

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 June 17, 2014** in the School Board Conference Room and 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

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I. APPROVAL OF MINUTES

- A) December 17, 2013
- B) January 22, 2014
- C) February 25, 2014

It was moved, seconded and passed by unanimous voice vote to accept the Minutes for the three meetings with a minor correction to each.

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II. MOTIONS FOR REHEARING

- A) Motion for Rehearing by Applicants regarding 200 Spaulding Turnpike.

The Board voted to **deny** the Motion for Rehearing. The Board determined that it made no errors in procedure or application of the law and no new information had been submitted that would form the basis for a rehearing.

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III. PUBLIC HEARINGS - OLD BUSINESS

- A) 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 13,068± s.f. per dwelling unit where 15,000 s.f. per dwelling unit is required.
(This petition was postponed from the April 29, 2014 and May 29, 2014 meetings)

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 spirit of the Ordinance will not be met as the proposal for two free-standing dwelling units is in direct contradiction to the intent of the Single Residence B District.
- There are no special conditions of the property that distinguish it from others in the area so that there is no unnecessary hardship created by literal enforcement of the Ordinance.

B) 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: Character District 5 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.
(This petition was postponed from the April 29, 2014 and May 29, 2014 meetings)

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 use is not listed in the Ordinance as an allowed use so that the spirit of the Ordinance will not be observed by granting the variance.
- Surrounding property values could be negatively affected by this use.
- It would not be in the public interest to grant this variance.
- There are no special conditions distinguishing this property from others in the downtown area that create an unnecessary hardship through literal enforcement of the Ordinance.

IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 6-1

Petitioners: Thomas W. & Anna L. Johnson, owners, New Cingular Wireless PCS LLC (“AT&T”), applicant

Property: 70 Martine Cottage Road

Assessor Plan 202, Lot 19

Zoning District: Rural

Description: Install a wireless communications facility with a 130'± tower.

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

1. A Special Exception under Section 10.923.30 to allow a wireless telecommunications facility.
2. A Variance from Section 10.521 to allow a structure height of 130'± where 35' is the maximum allowed.

Action:

1. The Board voted to postpone the petition to the July meeting so that additional needed information could be obtained and restricted further discussion at the hearing to procedural issues only.
 2. The Board voted to direct the Planning Department to employ an independent consultant on behalf of the Board in order to evaluate the application's quality, completeness and accuracy.
 3. The Board voted to assign responsibility to the Planning Department to act on the Board's behalf in requesting additional information from the applicant.
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2) Case # 6-2

Petitioners: Joseph and Ellen Yarborough

Property: 746 Middle Road

Assessor Plan 232, Lot 49

Zoning District: Single Residence B

Description: Lot subdivision creating two nonconforming lots.

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 continuous street frontage for each newly created lot of 50'± where 100' is the minimum required.

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:

- It would not be in the spirit of the Ordinance to create two nonconforming lots.
 - Literal enforcement of the Ordinance does not create an unnecessary hardship on the property.
 - The values of neighboring properties could be diminished if the variance was granted.
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3) Case # 6-3

Petitioners: William L. and Cathy Wansart

Property: 317 Thaxter Road

Assessor Plan 152, Lot 38

Zoning District: Single Residence B

Description: Replace nonconforming garage in same 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 or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a right side yard setback of 3'± where 10' is the minimum required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- Replacing an existing garage in the same footprint, in a neighborhood with many similar garages will be not be contrary to the public interest.
- The existing structure has been in the same location for many years and its reconstruction will protect access to light and air for abutting properties.
- The values of neighboring properties will not be diminished by a proposal that has abutter support.
- Substantial justice will be done by allowing the homeowner to replace a structure that is in poor repair.
- The pre-existing location of the garage close to the property line represents a special condition of the property so that no fair and substantial relationship exists between the general public provisions of the Ordinance and their application to the property. This is the most suitable location on the property for the garage.

4) Case # 6-4

Petitioners: Timothy C. and Priscilla Coughlin

Property: 185 Broad Street

Assessor Plan 130, Lot 19

Zoning District: General Residence A

Description: Construct a wrap-around covered front/side porch.

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 building coverage of 31.4%± where 25.5%± exists and 25% is the maximum allowed.
2. A Variance from Section 10.521 to allow a 1' 3" ± right side yard setback where 10' is the minimum required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- A wrap-around porch similar to others in the area will not alter the essential characteristics of the neighborhood nor threaten the health, safety and welfare of the general public so that granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.
- Substantial justice will be done as there would be no benefit to the public in denying the variances that would outweigh the loss to the applicant. This project will protect sight lines from the intersection and will improve the property overall.
- The value of surrounding properties will not be diminished by replacing an entry with an aesthetically pleasing and useful outdoor space.
- The special conditions of the property creating a hardship are its topography and location on a corner. A covered porch in a residential zone is a reasonable use of the property.

5) Case # 6-5

Petitioner: Jeffrey T. Bell

Property: 183 Austin Street

Assessor Plan 145, Lot 91

Zoning District: General Residence C

Description: Construct 6'± x 14'± and 10'± x 18'± rear additions. Add front and side dormers.

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 to be extended, reconstructed, enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow the following:
 - a. A lot area per dwelling unit of 1350 s.f.± where 3,500 s.f. per dwelling unit is required.
 - b. A front yard setback of 0' ± where 5' is the minimum required.
 - c. A left side yard setback of 0'± where 10' is the minimum required.
 - d. A right side yard setback of 8'± where 10' is required;
 - e. A rear yard setback of 3'± where 20' is required; and
 - f. Building coverage of 39.2%± where 35% is the maximum allowed
3. A Variance from Section 10.1114.21 to allow off-street parking spaces that do not comply with the dimensional requirements.
4. A Variance from Section 10.1114.32 to allow vehicles entering or leaving parking spaces to pass over another parking space and to enter and leave the parking area by backing into a public street or way.

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:

- It would be contrary to the public interest and the spirit of the Ordinance to add expansion space and dormers that would result in a structure with a mass and scale that would not fit the essential characteristics of the neighborhood.
- The proposed fourth unit would result in additional required parking which does not conform to dimensional requirements and involves unsafe backing out into a busy street.

6) Case # 6-6

Petitioners: Estate of John F. Cronin III, Crystal Cronin, Administrator, owner and Michael Lefebvre, applicant

Property: 56 Lois Street

Assessor Plan 232, Lot 8

Zoning District: Single Residence B

Description: Create new lot for a single-family residence with 20' street frontage.

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 continuous street frontage of 20'± where 100' is required.

Action:

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

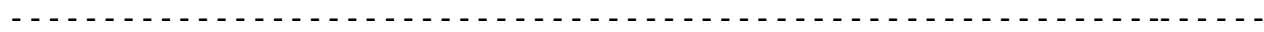
Other:

The Board noted that their consideration and approval is limited to the specific issue for which a variance was sought and that approval would be required from the Planning Board relative to lot subdivision as well as location of any proposed structures and impervious surfaces in relation to wetlands.

Review Criteria:

The petition was granted for the following reasons:

- Allowing a reduced frontage for access to a single-family structure on a large lot will not alter the essential characteristics of the neighborhood or threaten the health, safety or welfare of the general public so that granting the variance will not be contrary to the public interest.
- The intent of the frontage requirement in the Single Residence B District is to prevent homes from being spaced too closely together. With the special conditions of the access to this lot, an overly dense situation will not be created by reducing the frontage requirement.
- Substantial justice will be done as the loss to the applicant by requiring the property to remain undeveloped would not be outweighed by any gain to the general public.
- With the additional oversight of the Planning Board, any proposed structure on a lot with the approved frontage will not diminish the value of surrounding properties.
- The special conditions of this lot are its large size, unique configuration, and access. This is a large lot with frontage on a paper street that exceeds the lot size required in the district and what exists in the immediate vicinity so that there is no fair and substantial relationship between the frontage required by the Ordinance as it applies to this proposed lot.



7) Case # 6-7

Petitioner: Eugene C. Bergeron

Property: 792 Sagamore Avenue (792-796)

Assessor Plan 223, Lot 3

Zoning District: Single Residence B

Description: Replace existing front stairs with two stairs leading to entrance balcony.

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

1. A Variance from Section 10.331 to allow a lawful nonconforming use to be extended, enlarged or changed without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow building coverage of 27.23% where 25.8% exists and 20% is the maximum allowed.
3. A Variance from Section 10.1111.20 to allow a use that is nonconforming as to the requirements for off-street parking to be enlarged without complying with the requirements for the design of off-street parking.
4. A Variance from 10.1114.32 to allow vehicles entering or leaving parking spaces to pass over another parking space and to enter and leave the parking area by backing into a public street or way.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- This modest improvement to the front entry to the home will not be contrary to the public interest and will observe the spirit of the Ordinance
- Substantial justice will be done as granting a variance for this minor change will result in no harm to the general public.
- The value of surrounding properties will not be diminished by an improvement to the streetscape and no owners of neighboring properties have spoken against the proposal.
- Owing to the pre-existing use of the property, which will not be changed, the property cannot be reasonably modified in strict conformance with the Zoning Ordinance, which creates an unnecessary hardship.



8) Case # 6-8

Petitioners: Angelina E. Smith & Juliann Lehne

Property: 73 Northwest Street

Assessor Plan 141, Lot 28

Zoning District: General Residence A

Description: Install an 8'± x 10'± coop to house chickens.

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

1. A Variance from Section 10.440 Use #17.20 to allow the keeping of farm animals (chickens) in a district where such use is not allowed.

Action:

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

Stipulations:

- That the maximum amount of chickens to be kept at any time will not exceed ten.
- That there will be no roosters.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance with the attached stipulations for a property in this location will not be contrary to the public interest.
- The spirit of the Ordinance would be observed as it is close to a district where the use would be permitted by special exception and the property is large enough to accommodate the use.
- Substantial justice will be done by allowing the homeowner to take advantage of the property's size and location for this use.
- With the addition of the stipulations, the value of surrounding properties will not be diminished. The other homes in the area are at a reasonable distance and the housing for the chickens will be closer to the highway side of the property.
- The special conditions that distinguish this property from others in the area are its large size on the edge of a busy highway and adjacent to a district where the keeping of chickens would be allowed by special exception. With those unique conditions, 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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V. OTHER BUSINESS

A) Rules & Regulations

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VI. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 12:05 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary