

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 19, 2013 in the School Board Conference Room, Ground Floor, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Susan Chamberlin, Charles LeMay, Christopher Mulligan, David Rheame, Alternate: Patrick Moretti

EXCUSED: Derek Durbin, Robin Rousseau

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I. APPROVAL OF MINUTES

A) Excerpt of Minutes, Board of Adjustment Meeting, January 15, 2013

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

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II. OLD BUSINESS

A) Case # 12-6

Petitioner: Justin D. Setchell

Property: Fairview Avenue off Maplewood Avenue

Assessor Plan 220, Lot 66

Zoning District: Single Residence B

Description: Construct a new single-family home.

Requests: 1. A dimensional Variance from Section 10.521 to allow a rear yard of 10'± where 30' is the minimum required.

2. A dimensional Variance from Section 10.521 to allow a lot area of 6,000 ± square feet where 15,000 square feet is the minimum required.

3. A dimensional Variance from Section 10.521 to allow a lot depth of 60'± where 100' is the minimum required. *(This petition was continued from the January 15, 2013 meeting)*

Action:

The Board voted to again **postpone** the conclusion of the hearing, to the March 19, 2013 meeting, to allow the Board adequate time to study the plans and exhibits requested at the January 15, 2013 meeting.

Other:

The requested plans and exhibits were ready for submittal at the February 19, 2013 meeting and withdrawn when the Board postponed the hearing. These will need to be resubmitted with adequate time for the Board’s review prior to the March 19, 2013 meeting.

B) **Case # 1-4**

Petitioner: 973 Partners LLC, owner, Portsmouth Music and Arts Center, applicant

Property: 973 Islington Street

Assessor Plan 172, Lot 5

Zoning District: Business

Description: Establish a music and art studio.

Requests: 1. A Variance from Section 10.1112.30 to allow **16** off-street parking spaces to be provided where 60 parking spaces are required.

2. A Special Exception under Section 10.440, Use #4.42 to allow a music & art studio for instruction in a district where the use is only allowed by Special Exception. (*This petition was postponed from the January 15, 2013 meeting and amended as indicated above in italics and bolded.*)

Action:

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

Stipulations:

None.

Review Criteria:

The **Special Exception** was granted for the following reasons:

- The standards for this particular use permitted by Special Exception are met.
- There will be no hazard to the public or adjacent property from fire explosion or release of toxic materials.
- There is no indication that a detriment will result to property values due to a change in the essential characteristics of the neighborhood or from smoke, dust of other pollutants.
- This use is not significantly different from other uses in the area so that there will be no creation of a traffic safety hazard or increase in the level of traffic.
- What is basically a location for adults and children to go for music lessons will not create an excessive demand on municipal services or increase in storm water runoff.

The **Variance** was granted for the following reasons:

- It will not be contrary to the public interest to allow less parking for this similar use.
- The spirit of the Ordinance is observed as had there been a land use classification defined in the Ordinance that was closer to this particular use, it would likely require far fewer than 60 spaces.
- The hours of peak activity will be in keeping with the area and provision has been made for overflow parking on adjacent lots so that the value of surrounding properties will not be diminished.

- The special conditions of the property include an odd lot without frontage and little space for parking so that a number of alternative permitted uses may not be as good a fit for the space.

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III. PUBLIC HEARINGS

1) Case #2-1

Petitioners: Courtyard Condominium Association, owner and Ranger Property Development Realty Trust, applicant

Property: 50 Daniel Street, Unit 1

Assessor Plan: 106, Lot 17-1

Zoning District: Central Business B

Description: Install a 13± s.f. projecting 56”± from the building.

Requests: 1. A Variance from Section 10.1253.50 to allow a sign to project more than one-third the width of the sidewalk.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest as the essential character of the neighborhood will not be altered nor public health, safety or welfare impacted by simply changing the face of a sign that has been in place for 25 years.
- It is in the spirit of the Ordinance to allow signage consistent with a retail business in a retail environment.
- In the justice balance test, the loss to the applicant if the existing sign had to be removed would not be balanced by any benefit to the general public.
- The value of surrounding properties will not be changed by allowing the existing size sign to continue to promote a retail business.
- The special conditions of the property creating a hardship are its location in a central business zone where a nonconforming sign in an existing frame has been in place for over 25 years.

2) Case # 2-2

Petitioner: Bruce C. Teatrowe

Property: 226 Crescent Way

Assessor Plan: 212, Lot 128

Zoning District: General Residence B

Description: Construct a 10’x16’ rear deck.

- Requests:
1. A Variance from Sections 10.321 and 10.324 to allow a nonconforming addition to a lawful nonconforming building.
 2. A Variance from Section 10.521 to allow a 5'± right side yard setback where 10' is required.
 3. A Variance from Section 10.521 to allow a 23'± rear yard setback where 25' is required.
 4. A Variance from Section 10.521 to allow building coverage of 31.3%± where 30% 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:

- Granting the variance will not be contrary to the public interest as a deck will be in keeping with the essential character of this neighborhood.
- The lot backs on a large buffer area, ensuring that the light and air protected by the Ordinance will be preserved.
- Substantial justice will be served by allowing a deck which will not unreasonably encroach upon neighboring properties.
- In a neighborhood with many similar decks, the value of surrounding properties will not be diminished.
- The special conditions of the property creating a hardship are the unusual shape of the lot and the location of the lot line in the center of a shared duplex structure so that it is difficult to place an addition without infringing into the setbacks.

3) Case # 2-3

Petitioners: Joseph and Barbara Lavin

Property: 1250 Woodbury Avenue

Assessor Plan: 237, Lot 66

Zoning District: Mixed Residential Business

Description: Change of use from a retail use to a trade use.

Request : 1. A Special Exception under Section 10.440, Use #7.40 to allow use of a specified portion of the premises as a plumbing shop which is only allowed by Special Exception in this district.

Action:

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

Stipulations:

None.

Review Criteria:

The Special Exception was granted for the following reasons:

- The standards for this particular use permitted by Special Exception have been met.
- Based on the materials provided, there is no potential for any hazard to the public or adjacent property from fire explosion or release of toxic materials.
- This use meets the definition of a mixed residential use and is similar in character to the previous business so that there will be no change in the essential character of the neighborhood or decrease in surrounding property values.
- Any traffic would be generated by the scheduled movement of work vehicles, with occasional customers, so that there will be no creation of a traffic safety hazard or increase in the traffic normal for this area.
- Similar to a business operating in the location for some time, this new use should not result in any increase in the demand for municipal services or storm water runoff.

4) Case # 2-4

Petitioners: Timothy M. and Beth Finelli

Property: 297 South Street

Assessor Plan: 111, Lot 23

Zoning District: General Residence B

Description: Demolish existing and construct new 22' x 28' x 19'6" high garage with gable roof.

- Requests:
1. A Variance from Sections 10.321 to allow a non-conforming structure to be reconstructed in a manner that is not in conformance with the Ordinance.
 2. A Variance from Section 10.521 to allow a 4.5'± right side yard setback for an accessory structure where 10' is required.
 3. A Variance from Section 10.521 to allow a 3'± rear yard setback where 14.6'± is required for an accessory structure.
 4. A Variance from Section 10.521 to allow building coverage of 39%± where 30% 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:

- This home is similar to others in the neighborhood in the orientation of the buildings to the property lines so that granting the variance will not be contrary to the public interest.

- The spirit of the Ordinance will be observed as the replacement garage will encroach less into the setbacks than the existing garage.
- In the justice balance test, granting the variance will allow the property owner to have an updated garage with no detriment to the general public.
- With a structure similar to that being replaced but more attractive in appearance, the impact on the value of surrounding properties will, if anything, be beneficial.
- The special conditions of the property creating a hardship are the narrowness of the lot with two sides bordering on a public parking lot.

5) **Case # 2-5**

Petitioners: Timothy & Mary Ellen McNamara

Property: 99 Orchard Street

Assessor Plan 149, Lot 47

Zoning District: General Residence A

Description: Construct a 6' x 8' dormer on the right side of the house.

Requests: 1. A Variance from Sections 10.321 and 10.324 to allow a nonconforming addition to a lawful nonconforming building.

2. A dimensional Variance from Section 10.521 to allow an upward extension of a structure with a nonconforming right yard setback of 0'± where 10' is the minimum required.

Action:

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

Stipulation:

- That obscured or translucent glass be installed in the dormer window so that privacy will be protected while allowing light to pass through.

Review Criteria:

The petition was granted for the following reasons:

- Constructing a modest dormer on this structure in a neighborhood with similar proximity to abutting homes will not be contrary to the public interest or decrease the value of surrounding properties.
- This is a small addition which will allow the interior staircase to meet code requirements while maintaining the light and air for abutters that is protected by the Ordinance.
- Substantial justice will be done by allowing the applicants safe access to their third floor while maintaining, with the stipulation, privacy for their neighbor.
- The special condition creating a hardship is the placement and design of this older building which requires some changes in order to meet the building code requirements.

6) **Case # 2-6**

Petitioners: Michael A. and Janet McCann

Property: 80 Pearson Street

Assessor Plan: 232, Lot 106

Zoning District: Single Residence B

Description: Construct a 15' x 15' right side addition.

- Requests: 1. A Variance from Section 10.521 to allow a right side yard setback of 7'± where 10' is required.
2. A Variance from Section 10.521 to allow building coverage of 21%± where 20% is the maximum allowed.

Action:

The Board voted to **grant** the petition as presented and advertised, with an adjustment to the size of the addition.

Stipulations:

As presented by the applicant, the size of the addition will be 14' x 15'.

Review Criteria:

The petition was granted for the following reasons:

- This one story addition is compatible with the essential characteristics of the neighborhood so that granting the variance will not be contrary to the public interest and will support the spirit of the Ordinance.
- Granting the variance will benefit the homeowner with no counter-balancing harm to the general public. Evidence of support from many of the abutters was presented.
- This addition will blend into the neighborhood, increasing the value of this and the surrounding properties.
- The hardship in the property is that this is a small lot and the modest addition will be placed in the only logical place with respect to the lot and the way in which the home is situated on it.

7) Case # 2-7

Petitioners: B&M Wharf, LLC

Property: 70 State Street

Assessor Plan: 105, Lot 14

Zoning District: Central Business B

Description: Convert second floor restaurant use to residential.

- Requests: 1. A Variance from Section 10.575 to allow a dumpster to be located 2.5'± from a lot line where 10' is required.
2. A Special Exception under Section 10.335 to allow a lawful nonconforming use that is equally or more appropriate to the district than the existing use and has less adverse impact on adjacent properties.

Action:

The Board voted to **grant** the Variance from Section 10.575 and the Special Exception under Section 10.335 as presented and advertised with the acknowledgement that an additional advertised Variance from Section 10.1111.20 was not required.

Stipulations:

None.

Review Criteria:

The special exception was granted for the following reasons:

- With the establishment by the applicant that the pre-existing nonconformance to the parking requirement would be reduced with the change of use, the standards for this use as permitted by special exception have been met.
- This use has been place for decades so there is no reason to expect that there will be any hazard to the public or adjacent property from fire explosion or release of toxic materials.
- This conversion will not result in any detriment to property values or change in the essential characteristics of the area from smoke, dust, other pollutants or unsightly outdoor storage.
- The increase in residential use would have required less parking than the existing uses so that there will be no increase in the level of traffic congestion in the area.
- With no change to the exterior building or footprint, there will be no increase in demand on municipal services or storm water runoff.

The variance was granted for the following reasons:

- The placement of the dumpster will not alter the essential characteristics of the neighborhood nor threaten the health, safety or welfare of the public so that the public interest will not be negatively affected and the spirit of the Ordinance will be observed.
- In the substantial justice test, the loss to the applicant, if the petition were denied, would not be outweighed by any possible benefit to the general public.
- The value of surrounding properties will, if anything, improve as the dumpster area will be upgraded with additional screening for neighbors.
- The special condition creating a hardship is that there is no open space available in which to fit a dumpster. The applicant has proposed the most reasonable location to support the operation of a restaurant so that there is no fair and substantial relationship between the purposes of the Ordinance and their application to this property.

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IV. OTHER BUSINESS

No other business was presented.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:50 p.m.

Respectfully submitted,

Mary E. Koenick, Secretary