

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 December 19, 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, Peter McDonell, Patrick Moretti, Christopher Mulligan, Arthur Parrott
EXCUSED: Alternate John Formella

=====
I. ELECTION OF OFFICERS

By unanimous voice vote, David Rheaume was re-elected to serve as Chairman and Jeremiah Johnson was elected to serve as Vice-Chairman.

=====
II. APPROVAL OF MINUTES

A) November 21, 2017

It was moved, seconded and passed to accept the November 21, 2017 Minutes with corrections.

=====
III. PUBLIC HEARINGS - NEW BUSINESS

1) Case #12-1
Petitioner: Michael De La Cruz
Property: 75 (63) Congress Street
Assessor Plan: Map 117, Lot 5
Zoning District: Character District 5 (CD-5)
Description: Construct 15 residential units.
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 allow no off-street parking spaces to be provided where off-street parking spaces are required.

Action:

The Board acknowledged that the petition had been **withdrawn** at the request of the applicant.

2) Case #12-2

Petitioner: Brenda J. Bouchard Revocable Trust of 1999
 Property: 33 Holmes Court
 Assessor Plan: Map 101, Lot 12
 Zoning District: General Residence B
 Description: Install rear condenser.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:

1. A Variance from Section 10.573.10 to allow a 3'± right side yard setback and a 1'4"± rear yard setback where 5' is required for both.

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. The essential character of the neighborhood will not be altered by what is being proposed, nor will there be any threat to the health, safety or welfare of the general public.
- Holding fast to the setback requirements for an accessory structure and denying the petition would result in a loss to the applicant with no corresponding gain to the general public.
- The value of surrounding properties will not be diminished by a condenser in this location.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property, including the irregularly shaped lot situated on both sides of a public right-of-way. The current built environment is very tight to the lot lines and the most appropriate location has been chosen for the condenser, as additionally reviewed and approved by the Historic District Commission. The proposed is a reasonable use of the property.

3) Case #12-3

Petitioners: James C. and Amy M. Baker
 Property: 75 Humphreys Court
 Assessor Plan: Map 101, Lot 37

Zoning District: General Residence B
Description: Replace and expand a rear addition (construct a rear addition).
Requests: Variances and/or Special Exceptions necessary to grant the required Relief from the Zoning Ordinance including:
1. A Variance from Section 10.521 to allow an 18' rear yard setback where 25' is required.
2. 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:

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 proposed reconstruction of an existing addition with a modest expansion will add usable space to the second floor with no increase in height and an improvement in the existing setback.
- Substantial justice will be done as the benefit to the applicant by granting the petition will not be outweighed by any harm to the general public.
- A clean and tasteful design will modernize the general appearance of the home resulting in an increase in the value of this and surrounding properties. Several neighbors indicated their support of the project.
- The special conditions of the property resulting in a hardship include the odd shape of the lot and the placement of the existing home on the lot. The location for the modest addition has been chosen to have the least impact on abutting properties.

4) Case 12-4

Petitioners: Joseph D. Bezanson & Chelsea M. Ladd
Property: 87 Union Street
Assessor Plan: Map 145, Lot 66
Zoning District: General Residence C
Description: Construct 17' x 10' left rear deck.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
1. A Variance from Section 10.521 to allow an 8'± left side yard setback where 10' is required.
2. 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:

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

Review Criteria:

The petition was granted for the following reasons:

- A basic infill deck at the back corner of the existing structure will not change the essential character of the neighborhood and an open deck will pose no threat 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 as the benefit to the applicant if the variances are granted will not be outweighed by any harm to the general public.
- An upgrade to the property will only increase its value and that of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the orientation of the house to the left of the property making it difficult to place the deck without relief. The applicant has taken care to minimize the incursion into the setback by placing the deck back 2' from the edge of the house and current setback.

5) Case 12-5

Petitioners: Lucky Thirteen Properties LLC, owner, Lexie's Portsmouth, LLC, applicant.

Property: 361 Islington Street

Assessor Plan: Map 144, Lot 23

Zoning District: Character District 4- Limited 2 (CD4-L2)

Description: Convert existing building plus 90 s.f. addition to restaurant use.

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

1. A Variance from Section 10.5A41.10A to allow the following: a) a secondary front yard of 66'± where 12' is the maximum permitted; b) a 30'± left side yard setback where 20' is the maximum permitted; c) 14.9%± open space where 25% is the minimum required; and d) shopfront façade glazing of 47%± where 17% exists and 70% is the minimum required.
2. A Variance from Section 10.1113.20 to allow off-street parking to be located in a required front yard between the principal building and a street.
3. A Variance from Section 10.5A44.31 to allow off-street parking spaces to be located less than 20' behind the façade of a principal building.
4. 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:

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

Review Criteria:

The petition was granted for the following reasons:

- As an existing and allowed use in this district the proposal will not alter the essential character of the neighborhood. The proposed project fits into the City’s master plan and its vision for the Islington Street corridor so that granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed.
- The substantial justice balance test tips to the applicants who are making an effort to reuse and improve the property with design aspects to mitigate any possible detriment to the general public from the intensity of the use, light, sound, etc.
- Improving the property with a tasteful restaurant destination should benefit the value of this property as well as surrounding properties.
- The former use predated current zoning and with the building repurposed under modern requirements, a hardship is created due to the existing location on the lot and the need to balance the relief required for setbacks, open space and parking.

6) Case 12-6

Petitioners: National Propane LP c/o Amerigas Eagle Propane, owner and Granite State Gas Transmission Inc dba Unutil, applicant

Property: 1166 Greenland Road

Assessor Plan: Map 280, Lot 2

Zoning District: Industrial District

Description: Install fence and utility structure.

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 #15.12 to allow a utility related structure providing a community-wide or regional service where the use is only allowed by special exception.
2. A Variance from Section 10.521 to allow an 8’± primary front yard setback where 70’ is required.

Action:

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

Review Criteria:

The special exception was granted for the following reasons:

- The standards as provided in the ordinance for this use permitted by special exception are met.
- This is a well designed facility which will present no hazard to the public or adjacent property from potential fire explosion or release of toxic materials. The applicant has indicated that they will install a crash barrier along the side of the enclosure facing the road to provide additional protection from a possible vehicular accident.
- There will be no detriment to property values in the vicinity or change in the essential characteristics of any area on account of the location or scale of buildings or parking areas, odors, smoke, or other pollutants, noise, glare, heat or other irritants or unsightly outdoor storage. None of these are applicable to this small portion of a property shared with the existing LP gas operation.

- There will be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion in the vicinity. What is being proposed will not be a permanently staffed facility but intermittently visited by workers with the utility company.
- What is being proposed will not result in an excessive demand on municipal services, including water, waste disposal, police and fire protection.
- There will be no significant storm water runoff onto adjacent properties or streets. This is a minimal change to the facility and issues, if any, will be addressed by the Conservation Commission and the Technical Advisory Committee of the Planning Board.

The variance 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. The essential character of the neighborhood will not be threatened by what is being proposed, nor will the health, safety or welfare of the public be threatened.
- Substantial justice will be done. The loss to the applicant if the petition were denied would outweigh any benefit to the public by keeping strict adherence to the front yard setback. If the applicant had to comply, the facility would be pushed much farther from the existing gas mains with an economic impact as well as possible wetland issues.
- Granting the variance will not diminish the value of surrounding properties. There are no surrounding properties that would be negatively impacted by what is being proposed.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of this property that distinguish it from others in the area. These special conditions include the need for the proposed facility to be placed adjacent to the transmission line that it will service, its location on an existing lot that is used by a gas facility in a cooperative endeavor and the positioning of the lot between two municipalities. Due to these conditions there is no fair and substantial relationship between the purpose of the front yard setback provision and its specific application to the property. The use is a reasonable one in this particular area.

7) Case 12-7

Petitioners: 409 Franklin Pierce Highway LLC
 Property: 917 Greenland Road
 Assessor Plan: Map 259, Lot 7
 Zoning District: Single Residence B
 Description: Demolish existing structure and build new single-family dwelling.
 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 lot area and a lot area per dwelling unit of 11,760± s.f. where 15,000 s.f. is required; and b) an 18'± primary front yard setback where 30' is required.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- A residential use surrounded by other residential uses will not alter the essential character of the neighborhood or threaten the health, safety or welfare of the public so that granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed.
- Granting the variances will do substantial justice. There is no harm to the general public that would outweigh the benefit to the applicant if the variances were granted. The public will not be harmed by replacing an obsolete, abandoned building with a new single-family structure.
- The value of surrounding properties will not be diminished by the construction of a single-family dwelling similar to the surrounding uses.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property. These include its positioning as a corner lot, an irregular shape and small footprint. The two 30’ front yard requirements create a limited building envelope and the applicant has reasonably chosen the best alternative, orienting the house away from the more traveled road.

8) Case 12-8

Petitioners: Kathryn Michele Arbour

Property: 86 Emery Street

Assessor Plan: Map 220, Lot 87-1

Zoning District: Single Residence B

Description: Second free-standing dwelling on a lot.

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

1. A Variance from Section 10.513 to allow a second free-standing dwelling on a lot.

Action:

The Board voted to **table** the petition and **direct** the petitioner to make application to the Planning Board for a conditional use permit for an accessory dwelling unit. This will allow findings on specific criteria to be considered with regard to a second dwelling unit.

=====
IV. ADJOURNMENT

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

Respectfully submitted,

Mary E. Koepenick, Secretary