

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

ACTION SHEET

TO: John P. Bohenko, City Manager

FROM: Mary Koeppenick, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment at its regular meeting on February 16, 2016** in the School Board Conference Room*, 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

*Room change for this meeting.

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I. APPROVAL OF MINUTES

A) January 19, 2016

The Minutes were approved as presented with minor corrections.

B) January 26, 2016

The Minutes were approved as presented with minor corrections.

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II. OLD BUSINESS

A) Clarification of Variances granted for property located at 209 Clinton Street.

Action:

Determining that an Equitable Waiver of Dimensional Requirements as provided for in RSA 674:33-a applied to this request, the Board voted to **grant an Equitable Waiver** to allow the following:

- A left side yard setback of 8'4" where 10' is required, and a variance for 9' was granted at the December 15, 2015 Board of Adjustment meeting.
- A secondary front yard setback to Burkitt Street of 9' where 15' is required under Section 10.521, and no previous variance was granted.

Review Criteria:

In granting the Equitable Waiver, the Board made the following findings:

- The violation was not noticed or discovered by the owner until substantial work had been done.
- The violation was not an outcome of ignorance of the law or ordinance, misrepresentation or bad faith but was caused by a good faith error in measurement or calculation made by the owner or agent.
- The physical or dimensional violation does not constitute a public or private nuisance, diminish the value of other property in the area or adversely affect any present or permissible future uses of the property. In granting the variances, the Board reviewed visual representations of the existing structures and proposed addition in relationship to the lot lines and Burkitt Street. The project is being developed consistent with those representations.
- The applicant has incurred significant expense that would be difficult to recoup so that the cost of correction, resulting from ignorance of the facts of the violation, so far outweighs any public benefit to be gained, that it would be inequitable to require a correction.

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III. PUBLIC HEARINGS – NEW BUSINESS

1) Case #2-1

Petitioners: Benjamin M. & Amanda J. Goss

Property: 6 Pine Street

Assessor Plan 159, Lot 47

Zoning District: General Residence A

Description: Replace garage and add connecting mudroom.

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 nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a 3'± 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 variance will not be contrary to the public interest and the spirit of the Ordinance will be observed. The essential character of the neighborhood will not be altered by this modest expansion to a residential structure, nor will the public health, safety or welfare be threatened.
- Substantial justice will be done as the loss to the applicant in having to reduce the design would not be outweighed by any corresponding benefit to the general public.
- Replacement of a garage in disrepair with one that has a lower roofline and is further away from the property line and neighboring structures, and adding an infill mudroom toward the middle of the lot, will not diminish the value of surrounding properties.
- Special conditions of the lot exist that distinguish it from others in the area so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to the property. The proposed garage and infill mudroom are a reasonable use of the property. The placement of the existing home on a small corner lot limits the property owner’s options in locating these structures and the most reasonable location for a small addition has been proposed.

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- 2) Case #2-2
 Petitioner: Alden Properties LLC
 Property: 33 Columbia Street
 Assessor Plan 145, Lots 41 & 42
 Zoning District: General Residence C
 Description: Add two dwelling units on a merged lot to the existing three 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 3,253± s.f. of lot area per dwelling unit where 3,500 s.f. per dwelling unit is required.

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulation:

Stipulation:

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- That there will be no living space permitted above the four-bay garage indicated on the submitted plan.

Review Criteria:

The petition was granted for the following reasons:

- In an area of multiple dwelling units on small lots, the proposed lot area per dwelling unit will be in keeping with the essential character of the neighborhood so that granting the variance would not be contrary to the public interest.
- The relief sought is not excessive so that the spirit of the Ordinance will be observed.
- Substantial justice will be done by allowing the owner to make full and logical use of the merged lots with no corresponding detriment to the general public.
- The value of surrounding properties will not be diminished by upgrading existing structures and adding two new units.
- With the unique configuration of the two merged lots, there is ample space for the two additional dwelling units so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to the property. This is a minimal request and a reasonable use of the property.

3) Case #2-3

Petitioners: Natan Aviezri Revocable Trust, Debra Klein and Natan Aviezri, Trustees

Property: Middle Road at Ward Place (formerly 75 Monroe Street)

Assessor Plan 168, Lot 27 (merged from Lots 34 & 35)

Zoning District: General Residence A

Description: Construct a single-family home and garage on two re-merged 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 a lot area of 6,022± s.f. where 7,500 s.f. is required.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 6,022± s.f. where 7,500 s.f. per dwelling unit is required.
3. A Variance from Section 10.521 to allow continuous street frontage of 93.6'± where 100' of continuous street frontage is required.

Action:

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

Stipulations:

None.

Other:

The Board requested that the Planning Board in their review of the project and taking safety concerns into consideration, specify the location of the driveway cut.

Review Criteria:

The petition was granted for the following reasons:

- A home on a reasonably sized lot will be in keeping with 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.
- Substantial justice will be done by allowing reasonable development of the lot with no detriment to the general public.
- A new home in this area will not have any significant impact on abutters so that the value of surrounding properties will not be diminished.
- There are special conditions of the property distinguishing it from others in the area so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and their specific application to the property. This is a corner lot with frontage on two streets and a history of merging and unmerging with contiguous lots. The proposed use of the property is a reasonable use of two unmerged lots which have been re-merged into one.

4) Case #2-4

Petitioners: Abbie J. & Lee M. Frank

Property: 169 Madison Street

Assessor Plan 145, Lot 53

Zoning District: General Residence C

Description: Construct 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 nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a 2'6" ± left side yard setback where 10' is required.
3. A Variance from Section 10.521 to allow 40.12%± building coverage where 37%± exists and 35% is the maximum allowed.

Action:

Determining that this petition represented a material change from that submitted and heard previously, the Board voted that Fisher v. Dover did not apply and they would hear the current petition. The Board then voted to **grant** the petition as presented and advertised.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- The proposed addition, which has been reduced in size and setback relief from a previous submittal, will not alter the essential character of the neighborhood so that granting the variances will not be contrary to the public interest.
- The proposal will result in a minor increase over existing building coverage. While the proposed left side setback requires considerable relief, the spirit of the Ordinance will be observed as it will pull the addition back from the location on the property line of the existing structure.
- Substantial justice will be done as denying the revised request would be a detriment to the property owners with no corresponding benefit to the general public.
- An attractive addition, with the demonstrated support of several abutters, will not diminish the value of surrounding properties.
- The special conditions of the property include a long, narrow lot, with the existing main structure against the property line so that a hardship is created in the placement of any reasonable expansion.

5) Case #2-5

Petitioners: Robert R. & Elizabeth H. Macdonald

Property: 209 Gosport Road

Assessor Plan 224, Lot 10-12

Zoning District: Single Residence A

Description: Construction of a single-family residence.

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

1. An Equitable Waiver of Dimensional Requirements as defined in RSA 674:33-a to allow the existing foundation of a dwelling structure to remain with an 18.7'± right side yard setback where 20' is required.
2. A Variance from Section 10.521 to allow an 18.7'± right side yard setback where 20' is required.

Action:

The Board determined that it would consider the requests for an equitable waiver and a variance together and then voted to **grant** the equitable waiver and variance as presented and advertised.

Stipulations:

None.

Review Criteria:

The equitable waiver and variance were granted for the following reasons:

- A good faith error was made which was only discovered after the foundation had been completed and found to be in violation.
- The small setback deviation of 1% on a good-sized lot will be imperceptible so that the value of this and surrounding properties will not be diminished.

- The cost to reverse the error would be significant and so far outweigh any public benefit to be gained that it would be inequitable to require the violation to be corrected.
- A structure with the requested setback will not alter the essential character of the neighborhood so that granting the request will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as there would be no benefit to the general public in requiring the delay and extra expense of reconstructing the foundation.
- An imperceptible change will not diminish the value of surrounding properties.
- Literal enforcement of the Ordinance will result in unnecessary hardship. With the special condition of a foundation built with a minor deviation, there is no fair and substantial relationship between the general public purposes of the Ordinance and the specific application of the setback provision to the property.

6) Case #2-6

Petitioners: Portsmouth City Investment Realty Trust and Airgead Realty Trust, Paul & Christopher D. McInnis, Trustees, owners, Maplewood Ridge, LLC, applicant

Property: 678 Maplewood Avenue

Assessor Plan 220, Lots 89 & 90

Zoning District: Single Residence B

Description: Construct townhouses and an apartment building on two merged lots.

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

1. A Variance under Section 10.440 to allow multi-family dwellings containing 30 dwelling units where only a single family dwelling is allowed.
2. A Variance from Section 10.513 to allow two free-standing dwellings on a lot where only one free-standing dwelling is allowed.
3. A Variance from Section 10.521 to allow a lot area per dwelling unit of 2,341± s.f. where a minimum of 15,000 s.f. per dwelling unit is required.
4. A Variance from Section 10.521 to allow a structure height of 48'± where 35' is the maximum allowed.
5. A Variance from Section 10.1114.32 to allow parking where vehicles entering or leaving a parking space must pass over another space or require the moving of another vehicle.

Action:

A motion to grant variances requests #2, #5, and #6 **failed to pass** and those variances were **denied**. The Board also voted to **deny** variance requests #1, #3, and #4 as presented and advertised.

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant the variances were not met.
- The number of dwelling units and the lot area per dwelling unit would be contrary to the public interest and not observe the spirit of the Ordinance.
- While one of the purposes of the Board is to provide appropriate relief for rules that might be overly constricting as applied to individual properties, this request would require a significant change in the character of the two combined lots in this district.
- The special conditions of the property so that literal enforcement of the Ordinance would result in unnecessary hardship and the reasonableness of the proposed use were not adequately demonstrated.

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IV. OTHER BUSINESS

No other business was presented.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:45 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary