

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 September 20, 2016 Meeting** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheame, Vice-Chairman Charles LeMay, Jeremiah Johnson, Christopher Mulligan, Arthur Parrott, Alternate Jim Lee, Alternate Peter McDonell

EXCUSED: Patrick Moretti

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I. APPROVAL OF MINUTES

A) August 16, 2016

The Minutes were approved as presented.

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II. PUBLIC HEARINGS – OLD BUSINESS

A) Case #8-3
Petitioners: Abigail Kell Sutcliffe, owner, Fred Kell, applicant
Property: 12 Woodbury Avenue
Assessor Plan 163, Lot 9
Zoning District: General Residence A
Description: Add rear porch.
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow 55.94%± building coverage where 25% is the maximum allowed.
(Postponed from the August 16, 2016 meeting.)

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 characteristics of the neighborhood will not be altered by a modest porch similar to others in the area.
A porch of this size will not threaten the health, safety or welfare of the general public.
- Substantial justice will be done as there would be a loss to the applicant if the building coverage requirements were strictly enforced with no corresponding benefit to the general public.
- Granting the variances will not diminish the value of surrounding properties which have similar amenities.
- Literal enforcement of the Ordinance would result in unnecessary hardship as there are special conditions of the lot which include its small size and trapezoidal shape and the placement of the existing structures so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision regarding lot coverage. The proposed porch, representing a slight incremental increase in the existing building coverage, is a reasonable use of the property.

B) Case #8-8

Petitioners: James C. Lucy Revocable Living Trust, James C. & Kimberley A. Lucy, Trustees

Property: 127 & 137 High Street

Assessor Plan: Map 118, Lots 20 & 21

Zoning District: CD4-L1 and Downtown Overlay Districts

Description: Construct two-family dwelling unit with parking underneath.

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

1. A Variance from Sections 10.5A41.10A & 10.5A43.31 to allow a three-story building where up to a two-story building is the maximum permitted.
2. Variances from Section 10.5A41.10A to allow the following:
 - (a) A minimum lot area per dwelling unit of 1,200± s.f. where 3,000 s.f. is required.

- (b) A duplex building type where duplexes are not permitted in the Downtown Overlay District.
 - (c) The minimum ground story to be 8'8"± in height where 11' is required.
3. A Variance from Section 10.1114.20 to allow a 20'± maneuvering aisle where 24' is required.
(Postponed from the August 16, 2016 meeting.)

Action:

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

Review Criteria:

The reasons for denying the petition include the following:

- All the criteria necessary to grant a variance were not met.
- The project would be contrary to the public interest and the spirit of the Ordinance would not be observed as the essential character of the neighborhood would be changed by constructing a two-unit townhouse with garages immediately adjacent to an historic structure.
- The value of surrounding properties would be negatively impacted by the sheer mass of the project close to two property lines and an historic structure, as well as the historically inaccurate character of the proposed new building.
- An unnecessary hardship resulting from literal enforcement of the Ordinance was not sufficiently demonstrated.

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III. PUBLIC HEARINGS – NEW BUSINESS

- 1) Case #9-1
 Petitioner: 393 New Castle Avenue LLC
 Property: 390 New Castle Avenue
 Assessor Plan 207, Lot 6
 Zoning District: Single Residence B
 Description: Raise existing structure 18" and convert to dwelling unit.
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
 2. Variances from Section 10.521 to allow the following:
 - a) 96'± continuous street frontage where 100' is required.
 - b) A lot depth of 40'± where 100' is required.
 - c) A rear yard setback of 2'± where 30' is required;

Action:

The Board voted to **continue** the petition to the October 18, 2016 meeting so that files could be reviewed and information gathered relative to the applicability of the case law in Fisher v. Dover. The Board also requested a general layout of the proposed space from the applicant. The petition will be re-advertised to accurately reflect all required variances for the applicant's proposal.

2) Case #9-2

Petitioners: Gary M. & Marcia D. Baker

Property: 389 Lincoln Avenue

Assessor Plan 134, Lot 17

Zoning District: General Residence A

Description: Replace and expand rear deck.

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

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from Section 10.521 to allow 32.3%± building coverage where 25% 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:

- Allowing a modest improvement in a densely packed neighborhood will not alter the essential character of the neighborhood nor threaten the public's health, safety or welfare so that granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as granting the variances will benefit the applicant with no corresponding harm to the general public or other individuals.
- Improving this property will enhance the value of surrounding properties.
- A large lot and the positioning of the house on the lot are special distinguishing conditions of the property that create a hardship. The house is sited to be square with the road on an irregularly shaped lot which creates a difficulty in placing a reasonable addition to the house in conformance with the Ordinance.

3) Case #9-3

Petitioners: Robin M. Silva Revocable Living Trust, Robin M. Silva & Mark S. Anderson, Trustees.

Property: 25 Hawthorne Street

Assessor Plan 133, Lot 36

Zoning District: General Residence A

Description: Construct a 9.5'± x 20'± rear addition with a 5.5'± x 9.5'± side porch.

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

1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
2. A Variance from 10.521 to allow a 7'± right side yard setback where 10' 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:

- An addition and porch requiring a small amount of relief will not change the essential character of the neighborhood so that granting the variances will not be contrary to the public interest and the public health, safety or welfare will not be threatened.
- Substantial justice will be done as the benefit to the applicant will not be outweighed by any harm to the general public or other individuals.
- The value of surrounding properties will not be diminished by a small encroachment toward a neighboring property which contains a garage as the abutting structure.
- There are special conditions of the property creating a hardship. The house is sited to be square with the road on an irregularly shaped lot which creates a difficulty in the placement of a reasonable addition to the house in conformance with the Ordinance.

4) Case #9-4

Petitioners: Thomas J. & Christine W. Casa

Property: 6 Dwight Avenue

Assessor Plan 250, Lot 53

Zoning District: Single Residence B

Description: Construct a 12'± x 30'± rear deck.

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

1. A Variance from Section 10.521 to allow 21.33% building coverage 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:

- The proposed deck screened by vegetation will not alter the essential character of the neighborhood or threaten the public health, safety or welfare so that granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Granting the variance will result in substantial justice as the loss to the applicant, if the petition were denied, would not be counterbalanced by any benefit to the general public.
- The values of surrounding properties, many with similar structures, will not be diminished.
- There are special conditions distinguishing this property from other similarly situated properties. The configuration of the existing windows require that a deck be sited and sized in a certain manner so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision regarding lot coverage and its specific application to the property. This use is a reasonable one in a residential neighborhood.

5) Case #9-5

Petitioner: Amba Realty LLC

Property: 806 Route One By-Pass

Assessor Plan 161, Lot 43

Zoning District: Business

Description: Allow a second free-standing sign on a lot.

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

1. A Variance from Section 10.1243 to allow two free-standing signs on a lot where only one free-standing sign is allowed.

Sign One (left side of lot)

2. A Variance from Section 10.1253.10 to allow a 4'± setback from the front lot line where 20' is the minimum required.

Sign Two (right side of lot)

3. A Variance from Section 10.1251.20 to allow a sign area for a free-standing sign of 120± s.f. where 100 s.f. is the maximum sign area allowed.
4. A Variance from Section 10.1253.10 to allow a 12'± setback from the front lot line where 20' is the minimum required.

Action:

With no one in attendance to speak to the petition, the Board voted to **postpone** consideration to the next regular meeting in October.

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- 6) Case #9-6
Petitioners: Cynthia Caldwell & Linda Petersen
Property: 147 Martha Terrace
Assessor Plan 283, Lot 8
Zoning District: Single Residence A
Description: Reconstruct and expand front entrance.
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
 1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
 2. Variances from 10.521 to allow 19.3%± building coverage where 10% 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:

- Enlarging the front entry will not alter the essential character of the neighborhood nor threaten the public health, safety or welfare so that granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.

- Substantial justice will be done as there will be no benefit to the general public if the variances are denied.
 - Replacing a cumbersome structure with an attractive and code compliant entry will add value to this and surrounding properties.
 - An existing front entry that is not functional or code compliant is a special distinguishing condition of the property so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and its specific application to the property. Providing a more useful and safe entry, although expanded in size, is a reasonable use of the property.
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7) Case #9-7

Petitioner: Travis Therrien

Property: 1 Marjorie Street

Assessor Plan 232, Lot 32

Zoning District: Single Residence B

Description: Enclose existing nonconforming deck.

- Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
 2. A Variance from Section 10.521 to allow a 3'± right side yard setback where 10' 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 variances will not be contrary to the public interest and the spirit of the Ordinance will be observed as the additional living space will be small and utilize an existing structure. Enclosing a nonconforming deck and seeking the necessary relief to create that space will not alter the essential character of the neighborhood nor threaten the public health, safety or welfare.
- Granting the variances will result in substantial justice as the loss to the applicant if the relief is not granted will not be outweighed by any benefit to the general public.
- The value of the property will be increased by the improvement and have a positive effect on the values of surrounding properties.

- Literal enforcement of the Ordinance will result in an unnecessary hardship. The special characteristic of the property is the existence of a nonconforming structure that is encroaching into the side yard setback. The proposal is to modestly increase and extend that nonconformance by converting the deck into livable space as a mudroom which is a reasonable use in a residential district.

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IV. OTHER BUSINESS

No other business was presented.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:07 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary