

**ACTION SHEET
BOARD OF ADJUSTMENT
FEBRUARY 17, 2004**

TO: John P. Bohenko, City Manager

FROM: Judith A. Claveau, Secretary, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment** meeting held on **February 17, 2004**, in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Vice-Chairman Jim Horrigan, Bob Marchewka, Nate Holloway, Alain Jousse, David Witham, Alternate Arthur Parrott and Alternate Steven Berg

EXCUSED: Chris Rogers (Resignation effective February 17, 2004)

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**I. APPROVAL OF MINUTES**

Reconvened Meeting of November 25, 2003.

**II. OLD BUSINESS**

**A)** Petition of **Public Service Company of New Hampshire, owner**, for property located at **400 Gosling Road** wherein Variances from Article III, Section 10-305(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the following a) a wood fired boiler, air emission control device and ductwork not to exceed 125' in height, b) a stack not to exceed 350' in height, c) a wood conveyor not to exceed 100' in height constructed over the existing coal conveyor, extending from Lot 1 over the railroad parcel to Lot 2A; and, d) a wood fired boiler, ductwork, stack, wood conveyor and fireside wash recycle basin located within the required side yards. All construction being in a district where the maximum height is 45' and the minimum required side yards are 50'. Said property is shown on Assessor Plan 214 as Lots 1 & 2 and lie within the Waterfront Industrial district. Case # 12-4

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III. PUBLIC HEARINGS

1) Petition of **Richard P. Fecteau, owner**, for property located at **120 Spaulding Turnpike** wherein a Variance from Article IX, Section 10-908 Table 14 was requested to allow: a) a 155.25 sf free-standing sign 37.5' in height where a 150 sf of free-standing signage is the maximum allowed and the maximum height is 20', b) four 13 sf directional signs totaling 52 sf where 1.5 sf per sign is allowed; and, c) an aggregate of 350.79 sf of signage where 200 sf is the maximum aggregate allowed. Said property is shown on Assessor Plan 236 as Lot 33 and lies within the General Business district. Case # 11-2

As a result of such consideration, it was voted that the request be **granted** as presented with the following changes:

- Section a) be changed to a 100 sf sign 30' in height
- Sections b) and c) be withdrawn
- Aggregate will remain as previously granted at 263 sf

The Board felt that granting the variance was reasonable because one of the free-standing signs is being eliminated and would not be contrary to public interest. It is consistent with the intent of the Ordinance as it allows for signage which creates less congestion, and substantial justice would be done by providing needed visibility to a business located off a busy highway. They also felt that there would be no diminution of abutting properties as a result of granting this variance.

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2) Petition of **Brewster Street Properties, LLC, owner**, for property located at **98 Brewster Street** wherein a Variance from Article III, Section 10-303(A) was requested to allow a 22' x 34' three story single family dwelling with an attached 11.5' x 20' a garage including a second floor and attic space above with: a) a 2'± front yard where 5' is the minimum required, b) a 2'± left side yard where 10' is the minimum required; and, c) a 1.5'± x 6'± roof over the front steps with a 4'± front yard where 5' is the minimum required. Said property is shown on Assessor Plan 138 as Lot 56 and lies within the Mixed Residential Business district. Case # 2-1

As a result of such consideration, it was voted that the request be **granted** as advertised and presented as it met all the requirements of the five criteria. The Board felt that it would be a reasonable use of the land, and in the public interest to develop this vacant lot. They also felt that it was consistent with the spirit of the ordinance that allows for housing and substantial justice would be granted to the petitioner in granting this variance. The Board also felt that the proposed structure would be an improvement to the neighborhood, enhancing rather than diminishing property values. It is less relief on the left side than previously granted.



3) Petition of **James F. and Catherine Lamond, owners**, for property located at **84 Haven Road** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the following: a) a 252 sf irregular shaped front porch and steps with a 7'± front yard where 30' is the minimum required, b) a 7' x 24' one story addition to the left side of the existing dwelling with an 20.5' front yard where 30' is the minimum required; and, c) a 14.25' x 24' garage with living space on the second floor with an 8.8' right side yard' yard where 30' is the minimum required. Said property is shown on Assessor Plan 206 as Lot 28 and lies within the Single Residence B district. Case # 2-3

As a result of such consideration, it was voted that Sections a) and b) of the request be **granted** as advertised and presented as they met all the requirements of the five criteria; and that Section c) be **denied** as it did not meet all the requirements.

The Board felt that granting the request in Section a) and b) would be in the spirit of the ordinance and that strict enforcement of the ordinance would interfere with the owner's reasonable use of the land. They also felt that the front yard setbacks would not violate the public or private rights of others but would be in the public interest as a front porch would encourage co-mingling of neighbors and enhance the value of the house and surrounding properties.

Regarding Section c), the Board felt that no hardship had been demonstrated as a result of not granting section c). They also found that granting the request would not be in the public interest as placing a structure in such close proximity to an adjacent property would create congestion by blocking light and air.



4) Petition of **Robert L.Casella, LLC, owner, David Hodgdon, d/b/a PCG, option holder**, for property located at **30 Mirona Road Extension** wherein the following were requested: 1) Variances from Article III, Section 10-305(A) and Article IV and Section 10-401(A)(2)(c) to allow a 24' x 54' (1255 sf) irregular shaped one story addition to the right of the existing building with a 66.8' front yard where 70' is the minimum required, and 2) a Variance from Article XII, Section 10-1201(3)(f)(2) to allow parking 18' from the front property line where 50' is the minimum required setback. Said property is shown on Assessor Plan 253 as Lot 4 and lies within the Industrial district. Case # 2-4

As a result of such consideration, it was voted that the request be **granted** as advertised and presented as it met all the requirements of the five criteria. The Board felt that due to the steep slope in the rear of the lot, making it impossible to build on approximately 1/3 of the lot, literal enforcement of the ordinance would result in hardship to the owner, as it would allow for parking for only five vehicles.

They also felt that it is not the intent of the ordinance to prevent the improvement of the property but to encourage other property owners to make improvements as well. Substantial justice would be done in allowing the owner to use property that would otherwise be unusable as a result of the topography.

5) Petition of **Daryl K. and Maria A. Gregory, owners**, for property located at **85 Ocean Road** wherein Variances from Article II, Section 10-206 and Article III, Section 10-301(A)(2) were requested to allow two free-standing single family dwellings with attached garages and decks on a lot with an existing single family dwelling in a district where only one single family dwelling is allowed on a lot. Said property is shown on Assessor Plan 292 as Lot 154 and lies within the Single Residence B district. Case # 2-5

As a result of such consideration, it was voted that the request be **denied** as it did not meet all the requirements. The Board felt that it was not in the public interest to allow two more single family residences on this lot as it would have a negative impact on adjacent properties, creating too much density and adding to congestion. They felt that denying the request would not take away the reasonable use of the property as a single-family residence.

The Board stated that the zoning ordinance indicates that in a single-residence zone, one house per lot, regardless of the size of the lot, is the norm established by the Planning Board and City Council. This has worked for a long time for this particular lot and the adjacent lots as well. This proposal is an example of poor planning, to allow three single houses to be put on one lot.

6) Petition of **Friends of The Music Hall, owner, Portsmouth Community Radio, applicant**, for property located at **28 Chestnut Street** wherein a Variance from Article III, Section 10-304(A) was requested to allow a 20' antenna where the maximum height allowed is 10' for roof appurtenances. Said property is shown on Assessor Plan 126 as Lot 7 and lies within the Central Business B and Historic A districts. Case # 2-6

As a result of such consideration, it was voted that the request be **granted** as advertised and presented with the following stipulations:

- The use of the antenna not be extended to entities other than Portsmouth Community Radio.
- The antenna be removed when/if Portsmouth Community Radio ceases to exist.

The Board felt that it would be in the public interest to have the benefit of a community radio station. The Board stated that the zoning restriction of 10' allowance for roof appurtenances applied more to the case of elevator shafts or air conditioning units and that the view would not be significantly impacted by the installation of a 3" (inch) antenna. They also felt that granting the request would be consistent with the spirit of the ordinance and that no diminution would occur as a result of granting the variance.

**IV. ADJOURNMENT**

The motion was made and seconded to adjourn the meeting at 11:15 p.m.

Respectfully submitted,

Judith A. Claveau,  
Secretary