

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 January 22, 2014** 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: None

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I. ELECTION OF OFFICERS

Mr. Moretti made a motion to nominate David Witham to continue to serve as Chairman and Arthur Parrott to continue to serve as Vice-Chairman until the next election of officers. Mr. LeMay seconded the motion, which was passed by unanimous voice vote.

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II. PUBLIC HEARINGS - OLD BUSINESS

A) Case # 12-3

Petitioner: GTY MA/NH Leasing, Inc., owner & Nouria Energy Corporation, applicant

Property: 786 Route One By-Pass

Assessor Plan 161, Lot 42

Zoning District: General Residence A

Description: Revise existing free-standing sign to add logo and LED display.

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

1. A Variance from Section 10.1281 to allow a nonconforming sign to be altered or reconstructed without bringing the sign into conformity with the Zoning Ordinance.
2. A Variance from Section 10.1241 and Section 10.1251.20 to allow a free-standing sign with an area of 168± s.f. in a district where a free-standing sign is not permitted.
3. A Variance from Section 10.1253.10 to allow a sign height of 50'± where 7' is the maximum allowed and a front yard setback of 0'± where 5' is the minimum required.

- 4. A Variance from Section 10.1261.10 to allow direct illumination where sign illumination is not allowed.
(This petition was tabled at the December 17, 2013 meeting)

Action:

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

Stipulations:

- The lighting on the canopy banding that faces Dennett Street will be permanently turned off.
- There will be no moving, blinking or scrolling lights or any change to the sign except as necessary to change the pricing.

Review Criteria:

The petition was granted for the following reasons:

1. Granting the variances will not be contrary to the public interest as the applicant met with adjacent neighbors to agree upon stipulations that would make the proposed changes acceptable.
2. The spirit of the Ordinance will be observed by upgrading signage for the traveling public.
3. Substantial justice will be done as the benefit to the applicant in granting the variances will not be outweighed by a negative effect on the general public.
4. The value of surrounding properties will not be diminished as the concern with light spillage will be lessened by the attached stipulations.
5. The special conditions of the property resulting in a hardship include the zoning of this lot in relation to its location which creates problems in any signage change.

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III. PUBLIC HEARINGS – NEW BUSINESS

- 1) Case # 1-1
 Petitioners: Zoe Copenhaver Daboul & Michael Edward Daboul
 Property: 53 Humphreys Court
 Assessor Plan 101, Lot 39
 Zoning District: General Residence B
 Description: Construct a rear addition and new front porch. Replace existing garage with an attached garage.
 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 building to be extended or reconstructed without conforming to the requirements of the Ordinance.
 2. Variances from Section 10.521 to allow the following:
 - a) Building coverage of 42.8% where 30% is the maximum allowed.
 - b) A front yard setback of 4’9” ± where 5’ is the minimum required.

- c) A rear yard setback of 2’9” ± where 25’ is the minimum required.
- d) A right side yard setback of 3’1.5” and a left side yard setback of 4’3” ± where 10’ is the minimum 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:

- Adding a reasonable addition to the main structure will not threaten the health safety and welfare of the general public and attaching a smaller garage will be in keeping with the characteristics of the neighborhood so that granting the variances will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as the project will meet the purpose of the General Residence B zone which is to promote single family dwellings with accessory uses of moderate density.
- Granting the variances will result in substantial justice as the loss to the applicant if the petition were denied would not be outweighed by any potential benefit to the general public in maintaining the status quo.
- The value of surrounding properties will not be diminished by the new addition and reconstructed garage on this existing nonconforming property.
- The proposal will make a reasonable adjustment to what is already a substantially nonconforming lot with a porch that could present a health and safety hazard as currently configured so that there is no fair and substantial relationship between the general public purposes of setbacks and lot coverage requirements and their application to this property. The proposed is a reasonable use of this property.

2) Case # 1-2

Petitioner: Wylie E. Brewster, Jr., owner, Jason & Trisha Brewster, applicants

Property: 121 Mechanic Street

Assessor Plan 103, Lot 31

Zoning District: Waterfront Business

Description: Construct an addition over the rear porch on an existing residential structure.

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 building to be extended or enlarged without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.531 to allow a right side yard setback of 7’10” ± where 30’ 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:

- This minor addition with no increase to the existing footprint will not be contrary to the public interest as the essential characteristics of the neighborhood will not be changed.
- The spirit of the Ordinance will be observed as the addition follows the way the house is currently sited on the property, which is large enough to accommodate the proposed addition.
- Substantial justice will be done by allowing the applicant to have a fuller use of their property without negatively impacting the public or the neighborhood.
- The proposed addition will improve the property so that the value of surrounding properties will not be diminished.
- The special conditions of the property that distinguish it from others in the area creating an unnecessary hardship is that it is surrounded by water on three sides. The proposal will have no impact of the neighboring area so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to this property. A modest addition to this home is a reasonable use of the property.

3) Case # 1-3

Petitioners: M.A. Boccia & V.H.T. Luong Joint Liv. Tr., M.A. Boccia & V.H.T. Luong, Trustees, owner, Chris Meyer, applicant

Property: 30 Brewster Street (26-30)

Assessor Plan 138, Lot 35

Zoning District: General Residence C

Description: Add third floor dormers to two existing structures, adding one dwelling unit for a total of three dwelling units on one lot.

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. Variances from Section 10.521 to allow the following:
 - a) A lot area per dwelling unit of 1,220 ±s.f. where 1,831± s.f. exists and 3,500 s.f. is the minimum required.
 - b) A front yard setback of 0'± where 0' exists and 5' is the minimum required.
 - c) A left side yard setback of 0'± where 0' exists and a right side yard setback of 5'± where 5' exists and 10' is the minimum required for both.
 - d) A rear yard setback of 0'± where 0' exists and 20' is required.
 - e) 41.3%± building coverage where 41.5%± exists and 35% is the maximum allowed.

3. A Variance from Section 10.1112.30 to allow 4 parking spaces to be provided where 6 parking spaces are required.

Action:

The Board voted to **decline to hear** the petition citing case law established by Fisher v. Dover. The Board determined that the current petition did not represent a material change from the petition for this property which was denied at the December 17, 2013 meeting.

- 4) Case # 1-4
Petitioner: 1000 Islington Street LLC c/o Carolyn Chase DMD
Property: 1000 Islington Street
Assessor Plan 171, Lot 10
Zoning District: Single Residence B
Description: Install a 7' x 3' attached wall sign
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:
 1. A Variance from Section 10.1251.20 to allow a 21 s.f±. attached wall sign where 4 s.f. is the maximum sign area allowed for an individual wall sign.

Action:

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

Stipulation:

- There will be no other new wall signs permitted.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest and the value of surrounding properties will not be diminished. The proposed sign will not result in sign clutter in the area and facing away from the residential properties will not change the essential characteristics of the neighborhood.
 - In the spirit of the Ordinance, the proposed size will be appropriate to the surrounding area and will assist the public in locating the business.
 - In the substantial justice test, allowing this non-illuminated sign will benefit the applicant in promoting her practice while there will be no detriment to the general public.
 - The value of surrounding properties will not be diminished by this relatively modest non-illuminated sign.
 - Due to special conditions of the property, there is no fair and substantial relationship between the general public purposes of the Ordinance provisions and their application to this property. The unique hardship is that the zoning of this property does not fully reflect its surrounding area where the proposed sign is in keeping with the neighborhood and is a reasonable use of the property.
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5) Case # 1-5

Petitioner: Mary R. Hurlburt

Property: 220 Union Street

Assessor Plan 135, Lot 24

Zoning District: General Residence C

Description: Remove existing residence and construct a new two-story 878 s.f. ± single family residence.

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 building to be reconstructed without conforming to the requirements of the Ordinance.
2. Variances from Section 10.521 to allow the following:
 - a) A left side yard setback of 6.5'± where 10' is the minimum required.
 - b) A rear yard setback of 12.8'± where 20' is the minimum required.
 - c) Continuous street frontage of 25.5'± where 70' is the minimum required.

Action:

After determining that the case of Fisher v. Dover would not apply to this application as it was materially different from the petition for this property denied at the November 19, 2013 meeting, 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 characteristics of this densely populated area will not be altered nor the health, safety and welfare of the general public threatened. The proposal will make the best use of an awkwardly shaped lot while improving setbacks and building coverage.
- Allowing the replacement of a home in poor condition with a modern structure built to code will benefit the applicant while resulting in no detriment to the general public.
- A new attractive structure further away from the closest residence than the existing structure will not diminish the value of surrounding properties.
- The special conditions of the lot creating a hardship are its L-shape and existing close setbacks. There is no fair and substantial relationship between the general public provisions of the Ordinance and their application to this property as moving the new structure away from the closest dwelling will make the property more conforming.

6) Case # 1-6

Petitioners: Hill-Hanover Group LLC, owner, Deer Street Associates LP, applicant

Property: 181 Hill Street and 317-339 Hanover Street

Assessor Plan 125, Lot 14 and Assessor Plan 138, Lot 62

Zoning District: Mixed Residential Office & Mixed Residential Business

Description: Parking and dimensional relief as a result of a proposed lot line adjustment.

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

1. A Special Exception under Section 10.1113.112 to allow required off-street parking spaces to be located on a lot separate from the principal use which is under the same ownership and within 300' of the property in question.

If the Special Exception is not granted:

2. A Variance from Section 10.1113.11 to allow ten of the required off-street parking spaces to be located on a lot separate from the principal use.

In addition, the following Variance requests:

3. From Section 10.1111.20 to allow alterations to a nonconforming use without complying with off-street parking requirements.
4. From Section 10.1114.20 to allow off-street parking that does not comply with the minimum dimensions for stall layout and provision of bumper stops within 4 feet of a building or public street.
5. From Section 10.1114.32 to allow off-street parking areas that require vehicles to enter or leave by crossing over another parking space or by backing into or from a public street or way.
6. From Section 10.311 to allow modification to an existing nonconforming lot.
7. From Section 10.521 to allow a lot area per dwelling unit of 1,344± s.f. where 5,000± s.f. per dwelling unit is required.
8. From Section 10.521 to allow building coverage of 51%± where 30% is the maximum allowed.
9. From Section 10.521 to allow open space of 9%± where 25% open space is the minimum required.

Action:

Special Exception

After a discussion of existing and proposed ownership and a proposed parking easement, the Board voted against granting a special exception determining that a **special exception does not apply** in this situation.

Variances

The Board then voted to **grant** the variances as presented and advertised for Items 2, 5, 6, 7, 8 and 9. It was determined that variances for advertised Items 3 and 4 were not required. The Board clarified that Item 2 incorrectly listed ten spaces where in fact the requested relief was for nine off-street parking spaces. The variances were granted with the following stipulations:

Stipulations:

- The nine off-street parking spaces that are approved to be located on a lot other than the principal use are located on a portion of land that was removed from the parcel designated as Map 124, Lot 14 and added to the parcel designated as Map 138, Lot 62 by a lot line

relocation approved by the Planning Board subject to separate action of the Board of Adjustment. It is the intent of this Board that the use of the nine parking spots, presented as part of a proposed easement, continue to be available to current and future owners of the parcel designated as Map 124, Lot 14 by a permanent easement that runs with the land in perpetuity and is not terminable for any reason.

- The Legal Department of the City of Portsmouth will review and approve the language of the easement so that it fulfills the intent of the Board of Adjustment conveyed in the first stipulation and in the taped proceedings of the hearing.

Review Criteria:

The variances were granted for the following reasons:

- It will be in the public interest to ensure that the full on-site parking capability is available to the users of the properties. The essential characteristics of the neighborhood will also not be changed as the structures on the lots are existing with no change proposed.
- The spirit of the Ordinance will be observed as there are a number of variances requested but a number result from existing structures that are not changing. With regard to parking, the intent of the Ordinance to have ample parking within a reasonable distance of the activity on the property is met with the proposed easement.
- Substantial justice will be done by allowing the property owner(s) to make full use of these adjoining parcels in a logical way while preserving the needs of the current buildings on the parcel designated as Map 125, Lot 14 to have adequate parking. There is no benefit to the public that would outweigh the loss to the applicants if the petition were denied.
- With no major changes proposed to the existing buildings and parking adequately addressed, the value of surrounding properties will not be diminished.
- Owing to the special conditions of the property that distinguish it from other properties in the area it cannot be used in strict conformance with the Ordinance and variances are necessary to obtain a reasonable use. The fact that the structures exist impacts the proposal. A hardship is created by the awkward arrangement of the two lots so that full usage of the odd-shaped lot is not possible without an exchange of a portion of the lower parcel. With the variances, a reasonable use of the property is promoted.

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IV. PLANNING STAFF REPORT

A) Proposed Revisions to Board of Adjustment Application Form and Rules and Regulations.

Materials concerning proposed revisions to the Board of Adjustment Application Form and the Rules and Regulations were distributed for future discussion.

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V. OTHER BUSINESS

- A) Proposed Ground Rules for Appeals Hearings – Historic District Commission.

After discussion, a consensus was reached as to how the upcoming Appeals Hearings of Historic District Commission decisions, scheduled for January 28, 2014 and February 19, 2014, should be conducted.

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VI. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:40 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary