

**ACTION SHEET – BOARD OF ADJUSTMENT**

**TO:** John P. Bohenko, City Manager

**FROM:** Jane Shouse, Planning Department

**RE:** Actions Taken by the Portsmouth **Board of Adjustment** meeting held on October 19, 2004 in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

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

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**I. OLD BUSINESS**

A.) 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 is 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 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 seeks 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 seeks 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 seek approval of this bow window. The plan submitted shows this Item as being 60' from salt water marsh wetlands / mean high water line. Said property is shown on Assessor Plan 204 as Lot 14 and lies within the Single Residence B district. Case # 9-2.

At the request of Representation for the Applicants, this Petition was **tabled indefinitely**.

B.) 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

After consideration, the Board voted to **grant** the request for the following reasons:

- The variance will not be contrary to the public interest, as there has been a long-standing second dwelling existing on the site.
- The zoning restriction impedes the reasonable use of the property by restricting the owner's right to remove an existing structure in need of repair and replace it with an improved dwelling.
- The general purpose of the zoning ordinance is not served by forcing a renovation of the existing structure rather than building a new, to-code, dwelling.
- There is no injury to the public or private rights of others.
- The ordinance allows multi-family use, and the proposed structure is consistent with the spirit of the ordinance, while also complying with the dimensional requirements.
- Substantial justice will be realized in allowing the owners to build a better structure.
- Surrounding properties will now, instead of being near an older cottage, be near a newer, improved dwelling.

C.) 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

After consideration, the Board voted to **uphold** the Administrative Decision of the Planning Board and **deny** the Appeal, finding the Decision in keeping with the intent of the Zoning Ordinance.

With the denial of the Appeal, the Board then considered the Variance request and voted to **grant** the request subject to the following stipulations:

1. If lot lighting is provided, it shall be designed in such a manner as to not create a hazard on public ways or be objectionable to adjacent properties.
2. The lightpole shall not exceed 16 feet, which is the height the Planning Board has been looking at.
3. No vehicles (or signs other than existing signs), shall be placed on the grass areas in the 200 foot buffer zone for display, storage, or for any other reason other than property maintenance.
4. The volume of the outside speaker system should be kept low enough as to not be heard by abutting properties. The tendency would be to turn the system up to be heard farther away from the building now that the cars would be farther away from the building.

5. No vehicles of any type parked within the 200 foot buffer zone shall be advertised for sale or used to advertise, beyond the side window sales sticker; this includes, but not limited to, the exclusion of balloons, front windshield signage, open hood signage, ribbons and banners and other forms of temporary signage.

The Board granted the request, with stipulations, for the following reasons:

- The variance, with the stipulations added, will not be contrary to the public interest.
- The fact that the parking lot now exists and that the location of the line dividing the two zones provides an additional 50 feet from the residential lot lines are special conditions of the property requiring an area variance to enable the applicant's proposed use.
- The variance is the only feasible way of achieving the benefit sought of having some visibility to allow the use of the property, which is the sale of vehicles.
- Substantial justice is done by allowing the parking of for-sale vehicles in accordance with the stipulations
- The value of surrounding properties will be protected by the five stipulations made a part of this decision.

## II. PUBLIC HEARINGS

1) Petition of Roland and Patricia M. Bussierie, owners, for property located at 6 Suzanne Drive wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 3'6" x 16' addition to the existing deck to accommodate a 16' x 16' sun room to the rear of the existing single family dwelling with: a) a 27.5'± rear yard where 30' is the minimum required and b) 24.8% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 292 as Lot 84 and lies within the Single Residence B district. Case # 10-1

After consideration, the Board voted to **grant** the request with the stipulation that the use of the addition remain that of a three-season porch. The following were the reasons supporting the Board's decision:

- The change is not contrary to public interest and the abutters are not opposed to the proposal.
- The size of the house and placement on the lot limit the choices available to the owners and the addition would be a reasonable use of the property.
- The variance is consistent with the spirit of the ordinance, without infringing on the rights of others.
- Substantial justice is reflected in the fact that a very small relief from the ordinance is requested, with respect to both the distance to the back property line as well as coverage on the lot.
- The value of surrounding properties would not be diminished by the change.

2) Petition of Parade Office LLC, owner, for property located at **100 High Street** wherein a **Special Exception** as allowed in Article II, Section 10-208(51) was requested to allow 4' x 8' by 4' high PSNH electric supply switch cabinet where such installation requires a Special Exception. Said property is shown on Assessor Plan 125 as Lot 1 and lies within the Central Business B and Historic A districts. Case # 10-2

As a result of this consideration, the Board voted to **grant** the request for a Special Exception. The Board did not anticipate any problems with this device. Special Exceptions criteria are concerned with issues such as noise, safety hazards, increased traffic and service demands and none of these appear to be an issue.

3) Petition of Robert J. Chaffee and Barbara A. Trimble, owners, for property located at 32 Miller Avenue wherein a Special Exception as allowed in Article II, Section 10-207(8) was requested to allow a relocation of the owners master suite to the second floor of a proposed attached two car garage. Said property is shown on Assessor Plan 136 as Lot 18 and lies within the Mixed Residential Office district. Case # 10-3

This Petition was **re-advertised** and will be heard at the Re-Convened Board of Adjustment Meeting on October 26, 2004.

### **III. ADJOURNMENT**

The motion was made, seconded and approved to adjourn the meeting at 10:12 p.m.

Respectfully submitted,

Jane Shouse,  
Secretary

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