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 regular meeting** on October 19, 2010 in Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Vice-Chairman David Witham, Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternate: Robin Rousseau

EXCUSED: Alternate: Derek Durbin

= =

I. APPROVAL OF MINUTES

A) June 22, 2010

It was moved, seconded and passed to accept the Minutes as amended.

- -

B) September 21, 2010

It was moved, seconded and passed to accept the Minutes as amended.

= =

II. PLANNING DEPARTMENT REPORTS

A) Board of Adjustment Rules & Regulations, Adopted as Amended May 18, 2010

The amended Rules & Regulations were distributed.

= =

III. PUBLIC HEARINGS

1) Case #10-1
Petitioners: Nicole R. Gregg Rev. Trust, Nicole R. Gregg, Trustee
Property: 13 Salter Street Assessor Map 102, Lot 28
Zoning district: Waterfront Business
Description: To change a nonconforming residential use with 5 residential units to a nonconforming residential use with 2 units and expand a nonconforming structure by adding a two story addition and an attached garage with less than the minimum required front and side yards.
Request: Special Exception under Section 10.335 to allow a lawful nonconforming use to be changed to a similar nonconforming use with impacts on the adjacent properties less adverse than the current use.
Variance from Section 10.321 to allow the expansion of a nonconforming structure.
Variance from Section 10.334 to allow a nonconforming use of land to be extended into part of the remainder of a lot of land.
Variance from Section 10.521 to allow a front yard of 26' where 30' is rquired.
Variance from Section 10.521 to allow a right side yard of 16.5' where 30' is required.

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

- With no effect on the essential characteristics of the neighborhood, granting the variance will not be contrary to the public interest.
- Light and air will be preserved on this large lot and the property will be brought into greater compliance so that the spirit of the ordinance will be observed.
- Substantial justice will be done as the project has been reviewed by the Historic District Commission and other bodies that look to the wetlands and other issues.
- Improving the property and making it more appropriate to the area will have no negative effect on the value of surrounding properties.
- The conditions of the property creating a hardship include tidal water on one side, proximity to an intersection on the other and a utility pole, all of which involve regulation from outside agencies.
- Due to the reduction in the number of residential units, all of the conditions for granting the special exception are met.

- -

2) Case # 10-2
Petitioners: Todd G. Merrill & Caroline Merrill
Property: 238 Lincoln Avenue Assessor Plan 130, Lot 5
Zoning district: General Residence A
Description: To remove the existing entryway and deck from the rear portion of the structure and locate a new entryway and deck on the right side of the structure.
Request: Variance from Section 10.321 to allow a nonconforming structure to be altered.

Variance from Section 10.521 to allow a rear yard of 12' where 20' is required.

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

- There will be no public interest in this relocated side entryway and the value of surrounding properties will not be diminished.
- Bringing a property closer to conformance will observe the spirit of the ordinance.
- Substantial justice will be done by allowing better access and use of the property while moving the entryway away from the neighbors' driveway.
- This is a corner lot which determines the way the setbacks are defined so that a variance is needed. The proposed new location is more centrally located and there is no other reasonably feasible alternative.

- -

3) Case # 10-3
Petitioner: Todd Eiseman
Property: 29 Morning Street Assessor Plan 163, Lot 18
Zoning district: General Residence A
Description: To demolish the existing garage at the rear of the property and construct a new one story addition to the home on the same footprint.
Request: Variance from Section 10.521 to allow a left side yard of 1' where 10' is required.
Variance from Section 10.521 to allow a rear side yard of 1' where 20' is required.
Variance from Section 10.521 to allow a building coverage of 57% where 57% currently exists and 25% is allowed
Variance from Section 10.321 to allow a nonconforming structure to be reconstructed.

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

- The public interest will not be adversely affected by the replacement of one structure with another in the same footprint.
- It is in the spirit of the ordinance to allow owners the maximum use of their property as long as there is no intrusion into the rights of others.
- In the justice balance test, there is no benefit to the general public that would outweigh the hardship on the owner if the variances were denied.
- Replacing a deteriorating structure with a new, code compliant one will be a plus for neighborhood property values as well as the homeowner.
- On this small constrained lot, there are very few alternatives to gain living space.

- -

4) Case # 10-4
Petitioners: Christian L. Berling Revocable Trust, Christian L. Berling Trustee
Property: 117 Ash Street Assessor Plan 150, Lot 36
Zoning district: General Residence A
Description: To allow the expansion of the existing home with a 2 story addition
Request: 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 3’± where 10’ is required.

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

- There will be no public interest in this addition on a lot located on a dead end street.
- No threat will be posed to the public health, safety and welfare and there will be adequate light and air so that the spirit of the ordinance will be observed.
- The value of surrounding properties will not be diminished.
- There would be no benefit accruing to the general public if the variance were denied that would balance the hardship on the property owner.
- The existing house is approximately 3’6” from the property line and the lot lines are not quite square so that it is necessary to go down to 3’1” for the addition.

- -

5) Case # 10-5
Petitioners: Celeste C. Ledoux & Christopher Ledoux
Property: 100 Dennett Street Assessor Plan 140, Lot 15
Zoning district: General Residence A
Description: To construct a front porch with a front yard of 9’6” where 15’ is required.
Request: Variance from Section 10.321 to allow the expansion of a nonconforming structure.
Variance from Section 10.521 to allow a front yard of 9’6”where 15’ is required.

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

- With many houses in the neighborhood perched on the front property lines, granting this variance will have no negative effect on the public interest.
- It is in the spirit of the ordinance to encourage the upgrading of a property with code compliant construction in a manner consistent with the neighborhood.
- In the justice balance test, there is no evidence that the public interest will be harmed by the granting of the variance while a hardship would be created for the property owner.
- Any effect on the surrounding property values will be a positive one.

- The existing house extends toward the front at the right-hand edge so that it is already 4' from the property line. The proposed porch will be set back further from the line.

= =

IV. OTHER BUSINESS

None was presented.

= =

V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 8:10 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary