

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 April 18, 2017** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheume, Vice Chairman Charles LeMay, Jeremiah Johnson, Jim Lee, Patrick Moretti, Christopher Mulligan Arthur Parrott, Alternates Peter McDonell, John Formella,

EXCUSED: Jim Lee, Patrick Moretti

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I. APPROVAL OF MINUTES

A) March 21, 2017

The Minutes were approved with minor amendments by unanimous vote.

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II. PUBLIC HEARINGS – NEW BUSINESS

1) Case 4-1

Petitioner: Mark McNally

Property: 21 Brewster Street

Assessor Plan: Map 138, Lot 11

Zoning District: General Residence C

Description: Expand a previously approved 6-bay, 6-car garage to accommodate 12 cars with a lift system.

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

1. Variances from Section 10.521 to allow the following: a) a 1.5'± right side yard where 10' is required; b) a 0.5'± rear yard where 20' is required; c) 54.1±% building coverage where 35% is allowed; and d) 4.6±% open space where 20% is required;
2. A Variance from Section 10.1114.32(a) to allow vehicles to enter or leave parking spaces by passing over another space or requiring the movement of another vehicle;
3. A Variance from Section 10.1114.21 to allow upper lift position parking spaces that are less than the required 19' in depth.

Action:

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

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. While slightly less conforming dimensionally from the previously approved plan, the proposal will improve maneuverability. The proposed change is a result of feedback from the Planning Board’s Technical Advisory Committee, representing the public interest, and should improve the public health, safety and welfare.
- Granting the variances will result in substantial justice as the improvements, which have the support of the neighborhood association, will benefit the general public as well as the applicant.
- Improving the parking with a technological innovation and placing the parking of all vehicles under cover will have a positive effect on the value of surrounding properties.
- The size of the lot and its topography are special conditions of the property that distinguish it from others in the area resulting in an unnecessary hardship. Due to these conditions, there is no fair and substantial relationship between the purposes of the affected ordinance requirements and their application to this property, particularly as the new design which requires the relief is in response to a requirement of the Technical Advisory Committee. Additionally, a residential use in a residential zone is a reasonable use of the property.

2) Case 4-2

Petitioners: Gary & Aerial Sillanpaa
 Property: 4 Sylvester Street
 Assessor Plan: Map 232, Lot 36
 Zoning District: Single Residence B
 Description: Keep 4 chickens in a 4’ x 6’ coop.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including a Special Exception under Section 10.440, Use #17.20 to allow the keeping of farm animals in a district where it is only allowed by Special Exception.

Action:

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

Stipulations:

- The number of chickens will be limited to four, with no roosters.

Review Criteria:

The petition was granted for the following reasons:

- The standards as provided by the Ordinance for this particular use permitted by Special Exception are met by this proposal.
- This use will present no hazard to the public or adjacent property from fire explosion or release of toxic materials.
- A small chicken coop area, to be maintained as presented, will not result in a detriment to property values in the vicinity or change in the essential characteristics of the area from

buildings, accessways, odors, smoke or other pollutants, unsightly outdoor storage or other irritants.

- Nothing in the use will result in creation of a traffic safety hazard or increase in the level of traffic congestion in the vicinity.
- There is nothing in the proposed use that will result in additional demand on municipal services such as water, sewer, police and fire protection or significant increase in storm water runoff onto adjacent property or streets.

3) Case 4-3

Petitioners: Peter N. Carey Revocable Living Trust, P. N. Carey & M-J Monusky, Trustees

Property: 39 Mount Vernon Street

Assessor Plan: Map 111, Lot 32

Zoning District: General Residence B

Description: Install two free-standing condensers

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

1. Variances from Section 10.521 to allow a right side yard and a rear yard of less than 3’ where 10’ is required for each;
2. A Variance from Section 10.521 to allow 47.5±% building coverage where 30% is the maximum allowed.
3. A Variance from Section 10.1332.20 to allow a sound pressure level at the lot line of the sender premises that exceeds the maximum allowed.

Action:

The Board voted to **grant** the petition as presented and advertised, **amended** to allow a reduced rear yard of 4” for request #1. The petition was granted with the following stipulation:

Stipulation:

- Due to the decreased setbacks, the sound level requirement specified in Section 10.1332.20 of the Zoning Ordinance will not be considered met at the “lot line” of the ‘sender’ premises,” but must be met at distances from the originating unit equal to the side and rear setback requirements set out in Section 10.515.14.

Review Criteria:

The petition was granted for the following reasons:

- Improving the property by installing condensers will not change the 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 there will be a balance of sound protection for the neighbors while the property owners will have a more comfortable home environment.
- The value of surrounding properties will not be diminished by increasing the value of this property.
- The size of the property and the siting of the home on the lot create a hardship as the condensers cannot be placed in their best operational location without requiring variances. The installation of condensers is a reasonable use.

4) Case 4-4

Petitioner: Richard M. & Francoise Kinney c/o the Connable Office Inc
 Property: 65 Broad Street
 Assessor Plan: Map 129, Lot 11
 Zoning District: General Residence A
 Description: Construct a 1½ story right-side addition and front steps.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. Variances from Section 10.512 to allow the following: a) a 7’2” ± primary front yard where 15’ is required; and b) a 4’4” ± right side yard where 10’ is required.

Action:

The Board voted to **grant** the petition as presented and advertised, noting that the variance for a 7’2” primary front yard was not needed.

Review Criteria:

The petition for a variance to allow a 4’4”± right side yard where 10’ is required 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 addition to one of the smaller homes in the area will not alter the essential character of the neighborhood. The removal of the double gable is a positive change and there is nothing in the proposal that will threaten the public health, safety or welfare.
- Substantial justice will be done as allowing a reasonable expansion will benefit the applicant with no corresponding detriment to the general public.
- As presented, this is essentially a vertical expansion of an existing nonconformance and an upgrade to the property so that the value of surrounding properties will not be diminished.
- The special conditions of the property creating an unnecessary hardship include the current siting of the house on the lot, with a driveway to the left of the house, so that placement of a reasonable expansion requires a variance.

5) Case 4-5

Petitioners: Jesse M. & Sarah L. Lynch
 Property: 19 Sunset Road
 Assessor Plan: Map 153, Lot 19
 Zoning District: Single Residence B
 Description: Reconstruct an existing garage in the same footprint with an expansion in height.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.571 to allow an accessory structure to be located in the required front yard and closer to the street than the principal structure.
2. A Variance from Section 10.573.20 to allow a 7’± rear yard where 19’ is required.
3. A Variance from Section. 10.321 to allow a lawful nonconforming building to be reconstructed or enlarged without conforming to the requirements of the Ordinance.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- Reconstructing and modernizing a garage within the existing footprint will not alter the character of the neighborhood or threaten the health, safety or welfare of the public 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 the loss to the applicant by denying the petition and enforcing the requirements for the reconstructed garage would not be counterbalanced by any gain to the general public.
- A modest, updated, code compliant structure is proposed that will have a positive effect on the value of surrounding properties. No objections from neighbors have been raised.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the unique conditions of the property which include an existing nonconformity, challenging topography and its location on a corner lot with the existing garage fronting on Boss Avenue and the main entrance to the house on Sunset Avenue.

Due to the special conditions, there is no fair and substantial relationship between the purpose of the setback requirements and their application to this property. A residential use in a residential zone is a reasonable use of the property.

6) Case 4-6

Petitioners: Andrew Marks and Valerie Miller

Property: 1953 Lafayette Road

Assessor Plan: Map 268, Lot 7

Zoning District: Single Residence B

Description: Conduct palm and tarot readings and install a free-standing sign.

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

1. A Special Exception under Section 10.440, Use # 19.22 to allow a Home Occupation II in a district where it is only allowed by Special Exception.
2. A Variance to allow a 15± s.f. free-standing sign in a district where free-standing signs are not allowed.

Action:

The Board voted to **grant** the special exception and, in a separate vote, **deny** the variance both as presented and advertised.

Review Criteria:

The special exception was granted for the following reasons:

- The proposed Home Occupation II is permitted by special exception in this zone.
- The nature of the proposal will not present any hazard to the public or adjacent property from potential 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 neighborhood from buildings, parking areas, or accessways. Those are all existing and won't change. There will be no odors, smoke, noise, other pollutants or irritants, or unsightly outdoor storage resulting from the proposed use.

- There will be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion. As noted, the property is on a major thoroughfare with substantial traffic and the applicant has made modifications to the driveway to provide greater traffic safety.
- With the nature of this business there will be no excessive demand on municipal services, including water, sewer, waste disposal, police and fire protection.
- With no change in the existing built environment, so there will be no increase in storm water runoff onto adjacent property or streets.

The variance was denied for the following reasons:

- All the criteria necessary to grant a variance were not met.
- The sign as proposed would change the special feeling of this residential area so that the spirit of the ordinance would not be observed.
- In the substantial justice balance test, this sign in a residential zone would be inappropriate and the negative impact on the abutting residential properties would outweigh any benefit the applicant might receive in generating clients from transient traffic.
- It was not demonstrated that there is a unique circumstance associated with the physical property, in relation to other properties in the immediate vicinity that are essentially the same, that would create an unnecessary hardship and justify a variance. There are other means available to the applicant to obtain new clients that are potentially more effective than a sign in this location to attract drop-in business.

7) Case 4-7

Petitioners: Weeks Realty Trust, Kaley E. Weeks, Trustee and Bursaws Pantry, LLC, owners and Plan Ahead, Inc. applicant

Property: 3110 and 3020 Lafayette Road

Assessor Plan: Map 292, Lots 151-1, 151-2 and 152

Zoning District: Single Residence B (Lots 151-1&2) and Mixed Residential Business (Lot 152)

Description: Construct a retail facility of up to 15,000 s.f. with a drive-through window and lanes.

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

1. A Variance or Special Exception under Section 10.440 to allow a retail use in districts where it is not allowed or only allowed by Special Exception.
2. A Variance from Section 10.1113.20 to allow off-street parking to be located in any front yard or between a principal building and a street.
3. A Variance from Section 10.835.31 to permit a drive-through facility to be located within 100’ of a residential district and within 50’ of a lot line.
4. A Variance from Section 10.835.32 to permit drive-through lanes to be located within 50’ of a residential district and within 30’ of a lot line.
5. A Variance to allow a building, structure or parking area to be located 65’± from the centerline of Lafayette Road where 80’ is required.

Action:

The Board voted to **postpone** the petition to the May meeting at the request of the applicant.

8) Case 4-8

- Petitioner: Deer Street Associates
 Property: 163 Deer Street (Lot/Building 4)
 Assessor Plan: Map 125, Lot 17-2
 Zoning District: Character District 5 and the Downtown Overlay District
 Description: Install a drive-through facility in connection with the construction of a four-story mixed use structure.
- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance under Section 10.440, Use #19.40 to allow a drive-through facility as an accessory use.
 2. A Variance from Section 10.516.20 to allow a 5'± rear yard adjoining a railroad right-of-way where 15' is required.
 3. A Variance from 10.5A41.10D to allow a front lot line buildout of 66%± where 80% is required.
 4. A Variance from Section 10.835.31 to allow an outdoor service facility (ATM) 49.7'± from the rear lot line and 48'± from the front lot line where 50' is required for each.
 5. A Variance from Section 10.835.32 to allow a drive-through bypass lane 11.3'± from a lot line where 30' is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- As part of a complete development encompassing several lots, and in an area of previously approved projects that are similar, the proposals for this property will not alter the essential character of the neighborhood such that granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. This lot currently contains a bank and some of the variances are directly related to continuing that use. The proximity to a railroad is offset by the construction easement on the railroad property and physical restraints on future use of the railroad property.
- Substantial justice will be done by allowing this project the flexibility to continue through other land use boards and their reviews while allowing setbacks that will not harm the general public which represent the maximum possible size for a structure.
- A new structure similar to others existing or approved for the area will not diminish the value of surrounding properties.
- With the constraints placed on the property by the proximity to the railroad tracks, the location of Deer Street, the roadway layout needed to support other proposed structures, and the planned City parking garage nearby, literal enforcement of the ordinance would result in unnecessary hardship so that there is no fair and substantial relationship between the general purposes of the ordinance and their specific application to the property. The uses proposed are reasonable and will allow the project to move forward through the design review process which will solidify other aspects of the overall mass and scale of the proposed structure.

9) Case 4-9

Petitioner: S&G Realty
 Property: Chevrolet Avenue (number not assigned)
 Assessor Plan: Map 147, Lot 30
 Zoning District: General Residence C
 Description: Parking for three townhouses
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.1113.20 to allow off-street parking to be located in any front yard or between a principal building and a street.
2. A Variance from Section 10.1114.32 to allow vehicles to enter and leave parking spaces by passing over another parking space or requiring the moving of another vehicle, and to leave the parking area by backing into a public street.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The parking for this project was presented in general when the previous variance for lot area was granted by the Board. The project in general, including the proposed parking will not alter the essential character of the neighborhood so that granting the proposed variances will not be contrary to the public interest and the spirit of the ordinance will be observed.
- As it was presented that there will be a garage for each unit along with adequate maneuvering area, substantial justice will be done by granting variances that will benefit the applicant with no corresponding harm to the general public.
- In concert with the previously approved project, the proposed parking will not diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the L-shape of the lot which forces development to the front of the lot and impacting where dwellings can be sited. These units function as single family residences with regard to parking, for which stacked parking is allowed, so that there is no fair and substantial relationship between the general purposes of the ordinance and their specific application to this property. A residential use in a residential area is a reasonable one.

10) Case 4-10

Petitioners: Lauren H. Wool and Jeffrey Bower
 Property: 53 Summit Avenue
 Assessor Plan: Map 230, Lot 14
 Zoning District: Single Residence B
 Description: Construct an 8'± x 8'± mud room with a 4'± x 4'± covered front entry.
 Requests: 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 an 11'8" ± primary front yard where 30' is required.

- 2. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Action:

The Board voted to **postpone** the petition to a reconvened meeting on April 25, 2017 to allow adequate time to hear the request.

11) Case 4-11

Petitioners: Colman C. Garland & North Woods Revocable Trust, John D. Rust, Trustee & Rust Family Trust, Libby K Rust, Trustee, owners, & David Calkins, applicant

Property: Off Moffat Street

Assessor Plan: Map 243, Lots 25 through 28

Zoning District: Single Residence B

Description: Provide less than the required frontage while creating two residential lots from four existing lots.

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

- 1. Variance from Section 10.521 to allow 0'± continuous frontage where 100' is required.

Action:

The Board voted to **postpone** the petition to a reconvened meeting on April 25, 2017 to allow adequate time to hear the request.

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III. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:20 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary