

**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 December 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, Derek Durbin, Charles LeMay, Christopher Mulligan, David Rheaume. Alternates: Patrick Moretti, Jeremiah Johnson

**EXCUSED:** None.

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**The meeting was convened at 6:00 p.m., a departure from the customary 7:00 p.m. start time.**

**I. APPROVAL OF MINUTES**

A) November 18, 2014

The Minutes were approved as presented.

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**II. PUBLIC HEARINGS – OLD BUSINESS**

None.

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**III. PUBLIC HEARINGS – NEW BUSINESS**

1) Case # 12-1  
Petitioners: Randal J. & Marcia B. Leach  
Property: 358 Thornton Street  
Assessor Plan 161, Lot 26  
Zoning District: General Residence A  
Description: Construct a 6'± x 8'± rear shed.  
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 34%± 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:

- A relatively modest shed on a lot that is modest in size will not alter the essential character of the neighborhood nor threaten the health, safety or welfare of the general public so that granting the variance will not be contrary to the public interest and will observe the spirit of the Ordinance.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be outweighed by any gain to the general public.
- An increase of 1%± in building coverage over the existing coverage will not result in the diminution in the value of surrounding properties.
- The special condition of the property creating an unnecessary hardship is that it is a corner lot which creates a difficulty in the placement of structures. Adding a shed to a residential lot is a reasonable use and the applicant has sited the proposed shed in the most appropriate location.

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2) Case # 12-2

Petitioners: Ryan J. & Karen E. Baker

Property: 281 Sagamore Avenue

Assessor Plan 221, Lot 14

Zoning District: General Residence A

Description: Construct a 21.5'± x 21'± garage with unfinished room above.

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 0'± left side yard setback where 10' is required.

**Action:**

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

**Stipulations:**

- The garage shall be setback at least 2' from the left side property line.

**Review Criteria:**

The petition was granted for the following reasons:

- A reasonably sized garage appropriate for the lot will not change the essential character of the neighborhood so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed. The encroachment into the setback will abut a City-owned property which will add a 6' to 8' buffer to the 2' setback from the property line.
  - Substantial justice will be done as there would be no gain to the general public in denying the benefit of this garage to the applicant.
  - An upgrade to the property, which will fit in well in this neighborhood, will not diminish the value of surrounding properties.
  - The special condition of the property creating a hardship is its location on a corner. With the irregular shape of the lot and the placement of the existing house, there are limited possibilities in locating a garage without requiring relief.
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3) Case # 12-3

Petitioners: William K. & Nicola D. Douglass

Property: 96 Cliff Road

Assessor Plan 223, Lot 6

Zoning District: Single Residence B

Description: Construct a 1½ story left side addition, replace front porch and add rear dormer.

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

1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 6.5'± 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:

- The resulting size of the home and its positioning relative to the road will be consistent with the neighborhood so that granting the variances will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as the front porch is a minor expansion into the setback and the garage addition will be located further back than the existing house.

The perceived front setback is greater than the actual due to the width of the pavement on this dead-end road.

- Substantial justice will be done by allowing the property owner to make full use of the property with no detriment to the general public.
- With an anticipated increase in the value of this property, the value of surrounding properties will not be diminished.
- The special conditions of the property are its location on a dead-end road and a property line that doesn't reflect the placement of the house relative to the edge of pavement.

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4) Case # 12-4

Petitioners: Wilson & Gould Real Estate Partnership, owner, Susan J. Cerro, applicant

Property: 119 Summer Street

Assessor Plan 127, Lot 24

Zoning District: General Residence C

Description: Convert a ground floor nonresidential unit to a 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.

**Stipulations:**

None.

**Other-**

The Board agreed that the previously granted variance for parking which was to allow 2 parking spaces was also acceptable for this new use and therefore did not require a separate variance.

**Review Criteria:**

The special exception was granted for the following reasons:

- The standards for this particular use permitted by special exception have been met.
- There will be no hazard to the public or adjacent properties from fire explosion or the release of toxic materials as there will be no change from similar uses in the neighborhood.
- There will be no detriment to property values or change in the essential characteristics of the neighborhood from noise, odors, smoke or other irritants as the use is appropriate to the neighborhood.
- There will be no increase in traffic congestion or creation of a traffic safety hazard from the proposed use and no excessive demand on municipal services.
- With no change in the exterior structure, there will be no increase in storm water runoff onto adjacent property or streets.

5) Case # 12-5

Petitioner: Neal I. Katz Living Trust, Neal I. Katz, Trustee

Property: Sherburne Avenue (formerly part of 520 South Street )

Assessor Plan 112, Lot 29

Zoning District: General Residence A

Description: Construct 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 74.40'± where 100' 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 variance will not be contrary to the public interest and the spirit of the Ordinance will be observed as there will be no increase in impervious surfaces, the street frontage is equal to or greater than other lots in the area, and the house size will not affect the essential character of the neighborhood.
- Substantial justice will be done as there will be no harm done to the general public if the petition is granted by allowing a single family home to be built on a pre-existing lot of record.
- The value of surrounding properties will not be diminished as this new home is not encroaching on access to light and air for abutting properties.
- The special conditions of the property creating an unnecessary hardship in its use include its location on a dead-end street, the shape of the lot, and that it is a pre-existing nonconforming lot.

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6) Case # 12-6

Petitioners: Hackett Family Trust Fund, Christopher & Abigail Hackett, Trustees

Property: 47 Elwyn Avenue

Assessor Plan 113, Lot 30

Zoning District: General Residence A

Description: Replace existing addition with two-story rear addition with 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 structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 4'6" ± left side yard setback where 10' is required.
3. A Variance from Section 10.521 to allow 35.2%± building coverage where 29% exists and 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:

- The proposed addition will not compromise the essential character of the neighborhood nor threaten the health, safety and welfare of the general public so that granting the variances will not be contrary to the public interest and the spirit of the Ordinance will not be violated.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be outweighed by any gain to the general public.
- There will be only a slight extension of the existing encroachment so that granting the variances will not diminish the value of surrounding properties. The abutter most affected expressed support for the petition and the encroachment by a garage on a neighboring property mitigates any impact of the proposed addition.
- The relatively small size of the lot and the location and size of the existing structure are special conditions creating a hardship in adding and placing an addition without impacting the setbacks and lot coverage. It is reasonable to add additional dwelling space in a residential zone so that there is no fair and substantial relationship between the requirements of the Ordinance and their application to this property such that literal enforcement is necessary.

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7) Case # 12-7

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:

- The Board adopted by reference the thorough, thoughtful and correct decision of the Board that was reached on August 19, 2014, which was not appealed by any interested party, and the reasons put forth at that time for the decision. The Board recognized that the small increase in the height of the dormer did not change the merits for the previously granted relief.

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8) Case # 12-8

Petitioner: Abigail Khan-Cooper

Property: 227 Park Street

Assessor Plan 149, Lot 6

Zoning District: General Residence A

Description: Allow operation of a bed & breakfast in an existing owner occupied single family residence.

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 #10.21 to allow a Bed and Breakfast 1 in a district where the use is allowed by Special Exception.
2. A Variance from Section 10.1112.30 to allow 2 off-street parking spaces to be provided where 3 spaces are required.

**Action:**

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

**Review Criteria:**

The special exception was denied for the following reasons:

- All the standards for granting a special exception were not met.
- The proposal does not meet the definition and understanding of what constitutes a Bed & Breakfast use so that the standards for that particular use are not met, as required to grant a special exception.
- The essential character of this residential neighborhood would be changed so that there would be a detriment to property values.

The variance was denied for the following reason:

- Consideration of the variance was dependent on the granting of the special exception so the variance was also denied.

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9) Case # 12-9

Petitioners: Deer Street Associates

Property: 165 Deer Street

Assessor Plan 125, Lot 17

Zoning District: Central Business B

Description: Install an illuminated sign.

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

1. A Variance from Section 10.1261.30 to allow an internally illuminated sign in the Historic District.
2. A Variance from Section 10.1251.20 to allow an attached wall sign of 51.7± s.f where 40 s.f. is the maximum allowed for an individual wall sign.

**Action:**

The Board voted to **deny** the petition as presented and advertised, acknowledging the withdrawal of the variance request to allow an attached wall sign which exceeded the maximum sign area.

**Review Criteria:**

The petition was denied for the following reasons:

- Granting the variance would be contrary to the public interest as a modern illuminated sign of this type would not be compatible with the historic character of this district.
- There are no distinguishing special conditions of the property creating an unnecessary hardship.

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10) Case # 12-10

Petitioner: State Street Discount House

Property: 3613 Lafayette Road

Assessor Plan 298, Lot 6

Zoning District: Gateway

Description: Replace existing sign with a 5'± x 10'± color EMC double sided sign.

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

1. A Variance from Section 10.1223.10 to allow an animated sign (changeable sign) where an animated sign is not allowed.



**Action:**

The Board voted to **postpone** the petition to the January 2015 meeting as requested by the applicant.

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11) Case # 12-11

Petitioners: Heritage and Lafayette LLC, owner, John Barnes, Sr., applicant

Property: 2800 Lafayette Road

Assessor Plan 285, Lot 2

Zoning District: Gateway

Description: Establish a religious place of assembly.

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 #3.11 allow a religious place of assembly 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:

- The standards as provided by the Ordinance for this particular use have been met.
  - No hazard to the public or adjacent property will be created from this use 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 odor, smoke, heat or other irritants. None of these will result from this use and there will be no unsightly outdoor storage of equipment, vehicles or materials.
  - There is adequate navigation area around this property so that there will be no creation of a traffic safety hazard and the use will not generate an increase in the level of traffic congestion.
  - There will be no excessive demand on municipal services and, with no change to the exterior of the building, there will be no increase in storm water runoff onto adjacent properties or streets.
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12) Case # 12-12

Petitioner: Tammy J. Gewehr

Property: 13 McDonough Street

Assessor Plan 138, Lot 49

Zoning District: Mixed Residential Business

Description: Relocate a 6'± x 8'± shed to the right rear of the property.

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

1. A Variance from Section 10.521 and 10.570 to allow a right side yard setback of 2'± where 5' is required for an accessory structure.
2. A Variance from Section 10.521 to allow 42%± building coverage where 40% 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 would not be contrary to the public interest and the spirit of the Ordinance would be observed as the essentially residential character of the neighborhood will not be changed, nor will the health, safety and welfare of the general public be threatened. To the extent that the setbacks promote light, air and space, they will not be impacted by a modest shed on a small lot.
- Substantial justice will result from the granting of the variances as the loss to the applicant in having to site the shed outside the setbacks would not be balanced by any gain to the public or individuals. Placement in the allowable building envelope would limit the open space in the small back yard.
- Small accessory buildings such as sheds are common additions to lots in this neighborhood so there will be no negative impact on the value of surrounding properties. The structures on the property of the most affected abutter to the rear are an adequate distance away so that light and air will be maintained and the existing fence will further shelter the shed from the view of abutters.
- Literal enforcement of the Ordinance results in an unnecessary hardship. This is a relatively small lot with little options in providing space for storage and it is a reasonable use to erect an accessory structure for that purpose.

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13) Case # 12-13

Petitioners: George J. Rinalducci and Talam Realty Trust, Christopher D. McInnis, Trustee

Property: 244 Austin Street

Assessor Plan 135, Lot 62

Zoning District: General Residence C

Description: Replace existing residential structure with a three-story structure in same footprint.

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

1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow the following:
  - a) Lot area and lot area per dwelling of 1,288 s.f.± where 3,500 s.f. is required.
  - b) 14.22'± continuous street frontage where 70' is required.
  - c) 3'± and 9.5'± right side yard setbacks where 10' is required.
  - d) A 0'± rear yard setback where 20' is required.
  - e) A 0'± left 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:

- Granting the variance would not be contrary to the public interest and it would observe the spirit of the Ordinance as the size and scale of the proposed structure will be in keeping with the essential character of the neighborhood.
- Substantial justice will be done as the hardship to the applicant if the petition were denied, in not being allowed to redevelop this property with the existing footprint, would not be outweighed by any perceived benefit to the general public.
- The value of surrounding properties will not be diminished by the proposed structure, which will be erected within the existing footprint and will improve a dilapidated property.
- An unnecessary hardship is created by special conditions in the property. This is an L-shaped lot where it would be difficult to place even a very modest structure that is compliant with health and safety codes without requiring relief from the Ordinance so that there is no fair and substantial relationship between the general purposes of the Ordinance and their application to this property.

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14) Case # 12-14

Petitioners: Robert & Eileen Mackin Revocable Trusts, Robert & Eileen Mackin, Trustees

Property: 56 Dennett Street

Assessor Plan 140, Lot 13

Zoning District: General Residence A

Description: Allow a single family residence to be rented for short-term rentals 60 days annually.

Requests: An Administrative Appeal from the decision of a Code Official to issue a cease and desist order for rental of a single family home to vacationers for up to 60 days a year.

**Action:**

The Board voted to **deny** the appeal thus upholding the decision of the Code Official to issue a notice of violation for use of this property as an “Inn.”

**Review Criteria:**

The appeal was denied for the following reasons:

- The Code Official made a reasonable interpretation of the Zoning Ordinance in defining the short-term rental as an “Inn” use.

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15) Case # 12-15

Petitioners: Dale W. & Sharyn W. Smith

Property: 275 Islington Street

Assessor Plan 144, Lot 8

Zoning District: Central Business B

Description: Clarification of previously granted variances regarding the construction of four multi-family residences and an addition to a rear building creating 14 residential units.

Requests: A Variance from Section 10.521 to allow 14.1% open space where 15% 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 this minimal amount of additional relief will not alter the essential character of the neighborhood so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as strict interpretation of the Ordinance would cause harm to the applicant which would not be balanced by any benefit to the general public.
- The value of surrounding properties will not be diminished by allowing open space that does not meet the strict requirement of the Ordinance but is less than currently exists.

- Literal enforcement of the Ordinance would result in unnecessary hardship. The special conditions of the property are that it is bordered by a number of streets and currently contains a non-compliant structure which the applicant is proposing to bring into greater compliance.

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**IV. OTHER BUSINESS**

No additional business was presented.

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**V. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 11:15 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary