

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 20, 2005** in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

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

EXCUSED: Alain Jousse

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I. PUBLIC HEARINGS:

1) Petition of **Mark H. Wentworth Home for Chronic Invalids, owner**, for property located at **346 Pleasant Street** wherein Variances from Article II, Section 10-206(18), Article III, Section 10-302(A) and Article IV, Section 10-401(A)(1)(c) were requested to allow two additions to the existing nursing home/assisted care facility as follows: a) demolition of existing glass side entrance portico and replacement with a 404 sf (13' x 26' plus 4' x 16'6") ADA compliant entranceway; and, b) construction of an 875.6 sf (8' x 75' plus 7'6" x 36'8") one story additions to the garden level nursing care area. Said property is shown on Assessor Plan 109 as Lot 10 and lies within the General Residence B and Historic A districts.

After consideration, the Board voted to table the petition until: 1) the questions can be considered of whether parking requirements apply and, if so, if adequate parking has been provided; 2) plans are provided with all parking spaces delineated and dimensioned; and, 3) the petition can be readvertised to include lot coverage information.

2) Petition of **Bruce A. Clark, owner**, for property located at **893 Woodbury Avenue** wherein a Variance from Article III, Section 10-302(A) was requested to allow a 216 sf irregular shaped deck with a 24'3" rear yard where 30' is the minimum required. Said property is shown on Assessor Plan 219 as Lot 36 and lies within the Single Residence B district.

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

- That the deck remain open to the sky and not enclosed.

The petition was granted for the following reasons:

- With the natural and fabricated screening surrounding the lot, the deck will not be visible to the public.
 - The applicant has explored other locations and configurations but the options are limited by the existing building and a relatively small lot which predates zoning.
 - It is consistent with the spirit of the ordinance to allow the homeowner to improve his property without diminishing the value of the surrounding properties.
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3) “Rehearing per Order of the Rockingham County Superior Court in the matter of Michael Boccia, etal v. City of Portsmouth and Raymond Ramsey, Intervenor, 03-E-0087, dated October 4, 2004, for **property owned by Raymond A. Ramsey located off Kearsarge Way**, to determine whether construction of a 63-foot x 263-foot, 100-unit, five story hotel, with (1) a variance from Article III, Section 10-304(a)(10) to allow a 51-foot front yard where 70-feet is the minimum required, and a 30-foot rear yard where 50-feet is the minimum required, and (2) a variance from Article XII, Section 10-1201(A)(3)(e)(1) to allow off street parking to be located 15-feet from a residential district where a 100-foot setback is required, and Article XII, Section 10-1201A.3.(e)(2) to allow off street parking, maneuvering space, and traffic aisles within 15-feet of the front property line where a 40-foot vegetated buffer is required, constitutes a reasonably feasible alternative for the applicant to pursue under Boccia v. City of Portsmouth, 151 NH 85, (2004), from the variances granted on December 18, 2002, and clarified on November 15, 2005, from Article III, Section 10-304(a)(10) to allow a 51-foot building setback where a front setback of 70 feet is required; a 16-foot building setback where a side setback of 30-feet is required; a 30-foot building rear setback where 50-feet is required; (2) from Article III, Section 10-304(c)(2) to allow a building within 83 feet of property zoned residential where a 100-foot setback is required; (3) from Article XII, Section 10-1201A.3.(e)(1) to allow off street parking to be located 15-feet from a residential district where a 100-foot setback is required, and (4) from Article XII, Section 10-1201A.3.(e)(2) to allow off street parking, maneuvering space and traffic aisles within 15-feet of the front property line where a 40-foot vegetative buffer is required to permit construction of a 63’ by 310’ 100-unit four story hotel. Said property is shown on Assessors Plan 218 as Lots 22, 24, 25, 28, 29, 30, 32, 33, 34 and 39 (to be combined) a/k/a as Map 218 as Lot 22 and lies within the General Business district.”

After consideration, a motion to grant the application failed.

4) 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 9’8” x 43’8” one story addition to the rear of the existing convenience store with: a) a 30.1’ rear yard where 50’ is the minimum required, b) a 14.3’ left side yard where 30’ is the minimum required; and, c) a 15.1’ 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.

After consideration, the Board voted to approve the application as presented and advertised for the same reasons the Board cited in the granting of a variance at its May 24, 2005 meeting. The variance was granted with the following stipulation:

- That the building will be brought into compliance with the requirements of the Americans with Disabilities Act.

The reasons were the following:

- The variance will not be contrary to the public interest as the lot is in a commercial setting and the provided services are a well established combination of gas and light groceries.
- The location, small size and odd shape of the lot are special conditions requiring a variance to enable the proposed use.
- The lot is fully developed and there is no reasonably feasible alternative to expansion of the store as proposed.
- It is consistent with the spirit of the ordinance to promote and help small businesses to prosper.
- Substantial justice would be done by allowing the applicant to be more competitive and fully comply with the requirements of the Americans with Disabilities Act.
- A more modern and functional operation at this location will not diminish the value of surrounding properties.

5) Petition of **Portsmouth Farms LLC, owner, Starbucks Coffee Co., applicant**, for property located at **1855 Woodbury Avenue** wherein the following were requested: 1) a Variance from Article XII, Section 10-1204 Table 15 to allow 27 parking spaces to be provided where 34 parking spaces are required, 2) a Variance from Article XII, Section 10-1201(A)(3)(e)(2) to allow parking spaces and travel aisles within 40' of the front property line and said area to be landscaped; and 3) a Variance from Article III, Section 10-304(A) to allow a 4' x 9' drive-thru canopy with a 26' left side yard where 30' is the minimum required. 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 the January 17, 2006 meeting.

6) Petition of **Hill Hanover Group, LLC, owners**, for property located at **349-351 Hanover Street** wherein a Variance from Article III, Section 10-303(A) was requested to allow open space to be reduced by adding two nonconforming parking spaces from 29% to 22% where 25% is the minimum required. Said property is shown on Assessor Plan 138 as Lot 64 and lies within the Mixed Residential Office district.

As requested by the applicant, the Board voted to table the petition until the January 17, 2006 meeting.

7) Petition of **45 Pearl Street Properties, LLC, owner**, for property located at **45 Pearl Street** wherein the following were requested: 1) a Variance from Article II, Section 10-207 and Article IV, Section 10-401(A)(1)(b) to allow 3,200 sf of the existing building to be used as a function hall (Weddings, Wedding Receptions, Special Events {rental to local and non-profit ventures: auctions, family reunions, business meetings, etc}, Art Gallery {display, openings and sales of artist's work}; Live Performances of theater and music: rehearsal space, opening night galas and events); and Church services/bible study, all with amplified music and hours of operation daily til midnight and on New Years eve til 1 AM, and 2) a Variance from Article XII,

Sections 10-1203 and 10-1204 to allow the facility to provide no conforming onsite parking or loading areas where 148 parking spaces are required and loading areas are required. Said property is shown on Assessor Plan 126 as Lot 30 and lies within the Mixed Residential Office district.

After consideration, the Board voted to approve the application as presented and advertised with the following stipulations:

- That the hours of operation will be from 9:00 a.m. until 11: 00 p.m., Sunday through Saturday, except on New year’s Eve until 1:00 a.m.
- That no amplified music will be allowed on any day after 9:00 p.m.
- That there will be full compliance with all provisions of Article V of the ordinance, in particular, but not limited to, the provisions dealing with noise.

The variance was granted for the following reasons:

- With the attached stipulations, the rights of the public and the surrounding neighborhood will be protected.
- This property has operated in a similar fashion at this location for over a hundred years, predating the ordinance.
- The property shares an environment with mixed uses and to strictly apply the zoning restrictions would unreasonably interfere with the use of the property.

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III. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 12:05 a.m.

Respectfully submitted,

Mary E. Koepenick, Secretary