

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 July 24, 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, Charles LeMay, Christopher Mulligan, David Rheaume

EXCUSED: Alternates: Patrick Moretti, Robin Rousseau

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I. OLD BUSINESS

A) Request for Rehearing for property located at 37 Wholey Way.

The Board voted to suspend consideration of the Motion for Rehearing regarding the above captioned property until the August 21, 2012 meeting. The Board requires additional time to fully study the Motion, as well as the Applicant's Objection to the Motion for Rehearing.

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 & July 17, 2012 meetings)

Action:

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

Other:

The request, as presented, was to add an extra hour of operation on Friday and Saturday (2 additional hours) plus an extra hour of amplified music on Wednesday through Sunday (5 additional hours).

Review Criteria:

The petition was denied for the following reasons:

- Any expansion of hours would alter the essential characteristics of the neighborhood and would be contrary to the public interest.
- The spirit of the Ordinance is not observed as the Variance, if granted, would remain with the property and accrue to the benefit of a different operation which could have an even greater impact on the residential abutters.
- There is no demonstrated hardship in the property to support the granting of a Variance and the property can be reasonably used in strict conformance with the Ordinance and previously granted Variance for the use.

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II. PUBLIC HEARINGS

7) Case # 7-7

Petitioner: Eugene C. Hersey

Property: Off Dodge Avenue

Assessor Plan 258, Lot 42

Zoning District: Single Residence B

Description: Construction of a single family home on a lot without continuous street frontage and no access to a City street.

- Requests:
1. A dimensional Variance from Section 10.521 to allow a single-family dwelling on a lot with insufficient (12,200± s.f.) lot area where a minimum lot area of 15,000 s.f. is required.
 2. A dimensional Variance from Section 10.521 to allow insufficient lot area per dwelling unit (12,200± s.f.) where a minimum lot area per dwelling unit of 15,000 s.f. is required.
 3. A dimensional Variance from Section 10.521 to allow a single-family dwelling on a lot without street frontage, where 100' of continuous street frontage is required.
 4. A Variance from Section 10.512 to allow a single-family dwelling on a lot with no access to a City street.

Action:

The Board voted to **table** the petition to the August 21, 2012 meeting with the request that the applicant submit a detailed site plan clearly indicating access and egress points, as well as the impact on the lot area of the expansion to the midpoint of the street, if ownership of that portion is claimed by the applicant.

8) Case # 7-8

Petitioner: Dorothy M. Katz 91 Trust., Dorothy M. Katz, Trustee

Property: 880 Islington Street

Assessor Plan 166, Lot 51

Zoning District: Business

Description: A self-service laundry with less than the required parking spaces

Requests: 1. A Variance from Section 10.1112.30 to allow a self-service laundry (Use 7.62) with 10 off-street parking spaces where 21 spaces off-street parking spaces are required.

2. A Variance from Section 10.1113.20 to allow required off-street parking spaces to be located in a required front yard or between a principal building and a street.

3. A Variance from Section 10.1114.32(b) to allow vehicles to enter or leave the parking area by backing into or from a public street or way.

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 allow an existing vacant commercial space to be utilized by a business which will fit the neighborhood and not change its essential character.
- The spirit of the Ordinance will be observed by providing as many of the required parking spaces as the lot area with the existing building will permit.
- A small driveway area behind the spaces allows vehicles to back out and turn so that vehicles will not have to back straight out into the traffic flow on Islington Street.
- Substantial justice will be served by allowing a building to be fully occupied by a permitted use which provides the public with a needed service.
- A fairly large building on a relatively small lot creates a special condition distinguishing this property from others so that a hardship is created in implementing a reasonable use of the property.

9) Case # 7-9

Petitioner: 2422 Lafayette Road Associates LLC & ERB Realty LLC

Property: 2454 Lafayette Road

Assessor Plan 273, Lot 3

Zoning District: Gateway

Description: Allow the number of off-street parking spaces to exceed the maximum permitted.

Request: 1. A Variance from Section 10.1112.50 to allow 859 parking spaces where 457 parking spaces are required and 503 parking spaces are the maximum 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 is in the public interest for a plaza that had fallen into poor condition to be renovated and to provide adequate parking to support commercial space that might otherwise remain vacant.
- The spirit of the Ordinance will be observed by preserving and slightly increasing open space.
- Reducing the number of parking spaces and possibly removing some pavement would make it difficult for businesses to profitably use the space with no corresponding benefit to the general public.
- The increased usage will generate traffic for the surrounding businesses and enhance property values.
- The special condition of the property is the size and configuration of the existing impervious lot with a fixed number of spaces. With no specific formula yet in the Zoning Ordinance for cinemas, the proposed amount seems reasonable for a plaza incorporating this mix of business uses.

10) Case # 7-10

Petitioner: Regine Umber

Property: 211 Park Street

Assessor Plan 149, Lot 5

Zoning District: General Residence A

Description: Construction of a 20'± x 23'± garage at the rear of the property.

- Requests: 1. A dimensional Variance from Section 10.521 to allow a left side yard setback of 3'± where 10' is required.
2. A dimensional Variance from Section 10.521 and Section 10.573.20 to allow a rear yard setback of 3'± where 10.5' is required.
3. A dimensional Variance from Section 10.521 to allow building coverage of 27.2%± where 25% is the maximum building coverage allowed.

Action:

The Board voted to **deny** the petition as presented and advertised as a motion to grant the petition failed to pass.

Other:

The petition was presented as a 16' x 24' garage, with no change to the advertised setbacks but with building coverage reduced slightly. The height was indicated as 13' on the plan and 16' on the building permit application.

Review Criteria:

The petition was denied for the following reasons:

- It was felt that the 16' x 24' size, although reduced from the initial application, was still large for a proposed single car garage which would not meet the requirements of the Ordinance.
- There is no hardship that compels the placement of the garage in the setbacks, and the structure could be sited in a location which did not require the same degree of relief.
- A reasonable use of the property could be made without the granting of this number of variances.

11) Case # 7-11

Petitioner: Robert R. & Mary E. Threeton

Property: 476 Ocean Road

Assessor Plan 294, Lot 7

Zoning District: Single Residence A

Description: Replace existing rear deck and stairs with 14' x 20' deck and 8' x 8' landing.

Requests: 1. A dimensional Variance from Section 10.324 to allow a lawful nonconforming building to be extended or enlarged.

2. A dimensional Variance from Section 10.521 to allow building coverage of 12%± where 11.3% exists and 10% is the maximum 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:

- Replacing a deteriorating deck will not change the essential character of the neighborhood or be counter to the public interest.
- The spirit of the Ordinance will be observed by allowing full enjoyment of the property.
- There will be no benefit to the general public in limiting the applicant, in this case, to a maximum building coverage of 10% and the new landing and stairway will provide safer access and egress.
- With only a slight change to the size and configuration of the deck, and given the distances to the property lines, there will be no detriment to the value of surrounding properties.

- The special condition of the property resulting in a hardship is the presence of heavily wooded wetlands to the back and this proposed deck will not encroach on this area in any substantial way.
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12) Case # 7-12

Petitioner: 909 Islington St LLC

Property: 909 Islington Street

Assessor Plan 172, Lot 7

Zoning District: Business

Description: Provide less than the required parking spaces.

Request: 1. A Variance from Section 10.1112.30 to allow 83 off-street parking spaces to be provided where 90 off-street parking spaces are 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:

- An educational and cultural institution as proposed will be a benefit to the public interest.
 - In the spirit of the Ordinance and substantial justice, the proposed off-street parking spaces are sufficient to support the needs of all the uses on the property.
 - The proposed use will add value to the Islington Street area, as attested to by several letters of support from surrounding businesses.
 - With the wide variety of uses in the buildings, it is difficult to provide additional parking spaces and the proposed amount is a reasonable request.
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13) Case # 7-13

Petitioner: Public Service Company of New Hampshire

Property: 435 Route One By-Pass

Assessor Plan 234, Lot 2A

Zoning District: Office Research

Description: Replace existing substation and equipment.

Requests: 1. A dimensional Variance from Section 10.531 to allow a front yard setback of 24'± where 50' is the minimum required.

2. A dimensional Variance from Section 10.531 to allow a left side yard setback of 11'± where 75' is the minimum required.

3. A dimensional Variance from Section 10.531 to allow a right side yard setback of 10'± where 75' is the minimum required.

Action:

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

Stipulations:

None

Other:

With the newly presented plan, the front yard setback was clarified as being 99.8’ so that relief from the front yard setback is not required.

Review Criteria:

The petition was granted for the following reasons:

- There will be no negative effect on the public interest and the health, safety and welfare of the general public will benefit from an upgrade in the electrical equipment.
- Ultimately replacing an existing substation will not be contrary to the spirit of the Ordinance
- Denying the applicants the opportunity to make this upgrade will not benefit the general public.
- With a commercial property on one side and a City owned property on the other, there will be no diminution in surrounding property values.
- The special conditions that exist include a narrow, deep lot which is not as wide as the side yard setbacks required in this District so that nothing can be placed, such as the existing use, without infringing.

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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 9:35 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary