

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 July 23, 2019** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

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

EXCUSED: John Formella

=====

I. OLD BUSINESS

A) Request for Rehearing regarding property at 201 Kearsarge Way

Action:

The Board voted to **grant** a rehearing to be held at the August 20, 2019 meeting.

=====

II. PUBLIC HEARINGS – OLD BUSINESS

A) Case 7-7

Petitioner: Matthew Wajda
Property: 183 Coolidge Drive
Assessor Plan: Map 268, Lot 29
District: Single Residence B
Description: Create a second lot from an existing lot.
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 and lot area per dwelling unit of 10,100 s.f. for the lot with an existing structure where 15,000 s.f. is required for each;
b) a lot area and lot area per dwelling unit of 10,270 s.f. for the proposed lot lot where 15,000 s.f. is required for each;

- c) 85’ continuous street frontage where 100’ is required; and
- d) 86’ lot depth where 100’ is required.

(This petition was rescheduled, and changed, from the July 16, 2019 meeting.)

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. A new single family home on a subdivided lot that will be compliant with requirements including building coverage and setbacks will not offend the light, air and safety protected by the ordinance so that the essential character of the neighborhood will not be altered.
- Substantial justice will be done by allowing the applicant to use the property in a reasonable manner with no corresponding detriment to the general public.
- The value of surrounding properties will not be diminished by new construction on a lot very similar to adjacent properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include an existing lot larger than immediately adjacent properties with frontage on two streets. Due to these conditions, there is no fair and substantial relationship between the general public purposes of the ordinance provisions and their specific application to the property.

=====

III. PUBLIC HEARINGS – NEW BUSINESS

2) Case 7-9

Petitioners: Weeks Realty Trust, Kaley E. Weeks, Trustee and Chad Carter, owners and Tuck Realty Corporation, applicant

Property: 3110 Lafayette Road and 65 Ocean Road

Assessor Plan: Map 292, Lots 151-1, 151-2 and 153

District: Single Residence B

Description: Demolish existing residential structure and construct 18 townhouses in 5 structures on merged lots with one existing home to remain.

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

- a) from Section 10.513 to allow more than one free-standing dwelling per lot;
- b) from Section 10.440, Use #1.40 to allow townhouses where the use is not permitted;
- c) from Section 10.521 to allow a lot area per dwelling unit of 4,537 s.f. where 15,000 s.f. per dwelling unit 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. The essential character of the neighborhood will not be altered by the proposed townhouses as this property’s location on Lafayette Road creates a mixed neighborhood with different uses, including several commercial businesses and dense residential properties.
- Substantial justice will be done. The loss to the applicant if the petition were denied and strict conformance to the ordinance was required would not be outweighed by any gain to the general public as the immediate area is not suited for individual residences due to the large lots.
- Granting the variances will not diminish the value of surrounding properties. The development will incorporate new homes with code-compliant construction and design elements that will mitigate any negative effects on abutters’ properties. The rhythm of the neighborhood will not be affected because the existing single-family dwelling will remain and the densest part of the project will be closer to Lafayette Road.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property which include its frontage on both Ocean and Lafayette Roads. This is a large amalgamated property, different from others in the area, which is not suitable for single residence development. Due to the special conditions, there is no fair and substantial relationship between the purposes of the ordinance provisions and their specific application to the property. This is a reasonable use of the property as a residential use in a residential zone.

3) Case 7-10

Petitioner: Gruen Revocable Trust of 2019, Thomas W. and Carol R. Gruen, Trustees

Property: 673 Middle Street

Assessor Plan: Map 148, Lot 33

District: General Residence A

Description: A one-story 7.5’ x 22’ rear addition (165 s.f.) including rear entry porch.

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 4.5’ left side yard where 10’ is required;
- b) from Section 10.521 to allow 40% 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 with the following stipulation:

Stipulation:

- The approval for the left side yard may be modified by 6 inches plus or minus to allow for any discrepancies.

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 proposed one-story addition will not alter the essential character of the neighborhood nor threaten the health, safety or welfare of the general public.
- Substantial justice will be done as granting the variances will benefit the applicant with no possible harm to the general public.
- A modest, tasteful addition will not diminish the value of surrounding properties and many immediate abutters have voiced their approval. While the proposed addition is close to an adjacent abutter, the angle and juxtaposition of that abutter as well as the dense screening will provide protection.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. With respect to the setback request the special condition is the location of the existing house which dictates the addition location. The special condition affecting the lot coverage is the small size of the lot so that even a modest addition requires some degree of relief. Due to these conditions, there is no fair and substantial relationship between the provisions of the ordinance regarding these requirements and their specific application to the property. The proposed use is a reasonable one in this neighborhood.

4) Case 7-11

Petitioner: Karen L. Bouffard Revocable Trust, Karen L. Bouffard, Trustee
Property: 114 Maplewood Avenue
Assessor Plan: Map 124, Lot 4
District: Character District 4-L1
Description: Replace existing rear dwelling with a two-story structure including garage and one-story addition with deck above.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.5A41.10A to allow the following:
a) an 1.8’ left side yard where 1.5’ exists and 5’ is the minimum required;
b) a 2.5’ rear yard where 0’ exists and 5’ is the minimum required; and
c) a lot area per dwelling unit of 1.685 s.f. where 3,000 s.f. is required.

- and the following variance:
- d) 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 essential character of the neighborhood will not be altered by a code-compliant building with the same nature, size and purpose as the structure that will be replaced.
- Substantial justice will be done because a new structure with modern amenities will benefit the applicant with no overriding detriment to the general public.
- The value of surrounding properties will not be diminished but will be enhanced by replacing a deteriorated structure with a modern building and garage.
- Literal enforcement of the ordinance will result in unnecessary hardship due to special conditions of the property, which include the dimensions of the lot, locations of existing structures and the limited amount of available space in which to build. Due to the special conditions, there is no fair and substantial relationship between the general purposes of the ordinance and their specific application to the property.

5) Case 7-12

Petitioner: John A. Byron
 Property: 346 Bartlett Street
 Assessor Plan: Map 162, Lot 54
 District: General Residence A
 Description: Construct a single family dwelling on an unoccupied lot.
 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 and lot area per dwelling unit of 5,026 s.f. where 7,500 s.f. is the minimum required for each;
- b) 53.87’ of continuous street frontage where 100’ is required; and
- c) a 7’ right side yard 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:

- 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 will not be altered by a modest home in a neighborhood of similar homes nor will the public, health, safety or welfare be threatened.
- Substantial justice will be done by granting the variances. If strict compliance with the ordinance was required, the applicant would have an unbuildable lot with no corresponding benefit to the general public.
- The value of surrounding properties will not be diminished. The applicant is proposing a newly constructed, code-compliant home that will increase property values.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. These include an existing lot of nonconforming size and with nonconforming frontage, which can't be altered. The applicant has a reasonable right to develop the property. Conforming to the setback requirements would create a greater burden on existing structures in the abutting property. The modest relief requested is appropriate. Due to these special conditions, there is no fair and substantial relationship between the purpose of the side yard setback requirement and its application to the property. A residential use in a residential zone is a reasonable use of the property.

6) ACase 7-13

Petitioner: J&S Investments LLC
 Property: 14 Market Square
 Assessor Plan: Map 107, Lot 29
 District: Character District 5 and the Downtown Overlay District
 Description: Appeal an Administrative Decision regarding signage or, alternatively, to allow two murals, 124 s.f. and 68 s.f.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
 a) from Section 10.1251.10 to exceed the allowed maximum aggregate sign area; and
 b) from Section 10.1251.20 to allow two wall signs that exceed 40 s.f. each where 40 s.f. is the maximum allowed.

Action:

The Board voted to **deny** the appeal as the Planning Department was in compliance with the Zoning Ordinance definition of what constitutes a sign.

The Board then **granted** the requested variances as presented and advertised with the following stipulation:

Stipulation:

- The design of any current and future signs will require the approval of the Historic District Commission.

Review Criteria:

The variances were 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. At an intersection that is well signed and self-regulated, the proposed signs will not alter the essential character of the neighborhood.
- Substantial justice will be done. Granting the variances will benefit the applicant with no corresponding negative effect on the general public.
- The value of surrounding properties will not be diminished. The location is appropriate for the signage which will fit with the size and style of the building and the sign will also have the oversight of the Historic District Commission.
- Literal enforcement of the ordinance will result in unnecessary hardship due to the special conditions of the property. These include a corner lot in a very active area, a storefront that doesn't wrap around the building, and a size that is dictated by the need to align with the storefront around the corner and with the granite banding. Due to these special conditions, there is no fair and substantial relationship between the purposes of the ordinances regarding signage and their specific application to the property. The proposed is a reasonable use of the property.

7) Case 7-14

Petitioner: Bacman Enterprises
 Property: 140 Edmond Avenue
 Assessor Plan: Map 220, Lot 81
 District: Single Residence B
 Description: Expansion of a non-conforming use (after-the-fact).
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:

- a) from Section 10.333 to allow a nonconforming use to be extended into other parts of the building;
- b) from Section 10.1113.20 to allow off-street parking spaces to be located in the required front yard or between a principal building or the street; and
- c) from Section 10.1114.32 to allow vehicles to enter or leave a parking area by backing out, into or from a public street or way.

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 will not be altered by a long-standing, mixed-use development with no evidence of a conflict with any neighbor.
- Substantial justice will be done. Requiring off-street parking to be anywhere other than the front yard was not permitted and would be a hardship given the nature of the lot with wetlands and topographical issues. This isn't a dense portion of the city or heavily traveled so requiring strict compliance with the ordinance from the applicant would not provide any corresponding gain to the general public.
- The value of surrounding properties would not be diminished as the use has been ongoing for some time with no negative effect.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. These conditions include the presence of wetlands and topographical challenges. There is no way to locate the parking in the back so that the proposed parking location, resulting in the need to back on to or from a public street, is reasonable.

Additional special conditions stem from the uses that surround the property, which include no true residential abutters. Due to the special conditions, there is no fair and substantial relationship between the purposes of the ordinance provisions and their specific application to this property. This is a reasonable use of the property.

8) Case 7-15

Petitioners: Alex W. & Kathleen N. Greiner

Property: 88 Lincoln Avenue

Assessor Plan: Map 113, Lot 2

District: General Residence A

Description: Renovation/addition.

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 3'7" rear yard where 10' is required; and
- b) from Section 10.321 to allow the expansion of a nonconforming structure.

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 as the essential character of the neighborhood will not be altered by the proposed addition.
- Substantial justice will be done. The loss to the applicant if the petition were denied would not be outweighed by any gain to the general public. This a vertical expansion of an existing setback encroachment.
- The value of surrounding properties should be improved by the proposed renovations and addition.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. This is a corner lot with frontage on two sides and an existing dwelling encroaching into the setback. Due to these special conditions, there is no fair and substantial relationship between the side yard setback requirement in the ordinance and its specific application to the property. The proposed use is a reasonable one, a residential use in a residential zone and results in less nonconformity than was approved previously.

9) Case 7-16

Petitioners: Mathew Allen Reichl & Beth Richmond
 Property: 5 Sylvester Street
 Assessor Plan: Map 232, Lot 41
 District: Single Residence B District
 Description: Construct a 2-story addition at the rear of an existing structure.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including
 a) from Section 10.521 to allow a 10.8’ rear yard where 30’ 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 approval for the rear yard may be modified by 6 inches plus or minus to allow for any discrepancies.

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 rear addition will not alter the essential character of the neighborhood, nor threaten the health, safety or welfare of the general public.

- Substantial justice is done. There will be an obvious benefit to the applicant with no harm to the general public or other individuals
 - The value of surrounding properties will not be diminished by a relatively modest increase in the size of the home.
 - Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. These include a small allowable building envelope, the way the existing home is oriented on the property, and the existence of wetland buffers. Due to these special conditions there is no fair and substantial relationship between the purposes of the ordinance provisions and their specific application to the property. The proposed use is a reasonable one in a residential zone.
-

10) Case 7-17

Petitioners: Drew & Brittany Schulthess
Property: 15 Mt. Vernon Street
Assessor Plan: Map 111, Lot 33
District: General Residence B
Description: Construct an addition over an existing 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’ front yard where 5’ is required;
b) an 8.9’ right side yard where 10’ is required; and; and
c) a 20’ rear yard where 25’ is required;
and the following variance:
d) 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. Expanding a home within the existing footprint will not alter the essential character of the neighborhood nor threaten the health, safety or welfare of the general public.
- Substantial justice will be done as the loss to the applicant by not being allowed to expand the existing property to provide comfortable living for the family would not be outweighed by any benefit to the general public.

- The value of surrounding properties will not be diminished by a modern upward expansion that will not have a negative effect on the neighbors. The values will likely increase.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include a small lot and the placement of the existing home close to the lot line so that any reasonable expansion would require a variance. Due to the special conditions, there is no fair and substantial relationship between the purposes of the ordinance and their specific application to the property. The project will be done within the setbacks and existing building coverage. This is a reasonable use.

=====

IV. OTHER BUSINESS

No other business was presented.

=====

V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 12:25 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary