

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 May 22, 2018** in Conference Room A, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

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

EXCUSED: Vice Chairman Jeremiah Johnson, Alternate John Formella

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I. REQUEST FOR EXTENSION

- A) Request for Extension of Variance granted June 21, 2016 regarding 209 Kearsarge Avenue.

Action:

The Board voted to **grant** a one-year extension of the variance through June 21, 2019.

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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 **postpone** consideration of the request to the June meeting at the request of the applicant.

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III. NEW BUSINESS – PUBLIC HEARINGS

6) Case 5-6. Petition of Jeffrey J. Caron for property located at **325 Thaxter Street** wherein relief is required to amend a previously granted variance including the following: a) from Section 10.521 to allow a 4'± right side yard where 10' is required, extending upward along a previously approved right rear addition; 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 52, Lot 39 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:

- Granting the variances will not be contrary to the public interest and the spirit of the ordinance will be observed. This is a relatively minor extension of previously granted right side yard relief which will not alter the essential character of the neighborhood.
- Substantial justice will be done by allowing the applicant additional living space with no detriment to the general public.
- As in the initial petition, there has been no indication in this petition for an adjustment that granting the variances will have any negative effect on the value of surrounding properties.
- The special conditions of the property include the size and shape of a narrow lot which create a hardship in constructing any expansion without needing relief so that there is no fair and substantial relationship between the general public purposes of the ordinance provision and its specific application to the property. The proposed use is a reasonable one.

7) Case 5-7. Petition of 319 Vaughan Street Center LLC, owner, 3S Contemporary Artspace, applicant, for property located at **319 Vaughan Street** wherein relief is required from the Zoning Ordinance to annually hold a summer concert series, including the following: a) a special exception from Section 10.1440 #3.521 to allow an outdoor performance facility where the use is allowed by special exception; and b) a variance from Section 10.592.10 to allow an outdoor performance facility use to be located 500' from a residential district. Said property is shown on Assessor Plan 124, Lot 9 and lies within Character District 5 and the Downtown Overlay District.

Action:

The Board voted to **grant** a special exception and variance to allow the property to be used as an outdoor performance facility as presented and advertised, subject to the following stipulations:

Stipulations:

- The approval for the outdoor concerts is limited to the 2018 season which will begin June 1, 2018 and end September 30, 2018.
- No more than 10 events will be held in the specified period.
- The concerts will begin no earlier than 6:00 p.m. and end no later than 9:00 p.m.

Review Criteria:

The special exception was granted for the following reasons:

- The standards as provided by the Ordinance for the particular use permitted by Special Exception are met.
- There will be no hazard to the public or adjacent property on account of fire explosion or release of toxic material as a result of what is being requested.
- There will be no detriment to property values in the vicinity or change in the essential characteristics of the area from the location of buildings, accessways, odor, smoke, dust or other pollutants. None of those will result from this use.
- There will be no creation of a safety hazard or substantial increase in the level of traffic congestion. There have been no negative issues with traffic in the past for the outdoor concerts.
- There will be no excessive demand on municipal services including but not limited to water, waste disposal, police and fire protection. Similar events have been held in the past with no complaints of which the Board is aware.
- With no physical change to the property, there will be no significant increase in storm water runoff onto adjacent property streets.

The variance was granted for the following reasons:

- This use in a mixed use area will not alter the essential character of the neighborhood. The concerts have been held for several years with no threat to the health, safety or welfare of the general public so that granting the variance will not be contrary to the public interest and the spirit of the ordinance will be observed.
 - The substantial justice test tips in favor of the applicant as the limited series of events will not result in a detriment to the general public.
 - The previous series of events has taken place with no apparent detriment to the value of surrounding properties and it is expected that this will continue with the proposed series.
 - The special conditions of the property include its conversion from a warehouse to a performing arts venue with a built-in infrastructure that supports the property owners' proposal to conduct outdoor events so that there is no fair and substantial relationship between the general public purposes of the ordinance provision and their specific application to the property.
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8) Case 5-8. Petition of Peter G. Morin Trust, Peter G. Morin, Trustee for property located at **49 Pickering Street and 170 Mechanic Street** wherein relief is required from the Zoning Ordinance for a lot line revision, including the following: a) a variance from Section 10.521 to allow a 7.9'± rear yard where 25' is required. Said property is shown on Assessor Plan 102, Lots 6 & 7 and lies within the General 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:

- Granting the variance will not be contrary to the public interest and the spirit of the ordinance will be observed. With no visible difference, the proposed lot line revision will not alter the essential character of the neighborhood nor threaten the health, safety, or welfare of the general public.
- Substantial justice will be done as there will be a benefit to the applicant with no effect on any public rights.
- With the only change a slight alteration in the lot line, the value of surrounding properties will not be diminished and abutters have indicated their support.
- The small size and configuration of current lot 6 creates a hardship. A rectangular shaped lot is more desirable and makes the lot more conforming while not increasing the nonconformity of current lot 7 with a 7.9' rear yard. This is a reasonable change which will allow for needed snow storage which was not accessible with the current lot configurations.

9) Case 5-9. Petition of Michael De La Cruz for property located at **75 (63) Congress Street** wherein relief is required from the Zoning Ordinance for a basement indoor parking facility, including variances from Section 10.1114.20 to allow the following: a) eight parking spaces with less than the required dimensions and b) a 12'± wide maneuvering aisle where 14' is required. Said property is shown on Assessor Plan 117, Lot 5 and lies within Character District 5 and the Downtown Overlay District.

Action:

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

10) Case 5-10. Petition of Jonathan & Diana Guilbert for property located at **15 Thornton Street** wherein relief is required from the Zoning Ordinance to subdivide one lot containing existing structures into two lots, including variances from Section 10.521 to allow the following

for Proposed Lot 1: a) an 8.6'± front yard where 15' is required; b) a rear yard of 14.7'± where 20' is required; c) a lot depth of 64.66'± where 70' is required. Said property is shown on Assessor Plan 160, Lot 1 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. One lot will be split into two confirming lots with respect to lot area and the requested relief is for existing structures. The limited amount of requested relief is consistent with the objectives of the zoning in this neighborhood.
 - The impact due to any increase in the neighborhood's density would not outweigh the benefit to the applicant in allowing full use of their property within the ordinance constraints.
 - The existing house and structure are in keeping with the neighborhood so that the value of surrounding properties will not be diminished.
 - Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include a long narrow lot, bounded by streets on three sides. The existing structure drives the needed request for front and rear yard relief and the narrowness of the lot drives the lot depth request. The proposed use is a reasonable one. The applicant is proposing to use the property as it has been used in the past and as it has the potential to be reasonably used in the future.
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11) Case 5-11. Petition of Derek T. Hayward for property located at **17 Stark Street** wherein relief is required from the Zoning Ordinance to allow a second driveway on a lot, including the following: a) from Section 10.1114.31 to allow a driveway which does not meet the standards for "General Access and Driveway Design." Said property is shown on Assessor Plan 161, Lot 3 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:

- Allowing a second driveway is not going to alter the essential character of the neighborhood or affect the health, safety or welfare of the general public so that granting the variance will not be contrary to the public interest and the spirit of the ordinance will be observed.
- Granting the variance will result in substantial justice because the loss to the applicant if the petition were denied, would not be outweighed by any corresponding benefit to the general public.
- The value of surrounding properties will be improved. The provision of parking for vehicles that would otherwise be parked in the street contributing to parking congestion in the neighborhood would positively benefit property values.
- Literal enforcement of the ordinance would result in unnecessary hardship. The special conditions of the property distinguishing it from others is that there is a duplex structure on a long, relatively narrow lot that could appropriately accommodate parking on either side of the building so that there is no fair and substantial relationship between the purpose of modern driveway standards and their application to this particularly property. The use is a reasonable one, a residential use in a residential zone.

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IV. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:07 p.m.

Respectfully submitted,

Mary E. Koeppenick, Secretary