

**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 August 15, 2017** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

**PRESENT:** Vice Chairman Charles LeMay, Jeremiah Johnson, Jim Lee, Christopher Mulligan, Arthur Parrott, Alternate John Formella

**EXCUSED:** Chairman David Rheame, Patrick Moretti, Alternate Peter McDonell

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**I. APPROVAL OF MINUTES**

A) July 18, 2017

The Board approved the Minutes as presented by a unanimous vote.

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B) July 25, 2017

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

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**II. OLD BUSINESS**

A) Request for One-Year Extension of the Variance granted August 18, 2015 for property located at 305 Peverly Hill Road.

Action:

The Board voted to **grant** a one year extension of the variance granted August 18, 2015 through August 18, 2018.

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**III. PUBLIC HEARINGS – OLD BUSINESS**

## 10) Case 7-10.

- Petitioners: Petition of Flintatta LLC, owner and the Unitarian Universalist Church of Portsmouth, applicant
- Property: 73 Court Street
- Assessor Plan: Map 116, Lot 19
- Zoning District: Character District 4-L1.
- Description: Change of use.
- Requests: 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 #3.11 to allow a religious place of assembly in a district where the use is only allowed by special exception.
  2. Variances from 10.5A41.10A to allow the following: a) a 1'± left yard and 3'± rear yard where 5' is required for each; b) building coverage of 66% where 60% is the maximum allowed; and c) open space of 11.8% where 25% is the minimum required;
  3. A Variance from Section 10.1112.30 to permit no off-street parking spaces to be provided where the following are required: a) 8 off-street parking spaces for the 2,000 s.f. of office space; and b) 67 off-street parking spaces for the assembly use. *(This petition was postponed from the July 25, 2017 meeting and revised.)*

Action:

The Board voted to **postpone** the petition to the August 22, 2017 meeting.

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**IV. PUBLIC HEARINGS – NEW BUSINESS**

## 1) Case 7-10.

- Petitioner: Petition of Logan properties LLC
- Property: 403 Deer Street #7-13 (The Hill)
- Assessor Plan: Map 118, Lot 26
- Zoning Districts: Character District 4-L1 and Downtown Overlay.
- Description: Install 24±s.f. wall sign.
- Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
1. A Variance from Section 10.1251.20 to allow a 24± s.f. wall sign where 16 s.f. is the maximum allowed.
  2. A Variance from Section 10.1271.20 to allow a sign on the side of a building not facing the street and without a public entrance.

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 as the essential characteristics of the neighborhood would not be negatively affected by a slightly larger sign than that being replaced, nor would the public health, safety or welfare be threatened.
- Substantial justice will be done as the loss to the applicant if the Board if the petition were denied would be much higher than any gain to the public interest.
- With similar signage in place for a number of years, with no adverse effect, granting the variances will not diminish the value of surrounding properties.
- There are special conditions of the property distinguishing it from others in the area, including a large building with a blank expanse on the side where the signage is proposed. The property is surrounded by multi-story buildings that were not present when this particular use was introduced and which limit visibility and awareness of the use if signage is limited to the front side of the building or a side with a public entrance. Due to these special conditions, there is no fair and substantial relationship between the general public purposes of the ordinance provision and its specific application to the property. A commercial sign in a commercial zone is a reasonable use of the property.

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2) Case 8-2.

Petitioner:           Petition of 933 Islington LLC  
 Property:            933 Islington Street  
 Assessor Plan:      Map 172, Lot 9  
 Zoning District:     Business  
 Description:         Install decal signage on two windows.  
 Requests:            Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:  
                           1. A Variance from Section 10.1271.20 to allow a sign on the side of a building not facing the street and without a public entrance.

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 as adding signage to the side of a building without a public entrance, and which is angled so that a portion appears to be frontage, will not affect the character of the neighborhood with existing signage on a number of surrounding

buildings. The proposed sign in this location will pose no threat to the health, safety or welfare of the public.

- Substantial justice will be done as granting the request would be beneficial to the applicant with no detriment to the general public.
- Allowing a well-constructed sign in this location will not negatively affect the value of surrounding properties.
- The special conditions of the property resulting in a hardship from literal enforcement of the ordinance include the shape of the building and its orientation to the street. The property is also located in an area where traffic tends to move faster so that signage that only faces on the street can limit identification of the business.

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3) Case 8-3.

Petitioner: SLF Realty Group

Property: 180 Mirona Road

Assessor Plan: Map 235, Lot 2

Zoning District: Gateway

Description: Replace an internally illuminated free-standing sign.

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

1. A Variance from Section 10.1251.20 to allow a 112± s.f. free-standing sign (including base) where 100 s.f. is the maximum allowed.
2. A Variance from Section 10.1243 to allow a second free-standing sign on a lot where only one free-standing sign is permitted.
3. A Variance from Section 10.1281 to allow a nonconforming sign or sign structure to be altered, reconstructed or replaced without bringing the nonconforming sign into conformity with the Ordinance.

Action:

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

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4) Case 8-4.

Petitioners: Sean P. and Robin M. Murphy

Property: 24 Kent Street

Assessor Plan: Map 113, Lot 39

Zoning District: General Residence A

Description: Construct a 2-story attached garage.

Requests: 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 28.3%± building coverage where 25% is the maximum allowed.

Action:

The Board voted to **postpone** the petition to the August 22, 2017 meeting.

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## 5) Case 8-5.

Petitioner: Susan MacDougall

Property: 39 Pray Street

Assessor Plan: Map 102, Lot 38

Zoning Districts: General Residence B

Description: Reconstruct a rear one-story addition and shed.

Requests: 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'± right side yard setback where 10' is required.
2. A Variance from Section 10.573.10 to allow a 1'± side yard setback where 5' is required.
3. A Variance from Section 10.321 to allow a nonconforming building or structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.

Action:

Determining that the case law in Fisher v. Dover did not apply, the Board voted to consider this application as a new and separate petition and then voted to **grant** the petition as presented and advertised.

Review Criteria:

The petition was granted for the following reasons:

- With no significant increase in mass, reconstructing an existing nonconforming structure 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 loss to the applicant by requiring strict compliance with the Ordinance in this case would not be balanced by any corresponding gain to the general public.
- The proposed increase was outside the setback encroachment and the proposed shed would be less nonconforming than the existing structure so that the value of surrounding properties will not be diminished.
- The special conditions of the property creating an unnecessary hardship include a property that is a large and long property with frontage on two streets on which the existing dwelling structure is sited close to both Pray Street and the abutting property

with a small sideyard. Due to these conditions, there is no fair and substantial relationship between the general public purposes of the Ordinance and their application to the property. A residential use in a residential area is a reasonable use of the property.

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**V. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 8:00 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary