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 June 20, 2017 in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheaume, Vice Chairman Charles LeMay, Jeremiah Johnson, Jim Lee, Patrick Moretti, Arthur Parrott, Alternate Peter McDonell

EXCUSED: Christopher Mulligan, Alternate John Formella

I. APPROVAL OF MINUTES

A) May 16, 2017

The Board approved the Minutes as presented by unanimous vote.

II. OLD BUSINESS

A) Request for Rehearing for property located at Off Moffat Street.

Action:

The Board voted to deny the Request for Rehearing. The Board held a thorough hearing of the information presented, applying the criteria appropriately to the variance requests before them and determining that they were met. While recognizing that there were other issues among the parties and decisions to be made that could affect the subject properties, these were not within the Board’s purview and were not considered in determining the Board’s decision on the requests appropriately before them.

III. PUBLIC HEARINGS – NEW BUSINESS
1) Case 6-1
Petitioners: Sandra S. & David J. Mikolaities
Property: 19 Kent Street
Assessor Plan: Map 113, Lot 43
Zoning District: General Residence A (GRA)
Description: Keep three to five (3-5) chickens, no roosters, in a coop.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance under Section 10.440, Use #17.20 to allow the keeping of farm animals in a district where the use is not allowed.

Action:
The Board voted to grant the petition as presented and advertised with the following stipulation:

Stipulation:

- That there will be no more than six chickens with no roosters.

Review Criteria:
The petition was granted for the following reasons:

- This minor adjustment to the use of the property 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 as granting the petition will benefit the applicant with no harm to the general public. A number of neighbors indicated support for the proposal.
- The value of surrounding properties will not be diminished by a minor change in use. This is evidenced by the support received for the project with no one coming forward in opposition.
- With nothing in the proposed use to significantly change the property or alter the essential character of the neighborhood, there is no fair and substantial relationship between the general public purposes of the ordinance provision and their specific application to this property.

2) Case 6-2
Petitioners: Vicki C. & Chase Robinson
Property: 86-88 Orchard Street
Assessor Plan: Map 149, Lot 32
Zoning District: General Residence A (GRA)
Description: Remove decks and add new screened porch.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance under Section 10.521 to allow 27.27%± building coverage where 25% is the maximum allowed.
2. A Variance from Section 10.321 to allow a nonconforming building to be reconstructed or enlarged without conforming to the requirements of the ordinance.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- With no setback issues and a minor increase in building coverage allowed, the essential character of the neighborhood will not be changed 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 the benefit to the applicant in granting the petition will not be outweighed by any harm to the general public from this minor adjustment.
- An attractive renovation will not diminish the value of surrounding properties and there were a number of letters of support from the owners of neighboring lots.
- The special conditions of the property include a lot larger than many in the area with an existing multi-family home. Minor relief is required so that there is no fair and substantial relationship between the purposes of the ordinance provision to limit lot densities and its specific application to the property. The proposed addition is a reasonable use of the property which will decrease an existing nonconformity.

3) Case 6-3
Petitioners: James & Sandra Pantelakos
Property: 5 Meadow Road
Assessor Plan: Map 236, Lot 79
Zoning District: Single Residence B (SRB)
Description: Replace existing exterior stairs with two new decks.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.521 to allow 23.94%± building coverage where 20% maximum is allowed.

Action:

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

Review Criteria:
The petition was granted for the following reasons:

- Replacing existing stairs with decks will allow better access and use at the rear of the property and will not alter the essential character of the neighborhood so 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 the proposed changes will benefit the applicants with no harm to the general public from a minor change that will improve the functionality of the property.
- Solid decks at the rear of the property replacing unsafe stairs in need of repair should improve the value of surrounding properties and the neighbor most impacted signed a letter of approval.
- With no intensification of use and a minor increase in building coverage, there is no fair and substantial relationship between the ordinance provisions regarding density and their specific application to this property. A hardship in complying with strict emergency access regulations would also be created for the applicant if the request is denied.

4) Case 6-4
Petitioner: Melissa A. Raffoni Revocable Trust of 2011, Melissa Raffoni, Trustee
Property: 606 State Street
Assessor Plan: Map 127, Lot 21
Zoning District: General Residence C (GRC)
Description: Construct a spiral staircase to access a roof deck.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.521 to allow a 3.5’± rear yard setback where 20’ is required.
2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.

Action:

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

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 work will be small and located at the back of a building and out of public view so that the essential character of the neighborhood will not be altered.
- Substantial justice will be done as granting a minor change to a prior approval will not result in any corresponding harm to the general public.
The proposed staircase was small and would not be noticeable from surrounding properties so that the value of those properties would not be diminished.

The special conditions of the property include a small lot surrounded by commercial, industrial, and religious properties and a structure situated at the back of the lot. With the proposed structure configuration a method is needed to access the third floor deck.

5) Case 6-5
Petitioners: Ten Walker Street Realty, LLC, Elissa R. Arbogast and Benjamin S. Morse
Property: 73 Prospect Street
Assessor Plan: Map 142, Lot 28
Zoning District: General Residence A (GRA), Historic District
Description: Subdivide lot into one lot with a 4-unit building and one with a 2-unit building.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
Proposed Lot A:
1. Variances from Section 10.521 to allow the following: a) a lot area per dwelling unit of 3,788± s.f. where 7,500 s.f. is required and b) to allow 93’± continuous street frontage where 100’ is required.
2. A Variance from Section 10.1112.30 to allow vehicles to enter or leave a parking space by passing over any other parking space or requiring the moving of any other vehicle.
Proposed Lot B:
1. Variances from Section 10.521 to allow the following: a) a lot area of 2,364± s.f. and a lot area per dwelling unit of 1,182± s.f. where 7,500 s.f. is required for each; b) 54’± continuous street frontage where 100’ is required; c) a lot depth of 52’± where 70’ is required; d) a primary front yard of 5’11”± where 15’ is required; e) a 4”± right side yard and a 1’± left side yard where 10’ is required for each; f) a 4’ rear yard where 30’ is required; g) 43.0%± building coverage where 25% is the maximum allowed; and h) 13%± open space where a minimum of 30% is required.
2. A Variance from Section 10.1112.30 to allow 2 off-street parking spaces

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

Review Criteria:
The reasons for the denial include the following:

- All the criteria necessary to grant the variances were not met.
Separating the property into two lots would create one lot in particular that would alter the essential character of the neighborhood so that granting the variances would be contrary to the public interest. The proposed new lot would also require numerous significant variances, thus granting the variances would not observe the spirit of the ordinance.

The hardship criteria was not met. It was not demonstrated that there were special conditions inherent in the property that distinguished it from other properties in the area so that there is a fair and substantial relationship between the general public purposes of the ordinance provisions and their specific application to the property. The property can be fully used in its current configuration and potential economic benefits do not constitute a hardship in the property.

6) Case 6-6
Petitioner: Charles R Traver, Jr
Property: 100 Colonial Drive
Assessor Plan: Map 260, Lot 156
Zoning District: Single Residence B (SRB)
Description: Add second floor master suite and reconstruct garage and workshop.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.521 to allow the following: a) a 28’± primary front yard setback where 30’ is required; b) a 3’± right side yard and a 9’ left yard where 10’ is required for each.
2. A Variance from Section 10.321 to allow a nonconforming building to be reconstructed or enlarged without conforming to the requirements of the ordinance.

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

Review Criteria:
The petition was granted for the following reasons:

- A reasonable expansion 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 owner to take full advantage of the property and bring it up to code with no harm to the general public.
- A visual and functional improvement of the property should increase the values of surrounding properties.
- The existing structure was close to the lot lines in a dense neighborhood and a hardship would be created in making any reasonable expansion that did not require relief.
7) Case 6-7  
Petitioners: Jesse M. & Sarah L. Lynch  
Property: 19 Sunset Road  
Assessor Plan: Map 153, Lot 19  
Zoning District: Single Residence B (SRB)  
Description: Replace existing garage with larger garage.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
1. Variances from Section 10.521 to allow the following: a) a 10.975’± primary front yard where 30’ is required; b) a 3.6’± rear yard where 30’ is required; c) 20.30%± building coverage where 20% is the maximum allowed;  
2. A Variance from Section 10.571 to allow an accessory building or structure to be located in a required front yard or closer to the street than the principal building.  
3. A Variance from Section 10573.20 to allow an accessory building or structure more than 10’ in height or 100 s.f. in area to be closer to any property line than the height of the structure.  
4. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to reconstructed or enlarged without conforming to the ordinance.  

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

Review Criteria:  
The petition was granted for the following reasons:  

- A modest increase in size and footprint from that previously approved 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 as the applicants will have a property with increased functionality with no corresponding harm to the general public.  
- The replacement of a deteriorating garage will improve the value of surrounding properties. The project received the support of the owner of the nearby property most affected.  
- The special conditions of the property include a difficult topography with the placement of existing structures requiring accommodation for any expansion. Due to the special conditions, there is no fair and substantial relationship between the general public purposes of the ordinance provisions and their specific application to the property.

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ADJOURNMENT
It was moved, seconded and passed to adjourn the meeting at 9:00 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary