

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 18, 2019** 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, Alternate Phyllis Eldridge, Alternate Chase Hagaman

EXCUSED: John Formella, Peter McDonell

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I. APPROVAL OF MINUTES

A) May 21, 2019

Action: The Minutes were approved as amended.

B) May 28, 2019

Action: The Minutes were approved as amended.

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II. PUBLIC HEARINGS – OLD BUSINESS

A) Case 5-5

Petitioner: 56 Middle Street LLC

Property: 56 Middle Street

Assessor Plan: Map 126, Lot 19

District: Character District 4-Limited and the Downtown Overlay District

Description: Convert to a duplex and construct rear addition.

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

a) ~~from Section 10.5A41.10A to allow a building footprint of 2,646± s.f. where~~

- ~~2,500 s.f. is the maximum allowed;~~
- b) from Section 10.5A41, Figure 10.5A41.10A and Section 10.5A43.60 & Figure 10.5A43.60 to allow a duplex in the Downtown Overlay District where it is not permitted; and
 - c) ~~from Section 10.321 to allow a lawful nonconforming structure to be extended, reconstructed or enlarged without conforming to the requirements of the ordinance.~~
- (This petition was postponed from the May 21, 2019 meeting and has been amended by the withdrawal of items a) and c).Relief is still required for item b.)*

Action:

The Board voted to **table** the petition to the July meeting so that the following can be provided:

- building plans and elevations of current and proposed structures;
- a site plan detailing existing and proposed parking including the potential impact of the proposed two units on the parking arrangements and neighboring properties;
- information on current easements and whether additional easements will be needed.

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III. PUBLIC HEARINGS – NEW BUSINESS

1) Case 6-1

Petitioners: William Brinton Shone and Tatjana Rizzo Shone
 Property: 11 Elwyn Avenue
 Assessor Plan: Map 113, Lot 27
 District: General Residence A
 Description: Installation and placement of HVAC condensers.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
 a) from Section 10.515.14 to allow a 7'± setback where 10' is required for a mechanical system.

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 character of the neighborhood will not be altered by screened condensers, nor will the health, safety or welfare of the general public be threatened.

- Substantial justice will be done as granting the variance will benefit the applicant while the option chosen for obtaining the desired benefit will be the less intrusive than others with no harm resulting to the general public.
- Units generating a fairly low decibel level, and placed in a screened location, will not have a much greater impact on the neighborhood than the ambient noise in and around a house 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 the unusual exposure of the house on a corner lot with one side facing a large open area. Considering these conditions, the best location has been chosen for the condensers so that there is no fair and substantial relationship between the general purposes of the ordinance and their specific application to the property.

2) Case 6-2

Petitioners: Petition of Eric D. Weinrieb and Rachel L. Hopkins
 Property: 9 Middle Road
 Assessor Plan: Map 152, Lot 47
 District: General Residence A
 Description: Reconstruct deck and stairs with deck expansion.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
 a) a variance from Section 10.521 for a 7'± secondary front yard where 15' is required.

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulation:

Stipulation:

- The final setback may be 1' plus or minus from 7'.

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. This is a minor request that 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 the applicants will benefit by a small expansion, limited by the stipulation, while the site of the new construction will be largely away from the view of the general public.
- An incremental request in a change in the size of an existing structure will not result in any diminution in the value of surrounding properties and abutters have submitted letters of support.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include frontage on two streets creating multiple front

setbacks and a heavily travelled road making an existing front porch unusable. In addition, the siting of the building on the lot is skewed at an acute angle, on a lot with existing trees and landscaping, making it difficult for any expansion to fit within the setbacks.

3) Case 6-3

Petitioners: Nancy H. Alexander Revocable Trust, Nancy H. Alexander, Trustee, owner and High Definition Fitness, LLC, applicant

Property: 620 Peverly Hill Road

Assessor Plan: Map 254, Lot 6

District: Industrial

Description: Yoga studio.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following:
a) a special exception under Section 10.440, Use #4.40 to allow a yoga studio up to 2,000 s.f. of gross floor area in the Industrial District.

Action:

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

Review Criteria:

The petition was granted for the following reasons:

- The standards as provided by the Ordinance for the particular use permitted by Special Exception are met.
- A yoga class will not result in any hazard to the public or adjacent property from fire, explosion or release of toxic materials.
- This is a low intensity use, with small-to-moderate size classes a few times a day. There will be no detriment to property values in the vicinity or change in the essential characteristics of any area including residential, business and industrial districts from the scale of buildings, parking areas or accessways, odors, smoke, dust or other pollutants, noise, glare, heat or other irritants, or unsightly outdoor storage of equipment, vehicles or other materials.
- As has been the case with similar uses, there will be no creation of a traffic safety hazard or substantial increase in the level of traffic congestion.
- With limited class size and visitor/client time as well as the type of activity proposed, there will be no excessive demand on municipal services such as water, sewer, waste disposal, fire and police and fire protection.
- With no change to the physical facility, there will be no significant increase of storm water runoff onto adjacent property or streets.

4) Case 6-4

Petitioners: 2422 Lafayette Road Associates, LLC, owner, Pinz Portsmouth, LLC applicant

Property: 2454 Lafayette Road
 Assessor Plan: Map 273, Lot 3
 District: Gateway Neighborhood Mixed Use Corridor (G1)
 Description: Restaurant/bar with 250-500 patrons and a bowling alley.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following special exceptions:
 a) from Section 10.440, Use #9.12 to allow a nightclub or bar with an occupant load from 250 to 500 where the use is only allowed by special exception; and
 b) from Section 10.440, Use #4.20 to allow an indoor amusement use where the use is only allowed by special exception.

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulation:

Stipulation:

- A suitable barrier will be provided around the outdoor seating area to protect it from vehicular traffic.

Review Criteria:

The petition was granted for the following reasons:

- The standards as provided by the Ordinance for the particular use permitted by Special Exception are met.
- The proposed uses are relatively benign and will not result in any hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.
- There will be no detriment to property values and these types of uses could enhance nearby property values by drawing the public into the plaza. With a long history of commercial and mostly retail in the area, there will be no change in the essential characteristics of the area from the location or scale of buildings or other structures. Parking areas and access ways are existing and the uses will not generate odors, smoke, dust or other pollutants, noise, glare or other irritants or unsightly outdoor storage.
- The parking for that area is an existing large space that is self-contained and off the road so there will be no creation of a traffic safety hazard, particularly with the attached stipulation, or increase in traffic congestion.
- With the type of limited activity proposed, there will be no excessive demand on municipal services
- With no physical changes to the building, there will be no increase in storm water runoff onto adjacent property or streets.

5) Case 6-5

Petitioner: Richard Fusegni
 Property: 201 Kearsarge Way
 Assessor Plan: Map 218, Lot 5
 District: Single Residence B

Description: Subdivide one lot into three.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variance:
 a) from Section 10.521: a) to allow 83'± of continuous street frontage where 100' is required.

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.
- Granting the variance would be contrary to the public interest and the spirit of the ordinance would not be observed. The essential character of the neighborhood would be altered by a subdivision that would create a density in an area with smaller older homes on large lots.
- The hardship test is not met. There is an opportunity for a subdivided lot to be reasonably used in complete conformance with the ordinance. The proposed subdivision would result in unusual placement of property lines and a lot facing an intersection of two streets. The public purposes of the ordinance outweigh the benefit to the individual.

6) Case 6-6

Petitioners: Joel Johnson
 Property: 165 Union Street
 Assessor Plan: Map 135, Lot 65
 District: General Residence C
 Description: After-the-fact variances for a third floor dormer and rear deck.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
 a) from Section 10.521 to allow a 2'± left side yard where 10' is required for the dormer;
 b) from Section 10.521 to allow a 3.5'± left side yard where 10' is required for the deck; and
 c) 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:

- The essential character of the neighborhood will not be altered by a structure that was built in the same footprint 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 loss to the applicant by requiring complete compliance with the ordinance would force the applicant to remove the deck and dormer with no counterbalancing benefit to the general public.
- The value of surrounding properties will not be affected as evidenced by the quick sale of an adjoining property close to the encroachment.
- The special conditions of the property creating a hardship include a pre-existing and nonconforming condition and a narrow lot with an existing structure that has maximized the area of the lot. Due to these conditions, there is no fair and substantial relationship between the general public purposes of the setback provisions and their specific application to the property. This is a reasonable use, a residential use in a residential zone.

7) Case 6-7

Petitioners: Charles J. & Kimberlee S. McCue

Property: 105 Middle Road

Assessor Plan: Map 152, Lot 18

District: Single Residence B

Description: Second floor bedroom addition.

Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
a) from Section 10.521 to allow a 5'± right side yard 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.

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. A modest expansion will not alter the essential character nor threaten the public health, safety or welfare.
- Substantial justice will be done as the loss to the applicant, by requiring compliance and denying a modest addition, would not be balanced by any gain to the general public.
- The value of surrounding properties would not be diminished by a proposal that will not add a large amount of extra living space.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include a narrow lot with an existing encroachment. Due

to the special conditions, there is no fair and substantial relationship between the purposes of the setback requirements in the ordinance and their specific application to the property. A residential use in a residential district is a reasonable use of the property.

8) Case 6-8

Petitioners: Andrew J. Marden
Property: 60 Elwyn Avenue
Assessor Plan: Map 113, Lot 22
District: General Residence A
Description: Subdivide one lot into two lots.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including variances from Section 10.521 to allow the following:
a) 3,457± s.f. lot area and lot area per dwelling unit where 7,500 s.f. is the minimum required;
b) 2,943± s.f. lot area and lot area per dwelling unit where 7,500 is the minimum required;
c) 50'± of continuous street frontage where 100' is required;
d) lot depths of 58'± and 68'± where 70' is the minimum required; and
e) 30%± building coverage where 25% is the maximum allowed.

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 are similar lots in the area so that the essential character of the neighborhood will not be altered.
 - Substantial justice will be done and the value of surrounding properties will not be diminished. The loss to the applicant by requiring strict compliance with the ordinance in an area of nonconforming properties would not be balanced by any gain to the general public. The proposed would not result in any noticeable increase in the amount of density in the neighborhood.
 - Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property which include its frontage on two parallel streets. The existing dwelling is located close to and facing Elwyn Avenue thus the empty portion of the lot adjacent to Sherburne Avenue is naturally situated to create a buildable lot, similar to subdivisions of nearby properties. Due to the special conditions, there is no fair and substantial relationship between the general purposes of the ordinance and their specific application to this property.
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9) Case 6-9

Petitioners: Haven Properties LLC
 Property: 187 McDonough Street
 Assessor Plan: Map 144, Lot 43
 District: General Residence C
 Description: Demolish existing home and construct new dwelling, including lot line revision.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including the following variances:
 a) from Section 10.521 to allow the following:
 1) a 4'± right side yard where 10' is required;
 2) a 2'± left yard where 10' is required;
 3) a 10'± rear yard where 20' is required;
 4) 49%± building coverage where 35% is the maximum allowed;
 5) a lot area and lot area per dwelling unit of 2,537± s.f. where 3,500 is required; and
 6) 48'± of continuous street frontage where 70' 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.

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 the variances were not met.
- Granting the variances would be contrary to the public interest and the spirit of the ordinance would not be observed. Significant relief is being requested, both in terms of building coverage and setbacks. The mass of the proposed house, exacerbated by the proposed deck over the garage, is too much for the lot and would alter the character of the neighborhood. The Board has identified ways to bring the property more into compliance with the spirit of the ordinance while still providing a suitable benefit to the applicant in terms of a usable home.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 11:30 p.m..

Respectfully submitted,

Mary E. Koepenick, Secretary