



# CITY OF PORTSMOUTH

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

## ZONING BOARD OF ADJUSTMENT

October 3, 2023

Marcella F. Hoekstra  
35 Whipple Court  
Portsmouth, New Hampshire 03801

RE: **Board of Adjustment request for 35 Whipple Court (LU-23-147)**

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, September 26, 2023**, considered your application for an equitable waiver for 1) an accessory structure with an 8.5-foot right yard where 10 feet was permitted and an 8-foot rear yard where 17 feet was permitted; or in the alternative 2.a) Variance from Section 10.521 to allow an 8,324 SF lot area/dwelling unit where 15,000 SF is required; b) to allow a frontage of 45.83 feet where 100 feet is required; c) to allow an accessory structure with an 8.5 foot right yard where 10 feet is required; d) to allow an accessory structure with an 8 foot rear yard where 9 feet is required; and e) to allow a building coverage of 26% where 20% is allowed. Said property is shown on Assessor Map 260 Lot 98 and lies within the Single Residence B (SRB) District. As a result of said consideration, the Board voted to to **grant** an equitable waiver for the property located at 35 Whipple Court for the accessory structure, with an 8-1/2 foot right yard where 10 feet was permitted and an 8-ft rear yard where 17 feet was permitted.

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.

*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,

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Monica F. Kieser, Attorney  
R. Timothy Phoenix, Hoefle, Phoenix, Gormley & Roberts, PLLC

# Findings of Fact | Equitable Waiver

## City of Portsmouth Zoning Board of Adjustment

Date: 09/26/2023

Property Address: 35 Whipple Ct.

Application #: LU-23-147

Decision: **Grant**

### Findings of Fact

Effective August 23, 2022, amended RSA 676:3, It 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 all conditions necessary to obtain final approval.

### RSA 674:33-a: Equitable Waiver of Dimensional Requirement

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

Equitable Waiver of Dimensional Requirement Criteria:	Finding (Circle One)	Relevant Facts
(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;	Yes/No	<ul style="list-style-type: none"> <li>N/A</li> </ul>
(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;	Yes/No	<ul style="list-style-type: none"> <li>N/A</li> </ul>

c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and	<b>Yes/No</b>	<ul style="list-style-type: none"> <li>N/A</li> </ul>
(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.	<b>Yes/No</b>	<ul style="list-style-type: none"> <li>N/A</li> </ul>

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

<b>Equitable Waiver of Dimensional Requirement Criteria:</b>	<b>Finding</b> (Circle One)	<b>Relevant Facts</b>
II. It has been demonstrated to the board that the violation has existed for 10 or more years or more, and no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.	<b>Yes</b>	<ul style="list-style-type: none"> <li>It has been demonstrated that the violation has existed for more than 10 years and no enforcement action was taken.</li> </ul>
c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and	<b>Yes</b>	<ul style="list-style-type: none"> <li>As demonstrated by the uniform support of the neighbors.</li> </ul>
(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.	<b>Yes</b>	<ul style="list-style-type: none"> <li>It would be impossible to require the violation to be corrected. The violation existed in 2021 when the applicant came forward for a variance and the issue didn't come up.</li> </ul>



# CITY OF PORTSMOUTH

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

## ZONING BOARD OF ADJUSTMENT

October 2, 2023

Lawrence Brewer and Joshua Ydstie  
253 Broad Street  
Portsmouth, New Hampshire 03801

**RE: Board of Adjustment request for property located at 253 Broad Street (LU-23-148)**

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, September 26, 2023**, considered your application for constructing an attached garage and adding a second driveway, which requires the following: 1) Variance from Section 10.521 to allow a 7-foot side setback where 10 feet is required; and 2) Variance from Section 10.1114.31 to allow more than one driveway per lot. Said property is shown on Assessor Map 131 Lot 16 and lies within the General Residence A (GRA) District. As a result of said consideration, the Board voted to **grant** the first variance to allow a 7-foot side setback; and to **grant** the second variance to allow more than one driveway per lot, with the following **condition**:

1) *Contingent that the applicant shall get an approved ADU within two years.*

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 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

# Findings of Fact | Variance

## City of Portsmouth Zoning Board of Adjustment

Date: 09/26/23

Property Address: 253 Broad St.

Application #: LU-23-148

Decision: **Grant – Section 10.521 – to allow a 7 ft. side setback where 10 ft. is required**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, It 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 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.	YES	<ul style="list-style-type: none"> <li>The main public interest is for the abutter's light and air. It would be a small infringement but it is a modest-sized structure in a neighborhood of homes that are very tight to the property lines and there would not be an unusual change in the character of the neighborhood.</li> </ul>
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	<ul style="list-style-type: none"> <li>It observes the spirit of the Ordinance because a small encroachment is being asked for.</li> </ul>
10.233.23 Granting the variance would do substantial justice.	YES	<ul style="list-style-type: none"> <li>The applicant's ability to enjoy a two-car garage attached to his property and make improvements to the driveway in front of it would cause no public purposes that would outweigh the enjoyment it would bring the applicant.</li> </ul>

<p>10.233.24 Granting the variance would not diminish the values of surrounding properties.</p>	<p><b>YES</b></p>	<ul style="list-style-type: none"> <li>• It would not diminish the values of surrounding properties and would likely add value to the current home, with no negative impact to any of the surrounding properties.</li> </ul>
<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>	<p><b>YES</b></p>	<ul style="list-style-type: none"> <li>• One of the special conditions of the property was that it's a double lot in which the applicant has more room to add on an addition than his neighbors would. It is a logical location due to topography issues in other potential locations. It is reasonable to request to create the modest addition within the setback.</li> </ul>

# Findings of Fact | Variance

## City of Portsmouth Zoning Board of Adjustment

Date: 09/26/23

Property Address: 253 Broad St.

Application #: LU-23-148

Decision: **Grant – Section 10.1114.31 – to allow more than one driveway per lot**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, It 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 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.	YES	<ul style="list-style-type: none"> <li>A curb cut already exists.</li> </ul>
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	<ul style="list-style-type: none"> <li>It observes the spirit of the ordinance because the applicant wants to have a separate private entrance to a potential ADU and the ADU would be on the lower level of the addition at the right hand side of the house in the backyard.</li> </ul>
10.233.23 Granting the variance would do substantial justice.	YES	<ul style="list-style-type: none"> <li>It does substantial justice because the applicant wants to have a separate private entrance to a potential ADU and the ADU would be on the lower level of the addition at the right hand side of the house in the backyard..</li> </ul>



<p>10.233.24 Granting the variance would not diminish the values of surrounding properties.</p>	<p><b>YES</b></p>	<ul style="list-style-type: none"> <li>• It would not diminish the values of surrounding properties and would likely add value.</li> </ul>
<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>	<p><b>YES</b></p>	<ul style="list-style-type: none"> <li>• It is a double lot and the home was built in the middle of it, so there is room on either side. There is a hardship if the applicant wants to put the ADU in the back and it is a reasonable use.</li> </ul>

<p><b>Stipulations</b></p>
<p>1. Contingent that the applicant shall get an approved ADU within two years.</p>



# CITY OF PORTSMOUTH

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

## ZONING BOARD OF ADJUSTMENT

October 2, 2023

Prospect North 815 LLC  
PO BOX 372  
Greenland, New Hampshire 04840

**RE: Board of Adjustment request for property located at 815 Lafayette Road (LU-23-149)**

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, September 26, 2023**, considered your application for the demolition of the existing building and tower and the construction of three 4-story, 24-unit multi-family buildings (72 total units) with first floor parking and associated site improvements, which requires the following: 1) Variance from Section 10.5B33.20 (Front Build-out) to permit a front build out of less than 50% of the total front yard width; and 2) Variance from Section 10.5B33.30 (Façade Orientation) to permit a façade orientation that is not parallel with the front property line. Said property is shown on Assessor Map 245 Lot 3 and lies within the Gateway Corridor (G1) District and the FEMA 100yr flood and extended flood hazard area. 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:*

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

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Neil Hansen, Engineer, Tighe & Bond  
Francis X Bruton III, Esq, Bruton & Berube, PLLC

# Findings of Fact | Variance

## City of Portsmouth Zoning Board of Adjustment

Date: 09/26/23

Property Address: 815 Lafayette Rd.

Application #: LU-23-149

Decision: **Grant**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, It 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 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.	YES	<ul style="list-style-type: none"> <li>Because it is the gateway district that is meant to be mixed-use, walkable, and provide housing stock for the changing demographics of the area, which meant having a façade along the street to invite people in there and there will be buildings visible to Lafayette Road that are not presently visible.</li> </ul>
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	<ul style="list-style-type: none"> <li>It observes the spirit of the Ordinance in terms of protection of natural resources and wetlands because the buildings would be situated outside of the wetlands for the creek, which is a valuable natural resource.</li> </ul>
10.233.23 Granting the variance would do substantial justice.	YES	<ul style="list-style-type: none"> <li>Because there would be no detriment to the public if the variances were denied that would</li> </ul>

		outweigh the benefit to the applicant.
10.233.24 Granting the variance would not diminish the values of surrounding properties.	<b>YES</b>	<ul style="list-style-type: none"> <li>Because it is a commercial area with some residential and it was all zoned Gateway 1, so there would be no diminution of values to the surrounding properties by building the multi-family buildings.</li> </ul>
<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>	<ul style="list-style-type: none"> <li>The property has special conditions of having a drainage easement on the front of the property as well as the wetland buffers that make it impossible to comply with the provisions of the Zoning Ordinance as it applies to the property. The proposed use is a reasonable one, a multi-family dwelling in the Gateway 1 District.</li> </ul>