

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

REVISED 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 February 21, 2018*** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheaume, Vice Chairman Jeremiah Johnson, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate John Formella

EXCUSED: Jim Lee, Patrick Moretti

**Change in customary schedule and day of week.*

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I. APPROVAL OF MINUTES

A) January 17, 2018

The Minutes were approved with a minor correction.

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II. OLD BUSINESS

A) Case 1-1.
Petitioner: James M. Fernald, Appellant
Property: 996 Maplewood Avenue
Assessor Plan: Map 219, Lot 4
Zoning District: Single Residence B District
Description: Appeal
Request: Appeal from an Administrative Decision regarding the issuance of a building permit for Unit C of the above property.
(This petition was postponed from the January 17, 2018 meeting.)

Action:

The Board voted to **deny** the petition as presented and advertised, thus upholding the decision of a Code Official to issue a building permit for Unit C. While there was discussion at the meeting

of various aspects of the project’s path through the application and approval process, the Board concentrated its decision review on the specific appeal before it. The Board found no evidence that the issuing official made any errors of procedure or acted incorrectly in arriving at the decision and determined that the building permit was appropriately issued.

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III. PUBLIC HEARINGS - NEW BUSINESS

1) Case 2-1

Petitioner: Jennifer S. Benjamin
Property: 180 Sherburne Avenue
Assessor Plan: Map 112, Lot 31
Zoning District: General Residence A
Description: One-story left-front addition.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.521 to allow a 5’6”± right side yard where 10’ is required;
2. A Variance from Section 10.521 to allow 29%± building coverage where 25% is the maximum allowed;
3. 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:

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 what is being proposed and granting the requested relief will not threaten public health, safety or welfare.
- Substantial justice will be done. The loss to the applicant by strictly enforcing the setback and coverage requirements would not be outweighed by any benefit to the general public. As sited, the existing structure violates the setback and the increase in building coverage is slight.
- A significant upgrade to this property will have a positive effect on neighborhood property values.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. This is a small lot with existing nonconformities due to the siting of the existing dwelling so that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of

those provisions to the property. A residential use in a residential zone is a reasonable use of the property.

2) Case 2-2

Petitioners: Dorothy M. Kierstead and Theresa Sessions
Property: 50 Lovell Street
Assessor Plan: Map 147, Lot 2
Zoning District: General Residence C
Description: Construct two, two-family structures.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,423± s.f. where 3,500 s.f. is required.

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 a variance were not met.
 - Two large structures on a lot abutting the back yards of a number of small lots with smaller structures would be a negative factor affecting the value of surrounding properties.
 - There was no special condition of the property creating a hardship so that relief was required and the property can be reasonably used with less than five units while complying with the ordinance.
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3) Case 2-3

Petitioner: Jeffrey J. Caron
Property: 325 Thaxter Road
Assessor Plan: Map 152, Lot 39
Zoning District: Single Residence B
Description: One-story right rear addition.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.521 to allow a 4'± right side yard where 10' is required;
2. A Variance from Section 10.521 to allow 28.1%± building coverage where 20% is the maximum allowed;

3. 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:

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

Review Criteria:

The petition was granted for the following reasons:

- This tasteful and simple design will fit well in the neighborhood and repurpose utilized space. The increase in building coverage will be slight and the addition is set back further from the right side property line than the existing building 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 proposed unimposing addition will have no adverse effects on the public or affected abutters, many of whom spoke in favor.
- The value of surrounding properties will not be diminished by a small high-quality addition with a small increase in square footage.
- The special conditions of the property resulting in unnecessary hardship so that relief is required include a small narrow lot, the location of the right-of-way driveway and the siting of the existing structure along an irregular angular lot line.

4) Case 2-4

Petitioner: Kathryn Michele Arbour

Property: 86 Emery Street

Assessor Plan: Map 220, Lot 87-1

Zoning District: Single Residence B

Description: Two family dwelling.

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

1. A Variance from Section 10.440, Use #1.30 to allow a two family dwelling on a lot where only a single family dwelling is allowed.

Action:

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

Stipulations:

- One of the units in the approved two-family dwelling must be owner-occupied.
- Both dwelling units must be under the same ownership.
- The owners will provide a certificate annually to the Planning Department certifying compliance with the first two stipulations.

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 essential character of the neighborhood will not be altered by this two-family dwelling. There are similar multi-family homes in the area with the appearance of a single-family dwelling.
- Substantial justice will be done as the gain to the applicant will not be outweighed by any harm to the general public while the loss to the applicant, if the petition were denied, would be much greater than the benefit to the public.
- The value of surrounding properties will not be diminished. The project will not overburden or overcrowd the neighborhood and the applicant has made an effort to accommodate neighborhood recommendations.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special condition of a larger lot than surrounding properties. There is no fair and substantial relationship between the single-family limitation in the ordinance and its application to the property due to the timing of events that prevented the ability to build an accessory dwelling unit (ADU). The use is permitted and a reasonable use of the property.

5) Case 2-5

Petitioner: KL Boston Revocable Trust, Kelly L. Boston, Trustee
 Property: 465 Cutts Avenue
 Assessor Plan: Map 210, Lot 27
 Zoning District: Single Residence B
 Description: Extend existing garage and front porch.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.521 to allow a secondary front yard setback of 10.5'± where 30' is required;
2. A Variance from Section 10.521 to allow 23%± 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:

- Granting the minor adjustments to the previously approved variance would not be contrary to the public interest or to the spirit of the ordinance.

- The essential character of the neighborhood will remain residential and the public's health, safety and welfare would not be affected by approval of the variances.
 - Substantial justice would be done because the loss to the applicant if denied would far outweigh any gain to the public by requiring the ordinances be upheld.
 - The values of surrounding properties would improve by granting the variances and not be diminished.
 - The special conditions of the lot, being a corner lot with a second front yard setback, distinguish it from others in the area, so there was no fair and substantial relationship between the purpose of the Ordinance and its application to the property.
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6) Case 2-6

Petitioner: Evon Cooper

Property: 287 Maplewood Avenue

Assessor Plan: Map 141, Lot 36

Zoning District: Character District 4-Limited

Description: One-room addition on existing foundation.

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

1. A Variance from Section 10.5A41.10A to allow a 2.49'± side yard where 5' is the minimum required;
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:

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 will observe the spirit of the ordinance.
- Building the rear addition will not alter the character of the neighborhood nor threaten the public's health, safety or welfare.
- Substantial justice will be done because there is no public interest in the restoration of a small, modest room on the back of the house and the addition of added interior space will be a benefit to the house.
- The value of surrounding properties will not be diminished because the project would restore something that previously existed in that shape, or even larger. The existing foundation was part old and part new and does not add anything to the property as it currently exists.
- The hardship exists because of the odd placement of the structure with respect to the property line, which cannot be changed.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:40 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary