

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 15, 2018** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheaume, Vice Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Phyllis Eldridge,

EXCUSED: Alternate John Formella

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I. APPROVAL OF MINUTES

A) April 17, 2018

The Board approved the Minutes as presented.

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II. OLD BUSINESS

A) Request for Rehearing regarding property located at 160-168/170 Union Street.

Action:

The Board voted to **table** your request with the intent that it will be considered at its reconvened meeting on May 22, 2018.

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III. OLD BUSINESS - PUBLIC HEARINGS

A) **Case 4-8.** Petition of Portsmouth Housing Authority and ED PAC, LLC regarding property located at **140 and 152 Court Street** wherein relief is required from the Zoning Ordinance for a lot line adjustment and construction of a five story residential building. The required relief includes the following variances: For 140 Court Street: a) from Section 10.5A41.10C to allow a

front lot line buildout of 12.5%± where 50% is required; b) from Section 10.5A41.10C to allow a 10'± ground floor ceiling height where 12' is required; c) from Sections 10.5A43.30 & 10.5A21B to allow a structure with five stories (58'± in height) where three and a short fourth stories to a maximum height of 45' are permitted; and d) from Section 10.1114.21 to allow 9'± x 18'± parking spaces where 8.5' x 19' spaces are required and a 22' wide maneuvering aisle where 24' is required. For 152 Court Street: e) from Section 10.5A41.10C to allow no entrance proposed on the front building façade where an entrance is required every 50'. Said property is shown on Assessor Plan 116, Lots 37 and 38 and lies within Character District 4. (NOTE: This petition was postponed from the April 17, 2018 meeting and the requested relief has been amended.)

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The existing buildings in the area, comparable to the proposed building in size, use and scale, comprise the varied character of the surrounding neighborhood which will not be altered by the proposed structure and use. The proposal will also pose no threat the public health, safety or welfare or injure public rights 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 both the public and the applicants will benefit substantially by the granting of the petition.
- A tasteful downtown development, with modern materials and a design approved by the Historic District Commission, will not diminish 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 large, uniquely shaped lot with minimal street frontage, in a transition zone between large commercial or civic buildings and residential areas. This is an allowed residential use, adjacent to a similar use that has been present for many years, so that the proposed use is a reasonable one.

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IV. NEW BUSINESS – PUBLIC HEARINGS

1) Case 5-1. Petition of Charles R. Traver, Jr. for property located at **100 Colonial Drive** wherein relief is required from the Zoning Ordinance to amend a previously granted variance as follows: a) from Section 10.521 to allow a 3'± right side yard along an extended, previously approved, second floor addition where 10' is required; and b) 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. Said property is shown on Assessor Plan 260, Lot 156 and lies within the Single Residence B District.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The minimal changes to the previously approved plans will not alter the essential character of the neighborhood so that granting this 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 loss to the applicant by having to comply with the side yard requirement would be much higher than any gain to the general public if the petition were denied.
- This extension of an approved right side yard will not diminish the value of surrounding properties.
- The existing side yard encroachment creates a hardship as even a minimal adjustment to the previously granted relief requires a variance. An allowed residential use in a residential area is a reasonable use of the property.

2) Case 5-2. Petition of Richard M. Burbine Revocable Trust and Laura M. Burbine Revocable Trust for property located at **188 Broad Street** wherein relief is required from the Zoning Ordinance to install a generator on the right side of the home, including the following variances: a) from Section 10.515.14 to allow an 8'± right side yard where 10' is required; and b) from 10.521 to allow 27%± building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 133, Lot 11 and lies within the General Residence A District.

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 generator will be shielded by hedges and not really visible to the public so that the essential character of the neighborhood will not be altered nor will the health, safety or welfare of the general public be threatened.
 - Substantial justice will be done as the generator will provide peace of mind to the applicants with no corresponding detriment to the general public.
 - Granting the variances will not diminish the value of surrounding properties as the unit will not be visible except to the direct neighbor who has extended their support.
 - The hardship in the property is the existence of a gas line which drives the location of the unit so that there is no fair and substantial relationship between the general purposes of the ordinance provision and its specific application to this property.
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3) Case 5-3. Petition of Edward J. Miller Revocable Trust, Edward J. Miller, Trustee for property located at **5 Central Avenue** wherein relief is required from the Zoning Ordinance for short term rentals for periods of up to 180 days with no owner in residence, including the following: a) a variance from Section 10.440 to allow short term rentals of residential property where the use is not allowed. Said property is shown on Assessor Plan 209, Lot 1 and lies within the Single Residence B District.

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 a variance were not met.
 - Converting a single family home to a short-term rental use would change the character of the neighborhood and be contrary to the public interest.
 - There are no special conditions of the property so that literal enforcement of the ordinance would result in unnecessary hardship and the property can be reasonably used in strict conformance with the ordinance.
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4) Case 5-4. Petition of Goodwin Family Revocable Trust, Bruce E. and Jennifer J. Goodwin, Trustees, for property located at **87 Mason Avenue** wherein relief is required from the Zoning Ordinance for a one-story rear addition, including the following: a) a variance from Section 10.521 to allow a 24.2'± rear yard where 30' is required. Said property is shown on Assessor Plan 260, Lot 65 and lies within the Single Residence B District.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The location of this modest addition has been proposed to have the least impact on the surrounding properties so that the essential character of the neighborhood will not be changed. The health, safety and welfare of the public will also not be threatened 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, through strict compliance with the rear yard requirement and denial of the petition, would not be outweighed by any corresponding benefit to the general public.

- This is a reasonable and appropriate addition in intent and size which will not diminish the property values in the vicinity.
- There are special conditions of the property so that literal enforcement of the ordinance would result in unnecessary hardship. The property has an unusual shape resulting in a constricted building envelope potential so that it is difficult to site any addition without violating the setbacks. For these reasons, there is no fair and substantial relationship between the general purposes of the ordinance provision and its specific application to the property. The use is a reasonable one in a residential neighborhood

5) Case 5-5. Petition of 238 Deer Street LLC for property located at **238 Deer Street** wherein relief is required from the Zoning Ordinance for the placement of a dumpster with screening, including the following: a) a variance from Section 10.575 to allow a dumpster to be located 7'± from a lot line where 10' from a lot line is required. Said property is shown on Assessor Plan 125, Lot 3 and lies within Character District 4 and the Downtown Overlay District.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- A dumpster in this location will not alter the essential character of the neighborhood nor threaten the public’s health, safety or welfare 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 the benefit to the applicant if the variance is granted will not be outweighed by any detriment to the general public by a dumpster in this location.
- With the proposed screening, which will be reviewed by the Historic District Commission, the dumpster will not result in the diminution in the value of surrounding properties.
- The hardship in the property is the existing layout of the structures on the property with limited setbacks and options for placement of the dumpster. The applicant has chosen the side of the building most amenable for access and servicing so that there is no fair and substantial relationship between the general purposes of the ordinance provision and its specific application to the property.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:32 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary