

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 reconvened meeting** on December 21, 2010 in Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

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

EXCUSED: Alternate: Robin Rousseau

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I. APPROVAL OF MINUTES

- A) Planning Board Minutes of Joint Work Session, Pages 1 through 5, October 21, 2010
- B) Planning Board Minutes of Joint Work Session, Pages 1 through 5, November 18, 2010

It was moved, seconded, and passed by unanimous voice vote to accept both sets of Minutes as presented, except that it was noted that Arthur Parrott did not attend the November 18, 2010 Joint Work Session.

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II. PUBLIC HEARINGS

- 7) Case #12-7
Petitioners: Helen T. Steele and Huldah Lashar, Owners
Property: 53 Pray Street Assessor Plan 102, Lot 40
Zoning district: Waterfront Business
Description: To allow the expansion of a nonconforming residential use and structure in the Waterfront Business zone by constructing three additions.
Requests: Variance from Section 10.321 to allow the expansion of a nonconforming building.
Variance from Section 10.331 to allow the expansion of a nonconforming use

- Variance from Section 10.334 to allow a nonconforming use of land to expand into any part of the remaining land.
- Variance from Section 10.531 to allow a 7’ rear yard where 20’ is required.
- Variance from Section 10.531 to allow a 6’ left side yard where 30’ is required for the expansion of a shed dormer.
- Variance from Section 10.531 to allow a 0’ front yard where 30’ is required for the vertical expansion of the garage.
- Variance from Section 10.531 to allow an 18’ right side yard where 30’ is required for the expansion of the garage.
- Variance from Section 10.531 to allow a building coverage of 32% where 31% currently exists and 30% is the maximum coverage allowed.

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

- That the boathouse will not be used as a dwelling unit and no kitchen will be installed.
- That the pool equipment will be stored inside one of the buildings.

The petition was granted for the following reasons:

- With the stipulation regarding the storage of pool equipment, the public interest will not be affected by these changes and no objection has been raised by neighbors.
- The spirit of the Ordinance will be observed as this is an existing non-conforming use and the expansions are basically in-fill with minimal impact on neighboring properties.
- Justice will be done by allowing an upgrade of the property to a more livable standard.
- Improving the property will not result in a diminution in the value of surrounding properties, which includes a commercial entity and an accessway as abutting lots.
- The special condition of the property creating a hardship is that the amount requested is fairly small on a tight lot and the amount requested is fairly small.

8) Case # 12-8

Petitioners: Theta Realty, LLC, Owner & Theodore Mouzakis, Applicant

Property: 1150 Woodbury Avenue Assessor Plan 237, Lot 13

Zoning district: Single Residence B

Description: Expansion of a nonconforming residential multi-family use from 8 unit to 10 units where the existing lot area is 30,000 s.f. and the minimum lot area required for 10 units is 150,000 s.f.

Request: Variance from Section 10.331 to allow the expansion of a nonconforming use.
Variance from Section 10.440 Use# 1.50 to allow the conversion of a building existing on January 1, 1980 with less than the required minimum lot area per dwelling unit as specified in section 10.521.
Variance from Section 10.1112.30 to permit 15 parking spaces as shown on the plan where 16 parking spaces are required.

After consideration, a motion to grant the petition, with a stipulation that the applicant meet with Planning Department staff to determine where the one additional parking space should be located, failed to pass and the petition was denied. The Board felt that all the criteria necessary to grant a variance were not met. The property already exceeded the requirements of the district and, in observance of the spirit of Ordinance, the nonconformance should not be increased.

9) Case #12-9

Petitioner: Bradford D. Scott and Elizabeth B. Scott, Owners

Property: 94 Mendum Avenue Assessor Plan 149, Lot 55

Zoning district: General Residence A

Description: Construction of a new residential garage on the property at 94 Mendum Avenue

Requests: Variance from Section 10.521 to allow an accessory structure to be constructed with a building coverage of 36 % where 33% currently exists and 25% is the maximum coverage allowed.

Variance from Section 10.521 to allow a right sideyard of 3’ where 10’ is required.

Variance from Section 10.521 to allow a rearyard of 3’ where 20’ is required.

After deciding not to invoke Fisher v. Dover as the application was significantly different from the previous request, 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 alleviate a situation where one garage and driveway are split between two lots. The new garage will be set far enough from the street
- Substantial justice will be done by granting a reasonable request for a garage, in a proposed location that will bring it into conformity with similar structures on neighboring properties.
- The only testimony from an abutter has been in support so there should be no diminution in the value of surrounding properties.
- The location of the garage 3’ from the property lines will mirror what has long been in place.

10) Case # 12-10

Petitioner: Roger V. and Susan M. Odoardi, Owners

Property: 179 Lincoln Avenue Assessor Plan 113, Lot 8-1

Zoning district: General Residence A

Description: Expansion of a nonconforming residential structure with a two story addition to the rear of the existing home.

Request: Variance from Section 10.321 to allow a nonconforming residential building to be expanded, enlarged and structurally altered.

Variance from Section 10.521 to allow for a building coverage of 28% where 23% currently exists and 25% is the maximum coverage allowed.

Variance from Section 10.521 to allow a right sideyard of 8’ where 10’ is required.

Variance from Section 10.521 to allow a left sideyard of 8’ where 10’ is required.

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

- Located behind the existing home, there will be no public interest in this addition.
- While the spirit of the Ordinance is to eliminate nonconformity, this is a basic infill project which will not affect the light and air protected by the Ordinance or diminish the value of surrounding properties.
- The lot is somewhat smaller than others in the area so that anything done would impact the lot coverage. Other options were considered, but it was felt that this would be the most reasonable.
- Substantial justice will be done as this fairly minor addition will have no adverse effect but will make the property more livable and useful to the applicants.

11) Case #12-11

Petitioners: C&P Gallagher Properties, Inc.

Property: 801 Islington Street Assessor Plan 165, Lot 8

Zoning district: Business

Description: To allow a new business establishment in a multi-tenant building with 91 parking spaces where 98 are required.

Request: Variance from Section 10.1112.30 Table of Off-Street Parking Requirements to allow 91 parking spaces in a shopping center where 98 are required.

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

- With the parking needs staggered throughout the day due to the nature of the businesses in the center, the open space required by the Ordinance will be protected.
- The existing parking has adequately fulfilled the public needs for a number of years and this is basically exchanging one tenant for another, with no buildings being expanded to infringe on the available parking.
- Due to existing businesses and the railroad, expanding the parking to the rear is not an option.

12) Case # 12-12

Petitioners: Heritage & Lafayette, LLC, Owner and Robert Lee, Lessee

Property: 2800 Lafayette Road Assessor Plan 285, Lot 2

Zoning district: Gateway

Description: To allow a third free standing sign in a shopping center where only two free standing signs are allowed.

Requests: Variance from Section 10.1243 to allow a third freestanding sign in a shopping center where two are allowed at the entrances to the property.

Variance from Section 10.1251.30 to allow more than the permitted s.f. of freestanding signage allowed in shopping centers.

Variance from Section 10.1251.10 to allow the applicant to exceed the previous aggregate allocated by variance.

After consideration, the Board voted to deny the petition as presented and advertised. The request does not meet all the criteria necessary to grant a variance. Two freestanding signs are allowed and this would be a third so that the spirit of the Ordinance is not met. There is no hardship in the property to support the need for a variance.

13) Case # 12-13

Petitioners: Portsmouth Ford, Lincoln Mercury, Inc., Owner

Property: 450 Spaulding Turnpike Assessor Plan 238, Lot 1A

Zoning district: General Business

Description: Removal of a one-story building used for automobile sales and leasing and construction of a new two-story building with a similar footprint to be used for automobile sales and leasing.

Requests: Administrative Appeal from Section 10.310 for a Board ruling on the interpretation of a nonconforming use vs. a nonconforming lot.

Variance from Section 10.234 from a determination of the code official that the expansion of the existing auto dealership use requires a variance.

Variance from Section 10.311 to establish a new building on a lot without the required minimum lot area.

Variance from Section 10.324 to allow a nonconforming building to be added to or enlarged.

Variance from Section 10.331 to allow the expansion of a lawfully Nonconforming use.

Variance from Section 10.581 to allow sales, rental, leasing, distribution, and repair of vehicles, recreational vehicles, manufactured housing, marine craft, and related equipment on a lot with less than 2 acres.

Variance from Section 10.843.20 to allow the outdoor storage and outdoor display of vehicles closer than 40' from the street right-of-way.

After consideration, the Board voted to grant the following variances:

- Variance from Section 10.331 to allow the expansion of a lawfully nonconforming use.
- Variance from Section 10.581 to allow sales, rental, leasing, distribution, and repair of vehicles, recreational vehicles, manufactured housing, marine craft, and related equipment on a lot with less than 2 acres.

The variances were granted for the following reasons:

- The public interest and justice will be served by allowing a long-standing business to continue in the same location.
- The spirit of the Ordinance will be observed as the business existed prior to the newly enacted Ordinance requiring 2 acres for this use instead of 1.
- A two story building on a property surrounded by another auto related business, a box store and a turnpike will not have a negative effect on the value of surrounding properties.

- The special conditions resulting in a hardship are that the variances are required as the property became nonconforming due to a change in the zoning after it had existed for a number of years.

The applicant withdrew their request for the following:

- Administrative Appeal under Section 10.310 for a Board ruling on the interpretation of a nonconforming use vs. a nonconforming lot.
- Administrative Appeal under Section 10.234 from a determination of the code official that the expansion of the existing auto dealership use requires a variance.
- Variance from Section 10.311 to establish a new building on a lot without the required minimum lot area.
- Variance from Section 10.324 to allow a nonconforming building to be added to or enlarged.
- Variance from Section 10.843.20 to allow the outdoor storage and outdoor display of vehicles closer than 40’ from the street right-of-way.

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III. OTHER BUSINESS

No business was presented.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary