

**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 March 17, 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

**EXCUSED:** Alternates: Derek Durbin, Robin Rousseau

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**I. OLD BUSINESS**

A) Approval of Minutes – January 27, 2009

- February 17, 2009

It was moved, seconded and passed by unanimous voice vote to approve the Minutes for January 27, 2009 and February 17, 2009 as presented.

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**II. PUBLIC HEARINGS**

1) Settlement proposal for Docket # 08-E-541 Rockingham County Superior Court concerning **property owned by Jonathan W. Sobel, Trustee of the Jonathan W. Sobel Revocable Trust**, located at **49 Sheafe Street**. Said property is shown on Assessor Plan 107 as Lot 21 and lies within the Central Business B and Historic A districts.

After consideration, the Board voted to accept the Settlement Agreement, as presented by the City Attorney and with reference to Docket # 08-E-0541 of the Rockingham County Superior Court.

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2) Petition of **Edmond C. Tarbell, owner**, for property located at **75 Court Street** wherein the following were requested: 1) a Variance from Article III, Section 10-303(A) to

allow an existing office unit to be converted into a fourth residential apartment in a building containing three residential apartments and being on a lot having 4,573 sf of lot area where 30,000 sf (7,500 sf per dwelling unit) of lot area is the minimum required for four dwelling units, and 2) a Variance from Article XII, Section 10-1204 and Section 10-1201(A)(3) to allow four nonconforming parking spaces to be provided where six parking spaces are required and to allow said parking spaces to be arranged to park one behind another and back into the street. Said property is shown on Assessor Plan 116 as Lot 20 and lies within the Mixed Residential Office and Historic A districts.

After consideration, the Board voted to deny the petition as it did not meet the criteria necessary to grant a variance. The lot is already tight with respect to light and air and the difficult parking would not be suitable for a fourth residential unit. The owner would still have a reasonable use of the property with one office unit and the possibility of vehicles backing out onto a busy street would be lessened.

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3) Petition of **D’Angelo, Inc., owner**, for property located at **1981 Woodbury Avenue** wherein the following were requested: 1) a Variance from Article IX, Section 10-907(A)(2)(b) to allow 85± sf of internally illuminated channel letter flush mounted signage where 65 sf of signage is the maximum allowed, and 2) a Variance from Article IX, Section 10-901(E)(2) to allow said sign to be located above the level of the roof where signs are not allowed to be located. Said property is shown on Assessor Plan 215 as Lot 7 and lies within the General Business district.

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

- That the top of the letters on the sign be no more than 16’ above grade.

The petition was granted for the following reasons:

- It will be in the public interest to allow a new store in the area to be identified.
- The special conditions presenting a hardship include the odd shaped building, a large unit with limited frontage, and the way the building sits down from the road.
- Given the distance from the intersection, smaller letters would not meet the identification needs and the height is appropriate to the setting.
- There will be no harm to the public in granting the variance.
- The Zoning Ordinance bases size on a strictly linear formula, which did not contemplate a situation such as this.
- There would be no diminution in the value of surrounding properties.

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4) Petition of **Great McDonough Street LLC, owner, Superior Towing, applicant**, for property located at **135 McDonough Street** wherein the following were requested: 1) a Variance from Article II, Section 10-207 is requested to allow outdoor storage of 15 vehicles for 30 days or more in a district where outdoor storage of vehicles is not allowed, and 2) a

Variance from Article XII, Section 10-1204 to allow an undelineated area for the parking of 42 vehicles for the existing uses in the building plus 15 parking spaces for the storage of vehicles, for a total of 57 required spaces, where the application states that 50 undelineated parking spaces are available. Said property is shown on Assessor Plan 144 as Lot 47 and lies within the Mixed Residential Business district.

After consideration, the Board voted to deny the petition as all the criteria necessary to grant a variance were not met. The proposal would result in an over-intensification of the use in a dense residential area and it was felt that the owner had a reasonable use of the property without this additional use. The plan and presentation failed to clearly delineate the 50 required defined parking spaces. There was also a lack of consensus in the submitted plan, the representations of the applicant, and the presentation of the owner’s attorney as to where the entrance point was for the vehicles, off McDonough Street or Cornwall Street, and where the maneuvering area was located. The possible environmental impact, on the neighborhood and the public, of vehicles stored for long periods was not addressed.

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5) Petition of **Antoine Albathany, owner**, for property located at **999 Woodbury Avenue** wherein Variances were requested from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow an existing 20’ x 26’ attached garage to be increased 1’± in height and a pitched roof added with a 4’± left side setback where 10’ is the minimum required. Said property is shown on Assessor Plan 219 as Lot 32 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:

- This will be a minimal amount of relief that will not be contrary to the public interest or the spirit of the ordinance.
- The existing foundation and setback have been in place for quite awhile and there is no way to improve the setback without incurring unreasonable expense.
- Denial of the variance would cause hardship to the applicant without benefiting the public interest.
- The value of surrounding properties will not be diminished.

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6) Petition of **DiLorenzo Real Estate, LLC and City of Portsmouth, owners, Poco Diablo, Inc., applicant**, for property located at **33 Bow Street/ 2 Ceres Street, 37 Bow Street and off Ceres Street** wherein Variances from Article III, Section 10-304(A)&(B) were requested to allow an irregular shaped 1,160± sf addition 11’6”± in height consisting of an open sided pergola with protective covering and with a portion having a roof deck, additionally a 1<sup>st</sup> floor expansion beneath the deck and Lot 48 having 1%± open space where 5% is the minimum required. Said property is shown on Assessor Plan 106 as Lots 48 & 49 and lies within the Central Business A, Downtown Overlay and Historic A districts.

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

- The amount of open space on Lot 48 has been amended to 2.6%.

The petition was granted for the following reasons:

- With the related cooperative effort with the City, the public interest will be benefited by this change.
- The special conditions creating a hardship include the small lots, the orientation of the parcels, the peculiar access and the tight confines in this historic area.
- The open space for combined lots #48 & #49 exceeds 5%, so the spirit and intent of the ordinance as to open space will be met.
- An 11'6" high structure will be in keeping with the character of the neighborhood, while a 20' height would be overpowering.
- This is a well thought out design which will improve the value of surrounding properties.

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### **III. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 9:40 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary