

## ACTION SHEET

### RECONVENED MEETING OF THE 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 26, 2004 in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

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

**EXCUSED:** Vice Chairman James Horrigan

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#### **I. APPROVAL OF MINUTES.**

The following Excerpts of Minutes were reviewed and approved unanimously by the Board:

- Excerpt of Minutes from September 21, 2004 BOA Meeting (**2460 Lafayette Road**).
- Excerpt of Minutes from July 20, 2004 BOA Meeting (**350 Broad Street**).
- Excerpt of Minutes from September 21, 2004 Meeting (**350 Broad Street**).

#### **II. OLD BUSINESS**

A) Request for Rehearing on application of Wal-Mart Real Estate Business Trust for property located at **2460 Lafayette Road**.

After consideration, the Board voted to **deny** the Request for Rehearing as appropriate analysis standards were applied in making the original ruling and no new information was provided.

B) Request for Rehearing on application of Mark C. Adamy and Holly Lowe for property located at **350 Broad Street**.

After consideration, the Board voted to **deny** the request as no new information had been provided that was not available at the time of the original decision.

#### **III. PUBLIC HEARINGS**

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) is 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

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

- The requested use is allowed and meets the relevant standards. This type of structure already exists and is simply being relocated on the property.
- There are no dimensional requirements that need to receive special consideration. The proposed structure will be entirely within the setbacks that are needed.
- The change presents no fire, explosion, or toxic material release hazards to the public or adjacent property.
- There will be no change in the essential characteristics of the area. Property values will not be adversely affected, as more of the property will be open to light and air.
- A traffic safety hazard will not be created and there will be no increased demand on municipal services or an issue with storm water runoff as there is no additional coverage involved.

4) Petition of **Eric Weinrieb, owner**, for property located at **1 Jackson Hill Street** wherein a the following are requested for the construction of a 28' x 32' two story single family dwelling: 1) Variance from Article III, Section 10-301(A)(2) to allow a freestanding second dwelling on the lot in a district where all dwelling units are required to be in one building, and 2) Variance from Article III, Section 10-302(A) to allow said building to have: a) a 14'± rear yard where 20' is the minimum required, and b) to have two dwelling units on a 11,650 sf lot where 15,000 sf would be required. Said property is shown on Assessor Plan 141 as Lot 30-2 and lies within the General Residence A and Historic A districts. Case # 10-4

At the request of the owner, this Petition was **tabled until the November 16, 2004** meeting.

5) Petition of **Mark Philips Realty LLC, owner, and Jason R. Stiles, applicant**, for property located at **111 Daniel Street** wherein a Variance from Article III, Section 10-304(B) is requested to allow a 9.2'± x 13.4'± shed for a walk-in cooler 11' in height where the minimum height required is 20'. Said property is shown on Assessor Plan 107 as Lot 4 and lies within the Central Business B and Historic A districts. Case # 10-5

After consideration, the Board voted to **grant** the request as advertised and presented for the following reasons:

- It would not be contrary to the public interest to grant this request as the structure would actually be shorter and create less of an impact than what is reasonable.
- A special condition of the property exists – that being the slope of the roof at the back of the building where this is being attached - which is already lower than the 20' height.
- The only other method to achieve the benefit sought by the applicant would be to build a structure which is 20' high and we do not find it reasonably feasible to require the building of a structure which is almost double the height of that which is needed.
- Substantial justice will be done by allowing the applicant to build something appropriately smaller on this lot. A larger structure serves neither the applicant nor the abutters.
- A shorter structure will not result in a diminishing of property values and may actually have a more positive impact.

6) Petition of **Sean M. and Suzanne M. Correll, owners**, for property located at **492 Colonial Drive** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 14' x 36'3" one story addition with a basement to the rear of an existing single family dwelling with: a) an 8' 11 1/2"± left side yard where 10' is the minimum required, and b) 23% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 260 as Lot 60 and lies within the Single Residence B district. Case # 10-6

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

- The requested variances being requested are relatively small. Even expanded to the proposed scale, the house will still be a modest size overall.
- The variance will not be contrary to the public interest.
- Special conditions exist where literal enforcement of the ordinance results in unnecessary hardship, one condition being the unusual shape of the lot.
- The existing zoning interferes with the owners' reasonable use of the property, which requires this modest expansion. With the shape of the lot, the only logical place to expand is to the rear.
- The general purposes of the zoning ordinance are not served by a literal enforcement of a specific restriction in this instance and no neighbors have indicated that this would present any hardship or negatively impact their rights or property in any way.
- The variance is consistent with the spirit of the ordinance, which is to allow people reasonable use of their property.
- Substantial justice would be done in any balancing of rights and concerns in this case.
- Surrounding properties would not diminish in value with this expansion.

7) Petition of **Wal-Mart Estate Business Trust, David Glass Managing Trustee, owner**, for property located at **2460 Lafayette Road** wherein a Variance from Article IX, Section 10-908 Table 14 is requested to allow: a) 1,011.74 sf of attached signage where 300 sf is the maximum allowed and b) 1,051.49 sf of aggregate signage where 500 sf is the maximum allowed. Said property is shown on Assessor Plan 285 as Lots 16-2 and 16-1 (to be combined) and lie within the General Business district. Case # 10-7

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

- The criteria of the Boccia analysis were not met, as the approved signage is reasonable and adequate for the proposed property uses. Other means, including interior signage, are available to inform the public.
- Granting such a large variance would not be consistent with the spirit of the ordinance.

8) Petition of **Rebecca and Athanasius Iordanou, owners**, for property located at **15 Van Buren Avenue** wherein a Variance from Article III, Section 10-302(A) is requested to allow a 22' x 22' one story attached garage with: a) a 12' + rear yard where 30' is the minimum required, and b) 22.5% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 250 as Lot 52 and lies within the Single Residence B district. Case # 10-8

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

- The variance would not be contrary to the public interest. With the relocation of the garage, the driveway would be in a safer location, with less asphalt surface.
- The way the house is situated and the garage is proposed seems to be the most reasonably feasible method of achieving the best functional use of the property.
- The variance, with the relocation of the driveway, additional garage space and more green area, is in accordance with the spirit of the ordinance. The (technically) rear setback actually abuts the neighbors side driveway so there is sufficient distance from the neighbor's house.
- Substantial justice is done in that the property is being renovated and improved so that its value should be increased.
- The plan has the support of the appearing abutters and, as carried out, should result in an increase in the value of surrounding properties.

#### **IV. ADJOURNMENT**

The motion was made, seconded and carried to adjourn the meeting at 8:47 p.m.

Respectfully submitted,

Jane Shouse  
Secretary  
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