

**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 January 19, 2016** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Chairman David Witham, Vice-Chairman Arthur Parrott, Jeremiah Johnson, Charles LeMay, Patrick Moretti, Christopher Mulligan David Rheume. Alternate: Jim Lee

**EXCUSED:** None

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(Mr. Jim Lee was welcomed to the Board as an Alternate.)

**I. ELECTION OF OFFICERS**

The Board elected Chairman David Witham to continue as Chair and David Rheume to serve as Vice-Chairman.

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**II. APPROVAL OF MINUTES**

A) December 15,, 2015

The Minutes were approved as presented with minor corrections.

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**III. OLD BUSINESS**

A) Request for Rehearing for property located at 65 Mendum 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 in their action taken at the November 17, 2015 meeting. 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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**IV. PUBLIC HEARINGS – OLD BUSINESS**

A) 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, and December 15 2015 meetings.)*

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 lack of adequate space for the movement and parking of vehicles would put a strain on on-street parking and traffic circulation which would be contrary to the public interest and not meet the substantial justice test.
- There is no hardship in the property that would prevent its reasonable use without variances being granted.

B) 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 and postponed at the December 15, 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:

- Continuing a long-standing use will not change the essential character of the neighborhood nor threaten the public health, safety or welfare so that granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Granting the variances will result in substantial justice as the loss to the applicants if the petition was denied would not be outweighed by any benefit to the general public.
- With the long-term multi-family character of the property and mainly interior changes, there will be no diminution in the value of surrounding properties.
- The special conditions of the property distinguishing it from others in the area are the existence of a second dwelling unit in the structure and the property’s placement with wetlands on one side of the property and no residential development on the abutting lot. Although the property is in a single residence zone, the area is not dense so that there is no relationship between the purposes of the Ordinance in prohibiting multi-family residences and requiring 15,000 s.f. per dwelling unit and their application to the property. This long-standing use is a reasonable one.

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**V. PUBLIC HEARINGS – NEW BUSINESS**

1) Case #1-1

Petitioners: Donald A. & Ruth K. Littlefield

Property: 384 Union Street #4

Assessor Plan 134, Lot 54-4

Zoning District: General Residence A

Description: Construct roof over existing deck.

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 rear yard setback of 11’9”± where 20’ 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:

- Adding a roof structure over an existing deck will not change the essential character of the neighborhood so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as denying the request by applying the setback requirement to a slight upward expansion would harm the applicant with no corresponding benefit to the general public.
- This minimal change will not diminish the value of surrounding properties.
- The requested relief is necessitated by the current configuration of the property with an existing incursion into the rear yard setback so that a reasonable change cannot be made without seeking a variance.

2) Case #1-2

Petitioners: Ajeet Jai & Kathleen Jo Singh

Property: 140 Thornton Street

Assessor Plan 160, Lot 8

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 10.516.10 to allow a 0'± primary front yard setback where 7.3' is required and a 5'± secondary front yard setback where 8.3' is required.
2. A Variance from Section 10.521 to allow 30.28±% 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 requested setbacks and the slight increase over existing building coverage will not affect the essential character of the neighborhood nor threaten the public health, safety or welfare so that the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as the benefit to the applicant in granting the relief from required setbacks and building coverage which are only slight increases over that which currently exists will not be outweighed by any harm to the general public due to those specific requests.
- There is nothing in the dimensional aspect of the proposal that would diminish the value of surrounding properties.
- Literal enforcement of the Ordinance would result in unnecessary hardship as strict application of the provisions of the Ordinance would not allow the property to be developed in a way that would represent a reasonable use of the property.

## 3) Case #1-3

Petitioners: John Algren & Bessie J. Palmisciano, owners, Chinburg Builders, Inc., applicant

Property: Langdon Street (corner of McDonough Street)

Assessor Plan 138, Lots 48-1, 48-2, 48-3

Zoning District: Mixed Residential Business and Office Research

Description: Construct a single-family home on each of three lots.

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

Lot 1. Variances from Section 10.521 to allow the following:

- a) A lot area of 5,022± s.f. where 7,500 s.f. is required.
- b) A lot area per dwelling unit of 5,022± s.f. where 7,500 is required.
- c) A lot depth of 78.47± where 80' is required.
- d) A 5'± secondary front yard setback where 10' is required.

Lot 2. Variances from Section 10.521 to allow the following:

- a) A lot area of 5,301± s.f. where 7,500 s.f. is required.
- b) A lot area per dwelling unit of 5,301± s.f. where 7,500 s.f. is required.
- c) A lot depth of 77.39' where 80' is required.
- d) Continuous street frontage of 68.5'± where 100' is required.

Lot 3. Variances from Section 10.521 to allow the following:

- a) A lot area of 4,965± s.f. where 7,500 s.f. is required.
- b) A lot area per dwelling unit of 4,965± s.f. where 7,500 is required.
- c) Continuous street frontage of 43.24'± where 100' is required.
- d) A lot depth of 76.84'± where 80' is required.
- e) A 5'± left side yard setback where 10' is required.

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulations as attached to the previous approval granted on January 15, 2013.

Stipulations:

- As represented on the Concept Development Plan revised January 10, 2013, (resubmitted dated December 22, 2015) the three homes to be built on the lots will be in substantial compliance with the massing, location and architectural theme of the plans submitted with the application.
- As represented on the Concept Development Plan revised January 10, 2013, Note 3 (resubmitted dated December 22, 2015) “any fence installed along McDonough Street shall not exceed 42” in height and shall be open, architectural in nature in order to prevent a sense of confinement along the street.”
- The lots shall be developed in substantial compliance with the landscape plan, LA-1.0 dated 1/15/2013, as submitted and presented at the hearing.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances for the three lots would not be contrary to the public interest and the spirit of the Ordinance will be observed. The size and shape of the lots will be slightly larger and more regular in shape than adjacent properties so that the essential character of the neighborhood will not be adversely changed.

- Substantial justice will be done as there is no public interest that would be harmed by granting the variances.
- Creation of three residential lots that will provide for the construction of three new single-family structures built to code on good-sized lots and oriented in a logical fashion will not diminish the value of surrounding properties.
- There are special conditions of the property that distinguish it from others in the area so that the specific application of the provisions of the Ordinance would result in a hardship. The size and shape of the lots will be larger than others in the area but variances are still required to develop a reasonable use of the property for the property owners.

4) Case #1-4

Petitioner: Jamey R. Beland

Property: 373 Union Street

Assessor Plan 134, Lot 5

Zoning District: General Residence A

Description: Construct second 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 4'± left side yard setback for the addition where 10' is required.

Action:

Due to the extended length of the hearing, this petition was **continued** to a reconvened meeting on January 26, 2016.

5) Case #1-5

Petitioner: Christian G. Hulseman

Property: 430 Richards Avenue

Assessor Plan 112, Lot 8

Zoning District: General Residence A

Description: Demolish rear garage addition and reconstruct extending to width of 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 to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a 3.5'± left side yard setback where 10' is required.

Action:

Due to the extended length of the hearing, this petition was **continued** to a reconvened meeting on January 26, 2016.

- 6) Case #1-6
  - Petitioner: Scott Mitchell
  - Property: 2839 Lafayette Road
  - Assessor Plan 286, Lots 18 & 19
  - Zoning District: Gateway
  - Description: Parking related to construction of a bank and drive-through facility.
  - Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
    1. A Variance from Section 10.1113.20 to allow parking between a principal building and a street.

Action:

Due to the extended length of the hearing, this petition was **continued** to a reconvened meeting on January 26, 2016.

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- 7) Case #1-7
    - Petitioner: Faithful Church of Christ Inc.
    - Property: 217 Bartlett Street
    - Assessor Plan 162, Lot 32
    - Zoning District: General Residence A
    - Description: Four unit dwelling with related parking and travel aisles.
    - Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
      1. A Special Exception under Section 10.440 to allow four dwelling units where the use is only allowed by Special Exception.
      2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 2,237± s.f. where 7,500 s.f. is required.
      3. A Variance from Section 10.114.21 to allow an 18'± maneuvering aisle where 24' is required.

Action:

Due to the extended length of the hearing, this petition was **continued** to a reconvened meeting on January 26, 2016.

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- 8) Case #1-8
    - Petitioners: 599 Lafayette LLC owner, Aroma Joe’s Coffee, LLC, applicant
    - Property: 599 Lafayette Road
    - Assessor Plan 229, Lot 8
    - Zoning District: Gateway
    - Description: Construct a stand-alone drive-through 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 stand-alone drive-through facility as a principal use.

- 2. A Variance from Section 10.531 to allow a side setback of 23.6'± where 30' is required.
- 3. A Variance from Section 10.836.31 to allow an outdoor service facility to be located 64'± from a residential zoning district where 100' is required.
- 4. A Variance from Section 10.1243 to allow a second free-standing sign on a lot.

Action:

Due to the extended length of the hearing, this petition was **continued** to a reconvened meeting on January 26, 2016.

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- 9) Case #1-9
    - Petitioner: Paul E. Berton and Jane A. Ewell Living Trusts
    - Property: 482 Broad Street
    - Assessor Plan 221, Lot 63
    - Zoning District: General Residence A
    - Description: Construct three townhouses.
    - Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
      - 1. Special Exception under Section 10.440 to allow three dwelling units where the use is only allowed by Special Exception.

Action:

Due to the extended length of the hearing, this petition was **continued** to a reconvened meeting on January 26, 2016.

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**VI. OTHER BUSINESS**

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**VII. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 10:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary