

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 May 15, 2012 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, Charles LeMay, David Rheume, Alternate: Patrick Moretti

EXCUSED: Christopher Mulligan, Alternate: Robin Rousseau

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I. APPROVAL OF MINUTES

A) March 20, 2012

The Minutes were approved as presented by unanimous voice vote.

B) March 27, 2012

The Minutes were approved as presented by unanimous voice vote.

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II. OLD BUSINESS

A) 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 or enlarged in a manner that is not in conformity with the Zoning Ordinance.
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.
(This petition was postponed from the April 24, 2012 meeting.)

Action:

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

Stipulations:

Prior to commencement of construction, the applicant shall submit the final draft of the property deeds and proposed access easement to the City Attorney for review and approval.

Other:

As presented, the conversion will be from a single family dwelling to a two-family dwelling.

Review Criteria:

The petition was granted for the following reasons:

- This is a residential area which is fairly densely developed and populated. This project will not change its essential character or add greater density than currently exists.
- The spirit of the Ordinance will be observed as the property is surrounded by municipal uses with open space so that light and air will be preserved.
- The detriment to the applicant, if denied, would not be outweighed by any benefit to the general public.
- With no testimony to the contrary and no encroachment on neighbors, it is felt that this project will not result in any diminution in the value of surrounding properties.
- Its size and the surrounding uses create special conditions for the property so that a variance is necessary to use the property in a reasonable manner.

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III. PUBLIC HEARINGS

- 1) Case # 5-1
 Petitioner: Norman T. Ohr, Jr.
 Property: 69 New Castle Avenue
 Assessor Plan 101, Lot 49
 Zoning District: General Residence B

Description: Install two 27” x 27” x 28” A/C compressors against the right side of the residential structure.

- Request:
1. A dimensional Variance from Section 10.324 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 to allow building coverage of 39%± where 30% is the maximum building coverage allowed.
 3. A dimensional Variance from Section 10.572 and Section 10.521 to allow a right side yard setback of 4’± where 10’ is required.

Action:

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

Stipulations:

None.

Other:

As presented, the right side yard setback will be 5’±. The Building Inspection Department shall insure that the proposed a/c units comply with the noise requirements of Section 10.1332.20.

Review Criteria:

The petition was granted for the following reasons:

- As presented, these two units will not affect the public interest.
- It will be in the spirit of the Ordinance to allow this reasonable addition.
- The abutter who would be the most affected did not raise any objections and there is no reason to believe that the value of surrounding properties would be diminished.
- In the justice balance test, there is no overriding public interest that would argue against granting the variances.
- Other locations for the units were considered but not found feasible due to the dimensions and existing layout of the property.

2) Case # 5-2

Petitioner: Lea H. Aeschliman Trust, Lea H. Aeschliman, Trustee.

Property: 314 Middle Street

Assessor Plan 136, Lot 6

Zoning District: Mixed Residential Office

Request to Postpone

Description: Convert unit from office to residential for two dwelling units on property.

- Request:
1. A Variance from Section 10.1112.30 to allow 3 off-street parking spaces where 4 off-street parking spaces are required for two dwelling units.

Action:

At the applicant’s request, the Board **granted** a postponement to the June 19, 2012 meeting.

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- 3) Case # 5-3
Petitioner: HCA Health Services of NH Inc.
Property: 333 Borthwick Avenue
Assessor Plan 240, Lot 2-1
Zoning District: Office Research
Description: Construct and utilize a helipad in the emergency room parking lot to the left of the building.
Request: 1. Special Exception under Section 10.232 and Section 10.440, Use #15.20 to allow a heliport as an accessory use to a permitted principal use.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- It was presented that there would be no greater hazard to the public from fire explosion or release of toxic materials than from any passenger or commercial vehicle currently using the facility.
- There will be no detriment to property values. The closest abutter had no objections and residential areas are a half mile away.
- The pathway of the helicopter was planned to avoid residential neighborhoods and the noise generated would be no more than typical airplane noise.
- Any affected internal roads would be shut off while the unit was landing so that a traffic safety hazard will not be created.
- With power for the lights the only service required, there will be no excessive demand on municipal services.
- There will be no increase in storm water runoff as the site will be in the middle of an existing paved parking lot with no increase in impervious surface.

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- 4) Case # 5-4
Petitioner: MJS Realty Trust, M. J. Shafmaster & M. J. Sevigny, Trustees
Property: 860 State Street
Assessors: Map 145, Lot 45
Zoning District: General Residence C
Description: Construct a 4' x 7' second floor, rear landing with stairs to the ground level.
Requests: 1. A dimensional Variance from Section 10.521 to allow a rear yard setback of 13.7'± where 20' is the minimum setback 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 could not be met.
- Granting the variance would be contrary to the public interest as the privacy of a neighbor would be compromised.
- The spirit of the Ordinance would not be observed as the intent of setbacks is to reduce impact on surrounding properties.
- The hardship test cannot be met. The house can be used in conformance with the Ordinance and the back yard is accessible by other means.

The Board of Adjustment was presented with two applications for the same property. The Board first considered the application described as follows:

5) Case # 5-5

Petitioner: Mark Wentworth Home, owner, Hoefle, Phoenix, Gormley & Roberts, P.A.,

Property: 127 Parrott Avenue applicant

Assessor Plan 115, Lots 3 and 3A

Zoning District: Mixed Residential Office

Description: Provide 58 off-street parking spaces with 3 parking spaces located on a separate, abutting lot and 12 new parking spaces located in front of the principal building.

- Request:
1. A dimensional Variance under Section 10.521 to allow 22.6% open space where 25% is the minimum open space required.
 2. A Variance from Section 10.1113.20 to allow off-street parking spaces to be located between a principal building and a street
 3. A Special Exception under Section 10.1113.112 to allow 3 parking spaces to be located on another lot in the same ownership and within 300 feet of the property line of the lot in question.

Action Case #5-5:

A motion to grant the petition failed to pass and the petition was **denied**.

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant a variance were not met.
- Parking in front of the building and removal of the existing green buffer would not be in the public interest.

- The petition with this number of spaces in this configuration does not meet the hardship test. The property can be used in conformance with the Ordinance and there is a reasonably feasible alternative available.

Having denied the first petition, the Board then considered the second application described as follows:

6) Case # 5-6

Petitioner: Mark Wentworth Home, owner, Hoefle, Phoenix, Gormley & Roberts, P.A.,
 Property: 127 Parrott Avenue applicant
 Assessor Plan 115, Lots 3 and 3A
 Zoning District: Mixed Residential Office
 Description: Provide 46 off-street parking spaces with 3 off-street parking spaces located on a separate abutting lot.
 Request: 1 A Variance from Section 10.1112.30 to allow 46 off-street parking spaces to be provided where 58 off-street parking spaces are required.
 3. A Special Exception under Section 10.1113.112 to allow 3 parking spaces to be located on another lot in the same ownership and within 300 feet of the property line of the lot in question.

Action Case #5-6

The Board voted to **grant** the variance and special exception as presented and advertised.

Stipulations

None

Other

1. In making their decision, the Board relied on the representation of the applicants that it was their intent to retain the mature trees in the front of the property with the exception of one unhealthy tree (located where the new driveway is proposed) that would have to be removed.
2. The Historic District Commission was encouraged to consider retaining the existing portico as part of their review and approval.

Review Criteria:

The variance was granted for the following reasons:

- It will be in the public interest and the spirit of the Ordinance to allow the requested number of parking spaces available to the property and minimize the on-street parking impact on Parrott Avenue and the surrounding areas without any loss of the visual buffer to the property.

- The hardship on the applicant if the petition were denied would not be offset by any benefit to the general public.
- Surrounding property values will, if anything, increase by the planned improvements to the property and preservation of the open space.
- With the limited parking available in this particular area, there would be an inherent hardship if the applicant was not able to accommodate vehicles that would otherwise need to park on the street.

The special exception was granted for the following reasons:

- This is a permitted use by special exception.
- Locating three parking spaces on an adjacent lot will not result in any hazard to the public or surrounding properties from fire explosion or release of toxic materials.
- Surrounding property values will, if anything, increase from the planned improvements to the property.
- Relocating the spaces will not create any traffic safety hazard or increase in traffic congestion.
- The demand on municipal services will not be greater than that currently generated by the property.
- While the impervious surface will be increased, it was represented that an engineered plan would be implemented to mitigate any increased storm water runoff.

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IV. OTHER BUSINESS

No business was presented.

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V. ADJOURNMENT

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It was moved, seconded and passed to adjourn the meeting at 9:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary