

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 reconvened meeting** on September 25, 2012 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 Rheaume, Alternate Patrick Moretti

EXCUSED: Alternate Robin Rousseau

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III. PUBLIC HEARINGS

7) Case # 9-7

Petitioner: Blueberry Lafayette Investors & Edward Walsh, owners, McCauley Wholesale, applicant

Property: 3605 Lafayette Road

Assessor Plan 298, Lot 2

Zoning District: Gateway

Description: Allow display of vehicles 5' from the front property line.

Request: 1. A Special Exception under Section 10.440, Use #20.61 to allow outdoor storage of vehicles.

2. A Variance from Section 10.533 to allow a vehicle display area to be located 5'± from the front property line where no display or storage area shall be located less than 80' from the centerline of Lafayette Road or 30' from the sideline of Lafayette Road, whichever is greater.

Action:

A motion to grant the petition failed to pass and the petition was **denied**.

Review Criteria:

The petition was denied for the following reasons:

- All the criteria and standards necessary to grant the petition were not met.
- The spirit of the Ordinance would not be observed by having a number of vehicles parked so close to the roadway and the visual clutter of more cars being added in the front yard setback area.

8) Case # 9-8

Petitioners: David J. & Sandra S. Mikolaities

Property: 165 Richards Avenue

Assessor Plan 129, Lot 40

Zoning District: General Residence A

Description: Construct 2-story rear addition.

Requests: 1. A Variance from Section 10.321 & Section 10.324 to allow a nonconforming building or structure to be added to or enlarged without conforming to all the regulations of the zoning district in which it is located.

2. A dimensional Variance from Section 10.521 to allow a left side yard setback of 2'± where 10' is the minimum required.

3. A dimensional Variance from Section 10.521 to allow building coverage of 31%± where 25% is the maximum building coverage 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:

- There will be little public interest in an addition of this type located at the rear of the property.
- It will be in the spirit of the Ordinance to allow improvements to the property without adversely affecting neighbors. The extension of the line of the existing structure will not encroach closer to the property line.
- There is no offsetting public interest that would argue against the granting of this request.
- An upgrading of the property will, if anything, increase the value of surrounding properties.
- This is a narrow lot limiting the options for any expansion. The option chosen is the best of a number of alternatives considered.

9) Case #9-9

Petitioner: Regine Umber

Property: 211 Park Street

Assessor Plan 149, Lot 5

Zoning District: General Residence A

Description: Construction of a 13'± x 22'± garage at the rear of the property.

Requests: 1. A dimensional Variance from Section 10.521 to allow a left side yard setback of 3'± where 10' is required.

2. A dimensional Variance from Section 10.521 and Section 10.573.20 to allow a 3'± rear yard setback where 10' is required for an accessory structure.

Action:

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

Stipulation:

That the garage will be shifted 2’ further from the left property line for a 5’ left side yard setback.

Other:

The applicant represented that it was her intent to take the following voluntary actions as a result of her discussions with abutters:

1. Add windows to both sides of the garage to enable light to pass through.
2. Angle any lights toward the applicant’s house.
3. Not install motion sensor lights on the garage.
4. Not add dormers or skylights that might increase height.
5. Move the standard access door from the front of the garage to the side.
6. Replace the existing hedge in some fashion.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest in a neighborhood with garages tucked into many lots.
- The spirit of the Ordinance is to try to maintain the character of the neighborhood and this proposal is consistent with many of the surrounding properties.
- Substantial justice will be done as the applicant has reduced the request several times to make this a more modest request. The only way to make the request more acceptable to the abutter would require the expensive purchase of additional land.
- The value of surrounding properties will not be diminished and the abutting property also has an additional structure up against the property line. The property is limited in its size and, with the existing retaining wall and the slope in the back yard, there are not many choices in placing the garage, which is a reasonable use of the property.

10) Case # 9-10

Petitioners: John T. Martin & Margaret Ronchi

Property: 13 Harding Road

Assessor Plan 247 Lot 40

Zoning District: Single Residence B

Description: Replace front steps. Add front raised patio area.

Request: 1. A Variance from Section 10.521 to allow a front yard setback of 8’± where 30’ is the minimum setback required.

Action:

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

Stipulation:

That the patio area in front of the stairs will be no higher than 18” above finished grade.

Other:

It was confirmed that, after compliance with the stipulation, the front yard setback will be 15’± rather than 8’± as advertised.

Review Criteria:

The petition was granted for the following reasons:

- The general public will not be negatively affected by a needed repair and rework of the front entry.
- The spirit of the Ordinance will be observed and substantial justice done by allowing improvements to the property while not encroaching on the rights of others.
- This is a modest request that will not diminish the value of surrounding properties.
- The special circumstances of the property are that, while not an in-kind replacement, the same footprint and encroachment will be maintained.

11) Case # 9-11

Petitioner: Macleod Enterprises Inc.

Property: 1190 Lafayette Road

Assessor Plan 252, Lot 8

Zoning District: Gateway

Description: Renovate existing parking lot. Amend stipulation attached to a previously granted Variance.

- Request:
1. A Variance from Section 10.1112.21 and 10.1112.30 to allow a total of 135 off-street parking spaces to be provided where 143 spaces are required.
 2. A Variance from Section 10.1113.20 to allow required off-street parking spaces to be located between a principal building and a street.
 3. Amend the stipulation that a 10’ green buffer be maintained along the sides and rear of the property to allow two areas (172 s.f.± and 178 s.f.±) of impervious surface to be located in the buffer.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- In an area where many lots have parking between the primary building and the road, this proposal will not change the essential character of the neighborhood.

- This project is the type of development that it is the intent of the Zoning Ordinance to promote in the Gateway zone. The site design works well with the existing structure and the parking relief is between the roadway and an already built structure.
- In the justice test, the loss to the applicant if the petition were denied would not be offset by any balancing gain to the public interest.
- The nature of the surrounding properties is consistent with the proposed development and existing conditions so that their value will not be diminished. The proposed incursions into the 10' buffer, required by a stipulation attached to Variances granted June 30, 1987, will have a minor impact and are necessary to achieve the operational outcome of the parking layout on the property.
- Literal enforcement of the provisions of the Ordinance would result in a hardship due to special conditions, including the placement and orientation of the existing buildings. The purpose of the prohibition against parking between the roadway and the building is to create a streetscape that could not be created in this area so that there is no fair and substantial relationship between the provisions of the Ordinance and their application to the property. Concerning the number of parking spaces, the required number could be achieved, but the proposed number of spaces works better from an operational perspective. The slight encroachments into the buffer will have no discernible negative impact.

12) Case # 9-12

Petitioner: Marie J. Tremblay

Property: 344 Parrott Avenue

Assessor Plan 129, Lot 38

Zoning District: General Residence A

Description: Remove garage. Add 12' x 26' rear addition and 12' x 16' rear deck.

- Requests: 1. A Variance from Section 10.321 & Section 10.324 to allow a nonconforming building or structure to be added to or enlarged without conforming to all the regulations of the zoning district in which it is located.
2. A dimensional Variance from Section 10.521 to allow a right side yard setback of 5'± where 10' is the minimum setback required.
3. A dimensional Variance from Section 10.521 to allow a rear yard setback of 2'± where 20' is the minimum setback required.
4. A dimensional Variance from Section 10.521 to allow building coverage of 37%± where 25% is the maximum building coverage 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:

- Located in the rear of the property and not affecting the overall character of the neighborhood, the proposed structure will not negatively impact the public interest.

- In the spirit of the Ordinance, the existing garage which was located closer to the property lines will be removed and there will be no infringement on neighboring properties. While building coverage will be increased, removing a structure will minimize the request.
- Substantial justice will be done by allowing the property owner full use of the property.
- The proposal, supported by abutters, will improve the property by removing a garage in need of repair so that the value of surrounding properties will be increased.
- The unusual lot shape and the placement of existing structures are special conditions creating a hardship in placing a proposed addition.

13) Case # 9-13

Petitioners: Estate of William Cohen, Barbara Devanna and Robert Cohen,
Administrators, owners, Jeffrey Collins, applicant

Property: 55 Meredith Way

Assessor Plan 162, Lot 17

Zoning District: General Residence A

Description: Construction of a single family home on a lot with insufficient street frontage and no direct access to a City street.

- Requests: 1. A dimensional Variance from Section 10.521 to allow a single-family dwelling on a lot without street frontage, where 100' of continuous street frontage is required.
2. A Variance from Section 10.512 to allow a single-family dwelling on a lot with no direct access to a City street.

Action:

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

Stipulation:

That the building permit cannot be issued until the issue of access across the City-owned property has been resolved with the City.

Review Criteria:

The petition was granted for the following reasons:

- With this proposal, an existing non-conforming structure, outbuildings and debris will be removed. The replacement residence will not change the character of the neighborhood so that granting the variances will not be contrary to the public interest.
- The proposed single/two family home in this residential neighborhood will be in keeping with the intent of the Ordinance and the property will be brought into greater conformance.
- In the substantial justice test, the loss to the applicant if the variances were not granted would not be outweighed by any gain to the public.
- This is a lot which needs the redevelopment and improvement proposed by the applicant. Replacing a ramshackle structure will increase the value of surrounding properties.
- The special conditions of the property creating a hardship is that this is a large landlocked lot on a paper street with access from Pine Street. In accordance with the attached stipulation, that access should continue. The purpose of the 100' frontage requirement is to avoid properties being isolated, which is not the case with this location, close to the center of Portsmouth.

14) Case # 9-14

Petitioner: MacGregor Investments LLC

Property: 37 Sherburne Avenue

Assessor Plan 113, Lot 17

Zoning District: General Residence A

Description: Construct 10'± x 30'± front addition.

Requests: 1. A dimensional Variance from Section 10.521 to allow a front yard setback of 6'± where 15' is the minimum setback required.

2. A dimensional Variance from Section 10.521 to allow 29%± building coverage where 25% is the maximum building coverage 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:

- The proposed addition will not overwhelm the area but will be in keeping with the neighborhood so that the public interest will not be negatively impacted.
- With the sidewalk set back from the right of way, an illusion is created of greater frontage so that this is reasonable request in keeping with the spirit of the Ordinance.
- Substantial justice will be served by allowing the property owner full use of the property in keeping with others in the neighborhood.
- The value of surrounding properties will not be diminished as the house is in need of repair, which will positively affect values. The special condition of the lot is its small size and the deceptive appearance of the frontage. The proposed is a logical use of the property.

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IV. OTHER BUSINESS

No business was presented.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:35 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary