

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 February 26, 2013 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, Alternate: Robin Rousseau
EXCUSED: Susan Chamberlin, Alternate: Patrick Moretti

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III. PUBLIC HEARINGS

8) Case # 2-8

Petitioner: Kathryn Saunders
Property: 140 New Castle Avenue
Assessor Plan: 101, Lot 26
Zoning District: Single Residence B

Description: Construct rear connector addition with 4'± x 6'± entry porch. Replace existing detached garage with attached 15'± x 20'± x 13.5'± high garage.

- Requests:
1. A Variance from Sections 10.321 and 10.324 to allow nonconforming additions to a lawful nonconforming building.
 2. A Variance from Section 10.521 to allow a right side yard setback of 8.4'± where 10' is required.
 3. A Variance from Section 10.521 to allow a rear yard setback of 14.5'± where 30' is required.
 4. A Variance from Section 10.521 to allow building coverage of 33.8%± where 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:

- It will not be contrary to the public interest to allow changes in keeping with the overall character of other homes in the neighborhood.

- The spirit of the Ordinance will be observed as the proposed total square footage is close to that existing and includes an open porch which will not impede light and air. There will be no major change to the setbacks with one slightly improved.
- Substantial justice will be done by allowing the homeowner to improve the property and create more usable space.
- There will be no diminution in the values of surrounding properties resulting from the proposed improvements to this property bounded on two sides by streets. The support of several abutters, including the only directly adjoining property, was demonstrated.
- One of the special conditions distinguishing this property and creating a hardship is that the lot is extremely small and closed in by streets so that any modification is difficult. The proposed changes are reasonable in scale and in relationship to the neighborhood.

9) Case # 2-9

Petitioners: Patricia Bogardus Living Trust, Patricia & Robert Bogardus, Trustees

Property: 26 Park Street

Assessor Plan: 148, Lot 44

Zoning District: General Residence A

Description: Remove existing structures and construct a 436± s.f. 1-story addition, an 18'± x 28'± 2-story addition, and a front porch with steps.

Requests: 1. A Variance from Sections 10.321 and 10.324 to allow a nonconforming addition to a lawful nonconforming building.

2. A Variance from Section 10.521 to allow a front yard setback of 7.6'± where 15' is required.

Action:

The Board voted to **grant** the petition as presented and advertised with a change in the proposed structures noted under “Other.”

Other:

The Board noted that, as presented, the front yard setback of 7.6' would be to living space in the one-story addition and not to the advertised front porch. The advertised front porch would be eliminated from the request with the proposed one-story addition increased in square footage.

Review Criteria:

The petition was granted for the following reasons:

- With one well-designed structure in place of two and the addition set back further from the front property line than the existing structure, the essential characteristics of the neighborhood will not be changed so that granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed.
 - Substantial justice will be done as this would be a reasonable re-model balancing the fact that the structure has a pre-existing nonconforming setback.
 - The value of surrounding properties would, if anything, be enhanced by the addition.
 - The hardship in the property results from the pre-existing nonconforming setbacks and the need to balance what is needed while respecting the requirements of the Ordinance.
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10) Case # 2-10

Petitioners: Heritage Storage 1, LLC, owner, The Lawrence Group, Inc., applicant

Property: 70 Heritage Avenue

Assessor Plan: 285, Lot 11-B

Zoning District: Industrial

Description: Outdoor retail use with pool display and outdoor storage area, 4' x 8' sign installed on the fence surrounding the pool display area, and outdoor storage.

- Requests:
1. A Variance from Section 10.440 and Section 10.434.40 to allow the outdoor display and outdoor retail sale of pools and related materials.
 2. A Variance from Section 10.531 to allow a front yard setback of 36'± where 70' is required.
 3. A Variance from Section 10.531 to allow 17%± open space where 20% is required.
 4. The Variance(s) necessary to allow a 32 s.f. sign to be erected on a fence.
 5. A Special Exception under Section 10.440, Use #20.61 to allow the outdoor storage of pool related materials.

Action:

The Board voted to **grant** the Variances and Special Exception as presented and advertised with the following stipulations.

Stipulations:

- That the distance from the front property line on Heritage Avenue to the pools in the display area will be no less than 50'.
- That the area of the proposed sign to be erected on the fence will be no greater than 18 s.f.

Review Criteria:

The Variances were granted for the following reasons:

- It will not be contrary to the public interest to allow a display area in an area of commercial uses in an industrial zone. The stipulations will keep the corridor open and clutter away from the roadway.
- There will be a reasonable deviation from the open space requirement so that the spirit of the Ordinance will be observed. While no specific provision is made for a sign on a fence, it is within the spirit of the Ordinance to allow a sign of this size in this location, similar to the considerations for a free-standing sign.
- Substantial justice will be done as the applicant will be able to move to a more advantageous location where the general public can benefit from the services offered.
- The value of surrounding properties will not be diminished as this lot, while zoned industrial, is in an area with a number of retail uses.
- The unique aspect of the property is that it is zoned industrial while it has become, over time, more of a retail space offering those types of services to the public. The open display area and sign are reasonable, particularly with the stipulations, and better serve the general public purposes than a strict application of the requirements.

The Special Exception was granted for the following reasons:

- The standards for a use permitted by Special Exception are met.
- There was specific representation that no toxic materials would be used so there will be no hazard to the public or adjacent property from fire explosion or release of those materials.

- Given the nature of the surrounding properties, a small storage area in the back will not diminish the value of surrounding properties or change the essential characteristics of the neighborhood.
- There will be little traffic generated by the need to access this storage area so that there will be no increase in the level of traffic or creation of a traffic hazard.
- An open storage area will not result in an increased demand on municipal services.
- There will be no change to the paved area by simply enclosing it with a chain link fence so that there will be no increase in storm water runoff.

11) Case # 2-11

Petitioners: Mark E. & Janet Greenwood

Property: 480 Dennett Street

Assessor Plan: 160, Lot 26

Zoning District: General Residence A

Description: Convert existing garage to second dwelling unit on the lot.

Requests: 1. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,833± where 7,500 s.f. per dwelling unit is required.

2. A Variance from Section 10.521 to allow building coverage of 26%± where 25% is the maximum allowed.

3. A Variance from Section 10.513 to allow more than one free-standing dwelling on a lot.

Action:

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

Review Criteria:

The reasons for denying the petition included the following:

- All the criteria necessary to grant a variance were not met.
- There is no unnecessary hardship in the property as there is a fair and substantial relationship between the general purposes of the Ordinance and their application to the property, particularly as they relate to the lot area per dwelling unit.
- The spirit of the Ordinance will not be observed as there is not sufficient lot area to justify a second dwelling unit, especially within a detached accessory structure located behind the principal structure. This would result in over-intensification in terms of density and building coverage on the lot and negatively impact the use and privacy of the surrounding properties.

12) Case # 2-12

Petitioners: Richard D. Bournival Jr. & Alissa C. Bournival

Property: Lafayette Road (no number assigned)

Assessor Plan: 272, Lot 9-6

Zoning District: Gateway

Description: Test drive area for four-wheel drive SUV's on lot adjacent to 2355 Lafayette Road

Requests: 1. A Variance under Section 10.1530 to allow an accessory use as defined in this section to be conducted on a lot adjacent to the lot containing the principal use or building.

Action:

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

Stipulations:

1. That Notes 9, 12 and 13, as listed on the Board of Adjustment Application Plan submitted by the applicant, and shown below, be made a part of this approval.

Notes:

- a) Note 9: Area to be used during normal business hours of automotive sales business on abutting property and under the supervision of automotive sales employees on the abutting lot.
- b) Note 12: Intent of use is test drive road legal 4-wheel drive vehicles for the sale of those vehicles. No vehicles shall be brought in from off-site.
- c) Note 13: No rallies, competitions or other similar uses will be allowed.

2. That the test drive area will remain unpaved.

Review Criteria:

The petition was granted for the following reasons:

- The essential characteristics of the neighborhood will not be changed by this use of a vacant lot so that granting the variance will not be contrary to the public interest and will observe the spirit of the Ordinance.
- The benefit to the applicant by granting the variance will not be outweighed by any corresponding hardship to the general public.
- With the stipulations, this accessory use to the principal business of the abutting car dealership will have minimum impact on the neighbors so that the value of surrounding properties will not be diminished.
- The property cannot be reasonably used in strict conformance with the Ordinance. The situation is unique requiring a variance to conduct this accessory use on an open lot adjacent to the principal use.

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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 9:15 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary