

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 reconvened meeting on May 28, 2019** 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, Alternate Phyllis Eldridge, Alternate Chase Hagaman

EXCUSED: John Formella

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I. PUBLIC HEARINGS – NEW BUSINESS

1) Case 5-8

Petitioners: 75 NH Ave LLC and Two International Construction Co., LLC, applicant

Property: 85 New Hampshire Avenue

Assessor Plan: Map 306, Lot 3

District: (Pease) Airport Business Commercial

Description: Signage.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Pease Development Ordinance including the following variance:

- a) from Section 306.01(d) to allow aggregate signage of 256.75± s.f. where 200 s.f. is the maximum aggregate allowed.

Action:

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

Review Criteria:

The petition was recommended for approval for the following reasons:

No adverse effect or diminution in values of surrounding properties.

The building for which the signage is requested is similar in size and shape to the other buildings on the lot and in the area. The types of existing signs are also similar to the proposed so that the requested signs will not have an adverse effect on surrounding properties.

Granting the variance would be of benefit to the public interest.

Visitors have expressed difficulty in find this destination and the wall and monument signs will aid in identification.

Denial of the variance would result in unnecessary hardship to the applicant.

In addition to the problem with locating the property, the lot itself creates unnecessary hardship. The lot is large with four individual structures. The concept of 200 s.f. as a maximum for the lot is based on a smaller lot having one or two structures. Based on the fact of the four separate structures, the request for an additional 56 s.f. of signage is a reasonable request.

Granting the variance would be substantial justice.

The proposed signs will benefit the general public with no negative effect.

The proposed use is not contrary to the spirit of the zoning rule.

This is the fourth building constructed on the lot with all the buildings having reasonable signage. The proposed signage will be in keeping with all other signage requirements, because the rule is based on the lot as a whole with pieces applied to individual buildings, literal application of this requirement would conflict with the spirit of the rule.

2) Case 5-9

Petitioners:	Lonza Biologics, Inc.
Property:	101 International Drive
Assessor Plan:	Map 305, Lot 6
District:	(Pease) Airport Business Commercial District
Description:	add two new generators, above ground storage tanks, a transformer pad, and gear/switch enclosure.
Requests:	Variances and/or Special Exceptions necessary to grant the required relief from the Pease Development Ordinance including the following variances: a) from Section 308.02(c) to allow above ground storage tanks (AST) exceeding 2,000 gallons per facility.

Action:

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

Review Criteria:

The petition was recommended for approval for the following reasons:

No adverse effect or diminution in values of surrounding properties.

This is a continuation of existing machinery and facilities for which there is adequate space and distance to abutting properties.

Granting the variance would be of benefit to the public interest.

A prosperous business would benefit the public interest with no harm to the environment.

Denial of the variance would result in unnecessary hardship to the applicant.

The company has the expertise to determine the back-up emergency power measures that are needed to keep their operation running smoothly. The capacity of the fuel storage tanks is necessary to support that need. Denying the request would be detrimental to the applicant with no benefit to any other party.

Granting the variance would be substantial justice.

Granting the variance will benefit the applicant with no detriment to the general public.

The proposed use is not contrary to the spirit of the zoning rule.

Allowing the applicants to maintain reliable power that will allow them to operate their business in a safe and responsible manner will not be contrary to the spirit of the rule.

3) Case 5-10

Petitioners: Weeks Realty Trust, Kaley E. Weeks, Trustee and Chad Carter, owners and Tuck Realty Corporation, applicant
Property: 3110 Lafayette Road and 65 Ocean Road
Assessor Plan: Map 292, Lots 151-1, 151-2 and 153
District: Single Residence B
Description: Construct 23 townhouses on three merged lots.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
a) from Section 10.513 to allow more than one dwelling per lot;
b) from Section 10.521 to allow a lot area per dwelling unit of 4,205± s.f. where 15,000 s.f. is required; and
c) from Section 10.440, Use #1.40 to allow townhouses in a district where they are not permitted.

Action:

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

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant a variance were not met.
- The variances would be contrary to the public interest and the spirit of the ordinance would not be observed.
- While the new petition from the applicant is more in keeping with the essential character of the neighborhood, the number of units, and their similarity in size and massing will still have too great an impact on the closest area of relatively uniform, small single family homes.
- With specific reference to the spirit of the ordinance, considerable relief is being requested relative to the zone in which the lots are located. While there are nearby properties in other zones, these properties remain in a single residence zone. Even functioning as a transition area, the proposed development would not provide an appropriate buffer between the rest of the neighborhood in which it is located and other areas in the vicinity which are located in a different zone.
- While the property does have special conditions that distinguish it from other properties in the area, there are general public purposes of the ordinance which outweigh the specific application, and there are other reasonable uses of the property.

4) Case 5-11

Petitioners: Michael R. & Denise Todd

Property: 254 South Street

Assessor Plan: Map 124, Lot 9

District: Single Residence B and the Historic District

Description: Install A/C unit.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
a) a variance from Section 10.521 to allow a 6.5'± left side yard 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:

- Granting the variance will not be contrary to the public interest and the spirit of the ordinance will be observed as a small mechanical unit placed on the side of the house will not alter the essential character of the neighborhood nor threaten the public’s health, safety or welfare.
 - Substantial justice will be done by allowing a beneficial mechanical system with no detriment to the general public.
 - Granting the variance will not diminish the values of surrounding properties as this is a common amenity and nearby properties have similar units.
 - Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the lot which include a narrow lot which is skewed in a parallel shape, as well as a driveway on the other side of the property, so that this location was the most logical placement. The request is a reasonable one in a residential district.
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5) Case 5-12

Petitioner: PNF Trust of 2013, Peter N. Floros, Trustee
Property: 266 -278 State Street
Assessor Plan: Map 107, Lots 78, 79 & 80
District: Character District 4, the Downtown Overlay District and the Historic District
Description: Construct mixed use three story building with penthouse.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) from Section 10.5A43.31 to allow a 55’ height where 45’ is the maximum allowed for 2-3 stories (short 4th);
b) to allow a structure to be designated as a penthouse without meeting the 15’ setback from the edge of the roof as outlined in the definition of a penthouse;
c) from Section 10.5A41.10C to allow 93% building coverage where 90% is the maximum allowed and a 3’ rear setback from the lot line at the center building where 5’ is the minimum required.

Action:

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

Stipulation:

- With the granting of the variance for building coverage, 7% of open space is 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.

- Substantial justice will be done and the value of surrounding properties will not be diminished as there will be occupied buildings, both new and restored, on a lot that has been vacant for two years.
 - Literal enforcement of the ordinance would result in unnecessary hardship due to the special condition of having to incorporate the adjacent Times Building into the design of the newly proposed project. Due to this condition, there is no fair and substantial relationship between the general purposes of the ordinance provisions and their specific application to the property.
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6) Case 5-13

Petitioners: 2219 Lafayette Road LLC

Property: 2219 Lafayette Road

Assessor Plan: Map 272, Lot 1

District: Single Residence A and Gateway Neighborhood Mixed Use Corridor (G1)

Description: Parking space size and location.

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

- a) from Section 10.1113.20 to allow parking between a principal building and a street;
- b) from Section 10.1114.21 to allow 8.5' x 18' parking spaces where 8.5' x 19' spaces are 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 essential character of the neighborhood will not be altered as the use has existed on this site for close to twenty years with minimal impact and passersby will likely not notice any difference in the property other than a positive one.
- Substantial justice will be done as the loss to the applicant by requiring strict conformance with the ordinance would not be outweighed by any corresponding gain to the general public.
- Given the long-term and continuing use, the value of surrounding properties will not be diminished.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property which include an existing built environment, the continuing use, and the parking which already exists between the principal building and the street. The size of the parking stalls has historically been smaller than required with

no apparent problems. Due to these conditions, there is no fair and substantial relationship between the requirements in the ordinance relative to parking space dimensions and location and their specific application to the property.

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II. OTHER BUSINESS

No other business was presented.

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III. ADJOURNMENT

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

Respectfully submitted,

Mary E. Koepenick, Secretary