

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 regular meeting on July 18, 2017** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheaume, Vice Chairman Charles LeMay, Jim Lee, Patrick Moretti, Christopher Mulligan, Arthur Parrott, Alternates John Formella & Peter McDonell

EXCUSED: Jeremiah Johnson

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I. APPROVAL OF MINUTES

A) June 20, 2017

The Board approved the Minutes with a minor correction by unanimous vote.

B) June 27, 2017

The Board approved the Minutes as presented by unanimous vote.

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II. OLD BUSINESS

A) Request for One-Year Extension of a Special Exception and Variance granted for property located at 89 Brewery Lane.

Action:

The Board voted to **grant** a one-year extension through August 18, 2018.

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III. PUBLIC HEARINGS – NEW BUSINESS

1) Case 7-1

Petitioners: Chance & Edward Allen
 Property: 88 Sims Avenue
 Assessor Plan: Map 232, Lot 131
 Zoning District: Single Residence B
 Description: Construct a 14.5'± x 13.5'± right/front addition with a 21± s.f. 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 26.5' front yard setback where 30' is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- A modest addition with a minor front yard encroachment will not alter the essential residential 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.
- Granting the variances will result in substantial justice as there would be no gain to the public if the variances were denied that would outweigh the loss to the applicant.
- An addition in this location will not diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property including the presence of wetlands that, together with the required front yard setback, leave virtually no building envelope. The conditions also include an existing structure within the setback so that there is no fair and substantial relationship between the general public purpose of the ordinance provision for a front yard setback and its application to the property. The proposed use is a reasonable one in a residential district.

2) Case 7-2

Petitioner: Cutts Mansion Condominiums
 Property: 525 Maplewood Avenue
 Assessor Plan: Map 209, Lot 85
 Zoning District: General Residence A
 Description: Create two lots where one exists.
 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 lot area per dwelling unit of 4,506 s.f. where 7,500 s.f. is required.

Action:

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

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant a variance were not met.
- The Board cannot determine that literal enforcement of the ordinance would result in unnecessary hardship. While there might be special distinguishing conditions of the overall property as currently configured, insufficient information has been provided regarding plans for the proposed new lot for the Board to render a decision based on extending the conditions to that lot. Further information is needed so that the Board can ensure a proper balance between the purpose of the lot area per dwelling unit requirement in the zoning ordinance and the hardship on the property owner from literal enforcement of that ordinance provision. In addition, the applicant has not sufficiently demonstrated the hardship that would be experienced if the lot remains as it is currently structured and not subdivided. With the proposed reduction to 10 dwelling units the current lot can be reasonably used in strict conformance with the ordinance requirement for lot area per dwelling unit.
- Granting the variance would be contrary to the public interest. Public access to the proposed lot along Maplewood Avenue is problematic. A specific plan is needed to address existing physical features affecting ease and safety of access for emergencies, maintenance and general use.

3) Case 7-3

Petitioner: Deer Street Associates
 Property: 165 Deer Street (Lots 2 and 3)
 Assessor Plan: Map 125, Lots 17 & 17.1
 Zoning District: Character District 5 and the Downtown Overlay District
 Description: A surface parking lot as a principal use.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.440 to allow a surface parking lot as a principal use where such use is not allowed.
2. A Variance from Section 10.5A44 to allow a parking lot that does not comply with 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:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. While the property has been used as a parking lot for several years, the applicant represented that a parking lot as a principal use on the lot will be of limited duration so that the essential character of the neighborhood will not be changed nor will the public health safety or welfare be threatened.
- With no significant change in the property, granting the variances will benefit the applicant with no corresponding harm to the general public.
- Continuing an existing use for a period of time will not diminish the value of surrounding properties.
- This property is part of an overall multi-use development which will determine an ultimate use for the lot and eliminate the possibility of a permanent surface parking lot as a principal use. For this reason, there is no fair and substantial relationship between the purpose of the ordinance regarding parking lot uses and its application to this property.

4) Case 7-4

Petitioners: Albert and Melanie Sampson
 Property: 217 Broad Street
 Assessor Plan: Map 130, Lot 17
 Zoning District: General Residence A
 Description: Reconstruct existing porch.
 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 28.3%± building coverage where 25% is the maximum allowed.
2. A Variance from Section 10.321 to allow a lawful nonconforming structure 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:

- Reconstructing a porch in the same footprint 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 variances will allow an upgrade to the property with no harm to the general public.
- Replacing a deteriorated and unsafe structure will increase the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special condition of the property which contains a badly deteriorated and unsafe structure that must be replaced. The porch will be reconstructed in the same footprint and will meet

the setback requirements so that there is no fair and substantial relationship between the purpose of the ordinance provision and its specific application to the property.

5) Case 7-5

Petitioner: Colleen M. Cook

Property: 40 Winter Street

Assessor Plan: Map 145, Lot 96

Zoning District: General Residence C

Description: Construct a shed dormer.

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 right side yard setback of 9'5½"± where 10' is required.
2. A Variance from Section 10.321 to allow a lawful nonconforming structure to be reconstructed, extended, 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:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. The essentially residential character of this neighborhood will not be changed by the proposed shed dormer nor will the health, safety or welfare of the general public be threatened.
- Granting the variances will result in substantial justice. The loss to the applicant in not granting the request and requiring strict compliance with the ordinance would not be outweighed by any corresponding benefit to the general public. The property is already nonconforming with regard to the side setback and properties in the immediate vicinity have the same issues with regard to setbacks.
- Granting the variances should enhance the value of surrounding properties by bringing the property in greater code compliance with a reasonable bathroom and safe stairwell.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property which include a built environment which does not meet today's living and safety standards. The purpose of side yard setbacks to ensure light, air, and emergency access will not be infringed upon to any greater degree than is currently existing so that there is no fair and substantial relationship between the purpose of the setback ordinance and its specific application to this property. Constructing a shed dormer in a residential district is a reasonable use of the property.

6) Case 7-6

Petitioner: Paul Mannle
 Property: 1490 Islington Street
 Assessor Plan: Map 233, Lot 108
 Zoning District: Single Residence B
 Description: Interior attached accessory dwelling unit.
 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 5’ front yard setback for an existing structure where 30’ is required.

Action:

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

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 essential character of the neighborhood will not be changed by the addition of an accessory dwelling unit in an existing structure which will be virtually invisible to the general public and the health, safety and welfare of the general public will not be negatively impacted.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be outweighed by any gain to the general public.
- The value of surrounding properties will not be diminished as the nonconforming structure already exists and the encroachment is toward the street and not neighboring properties. In addition, the density created by the introduction of an accessory dwelling unit into the existing structure will not have a significant impact on neighbors.
- The special conditions of the property include a fairly large lot with an existing nonconforming structure that has been in place for an extended period of time so that there is no fair and substantial relationship between the purpose of the front yard setback and its application to this property. The use is a reasonable one and required to be accommodated under state law.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:42 p.m.

Respectfully submitted,

Mary E. Koeppenick, Secretary