

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 February 17, 2015** in Conference Room A, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Derek Durbin, Charles LeMay, Christopher Mulligan, David Rheaume. Alternates: Jeremiah Johnson, Patrick Moretti

EXCUSED: None

=====

A) January 21, 2015

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

B) February 3, 2015

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

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II. PUBLIC HEARINGS – OLD BUSINESS

A) Case # 12-14

Petitioners: Robert & Eileen Mackin Revocable Trusts, Robert & Eileen Mackin, Trustees

Property: 56 Dennett Street

Assessor Plan 140, Lot 13

Zoning District: General Residence A

Description: Allow a single family residence to be rented for short-term rentals 60 days annually.

Requests: An Administrative Appeal from the decision of a Code Official to issue a cease and desist order for rental of a single family home to vacationers for up to 60 days a year.

This petition was granted a rehearing at the January 21, 2015 meeting.

Action:

The Board voted to **deny** the Administrative Appeal and uphold the decision of the Code Official to issue a cease and desist order for the use of this property as an “Inn.”

Stipulations:

None.

Review Criteria:

The appeal was denied for the following reasons:

- The Board determined that the nature of the proposed operation meets the definition of an “Inn,” as defined in the Zoning Ordinance.

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III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 2-1

Petitioner: Strawbery Banke Inc.

Property: Off Washington Street

Assessor Plan 104, Lot 7

Zoning District: Mixed Residential Office

Description: Clarification of Variances granted to construct and operate a skating area.

Requests:

1. Clarification that the Variances granted June 18, 2013 will apply to the operation of a skating area during the winter months for a three-month period beginning on the date operations commence each season.
2. Allow the current period of operations to run through March 15, 2015.

Action:

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

- The Board granted an extension for the current period of operation through March 15, 2015, determining that there would be no negative impact on the community by allowing this extension.

Stipulations:

None.

Other:

The building permit issued to the applicant upon the granting of the initial variances will be extended through March 15, 2015.

2) Case # 2-2

Petitioners: Donald S. Margeson and Beth S. Margeson

Property: 14 Hancock Street (Strawbery Banke)

Assessor Plan 104, Lot 7

Zoning District: Mixed Residential Office

Description: Appeal Administrative Decision

Requests: Appeal the decision of a Code official to decline to issue a cease and desist order to the White Apron Café for use of a wine and beer license.

Action:

The Board voted to **deny** the Administrative Appeal and uphold the decision of the Code Official not to issue a cease and desist order to the White Apron Café for use of a wine and beer license.

Review Criteria:

The petition was denied for the following reasons:

- The definition of a “Museum” in the Zoning Ordinance includes the identification of accessory uses which may include “food services for museum visitors or others.” The Board determined that the White Apron Café, as part of this food service, could properly serve beer and wine as an appropriate accessory use to the primary museum use.
-

3) Case # 2-3

Petitioners: Great McDonough St LLC, owner, Cassie McCracken, applicant

Property: 135 McDonough Street

Assessor Plan 144, Lot 47

Zoning District: Mixed Residential Business

Description: Chiropractic/fitness facility.

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

1. A Special Exception under Section 10.440, Use #6.20 to allow a chiropractic use in a district where it is only allowed by Special Exception.
2. A Variance from Section 10.1112.30 to allow 44± off-street parking spaces to be provided where 73 are required for the entire building.

Action:

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

Stipulation:

- The applicants, and their customers and visitors, shall utilize the on-site parking rather than parking on the street.

Other:

- The Board acknowledged that 22 off-street parking spaces were provided on-site, rather than the advertised 44 spaces.
- Prior to the issuance of a building permit, the applicant must demonstrate to the Planning Department how they intend to comply with the stipulation of encouraging their visitors and customers to use on-site parking.

Review Criteria:

The Special Exception was granted for the following reasons:

- The standards for this use, permitted by Special Exception, were met.
- This use will not create a 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 from noise, pollutants, or other irritants, or creation of unsightly outdoor storage of equipment.
- This use will not significantly increase the level of traffic or create a traffic safety hazard.
- There is nothing in the use that would place an excessive demand on municipal services and, with no structural changes, there will be no increase in storm water runoff onto adjacent property or streets.

The Variance was granted for the following reasons:

- This use has been in place for some time with no parking issues arising so that the essential character of the neighborhood will not be changed. Allowing the continuance of this use will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the detriment to the applicant if the variance were denied would not be outweighed by any perceived benefit to the general public.
- With the tenants utilizing on-site parking, there will be no diminution in the value of surrounding properties.
- The unique conditions distinguishing this property from others in the area are the size of the existing structure as it sits on the lot and the changing uses on the property so that a hardship is created in providing the required number of off-street parking spaces.

4) Case # 2-4

Petitioners: Scott & Kelly Cioe (Kelly Whalen)

Property: 44 Melbourne Street

Assessor Plan 233, Lot 20

Zoning District: Single Residence B

Description: Install air conditioning unit.

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

1. A Variance from Section 10.521 to allow a left side yard setback of 0'± where 10' is 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:

- Installation of an air conditioning unit will not alter the essential character of this residential neighborhood nor will the health, safety and welfare of the public be threatened so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be counterbalanced by any gain to the general public.
- This is a modest encroachment, with no visual impact on the area, so that the value of surrounding properties will not be diminished. The abutter with the potential to be most affected supports the installation.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to the special conditions of the property which include the existing structures creating a difficulty in the placement of the unit. The most reasonable location for the unit has been chosen.

5) Case # 2-5

Petitioners: Harrison Alan Workman, owner, Heidi S. Ricci, applicant

Property: 912 Sagamore Avenue

Assessor Plan 223, Lot 26

Zoning District: Waterfront Business

Description: Demolish and reconstruct existing structure, adding a second story and an attached 24'± x 30'± garage.

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

1. A Variance from Section 10.334 to allow a lawful nonconforming use of land to be extended into any part of the remainder of a lot of land.

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 an existing home in a modest footprint and adding a garage will not materially change the character of the neighborhood so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the detriment to the applicant in denying the variance would not be outweighed by any benefit to the general public.
- A modest request for a continued use with an expansion in the same footprint and a garage meeting the dimensional requirements will not diminish the value of surrounding properties.
- Literal enforcement of the Ordinance, in not allowing a reasonable request to expand the home, would result in unnecessary hardship as there has been a long-term residential nonconforming use on the property which will remain even if the petition is denied.

6) Case # 2-6

Petitioners: Constitution Realty of Portsmouth LLC & F/K/A Baroni Family LLC, owners,
EVO Rock & Fitness, applicants

Property: 300 Constitution Avenue

Assessor Plan 274, Lot 5

Zoning District: Industrial

Description: Indoor climbing/fitness facility.

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

1. A Variance under Section 10.440 Use #4.30 to allow an indoor recreation use in a district where the use is not allowed.
2. A Variance from Section 10.1112 to allow 226 off-street parking spaces to be provided where 266 are required.

Action:

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

Stipulations:

None.

Other:

- The Board acknowledged that 276, not 266, off-street parking spaces were required.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed. While this is not an allowed use in the Industrial District, it would not be in the public interest to have vacant space and the operations of the proposed use will compliment those of the existing industrial uses on the lot.
- Substantial justice will be done as granting the variances will not result in any injury to the general public.
- The value of surrounding properties will not be diminished by this indoor use.
- Literal enforcement of the Ordinance would result in unnecessary hardship as the use will be contained in a large building in a district where the allowed building height can accommodate the needs of this business which could not be fulfilled in other districts with lower maximum height allowances. While not specifically allowed, this is a compatible use in this area.

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IV. OTHER BUSINESS

No other business was presented.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:05 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary

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 February 17, 2015** in Conference Room A, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Derek Durbin, Charles LeMay, Christopher Mulligan, David Rheaume. Alternates: Jeremiah Johnson, Patrick Moretti

EXCUSED: None

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II. PUBLIC HEARINGS – OLD BUSINESS

A) Case # 12-14

Petitioners: Robert & Eileen Mackin Revocable Trusts, Robert & Eileen Mackin, Trustees

Property: 56 Dennett Street

Assessor Plan 140, Lot 13

Zoning District: General Residence A

Description: Allow a single family residence to be rented for short-term rentals 60 days annually.

Requests: An Administrative Appeal from the decision of a Code Official to issue a cease and desist order for rental of a single family home to vacationers for up to 60 days a year.

This petition was granted a rehearing at the January 21, 2015 meeting.

Action:

The Board voted to **deny** the Administrative Appeal and uphold the decision of the Code Official to issue a cease and desist order for the use of this property as an “Inn.”

Stipulations:

None.

Review Criteria:

The appeal was denied for the following reasons:

- The Board determined that the nature of the proposed operation meets the definition of an “Inn,” as defined in the Zoning Ordinance.

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III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 2-1

Petitioner: Strawbery Banke Inc.

Property: Off Washington Street

Assessor Plan 104, Lot 7

Zoning District: Mixed Residential Office

Description: Clarification of Variances granted to construct and operate a skating area.

Requests:

1. Clarification that the Variances granted June 18, 2013 will apply to the operation of a skating area during the winter months for a three-month period beginning on the date operations commence each season.
2. Allow the current period of operations to run through March 15, 2015.

Action:

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

- The Board granted an extension for the current period of operation through March 15, 2015, determining that there would be no negative impact on the community by allowing this extension.

Stipulations:

None.

Other:

The building permit issued to the applicant upon the granting of the initial variances will be extended through March 15, 2015.

- 2) Case # 2-2
Petitioners: Donald S. Margeson and Beth S. Margeson
Property: 14 Hancock Street (Strawbery Banke)
Assessor Plan 104, Lot 7
Zoning District: Mixed Residential Office
Description: Appeal Administrative Decision
Requests: Appeal the decision of a Code official to decline to issue a cease and desist order to the White Apron Café for use of a wine and beer license.

Action:

The Board voted to **deny** the Administrative Appeal and uphold the decision of the Code Official not to issue a cease and desist order to the White Apron Café for use of a wine and beer license.

Review Criteria:

The petition was denied for the following reasons:

- The definition of a “Museum” in the Zoning Ordinance includes the identification of accessory uses which may include “food services for museum visitors or others.” The Board determined that the White Apron Café, as part of this food service, could properly serve beer and wine as an appropriate accessory use to the primary museum use.
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- 3) Case # 2-3
Petitioners: Great McDonough St LLC, owner, Cassie McCracken, applicant
Property: 135 McDonough Street
Assessor Plan 144, Lot 47
Zoning District: Mixed Residential Business
Description: Chiropractic/fitness facility.
Requests: The Variances and Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Special Exception under Section 10.440, Use #6.20 to allow a chiropractic use in a district where it is only allowed by Special Exception.
2. A Variance from Section 10.1112.30 to allow 44± off-street parking spaces to be provided where 73 are required for the entire building.

Action:

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

Stipulation:

- The applicants, and their customers and visitors, shall utilize the on-site parking rather than parking on the street.

Other:

- The Board acknowledged that 22 off-street parking spaces were provided on-site, rather than the advertised 44 spaces.
- Prior to the issuance of a building permit, the applicant must demonstrate to the Planning Department how they intend to comply with the stipulation of encouraging their visitors and customers to use on-site parking.

Review Criteria:

The Special Exception was granted for the following reasons:

- The standards for this use, permitted by Special Exception, were met.
- This use will not create a 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 from noise, pollutants, or other irritants, or creation of unsightly outdoor storage of equipment.
- This use will not significantly increase the level of traffic or create a traffic safety hazard.
- There is nothing in the use that would place an excessive demand on municipal services and, with no structural changes, there will be no increase in storm water runoff onto adjacent property or streets.

The Variance was granted for the following reasons:

- This use has been in place for some time with no parking issues arising so that the essential character of the neighborhood will not be changed. Allowing the continuance of this use will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the detriment to the applicant if the variance were denied would not be outweighed by any perceived benefit to the general public.
- With the tenants utilizing on-site parking, there will be no diminution in the value of surrounding properties.
- The unique conditions distinguishing this property from others in the area are the size of the existing structure as it sits on the lot and the changing uses on the property so that a hardship is created in providing the required number of off-street parking spaces.

4) Case # 2-4

Petitioners: Scott & Kelly Cioe (Kelly Whalen)

Property: 44 Melbourne Street

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Zoning District: Single Residence B

Description: Install air conditioning unit.

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

1. A Variance from Section 10.521 to allow a left side yard setback of 0'± where 10' is required.

Action:

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

Stipulations:

None.

Review Criteria:

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Stipulations:

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Review Criteria:

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Petitioners: Constitution Realty of Portsmouth LLC & F/K/A Baroni Family LLC, owners,
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Property: 300 Constitution Avenue

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Zoning District: Industrial

Description: Indoor climbing/fitness facility.

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Stipulations:

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Other:

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Review Criteria:

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Stipulation:

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The Variance was granted for the following reasons:

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Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed. While this is not an allowed use in the Industrial District, it would not be in the public interest to have vacant space and the operations of the proposed use will compliment those of the existing industrial uses on the lot.
- Substantial justice will be done as granting the variances will not result in any injury to the general public.
- The value of surrounding properties will not be diminished by this indoor use.
- Literal enforcement of the Ordinance would result in unnecessary hardship as the use will be contained in a large building in a district where the allowed building height can accommodate the needs of this business which could not be fulfilled in other districts with lower maximum height allowances. While not specifically allowed, this is a compatible use in this area.

=====

IV. OTHER BUSINESS

No other business was presented.

=====

V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:05 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary

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 February 17, 2015** in Conference Room A, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Derek Durbin, Charles LeMay, Christopher Mulligan, David Rheaume. Alternates: Jeremiah Johnson, Patrick Moretti

EXCUSED: None

=====

A) January 21, 2015

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

B) February 3, 2015

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

=====

II. PUBLIC HEARINGS – OLD BUSINESS

A) Case # 12-14

Petitioners: Robert & Eileen Mackin Revocable Trusts, Robert & Eileen Mackin, Trustees

Property: 56 Dennett Street

Assessor Plan 140, Lot 13

Zoning District: General Residence A

Description: Allow a single family residence to be rented for short-term rentals 60 days annually.

Requests: An Administrative Appeal from the decision of a Code Official to issue a cease and desist order for rental of a single family home to vacationers for up to 60 days a year.

This petition was granted a rehearing at the January 21, 2015 meeting.

Action:

The Board voted to **deny** the Administrative Appeal and uphold the decision of the Code Official to issue a cease and desist order for the use of this property as an “Inn.”

Stipulations:

None.

Review Criteria:

The appeal was denied for the following reasons:

- The Board determined that the nature of the proposed operation meets the definition of an “Inn,” as defined in the Zoning Ordinance.

=====

III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 2-1

Petitioner: Strawbery Banke Inc.

Property: Off Washington Street

Assessor Plan 104, Lot 7

Zoning District: Mixed Residential Office

Description: Clarification of Variances granted to construct and operate a skating area.

Requests:

1. Clarification that the Variances granted June 18, 2013 will apply to the operation of a skating area during the winter months for a three-month period beginning on the date operations commence each season.
2. Allow the current period of operations to run through March 15, 2015.

Action:

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

- The Board granted an extension for the current period of operation through March 15, 2015, determining that there would be no negative impact on the community by allowing this extension.

Stipulations:

None.

Other:

The building permit issued to the applicant upon the granting of the initial variances will be extended through March 15, 2015.

- 2) Case # 2-2
Petitioners: Donald S. Margeson and Beth S. Margeson
Property: 14 Hancock Street (Strawbery Banke)
Assessor Plan 104, Lot 7
Zoning District: Mixed Residential Office
Description: Appeal Administrative Decision
Requests: Appeal the decision of a Code official to decline to issue a cease and desist order to the White Apron Café for use of a wine and beer license.

Action:

The Board voted to **deny** the Administrative Appeal and uphold the decision of the Code Official not to issue a cease and desist order to the White Apron Café for use of a wine and beer license.

Review Criteria:

The petition was denied for the following reasons:

- The definition of a “Museum” in the Zoning Ordinance includes the identification of accessory uses which may include “food services for museum visitors or others.” The Board determined that the White Apron Café, as part of this food service, could properly serve beer and wine as an appropriate accessory use to the primary museum use.
-

- 3) Case # 2-3
Petitioners: Great McDonough St LLC, owner, Cassie McCracken, applicant
Property: 135 McDonough Street
Assessor Plan 144, Lot 47
Zoning District: Mixed Residential Business
Description: Chiropractic/fitness facility.
Requests: The Variances and Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Special Exception under Section 10.440, Use #6.20 to allow a chiropractic use in a district where it is only allowed by Special Exception.
2. A Variance from Section 10.1112.30 to allow 44± off-street parking spaces to be provided where 73 are required for the entire building.

Action:

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

Stipulation:

- The applicants, and their customers and visitors, shall utilize the on-site parking rather than parking on the street.

Other:

- The Board acknowledged that 22 off-street parking spaces were provided on-site, rather than the advertised 44 spaces.
- Prior to the issuance of a building permit, the applicant must demonstrate to the Planning Department how they intend to comply with the stipulation of encouraging their visitors and customers to use on-site parking.

Review Criteria:

The Special Exception was granted for the following reasons:

- The standards for this use, permitted by Special Exception, were met.
- This use will not create a 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 from noise, pollutants, or other irritants, or creation of unsightly outdoor storage of equipment.
- This use will not significantly increase the level of traffic or create a traffic safety hazard.
- There is nothing in the use that would place an excessive demand on municipal services and, with no structural changes, there will be no increase in storm water runoff onto adjacent property or streets.

The Variance was granted for the following reasons:

- This use has been in place for some time with no parking issues arising so that the essential character of the neighborhood will not be changed. Allowing the continuance of this use will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the detriment to the applicant if the variance were denied would not be outweighed by any perceived benefit to the general public.
- With the tenants utilizing on-site parking, there will be no diminution in the value of surrounding properties.
- The unique conditions distinguishing this property from others in the area are the size of the existing structure as it sits on the lot and the changing uses on the property so that a hardship is created in providing the required number of off-street parking spaces.

4) Case # 2-4

Petitioners: Scott & Kelly Cioe (Kelly Whalen)

Property: 44 Melbourne Street

Assessor Plan 233, Lot 20

Zoning District: Single Residence B

Description: Install air conditioning unit.

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

1. A Variance from Section 10.521 to allow a left side yard setback of 0'± where 10' is 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:

- Installation of an air conditioning unit will not alter the essential character of this residential neighborhood nor will the health, safety and welfare of the public be threatened so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be counterbalanced by any gain to the general public.
- This is a modest encroachment, with no visual impact on the area, so that the value of surrounding properties will not be diminished. The abutter with the potential to be most affected supports the installation.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to the special conditions of the property which include the existing structures creating a difficulty in the placement of the unit. The most reasonable location for the unit has been chosen.

5) Case # 2-5

Petitioners: Harrison Alan Workman, owner, Heidi S. Ricci, applicant

Property: 912 Sagamore Avenue

Assessor Plan 223, Lot 26

Zoning District: Waterfront Business

Description: Demolish and reconstruct existing structure, adding a second story and an attached 24'± x 30'± garage.

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

1. A Variance from Section 10.334 to allow a lawful nonconforming use of land to be extended into any part of the remainder of a lot of land.

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 an existing home in a modest footprint and adding a garage will not materially change the character of the neighborhood so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the detriment to the applicant in denying the variance would not be outweighed by any benefit to the general public.
- A modest request for a continued use with an expansion in the same footprint and a garage meeting the dimensional requirements will not diminish the value of surrounding properties.
- Literal enforcement of the Ordinance, in not allowing a reasonable request to expand the home, would result in unnecessary hardship as there has been a long-term residential nonconforming use on the property which will remain even if the petition is denied.

6) Case # 2-6

Petitioners: Constitution Realty of Portsmouth LLC & F/K/A Baroni Family LLC, owners,
EVO Rock & Fitness, applicants

Property: 300 Constitution Avenue

Assessor Plan 274, Lot 5

Zoning District: Industrial

Description: Indoor climbing/fitness facility.

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

1. A Variance under Section 10.440 Use #4.30 to allow an indoor recreation use in a district where the use is not allowed.
2. A Variance from Section 10.1112 to allow 226 off-street parking spaces to be provided where 266 are required.

Action:

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

Stipulations:

None.

Other:

- The Board acknowledged that 276, not 266, off-street parking spaces were required.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed. While this is not an allowed use in the Industrial District, it would not be in the public interest to have vacant space and the operations of the proposed use will compliment those of the existing industrial uses on the lot.
- Substantial justice will be done as granting the variances will not result in any injury to the general public.
- The value of surrounding properties will not be diminished by this indoor use.
- Literal enforcement of the Ordinance would result in unnecessary hardship as the use will be contained in a large building in a district where the allowed building height can accommodate the needs of this business which could not be fulfilled in other districts with lower maximum height allowances. While not specifically allowed, this is a compatible use in this area.

=====

IV. OTHER BUSINESS

No other business was presented.

=====

V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:05 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary

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 February 17, 2015** in Conference Room A, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Derek Durbin, Charles LeMay, Christopher Mulligan, David Rheaume. Alternates: Jeremiah Johnson, Patrick Moretti

EXCUSED: None

=====

A) January 21, 2015

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

B) February 3, 2015

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

=====

II. PUBLIC HEARINGS – OLD BUSINESS

A) Case # 12-14

Petitioners: Robert & Eileen Mackin Revocable Trusts, Robert & Eileen Mackin, Trustees

Property: 56 Dennett Street

Assessor Plan 140, Lot 13

Zoning District: General Residence A

Description: Allow a single family residence to be rented for short-term rentals 60 days annually.

Requests: An Administrative Appeal from the decision of a Code Official to issue a cease and desist order for rental of a single family home to vacationers for up to 60 days a year.

This petition was granted a rehearing at the January 21, 2015 meeting.

Action:

The Board voted to **deny** the Administrative Appeal and uphold the decision of the Code Official to issue a cease and desist order for the use of this property as an “Inn.”

Stipulations:

None.

Review Criteria:

The appeal was denied for the following reasons:

- The Board determined that the nature of the proposed operation meets the definition of an “Inn,” as defined in the Zoning Ordinance.

=====

III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 2-1

Petitioner: Strawbery Banke Inc.

Property: Off Washington Street

Assessor Plan 104, Lot 7

Zoning District: Mixed Residential Office

Description: Clarification of Variances granted to construct and operate a skating area.

Requests:

1. Clarification that the Variances granted June 18, 2013 will apply to the operation of a skating area during the winter months for a three-month period beginning on the date operations commence each season.
2. Allow the current period of operations to run through March 15, 2015.

Action:

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

- The Board granted an extension for the current period of operation through March 15, 2015, determining that there would be no negative impact on the community by allowing this extension.

Stipulations:

None.

Other:

The building permit issued to the applicant upon the granting of the initial variances will be extended through March 15, 2015.

- 2) Case # 2-2
Petitioners: Donald S. Margeson and Beth S. Margeson
Property: 14 Hancock Street (Strawbery Banke)
Assessor Plan 104, Lot 7
Zoning District: Mixed Residential Office
Description: Appeal Administrative Decision
Requests: Appeal the decision of a Code official to decline to issue a cease and desist order to the White Apron Café for use of a wine and beer license.

Action:

The Board voted to **deny** the Administrative Appeal and uphold the decision of the Code Official not to issue a cease and desist order to the White Apron Café for use of a wine and beer license.

Review Criteria:

The petition was denied for the following reasons:

- The definition of a “Museum” in the Zoning Ordinance includes the identification of accessory uses which may include “food services for museum visitors or others.” The Board determined that the White Apron Café, as part of this food service, could properly serve beer and wine as an appropriate accessory use to the primary museum use.
-

- 3) Case # 2-3
Petitioners: Great McDonough St LLC, owner, Cassie McCracken, applicant
Property: 135 McDonough Street
Assessor Plan 144, Lot 47
Zoning District: Mixed Residential Business
Description: Chiropractic/fitness facility.
Requests: The Variances and Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Special Exception under Section 10.440, Use #6.20 to allow a chiropractic use in a district where it is only allowed by Special Exception.
2. A Variance from Section 10.1112.30 to allow 44± off-street parking spaces to be provided where 73 are required for the entire building.

Action:

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

Stipulation:

- The applicants, and their customers and visitors, shall utilize the on-site parking rather than parking on the street.

Other:

- The Board acknowledged that 22 off-street parking spaces were provided on-site, rather than the advertised 44 spaces.
- Prior to the issuance of a building permit, the applicant must demonstrate to the Planning Department how they intend to comply with the stipulation of encouraging their visitors and customers to use on-site parking.

Review Criteria:

The Special Exception was granted for the following reasons:

- The standards for this use, permitted by Special Exception, were met.
- This use will not create a 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 from noise, pollutants, or other irritants, or creation of unsightly outdoor storage of equipment.
- This use will not significantly increase the level of traffic or create a traffic safety hazard.
- There is nothing in the use that would place an excessive demand on municipal services and, with no structural changes, there will be no increase in storm water runoff onto adjacent property or streets.

The Variance was granted for the following reasons:

- This use has been in place for some time with no parking issues arising so that the essential character of the neighborhood will not be changed. Allowing the continuance of this use will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the detriment to the applicant if the variance were denied would not be outweighed by any perceived benefit to the general public.
- With the tenants utilizing on-site parking, there will be no diminution in the value of surrounding properties.
- The unique conditions distinguishing this property from others in the area are the size of the existing structure as it sits on the lot and the changing uses on the property so that a hardship is created in providing the required number of off-street parking spaces.

4) Case # 2-4

Petitioners: Scott & Kelly Cioe (Kelly Whalen)

Property: 44 Melbourne Street

Assessor Plan 233, Lot 20

Zoning District: Single Residence B

Description: Install air conditioning unit.

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

1. A Variance from Section 10.521 to allow a left side yard setback of 0'± where 10' is 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:

- Installation of an air conditioning unit will not alter the essential character of this residential neighborhood nor will the health, safety and welfare of the public be threatened so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be counterbalanced by any gain to the general public.
- This is a modest encroachment, with no visual impact on the area, so that the value of surrounding properties will not be diminished. The abutter with the potential to be most affected supports the installation.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to the special conditions of the property which include the existing structures creating a difficulty in the placement of the unit. The most reasonable location for the unit has been chosen.

5) Case # 2-5

Petitioners: Harrison Alan Workman, owner, Heidi S. Ricci, applicant

Property: 912 Sagamore Avenue

Assessor Plan 223, Lot 26

Zoning District: Waterfront Business

Description: Demolish and reconstruct existing structure, adding a second story and an attached 24'± x 30'± garage.

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

1. A Variance from Section 10.334 to allow a lawful nonconforming use of land to be extended into any part of the remainder of a lot of land.

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 an existing home in a modest footprint and adding a garage will not materially change the character of the neighborhood so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the detriment to the applicant in denying the variance would not be outweighed by any benefit to the general public.
- A modest request for a continued use with an expansion in the same footprint and a garage meeting the dimensional requirements will not diminish the value of surrounding properties.
- Literal enforcement of the Ordinance, in not allowing a reasonable request to expand the home, would result in unnecessary hardship as there has been a long-term residential nonconforming use on the property which will remain even if the petition is denied.

6) Case # 2-6

Petitioners: Constitution Realty of Portsmouth LLC & F/K/A Baroni Family LLC, owners,
EVO Rock & Fitness, applicants

Property: 300 Constitution Avenue

Assessor Plan 274, Lot 5

Zoning District: Industrial

Description: Indoor climbing/fitness facility.

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

1. A Variance under Section 10.440 Use #4.30 to allow an indoor recreation use in a district where the use is not allowed.
2. A Variance from Section 10.1112 to allow 226 off-street parking spaces to be provided where 266 are required.

Action:

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

Stipulations:

None.

Other:

- The Board acknowledged that 276, not 266, off-street parking spaces were required.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed. While this is not an allowed use in the Industrial District, it would not be in the public interest to have vacant space and the operations of the proposed use will compliment those of the existing industrial uses on the lot.
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- Literal enforcement of the Ordinance would result in unnecessary hardship as the use will be contained in a large building in a district where the allowed building height can accommodate the needs of this business which could not be fulfilled in other districts with lower maximum height allowances. While not specifically allowed, this is a compatible use in this area.

=====

IV. OTHER BUSINESS

No other business was presented.

=====

V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:05 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary

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 February 17, 2015** in Conference Room A, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Derek Durbin, Charles LeMay, Christopher Mulligan, David Rheaume. Alternates: Jeremiah Johnson, Patrick Moretti

EXCUSED: None

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A) January 21, 2015

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

B) February 3, 2015

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

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II. PUBLIC HEARINGS – OLD BUSINESS

A) Case # 12-14

Petitioners: Robert & Eileen Mackin Revocable Trusts, Robert & Eileen Mackin, Trustees

Property: 56 Dennett Street

Assessor Plan 140, Lot 13

Zoning District: General Residence A

Description: Allow a single family residence to be rented for short-term rentals 60 days annually.

Requests: An Administrative Appeal from the decision of a Code Official to issue a cease and desist order for rental of a single family home to vacationers for up to 60 days a year.

This petition was granted a rehearing at the January 21, 2015 meeting.

Action:

The Board voted to **deny** the Administrative Appeal and uphold the decision of the Code Official to issue a cease and desist order for the use of this property as an “Inn.”

Stipulations:

None.

Review Criteria:

The appeal was denied for the following reasons:

- The Board determined that the nature of the proposed operation meets the definition of an “Inn,” as defined in the Zoning Ordinance.

=====

III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 2-1

Petitioner: Strawbery Banke Inc.

Property: Off Washington Street

Assessor Plan 104, Lot 7

Zoning District: Mixed Residential Office

Description: Clarification of Variances granted to construct and operate a skating area.

Requests:

1. Clarification that the Variances granted June 18, 2013 will apply to the operation of a skating area during the winter months for a three-month period beginning on the date operations commence each season.
2. Allow the current period of operations to run through March 15, 2015.

Action:

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

- The Board granted an extension for the current period of operation through March 15, 2015, determining that there would be no negative impact on the community by allowing this extension.

Stipulations:

None.

Other:

The building permit issued to the applicant upon the granting of the initial variances will be extended through March 15, 2015.

- 2) Case # 2-2
Petitioners: Donald S. Margeson and Beth S. Margeson
Property: 14 Hancock Street (Strawbery Banke)
Assessor Plan 104, Lot 7
Zoning District: Mixed Residential Office
Description: Appeal Administrative Decision
Requests: Appeal the decision of a Code official to decline to issue a cease and desist order to the White Apron Café for use of a wine and beer license.

Action:

The Board voted to **deny** the Administrative Appeal and uphold the decision of the Code Official not to issue a cease and desist order to the White Apron Café for use of a wine and beer license.

Review Criteria:

The petition was denied for the following reasons:

- The definition of a “Museum” in the Zoning Ordinance includes the identification of accessory uses which may include “food services for museum visitors or others.” The Board determined that the White Apron Café, as part of this food service, could properly serve beer and wine as an appropriate accessory use to the primary museum use.
-

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Property: 135 McDonough Street
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Zoning District: Mixed Residential Business
Description: Chiropractic/fitness facility.
Requests: The Variances and Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Special Exception under Section 10.440, Use #6.20 to allow a chiropractic use in a district where it is only allowed by Special Exception.
2. A Variance from Section 10.1112.30 to allow 44± off-street parking spaces to be provided where 73 are required for the entire building.

Action:

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

Stipulation:

- The applicants, and their customers and visitors, shall utilize the on-site parking rather than parking on the street.

Other:

- The Board acknowledged that 22 off-street parking spaces were provided on-site, rather than the advertised 44 spaces.
- Prior to the issuance of a building permit, the applicant must demonstrate to the Planning Department how they intend to comply with the stipulation of encouraging their visitors and customers to use on-site parking.

Review Criteria:

The Special Exception was granted for the following reasons:

- The standards for this use, permitted by Special Exception, were met.
- This use will not create a 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 from noise, pollutants, or other irritants, or creation of unsightly outdoor storage of equipment.
- This use will not significantly increase the level of traffic or create a traffic safety hazard.
- There is nothing in the use that would place an excessive demand on municipal services and, with no structural changes, there will be no increase in storm water runoff onto adjacent property or streets.

The Variance was granted for the following reasons:

- This use has been in place for some time with no parking issues arising so that the essential character of the neighborhood will not be changed. Allowing the continuance of this use will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the detriment to the applicant if the variance were denied would not be outweighed by any perceived benefit to the general public.
- With the tenants utilizing on-site parking, there will be no diminution in the value of surrounding properties.
- The unique conditions distinguishing this property from others in the area are the size of the existing structure as it sits on the lot and the changing uses on the property so that a hardship is created in providing the required number of off-street parking spaces.

4) Case # 2-4

Petitioners: Scott & Kelly Cioe (Kelly Whalen)

Property: 44 Melbourne Street

Assessor Plan 233, Lot 20

Zoning District: Single Residence B

Description: Install air conditioning unit.

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

1. A Variance from Section 10.521 to allow a left side yard setback of 0'± where 10' is 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:

- Installation of an air conditioning unit will not alter the essential character of this residential neighborhood nor will the health, safety and welfare of the public be threatened so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be counterbalanced by any gain to the general public.
- This is a modest encroachment, with no visual impact on the area, so that the value of surrounding properties will not be diminished. The abutter with the potential to be most affected supports the installation.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to the special conditions of the property which include the existing structures creating a difficulty in the placement of the unit. The most reasonable location for the unit has been chosen.

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

1. A Variance from Section 10.334 to allow a lawful nonconforming use of land to be extended into any part of the remainder of a lot of land.

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 an existing home in a modest footprint and adding a garage will not materially change the character of the neighborhood so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the detriment to the applicant in denying the variance would not be outweighed by any benefit to the general public.
- A modest request for a continued use with an expansion in the same footprint and a garage meeting the dimensional requirements will not diminish the value of surrounding properties.
- Literal enforcement of the Ordinance, in not allowing a reasonable request to expand the home, would result in unnecessary hardship as there has been a long-term residential nonconforming use on the property which will remain even if the petition is denied.

6) Case # 2-6

Petitioners: Constitution Realty of Portsmouth LLC & F/K/A Baroni Family LLC, owners,
EVO Rock & Fitness, applicants

Property: 300 Constitution Avenue

Assessor Plan 274, Lot 5

Zoning District: Industrial

Description: Indoor climbing/fitness facility.

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

1. A Variance under Section 10.440 Use #4.30 to allow an indoor recreation use in a district where the use is not allowed.
2. A Variance from Section 10.1112 to allow 226 off-street parking spaces to be provided where 266 are required.

Action:

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

Stipulations:

None.

Other:

- The Board acknowledged that 276, not 266, off-street parking spaces were required.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed. While this is not an allowed use in the Industrial District, it would not be in the public interest to have vacant space and the operations of the proposed use will compliment those of the existing industrial uses on the lot.
- Substantial justice will be done as granting the variances will not result in any injury to the general public.
- The value of surrounding properties will not be diminished by this indoor use.
- Literal enforcement of the Ordinance would result in unnecessary hardship as the use will be contained in a large building in a district where the allowed building height can accommodate the needs of this business which could not be fulfilled in other districts with lower maximum height allowances. While not specifically allowed, this is a compatible use in this area.

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IV. OTHER BUSINESS

No other business was presented.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:05 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary