

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: September 21, 2021
RE: Zoning Board of Adjustment September 28, 2021

NEW BUSINESS

1. 361 Islington Street – Request for Rehearing
2. 238 Deer Street
3. 420 Pleasant Street
4. 53 Green Street - Appeal

1.

Request of **Lucky Thirteen Properties, LLC, Owner** for the property located at **361 Islington Street**, is requesting a rehearing pursuant to RSA 677:2. Said property is shown on Assessor Map 144 Lot 23 and lies within the Character District 4-L2 (CD4-L2).

On Tuesday, August 7, 2021, the Board denied variances for a proposed restaurant which required the following: 1) Variance from Section 10.440 Use #9.42 to allow a restaurant with an occupant load of 50 to 250. 2) Variance from Section 10.5A41.10A to allow a) a 29' left side yard where a 5 foot minimum and 20 foot maximum is required and b) 17% open space where 25% is required. 3) Variance from Section 10.5A44.31 to allow parking to be located in front of the building façade. 4) Variance from Section 10.5A44.32 to allow parking unscreened by a building or street screen. 5) Variance from Section 10.575 to allow a dumpster within 20 feet of a residential zoned lot and within 10 feet of any lot line. 6) Variance from Section 10.1113.20 to allow parking in the front yard and between a principal building and a street. The applicant is requesting a rehearing on the variances above.

A request for rehearing has been filed within 30 days of the Board's decision and the Board must consider the request within 30 days. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the next month's Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

2.

Request of **238 Deer Street, LLC (Owner)**, for property located at **238 Deer Street** whereas relief is needed to demolish existing structure and construct new mixed use building with 21 residential units which requires the following: 1) Variances from Section 10.5A41.10C to allow a) 2.5% open space where 10% is required; and b) a 3.5' rear yard where 5' is required. 2) A Variance from Article 15 to allow a structure to be designated as a penthouse with an 8' setback from the edge where 15' is required and 60% floor area of the story below where 50% is required as outlined in the definition of a penthouse. Said property is shown on Assessor Map 125 Lot 3 and lies within the Historic District and Character District 4 (CD4).

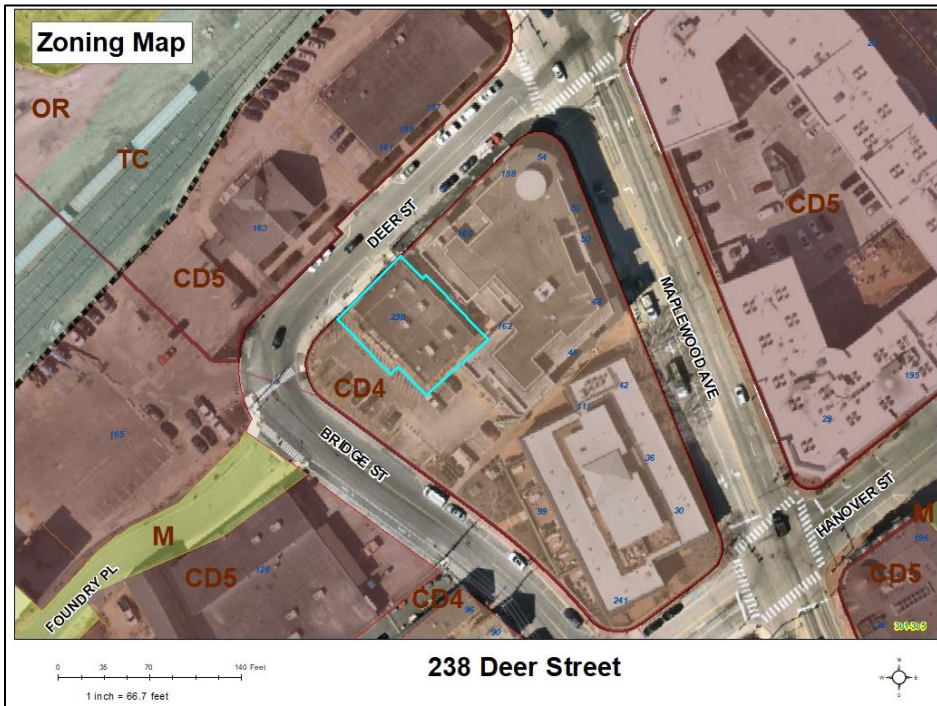
Existing & Proposed Conditions

| | <u>Existing</u> | <u>Proposed</u> | <u>Permitted / Required</u> |
|---------------------------------------|-----------------|--|-----------------------------|
| <u>Land Use:</u> | Restaurant/bar | Demo existing/construct mixed use building | Primarily mixed uses |
| <u>Lot area (sq. ft.):</u> | 6,181 | 6,181 | No Requirement |
| <u>Building Footprint (sq. ft.):</u> | 4,546 | 5,286 | 15,000 max. |
| <u>Front Yard (ft.):</u> | 1 | 0 | 10 max. |
| <u>Left Yard (ft.):</u> | 0 | 2.5' | No Requirement |
| <u>Right Yard (ft.):</u> | 2'9" | 0 | No Requirement |
| <u>Rear Yard (ft.):</u> | 7" | 3.5' | 5 min. |
| <u>Height (ft.):</u> | 1 story/23' | 42'/3 stories & penthouse | 40' + 2' + penthouse |
| <u>Penthouse setback/area</u> | NA | 8'/60% | 15'/50% of story below |
| <u>Building Coverage for the (%):</u> | 74 | 85 | 90 max. |
| <u>Open Space Coverage (%):</u> | 9.6 | 2.5 | 10 min. |
| <u>Parking</u> | | 0 (CUP granted 2/23/21) | 12 |
| <u>Estimated Age of Structure:</u> | 1951 | Variance request(s) shown in red. | |

Other Permits/Approvals Required

Historic District Commission
TAC/Planning Board – Site review

Neighborhood Context



Previous Board of Adjustment Actions

May 15 2018 – The Board granted variances for the placement of a dumpster with screening which required the following: a variance to allow a dumpster to be located 7'± from a lot line where 10' from a lot line is required.

Planning Department Comments

The applicant is proposing to demolish the existing structures and construct a mixed use building with commercial on the ground floor and 21 micro units on the upper floors, all under 500 square feet. The proposed penthouse will contain 4 of the 21 units. The definition of a penthouse is below, and it requires a 15 foot setback from all edges of the roof and the total floor area cannot exceed 50% of the story below. The total floor area would include uninhabitable space such as the elevator overrun, stairs and other appurtenances. As proposed, this exceeds the 50% and requires relief.

Penthouse

A habitable space within the uppermost portion of a **building** above the **cornice** which is set back at least 15 feet from all edges of the roof and the total floor area of which does not exceed 50% of the area of the **story** below. For internal courtyards at least 40 feet from a **street** or vehicular right-of-way or easement, the **penthouse** shall be setback at least 8 feet from the edge of the roof of the **story** below.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The “unnecessary hardship” test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

- (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

2.

Request of **Neal Pleasant St. Properties. LLC, (Owner)**, for property located at **420 Pleasant Street** whereas relief is needed to remove a rear entry and addition and replace with new three story addition with code compliant stairs and rear porch which requires the following: 1) A Variance from Section 10.521 to allow a 1' left side yard where 10' is required. 2) A Variance 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. Said property is shown on Assessor Map 102 Lot 56 and lies within the Historic District and General Residence B (GRB).

Existing & Proposed Conditions

| | <u>Existing</u> | <u>Proposed</u> | <u>Permitted / Required</u> |
|--|-----------------|--|-----------------------------|
| <u>Land Use:</u> | 5-units | 3-unit/replace rear addition | Primarily residential uses |
| <u>Lot area (sq. ft.):</u> | 4,791 | 4,791 | 5,000 min. |
| <u>Lot Area per Dwelling Unit (sq. ft.):</u> | 958 | 1,597 | 5,000 min. |
| <u>Street Frontage (ft.):</u> | 38 | 38 | 80 min. |
| <u>Lot depth (ft.):</u> | 11 | 110 | 60 min. |
| <u>Front Yard (ft.):</u> | 5 | 5 | 5 min. |
| <u>Left Yard (ft.):</u> | | 1 | 10 min. |
| <u>Secondary Front Yard (ft.):</u> | 1 | 1 | 5 min. |
| <u>Rear Yard (ft.):</u> | 62 | 62 | 20 min. |
| <u>Height (ft.):</u> | 29 | 29 | 35 max. |
| <u>Building Coverage (%)</u> | 29 | 33 | 35 max. |
| <u>Open Space Coverage (%)</u> | 61 | 52 | 25 min. |
| <u>Parking</u> | 5 | 5 | 4 |
| <u>Estimated Age of Structure:</u> | 1850 | Variance request(s) shown in red. | |

Other Permits/Approvals Required

Historic District Commission

Neighborhood Context



Previous Board of Adjustment Actions

No prior BOA history found.

Planning Department Comments

The applicant is proposing to reconstruct a rear addition with code compliant stairs and add a porch with a new rear entry to the building. The existing dwelling consists of 5 units and the proposal is to reduce the number to 3 units. The structure is located essentially on the left side lot line. As shown in the exhibits in the application, the structure on this lot and the adjacent lot are very close together. The new rear addition is proposed to be 1' where it currently is 6 inches from the side lot line.

Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
 - (a) *The property has special conditions that distinguish it from other properties in the area.*

AND

 - (b) *Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.*

OR

Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

4.

Appeal of **Duncan MacCallum, (Attorney for the Appellants)**, of the July 15, 2021 decision of the Planning Board for property located at **53 Green Street** which granted the following: a) a wetlands conditional use permit under Section 10.1017 of the Zoning Ordinance; b) preliminary and final subdivision approval; and c) site plan review approval. Said property is shown on Assessor Map 119 Lot 2 and lies within the Character District 5 (CD5) and Character District 4 (CD4).

Please see attached documents related to this matter from the appellant and response to the appeal from the developer's attorney. In addition to the link that was provided to the Board for the project, (<https://www.cityofportsmouth.com/planportsmouth/53-green-street>), the following hard copies are included as attachments: letters of decision from the Conservation Commission and Planning Board, minutes from both meetings, site plan, lot line revision plan and impervious surface exhibit.