

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 October 16, 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*, Christopher Mulligan, David Rheaume*, Alternate: Patrick Moretti*
EXCUSED: Charles LeMay, Alternate: Robin Rousseau

* Not present for the entire meeting.

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I. 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, August 21, & September 18, 2012 meetings)

Action:

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

Stipulations:

That the lot line and frontage as presented be reviewed and confirmed by the City’s Legal Department.

Review Criteria:

The petition was granted for the following reasons:

- Allowing a buildable house lot in these circumstances will not be contrary to the public interest.
- Substantial justice will be done this last lot at the end of the street was designed to be a developable lot.
- Granting the variances will be consistent with the spirit of the Ordinance in trying to have well developed, well planned out neighborhoods.
- With the attached stipulation, there should be no diminution in the value of surrounding properties.
- The special condition of the property is that, while the property is potentially developable, the street was not extended nor accepted. The lot area as represented is significantly larger than the minimum lot size required so that the requested relief is not excessive.

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II. PUBLIC HEARINGS

1) Case # 10-1

Petitioner: Justin D. Setchell

Property: Fairview Avenue at Maplewood Avenue

Assessor Plan 220, Lot 66

Zoning District: Single Residence B

Description: Construct a 38’± x 26’±, 1½ story single-family home.

- Requests: 1. A dimensional Variance from Section 10.521 to allow a lot area and lot area per dwelling unit of 6,014± s.f.
2. A dimensional Variance from Section 10.521 to allow a lot depth of 60’± where 100’ is the minimum required.
 3. A dimensional Variance from Section 10.521 to allow a front yard setback of 22’± where 30’ is the minimum required.
 4. A dimensional Variance from Section 10.521 to allow a rear yard setback of 10’± where 30’ is the minimum required.
 5. A dimensional Variance from Section 10.521 to allow building coverage of 24.3%± where 20% is the maximum allowed.

Action:

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

Other

The following were clarified as noted:

Request 1. Where 6,014 s.f. was proposed respectively as the lot area and lot area per dwelling unit, 15,000 s.f. is the minimum requirement for both.

Request 3. In compliance with Section 10.516.10 (Front Yard Exception for Existing Alignments), the minimum front yard setback required for this lot is 24'±.

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant the variances were not met.
- It would not be in the public interest or the spirit of the Ordinance to allow a house and garage that are too large for this undersized lot.
- On a lot with no existing dwelling, there were other options available that would allow greater conformity with the dimensional requirements.
- An effort could be made to work within the parameters of this lot, reducing any difficulty presented by its small size.

2) Case # 10-2

Petitioner: Green Brook LLC, owner, Matthew Beebe, applicant

Property: 636 Lincoln Avenue

Assessor Plan 148, Lot 17

Zoning District: General Residence A

Description: Construct an 88 s.f. rear addition.

- Requests: 1. A Variance from Section 10.321 and 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 Variance from Section 10.521 to allow a building coverage of 38.4%± where 36.8%± exists and 25% is the maximum 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:

- A small addition to this single family home will not alter the essential character of the neighborhood or threaten the public health, safety or welfare so that granting the variance will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as a modest expansion will be consistent with the general purposes of this zone and still allow adequate open space.
- In the justice balance test, the loss to the applicant if denied would not be outweighed by any gain to the general public.

- The proposed addition falls partially over an existing footprint and care has been taken to minimize impact so that the value of this and surrounding properties should be increased rather than diminished.
- The distinguishing special conditions of the property resulting in a hardship are an existing older house, needing updating, on a very small lot. It is not unreasonable to allow a slight expansion while funds are expended for the update and a restriction on the property is not necessary to achieve the general purposes of the Ordinance.

3) Case # 10-3

Petitioner: Nikki N. Nachampassak

Property: 280 McKinley Road

Assessor Plan 250, Lot 50

Zoning District: Single Residence B

Description: Add 16'± x 10'± porch extension to existing 10' x 10' rear porch.

- Requests: 1. A Variance from Section 10.321 and 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 from Section 10.521 to allow a building coverage of 25.1% where 23.3% exists and 20% is the maximum 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 this modest expansion to the rear will not be contrary to the public interest or diminish the value of surrounding properties.
- Allowing a small expansion to an existing structure, increasing its usefulness, will not be contrary to the spirit of the Ordinance.
- In the justice balance test, granting the variance will benefit the property owner with no adverse effect on the general public.

4) Case # 10-4

Petitioner: John & Joan Schorsch

Property: 53 Pray Street

Assessor Plan 102, Lot 40

Zoning District: Waterfront Business

Description: Construct a 12'6" x 20' right side porch.

- Requests: 1. A Variance from Section 10.321 and 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 Variance from Section 10.331 to allow a lawful nonconforming use to be extended or enlarged in a manner that is not in conformity with the Zoning Ordinance.

3. A Variance from Section 10.334 to allow a nonconforming use of land to expand into part of the remainder of the lot of land.
4. A dimensional Variance from Section 10.531 to allow a building coverage of 39.2% where 33.1% exists and 30% is the maximum 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:

- The proposed roofed porch will not be visible to most of the public so that granting the variances will not be contrary to the public interest.
- The character and nature of the home, which represents an existing nonconforming use, will not be changed so that the spirit of the Ordinance will be observed.
- Substantial justice will be done by allowing a change that will honor the aesthetics and history of the existing structure.
- Adding to a porch in a manner that will prevent further storm damage will not diminish the value of surrounding properties.
- The special conditions creating a hardship include trying to preserve a home on the waterfront. Applying the provisions of the Ordinance so that this improvement could not be made would not serve its general purposes.

5) Case # 10-5

Petitioner: Two Girls Realty LLC

Property: 261 South Street

Assessor Plan 111, Lot 34-2

Zoning District: General Residence B

Description: Amend Special Exception.

Requests: 1. Amend the Special Exception granted November 27, 2007 to permit the sale under Section 10.335, of food and beverages cooked or prepared to order.

Action:

The Board voted to **grant** the petition as presented and advertised with the addition of amending the request for a Special Exception, granted November 27, 2007, to clarify that the kitchen area may be used for catering. The petition was granted with the following stipulations.

Stipulations:

1. That the principal use of the property is Convenience Goods 2, “A convenience goods establishment that sells food prepared on the premises (excluding fried food) for consumption off the premises.”
2. That the catering of products is permitted under this use as an accessory use of the property.

3. That no more than 40% of the gross floor area of the existing structure shall be used for an accessory use.
4. That no on-street truck parking shall be permitted other than allowing 30 minutes for loading purposes.

Other

It was represented by the applicant, and counsel for the applicant, that their intent is to maintain the nature of the operation as it has been conducted for the past five years and that granting this request would cause no adverse consequences or impact on the neighborhood. Counsel for the applicant additionally represented that any future owners would be subject to the same restrictions that currently exist, which he represented as including limiting the hours of activity to between 7:00 a.m. and 7:00 p.m. and a restriction that there could be no seating.

It was stated by the maker of the motion that her intention was to allow the operations that have been occurring on the premises for the past five years to continue but not to allow further expansion of the nonconforming use that might not be consistent with this residential neighborhood.

Review Criteria:

The petition was granted for the following reasons:

- As presented, there will be no hazard to the public or adjacent property from fire explosion or toxic materials. That has not been occurring currently and there is no expectation that it will in the future.
- As represented, there will be no detriment to property values. A neighborhood market is in general a positive asset to the neighborhood and it will not change the character of the neighborhood from residential to commercial.
- There will be no creation of a traffic safety hazard, excessive demand on municipal services or increase in storm water runoff. There have been no issues with these standards and it is expected that will continue.

6) Case # 10-6

Petitioner: Cumberland Farms Inc.

Property: 1475 Lafayette Road

Assessor Plan 251, Lot 124

Zoning District: Gateway

Description: Rebuild existing gas station with convenience store, gasoline dispensers, canopy and free-standing signs.

- Requests:
1. A Variance from Section 10.592.10, Use #11.20 to allow a motor vehicle Service station to be located 0'± from a Residential or Mixed Residential District where 200' is the minimum distance required.
 2. A Variance from Section 10.843.33 to allow pump islands to be set back 37'± from all lot lines where a minimum of 40' is required.
 3. A Variance from Section 10.1113.20 to allow required off-street parking spaces to be located between a principal building and a street.
 4. A Variance from Section 10.1243 to permit two freestanding signs on a lot where only one freestanding sign per lot is permitted.

Action:

The Board voted to postpone the petition to the November 20, 2012 meeting at the request of the applicant.

7) Case # 10-7

Petitioner: Two-Four Mirona Road LLC, owner, Daniel Komisarek, applicant

Property: 2-4 Mirona Road

Assessor Plan 253, Lot 6

Zoning District: Industrial

Description: Storage of impound vehicles.

Requests: 1. A Special Exception under Section 10.440, Use #11.40 to allow an impound lot in a district where the use is allowed by Special Exception.

Action:

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

Stipulations:

None

Other:

The following representations were made:

1. That there would possibly be one vehicle per night coming into the impound area even in the busiest of times;
2. That the business hours of operation on the lot would be 8:00 a.m. to 5:00 p.m., with the impound lot operating 24 hours; and,
3. That they would be staffed as required.

Review Criteria:

The petition was granted for the following reasons:

- This is a use that is permitted by Special Exception.
 - There will be no hazard to the public or adjacent property from fire explosion or release of toxic materials resulting from this type of operation.
 - There will be no detriment to surrounding property values. This particular lot has been used for the storage of vehicles which will not be changed or expanded by this proposal. As represented, the impound area will be well screened from the view of surrounding properties.
 - As represented, there is adequate provision for access and egress so that there will be no creation of a traffic safety hazard.
 - There will be no excessive demand on municipal services.
 - With no expansion of structures or manipulation of storm water management, there will be no increase in storm water runoff onto adjacent streets or properties.
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- 8) Case # 10-8
 - Petitioner: Bethel Assembly of God
 - Property: 200 Chase Drive
 - Assessor Plan 210, Lot 2
 - Zoning District: Single Residence B
 - Description: Lot line relocation resulting in transfer of 2,725± s.f. of land to abutter.
 - Requests: 1. A Variance from Section 10.521 to allow a 2.3% reduction in open space on a pre-existing nonconforming lot where 31.6% exists prior to the lot line relocation and 40% is the minimum 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:

- Granting the variance will not be contrary to the public interest as there is no change in the use that would alter the essential character of the neighborhood or threaten the public health, safety and welfare.
- Nothing in this proposal will affect the purposes of the Ordinance in this zone.
- In the justice balance test, there will be no gain to the general public if the variance were denied.
- The value of surrounding properties will not be diminished and the only abutter that will be affected is a party to the lot line adjustment necessitating the variance.
- The special conditions of the property resulting in a hardship are that this is a large property in a residential district with a nonconforming use and a largely unused parking area. While the open space requirement is not met there is adequate green space in the right-of-way for the foreseeable future.

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III. OTHER BUSINESS

No other business was presented.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:00 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary