

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 **June 17, 2003** the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

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

EXCUSED: Nate Holloway, Chris Roger, and Bob Marchewka

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**I. Public Hearings**

1) Petition of **Diana M. Frye, owner**, for property located at **217 Myrtle Avenue** wherein a Variance from Article III, Section 10-302(A) is requested to allow the construction of a 6' x 26.8' front porch with a 16.5' front yard where 30' is the minimum required. Said property is shown on Assessor Plan 220 as Lot 92 and lies within the Single Residence B district. Case # 6-1

It was voted that the request be **granted**. The Board felt that this was an old porch and it would be in the public interest to repair it, both for safety and aesthetic reasons. It certainly was the spirit and intent of the ordinance to allow this type of renovation. The neighbors had indicated their support and it would enhance the value of the property as well as surrounding properties. The hardship dealt with the front yard setback. The street is a dead end so a front yard violation would not be a sufficient reason for denial. Property owners should be allowed to have full enjoyment of their property and this front porch allows that enjoyment.

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2) Petition of **Wayne Semprini, owner**, for property located at **3510 Lafayette Road** wherein the following are requested: 1) a Special Exception as allowed in Article IV, Section 10-401(A)(1)(d) is requested to change a retail business to a construction/restoration company with associated business office and indoor storage space, and 2) a Variance from Article II, Section 10-206 to allow the construction of a 60' x 72' garage for the proposed construction/restoration company. Said property is shown on Assessor Plan 297 as Lot 8 and lies within the Single Residence A district. Case # 6-0

It was voted that the request be **granted**. The Board stated that this was an unusual property. Special conditions exist as it was surrounded by commercial uses but was in a residential district. Therefore, it was consistent with the spirit of the zoning ordinance. Substantial justice would be done as they felt this would be a good use for the property as past retail businesses have not been successful. It would generate less traffic and have no impact on the neighborhood which would not be contrary to the public interest. There would be no diminution of property values.

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3) Petition of **Peter C. and Meg Middleton, owners**, for property located at **78 Lawrence Street** wherein the following are requested to build a 24' x 24' attached garage: 1) a Variance from Article III, Section 10-302(A) to allow: a) a 15' front yard where 30' is the minimum required maximum, b) a 7' right side yard where 10' is the minimum required; and, c) 28.1% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 152 as Lot 46-1 and lies within the Single Residence B district. Case # 6-3

It was voted that the request be **denied**. Although the Board felt that it met some of the criteria necessary to grant the variance, they did not feel that it meet all of the criteria. They did not believe that there was any hardship or that any special conditions existed as they felt the garage could be attached to the house or moved back, thereby avoiding the necessity for relief from the front setback. It was felt that an average car was longer than 15' so they wouldn't be able to park a car in front of the garage without sticking out onto the street.

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4) Petition of **Dennis M. Moulton and Maureen A. Gallagher, owners**, for property located at **190 Hillside Drive** wherein a Variance from Article III, Section 10-302(A) is requested to allow a 10.5' x 22' addition with a 25.5' front yard where 30' is the minimum required. Said property is shown on Assessor Plan 231 as Lot 38 and lies within the Single Residence B district. Case # 6-4

It was voted that the request be **granted**. It was felt that this was a well thought out and well presented project. The proposed sunroom would not be any more non-conforming than what is there now. It met all other dimensional requirements. Many other houses in the neighborhood have similar setbacks. The requested variance was not contrary to the public interest as it was an improvement to the property and would make it more attractive. There would not be any diminution of value to surrounding properties. The zoning ordinance interfered with the use of the property because the non-conformity already existed. There was no fair and substantial relationship between the purpose of the zoning ordinance and the specific restriction of the ordinance as it was not the purpose of the zoning ordinance to prevent people from improving their property and that was what this application was about. This was not contrary to the public interest and would not diminish surrounding property values. Substantial justice would be done by allowing the property owners to increase their property values and improving the appearance of the neighborhood.

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5) Petition of **Beth P. and Marc C. Griffin, owners**, for property located at **239 Broad Street** wherein a Variance from Article III, Section 10-302(A) is requested to allow a 15' x 22' two story addition with a 2'6" left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 131 as Lot 15 and lies within the General Residence A district. Case # 6-5

It was voted that the request be **granted**. The Board was happy to see them back with a revised plan and a property survey as the Board had suggested. It was understandable that they did not

want to build on the back of the house due to the existing willow tree. The Board felt that this was less intense than what was there now so it wasn't contrary to the public interest. By denial of the application, they would be left with something that was more non-conforming than what they were asking for. The Board did not feel that was the intent of the Zoning Ordinance. The hardship was that the Zoning Ordinance was prohibiting a less intensive use and was unreasonable. It was also felt that this was a hard piece of property to work with. This would not injure the public or private rights of others and the neighbors would benefit from this improvement.

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6) Petition of **Jerry and Brenda Duberstein, owner**, for property located at **49-51 Lawrence Street** wherein a Variance from Article III, Section 10-302(A) is requested to allow the replacement of a 563 sf deck with a 7' left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 152 as Lot 43 and lies within the General Residence A district. Case # 6-6

It was voted that the request be **granted**. They were simply replacing the deck that was severely damaged over the winter. It was currently a safety hazard. It would not be contrary to the public interest to repair the deck. It was an unreasonable hardship that the Zoning Ordinance prohibits the property owner from replacing the deck with the exact same thing. The purpose of the ordinance was not to prevent people from repairing a damaged deck. Both the public and private rights of others would benefit as it would be a safer situation for everyone. Surrounding property values would not be effected as nothing was changing. It was also noted that the deck made sense as there was a pronounced downward slop to the back yard and the only way they can enjoy your backyard would be with a deck.

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7) Petition of **Jennifer S. Benjamin, owner**, for property located at **180 Sherburne Avenue** wherein Variances from Article IV, Section 10-402(B) & Section 10-401(2)(c), and Article III, Section 10-302(A) are requested to allow a 230 sf L-shaped arbor and 1' x 4' porch steps creating 26.3% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 112 as Lot 31 and lies within the General Residence A district. Case # 6-7

It was voted that the request be **granted** with the **stipulation** that the structure be open-framed on the sides, to allow air to go through it. This was a very small lot and also had a very desirable, old tree that you want to preserve. The request would not be contrary to the public interest as it appears to be an attractive addition to the property. Special conditions exist due to the small frontage of the lot and the large tree which is in the critical open area. The purpose of the Zoning Ordinance is to control density, scale and volume and this attractive open-air arbor does not negate that purpose. She would also be providing a new parking space, which would take a parked car off of the street.

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9) Petition of **Wentworth-Gardener House Association, owner**, for property located at **49-51 Mechanic Street** wherein a Variance from Article II, Section 10-206(29)(b) is requested to conduct once a month (July, August and September 2003) events including outdoor music concerts in a district where such use is not allowed. Said property is shown on Assessor Plan 103 as Lot 41 and lies within the General Residence B and Historic A districts. Case # 6-9

A motion to deny the request failed on a 3-3 vote. The Board then made a **motion to grant, with the following stipulations:**

- That no more than 3 concerts were held;
- That the hours be limited to noon until 8:00 pm;
- That there are a maximum of 75 people;
- That there is no amplification of music;
- That no liquor, wine or beer is allowed;
- That the variance is for 2003 only;
- That a police officer be hired for the concerts;

This motion failed with a 3-3 vote.

The Board felt that this would be contrary to the public interest as this is a residential neighborhood. They did not see anything unique about the property that would allow the variance request, especially in terms of music. The variance would injure the public and private rights of others, as many neighbors have spoken in opposition. They were concerned about traffic and noise. It was not felt that this was consistent with the spirit of the ordinance.

Although part of the ordinance deals with supporting the arts, the spirit and intent was not for music concerts in a residential neighborhood. It was felt that the concerts would diminish the surrounding property values. No hardship was shown relative to special circumstances or the zoning restrictions that apply to this property.

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**II. Adjournment**

The motion was made and seconded to adjourn the meeting at 10:00 p.m.

Respectfully submitted,

Jane M. Shouse,  
Secretary

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