

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 November 21, 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, Patrick Moretti, Arthur Parrott, and Alternate Peter McDonell

EXCUSED: Christopher Mulligan, Alternate John Formella

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I. APPROVAL OF MINUTES

A) October 17, 2017

B) October 24, 2017

It was moved, seconded and passed to accept the October 17th and October 24th Minutes as presented.

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II. PUBLIC HEARINGS – NEW BUSINESS

Case #11-1

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 considered the petition after voting to grant a request to extend the applicants' presentation time to twenty minutes. The Board then voted to **deny** the appeal upholding the action taken by the City of Portsmouth in issuing a cease and desist order.

Review Criteria:

The petition was denied for the following reasons:

- The administrative official issuing the cease and desist order acted in good faith interpreting and applying the current laws and regulations that he is charged with enforcing.

Case #11-2

Petitioners: KL Boston Revocable Trust, Kelly L. Boston, trustee
Property: 465 Cutts Avenue
Assessor Plan: Map 210, Lot 27
Zoning District: Single Residence B (SRB)
Description: Extend existing garage and front porch.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. Variances from Section 10.521 to allow the following: a) a secondary front yard setback of 11' ± where 30' is required; and b) to allow a 20.13% ± building coverage where 20% is the maximum allowed.
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:

- Extending the home slightly toward the road 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.
- Substantial justice will be done by increasing the functionality of the property which will benefit the applicant with no detriment to the general public.
- A modest and attractive addition will enhance the neighborhood so that the value of surrounding properties will not be diminished.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include its corner lot location and the current secondary front yard setback so that even a slight extension into the setback requires relief from the ordinance.

Case #11-3

Petitioners: Ned and Bill Properties LLC
Property: 621 Islington Street
Assessor Plan: Map 164, Lot 6

- Zoning District: Character District 4-W (CD4-W)
- Description: Convert three retail/office units into three residential dwelling units (for a total of 7 units).
- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.5A41.10B to allow the following: (a) a lot area per dwelling unit of 2,074 s.f. where 2,500 s.f. is required; (b) 9.7% ± open space where 15% is the minimum required; (c) a ground story height of 7'7"± to 8'1"± where 12' is the minimum required; (d) a façade modulation length in excess of 80' where 80' is the maximum allowed; (e) façade glazing in excess of 50%; and (f) a ground floor surface above sidewalk grade in excess of 36" where 36" is the maximum allowed.
 2. A Variance from Section 10.5A44.35 to allow a 34'± wide driveway where 24' is the maximum allowed.

Action:

The Board voted to **grant** the six variances from Section 10.5A41.10B and **deny** the variance from Section 10.5A44.35, both as presented and advertised, with the following stipulation:

Stipulation:

- In lieu of the 34' driveway, which is denied, the plans should incorporate the 24' driveway, with vegetative buffer strips on each side, as shown on the submitted plan drawn by Ambit Engineering and dated January, 2007.

Review Criteria:

The variances from Section 10.5A41.10B were granted for the following reasons:

- Converting three commercial uses to residential use will pose no threat to the essential character of the neighborhood and, with traffic impact likely lessened, will not threaten the health, safety or welfare of the public. For these reasons, granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed.
- Granting the variances will benefit the applicants with no corresponding detriment to the general public.
- With the stipulation providing for a less prominent driveway while adding green space, there should be a positive effect on the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. The existing structure is sited directly on the street reflecting setback requirements from an earlier time on a lot that also abuts railroad tracks at the rear which affect what can be done on the property. The intent of the new character based zoning is to ensure that any proposed new structures or major changes will be keeping with the character with the neighborhood. This building as it exists blends with the neighborhood and there are no changes being made to the appearance so that there is no fair and substantial relationship between the purposes of the ordinance provisions and their specific application to the property. Returning these units to their original purpose as a residence is a reasonable use of the property.

The variance from Section 10.5A44.35 was denied for the following reason:

- There is no hardship in the property that would prevent installing a 24' wide buffered driveway and the property can be fully utilized while maintaining compliance with the 24' maximum width requirement.

Case #11-4

Petitioners: KC Realty Trust, Keith Malinowski, Trustee

Property: 84 Pleasant Street

Assessor Plan: Map 107, Lot 77

Zoning District: Character District 4 (CD4)

Description: Replace rear addition and permit residential uses on the second and third floors with no off-street parking provided.

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

1. Variances from Section 10.5A41.10C to allow the following: a) 0% open space where 10% is required; and b) 100% building coverage where 90% is the maximum allowed.
2. A Variance from Section 10.1111.10 to allow a change in the use or intensification of use in an existing building or structure without providing off-street parking.
3. A Variance from Section 10.1111.20 to allow a use that is nonconforming as to the requirements for off-street parking to be enlarged or altered without providing off-street parking for the original building, structure or use and all expansions, intensifications or additions.
4. 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:

- The conversion to all residential uses on the second and third floors of a reconstructed building, on a lot with no available parking or options for green space, 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, if the variances are granted, will not be offset with any detriment to the general public.
- The reconstructed property, as presented, will add character and texture to the neighborhood and streetscape so that the value of surrounding properties will not be diminished.

- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. The necessary reconstruction of a structure, located on a lot not meeting the requirements for open space, building coverage, or parking, cannot be achieved without seeking relief from the ordinance. The size and nature of the residential units will change but the number of individuals living and working in the building is likely to stay the same so that the inability to provide off-street parking will have minimal additional impact.

Case #11-5

Petitioners: PNF Trust of 2013, Peter N. Floros, Trustee
 Property: 278 State Street
 Assessor Plan: Map 107, Lot 80
 Zoning District: Character District 4
 Description: Appeal decision of the Historic District Commission to deny the issuance of a demolition permit.
 Requests: Issuance of a demolition permit.

Action:

The Board voted to **deny** the appeal as presented and advertised with the following stipulation.

Stipulation:

- The Board stipulates that the applicant work with the Historic District Commission to arrive at a mutually agreeable plan for the property. The Board further stipulates that any reconstruction of the existing building must, at a minimum, fully preserve the State Street side façade and the Church Street side façade of the existing building.

In arriving at their decision to deny, the Board considered the following Sections of the Zoning Ordinance:

Review Factors (10.635.60) that render a site architecturally or historically significant, including the following:

- 1) *The historical time period, context or immediate setting. These factors were discussed in terms of the age of the building. While not overwhelmingly unique or historic, the structure has some value with respect to these factors.*
- 2) *The structure's architecture, including stylistic features, design elements and mass. The massing of the structure is unique and could be partially duplicated but not in its entirety. There are unique stylistic features that, while compromised over the years, could be the basis for restoration. There are examples in the area that could serve as a guiding principle for restoring the facades.*
- 3) *Construction materials, including technological systems and features. There are existing materials that are worthy of preservation for passersby. Technological options could be*

explored that would allow the building to be successfully re-used as part of an overall renovation of the entire site.

- 4) *Importance relative to a historically recognized individual or event.* There is sufficient history to provide some extra value making the property worth preserving, at least in part.

Review Criteria (10.635.70). Determining whether the course of action furthers the purpose, objectives and applicability of the Historic District with reference to the following:

- 1) *The special and defining character of surrounding properties, including architectural details, design, height, scale, mass, width of surrounding structures, street frontages, types of roofs, facades and openings.* The Board noted the unique characteristics of the building in terms of its half floor height and how it was built. While this also has been compromised over the years, the right effort could restore some of the original historic characteristics. The street frontages are unique in their placement against an alleyway and the structure provides an anchor for the corner on which it is located.
- 2) *The significant historical or architectural value of an existing structure for which a Certificate is sought, including its setting, scale and mass; and the general size of new construction with consideration of such factors as height, width, materials and architectural details.* There is the potential to build a complimentary new construction adjacent to this structure that can preserve part of the structure while resolving some of the inherent technical difficulties. The setting, mass and scale of the building are unique for that corner. While they could potentially be partially duplicated, these aspects are sufficiently unique to be worthy of preservation.
- 3) The extent to which a proposed project's exterior design, scale, arrangement, texture, detailing and materials complement or enhance the existing structure and are compatible with surrounding properties and the Historic District Commission's adopted Design Guidelines. There is texture and detailing in the building's features including the unique semicircular windows above the current storefront on the State Street façade. While the windows also have been partly compromised by changes over the years, they represent a unique feature worthy of preservation at least along the State Street and Church Street facades.
- 4) *Encouraging the innovative use of technologies, materials and practices provided these are compatible with the character of surrounding properties.* The Board is encouraging the use of innovative ideas to redevelop the rest of the site and possibly a portion of the existing building in a cost effective manner that would allow full compliance with the Americans with Disabilities Act regulations and life safety issues. There is enough that could be preserved and integrated into an overall modern and successful development.

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III. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:45 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary