

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 May 17, 2005 in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Nate Holloway, Robert Marchewka, Arthur Parrott, Alternate Steven Berg and Alternate Duncan MacCallum

EXCUSED: Alain Jousse

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I. OLD BUSINESS

A) Request for Rehearing by Scott Young of the petition of Angela M. Zira, owner, for property located at 46-48 Woodbury Avenue wherein a Variance from Article II, Section 10-206(4) was granted to allow an existing single family dwelling to be converted into a two family dwelling on a lot: a) having 2,883 sf of lot area where 6,000 sf of lot area is the minimum required; and b) 28.3% open space where 30% is the minimum required. Said property is shown on Assessor Plan 163 as Lot 13 and lies within the General Residence A district. Case # 4-4

After consideration, the Board voted to deny the request as correct procedure had been followed in arriving at their decision and there were no changes to warrant a re-hearing.

B) Petition of Wal-Mart Real Estate Business Trust, David N. Glass Trustee, owner, for property located at 2460 Lafayette Road and Jokers Realty One LLC et al, owner for property located at 2460A Lafayette Road wherein a Variance from Article IX, Section 10-908 Table 14 was requested to allow 365.95 sf of attached signage where 300 sf is the maximum allowed. Said property is shown on Assessor Plan 285 as Lots 16-1 and 16-2 (to be combined) and lies within the General Business district. Case # 4-11

After consideration, the Board voted to grant the petition with the following stipulation:

That the following specific signs be eliminated as they are advertising in nature, not directional: Bakery (4.54 s.f.), Deli (2.33 s.f.), Meat (3.00 s.f.), Produce (5.25 s.f.), 1-Hour Photo (7.33 s.f.), Pharmacy (5.63 s.f.), and Optical (4.58 s.f.), for a total of 32.66 s.f. These signs are depicted on the plan labelled "Signage Schedule," dated February 10, 2005 and listed on the Proposed Signage Schedule, both submitted by the petitioner and received March 30, 2005.

C) Petition of **Six Hundred Six Realty Trust, C J Annis and D I Rolde Trustees, owners**, for property located at **606 Greenland Road** wherein a Variance from Article II, Section 10-206(22) was requested to allow 5 horses to be kept on the property and in a barn that is 18' from the left property line where relief is needed to keep horses and a 100' set back is required for any shelter for such horses and storage of manure or other noxious substances. Said property is shown on Assessor Plan 258 as Lot 3-1 and lies within the Single Residence B district. Case # 4-13

After consideration, the Board voted to **deny** the petition for the following reasons:

- The keeping of horses would change the character of this single family residential neighborhood.
- No hardship has been demonstrated.
- The benefit sought by the petitioner is outweighed by the need to protect the rights of residential neighbors, a significant number of which raised strong concerns.

These concerns included the following:

- odor from animal waste manure in the barn and paddock;
 - increased numbers of insects and rodents;
 - health concerns;
 - runoff from manure into neighboring wetland areas;
 - diminished enjoyment of neighbors' property due to these factors; and
 - diminished property value.
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D) Petition of **Mark C. Adamy and Holly Lowe, owners**, for property located at **350 Broad Street** wherein a Variance from Article IV, Section 10-402(B) was requested to allow a 14' x 26' detached garage with a 6'± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 221 as Lot 69 and lies within the General Residence A district. Case # 4-7

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

- The variance will not be contrary to the public interest as the size and scale of the garage will fit in well with neighboring properties.
 - The siting of the house, bulkhead and stone wall are special conditions which require a variance to enable the proposed use.
 - The applicant has explored a number of alternatives, none of which are reasonably feasible to pursue other than what is proposed.
 - The petition is consistent with the spirit of the ordinance and substantial justice is achieved by allowing a needed garage which requires the minimum of relief from the ordinance.
 - The value of surrounding properties will not be diminished by an attractive structure which has demonstrated neighboring support.
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E) Petition of **Strider and Rose Sulley, owners**, for property located at **46 McNabb Court** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the following: a) a 12' x 24' 1 ½ story addition with dormers with a 4' right side yard where 10' is the minimum required; b) a 4' x 12' 1 story rear addition with an 18' rear yard where 20' is the minimum required; c) a 4' x 12' left side porch with an 8' left side yard where 10' is the minimum required; d) a 4' x 12' two story right side addition with a 4' right side yard where 10' is the minimum required; and, e) 32% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 112 as Lot 59 and lies within the General Residence A district. Case # 4-5

After consideration, the Board voted to **deny** the petition as there were no unique conditions of the property which would require special consideration in applying the ordinance. No hardship in the context of the ordinance has been demonstrated and the relief that is being requested is substantial.

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I. PUBLIC HEARINGS.

1) Petition of **Bacman Enterprises Inc, owner**, for property located at **140 Edmond Avenue** wherein the following were requested: 1) a Variance from Article II, Section 10-206 to allow the entire lower level of the 2,300± sf building to be used as a chiropractic office where a 300± sf office and 5 parking spaces had been approved in 1978 in a district where such use is not allowed and 2) a Variance from Article XII, Section 10-1204 Table 15 to allow the additional required parking to back out onto the street and park one behind another. Said property is shown on Assessor Plan 220 as Lot 81 and lies within the Single Residence B district. Case # 8-11 and Case # 5-1

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

- That an engineered site plan, including parking spaces conforming in size and location, as depicted on the plan submitted and approved with this petition, be provided.
- That the property must meet current codes as referenced in the staff memorandum to the Board.

The variance was granted for the following reasons:

- Reasonable use of the property is difficult under the zoning due to the somewhat unique setting, abutting highway and land that cannot be developed for required parking.
- This is a low impact harmonious use which is not inconsistent with the intent of the ordinance.
- The variance would not injure the public or private rights of others or diminish surrounding properties as there is only one residential abutter, who shares a driveway, and no complaints regarding the use have been received over the period of occupancy.
- Justice would be done by allowing the continuance of an activity which has been peacefully conducted in the neighborhood for a number of years.
- No abutter voiced an objection to the petition.

2) Petition of **Jason J. Kyrousis and Julie Howard, owners**, for property located at **420 Lafayette Road** wherein the following were requested: 1) a Variance from Article IV, Section 10-401(A)(1)(c) to allow the two dwelling units to be re-arranged in the existing building including proposed additions, and 2) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow a 14’ 10” x 17’ 6” one story addition with: a) a 17’± front yard where 30’ is the minimum required, b) 27.5% building coverage where 20% is the maximum allowed; and, c) a bulkhead within the 30’ required rear yard. Said property is shown on Assessor Plan 231 as Lot 3 and lies within the Single Residence B district. Case # 5-2

After consideration, the Board voted to **deny** the petition as the project is overly ambitious for the lot, an addition could be built that would not require a variance, and there is no demonstrated hardship associated with the land.

3) Petition of **Franklin and John Grossman Revocable Trust, owner, and Nancy and John Grossman, applicants**, for property located at **170 Mechanic Street** wherein the following were requested: 1) a Variance from Article II, Section 10-206 is requested to allow one room and adjacent bath to be used for a Bed and Breakfast within a single family dwelling in a district where such use is not allowed, and 2) a Variance from Article XII, Section 10-1201(A)(2) to allow a travel aisle less than 24' where 24' is the minimum required. Said property is shown on Assessor Plan 102 as Lot 7 and lies within the General Residence B and Historic A districts. Case # 5-3

After consideration, the Board voted to **deny** the petition as it would not be in the spirit of the ordinance to introduce a business use into this residential neighborhood, no hardship has been demonstrated to justify a variance and a significant number of abutters have indicated that granting a variance would injure their rights, property values and enjoyment of their property.

4) The Portsmouth Board of Adjustment, acting pursuant to NH RSA 12-G:13 and Chapter 300 of the Pease Development Authority Zoning Requirements, will review and make a recommendation to the Board of Directors of the Pease Development Authority regarding the following petition of **200 International Group, applicant**, for property located at **200 International Drive** wherein a Variance from the Pease Development Authority Zoning Ordinance Section 303.4 was requested to allow an educational use (Seacoast Career Schools) in an existing building occupying 14,869± sf where such use is not allowed. Said property is shown on Assessor Plan 312 as Lot 7 and lies within the Industrial district. Case # 5-4

At the request of counsel for the petitioner, this application was **tabled** to the May 24, 2005 meeting.

5) Petition of **Jeffrey F. and Deborah S. Purtell, owners**, for property located at **31 Pleasant Point Drive** wherein a Variance from Article III, Section 10-302(A) was requested to allow the following after demolition of the existing single family dwelling: a) a 26' x 56' 10" two story single family dwelling with a 25.3'± front yard where 30' is the minimum required, a right side yard less than 10' where 10' is the minimum required; and , rear yard less than 30' where 30' is the minimum required, b) an attached 326 sf front porch with a 6.1± right side yard where 10' is the minimum required, c) a 12' x 16' one story rear addition with an 10'± rear yard where 30' is the minimum required; and, d) a 24' x 26' garage and connector (720 sf) with living space above creating 23.7% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 207 as Lot 27 and lies within the Single Residence B district. Case # 5-5

This petition was **tabled** to the May 24, 2005 meeting.

6) Petition of **K & S Energy Group Inc., owner**, for property located at **1400 Lafayette Road** wherein Variances from Article III, Section 10-304(A) and Article IV, Section 10-401(A)(2)(c) were requested to construct a 10' x 48' one story addition to the rear of the existing convenience store with: a) a 30' rear yard where 50' is the minimum required, b) an 11' left side yard where 30' is the minimum required; and, c) a 15' right side yard where 30' is the minimum required. Said property is shown on Assessor Plan 252 as Lot 7 and lies within the General Business district. Case # 5-6

This petition was **tabled** to the May 24, 2005 meeting.

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III. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 12:25 a.m.

Respectfully submitted,

Mary E. Koepenick
Secretary

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