

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

ACTION SHEET

TO: John P. Bohenko, City Manager

FROM: Mary Koeppenick, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment regular meeting** on January 20, 2009 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Vice-Chairman David Witham, Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternate: Derek Durbin

EXCUSED: Alternate: Robin Rousseau

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I. NEW BUSINESS

A) Election of Officers.

It was moved, seconded and passed by unanimous voice vote to re-elect Mr. Charles LeBlanc as Chairman and Mr. David Witham as Vice-Chairman.

II. OLD BUSINESS

A) Approval of Minutes – November 18, 2008

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

B) Settlement proposal for Docket # 08-E-0540 Rockingham County Superior Court concerning property owned by **Aquilla Chase and Marcia N. Chase**, located at **71 Baycliff Road**. Said property is shown on Assessor Plan 207 as Lot 46 and lies within the Single Residence B district.

After consideration, the Board voted to accept the Settlement Agreement, as presented by the City Attorney and with reference to Docket #08-E-0540 of the Rockingham County Superior Court. It was the feeling of the Board that this was a well thought out agreement which would balance the interests of all parties, including those of the Board of Adjustment.

C) Administrative Appeal of the decisions of the City of Portsmouth Building Inspector, Legal Department and Planning Department by **Jill A. Tapscott, Trustee of the Jill A Tapscott Revocable Trust, Sara L. Schmidt and Kimberly A. Geraci, Trustees of the Geraci Family Revocable Trust of 2008 and William D. Mortimer, Trustee of the William D. Mortimer Revocable Trust of 1997**, concerning property owned by **150 Greenleaf Avenue Realty Trust, James G. Boyle, Trustee** located at **150 Greenleaf Avenue**, that an illuminated portal is a wall and not a sign and as a result that any signage located on this wall would not be located above the building roofline and, thus, a permitted use and does not require a Variance from Article IX, Section 10-901(E). Said property is shown on Assessor Plan 243 as Lot 67 and lies within the General Business district.

This petition was withdrawn.

D) Petition of **Brina Lampert Revocable Trust, owner, Brina Lampert Trustee, and Aaron Jones d/b/a MoJo's BBQ Shack, applicant**, for property located at **212 Islington Street** wherein a Variance from Article IX, Section 10-908 was requested to allow: a) 121.58 sf of attached signage where 60 sf is the maximum allowed, b) 50 sf of projecting signage where 15 sf is the maximum allowed; and, c) 171.6 sf of aggregate signage where 75 sf is the maximum allowed. Said property is shown on Assessor Plan 137 as Lot 21 and lies within the Central Business B and Historic A districts.

After consideration, the Board voted to grant Sign #6 as shown on the plan submitted by the applicant on November 17, 2008 and to allow the existing automotive signage on the building to remain, for the following reasons (All remaining signs requested were not approved):

- This is a small building in a commercial area so the attached sign (#6) above the windows is needed and appropriate.
- A hardship is created by the need to compete with other businesses and by the existing square footage of permitted signage already on the building.

E) Petition of **Noble's Island Condominium Association, owner**, for property located at **500 Market Street** wherein a Variance from Article IX, Section 10-908 was requested to allow: a) 100.19 sf of attached signage where 60 sf is the maximum allowed, b) 26.18 sf of freestanding signage where 10 sf is the maximum allowed; and, c) 126.37 sf of aggregate signage wherein 75 sf is the maximum allowed. Said property is shown on Assessor Plan 120 as Lot 2 and lies within the Central Business A and Historic A districts.

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

- It will be in the public interest to identify buildings in a safe manner.
- With the major part of the signage on the interior, the intent of the ordinance will be served by minimizing signage clutter along the roadside.
- The special conditions are the two acre plus size of the property containing mixed uses in a number of buildings. The signage requirements in this district are designed more for a downtown, single structure business.

- This is the best way to provide necessary direction and cohesiveness without jeopardizing the public interest.
- In this location, there will be no negative impact on the value of surrounding properties.

F) Petition of **William Genimatas Revocable Trust of 1990, owner, Nicholas Genimatas, Trustee**, for property located at **599 Lafayette Road** wherein a Variance from Article IX, Section 10-907 was requested to allow a 28'3" high 182 sf free-standing entrance sign on existing base where 20' is the maximum height and 150 sf is the maximum square footage allowed for a free-standing entrance sign. Said property is shown on Assessor Plan 229 as Lot 8 and lies within the General Business district.

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

- It is in the public interest to allow a business to identify its location, especially in a multi-use facility.
- The proposed sign must accommodate a number of tenants and reducing the size would make it difficult to read.
- The spirit of the ordinance will be served by a sign which serves the tenants' identification purposes without being overly cumbersome.
- This replacement sign will conform more closely to the requirements of the ordinance and will not negatively impact the value of surrounding properties.

G) Petition of **Homayoun L. Daneschvar and Leslami Nasim Segnato, owners**, for property located at **566 Broad Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a second floor 28' x 36' addition with a 7'± left side setback where 10' is the minimum required. Said property is shown on Assessor Plan 221 as Lot 58 and lies within the General Residence A district.

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

- Of the alternatives considered, this is the least intrusive way to expand needed living space.
- The existing nonconforming dwelling creates a hardship as there is no way to increase the living space without requiring a variance.
- It will be in the spirit of the ordinance to allow a vertical expansion which will infringe no further into the setbacks.
- This reasonable proposal will result in a structure which will fit well in the neighborhood and should increase the value of surrounding properties.

H) Petition of **Gary Michaels (McIntosh Condominium Association), owner, Kristen Gauthier and Daniele Graveline d/b/a The Pink Sapphire, applicants**, for property located at **82 Fleet Street** wherein a Variance from Article IX, Section 10-908 was requested to allow 34.75 ±sf of projecting signage where 15 sf of projecting signage is the maximum allowed.

Said property is shown on Assessor Plan 117 as Lot 41 and lies within the Central Business B, Downtown Overlay and Historic A districts.

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

- It is reasonable to allow this business a sign similar to that of other businesses in the area.
- A hardship exists in that the other signs on the building have used up the allowed square footage so that a variance is required for this reasonably sized sign.
- With limited visibility from adjacent streets, it will be in the public interest to allow this shop to be identified.
- There would be no benefit to the public in denying this variance and the value of surrounding properties will not be affected.

III. PUBLIC HEARINGS

1) Petition of **Merton Alan Investments, LLC, owner**, for property located at 30 **Cate Street** wherein the following were requested to construct a 5 story building with a 13,375 sf footprint (66,875 sf total) for a 60 unit residential apartment building containing affordable work force housing units and artist live/work space (16 artist live/work units, 34 two bedroom units, 10 one bedroom units) with accessory on-site laundry and workout rooms: 1) a Variance from Article II, Section 10-209 to allow a residential apartment use in an Industrial district where a residential use is not allowed, 2) a Variance from Article III, Section 10-305(A) to allow the proposed development site with a 130' depth where 200' is the minimum required, 3) a Variance from Article III, Section 10-305(A) to allow an 18' front setback where 70' is the minimum required, 4) a Variance from Article III, Section 10-305(A) to allow a 14' rear setback where 50' is the minimum required, 5) a Variance from Article III, Section 10-301(B)(3) to allow an 80' setback from residential uses where 100' is the minimum required; and, 6) a Variance from Article XII, Section 10-1201(A)(f)(2) to allow parking 10' from the front property line where a 50' setback back in the minimum required. Said property is shown on Assessor Plan 165 as Lot 1 and lies within the Industrial district.

After consideration, a motion to grant the petition with stipulations failed to pass so the request was denied. The reasons for failing to pass the motion included the following:

- Considering the public interest with regard to safety and the impact on the area, the project was too large in scope and the intensification too high.
- This would create a little island of intense residential use in an area which is mainly industrial and commercial.
- There are a number of allowed uses for this property which would not require a use variance.
- While providing workforce housing might be considered in the public interest, the proposal fails to meet the remainder of the criteria necessary to grant a variance.

2) Petition of **CCV Group, LLC, owner, Craig and Mollie Sieve, applicants**, for property located at **4 Sagamore Grove Road** wherein the following were requested to allow the rebuilding of a single family dwelling in a Waterfront Business District: 1) a Variance from

Article II, Section 10-208 and to allow a residential use by rebuilding of nonconforming use on the existing foundation (600 sf) with an addition (568 sf), two stairway areas and a chimney in a district where residential uses are not allowed, 2) a Variance from Article III, Section 10-304(A) to allow a 20' x 30' (600 sf) 1 ½ story single family dwelling on the existing foundation with a 12'± left side setback and the 568 sf irregular shaped addition with a 16'± left side setback where 30' is the minimum side setback required; and, 3) a Variance from Article III, Section 10-301(A)(7)(a) to allow the following: a) the proposed 600 sf portion on the existing foundation to have a 46'± setback, b) the stairs to have a 41'± setback, c) the landing and to have stairs a 55'± setback; and, d) the proposed 568 sf addition to have a 77'± setback all from the salt water marsh wetlands and mean high water line where 100' is the minimum setback required for all. Said property is shown on Assessor Plan 201 as Lot 4 and lies within the Waterfront Business district.

This petition was continued to the January 27, 2009 reconvened meeting.

IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:20 p.m. and continue the final petition to the January 27, 2009 meeting.

Respectfully submitted,

Mary E. Koepenick, Secretary