

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

ACTION SHEET

TO: John P. Bohenko, City Manager

FROM: Mary Koeppenick, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment at its regular meeting on March 17, 2015** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Charles LeMay, Christopher Mulligan, David Rheume. Alternates: Jeremiah Johnson, Patrick Moretti

EXCUSED: Derek Durbin

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A) February 17, 2015

It was moved, seconded and passed by unanimous voice vote to accept the Minutes with minor corrections.

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II. OLD BUSINESS

A) Request for Rehearing regarding property located at 173-175 Market Street.

Action:

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

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III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 3-1

Petitioners: Andrew E. & Alyssa A. Ervin

Property: 192 Park Street

Assessor Plan 149, Lot 53

Zoning District: General Residence A

Description: Construct a rear addition and room over relocated garage.

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 left side yard setback of 2'± and a right side yard setback of 7'± where 10' is required for both.

Action:

The Board acknowledged that the petition had been **withdrawn** by the applicants.

2) Case # 3-2

Petitioners: Brandon & Tara Seppa

Property: 151 Elwyn Avenue

Assessor Plan 112, Lot 49

Zoning District: General Residence A

Description: Construct a 17'± x 8'± two story rear addition and 8'± x 21'± deck with 4'± x 8'± extension.

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 advertised and subsequently modified, noting that modified plans presented at the meeting reduced the building coverage to 31±%.

Stipulations:

None

Other:

The Board's decision was based on a presented 62± s.f. deck, reduced from the advertised 199± s.f. deck and shown on revised plans received at the meeting.

Review Criteria:

The petition was granted for the following reasons:

- Granting a variance for a deck that is reduced in size from what was originally requested will not be contrary to the public interest.
- With the change in the deck, as presented at the meeting, there will be a minimal increase over the existing building coverage so that the spirit of the Ordinance will be observed.
- Substantial justice will be done by allowing the homeowner to make better use of their property with no detriment to the general public.
- The value of surrounding properties will not be diminished by the proposed improvements to the home and the direct abutters have not raised objections.
- A special condition of the property is that the rear property line faces on a small back street allowing some expansion without imposing on neighboring properties so that there is no fair and substantial relationship between the general purposes of the Ordinance and their application to this property. Overall, this is a reasonable request.

3) Case # 3-3

Petitioner: State Street Discount House

Property: 3613 Lafayette Road

Assessor Plan 298, Lot 6

Zoning District: Gateway

Description: Allow a changeable sign to be changed more than once a day.

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

1. A Variance from Section 10.1290 to allow a changeable sign to be changed more than once a day.

Action:

The Board decided that Fisher v. Dover applied to this request and **declined to hear** the petition.

4) Case # 3-4

Petitioners: Anna R. Natowich & Matthew R. McPhee

Property: 308 Thornton Street

Assessor Plan 161, Lot 15

Zoning District: General Residence A

Description: Construct a 2-story rear addition and deck. Relocate expanded 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 structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - (a) A left side yard setback of 0'± where 10' is required;
 - (b) A right side yard setback of 3'± where 10' is required.
 - (c) 47%± building coverage where 36%± exists and 25% is the maximum allowed.

Action:

The Board voted to **grant** the petition as presented and advertised noting that there would be an adjustment to the advertised existing and proposed building coverages. The petition was granted with the following stipulations:

Stipulations:

- The proposed new dimensions will be confirmed by the applicants and provided to the Planning Department so that the correct new building coverage of 31.7±% will become part of the record for this property.
- Before a building permit is issued, verification is required from a licensed surveyor of the exact location of the already constructed replacement deck in relation to the existing fence and property line. A plan showing the verified location must be submitted to the Planning Department.

Review Criteria:

The petition was granted for the following reasons:

- In the proposed location, the requested relief will not alter the essential character of the neighborhood so that granting the variances will not be contrary to the public interest.
- An open deck will observe the spirit of the Ordinance and a stipulated survey will determine its proximity to the property line. The proposed new dimensions, which will be confirmed by the applicants as stipulated, will result in only a small increase in the existing building coverage.
- Substantial justice will be done by allowing the applicants to make full use of their property with no detriment to the general public.
- The value of surrounding properties will not be diminished as the proposal will be in keeping with the neighborhood and has positive feedback from abutters.
- The special conditions of the property include a narrow, deep lot and existing and proposed easements affecting placement on the lot so that there is no fair and substantial relationship between the general purposes of the Ordinance and their application to the property.

5) Case # 3-5

Petitioners: Michael Brandzel & Helen Long

Property: 39 Dearborn Street (Dearborn Lane)

Assessor Plan 140, Lot 3

Zoning District: General Residence A

Description: Construct a 100 s.f. shed in front yard. Construct an 8' x 13' single story addition and add shed 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 structure to be extended, reconstructed 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 5' where 15' is required.
 - (b) A right side yard setback of 4' where 10' is required.
 - (c) A rear yard setback of 3' where 20' is required.
3. A Variance from Section 10.571 to allow an accessory structure to be located in a required front yard.

Action:

The Board voted to **postpone** the petition, at the applicants' request, to the April meeting.

6) Case # 3-6

Petitioners: Portwalk HI, LLC/Hanover Apartments LLC

Property: 15 Portwalk Place (195 Hanover Street)

Assessor Plan 125, Lot 1

Zoning Districts: CD5, Historic and Downtown Overlay

Description: The provision of parking for a first floor restaurant use.

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

1. A Variance from Section 10.1115.21 to allow 235 off-street parking spaces to be provided where 253 are 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 will observe the spirit of the Ordinance as the impact of a modest coffee shop will not change the essential character of the neighborhood nor negatively affect the health, safety and welfare of the general public.
- Substantial justice will be done as strict application of the parking requirements in the previous Ordinance to this use would result in a loss to the applicant which would not be balanced by any corresponding benefit to the general public.
- This proposed use would compliment a walking environment in the area and would not diminish the value of surrounding properties.
- The special condition of the property creating a hardship is that the coffee shop would be part of a large property that has already met 80% to 90% of the parking requirements based on previous standards. The use is a reasonable one which would primarily draw on neighboring apartment residents and hotel guests so that there is no fair and substantial relationship between the general purposes of the parking requirements in the Ordinance and their application to this particular proposal.

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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 8:25 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary