

**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 July 19, 2011 in the Eileen Dondero Foley Council Chambers, 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. OLD BUSINESS**

A) Request for Rehearing for property located at 261 Myrtle Avenue.

After consideration, the Board voted to deny the request. No new information had been presented which was not available at the time of the hearing and there was no misapplication of the law in arriving at the Board's decision.

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B) Case # 6-10

Petitioner: Ricci Supply Company, Inc.

Property: 105 Bartlett Street

Assessor Plan 164, Lot 1

Zoning district: Office Research

Description: To demolish portions of existing building and replace with new building on same footprint.

Requests: Variance from Section 10.321 to allow a lawful nonconforming structure to be reconstructed in a district where it does not meet the dimensional requirements. Variance from Section 10.440, Use #8.31, Use #13.11 and Use #14.10 to allow non-marine-related retail and wholesale sales and light industry in a district where such uses are not allowed.

Variance from Section 10.532.10 to allow a 3'± front yard setback where 70' is required.

Variance from Section 10.532.10 to allow a 4'± left side yard setback where 50' is required.

Variance from Section 10.532.10 to allow a right side yard setback of 13'± where 50' is required.

Variance from Section 10.531 to allow building coverage of 37.6%± where 30% is the maximum allowed.

*(This petition was postponed from the June 28, 2011 meeting.)*

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

- The character of the neighborhood will not be negatively affected by this replacement of an existing building so that granting the petition will not be against the public interest.
- There would be no overriding benefit to the public if the petition were denied.
- The spirit of the Ordinance will be observed as the replacement building will be constructed in the same footprint with no further encroachment into the setbacks.
- The existing building has been in place for many years and there is no evidence that the surrounding property values will be diminished by this replacement.
- The lot is long and narrow and the allowed buildable area on the lot highly restrictive, which creates a hardship in replacing this long-established structure.

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C) Case # 6-11

Petitioners: Stephen M. & Kathleen M. Brown

Property: 14 Alder Way

Assessor Plan 142, Lot 18

Zoning district: General Residence A

Description: To allow a 1½ story garage to remain within the front yard setback.

Request: Equitable Waiver as allowed in RSA 674:33-a to allow a previously constructed 1½ story garage with a 0.7'± front yard setback where 15' is required.

*(This petition was tabled to this meeting at the June 28, 2011 meeting.)*

The Board determined that the criteria necessary to grant an Equitable Waiver of Dimensional Requirements, as set out in RSA674:33-a, had been met:

- Although the house was constructed years ago, the violation was only recently discovered by the current owner.
- The violation was not an outcome of ignorance of the law or ordinance, failure to inquire or bad faith on the part of the owner. Inspections were done and the City was involved along the way so it does not appear that there was any attempt to hide anything or misrepresent the property.
- There is no evidence that the garage as placed constitutes a public nuisance or that abutters will be aggrieved by allowing it to remain in place.

- The cost of correction would far outweigh any public benefit to be gained. In this case, correction would require removal of the garage and there is no evidence that the public would benefit from that action.

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**II. PLANNING DEPARTMENT REPORTS**

There were no reports to distribute.

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**III. PUBLIC HEARINGS**

- 1) Case # 7-1  
 Petitioner: Lawrence W. Tacy, Jr.  
 Property: 7 Clover Lane Assessor Plan 236, Lot 43  
 Zoning district: Single Residence B  
 Description: Construct a 20'± x 13'± rear deck  
 Requests: The variances and/or special exceptions required for the proposed work.

The Board granted the following relief:

- Variance from Section 10.321 to allow the expansion of a nonconforming structure.
- Variance from Section 10.521 to allow a rear yard setback of 15'± where 30' is required.
- Variance from Section 10.521 to allow building coverage of 21.3%± where 20% is the maximum building coverage allowed.

This action was taken for the following reasons:

- Replacing a deck to the back of the house, with little visibility from the road and surrounding properties, will not be contrary to the public interest.
- With adequate setbacks, there will be no interference with the light and air protected by the Ordinance.
- There would be no benefit to the general public in denying this petition.
- The value of surrounding properties will not be diminished by this basic infill at the rear of the property which will maintain the line of the existing house.
- The narrowness of the lot creates a hardship so that even replacing a deck that is in disrepair would require a variance.

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- 2) Case # 7-2  
 Petitioner: Piscataqua Savings Bank  
 Property: 15 Pleasant Street Assessor Plan 107, Lot 32  
 Zoning district: Central Business B

Description: Testing a generator up to 74 dBA located at the property line each Thursday between noon and 1:00 p.m.

Requests: The variances and/or special exceptions required for the proposed work.

The Board granted the following relief:

- Variance from Section 10.1332.20 to allow sound pressure of a generator to be up to 74 dBA at the lot line during weekly exercising each Thursday between noon and 1:00 p.m. where 60 dBA is the maximum sound pressure level allowed.

This action was taken for the following reasons:

- There will be no detriment to the general public as the generator will be tested during a very limited, specified, period of time.
- The detriment to the owner if the petition were denied would be greater than any possible benefit to the general public or an individual.
- The value of surrounding properties will not be diminished by a limited test period of this equipment.

3) Case # 7-3

Petitioner: Todd C. & Caroline Merrill

Property: 238 Lincoln Avenue

Assessor Plan 130, Lot 5

Zoning district: General Residence A

Description: Replace existing rear entryway and deck with a right side 10'± x 8½'± 1-story mudroom addition and 4½' ± x 5'± covered landing/entryway.

Requests: The variances and/or special exceptions required for the proposed work.

The Board granted the following relief:

- Variance from Section 10.321 to allow a nonconforming structure to be altered.
- Variance from Section 10.521 to allow a rear yard setback of 12'± where 20' is required.

This action was taken for the following reasons:

- A small addition, centered on the lot, will not be contrary to the public interest.
- It will be in the spirit of the Ordinance to allow the owners to have a greater use of their home with little impact on neighboring properties.
- There would be no overriding benefit to the general public if the petition were denied.
- The addition will be pulled further off the property line so that there will be no negative impact on the value of surrounding properties.
- The placement of the existing house on a corner lot creates a difficulty with even a modest replacement or expansion.

4) Case #7-4

Petitioner: Wayne & Marie Gagnon

Property: 171 Sagamore Avenue

Assessor Plan 221, Lot 22

Zoning district: General Residence A

Description: Replace existing rear single story structure, deck and bulkhead with rear 2½ story, 12'± x 22'± addition and stairs.

Request: The variances and/or special exceptions required for the proposed work.

The Board granted the following relief:

- Variance from Section 10.321 to allow a nonconforming structure to be altered.
- Variance from Section 10.521 to allow building coverage of 25.7%± where the existing building coverage is 25.8%± and 25% is the maximum coverage allowed.

This action was taken for the following reasons:

- It will not be contrary to the public interest to replace an existing structure with one of a slightly different configuration.
- The spirit of the Ordinance will be observed as the light and air protected by the Ordinance will be preserved and slightly less relief will be needed from the building coverage requirement.
- Substantial justice will be served as the applicants are asking for no more than the existing coverage.
- Constructed in the same footprint, the improved addition will have no negative effect on the value of surrounding properties.
- The special conditions are that this is an existing configuration which is already nonconforming. The only way to bring the property fully into compliance would be to remove the addition and make the house smaller, which would not provide substantial justice to the property owner.

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5) Case # 7-5

Petitioner: New England Glory, LLC

Property: 525 Maplewood Avenue

Assessor Plan 209, Lot 85

Zoning district: General Residence A

Description: Construct an L-shaped multi-bay garage with one section 70'± x 16'± and one section 86'± x 16'± .

Requests: The variances and/or special exceptions required for the proposed work.

The Board voted to deny the following relief:

- Variance from Section 10.521 to allow a rear yard setback of 10'± where 20' is required.
- Variance from Section 10.521 to allow a right side yard setback of 5'± where 10' is required.

The petition was denied as all the criteria necessary to grant a variance were not met. The garage would be too high and too close to the property lines. As new construction, the structure could be located so that it would conform to the setback requirements and there is no hardship in the property to dictate that it be located as proposed.

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6) Case # 7-6

Petitioner: Ghamami Rev. Trust of 2005, Owner, Sheila Grant, Applicant

Property: 369A & 371A Islington Street Assessor Plan 144, Lot 22

Zoning district: Mixed Residential Business

Description: Convert 2 commercial units to residential use.

Requests: The variances and/or special exceptions required for the proposed work.

The Board granted the following relief:

- Variance from Section 10.521 to allow a lot area per dwelling unit of 918 s.f.± where 7,500 s.f. per dwelling unit is required.
- Variance from Section 10.1112.30 (1) to allow conversion to residential units without the required parking.

This action was taken for the following reasons:

- The units are small and changing the use will not significantly increase the demand on the parking available in the area.
  - With no exterior changes, the spirit of the Ordinance will be observed.
  - There would be no overriding benefit to the public in denying the variances.
  - The value of surrounding properties will not be diminished by this change in use.
  - The property was originally designed for a residential use and it has been difficult to maintain occupancy of these two units with a commercial use.
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7) Case # 7-7

Petitioner: Martingale Wharf Limited Partnership, Owner, Portsmouth Buddhist Center, Inc., Applicant

Property: 99 Bow Street Assessor Plan 106, Lot 54

Zoning district: Central Business A

Description: Convert an existing vacant space to a religious use.

Requests: The variances and/or special exceptions required for the proposed work.

The Board granted the following relief:

- Special Exception under Section 10.440, Use 3.11 to allow a religious use in a district where such use is allowed by special exception.

This relief was granted with the following stipulation:

- That the Special Exception shall run with the lease, and any subsequent renewals, of the Portsmouth Buddhist Center at this property location.

This action was taken for the following reasons:

- This type of use will create no hazard to the public or adjacent property due to fire, explosion, or release of toxic materials.
- There are a multitude of uses in this district and this use will not change the essential characteristics of the neighborhood or cause a detriment to property values.
- There will be no creation of a traffic safety hazard or increase in the level of traffic.
- This type of use will be no different from the permanent uses on the property in terms of the demand on municipal services and, with no change to the structure, there will be no increase in storm water runoff.

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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 9:20 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary