

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 September 27, 2005** in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

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

EXCUSED: None

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I. OLD BUSINESS.

A) Approval of Minutes:

December 28, 2004
May 17, 2005
May 24, 2005

July 19, 2005
August 16, 2005

The Minutes presented were approved, with one minor correction.

B) Request for Rehearing on Petition of **Murat and Sandra Ergin, owners**, for property located at **251 Walker Bungalow Road**.

After consideration, the Board voted to **deny** the Request for Rehearing as no error in procedure had been made and no new evidence justifying a rehearing had been presented.

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II. PUBLIC HEARINGS:

6) Petition of **Paul J. and D. L. Holloway, owners**, for property located **off the Route One ByPass** and **Paul J. Holloway, owner** for property located **off Cottage Street** wherein the following are requested: 1) a Variance from Article II, Section 10-206 to allow a new driveway and 18 customer parking spaces for an associated automobile dealership on a lot zoned residential where such use is not allowed, and 2) a Variance from Article II, Section 10-209(13)(a)&(b) to allow 13 new motor vehicle display spaces on an industrially zoned parcel within 500' of property zoned residential and within 50' of the front and side lot lines of an industrially zoned parcel. Said property is shown on Assessor Plan 173 as Lots 9 & 11 and lie within the Industrial and General Residence A districts.

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

- That the arborvitae screening will be moved from lot #8 to lot #11.
- That barriers will be placed along the front property line of the dealership so that no access to Route One By-Pass can be made from the lot. The type of barriers will be determined by the Site Review Committee.
- That, if the driveway relocation does not solve the problem of vehicle carriers not being able to freely enter onto and exit the dealership from Cottage Street, the applicants will reconstruct and redesign the driveway, at their expense, so the problem is solved.
- That Cottage Street will not be used for loading or unloading vehicle carriers for the dealership.

The variances were granted for the following reasons:

- It will be in the public interest to eliminate the safety issue of vehicle carriers blocking and backing into traffic. The arborvitae barriers will screen the parking spaces for the new customer parking.
- The irregular shape of the zoning district inserts a narrow section of residentially zoned properties into an area otherwise zoned for non-residential uses. The residentially zoned lot will not be used for an office or store, but will be restricted to a driveway and customer parking.
- There is pre-existing parking on all sides of the 13 new display spaces. Due to the depth and size of the lot, there is nowhere else to place the parking spaces that would comply with the 500 foot setback requirement.
- The proposed location for the driveway is the safest and most effective way to provide access to the site.
- Expert testimony has been presented that the variances will not adversely affect the value of surrounding properties.

7) Petition of **Portsmouth Farms LLC, owner, Starbucks Coffee Co., applicant**, for property located at **1855 Woodbury Avenue** wherein the following are requested: 1) a Variance from Article XII, Section 10-1204 Table 15 to allow 28 parking spaces to be provided where 34 parking spaces are required, and 2) a Variance from Article XII, Section 10-1201(A)(3)(e)(2) to allow parking spaces and travels aisles within 40’ of the front property line. Said property is shown on Assessor Plan 215 as Lot 11 and lies within the General Business district.

The Board voted to **table** the petition to a time indefinite, at the petitioner’s request.

8) Petition of **Patricia A. Card Living Trust, owner, and Joseph Lavin, applicant**, for property located at **off Islington Street** wherein a Variance from Article III, Section 10-302(A) is requested to construct a 24’ x 36’ two story single family dwelling with basement on a lot having an area of 6,610+ sf where 15,000 sf in the minimum required. Said property is shown on Assessor Plan 233 as Lot 2 and lies within the Single Residence B district.

The Board voted to **table** the petition to the October 18, 2005 meeting so that all abutters may be notified.

9) Petition of **Paul Lane, owner**, for property located at **428 Hanover Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow the reconstruction of two 3' x 6' bump outs on the front of the building with a 3'6" x 21' 6" roof over said bump outs and front door with a 1'± front yard for all where 5' is the minimum required. Said property is shown on Assessor Plan 138 as Lot 7 and lies within the Apartment district.

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

- That gutters will be installed on three sides, with a downspout directing rainwater onto the owner's property and away from the City sidewalk.

The variances were granted for the following reasons:

- With the stipulation protecting the sidewalks, there will be no negative impact on the public interest.
- The structure predates zoning and is located close to the property line. There is no other way to replace the rotting bumpouts without a variance.
- It is consistent with the spirit of the ordinance to essentially allow a replacement in kind and provide protection over the entranceway.
- There will be no diminution in value of surrounding properties and the only neighbor appearing spoke in favor of the project.

10) Petition of **CLJR, LLC, owner**, for property located at **6 Robert Avenue** wherein a Variance from Article II, Section 10-208 is requested to allow a wholesale /retail irrigation business with a 30' x 35' outdoor storage area in a district where such use is not allowed. Said property is shown on Assessor Plan 286 as Lot 17 and lies within the General Business district.

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

- The zoning restriction interferes with the reasonable use of the property as it is zoned General Business but is located away from the flow of business in more of a warehouse/industrial setting.
- This is a reasonable use which shares a number of characteristics of the General Business category.
- Substantial justice is done by allowing the owner to utilize the property in a manner consistent with the general purposes of the zoning ordinance and the business across the street to expand in this location.
- There will be no diminution in value of the surrounding properties as the business has operated successfully across the street for several years with no detrimental effect.

III. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 9:45 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary