

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 17, 2013** 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
*joined meeting prior to Case #9-2

EXCUSED: Alternate: Robin Rousseau

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I. APPROVAL OF MINUTES

A) July 17, 2013

The Minutes were approved as presented.

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II. PLANNING DEPARTMENT REPORTS

A) Update - Electronic Packet Submittal

Considering this item as the last order of business at the meeting, the Board accepted a final version of the Proposed Amendment to Section IV of the Board of Adjustment Rules and Regulations.

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A) Request for One-Year Extension of Variance granted September 25, 2012 for property located at 211 Park Street.

The Board voted to **grant** a One-Year Extension of the Variances through September 25, 2014.

B) Request for One-Year Extension of Variance granted November 20, 2012 for property located at 1475 Lafayette Road.

Action:

The Board voted to **grant** a One-Year Extension of the Variances through November 20, 2014.

C) Case # 7-2

Petitioners: 4 Amigos, LLC

Property: 1390 & 1400 Lafayette Road

Assessor Plan 252, Lots 9 & 7

Zoning District: Gateway

Description: Install free-standing signs

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1243 to allow multiple free-standing signs on a lot where only one free-standing sign per lot is allowed.
2. A Variance from Section 10.1251.20 to allow a free-standing sign to exceed 100 s.f. in area.

*(This petition was postponed at the July 16 and August 20, 2013 meetings)***Action:**

The Board voted to **grant** a final postponement to the October 15, 2013 meeting as requested by the attorney for the applicant.

D) Case # 8-1 (Amended)

Petitioner: Richard S. Bean

Property: 324 Parrott Avenue

Assessor Plan 129, Lot 36

Zoning District: General Residence A

Description: Construct a 529± s.f. garage with living space and deck above. Construct a 388± s.f. left side deck.

Requests:

- A. This petition was revised from that postponed at the August 20, 2013 meeting to include the following:
Amend previously advertised and posted application to add an Appeal from an Administrative Decision that a Variance is needed from Section 10.321.
- B. The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
 1. If the Appeal from an Administrative Decision is not granted, a Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed, enlarged or structurally altered in a manner that is not in conformity with the Ordinance.
 2. A 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.
 3. A Variance from Section 10.521 to allow building coverage of 34 % ± where 25% is the maximum coverage allowed.
 4. A Variance from Section 10.521 to allow a left side yard setback of 2'± where 10' is the minimum allowed.

Action:

The Board voted to **deny** the Appeal from an Administrative Decision. The Board **acknowledged** that a Variance from Section 10.521 for lot area per dwelling unit was not needed (request B2). The Board then voted to **grant** the Variances specified in requests B1, B3 and B4 as presented and advertised.

Stipulations:

None.

Review Criteria:

The Appeal was denied for the following reason:

- The Board grants Variances from the Zoning Ordinance by finding that the specific proposal as presented meets all of the criteria of Section 10.233.20. If the proposal is allowed to be modified without requiring a new hearing, the Board is denied the opportunity to consider whether the project still meets the Variance criteria on which they based their initial finding.

The Variances were granted for the following reasons:

- Granting the proposal will not alter the essential character of the neighborhood, which is residential with municipal uses surrounding it, nor will the health, safety and welfare of the general public be threatened.
- In this area, it is normal to see properties with accessory uses and additions over garages so that the proposed structures will meet the purposes of the district.
- In the justice balance test, there would be a loss to the applicant, if the petition were denied, with no overriding gain to the general public.
- No neighbors have spoken in opposition and the property is primarily surrounded by municipal uses so that the value of surrounding properties will not be diminished by the proposed construction.
- A special condition of the property is that it abuts a large open space, municipally owned, which is not likely to be subject to development so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and their specific application to this property. The use is a reasonable one in keeping with the residential uses allowed in this district.

E) Case # 8-3

Petitioners: Beth L. & Marco A. Gross-Santos
 Property: Marjorie Street (number not yet assigned)
 Assessor Plan 232, Lot 14 (rev.)
 Zoning District: Single Residence B
 Description: Construct a single family home.
 Requests: The Variances necessary to grant the required relief from the Zoning Ordinance,

- including the following:
1. A Variance from Section 10.521 to allow a lot area of 9,596 s.f. ± per dwelling unit where 15,000 s.f. per dwelling unit is required.
 2. A Variance from Section 10.521 to allow a 26.1'± rear yard setback where 30' is the minimum allowed.

(This petition was continued for more information at the August 20, 2013 meeting)

Action:

The Board voted to **postpone** the continued hearing of the petition to the October 15, 2013 meeting so that recently submitted reports could be reviewed and approved by the Planning Department.

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1) Case # 9-1

Petitioners: Kearsarge Mill Unit Owners Association & JSA Trust, owners
 Property: 361 Hanover Street
 Assessor Plan 138, Lot 63-1

Zoning District: Mixed Residential Office

Description: Locate parking spaces for a proposed 4,000± office expansion on an adjacent lot.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1113.111 to allow required parking spaces to be located on a separate lot from the principal use at a municipally owned uncovered parking facility where a municipally owned covered parking facility is required.

Action:

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

Stipulations:

None.

Other:

It was clarified that the relief required was a Variance from 10.1113.11 to allow off-street parking spaces to be located on a separate lot from the principal use they are required to serve.

Review Criteria:

The petition was granted for the following reasons:

- The proposal will result in additional availability of off-hour parking for the area which will benefit the public interest.
- The Spirit of the Ordinance will be observed as the total off-street parking spaces provided will exceed the requirements by approximately 15%.
- Substantial justice will be done by allowing parking necessary to retain businesses in this location and benefit the neighborhood.
- The value of surrounding properties will not be diminished by locating the parking spaces required for expansion on an abutting lot. An effort was made to reach out to the community and a neighborhood group has expressed support.
- Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship as needed parking spaces would be lost if the petition were denied.

2) Case # 9-2

Petitioner: Frederick I. McMullen

Property: 1262 Woodbury Avenue

Assessor Plan 237, Lot 67

Zoning District: Mixed Residential B

Description: Allow a retail space with juice bar and take-out food.

Requests: The Variances and Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Special Exception under Section 10.440, Use #8.31 to allow retail sales in a district where this use is allowed by Special Exception.
2. A Variance from Section 10.440, Use #9.20 to allow a restaurant, take-out only, as an accessory use in a district where such use is not allowed.

Action:

The Board voted to **grant** the Special Exception and Variance as presented and advertised.

Stipulations:

None.

Review Criteria:

The Special Exception was granted for the following reasons:

- The proposed use is allowed in this district by Special Exception.
- There will be no hazard to the public or adjacent property from fire explosion or release of toxic materials by allowing this type of retail sales.
- The proposed use in this mixed use area adjacent to commercial uses will not result in any detriment to property values from noise, odors, unsightly outdoor storage or other negative impact.
- Mechanisms will be put in place to control vehicle access and egress, and the amount of traffic generated will not be significant compared to other uses that could exist in the building.
- Filling a currently vacant building with a new use with no change to the outside structure will not create an excessive demand on municipal services or result in any increase in storm water runoff onto adjacent property or street.

The Variance was granted for the following reasons:

- Granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed by allowing a use which is consistent with the number of retail and food establishment uses, including the allowed convenience store use, in the neighborhood.
- There would be no benefit to the general public in denying the variance.
- The value of surrounding properties will benefit from allowing this use in a currently vacant building.
- The special condition of the property that distinguishes it from others is that the most appropriate uses for a building in this location would be retail or food establishments. The proposed use is reasonable in an area where the surrounding uses, other than residential, are commercial and very similar in nature and intensity to what is proposed.

3) Case # 9-3

Petitioner: Gretchen J. Morgan

Property: 7 McDonough Street

Assessor Plan 138, Lot 50

Zoning District: Mixed Residential Business

Description: Construct porch and landing for new rear entry.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.324 to allow a lawful nonconforming building or structure to be added to or enlarged in a manner that does not conform to the requirements of the district.
2. A Variance from Section 10.516.40 to allow a side yard setback of 3'± where 10' is required.
3. A Variance from Section 10.521 to allow building coverage of 56.7%± where 40% 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 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 this construction in a neighborhood of existing structures close to property lines. The project that will threaten the health, safety and welfare of the general public.
- In the justice balance test, there will be a significant loss to the applicant if the Variance is not granted to reconfigure the landing with no corresponding benefit to the general public.
- The value of surrounding properties will not be diminished. The existing nonconformance will be slightly lessened and the abutter most affected has demonstrated support for the project.
- The distinguishing features of the property that would result in an unnecessary hardship include a large house on a fairly small lot with a small back yard so that any alterations to the rear would involve setback relief. Relocating the access will decrease the existing nonconformance so that there is no fair and substantial relationship between the purposes of the Ordinance provision and its application to the property.

4) Case # 9-4

Petitioners: Roxanne Raeside Wilton, owner, Bosen & Associates, PLLC, applicant

Property: 266 Middle Street

Assessor Plan 136, Lot 9

Zoning District: Mixed Residential Office

Description: Convert 2,000± s.f. residential space to office use.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1111.20 to allow the expansion of a use that is nonconforming as to the requirements for off-street parking.
2. A Variance from Section 10.1112.30 (5) to allow 6 parking spaces to be provided where 16 spaces are required for a business or professional office use.
3. A Variance from Section 10.1114.21 (D) to allow no maneuvering aisle to be provided.
4. A Variance from Section 10.1114.32 to allow vehicles entering or leaving a parking space to pass over another parking space, require movement of another vehicle, or back into a public right of way.

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 public interest will not be negatively affected by this use on a lot that has accommodated business uses for a number of years.

- Given the low level of client visitation, the number of off-street parking spaces provided is reasonable in practical terms so that the spirit of the Ordinance will be observed. The spaces will be primarily used by employees who will accommodate whatever movement of vehicles may be required.
- Substantial justice will be done by allowing full use of the property with a positive benefit to the community in retaining businesses.
- The value of surrounding properties will not be diminished as there will be no substantial change in the way the property has been utilized for years.
- A hardship is created as the property cannot be used in strict conformance with the Ordinance. There is limited off-street parking on site while there is more than adequate parking on the street and in a lot directly opposite the property. Converting the second floor to business use, necessitating the parking, is a reasonable use of the property.

5) Case # 9-5

Petitioners: Kenneth D. Markley & Joy L. Bryan

Property: 239 Raleigh Way

Assessor Plan 212, Lot 108

Zoning District: General Residence B

Description: Construct a 12'± x 20'± rear shed.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Sections 10.573.20 and 10.521 to allow a rear yard setback of 10'± where 12' is required for an accessory structure.
2. A Variance from Sections 10.572 and 10.521 to allow a left side yard setback of 3'± where 10' is required for an accessory structure.
3. A Variance from Sections 10.572 and 10.521 to allow a right side yard setback of 6'± where 10' is required for an accessory structure.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Set in the rear out of view from the street, the proposed shed will not negatively affect the public interest.
 - The spirit of the Ordinance will be observed as the shed is not a full use building and is typical of other structures in this neighborhood.
 - Substantial justice will be done by allowing maximum use of the property without infringing on the public or private rights of others.
 - The design of the shed is consistent with others in the neighborhood and the shed is placed for the least amount of impact so that the value of surrounding properties will not be diminished.
 - A hardship is created by the narrow lots in Atlantic Heights with property lines bisecting houses. The proposal is a reasonable use of the property as the functional use of the yard would be significantly reduced if the shed were moved away from the setbacks.
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6) Case # 9-6

Petitioner: Paula A. Chalfin

Property: 496 Middle Street #1

Assessor Plan 135, Lot 21-1

Zoning District: Mixed Residential Office

Description: Construct 14'± x 16'± left rear addition and stairs.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed, enlarged or structurally altered in a manner that is not in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow a left side yard setback of 3.9'± where 10' is required.

Action:

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

Stipulation:

Prior to issuance of a building permit, the applicant will provide accurate dimensional information to the Planning Department so that a determination can be made that the 40% maximum building coverage allowed in the Mixed Residential Office District will not be exceeded by the proposed addition and stairs.

Review Criteria:

The petition was granted for the following reasons:

- The proposed addition will be in keeping with those on similar properties in the neighborhood so that the essential character of the neighborhood will not be changed.
- The spirit of the Ordinance will be observed as the addition, while infringing into the setback, will be in the same visual line of sight as the primary structure. The chosen location was partially influenced by the wish to preserve an old oak tree which benefits the entire neighborhood.
- Substantial justice will be done by allowing a functional addition while maintaining the historic nature of the home.
- Overall improvements to the home will result in an increase in the value of this and surrounding properties.
- There is no fair and substantial relationship between the general public purposes of the Ordinance provision and its application to this property. There is an inherent hardship in the configuration of the lot and the angled placement of the structure on the lot.

7) Case # 9-7

Petitioner: Elizabeth H. Blaisdell

Property: 77 New Castle Avenue

Assessor Plan 101, Lot 50

Zoning District: General Residence B

Description: Replace existing 16'± x 37'± x 11'± high barn with a 20'± high accessory building on the same footprint.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed, enlarged or structurally altered in a manner that is not in conformity with the Ordinance.
2. A Variance from Sections 10.572 and 10.521 to allow a left side yard of 1.5'± where 10' is the minimum required for an accessory structure.

- 3. A Variance from Sections 10.573.20 and 10.521 to allow a rear yard setback of 3'± where 15' is the minimum required for an accessory structure.

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 these Variances were not met.
- The light and air protected by the Ordinance would be compromised by a structure that was too large overall and too tall for this location.
- It is difficult to see a hardship in the property that would justify the requested relief from the requirements of the Ordinance.

8) Case # 9-8

Petitioners: Robert A. & Meghan M. DesFosses

Property: 115 Fairview Avenue

Assessor Plan 220, Lot 68

Zoning District: Single Residence B

Description: Construct a 12'± x 20'± right side deck with a 30" high grilling section.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

- 1. A Variance from Sections 10.516.40 and 10.521 to allow a rear yard setback of 6.1'± where 15' is required for a deck less than 4' in height.
- 2. A Variance from Section 10.521 to allow building coverage of 27.6%± where 20% is the maximum allowed.

Action:

The Board acknowledged that the applicant had **withdrawn** the application.
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V. OTHER BUSINESS

No other business was presented.
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VI. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:10 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary