

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 July 15, 2008 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Vice-Chairman David Witham, Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Alternate: Robin Rousseau

EXCUSED: Arthur Parrott, Alternate: Derek Durbin,

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I. OLD BUSINESS

A) Approval of Minutes – June 17, 2008

A motion was made, seconded, and passed by unanimous voice vote to accept the Minutes as corrected.

B) Motion for Rehearing for property located at **233 Union Street**.

After consideration, the Board voted to deny the Motion for Rehearing as correct procedure had been followed in arriving at their decision and no new information had been provided to warrant a rehearing.

C) Request for a One-Year Extension of Variance, granted July 17, 2007, for property located at **145 Porpoise Way**.

After consideration, the Board voted to grant the Variance Extension through July 17, 2009.

D) Motion for Rehearing for property located at **606 Greenland Road**.

After consideration, the Board voted to deny the Motion for Rehearing as correct procedure had been followed in arriving at their decision and no new information had been provided to warrant a rehearing.

E) Request for a One-Year Extension of Variance, granted July 17, 2007, for property located at **824 State Street**.

After consideration, the Board voted to grant the Variance Extension through July 17, 2009.

F) Request for a One-Year Extension of Variance, granted August 28, 2007, for property located at **150 Route One By-Pass**.

After consideration, the Board voted to grant the Variance Extension through August 28, 2009.

II. PUBLIC HEARINGS

1) Petition of **New England Glory LLC, owner**, for property located at **525 Maplewood Avenue** wherein an Appeal was made from an Administrative Decision regarding the determination of the Code Officials that the Building Permit to convert the 9 apartments into a 14 room Bed and Breakfast has lapsed as the building continues to be used as 9 apartments.

Notwithstanding the above, if the Administrative Appeal is denied, a Variance from Article II, Section 10-206 was requested to allow the existing 9 apartments to be converted into a 14 room Bed and Breakfast. Said property is shown on Assessor Plan 209 as Lot 85 and lies within the General Residence A district.

The petition was postponed to the August meeting at the applicant's request.

2) Petition of **RA, SJ, and BN Goodman, owners, and Michael Maguire d/b/a New Hampshire Motorcycle Warehouse applicant**, for property located at **930 Route One By-Pass** to be relieved of an 1988 Board of Adjustment stipulation of approval that requires a fence along the left property line. Said property is shown on Assessor Plan 142 as Lot 16 and lies within the Business district.

After consideration, a motion to grant the petition failed to pass so the petition was denied. It was felt that the Board in 1988 had valid reasons for attaching the stipulation to the approval for a Special Exception. One of the considerations in granting a Special Exception then, as now, is that the Special Exception stays with the property and this stipulation was intended to protect the residential properties no matter what changes occurred in the future. That need still exists and the stipulation should stand.

3) Petition of **Kentucky Fried Chicken of Portsmouth, c/o Francis E. Daddario, owner, Churchill & Banks, applicant**, for property located at **1840 Woodbury Avenue** wherein the following were requested: 1) a Variance from Article III, Section 10-304(A) to allow a 1,750 sf addition to an existing 2,500 sf building within 100' of property zoned residentially, 2) a Variance from Article III, Section 10-304(A) and Article IV, Section 10-401(A)(2)(c) to allow

the 1,750 sf addition within the required 70' front yard; and, 3) a Variance from Article XII, Section 10-1201(A)(3)(e) to allow off-street parking and accessways within 100' of a residential zone where such use is not allowed. Said property is shown on Assessor Plan 239 as Lot 8 and lies within the General Business district.

After consideration, the Board voted to grant item 1) and item 3) of the petition as presented and advertised for the following reasons:

- This less intensive use will not be contrary to the public interest.
- The split zoning on the property, as well as the presence of wetlands, creates a hardship and impacts how the owner can use the property.
- The intent of the ordinance is to shield commercial from residential uses. In this case, unusable wetlands on the owner's property comprise the residential zone.
- There is no benefit to the public in denying the variance which will also allow the property owner a use that is appropriate to the area.
- The value of surrounding properties will be, if anything, increased by the proposed improvements.

It was determined that a variance for Item 2) of the petition was not needed as the addition will meet the required 70' front setback.

4) Petition of **Edward W. Momm Jr. and Lucy K. White, owners**, for property located at **130 Union Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow an irregular shaped 2 story 711 sf attached garage with living space above with: a) an 18"± left side setback where 10' is the minimum required; and b) 35.49%± building coverage (including a 10' x 17' second floor dormer) where 35% building coverage is the maximum allowed. Said property is shown on Assessor Plan 145 as Lot 60 and lies within the Apartment district.

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

- That there will be no windows on the left side of the garage.
- That the dormer will be set back 4' from the main wall of the garage.
- That a temporary silt fence be erected during construction.

The petition was granted for the following reasons:

- Improving the property will not be contrary to the public interest.
- The existing structure is on the property line and this will allow the property owner to make improvements while moving slightly away from the property line.
- With the configuration of the lot, this is the most reasonable proposal.

- With the stipulations, the spirit of the ordinance will be met and the rights of the abutters, as well as the value of surrounding properties, will be preserved.

5) Petition of **Seacoast Trust NH General Partnership, owner**, for property located at **150 Route One By- Pass** wherein the following were requested: 1) a Variance from Article II, Section 10-206 and Article IV, Section 10-401(A)(1)(b & c) to allow a 5,208 sf one story addition to the right side of the existing professional office building, 2) a Variance from Article IV, Section 10-401(A)(1)(c) to add two parking spaces at the rear of the lot in an area not currently used for parking; and, 3) a request to amend the location of the previously approved 50' x 8' portable coach for diagnostic services to the front of the building. Said property is shown on Assessor Plan 231 as Lot 58 and lies within the Single Residence B district.

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

- That the air conditioning unit be situated so that the decibel level at the property line meets the requirements of the ordinance.
- That, on the Hillside Drive side of the property, an arbor vitae screening be extended along the entire length of the property line.
- That the hours of operation will be as stipulated for the variance granted in January, 2002: from 7:00 a.m. to 8:00 p.m., Monday through Friday, and from 7:00 a.m. to 12:00 noon on Saturday, as well as by appointment for emergencies only on Sundays.
- That, as previously stipulated in 2002, the gravel driveway to Middle Road remain closed off.
- That, as previously stipulated in 2002, the lights in the parking areas be down shielded away from the abutting residential dwellings.

The petition was granted for the following reasons:

- That the public interest will not be affected by a previously approved addition, two new parking spaces and a relocated diagnostic coach on a property which predates zoning and has had the same use for years.
- There is no better place to locate the addition.
- The light and air provided for in the ordinance, and the value of surrounding properties, will be protected by the stipulations.
- Moving the location of the diagnostic coach to the front of the building, with appropriate screening, will position it further from the residential properties.
- There is no benefit to the public that would result from denial of the variances.

6) Petition of **Creative Investors c/o Peter Morin, owner**, for property located at **405 Pleasant Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 10' x 15' two story addition with: a) a 1.5'± left side setback where 10' is the minimum required and a 15'± rear setback where 25' is the minimum required, and b) 54.3% building coverage where 30% is the maximum allowed. Said property

is shown on Assessor Plan 102 as Lot 68 and lies within the General Residence B and Historic A districts.

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

- This proposal will not be contrary to the public interest in this area of similar density properties.
- This well considered proposal is the best way to deal with necessary renovations to an existing nonconforming structure
- In the spirit of the ordinance, consideration has been given to reducing the side yard setback and lot coverage.
- To meet the lot coverage, the garage would have to be totally removed, which would not be reasonable.
- There is no benefit to the public in denying the petition that would outweigh the hardship created for the applicant.
- The project has the support of the direct abutter and should, if anything, result in an increase in the value of surrounding properties.

7) Petition of **Matthew D. Beebe and Barbara R. Jenny, owners**, for property located at **81 Lincoln Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow an irregular shaped 190 sf one story addition and relocated bulkhead creating 32.9%± building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 113 as Lot 35 and lies within the General Residence A district.

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

- The public will not be negatively affected by this proposal and the removal of the back stairs will eliminate potential problems in the winter.
- The fact that this is a 5,000 s.f. lot in a district where the percentage of building coverage is predicated on a 7,500 s.f. minimum lot size creates a hardship in building any addition.
- The applicant is proposing to build the addition in the only feasible location which will only require relief from the required lot coverage.
- The proposal will be consistent with the area, where the lots are small and many properties exceed the maximum lot coverage.
- Reducing from a 2-family to a 1-family will result in a less intense use and require less on-street parking.
- The improvements should result in an increase in property values.

8) Clarification of previously approved Variance concerning property **owned by John F. Grogan** located at **8 Central Avenue** concerning a second driveway to the property. Said property is shown on Assessor Plan 209 as Lot 17 and lies within the General Residence A district.

The petition was withdrawn at the applicant's request.

9) Petition of American Financial Realty Trust, owner, for property located at **off Daniel Street** wherein a Variance from Article III, Section 10-304(B) was requested to allow a prefabricated 4' x 6' metal and glass parking attendant booth less than 20' in height where a minimum of 20' in height is required for buildings. Said property is shown on Assessor Plan 107 as Lot 27 and lies within the Central Business B and Historic A districts.

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

- An attractive booth on this lot will not change the essential character of the neighborhood or be contrary to the public interest.
- The special condition creating a hardship is the requirement for even accessory structures to be at least 20' in height.
- There is no other way to achieve the benefit of providing shelter for the parking attendant.
- The ordinance established minimum heights to achieve continuity in the streetscape and was not intended to apply to this type of structure.
- There will be no diminution in the value of surrounding properties and no benefit to the public in denying the variance.

10) Petition of **Karl E. Hahn, owner**, for property located at **340 Odiorne Point Road** wherein the following were requested: 1) an Equitable Waiver as allowed in RSA 674:33-a to allow a previously constructed 16' x 26' one car garage with a 9.56'± right side setback where 10' or 75% of the height of the structure, whichever is greater, is the minimum required, and 2) a Variance from Article IV, Section 10-402(A & B) to allow a 5' x 16' one story storage shed attached to the garage with a 4.58'± right side setback where 10' or 75% of the height of the structure, whichever is greater, is the minimum required. Said property is shown on Assessor Plan 224 as Lot 10-18 and lies within the Single Residence A district.

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

- The minor miscalculation appears to be the result of an honest mistake.
- The intent of the zoning is not affected by this error in measurement.

The Board voted to deny the Variance as the applicant or his agent should have been aware of the setback requirement. There are no special conditions on the property which warrant placement of the shed within the setback and there are other reasonably feasible options for the applicant to pursue in the placement of a shed.

11) Petition of **Raymond J & Maryrose Richer, owners**, for property located at **85 Woodworth Avenue** wherein a Variance from Article III, Section 10-302(A) was requested to allow a 12' x 22' roof over an existing deck with a 22'6"± rear setback where 30' is the minimum required. Said property is shown on Assessor Plan 243 as Lot 35 and lies within the Single Residence B district.

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

- Installing a roof over an existing deck will not negatively impact the neighbors or surrounding property values.
- This is a minimal request and the deck will not be enclosed to create additional living space.
- There will be no further encroachment into the setbacks.
- As an alternative, it would not be reasonably feasible to require the applicant to cut in half their usable space.

12) Petition of **Jose Luis San Miguel and Myong S Trest San Miguel, owners**, for property located at **24 Holmes Court** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) a 16' x 21' two story garage/living space/roof deck addition with a 0' rear setback where 25' is the minimum required and a 0' left setback where 10' is the minimum required; and b) 60.2%±% building coverage (including a 4'4" x 6' entry addition) where 30% is the maximum allowed. Said property is shown on Assessor Plan 101 as Lot 15 and lies within the General Residence B and Historic A districts.

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

- There will be no change in the existing setback or in the essential character of this neighborhood of closely situated dwellings.
- This is a tight lot with an existing foundation, which is reasonable to reuse.
- In order to meet the building coverage, it would be necessary to split the house in half, which is not feasible.
- Denying the variance would be an injustice to the homeowner, while not providing a benefit to the public.
- There will be no diminution in the value of surrounding properties and the feedback from the neighbors has been positive.

III. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:50.

Respectfully submitted,

Mary E. Koepenick, Secretary