

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 September 20, 2011 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Susan Chamberlin, Thomas Grasso, Alain Jousse, Charles LeMay, Alternates: Patrick Moretti, Robin Rousseau

EXCUSED: Derek Durbin

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I. APPROVAL OF MINUTES

A) June 21, 2011 (Excerpt previously approved)

B) June 28, 2011

C) July 19, 2011

D) July 26, 2011

The Minutes for June 21, 2011, June 28, 2011, July 19, 2011 and July 26, 2011 were approved, with one clerical correction, by unanimous voice vote.

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II. PLANNING DEPARTMENT REPORTS

The Board acknowledged receipt of a copy of the court decision in the case of 1808 Corporation v. Town of New Ipswich.

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III. OLD BUSINESS

- A) Request for Rehearing regarding the property located at 165 Dodge Avenue.

The Board voted to grant the Request for Rehearing as they felt that there was new information that was not available at the time of the original hearing. The rehearing will be held at the next regularly scheduled Board of Adjustment meeting in October.

- B) Case # 8-4
Petitioner: Searay Realty, LLC, owner, Archie E. DeFlorio, applicant
Property: 445 Route One Bypass Assessor Map 234, Lot 3
Zoning district: Office Research
Description: Establish a retail use.
Requests: Variance from Section 10.440, Use #8.31, to allow the proposed use.
(This petition was postponed from the August 16, 2011 meeting.)

The Board voted to grant a variance to allow the establishment of a business to buy gold from individuals with no sales on the premises.

The petition was granted for the following reasons:

- There are a number of established businesses in the neighborhood so that the essential character of the neighborhood will not be changed.
 - There will be no threat to public health or safety so that granting the variance will not be contrary to the public interest.
 - With no harm to the general public, substantial justice will be done.
 - There is no indication that surrounding property values will be diminished as a result of approving this variance.
 - By limiting the scope of the variance to the specific use with no sales on the premises, the spirit of the Ordinance will be observed.
 - A hardship is created as the property cannot be reasonably used in strict conformance with the Ordinance. The building has a unique layout and access to the lot can be difficult so that it has been problematic to find tenants.
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- C) Request for Rehearing regarding the property located at 30 Gardner Street
(This item was postponed from the August 16, 2011 meeting and should be considered with case #9-10 below.)

The Board voted to deny the Request for Rehearing as the Board made no error in their interpretation of the law and there was no new information presented that was not available at the time of the initial hearing.

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IV. PUBLIC HEARINGS

- 10) Case # 9-10
 Petitioner: Steerpoint Properties LLC
 Property: 30 Gardner Street Assessor Plan 103, Lot 43
 Zoning district: General Residence B
 Request: Equitable Waiver (under RSA 674:33-a) of the required minimum lot area per dwelling unit for the conversion of a dwelling existing on January 1, 1980 to additional dwelling units. The requested waiver is to allow the Special Exception for the conversion to be granted with 2,395.8 s.f. of lot area per dwelling unit rather than 3,000 s.f. per dwelling unit as required in the General Residence B district under Section 10.812.13

The Board voted to deny the Equitable Waiver as it could not make all the findings necessary to grant such a waiver as set forth in RSA 674:33-a. The Board determined that all relevant information regarding the property’s history, including the Board’s denials of previous applications for variances, was readily available to any interested party; that the violation was created in full knowledge of the ordinance; and that the City had issued written notice of the violation. Therefore, the Board determined that the request does not meet the spirit or intent of the Equitable Waiver provision as outlined in the statute.

- 1) Case # 9-1
 Petitioner: Laurie Ann McCray 2005 Revocable Trust, Laurie Ann McCray, Trustee
 Property: 15 Haven Road Assessor Map 111, Lot 17
 Zoning district: Single Residence B
 Description: Construct entryway over existing bulkhead.
 Requests: Variance from Section 10.321 to allow the alteration of a lawful nonconforming building.
 Variance from Section 10.521 to allow a 29’± front yard setback where 30’ is required.
 Variance from Section 10.521 to allow 25%± building coverage where 20% is the maximum allowed.

The Board voted to grant the petition as presented and advertised for the following reasons:

- In the proposed location, there should be little public interest in this rear entryway.
- In the spirit of the Ordinance, the property owners will be able to make improvements while maintaining the same, or slightly less, building coverage.
- There would be no gain to the public in denying the variances.
- This proposed upgrade, which will be no closer to neighboring lots than the existing structures, will not diminish the value of those surrounding properties.
- The way the house sits on a narrow lot creates a hardship in placing the structure.

2) Case # 9-2

Petitioner: Industrial Rents-NH, LLC

Property: 124 Bartlett Street

Assessor Map 163, Lot 2

Zoning district: Office Research

Description: Convert 1,000± s.f. of appliance repair space for retail use.

Requests: Variance from Section 10.440, Uses 8.30 to allow retail uses in a specified portion of an existing building.

The Board voted to grant the petition as presented and advertised with the following stipulations:

- That the retail use area will be limited to a maximum of 1,000 s.f. and used solely for the sale of used appliances.
- That there will be no outside display of products.
- That the applicant will provide an originally signed document approving this request from the “Seller” in the Contract for Deed for the property, as well as any additional documentation required by the Planning Department for verification of ownership.
- That the appliance repair facility will not be accessed via Morning Street.
- That the hours of retail operation will be 9:00 a.m. to 5:00 p.m., Monday through Friday and 8:00 a.m. to noon on Saturday.

The petition was granted for the following reasons:

- With the stipulations added to the approval, the public interest will be protected.
- The spirit of the Ordinance will be observed by allowing use of the property with no detriment to the rights of others.
- In the justice balance test, the private gain outweighs any public concerns and the stipulations are designed to minimize any negative impact.
- The hours of operation and noise generated will be less than the previous commercial laundry so that the value of surrounding properties will not be diminished by this new use.
- The odd shaped lot and location in an area with a mix of uses are special conditions of the property. Surrounded by a residential use, an auto repair facility and a lumber yard, this use will not change the essential characteristics of the neighborhood.

3) Case # 9-3

Petitioners: John & Joan Schorsch

Property: 53 Pray Street

Assessor Map 102, Lot 40

Zoning district: Waterfront Business

Description: Install a 24” x 24” x 28” compressor.

Requests: Variance from Section 10.531 to allow building coverage of 32+% where 30% is the maximum allowed.

The Board voted to grant the petition as presented and advertised except to clarify that the building coverage will now be 36±% where 35±% exists and 30% is the maximum allowed. The petition was granted for the following reasons:

- There will be no public interest in this simple addition to a previously approved plan.
- With no incursion into the setbacks, the spirit of the Ordinance will be observed.
- Substantial justice will be done and surrounding property values will not be diminished by allowing the property owner appropriate HVAC equipment which will be shielded from the neighbors' view by fencing.
- This is a small lot with tight setbacks and the compressor will be placed against the house in one of the few possible locations.

4) Case # 9-4

Petitioners: Gibson B. Kennedy, Jr. & Patricia A. Kennedy

Property: 267 Marcy Street

Assessor Map 103, Lot 44

Zoning district: General Residence B

Description: Construct side entry porch addition.

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

Variance from Section 10.521 to allow building coverage of 37.1%± where 30% is the maximum allowed.

The Board voted to grant the petition as presented and advertised for the following reasons:

- To replace an entryway which is in disrepair will have no effect on the public interest.
- With a modest increase in the existing building coverage and no incursion into the setbacks, the spirit of the Ordinance will be observed.
- Substantial justice will be served by allowing enjoyment of the property without infringing on the rights of the public or their neighbors.
- Replacing a structure which is in disrepair with one that is in scale with the existing home will not diminish the value of surrounding properties.
- With the size of the lot and the existing structure, replacement of a deteriorated structure could not be made without a variance.

5) Case # 9-5

Petitioners: Aaron M. & Jocelyn M. Garganta

Property: 423 Colonial Drive

Assessor Map 260, Lot 43

Zoning district: Single Residence B

Description: Construct a 6' x 10' front portico.

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

Variance from Section 10.521 to allow 23.1%± building coverage where 20% is the maximum allowed.

The Board voted to grant the petition as presented and advertised with acknowledgement that the proposed and advertised building coverage of 23.1±% was based on a 6' x 12' front portico. The petition was granted for the following reasons:

- The public interest will be protected and the spirit of the Ordinance observed as the essential characteristics of the area will not be changed by this portico.
 - There was no evidence that the value of surrounding properties would be diminished.
 - In an area of small lots, this represents a modest increase over existing lot coverage.
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6) Case # 9-6

Petitioners: Brian Short LLC, owner, Chris Kallandel, applicant

Property: 2225 Lafayette Road

Assessor Map 272, Lot 2

Zoning district: Gateway

Description: Establish a truck tire sales, service & distribution business.

Requests: Special Exception under Section 10.440, Use #11.30 to allow the proposed use in this district.

Variance from Section 10.581 to allow the sales, distribution and repair of vehicle related equipment on a lot with less than the required 2 acre minimum lot area.

The Board voted to grant the special exception and variance as presented and advertised.

The special exception was granted for the following reasons:

- There will be no threat to the public or adjacent property from fire explosion or release of toxic materials as it was represented that no volatile or toxic materials would be used.
- There will be no detriment to property values as there are similar types of businesses in the neighborhood and the essential characteristics of the area will not be changed.
- There will be no creation of a traffic hazard or substantial increase in traffic levels as the majority of the applicant's work will be performed off-site.
- No excessive demand will be put on municipal services and, with no changes to the structure, there will be no increase in storm water runoff.

The variance was granted for the following reasons

- The essential characteristics of a neighborhood with similar businesses will not be changed nor is there any indication that a threat will be created to the public health, safety or welfare so that the public interest is protected.
- It is in the spirit of the Ordinance to allow full benefit of the property to the owner with no detriment to the public.
- There would be no overriding benefit to the public if the variance were denied
- The value of surrounding properties will not be diminished by this use which will have less impact than the previous business in this location.

- A hardship is created as the property cannot be used in strict conformance with the Ordinance and retrofitting the property for a different use would be at considerable expense to the owner.

7) Case # 9-7

Petitioners: Timothy J. Andrews & Sarah Ann Raboin

Property: 647 Middle Street

Assessor Map 148, Lot 31

Zoning district: General Residence A

Description: Construct fence & retaining wall.

Request: Variance from Section 10.516.30 to allow a portion of a fence to be closer than 20' from the intersection point of a corner lot.

The Board voted to table the petition to the October 18, 2011 meeting so that the applicant could set up a “mock-up” with stakes that would indicate the location and height of the proposed fence and arrange with the Planning Department for a two-day window during which time the Board members could individually visit the site and better visualize the line-of-sight issues. The Board also asked that the Public Works Department of the City of Portsmouth look at the site and provide, through the Planning Department, a recommendation to the Board on the issues.

8) Case # 9-8

Petitioners: Brian M. Regan & Susan M. Regan

Property: 28-30 Dearborn Street

Assessor Map 140, Lot 1

Zoning district: General Residence A

Description: Divide an existing nonconforming lot containing two, two-family dwellings into two lots each containing one, two-family dwelling.

Requests: Variance from Section 10.331 to allow a lawful nonconforming use to be extended.

Variances from Section 10.521:

Lot 1 To permit a lot with 6,750 of lot area where 7,500 s.f. is required.

To permit a lot with 3,375 s.f. of lot area per dwelling unit where 7,500 s.f. is required.

To permit 55.15' of continuous street frontage where 100' is required.

To permit a side yard setback of 3.7' where 10' is required.

Lot 1-1 To permit a lot with 6,432 s.f. of lot area where 7,500 s.f. is required.

To permit a lot with 3,216 s.f. of lot area per dwelling unit where 7,500 s.f. per unit is required.

To permit 90'+ of continuous street frontage where 100' is required.

The Board voted to grant the petition as presented and advertised for the following reasons:

- Granting the variance will not be contrary to the public interest as there will be no apparent physical change to the property.
 - Substantial justice will be done as the benefit to the applicant will not be outweighed by any harm to the general public.
 - With no changes to the structures, the value of surrounding properties will not be diminished.
 - The granting of these variances will not change the essential characteristics of the neighborhood nor pose a threat to the public health, safety or welfare.
 - The special condition of the property is that the two existing two-family structures will remain in place so that any subdivision would require relief from the Ordinance.
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9) Case # 9-9

Petitioner: Robert B. Wason III, owner, Thai Huynh, applicant

Property: 100 Albany Street

Assessor Map 146, Lot 24

Zoning district: Mixed Residential Business

Description: Operate a reconditioning and protection service for vehicles and home goods.

Requests: The Variances and/or Special Exceptions required for the use.

The Board voted to grant a variance for the reconditioning and protection services for motor vehicles and a special exception for the same services for home goods for the building identified on the City of Portsmouth tax card as 100 Albany Street #C, Map 146, Lot# 124-003. The variance and special exception were granted subject to the following stipulations:

- That all work is to be conducted inside the building.
- That all water is to be contained on site and not allowed to drain into the City stormwater system.

The variance was granted for the following reasons:

- With the stipulation that all work will be performed in the building, granting the variance will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as the essential characteristics of the neighborhood will not be changed and the public health, safety or welfare will not be threatened.
- In the justice test, the benefit to the applicant will not be outweighed by any harm to the general public or individual rights.
- There is no evidence that the value of surrounding properties would be diminished, particularly with the stipulations.
- The proposed use is reasonable for this location with similar nearby businesses.

The special exception was granted for the following reasons:

- There will be no hazard to the public or adjacent properties from fire, explosion or release of toxic materials as it has been represented that there will be no toxic materials involved in the process.

- There will be no detriment to property values or change in the essential characteristics of any area from odors, heat or other irritants as the stipulation will guarantee that all work is done in the building.
- The occasional drop-off of goods to be serviced should not create a traffic safety hazard, substantial increase in traffic congestion or increase in the demand for municipal services.
- With the stipulation to contain water on the site, there should be no increase in storm water runoff.

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V. OTHER BUSINESS

No other business was presented.

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VI. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary