

**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 at its regular meeting** on February 15, 2011 in Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Chairman David Witham, Vice-Chairman Arthur Parrott, Derek Durbin  
Carol Eaton, Thomas Grasso, Alain Jousse

**EXCUSED:** Charles LeMay, Alternate: Robin Rousseau

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**I. APPROVAL OF MINUTES**

- A) July 20, 2010
- B) July 27, 2010
- C) August 17, 2010
- D) December 20, 2010

It was moved, seconded, and passed by individual unanimous voice votes to accept the Minutes for July 20, 2010, August 17, 2010 and December 20, 2010 as presented and advertised and the Minutes for July 27, 2010 with a minor correction.

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**II. PLANNING DEPARTMENT REPORTS**

- A) Zoning Ordinance Updates

The updates were distributed to the Board.

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**III. OLD BUSINESS**

3) Case # 1-3

Petitioner: High Liner Foods Inc, Owner

Property: 1 High Liner Avenue

Assessor Map 259, Lot 14

Zoning district: Industrial

Description: To expand the existing maintenance building by 4493 s.f. and expand the office space by 3200 s.f.

Request: Special Exception under Section 10.440, Use #14.32 to allow the expansion of a seafood processing facility in the Industrial district.

*(This petition was postponed from the January 25, 2011 meeting).*

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

- Adding an area for office space and an area for maintenance will create no hazard to the public or adjacent property from fire or release of toxic materials.
- The property is in an industrial district, adjacent to an interstate corridor and the additions will be made on existing pavement so there will be no detriment to property values or change in the essential characteristics of the neighborhood due to issues such as the scale of buildings, pollutants, noise or unsightly outdoor storage.
- Given the nature of the proposed uses in the additions, there will be no creation of a traffic hazard, increase in the traffic level, or an excessive demand on municipal services.
- With no increase in the impervious area, there will be no additional storm water runoff onto the streets or adjacent properties.

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**IV. PUBLIC HEARINGS**

1) Case # 2-1

Petitioners: Kyle T. & Bridget H. Richter

Property: 563 Broad Street

Assessor Map 221, Lot 49

Zoning district: General Residence A

Description: To construct an addition on the left side and rear of the structure with more than the allowed building coverage.

Request: Variance from Section 10.521 to permit a building coverage of 27.1% where 25% is allowed and 19.2% exists.

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

- With one addition abutting an alley and the other at the back, in the middle of the lot, there will be no injury to the public interest.
- It will be in the spirit of the Ordinance to allow the owners to improve their property with no deleterious effect on the abutting neighbors.

- There is no negative public interest that would balance against the benefit to the applicant in granting the variance.
- A useful and more attractive property will have a positive effect on the value of surrounding properties.
- With the narrow lot and the positioning of the existing house and garage, there is no other feasible way to obtain additional space without negatively impacting neighboring properties.

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2) Case # 2-2

Petitioner: RKW Investment Properties, LLC

Property: 115 Heritage Avenue

Assessor Map 285, Lot 5-1

Zoning district: Industrial

Description: To establish a food processing facility.

Request: Variance from Section 10.592 to permit a food processing facility within 500' of a Residential district.

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

- That the applicant shall not store any materials outdoors.
- That the applicant shall not operate the machinery while the rear doors are open.
- That the operation is limited to dry food mixing and packaging. No other processing is allowed.

The petition was granted for the following reasons:

- An operation of this type in a facility located in an area dominated by single business buildings will not be contrary to the public interest.
- The spirit of the Ordinance in protecting residential areas will be observed as there is a buffer between the building and the residential area.
- This is a benign operation which will not diminish the value of surrounding properties.
- Substantial justice will be served as this is an allowed use in the district.
- The residential building and this building are existing structures so that there is no way to meet the distance requirement without moving one of the buildings.

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3) Case # 2-3

Petitioners: NIP Lot 2, LLC NIP Lot 5/6, LLC & Maplewood & Vaughan Holding Co.,

LLC Property: 111 Maplewood Avenue

Assessor Map 124, Lot 8

Zoning district: Central Business A

Description: To allow 2 drive-through lanes as an accessory use for a retail bank in the Downtown Overlay District.

Requests: Variance from Section 10.440, Use 19.40 to permit a drive-through facility as an accessory use to a permitted use.

Variance from Section 10.836.22 to permit a drive-through facility with 2 Lanes serving a principal use with 3,000 sf of gross floor area, where no

more than one drive-through lane is permitted for each 5,000 sf of gross floor area of the principal use that it serves.

After consideration, the Board voted to deny the petition as presented and advertised. All the criteria necessary to grant a variance were not met. No hardship inherent in the land was found and it was determined that the spirit of the Ordinance, which is intended to implement the goals and objectives of the Master Plan, would not be observed.

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4) Case # 2-4

Petitioners: Kieth & Maureen Tong

Property: 27 Thaxter Road

Assessor Map 166, Lot 39

Zoning district: Single Residence B

Description: To construct an addition on the rear and right side of the structure.

Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure.

Variance from Section 10.521 to allow a left side yard of 9' where 10' is required.

Variance from Section 10.521 to allow a rear yard of 26' where 30' is required.

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

- There appears to be no public interest that would argue against granting these variances and the immediate abutters have presented their support.
- The spirit of the Ordinance would be observed as, due to the special conditions of the property, there is no way to expand the home without a variance and the relief requested is minimal.
- No evidence was presented to indicate that the value of surrounding properties would be diminished and the project has the support of the neighbors.
- The house is set in an inconvenient location on the lot and, without moving it, using the house to its fullest potential would not be possible without a variance.

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5) Case # 2-5

Petitioners: Belcher Market Realty, LLC, , owner, & Donna Kelly, applicant

Property: 23 Ceres Street

Assessor Map 106, Lot 41

Zoning district: Central Business A

Description: To construct a sign projecting over the sidewalk 39" where 27" is allowed.

Request: Variance from Section 10.1253.50 to allow a projecting sign to project more than one-third the width of the sidewalk.

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 attract passersby to the business.

- No evidence was presented to indicate that the value of surrounding properties would be diminished.
- In the spirit of the Ordinance, the sign will not be overly intrusive or block the street view.
- The special conditions include the use of an existing bracket and the location of the sign between two metal staircases coming down to the sidewalk which could impede visibility.

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6) Case # 2-6

Petitioners: Arthur & Mary Anker

Property: 34 Salter Street

Assessor Map 102, Lot 34A

Zoning district: General Residence B

Description: To construct an addition off the rear of the structure with less than the required rear yard.

Requests: Variance from Section 10.521 to permit a rear yard of 15' where 20' is required.

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 allow this small addition located in the rear of the property.
- The spirit of the Ordinance will be observed by allowing the home to be more livable with a modest closed entry.
- There is no overriding public concern that would argue against granting a variance.
- The proposed addition was designed to be commensurate with the scale of the house and neighborhood so that the value of surrounding properties will not be diminished.
- This is a small house on a small lot so that any addition would be difficult and the requested addition is reasonable as to location and size.

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**V. OTHER BUSINESS**

There was no other business to present.

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**VI. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 9:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary