

**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 July 15, 2014** in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Vice-Chairman Arthur Parrott, Susan Chamberlin, Derek Durbin, Charles LeMay, David Rheaume, Alternate: Patrick Moretti

**EXCUSED:** Chairman David Witham, Christopher Mulligan

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In the absence of the Chairman, the hearing was conducted by Vice-Chairman Parrott.

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**I. APPROVAL OF MINUTES**

- A) January 28, 2014
- B) March 18, 2014
- C) April 29, 2014

In separate unanimous voice votes, the Minutes for January 28, 2014, March 18, 2014 and April 29, 2014 were approved as presented.

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**II. PUBLIC HEARINGS - OLD BUSINESS**

- 1) Case # 6-1
  - Petitioners: Thomas W. & Anna L. Johnson, owners, New Cingular Wireless PCS LLC (“AT&T”), applicant
  - Property: 70 Martine Cottage Road
  - Assessor Plan 202, Lot 19
  - Zoning District: Rural
  - Description: Install a wireless communications facility with a 130’± tower.
  - 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 10.923.30 to allow a wireless telecommunications facility.
    - 2. A Variance from Section 10.521 to allow a structure height of 130’± where 35’ is the maximum allowed.

**Action:**

The Board voted to **accept the withdrawal without prejudice** of the petition by the applicants.

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**III. PUBLIC HEARINGS – NEW BUSINESS**

1) Case # 7-1

Petitioner: Kyle Crossen-Langelier

Property: 304 Leslie Drive

Assessor Plan 209, Lot 47

Zoning District: Single Residence B

Description: Construct an 11'± x 21' free-standing carport.

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

1. Variances from Section 10.521 to allow a front yard setback of 18'11"± where 30' is required and a left side yard setback of 7'± where 10' is required.

**Action:**

A motion to grant the petition failed to receive the votes necessary to pass and the petition was **denied**.

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2) Case # 7-2

Petitioners: Kevin Drohan and Heather Mangold

Property: 1240 Maplewood Drive

Assessor Plan 219, Lot 29

Zoning District: Single Residence B

Description: Add a second story over existing 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 structure to be extended, reconstructed or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a right side yard setback of 2'6" ± where 10' is required.
3. A Variance from Section 10.521 to allow a rear yard setback of 10'± where 30' is required.

**Action:**

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

**Stipulations:**

None

**Other:**

The applicant confirmed that the addition would not be used as a dwelling unit.

**Review Criteria:**

The petition was granted for the following reasons:

- Granting the petition will not be contrary to the public interest and will observe the spirit of the Ordinance as a modest increase in intensity to an existing structure will not alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public.
- Substantial justice will be done as the benefit to the applicant if the petition is granted would not be outweighed by any harm to the general public.
- The value of surrounding properties will not be diminished as the proposed upward expansion will not have a significant impact on the value of neighboring lots.
- An unnecessary hardship would be created by literal enforcement of the Ordinance and applying its provisions to a pre-existing garage on a nonconforming lot. An extension of the garage requiring a small amount of relief is a reasonable use of the property.

3) Case # 7-3

Petitioner: Christine V. Crockett Revocable Trust

Property: 209 Gosport Road

Assessor Plan 224, Lot 10-12

Zoning District: Single Residence A

Description: Construct a new single family home within 75' of a saltwater marsh.

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

1. A Variance from Section 10.301(6) – 1982 Zoning Ordinance to allow a structure 75'± from a saltwater marsh where a minimum of 100' is required.

**Action:**

The Board voted to **grant** a postponement to the August meeting as requested by the attorney for the applicant.

4) Case # 7-4

Petitioners: 402 State Street LLC, owner, JR Seely Company LLC, applicant

Property: 402 State Street

Assessor Plan 116, Lot 12

Zoning District: Character District 4-L

Description: Renovation to create three residential condominium units with related off-street parking.

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

1. A Variance from Article 10.5A42.10A to allow 1,609± s.f. per dwelling unit where a minimum of 3,000 s.f. is required.
2. A Variance from Section 10.1114.20 to allow off-street parking that does not comply with the dimensional requirements.

**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 more off-street parking will be provided than required with parking for compact cars available on the street. The public interest will not be negatively affected by the proposed lot area per dwelling as the number of units will reflect the character of the surrounding neighborhood.
- The spirit of the Ordinance will be observed by the additional parking and a plan that meets the intent of the Ordinance by adequately providing for vehicles to enter and exit the parking spaces safely. The lower lot area per dwelling unit is reasonable for this area.
- Substantial justice will be done by allowing the owners to make full use of the property by creating reasonably sized dwelling units with appropriate parking.
- The value of surrounding properties will not be diminished by the renovation of a property which will restore its historic appearance and enhance the look of the surrounding area while bringing the property up to current standards.
- No fair and substantial relationship exists between the general public purposes of the Ordinance provisions and their application to this property. The special conditions of the property creating a hardship are an existing structure with no room in the rear for a full-size parking area, as well as a structure size and configuration that would be overly large for a single dwelling but reasonable for the proposed three units.

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5) Case # 7-5

Petitioner: Reginald E. & Debra S. Perry

Property: 180 Cutts Street

Assessor Plan 209, Lot 28A

Zoning District: General Residence A

Description: Permit a photography studio in an existing residential unit.

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

1. A Special Exception under Section 10.440, Use #19.22 to allow a Home Occupation II to be conducted in a residential district.

**Action:**

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

**Stipulations:**

None.

**Review Criteria:**

The petition was granted for the following reasons:

1. The standards provided by the Ordinance for this particular use are met.
2. The proposed use will create no hazard to the public or adjacent property from fire explosion or release of toxic materials.
3. There will be no detriment to property values or change in the essential characteristics of the area from noise, pollutants or other irritants as the work will be performed within the structure with no impact on the surrounding area.
4. The approximate two clients a day visiting the property will not create a traffic safety hazard or increase traffic congestion.
5. There is nothing in the use that will create an excessive demand for municipal services and, with no change to the building, there will be no increase in storm water runoff onto adjacent properties or streets.

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- 6) Case # 7-6  
Petitioners: Ronald and Carol M. Smith  
Property: 32 Taylor Lane  
Assessor Plan 250, Lot 40  
Zoning District: Single Residence B  
Description: Construct 14' x 8' rear deck at end of access ramp.  
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 rear yard setback of 12'± where 15' is required for an open deck.
  2. A Variance from Section 10.521 to allow building coverage of 21.6%± where 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 the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed as the relief requested is minimal and will not alter the essential characteristics of the neighborhood.
- Substantial justice will be done by allowing enjoyment of the property while not infringing on the light and air of neighboring properties.
- A simple deck in keeping with the neighborhood will not diminish the value of surrounding properties.
- Literal enforcement of the provisions of the Ordinance would result in unnecessary hardship due to special conditions of the property. A deck is a reasonable request and its location is dictated by the pre-existing access ramp and a corner lot which limits placement options.

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- 7) Case # 7-7  
Petitioner: Daniel P. Keenan, DDS (Domer Realty LLC)  
Property: 545 Lafayette Road  
Assessor Plan 229, Lot 6  
Zoning District: Single Residence B  
Description: Add a real estate office in a building currently used for a medical office.  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Special Exception under Section 10.335 to allow a lawful nonconforming use to be changed to another nonconforming use.
  2. A Variance from Section 10.1241 to allow a free-standing sign in a district where free-standing signs are not allowed.
  3. A Variance from 10.1281 to allow an existing free-standing sign to be altered or reconstructed.
  4. A Variance from Section 10.1251.20 to allow a wall sign that is larger than the maximum allowed for an individual wall sign.

**Action:**

The Board voted to **grant** the special exception and variances outlined in requests #1, #2 and #3 for free-standing signs as presented and advertised and **deny** variance request #4 for a wall sign that is larger than the maximum size allowed.

**Stipulations:**

None.

**Review Criteria:**

The special exception was granted for the following reasons:

- No hazard to the public or adjacent property from fire explosion or release of toxic materials will be created by the proposed office use.
- There is nothing in the nature of this use that would result in a detriment to property values or cause a change in the essential characteristics of the area from noise, dust or other pollutants.
- There will be no creation of a traffic safety hazard or increase in traffic congestion as the proposed business will not generate more traffic than previous uses.
- A light office use will not result in any excessive demand on municipal services.
- With no change to the structure, there will be no increase in storm water runoff onto adjacent property or streets.

The variances outlined in requests #2 and #3 were granted for the following reasons:

- It will be in the public interest to provide a means to identify the businesses on the property.
- The spirit of the Ordinance will be observed by allowing an existing sign to be reconstructed and refurbished and an additional sign at the entry from the street.
- Substantial justice will be done and no diminution in the value of surrounding properties will result from allowing a free standing sign to continue and a small informational sign to be added.
- The special conditions of the property creating a hardship are that it is situated in an area close to commercial properties and contains a structure more suited to a commercial than a residential use. It is a reasonable use of the property to continue to allow free standing signs for identification.

The variance outlined in request #4 was denied as it failed to meet all of the criteria necessary to grant a variance:

- A wall sign that is larger than allowed will be contrary to the public interest and will not observe the spirit of the Ordinance.
- Literal enforcement of the provisions of the Ordinance would not result in an unnecessary hardship as a sign could be modified to meet the requirements of the Ordinance.

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It was moved, seconded and passed to adjourn the meeting at 9:15 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary