

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

ACTION SHEET

TO: John P. Bohenko, City Manager

FROM: Mary Koeppenick, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment at its regular meeting on April 19, 2016** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Witham, Vice-Chairman David Rheaume, Charles LeMay, Patrick Moretti, Christopher Mulligan, Arthur Parrott. Alternates: Jim Lee,

EXCUSED: Jeremiah Johnson, Peter McDonell

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I. APPROVAL OF MINUTES

- A) March 15, 2016
- B) March 22, 2016

Minutes for both meetings were approved as presented with minor corrections.

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II. OLD BUSINESS

- A) Request for Extension for property located at 56 Lois Street.

Action:

Determining that good cause had been shown by the applicant, the Board voted to **grant** a One-Year Extension of the variance through June 17, 2017.

- B) Request for Rehearing for property located at 525 Maplewood Avenue.

The Board voted to deny the Request for Rehearing determining that no new information had been provided relevant to the Board's reasons for the denial and that the Board had carefully considered all the information and had not made an error in their conduct of the review or application of the law.

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III. PUBLIC HEARINGS – OLD BUSINESS

- 3) Case #3-3
 Petitioner: Bellwood Associates LTD Partnership, owner, Festival Fun Parks dba Water Country, applicant
 Property: 2300 Lafayette Road
 Assessor Plan 273, Lot 5
 Zoning Districts: Industrial
 Description: Construct six workers’ dormitories and bath house.
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
 1. A Variance from Section 10.440 to allow six workers’ dormitories and bath house where the use is not allowed by the Zoning Ordinance.
(This petition was postponed for additional information at the March 15, 2016 meeting.)

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulations:

Stipulations:

- The maximum occupancy in the dormitories will not exceed sixty individuals.
- The dormitories and attendant facilities will be for the use of park employees only.
- The complex will be open for occupancy during the Water Country operating season, plus brief pre-season and post-season periods, the total time to run no earlier than May 1 and no later than September 30 of each year.

Review Criteria:

The petition was granted for the following reasons:

- It will be in the public interest to ensure that these employees are housed in a fair and reasonable manner while posing no threat to public safety.
- The spirit of the Ordinance will be observed. While the use is not treated specifically in the Ordinance, the request is a logical extension of other allowed uses.
- Substantial justice will be done by allowing the business owners to make reasonable use of their property with no harm to the general public.
- The proposed use will be on a large property surrounded by other businesses and not abutting a residential neighborhood. It is in keeping with the general nature of the area so that the value of surrounding properties will not be diminished.
- The special distinguishing conditions of the property are that there is a large lot already containing an entertainment use. There is adequate space and access so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and its specific application to the property.
 Given the location and existing nature of the property, the proposed is a reasonable additional use.

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IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case #4-1

Petitioners: Eric A & Jean M. Spear

Property: 514 Middle Street

Assessor Plan 135, Lot 19

Zoning District: Mixed Residential Office

Description: Add second dwelling unit in existing structure.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.812 to allow the conversion of a pre-1980 building to two dwelling units.

Action:

It was noted that this petition had been withdrawn as a Special Exception was not required.

2) Case #4-2

Petitioners: Arieh Katz Revocable Trust & Pamela J. Katz Revocable Trust

Property: 462 Lincoln Avenue, #4

Assessor Plan 133, Lot 20-4

Zoning District: General Residence A

Description: Construct a 6.5'± x 16.75'± one-story addition and a 13.5'± x 20'± two story addition on the right side of the existing building.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a 10.1'± secondary front yard setback where 15' is required.
2. A Variance from Section 10.521 to allow 26.5%± building coverage where 25% is the

Action:

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

Stipulation:

- Full screening will be provided for the condensers proposed to be relocated.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed as the proposed setback and building coverage will not alter the essential character of the neighborhood or infringe on public rights.

- Substantial justice will be done as the benefit to the applicant in improving the functionality of the building will not result in any corresponding harm to the general public.
 - An attractive structure in keeping with the area will not diminish the value of surrounding properties.
 - Literal enforcement of the Ordinance would result in unnecessary hardship. The special distinguishing properties of the property are its location with streets on three sides and the siting of the existing building on the lot. The request is reasonable with minimal impact so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision relative to setbacks and building coverage and their application to the property.
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3) Case #4-3

Petitioners: Daniel F. Ryan III & Annette M. Ryan Irrevocable Trusts, Daniel F. Ryan III & Annette M. Ryan, Trustees

Property: 1059 Banfield Road

Assessor Plan 294, Lot 4

Zoning District: Single Residence A

Description: Construct a 16'± x 12'± deck and stairs along a 15'± diameter above ground pool.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow 12.09%± building coverage where 10% is the maximum allowed.

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 deck bordering a small circular pool at the rear of the property will not alter the essential character of the neighborhood so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done by allowing the property owners to enhance the appearance and utility of their backyard pool with no corresponding harm to the general public or diminution in the value of surrounding properties.
- The special conditions of the property creating an unnecessary hardship are the existing main and accessory structures so that a variance is needed for a minor increase in building coverage. In this location, and with no infringement into the setbacks, the proposed use of a deck and stairs attached to the pool is a reasonable one.

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- 4) Case #4-4
Petitioners: Christiana M. Dadamo Rev.Tr., Christiana M. Dadamo, Trustee, owner, Thomas M. Varley, Trustee of the Thomas M. Varley Revocable Trust & Heidi G. Varley, Trustee of the Heidi G. Varley Revocable Trust, applicants.
Property: 209 Lafayette Road
Assessor Plan 151, Lot 5
Zoning District: General Residence A
Description: Construct a second free-standing dwelling.
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.513 to allow a second free-standing dwelling to be built on a lot.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- With the proposed layout and design, there will not be the appearance of a second freestanding dwelling unit on this large property so that the essential character of the neighborhood will not be altered and the spirit of the Ordinance will be observed.
- Substantial justice will be done by allowing a full use of the property with no corresponding harm to the general public.
- The proposed improvements will be in keeping with the existing structure which is on a large screened lot so the value of surrounding properties will not be diminished.
- The special conditions of the property are a large lot which could physically accommodate several units and an existing structure with unique architecture to preserve so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and its specific application to the property. The proposed is a reasonable use of this property.

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- 5) Case #4-5
Petitioners: Walter A. Hale IV & Lisa Marcucci Hale
Property: 165 Richards Avenue

Assessor Plan 129, Lot 40

Zoning District: General Residence A

Description: Raise and keep chickens.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.440, Use #17.20 to allow the keeping of chickens where the keeping of farm animals is not allowed.

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulations:

Stipulations:

- There will be no roosters allowed on the property.
- There will be no more than six chickens on the property.

Review Criteria:

The petition was granted for the following reasons:

- With the attached stipulations, the residential nature of the property will not change and the essential character of the neighborhood will not be altered so that granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will result as the loss to the applicant if the petition were denied would not be counterbalanced by any perceivable gain to the general public.
- The proposed, including the slight increase in building coverage, will not diminish the value of surrounding properties.
- Literal enforcement of the Ordinance would result in unnecessary hardship as the use is a benign activity sited in the most reasonable location so that there is no fair and substantial relationship between the Ordinance provisions and their specific application to the property.

6) Case #4-6

Petitioners: Branford Holding, LLC, owner, Forest Properties, applicant

Property: Lang Road, Robert Avenue, Anne Avenue

Assessor Plan 287, Lots 1 and 1-A & Plan 286, Lots 3 and 24

Zoning District: Garden Apartment/Mobile Home Park

Description: Install six free-standing signs on related lots.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1241 and Section 10.1251.20 to allow the following freestanding signs in a district where free-standing signs are not allowed:

- a) an 8'± x 1.9'± post-mounted sign
 - b) a 3.5'± x 3'± post-mounted sign
 - c) a 3'± x 3'± post-mounted sign
 - d) a 4.3'± x 1'± boulder-mounted sign
 - e) a 5.75'± x 1.6'± boulder-mounted sign
 - f) a 6.1'± x 1.3'± boulder-mounted sign
2. A Variance from Section 10.1243 to allow more than one freestanding sign on a lot.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Essentially replacing existing signs with little visual impact or visibility beyond the property will observe the spirit of the Ordinance.
- Directing users and visitors by clearly identifying new names and addresses will be in the public interest.
- Substantial justice will be done by allowing the owners to provide needed signage with no detriment to the general public.
- The signs will mainly be internal on wooded lots so that the value of surrounding properties will not be diminished.
- The special condition of the property creating a hardship is its set-apart nature which differs from the surrounding commercial uses. The requested signage is reasonable and will add context to a complicated layout on several properties.

7) Case #4-7

Petitioners: Stewart Whitney & Haiyan Chao Whitney

Property: 180 Wibird Street

Assessor Plan 148, Lot 1-1

Zoning District: General Residence A

Description: Construct two second story decks.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

- 1. A Variance from Section 10.521 to allow 30.3%± building coverage where 25% is the maximum allowed.

Action:

The Board voted to **postpone** hearing the petition until the May meeting at the request of the attorney for the applicants.

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V. OTHER BUSINESS

No other business was presented.

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VI. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:00 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary