

**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 September 16, 2014** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

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

**EXCUSED:** David Rheame, Patrick Moretti

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**I. APPROVAL OF MINUTES**

A) July 22, 2014

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

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**II. PUBLIC HEARINGS – OLD BUSINESS**

1) Case # 8-6 (Amended)

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.
3. A Variance from Section 10.1113.11 to allow required off-street parking to be located on another lot.

*This petition was postponed from the August 19, 2014 meeting and amended by the addition of Request #3.*

**Action:**

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

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- Modest physical changes to the front of the structure will not alter the character of the neighborhood nor threaten the health, safety or welfare of the general public so that granting the variances will not be contrary to the public interest or the spirit of the Ordinance.
- Granting the variances will result in substantial justice as the loss to the applicant if the petition were denied would not be counterbalanced by any gain to the public or immediate neighborhood.
- There is no evidence that the surrounding properties will be diminished by an improvement to this property.
- The special conditions of the property resulting in an unnecessary hardship include the existing nonconformities and its location on a dead-end street. Due to these conditions, any additions are likely to encroach so that there is no fair and substantial relationship between the provisions of the Ordinance and their application to this property.
- With regard to the parking variance, with a permanent easement for off-street parking for the dwelling units, the conditions that were the basis for previously granting the special exception have not been altered.

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2) Case # 7-1

Petitioner: Kyle Crossen-Langelier

Property: 304 Leslie Drive

Assessor Plan 209, Lot 47

Zoning District: Single Residence B

Description: Construct an 11' x 21' free-standing carport.

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 18'11" ± where 30' is required and a left side yard setback of 7'± where 10' is required.  
*This petition was granted a rehearing at the August 19, 2014 meeting.*

**Action**

A motion to grant the petition failed to receive the votes necessary to pass and the petition was **denied**.

**Review Criteria:**

The petition failed to pass as it did not meet all the criteria necessary to grant a variance. Specific reasons cited included the following:

- The essential character of the neighborhood, which includes lots of similar shape and size and alignment of building placement along the streetscape, would be changed so that granting the variances would be contrary to the public interest.
- The spirit of the Ordinance would not be observed by encroachments into both the front and side yard setbacks. While there are some unique conditions in the property, a fair and substantial relationship does exist between the general public purposes of the Ordinance provision and their application to the property.

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**III. PUBLIC HEARINGS – NEW BUSINESS**

1) Case # 9-1

Petitioner: Paul T. Marino

Property: 287 Marcy Street

Assessor Plan 103, Lot 46

Zoning District: General Residence B

Description: Rear porch stairs.

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

1. A Variance from Section 10.324 to allow a lawful nonconforming building to be added to or enlarged without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.516.40 to allow a rear yard setback of 11.8'± where 12.5' is required.
3. A Variance from Section 10.521 to allow 48.5%± 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:

- A small change which will bring the property into greater conformance with respect to the side yard setback will not change the essential character of the neighborhood so that granting the variances will not be contrary to the public interest or the spirit of the Ordinance.

- Substantial justice will be done as the loss to the applicant, in terms of egress to the rear of the property, if the petition were denied would not be outweighed by any gain to the general public.
  - The stairs will not negatively impact the light and air of the surrounding properties so that their values will not be diminished.
  - The special distinguishing conditions of the property creating an unnecessary hardship are that it is a small lot with an existing easement into which the previous stairs encroached. This is a reasonable change to the property which will bring the property into greater conformance.
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2) Case # 9-2

Petitioners: Theodore M. Stiles and Joan H. Boyd

Property: 425 Pleasant Street

Assessor Plan 102, Lot 70

Zoning District: General Residence B

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 right side yard setback of 3'± where 10' is the minimum required.

**Action:**

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

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- A dormer within the existing footprint and out of direct view from the street will not be contrary to the public interest or the spirit of the Ordinance.
- The spirit of the Ordinance will be observed by allowing more usable space to be created in a small house without infringing on the rights of neighboring property owners.
- In the substantial justice test, the balance tips to the applicant as there would be no benefit to the general public in denying the petition.
- A dormer appropriate to the house and neighborhood will not diminish the value of surrounding properties.
- The special conditions of the property resulting in a hardship are the basic design and small size of the existing home and lot so that there is no fair and substantial relationship between the provisions of the Ordinance and their application to the property.

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3) Case # 9-3

Petitioners: Brian Short LLC, owner and Michael Wallace, applicant

Property: 2225 Lafayette Road

Assessor Plan 272, Lot 2

Zoning District: Gateway

Description: Automotive muffler repair and replacement.

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

1. A Special Exception under Section 10.440, Use #11.20 to allow motor vehicle repair in a district where the use is allowed by Special Exception.

**Action:**

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

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

- There will be no toxic materials stored or used on the premises so that no hazard to the public or adjacent property will be presented from potential fire explosion or release of toxic materials.
- There will be no detriment to property values in the vicinity or change in the essential characteristics of the area from dust, noise or other pollutants. This use located toward the back of the building and similar in nature to a previous automotive related use, will be appropriate in this commercialized area.
- The use will not create a traffic safety hazard or increase in the level of traffic congestion.
- There will be no excessive demand on municipal services.
- With no changes to the physical structure, there will be no increase in storm water runoff onto adjacent properties or streets.

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4) Case # 9-4

Petitioner: Andrew J. Lane

Property: 245 Thaxter Road

Assessor Plan 167, Lot 3

Zoning District: Single Residence B

Description: Construct new roof over front entry.

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 an 18'± front yard setback where 30' 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:

- A modest change to an existing structure will not alter the essential characteristics of the neighborhood nor threaten the health, safety or welfare of the general public so that granting the variances will not be contrary to the public interest or the spirit of the Ordinance.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be balanced by any benefit to the general public.
- This improvement to the property will not diminish the value of surrounding properties.
- There is no fair and substantial relationship between the general purposes of the Ordinance provisions and their specific application to the property. The special condition of the property creating an unnecessary hardship is that the topography of the uphill portion of the lot moves the usable envelope closer to the front property line so that any changes in that area will require relief.

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5) Case # 9-5

Petitioners: Blake A. and Christina M. Dubin

Property: 336 Miller Avenue

Assessor Plan 131, Lot 27

Zoning District: General Residence A

Description: Construct 30' x 20'6" attached garage, with second floor office, bathroom and exterior stairway.

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 an 8'6"± 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:

- While the proposed structure is significant in mass and scale, the zoning relief requested is modest so that the essential character of the neighborhood will not be altered nor will the health, safety and welfare of the general public be threatened.
- Substantial justice will be done as the loss to the applicant in having to reconfigure the proposal and move the structure a few feet would not be counter-balanced by any gain to the general public.
- The value of surrounding properties will not be diminished as the side yard for which relief is sought abuts a public way and not a neighboring property.
- Literal enforcement of the Ordinance would result in an unnecessary hardship. The special conditions of the property are that it is a corner lot with frontage on two rights-of-way, containing an existing house constructed at an angle making it difficult to site the addition. Due to these special conditions, there is no fair and substantial relationship between the general public provisions of the Ordinance and their application to the property. By extending the lines of existing additions, the applicant has chosen the most reasonable location for the proposed structure.

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- 6) Case # 9-6  
 Petitioners: Lisa L. and Brett Comack  
 Property: 2 Sylvester Street  
 Assessor Plan 232, Lot 35  
 Zoning District: Single Residence B  
 Description: Appeal  
 Requests: Appeal the action of the City Council in resolving that they did not have jurisdiction over the request of the property owners to restore involuntarily merged lots pursuant to RSA 674:39aa.

**Action:**

The Board voted to grant the Appeal, determining that the City Council did have jurisdiction over the request of the property owners to restore involuntarily merged lots pursuant to RSA 674:39aa and that the City Council erred by failing to rule on the request.

**Other:**

The effect of the decision made by the Board of Adjustment will be to remand the request back to the City Council for consideration.

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**IV. OTHER BUSINESS**

No other business was presented.

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**V. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 10:00 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary