

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE**

7:00 P.M.

JULY 28, 2015

MEMBERS PRESENT: Vice-Chairman Arthur Parrott, Charles LeMay, David Rheume, Derek Durbin, Patrick Moretti

MEMBERS EXCUSED: Chairman David Witham, Jeremiah Johnson, Christopher Mulligan

ALSO PRESENT: Planning Department Vincent Hayes

In the absence of Chairman Witham, Vice-Chair Parrott chaired the meeting.

III. PUBLIC HEARINGS – NEW BUSINESS

The applicants for Petitions #7 through 12 had requested that they be postponed.

*It was moved, seconded and unanimously approved to **postpone** the following petitions to August:*

7) Case # 7-7

Petitioner: Amba Realty, LLC

Property: 806 Route 1 By-Pass

Assessor Plan 161, Lot 43

Zoning District: Business

Description: Expand first floor to 5,150 sq. ft. of retail space and construct second floor for office space.

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

1. A Variance from Section 10.1113.20 to allow 9 parking spaces to be located within the required front yard and between the principal building and the street;
2. A Variance from Section 10.1112.30 to allow 26 fully available parking spaces and 2 restricted parking spaces where 28 are required and to allow parking 6.5' from a residential zone where 50' is required.
3. A Variance from Section 10.1113.41 to allow parking 0' from the front lot line where 20' is required;
4. A Variance from Section 10.1113.43 to not provide landscaping and screening within the front setback.

- 8) Case # 7-8
Petitioner: Moray, LLC and 215 Commerce Way, LLC
Property: 215 & 235 Commerce Way
Assessor Plan 216, Lots 1-8A & 1-8B
Zoning District: Office Research
Description: Provide parking, on a corner lot, located between the street and the building.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.1113.20 to allow off-street parking spaces to be located in a front yard between a principal building and the street.
- 9) Case # 7-9
Petitioner: Barbara R. Frankel
Property: 89 Brewery Lane
Assessor Plan 146, Lot 26
Zoning District: Mixed Residential Business
Description: Remove existing structure and construct 2-story assisted-living home with a 3,450 sq. ft. footprint.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Special Exception from Section 10.440 to allow an assisted living home;
2. A Variance from Section 10.512 to allow 30' of street frontage where a minimum of 100' is required.
- 10) Case # 7-10
Petitioner: Strawberry Banke Inc.
Property: 14 Hancock Street (Strawberry Banke)
Assessor Plan 104, Lot 7
Zoning District: Mixed Residential Office
Description: Clarification/modification of previous approval for operation of the skating pond.
Requests: Clarification/modification of the time period for use of the skating pond from November 1st to March 31st each year.
- 11) Case # 7-11
Petitioner: Merton Alan Investments, LLC
Property: 30 Cate Street
Assessor Plan 165, Lot 1
Zoning District: Industrial
Description: Clarification of previous approval for construction of an office building.
Requests: Clarification that the setback relief granted included the 15.4' front setback resulting from the City's future reconfiguration of Cate St.
- 12) Case # 7-12
Petitioner: New England Glory, LLC
Property: 525 Maplewood Avenue
Assessor Plan 209 Lot 85

Zoning District: Single Residence B

Description: Creation of two lots where one currently exists.

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 3,755 sq. ft. where 7,500 sq. ft. is the minimum required.

13) Case # 7-13

Petitioner: Jillian Mirandi

Property: 19 Woodbury Avenue

Assessor Plan 162 Lot 65

Zoning District: General Residence A

Description: Replace front entry and add shed in back yard.

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 front yard setback of 2' 10" +/- where 15' is the minimum required and a building coverage of 29.6% where 25% is the maximum allowed.
2. A Variance from Section 10.573.10 to allow a left side yard of 2' and a 2' rear yard where 5' is the minimum required for an accessory structure.

SPEAKING IN FAVOR OF THE PETITION

Mr. Jason Freeman of 19 Woodbury Avenue stated that he was the fiancée of the owner Ms Jillian Mirandi's and that they wanted to remove and replace the existing porch with a bigger one so that the door could be opened. They also wanted to place a shed in the left rear corner of the backyard.

Mr. Rheume said he was confused about some of the diagram's dimensions and confirmed with Mr. Freeman that the entryway steps would be expanded to 8 feet and that the deck would be placed 5 feet out. Mr. Freeman noted that the steps would end at the sidewalk, and Mr. Rheume asked whether Mr. Freeman considered the sidewalk to be the property line for his property, and Mr. Freeman agreed. He also verified with Mr. Freeman that he proposed to put a new roof structure with columns and a set of railings and a post at the end of the new entryway. Mr. Rheume said he was concerned because anything above 18" was considered part of the setback, which would include the stairway handrails. Since Mr. Freeman wanted to move it up to his property line a few inches short of it, the requested relief was to set back 34" from the property line, which did not appear to be compatible. He was also concerned that Mr. Freeman was asking for more relief than what was posted due the height of the steps and the step rail. Mr. Freeman replied that the neighbors' steps ended at the sidewalk, but Mr. Rheume said Mr. Freeman had an existing short roof with no railing, so he thought the new structure would be a lot closer to the sidewalk. He asked Mr. Freeman if he had examples showing that the longer roof and the two columns would be appropriate for the neighbors. Mr. Freeman replied that he had no examples but said the neighboring houses had similar designs. Mr. Rheume asked whether the new shed would be behind the tree in the backyard, and Mr. Freeman replied that they would clear the tree's roots and that the tree was on the property line.

Mr. LeMay stated that the proportions on the drawing were loose. He noted a substantial 5-ft deep covered porch and also noted that the steps would be a foot back from the sidewalk. When the figures were added up, it came to 93” with an 8’x5’ deep deck. Mr. Freeman said that his contractor revised the drawing and that the cover sheet had the correct dimensions for a smaller 4’x3’ porch. Mr. LeMay stated that all he had were the setback numbers and no accurate depiction, and he asked Mr. Freeman whether he had a copy of the revised drawing, but Mr. Freeman did not. Mr. LeMay stated that the orientation was the same at 4’x3’ deep, which was better than 93 inches, and he asked whether Mr. Freeman still wanted the 33” depth for the sidewalk, noting that there would be the 3’x4’ platform and 33 inches of additional room for the steps, and Mr. Freeman agreed.

SPEAKING IN OPPOSITION TO THE PETITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Vice-Chair Parrott stated that the approved sketch showed a 5’x8’ platform with three 11” steps front to back and a 1-ft. space between the bottom step and the edge of the sidewalk, which totaled 105 inches. He also noted that the sketch showed a dimension of 96 inches. Therefore, the drawing was not consistent and the deck could not be built the way it was depicted on the sketch, yet it was the only information that the Board had. The elevation sketch had no dimensions indicating where the 18” line fell, which was the height of a structure that counted toward the coverage on a lot.

Mr. Rheaume asked Mr. Hayes whether a handrail would be required for the steps, and Mr. Hayes agreed, so Mr. Rheaume said the existing steps were not up to code. He said the applicant would need a 2’3” setback to do a 3-ft deep porch and three steps at 33”, and adding a handrail to the end would make it 18” going out to the end. He was also concerned because the plans showed a larger roof area with a large column. The existing porch had a short roof that extended out, which was consistent with the other two homes next to it and formed a unique pattern down the street. Mr. Rheaume said he was hesitant to allow the new roof but was amenable about the new steps going further out, giving a 2-ft setback and allowing a rail to bring it up to code. He stated that he preferred to see the original roof left in place to match the sightline. He said he had no heartache with the shed because its location would be 2 feet off the property line and was driven by the tree.

Mr. LeMay stated that his concern was the fact that the Board did not really have good plans for the project, and it was the area that was the most sensitive regarding the variance because it encroached on the road. He also had concerns about the roof. He suggested that the petition be continued to the August meeting to give the applicant the chance to file new drawings.

Vice-Chair asked for a motion regarding the shed only.

*Mr. Rheaume made a motion to **grant** the variance as presented and advertised for the shed at the rear of the property (Request #2). Mr. Moretti seconded the motion.*

Mr. Rheume stated that granting the variance would not be contrary to the public interest because it would be in the back corner of the property where there were no permanent adjoining structures. It would observe the spirit of the Ordinance because what was being asked for relief would require 5 feet, and the applicant was asking for 2 feet. Granting the variance would do substantial justice because it would allow the owner to take advantage of the open area behind the property to put a shed, and no public interest outweighed it. It would not diminish the value of surrounding properties because it would be a new, common shed, the size was not egregious, and there was an open area to place it in, so it would add value. As for the hardship test, the lot was small but had a unique aspect, with a lot of open area among the adjoining properties. One of the Board's concerns was light and air issues in approaching the edge of the property, but nothing would affect that. Mr. Moretti concurred with Mr. Rheume, saying that he had nothing to add.

Vice-Chair Parrott asked for a voice vote. *The motion passed with all in favor, 5-0.*

Mr. LeMay made a motion to continue Request #1 to August so that the applicant could present an accurate architectural plan, including footprints and elevations for the front porch, and could recalculate the required variances.

Mr. Durbin seconded the motion, noting that it would be prudent, particularly since the relief requested was greater than what was posted.

Vice-Chair Parrott stated that the sketches did not have any elevation dimensions and would make it difficult for the Building Inspection Department to figure out what the Board actually approved, so for that reason he agreed that the Board should have fully-dimensioned architectural plans so that all parties involved would understand what was proposed and approved. Mr. Rheume noted that it was particularly necessary because the steps were coming up against the City sidewalk and the edge of a property line, so the Board needed to be cautious.

Vice-Chair Parrott asked for a recorded vote. *The motion passed with all in favor, 5-0.*

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 7:30 p.m.

Respectfully submitted,

Joann Breault
Recording Secretary