

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** at its August 19, 2003 meeting
PRESENT: Chairman Charles Le Blanc, Vice-Chairman Jim Horrigan, Chris Roger, Alain Jousse, David Witham, Alternate Arthur Parrott and Alternate Steven Berg
EXCUSED: Nate Holloway, Bob Marchewka

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**I. Public Hearings**

A) Petition of **Ocean National Bank, owner**, for property located at **325 State Street** wherein a Variance from Article XII, Section 10-1201(2) is requested to allow the creation of four additional parking spaces with an 18' travel way where 24' is required. Said property is shown on Assessor Plan 116 as Lots 1, 2 & 6 (to be combined) and lies within the Central Business B and Historic A districts. Case # 7-13

The Board of Adjustment **tabled** this Petition to the September 16, 2003 meeting at the applicant's request.

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II. New Business

1) Petition of **Alvin L. and Betty M. Lightner, owners**, for property located at **34 Mariette Drive** wherein a Variance from Article III, Section 10-302(A) is requested to allow an 8' x 10' shed creating 23.8% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 292 as Lot 211 and lies within the Single Residence B district. Case # 8-1

As a result of such consideration, it was voted that the request be **granted**. The Board felt that this was a small request and would be in the public interest as the shed cannot be seen from the street. The neighbors did not raise any objections. The Board felt that this is a reasonable use of the property. The Board further felt that this variance would not interfere with the spirit of the ordinance and substantial justice would be done as the shed is small in size and will not diminish property values.

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2) Petition of **Gobbi Supply Corp., owner, Coast Pontiac-Cadillac-GMC, Inc., applicant**, for property located at **685 Islington Street** wherein a Special Exception as allowed in Article II, Section 10-208(36) is requested to allow an 1,850 sf building to be used for reconditioning of motor vehicles (cleaning and polishing). Said property is shown on Assessor Plan 164 as Lot 12 and lies within the Business district. Case # 8 -2

As a result of such consideration, it was voted that the request be **granted** with the following stipulations:

- That vehicles are prohibited from being displayed “For Sale” or sold from the property;
- That all work shall take place within the building and no washing of vehicles shall take place outside the building;
- Hours of operation will be limited to 8:00 a.m. – 5:00 p.m., Monday through Friday and up until noontime on Saturday.

The Board felt that this use was less intensive than the previous use or other potential future uses. No customers will be coming in and out of the property. There will be no hazard to the public or surrounding properties, nor will the proposed use diminish surrounding property values, as they are mostly commercial properties. This use will not be any more demanding on city municipal services than the previous use nor would there would be any additional noise. The Public Works Department has confirmed that the property has a grit/oil/grease separator that is in accordance with city regulations.

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3) Petition of **HCA Health Services, Inc., owner, Independent Wireless One Corp., applicant**, for property located at **333 Borthwick Avenue** wherein a Variance from Article II, Section 10-209 is requested to allow the addition of PCS antennas and related base station equipment to the Portsmouth Hospital rooftop where such use is not allowed. Said property is shown on Assessor Plan 240 as Lot 2-1 and lies within the Office Research district. Case # 8-3

As a result of such consideration, it was voted that the request be **granted**. The Board felt that this would not be contrary to the public interest as we are becoming a “wireless” society and are becoming more dependent upon this technology. There is a hardship as this use is not permitted. This is a reasonable use and three other companies already have been granted identical variances. There will be no injury to the public or private rights of others and substantial justice will be done as the public will benefit by providing better wireless services. There would not be any impact on surrounding properties and it was agreed that this was a logical use for this building.

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4) Petition of **David J. Desfosses, owner**, for property located at **137 Cabot Street** wherein Variances from Article II, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow a 4’ x 20’ addition to the front of the existing garage creating 38% building coverage where 35% is the maximum allowed. Said property is shown on Assessor Plan 145 as Lot 89 and lies within the Apartment district. Case # 8-4

As a result of such consideration, it was voted that the request be **granted**. The Board felt that the building coverage request was minimal and the applicant is the tenants can park on the property and therefore he needs to park his truck inside the garage. The Zoning Ordinance was not intended to stop someone from adding a very small addition to a garage. The variance will not injure the public or private rights of others and, in fact, would benefit the rear neighbors by blocking their view of the Cabot Street Market at their request. There would not be any diminution of property values and no one spoke in opposition to the petition. Overall, the Board felt that it is a very reasonable request to have a standard size garage.

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5) Petition of **Glenn E. Smith, Trustee for Glenn E. Smith Revocable Trust, owner**, for property located at **64 Austin Street** wherein an Appeal from the Decision of the Code Official is requested concerning the requirement of a 24' maneuvering aisle to access parking spaces in the rear of an existing 4 unit apartment building.

As a result of such consideration, the request was **denied**. The Board felt that the Code Official was correct in his decision and upheld the standards of the driveway requirements in the Zoning Ordinance.

Notwithstanding the above, if the Appeal from the Decision of the Code Official is denied, a Variance from Article XII, Section 10-1201(A)(2) is requested to allow a 14' accessway for 5 parking spaces (6th located at side of building) for an existing 4 unit apartment building where 24' is the minimum width required. Said property is shown on Assessor Plan 136 as Lot 2 and lies within the Apartment district. Case # 8-5

The Board felt that this restoration project is in the public interest. Removing off street parking will benefit the neighborhood. The shape of the lot creates a hardship as there is no other place to put the driveway. No fair and substantial relationship exists between the general purposes of the Zoning Ordinance and the specific restriction on the property as the Zoning Ordinance encourages off street parking. The requested variance would not injure the public or private rights of others and would actually enhance the values of surrounding properties by improving the property. Substantial justice would be done by allowing you to restore the building and provide apartments with full benefits.



6) Petition of **William Kelly Davis, owner**, for property located at **495 Union Street, 485 Union Street and 28 Willow Lane** wherein Variances from Article III, Section 10-302(A) and Article III, Section 10-301(A)(4) are requested to recreate the original lot lines with: a) Lot 19 having 93' of street frontage, 5,930 sf of lot area, and two dwelling units, b) Lot 21 having 40' of street frontage, 3,113 sf of lot area, 52% building coverage, and two dwelling units; and, c) Lot 22 having 50' of street frontage, 3,696 sf of lot area, 45% building coverage, and one dwelling unit in a district where minimum frontage is 100', minimum lot area is 7,500 sf, maximum building coverage is 25%, and a minimum of 3,000 sf of lot area per dwelling unit is required of a conversion and all non-conforming yards. Said property is shown on Assessor Plan 133 as Lots 19, 21 & 22(combined) and lie within the General Residence A district. Case # 8-6

As a result of such consideration, it was voted that the request be **granted**. The Board felt that granting the variances would not be contrary to the public interest as there were three houses on the three lots at one time. The granting of the variances would simply recognize property lines that already exist. The lots themselves conform to the adjacent lots in the neighborhood. In order for you to be allowed to use the properties as the owner would like, the lots need to be separated. The restriction is creating a hardship as he does not have a reasonable use of the property. The public or private rights of others will not be injured as nothing is changing and nothing has interfered with the neighbors in the past. The spirit of the Zoning Ordinance is to allow homeowners to use their property in a reasonable way. Substantial justice will be done as the lots cannot currently be sold independently. There will not be any diminution of property values. No one has come forward to object to the variances and this appears to be a logical and reasonable request. The properties are currently receiving three separate tax bills which indicates that the city looks at them as separate lots.



7) Petition of **Kathleen M. Beauchamp, owner**, for property located at **21 Blossom Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) are requested to allow: a) a 16' x 22.5' 1 1/2 story garage with a 2'± right side yard where 10' is the minimum required and a 4.25+ rear yard where 25' is the minimum required; b) an irregular shaped 182 sf addition with a 4.25± rear yard where 25' is the minimum required; and, c) 46.1% building coverage for the above and including a 5.25' x 11' porch where 30% is the maximum allowed. Said property is shown on Assessor Plan 110 as Lot 3 and lies within the General Residence B and Historic A districts. Case # 8-03

As a result of such consideration, it was voted that the request be **denied**. The Board felt that this would be an over-intensification of the lot. They could not dismiss the concerns of the Zabarskys, who are direct abutters, and spoke in opposition. It was felt that the addition would lower the value of the Zabarskys' property by putting the addition within 4 1/2' of their back yard.



8) Petition of **Tina Gleisner and Ted Blank, owners**, for property located at **238 Highland Street** wherein a Variance from Article II, Section 10-206 and Article XII, Section 10-1201(A)(3)(a)(3&4) and (b)(1) are requested to allow a Home Occupation II with one parking space in the driveway that backs out onto the street and is closer than 10' to the right property line and no screening is provided. Said property is shown on Assessor Plan 130 as Lot 37 and lies within the General Residence A district. Case # 8-8

As a result of such consideration, it was voted that the request be **granted**, with the following stipulation:

- That the Home Occupation II Handi Man business use cease at this property no later than January 31, 2005.

The Board felt that this would not be contrary to the public interest as there were no neighbors who objected to it. Special conditions exist as the applicant would like to use the property for a specific purpose which is reasonable but not allowed by the ordinance. The purpose of the Zoning Ordinance is to prevent over-intensification of residential neighborhoods and this would not create a problem on this quiet street. The variance would not injure the public or private rights of others as everyone seems to get along and no one spoke in opposition. Substantial justice is done as the applicant has been very forthcoming about her plans. This appears to be a well conceived business plan and will be for a limited duration and scope. There is no reason to believe that it will diminish surrounding property values. Although cars will be backing out onto the street and no screening is being provided, the abutter has no problem with this. The neighbors have also indicated that this is a quiet street so there should not be any safety issues with the parking.



9) Petition of **One Hundred Market Group, LLC, owner**, for property located at **100 Market Street** wherein an Appeal from the Decision of the Code Official is requested concerning the determination that internally-mounted window boxes are signs prohibited by Article X, Section 10-1012(A) and Article I, Section 10-102(A).

As a result of such consideration, it was voted that the request be **denied**. The Board felt that due to the magnitude and scale of the window boxes, they are not the same as objects which are clearly allowed by the ordinance. The Zoning Ordinance and common sense both dictate that the window boxes are signs and therefore the Code Official ruled properly. The illumination is also a violation of the Historic District Regulations.

Notwithstanding the above, if the Appeal from the Decision of the Code Official is denied the following are requested: 1) Variances from Article X, Section 10-1012(A) and Article IX, Section 10-908 Table 14 to allow internally-illuminated window boxes in the Historic A and Central Business B districts where such use is not allowed, and 2) a Variance from Article IX, Section 10-908 Table 14 to allow: a) an additional 215 sf of attached signage where 60 sf is the maximum allowed and b) an aggregate of 307.2 sf of signage where 92.2 sf was previously granted and 75 sf is the maximum allowed. Said property is shown on Assessor Plan 118 as Lot 6 and lies within the Central Business B and Historic A districts. Case # 8-9

As a result of such consideration, it was voted that the request be **denied**. This application does not meet the five criteria necessary to grant the variance. The Board indicated that the Zoning Ordinance should not be considered a hardship. A hardship should deal with the property, building or the use. The Board felt that there are other ways to address the problem of too much glass/windows. The request for three times the current signage is way out of proportion. This property is in the Historic District and the spirit and intent of the ordinance is to promote the historic character of the City. The illumination is not allowed, nor is it appropriate. Financial consideration is also not relevant

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10) Petition of **Linda Rioux, owner, Brian Whitworth, applicant**, for property located at **86 Islington Street** wherein a Variance from Article XII, Section 10-1201(A)(2) is requested to allow an entrance driveway 10.8' wide and travel aisle behind one parking space is 22' wide where 24' is the minimum required for both. Said property is shown on Assessor Plan 126 as Lot 25 and lies within the Central Business B and Historic A districts. Case # 8-10

As a result of such consideration, it was voted that the request be **granted**. The Board did not feel that the request was contrary to the public interest. The building has been existing for many years so the variance will not injure the public. The zoning restriction as applied to the specific property interferes with the reasonable use of the property as there is no way to change the driveway. The renovations of the building will be an asset to the community. There won't be any difficulty with traffic. Substantial justice will be done as the City is always looking to improve its properties. The building is being made safer by adding fire escapes. It was also felt that surrounding property values would be enhanced.

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11) Petition of **Carl A. Deck, owner**, for property located at **151 Eastwood Drive** wherein a Variance from Article XV, Section 10-1502(D)(1)(c) is requested to allow a 6' x 22' addition to the existing garage within 50' of the side property line of the entire development where the external dimensional side yard requirement is 50'. Said property is shown on Assessor Plan 288 as Lot 3-14 and lies within the Single Residence B district. Case # 8-11

The Board of Adjustment **tabled** this Petition to the September 16, 2003 meeting at the applicant's request.

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12) Petition of **John W. Gray Revocable Trust and Bradford A. Gray Revocable Trust, owners, Redlon & Johnson, applicant**, for property located at **126 Bridge Street** wherein a Variance from Article II, Section 10-208 is requested to allow the outdoor storage of materials and products at the rear of the existing building. Said property is shown on Assessor Plan 125 as Lot 16 and lies within the Central Business B and Historic A districts. Case # 8-12

The Board of Adjustment **tabled** this Petition to the September 16, 2003 meeting at the applicant's request.

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III. Adjournment

The motion was made and seconded to adjourn the meeting at 12:00 midnight.

Respectfully submitted,

Jane M. Shouse,
Secretary

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