

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 April 17, 2018** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.
PRESENT: Vice Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate John Formella
EXCUSED: Chairman David Rheume

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I. APPROVAL OF MINUTES

A) March 20, 2018

The Board approved the Minutes as presented.

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II. OLD BUSINESS

A) Motion for Reconsideration regarding property located at 996 Maplewood Avenue.

Action:

The Board voted to **deny** the request determining that they had carefully considered the issues and information provided in the appeal and acted in good faith in arriving at their decision. The Board also determined that no errors had been committed in their application of the law and no new information had been presented that would lead to a different decision.

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III. PUBLIC HEARINGS – OLD BUSINESS

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;
 - e) 13%± façade glazing where 20% minimum to 40% maximum is required;
 - f) *a building footprint of 3,146 s.f. where 2,500 s.f. is required; and*
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.
(This petition was postponed from the March 20, 2018 meeting and includes the addition of item f) italicized above.)

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- In an eclectic neighborhood with a wide variety of uses, the proposed use and structure will not alter the essential character of the neighborhood nor 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 the loss to the applicant in requiring strict compliance to the requirements would not be outweighed by any corresponding gain to the general public.
- A new structure in this neighborhood will only improve property values.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. These include an odd, irregularly shaped lot limited by the inclusion of a public right-of-way so that no fair and substantial relationship exists between the general purposes of the ordinance regarding dimensional, façade composition and parking location requirements and their specific application to the property. The use, which was initially approved by the Board three years ago, is a reasonable one with the changes since that time due to the location of the property in a new, more restricted zone with new design standards that must be met.

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IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case 4-1

Petitioners: Gordon C. & Carol L. Clark
Property: 28 Rockingham Street
Assessor Plan: Map 114, Lot 12
Zoning District: General Residence C
Description: Install a generator.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
1. A variance from Section 10.573 to allow a right side yard of 1.5'± where 5' is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- A generator, used on an emergency basis, will not alter the character of the neighborhood nor threaten the health, safety or welfare of the general public.
- Substantial justice will be done by providing a substantial benefit to the applicant with no corresponding harm to the general public.
- As presented, the noise produced when the unit is sporadically engaged should not be problematic and would be buffered by a 6' fence. No neighbors have raised concerns.
- The special conditions of the property that distinguish it from others in the area include a gas meter which precludes placement closer to the house. With a narrow side yard and small backyard, there is no other feasible location in which to place the generator. For these reasons, there is no fair and substantial relationship between the general public purposes of the ordinance in requiring a greater setback and their application to the property. Having a generator is a reasonable use on the property.

2) Case 4-2

Petitioner: Burns F. Barford IV
Property: 635 Maplewood Avenue
Assessor Plan: Map 209, Lot 10
Zoning District: Single Residence B
Description: Temporary storage beyond 30 days.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
1. A variance from Section 10.440, Use #18.23 10.573 to allow a temporary structure to remain from 91 to 180 days where 30 days is the maximum period allowed.

Action:

The Board **acknowledged** the withdrawal of the petition by the applicant.

3) Case 4-3

Petitioners: Bruce C. Teatrowe
Property: 226 Crescent Way
Assessor Plan: Map 212, Lot 128
Zoning District: General Residence B
Description: Replace a shed.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
1. A variance from Section 10.521 to allow a 0' left side yard where 5' is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- A new shed replacing an existing one will not alter the character of the neighborhood nor threaten the health, safety or welfare of the public so that granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed.
 - The request is to replace a shed recently found to encroach on a neighboring property. Granting the variance will result in substantial justice and the value of surrounding properties will not be diminished as both the applicant and general public, as represented by the neighboring property owner, will benefit.
 - Literal enforcement of the ordinance would result in unnecessary hardship. A new survey has shown that the lot line between this property and a neighboring property runs through the existing shed which has to be moved to remedy the encroachment. This is a modest property with an irregular shape so that placement options are limited. Replacing a shed is a reasonable use of the property and the most logical new location has been chosen.
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4) Case 4-4

Petitioners: Brenda J. Bouchard Revocable Trust of 1999, Brenda J. Bouchard, Trustee
Property: 33 Holmes Court
Assessor Plan: Map 101, Lot 12
Zoning District: General Residence B
Description: Install a condenser.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:

1. A variance from Section 10.573 to allow a rear yard of 14' where 5' 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 variance will not be contrary to the public interest and the spirit of the ordinance will be observed. The essential character of the neighborhood is not threatened by adding a condenser nor will the health, safety and welfare of the public be threatened. The condenser is similar to one recently approved by the Board and the proposal incorporates the recommendations of the Historic District Commission.
- Substantial justice will be done as the loss to the applicant by requiring strict conformance to the setback would not be outweighed by any benefit to the public.
- The value of surrounding properties will not be diminished as the area has already absorbed this type of relief with no effect on property values.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property distinguishing it from others in the area. The property straddles both sides of the street, with structures on either side. With the placement of the dwelling structure on the lot, there is no other feasible location in which to place this type of condenser unit, so that there is no fair and substantial relationship between the purposes of the setback requirement in the ordinance, to promote light, air, and emergency access, and their application to this specific property. This is a reasonable use and it is common to see this type of unit in a residential zone.

5) Case 4-5

Petitioners: Nathan P. Moss & Stacey Martinez Moss

Property: 5 Pamela Street

Assessor Plan: Map 292, Lot 119

Zoning District: Single Residence B

Description: Replace an attached garage.

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

1. A variance from Section 10.521 to allow a right side yard of 5'± where 10' is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- A modest expansion will not alter the essential character of the neighborhood nor threaten the health, safety and welfare of the general public so that granting the variance will not be contrary to the public interest and the spirit of the ordinance will be observed.
- In the substantial justice test, the benefit to the applicants if the petition is granted would not be outweighed by any loss to the general public.
- An upgrade to the existing house will not diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship. The way the house is situated on the property would make it difficult to place any needed expansion without requiring relief.

6) Case 4-6

Petitioners: Portsmouth Lumber & Hardware, Clipper Traders, LLC
 Property: 105 Bartlett Street
 Assessor Plan: Currently: Map 157, Lots 1& 2; Map 164 Lots 1, 2, 3 & 4
 Zoning Districts: Office Research (OR), Character District 4-W (CD-4W), Transportation Corridor (TC). Proposed Lots 3 and 4 are proposed to be re-zoned to CD-4W and Proposed Lot 5 is proposed to be re-zoned to CD4W and CD4-L2.
 Description: Adjust lot lines in order to construct new road.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

The required relief under the current zoning includes the following:

Proposed Lot 1:

Variances from Section 10.5A41.10B to allow the following:
 1a) a front lot line buildout of 13.4%± where 50% is required; and
 1b) a front yard of 27.2'± where 10' is the maximum allowed;

Proposed Lot 2:

Variances from Section 10.5A41.10B to allow the following:
 2a) a principal front line buildout of 13.3%± where 50% is required;
 2b) a secondary front lot line buildout of 0'± where 50% is required;
 2c) a principal front yard of 18.2'± where 10' is the maximum allowed; and
 2d) a secondary front yard of 30.2'± where 15' is the maximum allowed;

Proposed Lot 3:

Variances from Section 10.530 to allow the following:
 3a) a front yard of 0'± where 70' is required;
 3b) open space coverage of 9.6%± where 20% is required;

Proposed Lot 4:

Variances from 10.530 to allow the following:
 4a) a lot size of 1.4± acres where 2 acres is required;
 4b) a front yard of 1.7'± where 70' is required;
 4c) a side yard of 3.9'± where 50' is required; and
 4d) a rear yard of 46.9'± where 50' is required; and

Proposed Lot 5:

A variance from Section 10.530 to allow the following:
5a) a rear yard of 33.7'± where 50' is required.

The required relief under the proposed zoning includes the following:

Proposed Lot 3:

Variances from Section 10.5A41.10B to allow the following:
1a) a front lot line buildout of 24.7%± where 50% is required;
1b) open space coverage of 9.6%± where 15% is required;

Proposed Lot 4:

Variances from Section 10.5A41.10B to allow the following:
2a) a front lot line buildout of 29.1%± where 50% is required;
2b) a building footprint of 20,313± s.f. where a maximum of 15,000 s.f. is required; and

Proposed Lot 5:

Variances from Section 10.5A41.10B to allow the following:
3a) a front lot line buildout of 0%± where 50% is required; and
3b) a front yard of 75.6'± where a maximum of 10' 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 relief necessitated by lot line reconfigurations will not alter the essential character of the neighborhood, which includes commercial and residential uses, nor will it threaten the health, safety or welfare of the public so that granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed.
- The loss to the property owner if the petition were denied would result in hampering development of the properties which would outweigh any detriment to the general public if the petition is granted.
- Enhancing and improving the properties will if anything improve the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the properties, which include the irregular shape of the existing lots and their location between the railroad and the pond. The nature of the existing structures are unique in the neighborhood, mixing commercial with residential. Due to these special conditions, there is no fair and substantial relationship between the general public purposes of the setbacks, and other requirements from which relief is sought, and the specific application of the provisions to the properties. Based on the reconfigurations, some properties will be less conforming in some aspects and some properties more conforming. For what is currently before the Board, the existing uses remain a reasonable use of the properties.

7) Case 4-7

Petitioner: Mark McNally
Property: 21 Brewster Street
Assessor Plan: Map 138, Lot 11
Zoning District: General Residence C
Description: Add balconies to upper floor units.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
1. Variances from Section 10.521 to allow the following:
a) a 3.75'± right side yard where 10' is required;
b) 54.6% building coverage where 35% is the maximum allowed; and
c) 4.1% open space where 20% is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The proposed balconies will be an attractive addition to the property that will not alter the essential character of the neighborhood nor alter 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.
- In the substantial justice test, granting the variances will allow an upgrade to the property with no corresponding detriment to the general public.
- Attractive balconies will not diminish the value of surrounding properties.
- The way the building is configured and organized, there is no way to add a desirable and functional amenity without needing to seek relief.

8) Case 4-8

Petitioners: Portsmouth Housing Authority & ED PAC, LLC
Property: 140 & 152 Court Street
Assessor Plan: Map 114, Lots 37 & 38
Zoning District: Character District 4
Description: Construct five story residential building.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
For 152 Court Street:
a) A variance from Section 10.5A41.10C to allow no entrance proposed on the front building façade where an entrance is required every 50';
For 140 Court Street:

- Variances from Section 10.5A41.10C to allow the following
- a) a maximum front lot line buildout of 45.7%± where 50% is required;
 - b) no entrance proposed on the front building façade where an entrance is required every 50’; and
 - c) a ground floor ceiling height of 9’± where 12’ is required (parking deck on ground floor).

Action:

The Board voted to **postpone** the petition to the May meeting as requested by the applicant.

9) Case 4-9

Petitioners: Chad O. & Megan E. Luce
Property: 31 Willow Lane
Assessor Plan: Map 133, Lot 6
Zoning District: General Residence A
Description: Extend rear dormer.
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 10’ rear yard where 20’ 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:

- The essentially residential character of the neighborhood will not be altered by a rear dormer nor will the public’s health, safety or welfare be threatened.
- Substantial justice will be done as the loss to the applicant in requiring strict compliance with the setback requirement would not be outweighed by any benefit to the general public.
- The project will improve the property so that property values in the surrounding area should be enhanced.
- The special conditions of the property so that literal enforcement of the ordinance would result in unnecessary hardship include its corner lot location causing the property to have a Willow Street address but a Spring Street driveway configuration. This is simply a vertical expansion of the existing footprint which will not increase any setback

nonconformity so that there is no fair and substantial relationship between the purpose of the ordinance provision regarding setback requirements and its specific application to the property. A residential use in a residential area is a reasonable use of the property.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:35 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary