

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 October 17, 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, and Alternate Peter McDonell
EXCUSED: Patrick Moretti, Alternate John Formella

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I. APPROVAL OF MINUTES

A) September 19, 2017

The Minutes for September 19, 2017 were approved as presented.

B) September 26, 2017

The Minutes for September 26, 2017 were approved with a minor correction.

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II. PUBLIC HEARINGS - OLD BUSINESS

A) Case 8-6

Petitioner: Arne LLC
Property: 0 Sylvester Street
Assessor Plan: Map 232, Lots 43-1 & 43-2
Zoning District: Single Residence B (SRB)
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:
1. A Variance from Section 10.521 to allow the following: a) continuous street frontage of 80.64'± where 100'; b) a lot area and lot area per dwelling unit of 6,713± s.f. where 15,000 s.f. is required; c) a lot depth of 82.2'± where 100' is required; and d) a front yard setback of 21.7'± where 30' is required. A

petition for this relief was granted with a stipulation on August 22, 2017 and this rehearing regarding the stipulation was granted on September 19, 2017.

Action:

The Board **noted** the following:

- That the relief requested from Section 10.521 in items 1a), 1b) and 1c) had been previously considered and granted with a stipulation at the August 22, 2017 meeting of the Board;
- That a rehearing had been granted at the September 19, 2017 to reconsider the stipulation attached to that approval;

The Board incorporated the original items 1a), 1b) and 1c) into their deliberations for this meeting and voted to **grant** the variances from Section 10.521, items 1a), 1b) and 1c) with the following stipulation:

Stipulation:

- That, to ensure that there will be no adverse consequences to neighboring properties, the applicant will provide a drainage plan to the Department of Public Works for review and approval.

Review Criteria:

The petition was granted for the following reasons:

- Constructing a single-family home on two merged lots will not change the essential character of this neighborhood nor negatively impact the health, safety or welfare of the public so that granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. The stipulation that the Department of Public Works must approve a drainage plan will adequately address concerns about the public impact of the proposed structure.
- Substantial justice will be done as the loss to the applicant by requiring strict conformance to the dimensional requirements would outweigh any possible gain to the general public.
- A new construction will enhance the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship. The applicant has sited the home closer to the rear setback where there is sufficient space on a neighboring property so that the intent of the dimensional requirements in the ordinance, to protect against overcrowding or other negative impacts, will be met. In this location, there is no fair and substantial relationship between the general public purposes of the ordinance provision and its specific application to the property.

B) Case 9-5

Petitioners: Paul Lanzoni, owner, Paul & Janice Lanzoni, applicants
 Property: 411 South Street
 Assessor Plan: Map 112, Lot 55
 Zoning District: General Residence A (GRA)
 Description: Attached garage with accessory dwelling unit and hallway addition.
 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 rear yard setback of 8.1' ± where 20' is required, (b) a right yard setback of 9.3' ± where 10' is required; and (c) a building coverage of 26.4% ± where 25% 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. *This petition was continued from the September 19, 2017 meeting and has been amended with regard to the right side yard and rear yard setbacks.*

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.
- Granting the petition would result in an intrusion on one or more properties which would be contrary to the public interest and diminish the value of surrounding properties.
- A large addition would not observe the spirit of the ordinance which strives to allow all property owners to mutually enjoy their properties.
- Substantial justice would not be done by granting the variances as the benefit to the applicants, in replacing a usable garage with one substantially larger, would be outweighed by harm to the general public or other individuals.
- The special conditions in the property did not rise to the level of creating an unnecessary hardship, and the proposed use is not a reasonable one.

C) Case 9-10

Petitioners: 143 Daniel Street LLC
 Property: 135 – 143 Daniel Street
 Assessor Plan: Map 105, Lot 19
 Zoning District: Character District 4 (CD4), Character District 5 (CD5), Historic District (HD), and Downtown Overlay District (DOD)
 Description: Create additional underground parking space.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.1114.20 to allow an 8'± x 16' ± parking space where an 8½' x 19' space is required; and (b) to allow a 16'± wide travel aisle where a 24' wide travel aisle is required. *This petition was postponed from the September 26, 2017 meeting.*

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.
- Granting the variances would be contrary to the public interest as represented by the users of the garage. A compact-only parking space in the location requested creates a maneuvering aisle well below the standard which would impede access into and out of the congested and unusually arranged parking area.
- It was not sufficiently demonstrated that there are special conditions of the property resulting in unnecessary hardship and the property can be reasonably used in conformance with the ordinance and the prior granted relief.

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III. PUBLIC HEARINGS – NEW BUSINESS

Case #10-1

Petitioners: Working Stiff Properties LLC, owner, Matthew Beebe & Barbara Jenny, applicants

Property: 87 Lincoln Avenue

Assessor Plan: Map 113, Lot 34

Zoning District: General Residence A (GRA)

Description: Appeal.

Requests: Appeal by the owners of the action taken by the City of Portsmouth issuing a cease and desist for a non-permitted use as a short term rental for the property referenced above.

Action:

The Board voted to **deny** the appeal, upholding the action taken by the City of Portsmouth in issuing a cease and desist order.

The appeal was denied for the following reasons:

- The Board agreed with the Planning Department’s interpretation that the ordinance as written does not permit this type of use.
- In reviewing all the documentation and correspondence, the Board determined that the Code Official acted in a proper, thoughtful and fair manner in trying to work with the property owners and propose ways to resolve issues before issuing the cease and desist.

- Nothing has been provided that would serve as sufficient basis for overturning the cease and desist issued by the Code Official.

Case #10-2

Petitioners: Todd A. Milne Revo Trust (50% INT), Todd A. Milne, applicant
Property: 315 Wibird Street
Assessor Plan: Map 132, Lot 13
Zoning District: General Residence A (GRA)
Description: Enclose rear stairway and screened porch in accessory structure.
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 of 4' ± where 10' 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:

- A small addition in the proposed location will not alter the essential character of this neighborhood or threaten the public health safety or welfare 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 variances will not be outweighed by any negative impact on the general public.
- A well-designed addition in keeping with the existing structures will increase the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property including a narrow lot and the siting of the existing structures on that lot so that no addition could be made to the main house or accessory structure without requiring setback relief.

Case #10-3

Petitioners: Juanita Lancaster (1/8 Int.) and Eddie, Devon, Darren, and Tiffany Thomas, owners, John Anastas and Gloria Esposito-Anastas, applicants
Property: 1079 Maplewood Avenue
Assessor Plan: Map 219, Lot 49
Zoning District: Single Residence B (SRB)
Description: Replace existing structures with new construction of a single-family home and attached garage.

- 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 lot area and lot area per dwelling unit of 9,563'± where 15,000 s.f. is required; (b) continuous street frontage of 72'± on Maplewood Ave where 100' is required; and (c) a secondary front yard setback of 17.3'± 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 **postpone** the petition to a reconvened meeting on October 24, 2017 to allow adequate time to hear the petition.

Case #10-4

- Petitioners: Dovev Levine, owner and Dovev & Jannell Levin, applicants
 Property: 96 Woodlawn Circle
 Assessor Plan: Map 237, Lot 7
 Zoning District: Single Residence B (SRB)
 Description: Construct front portico and right side addition.
 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) a primary front yard of 18'± where 30' is required and b) a 28'9" ± rear yard 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 **postpone** the petition to a reconvened meeting on October 24, 2017 to allow adequate time to hear the petition.

Case #10-5

- Petitioners: Columbia Street Development LLC, owner, Revision Development, LLC, applicants
 Property: 53 Columbia Street and Columbia Street (No address)
 Assessor Plan: Map 145, Lots 43 & 44
 Zoning District: General Residence C (GRC)
 Description: Merge two lots and build an eight-unit dwelling.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Special Exception under Section 10.440, Use #1.52 to allow eight dwelling units on a property where they are allowed by special exception.

- 2. A Variance from Section 10.521 to allow a) a lot area per dwelling unit of 1,289 s.f. where 3,500 s.f. is required; and b) 44.4% building coverage where 35% is the maximum allowed.

Action:

The Board voted to **postpone** the petition to a reconvened meeting on October 24, 2017 to allow adequate time to hear the petition.

Case #10-6

Petitioners: High Liner Foods Inc.
 Property: 1 High Liner Avenue
 Assessor Plan: Map 259, Lot 14
 Zoning District: Industrial (I)
 Description: Replace and reface wall signs.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.1251.20 to allow a 600 s.f. wall sign where 100 s.f. is the maximum allowed for a wall sign;
2. A Variance from Section 10.1271.20 to allow a wall sign on a façade not facing a street and with no public entrance; and
3. A Variance from Section 10.1251 to allow a wall sign with no aggregate sign area available.

Action:

The Board voted to **postpone** the petition to a reconvened meeting on October 24, 2017 to allow adequate time to hear the petition.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:00 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary