

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 September 26, 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, Alternate John Formella and Alternate Peter McDonell

EXCUSED: Jeremiah Johnson

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IV. PUBLIC HEARINGS – NEW BUSINESS (continued from the September 19, 2017 meeting)

6) Case 9-6

Petitioners: Todd N. Creamer, owner, Todd N. Creamer and Cari M. Feingold, applicants

Property: 199 Union Street

Assessor Plan: 135, Lot 69

Zoning District: General Residence C

Description: 10'± x 14'± replacement shed.

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 a 2'± right side yard where 10' is required.
2. A Variance from Section 10.321 to allow a a nonconforming building or structure to be extended, 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:

- Replacing a dilapidated shed with one slightly larger will not alter the essential character of the neighborhood or threaten 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 there is no benefit to the general public that would outweigh the detriment to the applicant if the petition was denied.
- Replacing a worn out shed will positively impact the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. These include an abutting property with open space next to the proposed shed so that no views will be obstructed, and the small yard which makes placement of a shed in any other location difficult.

7) Case 9-7

Petitioners: Pamela Thacher, owner, Charles Seefried, applicant

Property: 180 Middle Street

Assessor Plan: 127, Lot 8

Zoning District: Mixed Residential Office

Description: Create five dwelling units.

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 the following: (a) a lot area per dwelling unit of 4,763± s.f. where 7,500 s.f. is required; (b) a 1'± right side yard setback for the carriage house where 10' is required; and (c) a 0.8 0.8'± rear yard setback for the carriage house where 15' is required.
2. A Variance from Section 10.1114.20 to allow a two-way maneuvering aisle, in the parallel parking space area, of 16'± where 24' 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 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 changed in any substantial way by the proposal. The setbacks are relatively large and the proposed density is not unusual for the area.
- Substantial justice will be done as there would be no gain to the general public in denying the variances. The structures will remain very similar visually to what is existing and the public interest will be served by maintaining historic elements of the property.

- The value of surrounding properties will not be diminished. There will be no significant change in drainage, with reasonable setbacks and screening, no additional encroachment on abutters.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property including the history of the property and its size. An increase in density is required to support the historic nature of this large property and creating these residential units is a reasonable use of the property.

8) Case 9-8.

Petitioner: Woodbury Cooperative Inc.
 Property: 1338-1342 Woodbury Avenue
 Assessor Plan: 237, Lot 70
 Zoning District: Mixed Residential Business
 Description: Add four manufactured homes.
 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 the following: (a) a lot area per dwelling unit of 3,149± s.f. where 7,500 s.f. is required; (b) right side yard setbacks for the four manufactured home units respectively of 6.4'±, 7.3'±, 2.5'±, and 1.7'±.
2. A Variance from Section 10.334 to allow a lawful nonconforming use to be extended, enlarged or changed except in conformity with the Ordinance.

Action:

The Board voted to **grant Item 1(a) and Item 2** of the petition as presented and advertised. The Board determined that it **would not grant** the setback relief requested in **Item 1(b)** as a plan to add units could be engineered so that the units could be located with no setback relief required.

Review Criteria:

Items 1(a) and Item (2) of the petition 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. As represented, the proposal would result in a total of 21 units where 19 or 20 units currently exist so that the essential character of the neighborhood will not be altered from a density perspective.
- Substantial justice will be done as the existing long-time density is higher than required so that strictly enforcing the ordinance and denying the application would result in a loss to the applicant with no corresponding benefit to the general public.
- Replacing some substandard structures with new homes will enhance the value of this property which should also carry over to the values of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. The property has been developed in a random fashion over the years resulting in a higher than allowed density. What is being proposed will

result in a small net change from the existing density so that there is no fair and substantial relationship between the purpose of the lot area per dwelling unit requirement and its application to this particular property. Replacing existing residential units with new, more modern residential units is a reasonable use of the property.

9) Case 9-9.

Petitioner: Benjamin A. Solomon
Property: 38 Summit Avenue
Assessor Plan: 230, Lot 2
Zoning District: Single Residence B
Description: Add two front window dormers
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 a front yard setback of 18' ± where 30' is required.
2. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, 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:

- Two dormers which will not change existing setbacks or encroach in any way 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 greater enjoyment of his property with no harm to the general public.
 - Adding attractive dormers will not diminish the value of surrounding properties.
 - Literal enforcement of the ordinance will result in unnecessary hardship. The existing home encroaches into the front setback so that dormers needed for additional living space on the second floor cannot be placed without requiring relief from the ordinance.
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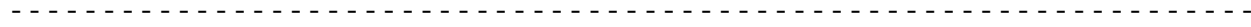
10) Case 9-10.

Petitioner: 143 Daniel Street LLC
Property: 135-143 Daniel Street
Assessor Plan: 105, Lot 9
Zoning Districts: Character District 4, Character District 5 and Downtown Overlay

Description: Create additional underground parking space.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
 1. Variances from Section 10.1114.20 to allow the following: (a) an 8'± x 16'± parking space where an 8½' x 19' space is required; and b) a 16'± wide travel aisle where a 24' wide travel aisle is required.

Action:

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



11) Case 9-11.

Petitioner: Ethel V. Ross Trust
 Property: 142 Mill Pond Way
 Assessor Plan: 140, Lot 20
 Zoning District: General Residence A
 Description: Construct three townhouses.
 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 # 1.51 to allow three dwelling units on a lot where they are only allowed by special exception.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The standards as provided by this ordinance for the particular use permitted by special exception are met.
- This residential use will present no hazard to the public or adjacent property on account of potential fire explosion or release of toxic materials. The applicant represented that sprinkler systems will be added to the buildings which will help mitigate any exposure.
- There will be no detriment to property values in the vicinity or change in the essential characteristics of the area from the scale of buildings, odors, smoke, or other pollutants, noise, glare, heat or other irritants, or unsightly outdoor storage of vehicles or other materials. The proposed multi-family use will be in modern buildings, surrounded by similar multi-family uses and buildings.
- The property is located on a private road off a main street. The one or two vehicles associated with adding one unit over the two allowed by the ordinance will not create a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity. Traffic and access will be considered in the site review process.
- The additional unit will not result in an excessive demand on municipal services, including water, sewer, waste disposal, police and fire protection, or schools.

- There will be no significant increase in storm water runoff onto adjacent property or streets. The applicant represented that a plan to mitigate storm water runoff, including rain gardens, would be implemented and storm water runoff will be considered in the review process for site plan approval.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary