

**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 October 16, 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, and Alternates Phyllis Eldridge and Chase Hagaman

**EXCUSED:** John Formella

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**I. APPROVAL OF MINUTES**

A) September 18, 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 at the August 21, 2018 and September 18, 2018 meetings.*

Action:

The Board **acknowledged** that, as a result of the Historic District Commission’s actions in their consideration of the project, the relief specified in item b) was no longer needed. The Board voted to **grant** the petition (items a, c, and d) 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 essential character of the neighborhood will be unchanged and the health, safety and welfare of the public will not be threatened in any way.
- Substantial justice will be done by granting the variances. The loss to the applicant if the request was denied would not be outweighed by any gain to the general public. The current signage is more nonconforming so the proposed signage will represent a gain to the public.
- Granting the variances will not diminish the value of surrounding properties. The changes, which will be an improvement, will not be noticeable to most including passersby, so that the likely effect on surrounding property values will be a positive one.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include the nonconformance of the pre-existing signage and the property’s location across an intersection, with frontage on two rights-of-way and access through a driveway parking area that would benefit from signage. Due to these special conditions, there is no fair and substantial relationship between the purposes of the sign ordinances from which relief is required and their specific application to this property. The use is a reasonable use of the property and a commercial use that requires signage.

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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 and September 18, 2018 meetings.*

Action:

The Board **acknowledged** that the petition had been withdrawn by the applicant.

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C) 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.;  
c) from Section 10.5A41.10A to allow a house in the Downtown Overlay District; and  
d) from Section 10.5A41.10A to allow 2,416± s.f. lot area per dwelling unit where 3,000 s.f. per dwelling unit is required.  
*Note: This petition was postponed at the September 18, 2018 meeting and amended by the addition of item d).*

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. While in the Downtown Overlay District, the street is mostly residential and residential uses are allowed on the property so that the proposed project will not alter the essential character of the neighborhood nor threaten the public’s health, safety or welfare.
- Substantial justice will be done as the applicants will be able to make full use of the property which will benefit them with no harm to the general public.
- The value of surrounding properties will not be diminished by the granting of these variances and the house with the most historical significance will be preserved and

largely intact. No relief is needed for building height, coverage or setbacks so that any effect on either property or any other properties will not result from the variances requested and granted.

- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. These include the siting of the property with intense uses on one side and a large open space property on the other, as well as the placement of buildings on the property. Considering the entire two-lot project area, there is one house with a small footprint and one house, with mixed uses, with a substantially larger footprint near the front of the lot with a large open space at the back. Given these conditions there is no fair and substantial relationship between the purposes of the ordinance and the specific application of those provisions to the property. Striking a balance between property rights and the interests of surrounding abutters, this is a reasonable use of the property.

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**III. PUBLIC HEARINGS - NEW BUSINESS**

1) Case 10-1

Petitioners: Petition of Sandra L. and James Pantelakos  
 Property: 5 Meadow Road  
 Assessor Plan: Map 236, Lot 79  
 Zoning District: Single Residence B  
 Description: Install above-ground pool with decking.  
 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 30%± building coverage where 20% 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 variances will not be contrary to the public interest and the spirit of the ordinance will be observed. A seasonal above-ground pool located in the middle of a large backyard abutting the woods will not alter the essential character of the neighborhood nor threaten the public health, safety or welfare of the public.
- Substantial justice will be done as there will be a clear benefit to the applicant if the petition is granted with no harm to the general public.
- The project will be an upgrade to the property so that the value of surrounding properties will be positively affected.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property which include the small amount of available square

footage and a uniquely situated backyard in which a structure can be located. This is a reasonable proposal which will not impact neighboring properties or the public so that there is no fair and substantial relationship between the general purposes of the ordinance and their specific application to the property.

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2) Case 10-2

Petitioner: Petition of Strawberry Banke Inc.  
Property: Off Marcy Street  
Assessor Plan: Map 104, Lot 7  
Zoning District: Mixed Residential Office  
Description: Install a 4' ± x 4' ± freestanding sign.  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:  
a) from Section 10.1243 to allow more than one freestanding sign on a lot;  
b) from Section 10.1253.10 to allow a freestanding sign 8' ± in height where 7' is the maximum height allowed; and  
c) from Section 10.1253.10 to allow a 1' ± setback where 5' is the minimum setback required.

Action:

The Board voted to **grant** the petition as presented and advertised, noting that the approval was for this specific sign at the location as presented.

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 additional sign will help direct the public, especially visitors, to their destination.
  - Substantial justice will be done as granting the variances will benefit the applicant with no corresponding harm to the general public. The placement of the sign closer to the road will facilitate easier identification and the added height will not block any sight lines.
  - The value of surrounding properties will not be diminished by the addition of this free-standing sign
  - The extensive perimeter of the site is a special condition of the property creating a hardship and another sign on the property will be helpful to direct people to the site. It is reasonable to provide good direction on a large property.
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3) Case 10-3

Petitioners: Petition of Frank Cavalieri et al  
Property: 179 Woodbury Avenue  
Assessor Plan: Map 162, Lot 57  
Zoning District: General Residence A  
Description: Lot line revision.  
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 lot area and lot area per dwelling unit of 5,467 where 7,500 s.f. is required; and  
b) 59.58' of street frontage where 100' is the minimum 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 lot and unit will continue with no change in density so that the essential character of the neighborhood will not be altered and a lot line revision, which will not be perceivable to the general public, will not threaten the public health, safety or welfare.
- Substantial justice will be done as the benefit to the applicant in improving the lot's alignment relative to the adjoining lot will not be outweighed by any detriment to the general public.
- There will be no effect on properties other than the subject property and abutting property so that the value of surrounding properties will not be diminished.
- Literal enforcement of the ordinance would result in unnecessary hardship. The hardship is due to the special conditions of the lot with the buildings and hardscapes all sited perpendicular to Woodbury Avenue while the property line is skewed. This has created a triangular space in the back with an awkward juxtaposition for the yard. The request is a reasonable one.

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4) Case 10-4

Petitioners: Petition of Richard J. and Myrinda A. Solito  
Property: 2 Stark Street  
Assessor Plan: Map 161, Lot 41  
Zoning District: General Residence A  
Description: Install an 8'± tall side yard fence and a 7'± x 24'± front farmers porch.  
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 0'± left side yard where 10' is required;

- b) from Section 10.521 to allow a 6' ± front yard where 15' is required; and
- c) 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:

- Changes to a property on a less travelled street will not be contrary to the public interest and the spirit of the ordinance will be observed.
- Substantial justice will be done as the benefit to the applicants if the variances are granted will not be outweighed by any harm to the general public.
- The value of surrounding properties will not be diminished by the addition of an attractive porch and the proposed fence will improve privacy for the applicant and abutter.
- Literal enforcement of the ordinance would result in unnecessary hardship. There is a slope between abutting properties necessitating a higher fence to ensure adequate privacy. Additionally, there is a substantial distance between the front property line and the location of the street, lessening the apparent impact of any encroachment into the front yard. Due to these special conditions, there is no fair and substantial relationship between the general purposes of the ordinance provisions and their specific application to this property.

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5) Case 10-5

Petitioners: Aaron J. and Jill Ann Grueter  
Property: 69 New Castle Avenue  
Assessor Plan: Map 101, Lot 49  
Zoning District: General Residence B  
Description: Construct a 72± s.f. rear addition.  
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 38%± building coverage where 30% is the maximum allowed; 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. The essential character of the neighborhood will not change, nor will the health, safety or welfare of the public be harmed by a modest increase in building coverage.
- Substantial justice will be done as the loss to the applicant would outweigh any gain to the public by requiring strict compliance with the ordinance regulation.
- Granting the variances will not result in the diminution in the value of surrounding properties and what is being proposed will have no negative impact on the most directly affected neighbor.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include the built environment on the property in which there is no appropriate kitchen. The applicant is attempting to upgrade and modernize the property with a livable kitchen so that there is no fair and substantial relationship between the general public purposes of the ordinance provision and their application to this property. The proposed use is a reasonable one, a residential use in a residential neighborhood.

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**IV. OTHER BUSINESS**

A) Board of Adjustment Rules & Regulations

Action:

The Board voted to accept and approve the changes to the Board of Adjustment Rules and Regulations.

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**V. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 11:05 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary