

TO: Zoning Board of Adjustment
FROM: Juliet Walker, Planning Department
DATE: September 9, 2015
RE: September 15, 2015 Board of Adjustment Meeting

OLD BUSINESS

1. 336 Union St
2. 525 Maplewood Ave

NEW BUSINESS

3. Deer Street, Russell Street & Maplewood Avenue (Harborcorp)

OLD BUSINESS

Case #6-8

Petitioners:	Joseph & Lindsey B. Donohue
Property:	336 Union Street
Assessor Plan:	Map 134, Lot 58
Zoning District:	General Residence A
Description:	Convert single family dwelling to two dwelling units.
Requests:	Request for rehearing on required variances: 1. A Variance from Section 10.521 to allow a lot area per dwelling unit of 2,178 s.f. ± where 7,500 s.f. is required. 2. A Variance from Section 10.1112.30 to allow two off-street parking spaces to be provided where four off-street parking spaces are required.

The Board voted to deny the variance request at June 16, 2015 meeting. The Applicant has filed a request for a rehearing within 30 days of the Board's decision and the Board must consider the request at the next scheduled meeting. The Board must vote to grant or deny the request or suspend the decision pending further consideration. If the Board votes to grant the request, the rehearing will be scheduled for the October Board meeting or at another time to be determined by the Board.

The decision to grant or deny a rehearing request must occur at a public meeting, but this is not a public hearing. The Board should evaluate the information provided in the request and make its decision based upon that document. The Board should grant the rehearing request if a majority of the Board is convinced that some error of procedure or law was committed during the original consideration of the case.

Case #7-12

Petitioner: New England Glory, LLC
 Property: 525 Maplewood Avenue
 Assessor Plan: Map 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.

A. Existing Conditions

	<u>Existing</u>	<u>Permitted / Required</u>
<u>Land Use:</u>	12-unit residential complex	Primarily residential
<u>Lot area (sq. ft.):</u>	80,693	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	6,724	7,500 min.
<u>Street Frontage (feet):</u>	551	100 min.
<u>Lot depth (feet):</u>	>70	70 min.
<u>Front Yard (feet):</u>	>15	15 min.
<u>Left Yard (feet):</u>	>10	10 min.
<u>Right Yard (feet):</u>	>10	10 min.
<u>Rear Yard (feet):</u>	<20	20 min.
<u>Building Coverage:</u>	<25%	25% max.
<u>Open Space Coverage:</u>	>30%	30% min.
<u>Parking (spaces):</u>		19 min.
<u>Estimated Age of Structure:</u>	1805	

B. Proposed Changes

	<u>Proposed</u>	<u>Permitted / Required</u>
<u>Lot area (sq. ft.):</u>	45,065 (Lot 1) 35,828 (Lot 2)	7,500 min.
<u>Lot Area per Dwelling Unit (sq. ft.):</u>	3,755 (Lot 1) Not yet determined (Lot 2)	7,500 min.
<u>Street Frontage (feet):</u>	354 (Lot 1)	100 min.
<u>Lot depth (feet):</u>	240 (Lot 1) 149 (Lot 2)	70 min.
<u>Front Yard (feet):</u>	>15 (Lot 1) Not yet determined (Lot 2)	15 min.
<u>Left Yard (feet):</u>	>10 (Lot 1) Not yet determined (Lot 2)	10 min.
<u>Right Yard (feet):</u>	>10 (Lot 1) Not yet determined (Lot 2)	10 min.
<u>Rear Yard (feet):</u>	<20 Not yet determined (Lot 2)	20 min.
<u>Building Coverage:</u>	<25% Not yet determined (Lot 2)	25% max.
<u>Open Space Coverage:</u>	>30% Not yet determined (Lot 2)	30% min.
<u>Parking (spaces):</u>		19 min. (Lot 1) Not yet determined (Lot 2)

C. Other Permits Required

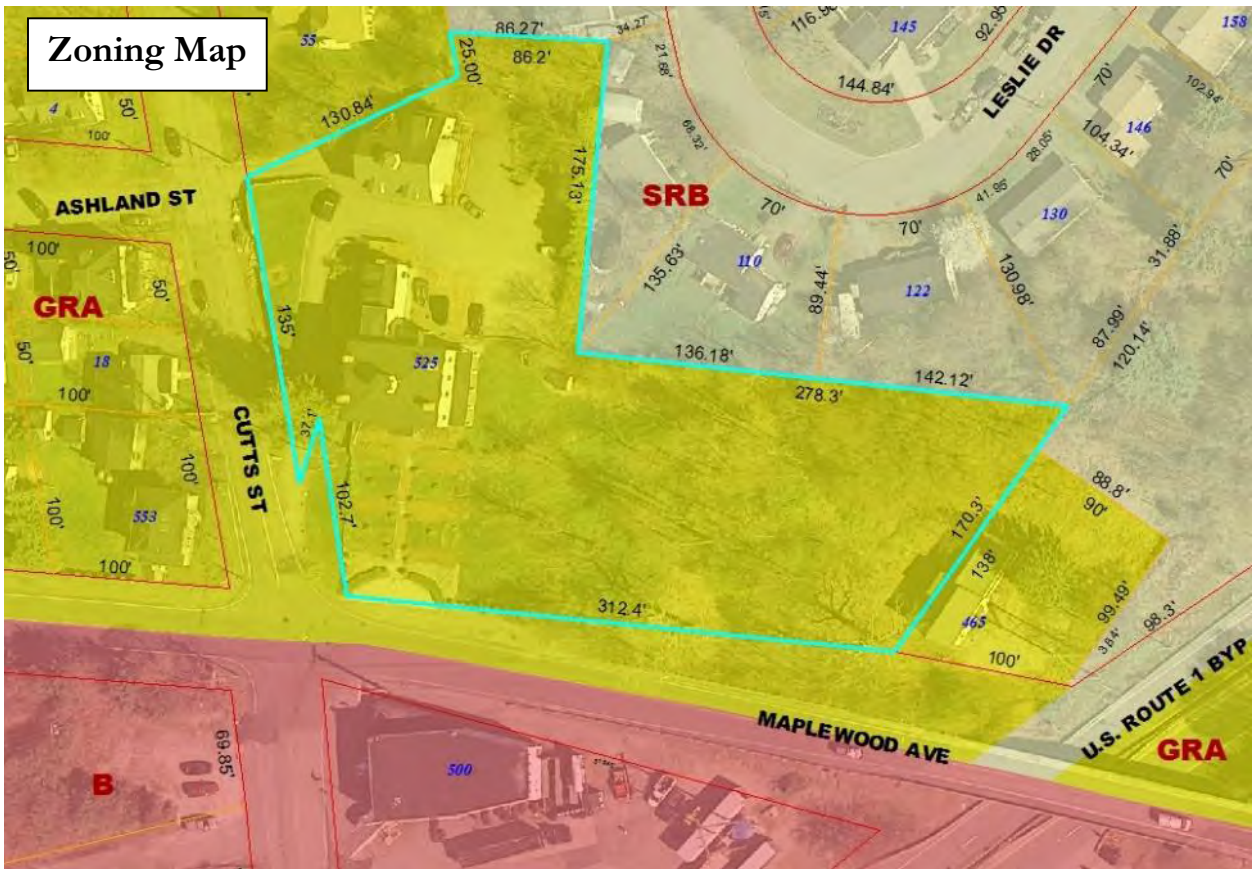
- Planning Board Subdivision

D. Neighborhood Context

- Surrounding Land Uses: Truck stop, single family residential, PSNH



Aerial Map



Zoning Map

E. Previous Board of Adjustment Actions

January 30, 1957 – The Board **granted** a variance to convert a four family dwelling into a ten apartment structure.

June 28, 1966 – The Board **tabled** a request to erect a sign for Theatre-By-The-Sea with the request that a letter be sent to the City Council urgently asking them to look into the need for adoption of a sign ordinance.

July 17, 1990 – The Board **denied** a request for the following: 1) to increase the extent of a nonconforming use of the property by creating a tenth dwelling unit where no such increase may be made; and 2) to permit the conversion of an existing storage barn into a dwelling unit for a total of 10 dwelling units on the lot where only one dwelling is allowed.

August 21, 1990 – The Board **denied** a Request for Rehearing on the above.

October 27, 1992 – The Board **denied** the following requests: 1) to allow an increase in the extent of a nonconforming use of a structure or land where no increase may be made; and 2) to allow the conversion of a garage/storage building into an apartment for a total of 10 dwelling units on a single lot in a single residence district where structures shall not accommodate more than a single family.

January 20, 1998 – The Board **granted** the following variances: 1) to allow the expansion of a nonconforming use by the addition of four dwelling units in the accessory barn/garage structure for a total of thirteen units where four dwelling units are the maximum allowed and nine grandfathered units presently exist; and 2) to allow a lot area per dwelling unit of 6,300 s.f. where 7,500 s.f. is required.

The request was granted **as per the letter sent to abutters by the Housing Partnership** as follows:

- The Cutts Mansion will be restored and renovated to its original glory, will enhance the entrance to your neighborhood;
- We will be spending over \$700,000 to renovate the property. This will increase the marketability of your property and perhaps its resale value;
- The grounds will be cleaned up, including removal of junk and any hazardous materials;
- The buildings will be brought up to meet all current building codes;
- A sprinkler system and completely new heating system will reduce the number of visits from the Portsmouth Fire Department;
- A landscape architect will supervise the removal of overgrown shrubs and trees and new landscaping;
- The property will be managed by a professional property management company; and
- Rubbish will be collected in a screened on-site dumpster, as opposed to curbside collection.

The Board members made the following **stipulations**:

- That the Planning Department be kept advised of the progress of the pending sale; and
- That the driveway be reviewed by the Traffic and Safety Committee (The committee met March 19, 1998 and approved the relocation of a driveway).

March 25, 1998 – The Chief Building Inspector sent a letter to the then owner advising of an unauthorized, newly created “dwelling/boarding room” in the main building and two dwellings and a business occupancy in the barn, which were in violation of the zoning ordinance and did not comply with building codes. The owner was requested to remove or have vacated the “three (3) illegal dwelling units and one (1) illegal business occupancy.”

May 19, 1998 – The Board **tabled** a request to allow the following: 1) the expansion of a nonconforming use by the addition of five dwelling units in the accessory barn/garage structure where four dwelling units had been previously granted and seven dwelling units to be in the main house for a total of twelve units on the lot where four dwelling units are the maximum allowed and nine grandfathered units presently existing in the main house; and 2) to allow a lot area per dwelling unit of 6,824 s.f. where 7,500 s.f. is required.

June 16, 1998 – The Board **granted** a variance to allow the following: 1) the expansion of a nonconforming use by the addition of five dwelling units in the accessory barn/garage structure where four dwelling units had been previously granted and eight dwelling units to be in the main house for a total of thirteen units on the lot where four dwelling units are the maximum allowed and nine grandfathered units presently exist in the main house. The request was granted subject to the **stipulations** from the letter to the Housing Partnership and the Board member **stipulations** attached to the variance granted at the January 20, 1998 meeting.

March 16, 1999 – The Board **granted** variances to allow the following: 1) to allow the existing barn to be converted into 5 dwelling units in addition to the existing 9 dwelling units in the main house for a total of 14 dwelling units on a lot where the maximum allowed is 4 dwelling units; and 2) to allow said dwelling units to be in two buildings where all dwelling units are to be in one building. The request was granted with the following **stipulations** submitted by Mr. Gary Dodds:

- Correct interior doors to and from apartments (to the general hallway);
- Install self closing mechanism on all doors to general hallway;
- Hard wire smoke detectors in basement, first floor, second floor, third floor and basement (19 total) (this work had been completed);
- Provide second means of egress to all units;
- Install new furnaces in both the Cutts Mansion and the Carriage House (barn); and
- The Carriage House will have a sprinkler system installed and be compliant with all other building codes.

The following will be addressed within the first year:

- Restore and renovate the Cutts Mansion to enhance its appearance with the neighborhood;
- Clean up the grounds and remove all hazardous materials;
- Landscape around the property to improve the neighborhood and the City of Portsmouth;
- Install fire extinguishers throughout the building; and
- Install an historic marker at the front of the property for people visiting the City to view and gain information about the property.

The Board added the following stipulations:

- That the rubbish area be screened; and
- That the building be brought up to meet all current building codes.

July 17, 2001 – The Board granted a variance to convert the nine apartments in the main building into fourteen rooms for a Bed and Breakfast Inn.

July 16, 2002 – The Board granted a one year extension of the above variance to expire on July 16, 2003.

July 15, 2008 – The applicant requested, and the Board **granted, a postponement** to the August meeting an Appeal from an Administrative Decision regarding the determination of the Code Officials that the Building Permit to convert the 9 apartments into a 14 room Bed and Breakfast has lapsed as the building continues to be used as 9 apartments. Notwithstanding that request, if the Administrative Appeal were denied, a request for a variance to allow the existing 9 apartments to be converted into a 14 room Bed and Breakfast.

August 19, 2008 – The Board **postponed** the above request to a time indefinite at the applicant's request.

December 28, 2009 – A letter was sent from the Principal Planner to the owner advising that there had been no action on the pending application and outlining the options in order to close the pending application.

January 19, 2010 – The Board acknowledged that the petition as outlined above for the July 15, 2008 meeting had been **withdrawn** at the applicant's request.

July 19, 2011 – The Board **denied** a request to construct a multi-bay garage with a 70' x 16' section and an 86' x 16' section with a 10' rear yard setback where 20' was required and a 5' right side yard setback where 10' was required.

F. Planning Department Comments

This application meets the submission requirements.

G. Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
 - (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.*

NEW BUSINESS

Case #9-1

Petitioners:	Barbara Adams, etal, “the appellants”
Property:	Deer Street, Russell Street & Maplewood Avenue
Assessor Plan:	Map 118 Lot 28 Map 119 Lots 1-1A,1-1C & 4 Map 124 Lot 12 Map 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.

A. Application History

May 27, 2015 – (Continued from the May 6, 2015 meeting). A Work Session/Public Hearing was held after a site walk to consider a new free standing structure (5 story mixed use development to include a hotel/event center, parking structure, condominiums and retail space). The Commission voted to continue the public hearing to the June 10, 2015 meeting.

May 27, 2015 – (Continued from the May 6, 2015 meeting). The Commission to continue to the June 10, 2015 meeting a request to allow a Conditional Use Permit to construct a multi-story, mixed-use building where the height exceeded the 45’ maximum height restriction.

June 10, 2015 - The Commission voted to approve (issue a Certificate of Approval) the above described five story mixed use development with the following stipulations:

1. The connector bridge over Russell Street has been removed from the application. Any design change that seeks to include a bridge connector shall require a new application and public hearing before the Commission;
2. 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;
3. A water-struck brick shall be used for Brick Type 1;
4. 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.

June 10, 2015 – The Commission voted to approve the request for a Conditional Use Permit with the following narrative, findings and stipulations:

The Portsmouth Historic District Commission (HDC) hereby grants a Conditional Use Permit (CUP) for the entirety of the building up to a maximum height of 60 feet (as defined by the Zoning Ordinance and shown on the submitted plans, as revised to except for appurtenances which 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 (see Site Layout Plans – Sheets A1.1 –A1.3B and “Elevations”, prepared by Harriman, received June 3, 2015). This approval is also based upon the Applicant providing the program elements listed in paragraph 5, at its sole expense, which the HDC hereby finds support the granting of this CUP in conformance with Section 10.535.13 of the Portsmouth Zoning Ordinance.

July 17, 2015 – The Commission denied a Motion for Rehearing requested by a group of interested parties.

B. Planning Department Comments

The Applicant, owner of the property located at the intersections of Deer St, Russell St, and Maplewood Ave, applied to the Historic District Commission (HDC) for a Certificate of Approval and a Conditional Use Permit, which were granted on June 10, 2015. The Appellants (Petitioners) requested, and were denied, a rehearing with the HDC on July 17, 2015.

Although the appellants’ request is termed an “appeal” from the decision of the HDC, it is unlike the other types of appeal and applications that the Board receives. The role of the Board of Adjustment is not to review the HDC’s action, but instead to conduct a new hearing and make its own decision on the matter in issue using the HDC criteria.

C. Review Criteria

The Board must conduct a new hearing and evaluate the application with respect to the standards for the HDC contained in the Zoning Ordinance.

Certificate of Approval

In considering the application for a Certificate of Approval, the Board’s decision must be based on the Purpose and Objectives in Section 10.631, Review Factors in Section 10.635.60, and the Review Criteria in Section 10.635.70. The Board’s action on the application will be either to grant a Certificate of Approval or to issue a Notice of Disapproval.

10.631 Purpose and Objectives

10.631.10 The Historic District is established to preserve the architectural and historic resources of the City of Portsmouth; to foster its architectural and historic character and its sense of place; to conserve property values; to strengthen the local economy; and to promote the use of the District for education, pleasure and welfare of residents and visitors.

10.631.20

This Section is intended to achieve the following objectives:

- (1) To preserve the integrity of the Historic District;
- (2) To maintain the special character of the District as reflected in the scale, mass, location and style of buildings;
- (3) To assess 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;
- (4) To encourage designs for new buildings and structures, additions to buildings and structures, and the reuse of existing buildings and structures that complement and enhance the City’s architectural and historic character and contribute to its sense of place;
- (5) To foster Portsmouth’s heritage and economic well-being through the conservation and enhancement of property values; and

(6) To promote the District's contribution to the education, pleasure and welfare of the City's residents and visitors.

10.635.60 Review Factors

In conducting reviews under this Section, the Commission shall consider factors that render a site architecturally or historically significant, including:

- (1) the historical time period, context or immediate setting;
- (2) the structure's architecture, including stylistic features, design elements and mass;
- (3) construction materials, including technological systems and features; and
- (4) importance relative to a historically recognized individual or event.

10.635.70 Review Criteria

The Commission shall review an application for a Certificate of Approval and determine whether the application is consistent with and furthers the purpose and objectives set forth in Section 10.631. In making this determination, the Commission shall make Findings of Fact by referring to the following criteria:

- (1) The special and defining character of surrounding properties, including architectural details, design, height, scale, mass, width of surrounding structures, street frontages, types of roofs, facades and openings.
- (2) The significant historical or architectural value of an existing structure for which a Certificate is sought, including its setting, scale and mass; and the general size of new construction with consideration of such factors as height, width, materials and architectural details.
- (3) The extent to which a proposed project's exterior design, scale, arrangement, texture, detailing and materials complement or enhance the existing structure and are compatible with surrounding properties.
- (4) Encouraging the innovative use of technologies, materials and practices provided these are compatible with the character of surrounding properties.

Conditional Use Permit

In considering the application for a Conditional Use Permit for an increase in building height pursuant to Section 10.535.13, the Board must determine that the proposed building and site design positively contribute to the context, quality, and overall historic character of the neighboring properties and the district as a whole, including:

- Publicly accessible open space areas such as widened sidewalks, plazas, pocket parks, playgrounds or other significant public open space areas;
- Underground parking in lieu of surface parking;
- The use of high-quality building materials in the building design including, but not limited to: slate or copper roofing; copper gutters and downspouts; restoration brick; granite sills, lintels, foundations, stoops and steps; and wood windows along the façade elevation;
- Significant scaling elements in the building design such as increased setbacks, stepbacks, reduced footprint and volume, the use of pitched roof forms, banding, quoining and other massing techniques to maintain a pedestrian scale along the façade;
- Significant restoration or reconstruction of a "focal" or "contributing" building;
- Permanent protection of a significant view corridor.