

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 January 15, 2013 in the School Board Conference Room, Ground Floor, 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 Rheame, Alternate: Patrick Moretti, Robin Rousseau*

EXCUSED: Robin Rousseau

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I. NEW BUSINESS

A) Election of Officers

It was moved, seconded and passed by unanimous voice vote to re-elect David Witham as Chairman and Arthur Parrott as Vice-Chairman to serve until the next election of Officers.

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II. APPROVAL OF MINUTES

A) December 18, 2012

It was moved, seconded and passed by unanimous voice vote to accept the Minutes with one minor adjustment.

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III. OLD BUSINESS

A) Request for One-Year Extension of Variances granted February 21, 2012 for property located at 28-30 Dearborn Street.

Action:

The Board voted to **grant** a one-year extension through February 21, 2014 of the Variances and Equitable Waiver, including all prior stipulations, granted February 21, 2012.

B) 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. *(This petition was postponed from the December 18, 2012 meeting)*

Action:

After hearing the initial presentation and testimony, the Board voted to **postpone** the conclusion of the hearing to the February 19, 2013 meeting so that specific information on drainage can be obtained, soil testing conducted, and complete, correct and dimensioned plans resubmitted.

C) 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. *(This petition was postponed from the December 18, 2012 meeting)*

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:

- As proposed, it was difficult to find special conditions creating a hardship in the property.
- As proposed, the addition of a second large single family dwelling on a single lot with common ownership would change the essential character of the neighborhood and diminish the value of surrounding properties.

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IV. PUBLIC HEARINGS

1) Case #1-1

Petitioner: Northern N. E. Conference

Property: 861 Middle Road

Assessor Plan 232, Lot 120

Zoning District: Single Residence B

Description: Expansion of religious assembly use.

Requests: 1. A Special Exception under Section 10.440, Use #3.11 to allow the existing religious assembly use to be conducted in an additional building.

2. A Variance under Section 10.1112.30 to allow 58 off-street parking spaces where 63 parking spaces are required.

Action:

The Board voted to **deny** the Special Exception as presented and advertised. The attorney for the applicant attorney then **withdrew** the Variance request.

Review Criteria:

The petition was denied for the following reasons:

- All the standards necessary to grant a Special Exception were not met.
- It was felt that the proposed expansion would result in over-intensification of the current use of the property and would negatively change the essential character of the neighborhood. Such change, due to the size, scale and design of the proposed new building would have a negative effect on the value of surrounding properties.
- Based on the submission package and information presented at the hearing, there appear to be alternative means to achieve the desired expansion space with less impact on this residential neighborhood.

2) Case # 1-2

Petitioners: Peter E. & Vanessa P. McElroy

Property: 106 Spring Street

Assessor Plan 133, Lot 15

Zoning District: General Residence A

Description: Install a 4'± x 2'± generator in the left side yard.

Requests: 1. A dimensional Variance from Section 10.571 and Section 10.521 to allow a left side yard setback of 5.5'± where 10' is the minimum setback required for an accessory structure.

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 essential character of the neighborhood will not be changed so that granting the variance will not be contrary to the public interest.
- The spirit of the Ordinance will be observed by allowing an accessory use consistent with a residential zone.
- The damage to the homeowner if the petition were denied would not be outweighed by any gain to the general public.
- The generator will be well screened and buffered from the neighboring home by a garage so that the value of surrounding properties will not be diminished.
- Owing to special conditions of the property, there is no fair and substantial relationship between the general provisions of the Ordinance and their application to the property. These special conditions include a narrow lot and the configuration of the home on the lot so that the placement of the generator is an appropriate and reasonable use of the property.

3) Case # 1-3

Petitioners: John Ahlgren & Bessie J. Palmisciano

Property: Langdon Street (no number assigned)

Assessor Plan 138, Lot 48

Zoning District: Mixed Residential Business

Description: Construct a single family home on each of three lots created by the proposed sub-division of one existing lot.

Requests:

1. Lot 1 (corner of Langdon and McDonough Streets)

Dimensional Variances from Section 10.521 to allow the following:

- a. A lot area of 5,022± s.f. where 7,500 s.f. is the minimum required.
- b. A lot depth of 78.47'± where 80' is the minimum required.
- c. Continuous street frontage of 63.35'± where 100' is the minimum required.
- d. A 5'± right side yard setback where 10' is the minimum required.

2. Lot 2

Dimensional Variances from Section 10.521 to allow the following:

- a. A lot area of 5,301± s.f. where 7,500 s.f. is the minimum required.
- b. A lot depth of 77.39'± where 80' is the minimum required.
- c. Continuous street frontage of 68.50'± where 100' is the minimum required.

3. Lot 3

Dimensional Variances from Section 10.521 to allow the following:

- a. A lot area of 4,965± s.f. where 7,500 s.f. is the minimum required.
- b. A lot depth of 76.84'± where 80' is the minimum required.
- c. Continuous street frontage of 43.24'± where 100' is the minimum required.
- d. A 5'± left side yard setback where 10' is the minimum required.

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulations:

Stipulations:

- As represented on the Concept Development Plan revised January 10, 2013, the three homes to be built on the lots will be in substantial compliance with the massing, location and architectural theme of the plans submitted with the application.
- As represented on the Concept Development Plan revised January 10, 2013, any fence installed along McDonough Street shall not exceed 42” in height and shall be open, architectural in nature in order to prevent a sense of confinement along the street.
- The lots shall be developed in substantial compliance with the landscape plan, LA-1.0 dated 1/15/2013, as submitted and presented at the hearing.

Review Criteria:

The petition was granted for the following reasons:

- It will be in the public interest and the spirit of the Ordinance to allow individual homes on separate, independent lots.
- Substantial justice will be done by providing housing on a formerly empty lot.
- With the stipulations, the neighborhood will be improved so that the value of surrounding properties will not be diminished.
- The special conditions of the lot resulting in a hardship are its shape and location between the railroad and Langdon, McDonough and Brewster Streets. Due to the shape of the lot, it would not be reasonable to limit the development to only a single property.

4) Case # 1-4

Petitioner: 973 Partners LLC, owner, Portsmouth Music and Arts Center, applicant

Property: 973 Islington Street

Assessor Plan 172, Lot 5

Zoning District: Business

Description: Establish a music and art studio.

Requests: 1. A Variance from Section 10.1112.30 to allow 18 off-street parking spaces to be provided where 60 parking spaces are required.

2. A Special Exception under Section 10.440, Use #4.42 to allow a music & art studio for instruction in a district where the use is only allowed by Special Exception.

Action:

The Board voted to **postpone** the petition to the February 19, 2013 meeting as requested by the attorney representing the applicant.

- 5) Case # 1-5
Petitioners: Cheri & William Kane
Property: 35 Summit Avenue
Assessor Plan 230, Lot 15
Zoning District: Single Residence B
Description: Reconfigure front steps.
Requests: 1. A dimensional Variance from Section 10.521 to allow a front yard setback of 14'± where 22'± is required after front yard averaging under Section 10.516.10.

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 as reconfiguring the front steps will not change the essential character of the neighborhood.
- The spirit of the Ordinance will be observed by allowing a safety hazard to be corrected.
- Substantial justice will be done as the safety issue will be resolved in an appealing manner without obstructing the public view or access.
- Enhancing the front entrance to the home would, if anything, raise the value of surrounding properties.
- Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship as enforcement of the setback would make it more difficult to resolve a safety issue which necessitated the project.

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- 6) Case # 1-6
Petitioners: Gary S. & Janice M. Colby
Property: 308 Pleasant Street
Assessor Plan 109, Lot 18
Zoning District: General Residence B
Description: Expand existing rear deck.
Requests: 1. A dimensional Variance from Section 10.521 to allow a building coverage of 35%± where 33.5%± exists and 30% 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:

- This small in-fill project at the rear of the property will not change the essential character of the neighborhood so that granting the variance will not be contrary to the public interest and will observe the spirit of the Ordinance.
- Substantial justice will be done by allowing a small expansion of the existing deck without detriment to the general public.
- With a project that will not be visible to the public and most abutters, there will be no diminution in the value of surrounding properties.
- The special conditions creating a hardship in achieving this small expansion are the size and configuration of the lot and existing structures so that placement is difficult without requiring a variance.

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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 11:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary