

**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 December 18, 2012 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, Charles LeMay, Christopher Mulligan, David Rheame, Alternates: Patrick Moretti, Robin Rousseau\*

**EXCUSED:** Susan Chamberlin

\* In attendance for the Call to Order and Case #12-7

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**I. PUBLIC HEARINGS**

- 1) Case # 12-1  
Petitioners: Catherine I. and Carl F. Aichele  
Property: 425 Union Street  
Assessor Plan 134, Lot 10  
Zoning District: General Residence A  
Description: Construct third floor dormer.  
Requests: 1. A Variance from Section 10.321 and Section 10.324 to allow an upward extension on a lawful nonconforming building in a manner that is not in conformity with the Zoning Ordinance.

**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 and substantial justice will be done as the proposed dormer will not change the essential character of the neighborhood.
  - The spirit of the Ordinance will be observed as this is a vertical expansion with no change to the footprint.
  - The value of surrounding properties will not be diminished. The proposed dormer overlooks the back yard with the neighbor's home an adequate distance away.
  - Strict enforcement of the general purposes of the Zoning Ordinance is not justified in this case as this is a reasonable use of the property and a hardship would result from strict application of the provisions.
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2) Case # 12-2

Petitioners: Jeffrey C. and Christine M. Randall

Property: 80 Diamond Drive

Assessor Plan 220, Lot 42

Zoning District: Single Residence B

Description: Construct a 20'± x 24'± addition.

Requests: 1. A dimensional Variance from Section 10.521 to allow a building coverage of 21.3%± where 16.5%± currently exists and 20% is the maximum 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:

- Allowing the proposed addition on this corner lot will not alter the character of the neighborhood or threaten the health, safety or welfare of the general public.
  - The proposal is in keeping with the purpose of the Zoning Ordinance in this district which is to provide areas for single family dwellings and granting the request would result in a minimal increase over the allowed building coverage.
  - The loss to the applicant, if the petition were denied, would far outweigh any potential gain to the public interest.
  - With no change to the neighborhood and abutters on only two sides, a reasonable addition will only enhance the value of this and surrounding properties.
  - The special conditions of the property resulting in a hardship are that the open space is limited by its corner location. This is a minimal expansion so that there is no fair and substantial relationship between the general purposes of the Ordinance and their specific application to this property.
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- 3) Case # 12-3  
Petitioners: Donald W. and Patricia A. Lane  
Property: 333 New Castle Avenue  
Assessor Plan 207, Lot 2  
Zoning District: Single Residence B  
Description: Adjustment of the lot line between Lot 207/3 and Lot 207/2.  
Requests: 1. A dimensional Variance from Section 10.520 to allow Lot 207/2 to have a lot area of 12,895± square feet where 15,000 square feet 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 public interest will be protected as this lot line adjustment will only result in a very minor physical change to the property.
- The spirit of the Ordinance will be observed as the existing lot is at 89% of the required square footage which will drop only 3% after the proposed lot line adjustment, maintaining the light and air protected by the Ordinance.
- Substantial justice will be done by clarifying the rights of the two property owners and ensuring that the physical lots match the recorded deeds.
- With only the small change in the patio, there will be no impact on the value of surrounding properties and the two parties involved will have considered their respective values in coming to their agreement.
- The special condition of the property is that its understood configuration has been found to be different from that described in the deeds so that clarification is needed for this and the other affected lot to avoid future complications.

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- 4) Case # 12-4  
Petitioners: Timothy & Mary Ellen McNamara  
Property: 99 Orchard Street  
Assessor Plan 149, Lot 47  
Zoning District: General Residence A  
Description: Construct a dormer on the right side of the house.  
Requests: 1. A Variance from Section 10.324 to allow a nonconforming addition to a lawful nonconforming building.  
2. A dimensional Variance from Section 10.521 to allow an upward extension of a structure with a nonconforming right yard setback of 0'± where 10' is the minimum required.

**Action:**

The Board initially considered postponing the petition, so that a surveyed site plan could be obtained to verify the lot line, but subsequently decided to continue with the hearing. Following the presentation, testimony and discussion, the Board voted to **deny** the petition as presented and advertised.

The Board found that all the criteria necessary to grant a variance were not met. The proposed size of the dormer, coupled with the 0'± setback, would interfere with the light and air protected by the Ordinance with the potential for diminishing the value of surrounding properties. It was felt that there were more reasonable alternatives that could be explored that would meet the stated needs.

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5) Case # 12-5

Petitioner: Matthew Hatem

Property: 1 Ash Street

Assessor Plan 149, Lot 34

Zoning District: General Residence A

Description: Replace existing porch with 2 story bedroom addition and carport.

Requests: 1. A Variance from Section 10.324 to allow a nonconforming alteration to a lawful nonconforming building.

2. A Variance from Section 10.520 to allow alterations to the building coverage where 28.2%± exists and 25% is the maximum 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 no adverse impact on the public interest as the proposed 390± s.f. addition will replace 392± s.f. of existing structures.
- The spirit of the Ordinance will be observed and surrounding property values protected by allowing enhancement of the property without negatively impacting neighbors. While there will be windows along the property line, they will face a garage rather than living space.
- There is no overriding public interest that would argue against the granting of the variance.
- The special conditions of the property resulting in a hardship are its location on a corner so that strict conformance to the requirements would prevent even a modest expansion.

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- 6) Case # 12-6  
Petitioner: Justin D. Setchell  
Property: Fairview Avenue off Maplewood Avenue  
Assessor Plan 220, Lot 66  
Zoning District: Single Residence B  
Description: Construct a new single-family home.  
Requests: 1. A dimensional Variance from Section 10.521 to allow a rear yard of 10'± where 30' is the minimum required.  
2. A dimensional Variance from Section 10.521 to allow a lot area of 6,000 ± square feet where 15,000 square feet is the minimum required.  
3. A dimensional Variance from Section 10.521 to allow a lot depth of 60'± where 100' is the minimum required.

**Action:**

The Board voted to **postpone** the petition, at the request of the applicant's attorney, to the January 15, 2013 meeting.

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- 7) Case # 12-7  
Petitioner: Boxer Family Trust 2010, Stuart D. & Paula A. Boxer  
Property: 601 Islington Street  
Assessor Plan 164, Lot 7  
Zoning District: Business  
Description: Change of use and modification of parking.  
Requests: 1. A Variance from Section 10.1112.30 to allow 20 parking spaces where 60 spaces are required.

**Action:**

After a motion to deny failed to pass, the Board voted to **grant** the petition as presented and advertised.

**Stipulations:**

None.

**Other:**

The Board requested that the applicant provide to the Planning Department 11' x 17' copies of the elevations presented at the hearing.

**Review Criteria:**

The petition was granted for the following reasons:

- It will not be contrary to the public interest to provide a balanced mix of small business uses at this location.
- The spirit of the Ordinance will be observed and the value of surrounding properties protected by a mixed use building(s) that is (are) equal to, or less intensive than, previous uses or other more intensive retail uses that could be located in the existing retail space.
- The hardship to the applicant if the petition were denied would not be outweighed by any perceived benefit to the general public.
- The size and configuration of the lot and existing buildings create an unnecessary hardship in making full use of the building(s).

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8) Case # 12-8  
 Petitioner: Heidi N. Archibald Revocable Trust, Heidi N. Archibald, Trustee  
 Property: 175 Gosport Road  
 Assessor Plan 224, Lot 1  
 Zoning District: Single Residence A  
 Description: Construct a second single-family home on a lot with an existing single-family home.  
 Requests: 1. A Variance from Sections 10.430 and 10.440 to allow a two-family use where the use is not allowed.  
 2. A Variance from Section 10.513 to allow two (2) residential dwelling units on one lot where only one (1) dwelling unit is allowed.

**Action:**

The Board voted to **postpone** the petition, at the request of the applicant’s attorney, to the January 15, 2013 meeting.

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**II. OTHER BUSINESS**

No other business was presented.

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**III. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 9:15 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary