

ACTION SHEET

**RECONVENED BOARD OF ADJUSTMENT MEETING
PORTSMOUTH, NEW HAMPSHIRE
August 17, 2004**

To: John P. Bohenko, City Manager

From: Delia Tasker, Planning Department

Re: Actions taken at the Portsmouth **Board of Adjustment** meeting held on **August 17, 2004**, in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

Present: Chairman Charles LeBlanc, Vice Chairman Jim Horrigan, Alain Jousse, Bob Marchewka, Nate Holloway, David Witham, Alternate Steve Berg, Alternate Duncan MacCallum

Also Present: Lucy E. Tillman, Planner I

Excused: Arthur Parrott

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**I. NEW BUSINESS**

1) Petition of **150 Greenleaf Avenue Realty Trust, James G. Boyle Trustee, owner**, for property located at **150 Greenleaf Avenue** wherein a Variance from Article II, Section 10-208(35) is requested to allow the outdoor storage of vehicles within 100' of a residential district where a 200' buffer to a residential district is required. Said property is shown on Assessor Plan 243 as Lot 67 and lies within the General Business district. Case #8-1

The Board of Adjustment, at its meeting of August 17, 2004, denied the petition for the following reasons:

- That no hardship was presented,
- That the owner purchased the property knowing the restriction,
- That the abutters testified that reducing the buffer would adversely effect the quality of life in the neighborhood,
- That the owner has not acted in good faith to stay within the boundaries of the Ordinance after being told by the Zoning Officer that they where in violation of the Zoning Ordinance,
- That the plan submitted lacked sufficient information,
- That the abutter felt property values would be effected,
- The Board concluded that the intent of the Ordinance was to regulate where vehicles are stored,
- That it is not reasonable to encroach on grass area,
- That under the Boccia analysis it was unclear as to what benefit was being sought, a member questioned whether it was to park as many cars as feasible on the grass,
- The Board felt that too much relief was being sought; and,
- That the value of surrounding properties would be effected.

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2) Petition of **Christopher E. Muro, owner**, for property located at **293 Marcy Street** wherein the following Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow an L-shaped 96 sf deck with: a) an 11.91' rear yard where 25' is the minimum required, b) a 3.58' left side yard where 10' is the minimum required; and, c) 42.1% building coverage where 30% is the maximum allowed. Said property is shown on Assessor Plan 103 as Lot 47 and lies within the General Residence B and Historic A districts. Case # 8-2

The Board of Adjustment, at its meeting of August 17, 2004, granted the petition after finding the following facts to be true:

- That a petition from abutters was presented in support,
- That the lot is extremely small,
- That it would be a public benefit to have off street parking,
- That the relief being requested was only a 6" difference in rear yard and the same as the existing side yard,
- That the lot coverage is only an additional 6 sf,
- That the request is a small dimensional increase,
- That the change will create a better entrance to the house; and,
- That what the owner is proposing is most reasonable given the size of the lot.

Stipulations:

1. Amend plan to provide a 10' right side yard
2. Deck remain open to the sky

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3) Petition of **MacLeod Enterprises, Inc, owner**, for property located at **1390 Lafayette Road** wherein an Equitable Waiver as allowed in NH RSA 674:33-a (Equitable Waiver of Dimensional Requirement) is requested to allow the existing Comfort Inn building to maintain a 34' rear yard where 50' is the minimum required. Said property is shown on Assessor Plan 252 as Lot 8 and lies within the General Business district. Case # 8-3

The Board of Adjustment, at its meeting of August 17, 2004, granted an Equitable Waiver for the following reasons:

- That evidence was presented that the violation had existed for over 10 years,
- That testimony was given concerning the cost of removing a portion of the Hotel as being in excess of 1.5 billion dollars,
- That no adverse effect has been suffered by any one,
- That no diminution of abutting properties has occurred,
- That nothing would be gained by requiring the owner to remove a portion of the building; and,
- That the cost of removing a portion would far outweigh any benefit.

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4) Petition of **Vincent M. Yosua, owner**, for property located at **30 Spinney Road** wherein a Variance from Article IV, Section 10-402(B) is requested to allow an 8' x 10' deck adjacent to

an above ground pool with a 3'± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 171 as Lot 2 and lies within the Single Residence B district. Case # 5-1 and Case # 8-4

The Board of Adjustment, at its meeting of August 17, 2004, failed to approve a motion to grant, therefore the petition was denied as the majority of the board felt that the following conditions where true:

- That regardless of the boundary issue, the deck is non-compliant, it is supposed to be 10' from the side property line,
- That the deck was built with out a variance, it is already up and already built without a permit and the benefits of it can be reached by some other methods that are reasonably feasible,
- That it is possible to build a deck in another location,
- That the filtering system and the deck are separate issues,
- That Mr. Owens, a direct abutter, feel's his property value is being diminished by having someone standing on a deck over looking the fence, creating a lack of privacy,
- That no new evidence was presented and nothing has changed since the petition was previously heard,
- That hardship was self-imposed, Mr. Yosua put the pool where it is and the filter equipment where it is, and the fact that the deck was built 3' from the property line isn't a unique attribute to the property,
- That seven feet is too much relief in a self-created situation,
- That there has been no survey of property; and,
- That no evidence of hardship established.

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5) Petition of **Henry S. Dutkowski**, owner, for property located at **806 US Route One By-Pass** wherein a Variance from Article XII, Section 10-1204 Table 15 is requested to allow 37 parking spaces to be provided where 58 parking spaces are required. Said property is shown on Assessor Plan 161 as Lot 43 and lies within the Business district. Case # 5-11 and Case # 8-5

This petition was tabled at the request of Attorney Hartnett.

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6) Petition of **Brewster Street Property, LLC, owner**, for property located at **98 Brewster Street** wherein a Variance from Article III, Section 10-303(A) is requested to allow the relocation of a previously approved 11'3" x 23' attached garage with a 2.11'± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 138 as Lot 56 and lies within the Mixed Residential Business district. Case # 7-3 & Case # 8-6

The Board of Adjustment, at its meeting of August 17, 2004, granted the request as advertised and presented as it met all the requirements:

- That it would be a hardship trying to construct a house with a garage on this property because of the lot size, so some relief is necessary,
- That it is consistent with spirit of ordinance,
- That the plan would provide more housing for the city and more off-street parking for the neighborhood,
- That the nature of building would improve value of surrounding property; and,
- That reconstruction will be more conforming to ordinances than previous house.

7) Petition of **Robert and Loraine Tozier, owners**, for property located at **484 Lincoln Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) a 6' x 26' two story front porch with a 14' front yard where 15' is the minimum required, b) 12' x 28' two story addition to the rear with a 7.5' left side yard where 10' is the minimum required, c) a 6' x 12' two story addition to the rear with a 7.5' right side yard where 10' is the minimum required; and, d) 26.9% building coverage where 25% building coverage is the maximum allowed. Said property is shown on Assessor Plan 133 as Lot 47 and lies within the General Residence A district. Case # 8-7

The Board of Adjustment, at its meeting of August 17, 2004, denied as the majority of the board felt that the following conditions exist:

- That the proposal is over ambitious for the lot,
- That the volume of the house doubles,
- That the proposal is out of character with Lincoln Ave,
- That a 2 story porch is out of character with neighborhood,
- That other alternatives are available without having an impact on light and air movement on surrounding properties,
- That abutting property values would be diminished because of a two story structure being so close to the property line in a greater scale than is typical for the neighborhood,
- That no evidence of hardship was presented; and,
- That an expansion could still be done and stay within zoning ordinances.

8) Petition of **William Ashley, property owner, Debora A. Paneblanco, homeowner**, for property located at **308 Oriental Gardens** wherein a Variance from Article II, Section 10-209 is requested to allow an existing 10' x 53' manufactured home to be replaced with a new 14' x 56' mobile home in the same location in a district where mobile homes are not allowed. Said property is shown on Assessor Plan 215 as Lot 9-7 and lies within the Office Research district. Case # 8-8

The Board of Adjustment, at its meeting of August 17, 2004, granted the request as advertised and presented as it met all the requirements:

- That it is not contrary to public interest,
- That hardship exists,
- That it is consistent with spirit of ordinance,
- That substantial justice would be done; and,
- That improvement of surrounding property values.

II. ADJOURNMENT

A motion was made and seconded and the meeting was adjourned at 11:00 p.m.

Respectfully submitted,
 Delia Tasker
 Planning Department