

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 at its reconvened meeting on February 25, 2014** in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Vice-Chairman Arthur Parrott, Susan Chamberlin, Derek Durbin, Charles LeMay, Christopher Mulligan, David Rheume, Alternate: Patrick Moretti

EXCUSED: Chairman David Witham

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(In the absence of the Chairman, Vice-Chairman Parrott conducted the hearing)

I. APPROVAL OF MINUTES

- A) November 20, 2012
- B) February 19, 2013
- C) March 19, 2013

It was moved, seconded and passed by unanimous voice vote to approve all sets of Minutes as presented with minor clerical corrections to each set.

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II. PUBLIC HEARINGS - OLD BUSINESS

No Old Business was presented.

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III. PUBLIC HEARINGS – NEW BUSINESS

- 2) Case # 2-A
Petitioner: Kim Ham Iozzo (Nelsen)
Property: 610 Middle Road
Assessor Plan 232, Lot 33
Zoning District: Single Residence B
Description: Part-time aesthetics services offered in a portion of a residence.

Requests: The Variances and Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.440, Use #19.22 to allow a Home Occupation 2 in this district.

Action:

The Board voted to **grant** the petition as presented and advertised.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- The standards for the proposed use permitted by special exception are met.
 - There will be no hazard to the public or adjacent property from fire explosion or release of toxic materials as no potentially hazardous materials will be used.
 - There will be no detriment to property values in the area. This will be a light impact use associated with a home occupation with not more than four to six clients in a one week period.
 - With the traffic volume of one car a day or less associated with the use, there will be no creation of a traffic safety hazard or increase in traffic congestion in the vicinity.
 - The use will not result in an excessive demand in municipal services.
 - With no expansion of the building, there will be no significant increase in storm water runoff onto adjacent properties or streets.
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3) Case # 2-2

Petitioners: GRN Realty Trust,, owner, and The Chandler’s Loft, applicant

Property: 15 Pickering Avenue (7 Pickering Avenue)

Assessor Plan 102, Lot 24

Zoning District: Waterfront Business

Description: Seasonal private functions in 30’± x 15’± outdoor seating area.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440 to allow outdoor space to be used for private functions from May to October in a district where such a use is not allowed.

Action:

The Board voted to **deny** the petition as presented and advertised.

Review Criteria:

The petition was denied as it failed to meet all of the criteria necessary to grant a variance:

- The spirit of the Ordinance would not be observed by granting the variance. The proposed use is not one of the allowed uses which are well defined in regard to the intent of the Waterfront Business District, nor is the use allowed in the immediately adjacent District.

- There are no special conditions of the property that distinguish it from other properties in the area and the property can be reasonably used in strict conformance with the Ordinance so that the unnecessary hardship test is not met.
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4) Case # 2-3

Petitioners: Brady J. Byrd & Brian L. Neste

Property: 184 Walker Bungalow Road

Assessor Plan 223, Lot 19

Zoning District: Single Residence B

Description: Second story addition, deck and canopies.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - (a) A front yard setback of 25'± where 30' is required.
 - (b) A rear yard setback of 20.8'± where 30' is required.

Action:

The Board voted to **grant** the petition as presented and advertised.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest as this is a vertical expansion built in the same footprint.
 - The spirit of the Ordinance will be observed as the expansion will not infringe further than the existing structure. The residential use will remain and the proposal will not change the essential characteristics of the neighborhood.
 - Substantial justice will be done and the value of surrounding properties will not be diminished by the addition of a second story to an existing home.
 - The odd shape of the lot is a special condition of the property creating a hardship in the reasonable use of the lot.
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5) Case # 2-4

Petitioners: Kara Lynn Cole & Alistair James Ferguson Cole

Property: 40 Mill Pond Way

Assessor Plan 143, Lot 6

Zoning District: General Residence A

Description: Remove existing two story detached nonconforming structure and build an attached 20'± x 36'± two story garage, 11'± x 24'± connector, and 3'± x 9'± one story balcony

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow building coverage of 30.9%± where 25% is the maximum allowed.

Action:

The Board voted to **postpone** the petition to the March meeting to allow the applicants to provide additional information and, if necessary revise the proposal.

6) Case # 2-5

Petitioner: Searay Realty LLC, owner and Public Service Company of New Hampshire, applicant

Property: 445 US Route One By-Pass

Assessor Plan 234, Lot 3

Zoning District: Office Research

Description: Construct electrical substation.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440, Use #15.12 to allow construction of an electrical station providing community-wide or regional service.
2. Variances from Section 10.531 to allow the following:
 - (a) A left side yard setback of 46' where 75' is required.
 - (b) A rear yard setback of 31' where 50' is required.

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulation.

Stipulations:

The dimensional variance is granted subject to approval by the Portsmouth Planning Board of a lot line adjustment as shown on the "Plan of Lot Line Adjustment, Proposed S/S," dated 01/2014 and submitted by the applicant with this application, which will eliminate existing nonconformities of the lot for rear yard, lot size, lot depth and street frontage.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances requested will not be contrary to the public interest. With an existing substation in the immediate vicinity, this proposal will not significantly alter the essential characteristics of the neighborhood and a decrease in the impervious surface and enhancement of buffers will provide additional wetlands protection.

- The spirit of the Ordinance will be observed as this property is located at the outer edge of the Office Research District across the roadway from an industrial zone where this would be a permitted use allowed by special exception.
- Substantial justice will be done. The loss to the applicant should the variances be denied would not be outweighed by any corresponding gain to the general public which will be served, if the variances are granted, by improvements to the infrastructure.
- As supported by a submitted report from a professional appraiser, the value of surrounding properties will not be diminished. The applicant owns one of the adjacent parcels that would be impacted and there is an existing substation in the vicinity.
- The proximity to wetlands, its location adjacent to already existing transmission infrastructure, and the ready access to existing transmission lines are special conditions that distinguish the property from others in the area so that there is no fair and substantial relationship between the purposes of the Ordinance and their application to the property. With the location of the property at the edge of the zoning district and its special distinguishing conditions, the proposed use is a reasonable one.

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IV. OTHER BUSINESS

- A) Proposed Revisions to Board of Adjustment Application Form and Rules and Regulations.

The Board postponed discussion to the March meeting.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:30 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary