

**PLANNING DEPARTMENT - BOARD OF ADJUSTMENT**

**AMENDED ACTION SHEET <sup>1</sup>**

**TO:** John P. Bohenko, City Manager

**FROM:** Mary Koeppenick, Planning Department

**RE:** Actions Taken by the Portsmouth **Board of Adjustment regular meeting** on April 20, 2010 in 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

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**I. OLD BUSINESS**

A. Approval of Minutes – March 16, 2010

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

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B) Petitioner: J. P. Nadeau  
Property: 187 Wentworth House Road Assessor Plan 201, Lot 12  
Zoning district: Waterfront Business District  
Request: **Amend the Variance** granted January 19, 2010 to establish two (2) residential uses where residential uses are prohibited by allowing the two residential structures currently existing on the lot to be moved to another location on the lot as shown on the plan submitted with the application, and amend the stipulation attached to the variance, both in accordance with the submitted revised plan. Section 10.440, Use #1.10, Section 10.513, and Section10.334.

After consideration, the Board voted to grant the request to amend the variance granted January 19, 2010 as presented and advertised with the following stipulations:

- That a boundary survey stamped by a licensed land surveyor be submitted to the Planning Department within 24 hours of the meeting showing dimensions for the

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<sup>1</sup> Pet. #3 stipulation revised to remove the phrase “open to the sky.”

- position of the residential structures and evidence that they are not encroaching into any of the buffers or setbacks as shown on the plan. \*

The effect of this decision is solely to amend the approved location of the residential structures. Accordingly, the other terms of the letter of decision dated January 22, 2010, remain in effect, including the following stipulation:

- That the approved relocation applies to the two residential structures as they currently exist. If there is any change to the structures, or they are deemed structurally unsound to move as they are, the granting of the variance will be null and void.

The request to amend the variance was granted for the following reasons:

- By meeting the dimensional setbacks and the setback from the wetland buffer, as demonstrated by the stipulated plan, the spirit of the ordinance will be met and the request will not be contrary to the public interest.
- There would be no overriding benefit to the public if the request were denied.
- There is no evidence that the value of surrounding properties would be diminished by this amendment to the granted variance.
- The hardship in this case is related to the buildable area on the lot itself and the situation will be improved by moving the structures away from the setbacks.

\* Note: The survey required by this stipulation was submitted to the Planning Department on April 21, 2010; therefore, the stipulation has been satisfied.

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C) Motion for Reconsideration and Motion for Hearing (Rehearing) re. 187 Wentworth House Road

After consideration, the Board voted to deny the requests. No new information has been presented which was not available at the time of the previous meeting and there was no misapplication of the law in arriving at the Board’s decision.

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D) Case # 3-6  
 Petitioners: Sureya M Ennabe Rev. Trust & CN Brown Co.  
 Property: 800 Lafayette Road Assessor Plan 244, Lot 5  
 Zoning district: Gateway  
 Requests: **Variance** to allow off street parking spaces between the principal building and the street right-of-way  
**Section 10.1113.20** Location of Parking Facilities on a lot  
*(This petition was postponed from the March 23, 2010 meeting)*

The Board voted to grant the petition as presented and advertised for the following reasons:

- It will be in the public interest to improve the site and reduce the impact on the marshlands.
- Considering the location, the commercial nature of the lot, and the impact on the environment, the location of the parking will not be against the spirit of the ordinance.
- Justice will be served by allowing a use of the property to be reestablished without infringing on the public interest.
- The special conditions of the lot include the fact that a good piece is in the tidal buffer zone limiting possible locations for the needed parking. Enforcing the restriction on the property would prevent it from being properly developed.
- Surrounding property values will not be negatively affected and would, if anything, be increased by the improvements.

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**II. PUBLIC HEARINGS**

1) Case # 4-1

Petitioners: Worth Development Condo Association

Property: 103-131 Congress Street Assessor Plan 126, Lot 6

Zoning district: Central Business B

Request: **Rehearing:** of the February 16, 2010 Board of Adjustment decision on a variance to waive the parking standards for a restaurant in the Central Business District

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

- It will not be contrary to the public interest to have another restaurant in an area with a number of other restaurants that are functioning well.
- The zoning restriction as applied interferes with the landowners reasonable use as this is an allowed use in the district.
- Special conditions exist so that there is no fair and substantial relationship between the general purposes of the Zoning Ordinance and the specific restriction on the property. The property is a condominium with no associated land so that parking spaces cannot be created.
- The proposed use in this district is a reasonable one and there will be no diminution in the value of surrounding properties.
- There will be no injury to the public or private rights of others. The operation will be located in a downtown area where other businesses are surviving with existing parking.
- In the justice test, there is no benefit which would accrue to the general public which would outweigh the hardship created for the applicant by a provision specific to an individual type of business.

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2) Case # 4-2

Petitioner: Harborside Associates, L.P.

Property: 100 Deer Street (formerly a portion of 195 Hanover Street)

Assessor Plan 125, Lot 1

Zoning district: Central Business B

Requests: **Appeal:** from a Planning Board decision on the interpretation and application of parking space requirements, requesting the Board of Adjustment to reverse the February 18, 2010 decision and remand the matter back to the Planning Board.

After consideration, the Board voted to deny the petition. It was found that the Planning Board made no error in arriving at their February 18, 2010 decision and the decision should stand as issued.

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3) Case # 4 -3

Petitioners: Michael G. Williams & Laura J. Williams

Property: 52 Suzanne Drive Assessor Plan 292, Lot 25

Zoning district: Single Residence B

Request: **Variance(s)** to construct a 6' x 25' front porch. Section 10.321 to allow the enlargement of a nonconforming structure; Section 10.521 Table of Dimensional Standards to allow a 22 foot front yard setback in the SRB zone where 30 feet is required

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

- That the porch remain unenclosed.

The petition was granted for the following reasons:

- This porch, with the stipulation, will have no negative effect on the public interest or interfere with the public right-of-way.
- It will be in the spirit of the ordinance to allow the owners to improve their property and make it more functional without infringing on others rights.
- In the justice balance test, there is no benefit to the public or overriding concern of neighbors that would argue against granting the variance.
- Consistent with the neighborhood and not affecting parking or other values, the porch will not diminish the value of surrounding properties.
- With the house predating zoning, even the stoop to be replaced infringes into the setback. The sidewalk adds additional space between the proposed porch and the public right-of-way.

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4) Case # 4-4

Petitioner: Eugene C. Bergeron

Property: 796 Sagamore Ave Assessor Plan 223, Lot 3

Zoning district: Single Residence B

Request: **Variance(s)** to construct canopies over utility tanks & controls. Section 10.321 to allow the enlargement of a nonconforming structure; Section 10.521 Table of Dimensional Standards to allow a building coverage of 24.3% where 20% is allowed

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

- The canopies will be set off the face of the house for less than 3½’ and will cover unattractive structures so there will be no negative impact on the public interest.
- This construction will represent a minor increase in lot coverage and will not affect the light and air of abutters.
- There would be no overriding benefit to the general public in denying the variances.
- An unnecessary hardship would be created by denial. The proposed use is a reasonable one and the alternative would be to leave these elements exposed which would be unsightly and negatively affect property values.

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5) Case # 4-5

Petitioners: Robert L. Leahy & Amy B. Leahy

Property: 260 Aldrich Road Assessor Plan 166, Lot 12

Zoning district: Single Residence B

Request: **Variance(s)** to construct a 15’ x 16’ pergola attached to the right side of the existing garage. Section 10.321 to allow the enlargement of a nonconforming structure; Section 10.521 Table of Dimensional Standards to allow a building coverage of 25% where 20% is allowed; Section 10.572 to allow a 5 foot setback where an accessory structure shall be no closer to the side or rear property line than 75% of the height or 10 feet whichever figure is greater.

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

- Located at the back corner of the lot, the only public interest in the pergola would be represented by neighbors, who have submitted a document in support.
- In the spirit of the ordinance, the variances will allow the owners to improve their property without injuring the rights of others.
- There is no overriding public interest which would argue against the granting of the variances.
- Given the layout of the neighborhood and the relation of the properties to each other, surrounding property values should not be diminished and, if anything will be increased by the improvements to the property.
- Built in conjunction with badly needed repairs to an existing nonconforming garage, this is the best possible placement of the pergola.

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6) Case # 4-6

Petitioners: T-Beyar Realty, LLC and Fitness Dynamics

Property: 141 Banfield Road, Unit 1 Assessor Plan 254, Lot 2

Zoning district: Industrial

Requests: **Special Exception**, Section 10.440 Use Table 4.40 to allow a Health Club of up to 2,000 square feet in the Industrial zone

After consideration, the Board voted to grant the petition with the following stipulation:

- That a building permit be obtained within thirty (30) days.

The Special Exception was granted for the following reasons:

- This use is benign in an established building so there should be no hazard to the public or adjacent property on account of fire, release of toxic materials.
- There should be no detriment to property values due to noise or other irritants.
- With plenty of parking, there should be no creation of a traffic safety hazard or an increase in traffic congestion.
- With the nature of this use, there should be no increase in the demand for municipal services.

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7) Case # 4-7  
 Petitioner: T-Beyar Realty, LLC and Seacoast Brzilian Jiu Jitsu  
 Property: 141 Banfield Road, Unit 7 Assessor Plan 254, Lot 2  
 Zoning district: Industrial  
 Request: **Special Exception**, Section 10.440 Use Table 4.40 to allow a  
 Jiu Jitsu Studio of up to 2,000 square feet in the Industrial zone

After consideration, the Board voted to grant the petition with the following stipulation:

- That a building permit be obtained within thirty (30) days.

The Special Exception was granted for the following reasons:

- This use is benign in an established building so there should be no hazard to the public or adjacent property on account of fire, release of toxic materials.
- There should be no detriment to property values due to noise or other irritants.
- With plenty of parking, there should be no creation of a traffic safety hazard or an increase in traffic congestion.
- With the nature of this use, there should be no increase in the demand for municipal services.

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**III. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 10:15 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary