

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 15, 2011 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Susan Chamberlin, Derek Durbin, Alain Jousse, Charles LeMay, Alternate Robin Rousseau

EXCUSED: Thomas Grasso, Alternate: Patrick Moretti

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I. APPROVAL OF MINUTES

A) September 20, 2011

The Minutes were approved as presented with one correction.

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II. PLANNING DEPARTMENT REPORTS

No reports were presented.

The Board acknowledged receipt of a memorandum regarding the procedure for hearing Requests for Rehearing and a copy of a recent court decision.

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III. REQUEST FOR REHEARING

(This item will be considered by the Board with reference to the written motion for rehearing and to the statutory criteria for granting a rehearing. There will be no public testimony.)

A) Request for Rehearing regarding the property located at 28-30 Dearborn Street.

The Board voted to table the request until a memorandum was received from the Planning and/or Legal Department with regard to any outstanding code violations on the property.

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IV. OLD BUSINESS

Case # 10-1

Petitioner: Sean C. Evans & Hannah Shea

Property: 165 Dodge Avenue

Assessor Plan 258, Lot 41

Zoning district: Single Residence B

Description: Construct a 26'± x 38'± two story home with attached 24'± x 24'± garage

Requests: Variance from Section 10.521 to allow a single-family dwelling on a lot without street frontage, where 100' of continuous street frontage is required. Variance from Section 10.512 to allow a structure on a lot without access to a public street or an approved private street.

Note: This rehearing was postponed from the October 18, 2011 meeting. An earlier variance application regarding lot area has been determined to be inapplicable provided the submitted plan is recorded by the Applicant.

Action:

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

Stipulations:

1. The Applicant shall submit an engineered plan showing details of the location, materials, and grading to be presented to the Public Works Department with a signature of acceptance by Mr. Stephen Lee, abutter to the property;
2. If any damage is done to the existing driveway, built by Mr. Lee in 1987, while constructing the new driveway to the Evans property, the driveway will be restored to its existing condition; and
3. The front yard setback will be measured from the original lot line and not the center line of the paper street.

Other:

1. The Applicant shall record with the Registry of Deeds the submitted survey plan showing sufficient lot size to comply with the requirements of the Ordinance, with a copy provided to the Board; and
2. The Board encouraged a mutual maintenance agreement with Mr. Lee for the driveway(s).

Review Criteria:

The petition was granted for the following reasons:

- There is no evidence that the public health, safety or welfare will be negatively impacted or that the essential characteristics of the neighborhood will be changed by constructing a single family home in this residential neighborhood.
- The spirit of the Ordinance will be observed by allowing access, subject to the specified stipulations.
- The benefit to the applicant in granting the petition will not be overridden by any harm to the general public.
- With the stipulations and the testimony on the projected value of a home on this lot, there should be no diminution in the value of surrounding properties.
- The hardship in the property is its location on a paper street so that the property cannot be reasonably used in conformance with the Zoning Ordinance.

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V. PUBLIC HEARINGS

1) Case # 11-1

Petitioner: Christopher A. Shields

Property: 61 Cabot Street

Assessor Plan 136, Lot 36

Zoning district: General Residence C

Description: Replace existing garage with 16' x 24' storage shed.

Requests: Variance from Section 10.521 to allow a 0'± left side yard setback where 10' is required.

Action:

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

Stipulations:

1. A two (2) foot left side yard setback is required.

Other:

1. The proposed parking plan with respect to the front yard setback will be modified to comply with the City's off-street parking requirements.

Review Criteria:

The petition was granted for the following reasons:

- Allowing the replacement of an existing structure in disrepair will not be contrary to the public interest or the spirit of the Ordinance.
- The value of surrounding properties will not be diminished by this construction of a new shed.
- With the revised left side yard setback, the new structure will be brought closer to conformance with the setback requirements.

2) Case # 11-2

Petitioner: Brian J. Bednarek

- This use is permitted in this district by Special Exception.
- There will be no hazard to the public or adjacent property from fire explosion or release of toxic materials resulting from these drive-through lanes.
- This use will not result in any detriment to property values in the vicinity or change in the essential characteristics of the area from smoke, gas, odors or other negative elements.
- A two lane drive-through should be minimally invasive and have far less impact on traffic than the previous use, with no creation of a traffic safety hazard or increase in traffic congestion.
- The demand on municipal services will be minimal.
- Plans were presented that indicated an improvement in storm water management so that there should be no increase in runoff onto the street or adjacent properties.

4) Case # 11-4

Petitioner: Michael’s Realty Trust, Owner, 4 Amigos, LLC, Applicant

Property: 1390 Lafayette Road

Assessor Map 252, Lot 9

Zoning district: Gateway

Description: Construct two drive-through lanes in association with construction of a pharmacy.

Requests: Special Exception under Section 10.440, Use #19.40, and Section 10.836 to allow a two-lane drive-through facility as an accessory use to a 11,944± s.f. pharmacy.

Action:

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

Stipulations: NA

Other: NA

Review Criteria:

The petition was granted for the following reasons:

- This use is permitted in this district by Special Exception.
- There will be no hazard to the public or adjacent property from fire explosion or release of toxic materials resulting from these drive-through lanes.
- This use will not result in any detriment to property values in the vicinity or change in the essential characteristics of the area from smoke, gas, odors or other negative elements.
- A two lane drive-through should be minimally invasive and have far less impact on traffic than the previous use, with no creation of a traffic safety hazard or increase in traffic congestion.
- The demand on municipal services will be minimal.
- Plans were presented that indicated an improvement in storm water management so that there should be no increase in runoff onto the street or adjacent properties.

5) Case # 11-5

Petitioner: Stephen G. Erickson

Property: 257 Austin Street

Assessor Map 145, Lot 71

Zoning district: General Residence C

Description: Construct 10' x 5'7" first floor bathroom/laundry addition.

Requests: Variance from Section 10.321 to allow a lawful nonconforming building to be extended or enlarged in a manner that is not in conformity with the Zoning Ordinance.

Variance from Section 10.521 to allow a building coverage of 44.7%± where 43.64%± currently exists and 35% is the maximum allowed.

Action:

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

Stipulations: NA

Other: NA

Review Criteria:

The petition was granted for the following reasons:

- A small, basically infill project, this addition will not change the essential characteristics of the neighborhood so that the public interest will not be negatively impacted.
- Screened from the view of abutting neighbors, there should be no public interest in this addition or diminution in the value of surrounding properties.
- In this location and with a modest increase in lot coverage, the spirit of the Ordinance will be observed.
- The special conditions of the property include a building with an odd shape that is skewed on the lot so that a hardship is created in trying to place even a modest addition without requiring a variance.

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VI. OTHER BUSINESS

No other business was presented.

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VII. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:45 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary