

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 April 21, 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, Alternates: Derek Durbin, Robin Rousseau

EXCUSED: None

I. PUBLIC HEARINGS

1) Petition of **2422 Lafayette Road Associates, LLC, owner**, for property located at **2454 Lafayette Road a/k/a Southgate Plaza** wherein a Variance from Article XII, Section 10-1204 Table 14 was requested to allow 731 parking spaces to be provided where 1,090 parking spaces are required in conjunction with renovations to the existing shopping center consisting of a 23,545± sf addition, a loading dock and a new freestanding 27,335± sf one story building. Said property is shown on Assessor Plan 273 as Lot 3 and lies within the General Business district.

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

- Parking has never been a problem in this long-standing center and there would be no detriment to the public interest in providing fewer spaces.
- There is no other option to pursue other than taking down part of the building, which would not be feasible.
- There is no benefit to the public, if the variance were denied, that would outweigh the hardship created for the applicant.
- The value of surrounding properties will not be diminished by needed renovations to the shopping center.

2) Petition of **Harbour Place Group LLC, owner**, for property located at **1 Harbour Place** wherein an Appeal from an Administrative Decision regarding the determination of the Code Official requiring a building height variance for a protective 3'6" high railing around a

roof top deck and a 6'6" x 26' storage shed addition to an existing roof top mechanical enclosure which should be considered "roof appurtenances".

Notwithstanding the above if the Administrative Appeal was denied Variances from Article III, Section 10-304(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 3'6" railing around a roof top deck ranging in height from 4^{13/16"} to 6^{15/16"} and a 6'6" x 26' storage shed addition on top of an existing 71'7" high building in a district where 50' is the maximum building height. Said property is shown on Assessor Plan 105 as Lot 2 and lies within the Central Business A, Historic A and Downtown Overlay districts.

After consideration, the Board voted to grant the Appeal from an Administrative Decision with regard to the 3'6" railing and deny the Appeal with regard to the shed. In looking at the definitions of roof appurtenances and buildings in the Zoning Ordinance, the Board felt that the shed, having walls and a roof, fell under the definition of a building and would require a building height variance, while the railing would fall under the definition of roof appurtenances and not require a variance.

Having denied the appeal for the storage shed, the Board considered that request for a variance and voted to grant the request as presented and advertised, with the following stipulations:

- That any exterior or interior lighting on the shed be controlled by motion sensors so that a "lighthouse effect" will not be created.
- That the shed will be only be used for storage.

The variance was granted for the following reasons:

- With the stipulation controlling the lighting, the public interest will not be affected.
- Justice will be done by allowing a proper place for storage which, with the stipulation, would be the only permitted use.
- It would be in the spirit of the ordinance to allow an attractive, shed structure which would be lower in height than existing appurtenances.
- These types of structures are common in the area so that the value of surrounding properties will not be diminished.

3) Petition of **280 Heritage Avenue Condo Association, owner, Peter LeSafre d/b/a Tour Auto of NH LLC, applicant**, for property located at **280 Heritage Avenue Unit F** wherein a Special Exception as allowed in Article II, Section 10-209(13) was requested to permit the sale of classic automobiles inside the building only. Said property is shown on Assessor Plan 284 as Lot 7 and lies within the Industrial district.

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

- That the vehicles for sale will remain inside the building.

The petition was granted for the following reasons:

- With the nature of the automobiles housed, there will be no hazard to the public or adjacent property in terms of explosions or hazardous materials.
- The operation will be an extremely low use in terms of vehicular traffic and will present no safety hazard.
- This low volume use will not result in an excessive demand on municipal services or increase in storm water runoff.

4) Petition of **Jonathan Schroeder, owner**, for property located at **324 Maplewood Avenue** wherein the following were requested: 1) Variances from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) to allow a two story addition on an existing garage/storage building to house two additional dwelling units on a 3,210 sf lot (that also contains a second building with a commercial use on the 1st floor and a dwelling unit on the 2nd floor) with: a) a 5.47'± left side setback where 10' is the minimum required, and b) a 1'± rear setback where 15' is the minimum required; and, c) 1,070 sf of lot area per dwelling unit where 7,500 sf of lot area per dwelling unit is required for a total of three dwelling units on the property requiring 22,500 sf of lot area. 2) a Variance from Article XII, Section 10-1201(A)(3) to allow the required parking spaces to back out onto the street where such parking layout is not allowed; and 3) a Variance from Article III, Section 10-301(A)(2) to allow dwelling units in two separate buidings on a lot where all dwelling units shall be located in one building. Said property is shown on Assessor Plan 141 as Lot 1 and lies within the Mixed Residential Office and Historic A districts.

This petition was postponed to the May meeting at the applicant's request.

5) Petition of **55 Congress Street Condominum Association, owner, New Cingular Wireless PCS, LLC, AT&T Mobility Corporation, manager applicant**, for property located at **55 Congress Street** wherein a Special Exception as allowed in Article II, Section 10-208(51) was requested to allow 3 additional antennas mounted to the penthouse façade and associated base station equipment cabinets to be mounted on a frame 5'4" in length. Said property is shown on Assessor Plan 117 as Lot 9 and lies within the Central Business B, Historic A and Downtown Overlay districts.

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

- Three additional antennas and associated base equipment cabinets will pose no hazard to the general public or adjacent property.
 - There will be no detriment to the property values in the area, no creation of a traffic or safety hazard, or increase in traffic.
 - There will be no excessive demand for municipal services or significant water runoff onto adjacent properties or the street.
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6) Petition of **Christoph Wienands and April Guille, owners**, for property located at **307 Wibird Street** wherein Variances from Article III, Section 10-302 and Article IV, Section 10-401(A)(2)(c) were requested to allow the existing steps to be moved back to the original location and rebuild the steps 7’2” x 5’6” with a 0’± front setback where 15’ is the minimum required. Said property is shown on Assessor Plan 132 as Lot 12 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:

- It will be in the public interest and increase the value of surrounding properties to improve the front entry appearance and restore the steps to their historical configuration.
- The special conditions include the location of the house only 5’ from the street, the existing original concrete foundation, and the fact that it is common in that neighborhood to have stairs up to the right of way.
- It will be in the spirit of the ordinance to maintain the integrity of the original home in keeping with the character of the neighborhood.
- There will be no harm to the public in granting the homeowner the right to meet their needs.

7) Petition of **Pamela J and Joseph D. Pantelakos, owners**, for property located at **24 Central Avenue** wherein a Variance from Article II, Section 10-206(24)(b) was requested to allow a temporary mobile home for 90 days during the reconstruction of the single family dwelling destroyed by fire on March 24 & 25, 2009. Said property is shown on Assessor Plan 209 as Lot 28 and lies within the General Residence A district.

After consideration, the Board voted to grant a Special Exception to allow a temporary mobile home for 90 days during reconstruction of the single family dwelling destroyed by fire. The Special Exception was granted for the following reasons:

- The use is clearly needed and will remain residential.
- The presence of the mobile home will not result in any generation of hazardous material, additional traffic or excessive demand for municipal services.
- The use will be temporary so that concerns needed to be addressed with a permanent use, such as parking, do not apply.

II. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 8:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary