

**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 October 21, 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: Patrick Moretti, Jeremiah Johnson

**EXCUSED:** Susan Chamberlin

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**I. APPROVAL OF MINUTES**

A) August 19, 2014

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

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**II. PUBLIC HEARINGS - NEW BUSINESS**

1) Case # 10-1

Petitioner: Jessica Paskalis

Property: 74 Wentworth House Road

Assessor Plan 201, Lot 20

Zoning District: Waterfront Business

Description: Reconstruct existing attached garage with living space above.

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

1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following: (a) a right side yard setback of 21'3.5" ± where 30' is required; and (b) a rear yard setback of 15'11.75" ± where 20' 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:

- Granting the variances will not be contrary to the public interest as the minimal increase in the dimensions of the reconstructed garage will not alter the essential character of the neighborhood.
- The structure has been in place for some time on a lot in the Waterfront Business Zone and the residential use will continue with only slight intensification so that the spirit of the Ordinance will be observed.
- In the substantial justice balance test, there is no general public interest that would argue against the granting of the variances.
- With a lot of this size, backing up to a conservation area, the proposal will not have any negative effect on nearby neighbors so that the value of surrounding properties will not be diminished.
- The special conditions of the property include its large lot size in the Waterfront Business Zone as well as the existing conditions of the land which affect the placement of structures on the lot, so that applying the general public purposes of the Ordinance to the property results in an unnecessary hardship.

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2) Case # 10-2

Petitioners: Jocelyn & Stephen Jacques

Property: 514 Middle Street

Assessor Plan 135, Lot 19

Zoning District: Mixed Residential Office

Description: Add a second dwelling unit.

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 10.812 to allow the conversion of a pre-1980 building to two dwelling units.

**Action:**

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

**Stipulations:**

- The property owner shall repair or replace the private sewer line, to the satisfaction of the Department of Public Works, within one year from the date of this approval.

**Review Criteria:**

The petition was granted for the following reasons:

- This is a conversion of a structure existing prior to 1980 so that the standards as provided in the Ordinance for this use, permitted by Special Exception, have been met.
- The structure, which has existed as a two-family dwelling for a number of years, will present no hazard to the public or adjacent property from potential fire explosion or release of toxic materials.
- With no intensification of use, there will be no detriment to property values in the vicinity or change in the essential characteristics of the area due to the scale of buildings, pollutants, noise, glare, outdoor storage of equipment, or other negative factors.
- There will be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion.
- With no essential change in use, there will be no excessive demand on municipal services, such as water, sewer, or waste disposal.
- The conversion of an existing structure will not result in any significant increase in storm water runoff onto adjacent property or streets.

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3) Case # 10-3

Petitioners: Debra A. Nash dba Five N Associates, owner & James Davis, applicant

Property: 235 Heritage Avenue

Assessor Plan 284, Lot 2

Zoning District: Industrial

Description: Provide off-street parking spaces for a religious assembly use.

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

1. A Variance from Section 10.1112.30 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:

- Allowing the applicant to operate a church without providing the additional 52 off-street parking spaces required by zoning will not be contrary to the public interest or the spirit of the Ordinance as this use will not be in conflict with the other uses on this lot.
- Substantial justice will be done by allowing relief for the additional parking spaces for a use that will be in operation primarily in off-peak hours and that was approved by a previous variance.

- The value of surrounding properties will not be diminished. This is a large property in a commercial area with most of the parking demand for this use occurring in off-peak hours.
- There is no fair and substantial relationship between the general public purposes of the Ordinance and their application to this property. The requirement is substantial based on an occupancy level which does not take into account the projected volume and times during which the parking is needed for this use and there is already a substantial amount of available parking on this large lot.

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4) Case # 10-4

Petitioner: Anita E. Thomas Revocable Trust, Anita E. Thomas, Trustee

Property: 33 Kent Street

Assessor Plan 113, Lot 44

Zoning District: General Residence A

Description: Reconstruct and extend garage.

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

1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following: (a) a right side yard setback of 2'± where 10' is required; and (b) a rear yard setback of 6'2" ± where 12.5' is required; and (c) 26.6% building coverage where 25% 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:

- This minor expansion will not change the essential character of the neighborhood so that granting the variances will not be contrary to the public interest.
- In keeping with the spirit of the Ordinance, the property will be made more usable with no additional infringement into the setbacks.
- In the substantial justice test, granting the variances will not result in any detriment to the general public.
- The replacement of an older garage with a new reasonably-sized structure will not diminish the value of surrounding properties.
- Constructing a single-car garage on the same or lesser scale than others in the area is a reasonable use of the property. The special conditions of the property include the current location of the garage which, if changed, would impact the usability of the property and the location of a large municipally owned property to the rear which helps to buffer any impact.

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- 5) Case # 10-5  
Petitioners: Richard M. & Susan H. Shea  
Property: 19 Howard Street  
Assessor Plan 103, Lot 82  
Zoning District: General Residence B  
Description: Construct 10'± x 14'± storage shed with 5'± x 8'± lean-to.  
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 a right side yard setback of 0.98'± where 10' is required.
  2. A Variance from Section 10.521 to a rear yard setback of 3.35'± where 10.9' is required.

**Action:**

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

**Review Criteria:**

The petition was granted for the following reasons:

- In an area with similar structures placed in similar locations, this shed will not change the essential character of the neighborhood nor threaten the public health, safety or welfare so that granting the variances will not be contrary to the public interest.
- While setback relief is needed, the other requirements of the Ordinance are met so that the spirit of the Ordinance will be observed.
- Substantial justice will be done by satisfying the need for outdoor storage with no detriment to the general public.
- With demonstrated support from neighbors and the public, as well as the oversight of the Historic District Commission regarding its exterior appearance, the shed will not cause any diminution in the value of surrounding properties.
- There is no fair and substantial relationship between the general public purposes of the Ordinance and their application to this property due to the special conditions that exist, which include an irregularly shaped lot, making the placement of the shed difficult. A shed on this lot in an area with similar structures is a reasonable use of the property and placing it in a different location would negatively impact open space and the historic character of the property.

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- 6) Case # 10-6  
Petitioner: Mark R. McNally  
Property: 897 Woodbury Avenue  
Assessor Plan 219, Lot 35  
Zoning District: Single Residence B  
Description: Convert existing single-family structure to a two-family.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance under Section 10.440, Use #1.20 to allow a two-family dwelling in a district where a two-family dwelling is not allowed.
2. A Variance from Section 10.521 to allow 13,180± s.f. per dwelling unit where 15,000 s.f. is required.

**Action:**

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

**Review Criteria:**

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest. The existing character of land use in this area is not exclusively single-family residential. The existing structures on the property will be altered in purpose but not in size so that the essential character of the existing neighborhood as a whole will not be altered.
- Substantial justice will be done by allowing the owner to make full use of the property and upgrade the existing structures with no detriment to the general public.
- Considering the historic use of the property and the proposed improvements in its appearance, the value of surrounding properties will not be diminished.
- Special conditions of the property exist so that a hardship is created preventing the property from being used in strict conformance with the Ordinance without a variance. The special conditions include the large size of the lot and a unique configuration of existing structures. The structure and lot are appropriate for the proposed use.

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7) Case # 10-7

Petitioner: Trisha Ballestero

Property: 116 Austin Street

Assessor Plan 136, Lot 29

Zoning District: General Residence C

Description: Replace existing porch & deck with 6' x 20' two-story 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 or structure to be extended or reconstructed without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following: (a) a right side yard setback of 9.5'± where 10' is required; and (b) a left side yard setback of 3.5'± 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:

- A change in an existing structure that will be sheltered from the street view will not be contrary to the public interest.
- In the spirit of the Ordinance, the relatively minor relief required will allow the property owner to upgrade the property without negatively impacting the rights of the neighboring property owners.
- In the substantial justice test, the property owner will be allowed to increase the size of their usable space with no detriment to the general public.
- An attractive addition, placed at the back and in the middle of the lot, will not diminish the value of surrounding properties.
- The unique conditions of the property creating a hardship include the confines of an existing small house on a narrow lot that limits the placement of new structures or additions.

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**III. OTHER BUSINESS**

No other business was presented.

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**IV. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 9:35 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary