

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 August 21, 2007 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Vice Chairman David Witham, Carol Eaton, Alain Jousse, Charles LeMay, Arthur Parrott, Alternate: Thomas Grasso

EXCUSED: Henry Sanders

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I. OLD BUSINESS

A) Approval of Minutes – July 17, 2007

It was moved, seconded and passed by unanimous voice vote to accept the Minutes with one minor correction.

B) Petition of Richard A. and Bonnie M. Porzio, owners, for property located at 431 Pleasant Street wherein the following were requested: 1) a Variance from Article IV, Section 10-402(A) to allow a 6' x 9'10" shed with: a) a 4'± right side yard, and b) a 4'6"± rear yard where 5' is the minimum required in each instance, and 2) a Variance from Article IV, Section 10-402(B) to allow an 8'9" x 21' pergola with a 6'2"± left side yard where 10' is the minimum required; and 3) a Variance from Article III, Section 10-302(A) to allow 48.9%± building coverage where 30% is the maximum allowed. Said property is shown on Assessor Plan 102 as Lot 71 and lies within the General Residence B and Historic A districts. Case # 7-7. This petition was postponed at the July 17, 2007 meeting.

The Chairman announced that the petition had been withdrawn by the applicant.

C) Request for One-Year Extension of Variance granted September 19, 2006 for property located at 10 Commercial Alley and off Penhallow Street.

After consideration, the Board voted to grant the Variance Extension through September 18, 2008.

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**II. PUBLIC HEARINGS**

1) An Appeal Pursuant to RSA 676:5 was requested by **1000 Market Street Corporation, Trustee, Nine Seventy Six Realty Trust and Dennis Prue, Trustee, Dover Realty Trust**, concerning property owned by **HarborCorp, LLC, Harborside Associates & Harborside Inn, Inc. located off Deer Street, Green Street, Market Street, Russell Street & Maplewood Avenue** concerning the Planning Board approval of the site plan entitled “Site Construction Plans for Harborside Hotel, Convention Center & Residential Condominiums” relative to parking. Said property is shown on Assessor Plan 118 as Lot 28, Assessor Plan 124 as Lot 12 and Assessor Plan 125 as Lot 21 and such other land of the City as shown on the subdivision/lot line revision plan and lies within the Central Business B, Downtown Overlay and Historic A districts.

After consideration, the Board voted to deny the appeal. The parking data, upon which the Planning Board based their decision, was prepared following procedures outlined in, and in compliance with, the zoning ordinance.

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2) Petition of **Forum Group LLC, owner**, for property located at **67 Bow Street** wherein a Variance from Article V, Section 10-505(B) was requested to allow the installation of 6 roof mounted condenser units on the rear of the building that do not meet the required 50 dba at the property line. Said property is shown on Assessor Plan 106 as Lot 53 and lies within the Central Business A, Downtown Overlay and Historic A districts.

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

- The additional sound generated will blend with the ambient noise in the area, with no effect on the public.
- With the physical configuration of the building and the way it is situated on the property, there is no other place to locate the units.
- The roof location will allow the noise to be dispersed well above ground level.
- The owner will be allowed to update an old, inefficient system without affecting neighborhood property values.

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3) Petition of **William Ashley, owner**, for property located at **103 Oriental Gardens** wherein a Variance from Article II, Section 10-209 was requested to allow the replacement of a 14’ x 66’ manufactured home in the same location with a new 14’ x 66’ manufactured home in a district where manufactured homes are not allowed. Said property is shown on Assessor Plan 215 as Lot 9 and lies within the Office Research district.

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

- It is in the public interest to replace an uninhabitable living unit with a modern one which is up to code.
- Denial would interfere with a reasonable use of the property, which had been grandfathered in an existing park..
- With no change in footprint or location, there will be no injury to the public or private rights of others.
- An upgraded home will not diminish the value of surrounding properties.

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4) Petition of **909 Islington Street LLC, owner, Robert Ovington d/b/a Ovington Produce, applicant**, for property located at **909 Islington Street** wherein a Variance from Article II, Section 10-208 was requested to allow 2,200± sf in an existing building to be used for a wholesale warehouse and distribution business in a district where such use is not allowed. Said property is shown on Assessor Plan 172 as Lot 7 and lies within the Business district.

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

- The public interest will be served by allowing space for a local small business.
- The general purposes of the ordinance will not be served by restricting a use which would fit well in this setting and allow a reasonable use of the property.
- With limited employees and little traffic generated, the business will not infringe on the public or private rights of others.
- Surrounding property values will not be diminished in this neighborhood of similar small businesses.

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5) Petition of **Port City Plumbing & Heating LLC, owner, and Kerri L. Grant DC, d/b/a Cafe of Life Chiropractic, applicant**, for property located at **968 Middle Road** wherein the following were requested: 1) a Special Exception as allowed in Article IV, Section 10-401(A)(1)(d) to change the use of 950± sf on the first floor from a Convenience Goods II store to a chiropractic office, including evening seminars, and an additional practitioner to share a treatment room; with hours ranging from 7:00 AM to 8:00 PM, Monday through Saturday, and 2) a Variance from Article IX, Section 10-908 to allow 2 attached signs totaling 60 sf in a district where such signs are not allowed. Said property is shown on Assessor Plan 232 as Lot 90 and lies within the Single Residence B district.

The Chairman announced that the petition had been withdrawn by the applicant.

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6) Petition of **Historic New England, owner**, for property located at **143 Pleasant Street** wherein the following were requested: 1) a Variance from Article II, Section 10-207 to allow the property to be used: a) as a function facility for weddings, parties and other non-museum events (including amplified music) from May 1st to October 15<sup>th</sup>, annually for up to 150 persons outside or up to 131 persons year round in the carriage house, and, b) the carriage house to be converted into a lecture space for up to 131 people and a catering kitchen be installed; and 2) a Variance from

Article XII, Section 10-1204 Table 15 to allow 1 handicap parking space to be provided onsite where 75 parking spaces are required in addition to the required parking for the existing uses of the property as a museum and caretaker apartment. Said property is shown on Assessor Plan 108 as Lot 14 and lies within the Mixed Residential Office and Historic A districts.

After consideration, the Board voted to grant the petition as presented and advertised with the following stipulations:

- That outdoor rental events be limited to a maximum of 6 per year, held between May 1 and October 15.
- That there will be no amplified music after 9:00 p.m.

The petition was granted for the following reasons:

- It would be in the public interest and the spirit of the ordinance to maintain this piece of cultural heritage.
- A long-term reasonable use of the property would be continued on a site unique in its large size for the area.
- The public and private rights of others should be protected by the stipulations.
- Property values should not be diminished and a number of neighbors have spoken in favor of the variance.

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**III. ADJOURNMENT**

The motion was made, seconded and passed to adjourn the meeting at 10:35 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary