

**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 October 25, 2016** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.  
**PRESENT:** Chairman David Rheaume, Vice Chairman Charles LeMay, Jeremiah Johnson, Jim Lee, Christopher Mulligan, Arthur Parrott. Alternates: John Formella,, Peter McDonell  
**EXCUSED:** Patrick Moretti

=====

**I. OTHER BUSINESS**

A) Board of Adjustment Rules & Regulations

The Board voted to postpone this item to the November 15, 2016 meeting.

=====

**II. APPROVAL OF MINUTES**

A) September 27, 2016.

The Minutes were approved as presented.

=====

**III. PUBLIC HEARINGS – OLD BUSINESS**

*(The following petitions were postponed from the October 18, 2016 meeting.)*

A) Case #10-7  
Petitioner: Cross Roads House  
Property: 600 Lafayette Road  
Assessor Plan 243, Lot 2  
Zoning District: Gateway  
Description: Erect a 12'± x 16'± shed.  
Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.573.20 to allow a 5’9” right side yard setback where 10’ is required for an accessory structure.

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 the shed will be set back from public land, buffered by fencing at the rear and some small trees.
- Substantial justice will be done by allowing the property owners to construct a useful accessory structure on their property with no corresponding detriment to the general public.
- The value of surrounding properties would not be diminished as the shed will be a utilitarian structure with protective fencing on both sides.
- With the number and placement of existing structures, a hardship is created in the placement of the shed which is proposed to be sited in the most logical location.

-----  
B) Case #10-8

Petitioner: Charles A. Corlin

Property: 736 Middle Street

Assessor Plan 148, Lot 24

Zoning District: Single Residence B

Description: Construct a 24’± x 24’± detached garage and 8’± x 16’± shed.

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

1. Variances from 10.573.20 to allow a 3’± right side yard setback for a shed where 10’ is required and a 6’± rear yard setback for a garage where 15’ 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 variances will not be contrary to the public interest and the spirit of the ordinance will be observed as the essentially residential character of the neighborhood will not change with the addition of a garage and a shed. The proposed setbacks will not threaten the public health, safety or welfare.
- Granting the variances will result in substantial justice as the loss to the applicant if the request were denied would far outweigh any gain to the general public.
- With the garage appropriately placed adjacent to the neighbor’s garage, the value of surrounding properties will be enhanced.

- Due to special conditions of the property, literal enforcement of the ordinance would result in unnecessary hardship. The lot is oddly shaped with road access from Aldrich Road, frontage on Middle Street, and an existing shared driveway with another property. With these conditions, it is difficult to site the garage and shed and be in compliance with the setbacks. Having a garage and shed is a reasonable residential use in a residential zone.

=====

**IV. PUBLIC HEARINGS – NEW BUSINESS**

9) Case #10-9

Petitioner: Elizabeth Pickford

Property: 1 Sheridan Avenue (1 & 3)

Assessor Plan 168, Lot 7

Zoning District: General Residence A

Description: Reconstruct and expand front porch.

- Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed, enlarged or structurally altered except in conformity with the Ordinance.
  2. A Variance from 10.521 to allow a 0'± front yard setback where 15' is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- Allowing the repair and expansion of a deteriorated front porch will not be contrary to the public interest or threaten the public health, safety or welfare.
- The spirit of the ordinance will be observed by reducing one nonconformity to balance the proposed expansion of another.
- Substantial justice will be done by allowing the applicant to replace a deteriorated structure with no harm to the general public.
- Adding a new deck and roof to the front of the property should increase surrounding property values.
- The location of the lot at the end of a dead-end street with little traffic and the siting of the existing home within the front setback limit the options in replacing the front porch so that literal enforcement of the ordinance would result in unnecessary hardship.

-----

10) Case #10-10

Petitioners: Blueberry Lafayette Investors LLC & Edward Walsh, owners, Rose Steel, Inc., applicant

Property: 3605 Lafayette Road (3607)

Assessor Plan 298, Lot 2  
Zoning District: Gateway  
Description: Light manufacturing with related office.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:  
1. A Variance from Section 10.440 to allow a light manufacturing with accessory use in a district where the use is not allowed.  
2. A Variance from the parking requirements as outlined in Section 10.1111 to allow a change of use that does not meet the requirements for design and location of off-street parking.

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 use will be consistent with the commercial nature of the existing built environment and surrounding properties and will not result in an increase in odors, noise and traffic that could threaten the public health, safety or welfare.
- Substantial justice will be done. With what is already built on the site and the lack of industrial space, the loss to the applicant would be substantial if the petition were denied with no gain to the general public.
- With no adverse effects, the value of surrounding properties will not be diminished.
- The special conditions of the property include the current built environment in the neighborhood and an existing industrial building suitable for a number of uses. There is ample parking available for the proposed use so that there is no fair and substantial relationship between the purpose of the types of allowable uses in this zone and their specific application to the property. The use is a reasonable one and will fit well in this commercial area that includes businesses and light industry.

-----  
11) Case #10-11

Petitioners: Sherwood Rollins III Revocable Trust & Denise C. Rollins Revocable Trust

Property: 149 Cass Street

Assessor Plan 146, Lot 7

Zoning District: General Residence C

Description: Convert an accessory structure to a dwelling unit.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:  
1. A Variance from Section 10.521 to allow a right side yard setback of 3.6'± where 10' is required.

Action:

A motion to grant the petition as presented and advertised failed to pass and the petition was **denied**.

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant a variance were not met.
- A detached second dwelling unit within the setback would alter the essential character of the neighborhood which would be contrary to the public interest.
- Substantial justice would not be done as the negative impact on the general public, if the petition were granted, would not be outweighed by any benefit to the applicant.
- The applicant did not meet the burden of proving that the value of surrounding properties would not be diminished by the proposal.
- Special conditions of the property were not found that would result in unnecessary hardship through literal enforcement of the Ordinance and there is adequate room on the property so that it can be reasonably used in strict conformance with the ordinance.

-----  
12) Case #10-12

Petitioners: Melanie R. Burger & Xavier H. Asbridge

Property: Crescent Way (also Falkland Place)

Assessor Plan 212, Lot 111

Zoning District: General Residence B

Description: Construct a two-story residence.

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

1. Variances from Section 10.521 to allow the following:
  - a) Minimum lot area and minimum lot area per dwelling unit of 4,336 s.f.±. where 5,000 s.f. is required for each;
  - b) A 37.8'± lot depth where a minimum lot depth of 60' is required;
  - c) A rear yard setback of 15'± where 25' is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The property has existed as a lot of record for a long period of time and lies in an area of similar smaller lots. The relief requested is not excessive and the proposed lot area can support a single family residence 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 by allowing the property owners to exercise their right to development the property with no harm to the general public.
- The creation of a new single-family residence within the setbacks will not adversely affect the value of surrounding properties.

- The special conditions of the property creating an unnecessary hardship by literal enforcement of the Ordinance are the unique location and irregular shape of the lot which determine how it could be developed and affect the way lot depth is measured.

-----  
13) Case #10-13

Petitioners: 2422 Lafayette Road Associates LLC c/o Waterstone Retail

Property: 2454 Lafayette Road

Assessor Plan 273, Lot 3

Zoning District: Gateway

Description: Install wall and directional signs, a menu board and reconstruct a free-standing sign.

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

1. A Variance from Section 10.1271.20 to allow a sign on a façade of a building that does not face a street and where no public entrance exists.
2. A Variance from Section 10.1222.20 to allow two directional signs each with a sign area of 7 s.f. where 4 s.f. is the maximum allowed per directional sign.
3. A Variance from Section 10.1243 to allow 2 free-standing pre-order menu boards to be erected which are not visible from a public right-of-way.
4. A Variance from 10.1281 to allow an existing non-conforming pylon sign to be modified without bringing it into conformance.

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 as a result of the proposed signage. It is likely that the health, safety and welfare of the public will be improved by signage directing motorists to their destination while avoiding visual clutter.
- Substantial justice will be done as the benefit to the applicant in granting the variances will not be outweighed by any loss to the general public, which will benefit by the largest sign being brought into greater conformance with the ordinance.
- With the signs located on a property in a fully developed corridor that could absorb the proposed signage there will be no diminution in the value of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property, including its location within a fully developed shopping plaza that is distinguishable from other properties in the area. The general purpose of the sign ordinance is to avoid visual clutter and help identify commercial properties for the general public. The proposal accommodates these purposes so that there is no fair and substantial relationship between the provisions of the ordinance and their specific application to the property. Repurposing an existing vacant restaurant into a productive one is a reasonable use of the property.

14) Case #10-14

Petitioners: Colman C. Garland, owner, R and D Resources 2, LLC, applicant

Property: 185 Cottage Street

Assessor Plan 174, Lot 14-A

Zoning District: General Residence A

Description: Construct a restaurant with a drive-through.

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

1. A Variance from Section 10.440 to allow a fast food restaurant in a district where the use is not allowed.
2. A Variance from Section 10.1112.30 to allow 23 parking spaces to be provided where 33 parking spaces are required.
3. A Variance from Section 10.1113.20 to allow off-street parking spaces to be located in a required front yard or between a principal building and a street.

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 volume and nature of the additional traffic generated by locating a 24-hour, fast food restaurant in a district where it is not allowed would pose a threat to the public’s health, safety and welfare as represented by abutters and passersby so that granting the variances would be contrary to the public interest and the spirit of the ordinance would not be observed..
- Substantial justice would not be done as any benefit to the applicant if the petition was granted would be outweighed by the loss to the general public.
- An unnecessary hardship was not demonstrated and the property, located in a residential district and currently used as a residence, can be reasonably used in strict conformance with the ordinance.

=====

**V. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 10:30 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary