

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 December 15, 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: None

=====

I. APPROVAL OF MINUTES

- A) November 17, 2015
- B) November 24, 2015

The Minutes for both meetings were approved as presented with minor corrections.

=====

II. PUBLIC HEARINGS - OLD BUSINESS

- A) 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. (*This petition was postponed from the November 17, 2015 meeting.*)

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- An addition at the rear of the existing home will not alter the essential character of a neighborhood where similar conditions exist.
- The spirit of the Ordinance will be observed as this is a relatively modest addition located with sufficient space from structures on abutting properties so that it will not interfere with the light and air protected by the Ordinance.
- Substantial justice will be done by allowing the property owners a small expansion with no detriment to the general public.
- The addition will not diminish the value of surrounding properties as there is adequate space between abutting structures and no objections were raised by surrounding property owners.
- The location of the existing home along the property line and the odd shape of the lot create a hardship in the placement of a reasonable expansion.

B) 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.

(This petition was postponed from the November 24, 2015 meeting.)

Action:

The Board voted to **postpone** the petition to the January 19, 2015 meeting at the applicant’s request.

C) 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. *(This petition was postponed from the November 24, 2015 meeting.)*

Action:

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

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant a variance were not met.
- The characteristics of the property were not sufficiently unique to distinguish it from others in the area so that an unnecessary hardship was not created.
- The spirit of the Ordinance would not be observed by allowing a second free-standing dwelling and a lot area per dwelling unit slightly over half of what is required.

D) 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. *(This petition was tabled with a request for additional information at the November 24, 2015 meeting.)*

Action:

The Board voted to **postpone** the petition to the January 19, 2015 meeting at the request of the attorney for the applicant.

=====

III. PUBLIC HEARINGS – NEW BUSINESS

1) Case #12-1

Petitioner: Judith L. Hiller & John B. Wilkens

Property: 18 Manning Street

Assessor Plan 103, Lot 67

Zoning District: General Residence B

Description: Appeal decision of the Historic District Commission

Request: Appeal the decision of the Historic District Commission to deny a Certificate of Approval for the use of full screens on windows instead of half screens.

Action:

The Board voted to **grant** the appeal, the effect of which will be to **issue a Certificate of Approval** to allow the use of full screens on windows instead of half screens.

Review Factors – Findings were made relative to factors that render a site architecturally or historically significant, including the following:

- 1) *The historical time period, context or immediate setting of the proposal.* The home was built in the 1930's and reflects that period.
- 2) *The structure's architecture, including stylistic features, design elements and mass.* The architecture and stylistic features do not lend themselves to a requirement that the window screens meet a certain set of design criteria.
- 3) *Construction materials, including technological systems and features.* It was presented that full screens provide a benefit technologically by allowing air to circulate more effectively when used in combination with double hung windows. .
- 4) *Importance relative to a historically recognized individual or event.* This factor has no applicability to this particular property.

Review Criteria - The Board determined that, giving due consideration to the Purposes and Objectives of the Historic District set forth in Section 10.631 of the Zoning Ordinance, the applicable Review Criteria were met. The Board made the following Findings of Fact with regard to the criteria:

- 1) *The special and defining character of surrounding properties.* The surrounding properties utilize a variety of screen treatments including full screens.
 - 2) *The significant historical or architectural value of an existing structure.* The home was built in the 1930's and is appropriate to that era.
 - 3) *The extent to which a proposed project's exterior design, scale, texture, detailing and materials complement the existing structure and are compatible with surrounding properties.* The submitted photographs illustrate that there is little exterior presentation that is a detriment to either the existing structure or surrounding properties.
 - 4) *The encouragement of innovative use of technologies, materials and practices.* Full screens improve the air flow for double hung windows and this property should be allowed to employ them to cool the home.
-

2) Case #12-2

Petitioners: Abbie J. & Lee M. Frank

Property: 169 Madison Street

Assessor Plan 145, Lot 53

Zoning District: General Residence C

Description: Replace rear deck & porch with 18'± x 24'± two- 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 to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a left side yard setback of 0'± where 10' is required.
3. A Variance from Section 10.521 to allow 42.45%± building coverage where 35% is the maximum allowed.

Action:

A motion to grant the petition failed to pass and the petition was **denied**.

Review Criteria:

The motion to grant failed to pass for the following reasons:

- Granting a variance for a structure with the proposed volume and setback would be contrary to the public interest
- There is a fair and substantial relationship between the provisions of the Ordinance with regard to setbacks and overall building coverage and their application to this property and the property can be reasonably used in conformance with the Ordinance so that the proposal fails the unnecessary hardship test.

3) Case #12-3

Petitioner: Pamela Gould

Property: 209 Clinton Street

Assessor Plan 159, Lot 27

Zoning District: General Residence A

Description: Construct a 10'6"± x 30'± single story rear 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 to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a left side yard setback of 9'± where 10' is required.
3. A Variance from Section 10.521 to allow 27.5% 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:

- This rear addition will not alter the essential character of the neighborhood or threaten the health, safety or welfare of the public so that granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Denying this small amount of relief would be a detriment to the applicant with no corresponding benefit to the general public.
- A single story rear addition with a minor encroachment into the setback will not diminish the value of surrounding properties.
- The special conditions of the property creating a hardship include a unique lot with frontage on two streets and the location of the existing structure so that there is no fair and substantial relationship between the general provisions of the Ordinance and their application to this property. An addition of this size in this location is a reasonable use of the property.

=====

IV. OTHER BUSINESS

=====

V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:30 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary