

**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 regular meeting on June 19, 2007** in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Chairman Charles LeBlanc, Carol Eaton, Charles LeMay, Arthur Parrott, Henry Sanders, Alternate: Thomas Grasso

**EXCUSED:** Vice Chairman David Witham, Alain Jousse

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**I. OLD BUSINESS**

A) Approval of Minutes – May 15, 2007

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

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B) Request for One-Year Extension of Variance granted June 27, 2006 for property located at **1303 Woodbury Avenue.**

After consideration, the Board voted to grant the Variance Extension through June 26, 2008.

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C) Request for One-Year Extension of Variance granted June 20, 2006 for property located at **92 Pleasant Street.**

After consideration, the Board voted to grant the Variance Extension through June 19, 2008.

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## II. PUBLIC HEARINGS

1) Petition of **TD Banknorth, owner**, for property located at **333 State Street** wherein an Appeal from an Administrative Decision was requested concerning Article IX, Section 10-901(I) and Article I, Section 10-102(A) wherein the City has determined that the green band surrounding the building is signage.

Notwithstanding the above, if the Administrative Appeal is denied a Variance from Article IX, Section 10-901(I) was requested to calculate the sign without the banding. Said property is shown on Assessor Plan 116 as Lot 5 and lies within the Central Business B, Historic A and Downtown Overlay districts.

After consideration, the Board voted to deny the Appeal and uphold the decision of the administrative official that the green band surrounding the building is signage. Based on the Zoning Ordinance, it is reasonable to consider as signage the totality of words against a background which is clearly distinguished in color from the rest of the building.

The Board then considered the request for a variance to calculate the sign without the banding and voted to deny the request for the following reasons:

- The tests for granting a variance are not met.
- No claim of unnecessary hardship was made by the applicant and no evidence was submitted that the owner could not operate without the variance.
- There were no special conditions associated with the property presented.
- The colors of the banding and printing are very distinctive and certainly associated with this bank.

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2) Petition of **Two Girls Realty LLC, owner**, for property located at **261 South Street** wherein the following were requested: 1) a Variance from Article II, Section 10-206 to allow the building to be used as a catering kitchen in the rear portion and in the front portion: retail sales of food products, beer and wine, as well as, food prepared in the catering kitchen to be sold and consumed on premises (counter with 5 stools inside). Products being sold would be baked goods, prepared sandwiches, salads (for breakfast, lunch and dinner) and prepared meals to go with the hours of operation being 7 days a week. The catering kitchen would operate from 6AM to 6PM and the store/food sales would operate 7AM to 7PM adjusted to summer hours of 9PM. 2) a Variance from Article XII, Section 10-1204 to allow no parking to be provided where conforming onsite parking spaces are required. Said property is shown on Assessor Plan 111 as Lot 34-2 and lies within the General Residence B and Historic A districts.

After consideration, the Board voted to deny the petition. The proposed uses, particularly with provided seating, would adversely impact parking and traffic in this residential neighborhood. Nothing was presented to indicate why a residential use could not be made of the property. Variance criteria were not met.

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3) Petition of **David Kish, owner**, for property located at **824 State Street** wherein the following were requested: 1) Variances from Article II, Section 10-206(2) and Article XII, Section 10-1204 to allow no parking to be provided where 6 parking spaces are required for the conversion of an existing building with 3 dwelling units to 4 dwelling units, and 2) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to construct an 8 ½' x 12' deck with a 5'± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 145 as Lot 84 and lies within the Apartment district.

At the applicant's request, the Board voted to postpone the petition to the July 17, 2007 meeting.

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4) Petition of **Randle W. Wright and Jane A. Wright, owners**, for property located at **30 Sudbury Street** wherein the following were requested to construct a 4' x 8' shed: 1) a Variance from Article IV, Section 10-402(A) to allow a 4.83'± right side yard where 5' is the minimum required, and 2) a Variance from Article III, Section 10-302(A) to allow 40.4%± building coverage where 35% is the maximum allowed. Said property is shown on Assessor Plan 138 as Lot 23 and lies within the Apartment district.

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- The shed will be in the back and out of the public view.
  - The lot is narrow and placing the shed on the existing deck will preserve the limited green space.
  - This was the most feasible method to solve the problem of needed storage.
  - The proposal is well thought out and should not negatively impact the value of surrounding properties.
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5) Petition of **William E. Dooley and Whitney S. Dooley, owners**, for property located at **140 Essex Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 20' x 20' two story addition with an 8'± right side yard and a fireplace bump-out with a 7'± right side yard where 10' is the minimum required in each instance. Said property is shown on Assessor Plan 233 as Lot 65 and lies within the Single Residence B district.

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- On a narrow lot with a long yard, this is the best possible placement for the addition.
- The addition will not encroach any further into the setbacks than the existing structure.

- Adequate green space will be preserved while making the house more suitable to the owners' needs.
- A well designed addition will not cause any diminution in the value of surrounding properties.

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6) Petition of **Jennifer Ramsey, owner**, for property located at **145 Porpoise Way** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) and Section 10-402(A) were requested to allow: a) a 144.63 sf one story addition with a 4' 6 7/8"± rear yard where 25' is the minimum required, b) a 4' x 11'1" one story addition with an 11'6"± rear yard where 25' is the minimum required, c) a 6' x 11' 3/4" pergola with an 8'± rear yard where 25' is the minimum required, d) an 8'6" x 11' shed with a 2'2"± rear yard and a 1'6"± left side yard where 5' is the minimum required for each; and, e) a 6' x 10'4" one story addition and a 6' x 14'2 1/2" open porch having all additions create a building coverage of 34.7% where 30% is the maximum allowed. Said property is shown on Assessor Plan 212 as Lot 70 and lies within the General Residence B district.

After consideration, a motion to grant the petition failed to pass. There was no hardship in the land demonstrated that would require this degree of relief.

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7) Petition of **Society for the Protection of Forests, owner, Shoals Marine Lab, applicant**, for property known as **Creek Farm located off Little Harbor Road** wherein Variances from Article II, Section 10-206 and Article XII, Section 10-1204 were requested to allow the 1<sup>st</sup> floor of the Carriage House to be used by Piscataqua Challenge for educational classes, boat building, sailing, rowing and related crafts in a district where such uses are not allowed. Said property is shown on Assessor Plan 203 as Lot 8 and lies within the Rural district.

After consideration, the Board voted to grant the petition as presented and advertised with the following stipulations:

- That anything constructed would be of predominantly wood construction, particularly the basic structure.
- That there will be no fiberglass construction.

The petition was granted for the following reasons:

- This is a large property, set apart from residential uses, and this benign use would be consistent with the unique setting
- It is in the spirit of the ordinance and the public interest to offer unique educational opportunities in the community.
- With public access already existing on the property and construction work done indoors, there would be no negative effect on surrounding properties

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**III. ADJOURNMENT.**

The motion was made, seconded and passed to adjourn the meeting at 9:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary