

**ACTION SHEET  
BOARD OF ADJUSTMENT  
MEETING  
MARCH 23, 2004**

**TO:** John P. Bohenko, City Manager

**FROM:** Judith A. Claveau, Secretary- Planning Department

**RE:** Actions Taken by the Portsmouth **Board of Adjustment** meeting held on **March 23, 2004**, in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Chairman Charles LeBlanc, Vice-Chairman Jim Horrigan, Bob Marchewka, Nate Holloway, Alain Jousse, Arthur Parrott, David Witham, Alternate Steven Berg and Alternate Duncan MacCallum.

**EXCUSED:** n/a

~~~~~  
**I. OLD BUSINESS**

A) Petition of **The Childrens Museum of Portsmouth, owner**, for property located at **295 Woodbury Ave and abutting lot on Woodbury Avenue**; and **The Hyder Irrevocable Trust of 1993, owner, for property located at 677 and 659 Dennett Street** wherein a Variance from Article II, Section 10-206 was requested to allow the Childrens Museum and 1,000 sf of office space for the Hyder Children's Foundation to be located in a district where such uses are not allowed. Said property is shown on Assessor Plan 161 as Lots 31 & 32 and Assessor Plan 175 as Lots 6 & 6A and lies within the General Residence A district. Case # 2-10

The Board of Adjustment, at its meeting of March 23, 2004, voted to **table** the petition until April 21, 2004, for a Special Board of Adjustment Meeting.

~~~~~  
B) Petition of **Lafayette Plaza LLC, owner**, for property located **2454 Lafayette Road** wherein the following were requested: 1) a Special Exception as allowed in Article II, Section 10-208(36) to allow 2,400± sf car wash in a district where such use is allowed by Special Exception, and 2) a Variance from Article III, Section 10-304(A) to allow a 75' front yard where 105' is the minimum required. Said property is shown on Assessor Plan 273 as Lot 3 and lies within the General Business district. Case # 2-11

As a result of such consideration, the Board voted unanimously to **grant** the request for a Variance as advertised and presented as it met all of the requirements.

Vice-chair Horrigan agreed that the facility would be more than an adequate distance from the front yard, and therefore the right-of-way on Route 1; and, an appropriate distance from the other car wash located south of the property. He felt that the proposed location would be in the public interest as there would be no impact on surrounding properties. He stated that the spirit of the Ordinance is to allow adequate distance from the highway and he felt that it was a reasonable proposal to locate the facility the proposed distance from the highway. The Board felt that it was the front property line in question and therefore, it was a valid request. They stated that the conditions were adequately met for granting the variance.

The request for a Special Exception, however, was **denied** as it did not meet all the criteria for a Special Exception. The Board felt that two car washes in such close proximity to one another within a busy plaza would invite traffic congestion and safety concerns and that there were no channeling methods proposed for the traffic flow.

C) Petition of **Robert J. Chaffee and Barbara A. Trimble, owners** for property located at **32 Miller Avenue** wherein the following were requested: 1) a Variance from Article III, Section 10-303(A) to allow a 4,000± sf L-shaped building for four units on a 32,939 sf lot having an existing dwelling unit for a total of five dwelling units with 6,587.8 sf of lot area per dwelling where 7,500 sf of lot area is required per dwelling unit, and 2) a Variance from Article II, Section 10-207 to allow five dwelling units on a lot where the maximum allowed is four dwelling units. Said property is shown on Assessor Plan 136 as Lot 18 and lies within the Mixed Residential Office district. Case # 2-12

This petition was **withdrawn** as the Department determined that the petition had to be re-advertised for the April 20, 2004, meeting.

D) A Request for Rehearing for **Daryl K. and Maria A. Gregory, owners**, was requested by Charles A. Griffin, Esq. for property located at 85 Ocean Road. Said property is shown on Assessor Plan 292 as Lot 154 and lies within the Single Residence B District.

The Board of Adjustment, at its meeting of March 23, 2004, considered a Request for Rehearing. As a result of such consideration, it was voted that the request be **denied**.

The Board found that there was no new evidence presented, that was not available at the time of the original hearing; nor, had there been any procedural errors at the time of the hearing. Members of the Board also reaffirmed that the decision which resulted from the hearing was reached as an independent process by each Board member and not as a result of the Planning Department's memo.

**II. PUBLIC HEARINGS**

1) Petition of **T-Beyar Realty, LLC, owner**, and **BISCO, applicant**, for property located at **141 Banfield Road, Units 5 & 8** wherein a Special Exception as allowed in Article II, Section 10-209(38) was requested to allow an 18' x 25' yard area for the outdoor storage of irrigation equipment. Said property is shown on Assessor Plan 254 as Lots 2 & 3 combined and lie within the Industrial district. Case # 3-1

As a result of such consideration, it was voted that the request be **granted** as advertised and presented, as it met all the requirements of the criteria for a Special Exception.

The Board felt that the proposed storage area, given its size and location, would not interfere with parking or proposed access ways. They felt that there was no hazard or public threat from toxic materials being used or stored, nor, would there be impact on property values as the storage area would be located in the rear of the building. The material would not be unsightly and there would be no excess demand on municipal services nor traffic hazard as a result of granting this request.

2) Petition of **Portsmouth Casey Home Association, owner**, for property located at **1950 Lafayette Road** wherein a Variance from Article II, Section 10-209 was requested to allow a 60' x 100'

(6,000 sf) one story building to be used by both the Knights of Columbus and as a function hall. Said property is shown on Assessor Plan 267 as Lot 7 and lies within the Office Research district. Case # 3-2

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

- That access from Lafayette Road be limited to “in” only;
- That the rear service road be extended to provide access to this site;
- That there be no outside dining/bar/entertainment area provided for the fraternal organization or its lessees;
- That the State Liquor Permit cannot be transferred to a new owner/entity if the property or shares in a holding entity are ever sold.
- That the notation *Phase 2 Development Area*, found on the preliminary site plan, not be construed as Board approval of future development.
- Any and all previous approvals by this Board are void.

The Board stated that a request for a variance had been approved for two office buildings on this site as well as a larger function hall. The present request would be a reduction from the previous requests. They stated that the variance would not be contrary to the public interest or injure the public or private rights of others, since the proposed building would be moved to the rear of the property, creating a buffer reducing any noise or traffic concerns for residents. They felt that strict enforcement of the zoning would interfere with the reasonable use of the property and that there would be no diminution to the surrounding properties by a proposed function hall.

~~~~~

3) Petition of **Richard P. Fusegni, owner**, for property located at **1574 Woodbury Avenue** and **D & P Shopping Center, LLC, owner**, for property located at **1600 Woodbury Avenue** wherein the following were requested: 1) a Variance from Article III, Section 10-304(A) to allow: a) a 10’ right side yard where 30’ is the minimum required, and b) a 16’ rear yard where 50’ is the minimum required, 2) a Variance from Article V, Section 10-504(D) to allow a dumpster 5’ from the rear property line where 10’ is the minimum required; and, 3) a Variance from Article XII, Section 10-1201(A)(3)(e)(2) to allow required parking 20’ from the front property where a 40’ setback from the front property line is the minimum required. Said property is shown on Assessor Plan 238 as Lots 16 & 17 and lie within the General Business district. Case # 3-3

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

- That the landscaping be more than the minimum required, and that the details be worked out with the Planning Department.

The Board felt that granting the variance(s) would not be contrary to the public interest as the surrounding area is 100% commercial use; and that special conditions exist since the property is entirely surrounded by shopping centers, and fronts on a busy street. Denying the variance would restrict the reasonable use of the property.

The Board also stated that granting the variance would not injure the public or private rights of others and referred to the fact that no one had spoken in opposition to the petition.

The Board stated that they were looking at three variances which all had to do with setbacks. They felt that there would be no adverse effect on surrounding properties as these setbacks would abut a large parking lot.

~~~~~

4) Petition of **Aranosian Oil Company, Inc., owner**, for property located at **1166 Greenland Road** wherein the following were requested: 1) a Variance from Article II, Section 10-209 Table 5 to allow 3,588 sf convenience store and an 864 sf car wash in a district where such uses are not allowed, 2) a Variance from Article IV, Section 10-402(B) was requested to allow: a) a 24' x 97' gas canopy with a 46' front yard where 70' is the minimum required, and b) a 30' x 90' truck fueling canopy with a 0' left side yard where 13.9' is the minimum required; and, 3) a Variance from Article IV, Section 10-401(A) and Section 10-401(A)(1)(c) to allow the existing convenience store (approved by court order) and the canopy to be moved and a car wash to be installed where a nonconforming use of land may not be extended into any part of the remainder of the lot of land. Said property is shown on Assessor Plan 279 as Lot 2 and lies within the Industrial district. Case # 3-7

The Board of Adjustment, at its meeting of March 23, 2004, voted to **table** the petition to the April 20, 2004 meeting.

~~~~~

5) **Petition of T-Beyar Realty LLC, owner, and Auto One Automotive, applicant** for property located at **141 Banfield Road Units 4 & 9** wherein a Variance from Article II, Section 10-209(13) was requested to allow an auto repair business (small cosmetic & dent repairs to autos & RVs, mobile service, and repairs to wood, leather & vinyl) in addition to repairs to marine craft, home and office furnishings located within 225' of a residential district where 500' is the minimum required. Said property is shown on Assessor Plan 254 as Lots 2 & 3 combined and lie within the Industrial district. Case # 3-6

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

- That any vehicles waiting to be serviced and waiting for pick up be located at least 100' from the adjoining wetlands.
- That no overnight parking of vehicles be allowed on the property.

The Board felt that granting the variance would not be contrary to the public interest as it is an operation that is consistent with the industrial district. They stated that this automotive use would produce no noise, fumes, or pollutants and was buffered by a substantial wetland and a cemetery. They felt that the zoning restriction of 500', as applied to this property, would interfere with the reasonable use of the property as they are intending to use the building as a multi-tenant industrial building and this proposed use is consistent with that fact. The Board did not see where the variance would injure the public or private rights of others as the use is almost entirely inside the building. The variance is consistent with the spirit of the Ordinance as it is an industrial use, consistent with typical industrial uses in the City's Industrial zones. Substantial justice would be done, by allowing the property owner to use this property for the proposed use, and there would be no diminution to surrounding properties as a result of granting this variance, as it is a multi-tenant industrial building.

6) Petition of **Thomas M. Hammer and Dierdre Veo Costabile, owners**, for property located at **102 Mill Pond Way** wherein a Variance from Article III, Section 10-302(A) was requested to allow the

construction of a two family dwelling on a lot having 12,064 sf where the minimum required is 15,000 sf of lot area for two dwelling units (7,500 sf of lot area per dwelling unit). Said property is shown on Assessor Plan 143 as Lot 7-2 and lies within the General Residence A district. Case # 3-4

The Board of Adjustment, at its meeting of March 23, 2004, voted to **table** the petition, as verbally requested by Bernard Pelech, Esq., to the April 20, 2004 Board of Adjustment meeting.

~~~~~  
7) Petition of **Eric A. Spear and Jean C.M. Spear, owners**, for property located at **57 Mt Vernon Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow the construction of an 18' X 24' one-story addition on the same footprint of the existing garage (to be removed) with a 1'8" left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 111 as Lot 31 and lies within the General Residence B and Historic A districts. Case # 3-5

The Board of Adjustment, at its meeting of March 23, 2004, voted to **table** the petition to the April 20, 2004 Board of Adjustment meeting.

~~~~~  
8) Petition of **T-Beyar Realty, LLC, owner**, and **Northeast Conversions, LLC, applicant**, for property located at **141 Banfield Road Units 2, 10, 11 and 12** wherein a Variance from Article II, Section 10-209(13) was requested to allow an automotive warranty service business located within 225' of a residential district where 500' is the minimum required. Said property is shown on Assessor Plan 254 as Lots 2 & 3 combined and lie within the Industrial district. Case # 3-6A

As a result of this consideration, the Board voted to **grant** the request as advertised and presented with the following stipulations:

- That any vehicles waiting to be serviced and waiting for pick-up be at least 100' from the adjoining wetlands.
- That no overnight parking of vehicles be allowed on the property.

The Board felt that granting the variance would not be contrary to public or private rights as it would be well-buffered from the single-residence zone by the existing wetlands. They felt that the zoning restriction of 500', as applied to this property would interfere with the reasonable use of the property. They stated that the industrial use was consistent with the zoning and that substantial justice is done by allowing the owner to house this type of use in their building.

~~~~~  
9) Petition of **William L. Morton and Kim L. Tyndall, owners**, for property located at **612 South Street, Unit B**, wherein the following were requested: 1) a Variance from Article II, Section 10-206(12) to allow a business office and the warehousing and distribution of goods from a residential property in a district where such use is not allowed. 2) a Variance from Article XII, Section 10-1204 to not provide required parking for the business. Said property is shown on Assessor Plan 112 as Lot 3 and lies within the General Residence A district. Case # 3-8

The Board of Adjustment, at its meeting of March 23, 2004, voted to **table** the petition to the April 20, 2004, Board of Adjustment meeting.

**II. ADJOURNMENT**

The motion was made and seconded to adjourn the meeting at 10:15 p.m.

Respectfully submitted,

Judith A. Claveau,  
Secretary