

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

April 27, 2010

MEMBERS PRESENT: Chairman Charles LeBlanc, Carol Eaton, Thomas Grasso,
Charles LeMay, Alternate Derek Durbin

EXCUSED: Vice Chairman David Witham, Alain Jousse, Arthur Parrott,
Alternate Robin Rousseau

ALSO PRESENT: Principal Planner, Lee Jay Feldman

Chairman LeBlanc announced that a request had been made to withdraw Item 12), the petition for 685 Islington Street. He stated that, while they were expecting one more member, there were currently only five members sitting and four positive votes were necessary to grant a variance. He offered applicants the opportunity to postpone their petitions to the next month.

I. PUBLIC HEARINGS

- 8) Case # 4-8
Petitioner: Ideas in Motion, LLC
Property: 28 Langdon Street Assessor Plan 138, Lot 46
Zoning district: General Residence C
Requests: **Special Exceptions**, Section 10.440 Table of Uses use(s) 1.42 and 1.53 to allow 5 dwelling units on the same parcel in the GRC zone and to allow the conversion of a building existing on January 1, 1980 with less than the required minimum lot area per dwelling unit as specified in Article 5; **Variance(s)** Section 10.521 Table of Dimensional Standards to allow 5 units on a parcel of 6391 square feet where 3500 square feet per unit is required; Section 10.1112.30 to allow for 5 parking spaces on the lot where 9 are required.

Attorney Pelech requested that the petition be postponed to the next month for a full Board.

Mr. Grasso made a motion to postpone hearing the petition to the May meeting, which was seconded by Mr. Durbin and approved by unanimous voice vote.

9) Case # 4-9

Petitioner: Thomas P. Coakley

Property: 231 Bartlett Street Assessor Plan 162, Lot 31

Zoning district: General Residence A

Requests: **Variance(s)**, to construct a third floor dormer. Section 10.321 to allow for the enlargement of a nonconforming structure; Section 10.521 Table of Dimensional Standards to allow a side yard set back of 8 feet where 10 feet is required

Attorney Pelech requested that the petition be postponed to the next month.

Mr. Grasso made a motion to postpone hearing the petition to the May meeting, which was seconded by Mr. Durbin and approved by unanimous voice vote.

10) Case # 4-10

Petitioner: Joshua B. Arend

Property: 98 Miller Avenue #1 Assessor Plan 129, Lot 15-1

Zoning district: General Residence A

Requests: **Variance(s)** to allow construction of a deck. Section 10.321 to allow the enlargement of a nonconforming structure; Section 10.521 Table of Dimensional Standards to allow a building coverage of 31.4% where 25% is allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. Josh Arend stated that he had included a letter with a series of sketches and site plans which he felt fairly well outlined the issues at hand. This was a small non-conforming lot for its district. He was seeking to increase the building coverage of the lot by 1.1% through the addition of a 60 s.f. deck. He stated that there was a two-unit condominium association on the property and he owned unit 1. In his letter, he had mentioned that the other owner had no objection and he now had a letter from that owner. To either side of the property were apartment buildings and there was no one from there in opposition so he didn't feel this would adversely affects surrounding properties. The deck would not be visible from the street and only marginally visible if at all from surrounding properties. The abutting property to the south and west had a large parking lot between his structure and theirs. The property to the north was screened in large part by bushes and trees. Mr. Arend stated that, with the size of the lot, it was difficult to add any value without some sort of variance.

Mr. Grasso asked if the railing of the deck was going to be similar in height to the unit two deck and Mr. Arend stated it was. They were hoping to make it look as if it were done by the same person so it wouldn't seem dramatically different to the overall structure. Mr. Grasso asked if the proposed door went, as shown in the photo, just to the right of the double windows and Mr. Arend stated, "correct." The double window that was now on the first floor would be slightly smaller in width to allow for that.

Chairman LeBlanc asked if the deck was going to be at ground level and Mr. Arend stated that, looking at the photograph, it would be approximately the height of that landing. Chairman LeBlanc stated the landing on the first floor, not the second and Mr. Arend stated, “correct.” He added that he had the entire first floor largely and half of the second. It was a sort of stacked type thing so that, as shown in the photograph, the doorway on the right side was his primary means of entrance right now. His unit was the entire back side of that first floor, so it would be similar in height to the first floor and similar in size to the second floor.

SPEAKING IN OPPOSITION TO THE PETITION, OR SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. LeMay made a motion to grant the petition as presented and advertised with the stipulation that the deck remain unenclosed. Mr. Grasso seconded the motion.

Mr. LeMay stated that this was a small amount of relief which would allow better access in general. It was not contrary to the spirit of the ordinance to allow a minor open platform to step on to get down to the ground. Substantial justice would be done by allowing the applicant to continue to enjoy his property and the value of surrounding properties would not be diminished. There were other decks in the area and this would not encroach on abutters. There would be only a minor impact on the light and air protected by the ordinance.

Mr. Grasso stated that the applicant was proposing a deck resulting in a little over 1% increase in lot coverage. This had minimal impact and was located on the back of the lot, not posing any problems to the general public. The deck would give the applicant an extra means of egress with a larger door for moving larger items.

The motion to grant the petition as presented and advertised, with the stipulation that the deck remain unenclosed, was passed by a unanimous vote of 5 to 0.

- 11) Case # 4-11
 - Petitioner: New Hampshire Department of Regional Community-Technical
 - Property: 320 Corporate Drive Assessor Plan 315, Lot 4
 - Zoning district: Airport Business and Commercial
 - Requests: **Variance**, Section 305.02(b) of the Pease Development Authority Zoning Ordinance to allow the placement of 5 new parking spaces within the required 50 foot front yard setback where no parking is allowed.

SPEAKING IN FAVOR OF THE PETITION

Mr. Brad Mezquita stated that he was from Appledore Engineering and was speaking on behalf of Great Bay Community College. He provided a smaller copy of the plan in the

packet stating that part of the request was to maximize parking on the existing site due to increased demand. He indicated on the plan the two locations within the dark grey areas of the proposed five parking spaces. They were asking for a variance because the spaces would be in the front setback. Corporate Drive had a 100' right of way where typically it would have a 50' right of way, which put a burden on the property. Mr. Mezquita displayed another plan which showed the detail with dimensions. He indicated the 50' setback noting that existing parking was already 30.6' into the front setback and the four spaces in the one location would be 26'. In the other location, this would be 7.2' into the setback.

Mr. Mezquita referred to their letter outlining how the criteria were met. He stated that granting the variance would not be contrary to the public interest. Parking would serve the public. A 100' right of way was not typical and it would be in the spirit of the ordinance to provide a normally required setback. Substantial justice would be done as vehicles would not have to park on lawns and non-parking areas. The value of surrounding properties would not be diminished as they would be no more nonconforming than now. The hardship was in trying to get what was needed on the lot as it currently existed. They had looked to expand in another area but there was a wetland there. They were out of land and just trying to box out a few parking spaces.

Mr. Feldman stated that, this being Pease, they were looking at a different ordinance, not the city's. This had already gone to the Pease Board of Directors before coming before this Board. When Mr. LeMay asked the result, Mr. Feldman stated that their Board had approved going forward. Chairman LeBlanc stated that any motion in favor would be that they concurred with the Pease Development Authority position and Mr. Feldman stated, "correct."

Chairman LeBlanc asked the representative why they couldn't put more parking spaces near the detention pond and Mr. Mezquita stated it would impact the wetlands.

The President of Great Bay Community College stated that they had moved to Pease which allowed them greater accessibility than in Stratham but they had immediately encountered parking issues. They were working with the Pease Development Authority to identify additional parking as they continue to grow. They felt that the current situation, adding 89 spaces 5 of which they were talking about that evening, would address parking issues for the next several years, providing relief in the immediate term.

SPEAKING IN OPPOSITION TO THE PETITION, OR SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. Grasso made a motion to concur with the Pease Development Authority prior recommendation to go forward with this, which was seconded by Ms. Eaton.

Mr. Grasso stated that the college was going through some growth, which was great for them and they served a wider range in these economic times with people going back to college. Adding this additional parking would help the college serve the local community.

Ms. Eaton stated that it was probably a public safety issue, to get some of the parking off the main road and into the area of the college.

Chairman LeBlanc called for the vote noting that the phrase the Board has used in the past for Pease petitions was that the Board recommended approval to the Pease Development Authority Board of Directors. Mr. Grasso and Ms. Eaton agreed to so modify their motion and second.

The motion to recommend approval of the petition to the Board of Directors of the Pease Development Authority was passed by a unanimous vote of 5 to 0.

- 12) Case # 4-12
 Petitioners: Joseph Gobbi Supply Corporation & Kevin & Bryan Gilman
 Property: 685 Islington street Assessor Plan 164, Lot 12
 Zoning district: Business
 Requests: **Special Exception Amendment** to allow parking for 15 vehicles where 7 were previously allowed; **Variance Amendment(s)** Section 10.531 Table of Dimensional Standards to move the fence 6’ toward the right-of-way from its current location, Section 10.843.14 to allow the outdoor storage of vehicles for up to 90 days where the current approval allows 30 days; Removal of a stipulation that requires a landscape buffer be placed in front of the storage fence

Chairman LeBlanc noted again that this petition had been withdrawn.

- 13) Case # 4-13
 Petitioner: Elizabeth M. Mackey
 Property: 214 Aldrich Road Assessor Plan 153, Lot 27
 Zoning district: Single Residence B
 Requests: **Variance(s)** to allow the construction of a 24’ x 24’ garage. Section 10.521 Table of Dimensional Standards to allow; A). a side yard setback of 3 feet where 10 feet is required; B) a rear yard setback of 5 feet where 30 feet is required and; C) a building coverage of 35% where 20% is allowed.

Ms. Mackey requested that the petition be postponed to the May meeting when a full Board would be sitting.

Mr. Grasso made a motion to postpone the petition to the May meeting, which was seconded by Mr. Durbin, and approved by unanimous voice vote.

14) Case # 4-14

Petitioners: Katherine Majzoub 2007 Family Trust and
Property: 475 Marcy Street Assessor Plan 101, Lot 9
Zoning district: General Residence B

Requests: **Variance(s)** to allow the expansion of a deck where the rear yard setback is proposed to be 19'6" and the required setback is 25 feet. Section 10.321 to allow the expansion of a nonconforming structure; Section 10.521 Table of Dimensional Standards

SPEAKING IN FAVOR OF THE PETITION

Mr. Walter Jensen stated that he was the contractor and was representing the owner. He referred to the submitted photograph which showed that the deck was only large enough for 4 chairs and they would like to expand it. The yard was wet a lot of the time so that it couldn't be used. They were hoping they could still enjoy the back yard without actually being down on the yard. The yard was fenced in and invisible to neighbors unless they were on the second floor. He stated that this expansion would not infringe on anybody else's property.

In response to questions from Mr. Grasso, Mr. Jensen stated that the proposed deck would be approximately 11' x 14' and the existing deck was 6' x 8'. The side setback was 12' and that wouldn't change. The rear would be shortened by about 5 and a half feet, still 19 and a half feet from the neighbor's fence. Mr. LeMay asked if they were within the appropriate boundary now and Mr. Jensen stated, yes, that the existing deck was exactly 25' from the property line.

**SPEAKING IN OPPOSITION TO THE PETITION, OR
SPEAKING TO, FOR, OR AGAINST THE PETITION**

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Ms. Eaton made a motion to grant the petition as presented and advertised, which was seconded by Mr. Grasso.

Ms. Eaton stated that the applicant was requesting a minimal expansion on a deck which barely met the setback. The expansion was only to 11'x 14' and was 19'6" from rear. With the configuration of the property and surrounding buildings, she saw no impact or conflict with the intent of the ordinance.

Ms. Eaton stated that the deck would be shielded by houses on both sides and there would be no impact on the public. The spirit of the ordinance would be observed as light and air, as well as privacy, would not be impacted. Substantial justice would be done by allowing the applicants to use their yard in a better manner and there was no evidence that the value of surrounding properties would be diminished. The special conditions of the property were its

size and the way the house was configured closer to the back yard. With one part being much closer on one side, there was not much that could be done.

Mr. Grasso stated that granting the variance would allow the applicant to replace a dilapidated deck, adding a little over 100 s.f. in size. Given the poor drainage of the land, it was reasonable to allow them an outdoor use.

The motion to grant the petition as presented and advertised was passed by a unanimous vote of 5 to 0.

II. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 7:35 p.m.

Respectfully submitted,

Mary E. Koepenick
Administrative Clerk