

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 meeting on October 18, 2016** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.
PRESENT: Chairman David Rheäume, Vice Chairman Charles LeMay, Jeremiah Johnson, Jim Lee, Patrick Moretti, Christopher Mulligan, Arthur Parrott. Alternates: John Formella,, Peter McDonell

EXCUSED:

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I. OLD BUSINESS

A) Case #9-1

Petitioner: 393 New Castle Avenue LLC
Property: 390 New Castle Avenue
Assessor Plan: Map 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;
d) A front yard setback of 25' where 30' is required; and
e) Minimum lot area per dwelling unit of 3,580± s.f. where 15,000 s.f. 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 small size of the proposed dwelling will not compromise the residential nature of the neighborhood nor will the public health, safety or welfare be threatened.
- Substantial justice will be done. Strict application of all the dimensional requirements will prevent the proposed improvement of a unique and historic structure resulting in a loss to the applicant with no corresponding benefit to the general public.
- The value of surrounding properties will not be diminished. The existing structure will be modified dimensionally by a slight increase in height without changing the sight lines and visual effect on surrounding properties.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to special conditions of the property. This is a corner lot surrounded by water on the remaining two sides. The building is historic with a colorful character and worthy of preservation. With these conditions, there is no fair and substantial relationship between the purposes of the Ordinance provisions to avoid overcrowding and increased intensity of uses and their specific application to the property.

B) Case #9-5

Petitioner: Amba Realty LLC
 Property: 806 Route One By-Pass
 Assessor Plan: Map 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:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Reproducing the same type of sign in the same location as the previously existing signs will not alter the essential character of the neighborhood. Without distracting displays

there will be no threat to 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 the variances will allow the applicant to advertise the business with no harm to the general public.
- Refurbishing signs that have been in place for a long time will not diminish the value of surrounding properties which also have signs advertising their businesses.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to special conditions of the property, including its proximity to the By-pass and a bridge partially obscuring line of sight, so that a tall sign is needed. Due to the special conditions, there is no fair and substantial relationship between the general public purposes of the Ordinance provision and their specific application to the property. Continuing previous signage is a reasonable use of the property.

C) Case #9-11

Petitioner: Michael F. McNeilly, owner, Alden Properties, LLC, applicant
 Property: 246 Austin Street
 Assessor Plan: Map 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. Variances from Section 10.521 to allow the following:
 a) A 0'± front yard setback where 5' is required;
 b) A 3.75'± right side yard setback where 10' is required;
 c) A 2.6'± left side yard setback where 10' is required; and
 d) 2'± rear yard setback where 20' 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:

- Rehabilitating a building to enhance the streetscape will not be contrary to the public interest.
- The spirit of the Ordinance will be observed by maintaining the existing footprint. While there will be an upward expansion, it will be in line with a neighboring property and remain a two-dwelling unit structure.
- Allowing a building to be brought up to code with no harm to the general public will result in substantial justice.
- Restoring a substandard property will sustain, if not increase, the value of surrounding properties.
- The special circumstances creating an unnecessary hardship are the siting of the existing non-code compliant building on a very small lot so that the extensive renovations

required for reasonable use of the property cannot be achieved in strict conformance with the Ordinance.

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II. PUBLIC HEARINGS

1) Case #10-1

Petitioner: Jask Realty Trust
 Property: 114 Gosling Road
 Assessor Plan: Map 215, Lot 3
 Zoning District: Office Research, Sign District 4
 Description: Replace free-standing sign.
 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 10.1281 to allow a nonconforming sign to be reconstructed or replaced without bringing it into conformity with the Ordinance.
2. Variances from Section 10.1253.10 to allow a 10'± front yard setback and a 10' right side yard setback where 20' is required for each setback.

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 sign will replace an existing one in the same location while lowering the height so that the essential character of the neighborhood will not be altered, nor will the public health, safety or welfare be threatened.
- Substantial justice will be done as the applicant would be harmed if the variances were denied with no resulting benefit to the general public.
- A sign of this type, intended to reduce the running of truck engines and refrigeration units, will not diminish the value of surrounding properties, but if enforced might improve the value of surrounding properties.
- The unnecessary hardship is the siting of the sign on the property and the vegetation which interfere with its viewability. This appears to be the best and most reasonable location for the sign to notify truck drivers before entering the property, and relocation of this sign in conformity with the required setback would make the sign less visible.

2) Case #10-2

Petitioners: John Douglas Deihl III & Stephanie Guay Deihl

Property: 380 Richards Avenue
 Assessor Plan: Map 112, Lot 12
 Zoning District: General Residence A
 Description: Reconstruct rear addition with 1 story and 2½ story sections.
 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 2.3'± right side yard setback where 10' is required.
 3. A Variance from Section 10.521 to allow 29.8%± 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:

- Granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed as the essential character of the neighborhood will not be altered nor will the public health, safety or welfare be threatened. There is an existing right yard setback that will be maintained while the building coverage will be slightly reduced.
- The loss to the applicant if the petition were denied would not be counterbalanced by any gain to the general public.
- Some existing additions will be replaced by one that is in keeping with the existing architecture so that this property will be enhanced and the value of the surrounding properties should increase. Several direct abutters indicated their support of the proposal.
- The special conditions of the property are that this is an existing nonconforming structure that exceeds the lot coverage and infringes into a setback. The proposal will not increase the existing footprint and will move toward building coverage that is in greater compliance so that there is no fair and substantial relationship between the general purposes of the dimensional requirements in the Ordinance and their specific application to the property. This is a reasonable use in a residential zone.

 3) Case #10-3

Petitioner: Liro O. Lehtinen
 Property: 740 Woodbury Avenue
 Assessor Plan: Map 236, Lot 8-1
 Zoning District: Single Residence B
 Description: Construct a 27'± x 24'± two-story garage.
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
 1. Variances from Section 10.573.20 to allow a 5'± left side yard setback where 10' is required and a 5'± rear yard setback where 17' 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 addition will not encroach on any abutters or interfere with their light and air.
- Substantial justice will be done as the benefit to the applicant if the request is approved will not be outweighed by any harm to the general public.
- The value of surrounding properties will not be diminished by the construction of an attractive garage on the property.
- With the changing grades from the front to the rear of the site, the need to create a safer alternate to backing out onto the street, as well as trying to site the garage while maintaining useful back yard space, a hardship is created in achieving a reasonable use of the property without seeking relief.

4) Case #10-4

Petitioner: Seacoast Development Group LLC
 Property: Rockingham Avenue
 Assessor Plan: Map 235, Lot 2, Sub-Lot #3
 Zoning District: Single Residence B
 Description: One lot in three-lot subdivision with less than required depth.
 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 lot depth of 61.84'± for proposed Lot 3 where 100' 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:

- A third lot in a proposed subdivision with less than the required depth will not alter the essential character of the neighborhood so that granting the variances will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- The substantial benefit to the applicant in granting the variance will not be outweighed by harm to the general public.
- The dimensional requirements that affect neighboring residential properties will be met so that the value of surrounding properties, many smaller lots, will not be diminished.
- There are special conditions of the property that constitute an unnecessary hardship. The narrow shape of the lot combined with the way lot depth is measured results in relief

being required on an otherwise large and adequately deep lot. Due to these conditions there is no fair and substantial relationship between the general purpose of the lot depth requirement in the Ordinance and its application to a lot that is triangular in shape. Restoring a residential use in a residential zone is a reasonable use of the property.

5) Case #10-5

Petitioner: S&G Realty
Property: Chevrolet Avenue
Assessor Plan: Map 147, Lot 30
Zoning District: General Residence C
Description: Construct a three-unit townhouse.
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 a lot area per dwelling unit of 3,357± s.f. where 3,500 s.f. per dwelling unit are required.

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 and the spirit of the Ordinance will be observed as the project can be integrated into the area without altering the essential character of the neighborhood, which will remain a dense residential area with multi-family dwellings. There is adequate space on the lot to support three units so that the public health, safety or welfare will not be threatened.
- Substantial justice will be done as the loss to the applicant through strict application of the Ordinance requirements would not be outweighed by any corresponding gain to the general public.
- The value of surrounding properties will be increased by replacing the existing garages on the lots with residential structures similar to others in the area. The surrounding properties that are commercial in nature will not be affected.
- Literal enforcement of the Ordinance will result in unnecessary hardship due to the special conditions of the property which is oddly shaped with frontage on two streets. With a modest amount of relief requested, there is no fair and substantial relationship between the purpose of the lot area per dwelling requirement in the Ordinance and its specific application to the property. The proposal is a reasonable use of the property which will not result in over-intensification.

6) Case #10-6

Petitioner: Thomas M. Penaskovic
Property: 29 Burkitt Street
Assessor Plan: Map 160, Lot 19
Zoning District: General Residence A
Description: Construct a 14'± x 23'± detached 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 10.521 to allow a 3'± right side yard setback where 10' is required.
2. A Variance from 10.521 to allow 28.93%± 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:

- Adding a modest-sized garage will not alter the essential character of the neighborhood 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 by allowing the property full use of the property with no harm to the general public.
- The proposal will improve the property and increase the value of surrounding properties.
- The presence of an existing driveway along the property line creates a hardship and without relief, the property cannot be reasonably used in strict conformance with the Ordinance. The most affected abutter is in support of the petition.

7) Case #10-7

Petitioner: Cross Roads House
 Property: 600 Lafayette Road
 Assessor Plan: Map 243, Lot 2
 Zoning District: Gateway
 Description: Erect a 12'± x 16'± shed.
 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 10.573.20 to allow a 5'9" right side yard setback where 10' is required for an accessory structure.

Action:

Due to the length of the meeting, the Board voted to **postpone** the petition to the October 25, 2016 meeting.

Case #10-8

Petitioner: Charles A. Corlin
 Property: 736 Middle Street
 Assessor Plan: Map 148, Lot 24
 Zoning District: General Residence A
 Description: Construct a 24'± x 24'± detached garage and 8'± x 16'± shed.
 Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. Variances from 10.573.20 to allow a 3'± right side yard setback for a shed where 10' is required and a 6'± rear yard setback for a garage where 20' is required.

Action:

Due to the length of the meeting, the Board voted to **postpone** the petition to the October 25, 2016 meeting.

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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 10:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary