

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 reconvened meeting** on May 22, 2012 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, Derek Durbin, Christopher Mulligan, Alternates: Patrick Moretti, Robin Rousseau

EXCUSED: Charles LeMay, David Rheaume

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I. APPROVAL OF MINUTES

A) April 17, 2012

It was moved, seconded and passed by unanimous voice vote to approve the Minutes with one minor correction.

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II. PUBLIC HEARINGS

7) Case # 5-7

Petitioner: Lawrence P. McManus & Mary Elizabeth Herbert

Property: 40 Pleasant Street

Assessor Plan 107, Lot 81

Zoning District: Central Business B

Description: A bookstore with café area and no off-street parking.

Request: 1. Variance from Section 10.1115.21 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.

Stipulations:

None

Review Criteria:

The petition was granted for the following reasons:

- The proposed business will not alter the essential historic character of the area so that granting this variance will not be contrary to the public interest.
- This particular parking requirement is in the process of being modified and forcing the business to wait for City Council action, and lose a good part of the summer season, would not be in the spirit of the Ordinance.
- This is not a full-scale restaurant and substantial justice will be done by granting the variance as the number of parking spaces currently required is out of scale for the operation.
- The unique and special condition of the proposal is that the operation has been classified as a restaurant while it is primarily a bookstore, a retail use which would not require parking. Literal enforcement of the current Ordinance would create a hardship in this particular instance.

8) Case # 5-8

Petitioners: Theodore M. Stiles & Joan Boyd

Property: 28 South Street

Assessor Plan 102, Lot 43

Zoning District: General Residence B

Description: Replace existing 22.5' x 14.5' garage with a 26'± x 15'± structure with dormers.

Request: 1. A 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 10.572 and Section 10.521 to allow a right side yard setback of 1.6'± where 10' is the minimum required.

Action:

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

Stipulations:

- That this approval specifically excludes, construction of the dormer proposed for the side of the structure closest to the right (southwestern) property line.

Review Criteria:

The petition was granted for the following reasons:

- While the setbacks in the Ordinance serve to protect light and air, there are neighborhood variables that need to be factored in so that the proposed replacement of a decrepit garage can be approved less the portion covered by the attached stipulation.
 - The additional length of the structure will accommodate today's vehicles and allow the garage to be used as it was intended while providing room for stairs to the storage area.
 - The proposed garage, as approved and with the stipulation, will not substantially increase the previous nonconformity.
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9) Case # 5-9

Petitioners: Henry & Jacqueline Brandt

Property: 37 Wholey Way

Assessor Plan 237, Lot 76

Zoning District: Single Residence B

Description: Appeal from Administrative Decision of the Code Official.

Request: 1. Appeal under Section 10.234.20, Section 10.234.30, Section 10.1013.10 and Section 10.1017 from the decision of the Code Official that a conditional use permit is required to build upon a lot created by a lot line adjustment in August, 2011.

Action:

The Board voted to **postpone** hearing the petition to the June 19, 2012 meeting, at the request of the attorney for the applicant.

10) Case # 5-10

Petitioners: Martingale Wharf Limited Partnership & RRJ Properties Limited Partnership

Property: 99 Bow Street

Assessor Plan 106, Lot 54

Zoning District: Central Business A

Description: 2,247 s.f.± for a restaurant (Surf Sushi) 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.

Stipulations:

None

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest as the essential character of the neighborhood will be not be changed by a restaurant that will fit well in the area. No threat will be posed to the public health, safety and welfare.
 - Encouraging restaurants in the downtown area is in keeping with the overall spirit and intent of the Ordinance.
 - To allow the property owner to use their site and space in a reasonable manner will not harm the general public in any way.
 - The value of surrounding properties will not be diminished by accommodating this restaurant.
 - The inability of the owner to create the required parking creates a hardship so that the property cannot be reasonably used without a variance.
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11) Case # 5-11

Petitioner: Martingale Wharf Limited Partnership & RRJ Properties Limited Partnership

Property: 99 Bow Street

Assessor Plan 106, Lot 54

Zoning District: Central Business A

Description: 7,084 s.f.± for a restaurant (Martingale Wharf Club) 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.

Stipulations:

None

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest as the essential character of the neighborhood will be not be changed by a restaurant that will fit well in the area. No threat will be posed to the public health, safety and welfare.
- Encouraging restaurants in the downtown area is in keeping with the overall spirit and intent of the Ordinance.
- To allow the property owner to use their site and space in a reasonable manner will not harm the general public in any way.
- The value of surrounding properties will not be diminished by accommodating this restaurant.
- The inability of the owner to create the required parking creates a hardship so that the property cannot be reasonably used without a variance.

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III. OTHER BUSINESS

No other business was presented.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 8:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary