

**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 August 22, 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, Christopher Mulligan, Arthur Parrott, Alternate John Formella and Alternate Peter McDonell

**EXCUSED:** Patrick Moretti

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**I. OLD BUSINESS**

A) Request for Rehearing regarding property located at 525 Maplewood Avenue.

Action:

The Board voted to **deny** the Request for Rehearing. The Board reaffirmed that, as stated in their letter of decision, they had not received sufficient information, which was within their purview to require, to grant approval. All of the criteria are needed to be met in order to grant a variance. In particular, the hardship to the applicant in not being allowed to create a nonconforming lot out of a conforming lot could not be determined without information regarding the proposed use of the lot, which could also impact other criteria. The Board carefully considered what was before them and made no error in the application of the law.

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**II. PUBLIC HEARINGS – OLD BUSINESS**

A) 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'± left yard and 3'± rear yard where 5' is required for each; b) building coverage of 66% where 60% is the maximum allowed; and c) open space of 11.8% where 25% is the minimum required;
  3. A Variance from Section 10.1112.30 to permit no off-street parking spaces to be provided where the following are required: a) 8 off-street parking spaces for the 2,000 s.f. of office space; and b) 67 off-street parking spaces for the assembly use. *(This petition was postponed from from the July 25, 2017 meeting, revised and subsequently postponed at the August 15, 2017 meeting.)*

Action:

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

Review Criteria:

The Special Exception was granted for the following reasons:

- A religious assembly use is permitted in this district so that the standards as provided by the Ordinance for the particular use permitted by Special Exception are met.
- There will be nothing stored on the site that would present a hazard to the public or adjacent property from potential fire explosion or release of toxic materials.
- The proposal is to return to a previous religious use so that there will be no detriment to property values or change in the essential characteristics of the area from the location of structures, smoke, gas or other pollutants, noise, glare or other irritants, or unsightly outdoor storage.
- There will be no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity. The congregation for the South Church, who will be the main users of the facility, will be in the vicinity during the most active period for this use so that there will be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity.
- Nothing in the use will create an excessive demand on municipal services.
- A small addition will not result in a significant increase in storm water runoff onto adjacent property or streets.

The Variances were approved for the following reasons:

- While not technically required, the access to the second floor is in keeping with the purposes of the Americans with Disabilities Act and the proposed structure is set off so that the historic nature of the building is preserved while needed functionality is added. In an area of properties with tight setbacks, the proposed use and addition 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 benefit to the applicant resulting from approval of the variances will not be outweighed by any harm to the public from a reasonable increase in parking congestion during limited periods.
- Given the low impact of the use, the day of the week on which most activity will take place, and the nature of the surrounding properties, the value of those properties will not be diminished by the granting of the variances.
- Due to special conditions of the property, there is no fair and substantial relationship between the general public purposes of the Ordinance provisions and their specific application to the property. This is a small lot with an existing old church in a close downtown area. While the relief from the parking requirement is considerable, the uses are related to ongoing uses at the South Church, so that the actual implementation will have a far less impact on the parking. The property would be virtually unusable in any other practical way that would have less parking impact so that the proposed is a reasonable use of the property.

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B) Case 8-4.

Petitioners: Sean P. and Robin M. Murphy  
 Property: 24 Kent Street  
 Assessor Plan: Map 113, Lot 39  
 Zoning District: General Residence A  
 Description: Construct a 2-story attached 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 to allow 28.3%± building coverage where 25% is the maximum allowed. *(This petition was postponed from the August 15, 2017 meeting.)*

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 would not be contrary to the public interest and the spirit of the ordinance will be observed as the essentially residential characteristic of this neighborhood will not be altered by this proposal.

- Granting the variance will result in substantial justice as the loss to the applicants if they were required to design this in a way that would meet the building coverage requirement would not be outweighed by any corresponding benefit to the general public.
- The value of surrounding properties will not be diminished by the proposed garage which is visually preferable to uncovered surface parking.
- Literal enforcement of the ordinance would result in an unnecessary hardship. The special condition of the property as it relates to the variance requested is that the existing dwelling has a 4’ height foundation. The proposed garage would be on a different plane so that additional coverage is needed to connect the two. For these reasons, there is no fair and substantial relationship between the general public purposes of the ordinance provision limiting building coverage to 25% and its specific application to this property.

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**III. PUBLIC HEARINGS – NEW BUSINESS (continued from August 15, 2017)**

6) Case 8-6.

Petitioner: Arne LLC  
 Property: 0 Sylvester Street  
 Assessor Plan: Map 232, Lots 43-1 & 43-2  
 Zoning District: Single Residence B  
 Description: Merge two lots and construct a single-family home.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: home including:

1. Variances from Section 10.521 to allow the following: a) continuous street frontage of 80.84’± where 100’ is required; b) a lot area and lot area per dwelling unit of 6,713± s.f. where 15,000 s.f. is required; c) lot depth of 82.2’± where 100’ is required; and d) a front yard setback of 21.7’± where 30’ is required.

Action:

The Board voted to **grant** items 1a), 1b) and 1c) of the petition as presented and advertised with the below stipulations. The Board then voted to **deny** item 1d) of the petition.

Stipulations to the approval of items 1a), 1b) and 1c):

- The two lots must be legally merged as the applicant represented before a permit pursuant to this approval can be issued.
- The proposed project will be put before the Planning Board for site review.

Review Criteria:

Items 1a), 1b) and 1c) were granted for the following reasons:

- While the proposed lot will be significantly smaller than that required by the Ordinance, the applicant has represented that one single family home will be constructed so that 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 remain residential.
- Substantial justice will be done as granting the variances will allow residential development on these lots with no detriment to the general public.
- The value of surrounding properties will not be diminished by new construction which will add value to the neighborhood and the requested variance that would have had the most impact on an abutter is denied.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to special conditions of the property that distinguish it from others in the area. These are pre-existing lots of record that would otherwise not be developable without the frontage and lot area relief that have been granted. While the property is smaller than some of its neighbors, it is also bordered by the Chase Home property, a substantial lot that does not have full-time single family residential development so that granting the relief will not result in unworkable overcrowding. For these reasons, there is no fair and substantial relationship between the general public purposes of the Ordinance provisions and their application to this property.

Item d) was denied for the following reasons:

- All of the criteria necessary to grant a variance for the front yard setback were not met.
- Reducing the front yard setback as proposed would diminish the value of surrounding properties, particularly that of the abutter directly across from the property on Sylvester Street.
- With regard to the unnecessary hardship criteria, there is a fair and substantial relationship between the front yard setback requirement and its specific application to this property as its purpose is to keep development a sufficient distance away from abutting properties so that it will not result in overcrowding.
- There are other options available to the petitioner that would not require this degree of relief.

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7) Case 8-7.

Petitioner: Bartlett Street Condos LLC  
 Property: 217 Bartlett Street  
 Assessor Plan: Map 162, Lot 32  
 Zoning District: General Residence A  
 Description: Replace demolished building with a single-family residence.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: home including:

1. A Variance from Section 10.513 to allow more than one free standing dwelling on a lot.
2. Variances from Section 10.521 to allow the following: a) a lot area per dwelling unit of 1,773± s.f. where 7,500 s.f. is required; b) a 3'± right side

yard setback where 10' is required; c) a 10'± front yard setback where 15' is required; d) 98.7'± continuous street frontage where 100' is required; and e) 35%± building coverage where 25% maximum is allowed.

Action:

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

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8) Case 8-8.

Petitioner: Brian M. Carloni  
Property: 30 Elwyn Avenue  
Assessor Plan: Map 113, Lot 25  
Zoning District: General Residence A  
Description: Construct a rear addition.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: home including:

1. Variances from Section 10.521 to allow the following: a) a 7'± right side yard setback where 10' is required; and b) 32% building coverage where 25% is the maximum allowed.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- A proposed addition at the rear of the existing home will not alter the essential characteristics of the neighborhood and the property will be brought into closer conformance with the Ordinance 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 improve, and increase enjoyment of, the property with no corresponding harm to the general public.
  - This is a small change which will have no measurable effect on the value of surrounding properties.
  - Literal enforcement of the Ordinance would result in unnecessary hardship. A special condition of the property is that it is already nonconforming as to building coverage. While it may not be feasible to adjust the property so that it is in total compliance, the proposal will reduce the nonconformance so that 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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9) Case 8-9.

Petitioner: Patrick J. Sayers  
Property: 56 Brackett Road  
Assessor Plan: Map 206, Lot 23  
Zoning District: Single Residence B  
Description: Construct a new single-family residence replacing an existing structure.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including: home including:  
1. Variances from Section 10.521 to allow the following: a) a lot area and lot area per dwelling unit of 14,209 s.f. where 15,000 s.f. is required; and b) 62.14' of continuous street frontage where 100' is required.  
2. A Variance from Section 10.311 to allow a structure on a lot without the minimum lot area and street frontage.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- Granting an overall minor amount of relief, the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. The essential residential character of the neighborhood will not be altered by replacing an existing dwelling with a new dwelling.
- Granting the variances will result in substantial justice as the loss to the applicant in requiring strict conformance with the requirements would far outweigh any possible gain to the general public. This is an existing lot with set configurations so that the applicant cannot comply with the requirements.
- The value of surrounding properties will not be diminished. With new construction replacing an older home will have a beneficial effect on property values in the surrounding area.
- Literal enforcement of the Ordinance would result in unnecessary hardship. The special conditions of the property is that it is a pre-existing nonconforming lot. The lot is not of a sufficient size that would allow the applicant to comply with either the lot coverage or the frontage requirements so that there is no fair and substantial relationship between the general public purposes of the Ordinance provisions and their specific application to this property. A residential use in a residential zone is a reasonable use of the property and the proposal otherwise meets all the other requirements under the Ordinance.

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## 10) Case 8-10.

- Petitioners: The Provident Bank, owner and 25 Maplewood Avenue, LLC, applicant  
 Property: 25 Maplewood Avenue  
 Assessor Plan: Map 126, Lot 2  
 Zoning District: Character District 5 and the Downtown Overlay District.  
 Description: Remove existing structure and construct a 3-4 story mixed use building.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. a) A Variance from Section 10.5A41.10D to allow the maximum finished floor surface of ground floor above sidewalk grade on the Maplewood Avenue face to be greater than 36".  
*If this request is denied, then:*
    - b) Variances from Section 10.5A41.10D to allow shopfront glazing along the Maplewood Avenue face to be less than 70%; and
    - c) to allow a minimum ground story height of 10' where 12' is required
  2. In addition to either Item 1a) or Items 1b & 1c, the following is requested:  
 A Variance from Section 10.5A43.32 to permit a roof appurtenance height in excess of 10' beyond the maximum building height.

Action:

Determining that all of the cited and advertised requests were required, the Board voted to **grant** the petition with the following stipulation.

Stipulation:

- The appurtenance height in excess of 10' beyond the maximum building height will be no more than 4', for a total appurtenance height of 14'.

Review Criteria:

The petition was granted for the following reasons:

- Replacing an unattractive structure with a well-designed new building, subject to the overview and guidance of the Historic District Commission, will not alter the essential character of the neighborhood so that granting the variances will not be contrary to the public interest, the spirit of the Ordinance will be observed, and the value of surrounding properties will not be diminished.
- Substantial justice will be done by allowing the applicant to construct a new building on a somewhat challenging lot with no harm to the general public.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property including the slope of the lot and the need for essentially underground parking which drive the requirements, as well as its location in the historic district which affects design, neighborhood integration and placement of features such rooftop mechanicals. The proposed is a reasonable use of this property.



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**IV. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 8:00 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary