

**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 21, 2012 in Conference Room B, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Chairman David Witham, Vice-Chairman Arthur Parrott, Susan Chamberlin, Derek Durbin, Charles LeMay Alternate: Patrick Moretti

**EXCUSED:** Robin Rousseau

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**I. APPROVAL OF MINUTES**

A) December 13, 2011

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

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**III. PLANNING DEPARTMENT REPORTS**

No reports were presented.

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**III. OLD BUSINESS**

B) **Case # 1-2**

Petitioners: Brian M. Regan & Susan M. Regan

Property: 28-30 Dearborn Street

Assessors: Map 140, Lot 1

Zoning District: General Residence A

Description: Allow the existing front-yard setback of the building to remain and revise the off-street parking layout required in a previous variance approval for the property.

Requests:

- Equitable Waiver (under RSA 674:33-a) to allow a front yard setback of 0'± where a 20' front yard setback is required for the structure located at 30 Dearborn Street.
- Amend the Variances granted 1984 and 1991 by revising the required parking plan (as shown on the plan on file at the Planning Department).

*(This petition was postponed from the January 17, 2012 meeting.)*

Case #1-2 and #1-2A were considered together. See action below.

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**C) Case # 1-2A**

Petitioners: Brian M. Regan & Susan M. Regan

Property: 28-30 Dearborn Street

Assessors: Map 140, Lot 1

Zoning District: General Residence A

Description: Provide four off-street parking spaces.

Requests: 1. A dimensional Variance from Section 10.1112.30 to allow four off-street parking spaces to be provided where eight off-street parking spaces are required.

*(This petition is new and was not a part of the petitions postponed from the January 17, 2012 meeting)*

**Action: (Case #1-2 & #1-2A)**

The Board voted to grant, as presented and advertised subject to the following stipulations, the equitable waiver, the amendment to the previously granted variance with a revised parking plan, and the variance to allow four off-street parking spaces where eight are required.

**Stipulation 1:**

Neither of the two proposed lots proposed to be subdivided may be sold until the following terms, conditions and restriction have been met or prior to an agreement entered with the City of Portsmouth in the nature of a Subdivision Agreement which would provide and guarantee through appropriate surety compliance that such terms, conditions and restrictions will be implemented:

1. That the Regans must remove the currently existing retaining wall which runs along the front of 28 Dearborn Street to the westerly side of the building situated on 30 Dearborn Street. And they shall simultaneously pave the area from the street right-of-way line as shown by surveyor Christopher Berry to the currently paved area of the street so the area is acceptable for four parking spaces.
2. That in connection with such removal the Regans shall also remove two trees currently situated between the buildings at 28 Dearborn Street and 30 Dearborn Street which removal has been recommended by the Portsmouth Planning Department.
3. That upon removal of such retaining wall the Regans shall relocate the presently existing sewer line which services 30 Dearborn Street in a manner acceptable to the City of Portsmouth and particularly its Public Works Department.
4. That upon removal of the aforementioned retaining wall the Regans shall be allowed to reconstruct a “bump out” with stairs as shown on the plans submitted with their application so that entry can be had to 28 Dearborn Street through the use of such steps.
5. That the Regans shall obtain any necessary permits which may be required to remove said retaining wall, pave over the area where the retaining wall and fill have been removed, construct the “bump out” and remove the trees and relocate the sewer line.

6. That the Regans shall cooperate with the City of Portsmouth and particularly its Public Works Department as to the establishment of an appropriate physical boundary at the sideline of Dearborn Street and the Regans boundary established by the surveyor Christopher Berry.
7. That the City of Portsmouth shall issue a satisfactory license, easement or other permission for the Regans to maintain the steps which have been “bumped out” and which are on the southerly side of the street boundary as set forth on the Regan plans as submitted with their application.
8. That if the Regans do not meet the foregoing terms, restrictions and conditions then the Regans or their successors upon a new petition presented to this Board may request new relief from the Board of Adjustment provided that if any such new petition is filed, it must specify in detail what conditions have not or cannot be met with a detailed explanation of why they have not or cannot be met.
9. The work and subdivision contemplated by the above Terms, Conditions and Restrictions must be completed one year from the grant of the variances and equitable waiver otherwise they shall be null and void and the Regans shall be required to submit a new application pursuant to 8 hereof.

**Stipulation 2:**

That the proposed Terms, Conditions and Restrictions be signed and dated by the applicants and their attorneys and submitted to the Clerk for the Board of Adjustment.

**Review Criteria:**

The Equitable Waiver was granted considering the history of the improvements made to the property. It was granted for the following reasons:

- It is believed that the violation in terms of the front yard setback was not intentional.
- Due to the historic character of the neighborhood, exhibited by the small front yard setbacks, the amount of relief requested is small requiring a waiver for only 6” of relief.

The variance and amendment to the variance were granted for the following reasons:

- Granting the variance will not be contrary to the public interest as it addresses the safety concerns of blocking the roadway and reduces congestion.
- In the spirit of the Ordinance, the reduced front yard setback is in keeping with the historic character of the neighborhood.
- Substantial justice will be done as the neighborhood and public interest concerns will be resolved.
- The value of surrounding properties will be maintained.
- The special conditions of the property are the tightness of the neighborhood and historical land use patterns.

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**A) Case # 1-1**

Petitioners: Brian M. Regan & Susan M. Regan  
Property: 28-30 Dearborn Street  
Assessors: Map 140, Lot 1  
Zoning District: General Residence A

Description: Divide an existing nonconforming lot containing two, two-family dwellings into two lots each containing one, two-family dwelling.

Rehearing Requests:

- Variance from Section 10.331 to allow a lawful nonconforming use to be extended.
  - Variances from Section 10.521:
    - Lot 1
      - To permit a lot with 6,750 of lot area where 7,500 s.f. is required.
      - To permit a lot with 3,375 s.f. of lot area per dwelling unit where 7,500 s.f. is required.
      - To permit 55.15' of continuous street frontage where 100' is required.
      - To permit a side yard setback of 3.7' where 10' is required.
    - Lot 1-1
      - To permit a lot with 6,432 s.f. of lot area where 7,500 s.f. is required.
      - To permit a lot with 3,216 s.f. of lot area per dwelling unit where 7,500 s.f. per unit is required.
      - To permit 90.15' of continuous street frontage where 100' is required.
- (This petition was postponed from the January 17, 2012 meeting.)*

**Action: (Case #1-1)**

The Board voted to grant the variances as presented and advertised.

**Stipulations:**

1. That the 1,129 SF +/- strip of land conveyed to the abutter, Regan Electric, remain as open space except that any existing paving within the strip be allowed to remain in place.

**Review Criteria:**

- Over the past several months, the project has been analyzed extensively and scrutinized by the Board. Thus, with the previous setback and traffic safety issues resolved, granting the variances will not be contrary to the public interest.
- With one structure per lot, the spirit of the Ordinance will be observed.
- Substantial justice will be done by allowing the proposed improvements to the neighborhood.
- The value of surrounding properties will not be diminished and may improve as a result of the proposed improvements.
- A hardship exists in achieving a reasonable use for this property as it is located within a unique and historically urban neighborhood with a number of setback and infrastructure challenges.

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**D) Case # 1-3**

Petitioner: Sam & Lea Chase

Property: 604 Lincoln Avenue

Assessors: Map 148, Lot 15

Zoning District: General Residence A

Description: Construct a 2½-story, 4' x 25' addition to the existing building and replace a 6' x 16' deck with a 2½-story, 6' x 16' addition.

Requests: 1. A dimensional Variance from Section 10.321 & Section 10.521 to increase the building coverage from 32% to 34%± where a maximum of 25% is permitted.

***This petition has been revised. The original request, for a 4' x 19' 2 ½ story addition to the existing building, was postponed from the January 17, 2012 meeting.***

**Action:**

The Board voted to **grant** the petition as presented and advertised.

**Stipulations:**

None

**Review Criteria:**

The petition was granted for the following reasons:

- Modifying a structure in keeping with the character of the neighborhood will not be contrary to the public interest.
- With no substantial increase in the lot coverage, the spirit of the Ordinance will be observed.
- Substantial justice will be served by allowing improvements to the structure with no substantial changes.
- The small increase in lot coverage will not diminish the value of surrounding properties.
- The proposed plan will allow a structure, destroyed by fire, to be rebuilt with reasonable modifications.

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**IV. PUBLIC HEARINGS**

1) **Case # 2-1**

Petitioners: Deer Street Associates, owner, Robert Marchewka, applicant

Property: 165 Deer Street, Building #1

Assessors: Map 125, Lot 17

Zoning District: Central Business B

Description: Rental and storage of motorized scooters.

Requests: 1. A use Variance from Section 10.440, Use #11.10 to permit the rental and storage of motorized scooters in a district where such use is not allowed.

**Action:**

The Board voted to **grant** the petition as presented and advertised.

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- This is a logical use for the facility which will not be contrary to the public interest or the spirit of the Ordinance.
- Substantial justice will be served by allowing a vacant spot to be filled with no negative impact.
- The scope of this operation will be limited by the building size and on-site facilities so that the value of surrounding properties will not be diminished.

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2) **Case # 2-2**

Petitioner: Raymond Wilkins  
 Property: 973 Islington Street  
 Assessors: Map 172, Lot 5  
 Zoning District: Business  
 Description: Wholesale HVAC and cooling equipment.  
 Requests: 1. A use Variance from Section 10.440, Use #13.11 to permit the wholesale storage of HVAC and cooling equipment in a district where such use is not allowed.

**Action:**

The Board voted to **grant** the petition as presented and advertised.

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- A suitable use for this property will not be contrary to the public interest.
- The use is compatible with the area and is less intrusive than previous uses so that the spirit of the Ordinance will be observed.
- In the justice balance test, there will be no benefit to the general public if the petition were denied.
- Located in a building at the back of the property and creating less traffic than retail operations, the proposed use will not result in the diminution in the value of surrounding properties.
- The structure is set way back from the street hindering visibility and creating a hardship in locating suitable tenants.

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**3) Case # 2-3**

Petitioner: Carole J. Hicks  
 Property: 496 Lincoln Avenue  
 Assessors: Map 133, Lot 48  
 Zoning District: General Residence A  
 Description: Construct a 34' x 22' 2-story rear addition with basement garage.  
 Requests: 1. A dimensional Variance from Section 10.321 to allow a lawful nonconforming building to be extended or enlarged in a manner that is not in conformity with the Zoning Ordinance.  
 2. A dimensional Variance from Section 10.321 & Section 10.521 to intensify a right side yard setback of 5'4" ± where 10' is the minimum setback required.  
 3. A dimensional Variance from Section 10.321 & Section 10.521 to increase the building coverage from 31.6% to 37.7%± where the maximum building coverage allowed is 25%.

**Action:**

The Board voted to **deny** the petition as presented and advertised.

**Review Criteria:**

The petition was denied for the following reasons:

- The public interest would not be served by an addition of this scale which is out of context with neighborhood structures and would negatively alter the essential characteristics of the neighborhood.
- The light and air protected by the Ordinance would be negatively affected by an increase in lot coverage of more than 50% over what is allowed in the district.
- As supported by testimony from abutters, the impact of essentially adding a second dwelling to the existing structure would diminish the value of surrounding properties.
- A hardship in the land necessitating this type of structure was not demonstrated and it was felt that a revised design could be proposed with much less impact on the neighborhood.

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**4) Case # 2-4**

Petitioners: Wayne & Marie Gagnon

Property: 171 Sagamore Avenue

Assessors: Map 221, Lot 22

Zoning District: General Residence A

Description: Replace existing 20' x 21' shed/garage with a 21' x 20' garage.

Requests: 1. A dimensional Variance from Section 10.572 to allow a 21' x 20' accessory structure, 16'± in height, with a left side yard setback of 2.25'± where 10' is the minimum setback required and a rear yard setback of 5'± where 12' is the minimum required.

**Action:**

The Board voted to **grant** the petition as presented and advertised.

**Stipulations:**

None

**Review Criteria:**

The petition was granted for the following reasons:

- The public interest will not be affected by this minor configuration change.
- While the length and width measurements will be interchanged, the footprint will remain the same with a slight increase in conformance to the Ordinance requirements.
- The impact on the value of surrounding properties will, if anything, be a positive one.
- The special condition of the property is that the garage/shed already exists in this location and the slight change in alignment will be an improvement.

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**5) Case # 2-5**

Petitioners: Michael De La Cruz, owner, Tom Holbrook, applicant

Property: 142 Fleet Street (63 Congress Street)

Assessors: Map 117, Lot 5

Zoning District: Central Business B

Description: Install a 22" x 38" (5.8 s.f.) projecting sign.

Requests: 1. A dimensional Variance from Section 10.1253.50 to allow a sign to project 43" ± over the sidewalk where a sign is allowed to project no more than one-third of the width of the sidewalk (20" ±).

**Action:**

The Board voted to **grant** the petition as presented and advertised.

**Stipulations:**

None

**Other:**

**Review Criteria:**

The petition was granted for the following reasons:

- This sign is of a reasonable size to identify the business for the public without requiring excessive relief from the Ordinance.
- In the justice balance test, the benefit to the applicant in granting the variance would not be outweighed by any detriment to the general public.
- With similar signs on this street, the value of surrounding properties will not be diminished.
- The sign allowed by this narrow sidewalk would not provide the same needed visibility as a reasonably larger sign.

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**6) Case # 2-6**

Petitioner: MJS Realty Trust, M. J. Shafmaster & M. J. Sevigny, Trustees  
 Property: 860 State Street  
 Assessors: Map 145, Lot 45  
 Zoning District: General Residence C  
 Description: Construct a 7' x 4' cantilevered, second floor, rear balcony.  
 Requests: 1. A dimensional Variance from Section 10.521 to allow a rear yard setback of 16'± where 20' is the minimum setback required.

**Action:**

The Board voted to **deny** the petition as presented and advertised.

**Review Criteria:**

The petition was denied for the following reasons:

- The petition failed to meet all the standards necessary to grant a variance.
- An elevated balcony only 16'± from the rear property line would be contrary to the spirit of the Ordinance and could negatively impact the value of surrounding properties.
- There was no hardship in the land demonstrated to justify a variance.

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**7) Case # 2-7**

Petitioners: National Block II LLC, owner, Portsmouth Buddhist Center, Inc., applicant  
 Property: 40 Congress Street  
 Assessors: Map 117, Lot 40  
 Zoning District: Central Business B  
 Description: Convert an existing vacant space to a religious use.  
 Requests: 1. A Special Exception under Section 10.440, Use 3.11 to allow a religious use in a district where such use is allowed by special exception.

**Action:**

The Board voted to grant the petition as presented and advertised with the following stipulation.



**Stipulations:**

1. That the Special Exception shall run with the lease, and any subsequent renewals, of the Portsmouth Buddhist Center at this property location.

**Review Criteria:**

The petition was granted for the following reasons:

- There are no special requirements that would be different from the current office space use.
- This use will create no hazard to the public or adjacent property due to fire, explosion, or release of toxic materials.
- With the anticipated number of visitors, there will be no significant increase in traffic or excessive demand on municipal services.
- There will be no changes to the structure so that stormwater runoff will not be affected.
- The level of noise will not increase and there will be no detriment to surrounding property values.

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**V. OTHER BUSINESS**

A work session with the Planning and Legal Departments regarding staff reports was proposed for March 27, 2012. After Board Members check their schedules, a final date will be confirmed.

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**VI. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 10:20 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary