

**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 September 16, 2003 meeting

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

**EXCUSED:** n/a

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**I. OLD BUSINESS**

A) Petition of **Patricia A. Butterworth, owner, Edward J. Rusher, applicant**, for property located at **61 Suzanne Drive** wherein a Special Exception as allowed in Article IV, Section 10-401(A)(1)(d) is requested to allow the former hair salon on the first floor to be converted to a chiropractic office with the apartment remaining on the second floor. Said property is shown on Assessor Plan 292 as Lot 30 and lies within the Single Residence B district. Case # 7-14

Petition was withdrawn by the Applicant.

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B) 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

Petition was withdrawn by the Applicant. It was determined that a variance was not required.

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C) 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

Petition was tabled at the request of the applicant until the next regular scheduled meeting.

II. PUBLIC HEARINGS

1) Petition of **James L. and Juliana Grant, owners**, for property located at **25 Wallis Road** wherein a Variance from Article III, Section 10-302(A) is requested to allow a 10' x 12' bathroom addition with a 28' rear yard where 30' is the minimum required. Said property is shown on Assessor Plan 292 as Lot 72 and lies within the Single Residence B district. Case # 9-1

Petition was withdrawn at the request of the Applicant.

2) Petition of **Robert C. & Debi L. Pekousky, owners**, for property located at **121 Aldrich Road** wherein a Variance from Article III, Section 10-302(A) is requested to allow the existing 98 sf irregular deck to be repaired and rebuilt and construct an additional 8' x 8' section both with an 8.5' right side yard where 10' is the minimum required. Said property is shown on Assessor Plan 153 as Lot 36 and lies within the Single Residence B district. Case # 9-2

This matter was tabled. It was determined that the Applicants will need to re-apply with adjusted right side yard measurements.

3) Petition of **Michael R. Clark, owner**, for property known as **Belle Isle off Little Harbor Road** wherein the following are requested: 1) a Variance from Article III, Section 10-301(A)(7) to allow: a) a 6,536 sf 2 1/2 story single family dwelling 50.7' from mean high water/wetlands, b) a 33' x 60' two story garage 41.19' from mean high water/wetlands; and c) a 40' x 52' two story pool building 73.35' from mean high water/wetlands where all buildings shall be at least 100' from mean high water/wetlands, and 2) a Special Exception as allowed in Article II, Section 10-206(22) to allow the keeping of up to five horses with associated 60' x 120' two story indoor riding arena and 40' x 52' two story horse barn where such use is allowed by Special Exception. Said property is shown on Assessor Plan 205 as Lot 2 and lies within the Rural district. Case # 9-3

The Board first addressed the request for a Special Exception. As a result of such consideration, the Special Exception request was **granted**. The Board felt that five horses would not create a hazard to the public or adjacent property as the horses will be fenced in. The horses will not be seen or heard by adjacent property owners, nor will there be any offensive odors. The horses will not create a traffic hazard and there will be no demand on public services except for water. The Animal Control Officer has written a letter indicating that all of her concerns have been satisfactorily addressed.

The Board then addressed the request for a variance. As a result of such consideration, the variance request was **denied** on a failed Motion to Grant. The Board felt that the placement of the main house in an unbuilt area and almost entirely in the buffer zone was not a reasonable request. As the existing building is being torn down, they are essentially starting over. There will be a brand new foundation on a brand new location and there is ample room on the island to

place this building in a permitted area, and outside of the 100' buffer zone. No effort was made to build the house outside of the buffer zone. No hardship was demonstrated to place this building in this location. The owner bought this property knowing the 100' buffer and those regulations need to be followed.

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4) Petition of **Robert A. Ricci Sr. Rev. Trust, owner, Portsmouth Music and Arts Center, applicant**, for property located at **75 Albany Street** wherein a Variance from Article II, Section 10-207 is requested to allow the building and associated parking lot to be used for music and arts education in a district where such used is not allowed. Said property is shown on Assessor Plan 156 as Lot 26 and lies within the Mixed Residential Business district. Case # 9-4

As a result of such consideration, it was voted that the request be **granted**. The Board felt that all of the necessary criteria had been met. This would not be contrary to the public interest. This is a unique location with special conditions as the zone does not allow many uses. The restrictions on the property interfere with the property owner's reasonable use. The proposed use is very appropriate as this area is very commercialized and not adjacent to residential properties that may be effected by any noise generated by this use. There is no fair and substantial relationship between the general purpose of the Zoning Ordinance and the specific restriction on the property as the allowed uses are very limited, making this a difficult space to lease. This use is consistent with the spirit and intent of the Zoning Ordinance as the school would contribute to the development of the arts.

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5) Petition of **Lisa Hecker, owner**, for property located at **3 Marjorie Street** wherein a Variance from Article III, Section 10-302(A) is requested to allow 14' x 20'9" two story addition with a 27' front yard where 30' is the minimum required. Said property is shown on Assessor Plan 232 as Lot 30 and lies within the Single Residence B district. Case # 9-5

As a result of such consideration, it was voted that the request be **granted**. The Board felt that all of the criteria necessary to grant the variance had been met. There is a very reasonable rational for the 3' variance due to the current interior set up of the house. This is a dead end street so there will not be any traffic or safety concerns. Substantial justice will be done by increasing their enjoyment of the property. It will not diminish the property values of surrounding properties but, rather, will increase the values.

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6) The Portsmouth Board of Adjustment, acting pursuant to NH RSA 12-G:13 and Chapter 300 of the Pease Development Authority Zoning Requirements, will review and make a recommendation to the Board of Directors of the Pease Development Authority regarding the following: Petition of **Pioneer Aviation, LLC, owner, TF Moran Inc., applicant**, for property located at **125 Aviation Avenue** wherein a Variance from the Pease Development Authority Zoning Ordinance Part 303.04 is requested to allow 2,000 sf of existing business office space to be used for an engineering office in a district where such use is not allowed. Said property is shown on Assessor Plan 311 as Lot 4 and lies within the Industrial district. Case # 9-6

As a result of such consideration, it was voted to recommend<sup>1</sup> to the Pease Development Authority Board of Directors that the request be **granted**. The Board felt that all of the necessary criteria had been met. This would not be contrary to the public interest and there is a hardship as this professional business is very similar to a business office. There is no fair and substantial relationship between the general purpose of the Zoning Ordinance and the specific restrictions on the property and the variance will not injure anyone. It was felt that substantial justice would be done by granting the variance as this firm is very harmonious with the surrounding uses.

7) Petition of **Ocean National Bank, owner**, for property located at **325 State Street** wherein a Variance from Article III, Section 10-304(B) is requested to allow an 18' x 28.5' one story addition 15'8" in height with a 6'6" L-shaped canopy on two sides and a 30' x 34' drive-thru canopy in a district where all buildings and structures shall be at least 20' in height. 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 # 9-7

The Planning Department confirmed that a variance for the 18' x 28.5' one story addition 15'8" in height with a 6'6" L-shaped canopy on two sides was not required because the height is based on the average of the building so no hearing was held concerning that request.

As a result of such consideration, it was voted that the remaining variance request be **granted**. The Board felt that all of the necessary criteria had been met. This is not contrary to the public interest as it is in the middle of a parking lot. The literal enforcement of the variance would result in an unnecessary hardship to the owner and would create an odd looking addition. As this is in the middle of a parking lot, there would be no injury to the public or private rights of others. It is not going to cause any diminution in value to surrounding properties. It will look much more appropriate at the lower height and substantial justice will be done. It is consistent with the spirit of the ordinance to make this canopy a lower height that what the ordinance requires.

## I. Adjournment

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

Respectfully submitted,

Jane M. Shouse,  
Secretary  
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<sup>1</sup> See RSA 12-G:10(c) "In all instances the authority (Pease Development Authority) shall retain the power to make the final decision regarding applicability, interpretation, and enforcement of its land use controls, which shall require 5 affirmative votes."