

**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 June 18, 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, Charles LeMay, Christopher Mulligan, David Rheume, Alternate: Patrick Moretti,

**EXCUSED:** Derek Durbin, Alternate: Robin Rousseau

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**I. APPROVAL OF MINUTES**

**A.** Minutes of Meeting – February 26, 2013

It was moved, seconded and passed by unanimous voice vote to approve the Minutes as presented.

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**II. PUBLIC HEARINGS - OLD BUSINESS**

A) Case #5-10

Petitioners: Mark E. & Janet Greenwood

Property: 480 Dennett Street

Assessor Plan: 160, Lot 26

Zoning District: General Residence A

Description: Add second dwelling unit in existing structure. Replace existing garage with 20'± x 20'± structure.

Requests: 1. A Special Exception under Section 10.440, Use #1.51 and Section 10.812 to convert a building existing on January 1, 1980, with less than the required minimum lot area per dwelling unit to 2 dwelling units.

2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,825± s.f. where 7,500 s.f. is required.

3. A Variance from Section 10.521 to allow a right side yard setback for an accessory structure of 3'± where 10' is required.

*(This petition was postponed from the May 28, 2013 reconvened meeting.)*

**Action:**

The Board first acknowledged that the variance requests were withdrawn by the applicant. The special exception was then considered. A motion to grant the special exception, with the stipulation that occupancy of the lower level would be limited to two individuals, failed to pass and the petition was **denied**.

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- B) Case #5-12  
 Petitioner: Strawbery Banke Inc.  
 Property: Off Washington Street  
 Assessor Plan: 104, Lot 7  
 Zoning District: Mixed Residential Office  
 Description: Construct an 85'± x 120'± oval and adjacent 60'± (in diameter) circular skating area with supporting structures.  
 Requests: 1. A Variance from Section 10.440, Use #4.50 to allow an outdoor recreational use in a district where such use is not allowed.  
 2. A Variance from Section 10.592.10.450 to allow an outdoor recreational use within 500' of a Residential or Mixed Residential district.  
*(This petition was postponed from the May 28, 2013 reconvened meeting.)*

**Action:**

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

**Review Criteria:**

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest. The essential character of the neighborhood will not be changed by the operation of a skating rink for three months in the winter nor will the health, safety and welfare of the public be threatened as the community as a whole will be served.
- The purpose of the Ordinance is to protect abutters and their property but also to promote the general welfare of the community as a whole. The spirit of the Ordinance will be observed as this use will not be in conflict with its general purposes.
- In the substantial justice test, the benefit to the applicant and the community as a whole would not be outweighed by any harm to the general public or individuals.
- There was expert testimony that the value of surrounding properties would not be diminished by this three month operation and the protections regarding noise levels and lighting will be applied in the Planning Board's site plan review process.
- There is no fair and substantial relationship between the provisions of the Ordinance and their application to the property. This provision is to protect residential areas within 500' of an outdoor recreation use. It was felt that this protection would not apply to an outdoor skating rink of this size and type, which is essentially a temporary structure in use for a limited period and which would have limited impact on the neighborhood. The use was judged to be a reasonable one.

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**III. PUBLIC HEARINGS – NEW BUSINESS**

- 1) Case # 6-1  
 Petitioners: David P. and Nancy T. MacDonald  
 Property: 28 Ball Street  
 Assessor Plan 207, Lot 54  
 Zoning District: Single Residence B  
 Description: Construct attached 24' x 24' garage.  
 Requests: 1. A Variance from Section 10.521 to allow building coverage of 23%± where 20% is the maximum building coverage allowed.

**Action:**

The Board determined that an additional variance would be needed and the petition was **postponed** until it could be correctly advertised and posted in accordance with State Statute.

2) Case # 6-2

Petitioners: Vernon Pearce and Virginie O. Raguenaud

Property: 5 Elwyn Road Extension

Assessor Plan 226, Lot 4

Zoning District: Single Residence A

Description: Construct an 8' x 10' shed in the right rear yard.

Requests: 1. A Variance from Section 10.521 to allow building coverage of 19%± where 17.6%± exists and 10% is the maximum building coverage allowed.

**Action:**

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

**Review Criteria:**

The petition was granted for the following reasons:

- An 8' x 10' shed in this location will not change the essential character of the neighborhood or threaten the health, safety or welfare of the general public so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- The substantial justice test will be met as the hardship on the applicant if the petition were denied would not be outweighed by any gain to the general public.
- The shed abuts the State of New Hampshire Urban Forestry Center land on both sides so that there will be no diminution in the value of surrounding properties.
- The requirements in the Ordinance are intended to protect the rights of neighbors. The special condition of the property is its location abutting protected land so that there is no fair and substantial relationship between the general purposes of the Ordinance and their application to this property.

3) Case # 6-3

Petitioners: Peter Cass & Mara Witzling

Property: 33 Hunking Street

Assessor Plan 103, Lot 38

Zoning District: General Residence B

Description: Replace existing front porch with 5' x 7' structure and construct rear addition, retaining wall in front yard and bulkhead to the left rear of the existing building.

Requests: 1. A Variance from Section 10.321 to allow a non-conforming structure to be enlarged, reconstructed or structurally altered in a manner that is not in conformity with the Zoning Ordinance.

2. A Variance from Section 10.521 to allow a rear yard setback of 19'± where 25' is the minimum required. .

3. A Variance from Section 10.521 to allow a left side yard setback of 6'± where 10' is the minimum required.

**Action:**

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

**Review Criteria:**

The petition was granted for the following reasons:

- Removal of a dilapidated front porch, replacing the front stairs with ones that are smaller, and construction of a new structure to the rear will not be contrary to the public interest.
- It will be in the spirit of the Ordinance to move the porch and stairs closer to the house so that the front yard setback is met and to place the bulkhead no closer to the side yard property line than the main line of the existing house. The structure infringing into the rear yard setback abuts properties with structures set to the front so there will still be adequate light and air.
- In the justice balance test, there would be no overriding benefit to the general public if the petition were denied.
- There will be an overall improvement in the appearance of the home, which will also be reviewed by the Historic District Commission, so that the value of surrounding properties will not be diminished.
- The special conditions of the property creating a hardship in locating any proposed structures include the small size of the lot and the placement of the existing house very close to the lot line on the left. In terms of the use of the lot, the placement of the addition is a reasonable choice.

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4) Case # 6-4

Petitioners: Lawrence P. McManus, Jr., owner, Mary Beth Herbert, applicant

Property: 112 Gates Street

Assessor Plan 103, Lot 71

Zoning District: General Residence B

Description: Install two air conditioning compressor units to the right of the existing structure.

Requests: 1. A Variance from Sections 10.572 & 10.521 to allow a 3.6'± right side yard setback where 10' is required for an accessory structure.

2. A Variance from Sections 10.574 and 10.521 to allow building coverage of 52.1%± where 51.8% exists and 30% is the maximum allowed.

**Action:**

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

**Other:**

The applicant represented that vegetation, or another appropriate buffer, would be installed to suppress the noise generated which was represented as 73 to 74 decibels.

**Review Criteria:**

The petition was granted for the following reasons:

- Replacing unattractive air conditioning window units with two relatively low lying condensers will not be contrary to the public interest.
- The spirit of the Ordinance will be observed. While the existing building coverage is over the allowed 30%, this additional increase is negligible. The relief for the side setback is for two small condensers and not a large addition which will lessen the impact.
- Substantial justice will be done and there will be no diminution in the value of surrounding properties as removal of the existing window a/c units will enhance the appearance of this property for the overall benefit of the neighborhood. It was demonstrated that the abutter most affected supported the proposal.

- A special condition of the property is that the existing home occupies the major portion of the lot so that no fair and substantial relationship exists between the general public purposes of the Ordinance and their application to the property. The use is a reasonable one and the best alternative for placement of the units was selected.
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5) Case # 6-5

Petitioners: Patrik & Eva Frisk

Property: 44 Pickering Street

Assessor Plan 102, Lot 19

Zoning District: General Residence B

Description: Remove attached garage and construct 20' x30' two-story addition with rear deck.

Requests: 1. A Variance from Section 10.321 to allow a non-conforming structure to be enlarged, reconstructed or structurally altered 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 5.25'± where 10' is required.

**Action:**

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

**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. The essential character of the neighborhood will not be changed nor the health, safety and welfare of the general threatened by moving the property into greater conformity with the required side setback.
  - There will be no overriding benefit to the general public in denying the petition. The general public will benefit from the increase in the right side yard setback.
  - Granting the variances will not diminish the value of surrounding properties. One direct abutter spoke in favor of the petition and moving the structure away from the property line will benefit the abutter on the side most affected by the change.
  - The special conditions of the property creating a hardship are its corner location and a significant existing nonconforming condition on the lot, which will be lessened.
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6) Case # 6-6

Petitioner: Public Service Company of NH

Property: 280 Gosling Road

Assessor Plan 214, Lot 2

Zoning District: Waterfront Industrial

Description: Expand existing sub-station by constructing a capacitor bank.

Requests: 1. A Special Exception under Section 10.440, Use #15.12 to allow the expansion of a transformer substation providing community-wide or regional service.

**Action:**

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

**Review Criteria:**

The petition was granted for the following reasons:

- The standards as provided in the Ordinance for this use permitted by special exception are met.
- There will be no hazard to the public or adjacent properties as there is an adequate protective setback to the various components.
- There will be no detriment to property values in the vicinity or change in the essential characteristics of the neighborhood as the surrounding properties are owned by the applicant and represent complimentary uses.
- There is nothing in this expansion that will create a traffic safety hazard, increase in traffic congestion, or excessive demand on municipal services.
- With the proposed structures and the gravel-based pervious surface there will be no increase in storm water runoff onto adjacent properties.

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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 1:00 a.m.

Respectfully submitted,

Mary E. Koepenick, Secretary