

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 regular meeting** on July 20, 2010 in Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

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

EXCUSED: Alternate: Robin Rousseau

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I. APPROVAL OF MINUTES

A) April 20, 2010

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

B) April 27, 2010

It was moved, seconded and passed to postpone consideration of these Minutes to the July 27, 2010 meeting.

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II. OLD BUSINESS

5) Case #6-5

Petitioners: Houston Holdings, LLC, Daniel Houston, President

Property: 653 Islington Street Assessor Plan 164, Lot 5

Zoning district: Business

Request: Variance: 10.440 Table of Uses 10.18.24 to allow two (2) temporary structures to remain on the premises for not more than 180 days, which is not allowed by ordinance.

Variance: 10.531 Table of Dimensional Standards, to allow a 4’ right side setback

where 15’ is required

Variance: 10.531 Table of Dimensional Standards, to allow a 4’ left side setback where 15’ is required

This petition was postponed from the June 15, 2010 meeting

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

- That the size of the two temporary structures will be 8’ x 20’ as delineated in the Planning Department memorandum.

The petition was granted for the following reasons:

- It will not be contrary to the public interest to grant this variance as the temporary trailers have been on the site for a period of time without problems.
- It will be in the spirit of the ordinance to help businesses transition to an expansion.
- There is no overriding public or private interest which would be hurt if the variances were granted.
- The property is in a business zone and there is nothing that would negatively influence surrounding properties so that the values would be diminished.
- Recent sewer work, which the owners cannot control, has adversely impacted the site so that the trailers are needed for storage.

6) Case #6 -6

Petitioners: Houston Holdings, LLC, Daniel Houston, President

Property: 653 Islington Street Assessor Plan 164, Lot 5

Zoning district: Business

Request: Variance: 10.321 to allow the expansion of a nonconforming structure.

Variance: 10.531 Table of Dimensional Standards, to allow a 25’ x 20’ addition with a 4’ right side setback where 15’ is required

Variance: 10.531 Table of Dimensional Standards, to allow a 4’ left side setback for the addition where 15’ is required

This petition was postponed from the June 15, 2010 meeting

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

- Located to the rear of the property and abutting railroad tracks, the addition will not be visible to the public.
- It is in the spirit of the ordinance to support the continued operation of a local business while not affecting the light and air protected by that ordinance.
- With no adverse effect on the public or private interest, the justice balance test tips to the applicant.

- The addition will be more attractive than the temporary trailers and appropriate to the rest of the building so that neighboring property values will not be diminished.
- There is no alternative available to the property owner on this odd shaped lot which has been adversely affected by a necessary public sewer project.

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III. PUBLIC HEARINGS

1) Case # 7-1

Petitioners: Kara L. Hutchins

Property: 40 Mill Pond Way Assessor Plan 143, Lot 6

Zoning district: General Residence A

Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure

Variance from Section 10.521 to construct a front porch with a 10’ setback from the front lot line where a 15’ front yard is required

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

- There will be no public interest that would be affected by a porch along a low traffic volume road.
- The spirit of the ordinance will be observed as only one portion of the porch falls within the setback and light and air are preserved.
- There would be no benefit to the public in denying the request and the value of surrounding properties will not be diminished.
- With the siting on the home on the lot, different from many other properties in the neighborhood, this is the only location where the porch could be placed. It would be unreasonable to start the porch at the center of the front door.

2) Case # 7-2

Petitioner: Kayla Realty, LLC, owner, and Heather Lessard, applicant, dba Tulips

Property: 60-62 Market Street Assessor Plan 117, Lot 34

Zoning district: Central Business B

Request: Variance from Section 10.1253.50 to allow a projecting sign to project 42” from the building where 36” (one-third of the sidewalk width) is the maximum allowed

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

- A 6” infringement above a sidewalk will not be contrary to the public interest
- The spirit of the ordinance will be observed by a minimal encroachment.
- In the justice test, there will be no harm to the general public in granting the petition as the sign has existed for 30 years and is just relocating with the business.

- The value of surrounding properties will not be diminished by this relocated sign.
- While there may be a relationship between the ordinance and its application to this petition, the relief required for a small edge of the sign does not tip the balance toward making this an unreasonable request.

3) Case # 7-3

Petitioner: 150 Greenleaf Avenue Realty Trust, James G. Boyle Trustee

Property: 150 Greenleaf Avenue Assessor Plan 243, Lot 67

Zoning district: Gateway

Request: Appeal under RSA 676:5(III) of the determination by the Planning Board that the Zoning Ordinance adopted by the City Council on December 21, 2009, and effective January 1, 2010, is applicable to a site plan review application submitted on October 23, 2009

After consideration, the Board failed to pass a motion to support the Planning Board in their decision that the Zoning Ordinance that was effective on January 1, 2010 be applied to this property.

The Board then voted to grant, as presented and advertised, the appeal of the determination by the Planning Board that the Zoning Ordinance adopted by the City Council on December 21, 2009 and effective January 1, 2010, is applicable to a site plan review application submitted on October 23, 2009. It was stated that the application to the Planning Board for site plan approval had been submitted on time to be considered under the Zoning Ordinance in effect in 2009.

4) Case #7 -4

Petitioners: 75 New Hampshire Avenue, LLC

Property: 75 New Hampshire Avenue Assessor Plan 306, Lot 4

Zoning district: Pease Industrial

Requests: Variance from Section 10.1243 to allow more than 1 freestanding sign per lot
Variance from Section 10.1253.10 to allow a freestanding sign to be 12'6"
from a lot line where 20' is the minimum setback allowed
Variance from Section 306.01(d) of the Pease Development Authority Zoning Ordinance to allow 218.9 square feet of aggregate sign area where 200 square feet is the maximum sign area allowed

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. The recommendation was made for the following reasons:

- It will be in the public interest to identify where the business is located on a large lot.
- The spirit of the ordinance will be observed as a business needs to be recognized.

- There would be no great benefit to the general public if the petition were denied and the value of surrounding properties will not be diminished.
- This is the best location for the sign although, due to the parking and sidewalk constraints, it infringes into the setbacks.

5) Case # 7-5

Petitioners: Gerald W. Howe

Property: 45 Miller Avenue Assessor Plan 129, Lot 33

Zoning district: General Residence A

Request: Variance from Section 10.331 to allow the expansion of a nonconforming use
Variances from Section 10.521, Table of Dimensional Standards, to allow the construction of a new garage with:

- A setback of 3’4” from the right side lot line where a 10’ side yard is required
- A setback of 4’8” from the left side lot line where a 10’ side yard is required
- A setback of 19’1” from the rear lot line where a 20’ rear yard is required
- Building coverage of 28.8% where 25% is the maximum coverage allowed

After consideration, the Board voted to deny the petition as presented and advertised. The proposed garage allowed minimal clearance and would affect the light and air protected by the Zoning Ordinance. There is no hardship inherent in the lot to justify expanding a nonconforming use.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:30 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary