

**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 at its regular meeting** on January 25, 2011 (postponed from January 18, 2011) in Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

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

**EXCUSED:** Alternate: Robin Rousseau

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**I. APPROVAL OF MINUTES**

A) November 16, 2010

B) Excerpt of Minutes – December 21, 2010 – 1150 Woodbury Avenue

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

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**II. PLANNING DEPARTMENT REPORTS**

A) Board of Adjustment Rules & Regulations – Proposed Revision

The Board voted unanimously to approve the proposed revision, subject to review by City Legal Counsel.

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**III. OLD BUSINESS**

A) Motion for Rehearing – 1150 Woodbury Avenue

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

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**IV. PUBLIC HEARINGS**

1) Case # 1-1

Petitioner: SJW Ltd, Owner

Property: 25 Vaughan Mall Assessor Map 117, Lot 4

Zoning district: Central Business B

Description: To place a wall sign for a business not located on the ground floor.

Request: Variance from Section 10.1242 to permit a wall sign for a second floor business where one is not permitted.

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

- The existing sign will remain essentially the same but with different formatting so that the public interest will not be affected and the value of surrounding properties not diminished.
- The spirit of the ordinance will be met by allowing a long established second floor business to meet their needs while not increasing the total amount of signage on the property.
- A hardship is created by the location of the business on the second floor with no way to identify their business except to take part of the sign already over their doorway.

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2) Case # 1-2

Petitioner: Dorothy Katz M91 TR, Owner, and Puddle Dock West Thrift Shop, Inc., Applicant

Property: 880 Islington Street Assessor Plan 166, Lot 51

Zoning district: Business

Description: To establish a retail business with less than the required number of parking spaces.

Request: Variance from Section 10.1112.30 to allow 10 parking spaces where 34 are required.

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

- The parking situation seems to have sufficed for a number of previous businesses with no impact on the public interest. Granting this variance will not change the character of the neighborhood.
- The use of the building on this lot is preexisting and, at one time, met the requirements of the Ordinance.
- There would be no negative impact on the public if the petition were granted while denial, in effectively preventing the use, would be unjust to the applicant and owner.

- There was no indication that the value of surrounding properties would be diminished.
- The special conditions creating a hardship are the size of the lot and the size of the building on the lot which leaves a limited area available for parking.

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3) Case # 1-3

Petitioner: High Liner Foods Inc, Owner

Property: 1 High Liner Avenue Assessor Map 259, Lot 14

Zoning district: Industrial

Description: To expand the existing maintenance building by 4493 s.f. and expand the office space by 3200 s.f.

Request: Special Exception under Section 10.440, Use #14.32 to allow the expansion of a seafood processing facility in the Industrial district.

At the request of the applicant, the hearing was postponed to the February 15, 2011 meeting.

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4) Case # 1-4

Petitioners: Michael’s Realty Trust, Owner, and Lighthouse Manufacturing, LLC, Applicant

Property: 35 Mirona Road Assessor Map 252, Lot 3

Zoning district: Gateway

Description: To establish a light manufacturing use in the Gateway district.

Request: Special Exception under Section 10.440 Use #14.11 to permit a light manufacturing use as a special exception in the Gateway district.

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

- With no change to the building and property, there should be no increase in storm water runoff onto adjacent properties or the street.
- The road on which the lot is situated is lightly travelled and located off the main thoroughfare, so there will be no creation of a traffic safety hazard
- All the remaining criteria necessary to grant a Special Exception are met.

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5) Case # 1-5

Petitioners: 233 Vaughan Street LLC, Owner

Property: 233 Vaughan Street Assessor Map 124, Lot 14

Zoning district: Central Business A

Description: To construct a building exceeding the 50’ maximum structure height allowed in the CBA district and exceeding the 40’ maximum height allowance for portions of a building within 10’ of a street right of way line in the CBA district.

Request: Variance from Section 10.531 to permit a structure designed for human occupancy (elevator penthouse and lobby) with a structure height of 62’5” where 50’ is the maximum structure height allowed.

Variance from Section 10.531 to permit a structure designed for human occupancy (corridors, bathrooms and kitchens) with a structure height of 59’8” where 50’ is the maximum structure height allowed.

Variance from Section 10.531 to permit a structure height of 52’8” (parapet and railing extending more than 2’ above the roof surface) where 50’ is the maximum structure height allowed.

Variance from Section 10.535.10 to allow a portion of a building within 10 feet of a street right of way line in the CBA district with a height of 52 feet where 40 feet is the maximum height allowed.

After consideration, the Board voted to deny the petition as presented and advertised. The petition failed to meet all the criteria necessary to grant these variances. It was felt that the public interest would be negatively impacted and the degree of relief requested from the newly enacted Ordinance could not be justified.

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6) Case # 1-6

Petitioners: 295 Maplewood Avenue Condominiums, Owner, and Joseph Cunningham,  
Applicant

Property: 295 Maplewood Avenue Assessor Map 141, Lot 35

Zoning district: General Residence A

Description: To construct a sign projecting over the sidewalk 42” where 31.6” is allowed.

Requests: Variance from Section 10.1253.50 to allow a projecting sign to project more than one-third the width of the sidewalk.

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

- It would help the public interest, on this particular road, to be able to easily locate a business.
- The spirit of the ordinance would be observed by allowing identification of the business and the degree of relief is not unreasonable.
- There would be no benefit to the public in denying the variance nor diminution of the value of surrounding properties.
- Compliance with the requirements of the Ordinance would result in a very small sign which, given the proposed height off the ground, would be unreasonable. There is also a small roof projection which could affect the visibility of a smaller sign.

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**V. OTHER BUSINESS**

A) Superior Court Decision, Witch Cove Marina Dev., LLC, et al v. City of Portsmouth

- B) December 6, 2010 Amendment to the Zoning Ordinance Effective January 1, 2010, Section 10.517, Roof Appurtenances and Other Rooftop Features.

The Board acknowledged, without discussion, receipt of the material.

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**VI. ADJOURNMENT**

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

Respectfully submitted,

Mary E. Koepenick, Secretary