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 August 18, 2015** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman David Witham, Charles LeMay, Patrick Moretti, Christopher Mulligan, David Rheaume. Alternate: Jeremiah Johnson

EXCUSED: Vice-Chairman Arthur Parrott, Derek Durbin

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I. APPROVAL OF MINUTES

A) July 21, 2015

B) July 28, 2015

The Minutes for July 21, 2015 and July 28, 2015 were approved as presented, with minor clerical corrections.

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II. REQUEST FOR EXTENSION

A) Request for Extension for property located at 324 Parrott Avenue.

<u>Action</u>: The Board voted to extend the variances through September 17, 2016.

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III. PUBLIC HEARINGS - OLD BUSINESS

A) Case # 7-13
Petitioner: Jillian Mirandi
Property: 19 Woodbury Avenue
Assessor Plan 162 Lot 65
Zoning District: General Residence A

Description: Replace front entry.
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 front yard setback of 2' 10"+/- where 15' is the minimum required and a building coverage of 29.6% where 25% is the maximum allowed.
A *request for setback relief for a shed was heard and granted at the July 28, 2015 meeting. The above request was postponed to this meeting.*

Action:

The Board voted to **grant** the petition as presented and advertised, with a 27"± front yard setback as presented and shown on the submitted drawing.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- A safer front entryway, conforming to code will not be contrary to the public interest.
- The spirit of the Ordinance will be observed as the footprint of the property will be minimally impacted and, with similar front entries in the area, the essential character of the neighborhood will not be altered.
- Substantial justice will be done and surrounding property values will not be diminished as the general public and neighbors will be minimally impacted.
- There is no fair and substantial relationship between the general public purposes of the Ordinance provision and its application to this property as the proposal will provide for a safer entryway and, without relief, the stairs would remain nonconforming and out of code compliance. This rebuild is reasonable in size and scope for a front entryway.

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B) Case # 7-7
Petitioner: Amba Realty, LLC
Property: 806 Route 1 By-Pass
Assessor Plan 161, Lot 43
Zoning District: Business
Description: Expand first floor to 5,150 sq. ft. of retail space and construct second floor for office space.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1113.20 to allow 9 parking spaces to be located within the required front yard and between the principal building and the street;

2. A Variance from Section 10.1112.30 to allow 26 fully available parking spaces and 2 restricted parking spaces where 28 are required and to allow parking 6.5' from a residential zone where 50' is required.
3. A Variance from Section 10.1113.41 to allow parking 0' from the front lot line where 20' is required;
4. A Variance from Section 10.1113.43 to not provide landscaping and screening within the front setback.

Action:

The Board voted to **grant** the petition as presented and advertised with the following changes and stipulations:

Changes:

- The request for 26 available parking spaces and 2 restricted parking spaces is not required and is withdrawn.
- The Variance to allow parking 6.5' from a residential zone is granted from Section 10.1113.30, not Section 10.1112.30.

Stipulation:

- The applicant must work with the Planning Board, through the site plan review process, to improve the fencing along the southeast property line so that it will provide an effective buffer to mitigate the light and sound reaching surrounding properties, and to prevent pedestrian access through or along the fencing.

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 proposed use is allowed in this district and area businesses have transient traffic similar to what this use might generate so that the essential character of the neighborhood will not be altered.
- To prevent a practical use of this property by denying the variances would be a detriment to the applicant with no corresponding benefit to the general public.
- With the adjoining parcels along the By-Pass having similar commercial uses, and the nearby residential area protected from any negative impact by the stipulation attached to this approval, the value of surrounding properties will not be diminished.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to special conditions of the property. The characteristics supporting similar uses of the property have been in place for many years and are capable of supporting the proposed changes.

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C) Case # 7-8
Petitioner: Moray, LLC and 215 Commerce Way, LLC
Property: 215 & 235 Commerce Way
Assessor Plan 216, Lots 1-8A & 1-8B
Zoning District: Office Research
Description: Provide parking, on a corner lot, located between the street and the building.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1113.20 to allow off-street parking spaces to be located in a front yard between a principal building and the street.

Action:

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

Note: The Board acknowledged that the relief being sought was for parking between a principal building and a street, not within the front yard.

Stipulation:

- Appropriate full cut-off light fixtures are to be installed to ensure that light generated from the parking lot running along Portsmouth Boulevard will not spill over onto neighboring properties.

Review Criteria:

The petition was granted for the following reasons:

- The parking in the proposed location is not a detriment to the public interest.
- While the strict spirit of the Ordinance would be to locate parking in the rear, it is impractical in this case due to the unique configuration of the lots and the existing building on the lot.
- Substantial justice will be done as the property owner will be allowed to make full use of this property with no infringement on the rights of the general public.
- Parking in this location will have no effect on the value of surrounding properties.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to the special conditions of the property. These include the unique configurations of the lots to be combined and the existing structures on the lots, the size of the lot, and a corner location. This creates a difficulty in placing parking without the need for a variance.

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D) Case # 7-9
Petitioner: Barbara R. Frankel
Property: 89 Brewery Lane
Assessor Plan 146, Lot 26
Zoning District: Mixed Residential Business
Description: Remove existing structure and construct 2-story assisted-living home with a 3,450 sq. ft. footprint.

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

1. A Special Exception from Section 10.440 to allow an assisted living home.
2. A Variance from Section 10.512 to allow 30' of street frontage where a minimum of 100' is required.

Action:

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

Stipulations:

None.

Review Criteria:

The Special Exception was granted for the following reasons:

- The standards provided by the Ordinance for this particular use permitted by Special Exception are met.
- This will be a residential use presenting no hazard to the public or adjacent property from fire explosion or release of toxic materials.
- For the same reason, there will be no detriment to property values or change in the essential characteristics from location or scale of buildings, fire, smoke, pollutants or other irritants.
- Given the existing right-of-way and the property's location across from a shopping mall, any traffic generated from this property will not create a traffic safety hazard or substantial increase in the level of traffic congestion.
- A residential use of this type will not create an excessive demand on municipal services.
- Similar to other reasonable residential developments, there will be no undue impact on the amount of storm water runoff onto adjacent property or streets.

The Variance was granted for the following reasons:

- Granting a variance will not be contrary to the public interest and will observe the spirit of the Ordinance. The proposed structure has the appearance of a single-family home and is located across from a commercial mall so that the essential characteristics of the neighborhood will not be altered or the health, safety or welfare of the general public threatened.
- Substantial justice will be done as the loss to the applicant if the petition were denied would not be balanced by any corresponding benefit to the public.
- The value of surrounding properties will not be diminished by a well-designed new home construction.
- Literal enforcement of the Ordinance would result in an unnecessary hardship. The approved sub-division that occurred a number of years ago resulted in a small amount of official frontage while, for practical purposes, there is significant frontage along a travel way. Due to this special condition, there is no fair and substantial relationship between the purpose of the frontage requirement in the Ordinance and its application to this property. The proposed use of the property is a reasonable one.

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E) Case # 7-10
Petitioner: Strawbery Banke Inc.
Property: 14 Hancock Street (Strawbery Banke)
Assessor Plan 104, Lot 7
Zoning District: Mixed Residential Office
Description: Clarification/modification of previous approval for operation of the skating pond.
Requests: Clarification/modification of the time period for use of the skating pond from November 1st to March 31st each year.

Action:

The Board voted to **grant** the petition as presented and advertised, modifying the variances granted on June 18, 2013 and clarified at the February 17, 2015 meeting as follows:

- The skating area may be operated for a running four month period each year beginning with the first day operations commence and the skating area is open to the public.

Stipulations:

None.

Other:

- The Board recognized that a short period of preparation of the skating area outside of the 4-month period may be needed each year prior to the commencement of actual operations and opening of the rink for public use.

Review Criteria:

The petition was granted for the following reasons:

- Granting this variance modification will not be contrary to the public interest and the spirit of the Ordinance will be observed as the previous year of operation has demonstrated that the essential character of the neighborhood will not be altered and there will be no threat the public health, safety and welfare.
- Substantial justice will be done as the benefit to the applicant if the petition is granted will not be outweighed by any harm to the general public.
- An additional month of operation will not diminish the value of surrounding properties.
- There is no fair and substantial relationship between the general purposes of the Ordinance and their application to a use that was already approved for a limited time period to operate for one additional month.

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F) Case # 7-11
Petitioner: Merton Alan Investments, LLC
Property: 30 Cate Street
Assessor Plan 165, Lot 1
Zoning District: Industrial
Description: Clarification of previous approval for construction of an office building.
Requests: Clarification that the setback relief granted included the 15.4' front setback resulting from the City's future reconfiguration of Cate St.

Action:

The Board voted to **clarify** that when they granted the variances for the property at the February 3, 2015 meeting, they understood that the approval for a 30' front yard setback was to the then existing property line and potential changes to the City right-of-way, as indicated on the reconfigured roadway shown on the plan presented to the Board at that meeting, might result in a reduction in the front yard setback to 15.4'±.

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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.

Action:

The Board voted to **postpone** the petition to the September meeting at the request of the attorney for the applicant.

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IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case # 8-1
Petitioners: Cherry Ventures LLC, owner, Mary Louise Brozena & Cheryl Kenney, applicants
Property: 64 Pine Street
Assessor Plan 162, Lot 24
Zoning District: General Residence A
Description: Rebuild home on non-conforming foundation.

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

1. A Variance from Section 10.321 to allow a lawful nonconforming building or structure to be extended, reconstructed or structurally altered except in conformance with the Ordinance.
2. A Variance from 10.516.10 to allow a 0'± front yard setback where 6' is required.
3. A Variance from Section 10.521 to allow a 0'± left side yard setback where 10' is the minimum required.

Action:

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

Review Criteria:

The petition was denied for reasons including the following:

- All the criteria necessary to grant a variance were not met.
- Without the protection of the front and left side yard setbacks, the mass and scale of the home will alter the essential character of the neighborhood.
- The proposed placement could affect the light and air protected by the Ordinance and diminish the value of surrounding properties.
- There is no special condition inherent in the property creating a hardship and the home could be designed and placed so that it would be more in accordance with the Ordinance.

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2) Case # 8-2
Petitioners: 2422 Lafayette Road Assoc LLC
Property: 2454 Lafayette Road
Assessor Plan 273, Lot 3
Zoning District: Gateway
Description: Allow a parking area between a principal building and a street.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.1113.20 to allow required off-street parking spaces to be located in a required front yard or between a principal building and a street.
2. A Variance from Section 10.734.20 to allow a front yard setback of 151'± where 90' is the maximum allowed.

Action:

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

Note: The Board acknowledged that the relief being sought was for parking between a principal building and a street, not within the front yard.

<u>Stipulations:</u>

None.

<u>Review Criteria</u>:

The petition was granted for the following reasons:

- Granting the variances will not be contrary to the public interest or the spirit of the Ordinance as allowing parking and structures to remain as they have existed for some time will not alter the essential character of the neighborhood or threaten the health, safety or welfare of the general public.
- Substantial justice will be done as complying with current standards would force the applicant to move buildings to the front of the property with no resulting benefit to the public.
- Surrounding property values will not be diminished by allowing the parking to remain as it has existed for many years.
- The special condition of the property is that the present built environment is substantially as it has existed for many years while the Ordinance has changed so that there is no fair and substantial relationship between the Ordinance provisions eliminating parking between a principal building and a street and the maximum front yard setback and their specific application to this property.

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3) Case # 8-3
Petitioners: Thomas E., Marybeth B., James B. & Meegan C. Reis
Property: 305 Peverly Hill Road
Assessor Plan 255, Lot 5
Zoning District: Single Residence B & NRP
Description: Construct a second free-standing dwelling on a lot.
Requests: The Variances necessary to grant the required relief from the Zoning Ordinance, including the following:

1. A Variance from Section 10.513 to allow a second free-standing dwelling on a lot where a second free-standing dwelling is not allowed in this district.

<u>Action</u>:

The Board voted to **grant** the petition as presented and advertised noting that the proposed second unit would be attached to the existing dwelling and therefore the variance was from Section 10.440, Use #1.20 to allow a second dwelling unit on a lot.

<u>Stipulations:</u>

None.

<u>Review Criteria</u>:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest and will observe the spirit of the Ordinance by maintaining a working farm and conservation land.
- Substantial justice will be done by allowing a working farm to be maintained with no corresponding detriment to the general public.
- Given the nature and size of the property, granting this variance will not result in the diminution in the value of surrounding properties.
- The property is unique in its size and nature so that there is no fair and substantial relationship between the general provisions of the Ordinance and their specific application to this property.

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V. OTHER BUSINESS

No other business was presented.

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VI. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:20 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary