

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 May 19, 2015** 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, Patrick Moretti, Christopher Mulligan, David Rheume. Alternate: Jeremiah Johnson

EXCUSED: None

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I. APPROVAL OF MINUTES

A) April 21, 2015

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

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II. OLD BUSINESS

A) 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 59'9"± for the habitable space of the building where 50' is the maximum allowed. *This petition was postponed from the April meeting and the request has been amended by a revision to the proposed height.*

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. The existing structure and height will remain the same. All that is changing is the use of the rooftop space so that the essential character of the neighborhood will not be altered.
- Substantial justice will be done as granting the variance will serve the public interest by complying with a requirement of the NH DES that a bathroom facility be provided in conjunction with the rooftop pool.
- The value of surrounding properties will not be diminished by an interior functional change in use.
- The special distinguishing conditions of the property include the existing structure and height and the need to comply with a state agency directive. Adding a required bathroom in an existing structure is a reasonable use of the property.

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III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 5-1

Petitioner: Strawberry Banke Inc.

Property: 14 Hancock Street (Strawberry Banke)

Assessor Plan 104, Lot 7

Zoning District: Mixed Residential Office

Description: Keep up to twelve chickens.

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

1. A Variance from Section 10.440, Use #17.20 to allow the keeping of farm animals in a district where it is not allowed.

Action:

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

Stipulations:

- No more than twelve chickens will be allowed.
- No roosters will be permitted.

Review Criteria:

The petition was granted for the following reasons:

- With the proposed activity located in the middle of the property, the essential character of the neighborhood will not be altered so that granting the variance will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as this is a large property and, with the stipulation, any impact on residential neighborhoods will be minimal.
- Substantial justice will be done by allowing the museum to realize their mission and provide information to visitors with no negative public impact.
- The value of surrounding properties will not be diminished by a live historical display that will be in the middle of the property and buffered by other buildings.
- The special conditions of the property are its large size in an area of much smaller properties and its unique character as a museum among many residences. What is being proposed is consistent with the mission of the museum and replicates a historic use of the property without an adverse effect on neighbors so that the use is a reasonable one.

2) Case # 5-2

Petitioners: John K. & Joan F. Burnap

Property: 50 South School Street #2

Assessor Plan 101, Lot 60-2

Zoning District: General Residence B

Description: Replace an 18'± x 12'± deck in 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 structure to be reconstructed or structurally altered without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - a) A rear yard setback of 11'± where 25' is required.
 - b) 43.5%% 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:

- Granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed. The proposed replacement will be within the existing footprint and requires review of its design by the Historic District Commission so that the essential character of the neighborhood will not be altered.
 - Substantial justice will be done as there would be no gain to the general public if the variance were denied. The deck is at the rear of the property with no visual access from South School Street.
 - The value of surrounding properties will not be diminished by replacing a deck that is structurally deficient. The rear abutter has voiced no opposition and the condominium association members have given their approval and support.
 - The special conditions of the property are that it is a large property for the neighborhood and the deck an existing nonconformity so that there is no fair and substantial relationship between the purposes of the setback and building coverage provisions of the Ordinance and their application to this property. It is a reasonable use of the property to have a usable deck on a residential building.
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3) Case # 5-3

Petitioners: Richard T. and Jennifer J. Mathes

Property: 69 Sunset Road

Assessor Plan 153, Lot 15

Zoning District: Single Residence B

Description: Replace existing shed with an 8'± x 10'± structure in same location.

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 25.9%± building coverage where 20% 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 will not be contrary to the public interest and the spirit of the Ordinance will be observed as a slight increase in the size of the shed over that to be replaced will not change the essential character of the neighborhood.
- Substantial justice will be done by allowing a benefit to the applicant with no harm to the general public.
- A shed in this location will not diminish the value of surrounding properties.

- Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship as the light and air preserved by the Ordinance will not be denied to abutting properties. The property sits on a hill and the shed is placed in the best location, well shielded from neighboring properties.
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4) Case # 5-4

Petitioners: Stephen P. Brady & David Schmoyer

Property: 51 Richards Avenue

Assessor Plan 128, Lot 4

Zoning District: General Residence A

Description: Enclose existing 9'8" ± x 18'6" ± 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. Variances from Section 10.521 to allow a 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:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed as the enclosure of an existing deck will not alter the essential character of the neighborhood and the light and air enjoyed by neighboring properties will not be lessened.
- Substantial justice will be done as denying the petition would prevent the applicant from increasing the usefulness of their property with no corresponding benefit to the general public.
- A modest upgrade near the center of the property will not diminish the value of surrounding properties.
- There are special conditions of the property so that there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their specific application to the property. The property backs onto a municipal lot on one side and the nearest neighboring house is shifted to the far side. This is a compact lot which limits the size of any potential addition so that an infill enclosure a distance away from neighbors' structures is the best solution to the need for added space.

5) Case # 5-5

Petitioner: Gerald R., Dolores A., & Gerald R., Jr. Irrevocable Trust, Brown, Gerald, Dolores, Gerald Jr., Trustees

Property: 174 Leslie Drive

Assessor Plan 209, Lot 57

Zoning District: Single Residence B

Description: Construct a 15'± x 22'± attached 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 the following:
 - a) A 5.5'± right side yard setback where 10' is required.
 - b) 21.8%± building coverage where 20% 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:

- Adding this garage will not alter the essential character of a neighborhood with many properties with similar garages, so that granting the variances will not be contrary to the public interest.
- A garage constructed in this location will not obstruct access to light and air which is protected by the Ordinance.
- Substantial justice will be done as the applicant's needs will be met by granting the variances with no negative effect on the general public.
- A modest addition will not diminish the value of surrounding properties and no abutters spoke in opposition.
- The special conditions creating a hardship are a narrow lot and the location of the existing structure so that placement of a modest single garage in the best location for easy access requires relief from the Ordinance. A garage of this type, providing needed protection from the elements, is a reasonable use of the property.

6) Case # 5-6

Petitioners: James A. & Elizabeth E. Hewitt

Property: 726 Middle Road

Assessor Plan 232, Lot 47

Zoning District: Single Residence B

Description: Reconstruct 20’ x 30’ barn in existing footprint.

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 left side yard setback of 3’ where 10’ is required.

Action:

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

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant a variance were not met.
- There was insufficient justification for the need to rebuild within the setback and the proposed barn could reasonably be constructed without requiring relief from the Ordinance.

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IV. OTHER BUSINESS

Chairman Witham raised the question of additional training for Board Members and it was decided that a local session would be scheduled to address specific issues, along with a Q&A period. He would send out an e-mail requesting input and suggestions for 10 to 15 questions.

Chairman Witham congratulated Mr. Moretti on his recent appointment as a regular Board Member.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:05 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary