

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 January 18, 2005 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, and Alternate Duncan MacCallum

EXCUSED: Vice-Chairman James Horrigan, Alternate Steven Berg

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**I. OLD BUSINESS**

A) Election of Officers – 2005.

Charles A. LeBlanc was nominated and elected to serve as Chairman of the Board of Adjustment for 2005. David Witham was nominated and elected to serve as Vice-Chairman.

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B) Petition of **Stephanie J. Lindenthal, owner**, for property located at **20 Pleasant Point Drive** wherein the following were 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 counsel for the applicant, the application was **tabled to a time indefinite**.

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C) Petition of **Eric Weinrieb, owner**, for property located at **1 Jackson Hill Street** wherein the following were 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

The petition was **withdrawn** by the applicant.

D) Motion for Rehearing, by counsel for abutters, of the 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 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. Said property is shown on Assessor Plan 204 as Lot 14 and lies within the Single Residence B district. Case # 9-2

After consideration, the Board voted to **deny** the Rehearing.

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II. PUBLIC HEARINGS

1) 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) was 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 and a 17.2' front yard where 30' 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

After individual consideration and votes on each item of the request, the Board voted to **deny** all items as presented and advertised, for the following reasons:

- That a hardship attached to the property and necessitating variances has not been established.
- That there are other reasonably feasible methods to achieve the sought benefits, i.e. reconfiguring the interior.
- That, by denying light and air to surrounding properties, the spirit of the ordinance would not be served.
- That the value of the immediately abutting properties would be diminished by decreasing a setback and increasing lot coverage.

2) Petition of **Mark Ayotte, owner**, for property located at **9 Garden Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 20' x 29' two story addition with a bay window on the first floor after the demolition of the existing 20' x 29' one story portion of the building in the same location with: a) a 3'± right side yard where 10' is the minimum required, b) a 7'± front yard where 15' is the required, and c) a 10'± right side yard for the bay window where 10' is the minimum required. Said property is shown on Assessor Plan 174 as Lot 10 and lies within the General Residence A district. Case # 1-1

As a result of considering all parts of this application, the Board voted to **grant parts a) and b)** and to **deny part c)** of the request, as presented and advertised.

Parts a) and b) were **granted** for the following reasons:

- That the variance will not be contrary to the public interest as a sounder, safer structure will replace one in need of repair.
- Special conditions exist in that, while the overall lot size was increased by purchase of abutting properties, the building's location, established prior to zoning, remains the same in relationship to the setbacks.
- The benefit sought cannot be achieved by any other reasonably feasible method and substantial justice would be done as the applicant has taken steps to reduce previous nonconformance and his only recourse now would be to move the building.
- The variance is consistent with the spirit of the ordinance as the replacement structure would be built to Code on the existing footprint.
- With the closest neighbor speaking in favor of the variance, there has been no evidence presented that the value of surrounding properties will be diminished.

Part c) was **denied** as the proposed window, on a side of the building which is already only 3' from the property line, would be only 10" from that line, exceeding the criteria of requesting the minimal amount of variance.

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3) Petition of **Richard Fecteau, owner**, for property located at **120 Spaulding Turnpike** wherein a Variance from Article II, Section 10-206 is requested to allow the creation of a 23,608 sf outdoor vehicle display parking area on the residentially zoned portion of the property where such use is not allowed. Said property is shown on Assessor Plan 236 as Lot 33 and lies within the General Business and Single Residence B districts. Case # 1-2

The Board ruled that **Fisher v Dover did not apply** to this application based on the following findings of fact:

- That by cutting into a hill and adding a sound barrier, the layout of the parking area has changed from that submitted originally.
- That the criteria the Board uses to judge a particular case, that being *Simplex v Town of Newington*, has changed since the previous submittal.

The Board then considered the application and voted to **deny** the request, as presented and advertised, for the following reasons:

- The variance would be contrary to the public interest and property values would be diminished by the substantial addition of 100+ cars with the resulting increase in traffic.
- There is no hardship created by enforcement of the ordinance, other than one self-created by purchasing a property with knowledge of easements and restrictions.

- The landowner has had reasonable use of the property for many years and the fact that a business use is not allowed to encroach upon residentially zoned land does not constitute interference of the zoning ordinance with that reasonable use.
- No fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property. Even if allowed the use, the plan would not meet the area standard, set forth in the ordinance, of a 200' buffer zone between parking areas and residential properties.
- As testified by surrounding residential property owners, increased traffic and snow removal problems caused by the expansion would injure their rights to enjoyment of their property.
- Representing business encroachment on land that is zoned residential, the variance is not consistent with the spirit of the ordinance. The fact that there are easements over it does not necessitate a change of use to commercial.

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4) Petition of Robert Chaffee and Barbara Trimble, owners, for property located at 32 Miller Avenue wherein a Special Exception as allowed in Article II, Section 10-207(18) was requested to allow a Home Occupation II for Extended Family on the first floor by the resident owners of the Bed and Breakfast with 5 parking spaces in the area of the tennis court for this use in addition to the existing onsite parking. Said property is shown on Assessor Plan 136 as Lot 18 and lies within the Mixed Residential Office district. Case # 1-3

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

- The Special Exception is just for this business, as described, and will have no detrimental impact on the essential characteristics of the neighborhood.
- No hazard is presented to public or adjacent property.
- Due to the nature of the activity, there will be no increased traffic hazard or congestion, no excessive demand on municipal services, and no increase in storm water runoff.

III. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 10:25 p.m.

Respectfully submitted,

Mary E. Koepenick
Secretary

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