

**PLANNING DEPARTMENT - BOARD OF ADJUSTMENT**

**ACTION SHEET**

**TO:** John P. Bohenko, City Manager

**FROM:** Mary Koepenick, Planning Department

**RE:** Actions Taken by the Portsmouth **Board of Adjustment at its regular meeting on August 19, 2014** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Chairman David Witham, Vice-Chairman Arthur Parrott, , Derek Durbin, Charles LeMay, Christopher Mulligan, David Rheame, Alternates: Jeremiah Johnson, Patrick Moretti

**EXCUSED:** Susan Chamberlin

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**I. APPROVAL OF MINUTES**

- A) April 22, 2014
- B) May 20, 2014
- C) May 29, 2014
- D) June 17, 2014
- E) July 15, 2014

The Minutes for the five sets of Minutes were approved with minor corrections.

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**II. MOTIONS FOR REHEARING**

- A) Motion for Rehearing by Applicants regarding 746 Middle Road.

**Action:**

The Board voted to **deny** the Motion for Rehearing. The Board determined that it made no errors in procedure or application of the law and no new information had been submitted that was not available at the time of the first hearing.

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- B) Motion for Rehearing by Applicants regarding 304 Leslie Drive.

**Action:**

The Board voted to **grant** your request for a rehearing to allow the proposal regarding the property to be presented and a decision made with specific reasons for granting or not granting the requested relief. A new hearing will be scheduled for the September 16, 2014 meeting.

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**III. PUBLIC HEARINGS – OLD BUSINESS**

- 1) Case # 7-3  
 Petitioner: Christine V. Crockett Revocable Trust  
 Property: 209 Gosport Road  
 Assessor Plan 224, Lot 10-12  
 Zoning District: Single Residence A  
 Description: Construct a new single family home within 75’ of a saltwater marsh.  
 Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
  - 1. A Variance from Section 10.301(6) – 1982 Zoning Ordinance to allow a structure 75’± from a saltwater marsh where a minimum of 100’ is required.  
 (This petition was postponed from the July 15, 2014 meeting.)

**Action:**

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

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- Constructing a single family home in a residential area will not alter the essential characteristics of the neighborhood or compromise the health, safety or welfare of the general public so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed. Expert opinion has been provided that the proposal will not have a negative impact on the wetland buffer zone.
- If the petition were denied, there would be a loss to the applicant in not being allowed a reasonable use of the property while there would be no corresponding benefit to the general public.
- There is no evidence that the proposed project will adversely impact the value of surrounding properties.
- The special conditions of the property are that the buildable uplands on the lot are restricted by the location of the wetlands which have altered over time so that there is no fair and substantial relationship between the purpose of the wetlands buffer protections and their application to this property. A single family home in an existing residential district is a reasonable use of the property.

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**IV. PUBLIC HEARINGS – NEW BUSINESS**

- 1) Case # 8-1  
 Petitioners: Weakes Revocable Trust, Danny & Rachel Weakes, Trustees  
 Property: 35 Davis Road  
 Assessor Plan 258, Lot 24  
 Zoning District: Single Residence B  
 Description: Construct 18’± x 16’± shed

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

1. Variances from Section 10.521 to allow a front yard setback of 27'4"± where 30' is required and a rear yard setback of 8.2'± where 10' is required for an accessory structure.
2. A Variance from Section 10.571 to allow an accessory structure to be located in a required front yard.

**Action:**

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

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- Constructing a new shed in a similar location to the original shed will not be contrary to the public interest.
- The spirit of the Ordinance will be observed and the value of surrounding properties will not be diminished as adequate light, air and space between the properties will be preserved.
- In the substantial justice balance test, denying the variances would result in a detriment to the property owner which would not be outweighed by any perceived benefit to the general public.
- The special condition of the property distinguishing it from others in the area is its location on a cul-de-sac creating an odd-shaped lot so that the shed is considered to be located in the required front yard. The relief requested is minimal so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to this property. Allowing this accessory structure is a reasonable use of the property.

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2) Case # 8-2

Petitioners: Mark A. & Deborah Chag

Property: 404 Middle Street

Assessor Plan 136, Lot 21

Zoning District: Mixed Residential Office

Description: Convert existing barn to single-family dwelling.

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

1. A Variance from Section 10.324 to allow a lawful nonconforming building to be added to or enlarged without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A lot area per dwelling unit of 5,436.5 s.f. ± where 7,500 s.f. is required;
  - b) A rear yard setback of 0'± where 15' is required; and
  - c) A right side yard setback of 2'± where 10' is required.

**Action:**

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

**Stipulation:**

The structure will be set back 2' from the rear property line.

**Review Criteria:**

The petition was granted for the following reasons:

- It will be in the public interest and the spirit of the Ordinance to continue a residential use in this established neighborhood. The proposed raised structure will maintain the same basic building footprint and its characteristic features will be preserved.
- In the substantial justice test, granting the variances will benefit the applicant with no detriment to the general public.
- The value of surrounding properties will not be diminished by raising and converting a structure that has been in place for many years and improvements will be largely hidden from public view.
- The special condition of the property distinguishing it from others in the area is that the structure to be converted sits on the corner close to, or on, property lines. It is a reasonable use of the property to expand an existing residential use into an existing structure.

3) Case # 8-3

Petitioner: Rye Atlantic Properties, LLC

Property: 361 Islington Street

Assessor Plan 144, Lot 23

Zoning District: Mixed Residential Business

Description: Detailing automobiles.

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

1. A Variance from Section 10.440 to allow the detailing of automobiles in a district where this use is not allowed.

**Action:**

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

**Stipulation:**

The application shall be submitted to the Planning Board for site plan review approval.

**Review Criteria:**

The petition was granted for the following reasons:

- The essential character of the neighborhood will not be altered, nor will the health, safety and welfare of the public be threatened by this commercial use in a mixed residential and business zone.
- In the substantial justice test, there would be a loss to the applicant if the petition were denied while the general public would not benefit from continuance of the property as it currently exists.
- The value of surrounding properties will not be diminished by an improvement to the existing property. The site review process will address issues of concern raised by neighbors.
- The special conditions of the property distinguishing it from others in the area include its relatively large size for the area, its corner location, a pre-existing structure and the fact that the property, due to deed restrictions, cannot in the foreseeable future contain residential or its previous gas station uses. For these reasons, there is no fair and substantial relationship between the provisions of the Ordinance relative to the proposed use and their application to the property. The use, with the protection of the oversight of the site review approval process, is a reasonable one for the property.

- 4) Case # 8-4  
Petitioner: Jane A. Shannon Revocable Trust, Brian Shannon, Trustee  
Property: 194 Wibird Street  
Assessor Plan 148, Lot 1  
Zoning District: General Residence A  
Description: Create a new lot for the purpose of constructing a single-family residence.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:  
1. A Variance from Section 10.521 to allow continuous street frontage of 57.52'± where 100' is the minimum required.

**Action:**

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

**Stipulations:**

- The application must be presented to the Planning Board for site plan review approval to include site drainage.
- A right side yard setback of 19' will be maintained along the 73.37'± segment of the right property line created by the merger of the lot designated as Lot 3 on the applicant's plans with the lot designated as Lot 2 on the applicant's plans. The standard 10' right side yard required in this district will apply to the remainder of the right property line.

**Review Criteria:**

The petition was granted for the following reasons:

- With the Planning Board reviewing issues of concern, and a street frontage typical for the area, the proposal will not alter the essential characteristics of the neighborhood or threaten the health, safety or welfare of the general public so that granting the variances will not be contrary to the public interest.
- The spirit of the Ordinance will be observed by efforts to maximize the amount of street frontage by the incorporation of an additional lot.
- In the substantial justice test, with the oversight of the Planning Board regarding any issues with drainage, there is no public interest that would outweigh the right of the property owners to make full use of their property.
- With the stipulations, adding a home in keeping with the area and meeting the setback requirements will not diminish the value of surrounding properties.
- A special condition of the property is the width of the lots that will be created out of one involuntarily merged lot that current statutes have allowed to be unmerged. A single family home in this area will continue the streetscape and is a reasonable use of the property.

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- 5) Case # 8-5  
Petitioner: Andrew S. Martin  
Property: 230 McDonough Street  
Assessor Plan 144, Lot 37  
Zoning District: General Residence C  
Description: Add a right-side dormer within existing footprint.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming building to be added to or enlarged without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 5'± right side yard setback where 10' is required.

**Action:**

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

**Stipulations:**

None

**Review Criteria:**

The petition was granted for the following reasons:

- Adding a dormer in a small back section of the existing building will not be contrary to the public interest.
- The spirit of the Ordinance is to encourage homeowners to improve their property while not infringing on the rights of adjacent property owners.
- Substantial justice will be done as the benefit of allowing the property owners to make their home more useful will not be outweighed by any corresponding detriment to the public.
- The value of surrounding properties will not be diminished by this small positive addition to the dwelling.
- The special condition of the property creating an unnecessary hardship is that access to usable space is restricted by the design of the home and this small addition will correct that problem and allow the space to be better utilized.

6) Case # 8-6

Petitioner: Thea Murphy

Property: 67 Mark Street

Assessor Plan 116, Lot 51

Zoning District: Mixed Residential Office

Description: Replace front porch and bulkhead with covered portico and storage locker.

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

1. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended, reconstructed, enlarged or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A front yard setback of 2'± where 5' is required;
  - b) A left side yard setback of 0.44'± where 10' is required; and
  - c) Building coverage of 42.2%± where 40% is the maximum allowed.

**Action:**

The Board voted to **postpone** the petition to the September meeting to allow for the submission of additional material.

7) Case # 8-7

Petitioners: Paul E. Berton Living Trust, Paul Berton, Trustee, & Jane A. Ewell Living Trust

Property: 482 Broad Street

Assessor Plan 221, Lot 63

Zoning District: General Residence A

Description: Construct four free-standing dwelling units with an 18'± wide driveway.

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

1. A Variance from Section 10.513 to allow four free-standing dwellings on a lot where no more than one free-standing dwelling is allowed.
2. A Variance from Section 10.1114.20 to allow an 18'± maneuvering aisle where a 24' maneuvering aisle is required.

**Action:**

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

**Review Criteria:**

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

- The proposal would be contrary to the public interest as it would not be in keeping with the look, feel and character of the neighborhood which mainly consists of properties with one building per lot, the majority of which face the street.
- Four free-standing dwelling units would not observe the spirit of the Ordinance.
- There is no hardship in the property that would justify granting the variances. The lot is similar in shape and size to others in the area with no special distinguishing characteristics that make it dissimilar from others that are also subject to the zoning regulations.

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**V. OTHER BUSINESS**

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**VI. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 11:45 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary