

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 March 18, 2014** 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, David Rheume, Alternate: Patrick Moretti

EXCUSED: Susan Chamberlin, Christopher Mulligan

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I. APPROVAL OF MINUTES

A) April 16, 2013

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

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II. PUBLIC HEARINGS - OLD BUSINESS

A) Motion for Rehearing regarding 111 Maplewood Avenue.

Action:

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 additionally determined that no new information had been provided that was not available at the time of the public hearing.

B) Case # 2-4

Petitioners: Kara Lynn Cole & Alistair James Ferguson Cole

Property: 40 Mill Pond Way

Assessor Plan 143, Lot 6

Zoning District: General Residence A

Description: Remove existing two story detached nonconforming structure and build an attached 20'± x 36'± two story garage, 11'± x 24'± connector, and 3'± x 9'± one story balcony

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 or reconstructed without conforming to the requirements of the Ordinance.

- 2. Variances from Section 10.521 to allow the following:
 - a) Building coverage of 30.9%± where 25% is the maximum allowed.
 - b) A left side yard setback of 6.5'± where 10' is required.
 - c) A rear yard setback of 18'± where 20' is required.

This request is revised from that presented at the February 25, 2014 meeting and postponed to the March meeting.

Action:

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

Review Criteria:

The petition was denied as it failed to meet all of the criteria necessary to grant a variance:

- The design was not consistent with the public interest in its present configuration.
- The spirit of the Ordinance would not be observed as the current proposal does not conform to the intended order and distance between buildings and properties for this District, which could restrict preservation of open light and air between abutting properties.
- The substantial justice test is not met as benefit to the applicant outweighs potential harm to abutting properties.

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III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 3-1

Petitioner: Kathleen E. Calkins Trust, Kathleen E. Calkins, Trustee

Property: 206 Elwyn Avenue

Assessor Plan 112, Lot 27

Zoning District: General Residence A

Description: Replace existing 178± s.f. rear addition with a 368± s.f. one-story 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 building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
- 2. A Variance from Section 10.521 to allow building coverage of 31%± where 27%± exists and 25% is the maximum 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 is a small increase which complements the lot and will not change the characteristics of the neighborhood so that granting the variances will not be contrary to the public interest.
- The spirit of the Ordinance will be observed by a limited increase in the building coverage while meeting the setback requirements.

- Substantial justice will be done as the homeowners will be allowed full enjoyment of their property without infringing on the public interest.
- A slight expansion of an existing single story addition will not infringe on the open light and air in a way that the value of neighboring properties would be diminished.
- The special conditions of the property creating a hardship in any expansion is that it is a long narrow lot with an existing nonconforming structure.
- The planned improvements will also make the home more accessible for the existing occupants and their visitors who may have physical limitations.

2) Case # 3-2

Petitioners: DEH Ventures LLC, owner, CHI Engineering, applicant

Property: 430 West Road

Assessor Plan 267, Lot 28

Zoning District: Gateway

Description: Install two roofed heating/ air conditioning units on 12'± x 6'± pads. Add 21 off-street parking spaces in front of the building.

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

1. Variances from Section 10.531 to allow the following:
 - a) A front yard parking setback of 27.6'± where 30' is required.
 - b) A right side yard setback of 12.5'± where 30' is required.
2. A Variance from Section 10.1112.50 to allow 127 off-street parking spaces where a maximum of 77 spaces is allowed.
3. A Variance from Section 10.1113.20 to allow off-street parking to be located in the front yard or between the principal building and a street.

Action:

The Board voted to **grant** the petition as presented and advertised, with the acknowledgement that Request #2 will not be needed due to the movement of identified parking spaces from the rear of the property to the front.

Stipulations:

None.

Other:

While not made a specific stipulation to this approval, the Board encouraged the applicant to strongly consider converting the back area from gravel to green space prior to moving forward with approval from the Planning Board.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest. There is already parking existing at the front of the building and its expansion will not impact the public interest. The condensers in the proposed location will be partially shielded from the public view.
- The requirement regarding parking between the principal building and the street is provided in the Ordinance as a protection along the Gateway corridor, which is less of a concern with this lot as it

is located off a lightly travelled road and out of view from the Route 1 corridor. The condensers will be closer to the lot line than allowed but face an access road and large commercial non-residential lot.

- Substantial justice will be done by allowing a company to expand which will be a positive thing for the community and not harm the general public.
- The condensers will be buffered by a building and trees so that the value of surrounding properties will not be diminished in this generally industrial area and the parking will be added to an existing area.
- The unique circumstances in the property include the current parking in the front and the siting of the current building on the lot closer than allowed to the property lines, which dictates the placement of the condensers and the location of the parking. There is no fair and substantial relationship between the general public provisions of the Ordinance and their application to this property and the proposed use is a reasonable one.

3) Case # 3-3

Petitioners: Donovan-Hess Family Revocable Trust, Jane M. Donovan & William Hess, Trustees

Property: 54 Rogers Street

Assessor Plan 116, Lot 44

Zoning District: Mixed Residential Office

Description: Install 12'6" x 8'6" shed in the left rear yard..

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

1. A Variance from Section 10.521 & 10.572 to allow a 1'7"± left side yard where 10' is the minimum required for an accessory structure.
2. A Variance from Section 10.521 & 10.573.20 to allow a 1'8" ± rear yard setback where 10' is required for an accessory structure.
2. A Variance from Section 10.521 to allow building coverage of 55.4%± where 50.7%± exists and 40% is the maximum allowed.

Action:

The Board voted to **grant** the petition as presented and advertised, with an acknowledgement that the actual requested building coverage was 42%, not 55.4% as advertised.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- The proposed shed is close to an in-kind replacement in size of an accessory building previously located at that location so that granting the variance will not be contrary to the public interest.
- With a minor increase in building coverage and essentially the same setbacks as the previous accessory structure, the spirit of the Ordinance will be observed.
- Substantial justice will be done by allowing the applicants to proceed with their original plans for the property.
- The value of surrounding properties will not be diminished by an improved shed.
- The special conditions of this property due to size and shape create a hardship for locating an accessory structure that is in strict conformance with the Ordinance.

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- 4) Case # 3-4
Petitioner: 303 Islington Street LLC
Property: 303 Islington Street
Assessor Plan 144, Lot 11
Zoning District: General Residence C
Description: Convert three office use units to dwelling units with an increase in required off-street parking spaces.
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 #1.52 to allow conversion of a building existing on January 1, 1980 to four dwelling units with less than the required minimum lot area per dwelling unit.
 2. A Variance from Section 10.1111.10 and 10.1112.30 to permit a change of use that provides 8 off-street parking spaces where 12 are required.
 3. A Variance from Section 10.1114 to allow off-street parking spaces and accessways that do not comply with the off-street parking dimensional requirements.

Action:

The Board voted to **postpone** the petition to the April meeting.

- 5) Case # 3-5
Petitioners: Christoph Wienands & April Guille
Property: 307 Wibird Street
Assessor Plan 132, Lot 12
Zoning District: General Residence A
Description: Construct a 26'± x 26'± two-story rear addition
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
 2. Variances from Section 10.521 to allow the following:
 - a) A left side yard of 9'5"± where 10' is the minimum required.
 - b) Building coverage of 26.3%± where 18.1%± exists and 25% is the maximum 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 is a neighborhood of homes with similar additions of similar size and scale so that this proposal will not alter the essential characteristics of the neighborhood or be contrary to the public interest.
- The spirit of the Ordinance will be observed as the side yard setback relief is minor and adjusting the design to conform with the ordinance would not be consistent with the character of the neighborhood and the property.
- Substantial justice will be done by allowing the homeowner to expand with a layout comparable to more recently built homes in the neighborhood.
- The planned improvements will increase the value of this property with no negative impact on neighbors so that the value of surrounding properties will not be diminished.
- There are special conditions in the property due to the narrow width of the lot creating a hardship so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property.

6) Case # 3-6

Petitioner: PF Jax Real Estate, LLC, owner, Bryan Pappas, applicant

Property: 159 Middle Street

Assessor Plan 127, Lot 4

Zoning District: Mixed Residential Office

Description: Install a 2' x 5' free-standing sign.

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

1. A Variance from Section 10.1253.40, to allow a front setback of 1'6" ± where 5' is required.
2. A Variance from Section 10.1253.30 to allow a sign height of 10' ± where 7' is the maximum allowed.

Action:

The Board voted to **postpone** the petition to the April meeting.

7) Case # 3-7

Petitioners: Peter & Lee D. Vandermark

Property: 86 Ridges Court

Assessor Plan 207, Lot 62

Zoning District: Single Residence B

Description: Raise height of existing left side shed roof.

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 or reconstructed without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a left side yard setback of 5.25' ± 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:

- This is a simple request which will not be contrary to the public interest or diminish the value of surrounding properties.
 - The spirit of the Ordinance will be observed by allowing the homeowners full use of their home, while slightly reducing the nonconformance of the property.
 - Substantial justice will be done as the usefulness of the property will be improved for the property owners without any negative effect on the general public.
 - The special condition of the property is inherent in the existing structure which is of a somewhat unusual design that influences the placement of any expansion.
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8) Case # 3-8

Petitioner: Hunking Holdings LLC

Property: 311 Marcy Street

Assessor Plan 102, Lot 2

Zoning District: General Residence B

Description: Add 8'± x 12'± 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 10.321 to allow a lawful nonconforming building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - a) A left side yard setback of 2.3'± where 10' is required.
 - b) A rear yard setback of 3'± where 25' 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:

- The proposed addition will be in keeping with other small homes in the area with small additions so that the essential characteristics of the neighborhood will not be changed and the variance will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as the degree of relief represents typical conditions for a neighborhood with houses spaced close together.
- Substantial justice will be done by allowing full use of the available space. Granting the request will result in improved functionality for the property owner without negatively affecting the general public.

- With no opposition from the neighbors, the value of surrounding property will not be diminished by this proposal.
- The small size of the lot and the location of the residence on the lot are unique conditions of the property so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to this property. From a design perspective, there were not many options to achieve the intended goal so that this is a reasonable request.

9) Case # 3-9

Petitioner: Robert A. Ricci Sr. Revocable Trust 9, Robert A. Ricci Sr., Trustee, owner, Robert A. Ricci, Jr., applicant

Property: 75 Albany Street

Assessor Plan 156, Lot 26

Zoning District: Mixed Residential Business

Description: Allow a furniture store in an existing building.

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 #8.31 to allow retail sales, not marine-related, to be conducted within a building.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- There will be no hazard to the public or adjacent property from potential fire explosion or release of toxic materials. This is not a use that might present these hazards.
- A furniture store with inside retail sales will not cause any detriment to property values in the vicinity or change the essential characteristics of residential neighborhoods due to odors, gas, dust or other pollutants.
- The anticipated traffic generation for this use will create a traffic safety hazard or increase traffic congestion.
- This use will not result in any increased demand on municipal services.
- With no change to the exterior of the building, there will be no increase in storm water runoff onto adjacent properties or streets.

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IV. OTHER BUSINESS

Proposed Revisions to Board of Adjustment Application Form and Rules and Regulations.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:32 pm.

Respectfully submitted,

Mary E. Koepenick, Secretary