

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 July 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, Christopher Mulligan, Arthur Parrott, Alternates Phyllis Eldridge and Chase Hagaman

EXCUSED: John Formella

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I. APPROVAL OF MINUTES

A) June 19, 2018

ACTION: The Minutes were approved with minor amendments.

B) June 26, 2018

ACTION: The Minutes were approved as presented.

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II. OLD BUSINESS

A) Request for Extension regarding property located at 75 Congress Street.

The Board voted to **grant** a one-year extension, through July 19, 2019, of the variances granted July 19, 2016.

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III. OLD BUSINESS – PUBLIC HEARINGS

A) Case 5-9

Petitioner: Michael De La Cruz
 Property: 75 (63) Congress Street
 Assessor Plan: Map 117, Lot 5
 Zoning District: Character District 5 and the Downtown Overlay District
 Description: Construct a basement indoor parking facility
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:

1. Variances from Section 10.1114.20 to allow the following:
 - a) eight parking spaces with less than the required dimensions; and
 - b) a 12'± wide maneuvering aisle where 14' is required.

Action:

The Board voted to **grant** a variance for request b) to allow a 12'± wide maneuvering aisle) and to **deny** a variance for request a) to allow eight parking spaces with less than the required dimensions.

Review Criteria:

A variance for request b) was granted for the following reasons:

- Granting a variance for a 12'± wide maneuvering aisle would not be contrary to the public interest and the spirit of the ordinance would be observed as a narrower maneuvering aisle with appropriate gates will not present any threat to the public's health, safety or welfare.
- Substantial justice will be done as there will be a clear benefit to the applicant in being able to utilize the lower level for a parking facility with no corresponding harm to the general public.
- No evidence was presented that a reduction in maneuvering aisle width would diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property including a large older structure with a small rear setback and design challenges. Due to the special conditions, there is no fair and substantial relationship between the purposes of the ordinance provision regarding the width of the maneuvering aisle and its specific application to the property. The proposed use is a reasonable one.

A variance for request a) was denied for the following reasons:

- All the criteria necessary to grant a variance were not met.
- The special conditions of the property do not extend to a hardship justifying granting all of the proposed parking spaces where a number of the spaces require relief from the dimensional requirements. The property was previously granted relief from requiring on-site parking.

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IV. NEW BUSINESS – PUBLIC HEARINGS

1) Case 7-1

Petitioner: LCSG 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 in three buildings.
 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:

- a) a lot area per dwelling unit of 2,363± s.f. where 3,500 s.f. is required;
- b) a right side yard of 5'± where 10' is required;
- c) a left side yard of 5'4" ± where 10' is required;
- d) a rear yard of 10'± where 20' is required; and
- e) 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:

- Removing the barn and reworking the combined properties with a new garage and appropriate parking will not alter the essential character of the neighborhood and adding an additional unit 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.
- In the substantial justice balance test, granting the variances would result in a benefit to the applicant with no harm to the general public.
- There was no indication that the value of surrounding properties would be diminished by what is proposed and the neighborhood would be improved by removal of the barn and neglected house.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. The combined lots are larger than most adjacent properties. A duplex already exists on the lots which contributes to the lot area per dwelling unit. The proposal improves non-conforming setbacks and the size and scale of the structures will be a reasonable use of the property.

2) Case 7-2

Petitioner: Bromley Portsmouth LLC, RCQ Portsmouth LLC c/o Quincy & Co Inc.
Property: 1465 Woodbury Avenue
Assessor Plan: Map 216, Lot 3
Zoning District: Gateway 1
Description: Install wall signage
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.1251.20 to allow 246± s.f. of wall signs where 200 s.f. is the maximum allowed.

Action:

The Board voted to **grant** the petition as presented and advertised, except with the following **stipulation**.

Stipulation:

- The granted amount of wall signage will be 230.7± s.f. where 200 s.f. is the maximum allowed.

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 commercial character of the neighborhood will not be altered to any appreciable extent by what is being proposed. Nor will the health, safety or welfare of the public be threatened in any way.
- Granting the variance will result in substantial justice as the loss to the applicants if they were required to have a smaller sign would not be outweighed by any corresponding gain to the general public. What is being proposed is not an extremely significant change from what is allowed.
- The surrounding properties will not be impacted in any way by the proposed signs so that the value of surrounding properties will not be diminished by the granting of the variance.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include its positioning offset from the main road. The purpose of signage is to direct motorists and the public to the establishment and a variance will allow that goal to be achieved. There is no pylon sign on the property and there are other large signs for adjacent businesses with no deleterious effect so that there is no fair and substantial relationship between the purpose of the sign ordinance and its specific application to this property. A commercial sign in a commercial district where signs are allowed is a reasonable use of the property.

3) Case 7-3

Petitioners: Byron D. And Sophie M. Matto
 Property: 17 Fields Road
 Assessor Plan: Map 170, Lot 8
 Zoning District: Single Residence B District
 Description: Add a second story and gable roof
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances from Section 10.521:

- a) a front yard of 17’11” ± where 30’ is required;
- b) a right side yard of 3’11” ± where 10’ is required; and
- c) building coverage of 25.5%± where 20% is the maximum allowed; and
- d) 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.

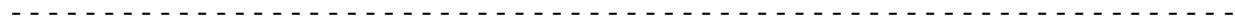
Action:

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

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest and the spirit of the ordinance will be observed. The addition is an enhancement to the property that will fit into the area and will not alter the essential characteristic of the neighborhood nor threaten the health, safety or welfare of the general public.
- Substantial justice will be done as the benefit to the applicant from the granting the variance will not be outweighed by any detriment to the public or abutters.
- The value of surrounding properties will not be negatively impacted as a tasteful home should increase values with minimal impact on the neighbors by the added floor space.
- There are special conditions of the property that result in unnecessary hardship including a side of the lot which has a significant angle with the existing house sited up against that angle. The house on the adjacent lot is sited such that the impact of reduced setbacks is minimized. Given these conditions, additional variances would be needed for any type of expansion.



4) Case 7-4

Petitioner: McDonalds Corporation c/o The Napoli Group
 Property: 1000 Lafayette Road
 Assessor Plan: Map 253, Lot 12
 Zoning District: Gateway 2 District
 Description: Replace menu boards in the drive-through

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) from Section 10.1223.10 to allow animated signs where they are not allowed; and
b) from Section 10.835.22 to allow illuminated menu boards or other signs associated with the drive-through facility that are not shielded from public streets and residential properties.

Action:

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

Stipulations:

- The animation would be limited to the following, both of which support drive-through ordering :
a) a primary menu board; and
b) a pre-order sign
- No other signs on the property are allowed to include animation.

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 signage will not alter the essential character of the neighborhood as the business and existing signage are long-established with surroundings that have changed very little. There will also be no threat to the public health, safety or welfare.
- Substantial justice will be done as granting the variances will benefit the applicant with no detriment to the general public. The signs will not be obvious to most of the motorists as Mirona Road has light traffic and motorists are generally focused on a nearby traffic signal.
- Adding animation to the menu board signs will not diminish the value of the surrounding properties which have changed very little over the years.
- Literal enforcement of the ordinance would result in unnecessary hardship as the property is a corner lot and, the way it is situated, eastbound traffic is prevented from getting close to the restaurant. The lot and road are wide and the restaurant is situated in the middle of the lot. With the resulting sight lines, any animation on the menu boards would not be a distracting factor. Given these conditions, there is no fair and substantial relationship between the general purposes of the ordinance provisions and their application to the property.

5) Case 7-5

Petitioner: Patricia A. Wallace Revocable Trust, Patricia A. Wallace, Trustee
 Property: 50 Sunset Road
 Assessor Plan: Map 153, Lot 13
 Zoning District: Single Residence B District Description: Install an 8'± x 8'± shed
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
 a) from Section 10.573.10 to allow a shed with a 0'± right 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:

- Granting the variance 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 be altered by addition of a small shed, nor will the public health, safety or welfare be threatened.
- Substantial justice will be done by allowing needed storage for the applicant with no corresponding detriment to the general public.
- Granting a variance for a shed in this location will not diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to a special condition of the property. There is a slope to the driveway which limits the placement of a shed without requiring a variance.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:42 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary