

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 July 16, 2019** in the Eileen Dondero Foley Council Chambers, Municipal Complex, One Junkins Avenue, Portsmouth, New Hampshire.

PRESENT: Chairman David Rheame, Vice Chairman Jeremiah Johnson, Jim Lee, Peter McDonell, Christopher Mulligan, Arthur Parrott, Alternate Chase Hagaman

EXCUSED: John Formella, Alternate Phyllis Eldridge

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I. APPROVAL OF MINUTES

A) June 18, 2019

Action: The Minutes were approved as presented.

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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:

After a motion to grant the variances failed to pass, the Board voted to **deny** the variances.

Review Criteria:

The petition was denied for the following reasons:

- All the criteria necessary to grant a variance were not met.
- Substantial justice would not be done, the value of surrounding properties would be diminished, and the use is not a reasonable one given the circumstances of the property and its surroundings. Abutting properties would be adversely impacted by the proposed duplex use.

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III. PUBLIC HEARINGS – NEW BUSINESS

1) Case 7-1

Petitioners: Iron Horse Properties, LLC, Clipper Traders, LLC and Portsmouth Lumber & Hardware, LLC, owners, Ricci Supply Company, Inc. dba Ricci Lumber, applicant

Property: 105 Bartlett Street

Assessor Plan: Map 164, Lot 4-2

District: Character District 4-W

Description: Replace sign cabinets and panels, with bottom cabinet a digital changeable sign

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

- a) from Section 10.1212 to allow a sign as an accessory use to a permitted use on an adjacent lot;
- b) from Section 1251.20 to allow a sign area of 142.33 s.f. where 20 s.f. is the maximum allowed for a freestanding sign;
- c) from Section 10.1253.10 to allow a 25’ tall freestanding sign where the maximum height is 12’; and
- d) from Section 10.1281 to allow a nonconforming sign to be altered, reconstructed, replaced or relocated without conforming to the ordinance.

Action:

The Board understood that, as presented, the changeable sign would be located in the middle cabinet and not the bottom cabinet. With that understanding, the Board voted to **grant** the petition as presented and advertised with the following stipulation:

Stipulation:

- The lighting on all of the signs will be extinguished by 11:00 p.m. every evening.

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 as replacing panels on a sign that has been in place for a long time and is surrounded by commercial uses, a railroad and a large billboard will not alter the essential character of the neighborhood.
- Substantial justice will be done as the benefit to the applicant if the petition is granted will not be outweighed by any harm to the general public.
- The value of surrounding properties will not be diminished by a long existing sign. This is a relatively small amount of signage for the two additional businesses and any impact from the change in lighting will be mitigated by the attached stipulation.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property, which include the length and proportions of the site and the way in which it addresses a busy street so that there is justification for a larger sign, which accommodates the fact that some of the businesses are a little further away.

2) Case 7-2

Petitioners: Kenneth K. and Deborah A. Jennings
 Property: 27 Thaxter Road
 Assessor Plan: Map 166, Lot 39
 District: Single Residence B
 Description: Appeal
 Requests: Appeal a decision of the Portsmouth City Council to restore two involuntary merger lots.

Action:

The Board voted to **postpone** the petition to the August 20, 2019 meeting at the request of the appellants.

3) Case 7-3

Petitioners: AER RE, LLC
 Property: 185 Cottage Street
 Assessor Plan: Map 174, Lot 14
 District: General Residence A
 Description: Double faced internally illuminated monument sign and (1) set of halo lit wall letters.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including :
 a) from Section 10.1251 to allow 113 s.f. of signage where 40 s.f. of aggregate sign area is available;

- b) from Section 10.1241 to allow a freestanding sign where freestanding signs are not allowed;
- c) from Section 10.1253.10 to allow a 10’ high free standing sign 15’ from a lot line where a freestanding sign is not permitted;
- d) from Section 1251.20 to allow a 44.4 s.f. wall sign where 4 s.f. is the maximum sign area allowed for a wall sign and a 60 s.f. freestanding sign; and
- e) from Section 1261.10 to allow halo illumination where no illumination is permitted.

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. With the business located on a corner lot, it is appropriate to have more than one sign without altering the essential character of the neighborhood. The proposed signs represent no threat to the public health, safety or welfare and no neighborhood concern has been expressed.
- Substantial justice will be done as the benefit to the applicant in granting the variances will not be outweighed by any detriment to the general public. The signs will help clients to locate the business.
- The value of surrounding properties will not be diminished. The signs are tastefully designed and appropriately sized and will fit in with the commercial uses on the surrounding properties.
- Literal enforcement of the ordinance will result in unnecessary hardship due to the special conditions of the property, which include a location where a medical facility and other office uses were previously approved by a variance. Adding appropriate signage for these uses is reasonable.

4) Case 7-4

Petitioners: Kenneth W. Young
Property: 346 Colonial Drive
Assessor Plan: Map 260, Lot 136
District: Single Residence B
Description: To construct a 515 s.f. Attached Accessory Dwelling Unit above a proposed garage addition.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from Section 10.521 of the Zoning Ordinance including:
a) a lot area of 6,099 s.f. where 15,000 s.f. is required for each;
b) building coverage of 24% where 20% is the maximum allowed;
c) a 4’11” rear yard where 30’ is required;

- d) a 17’ front yard where 30’ is required; and
- e) 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 a variance are not met.
- Granting the variances would be contrary to the public interest and the spirit of the ordinance would not be observed as the proposal would alter the essential character of the neighborhood.
- Substantial justice would not be done as it is feasible for the applicant to propose a different configuration with less impact on the neighborhood. A plan that would shift the garage and accessory dwelling unit forward would be workable and preferable.
- The value of surrounding properties would be diminished, particularly that of the abutter to the rear, by an addition so close and massive that it would affect light and air.

5) Case 7-5

Petitioners: Argeris & Eloise Karberas
 Property: 11 Meeting House Hill Road
 Assessor Plan: Map 103, Lot 59
 District: General Residence B
 Description: Add a dormer on either side of an existing dormer.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including :

- a) from Section 10.521 to allow a 3’ right side yard where 10’ is required;
- b) from Section 10.521 to allow a 14’ rear yard where 25’ is required; 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.

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 will not be

altered in any way and the health, safety and welfare of the public will not be impacted by what is being proposed.

- Granting the variances will result in substantial justice. The loss to the applicant outweighs any possible gain to the general public if the Board were to require strict adherence to the zoning ordinance. The property is already substantially non-compliant and the applicant is proposing to eliminate and reduce some of the existing nonconformities.
- The value of surrounding properties will not be diminished. The proposal is an improvement over the existing degraded condition of the dwelling. A new code compliant construction will enhance the values of surrounding properties.
- Literal enforcement of the ordinance would result in unnecessary hardship due to special conditions of the property. It is an oddly shaped lot that’s an amalgamation of two different lots, with existing severe nonconformities that the applicant has taken steps to mitigate and ameliorate to some extent. For these reasons, there is no fair and substantial relationship between the purposes of the ordinance and their application to this property. The use is a reasonable one as a residential use in a residential zone.

6) Case 7-6

Petitioners: Francis T. Delbene & Gwyn M. Burdell
 Property: 32 Union Street
 Assessor Plan: Map 145, Lot 29
 District: General Residence C
 Description: For a third dwelling unit over a reconstructed garage.
 Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
 a) from Section 10.521 to allow a lot area per dwelling unit of 1,843 s.f. where 3,500 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. With only an adjustment to a survey and no physical change, the essential character of the neighborhood will not be altered.
- Substantial justice will be done as the applicant will benefit by the granting of the variance with no corresponding detriment to the general public.
- With no change in the physical appearance of the property, there will be no impact on the value of surrounding properties.
- Granting the variance will recognize a minor mathematical change with no hardship involved.

7) Case 7-7

Petitioners: Matthew Wajda
Property: 183 Coolidge Drive
Assessor Plan: Map 268, Lot 29
District: Single Residence B
Description: Create a second lot from an existing lot.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
a) from Section 10.521 to allow a lot area and lot area per dwelling unit of 10,270 s.f. where 15,000 s.f. is required for each.

Action:

The Board **noted** that this petition would be heard at the July 23, 2019 meeting.

8) Case 7-8

Petitioners: Daniel Wyand and Lena Chamberland
Property: 65 Pinehurst Road
Assessor Plan: Map 221, Lot 72
District: General Residence A
Description: To construct a one-car detached garage.
Requests: Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance including:
a) from Section 10.573.20 to allow an accessory building or structure to be set back 3' from the left side property line where 10' is required and 6' from the rear property line where 16' 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 would not be contrary to the public interest and the spirit of the ordinance will be observed. The essential character of the neighborhood would not be altered by the relief that's being requested here nor would the health, safety or welfare of the public be threatened.
- Granting the variances would result in substantial justice. The loss to the applicant if the petition were denied would not be balanced by gain to the public if the Board insisted on strict adherence to the ordinance.

- The value of surrounding properties will not be diminished. The abutter to the rear is not impacted by setback relief as the lot is large, the built environment is close to Broad Street, and the abutter to the side is properly screened by the plantings of mature arbor vitae.
- Literal enforcement of the ordinance would result in unnecessary hardship due to the special conditions of the property which include an irregular shaped lot, with a fairly sizable dwelling in the built environment that distinguishes it from others in the area so that there is no fair and substantial relationship between the purpose of the setback ordinance and its application to the property. A residential use in a residential use is a reasonable use of the property.

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IV. OTHER BUSINESS

No other business was presented.

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V. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 10:50 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary