

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 reconvened meeting on November 24, 2015** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Vice-Chairman Arthur Parrott, Derek Durbin Charles LeMay, Christopher Mulligan, David Rheume. Alternate: Jeremiah Johnson

EXCUSED: Chairman David Witham, Patrick Moretti

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IV. NEW BUSINESS – PUBLIC HEARINGS (continued from November 17, 2015)

8) Case # 11-8
Petitioner: Tammy Gewehr
Property: 13 McDonough Street
Assessor Plan 138, Lot 49
Zoning District: Mixed Residential Business
Description: Provide less than the required off-street parking for a Bed and Breakfast.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where three spaces are required for a Bed and Breakfast use.
2. A Variance from Section 10.1114.32 to allow off-street parking spaces that do not comply with the vehicular circulation requirements of the Ordinance.

Action:

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

9) Case # 11-9
Petitioners: Clipper Traders LLC, owner, Play All Day LLC, applicant
Property: 105 Bartlett Street
Assessor Plan 157, Lot 1
Zoning District: Office Research
Description: Operate a dog daycare/boarding facility.

- 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 day care/boarding facility for dogs in a district where the use is not allowed.
 2. A Variance from Section 10.1111.10 to allow a change of use without providing the necessary off-street parking.
 3. A Variance from Section 10.1114 to allow off-street parking spaces that do not meet the dimensional 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:

- The proposed use is compatible with other uses in the area and will not alter the character of the neighborhood so that granting the variances will not be contrary to the public interest.
- The spirit of the Ordinance will be observed by a use with minimal impact on traffic and a location distant from residential uses.
- In the substantial justice balance test, there would be a loss to the applicant if the petition were denied with no corresponding benefit to the general public.
- With a compatible use, adequate off-street parking and space between properties, there will be no negative impact on the value of surrounding properties.
- The special condition of the property is its commercial nature with an industrial building with a long history of similar uses so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific to this property. In this location, the use is a reasonable one.

10) Case # 11-10

Petitioners: Clipper Traders LLC, owner, Scott Thornton, applicant

Property: 105 Bartlett Street

Assessor Plan 157, Lot 1

Zoning District: Office Research

Description: Operate a brewery.

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 operation of a brewery in a district where the use is not allowed.

2. A Variance from Section 10.1111.10 to allow a change of use without providing the necessary off-street parking.
3. A Variance from Section 10.1114 to allow off-street parking spaces that do not meet the dimensional 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:

- The proposed use will not alter the essential character of the neighborhood as it is similar in nature to previous uses on this and surrounding properties so that granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- In the justice balance test, granting the variances will benefit the applicant with no harm to the general public.
- With a compatible use, adequate off-street parking and space between properties, there will be no negative impact on the value of surrounding properties.
- The special conditions of the property is its commercial nature and an industrial building with a long history of similar uses so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific to this property. In this location, the use is a reasonable one.

11) Case # 11-11

Petitioners: Petra A. Huda & Kimberly A. Schroeder

Property: 280 South Street

Assessor Plan 111, Lot 8

Zoning District: Single Residence B

Description: Construct a 22'± x 30'± replacement garage in existing location.

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 10.573.20 to allow a 0'± left side yard setback where 10' is required.

Action:

The Board voted to **grant** the petition as presented and advertised with a 1’ left side yard setback rather than the advertised 0’±.

Stipulations:

- A 1’ setback will be maintained along the left side of the garage.

Review Criteria:

The petition was granted for the following reasons:

- In a neighborhood with lots containing similar structures, the essential character of the neighborhood will not be altered so that granting the variances will not be contrary to the public interest.
- The spirit of the Ordinance will be observed by the stipulated extra buffer and the abutting City of Portsmouth easement so that adequate light and air will be preserved.
- Substantial justice will be done as the harm to the applicants if the petition were denied would not be outweighed by any corresponding benefit to the general public.
- Replacing a deteriorated structure will not diminish the value of surrounding properties.
- The special conditions of the property include a long, narrow lot with a City of Portsmouth easement to the left. The incursion into the setback will have a lesser impact so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to this property. Replacing a deteriorated garage in this location is a reasonable use of the property.

12) Case # 11-12

Petitioner: Ruth E. James

Property: 179 McDonough Street

Assessor Plan 144, Lot 44

Zoning District: General Residence C

Description: Add full rear dormer.

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 a 4’± 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:

- A modest upward addition to an existing nonconforming structure will not 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.
- The loss to the applicant if the petition were denied would not be balanced by any corresponding benefit to the general public.
- A modest upward expansion and improvement of the property will not diminish the value of surrounding properties.
- The special conditions of the property are that this is a small lot backing up to railroad tracks and the siting of the existing structure so that a hardship is created in placing any upward expansion. A modest addition in this location is a reasonable use of the property.

13) Case # 11-13

Petitioner: 285-287 Hanover Street LLC

Property: 285-287 Hanover Street

Assessor Plan 125, Lot 8

Zoning District: Mixed Residential Office

Description: Four residential units on a lot.

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 435.6± s.f. where 7,500 s.f. is required.
2. A Variance from Section 10.1111.20 to allow a use that is nonconforming to be enlarged or altered without providing the required off-street parking.
3. A Variance from Section 10.1111.10 to allow a change or intensification of use in an existing structure without providing the required off-street parking spaces.
4. A Variance from Section 10.1112.30 to allow no off-street parking spaces to be provided where seven 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:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed as the property is located in an area of greater density so that the essential character of the neighborhood will not be altered. While there is no off-street parking, the greatest parking activity is during the daytime hours. The units on the property will provide needed smaller space housing with less anticipated vehicles per unit.
- In the justice balance test, denying the variances will result in a detriment to the applicant with no corresponding benefit to the general public.
- The value of surrounding properties will not be diminished by allowing improvements to a property and an occupancy that has existed for a number of years.
- Literal enforcement of the Ordinance would result in unnecessary hardship as it would impose a burden on the property in making improvements and achieving a reasonable use of the property

14) Case # 11-14

Petitioners: Christopher L. & Anna D. Shultz

Property: 140 Orchard Street

Assessor Plan 149, Lot 38

Zoning District: General Residence A

Description: Rebuild barn in existing footprint and add separate dwelling unit.

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 10.513 to allow a second free-standing dwelling on a lot where only one free-standing dwelling is allowed.
3. A Variance from Section 10.521 to allow 4,218.75. ± s.f per dwelling unit where 7,500 s.f. is required.
4. A Variance from Section 10.573.20 to allow a rear yard setback of 10'± where 14.8' is required.
5. A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where four are required.

Action:

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

15) Case # 11-15

Petitioners: Ryan & Jennifer Smith

Property: 100 Peverly Hill Road

Assessor Plan 243, Lot 51

Zoning District: Single Residence B

Description: Allow two residential dwelling units and a two story deck 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 10.440 to allow a two-family dwelling where only a single family dwelling is allowed.
3. A Variance from Section 10.521 to allow a 4791.6± s.f. lot area per dwelling unit where 15,000 is required.
4. A Variance from Section 10.516.40 to allow a 21'± front yard setback where 24' is required for an unenclosed deck.

Action:

The Board voted to **table** the petition until the December 15, 2015 meeting requesting that the applicants work with the Planning Department to obtain additional information on the zoning history of the property and specific information on how the property had been assessed in the past. The applicants were also requested to provide proposed floor plans.

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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 9:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary