

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 September 18, 2018** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheame, Vice Chairman Jeremiah Johnson, John Formella, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, and Alternates Phyllis and Chase Hagaman

EXCUSED: None

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I. APPROVAL OF MINUTES

A) August 21, 2018

Action: The Minutes were approved with minor amendments.

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II. PUBLIC HEARINGS - OLD BUSINESS

A) Case 8-1

Petitioner: Petition of Islington Street, LLC, (CVS Pharmacy)

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.

Note: This petition was postponed to the following month at the August 21, 2018 meeting.

Action:

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

B) Case 8-10

Petitioners: Petition of William Brinton Shone and Tatjana 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;
- c) *a 14'10" rear yard where 20' is required.*
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.

(Note: This petition was tabled at the August 21, 2018 meeting and has been amended by the addition of item c) above in italics.

Action:

After voting to take the petition from the table, the Board then 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 thoughtful design of this upgrade respects the existing architecture and neighborhood while adapting the structure to modern needs. The public's health, safety or welfare will not be threatened or any public rights injured.
- Substantial justice will be done as the benefit to the applicant in modernizing an old house in a tasteful and appropriate way will not be outweighed by any detriment to the general public.
- The value of surrounding properties will not be diminished. The existing house has suffered from benign neglect and updating it, while adding a tasteful addition, will benefit both the owners and the neighborhood.

- Literal enforcement of the Ordinance would result in unnecessary hardship. The property was purchased with the intent of a tasteful renovation and expansion with no harm to the public or neighbors. The applicants have reworked their proposal at the request of the Board lessening the impact on a neighbor's light and air. With the changes, there is no fair and substantial relationship between the general public purposes of the ordinance provisions and their specific application to the property.

C) 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.

Note: This petition was tabled at the August 21, 2018 meeting.

Action:

After voting to take the petition from the table, the Board then voted to **grant** the petition as presented and advertised with the following stipulations:

Stipulations:

- That only one food truck will be allowed on the property.
- That the power source for the food truck will be the electrical supply in the existing building and not from a generator or engine in the truck
- That the food truck may only operate during the following times: after 11 a.m. on any day of the week; before 8 p.m. on Sunday through Thursday; and before 10 p.m. on Friday and Saturday.

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 this eclectic neighborhood will not be altered. The lot will retain the look of the former old gas station but with a food truck on it. There will be no threat to the public's health, safety or welfare and no injury to public rights. The proposal requires appropriate technical review of the amended site plan which will address details concerning parking, traffic ingress and egress, public safety and similar issues.

- Substantial justice will be done as the applicants will benefit by making use of the property. This property is in a zone that allows commercial uses and the proposal is a minimal development of the property consistent with or less intense than other allowed commercial uses.
- Granting the variance will not diminish the value of surrounding properties. The intensity of the proposed use is consistent with or less than other uses which could reasonably be expected for the property.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property, which include a difficult site that is limited in its development capability and options. For these reasons, there is no fair and substantial relationship between the purposes of the Ordinance provision and its application to the property. A restaurant use is allowed in this district and a food truck is a reasonable use in the Islington Street Corridor.

D) 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.

Note: This petition was postponed at the August 21, 2018 meeting.

Action:

The Board voted to **recommend** to the Pease Development Authority that the variance be granted as presented and advertised.

Review Criteria:

The Board determined that all the criteria necessary to approve a variance under the Pease Development Authority Zoning Ordinance were met. Noting that there were similar sites within the Pease/Airport Districts and the proposed use was appropriate to the property, the Board made the following specific findings:

- The proposed signage will not have any adverse effect on, or diminishment of, surrounding properties. The proposed monument sign will be a positive addition and the wall sign will have no effect due to its orientation to the highway. The properties outside of the Pease/Airport Districts are large stores on the other side of the turnpike which will not be impacted.
- The proposed signs will benefit the public interest by directing the public to the facility.

- The denial of the variance would result in unnecessary hardship to the applicant as the proposal includes multiple buildings on combined lots and the signage is needed by the applicant to establish their operation.
- Substantial justice will be done as the hardship to the applicant if the petition were denied would not be balanced by any corresponding benefit to the general public.
- The signage for the proposed use will not be contrary to the spirit of the zoning regulations as the multiple lots, if not combined, could have separate signs equal to or exceeding that proposed for the combined lots.

E) 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.

Note: This petition was postponed at the August 21, 2018 meeting.

Action:

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

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III. PUBLIC HEARINGS - NEW BUSINESS

1) Case 9-1

Petitioners: Petition of James C. Lucy Revocable Trust, James C. & Kimberley A. Lucy, Trustees
 Property: 127 & 137 High Street
 Assessor Plan: Map 118, Lots 20 and 21
 Zoning District: Character District 4-L1.
 Description: Change a section to office use, add a second floor rear addition and construct a single-family home.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:

- a) from Section 10.642 to allow a residential use in the ground floor in the Downtown Overlay District;
- b) from Section 10.5A41.10A to allow a ground story height less than 11 ft.; and
- c) from Section 10.5A41.10A to allow a house in the Downtown Overlay District.

Action:

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

2) Case 9-2

Petitioners: Petition of Brendan A. White & Jessica Paterson
Property: 119 Union Street
Assessor Plan: Map 145, Lot 70
Zoning District: General Residence C
Description: Construct a dormer
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.521 to allow a 0'± left side yard where 10' 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:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. Houses in this area are in close proximity, many with dormers, upper floors and tight quarters so that a small dormer will not alter the character of the neighborhood, nor threaten the health, safety or welfare of the public.
- Substantial justice will be done as granting the variances will benefit the applicant with no detriment to abutters or the general public.
- A more usable bathroom will increase the value of this property with no diminishing effect on the values of the surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to a special condition of the property. The existing home is located against the left property line so that even a small dormer, necessary to bring a bathroom to reasonable functionality, requires relief from the ordinance. For that reason, there is no fair and substantial relationship between the purpose of the ordinance provision and its specific application to the property.

3) Case 9-3

Petitioners: Bonnie A. Konopka & Stephanie Ross
Property: 5 Simonds Road
Assessor Plan: Map 292, Lot 58
Zoning District: Single Residence B
Description: Rear addition
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.521 to allow a 16' ± rear yard where 30' is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- This request is a technical correction to a previously-approved application which will not alter the essential character of the neighborhood nor threaten the health, safety or 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.
- Substantial justice will be done as the loss to the applicants would far outweigh any benefit to the public if the applicants were required to strictly adhere to the setback requirement.
- Granting the variance will not diminish the value of surrounding properties. An almost identical project was already approved, and the “as-built” structure for which the applicants are seeking additional relief makes little difference to the overall project.
- Literal enforcement of the ordinance would result in unnecessary hardship. The addition has been placed in the only realistic location and trying to maintain the 30' setback would push the structure on top of the original dwelling so that there is no fair and substantial relationship between the purpose of the setback ordinance and its specific application to the property.

4) Case 9-4

Petitioner: Monarch Family Trust of 2018, Samantha D. King, Trustee
Property: 45 Miller Avenue
Assessor Plan: Map 129, Lot 21
Zoning District: General Residence A
Description: Construct basement and rear house access structures. Expand an existing deck.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.521 to allow 28% ± building coverage where 25% 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:

- The proposed modest rear access improvements will not alter the essential characteristics of the neighborhood nor threaten the public health, safety or welfare 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 there will be no gain to the public if the petition is denied while there would be a clear loss to the applicant in not being allowed to improve the overall functionality and safety of the property.
- There is no evidence that these rear access changes will diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. The existing structure is currently nonconforming with regard to building coverage and the proposed changes will bring the property into greater conformance so that there is no fair and substantial relationship between the provisions of the ordinance and their specific application to the property. The proposed use is a reasonable use of the property.

5) Case 9-5

Petitioners: Logan Properties LLC, owner, Doug & Dan LLC, applicant
 Property: 403 Deer Street #7-13
 Assessor Plan: Map 118, Lot 26-3
 Zoning District: Character District 4-L1
 Description: Operate a ten-room inn.
 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 Use #10.30 to allow an Inn where the use is not permitted in the zoning district.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The proposed inn will be in keeping with the character of the neighborhood and will pose no threat to the public health, safety or welfare 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 granting the variance will benefit the applicant with no harm to the general public. While there will be one less restaurant in the immediate vicinity, there are a number of nearby restaurants to serve the public.
- Granting the variance will not diminish the value of surrounding properties. The applicants have a successful history in other locations and a number of neighbors indicated support for the proposal.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. Granting the variance will allow the property to be used in a manner more in keeping with the nature of the neighborhood so that there is no fair and substantial relationship between the general public purposes of the ordinance and their specific application to the property. The property is in a zone where a similar bed and breakfast use is allowed by special exception and an abutting property contains a much more impactful hotel use, therefore this is a reasonable use for the property.

6) Case 9-6

Petitioner: 335 Maplewood Ave LLC
Property: 335 Maplewood Avenue
Assessor Plan: Map 141, Lot 26
Zoning District: Character District 4-L1.
Description: Replace existing rear addition
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.521 to allow a 3.4'± 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:

- The essential character of the neighborhood will not be altered by an existing setback, nor will the health, safety or welfare of the public be threatened 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 loss to the applicant if required to be in strict conformance with the ordinance would far outweigh any possible detriment to the general public.
- A tasteful update of the property will enhance the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include an existing nonconforming setback that distinguishes it from others in the area as well as an irregularly shaped lot and configuration. Due to the special conditions, there is no fair and substantial relationship

between the purpose of the setback requirement in the ordinance and its specific application to the property. The use is a reasonable one, permitted in this district.

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IV. OTHER BUSINESS

A) Board of Adjustment Rules & Regulations

Action:

The Board discussed several items, which will be incorporated into the amended Rules & Regulations and presented to the Board at the next meeting for final adoption and distribution.

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V. ADJOURMENT

It was moved, seconded and passed to adjourn the meeting at 10:30 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary