

ACTION SHEET – BOARD OF ADJUSTMENT

TO: John P. Bohenko, City Manager

FROM: Jane M. Shouse, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment** meeting held on **May 4, 2004**, in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles Le Blanc, Vice-Chairman Jim Horrigan, Nate Holloway, Alain Jousse, David Witham, Arthur Parrott, and Alternate Duncan MacCallum

EXCUSED: Robert Marchewka and alternate Steven Berg

~~~~~

**I. PUBLIC HEARING**

1) Petition to **Public Service Company of New Hampshire, owner**, for property located at **400 Gosling Road** wherein the following are requested: 1) Variances from Article III, Section 10-305(B)(2) to allow a replacement boiler, air emission control device, conveyor and other appurtenances, (including coal crusher house, limestone silo, bed ash storage silo and wood ash silo) with heights between 85' and 125' but which will not exceed 125' where 45' is the maximum allowed height, 2) Variances from Article III, Section 10-305(B)(2) to allow a stack with heights between 250' and 275' but which will not exceed 275' where 45' is the maximum allowed height, 3) Variances from Article III, Section 10-305(A) to allow: a) wood storage building; b) process building; and c) conveyor on storage building extending from Lot 1 over the railroad parcel to Lot 2A, all of which have heights between 75' and 85' but which will not exceed 85' where 70' is the maximum allowed height, 4) Variances from Article III, Section 10-305(A) to allow a replacement boiler with auxiliary equipment, duct work, stack, conveyor fireside wash recycle basin, and other appurtenant structures located within 50' of the required side yard where 50' is the minimum required setback distance; and, 5) Variances from Article III, Section 10-305(A) to allow minor roof appurtenances on any of the following: the replacement boiler, air emission control device, conveyor, stack, wood storage building, process building, and other appurtenances (including coal crusher house, limestone silo, bed ash storage silo and wood ash silo) which will not exceed 25' where 10' is the maximum allowed height. All construction being in a district in which the height limitation is 45' for all portions of buildings within 200' of the high watermark along the shores of the Piscataqua River and where the height limitation is 70' for those portions of buildings beyond 200' of the high watermark and in which the minimum required side yards are 50'. Said property is shown on Assessor Plan 214 as Lots 1 and 2 and lies within the Waterfront Industrial District. Case # 12-4

Prior to the Public Hearing, Attorney Ciandella indicated that as a result of a meeting with counsel representing the principals of the Commerce Center, a change to the site plans had been agreed upon which involved the wood storage building being relocated, however there was not enough time to revise their plans. Therefore, a request was made to hold a public hearing on

all five Variances that evening, close the public hearing, vote only on Variances request #1, #2 and #5 and to reconvene on Variance request #3 and #5 at a later date.

A motion was made and seconded to hear all evidence and suspend any decision on Variance requests #3 and #5 until a Board of Adjustment meeting scheduled for May 25, 2004. The motion passed unanimously.

The public hearing followed. The Board voted to **grant** Variance requests #1, #2 and #4 as advertised and presented, with the following stipulations:

- That sound and visual screening be erected for residential abutters where necessary;
- That the conditions stated in Paragraph #10 of the Technical Advisory Committee Letter of Decision dated April 30, 2004 be completed and that Shattuck Way be included in the traffic analysis.

The Board found that the applicant met all the requirements of the five criteria.

In reaching this decision, the Board indicated that 2 variances dealt with height and one variance dealt with a setback. They felt there would be only a minimal impact and that the changes would blend in well as they are the same height of the existing structures and will not change the character of the area. There would be no visual impact on the skyline. As the structures on the site are all the same size for the existing use, it is obvious that this is the required size that this type of facility needs to operate properly. The setback variance is from the railroad track which runs through their property, which the railroad company has expressed no objection to the variance so it is reasonable. They essentially feel that the proposed structures are the same size and feel and character of what is already there. The additions to the skyline will simply further the industrial aspects and will not take away from skyline. Understanding that the abutters have concerns about the view, they should expect these views within an industrial zone.

The Board felt that the truck traffic was not an issue because this was not a use variance. There was sympathy for the abutters who may have coal dust in their homes, however that did not have bearing on the requested variances. An abutter also expressed concern about her view however it was felt that people should understand that this was a reasonable way for a facility to grow.

Addressing the five criteria, the Board did not feel that the variances would be contrary to the public interest. The benefits in air quality are strongly in the public interest and outweigh other ramifications. It was felt that the abutters were not adversely effected and they need to expect changes in an industrial zone. Special conditions exist due to the uniqueness of the property. It is a very large facility and the variances are condensed in one waterfront area. It is reasonable to allow PSNH to change fuels and it would be unfair to make them remain strictly coal burning. Regarding the specific relationship between the ordinance and the restrictions, it was felt that height and setbacks deal with density and overcrowding, light and air, and it was not felt that any of these would be effected due to the size of the PSNH property. The granting of the variance would not injure the public or private rights of others as these are only interior

setbacks. The only injury that could be seen was view and view is not protected by the Zoning Ordinance. It was felt that it was consistent with the spirit of the ordinance which is to promote light, air and space and this project will provide better air quality to the general public as a whole. They felt that substantial justice would be done by allowing this business to move forward with a new use in an industrial zone which is driven by the market force at this time. The Board agreed with Mr. Choate's presentation that there would not be any diminution in property values. While some speakers thought that the trucks unloading and traffic would diminish their property values, the Board did not find these concerns to be relevant to these variances.

**I. ADJOURNMENT**

The motion was made and seconded to adjourn the meeting at 11:20 p.m.

Respectfully submitted,

Jane M. Shouse,  
Secretary

/jms