

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 September 18, 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, Christopher Mulligan, David Rheume, Alternate: Patrick Moretti

EXCUSED: Alternate: Robin Rousseau

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I. APPROVAL OF MINUTES

A) May 22, 2012

Action:

The Board voted to **approve** the Minutes as presented.

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II. OLD BUSINESS

A) Case # 7-7

Petitioner: Eugene C. Hersey

Property: Off Dodge Avenue

Assessor Plan 258, Lot 42

Zoning District: Single Residence B

Description: Construction of a single family home on a lot without continuous street frontage and no access to a City street.

Requests: 1. A dimensional Variance from Section 10.521 to allow a single-family dwelling on a lot with insufficient (12,200± s.f.) lot area where a minimum lot area of 15,000 s.f. is required.

2. A dimensional Variance from Section 10.521 to allow insufficient lot area per dwelling unit (12,200± s.f.) where a minimum lot area per dwelling unit of 15,000 s.f. is required.

3. A dimensional 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.

4. A Variance from Section 10.512 to allow a single-family dwelling on a lot with no access to a City street.

(This petition was postponed from the July 24 and August 21, 2012 meetings)

Action:

The Board voted to **postpone** the petition, at the request of the applicants’ attorney, for one additional period. The petition will be heard at the October 16, 2012 meeting.

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III. PUBLIC HEARINGS

- 1) Case # 9-1
 Petitioners: Henry & Jacqueline Brandt
 Property: 37 Wholey Way
 Assessor Plan 237, Lot 76
 Zoning District: Single Residence B
 Description: Appeal from Administrative Decision of the Code Official.
 Request: 1. Appeal under Section 10.234.20, Section 10.234.30, Section 10.1013.10 and Section 10.1017 from the decision of the Code Official that a conditional use permit is required to build upon a lot created by a lot line adjustment in August, 2011. *(A rehearing was granted on this petition at the August 21, 2012 meeting)*

Action:

The Board voted to **deny** the appeal as presented and advertised. It was determined that the administrative official executed his administrative responsibilities in conveying information that was in the official record and made no errors in that regard. He did not make an independent decision but passed on in good faith the determination of the Planning Board.

- 2) Case # 9-2
 Petitioner: Judell L. Schlachter Rev. Tr. of 1995, Judell L. Schlachter, Trustee
 Property: 140 Lincoln Avenue
 Assessor Plan 113, Lot 5
 Zoning District: General Residence A
 Description: Construct a two and a half story rear addition.
 Request: 1. A dimensional Variance from Section 10.521 to allow building coverage of 27.6%± where 25% is the maximum building coverage allowed.

Action:

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

Stipulations:

None

Review Criteria:

The petition was granted for the following reasons:

- Granting a variance for a lot in a neighborhood of lots with similar building coverage will not be contrary to the public interest.
- In keeping with the spirit of the Ordinance, this is a small percentage increase in relief.

- Substantial justice will be served by allow the homeowners to make full use of their property with a better interior layout.
- The impact on the value of surrounding properties will not be significantly different than if a similar addition were built within the requirements of the Zoning Ordinance. The applicants appear to have made a good faith effort to reduce the scale of their proposal to address abutter concerns.
- There is no fair and substantial relationship between the provisions of the Ordinance and their application to this property.

3) Case # 9-3

Petitioner: Portsmouth Submarine Memorial Association

Property: 600 Market Street

Assessor Plan 209, Lot 87

Zoning District: Single Residence B

Description: Construct an 8' x 16' storage shed.

Request: 1. A dimensional Variance from Section 10.521 to allow a left side yard setback of 7'± where 10' is the minimum setback required.

Action:

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

Stipulations:

None

Other:

The applicant was urged to take the necessary steps to ensure the safe storage of materials to be used in the upkeep of the property.

Review Criteria:

The petition was granted for the following reasons:

- There will be no impact on the public interest or abutters from this shed which will be set back from the Route One By-Pass.
- This is a small variance request that will observe the spirit of the Ordinance.
- In the justice test, there would be no benefit to the general public in denying this request.
- With no abutters in close proximity, the value of surrounding properties will not be impacted.
- The special conditions are the size of the lot, the location, the layout and the use of the lot which create a hardship in meeting this reasonable request.

4) Case # 9-4

Petitioner: Todd A. Milne Revocable Trust, Todd A. Milne, Trustee.

Property: 315 Wibird Street

Assessor Plan 132, Lot 13

Zoning District: General Residence A

Description: Replace rear addition and deck with a two-story addition.

- Request:
1. A Variance from Section 10.321 and Section 10.324 to allow a lawful nonconforming structure to be reconstructed 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 5.8' ± where 10' is the minimum setback required.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Located in the rear, this replacement addition will not be contrary to the public interest.
- In the spirit of the Ordinance, the homeowner will be allowed to improve the property and make it more useful without negatively affecting neighbors.
- There is no offsetting public interest that would argue against granting these variances.
- The value of surrounding properties will, if anything, be positively affected.
- The orientation of the existing house on the lot creates a hardship in placing an addition and this location is the logical choice for the construction.

5) Case # 9-5

Petitioners: Mara K. Khavari, Suzanne M. Brown & T. T. Michael Macdonald, owners,
Jay McSharry, applicant

Property: 46 Mark Street

Assessor Plan 116, Lot 52

Zoning District: Mixed Residential Office

Description: Replace existing structures with new single family home.

- Request:
1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be reconstructed in a manner that is not in conformity with the Zoning Ordinance.
 2. A dimensional Variance from Section 10.521 to allow a rear yard setback of 3' ± where 15' is the minimum setback required.
 3. A dimensional Variance from Section 10.521 to allow a lot area of 5,497 s.f. where 7,500 s.f. is required.
 4. A dimensional Variance from Section 10.521 to allow a lot area per dwelling unit of 5,497 s.f. where 7,500 s.f. is the minimum required.
 5. A dimensional Variance from Section 10.521 to allow continuous street frontage of 41' ± where 100' is the minimum required.
 6. A dimensional Variance from Section 10.521 to allow a lot depth of 52' where 80' is the minimum required.
 7. A dimensional Variance from Section 10.521 to allow 41.6% building coverage where 40% is the maximum building coverage allowed.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Bringing structures into greater compliance will be in the public interest. Light and air to surrounding properties will be increased and the structures will be in keeping with others in the neighborhood.
- The spirit of the Ordinance will be observed as this mixed use district is a transitional zone where there can be flexibility in bringing projects forward.
- In the justice test, there would be no gain to the public in denying these variances.
- The value of surrounding properties will be increased by this improvement to the property.
- Special conditions exist in the property. This is a lot on a dead end street, fronting on both the dead end and the street with nonconforming buildings in need of repair. The setback and lot coverage restrictions are not necessary in this instance to achieve the purposes of the Ordinance.

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- 6) Case # 9-6
 Petitioners: Mara K. Khavari, Suzanne M. Brown & T. T. Michael Macdonald, owners,
 Jay McSharry, applicant
 Property: 65/67 Mark Street
 Assessors: Map 116, Lot 51
 Zoning District: Mixed Residential Office
 Description: Replace rear decks, porches and stairs with (insert size) enclosed porch.
 Requests: 1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be reconstructed 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 0.44'± where 10' is the minimum setback required.
 3. A dimensional Variance from Section 10.521 to allow a right side yard setback of 8.66'± where 10' is the minimum setback required.
 4. A dimensional Variance from Section 10.521 to allow 42.2% building coverage where 40% is the maximum building coverage allowed.
 5. A Special Exception and Variance from Section 10.1113.112 to allow 2 off-street parking spaces to be located on another lot in the same ownership as the lot in question and within 300' of the property line in question.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Relieving some parking and upgrading a neglected structure will have a positive effect on the public interest.
- While a number of variances are being granted, there will be less relief required for building coverage. The most intrusive setback follows the line of the existing structure.
- Substantial justice will be done by allowing the property to make needed improvements while creating a better situation for neighbors.
- The improvements should, if anything, have a positive effect on surrounding property values.
- With the way the current building sits on the lot, it cannot be reasonably used and improved in strict conformance with the Ordinance.
- The two proposed parking spaces on an adjoining lot in common ownership will meet all the standards for granting a Special Exception.

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IV. OTHER BUSINESS

No other business was presented.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:25 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary