

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

REVISED 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 June 21, 2016** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheaume, Vice-Chairman Charles LeMay, Jeremiah Johnson, Patrick Moretti, Christopher Mulligan, Arthur Parrott. Alternates: Jim Lee, Peter McDonell

EXCUSED: None

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I. APPROVAL OF MINUTES

- A) May 17, 2016
- B) May 24, 2016

Minutes for both meetings were approved as presented.

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II. OLD BUSINESS

- A) Request for Rehearing regarding property located at 150 Route One By-Pass.

The Board voted to **grant** the Request for Rehearing for the Special Exception only and will rehear the Special Exception portion of the original request at a July meeting.

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III. PUBLIC HEARINGS – OLD BUSINESS

- A) 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:

The Board acknowledged that this petition had been **withdrawn** at the request of the applicant.

B) 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. The revised petition was postponed for additional information at the June meeting)

Action:

The Board voted to **postpone** the petition to the July meeting to allow the applicant additional time to provide the information and clarification that the Board had requested.

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IV. PUBLIC HEARINGS – NEW BUSINESS

1) Case #6-1

Petitioners: Colette TM Foley Revocable Trust, John D. & Colette TM Foley, Trustees

Property: 25 Lafayette Road

Assessor Plan 152, Lot 3

Zoning District: General Residence A

Description: Raising chickens.

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 10.440, Use #17.20 to allow the keeping of chickens where this use is not allowed.

Action:

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

Stipulations:

- A maximum of 6 chickens will be allowed, with no roosters permitted.

Review Criteria:

The petition was granted for the following reasons:

- With the attached stipulations, the essential character of the neighborhood will not be altered or the public health, safety or welfare threatened so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done by allowing the owners to use their backyard as proposed with no corresponding harm to the general public.
- Due to the reasonable size of the chicken coop, its placement on a relatively large and deep lot with neighboring properties open and free of structures adjacent to the proposed location and with fencing and vegetation buffers, there will be no diminution in the value of surrounding properties.
- With the above listed conditions and the attached stipulations, the proposed use is a reasonable one.

2) Case #6-2

Petitioner: 30 Maplewood LLC

Property: 30-46 Maplewood Avenue

Assessor Plan 125, Lot 2

Zoning District: Character District 4, Downtown Overlay District

Description: Continue parking use on subdivided lot.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance under Section 10.440 to allow a surface parking lot as a principal use where such use is not allowed.
2. A Variance from Section 10.5A44 to allow a parking lot that does not comply with the requirements of the Ordinance.

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. The essential character of the neighborhood will not be altered, nor public health or safety threatened by a parking lot that has existed for a number of years.
- Substantial justice will be done by allowing continuance of the existing parking lot while the lot is being subdivided and until new construction is commenced with no corresponding detriment to the general public or diminution in the value of surrounding properties.
- This lot will be developed in accordance with the intent of the Ordinance for this area to encourage reasonable development with less surface parking so that there is no fair and substantial relationship between the general public purposes of the Ordinance and their specific application to the property. Providing off-street parking prior to construction is a reasonable use of the property.

3) Case #6-3

Petitioners: Jason Combs & Meghan Rose J. Parks

Property: 834 Middle Road

Assessor Plan 232, Lot 55

Zoning District: Single Residence B

Description: Construct new single-family home.

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 except in conformity with the Ordinance.
2. A Variance from Section 10.516.10 to allow a secondary front yard setback of 12.8'± where 17.7' is required.
3. A Variance from Section 10.521 to allow a rear yard setback of 22'± where 30' is required.

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 essential character of this neighborhood with diverse building sizes will not be altered, nor will the health, safety and welfare of the public be impacted.

- In the substantial justice test, strictly applying the requirements would force the proposed project into a small building envelope and be a detriment to the applicant with no corresponding benefit to the general public.
- A new structure, built to code, will increase the value of surrounding properties.
- Literal enforcement of the Ordinance would result in unnecessary hardship due to the special conditions of the property which include a small cottage on a corner lot with multiple setbacks, in addition to the topography of the lot determining the siting of structures. Due to these special conditions, there is no fair and substantial relationship between the general public provisions of the Ordinance and their specific application to the property.

4) Case #6-4

Petitioners: Marc G. Goulet, owner, Stephanie A. Lane, applicant

Property: 4 Melbourne Street

Assessor Plan 233, Lot 18

Zoning District: Single Residence B

Description: Allow massage therapy use as a Home Occupation.

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 19.22 to allow a Home Occupation II in a district where it is allowed by special Exception.

Action:

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

Stipulations:

- There will be a maximum of one client per day.

Review Criteria:

The petition was granted for the following reasons:

- The standards as provided in the Ordinance for this use permitted by Special Exception are met.
- There is nothing proposed that will present a hazard to the public or adjacent property from potential fire explosion or release of toxic material.
- With the presented and stipulated limit of one client per day and no signage, the essential characteristics of the area will not be changed or result in a detriment to property values from parking areas, smoke, or other pollutants, noise, heat or other irritants or outdoor storage of equipment or vehicles.
- With the presented and stipulated number of clients, there will be no creation of a traffic safety hazard, substantial increase in the level of traffic congestion or increased demand for municipal services.
- With no exterior changes, there will be no significant increase in storm water runoff onto adjacent property or streets.

5) Case #6-5

Petitioners: Linda & John Leland

Property: 26 Thaxter Road

Assessor Plan 166, Lot 37

Zoning District: Single Residence B

Description: Covered front porch/entryway.

- 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 except in conformity with the Ordinance.
 2. A Variance from Section 10.521 to allow an 18'± front yard setback where 30' is required.
 3. A Variance from Section 10.521 to allow 31.39%± building coverage where 20% is the maximum allowed.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- A porch of an appropriate size for the building will not alter the essential characteristics 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 as the benefit to the applicant if the request is granted will not result in any corresponding detriment to the general public.
- The value of surrounding properties will not be diminished by upgrades consistent with the neighborhood and improving the curb appeal of the property.
- The size of the lot and the siting of the existing home on the lot are special conditions that would result in unnecessary hardship if the Ordinance provisions were literally enforced.

6) Case #6-6

Petitioners: Cristin Pugliese

Property: 5 Buckminster Way

Assessor Plan 282, Lot 6-23

Zoning District: Single Residence A

Description: Rental of a single family residence.

- Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance under Section 10.440 to allow a two family dwelling where only a single family dwelling is permitted.
 2. A Variance from Section 10.521 to allow a 21,997.8± s.f. lot area per dwelling unit where 43,560 s.f. (1 acre) is required.

Action:

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

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant the variances were not met.
- The essential characteristics of the neighborhood would be altered so that granting the variances would be contrary to the public interest and the spirit of the Ordinance.
- There are no special conditions of the property that would result in an unnecessary hardship from literal enforcement of the provisions of the Ordinance.

7) Case #6-7

Petitioner: Richard P. Fusegni

Property: 201 Kearsarge Way

Assessor Plan 218, Lot 5

Zoning District: Single Residence B

Description: Construct home on one lot of a three-lot subdivision.

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 15'± where 30' is required.

Action:

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

Stipulations:

None.

Other

The Board noted that the requested and granted relief was specific to the presented lot.

Review Criteria:

The petition was granted for the following reasons:

- Granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed as allowing setback relief for one dwelling will not alter the essential characteristics of the neighborhood or impact the health, safety or welfare of the general public.
- Substantial justice will be done as the loss to the applicant by strictly enforcing the setback would not result in any corresponding benefit to the general public.
- The proposed structure is well within the side yard setback and there is a proposed conservation easement in the rear as well as Planning Board review of drainage issues so that a new home will improve the value of surrounding properties.

- Literal enforcement of the Ordinance would result in unnecessary hardship as this is a corner lot with its boundaries well offset from the edge of pavement so that there is no fair and substantial relationship between the general public provisions of the Ordinance and their specific application to the property. A new home in a residential district is a reasonable use of the property.

8) Case #6-8

Petitioners: Sarnia Properties, Inc., owner, Q, LLC, applicant

Property: 4 Cutts Street #3 (933 Route One By-Pass)

Assessor Plan 142, Lot 37

Zoning District: Business

Description: Design and engineering of firearms, silencers and related accessories to the sporting and defense industries.

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

1. A Variance under Section 10.440 to allow a light industry use in a district where this use is not allowed.
2. A Variance from Section 10.1112.30 to allow 84 parking spaces where 103 parking spaces are required.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- In an area long developed with commercial and industrial uses, the proposed use will not alter 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 as the harm to the applicant if the petition were denied would not be balanced by any corresponding benefit to the public interest.
- The value of surrounding properties in this mature industrial area will not be diminished by the nature of the proposed use. There is sufficient parking on the property.
- While the property is well suited to the business, the narrow definition of light industrial in the Ordinance necessitated a variance to allow engineering, assembly and packaging in this district.

9) Case #6-9

Petitioners: Clipper Traders, LLC, owner, Great Rhythm Brewing Company, applicant.

Property: 105 Bartlett Street

Assessor Plan 157, Lot 1

Zoning District: Office Research

Description: Brewery with tasting room and outdoor area.

- Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. Amend previously granted variance to allow a brewery use with an 800± s.f. tasting area and adjoining outdoor tasting area.

Action:

The Board voted to **grant** a variance to allow a brewery use with an 800± s.f. indoor tasting area and to **deny** the proposed outdoor tasting area.

Stipulations:

None.

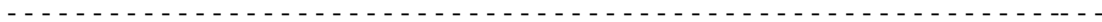
Review Criteria:

The variance for the expanded indoor tasting area was granted for the following reasons:

- Expanding the approved indoor tasting area will not alter the essential characteristics of the neighborhood so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Substantial justice will be done as denying the variance would be a detriment to the applicant with no corresponding benefit to the general public.
- The value of surrounding properties will not be diminished by this internal only expansion.
- With internal layout changes to the industrial spaces allowing for additional square footage, it is reasonable to allow the applicant to expand the indoor tasting area.

The variance for an outdoor tasting area was denied for reasons including the following:

- All the criteria necessary to grant a variance were not met.
- In the substantial justice test, the rights of neighbors to peace and quiet overrode the interest of the applicants to add an outside tasting area.
- The value of surrounding properties would be impacted by the proposed outdoor activity close to a residential area.



10) Case #6-10

Petitioner: Timothy R. Connolly
 Property: 195 Hillside Drive
 Assessor Plan 231, Lot 17
 Zoning District: Single Residence B
 Description: Addition over existing 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 10.321 to allow a nonconforming building or structure to be extended, enlarged or structurally altered except in conformity with the Ordinance.
 2. A Variance from Section 10.521 to allow a 7'± left side yard setback where 10' is required.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- With a residential use in a residential area and an existing side yard setback encroachment, the proposal will not significantly alter the essential character of the neighborhood nor threaten the health, safety or welfare of the general public 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 because the loss to the applicant if the petition were denied would not be outweighed by any gain to the general public.
- An improvement to the property will not diminish the value of surrounding properties.
- The special conditions of the property creating an unnecessary hardship include the existing nonconformity of the garage and setback encroachment that has not proven to disturb light, air, emergency access or other reasons for the setback requirements 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. An addition to the garage is a reasonable use of the property.

11) Case #6-11

Petitioner: Jeremy N. Mard
 Property: 21 Dearborn Street
 Assessor Plan 140, Lot 5
 Zoning District: General Residence A
 Description: Install rear condenser.
 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 except in conformity with the Ordinance.
 2. A Variance from Section 10.521 to allow a 0'± right side yard setback where 10' is required.

Action:

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

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- Adding a rear condenser with an existing setback will not change 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 the applicant to install a condenser with no detriment to the general public.
- Granting the variances will not diminish the value of surrounding properties and the neighbor most affected approved the proposal.
- With the current configuration of the home, the way it sits on the property and the need for the condenser in this location, literal enforcement of the Ordinance would result in unnecessary hardship.

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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 11:35 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary