

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 reconvened meeting on September 27, 2016** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheame, Jeremiah Johnson, Jim Lee, Patrick Moretti, Christopher Mulligan, Arthur Parrott. Alternates: John Formella,, Peter McDonell

EXCUSED: Vice Chairman Charles LeMay

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I. OLD BUSINESS

A) Request for Rehearing for property located at 996 Maplewood Avenue.

Action:

The Board voted to **deny** the request. The Board determined that they had fairly reviewed and heard the petition and made no error in arriving at their decision. No new evidence was presented that was not available at the time of the hearing.

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II. PUBLIC HEARINGS

8) Case #9-8
Petitioner: Brian D. Hogan Revocable Trust of 2008, Brian D. Hogan, Trustee, owner, Mark McNally, applicant
Property: 21 Brewster Street
Assessor Plan 138, Lot 11
Zoning District: General Residence C
Description: Convert rooming house to 6-unit condominium structure with a 6-bay garage.
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 #1.42 to allow six dwelling units where this use is allowed by Special Exception.
2. 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.
3. Variances from Section 10.521 to allow the following:
 - a) A lot area per dwelling unit of 1,386.33± s.f. where 3,500 s.f. is required;
 - b) A 1.5'± right side yard setback where 10' is required;
 - c) A 0.5'± rear yard setback where 20' is required;
 - d) 50.01%± building coverage where 35% is the maximum allowed;
 - e) 10.44%± open space where 20% is the minimum required.
 4. A Variance from Section 10.1114.32(a) to allow vehicles entering and leaving parking spaces to pass over another parking space or require the movement of another vehicle.

Action:

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

Stipulations:

None

Review Criteria:

The Special Exception was granted for the following reasons:

- The standards as provided by this Ordinance for the particular use permitted by Special Exception are met. The proposed six units are allowed by Special Exception.
- The proposed structures will house people and cars which will present no hazard to the public or adjacent property from fire explosion or release of toxic materials.
- There will be no detriment to property values in the vicinity or change in the essential characteristics of the area from the location or scale of buildings, parking areas, odors, smoke, or other pollutants or irritants, or unsightly outdoor storage. Noise will be reduced, parking improved and the improvement to the structures will increase property values.
- The previous use involved the passage of a number of vehicles and this proposal reduces the units and provides increased on-site parking so there will be no creation of a traffic safety hazard or substantial increase in traffic congestion.
- The demand on municipal services, including water, sewer, waste disposal, police and fire protection and schools, will decrease with this use.
- With the representations by the applicant that storm water runoff will be addressed with improved drainage, there will be no significant increase of storm water runoff onto adjacent property or streets.

The Variances were 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. The public interest is represented by the support of close neighbors and the structure and density are within the spirit of the Ordinance, the request representing equal or less impact than similar multi-family units in the area.
- Granting the variances will benefit the applicant and neighborhood with no overriding detriment to the general public.
- The value of surrounding properties will be increased and the project has the support of immediate abutters.
- The special conditions of the property are the size of the lot, the existing structure and the topography of the area so that there is no fair and substantial relationship between the general purposes of the Ordinance provisions and their specific application to this property. The proposal represents a reasonable use of the property.

9) Case #9-9

Petitioner: Patricia A. Monaco

Property: 9 Falkland Place #A1

Assessor Plan 212, Lot 26-1C

Zoning District: General Residence B

Description: Massage Therapy Use.

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 2 where the use is allowed by Special Exception.

Action:

The Board acknowledged that the petition had been **withdrawn** as a Special Exception was not required for this use.

10) Case #9-10

Petitioners: Harry S. Furman & Kathleen E. Straube

Property: 557 State Street

Assessor Plan 137, Lot 33

Zoning District: General Residence C

Description: Construct 160± s.f. second floor addition.

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 an 0.8'± 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 will observe the spirit of the Ordinance. This is a fairly dense residential neighborhood which will not be compromised by the requested relief. With the pitch of a roof next to a neighboring tall building and the additional height length at the back next to an open parking area on an adjacent property, light and air will be protected.
- Substantial justice will be done. The loss to the applicant if the petition were denied would not be outweighed by any gain to the general public as the existing nonconformity with regard to the setback would remain.
- The value of surrounding properties will not be diminished as the additional relief requested on the existing property, which abuts a multi-unit apartment building, is relatively modest and will not negatively affect surrounding properties.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to special conditions of the property. The existing dwelling is a large structure on a nonconforming lot with an addition constructed years ago right up against the property line. Any improvement would require relief and what is being proposed is a vertical expansion of the nonconforming footprint so that there is no fair and substantial relationship between the general public purposes of the Ordinance setback requirement and their application to this property. A residential use in a residential area is a reasonable use of the property.

11) Case #9-11

Petitioner: Michael F. McNeilly, owner, Alden Properties, LLC, applicant

Property: 246 Austin Street

Assessor Plan 135, Lot 63

Zoning District: General Residence C

Description: Vertical expansion of existing two-family dwelling.

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 lot area per dwelling unit of 653.40± s.f. where 3,500 s.f. is required.

Action:

The Board voted to **postpone** the petition to the October 18, 2016 meeting.

12) Case #9-12

Petitioners: Jennifer L. Bell & Harold G. Beresin

Property: 23 Marston Avenue

Assessor Plan 150, Lot 3

Zoning District: General Residence A

Description: Construct a 12'± x 25.5'± rear addition and attached 24'± x 17'± garage.

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 7'3"± left 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:

- Allowing the removal of a shed which is in disrepair and construction of a garage closer to the house will not be contrary to the public interest.
 - The spirit of the Ordinance will be observed as the proposal is for a minimal adjustment and will move structures away from the rear property line.
 - Substantial justice will be done as the improvements to the property will allow the owner to have more functional living space and a usable garage with no detriment to the general public.
 - An improvement to the property which includes the removal of a deteriorated structure will not result in a diminution in the value of surrounding properties.
 - Literal enforcement of the Ordinance would result in unnecessary hardship due to special conditions of the property. The lot is small with narrow setbacks. With the location of the existing structures, the addition is placed in the most sensible location. A modern, usable garage of this size is a reasonable use of the property.
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13) Case #9-13

- Petitioners: Foundation for Seacoast Health, owner, Hope for Tomorrow Foundation, applicant
Property: 315 Banfield Road
Assessor Plan 266, Lots 4 (portion), 5 & 6
Zoning District: Industrial
Description: Construct and operate a K-8 Elementary School.
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 10.440.3.21 to allow a primary or secondary school in a district where the use is not permitted.

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 and the spirit of the Ordinance will be observed. The project as proposed will not alter the essential character of the neighborhood or threaten the health, safety or welfare of the public. There are a number of institutional type uses nearby with additional projects planned which are compatible with this proposed use.
- Granting the variance will result in substantial justice. The proposed uses are non-residential and similar in nature to other uses in the area. Denying the petition would be a detriment to the applicant while there would be no gain to the general public in limiting the uses to those specifically listed in the Table of Uses.
- There is nothing in the proposed use that will diminish the value of surrounding properties.
- The use will be conducted on a large lot created by subdivision with significant frontage and open, green space. It will be accommodated in an area in transition with a number of complimentary uses so that there is no fair and substantial relationship between an elementary school use not being allowed in the Table of Uses in an industrial zone and applying that limitation specifically to this property. This site is compatible with this use.

14) Case #9-14

- Petitioners: Daniel P. & Eileen M. Doyon
Property: 456 Sherburne Road
Assessor Plan 261, Lot 20
Zoning District: Single Residence B

Description: Convert existing accessory structure into a second 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 10.513 to allow a second free-standing dwelling on a lot where only one free-standing dwelling is allowed.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 8,276.40± s.f. where 15,000 s.f. per dwelling unit 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 will not be contrary to the public interest and the spirit of the Ordinance will be observed. This is a small expansion of a residential use in a residential neighborhood so that the essential character of the neighborhood will not be altered. The density of the neighborhood will not be increased or overburdened so that the public health, safety or welfare will not be threatened.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be balanced by any gain to the general public.
- The existing structures will remain on the lot with no change in the footprint and there will be a minor increase in density so that the value of surrounding properties will not be diminished.
- Literal enforcement of the Ordinance would result in unnecessary hardship. There are special conditions of the property, including the small size of the primary dwelling and the existence of a supplementary structure at the rear of the property that can be adapted to provide less than 600 s.f. of living space. With the conditions, there is no fair and substantial relationship between the Ordinance restriction of a single dwelling unit per lot in this district and its specific application to this property. A residential use in a residential area is a reasonable use of the property.

15) Case #9-15

Petitioners: Justice C. Rines & Thea E. Murphy

Property: 372 Wibird Street

Assessor Plan 132, Lot 6

Zoning District: General Residence A

Description: Replace attached one-car garage/living space with a two-car garage/living space.

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 1.43'± 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. The proposed addition is in concert with many of the surrounding properties so that the essential character of the neighborhood will not be altered nor will there be a threat to the public health, safety or welfare or injury to “public rights.”
- Substantial justice will be done as the loss to the applicant in denying a modest increase will not be outweighed by any benefit to the general public or other individuals. The abutter most affected submitted a letter of support and any negative impact to the rear abutter is not sufficiently substantial, with the rear setback met, to outweigh the right of the property owners to make full use of their property.
- A tasteful and appropriately designed addition will not diminish the value of surrounding properties and the most direct abutter supports the proposal.
- The special conditions of the property resulting in a hardship include the trapezoidal shape of the lot and the orientation of the house on the lot. In rhythm with the neighborhood with properties situated to one side, the structure on the adjacent property is also sited to the far side of the lot, somewhat shielded and buffered by a driveway. With these special conditions, there is no fair and substantial relationship between the general public purposes of the Ordinance provision and its specific application to the property. The proposed addition along with the reconstruction of some structurally deficient portions of the house is a reasonable use of the property.

16) Case #9-16

Petitioners: Gregory and Elizabeth LaCamera

Property: 34 Rock Street

Assessor Plan 138, Lot 18

Zoning District: General Residence C

Description: Replace an 8.5'± x 14'± left rear addition with a 12'± x 14'± structure.

- 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) An 8’5” ± left side yard setback where 10’ is required;
 - b) A 2’10”± rear yard setback where 20’ is required; and
 - c) 53.28%± building coverage where 35% 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. This modest improvement in a densely packed neighborhood will not alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public or otherwise injure their rights.
- Substantial justice will be done as granting the variances will benefit the applicants with no harm to the general public or individuals.
- The value of surrounding properties will not be diminished by an aesthetically pleasing addition with safer access.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to special conditions of the property which include a relatively small site with an existing addition placed close to the property line. The proposed addition will remedy to some degree the existing nonconformities and is a reasonable use of the property.

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III. OTHER BUSINESS

No other business was presented.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:05 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary