

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 September 18, 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, Alternates: Derek Durbin, Thomas Grasso

EXCUSED: Henry Sanders

I. OLD BUSINESS

A) Approval of Minutes

August 21, 2007
August 28, 2007

It was moved, seconded and passed by unanimous voice vote to accept the August 21, 1007 Minutes with two corrections and the August 28, 2007 Minutes as presented.

B) Request for an Additional One-Year Extension of Variance, granted September 20, 2005 and subsequently extended through September 20, 2007, for property located at Off Falkland Place and Off Ranger Way.

After consideration, the Board voted to deny the request as the Zoning Ordinance provides for only one variance extension.

II. PUBLIC HEARINGS

1) Petition of Laurie Hersey, owner, for property located at 159 Austin Street Unit 2 wherein a Variance from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) was requested to allow a 5' x 8' addition to an existing nonconforming deck with: a) 0' right side yard where 10' is the minimum required, b) a 13'± rear yard where 20' is the minimum required;

and, c) 59.6% building coverage where 35% is the maximum allowed. Said property is shown on Assessor Plan 145 as Lot 93 and lies within the Apartment district.

After consideration, the Board voted to deny the petition as the proposed percentage of lot coverage would be contrary to the public interest and there were no special conditions in the property resulting in a hardship.

2) Petition of **Portal Realty Partnership, owner, Edward Benway, applicant**, for property located at **303 Islington Street** wherein the following were requested: 1) a Special Exception as allowed in Article IV, Section 10-401(A)(1)(d) to allow the E. H. Benway Financial office (2,166 sf) and The Hall Law office(150 sf) in space used by a dental office, 2) a Variance from Article XII, Section 10-1204 to allow 5 existing parking spaces to be provided where 10 parking spaces are required. Said property is shown on Assessor Plan 144 as Lot 11 and lies within the Apartment district.

Considering item 1) and item 2) separately, the Board voted to grant the Special Exception as presented and advertised for the following reasons:

- This use will be less intense than the previous dental office, resulting in a decrease in traffic.
- There will be no hazard to the public or adjacent properties from fire, explosion, or hazardous materials.
- With this type of use, there will be no detriment to property values from smoke, noise, or other irritants.
- With no change to the facility, there will be no increased demand on municipal services or storm water runoff.

The Board voted to grant the variance as presented and advertised, with the following stipulation:

- That the Department of Public Works will define the delineation between the parking lot and the sidewalk.

The variance was granted for the following reasons:

- With the dimensions of the existing lot and building, there is no way to rearrange the parking so that it would not require a variance.
- The five parking spaces should be adequate for the daily needs of the occupants.
- Five spaces is the limit that can reasonably fit on the lot and still allow room to maneuver.
- With the stipulation, the parking area will be better delineated and parking overflow onto the sidewalk will be prevented.

3) Petition of **Terry Bennett, owner, Union Lofts LLC, applicant**, for property located at **211 Union Street** wherein the following were requested to construct a 13 unit three story apartment building with 20 parking spaces on the ground level: 1) Variances from Article III,

Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow a 6,965± sf footprint three story addition (after demolition of a portion of the existing building) with: a) 6.9’ rear yard for the building and 3.1’ rear yard for the stairs where 20’ is the minimum required, b) 66% building coverage where 35% is the maximum allowed; and, c) 1,219 sf per dwelling unit where 3,500 sf per dwelling unit is the minimum required, and 2) a Variance from Article XII, Section 10-1201(A)(3)(a)(3) to allowed stacked parking in an indoor garage where stacked parking is not allowed. Said property is shown on Assessor Plan 135 as Lot 70 and lies within the Apartment and Historic A districts.

After consideration, the Board voted to deny the petition for the following reasons:

- The amount of lot coverage, degree of infringement into the setbacks and reduction in square footage per unit result in an over-intensification of the lot.
- There was no demonstrated hardship inherent in the land.
- With the impact on parking and direct abutters, the project would be contrary to the public interest.
- The stacked parking could create problems without relieving the street parking.

4) The Portsmouth Board of Adjustment, acting pursuant to NH RSA 12-G:13 and Chapter 300 of the Pease Development Authority Zoning Requirements, will review and make a recommendation to the Board of Directors of the Pease Development Authority regarding the following petition of **Two International Group, applicant**, for property located at **75 New Hampshire Avenue** wherein a Variance from the Pease Development Authority Zoning Ordinance Section 307.02(b) was requested to allow two 12’ x 20’ loading berths to be provided where one 12’ x 20’ and eight 12’ x 45’ loading berths are required. Said property is shown on Assessor Plan 306 as Lot 4 and lies within the Airport Business and Commercial district.

After consideration, the Board voted to recommend the granting of the petition, as presented and advertised, to the Board of Directors of the Pease Development Authority, with the following stipulation:

- That best management practice be followed to retain the four trees noted on the plan presented at the meeting.

The recommendation was made for the following reason:

- The proposed number of loading berths is appropriate to the uses in an office building of this type.

5) Petition of **Tain Properties LLC, owner, In Town Veterinary Group, Inc., applicant**, for property located at **215 Commerce Way** wherein a Variance from Article II, Section 10-209 was requested to allow a veterinary hospital in a district where such use is not allowed. Said property is shown on Assessor Plan 216 as Lot 1-8A and lies within the Office Research district.

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

- That all efforts be made to mitigate any sound generated.
- That the services provided be limited to small companion animals, particularly dogs and cats.

The petition was granted for the following reasons:

- The use will serve a public need without infringing on the public interest.
- A hardship is created because the Zoning Ordinance does not allow this particular use in an area where a similar use is allowed for humans.
- It is in the spirit of the ordinance to allow businesses to settle and be located where they can provide needed services without disturbing neighbors.
- Located in a non-residential area and protected by the stipulations, surrounding properties will not be affected by this type of operation.

6) Petition of **Port City Plumbing & Heating LLC, owner**, 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 allow a hair salon (Hair Fashions of Portsmouth) having 5 chairs for cutting, dying and drying, and one station for nails with hours of operation Monday thru Saturday 9AM to 8PM and Sunday 11AM to 5PM in space used as a Convenience Goods II store, and 2) a Variance from Article IX, Section 10-908 to allow two 4' x 7.5' flush attached signs (total 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.

Considering item 1) and item 2) separately, the Board voted to grant the Special Exception as presented and advertised, with the following stipulations:

- That the Department of Public Works review the lighting on the property before a Building Permit is issued to ensure that the fixtures are “dark sky friendly” and won’t spill over onto adjacent properties.
- That the front parking spaces be eliminated and the back parking spaces be striped to City standards of 8½’ x 19’.
- That the hours of operation will exclude any Sunday hours.

The Special Exception (Item 1) was granted for the following reasons:

- There will be no hazard to the general public or surrounding properties from fire, explosion, or toxic materials.
- This will be a less intensive use than the previous one and, with the elimination of the front parking area, there will be no substantial increase in traffic or creation of a traffic hazard.
- No exterior change will result in excessive demand on municipal services or increase in storm water runoff.
- With the stipulation limiting the hours of operation, there should be no infringement on the neighboring properties.

The Board voted to grant item 2) of the petition as presented and advertised, with the following stipulation:

- That the signage be limited to two flush attached signs, each no larger than 2½’ x 4’, to be placed, one on each of two designated sides of the building (Pevery Hill Road and Middle Road).

The petition was granted for the following reasons:

- A certain amount of signage is needed to enable the owner’s reasonable use of the property.
- With the stipulation, the impact on the neighborhood from signage will not be excessive.

7) **Petition of T’Rouge LLC, owner**, for property located at **213 Gates Street** wherein the following were requested: 1) a Variance from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(d) to allow an 8’ x 24’9” deck with stairs (including two upper level decks) creating 35.7%± building coverage where 30% is the maximum allowed. and 2) a Variance from Article XII, Section 10-1201(A)(2) to allow the existing nonconforming parking to be relocated and not meeting the required 24’ maneuvering aisle. Said property is shown on Assessor Plan 103 as Lot 8 and lies within the General Residence B and Historic A districts.

- Reducing the number of vehicles backing out into the street will be in the public interest.
- This is a very small lot where the required size of the maneuvering aisle is not needed and where any improvement would require a variance.
- This modest proposal is the only method to achieve the applicant’s purpose.
- It will be in the spirit of the ordinance to relocate the parking and relieve the volume on the street.
- Neighbors have indicated support and there should be no diminution in the value of surrounding properties.

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II. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 11:45 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary