

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 December 17, 2013** in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Susan Chamberlin, Charles LeMay, Christopher Mulligan, David Rheame, Alternate: Patrick Moretti

EXCUSED: Derek Durbin

=====

I. APPROVAL OF MINUTES

- A) September 18, 2012
- B) September 25, 2012
- C) September 17, 2013

It was moved, seconded and passed by unanimous vote to approve all sets of Minutes as presented with the exception of a one-word change in the September 25, 2012 Minutes.

=====

II. PUBLIC HEARINGS - OLD BUSINESS

- A) Case # 11-8
 - Petitioner: Ghamami Revocable Trust, Sheila Grant, Trustee
 - Property: 405 Deer Street #7-6
 - Assessor Plan 118, Lot 26-7
 - Zoning Districts: Central Business B & Downtown Overlay
 - Description: Appeal from Administrative Decision
 - Requests: Appeal from Administrative Decision to issue a violation notice for removal of a center chimney.
This petition was postponed at the November 19, 2013 meeting.

Action:

The Board voted to **deny** the petition as presented and advertised. The Board found no error in the action of the Code Enforcement Officer and upheld the decision to issue a violation notice for the removal of a center chimney

B) Case # 11-9

Petitioner: M.A. Boccia & V.H.T. Luong Joint Liv. Tr., M.A. Boccia & V.H.T. Luong, Trustees

Property: 30 Brewster Street (26-28)

Assessor Plan 138, Lot 35

Zoning District: General Residence C

Description: Expand third floors of two existing structures, adding one dwelling unit.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.324 to allow a lawful nonconforming building or structure to be added to or enlarged in a manner that does not conform to the requirements of the district.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 1,221 ±s.f. where 1,831± s.f. exists and 3,500 s.f. is the minimum required.
3. A Variance from Section 10.521 to allow a right side yard setback of 5'± where 5' exists and 10' is required.
4. A Variance from Section 10.521 to allow a rear yard setback of 0'± where 0' exists and 20' is required.
5. A Variance from Section 10.521 to allow 41.4%± building coverage where 41.6%± exists and 35% is the maximum allowed.
6. A Variance from Section 10.1112.30 to allow 4 parking spaces to be provided where 6 parking spaces are required.

This petition was postponed at the November 19, 2013 meeting

Action:

The Board voted to **deny** the petition as presented and advertised.

Review Criteria:

The petition was denied as it did not meet all of the criteria required to grant a variance.

- The proposed density and volume was not appropriate for this relatively small lot.
- There was no hardship demonstrated in the property that would support the granting of variances and a reasonable use of the property could still be made if the variances were not granted.

=====
III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 12-1

Petitioner: 10 State Street , LLC

Property: 10 State Street

Assessor Plan 105, Lot 4

Zoning District: Central Business A

Description: Appeal.

Request: Appeal from an Administrative Decision.

Action:

The Board voted to **grant** the Appeal from an Administrative Decision by the Building Inspector not to grant an extension for the building permit. The Appeal was granted for the following reasons:

- Two previous extensions of the building permit for construction of the proposed project had been issued under the existing Zoning Ordinance.
- The conditions supporting the decision to issue the previous extensions had not changed at the time the building permit expired.
- The justifications of the Chief Building Inspector in not issuing a third extension were inadequate and a third extension should have been issued.

2) Case # 12-2

Petitioners: Smith, Smith & Ward, LLC, owner & Paul Mercier, applicant

Property: 1338 Woodbury Avenue

Assessor Plan 237, Lot 70

Zoning District: Mixed Residential B

Description: Allow a recreational vehicle (RV) to be used as a residence.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.331 to allow a lawful nonconforming use to be enlarged or changed without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.440 to allow a recreational vehicle (RV) to be used as a permanent dwelling.

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulation.

Stipulations:

- The variances are granted for a one-year period from the date of the December meeting. If the recreational vehicle is not replaced by a manufactured housing structure by December 17, 2014, the variances will lapse.

Review Criteria:

The petition was granted for the following reasons:

- The proposed structure fits into a park designed for manufactured housing and will not change the overall characteristics of the area. With the stipulation, granting the variances will not be contrary to the public interest.
- The main difference between the proposed structure and a manufactured housing structure is primarily related to size and the spirit of the Ordinance will still be observed by allowing a somewhat smaller structure to be utilized under the stipulation attached to this approval.
- Substantial justice will be done by allowing full temporary use of the recreational vehicle as a dwelling.

- The recreational vehicle is located in a long-established manufactured housing park so that surrounding property values will not be diminished.
 - With the stipulation the proposed use is a reasonable one so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and its application to the property.
-

3) Case # 12-3

Petitioner: GTY MA/NH Leasing, Inc., owner & Nouria Energy Corporation, applicant

Property: 786 Route One By-Pass

Assessor Plan 161, Lot 42

Zoning District: General Residence A

Description: Revise existing free-standing sign to add logo and LED display.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1281 to allow a nonconforming sign to be altered or reconstructed without bringing the sign into conformity with the Zoning Ordinance.
2. A Variance from Section 10.1241 and Section 10.1251.20 to allow a free-standing sign with an area of 168± s.f. in a district where a free-standing sign is not permitted.
3. A Variance from Section 10.1253.10 to allow a sign height of 50'± where 7' is the maximum allowed and a front yard setback of 0'± where 5' is the minimum required.
4. A Variance from Section 10.1261.10 to allow direct illumination where sign illumination is not allowed.

Action:

The Board voted to **table** the petition to the January, 2014 meeting to allow time for the Planning Department to review the new material presented at the hearing and for abutters to be provided with additional information and given the opportunity to discuss their concerns with the applicant.

4) Case # 12-4

Petitioners: Paul R. Frohn, Jr. and Susan C. Frohn

Property: Meadow Road (between 70 and 100 Meadow Road)

Assessor Plan 236, Lot 80

Zoning District: Single Residence B

Description: Allow construction of a single-family home on a nonconforming lot.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

- 1 A Variance from Section 10.521 to allow a lot area and lot area per dwelling unit of 7,500± s.f. where 15,000 s.f. are required for each dimension.
- 2 A Variance from Section 10.521 to allow continuous street frontage of 75'± where 100' is required.

Action:

The Board voted to **grant** the petition as presented and advertised.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- A house on this lot, in an area of similar small houses on small lots, will not alter the essential characteristics of the neighborhood nor threaten the health, safety of the general public so that granting the variances will not be contrary to the public interest.
- One of the purposes of this Single Residence B zone is to encourage residential development so that the spirit of the Ordinance will be observed.
- Allowing construction on a lot similar in size and frontage to others in the area will not diminish the value of surrounding properties.
- The special conditions of the property resulting in a hardship are that it was part of a single lot created by an involuntary merger and subsequently divided by action of the City Council. A smaller non-conforming but still buildable lot was created so that no fair and substantial relationship exists between the frontage and lot area requirements of the Ordinance provision and their application to this property. Building a home on a lot in a residential zone is a reasonable use.

=====

IV. OTHER BUSINESS

No other business was presented.

=====

V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:15 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary