

**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 June 19, 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, Christopher Mulligan, Arthur Parrott, Alternates Phyllis Eldridge, John Formella

**EXCUSED:** Peter McDonell

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**I. APPROVAL OF MINUTES**

A) May 15, 2018

The Minutes were approved with minor amendments.

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B) May 22, 2018

The Minutes were approved with minor amendments.

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**II. OLD BUSINESS - PUBLIC HEARINGS**

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

Action:

The Board voted to **grant** a rehearing to be held at the regular July meeting, determining that new information had been provided and inconsistencies in previous documentation noted so that a new hearing was justified.

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B) Case 5-9

Petitioner: Michael De La Cruz  
Property: 75 (63) Congress Street  
Assessor Plan: Map 117, Lot 5  
Zoning District: Character District 5 and the Downtown Overlay District  
Description: Construct a basement indoor parking facility  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:  
1. 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.

Action:

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

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**III. NEW BUSINESS – PUBLIC HEARINGS**

1) Case 6-1

Petitioner: Richardson Family Trust of 2016, Justin C. Richardson,  
Property: 586 Woodbury Avenue  
Assessor Plan: Map 236, Lot 2  
Zoning District: Single Residence B. District  
Description: Construct a 24'± x 17'± enclosure and keep chickens  
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 #17.20 to allow the keeping of farm animals where the use is only allowed by special exception; and  
2) A variance from Section 10.573.20 to allow a 5.7' rear yard.

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 no more than six.
- No roosters will be allowed.

Review Criteria:

The special exception was granted for the following reasons:

- The standards as provided by the Ordinance permitted by Special Exception are met.
- Having chickens will present no hazard to the public or adjacent property from fire explosion or release of toxic materials.
- There will be no detriment to property values in the vicinity or change in the essential character of the area on account of buildings or other structures, odors, smoke, dust, noise, heat or other irritants or unsightly storage of vehicles or equipment. None of this will result from this proposed use.
- There will be no excessive demand on municipal services. The amount of water used will be minimal so there will be no impact on waste disposal. Fire and police protection, and schools will not be affected in any way.
- As presented, there is no aspect that will increase storm water runoff onto adjacent property or streets.

The variance was granted for the following reasons:

- The keeping of a limited number of chickens will not alter the essential character of the neighborhood nor threaten the public 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. Granting the variance would benefit the applicant with no corresponding harm to the general public or neighbors, particularly with a modest-sized pen and the limit on the number of chickens.
- With the stipulations placed on the approval, the value of surrounding properties will not be diminished and no neighbors have spoken in opposition.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. The siting of the house and topography of the land determined the placement of the run and pen which replaced an existing structure. The most logical location was chosen as trees and fencing form an effective buffer so that there is no fair and substantial relationship between the general public purposes of the ordinance and their specific application to this property.

## 2) Case 6-2

Petitioner: Myles S. Bratter  
 Property: 177 Bartlett Street  
 Assessor Plan: Map 158, Lot 9  
 Zoning District: General Residence A District  
 Description: Convert a unit with an existing commercial use to a dwelling unit  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:  
 1) from Section 10.440, Use #1.52 to allow five dwelling units where five dwelling units are not allowed; and  
 2) from Section 10.521 to allow a lot area per dwelling unit of 3,899± s.f. where 7,500 s.f. per dwelling unit is 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 variances will not be contrary to the public interest and the spirit of the ordinance will be observed. The essential character of the neighborhood, which is generally residential with a few commercial uses, will not be altered by the addition of one residential unit which will maintain the same spirit and feel of the area.
- In the substantial justice test, a residential unit replacing a commercial use will pose no harm to the general public.
- Granting the variances will not diminish the value of surrounding properties values. The unit will have no sign and likely bolster nearby property values.
- The special conditions of the property include its corner lot location with an existing building and parking lot supporting a mix of residential and commercial uses so that a change of use from commercial to residential can be accommodated with little impact.

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3) Case 6-3

Petitioners: Francis T. Delbene and Gwyn M. Burdell  
 Property: 32 Union Street  
 Assessor Plan: Map 145, Lot 29  
 Zoning District: General Residence C District  
 Description: Construct a 26' x 32' carriage house/garage with a third dwelling unit  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances from Section 10.521:  
     a) a lot area per dwelling unit of 1,887± s.f. where 3,500 s.f. is required; and  
     b) a 6'± rear yard where 20' is 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 variances will not be contrary to the public interest and the spirit of the ordinance will be observed. There currently is open space on lot that is larger than neighboring lots and, given the location of the existing structure, an additional structure will create a density that will conform to the neighborhood's character. The health, safety and welfare of the general public will not be threatened by one additional unit with adequate parking in an already-dense area.

- Substantial justice will be done as denying the variances would harm the applicants with no corresponding benefit to the general public.
  - The value of surrounding properties will not be diminished as the area will be improved by better use of the open space.
  - The lot is well suited for an additional structure and unit so that there is no fair and substantial relationship between the general public purposes of the ordinance and their specific application to the property. The lot is unique in its open space and the purpose of the ordinance is not to preserve remaining open space but prevent its overdevelopment which will not be the result of this modest proposal.
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#### 4) Case 6-4

Petitioners: Linda Preble McVay and John Frank McVay  
 Property: 42 Hunking Street  
 Assessor Plan: Map 102, Lot 8  
 Zoning District: General Residence B District  
 Description: Construct a 420± s.f. one-story addition  
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:  
 1) from Section 10.521 to allow a 10'± rear yard where 25' is required; and  
 2) 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. There currently is open space on lot that is larger than neighboring lots and, given the location of the existing structure, an additional structure will create a density that will conform to the neighborhood's character. The health, safety and welfare of the general public will not be threatened by one additional unit with adequate parking in an already-dense area.
- Substantial justice will be done as denying the variances would harm the applicants with no corresponding benefit to the general public.
- The value of surrounding properties will not be diminished as the area will be improved by better use of the open space.
- The lot is well suited for an additional structure and unit so that there is no fair and substantial relationship between the general public purposes of the ordinance and their specific application to the property. The lot is unique in its open space and the purpose of

the ordinance is not to preserve remaining open space but prevent its overdevelopment which will not be the result of this modest proposal.

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5) Case 6-5

Petitioners: Steven DeSantis, Allen Jeffries, Tia Spagnuolo, and the Solano Group LLC  
Property: **454 and 456 Middle Street**  
Assessor Plan: Map 135, Lots 43, 43-1 and 43-2  
Zoning District: Mixed Residential Office District  
Description: Install two HVAC condensers  
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.515.14 to allow the following:  
a) A condensing unit with a 3'± left side yard where 10' is required; and  
b) A condensing unit with a 3'± right side yard where 10' is 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 variances will not be contrary to the public interest and the spirit of the ordinance will be observed.
- Substantial justice will be done as central air conditioning is a modern convenience significantly benefiting the applicant and, in this case, there is no substantial detriment to the public.
- Granting the variances will likely enhance the value of surrounding properties.
- Literal enforcement of the ordinance will result in unnecessary hardship as the structure is constrained by existing setbacks and the chosen location for the condensers is reasonable.

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**IV. ADJOURNMENT**

It was moved, seconded and passed to adjourn the meeting at 9:05 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary