

**PLANNING DEPARTMENT - BOARD OF ADJUSTMENT**

**ACTION SHEET**

**TO:** John P. Bohenko, City Manager

**FROM:** Jane Shouse, Planning Department

**RE:** Actions Taken by the Portsmouth **Board of Adjustment at its regular meeting on June 16, 2015** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Chairman David Witham, Vice-Chairman Arthur Parrott, Derek Durbin, Charles LeMay, Patrick Moretti, Christopher Mulligan, David Rheaume. Alternate: Jeremiah Johnson

**EXCUSED:** None

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**I. APPROVAL OF MINUTES**

A) May 19, 2015

It was moved, seconded and passed by unanimous vote to accept the Minutes with minor corrections.

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**II. PUBLIC HEARINGS – NEW BUSINESS**

1) Case # 6-1

Petitioners: Zoe Copenhaver Daboul & Michael Edward Daboul

Property: 53 Humphreys Court

Assessor Plan 101, Lot 39

Zoning District: General Residence B

Description: Install 13”± x 38” ± condenser unit.

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

1. Variances from Section 10.521 to allow the following:
  - a) A 3’2” ± right side yard setback where 10’ is required;
  - b) Building coverage of 44.3%± where 42.8% was previously approved and 30% is the maximum allowed;
  - c. Open space coverage of 35.7%± where 25% is the minimum required.

Action:

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

Stipulation:

- 1. That the lot coverage be revised from 44.3% as advertised to the correct lot coverage of 42.9%.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance would not be contrary to the public interest or to the spirit of the Ordinance because it would not change the neighborhood in any noticeable way.
- Substantial justice will be done because the advantage to the owner for access to air conditioning and heating will not be off-set by any detrimental impacts to the general public.
- It will not diminish the values of surrounding properties because the condenser will be efficient, and it is common to have outdoor air conditioners in that area, so it will present no substantial noise to the neighborhood.
- Literal enforcement of the Ordinance will result in unnecessary hardship to the applicant because the location of the house on the lot is a special condition that distinguishes this property from other properties in the area and the hardship will be periodic and severe if the Board were to enforce the strict letter of the Ordinance. The proposed use is a reasonable one.

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2) Case # 6-2

Petitioner: 599 Lafayette LLC

Property: 599 Lafayette Road

Assessor Plan 229, Lot 8

Zoning District: Gateway

Description: Install a transformer and generator. Construct an overhang over existing sidewalk.

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

- 1. A Variance from Section 10.531 to allow a left side yard setback of 15'± where 30' is 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 would not be contrary to the public interest or to the spirit of the Ordinance because it would not change the essential characteristics of the neighborhood.
- Substantial justice will be achieved because, if the variance was denied, the gain to the public would be minimal whereas the loss to the applicant would be large.
- Granting the variance will not diminish the value of surrounding properties because it will be part of an overall upgrade that would benefit all surrounding properties. It will also include the removal of an unsightly overhead utility configuration, which would be positive for the surrounding properties.
- The literal enforcement of the Ordinance would result in unnecessary hardship because the lot is unique due to the location of the existing building on the lot, and there is no substantial relationship between the setback requirements as they relate to this property as it is currently configured and the minor and reasonable modification that is being proposed for the building.

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3) Case # 6-3

Petitioner: Mark D. Gray  
 Property: 140 Summer Street  
 Assessor Plan 137, Lot 2  
 Zoning District: General Residence C  
 Description: Construct 27'± long third floor dormer.

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 or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 3.5'± right side yard setback where 10' is required.

Action:

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

Stipulation:

- 1) That the proposed dormer be located approximately the same distance from the front of the house as that of the gabled dormer on the opposite side of the house in order to create a balanced appearance from the front.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest because the stipulation would keep the streetscape looking fairly similar to the existing conditions.
- Granting the variance will do substantial justice because it would allow the homeowner to get additional space with a vertical expansion and, with the stipulation, the public impact would be minimized.
- The value of surrounding properties will not be diminished because the increase of floor area on that side would add to the value of the home and in turn would be unlikely to diminish the value of surrounding properties.
- The unique conditions of the lot are that it is narrow and long, and with the position of the house up against the property line, the owner’s options for expansion are limited. This is a reasonable expansion because it will be masked by the neighboring house, which has dormers at this height as well.

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4) Case # 6-4

Petitioner: Lisa M. Zwalley Miller

Property: 683 State Street

Assessor Plan 137, Lot 12

Zoning District: General Residence C

Description: Approval of a seventh dwelling unit with related off-street parking.

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 #1.42 to allow seven dwelling units on the property where more than four units is allowed by Special Exception.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 1,717 s.f. ± where 3,500 s.f. is required.
3. Variance(s) from Section 10.1114 to allow off-street parking that does not comply with the design requirements of the Zoning Ordinance.

Action:

The Board voted to **deny without prejudice** the petition as presented and advertised.

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5) Case # 6-5

Petitioners: William T. & Annelise Ellison

Property: 687 Middle Street

Assessor Plan 148, Lot 34

Zoning District: General Residence A

Description: Replace existing garage with a 24’± x 30’± structure.

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 0'± right side yard setback where 10' is required.

Action:

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

Stipulation:

- 1) That the structure shall have a right side yard setback of a minimum of 2'.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest because it would be in keeping with the overall characteristics of the neighborhood.
- Granting the variance would do substantial justice because it will improve the applicant's use of the property by providing additional space for a car as well as an additional storage area above and the gain to the applicant will not be offset by any loss to the general public.
- This will not diminish the value of surrounding properties because the outdated garage will be replaced and, with the stipulation, it will be setback from the lot line, which should have a positive impact on property values.
- As to the hardship test, the special conditions of the property are that there is an existing structure that has been in place for some time, and, with the stipulation, the proposed garage will bring the property into greater conformance by setting it farther away from the lot line and it is a reasonable use for this property.

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6) Case # 6-6

Petitioners: Michael Brandzel & Helen Long

Property: 39 Dearborn Street (Dearborn Lane)

Assessor Plan 140, Lot 3

Zoning District: General Residence A

Description: Construct a rear shed dormer and single story addition.

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 or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 3'± rear yard setback where 20' is required for a 14'± extension of a previously approved rear dormer and for a 6'± x 15'± single story addition.

Action:

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

Stipulation:

- 1) That the prior approved stipulations shall be carried forward.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest or to the spirit of the Ordinance because it will not change the fundamental characteristics of the residential neighborhood, nor will there be any threat to the public’s health, safety and welfare if the Board permitted the encroachment into the rear yard setback.
- Granting the variance will do substantial justice because the loss to the applicant would be fairly extreme and not outweighed by any corresponding benefit to the public.
- This will improve the value of surrounding properties, and that was the reason the applicant had received approvals thus far.
- The special conditions of the lot are that it is located in the tidal buffer area, which impacts where the building can be located on the property, and that the house faces the side lot line and therefore the property cannot be reasonable used in strict conformance with the Ordinance. This is a reasonable use of the property.

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7) Case # 6-7

Petitioner: Lonza Biologics, Inc.

Property: 101 International Drive

Assessor Plan 305, Lot 6

Zoning District: Airport Business Commercial

Description: Install two new generators and construct above ground storage tanks.

Requests: Review and recommend the following Variance from the Pease Development Authority Zoning Ordinance:

- 1. A Variance from Section 308.02 (c) to allow above ground storage tanks (AST) exceeding 2,000 gallon capacity for two existing and two proposed generators.

Action:

The Board voted to **recommend approval** of the petition as presented and advertised with a request to provide information on the life span of the above ground tanks.

Review Criteria:

The petition was granted for the following reasons:

- The variance will not be contrary to the public interest or to the spirit of the Ordinance because it is necessary to maintain the environment when producing high-tech products, and it is understandable that the applicant needs reliable power because a shutdown could not be withstood.
- It will do substantial justice because there will be no overriding benefit to the public if this variance is not granted.
- There will be no adverse effect or diminution of surrounding property values because the applicant has clearly taken safety precautions relating to adverse effects.
- Denying the application would result in unnecessary hardship to the applicant because there was every reason to take extraordinary precautions to maintain uninterrupted power supply for this manufacturing operation.

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8) Case # 6-8

Petitioners: Joseph & Lindsey B. Donohue

Property: 336 Union Street

Assessor Plan 134, Lot 58

Zoning District: General Residence A

Description: Convert single family dwelling to two dwelling units.

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 per dwelling unit of 2,178 s.f. ± where 7,500 s.f. is required.
2. A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where four off-street parking spaces are required.

Action:

The Board voted to **postpone** the petition to the next meeting scheduled for July 21, 2015.

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9) Case # 6-9

Petitioner: Rhonda E. Stacy-Coyle Revocable Trust, Rhonda E. Stacy-Coyle, Trustee

Property: 36 Richards Avenue

Assessor Plan 136, Lot 14

Zoning District: Mixed Residential Office

Description: Construct a 2.5'± deep x 4'± wide rear gabled roof.

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 or structurally altered without conforming to the requirements of the Ordinance.
2. A Variance from Section 10.521 to allow a 2.5'± rear yard setback where 15' is required.
3. A Variance from Section 10.521 to allow 68.5%± building coverage where 40% is the maximum allowed.

Action:

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

Stipulation:

None

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest or to the spirit of the Ordinance because the character of the neighborhood will not change and the health, safety and welfare will not be affected by the minimal modification of the modest structure.
- Substantial justice will be met because there will be no corresponding benefit to the general public if the petition was denied.
- This will not diminish surrounding property values because it will not be visible to most of the surrounding properties.
- Denying the variance would result in a hardship as it is a unique property, the special conditions are that it is a cottage-style home on a small lot so that any modification will require relief from the Ordinance. Addition of a roof over an existing entry way is a reasonable use.

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**III. OTHER BUSINESS – None.**

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**IV. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 8:45 p.m.

Respectfully submitted,

Jane M. Shouse, Acting Secretary