



# CITY OF PORTSMOUTH

Planning Department  
1 Junkins Avenue  
Portsmouth, New  
Hampshire 03801  
(603) 610-7216

## ZONING BOARD OF ADJUSTMENT

January 24, 2023

Sarah M Gardent Revocable Trust  
47 Howard Street  
Portsmouth, New Hampshire 03801

**RE: Board of Adjustment request for property located at 47 Howard Street (LU-22-242)**

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, January 17, 2023**, considered your application for installation of a mechanical heat pump which requires the following 1) Variance from section 10.515.14 to allow a 8 foot setback where 10 feet is required. Said property is shown on Assessor Map 103 Lot 84 and lies within the General Residence B (GRB) and Historic District. As a result of said consideration, the Board voted to **grant** the variance as submitted.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

*The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:*

<https://www.cityofportsmouth.com/planportsmouth/zoning-board-adjustment/zoning-board-adjustment-archived-meetings-and-material>

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

A handwritten signature in black ink, reading "Phyllis Eldridge". The script is cursive and fluid, with the first name "Phyllis" and last name "Eldridge" clearly distinguishable.

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

# Findings of Fact | Variance

## City of Portsmouth Zoning Board of Adjustment

Date: 1/17/2023

Property Address: 47 Howard St

Application #: LU-22-242

Decision: **Grant**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	<b>YES</b>	The type of HVAC unit and the proposed location in the rear will create minimal noise and will not change the overall appearance of the property or be visible to the public.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	<b>YES</b>	The ordinance is not designed to prevent the modernization of HVAC units in the City and within the Historic District. Location of the unit in the rear observes the spirit of the ordinance.

10.233.23 Granting the variance would do substantial justice.	<b>YES</b>	There will be no loss to the public that would outweigh the benefit to the applicant.
10.233.24 Granting the variance would not diminish the values of surrounding properties.	<b>YES</b>	Advocacy and support of the abutters and direct abutters supports the understanding that the addition of the HVAC unit will not diminish the value of the surrounding properties.
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(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.</p>	<b>YES</b>	Due to the special condition of the property and of the neighborhood it is a densely packed location there are no other reasonable alternatives for the location of the HVAC. This is proven by the applicant's analysis of alternative locations as provided to the Board.



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## ZONING BOARD OF ADJUSTMENT

January 24, 2023

Antonio Salema, Trustee of Salema Realty Trust  
369 Lafayette Road  
Hampton, New Hampshire 03842

**RE: Board of Adjustment request for property located at 199 Constitution Avenue (LU-22-249)**

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, January 17, 2023**, considered your application for building a climbing, yoga, and general and specialty fitness studio in an existing building which requires the following 1) Special Exception from Section 10.440 Use #4.42 to allow a health club, yoga studio, martial arts school, or similar use that is greater than 2,000 GFA. Said property is shown on Assessor Map 285 Lot 16-301 and lies within the Industrial District. As a result of said consideration, the Board voted to **grant** the special exception for the application as presented and advertised.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

*The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:*

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The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

A handwritten signature in cursive script that reads "Phyllis Eldridge". The signature is written in black ink and is positioned above the printed name.

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Takeshi Miyamoto, Salt Pump Portsmouth, LLC

# Findings of Fact | Special Exception

## City of Portsmouth Zoning Board of Adjustment

Date: 1/17/2023

Property Address: 199 Constitution Ave

Application #: LU-22-249

Decision: **Grant**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Special Exception:

Special Exception Review Criteria: Section 10.232.20	Finding (Circle One)	Relevant Facts
10.232.21 Standards as provided by this Ordinance for the particular use permitted by special exception;	<b>Yes</b>	The use is allowed in the Zoning Ordinance by Special Exception.
10.232.22 No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.	<b>Yes</b>	As a yoga and general/specialty fitness studio and a climbing wall, there were be no potential fire, explosion or release of toxic materials present to effect the public and adjacent properties.
10.233.23 No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor	<b>Yes</b>	There will be no detriment to property values in the vicinity or change in the essential characteristics of any area, including residential neighborhoods, business or industrial districts on account of the location or scale of the buildings or other structures, parking areas, accessway, odor, smoke, gas, dust or other pollutants, noise, glare, heat, vibration, unsightly outside

storage of equipment, vehicles or other materials;		storage of equipment, vehicles or other materials. The applicant has met this criteria because as the business will be in an industrial area, and the climbing, yoga, general and special fitness studios will not have any outdoor odor, gas, dust, or other pollutant, noise, heat, vibration, unsightly storage of equipment or vehicles.
10.233.24 No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;	<b>Yes</b>	There is no creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity, and the applicant has taken into account all the turning radius and ways to avoid having any kind of safety hazard. Constitution Avenue is a very broad thoroughway and a traffic jam on that road would be difficult to create.
10.233.25 No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and	<b>Yes</b>	There will be no excessive demand on municipal services including but not limited to water, sewer, waste disposal, police and fire protection, and schools, as the facility that has climbing, yoga, and general/special fitness will not create excessive demand on any of those city services.
10.232.26 No significant increase of stormwater runoff onto adjacent property or streets.	<b>Yes</b>	There will be no significant increase in stormwater runoff onto adjacent properties or street, the applicant's type of use will not create any kind of increase in stormwater runoff.





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## **ZONING BOARD OF ADJUSTMENT**

January 24, 2023

Jesse Lynch and Sarah L Lynch  
19 Sunset Road  
Portsmouth, New Hampshire 03801

**RE: Board of Adjustment request for property located at 19 Sunset Road (LU-22-250)**

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, January 17, 2023**, considered your application for constructing a connector structure from primary structure to the garage which requires the following: 1) Variance from Section 10.521 to allow a) 27 foot setback where 30 feet is required; and b) 22 % building coverage where 20% is required. 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is shown on Assessor Map 153 Lot 19 and lies within the Single Residence B (SRB) District. As a result of said consideration, the Board voted to **grant** the variances as presented and advertised.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

*The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:*

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The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

A handwritten signature in cursive script that reads "Phyllis Eldridge". The signature is written in black ink and is positioned above the printed name.

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Arilda Densch, of Arilda Design

# Findings of Fact | Variance

## City of Portsmouth Zoning Board of Adjustment

Date: 1/17/2023

Property Address: 19 Sunset Road

Application #: LU-22-250

Decision: **Grant**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	<b>YES</b>	A slight increase in the overall footprint of the property was being asked for and is extremely minimal. The intent is not to create overcrowding and is to fill in space between two structures. It won't be impactful to the abutters and neighbors or the public.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	<b>YES</b>	Minimal impact is being requested by keeping light and air between buildings, keeping open spaces, and infilling between two buildings. It is a very minor increase in overall density on the property, and no one will really notice the slight impact to the setback requirement. There are already other portions of the building that are far closer to the edges of the lot.

10.233.23 Granting the variance would do substantial justice.	<b>YES</b>	It is a balancing test between what the applicant was trying to do and what the public interest was. The applicant won that balancing test because they are asking for very minimal relief that provides a lot of benefit to them in terms to connecting this odd garage with their main house, securing it for the winter, and creating an extra bathroom in a small home. The public has no outweighing concerns that would say what the applicant was looking for was unjust.
10.233.24 Granting the variance would not diminish the values of surrounding properties.	<b>YES</b>	It will be a minor change that would not affect the character of the neighborhood and has no impact to the surrounding properties.
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(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.</p>	<b>YES</b>	The lot has a unique topography where a garage had been built many years before and when the garage was rebuilt there was financial hardship that prevented the owners from creating the logical connection between the two structures to remedy that situation.



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## ZONING BOARD OF ADJUSTMENT

January 24, 2023

Patrick and Nicole Mullaly  
36 Hunters Hill Ave  
Portsmouth, New Hampshire 03801

**RE: Board of Adjustment request for property located at 36 Hunters Hill Ave (LU-22-243)**

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **January 17, 2023**, considered your application for construct an addition with a second living unit which requires the following: 1) Variance from Section 10.440 Use #1.30 to allow a two-family dwelling unit is the Business District. 2) Variance from Section 10.531 to allow a 5 foot setback where 10 feet is required. Said property is shown on Assessor Map 160 Lot 38 and lies within the Business (B) District. As a result of said consideration, the Board voted to **grant** the variances as presented and advertised with the following **condition**:

*1. The board recognizes the de minimis error in the advertisement for the application as 10 feet vs. 15 feet.*

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

*The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:*

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The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

A handwritten signature in cursive script that reads "Phyllis Eldridge". The ink is dark and the signature is fluid, with a long, sweeping underline.

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

# Findings of Fact | Variance

## City of Portsmouth Zoning Board of Adjustment

Date: 1/17/2023

Property Address: 36 Hunters Hill Avenue

Application #: LU-22-243

Decision: **Grant**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	<b>YES</b>	The public interest here is the zoning connection that should not negatively affect the ability of this residential use that was already an existing nonconformity in the Business District from being slightly expanded from one dwelling unit to another. It is in the public interest for the property to remain in the hands of the current owners and not be transferred to some other owner who could take advantage of the allowances in the Business District and provide something that would be negative to the public interest.

10.233.22 Granting the variance would observe the spirit of the Ordinance.	<b>YES</b>	A small amount of relief is being asked for and the property is up against the bypass and wouldn't affect the light and air of abutting properties. The elevation difference between the property and the bypass further negated that concern.
10.233.23 Granting the variance would do substantial justice.	<b>YES</b>	The public's interest in not only allowing the applicant to do what they requested but in keeping it from being rebuilt in some other fashion tipped the balance scale in favor of the applicant.
10.233.24 Granting the variance would not diminish the values of surrounding properties.	<b>YES</b>	The businesses in the lower elevation will not be negatively impacted and there will be no impact on neighboring properties because the applicant's property was on the opposite side of the residential properties that could be negatively impacted.
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(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.</p>	<b>YES</b>	The current situation was imposed on the property circa 1940 when a public roadway was built and the property was reorientated and elements on it were moved around. The applicant won't be creating any worse of an encroachment than what is currently there. The property is somewhat more elevated in height but not so much that it would be detrimental to becoming a reasonable use of the property. The elevation change between it and the bypass created a situation such that a more normal business use of the property is unlikely and not logical for the way the property was accessed through Hunter Hill Avenue.

### Stipulations

1. The board recognizes the de minimis error in the advertisement for the application as 10 feet versus 15 feet.