

ACTION SHEET – BOARD OF ADJUSTMENT

TO: John P. Bohenko, City Manager

FROM: Lori J. Becker, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment** meeting held on September 21, 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, Arthur Parrott, Alternate Steven Berg and Alternate Duncan MacCallum

EXCUSED: David Witham

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**I. OLD BUSINESS**

A) **Request for Re-Hearing** for Petition of Sheila C. Cail Revocable Trust, Applicant, for property located at **579 Sagamore Avenue, Unit 122**. Said property is shown on Assessor Plan 223 as Lot 30-122 and lies within the Single Residence A district.

The Board of Adjustment, at its meeting of September 21, 2004, **denied** the request.

**II. PUBLIC HEARINGS**

1) Petition of **Gary M. Epler and Maryliz A. Geffert, owners**, for property located at **245 Highland Street** wherein the following Variances was requested from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow: a) a 7' x 20' two story addition and a 5' x 7' deck to the right side of an existing single family dwelling with a 2'± right side yard where 10' is the minimum required, and b) a 10'± rear yard for the 7' x 20' addition where 20' is the minimum required. Said property is shown on Assessor Plan 130 as Lot 40 and lies within the General Residence A district. Case # 9-1

As a result of this consideration, the Board voted to **grant** the request as advertised and presented as it met all of the requirements. The Variance will not be contrary to the public interest, as established by the support of abutters. A hardship to the applicant was established in that the applicant requires an area Variance because of the location of the house on the property, and the fact that there is no feasible alternative location on the lot. If the applicant were to attempt the expansion on the other side of the house, the garage would have to be removed, and as a result, the expansion would no longer be financially feasible for the applicant. Both criteria for the area variance were met given the special conditions of the property and the fact that the benefit sought by the applicant cannot be achieved by some other method reasonably feasible for the applicant to pursue. The Board felt that the requested Variance was consistent with the spirit of the Ordinance, in that the Ordinance would encourage this kind of improvement to a home. The Board also felt that substantial justice would be done by granting the Variance, as it would allow the owners full use and enhanced enjoyment of their property, without resulting in the diminution of surrounding property values.

2) Petition of **Lawrence and Ruth Gray**, owners, for property located at **80 Curriers Cove** wherein a Variance from Article III, Section 10-301(7)(a) was requested for retroactive approvals for the following where the minimum setback from salt water marsh wetlands / mean high water line is 100'. Item 1) Approval was sought for an existing second story deck with dimensions of 10' x 14' which differs from the plan submitted to the Board showing the second floor deck having dimensions of 8' x 14'. The second floor deck constructed by the Applicant's contractor has a curved front which results in the deck being 10' x 14', the maximum extent of the "bump out". The plan submitted shows this Item as being 74' from salt water marsh wetlands / mean high water line. Item 2) Withdrawn by Attorney Pelech. Item 3) In June 2002 a building permit was issued to convert a screened porch and deck to living space. The screen porch converted to living space had a cropped corner to accommodate an existing tree. Subsequently the tree was removed and the cropped corner was extended and enclosed. The Application sought approval for the enclosure of the corner. The plan submitted shows this Item as being 81' from salt water marsh wetlands / mean high water line. Item 4) In 2003 the Applicant received approvals to construct an 8' x 14' deck with a 4' x 4' platform and steps to the ground. Due to the geographical features on the ground, the steps and platform were configured in a manner different from plans submitted. The Applicant sought approval of the platform and steps as they are presently configured in this Application. The plan submitted shows this Item as being 67' from salt water marsh wetlands / mean high water line. Item 5) During the renovation of the Applicants home, a new bow window was installed in the kitchen. The bow window makes no contact with the ground. The Applicants sought approval of this bow window. The plan submitted shows this Item as being 60' from salt water marsh wetlands / mean high water line.

The Board of Adjustment, at its reconvened meeting of September 21, 2004, voted to **table** this request until October to meet with the City Attorney.

3) Petition of **Wal-Mart Estate Business Trust, David Glass Managing Trustee, owner**, for property located at **2460 Lafayette Road** wherein a Variance from Article XII, Section 10-1203(A)(2) was requested to allow 7 loading areas to be provided where 17 are required. Said property is shown on Assessor Plan 285 as Lot 2 and lies within the General Business district. Case # 9-3

The Board of Adjustment, as its meeting of September 21, 2004, voted to **grant** the request as advertised and presented with the following stipulations:

- The adequacy of the permitted loading areas will be subject ongoing review by the City.
- Only trucks dealing directly with Wal-Mart be parked on site

The Board discussed the fact that the nearest store of similar dimensions in North Windham, ME, has 7 docks, which provides an adequate loading area for the size of the store. Furthermore, it was established that the way the Wal-Mart trucks are distributed is such that there are never more than 1-2 trailers in the loading area. The Board felt that the Variance would not be contrary to the public interest, and that the restriction of the Ordinance, as applied, would interfere with the reasonable use of the property given the unique setting of the environment, which in this case is a retail environment, not one with a neighborhood. The Board felt that the Ordinance was written with a certain type of retail environment in mind, and does not address

“Big Box” stores such as Wal-Mart. The Board felt that if other Wal-Marts of similar size function with 7 loading areas, then the requirement is unreasonable.

The purpose of the Ordinance is to accommodate the business function of the occupant, allowing for deliveries or distribution, and the Ordinance anticipated the need for 1 truck per 10,000', to cut down on traffic and parking lot congestion. Such a need is not present in this case. There is no injury to public or private rights, as this Variance only affects the building's occupant, Wal-Mart. The stipulation that the Variance be subject to ongoing review leaves open the possibility that the Board will revisit this issue should truck congestion become problematic in the future. The Board felt that by granting the Variance with the given stipulations, substantial justice would be done in that a business would be allowed to prosper without resulting in the diminution of surrounding property values.

4) Petition of **Mark C. Adamy and Holly Lowe, owners**, for property located at **350 Broad Street** wherein a Variance from Article IV, Section 10-402(B) was requested to allow a 14' x 30' detached garage with a 6' ± left side yard and a 6' ± rear yard where 10' is the minimum required in each instance. Said property is shown on Assessor Plan 221 as Lot 69 and lies within the General Residence A district. Case # 9-4

The Board of Adjustment, at its meeting of September 21, 2004, failed to approve a motion to grant, with the stipulations that the garage could not be used as a 2<sup>nd</sup> dwelling unit and could only be used as accessory to the single family dwelling unit. Therefore, the petition was **denied**, as the majority of the Board felt that the following conditions were true:

- The petition was not sufficiently modified from a petition heard and denied in July 2004.
- The Board felt that the criteria under the Boccia Analysis were not met by this application, and hardship was not adequately demonstrated.

5) Petition of **Paul R. Winslow and Robin F. Winslow, owners**, for property located at **47 Edmond Avenue** wherein a Variance from Article III, Section 10-302(A) was requested to allow a 7' x 26' covered porch with a 23' ± front yard where 30' is the minimum required. Said property is shown on Assessor Plan 220 as Lot 20 and lies within the Single Residence B district. Case # 9-5

The Board of Adjustment, at its meeting of September 21, 2004, voted to **grant** the request as advertised and presented with the following stipulations:

- The porch is not to be enclosed nor converted into heated living space.

The Board felt that a front porch is not contrary to the public interest, and is in the spirit of the Ordinance as it helps create a sense of community, improves the appearance of the property, and allows for a safer means to enter and exit the house. An area variance is required, as the house currently sits on the minimum set-back line, and the benefit sought cannot be achieved by any other method than that which was proposed in the application.

6) Petition of **Donald O. and Greta M. McEvoy, owners**, for property located at **3 Little Harbor Road** wherein a Variance from Article III, Section 10-302(A) was requested to allow a 24' x 36' 1 ½ story attached garage with a 21' ± rear yard where 30' is the minimum required. Said property is shown on Assessor Plan 222 as Lot 6 and lies within the Single Residence B district. Case # 9-6

The Board of Adjustment, as its meeting of September 21, 2004, voted to **grant** the request as advertised and presented with the **stipulation** that the existing garage be removed.

The Board felt that the Variance would not be contrary to the public interest, which was established by the fact that the only neighbors affected by the Variance have expressed their support of it. Special conditions apply in that any other location on the lot that would not require a variance would be a great distance from the house and might involve an extension of the existing driveway. Literal enforcement of the Ordinance would not be in the public interest, nor would it be in the interest of the homeowner. The Board felt that the Variance is consistent with the spirit and intent of the Ordinance in that it will make the property more useful for the residence. The Board felt that substantial justice would be done, as there are no other readily available remedy that would achieve the desired result. Furthermore, the value of surrounding properties will not be diminished by granting of the Variance, and will more likely be enhanced.

7) Petition of **Henry S. Dutkowski, owner**, for property located at **806 Rt 1 By-Pass** wherein the following were requested: 1) 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, and 2) a Variance from Article XII, Section 10-1201(A)(3)(d)(1) to allow parking within 50' of a residential district and no screening to be provided. Said property is shown on Assessor Plan 161 as Lot 43 and lies within the Business district. Case # 9-7

The Board of Adjustment, as its meeting of September 21, 2004, voted to **grant** the request as advertised and presented for the following reasons:

- The Variance will not be contrary to the public interest, and will enhance the restaurant, which is a public accommodation.
- Special conditions exist if the Board was to enforce a literal interpretation of the Ordinance, as the lot is limited in size and restricted on three sides.
- It is consistent with the spirit and intent of the Ordinance, which is to not hamper the reasonable expansion of a well-established local business.
- Substantial justice is done in that the Board has the ability to allow this expansion to go ahead without infringing upon abutters, whether they are business or private property owners.
- The value of surrounding properties would not be adversely affected.

8) Petition of **Richard J. Menard, owner**, for property located at **137 Elwyn Avenue** wherein a Variance from Article IV, Section 10-402(B) was requested to allow a 24' x 24' detached one story garage with a 5' left side yard and a 10' rear yard where 12' is the minimum required in each instance. Said property is shown on Assessor Plan 112 as Lot 48 and lies within the General Residence A district. Case # 9-8

The Board will hear this petition at its reconvened meeting of September 28, 2004.

9) Petition of **Deborah C. and Harry D. Hobbs owner**, for property located at **489 Sagamore Avenue** wherein a Variance from Article III, Section 10-301(A)(2) was requested to allow a 24' x 24' one story with basement freestanding second dwelling on the lot in a district where all dwelling units are required to be in one building. Said property is shown on Assessor Plan 222 as Lot 25 and lies within the General Residence A district. Case # 9-9

The Board will hear this petition at its reconvened meeting of September 28, 2004.

10) Petition of **150 Greenleaf Avenue Realty Trust, James G. Boyle Trustee, owner**, for property located at **150 Greenleaf Avenue** wherein an Appeal from an Administrative Decision was requested concerning the determination that parking of vehicles “For Sale” is “outdoor storage” as defined by Article I.

Notwithstanding the above, if the Administrative Appeal was denied, a Variance from Article II, Section 10-208(35) was requested to allow the outdoor storage of vehicles upon existing pavement within 200’ 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 # 9-10

The Board will hear this petition at its reconvened meeting of September 28, 2004.

11) Petition of **Gary W. and Nancy T. Seesman, owners**, for property located at **93-95 Union Street** wherein a Variance from Article IV, Section 10-402(B) was requested to allow a 24’ x 32’ two story garage with: a) a 6’ rear yard, b) a 6’ left side yard; and, c) a 10.7’ right side yard where 11.6’ is the minimum required in each instance. Said property is shown on Assessor Plan 145 as Lot 67 and lies within the Apartment district. Case # 9-11

The Board will hear this petition at its reconvened meeting of September 28, 2004.

### **III. ADJOURNMENT**

The motion was made and seconded to adjourn the meeting at 10:00 p.m.

Respectfully submitted,

Lori J. Becker,  
Secretary

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