

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 Thursday, May 29, 2014** 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, David Rheume, Alternate: Patrick Moretti

EXCUSED: Derek Durbin, Charles LeMay, Christopher Mulligan

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(Meeting reconvened from May 20, 2014)

II. APPROVAL OF MINUTES

1) November 19, 2013

It was moved, seconded and passed by unanimous voice vote to accept the Minutes as presented.

B) February 19, 2014

It was moved, seconded and passed by unanimous voice vote to accept the Minutes with a minor correction.

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III. PUBLIC HEARINGS – OLD BUSINESS

A) Case # 4-7

Petitioner: Kevin James Lilakos

Property: 36 Artwill Avenue

Assessor Plan 229, Lot 4

Zoning District: Single Residence B

Description: Allow a second dwelling unit above a garage.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440, Use #1.20 to allow a second dwelling unit on a lot where only one single family dwelling is permitted.

- 2. A Variance from Section 10.513 to allow more than one free-standing dwelling unit on a lot.
- 3. A Variance from Section 10.521 to allow a lot area of 0.3± acres* per dwelling unit where one acre* per dwelling unit is required.

(This petition was postponed from the April 29, 2014 meeting)

*Corrected at meeting to 13,068± s.f. per dwelling unit where 15,000 s.f. are required.

Action:

The Board voted to **grant a second postponement** of the petition to the June meeting with the following stipulation.

Stipulation:

The petition will be readvertised and abutters notified with the cost to be borne by the applicant.

B) Case # 4-13

Petitioners: Jamer Realty, Inc., owner, A. J. P. Billiards, Inc., applicant

Property: 80 Hanover Street

Assessor Plan 117, Lot 2-1

Zoning Districts: Central Business B and Downtown Overlay*

Description: Year-round game of chance for charity.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

- 1. A Variance under Section 10.440 to allow a use that is not permitted.
(This petition was postponed from the April 29, 2014 meeting)

* Note: This property is currently located in Zoning District Character District 5.

Action:

The Board voted to **grant a second postponement** of the petition to the June meeting with the following stipulation.

Stipulation:

The petition will be readvertised and abutters notified with the cost to be borne by the applicant.

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IV. PUBLIC HEARINGS – NEW BUSINESS (continued from May 20, 2014.)

Application:

7) Case # 5-7

Petitioners: KWA, LLC, owner & Barre & Soul, LLC, applicant

Property: 165 Court Street (163A & B)

Assessor Plan 116, Lot 27

Zoning District: Character District 5*

Description: Parking for a yoga studio.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

2. A Variance from Sections 10.1111.10 and 10.1112.30 to allow a change to a yoga studio use without providing the required parking.

* Note: Incorrectly advertised. The correct Zoning District is Character District 4.

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 will be a low impact use which will not alter the character of the neighborhood nor threaten the health, safety or welfare of the general public.
- The spirit of the Ordinance will be observed. This is a low intensity use so that the actual parking demand will be far less than the 14 parking spaces required and can be accommodated by the use of neighboring lots or on-street parking.
- Substantial justice will be done by encouraging businesses to locate in the City.
- The value of surrounding properties will not be diminished. The proposed hours of operation will fall mainly outside the prime time for business uses in this area so that the use and any related parking will not cause any disruption to the neighborhood.
- There is no fair and substantial relationship between the general purposes of the Ordinance and their application to this property so that a hardship is created. The property, which predates current parking requirements, is located at the edge of the zone. The existing building is situated close to all property lines with no means to provide on-site parking.

8) Case # 5-8

Petitioner: Steve A. Hart

Property: 181 Kearsarge Way

Assessor Plan 218, Lot 2

Zoning District: Single Residence B

Description: Demolish existing home and construct new single family home with garage.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming building to be reconstructed without conforming to the requirements of the Ordinance.

- 2. A Variance from Section 10.521 to allow a lot area and a lot area per dwelling unit of 10,577± s.f. where 15,000 s.f. is required.
- 3. A Variance from Section 10.521 to allow a right side yard setback of 9.72'± where 0'± exists and 10' is the minimum required.

Action:

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

Stipulation:

The Planning Department will confirm that the building coverage will not exceed the 20% maximum building coverage allowed and that no further variance is needed.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest. The proposed home is in keeping with other homes in the area so that the essential character of the neighborhood will not be changed.
- The spirit of the Ordinance will be observed as the side setback relief is minimal and the lot area is not significantly different from the overall size of lots in the area.
- Substantial justice will be done by allowing the property owner to replace an older less functional home with a new home and garage.
- The value of surrounding properties will not be diminished by construction of a new modern home.
- The odd shape of the lot and the way in which a prefabricated building must be positioned in order to accommodate the setbacks are special conditions creating a hardship so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. An appropriately sized house situated in the most logical location on the lot is a reasonable use of the property.

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V. OTHER BUSINESS

A) Rules & Regulations

The possible inclusion of procedures to be followed when there are only five voting members was briefly discussed.

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VI. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 7:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary