

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

ACTION SHEET

TO: John P. Bohenko, City Manager

FROM: Mary Koepenick, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment meeting on April 19, 2005** in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

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

EXCUSED: Arthur Parrott

I. OLD BUSINESS

- A) Approval of Minutes:
- Excerpt of Minutes for the January 18, 2005 meeting (120 Spaulding Turnpike)
 - Minutes of the March 15, 2005 meeting
 - Minutes of the February 15, 2005 meeting

The Minutes presented were approved with minor corrections.

- B) Request for a One-Year Extension of Variance Approval, by counsel for the applicant, for property located at **85 Middle Street**. Said property is shown on Assessor Plan 116 as Lot 16 and lies within the Central Business B district.

After consideration, the Board voted to **approve** a one-year extension of the variance through April 19, 2006.

- C) Motion to Vacate the Variance Granted Pursuant to RSA 673:14, by Tylene A. Jousse, of the petition of **The Childrens Museum of Portsmouth LLC**, owner, for property located at **295 Woodbury Avenue, abutting lot on Woodbury Avenue, 677 and 659 Dennett Street** wherein a Variance from Article II, Section 10-206 was requested to allow the Childrens Museum and 1,000 sf of office space for the Hyder Children's Foundation to be located in a district where such uses are not allowed. Said property is shown on Assessor Plan 161 as Lots 31 & 32 and Assessor Plan 175 as Lots 6 & 6A and lies within the General Residence A district. Case # 3-1

After consideration, the Board voted to **deny** the motion as correct procedure had been followed in arriving at their decision and no new information had been provided to warrant a rehearing. In making their decision, the Board found that there was no conflict of interest presented by any of the voting members.

D) Request for Rehearing, by William Eley, of the petition of The Children’s Museum of Portsmouth LLC as detailed in item c).

After consideration, the Board voted to **deny** the motion as correct procedure had been followed in arriving at their decision, all points were carefully weighed, and no new information had been provided to warrant a rehearing. In making their decision, the Board found that there was no conflict of interest presented by any of the voting members.

E) Request for Rehearing, by Peter P. Bresciano, of the petition of The Children’s Museum of Portsmouth LLC as detailed in item c).

After consideration, the Board voted to **deny** the motion as correct procedure had been followed in arriving at their decision, all points were carefully weighed, and no new information had been provided to warrant a rehearing. In making their decision, the Board found that there was no conflict of interest presented by any of the voting members.

F) Request for Rehearing, by Lenore Weiss Bronson, of the petition of The Children’s Museum of Portsmouth LLC as detailed in item c).

After consideration, the Board voted to **deny** the motion as correct procedure had been followed in arriving at their decision, all points were carefully weighed, and no new information had been provided to warrant a rehearing. In making their decision, the Board found that there was no conflict of interest presented by any of the voting members.

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II. PUBLIC HEARINGS.

1) Petition of **Malthouse Exchange Realty Trust, owner, and S J Torres, d/b/a Brewery Lane Tavern applicant**, for property located at **95 Brewery Lane Unit 2** wherein a Variance from Article II, Section 10-208(19) is requested to allow 450 sf to be used for outside dining with liquor from May to October on a lot that directly abuts both Residential and Mixed Residential property where such use is not allowed. Said property is shown on Assessor Plan 146 as Lot 27 and lies within the Business district. Case # 4-1

After consideration, the Board voted to **deny** the petition as there was no hardship demonstrated and the variance would not be consistent with the spirit of the ordinance which seeks to protect the right of residential neighbors in close proximity to restaurants/bars to peaceful enjoyment of their property.

2) Petition of **Malthouse Exchange Realty Trust, owner, and John Wyman, d/b/a Bounce, applicant**, for property located at **95 Brewery Lane Unit 7** wherein a Variance from Article II, Section 10-208(27) is requested to allow indoor recreation on a lot that directly abuts both Residential and Mixed Residential property where such use is not allowed. Said property is shown on Assessor Plan 146 as Lot 27 and lies within the Business district. Case # 4-2

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

- The variance will not be contrary to the public interest as the use is intended for the physical fitness and education of children.
- The zoning ordinance as applied refers to, and was intended to keep out, commercial recreational enterprises, not children's physical fitness and development. Strict interpretation of the ordinance would prevent this use and result in a hardship.
- No substantial relationship exists between the ordinance and the specific restriction on the property as this is an allowed use in this zone. While the building is within the required 200 foot from the buffer zone from residential properties, the actual location of the enterprise within the building is well over the 200 foot line.
- The variance is consistent with the spirit of the ordinance and the value of surrounding properties will not be diminished as very similar enterprises, such as a ballet school and health club, are permitted in the building.

3) Petition of **Barbara Jenny and Mathew Beebe, owners**, for property located at **54 McNabb Court** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) an irregular shaped 124.37 sf addition connecting the dwelling to the garage with a 7'1" rear yard where 20' is the minimum required and a 5'6 1/2" left side yard where 10' is the minimum required; b) the resulting attached garage will have a 12' x 20' 2nd story addition and maintain the existing 1'7" right side yard where 10' is the minimum required and a 5' rear yard where a 20' rear yard is required; and, c) 35% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 112 as Lot 58 and lies within the General Residence A district. Case # 4-3

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

- The variance will not be contrary to the public interest as the plan is well thought out and designed to have minimal impact on the neighborhood.
- Special conditions exist so that literal enforcement of the ordinance would result in unnecessary hardship as this is a tiny lot which predates the ordinance.
- The spirit of the ordinance would be served as there will not a great increase in density or interference with light and air.
- The sought benefit cannot be achieved by another reasonably feasible method due to the size of the lot and substantial justice would be done by allowing the applicants to enjoy their property without adversely affecting the neighborhood.
- The value of surrounding properties will not be diminished as the left side is wide open, the rear elevation provides protection on that side, and the abutter to the left has spoken in favor.

4) Petition of **Angela M. Zira, owner**, for property located at **46-48 Woodbury Avenue** wherein a Variance from Article II, Section 10-206(4) is requested to allow an existing single family dwelling to be converted into a two family dwelling on a lot: a) having 2,883 sf of lot area where 6,000 sf of lot area is the minimum required; and b) 28.3% open space where 30% is the minimum required. Said property is shown on Assessor Plan 163 as Lot 13 and lies within the General Residence A district. Case # 4-4

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

- The variance will not be contrary to the public interest as the lot area is consistent with a number of similar areas in Portsmouth and would result in approximately the same number of occupants requiring services.
- No fair and substantial relationship exists between the general purposes of the ordinance and the specific restriction on the property; and literal enforcement would result in a hardship. The fact that the existing building is physically a duplex is a special condition and the intent of the ordinance is not to take away something which already physically exists in order to force conformity.
- The variance would not injure the public or private rights of others as the property will be improved and maintained.
- With the fostering of housing and with parking consistent with that allowed for a two unit, the variance would be consistent with the spirit of the ordinance.
- Substantial justice would be done in that the interior demolition initiated twenty years ago, which results in a greater injustice to the homeowner than to the public, would be corrected.

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III. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 10:05 p.m.

Respectfully submitted,

Mary E. Koepenick
Secretary

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