



CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801
(603) 610-7216

ZONING BOARD OF ADJUSTMENT

March 7, 2023

Cate Street Development LLC
150 Presidential Way Suite 220
Woburn, Massachusetts 01801

RE: Board of Adjustment request for property located at 350 US Route 1 Bypass (LU-23-9)

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, February 28, 2023**, considered your application for allowing an urgent care veterinary clinic which requires the following: 1) Special Exception from Section 10.440, Use #7.50 to allow a veterinary clinic where the use is permitted by Special Exception. Said property is shown on Assessor Map 172 Lot 2 and lies within the Gateway Corridor (G1) and Transportation Corridor (TC) District. As a result of said consideration, the Board voted to **approve** the special exception as presented and advertised.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:

<https://www.cityofportsmouth.com/planportsmouth/zoning-board-adjustment/zoning-board-adjustment-archived-meetings-and-material>

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

Phyllis Eldridge

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Rarebreed Veterinary Partners

Findings of Fact | Special Exception

City of Portsmouth Zoning Board of Adjustment

Date: 02-28-2023

Property Address: 350 US Route 1 Bypass

Application #: LU-23-9

Decision: **Grant**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Special Exception:

Special Exception Review Criteria: Section 10.232.20	Finding (Circle One)	Relevant Facts
10.232.21 Standards as provided by this Ordinance for the particular use permitted by special exception;	Yes	<ul style="list-style-type: none"> The use is allowed by special exception.
10.232.22 No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials.	Yes	<ul style="list-style-type: none"> The applicant has taken care to ensure the proper handling of gases such as oxygen that could present such a hazard and will do that in compliance with all applicable regulations, guidelines, and standards.
10.233.23 No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other	Yes	<ul style="list-style-type: none"> The building is located in an area has a lot of commercial uses.

materials;		
10.233.24 No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;	Yes	<ul style="list-style-type: none"> • There is easy access from the road. • That road is a heavily traveled one and it would be very surprising if the traffic ingress and egress from a veterinary facility would add in any substantial way to the traffic conditions in that vicinity.
10.233.25 No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and	Yes	<ul style="list-style-type: none"> • The applicant stated that the existing supply of water and wastewater extraction were adequate for his purposes. • The applicant will not create any new police or fire protection hazards and the building isn't near enough to a school to be of any concern.
10.232.26 No significant increase of stormwater runoff onto adjacent property or streets.	Yes	<ul style="list-style-type: none"> • The property already has a great deal of impervious surface and the proposed use would not add to it, so there will be no increase of stormwater runoff onto adjacent properties or street.



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ZONING BOARD OF ADJUSTMENT

March 7, 2023

Andrea Hurwitz
129 Aldrich Road
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 129 Aldrich Road (LU-23-10))

Dear Ms. Hurwitz:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, February 28, 2023**, considered your application for installing a mechanical unit which requires the following: 1) Variance from Section 10.515.14 to allow a 4 foot side yard where 10 feet is required. Said property is shown on Assessor Map 153 Lot 35 and lies within the Single Residence B (SRB) District. As a result of said consideration, the Board voted to **approve** the application with the following **condition**:

1) *The mechanical unit is located according to the updated plan presented to the Board at the February 28, 2023 meeting which positions the unit 5 feet from the left yard setback instead of 4 feet as advertised.*

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

The Findings of Fact associated with this decision are available: attached here or as an attachment in the Viewpoint project record associated with this application and on the Zoning Board of Adjustment Meeting website:

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The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

A handwritten signature in cursive script that reads "Phyllis Eldridge". The signature is written in black ink and is positioned above the printed name.

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Chris Redmond, Mighty Roots LLC

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 02-28-2023

Property Address: 129 Aldrich Road

Application #: LU-23-10

Decision: **Grant with Stipulation**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	YES	<ul style="list-style-type: none"> The proposal is to replace an existing condenser with a newer and quieter one that needs less relief because it would be farther away from the property line and in the side yard, where it won't be easily visible from the street.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	<ul style="list-style-type: none"> There will be no impairment to the public's health, safety, or welfare, and the essential characteristics of the neighborhood will not be altered. It won't be easily visible from the street.

10.233.23 Granting the variance would do substantial justice.	YES	<ul style="list-style-type: none"> It is a needed improvement for updating the home and energy efficiency and there is no viable alternate location, and there will be no detriment to the public.
10.233.24 Granting the variance would not diminish the values of surrounding properties.	YES	<ul style="list-style-type: none"> There is no reason why replacing an old condenser with an improved one would harm property values.
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(a)The property has special Conditions that distinguish it from other properties in the area. AND (b)Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. OR Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.</p>	YES	<ul style="list-style-type: none"> The lot is half the width of the required minimum lot for a single family residence and the overall lot size is undersized, and given the location of the home and the driveway, it imposed a hardship that will justify the condenser's location

Stipulation

1. *The mechanical unit is located according to the updated plan presented to the Board at the February 28, 2023 meeting which positions the unit 5 feet from the left yard setback instead of 4 feet as advertised.*



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ZONING BOARD OF ADJUSTMENT

March 7, 2023

RTM Trust and Ryan T Mullen and Heidi E K Trustees
253 Odiorne Point Road
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 253 Odiorne Point Road (LU-23-11))

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, February 28, 2023**, considered your application for installing a mechanical unit which requires the following: 1) Variance from Section 10.515.14 to allow the mechanical unit to be located closer to a street than the principal structure. Said property is shown on Assessor Map 224 Lot 10-19 and lies within the Single Residence A (SRA) District. As a result of said consideration, the Board voted to **grant** the request as presented and advertised.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

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The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

Phyllis Eldridge

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 02-28-2023

Property Address: 253 Odiorne Point Road

Application #: LU-23-11

Decision: **Grant**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	YES	<ul style="list-style-type: none"> The public will barely see it and there will be more shrubbery around it.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	<ul style="list-style-type: none"> A generator is a good idea for someone who wanted the house to be listed as on Odiorne Point Rd.
10.233.23 Granting the variance would do substantial justice.	YES	<ul style="list-style-type: none"> The specific type of generator has very minimal noise. The generator will be quite far from the neighbors and any of the streets and that noise will not be an issue.
10.233.24 Granting the variance would not diminish the values of surrounding properties.	YES	<ul style="list-style-type: none"> It would most likely increase property value because the owner's property will be worth more.

<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(a)The property has special Conditions that distinguish it from other properties in the area. AND</p> <p>(b)Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. OR</p> <p>Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The hardship is that the property is a corner lot.
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ZONING BOARD OF ADJUSTMENT

March 7, 2023

Black Heritage Trail of New Hampshire
222 Court Street
Portsmouth, New Hampshire 03801

RE: Board of Adjustment request for property located at 222 Court Street (LU-23-12)

Dear Property Owner:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, February 28, 2023**, considered your application for the installation of one 24 by 28 foot mural and one 3 by 2 foot sign which requires the following: 1) Variance from Section 10.1251.10 to allow max aggregate sign area of 686 square feet where 36 square feet is allowed; 2) Variance from Section 10.1251.20 to allow max area for individual sign of 678 where 16 square feet is allowed; and 3) Variance from Section 10.1242 to allow more than one sign on building facing the street; and 4) Variance from Section 10.1271 to allow a sign on the side of the building that is not facing a street. Said property is shown on Assessor Map 116 Lot 33 and lies within the Character District 4-L1 (CD4-L1) and Historic District. As a result of said consideration, the Board voted to **grant** the request with the following **condition**:

1) *The sign is an artistic image only featuring Ona Judge and will not be altered for any other purpose.*

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

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The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

A handwritten signature in cursive script that reads "Phyllis Eldridge". The signature is written in black ink and is positioned above the typed name.

Phyllis Eldridge, Chair of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

Findings of Fact | Variance

City of Portsmouth Zoning Board of Adjustment

Date: 02-28-2023

Property Address: 222 Court Street

Application #: LU-23-12

Decision: **Grant with Stipulation**

Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.	YES	<ul style="list-style-type: none"> A compelling case could be made that it will be an enrichment for the public.
10.233.22 Granting the variance would observe the spirit of the Ordinance.	YES	<ul style="list-style-type: none"> This particular zone allowed a permitted use for a museum, and what the Black Heritage Trail of NH is doing is creating a free-to-the-public art display that would be considered akin to an open access museum for anyone to see, which is consistent with the spirit of the ordinance.
10.233.23 Granting the variance would do substantial justice.	YES	<ul style="list-style-type: none"> There will be no loss to the public. There would be no gain to be had by the owners of the property that would be outweighed by a loss to the public.

<p>10.233.24 Granting the variance would not diminish the values of surrounding properties.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The abutter seemed to have no objection to the mural, noting that the abutter would be in a position to make an objection if he thought there was an impact to his property values. • The absence of any public comment is taken to mean that there is support for the idea and that the proposal will not have a negative impact on surrounding properties.
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(a)The property has special Conditions that distinguish it from other properties in the area. AND (b)Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. OR Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.</p>	<p>YES</p>	<ul style="list-style-type: none"> • The special condition of the property is that it contains the brick wall that was placed there at some time in history, and that wall needs to be preserved by applying a coat of paint anyway. Therefore, making an artistic use of it is very consistent, and a unique aspect of the property is that it needs to have paint on the wall in order to preserve it, so that's the special condition that justifies the use in this manner.

Stipulation

1. *The sign is an artistic image only featuring Ona Judge and will not be altered for any other purpose.*