

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 June 19, 2012 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Vice-Chairman Arthur Parrott, Susan Chamberlin, Charles LeMay, Christopher Mulligan, David Rheaume, Alternates: Patrick Moretti, Robin Rousseau

EXCUSED: Chairman David Witham, Derek Durbin

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I. APPROVAL OF MINUTES

A) April 24, 2012

By unanimous voice vote, the Minutes were approved as presented.

B) May 15, 2012

By unanimous voice vote, the Minutes were approved as presented.

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II. OLD BUSINESS

A) Request for a One-Year Extension of Variances granted July 19, 2011 for property located at 105 Bartlett Street.

The Board voted to **grant** a One-Year Extension of the Variance through July 19, 2013.

B) Case # 5-2

Petitioner: Lea H. Aeschliman Trust, Lea H. Aeschliman, Trustee.

Property: 314 Middle Street

Assessor Plan 136, Lot 6

Zoning District: Mixed Residential Office

Description: Convert unit from office to residential for two dwelling units on a property.

Request: 1. A Variance from Section 10.1112.30 to allow 3 off-street parking spaces where 4 off-street parking spaces are required for two dwelling units.

(This petition was postponed from the May 15, 2012 meeting)

Action:

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

Stipulations:

None

Review Criteria:

The petition was granted for the following reasons:

- With adequate parking in the area, granting this variance will not be contrary to the public interest.
- The proposed parking will, in keeping with the spirit of the Ordinance, be adequate for these proposed uses.
- Substantial justice will be done by allowing the owner full reasonable use of the property.
- There will be no major change in the layout of the lot so that the value of surrounding properties should not be negatively affected.
- The special conditions of the lot are its size and the relative ease of parking in proximity to the property.

C) 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.

(This petition was postponed from the May 22, 2012 meeting)

Action:

The Board voted to **grant** the Appeal.

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III. PUBLIC HEARINGS

- 1) Case # 6-1
Petitioner: Shaun R. DeWolf
Property: 20 Marjorie Street
Assessor Plan 232, Lot 21
Zoning District: Single Residence B
Description: Construction of a two-story, single family home with garage under and rear deck.
Request: 1. A dimensional Variance from Section 10.521 to allow a rear yard setback of 22'± where 30' is the minimum required.

Action:

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

Stipulations:

That the deck will remain open.

Review Criteria:

The petition was granted for the following reasons:

- An open deck will not affect light and air so that granting the variance will not be contrary to the public interest.
- A deck is consistent with this neighborhood and community and will not diminish the value of surrounding properties.
- The spirit of the Ordinance will be observed as this a reasonable use of the land and the setback intrusion has been reduced from the prior submittal.
- Substantial justice will be done as the applicant has significantly reduced the main structure from what was previously proposed and an open deck is less intrusive than a covered room.
- With regard to literal enforcement of the Ordinance creating a hardship, the unnecessary hardship is that there is no real way to have an outdoor use of the property with just the staircase, which would not allow the reasonable enjoyment of the property as protected by the Ordinance.

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- 2) Case # 6-2
Petitioner: Edward J. Miller
Property: 5 Central Avenue
Assessor Plan 209, Lot 1
Zoning District: Single Residence B
Description: Construction of a rear dormer within existing roof structure.
Requests: 1. A dimensional Variance from Section 10.321 and Section 10.324 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 rear yard setback of 15.5'± where 30' is the minimum 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 addition of the dormer will not have a significant effect on the characteristics of the neighborhood or threaten the public health, safety and welfare.
- The spirit of the Ordinance will be observed as the dormer will be in keeping with the purpose of the Single Residence B zone which is to encourage low to medium density single family residences.
- In the justice balance test, there will be no significant effect on the neighborhood.
- The existing structure is nonconforming and the encroachment into the setback will not be exacerbated so that the value of surrounding properties will not be diminished.
- The special condition of this property resulting in a hardship is that it is already nonconforming as to setbacks. There is no fair and substantial relationship between the provisions of the Ordinance and their application to this property that would preclude allowing the applicant to simply improve upon this existing nonconforming structure

3) Case # 6-3

Petitioner: South Mill Investments, LLC, owner, James Sanders, applicant

Property: 25 South Mill Street

Assessor Plan 102, Lot 16

Zoning District: General Residence B

Description: Demolition and reconstruction of an existing duplex with conforming addition.

- Request:
1. A dimensional Variance from Section 10.521 to allow a lot area per dwelling unit of 2,680 s.f. where 5,000 s.f. per dwelling unit is required.
 2. A dimensional Variance from Section 10.521 to allow a 5'± right side yard setback where 10' 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:

- Moving the replacement structure back from the road will be in the public interest and the new structure will not affect the essential characteristics of the area.
- It will be in the spirit of the Ordinance to bring the property into greater conformity and lessen any impact on light and air. With specific reference to the lot area per dwelling unit, two units are common in the area and the lot is of a decent size to accommodate this structure.
- While there is a public interest in maintaining old properties, this structure has essentially been subject to demolition by neglect and it will be beneficial to the entire area to bring it into greater compliance.
- With the house better situated on the lot and no longer infringing on the front property line, there will be no diminution in the value of surrounding properties.
- The special condition of the property creating a hardship is the infringement of the current structure into setbacks and property lines. It is a reasonable use of the property to allow the structure to be moved back fully onto the site.

4) Case # 6-4

Petitioner: State Street Crossings, LLC, owner, Orange Door, Inc., applicant

Property: 220-226 State Street, Unit # 101

Assessor Plan 107, Lot 68

Zoning District: Central Business B and Downtown Overlay District

Description: A retail frozen yogurt shop with indoor seating area for food consumption 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:

- Due to the nature of the proposed use, granting the variance will not be contrary to the public interest.
- The spirit of the Ordinance will be observed and substantial justice done by treating similar properties in a consistent manner.
- Encouraging the development of commercial enterprises in the downtown area will not diminish the value of surrounding properties.

- The special conditions creating a hardship are that, with the existing building, on-site parking cannot be created. Requiring an in lieu payment would not allow this type of small business a reasonable use of the property.

5) Case # 6-5

Petitioners: Robert J. Chaffee & Barbara A. Trimble, owners, Atlantic Bridge and Engineering, applicant

Property: 32 Miller Avenue

Assessor Plan 136, Lot 18

Zoning District: Mixed Residential Office

Description: Conversion from Bed & Breakfast to Office use without meeting the parking requirements.

- Request:
1. A Variance from Section 10.834.30 to allow an office use in an existing building with 5,153± s.f. of gross floor area where the maximum gross floor area for any individual use is 5,000 s.f.
 2. A Variance from Section 10.1112.30.5 to allow 9 parking spaces to be provided where 21 spaces are required.
 3. A Variance from Section 10.1113.20 to allow 3 existing parking spaces to be located between a principal building and a street.
 4. A Variance from Section 10.1114 to allow parking spaces that do not meet the design requirements.

Action:

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

Stipulations:

That the Proposed Restrictive Covenants for ‘The Governor’s House,’ as submitted by the applicant on June 19, 2012 in draft form will be, after review and final approval of the exact wording by the Planning Department and the Legal Department of the City of Portsmouth, in substantial compliance with the draft and attached to this Variance as a permanent stipulation.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance, particularly with the stipulated covenants, will not be contrary to the public interest as the character of the property will be maintained.
- The spirit of the Ordinance, which is to ensure there is adequate parking for an office use, is met as the proposed number of parking spaces will accommodate the type of office use suitable for the property.
- Substantial justice will be done by preserving a positive aspect of the neighborhood while providing the owners a reasonable use of the property.
- The value of surrounding properties will not be diminished. The driveway is existing and the one extra space will not change the lot in any significant way or necessitate removal of trees and shrubbery.

- The special condition resulting in a hardship is that a reasonable use of the property, which is allowed in this district, could not be made if the parking requirements were strictly enforced. The requested Gross Floor Area does not significantly exceed the maximum allowed under the Zoning Ordinance.

6) Case # 6-6

Petitioner: Wright Ave. LLC

Property: Off Wright Avenue

Assessor Plan 105, Lot 18

Zoning District: Central Business B

Description: Provide parking, in connection with the construction of a 4 to 5 story mixed use building, that does not meet the parking requirements.

- Request: 1. A Variance from Section 10.1112.30 to allow 15 to 23 parking spaces to be provided for a combined retail/residential use where 30 parking spaces are required.
2. A Variance from Section 10.1114.32 to allow vehicles to enter and leave parking spaces by passing over another parking space or requiring the movement of another vehicle.

Action:

At the request of the applicant the Board voted to **postpone** the petition to the July 17, 2012 meeting.

7) Case # 6-7

Petitioner: 45 Pearl Street Properties, LLC

Property: 45 Pearl Street

Assessor Plan 126, Lot 30

Zoning District: Mixed Residential Office

Description: Amend the stipulations attached to Variances granted December 20, 2005 from Article II, Section 10-207 & Article IV, Section 10-401(A)(1)(b).

- Requests: 1. Amend the stipulation designating the hours of operation from “9:00 a.m. until 11:00 p.m., Sunday through Saturday, with the exception of New Year’s Eve until 1:00 a.m.”, to the following hours of operation: (a) Sunday through Thursday, from 9:00 a.m. until 11:00 p.m.; (b) Friday and Saturday, from 9:00 a.m. until 12:30 a.m.; and, (c) New Year’s Eve remaining from 9:00 a.m. until 1:00 a.m.
2. Amend the stipulation, designating that amplified music is not allowed beyond 9:00 p.m. on any day, to allow amplified music: (a) until 11:00 p.m. on any Sunday through Thursday that is not a holiday; and (b) until 12:30 a.m. on Friday, Saturday, and holidays.

Action:

The Board voted to **postpone** the petition to the July 17, 2012 meeting so that a revised proposal acceptable to all the interested parties could be presented.

Other:

Request 1 (b) was corrected to read, “Friday and Saturday, from 9:00 a.m. until 12:30 a.m.”

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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 10:15 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary