

**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 July 17, 2012 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

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

**EXCUSED:** Susan Chamberlin, Derek Durbin

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**I. OLD BUSINESS**

A) 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.

*(This petition was postponed from the June 19, 2012 meeting)*

**Action:**

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

**Stipulation:**

1. That this approval will not be limited to the specific driveway access location or building design shown on the plan submitted with this application but will extend to the alternative building designs or entry locations presented for State Street and/or Chapel Street per approval of the Historic District Commission and Planning Board.

**Review Criteria:**

The petition was granted for the following reasons:

- The proposed parking will support a mixed use development in keeping with others in the immediate vicinity so that granting the variance will not alter the character of the neighborhood nor threaten the health, safety or welfare of the general public.
- A creative parking solution will support the purpose of the Central Business B District which is to promote a wide range of uses and encourage pedestrian flow.
- In the justice balance test, denying the variance will result in a detriment to the applicant that will not be balanced by any gain to the general public.
- Parking for a project similar to others in the nearby area will not diminish the value of surrounding properties.
- The special condition of the property is that the lot is not deep enough to provide the required parking. This is a reasonable proposal that makes efficient use of the space to fulfill as much as possible of the parking needs generated by the proposed project.

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B) 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 p.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.

*(This petition was postponed from the June 19, 2012 meeting*

**Action:**

The Board voted to **postpone** the petition to the July 24, 2012 meeting

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**II. PUBLIC HEARINGS**

1) Case # 7-1

Petitioner: Michael K. Glynn

Property: 197 Raleigh Way

Assessor Plan 212, Lot 104

Zoning District: General Residence B

Description: Replace existing shed in rear yard with a larger structure.

- Requests: 1. A dimensional Variance from Section 10.521 and Section 10.572 to allow a right side yard setback of  $2.6' \pm$  where 10' is required for an accessory structure.  
2. A dimensional Variance from Section 10.521 and Section 10.572 to allow a  $0' \pm$  rear yard setback where 10' is the minimum required for an accessory structure.

**Action:**

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

**Stipulations:**

1. That the shed will be constructed with a minimum rear yard setback of 2' and a minimum right side yard setback of  $2\frac{1}{2}'$ .
2. That the size and orientation of the shed may be altered but the size will not exceed 10' x 12'.
3. That the roof of the shed will be designed so that water runoff will be directed away from abutting properties.

**Review Criteria:**

The petition was granted for the following reasons:

- While the replacement shed is larger than the existing structure, with the stipulations attached to the Variances, it will not be contrary to the public interest.
- The spirit of the Ordinance will be observed by an improvement to the rear setback.
- In the substantial justice test, the property owner will be allowed full use of the property without any undue negative impact on neighbors.
- With the stipulated setbacks, the replacement shed will not diminish the value of surrounding properties.
- There is no fair and substantial relationship between the general purposes of the Ordinance and its application to this property as the intent of the Ordinance is to maintain distances from the property lines. Allowing the shed replacement with the stipulated setbacks is a reasonable request which will meet that intent.

2) Case # 7-2

Petitioner: John F. Green & Alison L. Zaeder

Property: 37 Whidden Street

Assessor Plan 109, Lot 3

Zoning District: General Residence B

Description: Replace rear deck and stairs in same footprint.

- Requests: 1. A dimensional Variance from Section 10.521 to allow a right side yard setback of  $0' \pm$  where 10' is the minimum required.  
2. A dimensional Variance from Section 10.521 to allow a rear yard setback of  $15.5' \pm$  where 25' is the minimum required.  
3. A dimensional Variance from Section 10.521 to allow building coverage of  $49\% \pm$  where 45% is the maximum building coverage allowed.

**Action:**

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

**Stipulations:**

None

**Review Criteria:**

The petition was granted for the following reasons:

- It will not be contrary to the public interest to replace a deck and stairs in the same footprint.
  - The spirit of the Ordinance will be observed by allowing replacement of a structure that has existed satisfactorily for some time on a lot where the setbacks offer little leeway.
  - Substantial justice will be done by allowing the homeowners continued use of a deck by replacing a deteriorated structure.
  - A new structure in the same footprint will, if anything, increase the value of surrounding properties.
  - The special condition of the property is the placement of the home virtually on the property line with the deck following the line of the home. Replacing the decking so that it is safer and up to code is a reasonable request.
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3) Case # 7-3

Petitioner: Antonios & Chrisoul Tzortzakis

Property: 413 Islington Street

Assessor Plan 144, Lot 33

Zoning District: Mixed Residential Business

Description: Outdoor retail sales and storage.

Request: 1. A Special Exception from Section 10.440 to allow outdoor retail sales (Use 8.31) in a district where such use is only allowed by Special Exception.

2. A Variance from Section 10.440 to allow outdoor storage of machinery, equipment and vehicles (Use 20.61) in a district where this use is not allowed.

**Action:**

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

**Stipulations:**

1. That there will be no storage of gasoline, oils, or other hazardous or toxic waste or materials on the property.
2. That the outdoor storage permitted by the Variance will be only in the rear half of the eastern side yard (50' x 24'), as presented, in support of the outdoor retail sales for which the Special Exception was granted and is permitted to be located.
3. That the outdoor retail sales be limited to the sale of bicycles.

**Other:**

While not set out as stipulations, the following were noted by the Board:

1. It was recognized that the occasional yard-sale item (i.e. snowblowers or woodsplitters) would also be sold, subject to the same storage provisions as the sale of bicycles.
2. As set forth in the application and as presented, the customary hours of operation will be from 8:00 a.m. to 6:00 p.m. with limited sales in the winter period.

**Review Criteria:**

The Special Exception was granted for the following reasons:

- This particular use is permitted by Special Exception.
- With the attached stipulations, there will be no hazard to the public or adjacent property from potential fire explosion or release of toxic materials.
- There will be no detriment to property values or change in the essential characteristics of the neighborhood. The business has been place for many years, while property values in the area have continued to increase.
- With this low traffic business, there will be no creation of a traffic safety hazard or increase in the level of traffic congestion.
- With an individual working out of his home and given the nature of the business, there will be no excessive demand on municipal services or increase in storm water runoff.

The Variance was granted for the following reasons:

- This retail sales (bicycle) business and related storage which, although varied in its intensity since its establishment, has generally not altered the essential character of the neighborhood or negatively affected the public interest.
- The spirit of the Ordinance will be observed as the use supported by this Variance is permitted with the granted Special Exception.
- Substantial justice will be done as granting this request will not harm the public interest.
- Granting the Variance will cause no diminution in the value of surrounding properties as demonstrated by the increase in values over the time period in which the existing business has been in operation.
- This business is a reasonable use in this mixed use neighborhood where this type of activity or business is allowed (indoors) and a hardship would be created for the applicants in not permitting its continuance.

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4) Case # 7-4

Petitioner: High Liner Foods Inc.

Property: 1 High Liner Avenue

Assessor Plan 259, Lot 14

Zoning District: Industrial

Description: Expand existing seafood processing facility with two rear additions (4493 s.f.± and 3200 s.f.±).

Request: 1. A Special Exception under Section 10.440, Use 14.32 to allow the expansion of a seafood processing facility in the Industrial District.

**Action:**

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

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- This use meets the Ordinance standards provided for this particular use as permitted by Special Exception.
- With no change to the building or processes, there will be no hazard to the public or properties from fire explosion or release of toxic materials.
- There will be no detriment to property values or change in the essential characteristics of the area from smoke, dust, pollutants or unsightly outdoor storage. The only change to the outside appearance will be replacing panels on the side facing I-95 with matching materials.
- The creation of maintenance and office space will not result in a traffic safety hazard or increase in traffic congestion.
- The process will remain the same with no increase in production schedules so that there will be no excessive demand on municipal services.
- The additions will be in an area of existing impervious surface so that there will be no increase in storm water runoff.

5) Case # 7-5

Petitioner: Robblee Family Trust, D. A. & L. A. Robblee, Trustees

Property: 2 Rand Court

Assessor Plan 221, Lot 89

Zoning District: Single Residence B

Description: Construction of a roof over existing deck. Allow existing deck.

Request: 1. A dimensional Variance from Section 10.521 to allow a front yard setback of 20'± where 30' is the minimum required.

**Action:**

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

**Stipulation:**

1. That the existing deck and roof will be inspected by the Building Inspection Department to ensure that both are up to code.

**Other:**

The applicant is requested to include in the building permit application the value of the new construction as well as the porch which previously did not have a permit, paying the appropriate fee for both.

**Review Criteria:**

The petition was granted for the following reasons:

- Located on a dead end street, there will be no public interest in denying this roofed deck.
- It is in the spirit of the Ordinance to allow homeowners to upgrade their property in a way that will make it more useful.
- In the substantial justice test, the benefit to the applicant by granting the variance is not outweighed by any potential harm to the general public.
- With the attached stipulation, upgrading the property with a roofed deck in this location should increase the value of surrounding properties.
- The special conditions of the property are that the front setback predates the existing Zoning Ordinance and it sits at the terminus of a dead end street, orientated away from neighboring properties, so that the purpose and intent of a front setback is less critical. A farmers porch is a reasonable use in a residential district.

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6) Case #7-6

Petitioner: Johanna Lyons

Property: 18 Cutts Street

Assessor Plan 209, Lot 14

Zoning District: General Residence A

Description: Rebuild porch roof.

- Requests:
1. A dimensional Variance from Section 10.521 to allow a 5'± front yard setback where 15' is the minimum required.
  2. A dimensional Variance from Section 10.521 to allow a 0'± right side yard setback where 10' 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:

- Replacing a roof over an existing porch will not be contrary to the public interest.
- The spirit of the Ordinance will be observed and justice served by replacing a feature of the home that is in keeping with neighboring properties with a safer, sounder structure.
- Replacing a deteriorated structure will, if anything, enhance the value of surrounding properties.
- There is no fair and substantial relationship between the purposes of the Ordinance provisions and their application to this property as it is a reasonable request to rebuild a structure that was already in place with no detriment to neighboring properties.

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**III. OTHER BUSINESS**

No business was presented.

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**IV. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 9:45 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary