

**MEMORANDIUM**

**TO:** Portsmouth Zoning Board of Adjustment  
**FROM:** Karen Rosania  
**DATE:** January 20, 2023  
**RE:** Request for Rehearing  
Karen and Rick Rosania, Owners/Applicants  
Property Location: 32 Boss Ave Portsmouth, NH. 03801  
Assessor Map 153 Lot 5 and Single Residence B (SRB) district

Dear Chair Eldridge and Zoning Board Members:

I am respectfully requesting a rehearing of my application number LU-22-217 (to allow children and adults to partake in small art classes) for the following reasons:

- I am eliminating any concerns of street congestion by **only utilizing my driveway for parking**. I have included new, detailed pictures with measurements of parking spaces in our driveway (see attached Exhibit A)
- I am willing to reduce my proposed hours for art classes and number of students per class. Proposed number of classes per day 1-2.
  - Current proposed hours for art classes: M-F 11-5pm, 1-2 evenings a week 6-9pm and one day on the weekend 11-1pm.
  - Current proposed number of students per class: 7 (including me would be 8)
- One of the Relevant Facts outlined in my Zoning Board of Adjustment Denial letter dated 1/3/23 states: No businesses are allowed in the district or most adjacent district – however, several other types of businesses are **currently permitted by right (P) or Special Exception (S) in zoning SRB that have equal or greater intensity vs. my proposed small art classes including:** Group Day Care facility including Private preschool and kindergarten (S), Family Day care Facility (P), Assisted Living Home (S), Residential Care Facility - 5 or fewer residents (S), Religious Place of Assembly (S), Historic Preservation building (S), Recreational Uses Religious, sectarian or private non-profit recreational use (S). Many of these businesses have regular art instruction as part of their daily operations. (see attached Exhibit B – for brevity, only relevant sections included) Other businesses have operated successfully in my immediate neighborhood for many years offering classes to the community.  
Unnecessary hardship exists for my art studio because **other like businesses are allowed by right or special exception to operate in SRB zoning.**  
My initial application was seeking a Special Exception. Portsmouth Zoning city staff changed to Variance prior to 12/20/22 hearing.
- The most current *Portsmouth Cultural Plan* (a product of the Mayor’s Blue Ribbon Committee on the Arts and Culture) references **zoning barriers for artists** and proposed solutions. “Portsmouth has experienced an exodus of its artisans and musicians. This exodus was largely due to rising rents and general lack of affordable living spaces”. Some of the proposed solutions include: “Examine zoning regulations impacting the arts

and develop a pro-culture approach to land and building use". "Address zoning issues and building codes that are barriers for artists, including limitations on combining living and working space, need for higher density and smaller living spaces, and provision for signage in areas zoned residential." (See attached Exhibit C – for brevity only relevant sections included). I believe by denying my application, these issues are only being perpetuated.



# CITY OF PORTSMOUTH

Planning Department  
1 Junkins Avenue  
Portsmouth, New  
Hampshire 03801  
(603) 610-7216

## ZONING BOARD OF ADJUSTMENT

January 3, 2023

Karen and Rick Rosania  
32 Boss Avenue  
Portsmouth, New Hampshire 03801

**RE: Board of Adjustment request for property located at 32 Boss Avenue (LU-22-217)**

Dear Property Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **December 20, 2022**, considered your application for allowing an art studio for classes up to 8 people which requires the following: 1) A Variance from Section 10.440 to allow an art studio where the use is not permitted. Said property is shown on Assessor Map 153 Lot 5 and lies within the Single Residence B (SRB) District. As a result of said consideration, the Board voted to **deny** the petition because the spirit of the ordinance was not observed and literal enforcement of the provisions of the Ordinance would not result in an unnecessary hardship. Use as an Art Studio is not an established use in the Zoning Ordinance and Commercial uses are not permitted in the SRB zoning district.

The Board's decision may be appealed up to **thirty (30) days** after the vote. Please contact the Planning Department for more details about the appeals process.

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

Beth Margeson, Acting Chair of the Zoning Board of Adjustment

cc:

# Findings of Fact | Variance

## City of Portsmouth Zoning Board of Adjustment

Date: December 20, 2022

Property Address: 32 Boss Avenue

Application #: LU-22-217

Decision: **Denied**

### Findings of Fact:

Effective August 23, 2022, amended RSA 676:3, I now reads as follows: The local land use board shall issue a final written decision which either approves or disapproves an application for a local permit and make a copy of the decision available to the applicant. **The decision shall include specific written findings of fact that support the decision. Failure of the board to make specific written findings of fact supporting a disapproval shall be grounds for automatic reversal and remand by the superior court upon appeal, in accordance with the time periods set forth in RSA 677:5 or RSA 677:15, unless the court determines that there are other factors warranting the disapproval.** If the application is not approved, the board shall provide the applicant with written reasons for the disapproval. If the application is approved with conditions, the board shall include in the written decision a detailed description of the all conditions necessary to obtain final approval.

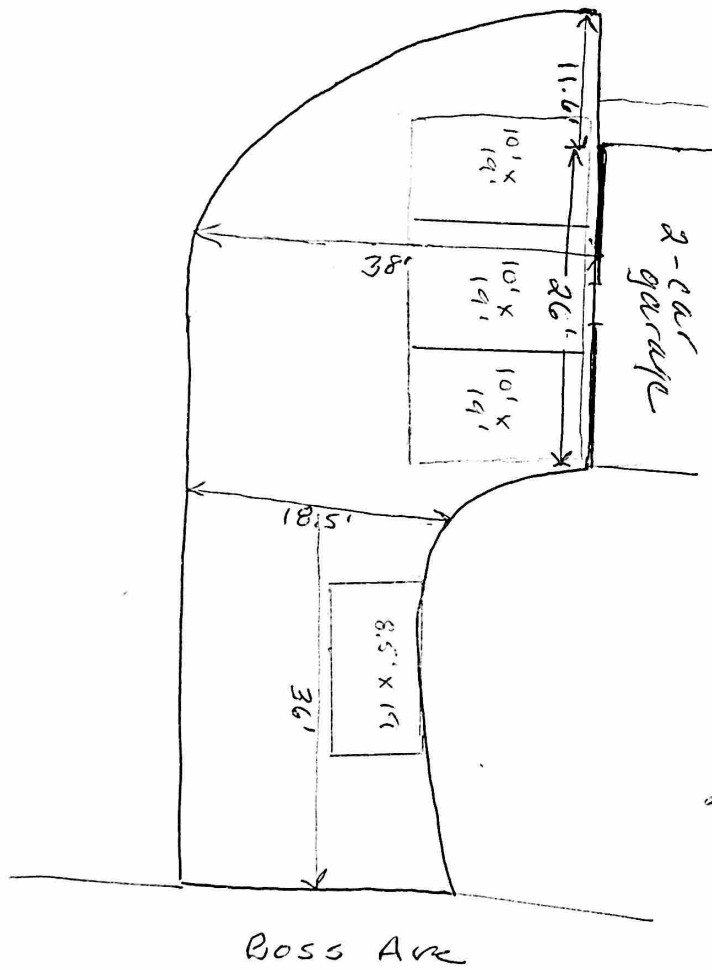
The proposed application meets/does not meet the following purposes for granting a Variance:

Section 10.233 Variance Evaluation Criteria	Finding (Meets Criteria)	Relevant Facts
10.233.21 Granting the variance would not be contrary to the public interest.		
10.233.22 Granting the variance would observe the spirit of the Ordinance.	<b>NO</b>	<ul style="list-style-type: none"> <li>• Art Studios are not recognized in the Zoning Ordinance.</li> <li>• No businesses are allowed in the district or most adjacent district.</li> </ul>
10.233.23 Granting the variance would do substantial justice.		

10.233.24 Granting the variance would not diminish the values of surrounding properties.		
<p>10.233.25 Literal enforcement of the provisions of the Ordinance would result in an unnecessary hardship.</p> <p>(a)The property has special Conditions that distinguish it from other properties in the area. AND (b)Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one. OR Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.</p>	<b>NO</b>	<ul style="list-style-type: none"> <li>• The property does not have anything unique about it as opposed to anyone else's property in the same district and would qualify it to have a business use placed on it.</li> </ul>

<b>Stipulations</b>
1.
2.
3.
4.

Exhibit A



32 Boss Ave

= proposed parking  
4 spots in  
driveway

Exhibit A



# Exhibit A



Sufficient room for another car to pass



Exhibit B

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	W1	Supplemental Regulations
6.20 Medical offices and clinics (outpatient only)	N	N	N	N	N	S	S	S	P	P	P	P	P	N	P	N	N	
6.30 Clinics with inpatient care	N	N	N	N	N	N	N	N	N	S	S	N	S	N	S	N	N	
6.40 Ambulatory surgical center	N	N	N	N	N	N	N	N	N	S	S	N	S	N	S	N	N	
6.50 Substance abuse treatment facility	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
6.60 Psychiatric hospital for the criminally insane	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
<b>7. Services, Other Than Health Care</b>																		
7.10 Day Care																		
7.11 Family day care facility	P	P	P	N	N	P	P	P	N	N	P	P	N	N	N	N	N	
7.12 Group day care facility including private preschool and kindergarten	S	S	S	S	N	S	S	P	P	P	S	S	P	N	N	N	N	10.824 (group day care facilities) 10.860 (hours of operation)
7.20 Personal services	N	N	N	N	N	N	S	S	P	P	P	S	P	N	N	N	N	
7.30 Consumer services such as copy shop, bicycle repair, and pet grooming	N	N	N	N	N	N	S	S	P	P	P	S	P	N	N	N	N	
7.40 Trade, craft and general service establishments, such as shops for plumbers, electricians, painters, paper hangers, upholsterers, sign painters and printers	N	N	N	N	N	N	N	S	P	P	P	S	P	N	P	P	P	All storage of materials and equipment shall be located within a building

Exhibit B

P = Permitted S = Special Exception CU = Conditional Use Permit N = Prohibited

Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
1.62 To 3 or 4 dwelling units	N	N	S	S	N	P	P	P	S	N	N	N	N	N	N	N	N	
1.63 To 5 to 8 dwelling units	N	N	N	S	N	S	S	S	S	N	N	N	N	N	N	N	N	
1.64 To more than 8 dwelling units	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
1.70 Live/work unit	N	N	N	N	N	P	P	P	P	N	P	P	P	N	N	N	N	
1.80 Manufactured housing park	N	N	N	N	P	N	N	N	N	N	N	N	N	N	N	N	N	10.816 (Manufactured Housing Park Dimensional Standards)
1.90 Planned unit development (PUD)																		10.720 (Planned Unit Developments)
1.91 Open space PUD	CU	CU	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
1.92 Residential density incentive PUD	N	N	CU	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
<b>2. Institutional Residence or Care Facilities</b>																		
2.10 Assisted living facility																		
2.11 Assisted living center	N	N	N	N	N	N	N	N	P	P	S	S	P	N	N	N	N	
2.12 Assisted living home	S	(S)	S	S	S	S	S	S	N	N	S	S	N	N	N	N	N	
2.20 Residential care facility																		
2.21 5 or fewer residents	S	(S)	S	S	S	S	S	S	N	N	S	S	S	N	N	N	N	
2.22 More than 5 residents	N	N	N	N	N	S	S	S	P	S	S	S	S	N	S	N	N	

Exhibit B

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Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
<b>3. Educational, Religious, Charitable, Cultural and Public Uses</b>																		
<b>3.10 Place of assembly</b>																		
3.11 Religious	S	(S)	S	N	N	S	S	S	S	S	S	S	S	N	N	N	N	
3.12 Other nonprofit	N	N	N	N	N	S	S	S	S	S	S	S	S	N	N	N	N	
<b>3.20 School</b>																		
3.21 Primary or secondary	N	N	N	N	N	S	S	P	P	P	S	S	P	P	N	N	N	
3.30 Post-secondary	N	N	N	N	N	S	S	P	P	P	S	S	P	N	P	P	N	
<b>3.30 Historic preservation building</b>	S	(S)	S	S	S	P	P	P	P	P	P	P	P	N	P	N	N	10.821 (Historic Preservation Buildings and Museums)
<b>3.40 Museum</b>	N	N	N	N	N	P	P	N	P	P	S	S	P	N	P	N	N	10.821 (Historic Preservation Buildings and Museums)
<b>3.50 Performance facility</b>																		
<b>3.51 Indoor performance facility</b>																		
3.511 Occupancy up to 500 persons	N	N	N	N	N	N	N	N	P	P	S	S	S	N	N	N	N	10.592 (location) 10.860 (hours of operation)
3.512 Occupancy more than 500	N	N	N	N	N	N	N	N	S	P	N	N	N	N	N	N	N	
<b>3.52 Outdoor performance facility</b>																		
3.521 Occupancy up to 500 persons	N	N	N	N	N	N	N	N	S	S	S	S	N	N	N	N	N	10.592 (location) 10.822 (yards) 10.860 (hours of operation)
3.522 Occupancy more than 500	N	N	N	N	N	N	N	N	S	S	N	N	N	N	N	N	N	

Exhibit B

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Use	R	SRA SRB	GRA GRB	GRC (A)	GA/ MH	MRO CD4- L1	CD4- L2	MRB	CD5 CD4	GB	G1	G2	B CD4- W	WB	OR	I	WI	Supplemental Regulations
3.60 Cemetery	S	S	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	
3.70 Club, fraternal or service organization	N	N	N	N	N	N	S	S	P	S	S	S	S	N	N	N	N	
3.80 Municipally operated park and related activities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	For other municipal uses see Section 10.460 (Municipal districts)
<b>4. Recreational Uses</b>																		
4.10 Religious, sectarian or private non-profit recreational use	N	(S)	N	N	N	S	S	N	P	P	S	S	P	N	N	N	N	
4.20 Cinema or similar indoor amusement use with no live performance	N	N	N	N	N	N	N	N	P	P	S	S	P	N	N	N	N	10.825 (noise) 10.860 (hours of operation)
4.30 Indoor recreation use, such as bowling alley or arcade	N	N	N	N	N	N	N	N	P	P	S	S	P	N	N	N	N	10.825 (noise) 10.860 (hours of operation)
4.40 Health club, yoga studio, martial arts school, or similar use																		
4.41 Up to 2,000 sq. ft. GFA*	N	N	N	N	N	S	S	P	P	P	P	P	N	N	S	N		
4.42 More than 2,000 sq. ft. GFA	N	N	N	N	N	N	N	N	S	P	S	S	S	N	N	S	N	
4.50 Outdoor recreation use	N	N	N	N	N	N	N	N	N	S	P	P	N	N	N	N	N	10.592 (location) 10.860 (hours of operation)
4.60 Amusement park, water park or theme park	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	

\*GFA = gross floor area.

Exhibit C

PORTSMOUTH, NEW HAMPSHIRE  
CULTURAL PLAN

A PRODUCT OF THE MAYOR'S BLUE RIBBON  
COMMITTEE ON ARTS AND CULTURE

Approved by City Council, December 2001

Adopted into the Portsmouth City Master Plan, January 2002

Report Published, May 2002

Funding provided by Greater Piscataqua Community Foundation

## Exhibit C

began the process of quantifying just how important arts and culture are to the City. The Americans for the Arts surveys were handed out to audience members of various concerts, plays, and other cultural events during the past year. This information will eventually be used to compile what will amount to an economic portrait: how much do the arts contribute to the fiscal health of the City? This information will be a useful tool in aiding the city toward its cultural and preservation goals.

During the time the Committee was engaged in its work, the economy of the nation, region, and state was strong, but, as the group's task was nearing completion, showed signs of faltering. The Committee was also cognizant of the fact that Portsmouth, while seeing the number of artistic and cultural productions and events remain virtually unchanged throughout the two-year existence of the group, experienced an exodus of its artisans and musicians. This exodus was largely due to rising rents and general lack of affordable living spaces.

The Committee was conscious of its duty to reverse the loss of artistic talent, and to maintain the places where artists are able to ply their craft, i.e., working space for rehearsals, gallery space, and studios.

It is in this context that the Committee wishes to formally recognize the continued commitment of both City government and the ongoing efforts of City residents to maintain a cultural life that is exciting, healthy and highly original.

And it is the hope of the Committee, with the following section added to the City's Master Plan as a guide, that the City continues on as a vibrant, diversified City, a City teeming with talent and cultural life; and a place with identifiable neighborhoods, all of which add to the distinct, rich flavor of Portsmouth.

The Mayor's Blue Ribbon Committee  
on Arts and Culture  
December 2001

## IDENTIFY AND PRESERVE BUILDINGS AND OPEN SPACES CONTRIBUTING TO THE UNIQUE CHARACTER AND CULTURAL ASSETS OF PORTSMOUTH

Portsmouth's character and appeal depend, in large part, on the city's architecture and landscape. Past preservation efforts have spawned a tourism industry that includes tours of historic homes and sites on the Portsmouth Black Heritage Trail and the Portsmouth Harbour Trail, walks through local burial grounds, lectures, cruises on Portsmouth Harbor, and the establishment of the 40-acre outdoor history museum, Strawberry Banke.

The need to preserve buildings and open spaces received the most votes in an arts survey of Portsmouth citizens conducted as part of the cultural planning process. And, in the cultural planning focus groups, this goal was consistently the topic of great concern. Much of the concern is on the fate of publicly-owned buildings. Other comments noted the need to improve awareness of the cultural and economic benefits derived from Portsmouth's historic architecture and the preservation of the City's open spaces. Still others believed there was a need to review the City's regulations and policies within the context of arts, promotion, and historic and open space preservation. The interest shown by citizens in historic preservation suggests that there is now an opportunity to broaden the involvement of organizations and residents in decision making regarding city buildings, neighborhoods, streetscape improvements, and regulatory changes.

### *Engage the community in preservation and cultural issues*

- Inventory buildings and open spaces that define the unique character and culture of Portsmouth.
- Leverage funds for preservation or acquisition of buildings and open spaces using grants and other sources, e.g., NH Land and Community Heritage Investment Program, SOS!, Land and Water Conservation Funds (LAWCON), Community Development Block Grants.
- Develop training programs on preservation and make them available to all people involved in local decision making, such as members of local boards and neighborhood groups.
- Publish information about the location of public art and cemeteries.
- Create and promote the use of non-traditional performing spaces.
- Create a task force to identify new spaces for public art - both permanent and temporary - and develop criteria for its creation, funding, and selection.
- Nominate eligible sites for the National Register of Historic Places.
- Explore the designation of a National Park district similar to that of Salem, MA and Lowell, MA.

- Provide opportunities to create neighborhood overlay districts that will preserve community character.
- Inventory and preserve the community's visual/photographic heritage.
- Collaborate with cultural organizations to design standardized signage and to develop a "way-finding" system to locate cultural venues and points of interest in the city. Support with an easy-to-read map.

### *Commit to preserve the City's cultural assets*

- Examine zoning regulations impacting the arts and develop a pro-culture approach to land and building use.
- Hire a municipal preservation planner.
- Provide incentives to developers for allowing public access to property along the waterfront and property with a scenic or culturally significant view.
- Fund and build a Riverwalk along the Piscataqua River behind Bow Street. Link it to the Portsmouth Harbour Trail and Prescott Park.
- Establish a revolving loan fund with program guidelines for owners to preserve their property. Update loan eligibility criteria to reflect evolving historic significance.
- Continue the municipal practice of not taxing nonprofit cultural entities.

# EXPAND AND SUPPORT SPACES FOR CULTURAL ACTIVITIES AND EVENTS, INCLUDING AFFORDABLE SPACE FOR ARTISTS, AND VENUES AND SPACE FOR PERFORMANCES, EXHIBITIONS, MEETINGS, STORAGE, REHEARSAL, AND EDUCATION

The severe shortage of affordable space in Portsmouth is the greatest challenge facing artists and cultural organizations. Focus group participants were concerned about the ability of individual artists and cultural organizations to maintain their places in Portsmouth. Most existing facilities are operating at, or near their capacity, yet the demand for additional activities is growing. The high rental and real estate purchase prices are limiting the growth of cultural entities and, in some cases, resulting in an exodus to more affordable space outside the City. In order for the cultural community to continue to develop and for Portsmouth to maintain the economic vitality derived from this sector of the economy, we need to think creatively about the opportunities available in the community for cultural development and expansion.

We propose learning from and building on existing public-private partnerships that have provided creative space solutions, such as the Player's Ring, Children's Museum, and Ballet New England's use of the Connie Bean Center. The City's arts agency will create an inventory of potentially usable spaces.

## *Create new and support existing partnerships to develop space for cultural uses*

- Using the City's consolidated planning process, create neighborhood arts centers that serve the needs of specific areas of the City, similar to the approach to parks and recreational facilities; an example would be the Rock Street Park facility.
- Provide incentives for the business community, schools, and the nonprofit community (arts and non-arts) to provide meeting, display, performance, and storage spaces to the cultural community and young artists as a donation or at low cost.
- Encourage permanent and temporary cultural activities in natural settings; examples could be an outdoor sculpture park at the Pease Tradeport or an arts center at Creek Farm.

## *Extend public properties for cultural uses*

- Create a centralized cultural arts center in a facility owned by the City; possibilities could be expansion of the Connie Bean Center or re-use of the library.

- Integrate cultural facilities into all new municipal building projects, such as the library, as well as renovations of existing spaces, such as the high school; examples include theatre space and visual arts studio space at the high school that could be used by the public or foundry space at City Yard.
- Enhance and increase the pedestrian-friendly areas in the City.
- Link transportation to cultural facilities, working with COAST and the school department.

## *Provide affordable living and working space for artists*

- Address zoning issues and building codes that are barriers for artists, including limitations on combining living and working space, need for higher density and smaller living spaces, and provision of signage in areas zoned residential. \*
- Address housing for artists, using appropriate funds and partnerships, including working with Portsmouth Housing Authority to provide subsidies. \*