

**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 April 21, 2015** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Chairman David Witham, Vice-Chairman Arthur Parrott, Christopher Mulligan, David Rheaume. Alternates: Jeremiah Johnson, Patrick Moretti

**EXCUSED:** Derek Durbin, Charles LeMay,

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**I. APPROVAL OF MINUTES**

A) March 17, 2015

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

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A) Request for Rehearing regarding property located at 3613 Lafayette Road.

**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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B) 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 12'± x 18'± 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. *This petition was postponed from the March 17<sup>th</sup> meeting and revised by a change in the size of the proposed shed.*

Action:

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

Stipulations:

1. The proposed accessory structure shall be no larger than 12 x 18 feet (216 SF) and shall be no taller at the ridge line than 12 feet in height. It shall have hinged doors as shown in the application and lighting that will prevent spillover to 31 Dearborn Street. No dormers or skylights shall be added to the roof of the accessory structure and the eastern and northern elevations shall have no windows installed. The exterior siding for the accessory structure shall be either wood clapboard siding or shingles.
2. The accessory structure shall only be used for such uses as the storage of bikes, garden tools, lawn equipment, materials, and other related items and not used for any use that would require mechanical power equipment.
3. There shall be no flood lights located on the eastern façade of the existing structure or the proposed accessory structure.
4. A View Easement Area, of approximately 2,018 SF+/- in area as shown in the application, shall be conveyed to the property located at 31 Dearborn Street and recorded at the Rockingham Registry of Deeds prior to issuance of a Building Permit. Except for egress to and from 39 Dearborn Lane within the existing 20 foot driveway at the end of Dearborn Lane, such View Easement Area shall remain, in perpetuity, in an open and natural state, free from all temporary or permanent structures, boats, equipment, vehicular parking or storage, or any other similar obstructions of the view to the North Mill Pond. Additionally, no trees shall be planted within the View Easement Area and all vegetation shall be maintained to a height of no more than four (4) feet.
5. Prior to the issuance of the building permit the existing 7'x13' utility trailer will be removed from the View Easement Area.
6. Prior to issuance of a Building Permit, the Planning Department shall review the final building and site plans and determine that the plans and elevations are in compliance with these stipulations.

Review Criteria:

The petition was granted for the following reasons:

- The proposed changes will not substantively alter the character of this essentially residential neighborhood so that granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be balanced by any gain to the general public.
- The value of surrounding properties will not be diminished by a substantial renovation to the property which has general neighborhood support.
- There are special conditions in the property that distinguish it from other properties in the area so that there is no fair and substantial relationship between the application of the setback requirements to this property. The property is sited on a semi-private lane, used for access from Dearborn Street, so that the front yard as defined by the Ordinance, with front yard requirements, is created from what in actual use would be a side yard. The wetland setback from the North Mill Pond also creates difficulties in siting a structure and placing expansions. The request for storage on a lot of this size and some added living space is a reasonable use of the property.

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**III. PUBLIC HEARINGS – NEW BUSINESS**

1) Case # 4-1

Petitioners: Peter O. & Karen G. Dawson Revocable Trusts

Property: 648 Lincoln Avenue

Assessor Plan 148, Lot 18

Zoning District: General Residence A

Description: Install two HVAC compressors.

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 30.4%± 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:

- The placement of the two compressors will not alter the essential character of the neighborhood or threaten the health, safety of 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.
- Substantial justice will be done as there is no public interest that would be violated by granting the benefit to the applicant.

- The placement will meet the setback requirements and the compressors will be buffered by shrubbery. The abutter in closest proximity to the proposed units has spoken in favor of the petition.
  - The special conditions of the property creating a hardship in the placement of the compressors are the narrow shape and configuration of the lot and the placement of the existing house on the lot.
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2) Case # 4-2

Petitioner: 233 Vaughan Street LLC

Property: 233 Vaughan Street

Assessor Plan 124, Lot 14

Zoning District: Central Business A

Description: Install a bathroom in space designated for mechanical equipment.

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

1. A Variance from Section 10.531 to allow a structure height of 57'3" for the habitable space of the building where 50' is the maximum allowed.

Action:

The Board voted to **postpone** the petition to the May meeting at the request of the applicant.

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3) Case # 4-3

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

1. A Variance from Section 10.521 to allow 12±% open space where 14.1±% was previously granted and 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:

- With the prior review of the project by land use boards and the overall factors considered by this Board in granting a previous variance, allowing slightly less open space will not be contrary to the public interest and the spirit of the Ordinance will be observed.
  - Substantial justice will be done by granting the variance as the need for the applicant to seek relief resulted from a change during the site review process which was designed to benefit the general public.
  - The value of surrounding properties will not be diminished by a reasonable use of the property that has already received extensive protective review and which will result in an improvement to the neighborhood.
  - There are special conditions in the property that distinguish it from others in the area so that the open space provision in the Ordinance should not be strictly applied. The property lies in a transitional zone, abutting a residential district. It is across the street from a park with the minimally reduced open space fronting on the street.
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4) Case # 4-4

Petitioner: Ellen S. Cohn Revocable Living Trust

Property: 124 Broad Street

Assessor Plan 134, Lot 19

Zoning District: General Residence A

Description: Construct 6'± x 14'6"± second floor addition.

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 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'± 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:

- A modest rear addition in a neighborhood where small additions are common will not change the essential character of the neighborhood so that granting the variance will not be contrary to the public interest and the value of surrounding properties will not be diminished.

- The spirit of the Ordinance will be observed as this addition, with garages the closest structures on neighboring properties, will not affect the light and air protected by the Ordinance.
  - Substantial justice will be done by allowing the owner to update and fully utilize the property with no harm to the general public.
  - The special conditions creating a hardship are the irregular shape of the lot and the siting of the existing structures on the lot creating a narrow area where the addition, which is a reasonable use, can be placed.
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5) Case # 4-5

Petitioners: Patricia L. & Burton S. Russell

Property: 65 Mendum Avenue

Assessor Plan 148, Lot 11

Zoning District: General Residence A

Description: Construct a second dwelling unit above a detached garage.

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 a second free-standing dwelling unit on a lot.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,787± s.f. where 7,500 s.f. per dwelling unit is required.

Action:

The Board acknowledged receipt of the applicant's request to **withdraw** the petition.

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6) Case # 4-6

Petitioners: Kelly Whalen (Cioe), owner, Scott & Kelly Cioe, applicants

Property: 44 Melbourne Street

Assessor Plan 233, Lot 20

Zoning District: Single Residence B

Description: Expand third floor in existing nonconforming footprint.

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 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 4'± left side yard setback where 10' is required.
  - b) A 15'± front yard setback where 30' is required.

Action:

The Board voted to **grant** the petition as presented and advertised, noting that front yard setback relief was not required.

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 the expansion is a significant distance away from the nearest neighboring structure so that there will be no interference with the light and air protected by the Ordinance.
- Substantial justice will be done by allowing the property owners use of the upper floor with no negative impact on the general public.
- An upward expansion maintaining the character of the house will not diminish the value of surrounding properties.
- Special conditions resulting in a hardship include the narrow shape of the lot and the placement of the existing structure so that relief is needed for a reasonable expansion in the existing footprint.

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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