

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 October 24, 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, Patrick Moretti, Christopher Mulligan, Arthur Parrott, and Alternate Peter McDonell

EXCUSED: Jim Lee, Alternate John Formella

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II. OLD BUSINESS

A) (Case 10-1) Request for Rehearing regarding property located at 87 Lincoln Avenue.

The Board voted to **grant** a rehearing, which will be held on November 21, 2017.

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III. PUBLIC HEARINGS - NEW BUSINESS *(continued from the October 17, 2017 meeting)*

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 **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- Replacing a single family dwelling with a different single family dwelling 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.
- Granting the variances will result in substantial justice. The proposal will reduce the existing non-conformance on the lot so that requiring strict compliance with the provisions of the ordinance will impose a burden on the applicant that would not be outweighed by any corresponding gain to the general public.
- Granting the variances will increase the value of surrounding properties. The new construction provides for a better configuration of the structures on the lot with the house sited to allow a greater distance to the side of the street than currently exists.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property, including an existing nonconforming corner lot, smaller than many surrounding it with setbacks on two streets, and a narrow building envelope. It is difficult to site any reasonable structure so that there is no fair and substantial relationship between the dimensional requirements in the ordinance and their application to the property. A single family residence in a single family zone is a reasonable use of the property.

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 **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- Adding an addition to single family home will not alter 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. Nothing in the proposal will threaten the public’s health, safety or welfare.
- Substantial justice will be done as the applicants will benefit from a home better suited to their needs with no harm to the neighbors or general public.
- An upgrade to the property will have a positive effect on the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property, including the existing structure which does not meet the rear and front setbacks. The addition is proposed on a side facing the open portion of the lot, and the front access has been reoriented to avoid further incursion into the setback 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. This is a reasonable request for the property.

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 **grant** Item 1, the special exception, as presented and advertised and **deny** Items 2a) and 2b, the variances from Section 10.521.

Review Criteria:

The special exception, Item 1, was granted for the following reasons:

- The proposed units will be in a modern building with modern equipment that will not pose a hazard to the public or adjacent property from potential fire explosion or release of toxic materials.
- The existing residential multi-unit structure is proposed to be replaced with a modernized residential building constructed on two merged lots and containing the requested dwelling units so that there will be no detriment to property values in the vicinity. There is nothing in the use that will change the essential characteristics of the neighborhood from odors, smoke, dust or other pollutants, noise, glare, heat or other irritants or unsightly outdoor storage of equipment, vehicles or other materials.
- Replacing a twelve-unit structure with one with eight units will not create a traffic safety hazard or increase in traffic congestion and will not result in an excessive demand on municipal services. The change will, if anything, result in a reduction in congestion and demand.
- A modern structure housing the proposed units will have systems to treat storm water so that there should be no significant increase of storm water runoff onto adjacent property or streets.

The variances, Items 2a) and 2b), were denied for the following reasons:

- All the criteria necessary to grant the variances were not met.
- The nature and size of the proposed units would result in a considerable increase in building coverage over what is presently on the two lots when considering the lots in combination. The plan to demolish an existing, usable structure that provides affordable housing and replace it with a larger structure with fewer units will not be in keeping with the essential character of the neighborhood. Therefore granting the variances would be contrary to the public interest and the spirit of the ordinance would not be observed.
- An unnecessary hardship resulting from literal enforcement of the ordinance was not sufficiently demonstrated. It is possible to create a more fully conforming structure on the two merged lots, where the only existing structure is to be demolished, thus the property can be reasonably used without requiring this degree of relief.

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 **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. Replacing existing signage with signage that is similar in kind and less nonconforming will have no effect on the essential character of the neighborhood nor will the health, safety and welfare of the general public be affected.
- Granting the variances will result in substantial justice as the loss to the applicants, by requiring the replacement signage to be in strict compliance with the ordinance, would not be outweighed by any gain to the general public.
- The signs are oriented toward Interstate 95 and away from neighboring businesses so that granting the variances will not diminish the value of surrounding properties. While a change in the illumination is proposed, it should pose no distraction to passing motorists on the interstate.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. These include bordering on an interstate highway and on a dead-end street, on which the natural façade of the building would front but which has little visibility, as well as the mass and scale of the building, which can accommodate a higher degree of signage, and its distance from vehicular traffic. Due to the special conditions, there is no fair and substantial relationship between the purposes of the sign ordinance and their specific application to this property. The proposed signage is reasonable for this property.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:07 p.m.

Respectfully submitted,

Mary E. Koepnick, Secretary