

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 July 25, 2017** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheaume, Jeremiah Johnson, Jim Lee, Patrick Moretti, Christopher Mulligan, Arthur Parrott, Alternate Peter McDonell

EXCUSED: Alternate John Formella, Vice Chairman Charles LeMay

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III. PUBLIC HEARINGS – NEW BUSINESS (continued from July 18, 2017)

7) Case **7-7**.

Petitioners: Roman Catholic Bishop of Manchester St. James Church, owner, Stonegate NH Construction LLC, applicant

Property: 2075 Lafayette Road

Assessor Plan: Map 268, Lot 97

Zoning District: Single Residence B

Description: Construct two (2) 24-unit multi-family dwelling.

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

1A. A Special Exception under Section 10.335 to allow a lawful nonconforming use to be changed to another nonconforming use

If the Special Exception for the proposed use is not granted, then the following is requested:

1B. A Variance from Section 10.440, Use # 1.53 to permit construction of two multi-family dwellings (24 units each).

2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,769± s.f. where 15,000 s.f. is required.

3. A Variance from Section 10.522 to allow the building length of a multi-family dwelling to be 205'± long where 160' is the maximum allowed.

Action:

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

Review Criteria:

The special exception was denied for the following reasons:

- The requirements of Section 10.335 of the ordinance are not met as the impact of the proposed use on adjacent properties would not be less adverse than the impact of the existing use which currently consists of an empty building, formerly containing a religious use.
- Accordingly, the standards as provided by the ordinance for the particular use permitted by special exception are not met.

Having denied the special exception, the Board then considered all of the variance requests and voted to **grant** the variances as presented and advertised.

Review Criteria:

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. This a residential use which will not alter the essential character of the neighborhood. The traffic generated will be less noticeable to the surrounding properties so that the public health, safety or welfare will not be threatened.
- Substantial justice will be done as the benefit to the applicant if the petition is granted will not result in any corresponding harm to the general public.
- The value of surrounding properties will not be diminished as this use will provide a buffer for the neighborhood from commercial activity, provide a drainage system and reduce the impervious surface.
- Literal enforcement of the ordinance would result in an unnecessary hardship due to special conditions of the property. The special conditions include the size of the lot and its frontage on a major thoroughfare so that a transition zone is created between single family residences and a busy commercial/industrial area. The placement of parking underneath the structure and not on exterior asphalt surface, while impacting some of the dimensions of the structure, also reduces the amount of impervious surface on the property. Developing the property while retaining its residential nature is a reasonable use and will be advantageous to other developments in the area.

8) Case 7-8.

Petitioners:	Tyler B. & Meredith Jackson
Property:	678 Maplewood Avenue
Assessor Plan:	Map 220, Lot 89
Zoning District:	Single Residence B
Description:	Expansion of the use of a second dwelling unit into the first floor of the garage and after-the-fact approval for a deck.

- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
1. Variances from Section 10.521 to allow a 21'2" ± rear yard setback where 30' is required and to allow 32.29%± building coverage where 20% is the maximum allowed.
 2. A Variance from Section 10.331 to allow the extension or enlargement of a non-conforming use.
 3. A Variance from Section 10.333 to allow a nonconforming use to be extended throughout other parts of the building.

Action:

The Board voted, in separate motions, to **grant** the variances from Section 10.521 (Item 1) and to **grant** the variances from Sections 10.331 and 10.333 (Items 2 and 3), both as presented and advertised.

Review Criteria:

Item 1 of the petition was granted for the following reasons:

- Replacing concrete stairs and a patio that were in poor condition 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 it will benefit the property owners to replace the patio and stairs with no corresponding harm to the general public.
- The value of surrounding properties will not be diminished by a simple upgrade to the property.
- The special condition of the property was that the existing patio and stairs were in a deteriorating condition and any replacement would require some encroachment on yard setbacks and lot coverage. While a variance was not applied for prior to starting the improvement, the property owners have now done so and the structure can be inspected to ensure that all necessary codes are met.

Items 2 and 3 of the petition were granted for the following reasons:

- Expansion of a use that has been in place for some time in an existing structure will not change the 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 property owner will be allowed to expand the living space in the second dwelling unit with no impact on the general public.
 - The proposed extension of a use within existing space will not diminish the value of surrounding properties and there is adequate space on the lot to support the use.
 - This a unique property which is bounded on one side by Interstate 95, on the other side by a commercial building, and Maplewood Avenue in the front. A two-family use has existed for some time so that a hardship is created through literal enforcement of the ordinance provisions.
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9) Case 7-9.

Petitioner: Karona LLC
 Property: 36 Artwill Avenue
 Assessor Plan: Map 229, Lot 4
 Zoning District: Single Residence B District
 Description: Detached accessory dwelling unit in an existing garage.
 Requests: 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 for street frontage where 100' is required and 0'± exists.

Action:

The Board voted to **grant** the petition as presented, and re-advertised on July 18, 2017.

Review Criteria:

The petition was granted for the following reasons:

- The specific frontage request before the Board will not materially change the character of this residential neighborhood so that granting the variance 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. The frontage is needed by the applicant for any improvements to the property so that the loss to the applicant by requiring strict compliance with the frontage requirement would not be outweighed by any gain to the public.
- This technical change and the specific relief required will have no effect on surrounding property values.
- There are special conditions of the property such that literal enforcement of the ordinance would result in unnecessary hardship. The City has determined that the property has no frontage, as defined in the ordinance, due to the fact that it fronts on a private right-of-way which distinguishes the property from others in the general area. While not considered a road, there is adequate access on Artwill Avenue so that there is no fair and substantial relationship between the purpose of the frontage requirement in the ordinance and its specific application to this property.

10) Case 7-10.

Petitioners: Petition of Flintatta LLC, owner and the Unitarian Universalist Church of Portsmouth, applicant
 Property: 73 Court Street
 Assessor Plan: Map 116, Lot 19
 Zoning District: Character District 4-L1.
 Description: Change of use.
 Requests: 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 #3.11 to allow a religious place of assembly in a district where the use is only allowed by special exception.
2. Variances from 10.5A41.10A to allow the following: a) a 1'± right yard where 5' is required; b) a 1'± left yard where 5' is required; c) a 3'± rear yard where 5' is required; d) 71.8%± building coverage where 60% is the maximum allowed; and e) 21.3% open space where 25% is the minimum required;
3. A Variance from Section 10.1112.30 to allow zero (0) off-street parking spaces to be provided where 8 spaces are required for the office use and 67 spaces are required for the assembly use.

Action:

The Board voted to **postpone** the petition to the August meeting as requested by the applicant.

11) Case 7-11.

Petitioner: Robert J. Fabbricatore Irrevoc. Trust of 2012
 Property: 177 State Street
 Assessor Plan Map 107, Lot 44
 Zoning District: Character District 4
 Description: Construct a 360 s.f. two-story addition
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:

1. A Variance from Section 10.5A41.10C to allow 5.6%± open space where 10% is the minimum required.
2. A Variance from Section 10.1112.30 to allow 1 off-street parking space to be provided where 9 are required.
3. A Variance from Section 10.1114.32(b) to allow vehicles to enter the property by backing into or from a public street.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The proposed project will not affect the healthy mix of office, retail and residential uses in 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 loss to the applicant by requiring strict compliance with the ordinance would not be outweighed by any benefit to the general public.

- The value of surrounding properties will not be diminished and may be enhanced as the variances will facilitate the substantial renovation and rehabilitation of a unique and historically significant downtown property.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property, which include the age of the property and its historic character that needs to be preserved. With the overview and input from other land use boards, including the Historic District Commission, the public interest will be protected so that there is no fair and substantial relationship between the purposes of the open space or parking requirements in the ordinance and their specific application to this property. Renovating and rehabilitating an important downtown property is a reasonable use.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:20 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary