

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 September 19, 2017** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheame, Vice Chairman Charles LeMay, Jeremiah Johnson, Jim Lee, , Patrick Moretti Christopher Mulligan, Arthur Parrott, Alternate John Formella and Alternate Peter McDonell

EXCUSED: Chairman David Rheame

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I. APPROVAL OF MINUTES

A) August 15, 2017

B) August 22, 2017

The Minutes for August 15, 2017 and August 22, 2017 were approved with minor corrections.

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II. OLD BUSINESS

A) (Case 9-3) Request for Rehearing regarding property located Off Sylvester Street (0 Sylvester Street)

The Board decided by unanimous voice to hear this request after Case 9-2.

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III. PUBLIC HEARINGS – OLD BUSINESS

A) Case 8-3.

Petitioner: SLF Realty Group

Property: 180 Mirona Road

Assessor Plan: Map 235, Lot 2

Zoning District: Gateway
 Description: Replace an internally illuminated free-standing sign.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:

1. A Variance from Section 10.1251.20 to allow a 112± s.f. free-standing sign (including base) where 100 s.f. is the maximum allowed.
2. A Variance from Section 10.1243 to allow a second free-standing sign on a lot where only one free-standing sign is permitted.
3. A Variance from Section 10.1281 to allow a nonconforming sign or sign structure to be altered, reconstructed or replaced without bringing the nonconforming sign into conformity with the Ordinance. *(This petition was postponed from the August 15, 2017 meeting.*

Action:

The Board acknowledged that the petition had been **withdrawn** by the applicant.

B) Case 8-7.

Petitioner: Bartlett Street Condos LLC
 Property: 217 Bartlett Street
 Assessor Plan: Map 162, Lot 32
 Zoning District: General Residence A
 Description: Replace demolished building with a single-family residence.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: home including:

1. A Variance from Section 10.513 to allow more than one free standing dwelling on a lot.
2. Variances from Section 10.521 to allow the following: a) a lot area per dwelling unit of 1,773± s.f. where 7,500 s.f. is required; b) a 3'± right side yard setback where 10' is required; c) a 10'± front yard setback where 15' is required; d) 98.7'± continuous street frontage where 100' is required; and e) 30.9%± *building coverage* where 25% is the maximum allowed. *This petition was postponed from the August 22, 2017. Item 2 e) has been revised to require less building coverage relief than was previously advertised.*

Action:

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

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant the variances were not met.

- The increase in density and the loss of the light and air, protected by a stipulation to a previous variance, would conflict with the explicit or implicit purposes of the ordinance so that granting the variances would be contrary to the public interest and the spirit of the ordinance would not be observed.
- A residential unit 3’ from the property line would negatively affect the value of surrounding properties.
- A hardship has not been demonstrated in obtaining a reasonable use of a property which is a large lot for the neighborhood and for which considerable relief has already been granted.

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IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case 9-1.

Petitioner: Petition of Melissa A. Raffoni Revocable Trust of 2011, Melissa Raffoni, Trustee

Property: 606 State Street

Assessor Plan: 127, Lot 21

Zoning District: General Residence C

Description: Third floor wall extension.

Requests: 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 a 4’± right side yard where 10’ is required;
2. A Variance from Section 10.321 to allow a a nonconforming building or 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:

- A minor change from a previous approval will not alter the essential character of the neighborhood so that granting the variances will not be contrary to the public interest and the spirit of the observed.
- Substantial justice will be done as the intent of the previous Board approval is maintained with no harm to the general public or diminution in the value of surrounding properties.
- With its placement on a small and narrow lot, it is difficult to make improvements to the property without requiring relief from the ordinance so that there is no fair and substantial relationship between the general public purposes of the ordinance and their specific application to the property. The setback line that the Board had previously approved is being maintained.

2) Case 9-2.

Petitioner: Arne LLC
Property: Off Sylvester Street (0 Sylvester Street)
Assessor Plan: Map 232, Lots 43-1 & 43-2
Zoning District: Single Residence B
Description: Construct a single-family home on two merged lots.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including from Section 10.521 to allow a rear yard setback of 22.1'± 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 is observed as the essential character of the neighborhood will not be altered by relatively minor setback relief at the back of the property, nor will the health, safety or welfare of the public be threatened.
- Substantial justice will be done as denial of the application would hinder the applicants in their ability to develop the property with no corresponding gain to the general public.
- The value of surrounding properties will not be diminished. With the applicant working with the neighborhood on this proposed new construction, this should be a positive addition.
- Literal enforcement of the ordinance would result in unnecessary hardship. The special conditions of the property are that these are pre-existing lots of record that were created a long time before current zoning requirements were in place. In order to develop these lots in any way, some zoning relief will be required and the siting of the proposed structure closer to the rear was suggested by the Board when considering a previous variance.

3) Case 9-3. Request for Rehearing regarding property located Off Sylvester Street (0 Sylvester Street) (deferred from the beginning of the meeting.)

Action:

The Board voted to **grant** the request to rehear the following stipulation attached to their approval of variance items 1a), 1b and 1c at the August 22, 2017 reconvened meeting of the Board. The stipulation as included in the letter of decision for that meeting reads, “The proposed project will be put before the Planning Board for site review.”

4) Case 9-4.

- Petitioners: Matthew Nolte, owner, Matthew & Kerry Nolte, applicants
Property: 321 Dennett Street
Assessor Plan: Map 160, Lot 40
Zoning District: General Residence A
Description: Relocate an existing second dwelling unit into a separate structure.
Requests: 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 a second free-standing dwelling on a lot where only one free-standing dwelling is allowed.
 2. Variances from Section 10.521 to allow the following (a) a 5.75' ± secondary front yard setback (Hunter Hill) where 15' is required; (b) a 9'6" ± rear yard setback (Dennett Street) where 20' is required; and (c) lot area per dwelling unit of 3,705 ± sf. where 7,500 s.f. is required.
 3. A Variance from Section 10.1111.20 to allow a use that is nonconforming with respect to off-street parking to be enlarged or altered without complying with the off-street parking requirements.
 4. A Variance from Section 10.1112.30 to allow 0 legally conforming off-street parking spaces where four (4) are the minimum required.

Action:

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

Stipulation:

- The existing two-family dwelling (main house) on the property will be converted to a single-family dwelling prior to the issuance of a certificate of occupancy for the conversion of the carriage house to a single-family residential dwelling.

Review Criteria:

The petition was granted for the following reasons:

- With the same number of households and no change to the physical characteristics of the property in terms of dimensions and parking, 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.
- Substantial justice will be done as the benefit to the applicants will not be outweighed by any detriment to the general public.
- With no physical changes and the number of dwelling units remaining at two, there is nothing in the proposed change that will diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property, including an existing approved two-family dwelling and the fact that the same number of units will remain but in separate structures on the property. The property, as it has existed since the 1980's, did not, and could not, meet the dimensional and parking requirements so that there is no fair and substantial

relationship between the general public purposes of the ordinance and their application to the property and the restrictions are not necessary to achieve the purpose of the ordinance. The use is a reasonable one that has existed since the 1980's.

5) Case 9-5.

Petitioners: Paul Lanzoni, owner and Paul and Janice Lanzoni, applicants
 Property: 411 South Street
 Assessor Plan: Map 112, Lot 55
 Zoning District: General Residence A
 Description: Attached garage, containing an accessory dwelling unit, and a hallway addition.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
 1. Variances from Section 10.521 to allow the following: a) a rear yard setback of 6.5'± where 20' is required; and b) 26.4%± building coverage where 25% is the maximum allowed.
 2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Action:

After a presentation and period of discussion, the Board voted to **continue** the petition to the October 17, 2017 meeting so that the applicant could consider the comments of the Board and clarify the nature of the relief required. The petition will be re-advertised with the revised requests.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:19 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary