

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 October 22, 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
EXCUSED: Alternate Patrick Moretti

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III. PUBLIC HEARINGS – NEW BUSINESS

- 6) Case # 10-6
Petitioners: Janice E. Clark, owner, Richard Clark, applicant
Property: 47 Lois Street
Assessor Plan 232, Lot 16
Zoning district: Single Residence B
Description: The keeping of chickens.
Requests: The Variances and/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 # 17.20 to allow the keeping of farm animals (chickens) in a district where this use is allowed by Special Exception.

Action:

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

Stipulations:

- Chickens will be the only farm animals kept on the property.
- The number of chickens will be limited to three.
- No roosters will be permitted on the property.

Review Criteria:

The petition was granted for the following reasons:

- The standards as provided in the Ordinance for this particular use permitted by Special Exception are met.

- The keeping of three chickens will present no hazard to the public or adjacent property from fire explosion or release of toxic materials.
 - There will be no detriment to property values or change in the essential characteristics of the area from noise or other irritants. The neighborhood will be protected by the stipulations attached to this approval.
 - There will no increase in demand for municipal services and the applicant has presented a reasonable plan for waste disposal.
 - Storm water runoff will not be affected.
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7) Case # 10-7

Petitioner: Grondahl Family LLC, owner, VMD Companies LLC, applicant

Property: 140 West Road

Assessor Plan 252, Lot 2, 1301-1305

Zoning district: Industrial

Description: Conversion of an existing industrial building to a health club use.

Requests: The Variances and/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 # 4.42 to allow a health club in a district where this use is allowed by Special Exception.

Action:

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

Stipulation:

- The parking spaces on the property will be laid out to meet the dimensional requirements outlined in Section 10.1114 of the Zoning Ordinance.

Other:

The applicant shall review the proposed parking layout with the Planning Department to ensure that the location and design of the proposed parking spaces comply with the Zoning Ordinance.

Review Criteria:

The petition was granted for the following reasons:

- The standards as provided in the Ordinance for this particular use permitted by Special Exception are met.
- Nothing in the proposed use will present a hazard to the public or adjacent property from potential fire explosion or release of toxic materials.
- This property is set in an industrial area close to a retail district with a variety of uses in surrounding properties so that this use will not result in a detriment to property values or change the essential characteristics of the area due to parking, smoke, other pollutants or unsightly outdoor storage.
- The traffic generated will be spread throughout the day and evening so that there will be no significant increase in traffic or creation of a traffic hazard.

- Functions appropriate to a health club conducted in an existing building will not create an excessive demand on municipal services.
 - With no change in the footprint of the structure or increase in paved area, there will be no significant increase in storm water runoff onto adjacent property or streets.
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8) Case # 10-8

Petitioners: Brinton & Tatjana Shone

Property: 46 Sherburne Avenue

Assessor Plan 113, Lot 10

Zoning district: General Residence A

Description: Install a 10'± x 7'± right side shed dormer.

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 lawful nonconforming building or structure to be added to or enlarged unless the addition or enlargement conforms to the requirements of the district.
2. A Variance from Section 10.521 to allow a right side yard setback for the dormer of 4.5'± where 10' is the minimum required.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- A dormer in this location will not interfere with the light and air of neighboring properties or change the essential characteristics of the neighborhood so that the spirit of the Ordinance will be observed and the public interest protected.
 - In the justice test, the balance weighs in favor of the applicant as there will be no detriment to the general public if the variances are granted.
 - An upgrade to this property with no impact on the neighborhood will not diminish the value of surrounding properties.
 - The special condition of the property distinguishing it from others in the area is that it is an older home with physical constraints in accessing the third floor. The general public purposes of the Ordinance will be met by allowing full and reasonable utilization of the property while preserving the light and air of neighbors.
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9) Case # 10-9

Petitioners: Adam D. Marcionek & Cara A. Murphy

Property: 50 Swett Avenue

Assessor Plan 232, Lot 59

Zoning district: Single Residence B

Description: Convert existing 13½' ± x 19' ± rear deck into a three-season enclosed porch.

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 lawful nonconforming building or structure to be added to or enlarged without the addition or enlargement conforming to the requirements of the district.
2. A Variance from Section 10.521 to allow a left side yard setback for a rear addition of 5' ± where 10' is required.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Converting an open deck to a three season room with no change in footprint will not be contrary to the public interest or change the essential characteristics of the neighborhood so that the spirit of the Ordinance will be observed.
- Substantial justice will be done and the value of surrounding properties will not be diminished by a modest change in keeping with the existing structure and area.
- This a small house on a small lot so that a hardship is created in locating this three season room. Alternate locations were considered and rejected as they would interfere with other existing structures.

10) Case # 10-10

Petitioner: Elizabeth Blaisdell

Property: 77 New Castle Avenue

Assessor Plan 101, Lot 50

Zoning district: General Residence B

Description: Replace rear barn in smaller footprint.

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 Ordinances.
2. A Variance from Sections 10.572 and 10.521 to allow a left side yard setback of 3.0' ± for the barn where 10' is the minimum required for an accessory structure.
3. A Variance from Sections 10.573.20 and 10.521 to allow a rear yard setback of 3' ± for the barn where 10.5' is the minimum required for an accessory structure.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Allowing the rebuilding of an existing barn in a smaller footprint will not be contrary to the public interest.
- The replacement structure will be in greater conformance with the requirements of the Zoning Ordinance. The essential characteristics of the neighborhood will not be altered and there will be no threat to the health, safety or welfare of the general public so that the spirit of the Ordinance will be observed.
- With less setback relief required than what currently exists, there would be no gain to the public in denying the variances.
- Surrounding property values will be increased by reconstruction of a dilapidated barn in a smaller footprint. The two abutters expressing interest in the petition were in support of the proposal.
- There are special conditions of the property so that no fair and substantial relationship exists between the general public purposes of the Ordinance and their application to the property. This is a small lot and compliance with the setbacks would prevent the applicant from use of the back yard. It is a reasonable use of the property to reconstruct a barn that has been in place for many years.

11) Case # 10-11

Petitioners: One Gosling Road LLC, owner, New Frontiers Church, applicant

Property: 1 Gosling Road

Assessor Plan 239, Lot 13

Zoning district: General Business

Description: Allow a religious use in a General Business District.

Requests: The Variances and/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 use in a district where this use is allowed by Special Exception.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- With the nature of the proposed use, there will be no hazard to the public or adjacent property from fire explosion or release of toxic materials.
- There will be no detriment to property values or change in the essential characteristics of the area from a use that is less intense than the previous uses. There will be no odors, smoke or other pollutants generated or unsightly outdoor storage.
- The site will be mainly used on Sunday mornings when the overall traffic is low so that there will be no creation of a traffic safety hazard or substantial increase in traffic congestion.
- The need for municipal services will be less with this proposed use.
- With no change to the exterior of the building or the site, there will be no significant increase in storm water runoff onto adjacent properties or the street.

12) Case # 10-12

Petitioners: Jessica L. Fiske & Evan W. Patten

Property: 250 Clinton Street

Assessor Plan 159, Lot 9

Zoning district: General Residence A

Description: Install a/c condenser in front of left side deck.

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

1. A Variance from Sections 10.572 and 10.521 to a right side yard setback for an a/c condenser of 6' where 10' is required for an accessory structure.
2. A Variance from Section 10.521 to allow building coverage of 27.1%± where 25% is the maximum allowed.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Adding a relatively small condenser in this location will not be contrary to the public interest.
- There will be a marginal increase in building coverage and the property line from which the 6' setback is requested abuts a paper street so that the spirit of the Ordinance in setting the dimensional requirements will be met.
- Substantial justice will be done by allowing the property owners the benefit of a condenser placed in a suitable location while shielding it from the view of the general public.
- This is a small change to the property which will not impact the value of surrounding properties.

- The property is unique with a property line abutting a paper street which is a special condition distinguishing it from other properties in the area. While the property cannot be used in strict conformance with the Ordinance, from a practical standpoint, the proposed 6’ setback is a reasonable one.

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IV. OTHER BUSINESS

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 8:40 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary