

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 May 21, 2019** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheaume, Vice Chairman Jeremiah Johnson, John Formella, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge, Alternate Chase Hagaman

EXCUSED: None

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I. APPROVAL OF MINUTES

A) April 16, 2019

Action: The Minutes were approved with minor corrections.

B) April 23, 2019

Action: The Minutes were approved with minor corrections.

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II. PUBLIC HEARINGS – OLD BUSINESS

A) Case 4-1

Petitioners: Donna L. Acox Revocable Trust, Donna L. Acox, Trustee

Property: 14 Mt. Vernon Street

Assessor Plan: Map 111, Lot 26

District: General Residence B

Description: 6' x 12' Shed

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

a) from Section 10.573.10 to allow a 1.5' right side yard where 5' is

- required;
- b) from Section 10.521 to allow 38% building coverage where 30% is the maximum allowed; and
- c) from Section 10.521 to allow 22% open space where 25% 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 building coverage and open space requests were modest and the placement of the shed will not alter the essential character of the neighborhood nor negatively impact the health, safety or welfare of the public.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be outweighed by any corresponding gain to the general public.
- The proposed shed is a minimal structure being placed in an appropriate position on the property so that the value of surrounding properties will not be diminished.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. These include a long lot, narrower than its nearest neighbors, especially the right-side neighbor where the setback relief is required. The current built environment also drives the placement of the shed in the proposed location. Due to these special conditions, there is no fair and substantial relationship between the provisions of the ordinance and their specific application to the property. The use is a reasonable one, an accessory use that is permitted in a residential zone.

B) Case 4-2

Petitioners: Vaughan Street Hotel LLC
 Property: 299 Vaughan Street
 Assessor Plan: Map 124, Lot 10
 District: Character District 5 and the Downtown Overlay District
 Description: Signage and lighting for a proposed hotel
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:

- a) Signs #1 and #2, from Section 10.1251.20 to allow two wall signs (124± s.f. and 70± s.f.) where 40 s.f. is the maximum allowed for a individual wall sign;
- b) Sign #5, from Sections 10.1271.10 and 10.1271.20 to allow a sign on an exterior wall that does not face a street and is on the side of the building without a public entrance;
- c) Sign #2, from Section 10.1261.30 to allow internal illumination where only external illumination is allowed for signs in the Historic District;

- d) Accent Light #1, from Section 10.1144.63 to allow lights above the height of 25' on the building surface; and
- e) Light L20, from Section 10.1144.60 to allow a luminaire to be attached at 32'9" ± above grade where the maximum height allowed is 20' above grade.

Action:

The Board voted to remove the petition from the table and **reopen** the public hearing. The Board **clarified** that the 70± s.f. wall sign listed in the agenda as Sign #2 under Item a) should correctly be identified as Sign #5. After further discussion, the Board voted to **grant** the following:

- Item a), Sign #1 - a 124± s.f. wall sign.
- Item c), Sign #2 - allowing internal illumination.
- Item e), Light L20 - allowing a luminaire at 32'9" ± above grade.

The Board voted to **deny** the following:

- Item a), Sign #5 (incorrectly designated in the agenda as Sign #2) – a 70± s.f. wall sign.
- Item b), Sign #5 to allow a sign on an exterior wall that does not face a street and is on the side of the building without a public entrance;
- Item d), Accent Light #1 to allow lights above 25' on the building surface.

Review Criteria:

*The above items [Item a), Sign #1, and Items c) and e)] were **granted** for the following reasons:*

- Granting these variances will not be contrary to the public interest and the spirit of the ordinance will be observed. Allowing these signs requiring minimal relief from the ordinance and parking lot lighting that is largely obscured will not alter the essential character of the neighborhood and the public health, safety or welfare will not be threatened.
- Substantial justice will be done as the granted signage will benefit the applicant while maintaining the essential character of the area with no detriment to the general public.
- The value of surrounding properties will not be diminished by the granted signage and parking lot lighting.
- Literal enforcement of the ordinance would result in unnecessary hardship. There are special conditions of the property which include the manner in which it is set back on streets that would be mainly travelled by seekers of this destination. The signage is appropriate to allow people in the proximity to identify the building. There are also special conditions of the structure having an elevated parking deck and an enclosing "C"-shaped structure, distinguishing it from other properties in the area. Due to the special conditions there is no fair and substantial relationship between the purposes of the ordinance regarding signage and their specific application to the property.

The above items [Item a), Sign #5, and Items b) and d)] were **denied** for the following reasons:

- All the criteria necessary to grant the variances was not met.
- Granting the variances would be contrary to the public interest and the spirit of the ordinance would not be observed. A sign not facing a street and on a façade without a public entrance is not found on other similar properties and would alter the essential character of the neighborhood. Concerns raised by abutters about the negative effect of the proposed extensive elevated accent lighting on public health, safety and welfare are valid.
- There were no conditions about the property in regard to the denied requests that would result in an unnecessary hardship so that a fair and substantial relationship does exist between the purposes of the ordinance regarding signage and their application to these specific requests.

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III. PUBLIC HEARINGS – NEW BUSINESS

1) Case 5-1

Petitioners: Ida Barry House Condominium Association and James Gary Dinulos Revocable Trust of 2013, James G. & Paulette A. Dinulos, Trustees

Property: 3 Hancock Street

Assessor Plan: Map 103, Lots 85-1 and 85-2

District: Mixed Residential Office

Description: Install a ductless A/C condenser

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.515.14 to allow a 7'± right side yard for a ductless A/C condenser 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 condenser placed next to the house and shielded from view will not alter the essential character of the neighborhood 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 granting the variances would benefit the applicants by allowing them to cool their home with no corresponding detriment to the general public.
- Placed in this location and shielded, the condenser will not diminish the value of surrounding properties.

- The special distinguishing conditions of the property, so that literal enforcement of the ordinance would result in unnecessary hardship, include the size and placement of existing structures on the lot creating difficulty in placement of the condenser without requiring relief. A deviation from the dimensional requirements already exists on the property greater than the requested relief so that there is no fair and substantial relationship between the general public purposes of the ordinance provision and its specific application to the property.
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2) Case 5-2

Petitioners: Hunking Holdings LLC and Peter G. Morin Trust, Peter G Morin, Trustee
Property: 170 Mechanic Street
Assessor Plan: Map 102, Lot 7
District: General Residence B
Description: Construct a 24'± x 24'± garage, 30± s.f. addition and a bulkhead.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) from 10.573.20 to allow an accessory structure with a 5'± rear yard where 14' is required;
b) from Section 10.521 to allow a rear yard of 7.9'± for an addition and 9'± for a bulkhead where 25' is required for each;
c) from Section 10.571 to allow an accessory building or structure to be located closer to a street than the principal building; and
d) 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 as the essential character of the neighborhood will not be altered nor will there be a threat to the health, safety or welfare of the public. The fronting of the property on three streets and the large lot has created significant open space and view corridors enjoyed by abutters. The proposed encroachment isn't unusual for the neighborhood and will preserve the view benefits enjoyed by abutters.
- Granting the variances will result in substantial justice as the property owners will be able to have a reasonable garage and mudroom with no corresponding detriment to the general public or abutters.
- Granting the variances will not diminish the value of surrounding properties and the best location has been chosen for the least impact.

- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. These include a large lot with frontage on three streets which makes it difficult to place the garage anywhere else on the property without losing significant open space and views. Due to these conditions, there is no fair and substantial relationship between the general public purposes of the ordinance provisions and their specific application to the property. A garage and modest mudroom addition are a reasonable use of the property
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3) Case 5-3

Petitioners: Donald J. and Lauren E. Geoffrion
Property: 1847 Lafayette Road
Assessor Plan: Map 268, Lot 1
District: Single Residence B
Description: Construct an 11'± x 25'± 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 a 22'± secondary front 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:

- 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 will not be altered by this modestly larger replacement deck nor will the health, safety or welfare of the public be threatened.
 - Substantial justice will be done.
 - A slight increase in the size of a deck that is facing a street will not diminish the value of surrounding properties.
 - Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property which includes frontage on two streets, creating larger setback requirements. Due to the special conditions, there is no fair and substantial relationship between the purposes of the ordinance provision regarding setbacks and its specific application to the property.
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4) Case 5-4

Petitioners: 319 Vaughan Street Center LLC, owner and 3S Artspace, applicant
Property: 319 Vaughan Street
Assessor Plan: Map 124, Lot 9
District: Character District 5 and the Downtown Overlay District
Description: Summer concert series.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
a) a special exception from Section 10.440, Use #3.521 to allow an outdoor performance facility where the use is allowed by special exception; and
b) a variance from Section 10.592.10 to allow an outdoor performance facility use to be located 500' from a residential district.

Action:

The Board voted to **grant** the petition as advertised and presented recognizing that the special exception is granted “in perpetuity” and that granted variances remain with the land.

Stipulations:

The following stipulations are attached to the concert series:

- The concert series must take place no earlier than the first of June and end no later than the first of October;
- A maximum of 16 concert performances will be allowed each season;
- The concerts may only be held on a Friday, Saturday or Sunday;
- The concerts must be held between the hours of 6:00 p.m. and 9:00 p.m. only;
- The sound amplification system must be limited to portable amplification.

Review Criteria:

The special exception was granted for the following reasons:

- The standards as provided by the Ordinance for the particular use permitted by Special Exception are met.
- There will be no hazard to the public or adjacent property on account of fire explosion or release of toxic material from the proposed use which has posed no problems in the past.
- There will be no detriment to property values in the vicinity or change in the essential characteristics of the area from the location of buildings, accessways, odor, smoke, dust or other pollutants. There is already a performance facility, gallery and restaurant on the property generating similar activity.
- There will be no creation of a safety hazard or substantial increase in the level of traffic congestion. There have been no negative issues with traffic in the past for these lower impact events. For the same reason, there will be no excessive demand on municipal services including but not limited to water, waste disposal, police and fire protection.
- With no physical change to the property, there will be no significant increase in storm water runoff onto adjacent property streets.

The variance was granted for the following reasons:

- This use in a mixed use area will not alter the essential character of the neighborhood as it would complement the neighborhood as it has evolved over the past years. The events have proven to be respectfully run in the past with no threat to 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.
- Granting the variance will do substantial justice as the benefit to the applicant will not have a negative impact on the general public.
- A small cultural event can be an advantage to other properties in the area, such as the new adjacent hotel, so that the value of surrounding properties will not be diminished.
- The special conditions of the property include its location in a former industrial/commercial area that still has lingering and important residential ties in a broad radius as well as the stipulations now attached to this approval and limiting the proposed use. For these reasons, there is no fair and substantial relationship between the general public purposes of the ordinance provision and their specific application to the property.

5) Case 5-5

Petitioner: 56 Middle Street LLC
 Property: 56 Middle Street
 Assessor Plan: Map 126, Lot 19
 District: Character District 4-Limited and the Downtown Overlay District
 Description: Convert to residential duplex. Replace addition with two-story addition/garage.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
 a) from Section 10.5A41.10A to allow a building footprint of 2,646± s.f. where 2,500 s.f. is the maximum allowed;
 b) from Section 10.5A41, Figure 10.5A41.10A and Section 10.5A43.60 & Figure 10.5A43.60 to allow a duplex in the Downtown Overlay District where it is not permitted; and
 c) from Section 10.321 to allow a lawful nonconforming 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 June meeting at the request of the applicant.

6) Case 5-6

Petitioners: Thomas A. Nies Revocable Trust of 2010 (50% Int.), Thomas A. and Denise M. Nies, Trustees
 Property: 419 Richards Avenue

Assessor Plan: Map 112, Lot 20
 District: General Residence A
 Description: Replace existing garage.
 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 6.5'± right side yard where 10' is required;
 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 with the following stipulation.

Stipulation:

- The right side yard setback may be plus or minus six inches of the requested 6.5'.

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 as an appropriately sized detached garage will not alter the character of the neighborhood, nor create any concern for the health, safety or welfare of the general public.
- Substantial justice will be done as granting the variance will benefit the applicant with no public interest in the project.
- The value of surrounding properties will likely be benefited by a modern, code-compliant garage.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property, which include a narrow lot and the siting of the existing buildings and driveway on the property so that the logical placement for the garage has been chosen. The added stipulation will allow for normal construction abnormalities. The proposed use is a reasonable one in this district.

7) Case 5-7

Petitioner: Gail H. Sanders Revocable Trust of 1998, Gail H. Sanders, Trustee
 Property: 30 Walden Street
 Assessor Plan: Map 101, Lot 18
 District: Waterfront Business
 Description: Replace 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 a 5'± left yard where 30' 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. The new deck will be in the same footprint so that the character of the neighborhood will not be altered nor will the public health, safety or welfare be threatened.
- Substantial justice will be done as nothing will really change on the property that will negatively affect the general public but denying the variances will be a loss to the applicant by having to retain an outdated deck.
- A new deck in the same footprint will not diminish the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property which include the configuration of the lot, the placement of the existing house and an existing deck in violation of the setback. Due to these special conditions, there is no fair and substantial relationship between the purpose of the setback ordinance and its specific application to this property. A deck is a reasonable use in this district.

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IV. OTHER BUSINESS

No other business was presented.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:50 p.m..

Respectfully submitted,

Mary E. Koepenick, Secretary