

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 July 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, Derek Durbin, Patrick Moretti, Christopher Mulligan, David Rheume. Alternate: Jeremiah Johnson

EXCUSED: Charles LeMay

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I. APPROVAL OF MINUTES

A) June 16, 2015

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

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II. OLD BUSINESS

A) Case # 6-8

Petitioners: Joseph & Lindsey B. Donohue

Property: 336 Union Street

Assessor Plan 134, Lot 58

Zoning District: General Residence A

Description: Convert single family dwelling to two dwelling 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 a lot area per dwelling unit of 2,178 s.f. ± where 7,500 s.f. is required and a building coverage of 39.3% where 25% is the maximum allowed.

2. A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where four off-street parking spaces are required.

This petition was postponed from the June meeting and the request has been amended to include building coverage.

Action:

A motion to grant the petition as presented and advertised **failed to pass** by a vote of 3 to 4. Therefore, the petition was denied.

Review Criteria:

The petition to grant was not passed for the following reasons:

- The petition did not meet all of the requirements for granting a variance.
- The applicant did not establish that literal enforcement of the ordinance would result in unnecessary hardship as the fact that they want to use the property as a two-family unit was not a sufficient basis for hardship.
- The previous variance granted for the addition stipulated that it would not be used as a second dwelling unit.
- Granting the variance would be contrary to the public interest because the lot area for this corner lot is already substantially below the minimum requirement of 7,500 square feet and would not provide adequate parking for the proposed use, which could result in additional demand for on-street parking in the immediate neighborhood.

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III. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 7-1

Petitioners: Kristen J. Campbell

Property: 31 Cabot Street

Assessor Plan 136, Lot 40

Zoning District: Mixed Residential Office

Description: Replace existing porch and stairs.

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 or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a left side yard of 7’6” and a right side yard of 6’6” where 10’ is the minimum required and a building coverage of 43% 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 variance would not be contrary to the Ordinance and would observe the spirit of the Ordinance and the public interest as the porch is located on the rear of the house and had been in a dilapidated condition and needed replacement.

- Substantial justice is done by granting the variance because allowing the homeowner to bring the porch up to code does not outweigh any harm to the general public or other individuals.
- Granting the variance would not diminish the value of surrounding properties because the petition would improve the house and likely increase its value as well as the neighboring properties.
- Literal enforcement of the ordinance would result in unnecessary hardship as, if the property owner had not already removed the porch, they likely would have been allowed to replace it without a variance due to its unsafe condition.

2) Case # 7-2

Petitioners: Alyssa and Andrew Ervin

Property: 192 Park Street

Assessor Plan 149, Lot 53

Zoning District: General Residence A

Description: Construct a porch on the left side and a 2-story rear 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 structure to be extended or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a left side yard of 2' and a right side yard of 9' where 10' is the minimum required and a building coverage of 26.5% 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:

- Granting the variance would not be contrary to the public interest because the applicant had made an effort to retain the character of the existing home by keeping it as a 1 ½ story and trying to minimize the overall mass and scale and had worked with the neighbors on the design.
- Granting the variance would observe the spirit of the Ordinance because they were retaining the existing character of the property and, although they were increasing the building coverage, the new addition would be more conforming as to setbacks and would have less of an impact on the neighborhood than increasing the height.
- Granting the variance would do substantial justice because it would allow the owners to accommodate their growing family and make full use of the property. The lot is large

enough to accommodate this project and the amount of difference from the required coverage is relatively small.

- The project would not diminish the value of surrounding properties because, although there was a general increase in size, the applicants had consulted with the neighbors and worked hard to come up with a design that would increase the value of their home while not decreasing the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship as the existing location of the driveway on one side dictates the garage location and the property is long and narrow, and these special conditions mean that it would be unreasonable to require strict conformance with the Ordinance.

3) Case # 7-3

Petitioner: Debora A. Panebianco

Property: 306 Oriental Gardens

Assessor Plan 215, Lot 9-9

Zoning District: Office Research

Description: Place a new manufactured home on an existing concrete slab.

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

1. A Variance from Section 10.440 to allow a manufactured home in a district where this use is not 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 would not be contrary to the public interest or to the spirit of the Ordinance. The essential characteristics of the existing neighborhood will stay the same and the public health, safety and welfare are not threatened because this will continue as a manufactured housing use, which is a long standing use in this location even though it is not allowed by zoning.
- Substantial justice will be done because the gain to the public if denied would not outweigh the loss to the applicant if they were not able to use this for a manufactured home given its location within an existing mobile home park.
- Granting the variance would not diminish the value of surrounding properties as it would be a newly-constructed manufactured home on an existing suitable site.
- There is a hardship for this location as the special conditions are that it is within an existing mobile home park and would not be suitable for other uses allowed in the office research zoning district. The use is a reasonable one because the lot has been used in this fashion in the past.

4) Case # 7-4

Petitioner: Laurie J. Harrigan Revo Trust

Property: 116 Sherburne Avenue

Assessor Plan 112, Lot 37

Zoning District: Single Residence B

Description: Construct 1 ½ story addition at rear of existing residence with new side entry deck and rear 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 or structurally altered without conforming to the requirements of the Ordinance.

1. A Variance from Section 10.521 to allow a building coverage of 27.1% 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:

- Granting the variance would be within the public interest and the spirit of the Ordinance. Light, air and space between surrounding properties would be protected, and the addition would be consistent with the general characteristics of the neighborhood and consistent with their lot coverage.
- The value of surrounding properties would not be diminished because the project was a tasteful design that would blend in well.
- Granting the variance would do substantial justice because the detriment to the applicant should it be denied outweighs any perceived public benefit.
- Literal enforcement of the Ordinance would result in a hardship because the special conditions of the lot are that it is small for the area it is in and there is no fair and substantial relationship between the general purpose of the Ordinance and the application to this property and the proposed use is a reasonable one.

5) Case # 7-5

Petitioner: Algene and Sheila Bailey, Jr.

Property: 487 Ocean Road

Assessor Plan 283, Lot 33

Zoning District: Single Residence A

Description: Construct new front door overhang, attached 16' x 32' garage and 13' x 6' front deck, and 16' x 20' shed in backyard.

- 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 of 10' where a minimum of 20' is required and a building coverage of 26.6% where 10% is the maximum allowed.
 2. A Variance from Section 10.573.20 to allow a left side yard of 6' where 10' is the minimum required for an accessory structure.

Action:

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

Stipulations:

- 1) The approved rear yard setback is 8';
- 2) The approved building coverage is 21.53% as confirmed by the Planning Department based on the revised dimensions provided by the applicant.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance would not be contrary to the public interest because this type of improvement with an attached garage is common for this area and the size of the shed was smaller and more reasonable than the one that was originally requested.
- Granting the variance would observe the spirit of the Ordinance because it resembles the character of the existing neighborhood, which overall does not comply with the lot dimensions of the Ordinance.
- Substantial justice would be done because granting the variance would allow the applicants to make full use of their property.
- Property values of surrounding properties will not be diminished because a lot of improvements to the property are being made.
- Literal enforcement of the Ordinance would result in unnecessary hardship because the special conditions of the lot are that it is much smaller than what the zoning called for and the house location on the center of the lot means that any addition to the house would have to encroach on the side lines. There is no fair and substantial relationship between the general public purpose and the specific application to this property because this neighborhood was laid out with small identical lots that do not comply with the existing zoning. The proposed use is a reasonable one.

6) Case # 7-6

Petitioner: Portsmouth Land Acquisition, LLC

Property: 428 Route 1 By-Pass (Building 2)

Assessor Plan 172, Lot 1

Zoning District: Industrial

Description: Allow dog daycare and boarding facility with associated parking.

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

1. A Variance from Section 10.440 to allow a dog daycare and boarding facility in a district where this use is not permitted.

Action:

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

Stipulations:

None.

Notes:

This property has recently been rezoned to Gateway where this use is also not allowed. The Board considered this fact in their discussion and determined that the variance criteria would still be satisfied under the new zoning.

Review Criteria:

The petition was granted for the following reasons:

- This is in an existing facility that would have minor if any modifications that would have no negative impact on the public, so granting the variance would not be contrary to the public interest and the spirit of the Ordinance would be observed.
- Granting the variance would do substantial justice because there was no overriding public interest in restricting use of this site for this use, which will be located in a back building on a busy street in a heavily commercial area adjacent to a railroad track.
- Granting the variance will not diminish the value of surrounding properties because the use is of a commercial nature and would be buffered from nearby properties.
- As to the hardship test, the special conditions are that the use is not currently recognized in the Ordinance so there is no fair and substantial relationship between the general public purposes and the Ordinance and the proposed use is a reasonable one for the location.

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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 9:00 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary