

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 March 20, 2012 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Vice-Chairman Arthur Parrott, Susan Chamberlin, Derek Durbin, Charles LeMay
Alternates: Patrick Moretti, Robin Rousseau

EXCUSED: Chairman David Witham

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In the absence of the Chairman, the meeting was chaired by Vice-Chairman Parrott.

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I. APPROVAL OF MINUTES

A) Amendment to Approved Minutes for October 18, 2011

The Amendment to the previously approved Minutes was approved by majority voice vote, with Ms. Rousseau abstaining.

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II. OLD BUSINESS

A) Request for Rehearing – 860 State Street

The Board voted to **deny** the request as no new information had been provided that was not available at the time of the initial hearing.

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III. PUBLIC HEARINGS

1) Case # 3-1

Petitioners: Thomas J. Schladenhauffen & M. Longi

Property: 708 State Street

Assessor Plan 137, Lot 8

Zoning District: General Residence C

Description: Replace existing rear addition and decks with a 28'x21', 2-story addition.

Replace and relocate existing 14'4" x 22'4" garage, adding 3' in height.

Requests: 1. A dimensional Variance from Section 10.321 to allow a lawful nonconforming building to be extended or enlarged in a manner that is not in conformity with the Zoning Ordinance.

2. A dimensional Variance from Section 10.521 to permit a 3' side yard setback for the addition where 10' is the minimum allowed.

3. Dimensional Variances from Section 10.521 to permit a 4' side yard setback and a 4' rear yard setback for the garage where 10' and 20' respectively are allowed.

4. A dimensional Variance from Section 10.521 to increase the building coverage from 30.6% to 40.6%.

Action:

The Board voted to **deny** the petition as presented and advertised.

Review Criteria:

The petition was denied for the following reasons:

- A substantial increase in nonconformity would be contrary to the public interest.
- The proposal does not meet the intent of the Ordinance to protect light, air and green space and prevent overcrowding.
- In the justice balance test, the hardship to the applicant does not outweigh the detriment to the general public.
- While there would be a potential benefit in decreasing the setback nonconformity for the garage, it would not justify the increase in overall nonconformity and building coverage.
- There was no compelling argument presented to demonstrate a hardship in the property.

2) Case # 3-2

Petitioner: Ghamami Revocable Trust of 2005, Sheila Grant, trustee

Property: 371A Islington Street

Assessor Plan 144, Lot 22-3

Zoning District: Mixed Residential Business

Description: Install a 30" x 36" projecting sign and a 60" x 30" attached sign.

Request: 1. A dimensional Variance from Section 10.1251 to permit an aggregate signage of 59± s.f. where 40 s.f. is the maximum allowed.

Action:

The Board voted to **deny** the petition as presented and advertised.

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant a variance were not met.
- The existing sign area on the building has consumed all that is allowed and to grant the additional amount would be contrary to the public interest where all businesses and properties in this zone need to be supported and treated as equally as possible.
- The larger amount of signage would remain with the building and have an effect of spot zoning which would not be in the spirit of the Ordinance.

3) Case # 3-3

Petitioner: Steven M. Noel

Property: 33 Hunters Hill Avenue

Assessor Plan 160, Lot 39

Zoning District: Business

Description: Add 1½ story addition to existing 24’6” square garage.

Requests: 1. A dimensional Variance from Section 10.321 to allow a lawful nonconforming building to be extended or enlarged in a manner that is not in conformity with the Zoning Ordinance.

2. Variance from Section 10.531 to permit a 0’ front yard setback where 20’ is the minimum required.

Action:

The Board voted to **grant** the petition as presented and advertised.

Stipulations:

None

Other:

The applicant is directed to work with the Inspection Department to ensure that the line of the building and any prohibited projections do not project further than the approved 0’ setback.

Review Criteria:

The petition was granted for the following reasons:

- In this mixed use neighborhood, granting the Variance will not be contrary to the public interest and may improve the neighborhood.
- No shadow would be cast on other properties and there appears to be no negative impact on neighbors.
- Substantial justice will be done by allowing a modest increase in floor area that will maintain the existing footprint and the existing 0’ front yard setback.
- This is a reasonable request for an extension in a neighborhood with many variations.

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- 4) Case # 3-4
Petitioners: Eastern Yacht Sales and Charters Inc., owner, Janette Desmond, applicant
Property: 20 Congress Street #104
Assessor Plan 117, Lot 37-104
Zoning District: Central Business B
Description: A retail chocolate/ice cream store adding indoor tables, stools and dining areas with no off-street parking.
Request: 1. Variance from Section 10.1115.20 and the requirements of 10.1115.30 to allow no off-street parking spaces to be provided where 1 space per 100 s.f. Gross Floor Area is required.

Action:

The Board voted to **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- There will be no conflict or change in the essential character of the neighborhood or threat to health and safety so that granting the Variance will not be contrary to the public interest.
- In the justice balance test, the applicant and community will benefit will no harm to the general public.
- To allow this space to be rented will help maintain surrounding property values.
- With no deeded parking available, a hardship is created in renting a commercial space and to require 17 spaces for this type of restaurant use and denial would not be in keeping with the spirit of the Ordinance.

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- 5) Case # 3-5
Petitioner: Debra R. Goodwin, owner, John Pento, applicant
Property: 255 Melbourne Street
Assessor Plan 233, Lot 87
Zoning District: Single Residence B
Description: Replace existing stairs with 4' x 4' front landing with stairs.
Requests: 1. A dimensional Variance from Section 10.321 to allow a lawful nonconforming building to be extended or enlarged in a manner that is not in conformity with the Zoning Ordinance.
2. A dimensional Variance from Section 10.521 to allow a 13'± front yard setback where 17'± exists and a 30' front yard setback is required.

Action:

The Board voted to **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- Moving the steps slightly forward will not alter the essential character of the neighborhood so that granting this Variance will not be contrary to the public interest or diminish the value of surrounding properties.
 - With no significant change to the structure, the spirit of the Ordinance will be observed.
 - In the justice balance test, the functionality of the home will be increased without negatively impacting abutters.
 - This small landing will increase safety and allow better access to the home with little change to the property.
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6) Case # 3-6

Petitioners: Michael’s Realty Trust & ESUM Realty Trust, owners, 4 Amigos LLC,
applicant

Property: 1390 & 1400 Lafayette Road

Assessor Plan 252, Lot 9 & 7

Zoning District: Gateway

Description: Construct two drive-through lanes in association with construction of
a 2,500± s.f. bank.

- Requests:
1. Special Exception under Section 10.440, Use 19.40 to allow a two-lane drive-through facility as an accessory use to a 2,500 s.f. bank
 2. Variance from Section 10.836.22 to allow two drive-through lanes for a 2,500 s.f. facility where only one drive-through lane for each 5,000 s.f. of gross floor area is allowed.

Action:

The Board voted to grant the petition as presented and advertised.

Review Criteria:

The Special Exception was **granted** for the following reasons:

- This use is permitted in the District by Special Exception.
- There will be no hazard to the public or adjacent property on account of fire explosion or release of toxic materials.
- The redevelopment will, if anything, result in an improvement in the value of surrounding properties.
- Representations were made for planned on-site and off-site improvements that will improve vehicle and pedestrian traffic. No traffic safety hazard will be created and traffic volume should remain relatively stable.
- There should be no greater demand on municipal services than that generated by previous uses.
- The current site consists of mostly impervious surface so that there should be no increase in storm water runoff with the development of the drive-through lanes.

The Variance was **granted** for the following reasons:

- Granting the Variance will not be contrary to the public interest, which may benefit by the services provided.
- The spirit of the Ordinance in this case would be to maintain traffic flow patterns and not over-intensify the use of a commercial lot. As presented, it would appear that traffic flow patterns will be maintained or improved and traffic congestion lessened.
- In the justice balance test, denial of the Variance would result in a detriment to the applicant with no corresponding benefit to the general public.
- The redevelopment will, if anything, result in an improvement in the value of surrounding properties.
- The special condition of the property resulting in a hardship is that challenges exist in developing the lot due to its orientation, the nearby intersection and existing congestion.

7) Case # 3-7

Petitioners: Robert R. & Mary E. Threeton

Property: 476 Ocean Road

Assessor Plan 294, Lot 7

Zoning District: Single Residence A

Description: Install generator and LPG to the rear of existing structure.

Requests: 1. A dimensional Variance from Section 10.321 to allow a lawful nonconforming building to be extended or enlarged in a manner that is not in conformity with the Zoning Ordinance.

2. A dimensional Variance from Section 10.521 to allow building coverage of 10.7.± % where 10.58.± % exists and 10% is the maximum allowed.

Action:

The Board voted to **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- This modest change to the property will not be contrary to the public interest.
- The value of surrounding properties will not be diminished and no neighborhood opposition was presented.
- The type of generator unit proposed is relatively quiet so that the value of surrounding properties will not be diminished.
- This is a small incremental increase in building coverage for a reasonable purpose so that the spirit of the Ordinance will be preserved.

- 8) Case # 3-8
Petitioners: Peter H. Jarvis & Sons LLC & Simeon P. Rev. Trust 1999, owners, Rudi's Restaurant, LLC, applicant
Property: 1 Congress Street (5 Congress Street)
Assessor Plan 117, Lot14
Zoning District: Central Business B
Description: 600 s.f. addition to existing restaurant with no on-site parking.
Requests: 1. Variance from Section 10.1115.20 and the requirements of 10.1115.30 to allow no off-street parking spaces to be provided where 1 space per 100 s.f. Gross Floor Area is required.
2. Special Exception under Section 10.1113.112 to allow 6 off-street parking spaces to be provided on another lot in the same ownership and within 300' of the property line of the lot in question.

Action:

The Board voted to **grant** the Variance as presented and advertised. With the granting of the Variance, the Board determined that the Special Exception would not be required.

Review Criteria:

The petition was granted for the following reasons:

- This is an existing restaurant that wishes to expand so that the essential character of the neighborhood will not be changed or the public health, safety or welfare threatened.
- The spirit of the Ordinance will be observed by allowing this space to be used in a reasonable manner.
- This expansion should have a positive impact on the community so that the surrounding property values will not be diminished.
- A hardship is created with this expansion as there is no deeded parking for this building.

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- 9) Case # 3-9
Petitioner: Commerce Way, LLC
Property: Commerce Way & Woodbury Avenue
Assessor Plan 216, Lot 1
Zoning District: General Business
Description: Modify existing free-standing sign and add a second free-standing sign.
Requests: 1. Variance from Section 10.1243 to permit two free-standing signs on a lot where only one free-standing sign is allowed.
2. A dimensional Variance from Section 10.1251.20 to permit a free-standing sign with a sign area of 124.4± s.f. where 100 s.f. in sign area is the maximum allowed.

Action:

The Board voted to **postpone** the petition for clarification of the dimensions and calculations.

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IV. OTHER BUSINESS

No other business was presented.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary