

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 March 16, 2010 in Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Vice-Chairman David Witham, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternates: Derek Durbin, Robin Rousseau

EXCUSED: Carol Eaton

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I. APPROVAL OF MINUTES

A) December 22, 2009

It was moved, seconded and passed by unanimous voice vote to approve the Minutes as presented.

B) January 19, 2010

It was moved, seconded and passed by unanimous voice vote to approve the Minutes as presented

II. NEW BUSINESS

A) Revised Rules & Regulations, Board of Adjustment

There was no New Business to present.

III. OLD BUSINESS

A) Request for Rehearing – 103-131 Congress Street

After consideration, the Board voted to grant a rehearing which will be included in the next regularly scheduled meeting on April 20, 2010.

B) Request for Rehearing – Portwalk, Lot #1 Deer Street

After consideration, the Board voted to deny the request. No new information had been presented which was not available at the time of the previous meeting and there was no misapplication of the law in arriving at the Board’s decision.

C) Case # 2-1

Petitioner: Kuzzins Bowden Hospitality LLC

Property: 300 Woodbury Ave Assessor Plan 175, Lot 4

Zoning district: General Business

Requests: Variance to allow a freestanding sign of 343 square feet where 100 square feet is allowed

Variance to allow wall signs of 304 square feet where 200 square feet is allowed

Section 10.1251.20

After consideration, the Board voted to grant a variance to allow a freestanding sign of 343 square feet and deny a variance to allow wall signs of 304 square feet.

The Variance to allow a 343 s.f. freestanding sign was granted for the following reasons:

- With the orientation of the sign, the lighted side strips will not change the essential character of the neighborhood or negatively affect the public interest.
- Granting the variance will not be contrary to the spirit of the ordinance as, when the sign was originally approved, this type of illumination was allowed and did not count toward freestanding sign square footage.
- There would be no benefit to the general public in denying the variance while a hardship would be created for the applicant.
- There is no fair and substantial relationship between the general purposes of the Ordinance and its application to the property. Although a reasonable request, lighting the 14” wide strips would count as almost triple the square footage of the previously approved freestanding sign.
- The view of the lighted strips is from the traffic circle and the residential area is sheltered so there should be no diminution in the value of surrounding properties.

The request to allow 304 s.f. of wall signage was denied as it did not meet the criteria to grant a variance. It would not be in the spirit of the ordinance to have down-lit and up-lit lighting so that entire facades glow green from the distance. The existing lighting adequately serves the purpose of identifying the building.

D) Case # 2-3

Petitioners: JP Nadeau, owner and Witch Cove Marina Development, LLC, applicant

Property: 187 Wentworth House Road Assessor Plan 201, Lot 12

Zoning district: Waterfront Business

Requests: Variance to allow the expansion of a nonconforming structure

Variance to allow the expansion of a nonconforming use

Section 10.321

Section 10.331

After consideration, the Board voted that the case of Fisher v. Dover applied to this request and declined to hear the petition.

E) Case # 2-4

Petitioner: South Mill Investments LLC, owner James Sanders, applicant

Property: 25 South Mill Street Assessor Plan 102, Lot 16

Zoning district: General Residence B

Request: Variance to allow a second story addition with a 6” side yard setback where 10’ is required

Variance to allow a two story addition off the rear of the existing structure with a 5’ side yard setback where 10’ is required

Table 10.521

Section 10.321

Section 10.324

After consideration, the Board voted to deny the petition as it did not meet all the criteria necessary to grant a variance. The mass of the second story addition would impact the light and air protected by the Zoning Ordinance and negatively affect the adjoining property. There were other methods which could be pursued which would better meet the requirements of the Ordinance.

F) Case # 2-8

Petitioners: Sarnia Properties Inc., owner and Thomas Woodard, applicant

Property: 933 Route 1 By-Pass Assessor Plan 142, Lot 37

Zoning district: Business

Request: Special Exception to allow an Auto Dealership in the Business zone

Variance to allow an Auto Dealership within 150’ of a Residential or Mixed Residential District where 200’ is required

Variance to allow Parking, outdoor storage or display within 40’ of the right-of-way

Table 10.440 use #11.10

Section 10.592.20
Section 10.843.21

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

- That no more than six vehicles will be on the lot for sale at any one time.
- That the approved use will be conducted within the 75' x 87' area as shown on the plan submitted with the application.
- That there will be no repair or washing of vehicles.

The Special Exception was granted for the following reasons:

- With no repair of vehicles, there will be no hazard to the public or adjacent property on account of fire explosion or release of toxic materials.
- Primarily a display of parked vehicles there should be no detriment to property values in the vicinity or change in the essential characteristics of the area due to pollutants, noise, glare, heat or unsightly storage.
- With only an occasional test drive, the use will be less intense than those surrounding it with no increase in traffic or creation of a traffic hazard.
- With a limited operation and few employees, there should be no excessive demand on municipal services.
- The exterior of the building and the paved area so there should be no increase in storm water runoff.

The Variances were granted for the following reasons:

- Granting the Variances will not be contrary to the public interest as this use will be less intense than the former automobile repair facility and will not create any noise, odors, or other nuisance factors.
- To allow a commercial use appropriate to the area will be in the spirit of the ordinance.
- There would be no benefit to the general public in denying the Variances which would outweigh the hardship created for the property owner.
- Enforcement of the setback requirement for parking would create a hardship as the arrangement was common for the area and had worked similarly in the past.
- With the nature of the business and the screening of the building from residential properties, there will be no diminution in the value of surrounding properties.

(Old Business Items C) through F) were postponed from the February 16, 2010 meeting.)

IV. PUBLIC HEARINGS

- 1) Case # 3-1
Petitioners: Robert A. Ricci Revocable Trust & Elizabeth Batick-Ricci Revocable Trust
Property: 31 Richards Ave Assessor Plan 128, Lot 2

Zoning district: General Residence A & Historic District Overlay

Request: **Appeal** from the Historic District Commission regarding the placement of a fence
Section 10.636.50 Appeal of Historic District Commission Decision

After considering the Review Factors and Review Criteria as outlined in Sections 10.635.60 and 10.635.70 respectively of the Zoning Ordinance, the Board voted to grant a Certificate of Approval for the following:

1. An existing fence, as presented at the hearing and in submitted materials, to remain in the existing location except with the following stipulations:
 - a) That the two sections of the fence closest to the street be cut down to a height of 36”, plus or minus 4” to accommodate the mid-rail; and
 - b) that a traditional style fence cap profile be put on top of the cut ends.
2. An existing railing system, for which a Certificate of Appropriateness was originally granted by the Historic District Commission at its October 7, 2009 meeting.

The Certificate of Approval was granted for the following reasons:

- Scaling down the height of the fence and adding the architectural detail of the fence cap profiles will make it more compatible with the special and defining character of the surrounding properties and their historical values.
- Not part of the specific Review Criteria, but in keeping with the overall purposes of the Zoning Ordinance, the height reduction of the fence sections nearest the street will increase visibility and add to the overall safety of the neighborhood.

V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:15 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary