

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 October 20, 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, David Rheaume. Alternate: Jeremiah Johnson

EXCUSED: Christopher Mulligan

**Mr. Durbin was present for a partial meeting sitting for Cases 10-6 through 10-9.*

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I. APPROVAL OF MINUTES

A) September 15, 2015

B) September 22, 2015

Minutes for both meetings were approved with minor corrections.

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II. OLD BUSINESS

A) Request for Clarification of Variances for property located at 244 Austin Street.

Action:

The Board voted to **clarify** that the intent in granting a variance for a 3'± setback would be satisfied by a 2' 6-1/8" setback.

Reasons for Granting:

- The additional 6" ± will not be significant relative to the overall application.
- There will be no change from the existing footprint.
- The clarification is in line with the intent of what was originally presented to, and granted by, the Board.

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III. PUBLIC HEARINGS – OLD BUSINESS

A) Case # 9-6

Petitioner: Unitarian Universalist Church

Property: 206 Court Street

Assessor Plan 116, Lot 34

Zoning District: Character District 4-L1

Description: Construction of an addition with related parking.

Requests: Amend previously advertised requests as follows:

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. Variances from Section 10.5A41.10A to allow the following:
 - a) A 3'± right side yard setback where a minimum 5' setback is required.
 - b) A 3'± left side yard setback where a minimum 5' setback is required.
 - c) Building coverage of 68.7%± where 60% is the maximum allowed.
 - d) Open Space of 21.3%± where 25% is required.
3. A Variance from Section 10.1112.30 to allow no off-street parking spaces to be provided where 53 parking spaces are required.

This petition was postponed from the September 22, 2015 meeting and amended.

Action on the Request for a Special Exception:

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

Stipulations:

None.

Review Criteria:

The special exception was granted for the following reasons:

- The standards for this particular use permitted by Special Exception in this district have been met.
- The proposed use will present no hazard to the public or adjacent property from fire explosion or release of toxic materials.
- There will be no detriment to property values in the vicinity or change in the essential characteristics of the area from the scale of buildings, parking areas, odors, smoke and other irritants. The expansion of an existing use will cause no substantial changes or have a detrimental effect on surrounding properties.
- There will be no creation of a traffic safety hazard or substantial increase in the traffic congestion from the use.
- With the standard needs generated in buildings with this type of use, there will be no excessive demand on municipal services.
- The applicant has represented that they will meet the open space requirement so there should be no significant increase in storm water runoff onto adjacent properties or streets.

Action on the Request for Variances:

The Board voted to **grant the request for variances** as presented and advertised with the removal of Request #2(d) conditional on the property owners' compliance with the minimum 25% open space requirement.

The variances were granted with the following stipulations:

Stipulations:

- 1) The property owners will work with the Baker-Wright Company to prevent potential encroachment into the direct abutter’s parking area(s) resulting from church activities.
- 2) The following agreements resulted from a meeting between the applicants and abutters and were presented by the applicant as part of this application. The Board recognized them as part of the applicant’s request for approval:
 - The church’s waste disposal system will tie in directly to the City sewer system.
 - Subject to the review and approval of the Historic District Commission, the addition will be constructed with either brick or brick veneer.
 - The addition will conform in general to the architectural submissions provided to the Board.
 - The fence between the properties will be no greater than 4’ in height. The cost of installation and on-going maintenance will be borne by the church.

Review Criteria:

The variances were 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 this is an expansion of an existing use so that the essential character of the neighborhood will not be changed nor the health, safety or welfare of the general public threatened. Many of the future users of the facility are already using the nearby church property so there should not be a substantial increase in the volume of traffic.
- 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 as the highest intensity of the use will be evenings and weekends.
- Special conditions exist so that there is no fair and substantial relationship between the purposes of the Ordinance and their specific application to this property. The current structures on the lot and the lack of accessible space impacts the setbacks and parking. It is a reasonable use of the property to expand the current activities.

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IV. PUBLIC HEARINGS – NEW BUSINESS

- 1) Case #10-1
 - Petitioner: Shirley W. Scarponi Trust, Shirley W. Scarponi, Trustee
 - Property: 276 Melbourne Street
 - Assessor Plan 233, Lot 84
 - Zoning District: Single Residence B
 - Description: Construct screened in porch on extended 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 building to be extended, enlarged or structurally altered except in conformity with the Ordinance.
 - 2. A Variance from Section 10.521 to allow a rear yard setback of 5’± 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:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed. This is a moderate adjustment to a nonconforming deck that will not change the essential character of the neighborhood.
- Substantial justice will be done as the owners will be allowed to improve the property with no harm to the general public.
- The value of surrounding properties will not be diminished by a mild infringement at the rear of the property screened by trees and the abutter on whom the impact would be greatest has not objected.
- The special conditions of the property include the odd shape of the lot and the siting of the existing structures so that there are few available options for a reasonable porch expansion.

2) Case #10-2

Petitioner: Dozier Revocable Living Trust, Richard M. Dozier, Trustee

Property: 100 Peverly Hill Road

Assessor Plan 243, Lot 51

Zoning District: Single Residence B

Description: Two-family dwelling on lot.

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

1. A Variance from Section 10.440, Use #1.20 to allow a two-family dwelling in a district where this use is not allowed.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 4,800± s.f. where 7,500 s.f. per dwelling unit is required.

Action: The Board **acknowledged the withdrawal** of the application by the property owner.

3) Case #10-3

Petitioner: Wayne Semprini

Property: 1 Fairview Drive

Assessor Plan 219, Lot 26

Zoning District: Single Residence B

Description: Subdivide single lot into two lots.

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 Lot 1 to have 79.97± s.f. of continuous street frontage where 100' is required.
2. A Variance from Section 10.521 to allow Lot 2 to have 14,052± s.f. of lot area where 15,000 s.f. of lot area is required.

Action:

The Board voted to **postpone** the petition to a November meeting at the request of the attorney for the applicant.

4) Case #10-4

Petitioner: Colmax Revocable Trust of 2011, Paul R. & Rosa Z. Delisle, Trustees

Applicant: Kathryn Freda

Property: 135 C Market Street

Assessor Plan 106, Lot 34C

Zoning District: CD5 and Downtown Overlay District

Description: Convert second floor office to residential dwelling.

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

1. A Variance from Section 10.1111.10 to allow a change of use without providing the required off-street parking.
2. A Variance from Section 10.1115.20 to allow no off-street parking spaces to be provided where two parking spaces are 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 no change to the building’s exterior and the change in use likely resulting in less total demand on parking in the area, 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 by allowing the owner a reasonable use of the property with no harm to the general public.
- The value of surrounding properties will not be diminished as the exterior will not change and the parking demand in the area could be diminished.
- The conditions of the property creating a hardship are an existing structure on a lot with no possibility of creating on-site parking. The request is a reasonable one for a property in an area with other residential uses without parking.

5) Case #10-5

Petitioner: St. Nicholas Greek Orthodox Church

Property: Ledgewood Drive (off Lafayette Road)

Assessor Plan 229, Lot 6A

Zoning District: Single Residence B

Description: Construct 14-units in multiple-family dwellings.

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

1. A Variance from Section 10.440, Use #1.43 to allow a multi-family dwelling in a district where this use is not allowed.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,142.5± s.f. where 15,000 s.f. per dwelling unit is required.

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

Review Criteria:

The petition was denied for the following reasons:

- The application failed to meet all the criteria necessary to grant a variance.
- The spirit of the Ordinance would not be observed by this number of dwelling units in a single residence district.
- There were no special conditions of the property distinguishing it from others in the area and creating a hardship.
- The value of surrounding properties would be diminished by a project with this number of units.

6) Case #10-6

Petitioners: Carl E. and Kathleen E. Walls

Property: 48 Fairview Avenue

Assessor Plan 220, Lot 58

Zoning District: Single Residence B

Description: Construct 7’10” ± x 12’± deck, 1’± x 35’± retaining wall and 6’4” ± x 15’6” ± walkway.

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 to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow 31.4%± building coverage where 29.52%± exists and 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:

- The proposal represents a minimal amount of increased relief that will not alter the essential character of the neighborhood nor threaten the health safety and welfare of the general public so that granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.
- Substantial justice will be done by allowing a tasteful deck, walkway and wall with no harm to the general public.

- With similar decks and patios in the neighborhood, the value of surrounding properties will not be diminished.
- The configuration of the existing structure on a small lot creates a hardship in seeking any expansion. The slight increase in building coverage to accommodate these additions is a reasonable use of the property.

7) Case #10-7

Petitioner: Lori A. Sarsfield

Property: 28 Dennett Street

Assessor Plan 140, Lot 9

Zoning District: General Residence A

Description: Increase height of rear section of second floor.

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 to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a right side yard of 2'± 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 minor rear vertical expansion of an existing nonconforming structure will not be contrary to the public interest or the spirit of the ordinance as it will blend in well with the character of the neighborhood and not interfere with the light enjoyed by neighboring properties.
- Substantial justice will be done by allowing the owner greater accessibility and functionality within the home with no harm to the general public.
- The value of surrounding properties will not be diminished by the slight expansion.
- The special condition of the property creating a hardship is the poor functionality of the existing structure on a smaller lot so that there is no fair and substantial relationship between the purposes of the Ordinance and their particular application to this property. The proposal for more usable space is a reasonable one.

8) Case #10-8

Petitioner: Brick Act LLC

Property: 102 State Street

Assessor Plan 107, Lot 52

Zoning District: CD4

Description: Addition for expanded retail & a dwelling unit.

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

1. A Variance from Section 10.112.30 to allow no off-street parking spaces to be provided where 6 spaces are required.
2. A Variance from Section 10.111.20 to allow a use that is nonconforming as to the requirements for off-street parking to be enlarged or altered without complying with off-street parking requirements.

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 which will benefit from a restoration of this historical property.
- The spirit of the Ordinance will be observed as the increase in parking demand attributable to this request will be less with the likely uses and easily accommodated in the area.
- Substantial justice will be done by allowing the property owner to restore and make full use of the property which will benefit the general public.
- The overall restoration and a tasteful addition will contribute to the vibrancy of the area and not diminish the value of surrounding properties.
- The special conditions of the property are that it is a unique old structure with historical significance which needs to be restored on a lot that cannot provide the necessary parking so that a hardship is created. The requested use is a reasonable one.

9) Case # 10-9

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.
2. A Variance from Section 10.112.30 to allow three off-street parking spaces to be provided where four off-street parking spaces are required.

Action:

The Board voted to invoke the case of Fisher v. Dover and decline to hear the merits of the petition finding that the application was not materially different in nature and degree from that previously submitted.

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V. OTHER BUSINESS

No other business was presented.

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VI. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary