

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 August 21, 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 Rheame, Alternate: Patrick Moretti

EXCUSED: Alternate: Robin Rousseau

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I. OLD BUSINESS

A) Request for Rehearing for property located at 37 Wholey Way. (*consideration of this request was postponed from the July 24, 2012 meeting*)

Action:

The Board voted to **grant** the Motion for Rehearing. The Administrative Appeal will be re-heard at the September 18, 2012 meeting.

B) 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.
(This petition was postponed from the July 24, 2012 meeting)

Action:

The Board voted to **postpone** the petition, at the request of the applicants’ attorney, for one additional period. The petition will be heard at the September 18, 2012 meeting.

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II. PUBLIC HEARINGS

- 1) Case # 8-1

Petitioner: Kearsarge House Associates Ltd.

Property: 104 Congress Street

Assessor Plan 126, Lot 8

Zoning District: Central Business B

Description: Install a 42”± x 32”± (7.32 s.f±) projecting sign.

Requests: 1. A dimensional Variance from Section 10.1253.50 to allow a sign to project 72” ± over the width of the sidewalk where a sign is allowed to project no more than one-third of the width of the sidewalk (32” ±).

Action:

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

Stipulations:

None

Review Criteria:

The petition was granted for the following reasons:

- Unifying the look of the signage on the building will not be contrary to the public interest.
- In the spirit of the Ordinance, the proposed sign will not increase sign clutter or disturb the sidewalk view.
- Justice will be served by allowing the business to attract customers in a way that is consistent with the neighborhood and will not diminish the value of surrounding properties.
- There is no fair and substantial relationship between the provisions of the Ordinance, which are to maintain a clean look in signage without unduly burdening businesses, and their application to this property.

- 2) Case # 8-2

Petitioners: Christopher S. Martin and Thomas W. Martin, Jr.

Property: 508 Marcy Street

Assessor Plan 101, Lot 57

Zoning District: General Residence B

Description: Install an accessory structure (condenser unit) at rear of property.

Requests: 1. A dimensional Variance from Section 10.521 to allow building coverage of 32.3%± where 30% 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:

- Placed at the rear of the property and buffered by structures, the condenser will have no negative impact on the public interest.
- The spirit of the Ordinance will be served by allowing the property to be upgraded and made more useful while only slightly increasing the building coverage.
- In the justice balance test, there is no overwhelming detriment to the public that would argue against granting the request.
- In this shielded location, installation of the condenser will not diminish the value of surrounding properties and several abutters have signed a petition in support.
- With the size of the lot and layout of the existing structures, the proposed location is the best option for placing the condenser.

3) Case # 8-3

Petitioners: Deborah C. and Harry D. Hobbs

Property: 489 Sagamore Avenue

Assessor Plan 222, Lot 25

Zoning District: General Residence A

Description: Reconstruct existing home in a new location.

Requests: 1. A Variance from Section 10.513 to allow more than one free-standing dwelling on a lot.

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 this proposed change will not alter the essential character of the neighborhood or threaten the health, safety and welfare of the public.

- This property is in a residential zone and the proposed dwelling is appropriate to the uses in the zone.
 - Justice will be served and the value of surrounding properties not diminished by removing a structure encroaching into the setback and replacing it with one that meets the setback requirements.
 - There is no fair and substantial relationship between the provisions of the Ordinance and their application to this property due to the special conditions of the lot. Two separate dwelling structures already exist on a property with a lot area much greater than that of neighboring properties.
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4) Case # 8-4

Petitioners: David J. & Sandra S. Mikolaities

Property: 165 Richards Avenue

Assessor Plan 129, Lot 40

Zoning District: General Residence A

Description: Enclose front porch. Construct 2-story rear addition.

Requests: 1. A Variance from Section 10.324 to allow a nonconforming building or structure to be added to or enlarged without conforming to all the regulations of the zoning district in which it is located.

2. A dimensional Variance from Section 10.521 to allow a left side yard setback of 2'± where 10' is the minimum required.

Action:

The Board failed to pass a motion to grant the petition so that the petition was **denied**.

Review Criteria:

All the criteria necessary to grant a variance were not met. The Board felt that the conversion of the front porch to a fully enclosed mudroom would change the essential character of the neighborhood and there were other reasonable options available for the property owners to meet their needs for this component of the project.

5) Case # 8-5

Petitioner: Echo Hill Condominium Association

Property: 155 Echo Avenue

Assessor Plan 237, Lot 60

Zoning District: Single Residence B

Description: Relocate an existing free-standing sign.

Request: 1. A Variance from Sections 10.1241 and 10.1251.20 to allow a 6± s.f. free-standing sign in a district where free-standing signs are not allowed.

Action:

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

Stipulations:

- That the two smaller signs being replaced be attached to, or made a part of, this free-standing sign.

The petition was granted for the following reasons:

- It will be a benefit to the public and improve traffic safety to allow ready identification of needed information.
- It will be in the spirit of the Ordinance to allow the replacement of the existing free-standing sign with one of the same size in a more practical location.
- Substantial justice will be observed by allowing better identification of the site, ensuring that visitors can safely locate the property.
- The existing sign has not had any detrimental effect on surrounding property values. There should be no change with a new sign in a different location well buffered from neighboring properties.
- In the hardship test, the general public purposes of the Ordinance as applied to this property are outweighed by the positive effects to the homeowners of having a sign to be able to identify their condominium complex.

6) Case # 8-6

Petitioner: Young Mens Christian Association

Property: 550 Peverly Hill Road

Assessor Plan 244, Lot 10-A

Zoning District: Single Residence A

Description: Replace existing free-standing sign and two attached signs.

- Requests:
1. A Variance from Sections 10.1241 and 10.1251.20 to allow a 38± s.f. free-standing sign in a district where free-standing signs are not allowed.
 2. A Variance from Section 10.1253.10 to allow a free-standing sign 7.5'± in height where a maximum height of 7' is allowed.
 3. A Variance from Section 10.1251.20 to allow a 37.5± s.f. wall sign where 4 s.f. is the maximum allowed.
 4. A Variance from Section 10.1251.20 to allow a 6.25± s.f. wall sign where 4 s.f. is the maximum allowed.
 5. A Variance from Section 10.1261.10 to allow internal illumination of a sign in a district where internally illuminated signs are not permitted.

Action:

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

Stipulations:

- That all illumination of the signs be turned off no later than thirty minutes after the closing of the facility, represented as being 9:00 p.m.

Review Criteria:

The petition was granted for the following reasons:

- It will not be contrary to the public interest to allow the updating of existing signage for better identification.
- The spirit of the Ordinance and substantial justice will be observed by allowing the facility to be upgraded with attractive signage that will help the public identify the location without infringing on the rights of neighbors or the general public.
- As proposed, and with the stipulation, the illumination of the sign will not reach onto other properties so that their value will not be diminished.
- The special condition of the property is its location in a mixed use area. Balance and reasonableness are needed to accommodate the needs of businesses to present themselves with the need to maintain a calm neighborhood for the rural aspects. There is no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property in maintaining that balance.

7) Case #8-7

Petitioner: Regine Umber

Property: 211 Park Street

Assessor Plan 149, Lot 5

Zoning District: General Residence A

Description: Construction of a 15'± x 22'± 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 4'± rear yard setback where 10' is required for an accessory structure.
3. A dimensional Variance from Section 10.521 to allow a building coverage of 27.1%± where 25% is the maximum building coverage allowed.

Action:

The Board voted to **postpone** the petition, at the applicant's request, to the September 18, 2012 meeting.

8) Case # 8-8

Petitioner: Bayview Lafayette Rd Real Estate and Fred Schneider, owners, Great Bay Limousine Inc., applicant

Property: 3660 Lafayette Road

Assessor Plan 297, Lot 1

Zoning District: Gateway

Description: Motor vehicle repair.

- Request: 1. A Special Exception under Section 10.440, Use #521 to allow the repair of motor vehicles where the use is allowed by special exception.

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 is permitted in the district by Special Exception.
- As a less intense use, there will be no hazard to the public or adjacent properties from fire explosion or release of toxic materials.
- The exterior building will not change and this follows a similar use so that there will be no detriment to property values or change in the essential characteristics of the area from scale of buildings, odor, smoke, gas, noise or other pollutants. With improvements to the parking, there will be no unsightly outdoor storage of equipment or vehicles.
- The proposed use should not create any traffic safety hazard or increase the level of traffic congestion.
- Provisions have been made for the waste stream from the property so that there will be no excessive demand on municipal services.
- With no exterior physical changes to the building, there will be no significant increase in storm water runoff onto adjacent property or streets.

9) Case # 8-9

Petitioner: Northern N. E. Conference

Property: 861 Middle Road

Assessor Plan 232, Lot 120

Zoning District: Single Residence B

Description: Expand into new function hall with related parking.

- Requests: 1. A Special Exception under Section 10.440, use #3.11 to allow the existing religious assembly use to be conducted in an additional building.
 2. A Variance under Section 10.1112.30 to allow 47 parking spaces to be provided where 63 parking spaces are required.

Action:

The Board acknowledged that the petition had been **withdrawn** by the applicant.

10) Case # 8-10

Petitioners: Melvin R. & Nancy H. Alexander, owners, Portsmouth Aikido, applicant

Property: 620 Peverly Hill Road

Assessor Plan 254, Lot 6

Zoning District: Industrial

Description: Operate a martial arts studio.

- Requests: 1. A Special Exception under Section 10.440, Use #4.42 to allow operation of a 2,000+ s.f. gross floor area martial arts studio.
 2. A Variance from Section 10.1112.30 (4) to allow 69 parking spaces for the property where 80 parking spaces are required.

Action:

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

Stipulations:

None.

Review Criteria:

The Special Exception was granted for the following reasons:

- The proposed use is allowed in this district by Special Exception.
- There is nothing in this use that would result in a hazard to the public or adjacent property from potential fire explosion or release of toxic materials.
- In this commercial use area, there will be no detriment to property values or change in the essential characteristics of the area from structures, odor, smoke, gas, or other pollutants.
- While there may be a slight increase in the use of the parking area, it will not create a traffic safety hazard or result in a substantial increase in traffic congestion.
- The use will not generate any additional demand for municipal services.
- With no exterior changes, there will be no significant increase in storm water runoff onto other properties or the streets.

The Variance was granted for the following reasons:

- Any increase in traffic into the parking area will be small and will not negatively impact the public interest in this already heavily travelled area.
- It will be in the spirit of the Ordinance to allow the parking to support a benign use and encourage local businesses.
- There is no overriding public concern that would argue against the rights of the applicants in granting this requested parking.
- The hours the parking would be needed would largely not overlap with those of the surrounding commercial uses.
- The special conditions are that this is a divided property with several units and the needs of this use will fit in well with the other uses in the building.

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III. OTHER BUSINESS

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:10 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary