

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 April 16, 2013 in the School Board Conference Room, Ground Floor, 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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II. OLD BUSINESS

A) Request for One-Year Extension of Variances granted May 15, 2012 for property located at 324-334 Parrott Avenue.

Action:

The Board voted to **grant** a One-Year Extension of the Variances through May 15, 2014.

B) Request for One-Year Extension of Variances granted May 22, 2012 for property located at 28 South Street.

Action:

The Board voted to **grant** a One-Year Extension of the Variances through May 22, 2014.

C) Case # 12-6
Petitioner: Justin D. Setchell
Property: Fairview Avenue off Maplewood Avenue
Assessor Plan 220, Lot 66
Zoning District: Single Residence B
Description: Construct a new single-family home.

- Requests:
1. A dimensional Variance from Section 10.521 to allow a rear yard of 10'± where 30' is the minimum required.
 2. A dimensional Variance from Section 10.521 to allow a lot area of 6,000 ± square feet where 15,000 square feet is the minimum required.
 3. A dimensional Variance from Section 10.521 to allow a lot depth of 60'± where 100' is the minimum required. *(This petition was continued from the January 15, 2013, February 19, 2013, and March 26, 2013 meetings.)*

Action:

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

Review Criteria:

The reasons for denying the petition included the following:

- All the criteria necessary to grant the variances were not met.
- The substantial variances requested for lot area and setback are not within the spirit of the Ordinance or the public interest.
- Because the drainage issues associated with the proposed site development have not been adequately addressed, the petition does not serve the purpose of the Ordinance to promote the health, safety and general welfare of the community.
- The Ordinance specifies that the existence in the surrounding area of conditions “similar to the proposed nonconformity shall not be the basis for the granting of a variance.” This decent sized home on a small lot in a neighborhood of small lots does not meet the hardship criteria.

D) Case # 3-3

Petitioners: Beth L. and Marco A. Gross-Santos

Property: 79 Lois Street

Assessor Plan 232, Lot 14

Zoning District: Single Residence B

Description: Proposed sub-division of an existing lot into two lots, one fronting on Lois Street and containing an existing structure and one fronting on Marjorie Street on which a new home is proposed to be constructed.

Requests: Variances from Section 10.521 to allow the following:

79 Lois Street Lot:

1. A lot area of 12,768 s.f.± where 15,000 s.f. is required.
2. A lot area per dwelling unit of 12,768 s.f.± where 15,000 s.f. is required.
3. Lot depth of 80'± where 100' is required.
4. A rear yard setback of 25'± where 30' is required.

Lot fronting on Marjorie Street, number to be assigned if subdivided:

1. A lot area of 9,600 s.f.± where 15,000 s.f. is required.
2. A lot area per dwelling unit of 9,600 s.f.± where 15,000 s.f. is required.
3. Lot depth of 80'± where 100' is required.
4. A rear yard setback of 14'± where 30' is required.
5. A front yard setback of 15'± where 30' is required.

Action:

The Board voted to **postpone** the petition to the May 21, 2013 meeting at the request of the applicant.

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II. PUBLIC HEARINGS

1) Case # 4-1

Petitioner: GMR Holdings of NH LLC

Property: 163 International Drive

Assessor Plan 313, Lot 14

Zoning district: Pease Airport Business Commercial District.

Description: Install wireless communications facility.

Requests: Special Exception under Section 303-A.04(c) of the Pease Development Authority Zoning Ordinance to allow installation of a 150'± high communications tower with antennas, related equipment and utilities enclosed in a 60'± x 60'± compound.

Action:

The Board voted to recommend to the Pease Development Authority that the Special Exception be **approved** as presented and advertised.

Stipulations:

None.

Review Criteria:

The Board determined that all the criteria were met that were necessary to approve a Special Exception under the Pease Development Authority Zoning Ordinance. Specific findings included the following:

- Constructing the proposed tower in a business area will not have an adverse effect or result in the diminution in the values of surrounding properties.
- The facility will be unattended, generating little traffic, so that no traffic, health, or safety hazard will be created.
- The tower and related equipment are sited on the property in an appropriate location for this use and provisions have been made for adequate and safe access and egress.
- The use will meet any additional standards provided in the Zoning Regulation for the zone in which it is located.

2) Case #4-2

Petitioner: Seacoast Trust LLP

Property: 150 Route One By-Pass

Assessor Plan: 231, Lot 58

Zoning District: Single Residence B

Description: Place 51'± x 8.5'± mobile diagnostic coach, with no advertising, in front of existing building with fencing.

- Requests:
1. A Variance from Section 10.434.40 to allow a use not specifically authorized in Article 4 of the Zoning Ordinance.
 2. A Variance from Section 10.331 to allow a lawful nonconforming use to be extended, enlarged or changed in manner that is not in conformity with the Zoning Ordinance.
 3. A Variance from Sections 10.333 & 10.334 to allow a nonconforming use of land to be extended into any part of the remainder of a lot of land.
 4. A Variance from Section 10.571 to allow an accessory building, structure or use to be located in any required front yard.

Action:

The Board voted to **grant** the petition as presented and advertised except as indicated under “Other” below and with the following stipulation.

Stipulations:

- That there will be no signage, printing or advertising in any form on the coach.

Other:

The Board determined that the placement of the mobile coach will meet the front yard setback requirement so that the published Variance from Section 10.571 **was not required**.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed as the essential character of the neighborhood will not be changed by allowing a reasonable expansion of a pre-existing nonconforming use.
- This will be a small change to the parcel and, with the proposed screening and protective stipulation, will not diminish the value of surrounding properties.
- In the justice balance test, the general public will benefit if, through granting the variances, this additional service is allowed.
- This is a unique parcel with a pre-existing nonconforming business use in a residential zone so that a hardship is created in an expansion of the use. This is a reasonable use which will serve the public.

3) Case #4-3

Petitioners: Trustee for Renato S. Maldini Rev. Trust, owner, Mark McNally, applicant

Property: 121 Boyd Street

Assessor Plan: 174, Lot 7

Zoning District: General Business

Description: Construct a 16'± x 10'± right side dormer for access to third floor of an existing home.

- Requests:
1. A Variance from Section 10.324 to allow a lawful nonconforming building to be added to or enlarged without conforming to the dimensional requirements of the district in which it is located.

2. A Variance from Section 10.521 to allow a 16'± x 10'± dormer to be constructed with a right side yard setback of 7'5" ± 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:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed as there are properties in proximity with similar dormers so that the essential character of the neighborhood will not be changed. Allowing a dormer for safer access to the third floor will not threaten the health safety and welfare of the general public.
- The proposal will not create a greater encroachment than already exists.
- Maintaining the character of the surrounding properties, and with demonstrated neighborhood support, there is no indication that the value of surrounding properties will be diminished by the granting of the variances.
- This is a narrow home on an odd shaped lot so that anything done to provide safer access to the third floor would require additional construction in the setback encroachment. It is reasonable to fully use the third floor in a residential zone so that there is no fair and substantial relationship between the provisions of the Ordinance and their specific application to this property.

4) Case #4-4

Petitioner: Tazman Investments LLC

Property: 155 Commerce Way

Assessor Plan: 216, Lot 1-10

Zoning District: Office Research

Description: Install 8' x 22' 500 kw generator and transformer on pad along southeast wall of existing building.

Request: 1. A Variance from Section 10.531 to allow a right side yard setback of 36'± where 50' is the setback to the existing building and 75' is the minimum setback required.

Action:

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

Stipulation:

The Board's approval is limited to the variance request as advertised. The Board did not address, and is not certifying that the applicant will be in compliance with, the provisions under Article 10.1330, Noise and Vibration Performance Standards, in the Zoning Ordinance.

Review Criteria:

The petition was granted for the following reasons:

- It will not be contrary to the public interest to install a generator tucked into the middle of a commercial development.
- In the justice balance test, no benefit would accrue to the general public if the variance were denied.
- The surrounding properties are of a similar nature, and located in the same complex, so that granting the variance will not diminish their value.
- The hardship in the property is that the facility is built and proposed changes to the local infrastructure will affect the property so that the chosen location for the generator is the most logical of several options considered.

5) Case #4-5

Petitioners: Sarah Parker & David Natt

Property: 76 Brackett Lane

Assessor Plan: 206, Lot 6

Zoning District: Single Residence B

Description: Replace existing deck over garage with 10'± x 12'± addition and relocate rear stairs.

- Requests:
1. A Variance from Section 10.321 to allow a lawful nonconforming building to be extended, reconstructed, enlarged or structurally altered in a manner that does not conform to the Zoning Ordinance.
 2. Variances from Section 10.521 to allow a rear yard setback of 14' 10" ± for the addition over the garage and 8' 10" ± for the stairs where a minimum 30' setback is required for both.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- An addition of this type will not alter the essential character of the neighborhood, nor threaten the health, safety and welfare of the general public so that granting the variances will not be contrary to the public interest.
- This change to a single family home is consistent with the low to medium densities allowed in a residential zone so that the spirit of the Ordinance will be observed.
- There would be no corresponding gain to the general public that would outweigh the hardship to the applicant if the petition were denied.
- The proposal, to which no opposition was raised from neighborhood residents, is consistent with the surrounding area so that the value of surrounding properties will not be diminished.

- The conditions creating a hardship are that this is an odd, triangular shaped, lot on which the existing structure infringes into the setbacks so that even a minimal change to the property will require relief. The proposed changes represent a reasonable use of the lot so that there is no fair and substantial relationship between the provisions of the Ordinance and their specific application to the property.

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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 9:25 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary