

**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 20, 2016** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

**PRESENT:** Chairman David Rheaume, Vice Chairman Charles LeMay, Jeremiah Johnson, Patrick Moretti, Christopher Mulligan, Arthur Parrott. Alternates John Formella, Peter McDonell

**EXCUSED:** Jim Lee

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**I. ELECTION OF OFFICERS**

It was moved, seconded and passed by unanimous voice vote to re-elect David Rheaume as Chairman and Charles LeMay as Vice-Chairman.

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**II. OTHER BUSINESS**

A) Board of Adjustment Rules & Regulations (*This item was postponed from the November 15, 2016 meeting.*)

It was moved, seconded and passed by unanimous voice vote to adopt the following changes (*in italics*) to the Board of Adjustment Rules & Regulations:

1. Rule VI.12. (Regarding the role of Alternate Members). The first sentence is amended to read, “Alternate Board member(s) shall sit with all other Board members during the meetings *and may participate through the close of the public hearing. After the close of the public hearing, an Alternate shall only participate in petitions when they have been designated to do so by the Chairman.*”
2. Rule VIII.2. (Regarding time limits for speakers). Amend the second line to read, “Absent extenuating circumstances, *fifteen (15) minutes* for the presentation from the applicant and *five (5) minutes* per person during public comment shall be considered a

reasonable time limit. (The previous specified times were ten minutes and three minutes respectively).

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**III. APPROVAL OF MINUTES**

- A) October 11, 2016
- B) November 15, 2016

The Minutes for October 11 and November 15, 2016 were approved with minor changes.

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**IV. OLD BUSINESS**

- 1) Request for Rehearing for property located at 149 Cass St.

Action:

The Board voted to **deny** the request for rehearing determining that the applicant had a thorough hearing. The Board carefully considered the appeal and made no errors in the conduct of the hearing or in the application of the law. The Board additionally determined that no new evidence had been provided that had not been available at the time of the initial hearing.

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**V. PUBLIC HEARINGS – NEW BUSINESS**

- 1) Case #12-1
  - Petitioners: Benjamin N. Otis & Kristin A. Trapane Otis
  - Property: 46 McNabb Court
  - Assessor Plan: 112, Lot 59
  - Zoning District: General Residence A
  - Description: Add third floor dormers.
  - 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 12’8” ± primary front yard and a 6’8” ± secondary front yard where 15’ is required for each.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- Raising dormers on the existing home without changing the footprint will not be contrary to the public interest.
  - The dormers will enhance the home without interfering with the light or air of neighboring properties so that the spirit of the Ordinance will be observed.
  - Substantial justice will be done by allowing the applicant to extend their enjoyment of the property with no harm to the general public.
  - The value of surrounding properties will not be diminished by a minimal change to improve a well-established property in a well-established neighborhood.
  - Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property which include a corner lot with a primary and secondary front yard and the siting of the existing home to the side of the property so that the dormers could not be placed without requiring a variance.
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2) Case #12-2

Petitioners: Finnian & Company, owner, Jay & Amanda McSharry, applicants

Property: 871 Middle Road

Assessor Plan: 232, Lot 119

Zoning District: Single Residence B

Description: Demolish rear garage and barn and construct single-family dwelling.

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 10.513 to allow a second free-standing dwelling on a lot where only one free-standing dwelling is allowed.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 6,879± s.f. where 15,000 s.f. is required.

Action:

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

Review Criteria:

The petition was denied for the following reasons:

- In an area of single family homes with one structure per lot and similar lot and home sizes, adding a second full size home would alter the essential character of the neighborhood so that granting the variances would be contrary to the public interest and would not observe the spirit of the ordinance.
- Substantial justice would not be done as the benefit to the applicant, if the petition were granted, would be outweighed by the detriment to the general public as represented by the neighboring property owners.

- Granting the variances would diminish the value of surrounding properties.
  - Literal enforcement of the ordinance would not result in unnecessary hardship as the property is and has been reasonably used as a single family residence or single-structure duplex in accordance with the ordinance or authorized variance for a number of years.
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3) Case #12-3

Petitioners: Thomas E. Erickson & Ellen M. Pongrace, owners and Chris and Kristin Martin, applicants

Property: 27 Sewall Road

Assessor Plan: 170, Lot 12

Zoning District: Single Residence B

Description: Add front and rear dormers and rear deck.

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 22'± front yard for the dormer where 30' is required.
3. A Variance from Section 10.521 to allow a 9'± left side yard for the dormer where 10' is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The proposed expansion in the existing footprint will not create a mass or scale that would 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.
  - Substantial justice will be done as the hardship to the applicant if the petition were denied would not be balanced by any benefit to the general public.
  - A tasteful and appropriate update of a modest dwelling will have a positive impact on neighboring property values.
  - The special condition of the property creating an unnecessary hardship is that the house is in an existing nonconforming location relative to the setbacks. There is sufficient light, air and emergency access with the house in this location so that there is no fair and substantial relationship between the purposes of the setback requirements in the ordinance and their specific application to the property.
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- 4) Case #12-4  
Petitioner: Merton Alan Investments, LLC  
Property: 30 Cate Street (at Bartlett Street)  
Assessor Plan: 165, Lot 1  
Zoning District: Character District 4-W  
Description: Construct 26 residential units within multi-dwelling unit rowhouses.  
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 10.5A41.10B to allow a 109'± secondary front yard where a 15' secondary front yard is the maximum allowed.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- While the character of the neighborhood will be modified to a certain extent, it will not be injurious to public rights or the spirit of the ordinance. The proposal will enhance an under-utilized property in a way that contributes to the vision and overall redevelopment plan for the west end of the City.
- Substantial justice will be done as the loss to the applicant by requiring adherence to the setback in this character district would not be balanced by a corresponding benefit to the general public. In this location, placing a structure only 15' from the street could create a hazard to the public given its proximity to the railroad right-of-way.
- The substantial investment being made in the property will increase its value and those of surrounding properties.
- The unique conditions of the property resulting in an unnecessary hardship include its unusual topography, its location adjacent to the railroad right-of-way and its long, narrow shape so that there is no fair and substantial relationship between the purposes of the ordinance and their application to this property. The proposed use is a reasonable one which is permitted in this district.

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- 5) Case #12-5  
Petitioners: Pauline Dowd, owner, Tuck Realty Corporation, applicant  
Property: 288 Peverly Hill Road  
Assessor Plan: 255, Lot 8  
Zoning District: Single Residence A and Single Residence B  
Description: Open Space Planned Unit Development with 9 townhouses.  
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 10.725.31 to allow 60.15'± of street frontage where 100' is required.

Action:

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

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. Allowing 60'± of frontage where 100' is required will not alter the essential character of the neighborhood nor will the reduced frontage threaten the public health, safety or welfare. This frontage was set by a previous action of the Planning Board with the intent of facilitating access to the rear portion of the property.
- Substantial justice will be done as the gain to the applicant will not be balanced by any corresponding loss to the public due to a reduction in frontage.
- There is no evidence that the value of surrounding properties will be diminished and there was testimony from a real estate professional that the property values would not be negatively affected. The proposal is beneficial from an open space perspective and an Open Space-Planned Unit Development is an allowed use in this district.
- Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship due to the unique shape of the long and narrow lot with a set amount of frontage on Peverly Hill Road so that the property cannot reasonably be developed without a variance. The proposed use is a reasonable one which is permitted in this district.

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**VI. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 10:20 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary