

**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 December 20, 2010 in Conference Room A, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

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

**EXCUSED:** Arthur Parrott, Alternate: Robin Rousseau

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**I. NEW BUSINESS**

A. Change in Meeting Date/Time

The Board voted to change the date and time of the regular monthly meeting to Monday, December 20, 2010, at 7:30 p.m.

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B. Election of Officers

The Board voted to elect David Witham to serve as Chairman and Arthur Parrott to serve as Vice-Chairman until the next election of officers.

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**II. APPROVAL OF MINUTES**

A) September 28, 2010

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

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**III. PLANNING DEPARTMENT REPORTS**

A) Rules & Regulations Update – suggested wording

The Board will review the suggested wording on the treatment of alternate members in the Rules and Regulations and report back their comments so that a final draft of the proposed revision can be prepared.

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**IV. OLD BUSINESS**

A) Case #11-4

Petitioners: NIP Lot 2, LLC NIP Lot 5/6, LLC & Maplewood & Vaughan Holding Co., LLC

Property: 111 Maplewood Avenue Assessor Plan 124, Lot 8

Zoning district: Central Business A

Requests: To allow 2 drive-through lanes as an accessory use with a retail bank in the Downtown Overlay District

Variance from Section 10.440, Use 19.40 to permit a drive-through facility as an accessory use to a permitted use.

Variance from Section 10.836.22 to permit a drive-through facility with 2 lanes associated with a building of 3,000 sf where a minimum of 5,000 sf of associated building area is required for each drive-through lane.

The Board acknowledged that the petition was withdrawn at the request of the applicant’s attorney.

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**V. PUBLIC HEARINGS**

1) Case # 12-1

Petitioners: Favaloro Revo Trust, Chrisopher and Carol Favaloro, Owners

Property: 275 McKinley Road Assessor Plan 250, Lot 18

Zoning district: Single Residence B

Description: To convert a deck to a 3 season room with less than the required rear yard.

Requests: Variance from Section 10.521 to allow a 17’4” rear yard where 30’ is required.

Variance from Section 10.521 to allow building coverage of 22% where 19.5% currently exists and 20% is the maximum coverage allowed.

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

- There will be no public interest in extending the sunroom 2’ to the left side and the value of surrounding properties to the side and back will not be diminished.

- The spirit of the ordinance will be observed as there will be no further encroachment into the setbacks.
- The unique aspect of the property resulting in a hardship is that the lot is of a different size and configuration than surrounding lots with a shorter, squared off backyard.

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2) Case #12-2

Petitioners: Terrence H. and Andrea B Allen, Owners

Property: 32 Baycliff Road Assessor Plan 207, Lot 43

Zoning district: Single Residence B

Description: To construct a front entry way with less than the required front yard and more than the allowed building coverage.

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

Variance from Section 10.521 to allow a front yard of 16’ where 30’ is required.

Variance from Section 10.521 to allow building coverage of 28% where the existing coverage is 26% and 20% is the maximum coverage allowed.

After consideration, the Board voted to deny the petition as presented and advertised. The Board felt that the increase in lot coverage was not supportable and encroachment into the front setback could not be justified. There was nothing unique in the property which would represent a hardship under the variance criteria.

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3) Case # 12-3

Petitioners: John F. Donohue Revo Trust, ½ and Patricia L Donohue Revo Trust

Property: 87 Ash Street Assessor Plan 150, Lot 33

Zoning district: General Residence A

Description: To allow the construction of a new 2 story addition and porch on the left side of the existing home.

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

Variance from Section 10.531 to allow a building coverage of 26% where the current building coverage is 23% and 25% is the maximum coverage allowed.

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

- There will be no real public interest in this small addition.
- The spirit of the Ordinance will be observed as the addition will meet all the setback requirements and result in a negligible increase in the lot coverage.
- In the justice balance test, there would be no benefit to the public if the petition were denied.
- The value of surrounding properties will not be diminished by this minimal proposal and the neighbors most impacted have indicated their support.

- The way the house sits off to the side on the lot creates a hardship in placing the addition to meet both the setback and lot coverage requirements.

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4) Case # 12-4

Petitioner: Barbara O. Bertrand, Owner

Property: 88 Ash Street Assessor Plan 150, Lot 39

Zoning district: General Residence A

Description: To allow a generator 2' from the right side lot line where 10' is required.

Request: Variance from Section 10.572 to allow an accessory use/structure 2' from the side yard where 10' is required.

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

- The general public will not be affected by the generator and the only representative of the neighborhood spoke in support of the installation.
- In the spirit of the Ordinance, the chosen location should be less intrusive for sound and have less effect on abutters than the alternative locations considered.
- With enough distance from the generator to the abutting neighbor's home, there should be no negative impact on the value of surrounding properties.
- The fair and substantial relationship between the Ordinance and its application to the property would be guaranteeing peace and quiet to the neighbors and that should be ensured by maintaining the required decibel levels (65 dBA) at the property line.

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5) Case #12-5

Petitioners: John Cottom, Owner

Property: 139 Dennett Street Assessor Plan 142, Lot 24

Zoning district: General Residence A

Description: To allow a new 133 sq. ft. 2 story addition to the rear of the house which violates side and rear yard requirements as well as building coverage.

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

Variance from Section 10.521 to allow a building coverage of 34% where the current building coverage is 34% and 25% is the maximum coverage allowed.

Variance from Section 10.521 to allow a 2' side yard where 10' is required.

Variance from Section 10.521 to allow an 11' rear yard where 20' is required.

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

- The public interest will not be affected by a second story addition set away from the street.

- The spirit of the Ordinance will be observed as the footprint will not be enlarged and the second floor addition will be cantilevered out only 16”, not enough to increase the existing building coverage.
- The value of surrounding properties will not be diminished by an attractive addition to the home and the abutting neighbors were represented as favoring the project.
- Any other method to expand would involve a substantial increase in lot coverage and this is a minimal way to gain desired space.

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6) Case # 12-6

Petitioner: Brian M. McNamara & Sheila LaSella, Owners

Property: 618 Dennett Street Assessor Plan 161, Lot 19

Zoning district: General Residence A

Description: To allow the operation of a massage & polarity therapy business as a Home Occupation II at 618 Dennett Street.

Requests: Special Exception under Section 10.440 Use# 19.22 to allow a Home Occupation II at 618 Dennett Street.

Variance from Section 10.1114.32(b) to allow vehicles to enter and leave a site by backing into or from a public street or way.

After consideration, the Board voted to grant the special exception and deny the variance, both as presented and advertised.

It was determined that all the standards required for a special exception as outlined in the Zoning Ordinance were met.

The variance was denied as the Zoning Ordinance is designed to protect the public welfare and backing out or entering from a public street where there is a fair amount of traffic does not benefit of the general public.

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**VI. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 9:25 p.m. and reconvene the next evening, Tuesday, December 21, 2010 to hear the balance of the petitions.

Respectfully submitted,

Mary E. Koepenick, Secretary