

**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 16, 2017** 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, Jim Lee, Patrick Moretti, Christopher Mulligan, Arthur Parrott

**EXCUSED:** Alternates Peter McDonell, John Formella

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**I. APPROVAL OF MINUTES**

A) April 18, 2017

The Board approved the Minutes as presented by unanimous vote.

B) April 25, 2017

The Board approved the Minutes with a minor correction by unanimous vote.

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**II. OLD BUSINESS**

A. Request for Rehearing for property located at 401 State Street.

Action:

The Board voted to **deny** the request for rehearing determining that the Board had conducted a careful and thorough hearing and acted correct in their application of the law. The Board additionally determined that no new evidence had been provided that had not been available at the time of the initial hearing.

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**III. PUBLIC HEARINGS – OLD BUSINESS**

7) Case 4-7

Petitioners: Weeks Realty Trust, Kaley E. Weeks, Trustee and Bursaws Pantry, LLC, owners and Plan Ahead, Inc. applicant

Property: 3110 and 3020 Lafayette Road

Assessor Plan: Map 292, Lots 151-1, 151-2 and 152

Zoning District: Single Residence B (Lots 151-1&2) and Mixed Residential Business (Lot 152)

Description: Construct a retail facility of up to 15,000 s.f. with a drive-through window and lanes.

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

1. A Variance or Special Exception under Section 10.440 to allow a retail use in districts where it is not allowed or only allowed by Special Exception.
2. A Variance from Section 10.1113.20 to allow off-street parking to be located in any front yard or between a principal building and a street.
3. A Variance from Section 10.835.31 to permit a drive-through facility to be located within 100’ of a residential district and within 50’ of a lot line.
4. A Variance from Section 10.835.32 to permit drive-through lanes to be located within 50’ of a residential district and within 30’ of a lot line.
5. A Variance to allow a building, structure or parking area to be located 65’± from the centerline of Lafayette Road where 80’ is required.  
*(This petition was postponed from the April 18, 2017 meeting)*

Action:

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

Review Criteria:

- All the criteria necessary to grant the variances were not met.
- Granting the variances would be contrary to the public interest and the spirit of the ordinance would not be observed. The proposal is for an intense commercial development which will result in an increase in traffic volume and change in traffic patterns that could threaten the public safety as well as increased storm water runoff that could impact surrounding residential properties and alter the essential character of the neighborhood.
- Substantial justice would not be done by granting the variances as the nature and intensity of this proposed commercial use would result in harm to the general public and neighbors which would not be outweighed by the benefit to the applicant.
- The difficulty encountered by an applicant proposing to develop an intense commercial use on lots located in districts zoned for residential uses is not sufficient to satisfy the special conditions necessary to determine that literal enforcement of the ordinance would result in unnecessary hardship.

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**IV. PUBLIC HEARINGS – NEW BUSINESS**

1) Case 5-1

Petitioners: Eugene & Pamela Hunter

Property: 495 Ocean Road

Assessor Plan: Map 283, Lot 35

Zoning District: Single Residence A

Description: Replace existing stairs with an 8'± x 16'± open porch.

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

1. Variances from Section 10.521 to allow the following: a) a 20'± primary front yard where 30' is required and b) 17%± building coverage where 10% is the maximum allowed.
2. A Variance from Section 10.321 to allow a nonconforming building to be reconstructed or enlarged without conforming to the requirements of the ordinance.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- A modest increase in the footprint of a modest home will not alter the essential character of the neighborhood or impact the public health, safety or welfare 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 holding the property to the strict letter of the ordinance and denying the variances would harm the applicant with no corresponding gain to the general public.
- The value of surrounding properties will not be diminished by the proposed increase in coverage and a reasonable increase in the front yard encroachment.
- Literal enforcement of the ordinance will result in unnecessary hardship due to special conditions of the property which include the topography of the lot and a substantial change in grade. Due to the conditions, the proposal for this lot will not have a real impact on the front yard setback or crowd the road so that there is no fair and substantial relationship between the purposes of the setback and coverage provisions and their specific application to the property.

2) Case 5-2

Petitioner: Pamela Gould

Property: 209 Clinton Street

Assessor Plan: Map 159, Lot 27  
 Zoning District: General Residence A  
 Description: Keep four chickens (hens) in a 73” ± x 38” ± movable coop.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
 1. A Variance under Section 10.440, Use #17.20 to allow the keeping of farm animals in a district where the use is not allowed.

Action:

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

Stipulations:

- The number of chickens will be limited to six, with no roosters.

Review Criteria:

The petition was granted for the following reasons:

- The keeping of chickens, as limited by the attached stipulation, will not alter the essential character of the neighborhood so that 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 the proposal as presented will benefit the applicant with no harm to the general public from the use.
- The value of surrounding properties will not be diminished as this is a modest request which has the support of several neighbors.
- There is no fair and substantial relationship between the general public purposes of the ordinance provision in not allowing the keeping of farm animals in this district and its application to this request for the keeping of a limited number of chickens on the property so that literal enforcement of the ordinance would result in unnecessary hardship.

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3) Case 5-3

Petitioners: Brick Act LLC, owner and Kristin Fichera, applicant  
 Property: 100-102 State Street  
 Assessor Plan: Map 107, Lot 52-1  
 Zoning District: Character District 4  
 Description: Operate a preschool for a maximum of 20 children where no off-street parking is provided.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:  
 1. A Variance from Section 10.1112.30 to provide no off-street parking spaces where 0.5 spaces per client licensed capacity are required.

Action:

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

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. This property is indistinguishable from properties in the nearby Downtown Overlay District where no off-street parking is required and the provision of no on-site parking for this property will have a similar lack of impact with no alteration of the essential character of the neighborhood.
- Substantial justice will be done as strictly enforcing the ordinance on a property with no possibility of providing off-street parking will cause harm to the applicant with no overriding benefit to the general public.
- The value of surrounding properties will not be diminished. The use is benign and any negative impact from parking and pick-up activity would result in an economic issue for the proposed business rather than surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship as there is no place to site off-street parking on this lot so that there is no fair and substantial relationship between the purposes of the off-street parking requirement and its specific application to this property.

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4) Case 5-4

Petitioner: Deer Street Associates  
 Property: 165 Deer Street (Lot/Building 3)  
 Assessor Plan: Map 125, Lot 17  
 Zoning District: Character District 5 and Downtown Overlay District  
 Description: Construct a 5-story mixed use building with enclosed off-street parking utilizing a lift system.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.516.20 to allow a 5'± rear yard adjoining a railroad right-of-way where 15' is required.
2. A Variance from Section 10.1114.21 to allow 62 parking spaces utilizing a two-car lift system in each bay that does not meet the required dimensions for parking spaces.
3. A Variance from Section 10.1114.32(a) to allow vehicles to enter and leave parking spaces by passing over another parking space or requiring the moving of another vehicle.

Action:

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

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 parking system proposed for this lot is another component of an extensive development and is consistent with what has been previously presented and approved by this Board. The project is similar to others, planned or existing, in the area so that the essential character of the neighborhood will not be altered.
- Substantial justice will be done by granting the variances as limiting the parking spaces and parking flow would result in harm to the applicant with no benefit to the general public.
- The value of surrounding properties will not be diminished. These variances will allow the provision of adequate parking for the proposed use with the configuration of the parking and parking system contained within a building and not visible to the general public
- Literal enforcement of the ordinance would result in unnecessary hardship. The lot’s proximity to a railroad right-of-way is a hardship that has been satisfactorily addressed through the creation of an easement on the railroad property, similar to the variance granted to another lot in the development on April 18, 2017. With regard to the provisions regarding parking in the ordinance, there is no fair and substantial relationship between the purposes of those provisions and their specific application to this property, with a parking system that is enclosed in a structure.

5) Case 5-5

Petitioner: Steven J. Craige  
 Property: 10 Humphreys Court  
 Assessor Plan: Map 101, Lot 43  
 Zoning District: General Residence B  
 Description: Replace existing one-car garage with a two-car garage.  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. Variances from Section 10.521 to allow the following: a) a right side yard of 2’-10.25” ± where 10’ is required; b) an 8’1” ± rear yard where 25’ is required; and c) 33.9%± building coverage where 30% is the maximum allowed.
2. A Variance from Section 10.321 to allow a nonconforming building to be reconstructed or enlarged without conforming to the requirements of the ordinance.

Action:

The Board voted to **grant** the petition as presented and advertised, noting that the relief granted for the right side yard was 2’-10.25” ± as presented.

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. In a fundamentally tight neighborhood with similar structures and setback encroachments, attaching the proposed garage to the existing home will not alter the essential character of the neighborhood.
- Substantial justice will be done and the value of surrounding properties will not be diminished by an improvement that conforms to others in the area. The lot most affected has structures with a similar right orientation as well as a driveway buffer allowing sufficient distance between structures.
- The special conditions of the property resulting in a hardship in achieving a reasonable use are that it is an irregularly shaped lot with the right side property line slanting to the left. The house and existing garage with driveway access are placed to the right side of the property so that any expansion will result in the top right corner of the garage encroaching further into the setback.

6) Case 5-6

Petitioners: Matthew & Katherine Menchen

Property: 416 Ocean Road

Assessor Plan: Map 293, Lot 12

Zoning District: Single Residence A

Description: Keep chickens (hens) in a mobile coop.

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

1. A Special Exception under Section 10.440, Use #17.20 to allow the keeping of farm animals in a district where the use is only allowed by Special Exception.

Action:

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

Stipulations:

- The number of chickens will be limited to eight, with no roosters.

Other:

It was represented by the applicants that the mobile coop would be kept out of the wetlands buffer areas and be positioned so that it complies with the 5’ setback dimensional requirements for the right, left and rear yards.

Review Criteria:

The petition was granted for the following reasons:

- The standards as provided by the ordinance for the particular use permitted by special exception, the keeping of farm animals, are met.
- There will be no hazard to the public or adjacent property from potential fire explosion or release of toxic materials as a result of this use.
- As presented, there will be no detriment to property values in the vicinity or change in the essential characteristics of the area from the location of structures, odors, smoke, dust or other pollutants, noise, heat or other irritants or unsightly outdoor storage of vehicles or other materials. This is a minor ancillary use in a residential neighborhood and none of these negative impacts is a factor.
- There will be no traffic impact at all from this use so there will be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion.
- The keeping of a maximum number of eight chickens and no roosters will not result in any excessive demand on municipal services including water, sewer, waste disposal, police and fire protection, nor will there be a significant increase in storm water runoff onto adjacent property or streets.

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**V. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 10:55 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary