

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 November 19, 2013** in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Derek Durbin, Charles LeMay, Christopher Mulligan, David Rheäume, Alternate: Patrick Moretti

EXCUSED: Susan Chamberlin

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I. APPROVAL OF MINUTES

A) July 24, 2012

B) August 21, 2012

Minutes for both meetings were approved as presented.

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II. PUBLIC HEARINGS - OLD BUSINESS

A) 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.

(This petition was postponed for additional information at the August 20, September 17 and October 15, 2013 meetings.)

Action:

The Board voted to **grant** the petition for a reduced lot area as presented, acknowledging that the advertised variance for a rear yard setback was no longer needed. The petition was granted with the following stipulation.

Stipulation:

- That the Stormwater Management Inspection & Maintenance Plan dated October 31, 2013, as submitted and as presented at the meeting, will be followed by the present owner and future owners as a deeded element of the property.

Review Criteria:

The petition was granted for the following reasons:

- The essential character of the neighborhood will not be changed by a home of this size and type, nor will the health, safety or welfare of the general public be threatened. Granting the variance will not be contrary to the public interest as the previous concerns with drainage have been fully addressed by the submitted plan as outlined in the stipulation attached to this variance.
- The spirit of the Ordinance will be observed as the property is located in a residential zone, the purpose of which is to encourage residential development of low and medium densities.
- Substantial justice will be done as denying the variance will prevent development of the lot causing a loss to the applicant while the general public will not benefit by maintenance of a *status quo* that would include previous storm water concerns.
- A newly constructed home that is in keeping with the character of the neighborhood should not decrease the value of surrounding properties.
- This is the largest undeveloped lot in a neighborhood of nonconforming lots so that there is no fair and substantial relationship between the provisions of the Ordinance and their specific application to this property. With a reasonably sized home and the protection of the attached stipulation, the proposed use is a reasonable one.

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III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 11-1

Petitioner: Evon Cooper

Property: 287 Maplewood Avenue

Assessor Plan 141, Lot 36

Zoning District: Mixed Residential Office

Description: Construct one story rear addition.

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 in a manner that does not conform to the requirements of the district.
2. A Variance from Section 10.521 to allow a right side yard setback of 2.49'± 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:

- Building a small room at the back end of an older structure will not be contrary to the public interest.
- Located next to an open area on the abutting property and with no expansion of the footprint, the proposed addition will not impact the light and air as protected by the Zoning Ordinance.
- Substantial justice will be done by allowing the homeowner to make use of space previously occupied by an addition, the reconstruction of which was previously approved by a lapsed variance. There would be no benefit to the general public in denying the variances.
- Adding this small addition to the home should positively affect the value of surrounding properties.
- An inherent hardship is created as this is a tight lot created years ago so that almost any construction would require a variance. There is a pre-existing foundation element which will be the basis for the new construction.

2) Case # 11- 2

Petitioners: Jeffrey P. & Jamie E. Barnes

Property: 22 Central Avenue

Assessor Plan 209, Lot 29

Zoning District: General Residence A

Description: Allow a single chair in-home hair salon. Construct left side dormer and stairs.

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 #19.22 to allow a Home Occupation 2 in a district where the use is allowed by Special Exception.
2. Variance from Section 10.440, Use #19.22 to allow 400 s.f. floor to be used for the Home Occupation where 300 s.f. is the maximum floor area allowed.
3. A Variance from Section 10.324 to allow a lawful nonconforming building or structure to be added to or enlarged in a manner that does not conform to the requirements of the district.
4. A Variance from Section 10.521 to allow a front yard setback of 0'± where 15' is required.
5. A Variance from Section 10.521 to allow building coverage of 26%± where 25% is the maximum allowed.
6. A Variance from Section 10.1112.30 to allow less than two parking spaces to be provided.

Action:

The Board voted to grant the petition as presented, acknowledging that the proposed front yard setback was 2'± and not 0'± as advertised.

Stipulations:

None.

Review Criteria:

The special exception was granted for the following reasons:

- The standards as provided by the Ordinance for this particular use permitted by Special Exception are met.
- A single-chair hair salon will present no hazard to the public or adjacent property from fire explosion or release of toxic materials.

- This is a low impact business that will not detract from property values or change the essential characteristics of the area from smoke, dust or other pollutants or irritants. With good visibility and low traffic volume there will be no creation of a traffic safety hazard or increase in congestion.
- The nature of the proposed use will not result in an excessive demand on municipal services and, with no change to the physical structure, no increase in storm water runoff onto adjacent property or streets.

The variances were granted for the following reasons:

- The proposed dormer and stairs will not alter the essential character of the neighborhood so that granting the petition will not be contrary to the public interest.
- The spirit of the Ordinance will be observed by allowing these small increases which are required for access to the new space.
- Substantial justice will be done as the benefit to the applicant will not be outweighed by any harm to the general public.
- With minimal impact on the neighborhood, there will be no diminution in the value of surrounding properties.
- The special conditions in the property resulting in a hardship are the odd configuration of the lot and the siting of the existing structure on the lot so that the proposed dormer and stairs infringe into the setback.

3) Case # 11-3

Petitioners: Judy L. Hiller & John B. Wilkens

Property: 18 Manning Street

Assessor Plan 103, Lot 67

Zoning District: General Residence B

Description: Relocate side entrance landing and stairs to rear.

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 building or structure to be extended, reconstructed, enlarged or structurally altered in a manner that does not conform to the requirements of the district.
2. A Variance from Section 10.516.40 and 10.521 to allow a left side yard setback of 4'± where 5' is required for an open porch and stairs.
3. A Variance from Section 10.516.40 and 10.521 to allow a rear yard setback of 9'± where 19' is required for an open porch and stairs.
4. A Variance from Section 10.521 to allow building coverage of 41.8%± where 41.7%± exists and 30% is the maximum allowed.

Action:

The Board voted to **grant** the petition as presented, acknowledging that the variance for the left side yard setback was not required as the setback is 5'±, not 4'± as advertised. The Board also acknowledged that, for the rear yard, the variance was for 9'± where 12.5' is required.

Stipulations:

None

Review Criteria:

The petition was granted for the following reasons:

- Relocating the stairs and landing to the rear of the property would be in the public interest.
- This change will not alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public so that the spirit of the Ordinance will be observed.
- The applicant is modifying an internal layout which would be facilitated by moving one means of egress. In the substantial justice balance test, there would be a loss to the applicant if the petition were denied with no balancing gain to the general public.
- Additional parking will be made available by moving the entrance and stairs relieving on-street parking and the rear encroachment will not affect neighboring properties so that the value of surrounding properties will not be diminished.
- This is an odd shaped lot at the intersection of two streets. With an existing nonconforming structure, there is little room for improvements without seeking a variance so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and their application to the property. It is a reasonable use of the property to relocate the stairs from the side to the rear and their specific placement was determined by the need to accommodate the existing accessway to the basement.

4) Case # 11- 4

Petitioner: Great Bay School Training Center

Property: 417 Lafayette Road

Assessor Plan 230, Lot 23

Zoning District: Single Residence B

Description: New lot created by sub-division.

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 13,923 s.f. ± where 15,000 s.f. is the minimum lot size required.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 13,923 s.f. ± where 15,000 s.f. is the minimum 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:

- An orderly arrangement of these lots will not be contrary to the public interest. The spirit of the Ordinance will be observed by allowing an adequately sized lot for the placement of a single-family home without encroaching on abutting property owners. While the lot size is under the requirement, the reduction is not substantial enough to affect the health, safety or welfare of the general public.
- In the substantial justice balance test, denial of the application would be detrimental to the applicant while a strictly conforming lot size would not benefit the general public.

- This is an adequately sized lot for a single family home so that the value of surrounding properties will not be diminished.
- There is no fair and substantial relationship between the general public purposes of the Ordinance provisions and their application to this property. With the configuration of the current lot and boundaries, it is reasonable to create a buildable legally nonconforming lot rather than try to create a conforming lot that might raise other issues with the Zoning Ordinance and Sub-Division Regulations.

5) Case # 11-5

Petitioner: Kenneth C. Sullivan

Property: 40 Howard Street

Assessor Plan 103, Lot 61

Zoning District: General Residence B

Description: Construct second story over rear section of existing structure.

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 in a manner that does not conform to the requirements of the district.
2. A Variance from Section 10.521 to allow a rear yard setback of 8'± where 25' is required.
3. A Variance from Section 10.521 to allow building coverage of 40%± where 30% is the maximum allowed.

Action:

The Board voted to **grant** the petition as presented and advertised, acknowledging that the variance was for a rear yard setback of 7.5'± where 25' is required and that the existing footprint will not be expanded.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- There will be nothing contrary to the public interest in this rear addition which will fit in well with the neighborhood.
- It will be in the spirit of the Ordinance to allow the property owners to improve and expand their space without infringing on the rights of their neighbors.
- In the substantial justice test, a potential harm to the property owner if the petition were denied would not be balanced by any benefit to the general public.
- The design of the proposed addition will fit in well with adjacent properties so that their value will not be diminished.
- A hardship is created by a uniquely shaped lot with the existing structure sited so that any expansion would require a variance. Increasing the footprint would not be practical so that a vertical expansion at the rear was the best choice for an expansion.

- 6) Case # 11-6
Petitioner: Grondahl Family LLC
Property: 140 West Road
Assessor Plan 252, Lot 2-1301-1305
Zoning District: Industrial
Description: Parking for a health club.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.1112.30 to allow 103 parking spaces where 72 parking spaces exist and 145 parking spaces are 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 variance will not be contrary to the public interest and the spirit of the Ordinance will be observed. Given the limited relief from the parking requirement, the essential character of the neighborhood will not be altered nor the health, safety, or welfare of the general public threatened.
- In the justice balance test, enforcing a 146 space requirement would result in a loss to the applicant with no gain to the general public.
- The proposed additional green space and less impervious surface will increase the attractiveness of the site, which will not diminish the value of surrounding properties.
- Literal enforcement of the provisions of the Ordinance would result in a hardship. The amount of required parking is excessive for this particular reasonable use of the property so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property.

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- 7) Case # 11-7
Petitioner: Mary R. Hurlburt
Property: 220 Union Street
Assessor Plan 135, Lot 24
Zoning District: General Residence C
Description: New two-story residential structure replacing existing one-story.
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 building or structure to be extended, reconstructed, enlarged or structurally altered in a manner that does not conform to the requirements of the district.
2. A Variance from Section 10.521 to allow construction on a lot with 25.5'± continuous street frontage where 70' is required and a lot depth of 39.7'± where 50' is the minimum required.
3. A Variance from Section 10.521 to allow left and right side yard setbacks of 4.5'± where 10' is required for each setback.
4. A Variance from Section 10.521 to allow a rear yard setback of 7.8'± where 20' is required.

Action:

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

Review Criteria:

The petition failed to meet all the criteria for granting a variance and was denied for the following reasons:

- A home of this size in this location would be contrary to the public interest and the spirit of the Ordinance by altering the essential character of the neighborhood.
- There are better alternatives in scale and placement on the lot that could meet the applicant's objectives.

8) Case # 11-8

Petitioner: Ghamami Revocable Trust, Sheila Grant, Trustee

Property: 405 Deer Street #7-6

Assessor Plan 118, Lot 26-7

Zoning Districts: Central Business B & Downtown Overlay

Description: Appeal from Administrative Decision

Requests: Appeal from Administrative Decision to issue a violation notice for removal of a center chimney.

Action:

The Board voted to **postpone** the petition to the December 17, 2013 meeting at the request of the applicant. The postponement was granted with the following stipulation.

Stipulation:

This is the sole postponement that will be granted.

9) Case # 11-9

Petitioner: M.A. Boccia & V.H.T. Luong Joint Liv. Tr., M.A. Boccia & V.H.T. Luong, Trustees

Property: 30 Brewster Street (26-28)

Assessor Plan 138, Lot 35

Zoning District: General Residence C

Description: Expand third floors of two existing structures, adding one dwelling unit.

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 in a manner that does not conform to the requirements of the district.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 1,221 ±s.f. where 1,831± s.f. exists and 3,500 s.f. is the minimum required.
3. A Variance from Section 10.521 to allow a right side yard setback of 5'± where 5' exists and 10' is required.
4. A Variance from Section 10.521 to allow a rear yard setback of 0'± where 0' exists and 20' is required.
5. A Variance from Section 10.521 to allow 41.4%± building coverage where 41.6%± exists and 35% is the maximum allowed.
6. A Variance from Section 10.1112.30 to allow 4 parking spaces to be provided where 6 parking spaces are required.

Action:

The Board voted to **postpone** the petition at the request of the applicant to the December 17, 2013 meeting to allow additional time to meet with abutters regarding their concerns

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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 9:38 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary