

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 November 17, 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 Rheume. Alternate: Jeremiah Johnson

EXCUSED: Derek Durbin

I. APPROVAL OF MINUTES

A) October 20, 2015

The Minutes were approved as presented with one minor correction.

II. OLD BUSINESS

A) Request for Rehearing for property located at Deer Street, Russell Street & Maplewood Avenue.

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 further determined that no new information had been provided that was not available at the time of the public hearing.

B) Request for Rehearing for property located at 482 Broad Street.

Action

The Board voted to deny the request for rehearing. The Board found that it made no errors in procedure or application of the law. The Board further determined that no new information had been provided that was not available at the time of the public hearing.

**III. PUBLIC HEARINGS – OLD BUSINESS**

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 **grant** the petition as presented and advertised with a clarification that the request for Lot 1 was for 79.97 linear feet of street frontage.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest as the proposed street frontages and lot sizes will not alter the essential character of the neighborhood.
- The spirit of the Ordinance will be observed by sufficient frontage and lot size to meet the requirements of the Ordinance for appropriate placement and alignment of buildings and driveways.
- Substantial justice will be done as the owner will be allowed to make full use of the property with no harm to the general public.
- The value of surrounding properties will not be diminished by allowing the retention of an existing cottage and construction of a single family home in keeping with the neighborhood.
- Subdividing this large lot is a reasonable use of this property but a hardship is created as the two lots cannot be used in strict conformance with the Ordinance without requiring a degree of relief.

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**IV. PUBLIC HEARINGS – NEW BUSINESS**

1) Case # 11-1

Petitioners: Aaron K. & Stephanie A. Caswell

Property: 65 Mendum Avenue

Assessor Plan 148, Lot 11

Zoning District: General Residence A

Description: Appeal.

Requests: Appeal by the owners of an abutting property of the action taken by the Portsmouth City Council to restore involuntarily merged lots for this property under RSA 674:39.

Action:

The Board voted to **grant** the petition as presented and advertised which had the effect of reversing the City Council’s action to restore the lots to their pre-merger status. The Board determined that the lots had been voluntarily merged by overt action or conduct of the owners in the chain of title indicating that the owners regarded the lots as merged; and that, as a result, there had been no involuntary merger under RSA 674:39.

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2) Case # 11-2

Petitioners: Justin P. & Melissa L. Perry

Property: 243 Wibird Street

Assessor Plan 133, Lot 32

Zoning District: General Residence A

Description: Replace an open deck with 11’± x 14’± enclosed porch.

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 and enlarged except in conformance with the Ordinance.
2. A Variance from Section 10.521 to allow 28.4%± building coverage 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 variances will not be contrary to the public interest and the spirit of the Ordinance will be observed as the replacement and enclosing of a porch in the same location will not change the essential character of the neighborhood or threaten the health, safety or welfare of the general public.
  - Substantial justice will be done as the loss to the application if the relief from the lot coverage requirement was denied would not be outweighed by any benefit to the general public.
  - The improvements will not be visible to the general public or detract from surrounding property values.
  - Literal enforcement of the Ordinance would result in unnecessary hardship due to special conditions of the property. A corner lot, slightly over the lot coverage requirement, will not contribute to overcrowding surrounding lots so that there is no fair and substantial relationship between the Ordinance lot coverage requirement and its specific application to this property.
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- 3) Case # 11-3  
Petitioner: Douglas F. Fabbriatore  
Property: 536 Marcy Street  
Assessor Plan 101, Lot 56  
Zoning District: General Residence B  
Description: Construct second story 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 building or structure to be extended, enlarged or structurally altered except in conformance with the Ordinance.
  2. A Variance from Section 10.521 to allow a 0'± left side yard setback where 10' is required.

Action:

The Board voted to **postpone** the petition to a December meeting at the request of the applicant.

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- 4) Case # 11-4  
Petitioner: Deborah E. Zimmerman  
Property: 50 Sewall Road  
Assessor Plan 166, Lot 27  
Zoning District: Single Residence B  
Description: Construct a 12'± x 20'± 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 building or structure to be extended or enlarged except in conformance with the Ordinance.
  2. A Variance from Section 10.521 to allow an 8'± 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 this modest request will not alter the essential character of the neighborhood.
- In the substantial justice balance test, there would be no benefit to the general public in denying the petition.
- A modest addition which will not affect the light and air of neighbors will not diminish the value of surrounding properties.
- The special conditions of the property creating a hardship are the unusual shape of the lot and the location of the existing house so that there are few options to consider in placing a reasonable addition.

5) Case # 11-5

Petitioners: Lewis Family Rev. Trust of 2013, Stephen M. & Randy B. Lewis, Trustees

Property: 360 Wibird Street

Assessor Plan 132, Lot 7

Zoning District: General Residence A

Description: Construct a 12'± x 28'± garage.

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

1. A Variance from Section 10.573.20 to allow an 8'± left side yard setback where 10' is required.
2. A Variance from Section 10.521 to allow 30.36%± building coverage 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 variances will not be contrary to the public interest and the spirit of the Ordinance will be observed as a garage in this location will not alter the essential character of the neighborhood nor threaten the health, safety or welfare of the general public.
- Substantial justice will be done as the loss to the property owners if they could not construct the garage would not be outweighed by any corresponding benefit to the general public.
- A modest garage at the rear of the property will not diminish the values of surrounding properties.
- Literal enforcement of the Ordinance would result in an unnecessary hardship as this is a preexisting nonconforming lot. Due to special conditions there is no fair and substantial relationship between the purpose of the setback requirements to prevent overcrowding and the modest relief requested. Granting the variances will allow a reasonable use of the property.

6) Case # 11-6

Petitioners: Frank W. Jr. & Ingrid C. Getman

Property: 606 Union Street

Assessor Plan 132, Lot 20-1A

Zoning District: General Residence A

Description: Construct single family home.

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

1. A Variance from Section 10.513 to allow a second free-standing dwelling unit on a lot where only one free-standing dwelling unit is 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 lot is of a sufficient size to accommodate a second free-standing dwelling unit so that the character of the neighborhood will not be altered nor will the health, safety or welfare of the general public be threatened.
- Substantial justice will be done as the loss to the applicant if the second dwelling unit were denied would not be outweighed by any corresponding benefit to the general public.
- An attractive new construction will not diminish the value of surrounding properties and the closest abutter demonstrated support for the project.
- Literal enforcement of the Ordinance would result in an unnecessary hardship due to the special conditions of the lot, including an unusually large lot with an existing historic carriage house. The use is a reasonable one as the lot size can accommodate another dwelling without maximizing the property or negatively affecting surrounding properties.

7) Case # 11-7

Petitioner: Kevin Drohan

Property: 201 Echo Avenue

Assessor Plan 237, Lot 57

Zoning District: General Business

Description: Convert existing commercial unit to residential use.

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 multi-family dwelling with 4 residential dwelling units where this use is not allowed.
2. A Variance from Section 10.331 to allow a lawful nonconforming use to be extended or enlarged without conforming to the Ordinance.
3. A Variance from Section 10.333 to allow a nonconforming use located in a portion of a building to be extended throughout other parts of the building.

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 change in the use of a structure at the end of a road fronting on a highway will not alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public so that granting the variances will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as adding a fourth residential unit will be in keeping with the current uses.
- Substantial justice will be done as granting the petition will benefit the applicant with no harm to the general public.
- The value of the surrounding commercial and residential properties will not be diminished by the proposed change.
- The location of what appears to be a housing structure among commercial properties creates a hardship in using the structure appropriately without relief.

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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 10:57 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary