

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

ACTION SHEET

TO: John P. Bohenko, City Manager

FROM: Jane Shouse, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment at its reconvened meeting on September 22, 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, Patrick Moretti, Christopher Mulligan, David Rheäume. Alternate: Jeremiah Johnson

EXCUSED: Derek Durbin.

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I. APPROVAL OF MINUTES

A) August 18, 2015

The Minutes were approved as presented with one minor correction.

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II. OLD BUSINESS

A) Request for Rehearing regarding property located at 806 Route One ByPass.

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 # 9-2

Petitioner: Trisha Balestero

Property: 116 Austin Street

Assessor Plan 136, Lot 29

Zoning District: General Residence C

Description: Extend upper rear landing.

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 building or structure to be extended or structurally altered except in conformance with the Ordinance.
2. A Variance from Section 10.516.40 to allow a left side yard setback of 3.5'± where 4' is required for an open porch/landing and stairs.
3. A Variance from Section 10.521 to allow building coverage of 38.31% where 37.96% exists and 35% 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:

- A limited extension of a landing in the proposed location will not conflict with the purposes of the Ordinance or alter the essential character of the neighborhood so that granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- In the proposed location, the values of surrounding properties will not be diminished.
- Substantial justice will be done by allowing the applicant the benefit of easier access with no corresponding harm to the general public.
- The height of the entranceway due to the existing slope of the ground and the placement of the existing home are special conditions creating a hardship. This small request is a reasonable use of the property.

2) Case # 9-3

Petitioner: Anthony G. Courts
Property: 190 Thornton Street
Assessor Plan 161, Lot 5

Zoning District: General Residence A

Description: Replace a 12'± x 14'± shed with a 24'± x 24'± two car 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 building or structure to be reconstructed except in conformance with the Ordinance.
2. A Variance from Section 10.570 to allow a right side yard setback of 3'± where 10' is required and a rear yard setback of 3'± where 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:

- While the proposed garage is increased in size, the location is more advantageous. With the surrounding property structures a distance away, the light and air protected by the Ordinance will be preserved and granting the variances will not be contrary to the public interest.
- Substantial justice will be done as denial of the variances would be a detriment to the applicant while there would be no harm to the general public if the variances were granted.
- The applicant represented that there was neighborhood support for the project and no one spoke against it so that the value of surrounding properties will not be diminished.
- The location of the existing driveway and the configuration of the lot which provides access from a side street are special conditions creating a hardship in the placement of the garage and this is a reasonable use of the property.

3) Case # 9-4

Petitioners: Leonard S. & Wendy M. Cushing

Property: 126 Elwyn Avenue

Assessor Plan 112, Lot 44

Zoning District: General Residence A

Description: Replace existing garage in same 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 building or structure to be reconstructed except in conformance with the Ordinance.
2. Variances from Section 10.570 to allow the following for an accessory structure:
 - a) A 3'± left side yard setback where 10' is required.
 - b) A 9' right side yard setback where 10' is required.
 - c) A 4' rear yard setback where 10.5' is required.
4. A Variance from Section 10.521 to allow 33% building coverage where 25% 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 as requested will not be contrary to the public interest and the health, safety and welfare of the general public will not be threatened by the replacement of a dilapidated structure in kind and on the existing footprint which will not alter the essential character of the neighborhood.
- The loss to the applicant in having to conform to the current Ordinance requirements would not be outweighed by a corresponding gain to the public.
- The value of surrounding properties will not be diminished by an upgrade to the property which will have, if anything, a positive effect.
- Literal enforcement of the Ordinance would result in unnecessary hardship. The special conditions of the property distinguishing it from others are that it has frontage on two streets and the existing structures are currently nonconforming. There is no fair and substantial relationship between the purposes of the setbacks and coverage requirements as they apply to this property. Replacing an existing structure in the same footprint is a reasonable use of the property.

4) Case # 9-5

Petitioners: Richard and Janice Henderson

Property: 284 New Castle Avenue

Assessor Plan 207, Lot 73

Zoning District: Single Residence B

Description: Replace existing entry 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 building or structure to be extended or structurally altered except in conformance with the Ordinance.
2. A Variance from 10.516.10 to allow a front yard setback of 9’2” ± where 26’ is required.
3. A Variance from Section 10.573.20 to allow a rear yard setback of 11’ for an accessory structure where 13.5’ is required.

Action:

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

Stipulations:

- The garage will be moved forward to meet the required 13.5’ rear yard setback so that a variance for the rear yard setback is not required.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not contrary to the public interest and the spirit of the ordinance will be observed as the proposed changes will not alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public.
- Substantial justice will be done as the benefit to the applicant if the variances are granted will not be overridden by any corresponding harm to the public or specific individuals.
- The changes as located on the property will have no adverse effect on adjacent properties so that their values will not be diminished.

- Literal enforcement of the Ordinance would result in unnecessary hardship. The fact that the existing structure was built close to the road creates a preexisting nonconforming use so that the proposed change cannot be accomplished without requiring relief.

5) Case # 9-6

Petitioner: Unitarian Universalist Church

Property: 206 Court Street

Assessor Plan 116, Lot 34

Zoning District: Mixed Residential Office, Character District 4-L1

Description: Construction of an addition with related parking.

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

1. A Special Exception under Section 10.440, Use # 3.11 to allow a religious place of assembly and educational uses where the uses are only allowed by Special Exception.
2. A Variance from Section 10.5A41.10A to allow the following:
 - a) A 1' right side yard setback where a minimum 5' setback is required.
 - b) A 1' left side yard setback where a minimum 5' setback is required.
 - c) A rear yard setback of 3' where 5' is required.
 - d) Building coverage of 71.78% where 60% is the maximum allowed.
 - e) Open space of 21.3% where 25% is required.
3. A Variance from Section 10.1112.30 to allow 1 off-street parking space to be provided where 53 parking spaces are required.
4. A Variance from Section 10.1114.32 to allow vehicles accessing the parking area to back into or from a public street.

Action:

The Board voted to **postpone** the petition to an October meeting as requested by the attorney for the applicant.

6) Case # 9-7

Petitioner: Tanner Bridge Development LLC

Property: 40 Bridge Street

Assessor Plan 126, Lot 52

Zoning District: Mixed Residential Office, Character District 4

Description: Parking in support of the construction of a mixed-use building.

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

1. Variances from Section 10.1114.21 to allow the following:
 - (a) The depth of an off-street parking space to be 18'± where 19' is required.
 - (b) Maneuvering aisle widths of 12' to 18' for access ramps and 10'± for the garage entrance where 22' is required for both.

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 parking areas and maneuvering aisles dedicated to the use of the residents and with adequate lighting and maneuvering space provided, variances for those areas will not be contrary to the public interest or threaten public health, safety or welfare. The spirit of the Ordinance will be observed by allowing the property owners a reasonable use of their property.
- Substantial justice will be done as no harm will be done to the general public by granting the variances.
- With the additional review by the Historic District Commission and the provision of off-street parking that won't be visible from the street, the value of surrounding properties will not be diminished.
- A hardship is created in trying to produce a modern mixed use development on a lot that currently contains deteriorating structures and which cannot accommodate a building of reasonable size along with surface parking. There is no public interest for providing parking and maneuvering aisles that comply with the dimensional requirements of the Ordinance so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and their specific application to this property. Developing the property as proposed is a reasonable use.

7) Case # 9-8

Petitioners: Matthew E. & Leslie G. Allen

Property: 143 Brackett Road

Assessor Plan 206, Lot 16

Zoning District: Single Residence B

Description: Construct 16' x 16' rear screened porch.

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

1. A Variance from 10.521 to allow a rear yard setback of 23.6'± where 30' 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 screened porch at the rear of the property will not be contrary to the public interest or threaten the health, safety or welfare of the general public.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be balanced by any corresponding benefit to the general public.

- A small screened porch in this location will be a non-intensive use that will not diminish the value of surrounding properties and the rear of the property is buffered by a wooded area.
- The special conditions of the property include a large, irregularly shaped lot on a road that narrows to a walking path near the property. With the siting of the existing structure, this is the most reasonable location for the proposed porch and requiring that the rear setback be met would create an unnecessary hardship.

8) Case # 9-9

Petitioners: Robert W. & Constance M. Bushman Revocable Trusts 2000

Property: 34 Marne Avenue & 43 Verdun Avenue

Assessor Plan 222, Lots 33 & 34

Zoning District: General Residence A

Description: Lot line relocation.

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

34 Marne Avenue:

1. Variances from Section 10.521 to allow a lot area and a lot area per dwelling unit of 7,461± s.f. where 7,500 s.f. is required for both.

43 Verdun Avenue:

2. A Variance from Section 10.570 to allow a left side yard setback of 6.9’ where 10’ is required for an accessory structure.
3. A Variance from Section 10.570 to allow a rear yard setback of 5’4” where 15’ is required for an accessory structure.

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 value of surrounding properties will not be diminished as the appearance of the two lots will be the same and there will be no change to the existing structures.
- The spirit of the Ordinance will be observed as the change in lot size requires minimal relief and the requested setbacks will allow the sharing of the light and air protected by the Ordinance with neighboring properties.
- Substantial justice will be done by allowing the owners full use of their properties with no detriment to the general public.
- The three preexisting structures, one of which is essentially on the property line, create a special condition in trying to redefine the property line. Less setback relief will be required and there is adequate maintenance room for the barn structure so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to the properties. Adjusting the lot line in this way is a fair and reasonable use of the properties.

9) Case # 9-10

Petitioner: DiLorenzo Lafayette Ledgewood RE LLC

Property: 581 Lafayette Road

Assessor Plan 229, Lot 8B

Zoning District: Gateway

Description: Allow a restaurant and market with associated parking.

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

1. A Special Exception under Section 10.440, Use #9.52 to allow a restaurant with 492 seats where 250 to 500 seats are allowed by Special Exception.
2. A Variance from 10.593.10 to allow a restaurant to be located 92.1' from a residential district where 200' is required.
3. A Variance from 10.531 to allow 16.5% open space where 11% exists and 20% is required.
4. A Variance from Section 10.1112.50 to allow 154 off-street parking spaces where 184 exist and 132 are the maximum allowed.
5. A Variance from Section 10.1113.20 to allow parking in the front yard or between a building and a street for 34 spaces where 38 exist and 0 spaces are permitted.
6. A Variance from 10.1113.10 to allow 28 existing and 30 proposed off-street parking spaces to be partially located on a lot separate from that of the principal use.
7. A Variance from Section 10.1114.21 to allow 10 off-street parking spaces to be 17.5' in length where 19' is required.
8. A Variance from 10.1124.20 to allow off-street loading or maneuvering areas to be 87.7' from an adjoining Residential or Mixed Residential District where 100' is required.

Action:

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

Stipulations:

None.

Review Criteria:

The Special Exception was granted for the following reasons:

- The standards as provided by the Ordinance for this particular use permitted by Special Exception are met.
- There will be no hazard to the public or adjacent property from fire explosion or release of toxic materials from the proposed uses.
- There will be no detriment to property values in the vicinity or change in the essential characteristics of the area on account of the location or scale of buildings, odors, smoke, or other pollutants or irritants, or unsightly outdoor storage of equipment, vehicles or other materials. This is primarily a business district with the property containing essentially the same characteristics as it has had in the past. The scale of buildings will not change appreciably and there is nothing in the proposed uses to generate noxious odors, smoke or pollutants.

- There will be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. Concerns with traffic congestion and the general traffic flow will be addressed by the Technical Advisory Committee and the Planning Board.
- There will be no excessive demand on municipal services. There is nothing in the restaurant use that would create an unusual demand.
- There will be no significant increase in storm water runoff onto adjacent property or streets. There are existing buildings on the property and it is proposed to add additional green space which will help to mitigate any runoff.

The Variances were granted for the following reasons:

- Granting the variances will not be contrary to the public interest. The restaurant will be located in what has been a commercial corridor so that the essential characteristics of the neighborhood will not be altered and no threat will be presented to the public health, safety or welfare. Any traffic generated will tend to be variable throughout the day and week and not create an undue burden. Any impact on traffic will be further addressed by the Technical Advisory Committee and the Planning Board.
- The spirit of the Ordinance will be observed. The retail and restaurant use will be more compatible in its proximity to a residential area than many uses with similar setbacks. Only minor relief is required with the proposed setback for the off-street loading and maneuvering area. The proposed parking is part of a larger shopping complex with interchanging use of the parking areas from different entities. The spirit of the Ordinance is also served as the proposal will move closer to what is required for open space.
- Substantial justice will be done by allowing the property owner to make full and practical use of what has been a deteriorated property which will also benefit the general public.
- The value of surrounding properties will not be diminished as there will not be a major change in use in terms of activity related to the conduct of business.
- The hardship with particular reference to the parking variances includes the existing structure and existing parking layout that the property owners must adapt to their needs. With specific regard to the distances from a residential area, there have been long standing business uses on the property and a hardship would be created in imposing the current Ordinance requirements. The applicant’s request is a reasonable one.

10) Case # 9-11

Petitioners: Paul E. Berton & Jane A. Ewell Living Trusts

Property: 482 Broad Street

Assessor Plan 221, Lot 63

Zoning District: General Residence A

Description: Replace existing structure with 4 attached townhouses.

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

1. A Special Exception under Section 10.440 to allow four attached townhouses (four dwelling units) in a district where they are only allowed by Special Exception.

Action:

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

Review Criteria:

The petition was denied for the following reasons:

- All the standards necessary to grant a Special Exception were not met.
- The project would change the essential characteristics of the neighborhood due to the scale of the proposed structure and the location of the accessway and its orientation on the lot and this is likely to have a negative impact on property values in the vicinity.

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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 11:15 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary