

**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 January 17, 2018** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

**PRESENT:** Chairman David Rheaume, Vice Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Patrick Moretti, Christopher Mulligan, Arthur Parrott, Alternate John Formella

**EXCUSED:** None

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**I. APPROVAL OF MINUTES**

A) December 19, 2017

The Minutes were approved with a minor correction.

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**II. OLD BUSINESS**

A) Request for Rehearing regarding property located at 278 State Street.

Action:

The Board voted to **deny** the rehearing determining that the Board had carefully considered the petition before them as well as the information provided by the presenters and, observing due process, made a reasonable and logical decision.

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B) Case 12-8

Petitioner: Kathryn Michele Arbour

Property: 86 Emery Street

Assessor Plan: Map 220, Lot 87-1

Zoning District: Single Residence B  
 Description: Second free-standing dwelling on a lot.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
 1. A Variance from Section 10.513 to allow a second free-standing dwelling on a lot. *(This petition was tabled at the December 19, 2017 meeting.)*

Action:

The Board acknowledged that the petition had been **withdrawn** by the applicant.

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**III. PUBLIC HEARINGS - NEW BUSINESS**

1) Case 1-1.

Petitioner: James M. Fernald, Appellant  
 Property: 996 Maplewood Avenue  
 Assessor Plan: Map 219, Lot 4  
 Zoning District: Single Residence B District  
 Description: Appeal  
 Request: Appeal from an Administrative Decision regarding the issuance of a building permit for Unit C of the above property.

Action:

The Board voted to **postpone** the petition to the February meeting as requested by the appellant.

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2) Case 1-2

Petitioners: Bursaw’s Pantry, LLC, owner and Robert and Kathleen Dockham, applicants  
 Property: 3020 Lafayette Road  
 Assessor Plan: Map 292, Lot 152  
 Zoning District: Mixed Residential B District  
 Description: Expand an existing building to contain three upper story dwelling units and a ground floor office with a parking lot landing.  
 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) 3,938± s.f. lot area per dwelling unit where 7,500 s.f. is required; and b) a 5.5’± left side yard where 10’ is required.  
 2. A Variance from Section 10.533 to allow a building or structure to be located 54’± from the centerline of Lafayette Road where a minimum of 80’ is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- Following the direction of the Master Plan and considering its suitability in a mixed use area, the proposed use will not alter the essential character of the neighborhood and will not 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 there will be no conflicting or overriding public interest resulting from the granting of the variances.
- The values of surrounding properties will not be diminished. The proposed use of the first floor as a business should result in less traffic and the nearby residential properties will benefit from an improved and attractive office and residential use building rather than an empty structure.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property, including the small size of the lot, which lost area to a highway expansion, and the zoning of the lot in this area. The proposed uses are a reasonable use of the property and provide an appropriate transition from the nearby Gateway Neighborhood Mixed Use District to the residential neighborhood behind the property.

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3) Case 1-3.

Petitioners: Goodman Family Realty Trust, owner and Aroma Joe’s Coffee, LLC, applicant

Property: 1850 Woodbury Avenue

Assessor Plan: Map 239, Lot 9

Zoning District: Gateway Neighborhood Mixed Use Corridor (G1)

Description: Construct and operate a drive-through take-out restaurant

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

1. A Variance from Section 10.5B.34.90 to allow a building with no street facing entrance.
2. A Variance from Section 10.5B.41.80 to allow no community space coverage to be provided where 10% of the total site area is required.

Action:

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

Other:

The Board **noted** that the stipulation regarding the erection of a protective fence, attached to the variances approved March 21, 2017, was still in effect.

Review Criteria:

The petition was granted for the following reasons:

- The new zoning being applied to this lot would more easily be applied to redevelopment of a vacant lot, resulting in transformation of the area over time. This lot lies at the end of the new zone and is already developed with a permitted use 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 strict application of all the new zoning requirements to this property would create a burden for the applicant with no benefit to the general public.
- The value of surrounding properties will not be diminished. This is a small scale commercial use in a commercial district that already has a significant level of traffic. The stipulation noted with this approval will further protect the surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. The existing building is set well off to the side and the proposal is for a use on the remaining portion dictating its placement and the placement of design features around a small structure. The proposed use is a reasonable one for the area.

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**IV. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 8:20 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary