

**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 January 26, 2016** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Chairman David Witham, Vice-Chairman Arthur Parrott, Jeremiah Johnson, Charles LeMay, Christopher Mulligan David Rheume. Alternate: Jim Lee

**EXCUSED:** Patrick Moretti

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**V. PUBLIC HEARINGS – NEW BUSINESS (continued from January 19, 2016)**

- 4) Case #1-4  
Petitioner: Jamey R. Beland  
Property: 373 Union Street  
Assessor Plan 134, Lot 5  
Zoning District: General Residence A  
Description: Construct second story rear addition.  
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended, enlarged or structurally altered except in conformity with the Ordinance.
  2. A Variance from Section 10.521 to allow a 4'± left side yard setback for the addition where 10' is required.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- With similar additions on neighboring properties, the essential characteristics of the neighborhood will not be altered by this rear addition so that granting the variances will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as the addition will be constructed over an existing foundation and light and air for abutters will be protected by the distances between abutting living structures.

- Substantial justice will be done by allowing the owner to make full use of the property with no damage to the general public.
- Upgrading the property while maintaining the overall footprint will not diminish the value of surrounding properties.
- The location of the existing home close to one property line creates a hardship as it prevents a reasonable expansion of the structure without relief from the requirements of the Ordinance.

5) Case #1-5

Petitioner: Christian G. Hulseman

Property: 430 Richards Avenue

Assessor Plan 112, Lot 8

Zoning District: General Residence A

Description: Demolish rear garage addition and reconstruct extending to width of garage.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a 3.5'± left side yard setback where 10' is required.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Reconstructing and expanding a deteriorated addition in line with the existing garage will not change the essential character of the neighborhood nor threaten the health, safety or welfare of the general public 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 would be a loss to the applicant if the side yard setback requirement were strictly enforced while a modest addition adhering to the existing setback would not harm the general public.
- Replacing a deteriorated structure with a well constructed addition will not diminish the value of surrounding properties.
- The special conditions of the property include the existing nonconforming placement of a garage in need of repair so that there is no fair and substantial relationship between the purposes of the Ordinance and their specific application to this property. It is a reasonable use of the property to replace and expand the addition with no additional infringement on the light and air of surrounding properties.

6) Case #1-6

Petitioner: Scott Mitchell

Property: 2839 Lafayette Road

Assessor Plan 286, Lots 18 & 19

Zoning District: Gateway

Description: Parking related to construction of a bank and drive-through facility.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1113.20 to allow parking between a principal building and a street.

Action:

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

Stipulations:

None.

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 as the parking between a principal building and the street will be on the side of the property facing a secondary road. On the primary road frontage and entrance, the streetscape and visual sight lines meet the intent of the Ordinance and the interests of the public.
- Substantial justice will be done by allowing the applicant to use the property effectively with no harm to the general public.
- Replacing older buildings in need of repair by an attractive functional structure will not diminish the value of surrounding properties.
- The property as a corner lot is distinguished from others in the area so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and their specific application to the property. Frontage on two streets creates a hardship requiring compliance with requirements regarding the placement of parking in relation to both streets.

7) Case #1-7

Petitioner: Faithful Church of Christ Inc.

Property: 217 Bartlett Street

Assessor Plan 162, Lot 32

Zoning District: General Residence A

Description: Four unit dwelling with related parking and travel aisles.

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

1. A Special Exception under Section 10.440 to allow four dwelling units where the use is only allowed by Special Exception.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 2,237± s.f. where 7,500 s.f. is required.
3. A Variance from Section 10.114.21 to allow an 18'± maneuvering aisle where 24' is required.

Action:

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

Stipulation:

- The existing concrete block building and connector will be removed prior to the issuance of an occupancy permit for the four dwelling unit structure.

Review Criteria

The special exception was granted for the following reasons:

- The use of the property with four dwelling units is permitted by the Ordinance by Special Exception.
- There is nothing in the proposed use that would cause a hazard to the public or adjacent property on account of potential fire explosion or release of toxic materials.
- There will be no detriment to property values or change in the essential characteristics of the neighborhood, creation of a traffic safety hazard or increase in traffic congestion. This use has a longstanding history on the property with no negative effect on property values or create traffic issues.
- Reactivating the use of four dwelling units will not result in an excessive demand on municipal services and, with little change in the remaining structure, no significant increase in storm water runoff onto adjacent properties.

The variances were granted for the following reasons:

- With little change in the historic use of the dwelling structure, the essential character of the neighborhood will not be altered 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 granting the variances will allow a return to a lapsed use without resulting in any corresponding detriment to the public interest.
- Improving the property and removing the concrete block structure will not diminish the value of surrounding properties.
- The special conditions of the property distinguishing it from others in the neighborhood and creating a hardship in seeking a reasonable use include a longstanding use which was conforming when it began, an existing four unit structure, and a lot size which would require relief for any dwelling units over one unit.

8) Case #1-8

Petitioners: 599 Lafayette LLC owner, Aroma Joe’s Coffee, LLC, applicant

Property: 599 Lafayette Road

Assessor Plan 229, Lot 8

Zoning District: Gateway

Description: Construct a stand-alone drive-through facility.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.440 to allow a stand-alone drive-through facility as a principal use.
2. A Variance from Section 10.531 to allow a side setback of 23.6’± where 30’ is required.
3. A Variance from Section 10.836.31 to allow an outdoor service facility to be located 64’± from a residential zoning district where 100’ is required.
4. A Variance from Section 10.1243 to allow a second free-standing sign on a lot.

Action:

The Board voted to **grant** Variances #1, #2 and #3 as presented and advertised and **deny** Variance #4.

Stipulations:

None.

Review Criteria:

Variances #1, #2 and #3 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 as the essential character of the neighborhood will not be altered by this minimal relief in the proposed location.
- Substantial justice will be done by allowing full use of the parcel with no detriment to the general public.
- The proposed use and location in a commercial area with adequate distance to a residential zone will not diminish the value of surrounding properties.
- The special conditions of the property distinguishing it from others in the area and creating a hardship include an odd-shaped parcel and easements affecting placement of this use.

Variance #4 was denied for the following reasons:

- All the criteria necessary to grant a variance were not met.
- Contrary to the public interest, a second free-standing sign on the property would reduce open space.
- There will be no hardship resulting from any special conditions of the property if the requested sign is denied.

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9) Case #1-9

Petitioner: Paul E. Berton and Jane A. Ewell Living Trusts

Property: 482 Broad Street

Assessor Plan 221, Lot 63

Zoning District: General Residence A

Description: Construct three townhouses.

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

1. Special Exception under Section 10.440 to allow three dwelling units where the use is only allowed by Special Exception.

Action:

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

Stipulation:

- The Memorandum of Understanding between the Paul E. Berton and Jane A. Elwell Living Trusts and the Residents of Broad Street and Pinehurst Road, listed in an Attachment (Exhibit 11) submitted with the petition and attached to this letter, is incorporated as a part of this approval, and future approvals of City Boards and Commissions related to this proposal, and will be recorded at the Rockingham County Registry of Deeds.

Review Criteria:

The petition was granted for the following reasons:

- Three dwelling units will present no hazard to the public or adjacent properties from potential fire explosion or release of toxic materials.
- The proposed units on a lot of this size will not be a detriment to property values in the area or change the essential characteristics of the neighborhood as a result of odors, smoke, excessive noise or pollutants, glare, heat or other irritants.
- Adding two additional living units will not create a traffic safety hazard or a substantial increase in traffic congestion in the vicinity and will not result in an excessive demand on municipal services.
- There will be no significant increase in storm water runoff and a storm water management plan is included in the stipulated Memorandum of Understanding.

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**VI. OTHER BUSINESS**

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**VII. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 10:30 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary