

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 May 24, 2016** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.
PRESENT: Chairman David Witham, Vice-Chairman David Rheume, Charles LeMay, Patrick Moretti, Christopher Mulligan; Arthur Parrott, Alternates: Jim Lee; Peter McDonell
ALSO PRESENT: Jane M. Ferrini Esq.
EXCUSED: Jeremiah Johnson

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V. PUBLIC HEARINGS – NEW BUSINESS (continued from the May 17, 2016 meeting)

- 1) Case #5-1
Petitioners: Benjamin M. & Amanda J. Goss
Property: 6 Pine Street
Assessor Plan 159, Lot 47
Zoning District: General Residence A
Description: Extend previously granted variance.
Requests: The Variances and/or Special Exceptions 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, 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, determining that the current request represented a modest increase in relief from the previously granted variances at the February 16, 2016 meeting.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons, brought forward from the February 16, 2016 meeting and incorporated in the decision made at this meeting.

- 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 #5-2

Petitioners: Jesse T. Lore & Melissa Jones

Property: 4 McDonough Street #1

Assessor Plan 138, Lot 25-1

Zoning District: General Residence C

Description: Add rear shed dormer. .

- Requests: The Variances and/or Special Exceptions 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, enlarged or structurally altered except in conformity with the Ordinance.
 2. A Variance from Section 10.521 to allow a 17'± rear yard setback where 20' is required.
 3. A Variance from Section 10.521 to allow a 0'± secondary front yard setback where 5' 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 dormer in the proposed location will not be contrary to the public interest and the spirit of the Ordinance will be observed as the essential character of the neighborhood will not be altered or the safety and welfare of the general public threatened.

- Substantial justice will be done as the loss to the applicant in not being allowed a modest expansion, if the petition were denied, would not be balanced by any corresponding benefit to the general public.
 - The proposed upward expansion will not encourage overcrowding or diminish light, air or access and would be tastefully designed and constructed so that the value of surrounding properties will not be diminished.
 - There are special conditions of the property which include an irregularly-shaped corner lot and the siting of the existing structure on the lot so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and its specific application to the property.
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3) Case #5-3

Petitioner: Jeffrey N. & Elizabeth H. Dyer

Property: 346 Union Street

Assessor Plan 134, Lot 57-1

Zoning District: General Residence A

Description: Extend right side deck with stairs and add 3½'± x 12'± shed

Requests: The Variances and/or Special Exceptions 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, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a 4.5'± right side yard setback for an accessory structure where 10' is required.
3. A Variance from Section 10.521 to allow 43.03%± 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 shed addition out of public view and expansion of a deck at this height will not alter the character of the neighborhood. The increase in building coverage over what is existing is modest and includes an open deck not affecting light and air.
- Substantial justice will be done by allowing the applicant to make full use of the property with no negative impact on the general public.
- The proposed changes are relatively minor and will not change the fundamental size of the structure so that the value of surrounding properties will not be diminished.
- The special conditions of the property include the dimensions of the existing house and its placement on a small lot. It is a reasonable use of the property to add a small shed on a one-story level and a deck extension proportionate to the size of the house.

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- 4) Case #5-4
Petitioners: Five Hundred Five Lafayette Road LLC
Property: 605 Lafayette Road
Assessor Plan 229, Lot 9
Zoning District: Gateway
Description: Replace one-story office building with two-story office/retail
Requests: The Variances and/or Special Exceptions 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 structure to be extended, reconstructed, or changed except in conformity with the Ordinance.
(Delete following two items):
 2. *A Variance from Section 10.1113.20 to allow required off-street parking spaces to be located between a principal building and a street.*
 3. *A Variance from Section 10.1124.10 to allow a loading area to be located between a front property line and a building or structure.*
(Add following item):
 2. A Variance from Section 10.1113.20 to allow off-street parking to be located in the required front yard.

Action:

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

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 structure will not impact the essential characteristics of the neighborhood or threaten the public safety.
- The spirit of the Ordinance will be observed as the space between the building and the street will essentially be free of parked vehicles.
- Substantial justice will be done as granting the variances will benefit the applicant with no corresponding detriment to the general public.
- With a use and structure compatible with surrounding retail uses, the value of surrounding properties will not be diminished.
- The special conditions of the property resulting in an unnecessary hardship include an irregularly shaped lot with access easements and a pre-existing nonconforming use.

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- 5) Case #5-5
Petitioners: 319 Vaughan Street Center LLC
Property: 319 Vaughan Street
Assessor Plan 124, Lot #9
Zoning District: CD5 and Downtown Overlay District
Description: Summer outdoor concert series.

- 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, Use #3.521 to allow a series of outdoor concerts in a district where the use is only allowed by Special Exception.
(Add following item):
 2. *A Variance under Section 10.592.1 to allow this use to be less than 500' from a CD4-L1 District.*

Action:

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

Stipulations:

None.

Other:

It was represented in the application and presentation that there would be a series of five concerts during the period beginning July 1, 2016 and ending August 31, 2016 (July 1, 15, & 29, 2016 and August 12 and 26, 2016.)

Review Criteria:

The Special Exception was granted for the following reasons:

- The standards as provided by the Ordinance for this use permitted by Special Exception are met.
- The nature of this use will present no hazard to the public or adjacent property from fire explosion or release of toxic materials.
- There will be no detriment to property values in the vicinity or change in the essential characteristics of the area from buildings, odors, smoke, noise or other pollutants. A limited number of events were requested, for a set duration of time.
- With the concerts taking place between 6:00 p.m. and 8:00 p.m., there will be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion. In-door performance activities take place year-round with no negative impact.
- There is nothing in the proposed use that would place an excessive demand on municipal services.
- With no change to the physical property, there will be no increase in storm water runoff onto adjacent property or streets.

The Variance 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 as the request is for a limited number of concerts of limited duration in a setting that is not in close proximity to residences. The size of the space is self-limiting as to the type of performances and numbers of attendees.
- Substantial justice will be done as there will be no detriment to the general public if the variance is granted.

- The value of surrounding properties will not be diminished by a limited number of concerts with no change in the appearance of the property or installation of temporary structures. Noise generated from the venue will be alleviated by the geographic high point that would help reduce any noise from the venue toward the residential district.
- This is a unique property with special characteristics and the proposed is a reasonable use of the property. A special condition is that the use is allowed by Special Exception but requires a location that can accommodate it.

6) Case #5-6

Petitioners: 334 Parrott Avenue, LLC

Property: 334 Parrott Avenue

Assessor Plan 129, Lot 37

Zoning District: General Residence A

Description: Construct attached garage and addition with second dwelling unit.

Requests: The Variances and/or Special Exceptions 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 6326.5± s.f. where 7,500 s.f. 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 the essential character of this neighborhood of single and multi-family units will not be altered.
- Substantial justice will be done by allowing the property owner to make full use of the property with no corresponding detriment to the general public.
- The value of surrounding properties will not be diminished by allowing a second dwelling unit which will improve the property.
- In a neighborhood with a number of multi-unit properties, this property is unique
- in being relatively large. While not entirely meeting the requirement, it is able to accommodate a second dwelling unit 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 request is a reasonable one relative to the overall characteristics of the neighborhood

7) Case #5-7

Petitioner: KLDay Realty LLC

Property: 2 Greenleaf Woods Drive, Ste 102

Assessor Plan 243, Lot 6-E102

Zoning District: Gateway

Description: Religious services in a building with office uses.

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, Use #3.11 to allow a religious place of assembly in a district where the use is only allowed by Special Exception.

Action:

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

Stipulations:

None.

Review Criteria:

The Special Exception was granted for the following reasons:

- The standards as provided by the Ordinance for this particular use permitted by Special Exception are met.
- A religious assembly use will not present a hazard to the public or adjacent properties from fire or release of toxic materials.
- There will be no detriment to property values or change in the essential characteristics of the neighborhood from pollutants, noise, other irritants, or outdoor storage of equipment or vehicles as the existing structure will not change and the use is compatible with the existing commercial uses.
- There will be no creation of a traffic safety hazard or increase in the level of traffic congestion as the hours of operation will be complimentary to those kept by neighboring entities and adequate parking is provided.
- Nothing in the use will create an excessive demand on municipal services and, with no change to the structure, there will be no increase in storm water runoff onto adjacent properties or streets.

(This petition was heard after Item 9), Case #5-9)

8) Case #5-8

Petitioners: CSS Realty Trust, Christopher D. McInnis, Trustee, owner, White Acquisitions LLC, applicant

Property: 200 McDonough Street

Assessor Plan 144, Lot 29

Zoning District: General Residence C

Description: Single family home on pre-existing nonconforming lot.

Requests: The Variances and/or Special Exceptions 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 or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.516.30 to allow a structure obstructing visibility to be erected on a corner lot between the heights of 2.5’ and 10’ above the edge of pavement grades within the area outlined in the Ordinance.
3. Variances from Section 10.521 to allow the following:
 - a) A secondary front yard setback of 1.2’± where 5’ is required;
 - b) A 1.8’ left side yard setback where 10’± is required; and
 - c) 44.4%± building coverage where 35% is the maximum allowed.

Action:

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

Review Criteria:

The petition was denied for the following reasons:

- All of the criteria necessary to grant the variances are not met.
- A structure of this size, with the proposed setbacks, would not be consistent with the essential character of the neighborhood and would be contrary to the public interest.
- The spirit of the Ordinance would not be observed by granting this degree of relief particularly when new construction provides an opportunity for greater compliance.

9) Case #5-9

Petitioners: Cole BJ Portfolio II LLC & BJ’s Wholesale Prop Tax DPT C2

Property: 1811 (1801) Woodbury Avenue

Assessor Plan 215, Lot 14

Zoning District: General Business

Description: Install second free-standing sign.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1240 to allow a second free-standing sign on a lot.

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 as the changes, will be made to an existing sign.
- The spirit of the Ordinance will be observed as the sign was in compliance prior to Ordinance changes and has not changed its location or purpose.
- Substantial justice will be done as granting the variance will result in a benefit to the applicant with no corresponding detriment to the general public.
- The value of surrounding properties will not be diminished by a change to an existing sign in a commercial area.
- The special conditions of the property creating a hardship are that there are two different operations on the property both needing distinguishing signs so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to the property.

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VI. OTHER BUSINESS

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VII. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:45 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary