

**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 22, 2014** 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, Derek Durbin, Charles LeMay, Christopher Mulligan, David Rheame

**EXCUSED:** Alternate: Patrick Moretti

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**I. APPROVAL OF MINUTES**

A) June 18, 2013

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

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B) August 20, 2013

It was moved, seconded and passed by unanimous voice vote to accept the Minutes with minor corrections.

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C) October 15, 2013

It was noted that action on these Minutes was deferred to the April 29, 2014 meeting.

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D) October 22, 2013

It was moved, seconded and passed by unanimous voice vote to accept the Minutes with minor corrections.

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## II. PUBLIC HEARINGS - OLD BUSINESS

- A) Motion for Rehearing by Applicants regarding the overturning of a Certificate of Approval for property located at 173 – 175 Market Street.

The Board voted to **deny** the Motion for Rehearing. The Board’s decision was reached after extensive review of submitted documents and a thorough hearing and the Board determined that it made no errors in procedure or application of the law. Additionally, the Board found that there was no new information submitted that had not been available at the time of the public hearing.

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- B) Motion for Rehearing by Appellants regarding the granting of a Conditional Use Permit for property located at 173 – 175 Market Street.

### **Action:**

The Board voted to **deny** the Motion for Rehearing. The Board determined that there was no new information submitted that had not been available at the time of the public hearing and that it had made no errors in procedure or application of the law.

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- C) Case # 3-4

Petitioner: 303 Islington Street LLC

Property: 303 Islington Street

Assessor Plan 144, Lot 11

Zoning District: General Residence C

Description: Convert three office use units to dwelling units with an increase in required off-street parking spaces.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.440, Use #1.52 to allow conversion of a building existing on January 1, 1980 to four dwelling units with less than the required minimum lot area per dwelling unit.
2. A Variance from Section 10.812.12 to allow a dwelling existing on January 1, 1980 to be converted to additional dwelling units without complying with the minimum open space, maximum building coverage requirements, and off-street parking requirements.
3. A Variance from Section 10.1111.10 and 10.1112.30 to permit a change of use that provides 8 off-street parking spaces where 12 are required.
4. A Variance from Section 10.1114 to allow off-street parking spaces and accessways that do not comply with the off-street parking dimensional requirements.

*(This petition, postponed from the March 18, 2014 meeting, has been revised by the addition of Request #2.)*

**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:

- This use is permitted in this district by special exception.
- There is nothing in the proposed use for these units that will present a hazard to the public or adjacent property from fire explosion or release of toxic materials.
- A use in keeping with the neighborhood will not cause a detriment to property values in the vicinity from the scale of buildings, parking areas, smoke, dust or other pollutants or irritants or unsightly outdoor storage.
- The mix of uses on the property will not create a traffic safety hazard and should decrease the level of traffic congestion.
- Any increase in the need for some municipal services will be minimal.
- With no change to the building or parking areas, there will be no increase in storm water runoff onto adjacent properties or streets.

The variances were granted for the following reasons:

- The proposed change for this property, on the border of residential and commercial areas, will not alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public so that granting the variances will not be contrary to the public interest.
- The spirit of the Ordinance will be observed and substantial justice done as the property will be less nonconforming with regard to use as well as off-street parking spaces.
- The value of surrounding properties will not be diminished by a conversion to more residential units, a use which already exists on the property and which will be in keeping with the character of the neighborhood.
- The distinguishing conditions of the property are that it contains a large building on a small lot so that, while the required number of off-street parking spaces will be less than with the current uses, that full requirement cannot be met without a variance so that a hardship is created in converting to this reasonable use.

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D) Case # 3-6

Petitioner: PF Jax Real Estate, LLC, owner, Bryan Pappas, applicant

Property: 159 Middle Street

Assessor Plan 127, Lot 4

Zoning District: Mixed Residential Office

Description: Install a 2' x 5' free-standing sign.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1253.40, to allow a front setback of 1’6” ± where 5’ is required.
2. A Variance from Section 10.1253.30 to allow a sign height of 10’± where 7’ is the maximum allowed.

*(This petition was postponed from the March 18, 2014 meeting)*

**Action:**

The Board voted to **grant** the variance to allow a front setback of 1’6” where 5’ is required and to **deny** the variance to allow a sign height of 10’ so that the proposed sign must not exceed the 7’ maximum sign height permitted in this district.

**Stipulations:**

None.

**Review Criteria:**

The variance to permit a front setback of 1’6” was granted for the following reasons:

- Granting the variance will not be contrary to the public interest. There are signs in the area, with similar setbacks to the road and the public right-of-way so that this sign will be in keeping with the characteristics of the neighborhood.
- While the spirit of the Ordinance is to ensure that signs are as far back as possible, the building is close to the road limiting the area in which a sign can be placed to provide information as to the nature of the businesses on the property.
- Substantial justice will be done by allowing the property owner to make full and proper use of the property and allow them to fulfill a basic tenant expectation for identification in areas zoned to allow businesses.
- The value of surrounding properties will not be diminished, particularly with the maintenance of the 7’ maximum height requirement. The placement of this type of signage is similar to that of other properties in the area so that property values will not be negatively affected.
- There are special conditions that distinguish this property from other properties in this zoning district where it was anticipated that a 5’ setback from the right-of-way could be achieved. With the placement of this building and others in the immediate area, meeting the setback is difficult so that the property cannot be reasonably used in strict conformance with the Ordinance.

The variance to permit a sign height of 10’ was denied for the following reasons:

- The Board determined that, by varying the composition and relative size of the sign components, the 7’ maximum sign height permitted in this zone was achievable.
- The nature of vehicle and foot traffic in this area does not require an overly large sign to provide tenant identification.

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**III. PUBLIC HEARINGS – NEW BUSINESS**

- 1) Case # 4-1  
Petitioners: Summit 501 Islington LLC & Todd Baker Winslow Property Management  
Property: 501 Islington Street, #1A-2  
Assessor Plan 157, Lot 6-2  
Zoning District: Business  
Description: Install a 58"± x 102" ±, 10'± high free-standing sign.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:  
1. A Variance from Section 10.1253.10 to allow a front yard setback of 10'± where 20' 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 variance will not be contrary to the public interest and the spirit of the Ordinance will be observed as the sign will be in the same location as the existing sign but with an improved setback. The sign will provide information to the public while not changing the essential nature of the neighborhood.
- Substantial justice will be done. A new attractive sign benefits the applicant and the community with no harm to the general public.
- The value of surrounding properties will not be diminished. No harm will be done to the neighborhood and sign clutter will be reduced by the elimination of one sign.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to the size of the building, its siting on the lot and the shortened lot frontage. It is a reasonable compromise and use of the property to place the sign in this location in terms of visibility and the setback from the road.

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- 2) Case # 4-2  
Petitioners: Richard D. Bournival, Jr. & Alissa C. Bournival  
Property: Adjoining 2355 Lafayette Road  
Assessor Plan 272, Lot 9-6  
Zoning District: Gateway  
Description: Install an 8'± x 4'±, 8'± high free-standing sign.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:  
1. A Variance from Section 10.1530 to allow a free-standing sign for an accessory use on a lot adjacent to the lot containing the principal use or building.

**Action:**

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

**Review Criteria:**

The petition was denied as it failed to meet all of the criteria necessary to grant a variance.

- Granting the variance would be contrary to the public interest as the proposed sign would not fulfill the purpose of keeping the traffic flowing and indicating to the public where a turn can be safely made.
- The spirit of the Ordinance, which is to promote the public health, safety and welfare, would not be observed by a sign in the proposed location.

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3) Case # 4-3

Petitioner: 4 Amigos LLC

Property: 1390/1400 Lafayette Road

Assessor Plan 252, Lots 9 & 7

Zoning District: Gateway

Description: Install two free-standing signs, one with animation.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1251.20 to allow a 204 s.f. ± free-standing sign where 100 s.f. is the maximum allowed.
2. A Variance from Section 10.1243 to allow multiple free-standing signs on a lot where only one free-standing sign is permitted.
3. A Variance from Section 10.1223.20 to allow signs that move, flash or give the appearance of motion where such signs are prohibited.
4. Variances from Section 10.1253.10 to allow a sign 22' in height where 20' is the maximum allowed and Section 10.1253.20 to allow a sign between 2.5' and 10' above grade within 20' of an intersection.

**Action:**

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

**Stipulation:**

- The variances for height and animation are approved for the specific sign as presented, with the animation added solely to the restored “Yokens” sign and not the proposed 60” x 96” lower panel.

**Review Criteria:**

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest and would be within the spirit of the Ordinance as the character of the neighborhood will not be changed or the health, safety and welfare of the general public threatened by the proposed sign, which will not result in obstruction or over-clustering of signage on the property.
  - In the substantial justice test, the hardship to the applicant if the petition was denied would be significant in terms of time and expense while there would be no perceived benefit to the general public.
  - The value of surrounding properties would not be diminished by the restoration of an historic sign on this large lot.
  - The special distinguishing conditions of the property are that this is a large lot with multiple access points and a number of structures so that no fair and substantial relationship exists between the general public purposes of the Ordinance and their application to the property. The proposed use is a reasonable one which has been previously reviewed by the Planning Board in addition to this Board.
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## 4) Case # 4-4

Petitioner: 402 State Street, LLC

Property: 402 State Street

Assessor Plan 116, Lot 12

Zoning Districts: Central Business B and Downtown Overlay

Description: Allow a residential use on the ground floor.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.642 to allow a residential use on the ground floor in the Downtown Overlay District.

**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, which would be to maintain the overall character of the immediate mixed use area.
- The spirit of the Ordinance will be observed. The intent in the overlay district regarding first floor business uses would still be met with this use.
- Substantial justice will be done by allowing the applicant, who has made unsuccessful efforts to utilize the property for business purposes, the option of pursuing a residential use on the ground floor.
- Using the property exclusively as residential, which could be more beneficial to the area than a commercial use, will not diminish the value of surrounding properties.

- The special condition of the property is its residential appearance, within this overlay district, which is not ideally suited to first floor commercial use so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to this property. The proposed use is a reasonable one in this structure and area.
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5) Case # 4-5

Petitioner: KWA, LLC, owner, Tanya Hart, applicant

Property: 165 Court Street

Assessor Plan 116, Lot 27

Zoning District: Mixed Residential Office

Description: Establish new salon.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440, Use #7.20 to allow a personal services use in a district where this use is prohibited.
2. A Variance from Sections 10.1111.10 and 10.1112.30 to allow a change to a personal service use without providing the required parking.

**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 proposed use will not be contrary to the public interest, offering services while generating minimal traffic. Needed parking could be accommodated in the immediate area.
  - The spirit of the Ordinance to encourage businesses in appropriate areas will be observed as a currently vacant space will be filled by a use compatible with this mixed-use area, which contains similar personal services businesses.
  - In the substantial justice test, there is no overriding public concern that would argue against granting the request.
  - The value of surrounding properties in this mixed use area will not be diminished by a low impact use that would be confined within the building.
  - The special conditions of the property that distinguish it from others in the area are its corner location with no parking and small size which can accommodate only certain types of businesses. This is a reasonable use for this location where strict adherence to the parking requirement would be impossible for any use and is not necessary to achieve the purposes of the Ordinance.
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6) Case # 4-6

Petitioners: AHI Holdings, LLC, owner, Daniel E. Innis & Doug Palardy, applicants.

Property: 40 Court Street

Assessor Plan 127, Lot 1

Zoning District: Mixed Residential Office

Description: Establish beer and wine service in hotel lounge.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440, Use #9.51 to allow a restaurant with an occupant load of less than 250 in a district where this use is prohibited.
2. A Variance from Sections 10.1111.10 and 10.1112.30 to allow a change of use with 32 off-street parking spaces where 38 parking spaces are required.

**Action:**

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

**Stipulation:**

- That the maximum number of seats provided for this use, represented as being located in the former lower level lounge, would be 25.

**Review Criteria:**

The petition was granted for the following reasons:

- Granting the variances would not be contrary to the public interest and would be within the spirit of the Ordinance. A traditional bar or restaurant would have the potential to intensify the use and require additional parking which could impact the neighborhood but the applicants are proposing a true accessory use limited to members of the hotel.
- In the substantial justice test, the hardship to the applicant, which has made a significant investment, if the petition were denied would not be balanced by any perceived benefit to the general public.
- The value of surrounding properties will not be diminished by this use as proposed.
- There is no fair and substantial relationship between the general public purposes of the Ordinance and their application to this property. The Ordinance is designed to provide for intensifications in use where a bar or restaurant was proposed but this use, within a property designed as a hotel, will not result in any intensification.

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**IV. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 10:45 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary