

**MINUTES OF THE BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE**

MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

EILEEN DONDERO FOLEY COUNCIL CHAMBERS

7:00 p.m.

**April 24, 2012, Reconvened
From April 17, 2012**

MEMBERS PRESENT: Vice-Chairman Arthur Parrott, Susan Chamberlin, Derek Durbin, Charles LeMay, Christopher Mulligan, David Rheaume; Alternate Patrick Moretti

EXCUSED: Chairman David Witham, Alternate Robin Rousseau

In the absence of the Chairman, Vice-Chairman Parrott served as Chair for the meeting.

I. PUBLIC HEARINGS

7) Case # 4-7

Petitioner: Richard S. Bean

Property: 324-334 Parrott Avenue

Assessor Plan 129, Lot 36 & 37

Zoning District: General Residence A

Description: Convert a single family to a multi-family dwelling with a two-car garage.

Request: 1. A Variance from Section 10.311 to allow a structure on a lot with less than the required minimum lot area and street frontage.

2. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended to the rear property line and to be extended to the rear property line. **Request to Postpone**

3. A Variance from Section 10.324 to allow a lawful nonconforming structure to be added to or enlarged where the addition or enlargement does conform to all the regulations of the Zoning Ordinance.

4. A dimensional Variance from Section 10.521 to allow a lot area per dwelling unit of 3,211 s.f.± where 7,500 s.f. per dwelling unit is required.

5. A dimensional Variance from Section 10.521 to allow 28%± building coverage where 25.3% exists and 25% is the maximum allowed.

DECISION OF THE BOARD

It was moved, seconded and passed by unanimous voice vote to postpone the petition to the May meeting, as requested by the applicant.

8) Case # 4-8

Petitioners: Theodore M. Stiles & Joan Boyd

Property: 28 South Street

Assessor Plan 102, Lot 43

Zoning District: General Residence B

Description: Replace existing 22.5' x 14.5' garage with a 30'± x 14.5'± structure with dormers

Request: 1. A Variance from Section 10.521 to allow a nonconforming building to be extended or enlarged in a manner that is not in conformity with the Zoning Ordinance.

2. A dimensional Variance from Section 10.521 to allow a right side yard setback of 1.6'± where 10' is the minimum required.

Withdrawn

It was acknowledged by the Board that the petition had been withdrawn by the applicants.

9) Case # 4-9

Petitioners: Donovan-Hess Family Rev. Trust, Jane M. Donovan & William Hess, Trustees

Property: 54 Rogers Street

Assessor Plan 116, Lot 44

Zoning District: Mixed Residential Office

Description: Replace existing sunroom with 18'9"± x 13'6"± 2-story addition, construct front and rear porches, reduce existing garage

Request: 1. A 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.

2. A dimensional Variance from Section 10.521 to allow a left side yard setback of 4'± where the minimum setback required is 10'.

3. A dimensional Variance from Section 10.521 to allow 42%± building coverage where 39% ± exists and 40% is the maximum allowed.

SPEAKING IN FAVOR OF THE PETITION

Ms. Ruth Edwards stated that she lived at 165 Black Water in Somersworth. She wanted to correct two errors. The first was that the description should read that they were constructing side and rear porches, not front and rear porches. She also stated they were looking for a left side yard setback of approximately 6'± which she believed was actually 5'11". When Vice-

Chairman Parrott asked if that was after the change in the size of the lot, she responded, "yes," if he meant the proposed project. Vice-Chairman stated that her corrections were noted.

Ms. Edwards stated that the lot was very tight. In 2008, her client had another petition before the Board, which was granted for a similar renovation and addition. The project was put on hold and they were back looking for somewhat less relief than had been originally granted. She stated that the open space would increase with the proposed project while the setback variances would decrease.

She reviewed the contents of a memorandum distributed to the Board, which included the petition, the corrections, information on two projects of a similar nature on Rogers Street that had recently been granted, and details on the variances granted in 2008 petition for the same property. She confirmed that they had not acted on those variances, but the reasons for granting them, as well as the variance granted for a porch at the nearby 235 Rogers Street property, were in concert with the current project.

Vice-Chairman Parrott stated that the Board needed her testimony as to what they were actually requesting, including the reduction of the outbuilding, to ensure that the Board had the latest information. Noting that they were also working with the Historic District Commission, Ms. Edwards stated that they would be replacing windows, replacing a previous addition, adding a side entry porch, little more than a platform, and a rear porch which would not be seen from the street. While the main structure with porches would be nominally increased, they would actually be decreasing the footprint by removing the outbuilding. She stated that the only infringement was at the left side of the property, with the platform porch. She also distributed some photographs, which included an aerial view which provided a good idea of the restrictions of the site. The existing building was a nonconforming structure.

Vice-Chairman Parrott requested that she address the status of the garage. Ms. Edwards stated that it would be cut in half with the rear half saved, only modified. The side and rear setbacks would remain as they were. He asked that she also address the change in the size of the lot which had happened about a year and a half ago. When she asked if that was the 8' wide strip purchased from the City, Vice-Chairman Parrott clarified that he wanted on the record what exactly had happened with the lot size.

Mr. Bill Hess stated that he lived at 54 Rogers Street. In the summer of 2010, they were told that, due to a survey performed for the Middle School, there was a strip of property about 7' or 8' wide, from the fence to the center of their driveway, which belonged to the City. The line alongside the strip basically ran from Rogers Street back to Richards Avenue, affecting about 13 to 16 lots. After some discussion with the City, they had purchased their section which was 7' to 8' wide by 74½' deep and placed pins in the ground to mark the current boundaries. In response to a question from Vice-Chairman Parrott, he confirmed that the purchase widened his lot and affected the setbacks. The net gain in lot size, which was on the recorded survey plan which both they and the City had, was approximately 680 s.f. some square feet.

Mr. LeMay noted that, back in 2008 when the variance was granted to allow the two story addition which had not been built, part of the request was to remove a front entry deck. Mr.

Hess confirmed that the front deck had been removed. Ms. Chamberlin asked if the 8' addition was open space, or pavement and Mr. Hess stated it was mostly their driveway and it would stay a driveway now that they actually owned all of it.

Addressing the criteria, Ms. Edwards stated that the variance would not be contrary to the public interest. The majority of the work would be at the back and side of the property, not impeding on public rights of way. She maintained that the aesthetic would increase the value, not only of the home but the community and surrounding properties, one of which was a school. The proposed porch at the requested location would not undermine the buffering intent of the Ordinance, especially taking into consideration the additional lot area. She stated that substantial justice would be done as there would be no negative impact to the adjacent properties or the surrounding community. Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship because the proposed location was not adjacent to any other resident. The property was separated by an existing fence and they believed it was reasonable to request that a one story roof covered porch be constructed three feet beyond the setback.

Vice-Chairman Parrott asked the Consultant/Planner in the Planning Department if he wanted to address the differences the presenter raised in the notice and whether they were due to the enlarged lot. Mr. Cracknell stated he didn't think so. He felt that what had been suggested was that the side yard setback would be 6' instead of 4'. It had been interpreted as 4', intruding 6' into the side yard setback but if what was shown on the plan was 6' then the setback was 6'.

SPEAKING IN OPPOSITION TO THE PETITION, OR SPEAKING TO, FOR, OR AGAINST THE PETITION

With no one rising, the public hearing was closed.

DECISION OF THE BOARD

Mr. LeMay made a motion to grant the petition as presented and advertised, which was seconded by Mr. Durbin.

Mr. LeMay stated that this had slightly less impact than the previously requested variance which had not been acted upon after approval. He stated that this change would not alter the neighborhood or result in any harm to the public. The project was interior to the lot with the small exception of a side variance on the side abutting the school property so that there would be no issues with the light and air protected by the Ordinance. Mr. LeMay stated that to restrict the property so that it would remain in strict conformance with the Ordinance was not necessary due to the parking lot to the back and the school to the side. They would not be affected by this activity so that a restriction would become an unreasonable hardship. He stated that he had heard nothing about surrounding property values and felt that the impact was pretty neutral, adding that reducing the size of the garage was probably in the public interest and mitigated some of the growth on the house.

Mr. Durbin stated that he seconded Mr. LeMay's comments. Originally, he felt this seemed like a lot of relief and he thought the applicants could have done it differently. At the same time, he looked at the lot which was really narrow so that there was an inherent hardship in the lot itself. The project was oriented to the back of the lot where there was no negative impact and there didn't appear to be an over-intensification of the lot so he felt that the spirit of the Ordinance was observed as well as the other criteria.

The motion to grant the petition as presented and advertised was passed by a vote of 7 to 0.

II. OTHER BUSINESS

No other business was presented.

III. ADJOURNMENT

It was moved, seconded and passed by unanimous voice vote to adjourn the meeting at 7:25 p.m.

Respectfully submitted,

Mary E. Koepenick
Administrative Clerk