

ACTION SHEET – BOARD OF ADJUSTMENT

TO: John P. Bohenko, City Manager

FROM: Mary Koepenick, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment** reconvened meeting on December 28, 2004 in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

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

EXCUSED: Vice-Chairman James Horrigan

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**I. PUBLIC HEARINGS**

8) Petition of **Michael J. and Leanne Edwards owners**, for property located at **64 Brackett Road** wherein a Variance from Article III, Section 10-302(A) is requested to allow the following: a) an irregular shaped 14' x 22' 1 ½ story attached garage with a 3.1' right side yard where 10' is the minimum required, b) a 16' x 38' irregular shaped 1 ½ story rear addition with an 8.6' right side yard where 10' is the minimum required, c) a 12' x 27' irregular shaped deck with an 18.7' rear yard where 30' is the minimum required, and , d) 33% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 206 as Lot 22 and lies within the Single Residence B district. Case # 12-7

As a result of this consideration, the Board voted to **table** the application until the lot line issue raised at the meeting is resolved.

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9) Petition of **Northeast Credit Union, owner**, for property located at **100 Borthwick Avenue** wherein the following are requested in conjunction with a 3 story addition (8,000± sf per floor) to the existing banking facility for use as "financial retail and business offices": 1) Variances from Article II, Section 10-209 and Article IV, Section 10-401(A)(1)(c) to allow an existing financial facility to expand on the site, 2) Variances from Article XII, Section 10-1201(A)(3)(f) and Article V, Section 10-503 and 10-504(B) to allow the existing and proposed off-street parking, maneuvering space and traffic aisles within the required setbacks and including the existing vegetation to provide screening for the abutting residentially zoned property without additional plantings; and, 3) a Variance from Article XII, Section 10-1203 to allow 2 loading areas to be provided where 5 loading areas are required and to be located within 100' of property zoned residentially. Said property is shown on Assessor Plan 259 as Lot 15 and lies within the Office Research district. Case # 12-8

As a result of this consideration, the Board voted to **grant** the request, as presented and advertised, with the following stipulations:

- That existing and proposed lighting, through the site review process, meet the current standards of not reaching beyond the property line.
- That the sign on the rear of the building be turned off at 6:00 p.m.; and,
- That screening be provided along the back of the lot consistent with the easements that are in place.

The request was granted for the following reasons:

- The variance will not be contrary to the public interest. The operation has been located at this site for some time and has not been intrusive. Lighting issues that were raised are addressed in the stipulations and the overall development is an aesthetic improvement to the area.
- Special conditions exist regarding a use variance as this is a reasonable expansion of an existing non-conforming use. Application of the zoning restriction would unreasonably allow no expansion at the site.
- An area variance is needed given special conditions of the property, which include easements, abutting rail lines, and an odd configuration. These conditions restrict the use of the property so that the benefit sought by the applicant cannot be met by some other reasonably feasible method.
- An expansion of a use that has functioned well for years is consistent with the spirit of the ordinance and the applicant has requested the minimum variance that can be granted and still meet their needs.
- Two loading docks are adequate for a building of this size and insistence on five would make the plan less aesthetically pleasing to the surrounding properties.
- Given the nature of the neighborhood, no fair and substantial relationship exists between the ordinance and the specific restriction on the property.
- Substantial justice is done by allowing this business to thrive and the value of surrounding properties will not be diminished, particularly with the addition of the attached stipulations.

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10) Petition of **TDSG, LLC, owner**, for property located at **2992A Lafayette Road** wherein an Appeal from an Administrative Decision is requested concerning the determination that a wholesale showroom is not an allowed use.

Notwithstanding the above, if the appeal is denied, a Variance from Article II, Section 10-207 is requested to allow a proposed business office to have an associated wholesale showroom in a zone where wholesale showrooms are not allowed. Said property is shown on Assessor Plan 292 as Lot 14 and lies within the Mixed Residential Business district. Case # 12-9

As a result of this consideration, the Board voted to **uphold the Administrative Decision** as the ordinance, while specifically mentioning a number of other uses, nowhere lists the words, “wholesale” or “showroom,” whether separately or together, as an allowed use in this district.

With the denial of the appeal, the Board then considered the variance and voted to **grant** the request, as presented and advertised, with the following stipulation:

- That the display be limited to millwork products in the showroom; and
- That the showroom be restricted to the first floor.

The variance was granted for the following reasons:

- The variance will not be contrary to the public interest as this is a relatively benign use in a building which has been a retail property. The traffic will be less as a wholesale office.
- This is only one component of a larger piece of property, in with other businesses and along heavily travelled Route One, so no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property.
- The variance will not injure the public or private rights of others and will result in a less intense use than previous operations.
- The variance is consistent with the spirit of the ordinance. It is a mixed residential/business district and this is the type of business that can function without causing problems to neighbors.
- Substantial justice is done in that the property owner is allowed to use his property in a reasonable manner and there will be no diminution of surrounding properties.
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11) Petition of **Stephanie J. Lindenthal, owner**, for property located at **20 Pleasant Point Drive** wherein the following are requested: 1) a Variance from Article III, Section 10-301(A)(7) to allow a 4,039 sf footprint 1 ½ single family dwelling after the demolition of the existing single family dwelling 69.3’ from the mean high water line and the attached deck 61.1’ from the mean high water line where 100’ is the minimum required and, 2) a Variance from Article III, Section 10-302(A) to allow the left front corner of the proposed dwelling to have a 21.3’ front yard where 30’ is the minimum required. Said property is shown on Assessor Plan 207 as Lot 8 and lies within the Single Residence B district. Case # 12-10

At the request of the applicant’s representative, Attorney John K. Bosen, the request was **tabled** to the January 18, 2005 regular meeting.

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12) Petition of **Theresa N. Pesarik, owner**, for property located at **214 Elwyn Avenue** wherein Variances from Article IV, Section 10-402(B) and Article III, Section 10-302(A) are requested to allow a 15’ x 28’ garage with loft with: a) a 1’8”± left side yard where 11’ is the minimum required, and b) 29.1% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 112 as Lot 26 and lies within the General Residence A district. Case # 12-11

As a result of this consideration, the Board voted to **deny** the petition as there are other options available to the applicant and the criteria for hardship was not established.

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13) Petition of **Robert McDowell, owner**, for property located at **379 Newcastle Avenue** wherein a Variance from Article IV, Section 10-402(B) is requested to allow a 10’8” x 16’ one story garage with an 14.3’± front yard where 30’ is the minimum required. Said property is shown on Assessor Plan 207 as Lot 4 and lies within the Single Residence B and Historic A districts. Case # 12-12

As a result of this consideration, the Board voted to **grant** the variance as presented and advertised for the following reasons:

- The variance is not contrary to the public interest and represents the minimum that could be requested and achieve the sought benefit .

- Literal enforcement of the ordinance would result in hardship due to the existence of special conditions of the property, including the size of the lot, the location of the dwelling, and an existing driveway.
- There is no other reasonably feasible method for the applicant to pursue to have the sought benefit of a garage.
- The variance is consistent with the spirit of the ordinance and this type of setback exists on the same street.
- No evidence has been presented demonstrating a diminution in value of surrounding properties.

II. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 9:45 p.m.

Respectfully submitted,

Mary E. Koepenick
Secretary

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