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 reconvened meeting on June 28, 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. OLD BUSINESS

A) 56 Lois Street

The Board of Adjustment at its reconvened meeting on June 28, 2016 received for the record a memorandum from the City's Legal Department.

The memorandum states that the variance granted June 17, 2014 for the above property had been invalidated by the New Hampshire Superior Court in 150 Greenleaf Avenue Realty Trust v. City of Portsmouth, et al (Docket No. 218-2014-cv-0864). With the underlying variance invalid, the extension of that variance as noted in the letter of decision dated April 25, 2016 is void.

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II. PUBLIC HEARINGS – NEW BUSINESS

12) Case #6-12
Petitioner: Beth P. Griffin Revocable Trust of 2011, Beth P. Griffin, Trustee
Property: 250 Broad Street
Assessor Plan Map 131, Lot 10
Zoning District: General Residence A
Description: Second floor addition and relocation of barn/office/rec. room.
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 right side yard setback of 3.09'± for the barn/office and 4.05'± for the second story addition where 10' is required.

Action:

The Board voted to **postpone** the petition to the July meeting at the request of the applicant.

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13) Case #6-13
Petitioners: CSS Realty Trust, Christopher D. McInnis, Trustee, owner, White Acquisitions, applicant
Property: 200 McDonough Street
Assessor Plan Map 144, Lot 29
Zoning District: General Residence C
Description: Single family home on pre-existing nonconforming 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 10.321 to allow a nonconforming building or structure to be reconstructed except in conformity with the Ordinance.
2. A Variance from Section 10.516.30 to allow a structure obstructing visibility to be erected on a corner lot between the heights of 2.5' and 10' above the edge of pavement grades within the area outlined in 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:

- With the redesign of the proposal after the denial of a previous petition, the essential character of the neighborhood will not be altered 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 denial would be a detriment to the applicant with no corresponding benefit to the general public.
- Replacing the existing structure will not diminish the value of surrounding properties and may result in an improvement.
- A pre-existing nonconforming lot with an existing deteriorated structure are special conditions resulting in a hardship through strict application of the Ordinance provisions. With the reduction in the number of variances needed due to changes in response to previous Board recommendations, the proposed use is a reasonable one.

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 the redesign of the proposal after the denial of a previous petition, the essential character of the neighborhood will not be altered 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 denial would be a detriment to the applicant with no corresponding benefit to the general public.
- Replacing the existing structure will not diminish the value of surrounding properties and may result in an improvement.
- A pre-existing nonconforming lot with an existing deteriorated structure are special conditions resulting in a hardship through strict application of the Ordinance provisions. With the reduction in the number of variances needed due to changes in response to previous Board recommendations, the proposed use is a reasonable one.

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14) Case #6-14
Petitioner: Eleanor C. Bradshaw
Property: 21 Humphreys Court
Assessor Plan Map 101, Lot 42
Zoning District: General Residence B
Description: Add left side bay window.
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 10.516.40 to allow a bay window to project more than 2'± into the required left side 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:

- A small addition to the existing dwelling will not alter the essential character of the neighborhood or 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.
- This is a minimal increase in the nonconformity so that there would be no benefit to the general public that would outweigh the loss to the applicant if the petition were denied.
- A well designed bay window in this location will not diminish the value of surrounding properties.
- There are special distinguishing conditions of the property which include a small lot with a small building that predates current zoning so that it now has existing nonconformities and setback encroachments necessitating relief for the window addition. With these conditions, there is no fair and substantial relationship between the general public purposes of the Ordinance to protect light and air and their specific application to this property. The proposed use is a reasonable one for a property in a residential district.

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15) Case #6-15
Petitioners: Brian J. Bednarek & Sophie Bednarek
Property: 10 Humphreys Court
Assessor Plan Map 101, Lot 43
Zoning District: General Residence B
Description: Construct connector between existing house and 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 rear yard setback of 9'± where 25' is required.
3. A Variance from Section 10.521 to allow 32.0%± building coverage where 30% is the maximum allowed.

Action:

The Board voted to **grant** the petition as advertised and presented. The Board noted that a variance was also required for a 6' right side yard setback where 10' is required and included that request in their consideration and decision.

Stipulations:

None.

Review Criteria:

The petition was granted for the following reasons:

- With similar garage/connector structures in the area, the essential character of the neighborhood will not be altered so that granting the variances will not be contrary to the public interest.
- With no further encroachment into the setback affecting light and air, the spirit of the Ordinance will be observed.

- Substantial justice will be done by allowing the property owners to add a modern addition connecting the home and the garage with no detriment to the general public.
- An addition in this location will upgrade the property with no diminution in the value of surrounding properties.
- The way the structures are sited on a small lot and the existing encroachments are special conditions of the property creating a hardship in adding a small addition. Adding space while maintaining the existing footprint is a reasonable use of the property.

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16) Case #6-16
Petitioners: Stephen M. & Bridget M. Viens
Property: 78 Marne Avenue
Assessor Plan Map 222, Lot 40
Zoning District: General Residence A
Description: Single story right side addition.
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 rear yard setback of 15.9'± where 20' 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 house and lot are in proportion to the area so that the essential character of the neighborhood will not be altered.
- Substantial justice will be done as the benefit to the applicant in granting the petition will not be outweighed by any corresponding detriment to the general public.
- Placed at the rear facing a wooded area and with open yard space on both sides, this small addition will not diminish the value of surrounding properties and several neighbors have indicated their support for the project.
- With the way the existing house is situated on this corner lot, literal enforcement of the Ordinance would result unnecessary hardship. This modest improvement is a reasonable use of the property and located in the logical place for any expansion.

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17) Case #6-17
Petitioners: Eric & Joan Landis
Property: 540 Marcy Street
Assessor Plan Map 101, Lot 79
Zoning District: General Residence B
Description: Replace existing shed with two-car, one story 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 3'± rear yard setback where 25' 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:

- A garage out of view from the street will not alter the essential character 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 by allowing use of the property with no harm to the general public.
- As positioned, the garage will be a reasonable distance from the living area of the owners of the only property that will be affected. The proposal has the support of neighboring property owners, reinforcing the conclusion that the value of surrounding properties will not be diminished.
- The trapezoidal shape of the lot, combined with the required 50' primary setback from the tideline, impact the placement of structures so that the house needs to be set back further from the front property line. The existing driveway also influenced the location of the garage. These are special conditions that would result in unnecessary hardship through literal enforcement of the Ordinance.

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18) Case #6-18
Petitioners: Seacoast Trust, LLP, Stonegate Construction, LLC, applicant
Property: 150 US Route One By-Pass
Assessor Plan Map 231, Lot 58
Zoning District: Single Residence B
Description: Construct three-story, 30 unit, multi-family building.
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 Sections 10.440 and 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, the following are requested:

2. A Variance under Section 10.440 to allow a multi-family dwelling in a district where the use is not permitted.
3. A Variance from Section 10.521 to allow a lot area per dwelling unit of 4,339.17± s.f. where 15,000 s.f. is required.
4. A Variance from Section 10.522 to allow a multi-family dwelling with a building length of 246'± where 160' is the maximum allowed.

Action:

The Board noted that a previous petition for this property had been submitted, denied and then granted a rehearing to be held in July. The request for rehearing had been withdrawn at the applicant's request. After a brief discussion of the two applications, the Board did not invoke Fisher v. Dover and proceeded to consider the application.

The Board voted to **grant** the Special Exception as presented and advertised. The Board determined that by granting the Special Exception the Variance described in Request #2 was **not needed**. The Board then voted to **grant** the Variances described in Request #3 and #4 as presented and advertised.

Stipulations:

None.

Review Criteria:

The Special Exception was granted for the following reasons, considering the Special Exception standards as outlined in Section 10.230 as well as the conditions in Section 10.335 of the Ordinance:

- Nothing in the nature of the use will create a hazard to the public or adjacent property from potential fire explosion or release of toxic materials.
- This will be a positive change with no detriment to property values in the vicinity from the scale of buildings, parking areas or accessways; no detriment from odors, gas, noise, heat or other irritants or unsightly outdoor storage.
- With the expectation that the proposed use will generate less traffic and of a different nature, there will be no creation of a traffic safety hazard or increase in the level of traffic congestion.
- The use will not create an excessive demand on municipal services.
- Increased landscaping and reconfiguration will ensure that there will be no significant increase in storm water runoff onto adjacent property or streets.
- The proposed use is in greater compliance than the existing use and will be less of a detriment to the area than the existing nonconforming use and its physical characteristics.

Variances #3 and #4 were granted for the following reasons:

- The proposed structure and use would not change the essential character of the neighborhood as it would be in keeping with many neighboring uses so that granting the variances would not be contrary to the public interest and the spirit of the Ordinance would be observed.

- Substantial justice would be done as the benefit to the applicant in granting the variances would not result in any detriment to the general public.
- With the reduction in number of stories and units from a previous petition, there is nothing in the nature of the use that would result in the diminution in the value of surrounding properties.
- Literal enforcement of the Ordinance would result in an unnecessary hardship. The property is unique in size and shape with sole access from Route One. It is not appropriate for single-family residential development, thus a multiple unit building needing dimensional relief but of a size appropriate to the lot is a reasonable use of the property.

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19) Case #6-19
Petitioner: GTY MA/NH Leasing Inc., c/o Nouria Energy Corporation
Property: 786 US Route One By-Pass
Assessor Plan Map 161, Lot 42
Zoning District: General Residence A
Description: Relocate existing free-standing sign and add changeable LED fuel price display.
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 10.1241 to allow a free-standing sign where a free-standing sign is not permitted.
2. A Variance from Section 10.1243 to allow a second free-standing sign on a lot.
3. A Variance from Section 10.1240 to allow a changeable sign where a changeable sign is not permitted.
4. A Variance from Section 10.1253.10 to allow a free-standing sign with a height of 24'10.5" ± where 7' is the maximum height allowed.
5. A Variance from Section 10.1253.10 to allow a free-standing sign with a right side yard setback of 2'± where 5' is required.
6. A Variance from Section 10.1261.10 to allow a free-standing sign to be illuminated where it is not permitted.

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 similar sign in the vicinity, of a size and height that was well within what would be expected in nearby businesses, the essential character of the neighborhood would not be altered nor would the public health, safety or welfare be threatened.

- Substantial justice will be done by granting the variances as a denial would cause the sign to be lost entirely or maintained in a deteriorated stated with no corresponding benefit to the general public.
- Allowing a new technology adopted in other areas without negative effect and with no change to the existing size of the sign the value of surrounding properties will not be diminished.
- The special conditions of the property include its pre-existence as a gas station in a general residence district that was not converted to commercial zoning, as had occurred with neighboring properties, so that there is no fair and substantial relationship between the general purpose of the Article regarding signs in the Ordinance intending to maintain the character of residential neighborhoods and its application to this property, in an area which was not residential.

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20) Case #6-20

Petitioners: Anthony DiLorenzo, c/o Portsmouth Chevrolet, owner, Portsmouth Used Car Superstore, Inc., applicant
Property: 2219 Lafayette Road
Assessor Plan Map 272, Lot 1
Zoning District: Gateway
Description: Appeal Administrative Decision.
Requests: The actions necessary to grant the required relief from the Ordinance, including the following:

1. Granting an Appeal of an Administrative Decision of a Code Official in the application of Section 10.1280 of the Ordinance.

Action:

The Board voted to **deny** the appeal as presented and advertised, determining that the interpretation of the Planning Department was responsible and correct. By this action, the Board **upheld** the decision of the Planning Director as Code Official in denying the applicants' sign permit application and determined that the Director correctly applied Section 10.1280 of the Ordinance. The Board also **upheld** the Director's determination that the applicants' request for a sign went beyond the parameters set out in the Settlement Agreement and Order issued by the Superior Court on October 21, 2003.

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21) Case #6-21

Petitioners: Ryan P. & Jennifer L. Smith
Property: 100 Peverly Hill Road
Assessor Plan Map 243, Lot 51
Zoning District: Single Residence B
Description: Construct a front porch and new second story.
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 front yard setback of 0'± for the addition and 5'11" ± for the porch where 30' is required for each.

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. A number of buildings in the area are similar in height to that proposed and many have additions and outbuildings so that the proposed changes will not significantly alter the essential character of the neighborhood or threaten the public health, safety or welfare.
- Substantial justice will be done as denial of the variances would be detrimental to the applicant with no benefit to the general public.
- An upgrade will either increase the value of surrounding properties or not be a detriment and the homeowner will have a safer, more structurally sound building.
- The special conditions of the property creating a hardship include the siting of the existing building up against the front property line, which was set back from the road, so that a hardship is created in any expansion.

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III. OTHER BUSINESS

No other business was presented.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:30 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary