

**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 July 22, 2014** 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, Alternate: Patrick Moretti  
**EXCUSED:** David Rheaume

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**I. REQUESTS FOR REHEARING**

A) Request for Rehearing for property located at 56 Lois Street.

**Action:**

A motion to grant the rehearing failed to pass and the request was denied. The Board determined that it had 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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**II. PUBLIC HEARINGS – NEW BUSINESS**

8) Case # 7-8  
Petitioner: Debra A. Nash dba Five N Associates, owner & James Davis, applicant  
Property: 235 Heritage Avenue  
Assessor Plan 284, Lot 2  
Zoning District: Industrial  
Description: Religious assembly use.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:  
1. A Variance from Section 10.440, Use #3.11 to allow a religious place of assembly in a district where the use is not allowed.  
2. A Variance from Section 10.1112.30 to permit less than the required number of off-street parking spaces.

**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. There will be minimal exterior impact so that the essential character of the neighborhood will not be altered.
- The spirit of the Ordinance will be observed as the introduction of a religious use in an Industrial Zone will not threaten the health, safety and welfare of the general public.
- Substantial justice will be done as denying the variance would result in a detriment to the applicant which would not be balanced by any gain to the general public.
- The values of surrounding properties will not be diminished as there is sufficient access from two roads to the site so no traffic congestion should result from this complimentary use with the main activity occurring during off-peak hours.
- This is an under-utilized property in an industrial park. The use is complimentary so that there is no fair and substantial relationship between the purpose of the Ordinance in not allowing a place of assembly as a use and its application to this particular property.
- With specific reference to the parking variance, the amount of relief is three spaces which is minimal given the complimentary nature of the use so there is no fair and substantial relationship between the parking requirement and its application to this property.

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9) Case # 7-9

Martha Stolzer

Property: 5 Pleasant Point Drive

Assessor Plan 207, Lot 32

Zoning District: Single Residence B

Description: Construct a roofed front entryway and roofed left side deck.

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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A 22'± front yard setback where 30' is the minimum required;
  - b) A 20'± rear yard setback where 30' is the minimum required; and
  - c) 22.5%± building coverage where 20% is the maximum allowed.

**Action:**

The Board voted to **grant** the petition as presented and advertised with the following revisions and as stipulated below:

- a) The required relief for a front yard setback is 22' where 26.5'± is allowed in accordance with the provisions of Section 10.516.10.
- b) No zoning relief is required for a rear yard setback as the applicant's modifications will be within the 24' minimum required for open decks and steps over 4' in height in accordance with Section 10.516.40.

**Stipulations:**

- The applicant will provide the Planning Department with the necessary front yard averaging documentation to support a revised front yard setback minimum requirement of 26.5'±.
- There will be no pergola or roof on the proposed deck on the south side of the house.
- The proposed uncovered deck and stairs will be 24' or more from the rear lot line.

**Review Criteria:**

The petition was granted for the following reasons:

- The proposed additions to improve the property will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as the amount of relief required for the proposed additions is minimal.
- Substantial justice will be done as granting the variance will not result in any detrimental effect on the general public.
- The value of surrounding properties will not be diminished as an effort has been made by the applicant to minimize the impact on the neighbors who have expressed their support.
- Literal enforcement of the Ordinance would result in unnecessary hardship. With the placement of the existing structure on the lot and its corner location are special conditions so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. The encroachment is not substantial so that the proposed use is a reasonable one.

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10) Case # 7-10

Petitioner: Jeffrey T. Bell

Property: 183 Austin Street

Assessor Plan 145, Lot 91

Zoning District: General Residence C

Description: Demolish two-story rear wing. Construct 6'± x 14'± rear addition, roof over front landing, and front and left 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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A 3'± front yard setback where 5' is the minimum required;
  - b) A 0'± left side yard setback where 10' is the minimum required; and
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 **grant** the petition as presented and advertised.

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- The proposed renovations will not alter the essential character of the neighborhood so that granting the variance will not be contrary to the public interest and will be within the spirit of the Ordinance.
  - Substantial justice will be done as the hardship to the applicant if the variances were denied would not be outweighed by any perceived benefit to the general public.
  - The value of surrounding properties will not be diminished by an improvement to the property, which has taken into consideration the concerns of neighbors and the Board.
  - The special conditions of the property are that the front and left setbacks are not being altered and the parking as laid out has existed for an extensive period of time.
  - With the special conditions of the property, there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to the property. The proposed use is a reasonable one.
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11) Case # 7-11

Petitioner: Herring Pond LLC

Property: 856 Route One By-Pass

Assessor Plan 160, Lot 30

Zoning District: Business

Description: Install a 10'± x 10'± x 65'± high freestanding sign.

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

1. A Variance from Section 10.1243 to allow more than one freestanding sign per lot.
2. Variances from Section 10.1253.10 to allow a freestanding sign 65'± in height where 20' is the maximum allowed and to allow a freestanding sign that is located closer than 20' from the front property line.

**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:

- Granting the variances would be contrary to the public interest and the spirit of the Ordinance would not be observed as the character of the neighborhood would be altered by the addition of a sign at this height.
  - In the substantial justice balance test, the detriment to the public interest would outweigh any perceived benefit to the applicant if the variances were granted.
  - Surrounding property values would likely be diminished by the impact of the proposed sign and there was no compelling argument for special conditions creating a hardship.
-

12) Case # 7-12

Petitioner: David B. and Deborah A. Adams

Property: 210 Gates Street

Assessor Plan 103, Lot 26

Zoning District: General Residence B

Description: Install a 24" x 24" x 28.5" a/c compressor at the rear of the lot.

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

1. A Variance from Section 10.573.10 to allow a 6' ± rear yard setback where 5' is the minimum required for an accessory structure.
2. A Variance from Section 10.521 to allow 43.2% building coverage where 30% 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:

- Granting the variances will not alter the essential characteristics of the neighborhood and the spirit of the Ordinance will be observed by this modest change to the overall footprint of the property and minimal additional encroachment.
- There would be no gain to the general public that would balance the loss to the applicant if the petition were denied.
- The value of surrounding properties will not be diminished as this solution is in keeping with the historical improvements to the property and the a/c unit will be buffered by a stone wall and other landscape elements.
- The special conditions of the property include its current legal nonconforming location that is typical for a home built in the 1700's before current zoning so that there is no fair and substantial relationship between the general public purposes of the Ordinance provisions as to setbacks and lot coverage and their specific application to this property. This is a reasonable use in a residential district and, with windows along the rear foundation limiting the placement possibilities, the best location has been proposed for the unit.

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13) Case # 7-13

Petitioner: HCA Health Services of NH Inc., owner, Portsmouth Regional Hospital, applicant

Property: 333 Borthwick Avenue

Assessor Plan 240, Lot 2-1

Zoning District: Office Research

Description: Construct a helipad in the parking lot to the left of the building.

Request : 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 #15.20 to allow a heliport as an accessory use incidental to a permitted principal use.

**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 standards as provided by the Ordinance for this particular use permitted by Special Exception are met.
  - The proposed location is not in proximity to buildings on neighboring properties so that granting the special exception will not present a hazard to the public or adjacent property from potential fire explosion or release of toxic materials. Procedures are in place to deal with any potential fire hazard during helicopter operations.
  - There will be no detriment to property values in the vicinity or change in the essential characteristics of the area due to smoke, odors or other pollutants, noise, glare or unsightly outdoor storage of materials, vehicles or equipment. The helipad will be on ground level with little visibility. The potential occurrences of heat, noise or vibration will be infrequent and of short duration. Any impact will be lessened by the distance to neighboring properties which are non-residential.
  - Due to the infrequent use of the helipad there will be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion.
  - There is nothing in the use as a helipad that will result in an excessive demand on municipal services or cause any increase in storm water runoff onto adjacent properties or streets.
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14) Case # 7-14

Petitioner: Kristina Logan

Property: 220 South Street

Assessor Plan 111, Lot 1

Zoning District: Single Residence B

Description: Replace existing storage shed with 15'± x 30'± artist studio.

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 reconstructed, enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 1.5'± right side yard setback where 10' is the minimum required.
3. A Variance from Section 10.521 to allow 20.96%± building coverage where 20% is the maximum allowed.

**Action:**

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

**Stipulations:**

- The proposed studio is not to be used as living space or an independent dwelling unit and there will be no cooking facilities in the space.

**Review Criteria:**

The petition was granted for the following reasons:

- Granting the variances for the continuation of an existing right side yard setback and less than a 1% increase in building coverage will not be contrary to the public interest or the spirit of the Ordinance.
- Substantial justice will be done as the detriment to the applicant if the project were denied would not be outweighed by any perceived public benefit.
- The value of surrounding properties will not be diminished as the setback will remain the same with a slight increase in length.
- The special conditions of the property are its unusual shape, the location of the existing structure to be replaced and some wetlands at the rear which make the maintenance of the existing basic footprint the best choice. Due to the special conditions, there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to this property.

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15) Case # 7-15

Petitioner: John Hall, owner, Leonard & Wendy Cushing, applicants

Property: 126 Elwyn Avenue

Assessor Plan 112, Lot 44

Zoning District: General Residence A

Description: Construct an 11'± x 18'± two and a half 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 to be extended or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 6'± right side yard setback where 10' is the minimum required.

**Action:**

A motion to **deny the petition failed to pass** and the Board then 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 as the proposed upward expansion of an existing legal nonconforming building is a reasonable proposal for the neighborhood.
- Substantial justice will be done as allowing the homeowner to make more efficient use of the property will not be offset by a negative impact on the general public.

- Allowing for a home to be renovated will not have a negative impact on the value of surrounding properties.
- The special condition of the property creating a hardship is the current location of the existing structure.

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**III. RULES & REGULATIONS – FINAL APPROVAL**

By unanimous vote of the Board, the Rules and Regulations for the Board of Adjustment, Revised July 22, 2014 were adopted.

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**IV. ADJOURNMENT**

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It was moved, seconded and passed to adjourn the meeting at 10:10 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary



**PLANNING DEPARTMENT - BOARD OF ADJUSTMENT**

**ACTION SHEET**

**TO:** John P. Bohenko, City Manager  
**FROM:** Mary Koepenick, Planning Department  
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Description: Religious assembly use.  
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1. A Variance from Section 10.440, Use #3.11 to allow a religious place of assembly in a district where the use is not allowed.  
2. A Variance from Section 10.1112.30 to permit less than the required number of off-street parking spaces.

**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. There will be minimal exterior impact so that the essential character of the neighborhood will not be altered.
- The spirit of the Ordinance will be observed as the introduction of a religious use in an Industrial Zone will not threaten the health, safety and welfare of the general public.
- Substantial justice will be done as denying the variance would result in a detriment to the applicant which would not be balanced by any gain to the general public.
- The values of surrounding properties will not be diminished as there is sufficient access from two roads to the site so no traffic congestion should result from this complimentary use with the main activity occurring during off-peak hours.
- This is an under-utilized property in an industrial park. The use is complimentary so that there is no fair and substantial relationship between the purpose of the Ordinance in not allowing a place of assembly as a use and its application to this particular property.
- With specific reference to the parking variance, the amount of relief is three spaces which is minimal given the complimentary nature of the use so there is no fair and substantial relationship between the parking requirement and its application to this property.

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9) Case # 7-9

Martha Stolzer

Property: 5 Pleasant Point Drive

Assessor Plan 207, Lot 32

Zoning District: Single Residence B

Description: Construct a roofed front entryway and roofed left side deck.

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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A 22'± front yard setback where 30' is the minimum required;
  - b) A 20'± rear yard setback where 30' is the minimum required; and
  - c) 22.5%± building coverage where 20% is the maximum allowed.

**Action:**

The Board voted to **grant** the petition as presented and advertised with the following revisions and as stipulated below:

- a) The required relief for a front yard setback is 22' where 26.5'± is allowed in accordance with the provisions of Section 10.516.10.
- b) No zoning relief is required for a rear yard setback as the applicant's modifications will be within the 24' minimum required for open decks and steps over 4' in height in accordance with Section 10.516.40.

**Stipulations:**

- The applicant will provide the Planning Department with the necessary front yard averaging documentation to support a revised front yard setback minimum requirement of 26.5'±.
- There will be no pergola or roof on the proposed deck on the south side of the house.
- The proposed uncovered deck and stairs will be 24' or more from the rear lot line.

**Review Criteria:**

The petition was granted for the following reasons:

- The proposed additions to improve the property will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as the amount of relief required for the proposed additions is minimal.
- Substantial justice will be done as granting the variance will not result in any detrimental effect on the general public.
- The value of surrounding properties will not be diminished as an effort has been made by the applicant to minimize the impact on the neighbors who have expressed their support.
- Literal enforcement of the Ordinance would result in unnecessary hardship. With the placement of the existing structure on the lot and its corner location are special conditions so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. The encroachment is not substantial so that the proposed use is a reasonable one.

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10) Case # 7-10

Petitioner: Jeffrey T. Bell

Property: 183 Austin Street

Assessor Plan 145, Lot 91

Zoning District: General Residence C

Description: Demolish two-story rear wing. Construct 6'± x 14'± rear addition, roof over front landing, and front and left 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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A 3'± front yard setback where 5' is the minimum required;
  - b) A 0'± left side yard setback where 10' is the minimum required; and
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 **grant** the petition as presented and advertised.

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- The proposed renovations will not alter the essential character of the neighborhood so that granting the variance will not be contrary to the public interest and will be within the spirit of the Ordinance.
  - Substantial justice will be done as the hardship to the applicant if the variances were denied would not be outweighed by any perceived benefit to the general public.
  - The value of surrounding properties will not be diminished by an improvement to the property, which has taken into consideration the concerns of neighbors and the Board.
  - The special conditions of the property are that the front and left setbacks are not being altered and the parking as laid out has existed for an extensive period of time.
  - With the special conditions of the property, there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to the property. The proposed use is a reasonable one.
- 

11) Case # 7-11

Petitioner: Herring Pond LLC

Property: 856 Route One By-Pass

Assessor Plan 160, Lot 30

Zoning District: Business

Description: Install a 10'± x 10'± x 65'± high freestanding sign.

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

1. A Variance from Section 10.1243 to allow more than one freestanding sign per lot.
2. Variances from Section 10.1253.10 to allow a freestanding sign 65'± in height where 20' is the maximum allowed and to allow a freestanding sign that is located closer than 20' from the front property line.

**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:

- Granting the variances would be contrary to the public interest and the spirit of the Ordinance would not be observed as the character of the neighborhood would be altered by the addition of a sign at this height.
  - In the substantial justice balance test, the detriment to the public interest would outweigh any perceived benefit to the applicant if the variances were granted.
  - Surrounding property values would likely be diminished by the impact of the proposed sign and there was no compelling argument for special conditions creating a hardship.
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## 12) Case # 7-12

Petitioner: David B. and Deborah A. Adams

Property: 210 Gates Street

Assessor Plan 103, Lot 26

Zoning District: General Residence B

Description: Install a 24" x 24" x 28.5" a/c compressor at the rear of the lot.

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

1. A Variance from Section 10.573.10 to allow a 6' ± rear yard setback where 5' is the minimum required for an accessory structure.
2. A Variance from Section 10.521 to allow 43.2% building coverage where 30% 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:

- Granting the variances will not alter the essential characteristics of the neighborhood and the spirit of the Ordinance will be observed by this modest change to the overall footprint of the property and minimal additional encroachment.
- There would be no gain to the general public that would balance the loss to the applicant if the petition were denied.
- The value of surrounding properties will not be diminished as this solution is in keeping with the historical improvements to the property and the a/c unit will be buffered by a stone wall and other landscape elements.
- The special conditions of the property include its current legal nonconforming location that is typical for a home built in the 1700's before current zoning so that there is no fair and substantial relationship between the general public purposes of the Ordinance provisions as to setbacks and lot coverage and their specific application to this property. This is a reasonable use in a residential district and, with windows along the rear foundation limiting the placement possibilities, the best location has been proposed for the unit.

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13) Case # 7-13

Petitioner: HCA Health Services of NH Inc., owner, Portsmouth Regional Hospital, applicant

Property: 333 Borthwick Avenue

Assessor Plan 240, Lot 2-1

Zoning District: Office Research

Description: Construct a helipad in the parking lot to the left of the building.

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

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**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 standards as provided by the Ordinance for this particular use permitted by Special Exception are met.
  - The proposed location is not in proximity to buildings on neighboring properties so that granting the special exception will not present a hazard to the public or adjacent property from potential fire explosion or release of toxic materials. Procedures are in place to deal with any potential fire hazard during helicopter operations.
  - There will be no detriment to property values in the vicinity or change in the essential characteristics of the area due to smoke, odors or other pollutants, noise, glare or unsightly outdoor storage of materials, vehicles or equipment. The helipad will be on ground level with little visibility. The potential occurrences of heat, noise or vibration will be infrequent and of short duration. Any impact will be lessened by the distance to neighboring properties which are non-residential.
  - Due to the infrequent use of the helipad there will be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion.
  - There is nothing in the use as a helipad that will result in an excessive demand on municipal services or cause any increase in storm water runoff onto adjacent properties or streets.
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14) Case # 7-14

Petitioner: Kristina Logan

Property: 220 South Street

Assessor Plan 111, Lot 1

Zoning District: Single Residence B

Description: Replace existing storage shed with 15'± x 30'± artist studio.

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 reconstructed, enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 1.5'± right side yard setback where 10' is the minimum required.
3. A Variance from Section 10.521 to allow 20.96%± building coverage where 20% is the maximum allowed.

**Action:**

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

**Stipulations:**

- The proposed studio is not to be used as living space or an independent dwelling unit and there will be no cooking facilities in the space.

**Review Criteria:**

The petition was granted for the following reasons:

- Granting the variances for the continuation of an existing right side yard setback and less than a 1% increase in building coverage will not be contrary to the public interest or the spirit of the Ordinance.
- Substantial justice will be done as the detriment to the applicant if the project were denied would not be outweighed by any perceived public benefit.
- The value of surrounding properties will not be diminished as the setback will remain the same with a slight increase in length.
- The special conditions of the property are its unusual shape, the location of the existing structure to be replaced and some wetlands at the rear which make the maintenance of the existing basic footprint the best choice. Due to the special conditions, there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to this property.

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15) Case # 7-15

Petitioner: John Hall, owner, Leonard & Wendy Cushing, applicants

Property: 126 Elwyn Avenue

Assessor Plan 112, Lot 44

Zoning District: General Residence A

Description: Construct an 11'± x 18'± two and a half 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 to be extended or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 6'± right side yard setback where 10' is the minimum required.

**Action:**

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**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 as the proposed upward expansion of an existing legal nonconforming building is a reasonable proposal for the neighborhood.
- Substantial justice will be done as allowing the homeowner to make more efficient use of the property will not be offset by a negative impact on the general public.

- Allowing for a home to be renovated will not have a negative impact on the value of surrounding properties.
- The special condition of the property creating a hardship is the current location of the existing structure.

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**III. RULES & REGULATIONS – FINAL APPROVAL**

By unanimous vote of the Board, the Rules and Regulations for the Board of Adjustment, Revised July 22, 2014 were adopted.

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**IV. ADJOURNMENT**

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It was moved, seconded and passed to adjourn the meeting at 10:10 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary



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**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 July 22, 2014** 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, Alternate: Patrick Moretti

**EXCUSED:** David Rheaume

=====

**I. REQUESTS FOR REHEARING**

A) Request for Rehearing for property located at 56 Lois Street.

**Action:**

A motion to grant the rehearing failed to pass and the request was denied. The Board determined that it had 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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**II. PUBLIC HEARINGS – NEW BUSINESS**

8) Case # 7-8  
Petitioner: Debra A. Nash dba Five N Associates, owner & James Davis, applicant  
Property: 235 Heritage Avenue  
Assessor Plan 284, Lot 2  
Zoning District: Industrial  
Description: Religious assembly use.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:  
1. A Variance from Section 10.440, Use #3.11 to allow a religious place of assembly in a district where the use is not allowed.  
2. A Variance from Section 10.1112.30 to permit less than the required number of off-street parking spaces.

**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. There will be minimal exterior impact so that the essential character of the neighborhood will not be altered.
- The spirit of the Ordinance will be observed as the introduction of a religious use in an Industrial Zone will not threaten the health, safety and welfare of the general public.
- Substantial justice will be done as denying the variance would result in a detriment to the applicant which would not be balanced by any gain to the general public.
- The values of surrounding properties will not be diminished as there is sufficient access from two roads to the site so no traffic congestion should result from this complimentary use with the main activity occurring during off-peak hours.
- This is an under-utilized property in an industrial park. The use is complimentary so that there is no fair and substantial relationship between the purpose of the Ordinance in not allowing a place of assembly as a use and its application to this particular property.
- With specific reference to the parking variance, the amount of relief is three spaces which is minimal given the complimentary nature of the use so there is no fair and substantial relationship between the parking requirement and its application to this property.

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9) Case # 7-9

Martha Stolzer

Property: 5 Pleasant Point Drive

Assessor Plan 207, Lot 32

Zoning District: Single Residence B

Description: Construct a roofed front entryway and roofed left side deck.

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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A 22'± front yard setback where 30' is the minimum required;
  - b) A 20'± rear yard setback where 30' is the minimum required; and
  - c) 22.5%± building coverage where 20% is the maximum allowed.

**Action:**

The Board voted to **grant** the petition as presented and advertised with the following revisions and as stipulated below:

- a) The required relief for a front yard setback is 22' where 26.5'± is allowed in accordance with the provisions of Section 10.516.10.
- b) No zoning relief is required for a rear yard setback as the applicant's modifications will be within the 24' minimum required for open decks and steps over 4' in height in accordance with Section 10.516.40.

**Stipulations:**

- The applicant will provide the Planning Department with the necessary front yard averaging documentation to support a revised front yard setback minimum requirement of 26.5'±.
- There will be no pergola or roof on the proposed deck on the south side of the house.
- The proposed uncovered deck and stairs will be 24' or more from the rear lot line.

**Review Criteria:**

The petition was granted for the following reasons:

- The proposed additions to improve the property will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as the amount of relief required for the proposed additions is minimal.
- Substantial justice will be done as granting the variance will not result in any detrimental effect on the general public.
- The value of surrounding properties will not be diminished as an effort has been made by the applicant to minimize the impact on the neighbors who have expressed their support.
- Literal enforcement of the Ordinance would result in unnecessary hardship. With the placement of the existing structure on the lot and its corner location are special conditions so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. The encroachment is not substantial so that the proposed use is a reasonable one.

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10) Case # 7-10

Petitioner: Jeffrey T. Bell

Property: 183 Austin Street

Assessor Plan 145, Lot 91

Zoning District: General Residence C

Description: Demolish two-story rear wing. Construct 6'± x 14'± rear addition, roof over front landing, and front and left 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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A 3'± front yard setback where 5' is the minimum required;
  - b) A 0'± left side yard setback where 10' is the minimum required; and
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 **grant** the petition as presented and advertised.

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- The proposed renovations will not alter the essential character of the neighborhood so that granting the variance will not be contrary to the public interest and will be within the spirit of the Ordinance.
  - Substantial justice will be done as the hardship to the applicant if the variances were denied would not be outweighed by any perceived benefit to the general public.
  - The value of surrounding properties will not be diminished by an improvement to the property, which has taken into consideration the concerns of neighbors and the Board.
  - The special conditions of the property are that the front and left setbacks are not being altered and the parking as laid out has existed for an extensive period of time.
  - With the special conditions of the property, there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to the property. The proposed use is a reasonable one.
- 

11) Case # 7-11

Petitioner: Herring Pond LLC

Property: 856 Route One By-Pass

Assessor Plan 160, Lot 30

Zoning District: Business

Description: Install a 10'± x 10'± x 65'± high freestanding sign.

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

1. A Variance from Section 10.1243 to allow more than one freestanding sign per lot.
2. Variances from Section 10.1253.10 to allow a freestanding sign 65'± in height where 20' is the maximum allowed and to allow a freestanding sign that is located closer than 20' from the front property line.

**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:

- Granting the variances would be contrary to the public interest and the spirit of the Ordinance would not be observed as the character of the neighborhood would be altered by the addition of a sign at this height.
  - In the substantial justice balance test, the detriment to the public interest would outweigh any perceived benefit to the applicant if the variances were granted.
  - Surrounding property values would likely be diminished by the impact of the proposed sign and there was no compelling argument for special conditions creating a hardship.
-

## 12) Case # 7-12

Petitioner: David B. and Deborah A. Adams

Property: 210 Gates Street

Assessor Plan 103, Lot 26

Zoning District: General Residence B

Description: Install a 24" x 24" x 28.5" a/c compressor at the rear of the lot.

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

1. A Variance from Section 10.573.10 to allow a 6' ± rear yard setback where 5' is the minimum required for an accessory structure.
2. A Variance from Section 10.521 to allow 43.2% building coverage where 30% 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:

- Granting the variances will not alter the essential characteristics of the neighborhood and the spirit of the Ordinance will be observed by this modest change to the overall footprint of the property and minimal additional encroachment.
- There would be no gain to the general public that would balance the loss to the applicant if the petition were denied.
- The value of surrounding properties will not be diminished as this solution is in keeping with the historical improvements to the property and the a/c unit will be buffered by a stone wall and other landscape elements.
- The special conditions of the property include its current legal nonconforming location that is typical for a home built in the 1700's before current zoning so that there is no fair and substantial relationship between the general public purposes of the Ordinance provisions as to setbacks and lot coverage and their specific application to this property. This is a reasonable use in a residential district and, with windows along the rear foundation limiting the placement possibilities, the best location has been proposed for the unit.

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13) Case # 7-13

Petitioner: HCA Health Services of NH Inc., owner, Portsmouth Regional Hospital, applicant

Property: 333 Borthwick Avenue

Assessor Plan 240, Lot 2-1

Zoning District: Office Research

Description: Construct a helipad in the parking lot to the left of the building.

Request : 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 #15.20 to allow a heliport as an accessory use incidental to a permitted principal use.

**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 standards as provided by the Ordinance for this particular use permitted by Special Exception are met.
  - The proposed location is not in proximity to buildings on neighboring properties so that granting the special exception will not present a hazard to the public or adjacent property from potential fire explosion or release of toxic materials. Procedures are in place to deal with any potential fire hazard during helicopter operations.
  - There will be no detriment to property values in the vicinity or change in the essential characteristics of the area due to smoke, odors or other pollutants, noise, glare or unsightly outdoor storage of materials, vehicles or equipment. The helipad will be on ground level with little visibility. The potential occurrences of heat, noise or vibration will be infrequent and of short duration. Any impact will be lessened by the distance to neighboring properties which are non-residential.
  - Due to the infrequent use of the helipad there will be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion.
  - There is nothing in the use as a helipad that will result in an excessive demand on municipal services or cause any increase in storm water runoff onto adjacent properties or streets.
- 

14) Case # 7-14

Petitioner: Kristina Logan

Property: 220 South Street

Assessor Plan 111, Lot 1

Zoning District: Single Residence B

Description: Replace existing storage shed with 15'± x 30'± artist studio.

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 reconstructed, enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 1.5'± right side yard setback where 10' is the minimum required.
3. A Variance from Section 10.521 to allow 20.96%± building coverage where 20% is the maximum allowed.

**Action:**

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

**Stipulations:**

- The proposed studio is not to be used as living space or an independent dwelling unit and there will be no cooking facilities in the space.

**Review Criteria:**

The petition was granted for the following reasons:

- Granting the variances for the continuation of an existing right side yard setback and less than a 1% increase in building coverage will not be contrary to the public interest or the spirit of the Ordinance.
- Substantial justice will be done as the detriment to the applicant if the project were denied would not be outweighed by any perceived public benefit.
- The value of surrounding properties will not be diminished as the setback will remain the same with a slight increase in length.
- The special conditions of the property are its unusual shape, the location of the existing structure to be replaced and some wetlands at the rear which make the maintenance of the existing basic footprint the best choice. Due to the special conditions, there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to this property.

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15) Case # 7-15

Petitioner: John Hall, owner, Leonard & Wendy Cushing, applicants

Property: 126 Elwyn Avenue

Assessor Plan 112, Lot 44

Zoning District: General Residence A

Description: Construct an 11'± x 18'± two and a half 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 to be extended or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 6'± right side yard setback where 10' is the minimum required.

**Action:**

A motion to **deny the petition failed to pass** and the Board then 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 as the proposed upward expansion of an existing legal nonconforming building is a reasonable proposal for the neighborhood.
- Substantial justice will be done as allowing the homeowner to make more efficient use of the property will not be offset by a negative impact on the general public.

- Allowing for a home to be renovated will not have a negative impact on the value of surrounding properties.
- The special condition of the property creating a hardship is the current location of the existing structure.

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**III. RULES & REGULATIONS – FINAL APPROVAL**

By unanimous vote of the Board, the Rules and Regulations for the Board of Adjustment, Revised July 22, 2014 were adopted.

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**IV. ADJOURNMENT**

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It was moved, seconded and passed to adjourn the meeting at 10:10 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary



**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 July 22, 2014** 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, Alternate: Patrick Moretti  
**EXCUSED:** David Rheaume

=====

**I. REQUESTS FOR REHEARING**

A) Request for Rehearing for property located at 56 Lois Street.

**Action:**

A motion to grant the rehearing failed to pass and the request was denied. The Board determined that it had 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.

=====

**II. PUBLIC HEARINGS – NEW BUSINESS**

8) Case # 7-8  
Petitioner: Debra A. Nash dba Five N Associates, owner & James Davis, applicant  
Property: 235 Heritage Avenue  
Assessor Plan 284, Lot 2  
Zoning District: Industrial  
Description: Religious assembly use.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:  
1. A Variance from Section 10.440, Use #3.11 to allow a religious place of assembly in a district where the use is not allowed.  
2. A Variance from Section 10.1112.30 to permit less than the required number of off-street parking spaces.

**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. There will be minimal exterior impact so that the essential character of the neighborhood will not be altered.
- The spirit of the Ordinance will be observed as the introduction of a religious use in an Industrial Zone will not threaten the health, safety and welfare of the general public.
- Substantial justice will be done as denying the variance would result in a detriment to the applicant which would not be balanced by any gain to the general public.
- The values of surrounding properties will not be diminished as there is sufficient access from two roads to the site so no traffic congestion should result from this complimentary use with the main activity occurring during off-peak hours.
- This is an under-utilized property in an industrial park. The use is complimentary so that there is no fair and substantial relationship between the purpose of the Ordinance in not allowing a place of assembly as a use and its application to this particular property.
- With specific reference to the parking variance, the amount of relief is three spaces which is minimal given the complimentary nature of the use so there is no fair and substantial relationship between the parking requirement and its application to this property.

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9) Case # 7-9

Martha Stolzer

Property: 5 Pleasant Point Drive

Assessor Plan 207, Lot 32

Zoning District: Single Residence B

Description: Construct a roofed front entryway and roofed left side deck.

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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A 22'± front yard setback where 30' is the minimum required;
  - b) A 20'± rear yard setback where 30' is the minimum required; and
  - c) 22.5%± building coverage where 20% is the maximum allowed.

**Action:**

The Board voted to **grant** the petition as presented and advertised with the following revisions and as stipulated below:

- a) The required relief for a front yard setback is 22' where 26.5'± is allowed in accordance with the provisions of Section 10.516.10.
- b) No zoning relief is required for a rear yard setback as the applicant's modifications will be within the 24' minimum required for open decks and steps over 4' in height in accordance with Section 10.516.40.

**Stipulations:**

- The applicant will provide the Planning Department with the necessary front yard averaging documentation to support a revised front yard setback minimum requirement of 26.5'±.
- There will be no pergola or roof on the proposed deck on the south side of the house.
- The proposed uncovered deck and stairs will be 24' or more from the rear lot line.

**Review Criteria:**

The petition was granted for the following reasons:

- The proposed additions to improve the property will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as the amount of relief required for the proposed additions is minimal.
- Substantial justice will be done as granting the variance will not result in any detrimental effect on the general public.
- The value of surrounding properties will not be diminished as an effort has been made by the applicant to minimize the impact on the neighbors who have expressed their support.
- Literal enforcement of the Ordinance would result in unnecessary hardship. With the placement of the existing structure on the lot and its corner location are special conditions so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. The encroachment is not substantial so that the proposed use is a reasonable one.

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10) Case # 7-10

Petitioner: Jeffrey T. Bell

Property: 183 Austin Street

Assessor Plan 145, Lot 91

Zoning District: General Residence C

Description: Demolish two-story rear wing. Construct 6'± x 14'± rear addition, roof over front landing, and front and left 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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A 3'± front yard setback where 5' is the minimum required;
  - b) A 0'± left side yard setback where 10' is the minimum required; and
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 **grant** the petition as presented and advertised.

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- The proposed renovations will not alter the essential character of the neighborhood so that granting the variance will not be contrary to the public interest and will be within the spirit of the Ordinance.
  - Substantial justice will be done as the hardship to the applicant if the variances were denied would not be outweighed by any perceived benefit to the general public.
  - The value of surrounding properties will not be diminished by an improvement to the property, which has taken into consideration the concerns of neighbors and the Board.
  - The special conditions of the property are that the front and left setbacks are not being altered and the parking as laid out has existed for an extensive period of time.
  - With the special conditions of the property, there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to the property. The proposed use is a reasonable one.
- 

11) Case # 7-11

Petitioner: Herring Pond LLC

Property: 856 Route One By-Pass

Assessor Plan 160, Lot 30

Zoning District: Business

Description: Install a 10'± x 10'± x 65'± high freestanding sign.

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

1. A Variance from Section 10.1243 to allow more than one freestanding sign per lot.
2. Variances from Section 10.1253.10 to allow a freestanding sign 65'± in height where 20' is the maximum allowed and to allow a freestanding sign that is located closer than 20' from the front property line.

**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:

- Granting the variances would be contrary to the public interest and the spirit of the Ordinance would not be observed as the character of the neighborhood would be altered by the addition of a sign at this height.
  - In the substantial justice balance test, the detriment to the public interest would outweigh any perceived benefit to the applicant if the variances were granted.
  - Surrounding property values would likely be diminished by the impact of the proposed sign and there was no compelling argument for special conditions creating a hardship.
-

## 12) Case # 7-12

Petitioner: David B. and Deborah A. Adams

Property: 210 Gates Street

Assessor Plan 103, Lot 26

Zoning District: General Residence B

Description: Install a 24" x 24" x 28.5" a/c compressor at the rear of the lot.

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

1. A Variance from Section 10.573.10 to allow a 6' ± rear yard setback where 5' is the minimum required for an accessory structure.
2. A Variance from Section 10.521 to allow 43.2% building coverage where 30% 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:

- Granting the variances will not alter the essential characteristics of the neighborhood and the spirit of the Ordinance will be observed by this modest change to the overall footprint of the property and minimal additional encroachment.
- There would be no gain to the general public that would balance the loss to the applicant if the petition were denied.
- The value of surrounding properties will not be diminished as this solution is in keeping with the historical improvements to the property and the a/c unit will be buffered by a stone wall and other landscape elements.
- The special conditions of the property include its current legal nonconforming location that is typical for a home built in the 1700's before current zoning so that there is no fair and substantial relationship between the general public purposes of the Ordinance provisions as to setbacks and lot coverage and their specific application to this property. This is a reasonable use in a residential district and, with windows along the rear foundation limiting the placement possibilities, the best location has been proposed for the unit.

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13) Case # 7-13

Petitioner: HCA Health Services of NH Inc., owner, Portsmouth Regional Hospital, applicant

Property: 333 Borthwick Avenue

Assessor Plan 240, Lot 2-1

Zoning District: Office Research

Description: Construct a helipad in the parking lot to the left of the building.

Request : 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 #15.20 to allow a heliport as an accessory use incidental to a permitted principal use.

**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 standards as provided by the Ordinance for this particular use permitted by Special Exception are met.
  - The proposed location is not in proximity to buildings on neighboring properties so that granting the special exception will not present a hazard to the public or adjacent property from potential fire explosion or release of toxic materials. Procedures are in place to deal with any potential fire hazard during helicopter operations.
  - There will be no detriment to property values in the vicinity or change in the essential characteristics of the area due to smoke, odors or other pollutants, noise, glare or unsightly outdoor storage of materials, vehicles or equipment. The helipad will be on ground level with little visibility. The potential occurrences of heat, noise or vibration will be infrequent and of short duration. Any impact will be lessened by the distance to neighboring properties which are non-residential.
  - Due to the infrequent use of the helipad there will be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion.
  - There is nothing in the use as a helipad that will result in an excessive demand on municipal services or cause any increase in storm water runoff onto adjacent properties or streets.
- 

14) Case # 7-14

Petitioner: Kristina Logan

Property: 220 South Street

Assessor Plan 111, Lot 1

Zoning District: Single Residence B

Description: Replace existing storage shed with 15'± x 30'± artist studio.

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 reconstructed, enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 1.5'± right side yard setback where 10' is the minimum required.
3. A Variance from Section 10.521 to allow 20.96%± building coverage where 20% is the maximum allowed.

**Action:**

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

**Stipulations:**

- The proposed studio is not to be used as living space or an independent dwelling unit and there will be no cooking facilities in the space.

**Review Criteria:**

The petition was granted for the following reasons:

- Granting the variances for the continuation of an existing right side yard setback and less than a 1% increase in building coverage will not be contrary to the public interest or the spirit of the Ordinance.
- Substantial justice will be done as the detriment to the applicant if the project were denied would not be outweighed by any perceived public benefit.
- The value of surrounding properties will not be diminished as the setback will remain the same with a slight increase in length.
- The special conditions of the property are its unusual shape, the location of the existing structure to be replaced and some wetlands at the rear which make the maintenance of the existing basic footprint the best choice. Due to the special conditions, there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to this property.

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15) Case # 7-15

Petitioner: John Hall, owner, Leonard & Wendy Cushing, applicants

Property: 126 Elwyn Avenue

Assessor Plan 112, Lot 44

Zoning District: General Residence A

Description: Construct an 11'± x 18'± two and a half 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 to be extended or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 6'± right side yard setback where 10' is the minimum required.

**Action:**

A motion to **deny the petition failed to pass** and the Board then 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 as the proposed upward expansion of an existing legal nonconforming building is a reasonable proposal for the neighborhood.
- Substantial justice will be done as allowing the homeowner to make more efficient use of the property will not be offset by a negative impact on the general public.

- Allowing for a home to be renovated will not have a negative impact on the value of surrounding properties.
- The special condition of the property creating a hardship is the current location of the existing structure.

=====

**III. RULES & REGULATIONS – FINAL APPROVAL**

By unanimous vote of the Board, the Rules and Regulations for the Board of Adjustment, Revised July 22, 2014 were adopted.

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**IV. ADJOURNMENT**

=====

It was moved, seconded and passed to adjourn the meeting at 10:10 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary



**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 July 22, 2014** 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, Alternate: Patrick Moretti  
**EXCUSED:** David Rheaume

=====

**I. REQUESTS FOR REHEARING**

A) Request for Rehearing for property located at 56 Lois Street.

**Action:**

A motion to grant the rehearing failed to pass and the request was denied. The Board determined that it had 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.

=====

**II. PUBLIC HEARINGS – NEW BUSINESS**

8) Case # 7-8  
Petitioner: Debra A. Nash dba Five N Associates, owner & James Davis, applicant  
Property: 235 Heritage Avenue  
Assessor Plan 284, Lot 2  
Zoning District: Industrial  
Description: Religious assembly use.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:  
1. A Variance from Section 10.440, Use #3.11 to allow a religious place of assembly in a district where the use is not allowed.  
2. A Variance from Section 10.1112.30 to permit less than the required number of off-street parking spaces.

**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. There will be minimal exterior impact so that the essential character of the neighborhood will not be altered.
- The spirit of the Ordinance will be observed as the introduction of a religious use in an Industrial Zone will not threaten the health, safety and welfare of the general public.
- Substantial justice will be done as denying the variance would result in a detriment to the applicant which would not be balanced by any gain to the general public.
- The values of surrounding properties will not be diminished as there is sufficient access from two roads to the site so no traffic congestion should result from this complimentary use with the main activity occurring during off-peak hours.
- This is an under-utilized property in an industrial park. The use is complimentary so that there is no fair and substantial relationship between the purpose of the Ordinance in not allowing a place of assembly as a use and its application to this particular property.
- With specific reference to the parking variance, the amount of relief is three spaces which is minimal given the complimentary nature of the use so there is no fair and substantial relationship between the parking requirement and its application to this property.

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9) Case # 7-9

Martha Stolzer

Property: 5 Pleasant Point Drive

Assessor Plan 207, Lot 32

Zoning District: Single Residence B

Description: Construct a roofed front entryway and roofed left side deck.

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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A 22'± front yard setback where 30' is the minimum required;
  - b) A 20'± rear yard setback where 30' is the minimum required; and
  - c) 22.5%± building coverage where 20% is the maximum allowed.

**Action:**

The Board voted to **grant** the petition as presented and advertised with the following revisions and as stipulated below:

- a) The required relief for a front yard setback is 22' where 26.5'± is allowed in accordance with the provisions of Section 10.516.10.
- b) No zoning relief is required for a rear yard setback as the applicant's modifications will be within the 24' minimum required for open decks and steps over 4' in height in accordance with Section 10.516.40.

**Stipulations:**

- The applicant will provide the Planning Department with the necessary front yard averaging documentation to support a revised front yard setback minimum requirement of 26.5'±.
- There will be no pergola or roof on the proposed deck on the south side of the house.
- The proposed uncovered deck and stairs will be 24' or more from the rear lot line.

**Review Criteria:**

The petition was granted for the following reasons:

- The proposed additions to improve the property will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as the amount of relief required for the proposed additions is minimal.
- Substantial justice will be done as granting the variance will not result in any detrimental effect on the general public.
- The value of surrounding properties will not be diminished as an effort has been made by the applicant to minimize the impact on the neighbors who have expressed their support.
- Literal enforcement of the Ordinance would result in unnecessary hardship. With the placement of the existing structure on the lot and its corner location are special conditions so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. The encroachment is not substantial so that the proposed use is a reasonable one.

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10) Case # 7-10

Petitioner: Jeffrey T. Bell

Property: 183 Austin Street

Assessor Plan 145, Lot 91

Zoning District: General Residence C

Description: Demolish two-story rear wing. Construct 6'± x 14'± rear addition, roof over front landing, and front and left 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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A 3'± front yard setback where 5' is the minimum required;
  - b) A 0'± left side yard setback where 10' is the minimum required; and
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 **grant** the petition as presented and advertised.

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- The proposed renovations will not alter the essential character of the neighborhood so that granting the variance will not be contrary to the public interest and will be within the spirit of the Ordinance.
  - Substantial justice will be done as the hardship to the applicant if the variances were denied would not be outweighed by any perceived benefit to the general public.
  - The value of surrounding properties will not be diminished by an improvement to the property, which has taken into consideration the concerns of neighbors and the Board.
  - The special conditions of the property are that the front and left setbacks are not being altered and the parking as laid out has existed for an extensive period of time.
  - With the special conditions of the property, there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to the property. The proposed use is a reasonable one.
- 

11) Case # 7-11

Petitioner: Herring Pond LLC

Property: 856 Route One By-Pass

Assessor Plan 160, Lot 30

Zoning District: Business

Description: Install a 10'± x 10'± x 65'± high freestanding sign.

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

1. A Variance from Section 10.1243 to allow more than one freestanding sign per lot.
2. Variances from Section 10.1253.10 to allow a freestanding sign 65'± in height where 20' is the maximum allowed and to allow a freestanding sign that is located closer than 20' from the front property line.

**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:

- Granting the variances would be contrary to the public interest and the spirit of the Ordinance would not be observed as the character of the neighborhood would be altered by the addition of a sign at this height.
  - In the substantial justice balance test, the detriment to the public interest would outweigh any perceived benefit to the applicant if the variances were granted.
  - Surrounding property values would likely be diminished by the impact of the proposed sign and there was no compelling argument for special conditions creating a hardship.
-

12) Case # 7-12

Petitioner: David B. and Deborah A. Adams

Property: 210 Gates Street

Assessor Plan 103, Lot 26

Zoning District: General Residence B

Description: Install a 24" x 24" x 28.5" a/c compressor at the rear of the lot.

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

1. A Variance from Section 10.573.10 to allow a 6' ± rear yard setback where 5' is the minimum required for an accessory structure.
2. A Variance from Section 10.521 to allow 43.2% building coverage where 30% 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:

- Granting the variances will not alter the essential characteristics of the neighborhood and the spirit of the Ordinance will be observed by this modest change to the overall footprint of the property and minimal additional encroachment.
- There would be no gain to the general public that would balance the loss to the applicant if the petition were denied.
- The value of surrounding properties will not be diminished as this solution is in keeping with the historical improvements to the property and the a/c unit will be buffered by a stone wall and other landscape elements.
- The special conditions of the property include its current legal nonconforming location that is typical for a home built in the 1700's before current zoning so that there is no fair and substantial relationship between the general public purposes of the Ordinance provisions as to setbacks and lot coverage and their specific application to this property. This is a reasonable use in a residential district and, with windows along the rear foundation limiting the placement possibilities, the best location has been proposed for the unit.

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13) Case # 7-13

Petitioner: HCA Health Services of NH Inc., owner, Portsmouth Regional Hospital, applicant

Property: 333 Borthwick Avenue

Assessor Plan 240, Lot 2-1

Zoning District: Office Research

Description: Construct a helipad in the parking lot to the left of the building.

Request : 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 #15.20 to allow a heliport as an accessory use incidental to a permitted principal use.

**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 standards as provided by the Ordinance for this particular use permitted by Special Exception are met.
  - The proposed location is not in proximity to buildings on neighboring properties so that granting the special exception will not present a hazard to the public or adjacent property from potential fire explosion or release of toxic materials. Procedures are in place to deal with any potential fire hazard during helicopter operations.
  - There will be no detriment to property values in the vicinity or change in the essential characteristics of the area due to smoke, odors or other pollutants, noise, glare or unsightly outdoor storage of materials, vehicles or equipment. The helipad will be on ground level with little visibility. The potential occurrences of heat, noise or vibration will be infrequent and of short duration. Any impact will be lessened by the distance to neighboring properties which are non-residential.
  - Due to the infrequent use of the helipad there will be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion.
  - There is nothing in the use as a helipad that will result in an excessive demand on municipal services or cause any increase in storm water runoff onto adjacent properties or streets.
- 

14) Case # 7-14

Petitioner: Kristina Logan

Property: 220 South Street

Assessor Plan 111, Lot 1

Zoning District: Single Residence B

Description: Replace existing storage shed with 15'± x 30'± artist studio.

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 reconstructed, enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 1.5'± right side yard setback where 10' is the minimum required.
3. A Variance from Section 10.521 to allow 20.96%± building coverage where 20% is the maximum allowed.

**Action:**

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

**Stipulations:**

- The proposed studio is not to be used as living space or an independent dwelling unit and there will be no cooking facilities in the space.

**Review Criteria:**

The petition was granted for the following reasons:

- Granting the variances for the continuation of an existing right side yard setback and less than a 1% increase in building coverage will not be contrary to the public interest or the spirit of the Ordinance.
- Substantial justice will be done as the detriment to the applicant if the project were denied would not be outweighed by any perceived public benefit.
- The value of surrounding properties will not be diminished as the setback will remain the same with a slight increase in length.
- The special conditions of the property are its unusual shape, the location of the existing structure to be replaced and some wetlands at the rear which make the maintenance of the existing basic footprint the best choice. Due to the special conditions, there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to this property.

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15) Case # 7-15

Petitioner: John Hall, owner, Leonard & Wendy Cushing, applicants

Property: 126 Elwyn Avenue

Assessor Plan 112, Lot 44

Zoning District: General Residence A

Description: Construct an 11'± x 18'± two and a half 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 to be extended or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 6'± right side yard setback where 10' is the minimum required.

**Action:**

A motion to **deny the petition failed to pass** and the Board then 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 as the proposed upward expansion of an existing legal nonconforming building is a reasonable proposal for the neighborhood.
- Substantial justice will be done as allowing the homeowner to make more efficient use of the property will not be offset by a negative impact on the general public.

- Allowing for a home to be renovated will not have a negative impact on the value of surrounding properties.
- The special condition of the property creating a hardship is the current location of the existing structure.

=====

**III. RULES & REGULATIONS – FINAL APPROVAL**

By unanimous vote of the Board, the Rules and Regulations for the Board of Adjustment, Revised July 22, 2014 were adopted.

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**IV. ADJOURNMENT**

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It was moved, seconded and passed to adjourn the meeting at 10:10 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary



**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 July 22, 2014** 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, Alternate: Patrick Moretti  
**EXCUSED:** David Rheaume

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**I. REQUESTS FOR REHEARING**

A) Request for Rehearing for property located at 56 Lois Street.

**Action:**

A motion to grant the rehearing failed to pass and the request was denied. The Board determined that it had 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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**II. PUBLIC HEARINGS – NEW BUSINESS**

8) Case # 7-8  
Petitioner: Debra A. Nash dba Five N Associates, owner & James Davis, applicant  
Property: 235 Heritage Avenue  
Assessor Plan 284, Lot 2  
Zoning District: Industrial  
Description: Religious assembly use.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:  
1. A Variance from Section 10.440, Use #3.11 to allow a religious place of assembly in a district where the use is not allowed.  
2. A Variance from Section 10.1112.30 to permit less than the required number of off-street parking spaces.

**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. There will be minimal exterior impact so that the essential character of the neighborhood will not be altered.
- The spirit of the Ordinance will be observed as the introduction of a religious use in an Industrial Zone will not threaten the health, safety and welfare of the general public.
- Substantial justice will be done as denying the variance would result in a detriment to the applicant which would not be balanced by any gain to the general public.
- The values of surrounding properties will not be diminished as there is sufficient access from two roads to the site so no traffic congestion should result from this complimentary use with the main activity occurring during off-peak hours.
- This is an under-utilized property in an industrial park. The use is complimentary so that there is no fair and substantial relationship between the purpose of the Ordinance in not allowing a place of assembly as a use and its application to this particular property.
- With specific reference to the parking variance, the amount of relief is three spaces which is minimal given the complimentary nature of the use so there is no fair and substantial relationship between the parking requirement and its application to this property.

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9) Case # 7-9

Martha Stolzer

Property: 5 Pleasant Point Drive

Assessor Plan 207, Lot 32

Zoning District: Single Residence B

Description: Construct a roofed front entryway and roofed left side deck.

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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A 22'± front yard setback where 30' is the minimum required;
  - b) A 20'± rear yard setback where 30' is the minimum required; and
  - c) 22.5%± building coverage where 20% is the maximum allowed.

**Action:**

The Board voted to **grant** the petition as presented and advertised with the following revisions and as stipulated below:

- a) The required relief for a front yard setback is 22' where 26.5'± is allowed in accordance with the provisions of Section 10.516.10.
- b) No zoning relief is required for a rear yard setback as the applicant's modifications will be within the 24' minimum required for open decks and steps over 4' in height in accordance with Section 10.516.40.

**Stipulations:**

- The applicant will provide the Planning Department with the necessary front yard averaging documentation to support a revised front yard setback minimum requirement of 26.5'±.
- There will be no pergola or roof on the proposed deck on the south side of the house.
- The proposed uncovered deck and stairs will be 24' or more from the rear lot line.

**Review Criteria:**

The petition was granted for the following reasons:

- The proposed additions to improve the property will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as the amount of relief required for the proposed additions is minimal.
- Substantial justice will be done as granting the variance will not result in any detrimental effect on the general public.
- The value of surrounding properties will not be diminished as an effort has been made by the applicant to minimize the impact on the neighbors who have expressed their support.
- Literal enforcement of the Ordinance would result in unnecessary hardship. With the placement of the existing structure on the lot and its corner location are special conditions so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. The encroachment is not substantial so that the proposed use is a reasonable one.

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10) Case # 7-10

Petitioner: Jeffrey T. Bell

Property: 183 Austin Street

Assessor Plan 145, Lot 91

Zoning District: General Residence C

Description: Demolish two-story rear wing. Construct 6'± x 14'± rear addition, roof over front landing, and front and left 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 enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A 3'± front yard setback where 5' is the minimum required;
  - b) A 0'± left side yard setback where 10' is the minimum required; and
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 **grant** the petition as presented and advertised.

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- The proposed renovations will not alter the essential character of the neighborhood so that granting the variance will not be contrary to the public interest and will be within the spirit of the Ordinance.
  - Substantial justice will be done as the hardship to the applicant if the variances were denied would not be outweighed by any perceived benefit to the general public.
  - The value of surrounding properties will not be diminished by an improvement to the property, which has taken into consideration the concerns of neighbors and the Board.
  - The special conditions of the property are that the front and left setbacks are not being altered and the parking as laid out has existed for an extensive period of time.
  - With the special conditions of the property, there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to the property. The proposed use is a reasonable one.
- 

11) Case # 7-11

Petitioner: Herring Pond LLC

Property: 856 Route One By-Pass

Assessor Plan 160, Lot 30

Zoning District: Business

Description: Install a 10'± x 10'± x 65'± high freestanding sign.

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

1. A Variance from Section 10.1243 to allow more than one freestanding sign per lot.
2. Variances from Section 10.1253.10 to allow a freestanding sign 65'± in height where 20' is the maximum allowed and to allow a freestanding sign that is located closer than 20' from the front property line.

**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:

- Granting the variances would be contrary to the public interest and the spirit of the Ordinance would not be observed as the character of the neighborhood would be altered by the addition of a sign at this height.
  - In the substantial justice balance test, the detriment to the public interest would outweigh any perceived benefit to the applicant if the variances were granted.
  - Surrounding property values would likely be diminished by the impact of the proposed sign and there was no compelling argument for special conditions creating a hardship.
-

12) Case # 7-12

Petitioner: David B. and Deborah A. Adams

Property: 210 Gates Street

Assessor Plan 103, Lot 26

Zoning District: General Residence B

Description: Install a 24" x 24" x 28.5" a/c compressor at the rear of the lot.

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

1. A Variance from Section 10.573.10 to allow a 6' ± rear yard setback where 5' is the minimum required for an accessory structure.
2. A Variance from Section 10.521 to allow 43.2% building coverage where 30% 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:

- Granting the variances will not alter the essential characteristics of the neighborhood and the spirit of the Ordinance will be observed by this modest change to the overall footprint of the property and minimal additional encroachment.
- There would be no gain to the general public that would balance the loss to the applicant if the petition were denied.
- The value of surrounding properties will not be diminished as this solution is in keeping with the historical improvements to the property and the a/c unit will be buffered by a stone wall and other landscape elements.
- The special conditions of the property include its current legal nonconforming location that is typical for a home built in the 1700's before current zoning so that there is no fair and substantial relationship between the general public purposes of the Ordinance provisions as to setbacks and lot coverage and their specific application to this property. This is a reasonable use in a residential district and, with windows along the rear foundation limiting the placement possibilities, the best location has been proposed for the unit.

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13) Case # 7-13

Petitioner: HCA Health Services of NH Inc., owner, Portsmouth Regional Hospital, applicant

Property: 333 Borthwick Avenue

Assessor Plan 240, Lot 2-1

Zoning District: Office Research

Description: Construct a helipad in the parking lot to the left of the building.

Request : 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 #15.20 to allow a heliport as an accessory use incidental to a permitted principal use.

**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 standards as provided by the Ordinance for this particular use permitted by Special Exception are met.
  - The proposed location is not in proximity to buildings on neighboring properties so that granting the special exception will not present a hazard to the public or adjacent property from potential fire explosion or release of toxic materials. Procedures are in place to deal with any potential fire hazard during helicopter operations.
  - There will be no detriment to property values in the vicinity or change in the essential characteristics of the area due to smoke, odors or other pollutants, noise, glare or unsightly outdoor storage of materials, vehicles or equipment. The helipad will be on ground level with little visibility. The potential occurrences of heat, noise or vibration will be infrequent and of short duration. Any impact will be lessened by the distance to neighboring properties which are non-residential.
  - Due to the infrequent use of the helipad there will be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion.
  - There is nothing in the use as a helipad that will result in an excessive demand on municipal services or cause any increase in storm water runoff onto adjacent properties or streets.
- 

14) Case # 7-14

Petitioner: Kristina Logan

Property: 220 South Street

Assessor Plan 111, Lot 1

Zoning District: Single Residence B

Description: Replace existing storage shed with 15'± x 30'± artist studio.

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 reconstructed, enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 1.5'± right side yard setback where 10' is the minimum required.
3. A Variance from Section 10.521 to allow 20.96%± building coverage where 20% is the maximum allowed.

**Action:**

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

**Stipulations:**

- The proposed studio is not to be used as living space or an independent dwelling unit and there will be no cooking facilities in the space.

**Review Criteria:**

The petition was granted for the following reasons:

- Granting the variances for the continuation of an existing right side yard setback and less than a 1% increase in building coverage will not be contrary to the public interest or the spirit of the Ordinance.
- Substantial justice will be done as the detriment to the applicant if the project were denied would not be outweighed by any perceived public benefit.
- The value of surrounding properties will not be diminished as the setback will remain the same with a slight increase in length.
- The special conditions of the property are its unusual shape, the location of the existing structure to be replaced and some wetlands at the rear which make the maintenance of the existing basic footprint the best choice. Due to the special conditions, there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to this property.

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15) Case # 7-15

Petitioner: John Hall, owner, Leonard & Wendy Cushing, applicants

Property: 126 Elwyn Avenue

Assessor Plan 112, Lot 44

Zoning District: General Residence A

Description: Construct an 11'± x 18'± two and a half 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 to be extended or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 6'± right side yard setback where 10' is the minimum required.

**Action:**

A motion to **deny the petition failed to pass** and the Board then 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 as the proposed upward expansion of an existing legal nonconforming building is a reasonable proposal for the neighborhood.
- Substantial justice will be done as allowing the homeowner to make more efficient use of the property will not be offset by a negative impact on the general public.

- Allowing for a home to be renovated will not have a negative impact on the value of surrounding properties.
- The special condition of the property creating a hardship is the current location of the existing structure.

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**III. RULES & REGULATIONS – FINAL APPROVAL**

By unanimous vote of the Board, the Rules and Regulations for the Board of Adjustment, Revised July 22, 2014 were adopted.

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**IV. ADJOURNMENT**

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It was moved, seconded and passed to adjourn the meeting at 10:10 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary