

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 February 27, 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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III. PUBLIC HEARINGS - NEW BUSINESS (*Continued from the February 21, 2018 meeting*)

Case 2-7

Petitioner: Michael De La Cruz
Property: 75 Congress Street (63 Congress Street)
Assessor Plan: Map 117, Lot 5
Zoning District: Character District 5
Description: Construct 15 residential units without required parking.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.1112.30 to allow no off-street parking spaces to be provided where off-street parking spaces are required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The mainly interior renovations will not alter the essential character of the neighborhood or threaten the health, safety or welfare of the public so that granting the variance will not be contrary to the public interest and the spirit of the ordinance will be observed.

- Substantial justice will be done as the variance will result in a benefit to the applicant with no detriment to the public from the interior changes and added residential use space.
- Upgrading and restoring this property will increase its value and the value of surrounding properties will, if anything, increase with new residents living and working in the neighborhood.
- Literal enforcement of the ordinance would result in unnecessary hardship. As situated, there is no opportunity to create additional parking on the property although there will be a new parking garage within walking distance. Any use of the building would require parking relief and a number of potential uses would have a higher density of need for parking so that this is a reasonable request.

Case 2-8

Petitioners: James W. and Heather L. Davis
Property: 530 Dennett Street
Assessor Plan: Map 161, Lot 10-1
Zoning District: General Residence A
Description: Construct single family home and garage replacing existing home and 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 a lot area and lot area per dwelling unit of 7,441± s.f. where 7,500 s.f. is required for each;
2. A Variance from Section 10.521 to allow continuous street frontage of 61.09'± where 100' is required;
3. A Variance from Section 10.521 to allow an 8'± left side yard where 10' is required;
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:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. The proposed replacement of a reasonably sized dwelling with a new house and garage with only a slight increase in the required relief will not alter the character of the neighborhood nor threaten the health, safety and welfare of the general public.
- Substantial justice will be done by granting the variances which will benefit the applicants with no corresponding detriment to the general public.
- An upgrade to a structure that has been in place for a number of years will not diminish the value of surrounding properties.

- Due to special distinguishing conditions of the property, literal enforcement of the ordinance would result in unnecessary hardship. The existing lot has a relatively narrow frontage and the lot is fairly narrow and deep so that it is difficult to place a usable structure without requiring relief from the ordinance. The proposed use, in a residential neighborhood, is a reasonable one.

Case 2-9

Petitioners: Michael G. and Annette A. Kane
 Property: 242 State Street, #1
 Assessor Plan: Map 107, Lot 70-6
 Zoning District: Character District 4
 Description: Lighted projection of a logo onto sidewalk.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.1234 to allow a sign that is not specifically permitted in a sign district;
2. A Variance from Section 10.1263.10 to allow a light source for external illumination of a sign to be visible three feet above grade at the lot line with the lighting not confined to the area of the sign;
3. A Variance from Section 10.1263.30 to allow a sign or its illuminator to interfere with pedestrian or vehicular traffic;
4. A Variance from Section 10.1262 to allow a sign to be illuminated between 11:00 p.m. and 6:00 a.m. without the operation of a use or activity that is open to customers or the public, and more than one hour after activity ceases.

Action:

The Board voted to **deny** the petition as presented and advertised. With rapidly changing technology, a sign of this type may be considered by the ordinance in the future with specific guidelines as to the manner in which it may be used and specific requirements from which relief might be granted by applying the criteria but this is currently not addressed.

In order to grant variances all the criteria must be met and, at a minimum, the following were not satisfied:

- With no guidelines to follow as to size, setbacks and illumination, a lighted projection sign would alter the essential character of the neighborhood so that granting a variance would be contrary to the public interest and the spirit of the ordinance would not be observed.
- Determination of an unnecessary hardship relies on the purposes of ordinance provisions and the specific application of ordinance provisions to a property for a requested structure or use. Without provisions related to signs of this type, there is nothing that is a unique hardship for this property which is indistinguishable from other downtown business properties related to a sign of this type.

Case 2-10

Petitioner: Richard Fusegni
Property: 201 Kearsarge Way
Assessor Plan: Map 218, Lot 5
Zoning District: Single Residence B
Description: Subdivide one lot into two.
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 lot area and lot area per dwelling unit of 7,834± s.f. where 15,000 s.f. is required;
2. A Variance from Section 10.521 to allow 97.52'± of continuous street frontage where 100' is required.

Action:

The Board voted to **postpone** the petition to the March meeting at the applicant's request.

Case 2-11

Petitioner: Cyrus Lawrence Gardner Beer
Property: 64 Mt. Vernon Street
Assessor Plan: Map 111, Lot 30
Zoning District: General Residence B
Description: Chicken coop with six chickens (hens).
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.440, Use #17.20 to allow the keeping of farm animals where the use is not allowed.
2. A Variance from Section 10.573.10 to allow an accessory structure 3'± from the rear property line where 5' is required.

Action:

The Board voted to **postpone** the petition to the March meeting at the applicant's request.

Case 2-12

Petitioners: Vaughan Street Hotel LLC and 299 Vaughan Street LLC c/o Cathartes Private Investments
Property: 225 and 299 Vaughan Street
Assessor Plan: Map 123, Lot 15 and Map 124, Lots 10 and 11
Zoning District: Character District 5
Description: Allow specific vehicle circulation patterns in off-street parking areas.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.1114.32 to allow vehicles to enter and leave a parking space by passing over another parking space or requiring the moving of another vehicle.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest. This is a parking lot inside an enclosed building which would have limited visibility and impact on the general public.
- This is a minor request for a parking option where valet parking will control most of the activity and avoid the problems the ordinance provision is intended to limit so that the spirit of the ordinance will be observed.
- Substantial justice will be done as the applicants have developed a plan to meet the parking needs and granting the variance will support that effort.
- A modern building with modern amenities, supported by adequate parking, will not diminish the value of surrounding properties.
- An unnecessary hardship is created due to special conditions of the property. This is an area with a high water table and there are other logistical and cost factors that preclude going deeper into the ground to create required parking. With a tandem parking situation, operated and controlled by professionals, there is no fair and substantial relationship between the general purposes of the ordinance provision and its application to the property.

Case 2-13

Petitioners: Eric A. and Jean C. Spear, owners and Brendan Cooney and Megan Tehan, applicants

Property: 57 Mt. Vernon Street

Assessor Plan: Map 111, Lot 31

Zoning District: General Residence B

Description: Create a lot by subdivision containing an existing dwelling.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.521 to allow the following:

1. A lot area and lot area per dwelling unit of 3,647± s.f. where 5,000 s.f. is required for each;
2. Continuous street frontage of 45.41'± where 80' is required;
3. A 2.2'± left side yard where 10' is required;
4. A 15.8'± rear yard where 25' 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 change in any way. There will still be two single-family dwellings in the same locations. The health, safety and welfare of the public will also not be affected by what already exists on the ground.
- Substantial justice will be done as the loss to the applicant, if strict compliance with the zoning ordinance were required and the petition was denied, would not be outweighed by any gain to the general public.
- The value of surrounding property will not be diminished as the conditions have existed for some time with no discernible effect on the surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include two single-family residences currently on a single lot and the location on a dead-end street on which there are very few affected neighbors. The requested relief would recognize the existing conditions as they would be affected by the proposed subdivision so that there is no fair and substantial relationship between the purposes of the setback and lot area ordinance provisions and their application to the property. The continued residential use is a reasonable use of the property.

Case 2-14

Petitioners: Charles L. Fleck, Jr., owner and Sarah Fleck and Charles L. Fleck, Jr., applicants

Property: 39 Sagamore Avenue

Assessor Plan: Map 222, Lot 31

Zoning District: General Residence A

Description: Replace a free-standing shed with an 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 a 6'± right side yard 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:

- Replacing a smaller structure with a larger garage more suited to today’s needs, but still allowing neighbors light and air, will not change the essential character of the neighborhood nor threaten the health, safety or welfare of the general public 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 applicants a more usable structure without imposing on neighboring properties.
- The value of surrounding properties will not be diminished by an updated structure that will still allow the passage of light and air.
- The special conditions of the property so that literal enforcement of the ordinance would result in unnecessary hardship include a very narrow lot and the current placement of buildings as well as an existing driveway with which the structure must align. Given these conditions, there are not many options for the applicant to pursue in fitting in a reasonably proportioned and usable garage, which is an expected amenity today.

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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. Koepenick, Secretary