

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 July 16, 2013 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Vice-Chairman Arthur Parrott, Susan Chamberlin, Charles LeMay, Christopher Mulligan, David Rheume, Alternate: Patrick Moretti,

EXCUSED: Chairman David Witham, Derek Durbin, Alternate: Robin Rousseau

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I. APPROVAL OF MINUTES

A. Minutes of Meeting – May 21, 2013

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

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II. PLANNING DEPARTMENT REPORTS

A) Electronic Packet Submittal

It was agreed that Ms. Walker would amend the proposed change to the Rules & Regulations regarding electronic submittal of application materials for action at the August meeting.

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III. PUBLIC HEARINGS - OLD BUSINESS

A) 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: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a rear yard setback of 18'± where 30' is the minimum required.

(This petition was revised from that receiving initial consideration at the June 18, 2013 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 variance will not be contrary to the public interest as the existing row of trees along the rear of the property, which the applicant represented would remain, will mitigate the intrusion into the rear yard setback.
- The spirit of the Ordinance will be observed as the essential character of the neighborhood, which includes properties with a number of small garages, will not be changed.
- The lot size is adequate for a two car garage and the placement is reasonable so that allowing the homeowners greater enjoyment of their property will cause no harm to the general public.
- The improvements to the property, including the addition of a garage and stabilization of the home, will not diminish the value of the surrounding properties.
- A special distinguishing characteristic of the property is that the lot is smaller than the required minimum lot size for this district. This creates a hardship for the property owner in attempting to comply with the dimensional requirements.

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IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 7-1

Petitioners: Matthew & Katherine Hatem

Property: 1 Ash Street

Assessor Plan 149, Lot 34

Zoning District: General Residence A

Description: Install 39"±L x 27"±W x 18"±H condenser unit at rear of existing home.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a rear yard setback of 7'± where 20' is required.
2. A Variance from Section 10.521 to allow building coverage of 28.3%± where 28.2% exists and 25% is the maximum allowed.

Action:

The Board voted to **postpone** the petition, at the request of the attorney for the applicants, to the August 20, 2013 meeting.

2) Case # 7-2

Petitioners: 4 Amigos, LLC

Property: 1390 & 1400 Lafayette Road

Assessor Plan 252, Lots 9 & 7

Zoning District: Gateway

Description: Install free-standing signs

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1243 to allow multiple free-standing signs on a lot where only one free-standing sign per lot is allowed.
2. A Variance from Section 10.1251.20 to allow a free-standing sign to exceed 100 s.f. in area.

Action:

The Board voted to **postpone** the petition, at the request of the attorney for the applicants, to the August 20, 2013 meeting.

3) Case # 7-3

Petitioners: Julie L. Cyr

Property: 91 Spring Street

Assessor Plan 133, Lot 10

Zoning District: General Residence A

Description: Replace a nonconforming deck and stairs.

Requests: 1. An Equitable Waiver as allowed in RSA 674:33-a for a deck resulting in 27%± building coverage where 25% is the maximum allowed.

If the Equitable Waiver is not granted, the Variances necessary to grant the required relief from the Zoning Ordinance, including the following;

2. A Variance from Section 10.521 to allow 27%± building coverage where 25% is the maximum allowed.

Action:

The Board determined that the circumstances of the request did not allow them to make a finding under item (d) of RSA 674:33-a so that an **Equitable Waiver could not be granted**. The Board then considered the variance request and voted to **grant the variance** as presented and advertised.

Review Criteria:

The variance was granted for the following reasons:

- The relatively small increase requested in building coverage will not alter the essential character of the neighborhood nor threaten the health, safety or welfare of the general public.
 - Decks are common in this neighborhood and the addition is in keeping with the general intent of the requirements in the General Residence A District.
 - In the substantial justice test, there would be no gain to the general public that would counterbalance the loss to the applicant if the replacement of the previous deck were not allowed.
 - A replacement deck that is smaller in size will not diminish the value of surrounding properties.
 - The previous addition, approved in 1987, included features that would allow the living space to open onto a deck so that there is no fair and substantial relationship between the general purposes of the Ordinance provision for lot coverage and its specific application to this property. The use is a reasonable one in this residential neighborhood and depriving the applicant of the use and requiring reconfiguration of the egress would result in a hardship.
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4) Case # 7-4

Petitioners: St. Gelais Revocable Trust, Gerard J. & Barbara J. St. Gelais, Trustees

Property: 13 Van Buren Avenue

Assessor Plan 250, Lot 51

Zoning District: Single Residence B

Description: Construct an 8'±L x 8'±W x 8'±H shed in the right rear corner of the lot

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 and 10.572 to allow a right side yard setback of 5'± where 10' is required for an accessory structure.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- With small sheds common in many areas of Portsmouth, the proposed shed will not be contrary to the public interest.
- While the proposed setback is half that required, angling the shed so that the measurement is from the corner will lessen the impact and observe the spirit of the Ordinance.
- The shed will improve the owners’ enjoyment of their property without infringing on the general public.
- A small shed placed in a logical location will not diminish the value of surrounding properties.
- The special conditions of the property are the relatively small size of the lot and the way the house is centered front to back so that moving the shed away from the property line would impede the small amount of yard available. A shed is a reasonable use of a property in this residential neighborhood.

5) Case # 7-5

Petitioner: Douglas F. Fabbriatore

Property: 536 Marcy Street

Assessor Plan 101, Lot 56

Zoning District: General Residence B

Description: Construct an 11’ x 16’ rear addition over existing kitchen, lift the main roof over existing front section of home and add shed dormers.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.324 to allow a nonconforming building or structure to be added to or enlarged with the addition or enlargement not in conformance with the Zoning Ordinance.
2. A Variance from Section 10.521 to allow a front yard setback of 2’10”± where 5’ is the minimum required.
3. A Variance from Section 10.521 to allow a left side yard setback of 0’± for an addition where 10’ is the minimum required.
4. A Variance from Section 10.521 to allow building coverage of 32%± where 27.4%± exists and 30% is the maximum allowed.

Action:

The Board determined that the variance for building coverage would not be needed and voted to **grant** the remaining three variances as presented and advertised.

Review Criteria:

The variances were granted for the following reasons:

- Granting the variances will not change the essential character of the neighborhood nor threaten the health, safety or welfare of the general public.
- No public good would result from restricting an expansion to an existing nonconforming building that has been in place for many years.

- There was no specific testimony to support a conclusion that the value of surrounding properties would be diminished and it was presented that the existing setbacks would remain unchanged.
- One of the special conditions of the property is the existing nonconformance in a neighborhood developed well before zoning. To impose a restriction resulting from changes in the Ordinance over time would not be reasonable.

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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 8:25 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary