

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 at its regular meeting** on April 19, 2011 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Derek Durbin, Carol Eaton, Thomas Grasso, Alternate: Robin Rousseau

EXCUSED: Alain Jousse, Charles LeMay

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I. APPROVAL OF MINUTES

A) February 15, 2011

The Minutes were approved as presented.

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II. PLANNING DEPARTMENT REPORTS

There were no reports presented.

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III. PUBLIC HEARINGS

1) Case # 4-1

Petitioners: James & Patricia Katkin

Property: 1400 Woodbury Avenue Assessor Map 238, Lot 5

Zoning district: Single Residence B

Description: To expand from a Family Day Care Facility for up to 6 children to a Group Day Care Facility for up to 12 children.

Request: Special Exception under Section 10.440, Use # 7.12, to allow a Group Day Care Facility for up to 12 children.

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

- No evidence was presented to indicate that a hazard to the public or adjacent property would result from fire explosion or release of toxic materials from this operation.
- No evidence was presented that there would be any detriment to property values or change in the essential characteristics of the area from odors, dust, noise or other irritants including unsightly outdoor storage.
- It does not appear, and there was no testimony to the effect, that any traffic safety hazard or increase in traffic levels would result from granting this special exception.
- With the only change an increase in the number of children at the facility from the previously approved 9 to 12, there should be no excessive demand on municipal services or increase in storm water runoff onto adjacent properties or streets.

2) Case # 4-2

Petitioner: Bellwood Associates LTD Partnership C/O Festival Fun Park Properties

Property: 2300 Lafayette Road Assessor Map 273, Lot 7

Zoning district: Gateway

Description: To construct a new building entrance and turnstile into the park.

Requests: Variance from Section 10.331 to allow the expansion of a nonconforming use.

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

- This is a well developed site and adding a small structure at the interior entrance to the park will have no negative impact on the public interest.
- The zoning in the district will not be affected by minor changes to an established facility with a single use.
- It would be a fair and just use to allow a shaded entryway for employees and the public.
- There is no evidence that a protective structure over the existing entrance turnstiles would negatively affect the value of surrounding properties.
- The special condition in the property is that, while the use is long established, it is different from the uses allowed in the district so that a variance is required for any proposed change.

3) Case # 4-3

Petitioner: Ross J.& Jody H. Gittell

Property: 404 South Street Assessor Map 111, Lot 16

Zoning district: Single Residence B

Description: To remove the existing mud room and replace with new decking.

Request: Variance from Section 10.521 to permit a side yard setback of 5’ where 10’ is required.

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

- Two small changes at the back of the property and away from property lines will not have a negative impact on the public interest.
- The spirit of the Ordinance will be observed by allowing owners to improve the functionality of the home while not enlarging the existing structure.
- In the justice balance test, there is no overriding public concern that would argue against granting the applicants request.
- The proposed changes will make the home more useful and, positioned as they are, there will be no effect on the value of surrounding properties.
- The hardship in the property is demonstrated by the size of the house and its positioning on the lot which results in an existing 3’ left side yard setback.

4) Case # 4-4

Petitioners: Heritage Storage Center Inc., owner, and Glass Operating, LLC, applicant

Property: 70 Heritage Avenue Assessor Map 285, Lot 11-B

Zoning district: Industrial

Description: To allow Motor Vehicle Repair/automotive glass replacement as a special exception use.

Request: Special Exception under Section 10.440, Use #11.20, to permit Motor Vehicle Repair in the Industrial district.

After consideration, and failing to pass a stipulation which would have limited the special exception specifically to glass sales and installation, the Board voted to grant the petition as presented and advertised. The petition was granted for the following reasons:

- With the type of operation presented, there will be no hazard to the public or surrounding properties from fire, explosion or release of toxic materials.
- The use is compatible with surrounding businesses and will cause no detriment to property or change in the essential character of the neighborhood. No odors, dust, noise or other pollutants will be generated and, with cars picked up before 5:00 p.m., there will be no unsightly outdoor storage.
- There is sufficient parking on site so that there will be no creation of a traffic hazard. The proximity to a signalized intersection will ensure no substantial increase in traffic congestion.
- This business replaces similar operations in this location. With no enlargement of the building, the demand on municipal services will not be increased nor will there be a significant increase in storm water runoff onto adjacent properties or streets.

5) Case # 4-5

Petitioners: Brian M. & Susan M. Regan

Property: 28-30 Dearborn Street Assessor Map 140, Lot 1

Zoning district: General Residence A

Description: To divide an existing nonconforming lot containing two two-family dwellings into two lots, each containing one two-family dwelling, where both lots will have less than the required minimum lot area per dwelling unit and minimum street frontage; one lot will have less than the required minimum lot area; and one lot will have less than the required side yard.

Requests: Variances from Section 10.521:

Lot 1 To permit a lot with 3,940 s.f. of lot area per dwelling unit where 7,500 s.f. is required.

To permit 55.15' of continuous street frontage where 100' is required.

To permit a side yard setback of 3.7' where 10' is required.

Lot 1-1 To permit a lot with 6,432 s.f. of lot area where 7,500 s.f. is required.

To permit a lot with 3,216 s.f. of lot area per dwelling unit where 7,500 s.f. per unit is required.

To permit 95' of continuous street frontage where 100' is required.

At the request of the parties, the Board voted to postpone the petition for one month to its next regularly scheduled meeting in May. The Board agreed to the postponement with the proviso that, if the application changes from what has been posted and advertised, it will need to be withdrawn and a new application filed which would be processed and heard in the same manner and timeframe as any newly received application.

6) Case # 4-6

Petitioner: RA, SJ and BN Goodman

Property: 930 Interstate By-Pass Assessor Map 142, Lot 16

Zoning district: Business

Description: To use the building for an automotive inspection station, automotive repair and commercial office space.

Request: Special Exception under Section 10.440, Use # 11.20, to permit motor vehicle repair (including motor vehicle inspection station).

Variance from Section 10.581 to allow vehicle repair on a lot with 0.333 acre where 2 acres is required.

Variance from Section 10.592.20 to allow vehicle repair less than 200 feet from a Residential district.

Variance from Section 10.843.21 to permit the outdoor storage of vehicles within 20' of the street right-of-way where 40' is required.

Variance from Section 10.1112.30 to allow 9 parking spaces where 10 are required.

After consideration, the Board voted to deny the petition as presented and advertised. With respect to the standards for granting a special exception, the Board found that there would be a detriment to property values in the vicinity, changes in the essential characteristics of the area from noise, pollutants, unsightly outdoor storage and other irritants to be considered under the special exception standards, and an increase in traffic safety hazards.

In considering the criteria for the four variance requests, the Board determined that the public interest would be negatively impacted by the proposed use on a lot so close to a residential zone. They found that the spirit of the Ordinance would not be observed because the lot is significantly undersized for the requested use, is too close to a residential zone, and will not meet the vehicle storage and parking requirements.

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IV. OTHER BUSINESS

No other business was presented.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 8:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary