

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 March 20, 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, Arthur Parrott, Alternate Phyllis Eldridge

EXCUSED: Christopher Mulligan, Alternate John Formella

=====

I. APPROVAL OF MINUTES

A) February 21, 2018

The Minutes were approved with minor corrections.

B) February 27, 2018

The Minutes were approved as presented.

=====

II. PUBLIC HEARINGS – OLD BUSINESS

A) 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;
(*This petition was postponed from the February 27, 2018 meeting.*)

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- This is a proposal for a residential use in a residential area which will not alter the character of the neighborhood or pose a threat to 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 applicant will benefit by being allowed to alter a previous request with no corresponding detriment to the general public.
- A tasteful development, where the density is not excessive, will not alter the value of surrounding properties.
- The special conditions of the property include its location fronting on two streets and surrounding an adjacent lot as well as its irregular shape. The property lines on two sides are inset from edge of pavement so that the property appears larger and capable of supporting the required density. A residential use in a residential neighborhood is a reasonable use of the property.

B) 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.

(This petition was postponed from the February 27, 2018 meeting.)

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulation:

Stipulation:

- There will be no more than six chickens and no roosters.

Review Criteria:

The petition was granted for the following reasons:

- In an area with several similar uses, the proposed use will not alter the character of the 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 by allowing the applicant to keep chickens with no harm to the general public.
- The value of surrounding properties will not be diminished as the applicant has represented that the chickens will be contained in a fenced area and no neighbors came forward with concerns.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which backs up to a high wall separating it from an outbuilding and parking lots at City Hall. Sound is muffled so that the setback and proposed use raises no concerns for neighbors.

=====

III. PUBLIC HEARINGS - NEW BUSINESS

1) Case 3-1

Petitioner: Giri Dover LLC

Property: 99 Durgin Lane

Assessor Plan: Map 239, Lot 15

Zoning District: Gateway Mixed Use Corridor

Description: Install an LED light band under cornice roof line.

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

1. A Variance from Section 10.1271 to allow signage where it is not allowed;
2. A Variance from 10.1251.10 to allow signage where there is no aggregate signage available;
3. A Variance from Section 10.1251.20 to allow canopy signs greater than 20 s.f.;
4. A Variance from Section 10.1251.20 to allow a wall sign greater than 200 s.f.; and,
4. A Variance from Section 10.1242 to allow more than one wall sign above the first floor on three sides of the building without a street façade.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- In an area containing a variety of non-residential uses, the proposal will not alter the character of the 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 it will be beneficial to the applicant to display their standard brand with no detriment to the general public.
 - The way the surrounding commercial properties are situated, lacking continuity and aesthetic cohesiveness, the proposed sign (lit band) will not diminish the value of surrounding properties or increase ambient lighting in the area.
 - The conditions of the property distinguishing it from other locations are its location abutting a major highway in a less lighted area, as well as the close proximity of its access point, making it difficult for customers not familiar with the area to identify the property as a destination.
-

2) Case 3-2

Petitioner: Cape Elizabeth Moss GST Exempt Trust F/B/O Keith Mariah Heriot
Property: 18 Monroe Street
Assessor Plan: Map 151, Lot 7
Zoning District: General Residence A District
Description: Replace existing two-story left-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 5’10”± left side yard and a 5’11”± right side yard where 10’ is required for each;
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:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. Essentially filling in a middle space between the house and garage will not alter the essential character of the neighborhood nor threaten the public health, safety or welfare. The applicants have presented that the rear portion of the house that ran along the property line will be removed and the new addition maintains the same setback as the house’s original structure.
- Substantial justice will be done as the applicant will benefit from a substantial addition to their home without harming the general public.

- This is a tasteful addition and renovation that will not diminish the value of surrounding properties and no testimony was made against the proposal.
 - Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property, which include varying grade heights and existing additions that are not structurally sound and have poor functionality causing water problems and other issues. Due to the special conditions, there is no fair and substantial relationship between the general purposes of the ordinance provisions with regard to setbacks and their specific application to the property.
-

3) Case 3-3

Petitioner: LGSG, LLC
Property: 160 and 168-170 Union Street
Assessor Plan: Map 135, Lots 29 and 30
Zoning District: General Residence C District
Description: Merge two lots into one with four dwelling units.
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 per dwelling unit of 2,363± s.f. where 3,500 s.f. is required;
2. A right side yard setback of 5'± where 10' is required;
3. A left side yard setback of 5'4"± where 10' is required; and
4. A rear yard setback of 8'6"± where 20' is required.

Action:

A motion to approve the petition failed to receive the four votes necessary to grant the variances so the petition was **denied**.

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant a variance were not met.

The Board noted the following considerations in their determination:

- Considerable setback relief is being requested, in particular the rear yard setback, which would interfere with the light and air protected by the ordinance.
 - This property is in a neighborhood of smaller lots with smaller sized buildings. There is no significant difference between the subject properties and adjacent properties to indicate that a hardship exists, especially in regards to the rear garage and dwelling unit structure. The two lots could be reasonably developed to bring the overall property into full, or closer, compliance with the requirements of the ordinance.
-

4) Case 3-4

Petitioners: Terrence H. Allen and Andrea B. Allen
Property: 32 Baycliff Road
Assessor Plan: Map 207, Lot 43
Zoning District: Single Residence B District
Description: Replace existing garage.
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 1'6"± right side yard setback where 10' is required;
b) A secondary front yard setback of 7'6"± where 30' is required; and
c) 31%± building coverage where 20% is 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:

- A garage representing a fairly modest increase over the existing structure and smaller than others in the area 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 allowing the homeowners to have a usable garage with no corresponding detriment to the general public, which will actually benefit from the safer access from the street.
- A new garage will be an upgrade to the property which will not diminish the value of surrounding properties. The proposed garage is not overly large and there should be adequate access for proper maintenance.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property, including a lot smaller than adjacent properties and an existing garage that is unusable due to the orientation of the door which does not allow safe or easy access. Due to the special conditions, there is no fair and substantial relationship between the general public purposes of the ordinance provisions and their specific application to the property.

5) Case 3-5

Petitioner: Barbara R. Frankel
Property: 89 Brewery Lane
Assessor Plan: Map 146, Lot 26

Zoning District: Character District 4-L2
 Description: Replace existing structure with a Colonial style assisted living home.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. Variances from Section 10.5A41.10A to allow the following:
 - a) a principal front yard of 76'± where 15' is the maximum allowed;
 - b) a right side yard of 37'± where a 5' minimum to 20' maximum is required;
 - c) a front lot line buildout of 50%± where 60% minimum to 80% maximum is required;
 - d) a minimum ground story height of 10' where 11' is required; and
 - e) 13%± façade glazing where 20% minimum to 40% maximum is required;
2. A Variance from Section 10.5A44.31 to allow off-street parking spaces to be located less than 20' behind the façade of a principal building.

Action:

The Board voted to **postpone** the petition to the April meeting so that additional relief required from the Zoning Ordinance can be advertised, noticed and posted.

6) Case 3-6

Petitioner: Petition of Tara F. Trafton Hamblett Revocable Trust 2003, Tara F. Trafton Hamblett, Trustee
 Property: 118 Elwyn Avenue
 Assessor Plan: Map 112, Lot 45
 Zoning District: General Residence A District
 Description: Reconstruct rear deck.
 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 27%± building coverage where 25% is the maximum allowed;
2. A variance from Section 10.521 to allow a 6'± right side yard setback where 10' is required;
3. 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 slight enlargement of an existing deck will not alter the character of the 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 by allowing the applicant enjoyment of a new deck, with safer access, in a location not visible from the street so there will be no impact on the general public.
- The value of surrounding properties will not be diminished by replacing a deteriorated deck.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property which include the need to replace a deteriorated deck while accommodating the considerations resulting from the siting and layout of the house. The deck needs to be located within the setbacks to provide access to an existing rear entry on the main structure.

=====

IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:07 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary