

**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 May 21, 2013 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 Rheame, Alternate: Patrick Moretti,

**EXCUSED:** Christopher Mulligan, Alternate: Robin Rousseau

\* Arrived after Case 5-3

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**I. APPROVAL OF MINUTES**

A) April 23, 2013

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

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**II. OLD BUSINESS**

A) Case # 3-3

Petitioners: Beth L. and Marco A. Gross-Santos

Property: 79 Lois Street

Assessor Plan 232, Lot 14

Zoning District: Single Residence B

Description: Proposed sub-division of an existing lot into two lots, one fronting on Lois Street and containing an existing structure and one fronting on Marjorie Street on which a new home is proposed to be constructed.

Requests: Variances from Section 10.521 to allow the following:

**79 Lois Street Lot:**

1. A lot area of 12,768 s.f.± where 15,000 s.f. is required.
2. A lot area per dwelling unit of 12,768 s.f.± where 15,000 s.f. is required.
3. Lot depth of 80'± where 100' is required.
4. A rear yard setback of 25'± where 30' is required.

**Lot fronting on Marjorie Street, number to be assigned if subdivided:**

1. A lot area of 9,600 s.f.± where 15,000 s.f. is required.
2. A lot area per dwelling unit of 9,600 s.f.± where 15,000 s.f. is required.
3. Lot depth of 80'± where 100' is required.
4. A rear yard setback of 14'± where 30' is required.
5. A front yard setback of 15'± where 30' is required.

**Action:**

The Board acknowledged that the petition was withdrawn by the applicant.

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**III. PUBLIC HEARINGS**

1) Case #5-1

Petitioner: T. Beyar Realty, LLC, owner, DAS Auto LLC, applicant

Property: 141 Banfield Road , Unit 1

Assessor Plan: 254, Lot 2

Zoning District: Industrial

Description: Automotive repair, restoration and State inspections.

- Requests:
1. A Special Exception under Section 10.440, Use #11.20 to allow the provision of automotive repair, restoration and State inspections in a district where such uses are only allowed by Special Exception.
  2. A Variance from Section 10.592 to allow a motor vehicle service station less than 200' from a Residential or Mixed Residential district.

**Action:**

With no one appearing to speak to the petition, the Board voted to **postpone** the petition to be heard as the final item at their reconvened meeting on May 28, 2013 in the School Board Conference Room.

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2) Case #5-2

Petitioners: H. Brooks Stevens Revocable Trust

Property: 60 Martine Cottage Road

Assessor Plan: 202, Lot 18

Zoning District: Rural

Description: Remove existing residence and construct new residence, porches and attached garage.

- Requests:
1. A Variance from Section 10.521 to allow building coverage of 6.1%± where 5% is the maximum building coverage allowed.
  2. A Variance from Section 10.521 to allow a lot area and lot area per dwelling unit of 46,537± sf. where 5 acres is the minimum required for both.

**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 variances will not be contrary to the public interest and substantial justice will be done as construction of a replacement home will have no adverse impact on the public or neighboring area.
- The spirit of the Ordinance will be observed as the area is sufficient in size to preserve the rural character of the district.
- The value of surrounding properties will not be diminished and the applicant also owns the adjoining lot which mitigates any adverse impact.
- The uneven grade and presence of ledge on the site are special conditions that distinguish the property, and various transitional building areas, (i.e. open porches, landings..) are needed to support the desired use. These areas increased the building coverage 1.1%± over what was permitted.

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3) Case #5-3  
 Petitioners: Christoph Wienands & April Guille  
 Property: 307 Wibird Street  
 Assessor Plan: 132, Lot 12  
 Zoning District: General Residence A  
 Description: Rebuild and relocate 150 s.f., 11' high shed to the left, rear of the property.  
 Requests: 1. Variances from Section 10.570 and 10.521 to allow 6'± left side yard and rear yard setbacks where 10' is required for both 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:

- A small accessory structure at the back of the lot will not change the essential character of the neighborhood so that granting the variance will not be contrary to the public interest.
- In its setting, a 6' setback would be reasonable to observe the spirit of the Ordinance.
- Substantial justice would allow the owner the use of a shed and backyard without infringing on the general public.
- Replacing a deteriorated shed in a location that will provide better sight lines for the abutting neighbors will only increase the value of surrounding properties.

- A special condition of the property is that a concrete pad already exists in the proposed shed location and strict conformance with the provisions of the Ordinance would not allow the reasonable use of this area as the foundation for the proposed shed.
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4) Case #5-4

Petitioners: Janet Morly, owner, Roland Cote, applicant

Property: 188 Union Street

Assessor Plan: 135, Lot 27

Zoning District: General Residence C

Description: Replace existing 8' x 8' shed with 10' x 14' shed in the left, rear of the property.

Requests: 1. Variances from Section 10.570 and 10.521 to allow 3'± left side yard and rear yard setbacks where 10' is required for both 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:

- Maintaining the existing setbacks with no further encroachment, a replacement shed in this location will not be contrary to the public interest.
  - By protecting the light and air between abutting properties, the spirit of the Ordinance will be observed.
  - In the substantial justice balance test, there would be no benefit to the public in denying the variance to the applicant.
  - A new shed will replace one that is not in good condition in a location backing onto a garage across the abutting property line so that there will be no adverse impact on the value of surrounding properties.
  - This is a reasonable size increase to accommodate the need for storage while maintaining existing setbacks.
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5) Case #5-5

Petitioners: Richard & Kathleen Boduch

Property: 34 Hunking Street

Assessor Plan: 102, Lot 9

Zoning District: General Residence B

Description: Install a/c condenser at right, rear of the property.

Requests: 1. A Variance from Section 10.570 and 10.521 to allow a 3'5" ± right side yard setback where 10' is required for an accessory structure.

2. A Variance from Section 10.570 and 10.521 to allow a 1'11" ± rear yard setback where 10' is required for an accessory structure.

- 3. A Variance from Section 10.521 to allow building coverage of 34.6%± where 34.4 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:

- Placed in this location, and shielded from the neighbors by both the location and a fence, the condenser will not adversely impact the general public or result in any diminution in the value of surrounding properties.
- The effort made to shield the unit observes the spirit of the Ordinance in reducing any negative effect on neighbors.
- Substantial justice will be done as this is part of overall renovations that will ultimately improve the neighborhood.
- A number of factors created a hardship in placing the unit and the applicants chose the option that would have the least impact.

6) Case #5-6

Petitioners: Donald Lamothe Revocable Trust ½ Int. Trustee & Marcia K. Lamothe Revocable Trust ½ Int. Trustee

Property: 36 Sherburne Avenue

Assessor Plan: 113, Lot 11

Zoning District: General Residence A

Description: Construct second floor addition with dormer over existing portion of one-story home, rebuild deck

Requests: 1. A Variance from Section 10.321 and Section 10.324 to allow a lawful nonconforming building to be expanded or reconstructed in a manner that is not in conformity with the Zoning Ordinance.

2. A Variance from Section 10.521 to allow a right side yard setback of 4'± where 10' is 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:

- Granting the variances will not be contrary to the public interest, and the spirit of the Ordinance will be observed, as the essential character of the neighborhood will not be changed by an expansion similar to others in the area.
  - The property will provide additional function for the homeowners with no detriment to the interest of the general public.
  - The improvement, with no change in the existing footprint, will increase the value of this property as well as those in the surrounding neighborhood.
  - The distinguishing special conditions of the property are the narrowness of the existing home and its unusual configuration on a deep narrow lot where there is no feasible way to add needed space without seeking relief.
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7) Case #5-7

Petitioner: Ronald C. Cameron

Property: 14 Elwyn Road

Assessor Plan: 251, Lot 121

Zoning District: Single Residence B

Description: Replace existing rear deck with a 15'±( in diameter) half-round deck.

Requests: 1. A Variance from Section 10.521 to allow building coverage of 22.7%± where 22%± exists and 20% is the maximum allowed.

**Action:**

The Board determined that, at a 16'± height, a **variance was not required** to build the deck and the hearing was terminated without a vote.

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8) Case #5-8

Petitioners: Regeneration Realty Trust, owner, Demeters Steakhouse, applicant

Property: 3612 Lafayette Road

Assessor Plan: 297, Lot 3

Zoning District: Gateway

Description: Relief from parking requirement.

Requests: 1. A Variance from Section 10.1112.30 to allow no additional off-street parking spaces to be provided where 9 off-street parking spaces are required for a 936± s.f. patio.

**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 there is no indication that any overcrowding in on-site parking will result if these these nine off-street parking spaces are not provided.
- One of the purposes of the Ordinance is to provide adequate parking, which is available on this site.
- There is no indication that the value of surrounding properties will be diminished by granting this relief for the nine required off-street parking spaces.
- One of the special distinguishing conditions in the property is its proximity to wetlands so that it would be difficult to create additional parking. The existing availability of adequate off-street parking spaces during the hours in which they would be needed for this use makes additional parking spaces unnecessary.

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**IV. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 8:25 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary