

**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 August 16, 2016 Meeting** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.  
**PRESENT:** Chairman David Rheaume, Vice-Chairman Charles LeMay, Jeremiah Johnson, Patrick Moretti, Arthur Parrott, Alternate Peter McDonell  
**EXCUSED:** Christopher Mulligan, Alternate Jim Lee,

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**I. APPROVAL OF MINUTES**

A) July 19, 2016

The Minutes were approved with minor corrections.

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**II. OLD BUSINESS**

A) Request for Rehearing regarding 2219 Lafayette Road.

Action:

The Board voted to **deny** the request for rehearing determining that the applicant had a thorough hearing. The Board carefully considered the appeal and made no errors in the conduct of the hearing or in the application of the law. The Board additionally determined that no new evidence had been provided that had not been available at the time of the initial hearing.

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**III. OLD BUSINESS - PUBLIC HEARINGS**

4) Case #7-4  
Petitioners: Thunderbolt Realty Trust of 2011 c/o Alison Jewett  
Property: 17 Gardner Street  
Assessor Plan 103, Lot 14

Zoning District: General Residence B

Description: Reconstruct rear additions.

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

1. Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. Variances from Section 10.521 to allow the following:
  - a) A front yard setback of 4'10" ± where 5' is required;
  - b) A left side yard setback of 1" ± where 10' is required;
  - c) A rear yard setback of 9'2" ± where 25' is required; and
  - d) Building coverage of 40.2%± where 30% is the maximum allowed.

Action:

The Board acknowledged that the petition had been **withdrawn** by the attorney for the applicant.

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**IV. PUBLIC HEARINGS – NEW BUSINESS**

1) Case #8-1

Petitioners: Liva-Blaisdell Family Revocable Trust of 2016, Liva F. J. & Blaisdell B.L., Co-Trustees

Property: 71 Baycliff Road

Assessor Plan 207, Lot 46

Zoning District: Single Residence B

Description: Replace and expand front deck and stairs.

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

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a 27.79'± front yard setback where 30' is required and a 7.84'± right 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:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed. The amount of relief requested is very small and with similar residential homes in the area, the essential character of the neighborhood will not be changed and there will be no threat to the health, safety or welfare of the public.
- Substantial justice will be done as granting the variances will benefit the applicant while the general public will not be harmed by allowing the proposed setbacks.
- The value of surrounding properties will, if anything, be enhanced by the proposed improvements. The increase in height will not affect the closest abutters who are at the further end of the property.
- The way the existing house sits on the lot creates a hardship in upgrading existing features so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision regarding setbacks and its specific application to the property.

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2) Case #8-2

Petitioners: Frederic & Priscilla Roue

Property: 14 Harding Road

Assessor Plan 247, Lot 10

Zoning District: Single Residence B

Description: Replace rear deck.

Requests: The 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 21.33%± building coverage where 20% is the maximum allowed.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- The amount of relief requested is small and replacing a deteriorated deck with one that will have little impact on the existing coverage will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done and the value of surrounding properties enhanced by allowing construction of a new deck, built to code, that will not pose safety issues.
- A deck that is in poor condition on a non-conforming lot creates a hardship. The small lot size results in the existing structures taking up all of the allowable lot coverage and

the installation of a slightly larger, sturdier and better-sited deck is a reasonable use of the property.

3) Case #8-3

Petitioners: Abigail Kell Sutcliffe, owner, Fred Kell, applicant

Property: 12 Woodbury Avenue

Assessor Plan 163, Lot 9

Zoning District: General Residence A

Description: Add rear porch.

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

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow 55.94%± building coverage where 25% is the maximum allowed.

Action:

With no one present to speak to the petition, the Board initially voted to suspend discussion of the petition to the end of the meeting and then voted to **postpone** the petition to the September 20, 2016 meeting.

4) Case #8-4

Petitioner: Public Service Company of NH

Property: 280 & 300 Gosling Road

Assessor Plan 214, Lots 2 & 3

Zoning District: Waterfront Industrial & Office Research

Description: Lot line revision affecting setbacks and frontage.

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

Lot #1 (214/2)

1. A Variance from Section 10.531 to allow 134.95'± continuous street frontage where 200' is required.
2. A Variance from Section 10.573.20 to allow right side yard setbacks of 3'± for accessory structures.

Lot #2 (214/3)

3. A Variance from Section 10.573.20 to allow left side yard setbacks of 0'± to 50'± for accessory structures.

Action:

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

Stipulation:

- Variance #2 (Map #214, Lot #2) as granted will allow right side yard setbacks of 0'± to 20'± for accessory structures. The advertised 3' setback is deleted.

Review Criteria:

The petition was granted for the following reasons:

- In this location, dividing a property containing a well-established facility without making any physical changes will not affect the public interest.
- The spirit of the Ordinance will be observed by allowing the property owner to make more efficient use of the property with complimentary setbacks on the proposed two lots.
- Substantial justice will be done as granting the variances will benefit the property owner with no detriment to the general public.
- There will be no physical changes to the two properties so that the value of surrounding properties will not be diminished.
- The special conditions of the property include its size and the nature of the use, as well as the existing locations of structures, equipment and pipelines creating a hardship in dividing the property without setback relief.

## 5) Case #8-5

Petitioners: Carol I. Cooper, owner & Lorax Sustainable Development, LLC,  
applicant

Property: 996 Maplewood Avenue  
Assessor Plan 219, Lot 4

Zoning District: Single Residence B

Description: Construct three free-standing dwellings.

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

1. A Variance from Section 10.513 to allow more than one free-standing dwelling on a lot.

Action:

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

Stipulation:

- The proposal is referred to the Planning Board for placement of a conservation easement on a portion of the undeveloped area around the pond that will protect that portion of the pond and wetland area, the nature and extent of that protection to be determined by the Planning Board in their site plan review process.

Review Criteria:

The petition was granted for the following reasons:

- The addition of three appropriately sited single-family homes, will not change the essential character of the neighborhood nor threaten the public health, safety, or welfare so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Granting the variances will do substantial justice since the benefit to the applicant will not be outweighed, particularly with the protection of the attached stipulation, by any harm to the general public.
- The value of surrounding properties will not be diminished by three new single-family homes on a large lot with no greater intensity than similar area developments. The setbacks are met so that the structures will not encroach on neighboring properties and there is good access to Maplewood Avenue for fire and emergency services.
- The special distinguishing conditions of the property include a large, irregularly shaped lot with a pond that affects the placement of structures so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and the specific application of that provision to the property.

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6) Case #8-6

Petitioners: Andrew F. & Jennifer B. Cotrupi

Property: 137 Wibird Street

Assessor Plan: 134, Lot 48

Zoning District: General Residence A

Description: Subdivide one lot into two.

Requests: The 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 proposed Parcel B to have 58.85'± of continuous street frontage where 100' is required.
2. A Variance under Section 10.440 to allow proposed Parcel B to contain an accessory structure as a principal use.

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 variances will not be contrary to the public interest and the spirit of the Ordinance will be observed as the proposed use will not conflict with, or alter, the essential character of the neighborhood. The existing garage on one proposed lot will not be a permanent condition and will not threaten the public health, safety or welfare.

- Substantial justice will be done by as there will be no harm to individuals or the general public that would outweigh the benefit to the applicant in granting the variances.
- The proposed lots will be in keeping with the neighborhood so that the value of surrounding properties will not be diminished.
- Literal enforcement of the ordinance would result in a hardship as the initial lot is a corner lot and larger than others in the area. Bisecting the lot will be in keeping with the size and configuration of similar neighboring lots so that there is no fair and substantial relationship between the general public purposes of the Ordinance provisions and their specific application to this property. The proposed use of the property is a reasonable one.

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7) Case #8-7

Petitioner: Old Tex Mex, LLC

Property: 3510 Lafayette Road

Assessor Plan 297, Lot 8

Zoning District: Gateway

Description: Convert existing structure into twenty-five residential dwelling units.

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

1. A Variance from Section 10.440, Use # 1.43 to allow a 25-unit multi-family dwelling where such is not allowed.

Action:

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

Stipulations:

- At least two units of the proposed converted structure will be provided as workforce housing.

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 project meets some aspects of the Master Plan and will serve the public interest with additional housing units.
- Substantial justice will be done as the property owners will benefit by making an appropriate use of their property while providing needed housing, including two workforce units.
- This will be a positive change for the area which will not diminish the value of surrounding properties.
- The special conditions of the property creating a hardship are its location and size which have created a difficulty in marketing it for commercial use.

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- 8) Case #8-8  
 Petitioners: James C. Lucy Revocable Living Trust, James C. & Kimberley A. Lucy, Trustees  
 Property: 127 & 137 High Street  
 Assessor Plan: Map 118, Lots 20 & 21  
 Zoning District: CD4-L1 and Downtown Overlay Districts  
 Description: Construct two-family dwelling unit with parking underneath.  
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Sections 10.5A41.10A & 10.5A43.31 to allow a three-story building where up to a two-story building is the maximum permitted.
  2. Variances from Section 10.5A41.10A to allow the following:
    - (a) A minimum lot area per dwelling unit of 1,200± s.f. where 3,000 s.f. is required.
    - (b) A duplex building type where duplexes are not permitted in the Downtown Overlay District.
    - (c) The minimum ground story to be 8'8"±in height where 11' is required.
  3. A Variance from Section 10.1114.20 to allow a 20'± maneuvering aisle where 24' is required.

Action:

The Board voted to **postpone** the petition to the September 20, 2016 meeting at the request of the attorney for the applicant.

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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 10:55 p.m.

Respectfully submitted,

Mary E. Koeppenick, Secretary