

**PLANNING DEPARTMENT - BOARD OF ADJUSTMENT**

**ACTION SHEET**

**TO:** John P. Bohenko, City Manager

**FROM:** Mary Koeppenick, Planning Department

**RE:** Actions Taken by the Portsmouth **Board of Adjustment regular meeting** on May 18, 2010 in Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Chairman Charles LeBlanc, Vice-Chairman David Witham, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternate: Robin Rousseau

**EXCUSED:** Carol Eaton, Alternate: Derek Durbin

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**I. APPROVAL OF MINUTES**

A) March 23, 2010

It was moved, seconded and passed by unanimous voice vote to accept the Minutes as presented.

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B) April 20, 2010 - Excerpt of Minutes (100 Deer Street)

It was moved, seconded and passed by unanimous voice vote to accept as presented the Excerpt of Minutes for Case #4-2 of the April 20, 2010 meeting.

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**II. OLD BUSINESS**

A) Revised Rules & Regulations – Board of Adjustment

It was moved, seconded and passed by majority voice vote to add the words, “or an abutter.” at the end of Item10, under Section VI of the proposed City of Portsmouth Board of Adjustment Rules and Regulations. Ms. Rousseau voted, “nay.”

It was moved, seconded and passed by majority voice vote to adopt the City of Portsmouth Board of Adjustment Rules and Regulations as amended. Mr. Parrott and Ms. Rousseau voted, “nay.”

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- B) Request for a One-Year Extension of Variances granted May 19, 2009 for property located at 1850 Woodbury Avenue.

After consideration, the Board voted to grant a One-Year Extension of the Variances through May 19, 2011.

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- C) Motion for Rehearing regarding 100 Deer Street (formerly a portion of 195 Hanover Street)

After consideration, the Board voted to deny the request. No new information had been presented which was not available at the time of the hearing and there was no misapplication of the law in arriving at the Board’s decision.

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- D) Case # 4-8

Petitioner: Ideas in Motion, LLC

Property: 28 Langdon Street Assessor Plan 138, Lot 46

Zoning district: General Residence C

Requests: **Special Exceptions**, Section 10.440 Table of Uses use(s) 1.42 and 1.53 to allow 5 dwelling units on the same parcel in the GRC zone and to allow the conversion of a building existing on January 1, 1980 with less than the required minimum lot area per dwelling unit as specified in Article 5; **Variance(s)** Section 10.521 Table of Dimensional Standards to allow 5 units on a parcel of 6391 square feet where 3500 square feet per unit is required; Section 10.1112.30 to allow for 5 parking spaces on the lot where 9 are required. *(This petition was postponed from the April 27, 2010 reconvened meeting.)*

After consideration, a motion to grant the Special Exceptions failed to pass and the request for the Special Exceptions was denied. It was felt that a traffic or safety hazard could be created and that neighboring property values would be negatively affected by noise and light from a residential unit in that location.

The Board then voted to deny the Variances. The applicants failed to demonstrate special conditions of the property which would result in an unnecessary hardship and it was felt that a fair and substantial relationship did exist between the general purposes of the Ordinance provision and its application to the property with respect to both the square footage per dwelling unit and the proposed parking spaces.

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E) Case # 4-9  
 Petitioner: Thomas P. Coakley  
 Property: 231 Bartlett Street Assessor Plan 162, Lot 31  
 Zoning district: General Residence A  
 Requests: **Variance(s)**, to construct a third floor dormer. Section 10.321 to allow for the enlargement of a nonconforming structure; Section 10.521 Table of Dimensional Standards to allow a side yard set back of 8 feet where 10 feet is required. *(This petition was postponed from the April 27, 2010 reconvened meeting.)*

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- The essential character of the neighborhood will not be changed by these scaled down dormers.
- There would be no benefit to the general public if the petition were denied while a hardship would be created for the property owner.
- The special conditions of the property which would result in an unnecessary hardship include the siting of the house on the lot and the existing nonconformance.
- In the spirit of the ordinance, the light and air available to neighbors will be protected and there is no evidence that the proposal will result in a diminution in surrounding property values.

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F) Case # 4-13  
 Petitioner: Elizabeth M. Mackey  
 Property: 214 Aldrich Road Assessor Plan 153, Lot 27  
 Zoning district: Single Residence B  
 Requests: **Variance(s)** to allow the construction of a 24' x 24' garage. Section 10.521 Table of Dimensional Standards to allow; A) a side yard setback of 3 feet where 10 feet is required; B) a rear yard setback of 5 feet where 30 feet is required and; C) a building coverage of 35% where 20% is allowed. *(This petition was postponed from the April 27, 2010 reconvened meeting.)*

Prior to consideration, the Board acknowledged that a correction to the building permit application resulted in a reduction in the requested building coverage from 35% as advertised to 24% as presented. A motion to grant the petition then failed to pass and the petition was denied. In addition to infringing on the side and rear setbacks, the proposed garage would be more than half the size of the existing house. It was felt that special conditions of the property distinguishing it from others in the neighborhood were not demonstrated and that the garage could be redesigned to better comply with the Zoning Ordinance.

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**III. PUBLIC HEARINGS**

1) Case # 5-1

Petitioners: Bradford D. Scott & Elizabeth B. Scott

Property: 94 Mendum Ave Assessor Plan 149, Lot 55

Zoning district: General Residence A

Request: **Variance(s)**: To remove a portion of a garage which encroaches on 94 and 104 Mendum Avenue and to relocate a new garage on 94 Mendum Avenue. To **A)** allow an accessory structure to be constructed with a building coverage of 36.6 % where 25% is allowed and **B)** allow a sideyard setback of 4’ where 10’ is required; Section 10.521 Table of Dimensional Standards; Section 10.321 to allow the expansion of a nonconforming structure.

After consideration, a motion to grant the petition failed to pass and the petition was denied. This would be a large garage on a small lot. With a little reduction and movement it was possible to get closer to meeting the setback and coverage requirements.

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2) Case # 5-2

Petitioners: David D. Paquette and Eliz J. Paquette

Property: 8 Pheasant Lane Assessor Plan 268, Lot 99-8

Zoning district: Single Residence B

Requests: **Variance**: To construct a 24’ round above ground pool and a 900 square foot deck with a side yard setback of 30’ where 50’ is required under the Planned Unit Development ordinance Section 10.725.32

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- A pool and deck in this location will not infringe on the public interest by changing the essential character of the neighborhood.
- With adjacent wetlands and a commercial use on the nearest side, the light and air of neighbors will be protected and the spirit of the ordinance observed.
- In the justice balance test, there would be no benefit to the public in denying the variance.
- With no negative impact, the value of surrounding properties will not be diminished.
- There are special conditions of the property so that no fair and substantial relationship exists between the general public purposes of the Ordinance and its specific application to the property. These include the pitch of the lot, the changed configuration of the wetlands and the adjacent commercial use.

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3) Case # 5-3

Petitioners: Karen E. Lloyd and Thomas P.Martin

Property: 1248 South Street Assessor Plan 151, Lot 4

Zoning district: General Residence A

Request: **Variance:** To expand an enclosed porch with a dimension of 2’3” x 12’8” or 28.5 square feet placing the building coverage at 30.9% where 25% is allowed; Section 10.521 Table of Dimensional Standards; Section 10.321 to allow the expansion of a nonconforming structure.

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- Replacing a dilapidated porch with a safer structure in this location will not be contrary to the public interest or diminish the value of surrounding properties.
- The spirit of the ordinance with regard to lot coverage is to control density but this placement will allow adequate distance between structures.
- There would be no benefit to the general public in denying the variance.
- The special condition of the property distinguishing it from others in the neighborhood under the unnecessary hardship criteria is the odd shape and small size of the lot.

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4) Case # 5-4

Petitioners: John Biskaduros & Jeanine E. Biskaduros

Property: 321 Mckinley Road Assessor Plan 247, Lot 27

Zoning district: Single Residence B

Request: **Variance:** To construct a 16’ x 16’ sunroom with a 15’ rearyard set back where 30’ is required; Section 10.521 Table of Dimensional Standards; Section 10.321 to allow the expansion of a nonconforming structure.

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- The sunroom will be located on top of the existing deck to the rear and should have no impact on the general public.
- The spirit of the ordinance is observed as there is adequate surrounding open space for neighbors.
- There would be no benefit to the general public in denying the variance and the value of surrounding properties will not be affected by this modest structure.
- The special condition of the property is that the deck, which is the best location for the sunroom, lies within the rear yard setback. As part of the proposal, the deck’s infringement into the setback will be reduced.

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5) Case # 5-5

Petitioner: John J. Vendola

Property: 290 Miller Avenue Assessor Plan 130, Lot 12

Zoning district: General Residence A

Request: Variance(s): to remove existing porches, enclose the rear accessways and stairs and to increase the size of the living space which includes a 0' side yard setback where 10' is required and building coverage of 35% where 25% is required and 33.1% currently exists, Section 10.521 Table of Dimensional Requirements; Section 10.321 to allow the expansion of a nonconforming structure

After consideration, the Board voted that the case of Fisher v. Dover applied to this request and declined to hear the petition.

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**IV. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 10:45 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary