

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 April 29, 2014** 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 Rheame, Alternate: Patrick Moretti

EXCUSED: Chairman David Witham, Derek Durbin

=====
(In the absence of the Chairman, Vice-Chairman Parrott conducted the hearing.)

I. APPROVAL OF MINUTES

A) October 15, 2013

It was moved, seconded and passed by unanimous voice vote to accept the Minutes with minor corrections.

=====

II. PUBLIC HEARINGS – NEW BUSINESS (Continued from April 22, 2014)

7) Case # 4-7

Petitioner: Kevin James Lilakos

Property: 36 Artwill Avenue

Assessor Plan 229, Lot 4

Zoning District: Single Residence B

Description: Allow a second dwelling unit above a garage.

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

1. A Variance under Section 10.440, Use #1.20 to allow a second dwelling unit on a lot where only one single family dwelling is permitted.
2. A Variance from Section 10.513 to allow more than one free-standing dwelling unit on a lot.
3. A Variance from Section 10.521 to allow a lot area of 0.3± acres per dwelling unit where one acre per dwelling unit is required.

Action:

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

8) Case # 4-8

Petitioners: William Marconi Revocable Trust 94 & Eva Marconi Revocable Trust 94, owners, William & Michelle Marconi, applicants

Property: 529 New Castle Avenue

Assessor Plan 205, Lot 4

Zoning District: Single Residence A

Description: Demolish and reconstruct one of two single family residences on a lot.

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 10.1513 to allow a second single family residence on a lot.
3. Variances from Section 10.521 to allow building coverage of 10.5%± where 10% is the maximum allowed and a lot area of 0.6± acres per dwelling unit where one acre per dwelling unit is required.

Action:

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

- A Variance under Section 10.440, Use #1.20 was also granted to allow a second dwelling unit on a lot where only one single family dwelling is permitted.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed. The essential character of the neighborhood will not be changed as there are already a number of outbuildings and two dwellings on this property and lot is relatively isolated from others in the neighborhood.
- Granting the variances will result in substantial justice. If the variances were denied, there would be no benefit to the general public while the applicant would be unable to improve the property.
- There is no evidence that these improvements will negatively impact the value of surrounding properties.
- The special conditions of the property that distinguish it from others in the area are that it is separated from its nearest neighbors by water or Route 1A. There is no fair and substantial relationship between the general public purposes of the Ordinance provision

and their specific application to the property. One of the purposes is to prevent overcrowding of lots and excessive density. There is already a second dwelling unit, which will be improved upon replacement, and a continued residential use in a residential zone is a reasonable use of the property.

9) Case # 4-9

Petitioners: Jeanne L. Freeze, owner, Ilara Donarum, applicant

Property: 205 Bartlett Street

Assessor Plan 162, Lot 33

Zoning District: General Residence A

Description: Allow a part-time optometry business.

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

1. A Variance from Section 10.440, Use #6.20 to allow a medical office where the use is prohibited in this district.
2. A Variance from Sections 10.1111.10 and 10.1112.30 to allow no off-street parking spaces to be provided where 2 off-street parking spaces are required.

Action:

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

Stipulation:

- That the regular hours of operation will be limited to 20 hours per week.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest. The overall nature of the neighborhood will not be altered by using the property in a manner similar to past uses at this location.
 - The spirit of the Ordinance will be observed as this property is at the edge of the residential district near an area where there are other nonresidential uses.
 - Substantial justice will be done by allowing the applicant to make full use of the property with no detriment to the general public.
 - The value of surrounding properties will not be diminished as there will be no physical changes to the building and the property will be used in a similar manner as previous uses. In addition, there appears to be ample on-street parking in the area and there is potential for parking on an adjacent lot. The unique circumstances of this property include its pre-existing business use so that the proposed use is a reasonable one. For that same reason, no fair and substantial relationship exists between the general public purposes of the Ordinance provisions and their application to the property.
-

10) Case # 4-10

Petitioner: Rick E. Condon

Property: 141 Madison Street

Assessor Plan 145, Lot 55

Zoning District: General Residence C

Description: Construct wrap-around covered farmers porch and stairs with a 38'± x 6'10" ± front section with stairs and a 28', 3" ± x 6'10" ± left side section.

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 conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow a front yard setback of 1'± where 5' is the minimum required; a right side yard setback of 8'3"± where 10' is the minimum required; and building coverage of 47.1%± where 35% is the maximum permitted.

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 variances will not be contrary to the public interest and the spirit of the Ordinance will be observed. The generally residential character of this neighborhood will not be changed by the construction of this porch nor will there be a negative effect on the health, safety or welfare of the general public.
- Substantial justice will be done as any benefit to the public from strictly adhering to the requirements would be far outweighed by the loss to the applicant if he is not allowed to improve his property.
- Construction of the porch, which has neighborhood support, will not result in any diminution in the value of surrounding properties.
- The special conditions of the property resulting in an unnecessary hardship are the size of the existing nonconforming structure and its location on the lot. There is no fair and substantial relationship between the purposes of the Ordinance provisions and their application to the property and the proposed use is a reasonable one in a residential neighborhood.

11) Case # 4-11

Petitioner: Nicholas E. Strong

Property: 413 Bartlett Street

Assessor Plan 161, Lot 21

Zoning District: General Residence A

Description: Construct rear dormers, second floor deck and stairs.

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 conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow a left side yard setback of 4'± where 10' is the minimum required; and building coverage of 25.8%± where 25% is the maximum allowed.

Action:

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

- Addition of a variance from Section 10.521 to allow a front yard setback of 0' where 15' is the minimum required.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed. These renovations will increase the usable living area of the property without changing the essential character of the neighborhood.
- Substantial justice will be done by allowing the homeowner to increase living space with no harm to surrounding properties.
- The proposed improvements within the current footprint will not diminish the value of surrounding properties.
- The special conditions of the property are the size of the lot and the location of the building on the lot. A modest upgrade to the home is a reasonable use of the property.

12) Case # 4-12

Petitioner: Auger Family Irrevocable Trust, Jon C. Auger, Trustee

Property: Taft Road (number not yet assigned)

Assessor Plan 251, Lot 56

Zoning District: Single Residence B

Description: Construct single-family home with garage.

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

1. Variances from Section 10.521 to allow the following:
 - a) Lot area, and lot area per dwelling unit, of 14,425± s.f. where 15,000 s.f. is required.
 - b) Continuous street frontage of 90'± where 100' 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:

- Granting the variances will not be contrary to the public interest. The lot size overall is in keeping with others in the neighborhood so that the essential characteristics of the neighborhood will not be changed.
- The spirit of the Ordinance will be observed. The proposed lot, which is approximately 3% lower in lot area than required with street frontage that meets 90% of the requirement, is close to the parameters that the Ordinance is trying to establish for a lot in this district.
- Substantial justice will be done. This is a piece of property that was purchased years ago as a developable lot and granting the variances will allow the property owners to exercise their right to sell the lot for construction of a home.
- Considering the neighborhood as a whole and the actual proposed changes, there will be no diminution in the value of surrounding properties.
- No fair and substantial relationship exists between the general public purposes of the Ordinance and its specific application to this property. The requested relief is limited to the lot area and street frontage and the other requirements of the Ordinance are met. This lot was originally created as a buildable lot and the applicants’ request, to build a reasonably sized home in keeping with the neighborhood, outweighs any public desire to keep the lot vacant.

13) Case # 4-13

Petitioners: Jamer Realty, Inc., owner, A. J. P. Billiards, Inc., applicant

Property: 80 Hanover Street

Assessor Plan 117, Lot 2-1

Zoning Districts: Central Business B and Downtown Overlay

Description: Year-round game of chance for charity.

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

1. A Variance under Section 10.440 to allow a use that is not permitted.

Action:

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

14) Case # 4-14

Petitioners: Joseph & Zulmira D. Almeida Revocable Trust, Joseph & Zulmira Almeida, Trustees

Property: 27 Rogers Street

Assessor Plan 116, Lot 41

Zoning District: Mixed Residential Office

Description: Construct 29’9” ± x 15’2½”±, 1½-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 without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow a left side yard setback of 5’6” ± where 10’ is the minimum required; a rear yard setback of 3’± where 15’ is the minimum required; and building coverage of 44%± where 40% is the maximum permitted.

Action:

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

Stipulations:

- There will be no kitchen installed in the proposed addition.
- The existing shed on the property will be removed.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed as the property, with the stipulations, will remain a single-family home which will not alter the nature of the surrounding neighborhood with similar rear additions.
- Substantial justice will be done by allowing the applicant to utilize the property in a reasonable manner and, with the stipulation, will avoid potential use of the addition for a second unit.
- There is no evidence that the value of surrounding properties will be diminished.
- The size, shape and age of the lot are special conditions of the property, as well as having a large apartment complex as an abutter to the rear, which will offset any impact of the addition and its location relative to the rear property line. There is no fair and substantial relationship between the general purposes of the Ordinance and their application to the property as this is already a densely built neighborhood. The proposed use is reasonable for the location of this lot.

=====

III. OTHER BUSINESS

A) Rules & Regulations

Final discussion on this item was deferred to the May meeting.

=====

IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:30 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary