

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 24, 2018** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheaume, John Formella, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

EXCUSED: Vice Chairman Jeremiah Johnson

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IV. NEW BUSINESS – PUBLIC HEARINGS (continued from the July 17, 201 meeting)

6) Case 7-6

Petitioner: Two-Way Realty LLC, owner, Port City Nissan, Inc., applicant

Property: 120 Spaulding Turnpike

Assessor Plan: Map 236, Lot 33

Zoning District: General Business and Single Residence B

Description: Construct a 12,000 s.f. vehicle storage area for 65± vehicle capacity

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

- a) from Section 10.591 to allow vehicle storage within a residential zone where 100 feet is required;
- b) from Section 10.592.20 to allow a motor vehicle dealership to be less than 200 feet from a residential district; and
- c) from Section 10.440, Use #10.60 to allow outdoor motor vehicle storage in a residential district.

Action:

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

Stipulation:

- Outdoor vehicle storage must be a minimum of 200 feet from any abutting property that has a residential use.

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 service bay addition and the proposed vehicle storage area (with the stipulation that it will be more than 200 feet from a residential property) will be far enough removed and screened from any residences that the character of this mixed use neighborhood will not be altered.
- Substantial justice will be done by granting the variances as the benefit to the applicant would not be outweighed by any harm to the general public or other individuals.
- The value of surrounding properties will not be diminished. The proposal for a service bay addition and the vehicle storage area, as set back from residential uses by the stipulation, represent only a small intensification of the business use and therefore will not negatively impact neighborhood property values.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property, which include a utility easement, a wetland buffer area and the line separating the General Business and Single Residence B zones running through the middle of the lot. 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 proposed use, as presented and as limited by the stipulation, is a reasonable one.

7) Case 7-7

Petitioners: Michael R. & Denise Todd
Property: 254 South Street
Assessor Plan: Map 111, Lot 4
Zoning District: Single Residence B
Description: Construct a rear deck addition
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.521 to allow 27%± building coverage where 20% is the maximum allowed.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The essential residential character of the neighborhood will not be altered by expanding an existing deck over the footprint of the existing crushed stone. The health, safety and welfare of the public will also not be affected so that granting the variance will not be contrary to the public interest and the spirit of the ordinance will be observed.

- Granting the variance will result in substantial justice as the loss to the applicant if the request were denied, and strict adherence to the building coverage provision required, would far outweigh any potential gain to the public. The property is already slightly over the requirement primarily due to the existing deck and the applicants provided valid reasons for the additional coverage request.
- Extending the deck will not diminish the value of surrounding properties which will not be affected in any way. The deck will not be visible from the street and only minimally from other properties. The proposal will also be reviewed by the Historic District Commission and the Conservation Commission as additional protection for the properties.
- Literal enforcement of the ordinance would result in unnecessary hardship. The special conditions of the property include the proximity of wetlands and a downward slope which together limit the options in providing storage space. Due to the special conditions, there is no fair and substantial relationship between the purpose of the building coverage requirement in the ordinance and its application to this property. This is a reasonable residential use in a residential zone.

8) Case 7-8

Petitioners: Petition of RKW Investment Properties LLC, owner and Portsmouth Believers Church, Inc., applicant

Property: 115 Heritage Avenue

Assessor Plan: Map 285, Lot 5-1

Zoning District: Industrial District

Description: Religious assembly use.

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

a) under Section 10.440, Use #3.11 to allow a religious place of assembly where the use is not permitted.

Action:

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

9) Case 7-9

Petitioner: Noelle B. Beadling

Property: 86 Thornton Street

Assessor Plan: Map 160, Lot 2

Zoning District: General Residence A

Description: Convert basement space into a dwelling unit.

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

a) from Section 10.521 to allow a lot area per dwelling unit of 1,960± s.f. where 7,500 s.f. is the minimum 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 variance will not be contrary to the public interest and the spirit of the ordinance will be observed as the proposed project will not alter the essential character of the neighborhood. There is a similar density in this neighborhood with other multiple-unit properties. Although the proposal would add a new dwelling unit, it would not effectively increase the number of residents or vehicles so there should be no noticeable change.
- Substantial justice will be done by granting the variance as the applicant would gain by having separate units and a full kitchen but there was little change that would affect the general public.
- There was no indication that the request would diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. This is a small property containing a building that is subdivided with the other portion on an abutting lot. The property is already non-conforming. The proposed change was not significant considering that the property's intensity of use won't increase so that there is no fair and substantial relationship between the purpose of the ordinance provision and its application to the property. The proposed use is reasonable and two dwelling units are allowed in this district.

10) Case 7-10

Petitioners: Jeffrey P. Bartolini and A. Rachel Roemer
Property: 130 Pine Street
Assessor Plan: Map 162, Lot 29
Zoning District: General Residence A
Description: Replace existing shed with the same footprint in the same location.
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 0'± right side yard where 10' is required;
b) from Section 10.521 to allow 28%± building coverage where 25% is the maximum allowed; and
c) 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:

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 simply replacing an existing deteriorated shed will not alter the essential character of the neighborhood nor threaten the public health, safety or welfare.
- Substantial justice will be done as the applicant will be able to replace a deteriorating shed with no harm to the general public.
- Replacing an existing shed will not diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. The lot is narrow and there is no practical location for the shed that would be in full conformance with the ordinance. The proposed new shed is essentially the same size as the existing shed and will pose no additional burden on neighboring properties

11) Case 7-11

Petitioners: Cassandra M. Saltus Declaration of Trust, Cassandra M. Saltus, Trustee, owner, Derek Bickford, applicant

Property: 122 Essex Avenue

Assessor Plan: Map 233, Lot 66

Zoning District: Single Residence B

Description: Construct an 18'± x 6'± front farmers 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 front yard of 13'± where 30' is required; and
 b) from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirement 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 remain residential and the health, safety and welfare of the public will not be threatened.
- Granting the variances results in substantial justice. The loss to the applicant if the request were denied would not be balanced by any gain to the general public.

- The value of surrounding properties will not be affected in any way by what is being proposed.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. This is a rather large lot for the area with a wide home that sits closer to the front property line abutting Essex Street than some of the neighboring properties. While front setback relief is required, there will be sufficient light and air and emergency access with what is being proposed so that there is no fair and substantial relationship between the purpose of the front yard requirement and its application to this property. A residential use is reasonable in a residential district.

12) Case 7-12

Petitioners: Shawn A. Dick
Property: 869 Woodbury Avenue
Assessor Plan: Map 219, Lot 37
Zoning District: Single Residence B
Description: Replace damaged home and detached garage with a single family home and attached garage.
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 lot area and lot area per dwelling unit of 10,018± s.f where 15,000 is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The lot is consistent in size and shape with other lots in the area so that the essential character of the neighborhood will not be altered by what is being proposed. The health, safety and welfare of the public will not be threatened so that granting the variance will not be contrary to the public interest and the spirit of the ordinance will be observed.
 - Substantial justice will be done as there will be a clear benefit to the applicant in replacing a house that was burned and not restorable to a decent living condition. Replacing the house will not result in any harm to the general public.
 - An attractive new home, built to code, will be a credit to the neighborhood and not result in any diminution in the value of the surrounding properties.
 - Literal enforcement of the ordinance would result in unnecessary hardship. The existing structure was damaged by fire and the applicant needs to replace a house that is beyond repair and is making it more conforming with regard to the setbacks. For these reasons, there is no fair and substantial relationship between the purposes of the ordinance provision and its specific application to the property.
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13) Case 7-13

Petitioner: Bruce A. Clark
Property: 893 Woodbury Avenue
Assessor Plan: Map 219, Lot 36
Zoning District: Single Residence B
Description: Replace existing garage with an attached two-car garage.
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 an 8'± right side yard where 10' is required;
b) from Section 10521 to allow a 23'± rear yard where 30' is required; and
c) 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:

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 two-car garage of this size will not alter the character of the neighborhood nor threaten the health, safety or welfare of the public.
- Substantial justice will be done by granting the variances as the property owner will benefit from easier access with no harm to the general public, who will actually benefit by an extra off-street parking spot.
- A tasteful garage addition will not diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. These include the existing house and the way it sits on the lot so there is no feasible way to reconstruct a garage with a needed second bay without encroaching into the setbacks. Removing an existing shed and adding the expanded garage will not substantially add to the mass so that there is no fair and substantial relationship between the general purposes of the ordinance provision and its specific application to the property. A garage of this size is a reasonable use of the property in a residential district.

14) Case 7-14

Petitioner: 206 Court Street, LLC
Property: 206 Court Street
Assessor Plan: Map 116, Lot 34
Zoning District: Character District 4-L1
Description: Construct a 36'± x 20'± rear addition.

- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
- a) from Section 10.5A41.10A to allow a lot area per dwelling unit of 979± s.f. where 3,000 s.f. is required;
 - b) from Section 10.5A41.10A to allow façade glazing of 16%± where 20% is the minimum required;
 - c) from Section 10.5A41.10A to allow a 9'± ground floor height where a minimum of 11' is required;
 - d) from Section 10.1114.21 to allow two parking spaces with a width of 8'± where 8.5' is required;
 - e) from Section 10.1114.32(b) to allow vehicles to enter and leave the parking area by backing into or from a public street or way; and
 - f) 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:

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

Review Criteria:

The petition was granted for the following reasons:

- This property is located in a dense downtown area with multi-unit and commercial uses so that constructing a rear addition as part of what will become a three dwelling unit property will not alter the essential character of the neighborhood. The question of vehicles backing out into the street and the possible impact on the health, safety and welfare of the public will be partially mitigated by a mirror system and the overall parking issue will be reviewed by two other land use boards.
- Substantial justice will be done as there would be no benefit to the public in denying the variances while there would clearly be a loss to the applicant as the lot would almost be unusable particularly as it relates to the lot area per dwelling unit requirement.
- Refurbishing the building and converting it into an allowed three unit residential building would potentially increase neighboring property values.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. This is a very small lot, unique in size when compared to the surrounding properties. The lot contains a historic structure that cannot be externally altered and the lot area per dwelling unit requirement is not reasonable in this dense area so that there is no fair and substantial relationship between the purpose of the ordinance provision and its application to the property. The proposed use of the property is a reasonable one.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:35 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary