

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 regular meeting on May 17, 2016** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Witham, Jeremiah Johnson, Charles LeMay, Patrick Moretti, Arthur Parrott. Alternates: Jim Lee, Peter McDonell

EXCUSED: Vice-Chairman David Rheaume, Christopher Mulligan,

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I. APPROVAL OF MINUTES

- A) April 19, 2016
- B) April 26, 2016

Minutes for both meetings were approved as presented with minor corrections.

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III. OLD BUSINESS

- A) 525 Maplewood Avenue – Request for Rehearing

Action:

The Board voted to **take into record** the previous action and comments from the April 19, 2016 meeting and **deny** the Request for Rehearing with an effective date of May 17, 2016. The Board incorporated their determination that no new information had been provided relevant to the Board’s reasons for the denial and that the Board had carefully considered all the information and had not made an error in their conduct of the review or application of the law.

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IV. PUBLIC HEARINGS – OLD BUSINESS

- 1) Case #4-7
 - Petitioners: Stewart Whitney & Haiyan Chao Whitney
 - Property: 180 Wibird Street
 - Assessor Plan 148, Lot 1-1
 - Zoning District: General Residence A
 - Description: Construct two second story decks.

- 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 30.3%± building coverage where 25% is the maximum allowed.
(*This petition was postponed at the April 17, 2016 meeting.*)

Action:

The Board acknowledged that the petition had been **withdrawn**, without prejudice, at the request of the attorney for the applicant.

2) Case #4-8

- Petitioner: Wentworth Sagamore, LLC
 Property: 1150 Sagamore Avenue
 Assessor Plan 201, Lot 22
 Zoning District: Mixed Residential Business
 Description: Install a wall sign and a second free-standing sign on a lot.
- 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 10.1243 to allow a second free-standing sign on a lot.
 2. A Variance from Section 10.1251.20 to allow a 28.4± s.f. free-standing sign where 20 s.f. is the maximum allowed.
 3. A Variance from Section 10.51251.20 to allow a 25± s.f. wall sign where 16 s.f. is the maximum allowed.

Action:

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

Stipulation:

- The proposed signs must comply with the sign illumination standards provided in Section 10.1260 of the Ordinance.

Review Criteria:

The petition was granted for the following reasons:

- A wall sign on a building of sufficient size to accommodate it and a second free-standing sign in the proposed location will not alter the character of the neighborhood so that granting the variances will not be contrary to the public interest and will observe the spirit of the Ordinance.
 - Substantial justice will be done as granting the variances will not result in any detriment to the general public and no one spoke in opposition to the petition.
 - The value of surrounding properties will not be diminished by reasonable signage on an improved lot with a newly constructed building.
 - The special distinguishing conditions of the property include its newly redeveloped character and a long existing free-standing sign bound to another entity so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and their specific application to the property.
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3) Case #4-9

Petitioner: Michael De La Cruz

Property: 75 Congress Street (63 Congress Street)

Assessor Plan 117, Lot 5

Zoning District: Character District 5, Downtown Overlay District

Description: Construct five residential use dormers and one office use dormer, with walkways and decks. Restore pediments.

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, enlarged or structurally altered without conforming to the Ordinance.
2. A Variance from Section 10.5A43.31 and Section 10.5A21.22 to allow the following building heights where the maximum building heights allowed per Map 10.5A21B are 40’ for a 2-3 stories height requirement area and 45’ for a 2-3 stories (short 4th) height requirement area:
 - a. 62’11” for the proposed pediments
 - b. 64’6” for the proposed office dormer, and
 - c. 60’5” for the proposed residential dormers
(This petition has been revised since its initial publication, with the changes indicated in italics.)

Action:

The Board voted to **postpone** the petition to the June meeting so that the following additional information and clarification could be provided:

- A 3-D scaled rendering, aerial view, and street view of the proposed dormers and roof decks.
- A cross-section plan with dimensions.
- A detailed exterior lighting plan.
- Explanation of proposed covenants, if any, regarding use restrictions for the roof decks, plans for roof top furniture, lighting, etc.

4) Case #4-10

Petitioner: Robert McDowell

Property: 379 New Castle Avenue

Assessor Plan 207, Lot 4

Zoning District: Single Residence B

Description: Construct a 20’ x 20’ detached garage.

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 front yard setback of 7.25’ where 30’ is required.
2. A Variance from Section 10.521 to allow 20.6% building coverage where 20% is the maximum allowed.
3. A Variance from Section 10.571 to allow an accessory building to be located in a required front yard.

Action:

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

Stipulations:

None.

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 character of the neighborhood will not be altered by replacing two garages with a single structure.
- Substantial justice will be done as granting the variances will benefit the applicant with no detriment to the general public.
- A single garage with a smaller overall footprint in essentially the same location as the existing two garages will not diminish the value of surrounding properties.
- The special conditions of the property distinguishing it from others in the area and creating a hardship include a small, narrow lot and the location of existing structures on the lot so that there is no other reasonably feasible location for the proposed replacement garage.

5) Case #4-11

Petitioners: Natan Aviezri Revocable Trust, Debra Klein & Natan Aviezri, Trustees

Property: 75 Monroe Street (Middle Road at Ward Place)

Assessor Plan 168, Lot 27 (merged from Lots 34 & 35)

Zoning District: General Residence A

Description: Construct a single-family home and garage on two re-merged lots.

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 lot area of 5,954± s.f. where 7,500 s.f. is required.
2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 5,954± s.f. where 7,500 s.f. per dwelling unit is required.
3. A Variance from Section 10.521 to allow continuous street frontage of 85.59'± where 100' of continuous street frontage is required.

Action:

The Board determined that the modification to the variances granted at the February 16, 2016 meeting was slight so that the variances as currently presented and advertised should be **granted**. The Board also determined that the minor changes represented by the current petition did not affect the nature of the discussions at the February meeting or how the Board determined that the criteria for granting the variances were met so that the reasons for meeting the criteria should be carried forward to the granting of the current petition.

Stipulations:

None.

Other:

The Board again requested that the Planning Board in their review of the project take safety concerns into consideration in determining the location of the driveway. The Board also noted that the request

to conform to the location of the sewer line that crosses the abutting proposed lot should be addressed with the Planning Department.

Review Criteria: (As carried forward from the February 19, 2016 letter of decision)

The petition was granted for the following reasons:

- A home on a reasonably sized lot will be in keeping with the essential character of the neighborhood 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 reasonable development of the lot with no detriment to the general public.
- A new home in this area will not have any significant impact on abutters so that the value of surrounding properties will not be diminished.
- There are special conditions of the property distinguishing it from others in the area so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and their specific application to the property. This is a corner lot with frontage on two streets and a history of merging and unmerging with contiguous lots. The proposed use of the property is a reasonable use of two unmerged lots which have been re-merged into one.

6) Case #4-12

Petitioner: Seacoast Trust LLP

Property: 150 US Route One By-Pass

Assessor Plan 231, Lot 58

Zoning District: Single Residence B

Description: Construct four-story, 40 unit, multi-family building.

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

- 1A. A Special Exception under Section 10.335 to allow a lawful nonconforming use to be changed to another nonconforming use.

If the Special Exception for the proposed use is not granted, then the following is requested:

- 1B. A Variance from Section 10.440, Use #1.40 to allow a multifamily dwelling with 40 dwelling units.

The following dimensional relief is also requested:

2. A Variance from Section 10.521 to allow a lot area per dwelling unit of 3,254 s.f. where 15,000 s.f. is required.
3. A Variance from Section 10.521 to allow a structure height of 50’ where 35’ is the maximum allowed.
4. A Variance from Section 10.522 to allow a multifamily dwelling with a building length of 246’ where 160’ is the maximum allowed.

Action:

The Board voted to **deny** the Special Exception as presented and advertised. The Board then voted to **deny** the Variances as presented and advertised.

Review Criteria:

The Special Exception was denied as it was determined that the following criteria necessary to grant a Special Exception under Section 10.335 were not met:

1. In size and scale the proposed multi-residential use is not equal to or more appropriate to the district than the existing use.
2. The potential impact on adjacent properties will not be less adverse than the existing use.

The Variances were denied for the following reasons:

- All the criteria necessary to grant the petition were not met, with the variance request for height not meeting any of the five criteria.
- Granting variances for a structure of this mass and scale with the proposed number of residential units would be contrary to the public interest and alter the essential character of the neighborhood.
- The hardship test is not met as the property can be reasonably used without requiring this degree of relief.

7. Case #4-13

Petitioners: Blueberry Lafayette Investors LLC & Edward Walsh, owners, William P. Walsh, applicant

Property: 3605 (3607) Lafayette Road

Assessor Plan 298, Lot 2

Zoning District: Gateway & Rural

Description: Motor vehicle repair

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

1. A Special Exception under Section 10.440, Use #11.20 to allow a motor vehicle repair use in a district where the use is allowed only by Special Exception.
2. A Variance from Section 10.1111 to allow a change in use that does not meet the requirements for off-street parking.
3. A Variance from Section 10.843.12 to allow more than two 40' wide curb cuts or access or egress points on each abutting street.
4. A Variance from Section 10.843.21 to allow areas for parking, outdoor storage and outdoor display of vehicles or equipment to be set back less than 40 feet from the street right-of-way.

Action:

This petition was **postponed** to the June meeting.

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It was moved, seconded and passed to adjourn the meeting at 11:05 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary