

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

ACTION SHEET

TO: John P. Bohenko, City Manager
FROM: Mary Koeppenick, Planning Department
RE: Actions Taken by the Portsmouth **Board of Adjustment at its regular meeting on August 20, 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

=====
I. APPROVAL OF MINUTES

A) May 28, 2013

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

B) Excerpt of Minutes – June 18, 2013 regarding property located at Off Washington Street.

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

=====
II. PLANNING DEPARTMENT REPORTS

A) Update - Electronic Packet Submittal

Considering this item as the last order of business at the meeting, the Board requested that a final version be provided for a vote at the September 17, 2013 meeting which would specify the member of the Planning Department responsible for granting a waiver request.

=====
III. PUBLIC HEARINGS - OLD BUSINESS

A) Motion for Rehearing regarding property located at Off Washington Street.

Action:

The Board of Adjustment acknowledged that the petitioners had requested an extension to this date of the time period in which to hear the motion.

After consideration, the Board voted to **deny** the Motion for Rehearing. The Board found that it made no errors in procedure or application of the law. The Board found that the June 18, 2013 public hearing for the variance request, for the property with an address of off Washington Street, was thorough with arguments presented in favor of, and in opposition to, the petition and it was determined that no new information had been provided that was not available at the time of the hearing.

B) 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.

(This petition was postponed at the July 16, 2013 meeting)

Action:

The Board acknowledged that the applicant had **withdrawn** the petition.

C) 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.

(This petition was postponed to the August 20, 2013 meeting)

Action:

The Board voted to **postpone** hearing the petition to the September 17, 2013 meeting as requested by the attorney for the applicant.

=====

IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 8-1

Petitioner: Richard S. Bean

Property: 324 Parrott Avenue

Assessor Plan 129, Lot 36

Zoning District: General Residence A

Description: Construct a 529± s.f. garage with living space and deck above. Construct a 388± s.f. left side deck.

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

1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed, enlarged or structurally altered in a manner that is not in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,211± s.f. where 7,500 s.f. per dwelling unit is required.
3. A Variance from Section 10.521 to allow building coverage of 34 % ± where 25% is the maximum coverage allowed.
4. A Variance from Section 10.521 to allow a left side yard setback of 2'± where 10' is the minimum allowed.

Action:

The Board voted to **postpone** hearing the petition to the September 17, 2013 meeting as requested by the attorney for the applicant.

2) Case # 8-2

Petitioners: Two Boats Realty LLC, owner, Mary Driscoll, applicant

Property: 279 Richards Avenue

Assessor Plan 130, Lot 53

Zoning District: General Residence A

Description: Construct 20'± x 48'± detached 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 left side yard setback of 3'± where 10' is the minimum allowed.

Action:

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

Stipulations:

- That the granted variance will be for a 6'± left side yard setback where 3'± was requested.
- That the garage will be constructed on a floating slab foundation.
- That best practices be employed to preserve the existing trees.

Other:

It was noted that the name of the current owner of record has been changed to Scary Realty LLC.

Review Criteria:

The petition was granted for the following reasons:

- There will be no public interest in a garage placed in this location.
- With the stipulations, the spirit of the Ordinance will be observed by allowing the property owner to better utilize their property without infringing on the rights of others.
- There would be no overriding public benefit that would outweigh the loss to the applicant if denied.
- A new structure built to code and in a style similar to the existing principal building will not diminish the value of surrounding properties.
- Due to the special conditions of the lot, including its configuration and placement of structures as well as a driveway shared with an abutter, there is no fair and substantial relationship between the general public purposes of the Ordinance provision and their application to the property.

The applicant shall make all required revisions to the building permit application as necessitated by the stipulations of this approval.

3) Case # 8-3

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

Property: Marjorie Street (number not yet assigned)

Assessor Plan 232, Lot 14 (rev.)

Zoning District: Single Residence B

Description: Construct a single family 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 lot area of 9,596 s.f. ± per dwelling unit where 15,000 s.f. per dwelling unit is required.
2. A Variance from Section 10.521 to allow a 26.1'± rear yard setback where 30' is the minimum allowed.

Action:

The Board voted to **continue** the petition to the September 17, 2013 meeting so that the applicant can provide elevations of the proposed structure and City Staff can provide information to the Board regarding drainage at this site.

4) Case # 8-4

Petitioners: K. C. Realty Trust, owner, Portsmouth Buddhist Center Inc., applicant

Property: 84 Pleasant Street, Ste. 201

Assessor Plan 107, Lot 77

Zoning District: Central Business B

Description: A religious place of assembly.

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

1. A Special Exception under Section 10.440, Use #3.11 to allow a religious place of assembly in a district where such use is allowed by Special Exception.

Action:

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

Stipulations:

None.

Review Criteria:

The Special Exception was granted for the following reasons:

- The standards provided for the Ordinance for this particular use permitted by Special Exception were met.
- There would be no hazard to the public or adjacent property from fire explosion or release of toxic materials generated by a use consisting of meditation and religious studies.
- The nature of this use will not result in any detriment to property values or change in the essential characteristics of the area from pollutants, heat or other irritants. There will be no creation of a traffic hazard or increase in congestion. This group has operated in two different locations in the past with no problems and much of the activity takes place in non-peak traffic hours.
- There will be no excessive demand on municipal services from a use that is not fundamentally different from an educational use.
- There will be no changes to the structure or site so there will be no increase in storm water runoff onto adjacent property or streets.

-
- 5) Case # 8-5
 Petitioners: 63 Humphreys Court Realty Trust & Lynne Fedorowich
 Property: 63 Humphreys Court
 Assessor Plan 101, Lot 38
 Zoning District: General Residence B
 Description: Replace existing mudroom & garage with new structures plus second story addition.
 Replace deck.
 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 right side yard setback of 2.5'± where 10' is the minimum allowed.
 2. A Variance from Section 10.521 to allow building coverage of 36% ± where 49%± exists and 30% is the maximum coverage allowed.

Action:

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

Stipulations:

- That the right side yard setback will be 4.2'± as presented by the applicant at the hearing, rather than 2.5'± as advertised.
- That the existing shed will be removed.
- That the proposed deck will be less than 18" above grade.
- That any construction within the 25' rear yard will not exceed the height and footprint of existing structures ensuring that the proposed second story addition will be no closer than 25' to the rear property line.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest. The proposed is in keeping with a residential area so that the essential character of the neighborhood will not be changed. The public health, safety and welfare will benefit by the reduction in the nonconformance of the lot.
- With the stipulations and moving to greater conformity with respect to the rear yard setback and building coverage, the proposal will be in keeping with the goals of the Zoning Ordinance.
- In the justice balance test, there would be no gain to the general public if the petition were denied.
- Improving the property in a reasonable manner will, if anything, increase the value of surrounding properties.
- There is no fair and substantial relationship between the general public purposes of the Ordinance provision and their application to the property due to the special conditions of the lot. This is an existing small house on a small lot, angled in configuration so that a hardship is created in making full use of the property. This is a reasonable use which will lessen the existing nonconformities.

The applicant shall make any required revisions to the building permit application as necessitated by the stipulations of this approval.



6) Case # 8-6

Petitioner: Ryan P. & Crystal L. Cronin

Property: 180 Gates Street

Assessor Plan 103, Lot 18

Zoning District: General Residence B

Description: Construct a two-story 12'± x 11'± rear addition.

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

1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed, enlarged or structurally altered in a manner that is not in conformity with the Ordinance
2. A Variance from Section 10.521 to allow building coverage of 35% ± where 32.2%± exists and 30% is the maximum coverage 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 add a modest addition to the rear of an existing structure.
- This is a relatively large lot for the area and a slight increase in building coverage will be in keeping with the spirit of the Ordinance, which is to prevent large structures on small lots.
- Substantial justice will be done by filling a need for the property owner with no loss to the neighborhood or the public.
- An appropriate small addition will increase the value of this property and will not decrease the value of surrounding properties.
- With the existing main structure close to the right property line, the best location has been chosen for the addition to allow a reasonable use of the property.

-
- 7) Case # 8-7
Petitioners: Loehwing & Mulligan Trust, D. J. Loehwing & M. E. Mulligan, Trustees
Property: 130 Thornton Street
Assessor Plan 160, Lot 9
Zoning District: General Residence A
Description: Construct 3' x 5' addition, rear L-shaped deck and steps.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed, enlarged or structurally altered in a manner that is not in conformity with the Ordinance
 2. A Variance from Section 10.521 to allow a left side yard setback of 8'± where 10' is the minimum allowed.
 3. A Variance from Section 10.521 to allow a rear yard setback of 18'± where 20' is the minimum allowed.
 4. A Variance from Section 10.521 to allow building coverage of 35% ± where 29%± exists and 25% is the maximum coverage 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 very small addition and reasonably-sized deck will be placed so that there will be no effect on the public interest.
- As this continues the line of the existing home, the deviation from the setback requirements is small. The majority of the increase in building coverage is due to an open deck which preserves the light and air protected by the Ordinance.
- Substantial justice will be done by allowing the homeowner to make their property more livable without infringing on the public interest.
- The improvements should increase the value of this property as well as those of the surrounding neighbors.
- The special conditions of the property include the overall small size of the lot and a lot line that narrows as it moves back from the front so that the depth at the rear is somewhat smaller. The request is a reasonable one that will not contribute to a feeling of overcrowding in the neighborhood.

-
- 8) Case # 8-8
Petitioner: Jerry Duberstein Revocable Trust, Jerry Duberstein, Trustee
Property: 49 Lawrence Street
Assessor Plan 152, Lot 43
Zoning District: General Residence A

Description: Construct 8’ x 12’ shed at right, rear of property.

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 right side yard setback of 5’ where 10’ is required.
2. A Variance from Section 10.521 to allow building coverage of 35%± where 33.3%± exists and 25% is the maximum coverage 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:

- A small shed located in the rear of the property will not alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public so that granting the variances will not be contrary to the public interest.
- The request will not negatively affect the purposes of this Zone, which includes allowing low properties with medium to high densities.
- The loss to the applicant, if the petition were denied, would not be outweighed by any public benefit.
- The value of surrounding properties will not be diminished by a shed of this size in this location.
- The special conditions of the property is that it is currently nonconforming with structures built before the Ordinance was enacted so there is no fair and substantial relationship between the general public purposes of the Ordinance provision and their application to the property, specifically for an accessory use. Adding a shed is a common and reasonable use of the property.

=====

V. OTHER BUSINESS

No other business was presented.

=====

VI. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:35 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary