

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 April 23, 2013 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, David Rheäume, Alternate Patrick Moretti, Alternate Robin Rousseau

EXCUSED: Christopher Mulligan

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I. PUBLIC HEARINGS (continued from April 16, 2013)

6) Case #4-6

Petitioner: John J. Vendola

Property: 290 Miller Avenue

Assessor Plan: 130, Lot 12

Zoning District: General Residence A

Description: Increase the ridge height of the existing garage to 20 feet and add dormers.

- Requests:
1. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended, reconstructed, enlarged or structurally altered in a manner that is not in conformity with the Zoning Ordinance.
 2. A Variance from Section 10.521 & 10.570 to allow a left side yard setback of 7.85'± where 10' is the minimum required for the proposed accessory building.
 3. A Variance from Section 10.531 & 10.570 to allow a rear yard setback of 6.6' ± where 15' is the minimum required for the proposed accessory building.

Action:

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

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant the variances were not met.

- Increasing the nonconformity in a tight neighborhood would not observe the spirit of the Ordinance as the light and air of neighbors would be adversely impacted and the overall density of this pre-existing nonconforming accessory structure would be unreasonably increased.
 - The hardship test was not met and a reasonable use of the property could be made without requiring relief from the Zoning Ordinance.
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7) Case #4-7

Petitioners: Kent D. Collins and Kennett Collins Jr.

Property: 393 Cutts Avenue

Assessor Plan: 210, Lot 4

Zoning District: Single Residence B

Description: Landscaping business operated out of a residential property.

Request: 1. A Variance from Section 10.440, Use #7.40 (Trade Use) to allow a landscaping business in a district where the use is not allowed.

Action:

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

Stipulations:

- That there will be no more than two non-resident employees.
- That there will be no free-standing signage or signage attached to the home. Identifying lettering on a truck or trailer parked in the driveway is not considered signage for the purposes of this stipulation.
- That all equipment will be stored in the garage, with the only equipment allowed in the driveway a trailer and a truck, and a plow in the wintertime.
- That there will be no deliveries made by vehicles with more than two axles.
- That, if the applicant finds that he cannot meet, or otherwise wishes to change, any of the stipulations, he would have to request specific approval from the Board.

Review Criteria:

The petition was granted for the following reasons:

- Allowing a small starter business, similar to a home occupation, performing routine outdoor maintenance work will not be contrary to the public interest.
- With the stipulations, the spirit of the Ordinance, which is to protect neighborhoods, will be observed.
- There will be no outdoor storage and, with the appearance of the property maintained, there will be no diminution in the value of surrounding properties.
- Substantial justice will be done by allowing this small business, which received written neighborhood support and no stated opposition during the public hearing, to be located on a dead-end street with little public traffic.
- The applicant's stated physical limitations require him to hire help in conducting the business so that literal enforcement of the provisions of the Ordinance would result in a hardship.

8) Case #4-8

Petitioner: 143 Daniel Street LLC

Property: 143 (135-143) Daniel Street

Assessor Plan: 105, Lot 19

Zoning District: Central Business B & Downtown Overlay District

Description: Allow ground floor residential use and off-street parking.

- Requests: 1. A Variance from Section 10.642.1 to allow a residential principal use on the ground floor(s) of a building within the Downtown Overlay District.
2. A Variance from Section 10.643.20 to allow accessory off-street parking facilities providing spaces for more than 2 vehicles to be located within 30' of Daniel Street.
3. A Variance from Section 10.1114.20 to allow a parking layout with a 20.8'± wide maneuvering aisle and driveways where a 24' width is required.

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulations and as outlined under “Other” below.

Stipulations:

- That, as represented by the applicant, the variances (from Article 10.642.1) associated with the residential principal use on the ground floor will be confined to the portion of the building identified as the “1916 portion” and to the building to be newly constructed on Chapel Street.
- That the variance (from Article 10.1114.20) is granted for a 20'± wide maneuvering aisle and not 20.8' as advertised

Other

The Board recognized that the specific requirements of the Downtown Overlay District Ordinance include a prohibition on ground floor residential uses, but noted that the general purposes of the Ordinance also include the preservation of historic districts, buildings and structures. In this particular case, the Board determined that adapting the original 1916 portion of the building for a commercial use would require modifications that would damage its historic character, and that such modifications are not required for converting the building to residential use.

With respect to allowing ground floor residential use in the proposed new building, the Board considered the narrowness and residential character of Chapel Street, and determined that a new residential use would have less impact on the neighboring residences than a new nonresidential use.

Review Criteria

The petition was granted for the following reasons:

- The public interest will be served by preserving the historic character of a unique building and by allowing a compatible new building on a primarily residential street.
- The spirit of the Ordinance will be observed because: the majority of the ground floor of the existing building will be in nonresidential use as required in the Downtown Overlay District; the historic character of the original 1916 structure will be preserved; the new residential building will complement the neighboring residential uses on Chapel Street; the reduction in maneuvering aisle width is consistent with the narrowness and existing residential character of Chapel Street; and the proposed private residential use of the underground parking is consistent with a narrower driveway width.
- Substantial justice will be done by allowing redevelopment of the currently vacant building in harmony with the surrounding area.
- Preserving the existing historic structure and replacing the surface parking lot with a new building in keeping with the neighborhood will protect the values of surrounding properties
- The unique 1916 building, with its first floor raised nearly 6 feet from street level and its location on the parcel, is a special condition that distinguishes the property from other properties in the area; and owing to this condition no fair and substantial relationship exists between the general public purposes of the provisions of the Ordinance from which variances are requested and the specific application of those provisions to this property.

9) Case #4-9

Petitioner: KHP Properties

Property: 428 Pleasant Street

Assessor Plan: 102, Lot 55

Zoning District: General Residence B

Description: Demolish rear additions and construct a 2-story addition. Replace the front stairs.

Requests: 1. A Variance from Section 10.321 to allow a lawful nonconforming building to be reconstructed in a manner that is not in conformity with the Zoning Ordinance.

2. A Variance from Section 10.521 to allow 5'± left side yard setback where 10' is required.

3. A Variance from Section 10.521 to allow a 3.9'± right side yard setback where 10' is required.

4. A Variance from Section 10.521 to allow a 0'± front yard setback where 5' is required.

5. A Variance from Section 10.521 to allow building coverage of 35.3%± where 37.3% exists and 30% is the maximum allowed.

Action:

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

Stipulation:

- That, prior to issuance of a building permit, a copy of the recorded access easement, as presented at the meeting and represented on the submitted proposed plan, shall be provided to the Inspection Department.

Review Criteria:

The petition was granted for the following reasons:

- A well designed and scaled addition, that will bring the property up to code, will not be contrary to the public interest.
- It will be in the spirit of the Ordinance to reduce the existing nonconformance with no significant impingement on light and air to the abutting properties.
- Substantial justice will be done by allowing the modest addition, especially noting the many changes made to an original proposal to accommodate the concerns of neighbors.
- The value of surrounding properties will not be diminished by the addition and an easement will be put in place to assist the abutters' access to their private parking areas.
- A hardship is created by the need to replace the dilapidated addition on the existing nonconforming structure.
- The size of the addition is reasonable to accommodate the proposed use of the structure.

10) Case #4-10

Petitioner: Heritage Storage I LLC, owner and Jerome C. Artigliere dba Amos Wash’N Dry, applicant

Property: 70 Heritage Avenue

Assessor Plan: 285, Lot 11-B

Zoning District: Industrial

Description: Tanning booth in existing laundromat facility.

- Requests:
1. A Variance from Section 10.440, Use #7.20 to allow a use that is not permitted in this district.
 2. A Variance from Section 10.331 to allow a lawful nonconforming use to be extended, enlarged or changed in manner that is not in conformity with the Zoning Ordinance.

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 provide a service for those members of the public who wish to use it and appropriate training, hygienic practices and certifications will be in place for their protection.
- The spirit of the Ordinance will be observed and substantial justice done by allowing the proposed use in an existing business located in a structure with existing retail uses and a combination of services.
- In this setting, the value of surrounding properties will not be diminished.
- This reasonable use was not considered as the Ordinance was written so that no fair and substantial relationship exists between the general purposes of the Ordinance and their application to this property.

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II. OTHER BUSINESS

No other business was presented.

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III. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:25 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary