

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 May 17, 2011 in Conference Room B, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire
PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Derek Durbin, Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Alternate: Robin Rousseau
EXCUSED: None

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I. APPROVAL OF MINUTES

A) March 15, 2011

The Minutes were approved as presented and advertised

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II. PLANNING DEPARTMENT REPORTS

The Chairman advised that two documents relating to the first two items on the agenda had been distributed.

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III. OLD BUSINESS

A) Case # 4-5
Petitioners: Brian M. & Susan M. Regan
Property: 28-30 Dearborn Street Assessor Map 140, Lot 1
Zoning district: General Residence A
Description: To divide an existing nonconforming lot containing two two-family dwellings into two lots, each containing one two-family dwelling, where both lots will have less than the required minimum lot area per dwelling unit and minimum

street frontage; one lot will have less than the required minimum lot area; and one lot will have less than the required side yard.

Requests: Variances from Section 10.521:

Lot 1 To permit a lot with 3,940 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 95’ of continuous street frontage where 100’ is required.

(This petition was postponed from the April 19, 2011 meeting.)

The petition was withdrawn at the request of counsel for the applicant.

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IV. PUBLIC HEARINGS

1) Case # 5-1

Petitioner: Brian M. Regan

Property: 28-30 Dearborn Street Assessor Plan 140, Lot 1

Zoning district: General Residence A

Description: To appeal decision of Code Official to allow a Variance application by one co-owner of the property without authorization from the second co-owner.

Request: Appeal from an Administrative Decision under Section 10.234.20

The appeal was withdrawn at the request of counsel for the appellant.

2) Case # 5-2

Petitioners: Ryan J & Molly Shaw Wilson

Property: 1360 South Street Assessor Plan 168, Lot 4

Zoning district: General Residence A

Description: To operate a pediatric occupational therapy business.

Requests: Special Exception under Section 10.440 Use# 19.22 to allow a Home Occupation 2.

After consideration, the Board voted to grant the petition as presented and advertised with the following stipulation:

- That no sign will be installed on the premises in connection with this business activity.

The petition was granted for the following reasons:

- There will be no hazard to the general public or adjacent properties from explosion or release of toxic materials with this type of business.
- With only one client at a time and sufficient time between appointments, there will be no detriment to property values in the vicinity or change in the essential characteristics of the neighborhood.
- The low volume of usage will not create any traffic hazard or increase in congestion.
- There will be no excessive demand on municipal services or increase in storm water runoff.

3) Case # 5-3

Petitioner: Laurie Ann McCray 2005 Rev. Trust, Laurie Ann McCray, Trustee

Property: 15 Haven Road Assessor Plan 111, Lot 17

Zoning district: Single Residence B

Description: To create a mudroom by expanding and enclosing existing porch.

Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure.

Variance from Section 10.521 to permit a building coverage of 25%± where 20% is the maximum allowed.

Variance from Section 10.521 to permit a rear yard setback of 4'± where 30' is required.

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

- A slight increase in the nonconformity of the structure will not be contrary to the public interest.
- In the justice balance test, granting the variances will benefit the applicant with no harm to the general public.
- The spirit of the Ordinance will be observed as the setback and lot coverage will remain essentially the same as the existing porch.
- The value of surrounding properties will not be diminished by enclosing this existing porch and the project has the support of the abutter most affected.
- The buildable area on the lot is limited by the house placement, creating a unique situation for even a small expansion.

4) Case # 5-4

Petitioners: Stephen R. & Elisabeth C. Rakaseder

Property: 93 Thaxter Road Assessor Plan 166, Lot 43

Zoning district: Single Residence B

Description: To build a two-story addition to the right rear corner of the existing structure.

- Requests: Variance from Section 10.321 to allow the expansion of a nonconforming structure.
 Variance from Section 10.521 to permit a building coverage of 27%± where 20% is the maximum allowed.

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

- With the placement of the addition at the back of the house and the middle of the lot, the variance will not be contrary to the public interest.
- The proposed family room will be a little further from the property line than the existing deck and there will be no interference with light and air so that the spirit of the Ordinance will be observed.
- There is no indication that surrounding property values will be diminished and neighbors signed a petition indicating that they had no objection to the proposal.
- The special conditions of the property include its small size which leaves little room to expand without a variance. The proposal is a reasonable one increasing the footprint very little over what currently exists and not changing the essential character of the neighborhood.

5) Case # 5-5

Petitioners: Earl A. Picard, Jr. & Linda J. Picard
 Property: 375 Ocean Road Assessor Plan 292, Lot 220
 Zoning district: Single Residence B
 Description: To add a 12' x 22' rear deck.
 Requests: Variance from Section 10.521 to permit a rear yard setback of 21'± where 30' is required.

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

- With the placement of the deck at the back of the home, there will be no public interest to argue against granting the variance and no benefit to the public in denying it.
 - The deck will be far enough away from the property lines so that the spirit of the Ordinance will be observed.
 - There is no evidence that the value of surrounding properties will be diminished by a deck constructed where a similar one had been previously in place with no negative impact.
 - The special condition is that the deck is replacing one that had existed and would allow a greater level of enjoyment of the property for a family member that would not otherwise be possible.
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6) Case # 5-6

Petitioners: John L. & Jean M. Shields

Property: 308 Pleasant Street

Assessor Plan 109, Lot 18

Zoning district: General Residence B

Description: To replace existing deck and stairs to the left rear of existing structure.

Requests: Variance from Section 10.521 to permit a left side yard setback of 4'± where 10' is required.

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

- It will not be contrary to the public interest to essentially replace a deck in kind.
- Replacing a deck that is in disrepair and bringing it up to code will be in the spirit of the Ordinance and will not result in diminution in the value of surrounding properties.
- Substantial justice will be done as there is no overriding public interest to argue against granting the variance.
- The hardship is that the existing deck, which provides needed egress to the house, has fallen into disrepair and needs to be replaced.

7) Case # 5-7

Petitioners: T Beyar Realty LLC, Owner, William Lodwyk, Applicant

Property: 141 Banfield Road

Assessor Plan 254, Lot 2

Zoning district: Industrial

Description: To operate a custom race car fabrication/retrofit facility.

Requests: Special Exception under Section 10.440, Use #11.20 to allow a motor vehicle service use.

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

- With this use, there will be no potential for fire explosion or release of toxic materials.
- There will be no detriment to property values as all sound and activity will be contained in the building, which is located in a commercial area backed by a gravel lot.
- With a limited number of vehicles being processed at any one time, there will be no creation of a traffic hazard or increase in traffic congestion.
- The operation will not generate an excessive demand for municipal services and, with no change to the structure, will not result in an increase in storm water runoff.

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 8:45 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary