

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 August 21, 2018** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheaume, John Formella, Peter McDonell, Arthur Parrott, and Alternate Chase Hagaman

EXCUSED: Vice Chairman Jeremiah Johnson, Jim Lee, Christopher Mulligan, Alternate Phyllis Eldridge

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I. APPROVAL OF MINUTES

A) July 17, 2018

ACTION: The Minutes were approved with a minor amendment.

B) July 24, 2018

ACTION: The Minutes were approved with a minor amendment.

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II. NEW BUSINESS – PUBLIC HEARINGS

1) Case 8-1

Petitioner: Petition of Islington Street, LLC, (CVS Pharmacy), owner
Property: 674 Islington Street
Assessor Plan: Map 155, Lot 3
Zoning District: Character District 4-W.
Description: Install wall signage.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) from Section 10.1251.20 to allow four wall signs that each exceed 40 square feet;

- b) from Section 10.1261.30 to allow internal illumination in the Historic District;
- c) from Section 1251.10 to exceed the maximum aggregate signage available;
and
- d) from Section 10.1271 to allow signage where there is no frontage or public entrance.

Action:

The Board voted to **postpone** the petition to the September meeting at the request of the applicant.

2) Case 8-2

Petitioners: Noble Island Condominium Association, owner, and William R. Buckley, Jr. Revocable Trust and Rebecca Gould 1996 Revocable Trust (Units 9L and 9R), applicants

Property: 500 Market Street, Units 9L and 9R

Assessor Plan: Map 120, Lots 2-9L and 2-9R

Zoning District: Character District 4-L1

Description: Bed and Breakfast with two guest rooms

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following special exception:
a) from Section 10.440, Use #10.21.

Action:

The petition was withdrawn.

3) Case 8-3

Petitioners: Petition of Pease Development Authority, owner, and Wentworth-Douglass Hospital, applicant

Property: 121 Corporate Drive

Assessor Plan: Map 303, Lot 8

Zoning District: (Pease) Airport Business Commercial

Description: Illuminated wall sign and monument sign

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 306.01(d) to allow 391.7 square feet of sign area where 200 square feet is the maximum per lot.

Action:

The Board voted to **postpone** the petition to the September meeting at the request of the applicant.

4) Case 8-4

Petitioners: Petition of Travis J. Lavoie and Ariana L. Odom-Truelson, owners
Property: 307 Dennett Street
Assessor Plan: Map 160, Lot 41
Zoning District: General Residence A
Description: Replace existing barn with attached garage with living space above.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) from Section 10.521 to allow a 5.6± foot side yard where 10 feet is required; and
b) 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 an existing structure, while a change to the property, will not alter the essential character of the neighborhood nor will the health, safety or welfare of the public be threatened. For these reasons, granting the variances will not be contrary to the public and the spirit of the ordinance will be observed.
- Substantial justice will be done as granting the variances will benefit the applicant with no detriment to the general public. The neighbor most affected will also benefit by the retention of the existing landscaping and flower bed.
- Granting the variances will not diminish the value of surrounding properties and replacing a dilapidated barn with a tasteful garage will increase values.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property including a narrow lot with the existing structures located in such a way that the proposed garage could not be accommodated on the side. For these reasons, 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 8-5

Petitioners: Petition of Stefanie A. Flavin & Brendan D. Flavin, owners
Property: 460 Dennett Street
Assessor Plan: Map 160, Lot 24
Zoning District: General Residence A
Description: Garage and mudroom/entry connector

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 5± foot secondary front yard where 15 feet is required;
- b) a 16± foot rear yard where 20 feet is required;
- c) a 6± foot right side yard where 10 feet is required; and
- d) 49%± building coverage; as well as where 25% is the maximum allowed; and the following variance from Section 10.321 to allow the following:
- e) an existing 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. This neighborhood contains mostly single-family homes and this is not a major change that would rise to the level of altering the essential character of the neighborhood or threatening the health, safety or welfare of the public.
- Substantial justice will be done as there would be a substantial loss to the applicant if the request is denied with no corresponding benefit to the general public.
- There is no evidence that the value of surrounding properties would be diminished by the project and several neighbors testified in support.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special nature of a corner lot property. The requested relief is from the requirements for building coverage and setbacks, which seek to avoid a negative impact on light and air. With the openness provided by a corner lot, these concerns are mitigated. The proposed use is reasonable as the property will continue to contain a single family use, which is permitted in this district.

6) Case 8-6

Petitioner: Petition of Amanda R. Blanchette, owner
Property: 1462 Islington Street
Assessor Plan: Map 233, Lot 86
Zoning District: Single Residence B
Description: Attached garage with living space above
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 521 to allow the following:

- a) a 10 foot rear yard where 30 feet is required;
- b) a 3' right side yard where 10' is required;
- c) 26% building coverage where 20% is the maximum allowed;

- and a variance from Section 10.321 to allow the following:
- d) an existing nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Action:

The Board voted to **postpone** the petition to the September meeting at the request of the applicant.

7) Case 8-7

Petitioners: Petition of Shipwatch Condominium Association, owner, and 51 Ceres, LLC, applicant
Property: 129 Market Street, Unit A
Assessor Plan: Map 106, Lot 35-A
Zoning District: Character District 5
Description: Convert commercial space to a live/work unit.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.1112.311 to allow 0 parking spaces where 1 space 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. The proposed conversion of this unit, resulting in relief needed from the parking requirements, is very much in keeping with how the neighborhood has evolved over the past years so that the essential character of the neighborhood will not be altered, nor is there any threat to the health, safety or welfare of the public.
- Substantial will be done. Granting the variance will result in a benefit to the applicant with no offsetting harm to the general public. Except for the addition of a door, there will be no exterior physical change to the property so there should be no public interest involved.
- The value of surrounding properties will not be diminished. Adjacent buildings contain similar units and the proposed use, for which the parking relief is sought, will fit in smoothly with no adverse effect on any surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship. The ordinance does not require a parking space for the current commercial use but one would be required if the unit is converted to include a residential use. With no land available, similar to properties along neighboring streets, the applicant cannot provide the parking

space now required so that there is no fair and substantial relationship between the purpose of the ordinance provision and its specific application to this property.

8) Case 7-8

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 252± square feet of wall signs where 200 square feet is the maximum allowed.

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 proposed sign is not significantly larger than that approved at a previous meeting and is still substantially shorter than other signs in the same shopping center so that the essential character of the neighborhood will not be altered. No threat will result to the health, safety or welfare of the public and the sign will not draw attention from the road in an injurious way.
- Substantial justice will be done as the applicant will benefit from a sign that needs, for brand consistency, to have a certain height to width ratio, with no corresponding detriment to the general public.
- There is nothing in the adjusted size of the sign that will diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship. The building sits fairly far back from the road which creates a hardship if the sign is not large enough to be seen from the roadway so that there is no fair and substantial relationship between the purpose of the ordinance provision and its application to this property. The proposed use is reasonable and appropriate to the area.

9) Case 8-9

Petitioners: Petition of David Simpson and Janet Zerr, owners
Property: 65 Rogers Street
Assessor Plan: Map 115, Lot 2
Zoning District: Mixed Residential Office
Description: Replace detached garage and shed with attached garage.

- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 521 to allow the following:
- a) a 4.5± foot left side yard where 10 feet is required;
 - b) a 14.2± foot rear yard where 15 feet is required;
and a variance from Section 10.321 to allow the following:
 - c) an existing 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. Modifying an existing home in keeping with similar homes in the area will not alter the essential character of the neighborhood. Nothing that is proposed will threaten the health, safety or welfare of the public.
- Substantial justice will be done as the benefit to the applicant will not be outweighed by any harm to the general public.
- Removing a dilapidated shed while locating the replacement structure further from the property line will improve the value of this property and should increase the value of surrounding properties. While this approval will allow some encroachment on the left side of the lot, the net effect to the property on that side is minimal
- Literal enforcement of the ordinance would result in unnecessary hardship. With a structure placement mirrored by the neighboring property, the house is situated well to the front and left of the lot which drives the applicants' need for relief. Due to this condition, there is no fair and substantial relationship between the general public purposes of the ordinance provision and its specific application to the property. The use is a reasonable one in this area.

10) Case 8-10

- Petitioners: Petition of William Brinton Shone and Tatjiana Rizzi Shone, owners
Property: 11 Elwyn Avenue
Assessor Plan: Map 113, Lot 27
Zoning District: General Residence A
Description: Infill addition and dormer
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 521 to allow the following:
- a) a 5± foot right side yard where 10 feet is required;
 - b) 40% building coverage where 25% is the maximum allowed;
and a variance from Section 10.321 to allow the following:

- c) an existing nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance.

Action:

The Board voted to **table** the petition to the September 18th meeting so that the applicant can resubmit information about the new footprint and dimensions encompassing the main house and garage and, if necessary, advertise a revised petition including any additional relief needed.

11) Case 8-11

- Petitioners: Petition of Lucky Thirteen Properties, LLC, owner, and Opendell Journey, LLC, applicant
- Property: 361 Islington Street
- Assessor Plan: Map 144, Lot 23
- Zoning District: Character District 4-L2
- Description: Operate a food truck style establishment.
- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
 - a) from Section 10.440 to allow a food truck style establishment.

Action:

The Board voted to **table** the request to the September 18th meeting so that the applicants can work with the Planning Department regarding issues raised at this hearing and specifically work to develop a complete plan and information packet including the number of food trucks, issues of traffic, light and noise control, and specific barriers between seating areas and parking spots and access-ways, as well as determining whether evening hours are appropriate.

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III. OTHER BUSINESS

- A) Board of Adjustment Rules & Regulations

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary