

**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 January 19, 2010 in Conference Room B, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Chairman Charles LeBlanc, Vice-Chairman David Witham, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternates: Derek Durbin, Robin Rousseau

**EXCUSED:** Carol Eaton

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**I. APPROVAL OF MINUTES**

A) November 17, 2009

It was moved, seconded and passed by unanimous voice vote to accept the Minutes as presented.

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**II. NEW BUSINESS**

A) Election of Officers

A motion was made, seconded, and passed by unanimous voice vote to re-elect Charles LeBlanc as Chairman and David Witham as Vice Chairman to serve until the next election.

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**III. OLD BUSINESS**

A) Petition of **New England Glory LLC, owner**, for property located at **525 Maplewood Avenue** wherein an Appeal 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 had lapsed as the building continues to be used as 9 apartments.

Notwithstanding the above, if the Administrative Appeal was 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. *This petition was postponed to a time indefinite at the August 19, 2008 meeting.*

The Board acknowledged the request of the applicant to withdraw the application.

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B) Request for Extension of Variance granted February 17, 2009 for property located at 33 Hunking Street

After consideration, the Board voted to grant a one year extension of the variance through February 17, 2011.

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C) Case # 12-9

Petitioners: J.P. Nadeau, Owner & Witch Cove Marina Development LLC, Applicant  
Property: 187 Wentworth House Rd. Assessor Plan 201, Lot 12  
Zoning district: Waterfront Business District

Requests: Variances to establish two (2) residential uses where residential uses are prohibited; To expand two (3) non-conforming residential uses and structures; to expand a non-conforming marine related structure; To allow for the encroachment of two(2) structures into the 100’ Tidal Buffer where the encroachment is not allowed. Article II Section 10-208 Table 4 (43), Article III Section 10-301(A)(2), Article III Section 10-301(A)(7)(a), Article IV Section 10-401(A)(1)(b), Article IV Section 10-401(A)(1)(c)

After considering the individual variances separately, the Board took the following actions: (note 1)

The Board voted to grant a variance from Sections 10-208 Table 4(43)(note 2), 10-301(A)(2)(note 3) and 10-401(A)(1)(c)(note 4) of the Zoning Ordinance to establish two (2) residential uses where residential uses are prohibited by allowing the two residential structures that currently exist on the lot to be moved to another location on the lot as shown on the plan submitted with the application. The variance was granted with the following stipulation:

- That the approved relocation applies to the two residential structures as they currently exist. If there is any change to the structures, or they are deemed structurally unsound to move as they are, the granting of the variance will be null and void.

The variance was granted for the following reasons:

- The public interest will not be affected by relocating residential uses which have been in place for a number of years.
- The proposed new location will allow the structures to be less nonconforming with respect to the front and side setbacks.
- There is no relationship between the purposes of the Zoning Ordinance and the specific restriction on the property as moving the structures will take them away from commercial uses and closer to other residential uses.

The Board voted to grant a variance from Section 10-401(A)(2)(c) (note 5) of the Zoning Ordinance to allow the expansion of a nonconforming structure located on the Waterfront and shown on the plan submitted with the application. The applicant represented that the building had been used for marine related storage for many years.

The Board voted to deny the request for a variance from Section 10-401 (A)(1)(b) (note 6) of the Zoning Ordinance for the expansion of two nonconforming residential uses for the following reasons:

- No special condition was presented to warrant the expansion of the two residential buildings and no argument of hardship regarding the need for expansion.
- While the relocation of the existing dwellings was granted, expanding a nonconforming residential use in this Waterfront Business District would not be in the spirit of the ordinance.

The Board did not act on the request for a variance from Section 10-301(A)(7)(a) (note 7) of the Zoning Ordinance to allow two structures to be located within 100' of the mean high water line of Sagamore Creek.

Footnotes:

- 1) This application was submitted on November 24, 2009, and was originally scheduled to be heard at the Board's meeting on December 22, 2009. At the request of the applicant, the Board postponed the hearing to January 19, 2010, by which date the City's revised Zoning Ordinance had taken effect. The revisions to the Ordinance did not represent substantive changes with respect to any of the actions which the Board took on this application, but the section references were changed. In order to be consistent with the original application the above text retains the references to the previous Zoning Ordinance, with footnotes to the current Ordinance.
- 2) Section 10.440, Use #1.10 in the current Zoning Ordinance
- 3) Section 10.513
- 4) Section 10.334
- 5) Section 10.324
- 6) Section 10.333
- 7) The current Zoning Ordinance eliminated this provision and replaced it with a requirement for a Conditional Use Permit for activities within the Tidal Wetlands Buffer (See Sec. 10.1013).

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#### **IV. PUBLIC HEARINGS**

1) Case # 1-1

Petitioners: 337 Pleasant St. LLC Owners

Property: 337 Pleasant Street Assessor Plan 103, Lot 62

Zoning district: General Residence B

Request: **Variance(s)** from:

**Section 10.321** to allow the enlargement of a lawfully nonconforming structure

**Section 10.521** to allow a front yard setback of 1.5'± where 5' is required

**Section 10.521** to allow a front yard setback of 1.5'± where 5' is required

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

- With no increase in nonconformity as to the setback, the public interest will not be negatively impacted.
- The two story height and setback are in line with other homes in the area so that the essential character of the neighborhood will not be affected.
- The siting of the existing home on the lot presents a hardship for even a minimal expansion and while other alternatives were considered, this was the most reasonable.
- Substantial justice will be done by allowing a reasonable use of the property.
- Fronted on three sides by streets, this placement will not affect the light and air protected by the Zoning Ordinance.
- There will be no infringement on the rights of abutters and no indication that surrounding property values will be diminished.

2) Case # 1-2

Petitioner: George Byron McAlpin & Glenn P. Smart, Owners

Property: 428 Ocean Road Assessor Plan 294, Lot 15

Zoning district: Single Residence A

Requests: **Variance** from:

**Section 10.521** for the placement of an 8' x 10' shed at 428 Ocean road with a building coverage of 10.5% where 10% is allowed

After consideration, the Board voted to grant the petition as presented, with the size of the shed changed to 8' x 8', and as otherwise advertised for the following reasons:

- There will be no public interest involved in an 8' x 8' shed placed in the back yard of a relatively large, screened lot.
- The spirit of the ordinance will be served by allowing the property owners the maximum enjoyment of their property while not infringing on the rights of others.
- There would be no overriding public interest in denying the variance and the value of surrounding properties will not be affected.

- Literal enforcement of the ordinance would result in unnecessary hardship by denying the property owners a small area for storage space.

3) Case # 1-3

Petitioner: Saco Avenue Professional Building, Inc., Owner and Stan Pasay, Applicant

Property: 125 Brewery Lane Assessor Plan 154, Lot 2

Zoning district: Business

Request: **Special Exception** from:

**Section 10.440, Use #4.42** to allow a Fitness Center of more than 2,000 square feet proposed to be located within an existing building in the Business zone

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

- As presented, the operation should present no hazard to the public or adjacent properties.
- With more than adequate parking, there should be no creation of a traffic safety hazard or increase in congestion.
- Occupying existing space, there will be no excessive demand on municipal services or increase in storm water runoff.
- Surrounded by a wide variety of businesses, the operation should be a good fit for the area and have no negative impact on surrounding property values.

4) Case # 1-4

Petitioners: David J. & Vasilina Tooley,

Property: 166 New Castle Avenue Assessor Plan 101, Lot 24

Zoning district: Single Residence B

Request: **Variance(s)** from:

**Section 10.321** to allow the enlargement of a lawfully nonconforming structure

**Section 10.521** to allow a rear yard setback of 1'2"± where 30' is required

**Section 10.521** to allow a building coverage of 50% where 20% is allowed

**Section 10.521** to allow open space coverage of 41% where 40% is allowed

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

- These improvements will not be contrary to the public interest.
- The zoning restriction as applied interferes with a reasonable use of the property as this is a small sloped lot with a limited buildable area so that almost anything to be done would require a variance.

- The public and private rights of others will not be injured by allowing the property owners to close off a small area which, due to the slope of the lot, collected snow causing damage to the existing structure.
  - In the spirit of the ordinance, the light and air available to abutters will be increased.
  - The value of surrounding properties will not be diminished and there was demonstrated neighborhood support for the project.
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**V. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 9:45 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary