

ACTION SHEET – BOARD OF ADJUSTMENT

TO: John P. Bohenko, City Manager

FROM: Jane M. Shouse, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment** meeting held on May 27, 2003 in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Vice-Chairman Jim Horrigan, Nate Holloway, Alain Jousse, Chris Roger, David Witham, Alternate Arthur Parrott and Alternate Steven Berg

EXCUSED: Bob Marchewka

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**I. Public Hearings**

6) Petition of **Thadeus Drabkowski, owner, Thomas Battles, applicant**, for property located at **948 US Highway 1 (a/k/a Route One By-Pass North)** wherein a Variance from Article III, Section 10-304(A) is requested to allow the existing building to be converted into 6 apartments totaling 4,950 sf and nonresidential uses totaling 3,250 sf with: a) 9% open space where 15% is the minimum required, b) 17.1” front yard where 20’ is the minimum required; and, c) 7.6’ and 9.1’ left side yards where 15’ is the minimum required. Said property is shown on Assessor Plan 142 as Lot 17 and lies within the Business district. Case # 5-6

It was voted that the request be **granted** with the following **stipulation**:

- The fence along Alder Way is to be extended to the Route One By-Pass and the fence will be maintained and shall not be allowed to fall into disrepair.

The Board did not feel that the variance was contrary to the public interest as they were looking to improve the area. It would create a more residential area. The zoning ordinance has put the property into a hardship situation by changing the frontage of the property and that interferes with the reasonable use of the property. There is no fair and substantial relationship existing between the general purpose of the zoning ordinance and the restrictions on the property. It is evident that the property is in a very difficult location. The applicant is mainly asking for dimensional setbacks that are fairly minimal. The applicant’s use for the building is very reasonable and appropriate and would finally make use of a building that has been vacant for a very long time. The Board did not feel that it would injure the public or private rights of others because it would be decreasing the problems that are being experienced in that area with sexual activity, things being found in the area, etc., and it would be increasing the value of the area, instead of decreasing the value. Substantial justice would be done by granting the variance and it would not diminish the values of surrounding properties.

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7) Petition of **Kathleen L. Wells, owner**, for property located at **36 Wilson Road** wherein a Variance from Article III, Section 10-302(A) is requested to allow a 12' x 14' breezeway connecting a formerly approved detached one story garage making the garage part of the principal building with a 6' left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 251 as Lot 59 and lies within the Single Residence B district. Case # 5-7

It was voted that the request be **granted**. The Board did not feel that this variance request was contrary to public interest. She had already requested this variance once. She is decreasing the non-conformance of the property with a larger setback. The garage is currently right up against the property line and she is bringing it in. The zoning restriction as applied to this particular property does interfere with the owner's reasonable use of the property because at present the building is in disrepair and needs to be fixed up. The connecting breezeway will improve upon the general appearance of the property. The breezeway will expand her living area and is a necessity in our New England weather. It will also allow her to maintain the garage without going on her neighbor's property. No fair and substantial relationship exists between the general purposes of the ordinance and the restrictions on the property. There will be no diminution of value to the surrounding properties. The request is consistent with the spirit of the ordinance and there is substantial justice in granting the variance.

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8) Petition of **Joan W. Sanborn, Trustee, Joan W. Sanborn Revocable Trust, owner**, for property located at **191 South Street** wherein a Variance from Article III, Section 10-302(A) is requested to allow a 9' x 10' one story addition creating 41.9% building coverage where 30% is the maximum allowed. Said property is shown on Assessor Plan 111 as Lot 39 and lies within the General Residence B and Historic A districts. Case # 5-8

It was voted that the request be **granted**. The Board felt that although on the surface it looked like she was seeking quite a bit of relief, the increase in lot coverage is just a little over 3% of what is existing and is not unusual for that area. The requested variance would be in the public interest as the addition will be hidden in the back of the house and won't be visible from the front. Therefore, it would not injure the public or private rights of others. Special conditions exist with respect to the property due to the configuration of the house. The size of the lot is quite small and the size of the house can't be changed so that creates a hardship. The percentage of lot coverage would restrict the expansion of the house and this is a very reasonable expansion. There is no fair or substantial relationship between the variance and the general purpose of the ordinance. The requested variance is consistent with the spirit of the ordinance, which is to allow people to enjoy their property. The variance would not diminish the values of surrounding property and, in fact, would probably increase them.

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9) Petition of **Thomas P. and Dani M. Rooney, owners**, for property located at **29 Spring Street** wherein the following Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 5' x 14' porch to the right side of the dwelling and expand the front entry to 6' x 7' creating 28.8% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 130 as Lot 21 and lies within the General Residence A district. Case # 5-9

It was voted that the request be **granted**. The Board felt that the variances were being triggered by improvements to entrances to the house. In the front it would make a narrow entrance wider and in the rear it would enclose what is essentially a back door entrance. It would certainly be in the public interest to improve these entrances, it would correct a safety issue and it would not interfere with someone's public interest. The zoning restriction would prevent reasonable use because it would prevent them from

improving access to their home. The building coverage would only be 4% over the allowed amount and that is not uncommon for that area. The addition would not have any impact on density in the neighborhood. In the same vein, there would be no fair and substantial relationship between the variances and the spirit of the ordinance. The spirit of the ordinance is to enjoy residential property as much as possible. Substantial justice is done by improving a problem with both entrances and it will not diminish values of surrounding properties but rather will probably enhance those values.

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10) Petition of **Lawrence N. & Ruth S. Gray, owners**, for property located at **80 Currier's Cove** wherein a Variance from Article III, Section 10-301(A)(7) is requested to allow an 8' x 14' screened porch with a 2<sup>nd</sup> floor roof deck above the porch and a 4' x 4' platform with steps to grade from the porch 67' from the edge of the salt water marsh/wetlands where 100' in the minimum setback to the edge of the salt water marsh/wetlands. Said property is shown on Assessor Plan 204 as Lot 14 and lies within the Single Residence A district. Case # 5-10

This was tabled until the next regular meeting.

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11) Petition of **Catherine A. Irvine, owner, Jeffrey Marple, applicant**, for property located at **300 Court Street** wherein the following are requested: 1) Variances from Article II, Section 10-207(13), Article III, Section 10-303(A); and, Article IV, Section 10-401(A)(1)(b) to allow a third dwelling unit in an existing building on a 7,358 sf lot where 22,500 sf of lot is required for three dwelling units, and 2) Variances from Article XII, Section 10-1201(A)(2) and Section 10-1201(A)(3)(a)(3&4) and Section 10-1204 Table 15 to allow 4 parking spaces to be provided that are designed to park one behind another and to back out onto the street where 5 parking spaces are required and are to be designed so that any motor vehicle may proceed to and from a parking space without moving another vehicle and not back out onto the street with a 24' maneuvering aisle. Said property is shown on Assessor Plan 108 as Lot 12 and lies within the Mixed Residential Office district. Case # 5-11

A motion to grant with alternate #1 for parking **failed on a 3-3 vote**. Therefore, your petition was **denied**.

Board members felt that the lot was only 7,358 s.f. where currently they need 22,000+ s.f. for 3 dwelling units. Although they can provide five parking spaces, they cannot provide 5 spaces where the residents can drive out onto Court Street. They felt that Court Street was a fairly busy street and it would create a public safety hazard. The size of the building does not allow for space to park cars. Also, they felt that there were reasons for the required square footage, such as keeping light, air and open space for the citizens of the city, and to use the fact that other buildings in the area were used as densely as possible does not give the Board the right to allow this particular unit to be increased to three dwelling units with the more intense parking.

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12) Petition of **Eric D. Weinrieb, owner**, for property located at **1 Jackson Hill Street** wherein a Variance from Article IV, Section 10-402(B) is requested to allow a 12' x 16' shed including a 3' x 12' roof overhang with a 4'6" rear yard where 10' is the minimum required. Said property is shown on Assessor Plan 141 as Lot 30 and lies within the General Residence A and Historic A districts. Case # 5-12

It was voted that the request be **granted**. The requested variance is not contrary to the public interest because the old shed and the solar panel are in bad shape and look unsightly. The restrictions as applied to this specific property do interfere with the use of the property. He is taking down a building that is in very bad shape and replacing it with one that is very similar and by taking down the solar panel it will be much more attractive for both the property as well as the neighbors. There is not a fair and substantial relationship between the general purpose of the zoning ordinance and this particular property. The setbacks are to protect other properties and it appears that the properties surrounding this shed would be greatly improved by the new shed. This is a very small lot which makes it very restrictive with what he can do and build. This seems like a good solution all around and will not negatively effect any of the neighbors. It does not injure any public or private rights of people and certainly no one has come forward except to commend the new shed. It is very consistent with the spirit of the ordinance and substantial justice will be done by granting the variance. In order to keep the lawn equipment off of the lawn and being an eyesore it is necessary to have a shed such as this. There would not be any diminution of property values. As the abutters have attested to, it will improve the property and will make a more attractive view for the neighbors.

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13) Petition of **James and Edna Pantelakos, owners, Chris and Petra Barstow, applicants**, for property located at **188 Edmond Avenue** wherein the following are requested: 1) a Variance from Article II, Section 10-206 to allow a single family dwelling to be converted into a two family dwelling in a district that only allows single family dwellings, and 2) a Variance from Article III, Section 10-302(A) to allow two dwelling units on a 22,000 sf lot in a district where 15,000 of lot area is required per dwelling unit. Said property is shown on Assessor Plan 220 as Lot 78 and lies within the Single Residence B district. Case # 5-13

This was withdrawn by the Applicants.

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14) Petition of **Lafayette Limited Partnership, owners, Philbrick's Fresh Market LLC, applicant**, for property located at **775 Lafayette Road** wherein the following are requested to allow a 1,020 sf addition to the existing building for a grocery market with a restaurant (cafe) with both inside and outside seating : 1) a Variance from Article II, Section 10-208(20)(A) to allow a restaurant use on a lot which directly abuts a residential district, 2) a Variance from Article III, Section 10-304(A) to allow said addition to have: a) a 24' right side yard where 30' is the minimum required, and b) 12.7% open space where 20% is the minimum required, 3) a Variance from Article XII, Section 10-1203(1) to allow the loading berth to be located within the required right side setback; and, 4) a Variance from Article XII, Section 10-1204 Table 15 to allow 544 parking spaces to be provided where 593 are required. Said property is shown on Assessor Plan 245 as Lot 1 and lies within the General Business district. Case # 5-14

It was voted that the request be **granted**. The Board felt that the zoning restriction as applied to this property would interfere with the reasonable use of the property. It is a commercial shopping mall and the entire area is surrounded by commercial businesses. There is an abutting residential district but this particular site is the furthest removed from that district, well over 300 feet. A variance was granted in the past to a restaurant that is closest to the residential area so it was felt that it would be unreasonable not to allow a restaurant on this particular part of the property. There is no fair and substantial relationship between the general purpose of the zoning ordinance and the restriction on this property. Certainly, a grocery store/restaurant would enhance the public benefits from this property. It is an excellent proposal for the use of what is now a vacant part of the overall building. The zoning ordinance did not intend that the dimensional variances being asked for or fewer parking spaces would somehow block a proposal of

this type. The public rights aren't going to be violated and the private rights of abutting property owners will also see their businesses enhanced.

This would not be contrary to the public interest as it would be well served by this proposal. The open space is not changing at all. The setback relief being asked for is minimal. Having the loading berth on the right side of the building makes sense and will not intrude on the rights of the immediate abutter, WHEB radio. This Board has repeatedly granted parking relief for this lot because this parking lot is never full, even at Christmas time. The variances would be consistent with the spirit of the ordinance as this type of business is very desirable in the City of Portsmouth. Substantial justice is done by granting the variance as this has been a difficult space for the owner to rent and justice would be done to the owners by allowing this proposal. There would be no diminution in property values.

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15) Petition of **Louis F. Clarizio, Trustee, SOS Realty Trust, owners**, for property located off **Cass Street** wherein the following are requested for the construction of a 32' x 34' two story building for one dwelling unit and office space: 1) a Variance from Article III, Section 10-303(A) to allow: a) a 13' rear yard where 15' is the minimum required, and b) 7,454 sf of lot area where the minimum lot size is 7,500 sf and where 7,500 sf is required for a dwelling unit, and 2) a Variance from Article XII, Section 10-1201(A)(3)(c)(1) to allow parking 6' from a residential lot line where 50' is the minimum required to a residential lot line. Said property is shown on Assessor Plan 156 as Lots 33 & 34 and lie within the Mixed Residential Business district. Case # 5-15

It was voted that the request be **denied**. The Board felt that there were numerous serious issues raised by the application. There was an unusually large number of neighborhood property owners objecting to this proposal, in writing and in person. The design is a case of trying to put too much on too small of a location. It is an unusual shaped lot. This proposal would not improve the neighborhood at all and 52 Cass Street would be completely dwarfed by the location of the proposed building. The location of the proposed building seems to be driven by the need to preserve an alley between Cass Street and Albany Street. There was a serious concern about a variance request from a 50' setback to only 6' as that is a huge variance. Also, the 15' rear setback is a minimum requirement. In this case, 15' would be quite close and the proposed building could be located further from the property line. The setback and parking requirements in this case are very reasonable requirements and they are not in any way preventing the applicant from making a reasonable use of the property. There is a very fair and substantial relationship between dimensional requirements because if they were violated then property values would be affected. Surrounding property values, especially 52 Cass Street, would be diminished. There is no hardship because a denial would not hurt anyone as these are vacant lots and there is no hardship situation. It is clearly a case of construction of a new building that is too big for the lot.

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16) Petition of **Deborah C. and Harry D.Hobbs, owners**, for property located at **489 Sagamore Avenue** wherein a Variance from Article III, Section 10-301(A)(2) is requested to allow a 26' x 36' freestanding second dwelling unit on the property to replace one of the existing free-standing dwellings on the property in a district where no more than one free-standing dwelling shall be built upon any single lot. Said property is shown on Assessor Plan 222 as Lot 25 and lies within the General Residence A district. Case # 5-16

It was voted that your request be **granted** with the following **stipulation**:

- That the existing cottage will be torn down within 30 days after the issuance of a Certificate of Occupancy on the new structure.

The Board felt that this would be improving what was currently existing. The use would not be any more intense and would not be contrary to the public interest. There is a hardship because there already is a detached dwelling and the proposed structure will be more attractive and built to code, making it safer. The size of the lot supports the second dwelling unit and other properties in that area have second dwelling units on their lots. Contractors have indicated that the existing cottage is not even worth repairing. The requested variance is consistent with the spirit of the ordinance as it is a multi-family neighborhood and you are simply replacing what is already there. Substantial justice would be done by granting the variance because the property does not have any basement or attic storage so they will be able to use the garage for much needed storage space. Surrounding property values will not be diminished.

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17) Petition of **George W. Williams Jr., owner**, for property located at **272 Highland Street** wherein an Appeal from the Decision of the Code Official is requested requiring Variances from Article III, Section 10-301(A)(2) and 10-302(A) for a second dwelling unit on the property.

It was voted that the request be **denied**. It was felt that the code enforcement official was correct in the interpretation of the code.

Notwithstanding the above, if the Appeal from the Decision of the Code Official is denied the following are requested: 1) a Variance from Article III, Section 10-301(A)(2) to allow a second dwelling unit on a 9,807 sf lot where 7,500 sf of lot area is required per dwelling unit for a total of 15,000 sf of lot area for two dwelling units, and 2) a Variance from Article III, Section 10-302(A) to allow a 5' x 28' two story addition with a 5' right side where 10' is the minimum required. Said property is shown on Assessor Plan 130 as Lot 35 and lies within the General Residence A district. Case # 5-17

The Board voted not to hear the Petition under Fisher v. Dover as the application was essentially the same as the previous proposal except the addition will be on the right side of the garage rather than on the left side. The Board did not feel that they would hear anything to make them view the petition differently than they did at the April meeting.

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**II. Adjournment**

The motion was made and seconded to adjourn the meeting at 12:15 a.m..

Respectfully submitted,

Jane M. Shouse,  
Secretary  
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