

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 April 17, 2012 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Susan Chamberlin, Charles LeMay, Chris Mulligan, Alternate: Robin Rousseau

EXCUSED: Derek Durbin, David Rheume, Alternate: Patrick Moretti

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I. APPROVAL OF MINUTES

A) January 17, 2012

The Minutes were approved, with two minor changes, by majority voice vote. Mr. Mulligan abstained.

B) February 21, 2012

The Minutes were approved, with one minor correction, by majority voice vote. Mr. Mulligan abstained.

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II. NEW BUSINESS

A) Acceptance of April 10, 2012 Memorandum from Robert P. Sullivan, City Attorney, regarding property located at 604 Lincoln Avenue.

The Board voted to **accept** the memorandum and allow the applicants to rely on the February 21, 2012 approval of the Board Adjustment for a renovated structure and additions as applying to, and authorizing, the issuance of a building permit to rebuild the structure and add the

additions. The Building Inspector will review and approve construction drawings/sketches ensuring compliance with the February 21, 2012 approval.

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III. OLD BUSINESS

A) Case # 3-9

Petitioner: Commerce Way, LLC

Property: Commerce Way & Woodbury Avenue

Assessor Plan 216, Lot 1

Zoning District: General Business

Description: Modify existing free-standing sign and add a second free-standing sign.

Requests: 1. Variance from Section 10.1243 to permit two free-standing signs on a lot where only one free-standing sign is allowed.

2. A dimensional Variance from Section 10.1251.20 to permit a free-standing sign with a sign area of 124.4± s.f. where 100 s.f. in sign area is the maximum allowed.

(This petition was postponed for more information at the March 20, 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:

- A slightly smaller, modernized replacement sign will not be contrary to the public interest. The additional sign will alert the public to the location of emergency veterinary services.
- It is in the spirit of the Ordinance to provide a smaller sign that will be easily understood by drivers seeking information.
- The emergency related message of the smaller sign would be lost if it had to be added to the larger sign.
- There is adequate space so that the signs won't look oversized or out of place.
- The special conditions of the property are that the buildings are located in a visually confusing area and can't be seen from Woodbury Avenue. The signs will be helpful in directing the public to the services they offer.

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IV. PUBLIC HEARINGS

1) Case # 4-1

Petitioners: Angelique & Michael Murray

Property: 17 Thaxter Road
 Assessor Plan 166, Lot 52
 Zoning District: Single Residence B
 Description: Replace existing storage building and a portion of rear deck with 1160± s.f two-car garage/addition.
 Request: 1. A dimensional Variance from Section 10.521 to allow a rear yard setback of 18’6”± where 30’ is the minimum required.
 2. A dimensional Variance from Section 10.521 to increase the building coverage to 21% where 20% is the maximum 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:

- Removal of a commercial use structure from a lot in a residential zone will not be contrary to the public interest.
- The property will be made more conforming as to the rear setback and the addition will abut a commercial building to the rear so that the spirit of the Ordinance will be observed.
- Substantial justice will be served by allowing replacement of an unused structure with a useful addition.
- With a structure more accommodating to a residential district the value of surrounding properties will, if anything, increase.
- The special conditions of the property creating a hardship are its location with a busy street to the west and a commercial building close to the rear property line.

2) Case # 4-2

Petitioners: Robin G. Bianchi, owner & Andrea Rossetto, applicant
 Property: 90B Fleet Street
 Assessor Plan 117, Lot 41B
 Zoning District: Central Business B
 Description: A retail gelato shop with indoor tables and chairs with no off-street parking.
 Request: 1. Variance from Section 10.1115.20 and the requirements of 10.1115.30 to allow no off-street parking spaces to be provided where 1 space per 100 s.f. Gross Floor Area is 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:

- This type of business will cater more to foot traffic rather than serving as a destination business involving vehicles and parking.
 - Under the Ordinance, it is difficult to open a shop that is less than the traditional destination restaurant. A retail operation would not have to meet the same requirements.
 - There have been a variety of uses at this location and in the nearby area so that the value of surrounding properties will not be diminished.
 - A hardship would be created if the variance were denied as the inability to provide the required parking fee would prevent the opening of this shop and the leasing of currently vacant space.
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3) Case # 4-3

Petitioner: 750 Lafayette LLC, owner, Summit Land Development, applicant

Property: 750 (&720) Lafayette Road

Assessor Plan 244, Lots 7 and 8

Zoning District: Gateway

Description: A single-lane drive-through facility in association with construction of a 4,000± s.f. bank.

Request: 1. Special Exception under Section 10.440, Use 19.40 to allow a one-lane drive-through facility as an accessory use to a permitted principal use.

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 use is allowed by Special Exception.
- There does not appear to be any negative impact on traffic that has not been addressed by the total redesign of the site.
- A drive-through will present no hazard to the public or adjacent property from fire explosion or release of toxic materials.
- This is already a busy commercial area so that there will be no change in the essential characteristics of the area or detriment to property values.
- There will be no excessive demand on municipal services. This will be one drive-through for a bank on a road with a number of other banks so that the demand will be spread out.
- With better on-site treatment, there will be no increase in storm water runoff.

4) Case # 4-4

Petitioners: Five Way Realty LLC, Two Way Realty LLC, & Richard P. Fecteau

Property: 80-100-120 Spaulding Turnpike

Assessor Plan 236, Lots 38, 37 & 33

Zoning District: General Business

Description: Storage, offices and automobile dealership with parking and signage.

- Requests:
1. A Variance from Section 10.571 to allow an accessory use in a Required front yard.
 2. A Variance from Section 592.20 to allow the sales, rental, leasing, Distribution and repair of vehicles and related equipment, parking, display and storage within 200' of a Residential District.
 3. A Variance from 10.843.21 to allow vehicles sales, use and parking And outdoor storage and display within 40' of the front street right-of-way.
 4. A Variance from Section 10.1113.31 to allow off-street parking areas, accessways, maneuvering areas and traffic aisles within 100' of a Residential District.
 5. A Variance from Section 10.1113.41 to allow off-street parking areas, accessways, maneuvering areas and traffic aisles within 40' of the front lot line.
 6. A Variance from Section 10.1243 to allow a second 100 s.f.± free-standing sign where only one free-standing sign is allowed on the combined lots.

Action:

The Board voted to **grant** the petition as presented with the following stipulations.

Stipulations:

- That the variances will not take effect until the legal merger of the three lots (80, 100 and 120 Spaulding Turnpike, Plan 236, Lots 38, 37 & 33) into one lot is complete.
- That, after the merger into one lot, there will not be more than the two approved 100 s.f. free-standing signs on the merged lot.
- That the area in front of the auto detailing building (currently Plan 236, Lot 38 with an address of 80 Spaulding Turnpike) will not be used for parking, display, or queuing.

Other:

A factor in the Board decision was testimony by the applicant that the proposed changes, including provisions for a different access route for delivery trucks, would result in an improvement in terms of past traffic problems in the nearby residential area.

It was noted that, as contained in the Legal Notice and Agenda, Request #6 was a duplicate of Request #5 and the correct number of variances requested and granted is six, as listed above.

Review Criteria:

The petition was granted for the following reasons:

- Continuing a use which has been on one of the lots to be merged for a number of years will not alter the essential character of the neighborhood or threaten the public health, safety or welfare so that granting the variances will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as the impact of the requirements is very different with a property fronting on the turnpike than one fronting on an in-town street.
- Regarding the 200’ proximity to a residential area requirement, the area appears to be an adequate distance away from the actual residences, buffered by a 300’ power line right-of-way.
- The benefit to the applicant, in granting the variances, will not be outweighed by any corresponding harm to the general public or other individuals.
- Improving this section as proposed would not diminish the value of surrounding properties.
- This is a unique property, in proximity to a turnpike, a major industrial development site, a power line easement and similar uses, that cannot be used in strict conformance with the Ordinance. Continuing a long standing car dealership would be a reasonable use for the expanded site.
- Two, 100 s.f. free-standing signs on the combined lot is reasonable for a business located on a busy highway in this district.

Prior to issuance of a building permit, the applicant shall submit a voluntary lot merger plan to the Planning Department.

5) Case # 4-5

Petitioner: Tammy L. Byron, owner & Scott Broughton, applicant

Property: 633 Dennett Street

Assessor Plan 161, Lot 34

Zoning District: General Residence A

Description: Construct an 8’ x 10’ shed, 11’6”± in height at the rear of the property.

- Request:
1. A dimensional Variance from Section 10.571 to allow a side yard setback of 2’ where 10’ is the minimum required.
 2. A dimensional Variance from Section 10.573.20 to allow a rear yard setback of 4’ where 10’ 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:

- Tucking the proposed shed into the corner of the lot next to the neighbor’s garage will not be contrary to the public interest.
- The spirit of the Ordinance will be observed by improving the overall green space on the lot and the neighborhood layout. Conforming completely to the setbacks would place the shed in the middle of the yard while the corner would still be overshadowed by the neighboring structure.
- There are similar options for storage on area lots and allowing this property owner to have a place to store outdoor materials will not diminish the value of surrounding properties.
- One of the special conditions of the property is that a structure which would meet the setbacks would be less attractive to the neighborhood. A large development is also under construction across the street making it important to preserve as much of the rear yard as possible.

6) Case # 4-6

Petitioners: Joanne F. DeWolf & Timothy G. Foley, Jr.

Property: 20 Marjorie Street

Assessor Plan 232, Lot 21

Zoning District: Single Residence B

Description: Construction of a single family home with attached garage.

Requests: 1. A dimensional Variance from Section 10.521 to allow a rear yard setback of 18.6’± where 30’ is the minimum required.

2. A dimensional Variance from Section 10.521 to increase the building coverage to 27%± where 20% is the maximum allowed.

Action:

A motion to grant the petition **failed to pass and the petition was denied.** It was felt that the project had changed significantly from the time the original variances were granted and, where this was new construction, a structure could be built that was more in compliance with the Ordinance.

The following Agenda items were postponed to the April 24, 2012 meeting.

7) Case # 4-7

Petitioner: Richard S. Bean

Property: 324-334 Parrott Avenue

Assessor Plan 129, Lot 36 & 37

Zoning District: General Residence A

Description: Convert a single family to a multi-family dwelling with a two-car garage.

- Request:
1. A Variance from Section 10.311 to allow a structure on a lot with less than the required minimum lot area and street frontage.
 2. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended or enlarged in a manner that is not in conformity with the Zoning Ordinance.
 3. A Variance from Section 10.324 to allow a lawful nonconforming structure to be added to or enlarged where the addition or enlargement does conform to all the regulations of the Zoning Ordinance.
 4. A dimensional Variance from Section 10.521 to allow a lot area per dwelling unit of 3,211 s.f.± where 7,500 s.f. per dwelling unit is required.
 5. A dimensional Variance from Section 10.521 to allow 28%± building coverage where 25.3% exists and 25% is the maximum allowed.

8) Case # 4-8

Petitioners: Theodore M. Stiles & Joan Boyd

Property: 28 South Street

Assessor Plan 102, Lot 43

Zoning District: General Residence B

Description: Replace existing 22.5' x 14.5' garage with a 30'± x 14.5'± structure with dormers.

- Request:
1. A 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 10.521 to allow a right side yard setback of 1.6'± where 10' is the minimum required.

9) Case # 4-9

Petitioners: Donovan-Hess Family Rev. Trust, Jane M. Donovan & William Hess, Trustees

Property: 54 Rogers Street

Assessor Plan 116, Lot 44

Zoning District: Mixed Residential Office

Description: Replace existing sunroom with 18'9"± x 13'6"± 2-story addition, construct front and rear porches, reduce existing garage

- Request:
1. A 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 10.521 to allow a left side yard setback of 4'± where the minimum setback required is 10'.
 3. A dimensional Variance from Section 10.521 to allow 42%± building coverage where 39% ± exists and 40% is the maximum allowed.

V. OTHER BUSINESS

No other business was presented.

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VI. ADJOURNMENT

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

Respectfully submitted,

Mary E. Koepenick, Secretary