no detriment to property rights, no noise or vibration or anything that would be unwelcome in the neighborhood.
- The road is already well travelled and this will create no additional traffic safety hazard.
- With no change in function, there will be no excessive demand on municipal services or significant runoff of storm water onto adjacent properties or streets.
- With respect to the variance, the public interest will not be affected by re-establishing an automotive repair facility in the middle of a large lot.

- The literal enforcement of the ordinance would result in a hardship as it would deny the re-establishment of a previous use with similar work in similar surroundings.
- The special conditions of the property are that there are few residences nearby, a wooded area directly across the street and an industrial facility at the back.
- The relationship of the building to the surrounding properties remains unchanged and there is no other reasonably feasible location for the proposed operation.
- The spirit of the ordinance is to encourage and allow businesses to be sited where it makes sense as long as it doesn't intrude on neighbors.
- There is no overwhelming public interest which would be served in denying the variance.
- With no change in the type of business, there should be no negative effect on the value of surrounding properties.

4) Case # 12-4

Petitioners: Iain and Katherine Moodie

Property: 14 Mt. Vernon St. Assessor Plan 111, Lot 26

Zoning district: General Residence B

Request: Variances to construct a new home in the General Residence B zone on an existing lot of 2252 square feet where the required minimum lot size is 5,000 square feet. To allow a lot coverage of 39% where 30% is allowed, to allow a left side setback of 7' where 10' is required, to allow a right side setback of 3'6" where 10' is required and to allow a front yard setback of 0' where 5' is required. Article III Section 10-302(A) Table 8

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 rebuild a badly deteriorated structure in essentially the same footprint.
- A hardship is created in trying to reasonably site a structure on a tiny lot and the benefit sought cannot be obtained by some other method.
- It will be in the spirit of the ordinance to allow property owners to reconstruct and repair their property without altering the essential character of the neighborhood.
- Substantial justice will be done by allowing the applicant to rebuild the property in a reasonable manner.
- No neighbors have spoken against the project and, if anything, the value of surrounding properties should be increased.

5) Case # 12-5

Petitioners: Debra Page

Property: 35 Swett Ave. Assessor Plan 232, Lot(s) 66 & 73

Zoning district: Single Residence B

Requests: Variance to allow the creation of two nonconforming lots where one conforming and one nonconforming lot currently exist: One lot of 8,500± square feet where 15,000 square feet is required and one lot of 11,900± square feet where 15,000 square feet is required; both lots having a depth of 85' where 100' is required. Article III Section 10-302(A) Table 8

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

6) Case # 12-6

Petitioners: Dsq Holding, LLC, Owner & Access Signs, Applicant

Property: 1600 Woodbury Ave. Assessor Plan 238, Lot 16

Zoning district: General Business

Requests: Variances to allow 84 square feet of signage on an “out lot” where 60 square feet is allowed, and to allow a free standing sign on an “out lot” where one is not allowed. Article IX Section 10-907(A)(3)(a) &

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

- That the requested free standing 24’ sign be erected in the same location on the island as the sign erected by the previous tenant.
- That the total aggregate signage allowed will not exceed 61 s.f., as would be allowed under the proposed new Zoning Ordinance.

The petition, with stipulations, was granted for the following reasons:

- With the stipulations, granting the variance will not result in the sign clutter which would be contrary to the public interest.
- An unnecessary hardship would be created if approval were withheld for a sign of reasonable size similar to that of other businesses.
- The special conditions of the property are its location relative to the roadway and other businesses so that a variance is needed to allow identification of this business.
- There is no alternative design which would fulfill the purpose of adequate identification.
- It is in the spirit of the ordinance to encourage businesses and allow them to advertise without negatively impacting their neighbors.
- Allowing an aggregate signage consistent with the new ordinance and a free standing sign in the same location as the previous sign will benefit the applicant while not infringing on the public interest.
- The value of surrounding properties will not be diminished by signage in keeping with what exists on those properties.

V. ADJOURNMENT

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

Respectfully submitted,

Mary E. Koepenick, Secretary