

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 November 20, 2018** 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, Alternates Phyllis Eldridge and Chase Hagaman

EXCUSED: John Formella, Arthur Parrott

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I. APPROVAL OF MINUTES

A) October 16, 2018

Action: The Board voted to accept the Minutes as presented.

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II. OLD BUSINESS

A) Request for Extension – 163 Deer Street, Lot 4

Action:

The Board voted to **grant** a one-year extension through April 18, 2020 of the variances granted April 18, 2017.

B) Request for Extension – 165 Deer Street, Lot 3

Action:

The Board voted to **grant** a one-year extension through May 16, 2020 of the variances granted May 16, 2017.

C) Request for Rehearing for property located at 127 & 137 High Street

Action:

The Board voted to **deny** the request for rehearing determining that all parties were well represented and heard fairly and that the Board had been thoughtful and very deliberative in coming to their decision. Additionally, the Board determined that no technical or procedural error had been made in the process; facts were carefully considered; and no new facts have been presented to justify granting a rehearing.

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III. PUBLIC HEARINGS - NEW BUSINESS

1) Case 11-1

Petitioners: Ryan and Karen Baker
Property: 137 Wibird Street
Assessor Plan: Map 134, Lot 48
Zoning District: General Residence A
Description: Construct semi-attached 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 0' left side yard where 10' is required; and
b) 27%± building coverage where 25% is the maximum allowed.

Action:

The Board voted to **table** the petition to the December meeting or the earliest meeting allowing sufficient time for the applicants to return with a proposal or amended application addressing the concerns of the Board. These include the 0' property line, and the need to work on the adjacent property to construct and maintain the garage. The applicant was encouraged to work with the Planning Department to propose an increased setback that could accommodate the construction and maintenance of a garage.

Alternatively, or in addition, the applicant needs to provide an assurance that the abutter affected by the garage being in the setback agrees to allow its construction and future maintenance from property the abutter owns. This may be by an easement or other agreement filed with the Registry of Deeds such that all future owners of either property are aware of the agreement when buying or selling their property.

2) Case 11-2

Petitioner: Potter-Schwartz Family Revocable Trust, Michael Schwartz and Sharon Potter
Property: 442/444 Middle Street

Assessor Plan: Map 135, Lot 44
Zoning District: Mixed Residential Office
Description: Vehicular circulation supporting commercial and residential units.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances from Section 10.1114.32 to allow the following:
a) vehicles to enter and leave a parking space by passing over any other parking space or requiring the moving of another vehicle; and
b) vehicles to enter or leave the parking area by backing 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 converting a dwelling unit to office use in this mixed residential and commercial district.
- Substantial justice will be done as the loss to the applicants in requiring strict compliance with the parking requirements would not be balanced by any gain to the general public.
- With no physical change to the property, the value of surrounding properties will not be diminished.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property, which include a property designed for residential use before an office use was permitted in the zone and existing parking that isn't configured for current zoning requirements for travel aisles and vehicular movement. Compliance with the ordinance would unreasonably require carving out additional space from the backyard for institutional parking. With 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. An office use is permitted in this district so that the proposed use is a reasonable one.

3) Case 11-3

Petitioners: Arbor View and The Pines LLC c/o Forest Properties Management Inc.
Property: 145 Lang Road
Assessor Plan: Map 287, Lot 1
Zoning District: Garden Apartment/Mobile Home Park
Description: Add two apartment buildings for a total of 186 dwelling units on the property.
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 per dwelling unit of 8,321± s.f. where 10,000 s.f. is required; and
- b) from Section 10.522 to allow two new multifamily dwellings with a maximum building length exceeding 160 feet.

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 proposed new buildings will be in keeping with those that are existing so that the character of the neighborhood will not be altered. There is no evidence that the public health, safety or welfare will be threatened. Residential uses create fewer traffic issues than businesses and residents of the new buildings can access a traffic light at Roberts Avenue in lieu of using the more heavily traveled Lang Road. Further, the Technical Advisory Committee and Planning Board will consider traffic and potential storm water runoff during site plan review.
- Granting the variances will result in substantial justice as there is no gain to the public that would outweigh the loss to the applicant if the petition were denied.
- The proposed buildings are appropriate to the site and will be located behind existing structures, set off from neighboring properties and not within the sight lines of those properties, so that the value of surrounding properties will not be diminished.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include substantial wetland that is not developable so that there is no fair and substantial relationship between the general purposes of the ordinance and their specific application to the property. The proposed use is a reasonable one as parking has been provided for the additional units and smaller buildings already on the property have not damaged the surrounding wetlands or buffer.

4) Case 11-4

Petitioners: Petition of Wayne and Kristin Barrows
Property: 55 Lafayette Road
Assessor Plan: Map 151, Lot 10
Zoning District: General Residence A
Description: Subdivide one lot into Lot 1 (conforming) and Lot 2 (nonconforming).
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance for Lot 2 including variances from Section 10.521 to allow the following:

- a) a lot area and lot area per dwelling unit of 6,251± s.f. where 7,500 s.f. is required for each; and
- b) 96'± continuous street frontage where 100' is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- Two lots, one conforming and one requiring some relief, 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 ordinance will be observed. A new home on the nonconforming lot will have to be of a modest size when meeting setback requirements and issues of drainage and erosion will be addressed via the permitting process for constructing a home.
- Granting the variances will result in substantial justice as the applicants will benefit by making additional use of their property with no corresponding detriment to the general public. An additional modest-sized house in the city will benefit the public interest.
- A new structure will be subject to the oversight of the review process and, given the size of what would be allowed by right to be built on the new lot, there will not be an imposing structure so that granting these variances will not result in the diminution in the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include an irregularly shaped lot which drives the need for the requested relief. The lot has sufficient area to create two conforming lots, but the location of the existing structure and unusual shape of the lot make such a division impractical and there are numerous other nearby lots of similar or lesser area than that proposed here. Given these conditions, there is no fair and substantial relationship between the general purposes of the ordinance and their specific application to the property. The proposed use as presented is reasonable.

5) Case 11-5

Petitioner: Paul Lane
 Property: 428 Hanover Street
 Assessor Plan: Map 138, Lot 7
 Zoning District: General Residence C
 Description: Construct a two-story 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 10.521 to allow a left side yard of 5.2'± where 10' is required; b) from Section 10.521 to allow a rear yard of 9.4'± where 20' 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 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:

- The proposed addition in this location will not alter the essential character of the neighborhood nor will the health, safety or welfare of the general public be threatened 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 the loss to the applicant if strict conformance to the setbacks in the ordinance is required would not be outweighed by any corresponding gain to the general public. The side yard relief was driven by the need to fit in the addition with the existing bulkhead. If the applicant was forced to conform to the 20' setback any addition would be extremely small and of negligible use.
- Granting the variances will not diminish the value of surrounding properties as the proposed addition will improve values from new construction and a renovated, more livable, dwelling.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include a small, nonconforming lot, the configuration and siting of the existing house, the placement of the bulkhead which drives the siting of the proposed addition, and the location of the property in a neighborhood where there were large multi-family dwellings. Due to these special conditions, there is no fair and substantial relationship between the purpose of the rear and side yard requirements in the ordinance and their application to the property. The use is reasonable and allowed in the district.

6) Case 11-6

Petitioner: Petition of Patrick Liam Hughes

Property: 65 Fields Road

Assessor Plan: Map 170, Lot4

Zoning District: Single Residence B

Description: Approve existing nonconformities of the lot in order to become eligible for an attached accessory dwelling unit.

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 of 7405.2± s.f where 15,000 is the minimum required;
- b) a 16.9'± rear yard where 30' is required;
- c) a secondary front yard of 17'± where 30' is required; and
- d) building coverage of 23±% 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:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. While obtaining a conditional use permit from the Planning Board will still be required, the homeowner is allowed by state law to have an accessory dwelling unit of approximately this size on their property. There will be no new construction so that the essential character of the neighborhood will not be altered nor will the public's health, safety or welfare be threatened.
- Substantial justice will be done as granting the petition will benefit the applicant with no corresponding detriment to the general public.
- The value of surrounding properties will not be diminished as the dimensional relief is based on existing conditions.
- Literal enforcement of the ordinance will result in unnecessary hardship due to special conditions of the property, which include a small corner lot that is half of the lot area required by current zoning and existing nonconforming conditions which drive the need for the relief. Denying the petition would prevent the owner from fully utilizing the property. The new law requires municipalities to provide opportunities for Accessory Dwelling Units and the applicant's case is a special one so that there is no fair and substantial relationship between the purposes of the dimensional requirements in the ordinance and their application to the project. This is a reasonable use of the property, a residential use in a residential zone.

7) Case 11-7

Petitioner: Joseph and Ellen Yarborough
 Property: 746 Middle Road
 Assessor Plan: Map 232, Lot 49
 Zoning District: Single Residence B
 Description: Subdivide a lot into two nonconforming lots with an existing single family home and a single family home to be constructed.
 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 continuous street frontage of 50' for each lot where 100' is required for each.

Action:

The Board voted to **invoke Fisher v. Dover** deciding that the case law applied to this petition and declining to hear the petition. The Board determined that the application was not materially different from their previous application nor that the legal standard or change in the law pertaining to Accessory Dwelling Units was a material change impacting the application. A small, subordinate structure in common ownership with the primary structure is very different from both the previous and current proposals to create two separate lots with the potential for separate owners for the lots.

8) Case 11-8

Petitioner: Portsmouth Housing Authority
 Property: Gosling Road (40 Wedgewood Road)
 Assessor Plan: Map 239, Lot 12
 Zoning District: Gateway Neighborhood Mixed Use Corridor (G-1)
 Description: Convert 670± s.f. in an existing recreation center to pre-school use.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
 a) a special exception under Section 10.440, Use #7.12 to allow a group day care facility including private preschool and kindergarten where the use is only allowed by special exception.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The preschool will be a conducive use to the recreational center and the standards as provided by the Ordinance for the particular use permitted by special exception are met.
- Nothing in the proposed use will pose a hazard to the public or adjacent properties on account of potential fire explosion or release of toxic materials.
- There will be no detriment to property values in the vicinity or change in the essential characteristics of the area including residential neighborhoods or business/ industrial districts from the scale of buildings, parking areas or accessways, smoke, gas or other pollutants, noise, glare heat or other irritants or unsightly outdoor storage. The building is existing and contains a similar and complimentary use.
- Granting the special exception will pose no creation of a traffic safety increase or hazard. Most of the attendees will live in the neighborhood and will likely not be dropped off by vehicle. There is already some residential vehicular traffic and the occasional vehicle will have no significant impact.
- The portion of the facility dedicated to the facility will not result in any excessive demand on municipal services, including water, sewer, waste disposal, police, fire protection or schools. The use will have lower peak flow times than the existing center.
- The proposed use will be contained in an existing building so there will be no increase in storm water runoff onto adjacent property or streets.

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IV. OTHER BUSINESS

No Other Business was presented.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary