

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 February 20, 2019** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.
**Change from customary meeting day.*

PRESENT: Chairman David Rheame, Vice Chairman Jeremiah Johnson, Jim Lee, Christopher Mulligan, Arthur Parrott, Peter McDonell, Alternate Phyllis Eldridge
Alternate Chase Hagaman

EXCUSED: John Formella

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I. APPROVAL OF MINUTES

A) January 15, 2019

Action: The Board voted to **accept** the Minutes of the January 15, 2019 meeting as presented.

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II. OLD BUSINESS

A) Request for Extension regarding 686 Maplewood Avenue.

Action:

The Board voted to **grant** a one-year extension of the variance and special exception, granted at its meeting on February 21, 2017, through February 21, 2020.

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III. PUBLIC HEARINGS – OLD BUSINESS

2) Case 1-2

Petitioners: Katherine Balliet & Carol Hollings, owners and Lisa Koppelman and Nicholas Cracknell, applicants

Property: 11 Meeting House Hill Road

Assessor Plan: Map 103, Lot 59

Zoning District: General Residence B

Description: Move one existing dwelling unit to a garage with added second story and a connector to existing home.

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 48%± building coverage where 30% is the maximum permitted;
- b) from Section 10.521 to allow a 5.5’± rear yard where 25’ is required; 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 character of the neighborhood, a densely built area featuring both smaller and larger buildings than those proposed, will not be altered. The tasteful design is for a two-unit property that would replace a contextually inappropriate secondary building in poor condition and work well with surrounding properties. The property’s corner location will allow for light and air.
- Granting the variances will result in substantial justice. The two units will retain the same use, the property will be upgraded, the garage structure will be larger but not excessive and some parking will be removed from the street. The new structure is sufficiently set back from the corner of the lot so as to provide adequate sightlines for street traffic, especially considering the slow speed of traffic in the neighborhood. There is no public interest that outweighs the benefits to the property owner.
- The value of surrounding properties will not be diminished as the property will be upgraded with the changes not overbearing and the provision of off-street parking a benefit to the neighborhood. The project will also be reviewed by the Historic District Commission for effects on adjacent properties when considering massing and volume.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. These include that it is a larger lot for the existing structures, located on a corner in a densely packed neighborhood having both primary and secondary front yards. Additionally, the nature of the lot relative to some of the neighboring properties and an unusual property line that drives the configuration of structures on the lot are additional characteristics leading to a hardship. Due to these special conditions, there is no fair and substantial relationship between the general public purposes of the ordinance provision and their specific application to the property. The proposed use is reasonable, being a residential use in a residential neighborhood.

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IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case 2-1

Petitioners: Frank AJ Veneroso and Roslyn Weems
Property: 53 Austin Street
Assessor Plan: Map 127, Lot 26
Zoning District: General Residence C
Description: Proposed Inn
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from the following:
a) from Section 10.440, Use #10.30 to allow an Inn in a district where the use is not permitted in the district.

Action:

The Board voted to **table** the petition to the March meeting so that the applicants could work with the Planning Department to provide further information and clarification.

2) Case 2-2

Petitioners: Keith Anthony Kohler and Nicole Gabrielle Lapierre
Property: 44 Rock Street
Assessor Plan: Map 138, Lot 19
Zoning District: General Residence C
Description: Demolish garage and deck and add 2 ½ story 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 5'± left side yard where 10' is required;
b) from Section 10.521 to allow 37%± building coverage where 35% is the maximum allowed; and
c) from Section 10.321 to allow a nonconforming structure or building to be expanded, 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. This is a tasteful project which will not alter the essential character of this dense residential neighborhood. There will also be no threat to the public health, safety or welfare and there will be a net benefit from parking that will be shifted off the street.
- Substantial justice will be done as the loss to the applicant, if the petition, would not be outweighed by any gain to the public. The request is a minor increase over the already nonconforming lot coverage and the side setback will be improved.

- The value of surrounding properties will not be diminished as a substantial and unattractive accessory structure will be replaced by one with a tasteful design. The investment will improve the neighborhood and enhance property values.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property which include its corner lot location, an existing built environment that is nonconforming, and an unusually designed small house. Because of the special conditions, there is no fair and substantial relationship between the general public purposes of the setback and lot coverage ordinances and their specific application to the property. The proposed is a reasonable use in a residential zone.

3) Case 2-3

Petitioner: Stephen G. Bucklin

Property: 322 Islington Street

Assessor Plan: Map 145, Lot 3

Zoning District: Character District 4-Limited-2 District.

Description: Move existing carriage house to a new foundation and add one-story connector to the existing house.

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

- a) from Section 10.5A41.10A to allow a 1'± rear yard where 5' is required;
- b) from Section 10.5A41.10A to allow a 2'± left side yard where 5' is the minimum required; and
- c) from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance.

Action:

Due to the length of the meeting, the Board voted to **postpone** the petition to a continued meeting on February 26, 2019.

4) Case 2-4

Petitioner: Carrie Richesson

Property: 101 Martha Terrace

Assessor Plan: Map 283, Lot 5

Zoning District: Single Residence A

Description: Construct a 20'± x 24'± garage attached to the existing house by a 10'± x 10'± mudroom.

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

- a) a 12'± secondary front yard where 30' is required; and
- b) 16%± building coverage where 10% is the maximum allowed.

Action:

Due to the length of the meeting, the Board voted to **postpone** the petition to a continued meeting on February 26, 2019.

5) Case 2-5

Petitioners: Ryan P. and Jennifer L. Smith
Property: 7 Laurel Court
Assessor Plan: Map 212, Lot 191
Zoning District: General Residence B
Description: Equitable Waiver for rear and front yard encroachments.
Requests: An Equitable Waiver under RSA 674:33-a to allow a previously constructed bulkhead with a 22'± rear yard and a previously constructed bulkhead with a 24.7'± rear yard where 25' is required for each and to allow a 4'± front yard where 5' is required.

Action:

The Board **determined** that the criteria necessary to grant an Equitable Waiver of Dimensional Requirements, as set out in RSA674:33-a, had been met:

- The violation was only discovered recently and was not noticed or discovered by an owner, former owner, agent or representative or any municipal official until after the structure(s) were completed.
- It appears that an error in measurement or calculation was made by a builder and not an outcome of ignorance of the law, bad faith, or any other misrepresentation, obfuscation on the part of the owners of other involved parties.
- There is no evidence that the violation constitutes any public or private nuisance or diminishes the value of any property in the area, or interferes or adversely affects any present or permissible future uses of the property.
- Due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained that it would be inequitable to require the violation to be corrected. It is clear that there would be costs to correct the error with no evidence of any public benefit that would result by requiring compliance.

6) Case 2-6

Petitioners: Vaughn Family Revocable Trust, Charles & Sally Vaughn, Trustees, owners, and Craig and Diane Alie, applicants
Property: 50 Pleasant Point Drive
Assessor Plan: Map 207, Lot 11
Zoning District: Single Residence B
Description: Second story addition and new two-story garage.
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 an 18'± secondary front yard for a vertical expansion of the existing dwelling where 30' is required;

- b) from Section 10.521 to allow a 21'± secondary front yard for a new two-story garage where 30' is required; and
- c) from Section 10.321 to allow a nonconforming structure or building to be expanded, reconstructed or enlarged without conforming to the requirements of the ordinance.

Action:

Due to the length of the meeting, the Board voted to **postpone** the petition to a continued meeting on February 26, 2019.

7) Case 2-7

Petitioners: Neil A. Fitzgerald Family Trust, Kara Moss and Linda Fitzgerald, Trustees

Property: 226 Park Street

Assessor Plan: Map 149, Lot 50

Zoning District: General Residence A

Description: Rear addition, single-story 410± s.f. detached accessory dwelling unit (DADU), and a detached one-car 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 lot area per dwelling unit of 4,368± s.f. where 7,500 s.f. is required per dwelling unit; and
- b) 31%± building coverage where 25% is the maximum allowed.

Action:

Due to the length of the meeting, the Board voted to **postpone** the petition to a continued meeting on February 26, 2019.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:17 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary