

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

ACTION SHEET

TO: John P. Bohenko, City Manager

FROM: Jane Shouse, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment at its regular meeting on September 15, 2015** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Vice-Chairman Arthur Parrott, Derek Durbin, Charles LeMay, Patrick Moretti. Alternate: Jeremiah Johnson

EXCUSED: Christopher Mulligan, David Rheume

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I. OLD BUSINESS

A) Request for Rehearing regarding property located at 336 Union Street.

Action:

The Board voted to **deny** the Motion for Rehearing. The Board found that it made no errors in procedure or application of the law. The Board additionally determined that no new information had been provided that was not available at the time of the public hearing.

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II. OLD BUSINESS - PUBLIC HEARINGS

G) Case # 7-12

Petitioner: New England Glory, LLC

Property: 525 Maplewood Avenue

Assessor Plan 209 Lot 85

Zoning District: General Residence A

Description: Creation of two lots where one currently exists.

Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,755 sq. ft. where 7,500 sq. ft. is the minimum required.

(This petition was postponed from the July 28, 2015 and August 18, 2015 meetings.)

Action:

The Board voted to **postpone** further consideration of the petition to a future meeting requesting that the applicant provide information to clarify the proposal and aid in the assessment of its impact on abutters and the surrounding area, including:

- The number and location of dwelling units proposed for each lot.
- A plan for access and circulation proposed for both lots.
- A rendering of the proposed building.

The Board **referred** the proposal to the Technical Advisory Committee for a recommendation related to the above items.

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III. PUBLIC HEARINGS – NEW BUSINESS

- 1) Case #9-1
 Petitioners: Barbara Adams, etal, “the appellants”
 Property: Deer Street, Russell Street & Maplewood Avenue
 Assessor Plan 118, Lot 28, Plan 119, Lots 1-1A,1-1C & 4, Plan 124, Lot 12 and Plan 125, Lot 21
 Zoning Districts (as configured on the date of the Historic District Commission hearing): Central Business B, Historic District, Downtown Overlay District
 Description: Appeal decisions of the Historic District Commission
 Requests: Appeal the decisions of the Historic District Commission to grant a Conditional Use Permit and a Certificate of Approval.

ACTION – CONDITIONAL USE PERMIT:

The Board took the following action:

Voted to **grant** a Conditional Use Permit (CUP) for the entirety of the building to a maximum height of 60 feet as defined by the Zoning Ordinance and shown on the submitted plans and exhibits and in connection with a request to allow a new free standing structure (5 story mixed use development to include a hotel/event center, parking structure, condominiums, and retail space) as per plans on file in the Planning Department. The effect of this action by the Board was to **deny** this portion of the Appeal and uphold the decision of the Historic District Commission to issue a Conditional Use Permit on June 10, 2015.

Reasons for Granting:

In granting the Conditional Use Permit, the Board found that the 60’ height of the proposed building in this district was not too imposing and determined that the proposed building and site design positively contributed to the context, quality and overall historic character of the neighboring properties and the district as a whole, noting the following:

- As determined from the exhibits and plans, the project will blend well with the surrounding area, not detract from other properties in the District and will contribute positively to developments in the surrounding area.
- The exhibits demonstrated that high quality materials were proposed for the project.
- Open spaces accessible to the public have been provided and, for portions of the building, the setback lends itself to pedestrian scale.
- The applicant has proposed contributions to the historical heritage of the City, including supporting efforts to preserve the stone retaining wall at the Old North Cemetery and a publicly accessible historic artifacts exhibit.
- The project will not detract from existing view corridors. The public space on top of the building will provide additional views.

Stipulations:

The Board voted to incorporate into the decision the following conditions and stipulations which were attached to the Conditional Use Permit granted by the Historic District Commission on June 10, 2015:

1. Appurtenances may exceed 60 feet, in accordance with the Portsmouth Zoning Ordinance with the actual specific building height to be in substantial compliance with the heights shown on the submitted plans, elevations, and renderings.

Civic Space Elements

1. The North End Plaza - This plaza shall be owned and maintained by the City, except that Applicant shall, at the request of the City, maintain all landscaping it installs, and is subject to the City Council granting any necessary approvals and/ or easements for this plaza. Applicant may apply to the City Council for the necessary licenses, easements and approvals to operate a café/restaurant which shall be open to the public and located adjacent to its building on this plaza. The Applicant will provide \$50,000 toward installation of a public artwork, preferably 3-Dimensional, as well as donating land from the Sheraton Hotel property in order to relocate and realign the Russell Street intersection.
2. Rooftop Garden and Park (at the intersection of Russell and Deer Streets - At least 50% of this approximately 8,000 SF rooftop garden shall be open to the public from at least 9 a.m. to 9 p.m. daily. This area will be the area closest to the public entrance to the Rooftop Garden and Park off of Deer Street. This garden and park shall be constructed by Applicant at its expense and owned and maintained by the Applicant
3. The Green Street Plaza - The hardscape and landscaping of this plaza, the specific details of which shall be determined by the Planning Board's final site plan approval as the same may be amended from time to time, shall be constructed by Applicant at its sole expense but owned and maintained by the City, except that Applicant shall, at the request of the City, maintain all landscaping it installs, and is subject to the City Council granting any necessary approvals and/ or easements for this plaza. Applicant may apply to the City Council for the necessary licenses, easements and approvals to operate a café/restaurant which shall be open to the public and located adjacent to its building on this plaza.
4. The Russell Street Pocket Park - This park shall be constructed, owned and maintained by Applicant at its sole expense and open to the public at all hours, except that the City shall own and maintain the sidewalk in this park.

5. The Vaughan Street Pocket Park – This park shall be constructed by the Applicant at its sole expense but owned and maintained by the City, except that Applicant shall, at the request of the City, maintain all landscaping it installs, and is subject to the City Council granting any necessary approvals and/or easements for this plaza.
6. Brick Sidewalks - The proposed brick sidewalks shall be constructed at Applicant's sole expense but owned and maintained by the City, except that Applicant shall, at the request of the City, maintain all landscaping it installs, the width of which shall be determined by the Planning Board's final site plan approval as the same may be amended by the Planning Board from time to time – all subject to the City Council granting any necessary approvals and easements for these sidewalks.
7. The Deer Street Passageway - The passageway, the final dimensions of which shall be determined by the Planning Board's site plan approval, shall be constructed and maintained by the Applicant at its sole expense.

Parking and Transportation Related Elements:

1. Underground Parking and Parking Supply & Management - The final parking plan will be as reviewed and approved by the Planning Board under Site Plan Review.
2. Fuel-Efficiency - To support fuel-efficient vehicles, charging stations will be included in the garage as well as parking for carpooling, vanpooling and fuel-efficient vehicles as determined by the Planning Board.
3. Alternative Transportation - To support alternative transportation modes, bicycle parking and storage areas shall be provided within the building and along the sidewalk and plaza areas. Bike lanes have been added to Russell and Deer Street as well as sharrows for shared lanes, as determined by the Planning Board.
4. Bus and Truck Parking - To accommodate the hotel and conference center parking needs, 2 bus parking spaces shall be provided on Russell Street as shown. All deliveries and loading areas shall be located mid-block along the rear of the building and include screening elements as determined by the Planning Board.
5. On-Street Parking - To provide pedestrian safety as well as maintain some of the existing on-street parking, on-street parking spaces shall be maintained on Russell and Deer Streets as determined by the Planning Board.
6. Crosswalks - To enhance pedestrian safety and circulation, raised and textured crosswalks shall be provided on Russell and Deer Streets, as determined by the Planning Board. All crosswalks on Russell Street will also carry the bricks through the entrance drives to enhance pedestrian safety as determined by the Planning Board.
7. Traffic Calming - To enhance traffic circulation and the views entering the downtown along Market Street the project proposes a contribution of land and \$25,000 toward the proposed roundabout located along the Russell and Market Street intersection.
8. Sidewalks - To enhance pedestrian circulation, safety, and reduce the scale and massing of the building, all of the proposed sidewalks shall be constructed of brick. Except for a very small section of the proposed building along Maplewood Ave. and the service entrance driveway, all sidewalks shall range from 8 to 50 feet in width as determined by the Planning Board.

Building Design Elements:

In order to mitigate the impact of a building height above 45 feet or 3.5 stories, the proposed building shall use high-quality building materials as shown and presented including but not limited to granite, copper or restoration brick. The following summarizes the high-quality building elements included in the proposed building design and the construction drawings shall be in substantial compliance with the following:

1. High-Quality Building Design Elements – Of the twenty separate building façade segments, the percentage of the segments using each of the following high-quality building materials shall generally be as follows: metal or slate roofs (20%); copper flashing (20%); decorative metal or wood railings (80%); decorative metal panels, artwork or timber beams (50%); restoration brick (70%); granite sills, lintels or foundations (65%); traditional storefront panels (30%); operable windows (55%); and wooden storefront doors (10%).

Building Scaling Elements:

In order to mitigate the impact of a building height above 45 feet or 3.5 stories, the following scaling elements have been proposed and the construction drawings shall be in substantial compliance with the following:

1. Reduced Building Coverage – The Zoning Ordinance allows up to 95% of the property to be used for the footprint of a building(s). The three contiguous lots total approximately 85,650 SF which would allow up a building footprint of up to 81,368 SF. The proposed site plan shows a building footprint of approximately 77,000 SF which represents 90% coverage; or a 5% reduction from the maximum permitted coverage. Note that parcel identified as Map 199 Lot 4 (the proposed Russell Street Pocket Park) is 9,765 SF which represents another 10% of the larger project that will remain as open space.
2. Reduced Building Volume – The Zoning Ordinance does not directly regulate building volume through a Floor Area Ratio requirement however, using a 5 story building as the benchmark, the maximum coverage and height requirements would yield a building of approximately 406,000 SF of Gross Floor Area (GFA). The proposed volume (excluding underground parking areas) is approximately 260,000 SF of GFA; a 36% reduction. Understanding that nearly 40% of the proposed building façade along Deer and Russell Streets have high floor-to-ceiling heights (in a relatively tall 3 story form) a cubic foot assessment illustrates that approximately 5.1m FT³ in building volume would be allowed under the zoning requirements. The proposed building is approximately 3.5m FT³; representing a 30% reduction from the maximum permitted volume.
3. Building Height – Under the definition of building height in the Zoning Ordinance, sheets A.1.1 and A.1.3A show that the average height of the proposed building is approximately 57.2 feet. Measuring from the higher roof structure, most segments of the building are between 53-60 feet in height.

4. Perceived Building Height – The perceived height of the building along the sidewalk shows that the average building height is significantly reduced due to the use of scaling elements such as stepbacks and sloped roofs. The average perceived height at the sidewalk is approximately 49 feet; a 15% reduction. Note that the average perceived height is further reduced to 46 feet when only the portions of the façade are considered that are located along a public sidewalk.
5. Building Design Elements – Of the twenty separate building façade segments, the percentage of the segments using each of the following scaling elements is as follows: increased setbacks (100%); stepbacks (65%); pitched roofs (58%); brick pilasters or firewalls (60%); horizontal or cornice banding (85%); awnings, brackets, dormers or roof canopies (90%); varied window patterns or openings (100%); and projecting signs and lighting (50%).

Historic Preservation Elements

1. Old North Cemetery - As part of the Maplewood Ave. streetscape, the Applicant shall make a financial contribution of \$20,000 to support efforts to preserve and repair the stone retaining wall at the historic Old North Cemetery.
2. Archeological Resources - The Applicant shall commission an archaeological study of the project area with Kathleen Wheeler of Independent Archaeological Consulting, and shall exhibit any significant archaeological findings from Dr. Wheeler's investigations in the project. Any notable historic artifacts will be exhibited within the publically accessible common areas within the hotel/ conference center.

Design Changes/Modifications:

1. City Council Licenses, Easements and Approvals - Should the City Council not grant any of the easements or approvals necessary to provide any of these project elements (except those relating to the Russell Street intersection realignment, the North End or the Green Street Plazas as well as for cafes and restaurants), then Applicant shall be relieved of the requirement to provide the public elements listed above. All other project elements shall be in substantial compliance with the proposed design submitted as presented.
2. Program or Design Changes - Any subsequent design change to the exterior of the building from the approved plans, elevations or details shall be reviewed by the Planning Director. The Director shall determine whether the proposed change is in substantial compliance with the approved plans, elevations or details. Any change determined not to be in substantial compliance with the approved plans, elevations or details shall require an amendment to the CUP.

ACTION – CERTIFICATE OF APPROVAL:

The Board took the following action:

Voted to **issue** a Certificate of Approval of the petition wherein permission was requested to allow a new free standing structure (5 story mixed use development to include a hotel/event center, parking structure, condominiums, and retail space) as per plans on file in the Planning Department. The effect of this action by the Board was to **deny** this portion of the Appeal and uphold the decision of the Historic District Commission to issue a Certification of Approval on June 10, 2015.

Purpose and Objectives:

It was determined that the overall Purpose and Objectives of the Historic District Ordinance were met:

- 1) The integrity of the Historic District will be preserved and the project will strengthen the local economy, conserve property values and promote the education, welfare and pleasure of Portsmouth's citizens and visitors.
- 2) The special character of the District is reflected in the scale, mass, location and style of the buildings. The mass and scale are appropriate to the lot and the design treatments break up the mass and provide variety.
- 3) The project will retain the historical and architectural value of buildings and structures, their settings, and their local or national significance in terms of the represented time period, visible architecture, construction materials, or relationship to a historically recognized individual or event. The project accomplishes this by motifs incorporated from other areas in the City and by the innovative styles and features included such as the roof park, quality materials and innovative technologies including the proposed water treatment and the unique design of the building at all of the approaches.
- 4) The designs for new buildings, additions, and the reuse of existing buildings will complement and enhance the City's architectural and historic character and contribute to its sense of place. The design for new buildings will enhance the City's architectural and historic character and provide a desirable entryway into the City.
- 5) The project will support Portsmouth's heritage and economic well-being through the conservation and enhancement of property values. The Board noted that many of the neighbors had spoken in favor of the project citing the positive impact on their property values.
- 6) The project will support the District's contribution to the education, pleasure and welfare of the City's residents and visitors. Education will be promoted by the proposed archeological project and the public parks, including the rooftop park, will have a positive effect.

Review Factors:

- 1) By integrating City motifs while incorporating appropriate technologies, the project will render the site architecturally and historically significant.
- 2) The design and styles incorporated are varied and complimentary to the overall character of the District.
- 3) The mass was broken by design treatments.
- 4) The Board supported the 60' building height by issuing a Conditional Use Permit.

Review Criteria:

- 1) The comments of the Board listed above and at the hearing reflect the belief that the proposed project will be complimentary to the special and defining character of surrounding properties.

- 2) The Board agreed with the review and approval of the architectural details by the Historic District Commission and believed that the design will complement existing structures.
- 3) The project’s exterior design, scale, arrangement and detailing that includes attractive “bookends” at the approaches are all compatible with surrounding properties.
- 4) The project will incorporate innovative water treatment and rain collection systems, add metal elements to the parking garage and provide a public access roof garden. Throughout, the project is proposed to use quality materials and construction to meet the integrity of the District.

Stipulations:

The Board voted to adopt the stipulations attached to the Certificate of Approval granted by the Historic District Commission on June 10, 2015, as follows:

- 1. A mock-up (that includes a window) of the proposed bricks shall be provided for review and approval by the Commission Chair and Vice-Chair prior to installation of any brick walls within any building segment within the larger project;
- 2. A water-struck brick shall be used for Brick Type 1;
- 3. This approval is subject to the terms, conditions and stipulations approved under the Conditional Use Permit for this project that was approved on 6-10-15.

The Board also concurred with the Findings of Fact included in the Historic District Commission decision to issue a Certificate of Approval.

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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 11:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary