

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 18, 2018** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheume, Vice Chairman Jeremiah Johnson, Arthur Parrott, John Formella, Peter McDonell, Christopher Mulligan, Alternate Chase Hagaman

EXCUSED: Jim Lee, Alternate Phyllis Eldridge

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I. ELECTION OF OFFICERS

It was moved, seconded and passed by unanimous voice vote to reelect David Rheume as Chairman and Jeremiah Johnson as Vice-Chairman to serve until the next Election of Officers.

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II. APPROVAL OF MINUTES

A) November 20, 2018

Action: The Board voted to accept the Minutes of the November 20, 2018 meeting as amended.

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III. PUBLIC HEARINGS - OLD BUSINESS

A) Case 11-1

Petitioners: Ryan and Karen Baker

Property: 137 Wibird Street

Assessor Plan: Map 134, Lot 48

Zoning District: General Residence A

Description: Construct semi-attached garage.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.521 to allow the following:

- a) a 2.5' left side yard where 10' is required; and
 - b) 27%± building coverage where 25% is the maximum allowed.
- (This petition was tabled at the November 20, 2018 meeting and has been revised with the changes in italics above.*

Action:

The Board voted to remove the application from the table and, after considering the revisions, voted to **grant** the revised petition as presented and advertised with the following stipulation:

Stipulation:

- The left side yard is granted as 2.5' plus or minus a maximum of 6" to allow for changes in construction circumstances that would determine the final setback.

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. A modest proposal in a well-established neighborhood, with similar structures close to the property line, will not alter the essential character of the neighborhood nor threaten the public health safety or welfare.
- Substantial justice will be done as there will be a clear benefit to the property owner in granting the petition with no resulting harm to the general public.
- The value of surrounding properties will not be diminished. The proposed will be a modest garage, not over-built for the lot and in a logical location, which will blend with the existing structure on the lot and with the neighborhood.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include the placement of an existing larger house on a small lot so that the only logical location for a new garage requires relief. Adding a garage is a reasonable use of the property.

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IV. PUBLIC HEARINGS - NEW BUSINESS

1) Case 12-1

Petitioners: Jon R. & Karin E. Allard
 Property: 24 Burkitt Street
 Assessor Plan: Map 160, Lot 23
 Zoning District: General Residence A
 Description: Replace an existing rear porch with a 10'± x 22'± enclosed porch and stairs.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
 a) From Section 10.521 to allow a 5'± left side yard where 10' is required; and

- b) From Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

Action:

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

Stipulation:

- The left side yard setback may be adjusted as necessary to ensure that the proposed stairs and landing meet the minimum dimensions necessary to comply with the Building Code.

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 replacing the porch will not affect the essential character of the neighborhood.
- Substantial justice will be done as the loss to the applicant if required to strictly adhere to the side yard requirement would far outweigh any corresponding benefit to the general public.
- The new construction should enhance property values in the neighborhood and the most directly affect abutter expressed support for the project.
- Literal enforcement of the ordinance would result in unnecessary hardship due to a special distinguishing condition of the property on which the existing house and porch are already nonconforming. The proposal is to replace the existing deficient porch with a modern structure and a better access point and the additional encroachment is not significant. A residential use in a residential zone is a reasonable use of the property.

2) Case 12-2

Petitioners: Jason R. and Natasha A. Karlin
 Property: 88 Lincoln Avenue
 Assessor Plan: Map 113, Lot 12
 Zoning District: General Residence A
 Description: Replace a detached garage with a garage plus attic and construct a two and a half story rear addition.

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

- a) from Section 10.521 to allow a rear yard of 3’7” ± where 20’ is required;
- b) from Section 10.521 to allow 35%± building coverage where 25% is the maximum allowed; and
- c) from Section 10.321 to allow a lawful nonconforming structure to be extended, 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:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. While the proposed addition is substantial, the size will not alter the essential character of the neighborhood and there is nothing in the proposal that will threaten the public health, safety or welfare.
- Substantial justice will be done as granting the petition will benefit the applicant by providing a reasonable amount of additional living space with no detriment to the general public.
- The value of surrounding properties will not be diminished by a new structure and a number of neighbors have indicated support for the project.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include the impact of setbacks on a corner lot and the siting of the existing building, which the applicant has mitigated by moving the mass of the addition toward the center of the property. With these conditions, there is no fair and substantial relationship between the general public purposes of the ordinance provisions as to setback and building coverage requirements and their specific application to the property. The proposed use in a residential area is a reasonable one.

3) Case 12-3

Petitioners: Jennifer & Dylan Thomas

Property: 279 Wibird Street

Assessor Plan: Map 133, Lot 35

Zoning District: General Residence A

Description: Construct a mudroom and 24'± x 26'± garage with second floor living space.

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

- a) from Section 10.521 to allow a right side yard of 5'3" ± where 10' is required;
- b) from Section 10.521 to allow 26% building coverage; and
- c) from Section 10.321 to allow a nonconforming structure to be extended, 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:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. The essential residential character of the neighborhood will not be changed by what is proposed, nor will the public health, safety or welfare be threatened by the requested building coverage increase and setback relief.
- Substantial justice will be done as the harm to the applicant by requiring strict adherence to the ordinance would outweigh any possible detriment to the general public.
- Granting the variances and constructing an attractive addition will not diminish the value of surrounding properties and the most immediate abutter will not be significantly impacted.
- A hardship is created in achieving full use of the property due to the special conditions of the lot which include a large structure on a narrow lot and lot lines angled to create issues in access and egress to the garage with an appropriate turning radius. The proposal represents a minimal increase in building coverage and a slight improvement over the existing setback. Removal of the existing porch will also increase access to sufficient light and air, one of the purposes of setback requirements. For these reasons there is no fair and substantial relationship between the purposes of the ordinance provisions and their specific application to this property.

4) Case 12-4

Petitioner: Margot L. Thompson

Property: 57 Salter Street

Assessor Plan: Map 102, Lot 32

Zoning District: Waterfront Business

Description: Use an existing structure as a dwelling unit, relocating stairs, and adding a dormer and two 19± s.f. entrance overhangs.

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

- a) from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance;
- b) from Section 10.440, Use #1.10 to allow a single family dwelling where the use is not allowed in this district;
and variances from Section 10.311 and Section 10.531 to allow the following:
 - c) a lot area of 11,327± s.f. where 20,000 s.f. is required;
 - d) 67'± of continuous street frontage where 100' is required;
 - e) a 4.1'± front yard where 30' is required; and
 - f) a 0'± side yard 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:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. With no footprint change to the property, the essential character of the neighborhood will not altered, nor will the public health, safety or welfare be threatened.
- Substantial justice will be done as the gain to the applicant in granting the variances will not result in a corresponding detriment to the general public from a modest amount of living space added to the property.
- The small enhancements to the existing structure will not diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. These include its location at the end of a dead-end street bordered on two sides by water. This is a fairly large property in a district in which many properties don't fit the idealized waterfront business concept due to constraints such as access on narrow streets so that there is no fair and substantial relationship between the purposes of the uses permitted in the zone and their application to the property and the proposed use is a reasonable one.

5) Case 12-5

Petitioner: 56 Middle St LLC

Property: 56 Middle Street

Assessor Plan: Map 126, Lot 19

Zoning Districts: Character District 4L-1 and the Downtown Overlay District

Description: Restore the property to a single family home,

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

- a) from Section 10.642 and 10.5A32 to allow a residential principal use on the ground floor of a building; and
- b) from 10.5A41.10A to allow a 1.7'± rear yard where 5' is required.
- c) from Section 10.321 to allow a lawful nonconforming structure to be extended, 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:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. The required setback relief covers only a short distance along a lengthy property line. Allowing a residential use on the first floor, with nearby

residential uses, will not alter the essential character of the neighborhood nor threaten the public’s health, safety, or welfare.

- Substantial justice will be done as the loss to the applicant if the petition were denied would not be outweighed by any benefit to the general public.
- Restoring the property to a single family home will not diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property, which include the fact that it is on the periphery of the Downtown Overlay District and its long historical use as a single family home. Granting the variances will restore the property to its original purpose so that there is no fair and substantial relationship between the purpose of the use limitation and its specific application to the property. With nearby similar properties, this is a reasonable use.

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V. OTHER BUSINESS

No other business was presented.

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VI. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:40 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary