

**ACTION SHEET – BOARD OF ADJUSTMENT**

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

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

**RE:** Actions Taken by the Portsmouth **Board of Adjustment** meeting held on **April 20, 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, David Witham, Arthur Parrott, Alternate Duncan MacCallum, and Alternate Steven Berg

**EXCUSED:** n/a

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**I. OLD BUSINESS**

A) 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) is 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

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

1. That there be no overnight parking of tractor-trailer trucks on-site.
2. That the car wash facility be operated in such a way that the process water is 100% recycled and none of the process water leaves the facility. (Planning Department clarification: With the exception of maintenance pumping of the closed system.)
3. That no more than 9 trucks be allowed to be parked on-site.
4. Any future changes come back before the Board.

The Board felt that the plan was an improvement over the existing conditions of the site and that granting the Variance would be in the public interest both aesthetically and environmentally. They felt that the zoning restrictions applied to this property would interfere with the owner's reasonable use of the property, considering its unique setting. They felt that granting the

Variations would create an environmental improvement to the property by limiting runoff, and the existing property would be improved aesthetically.

They felt that if the Variance were not granted, there would likely be no improvement to property, and that the public benefit would outweigh any specific restrictions that zoning would require. They stated that the proposed petition would be an improvement for the public and that there were no abutters that would be negatively impacted if the Variations were granted.

Substantial justice is done to owners in being able to improve their property and expand the nonconforming use and the public would benefit from an updated and environmentally cleaner use of the property. The Board felt that granting the variance would not diminish the value of surrounding properties, as it would be more environmentally sensitive and aesthetically pleasing.

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B) 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 April 20, 2004, acted to table the petition to the end of the agenda for the April 27, 2004 Board of Adjustment meeting, due to the fact that no one was present to speak to the petition nor had we received any written requests to table the petition.

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C) Petition of **Eric A. Spear** and **Jean C. M. Spear, owners**, for property located at **57 Mt Vernon Street** wherein Variations 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

As a result of this consideration, the Board voted to **grant** the request as advertised and presented as it met the five criteria. The Board felt that granting the Variance would not be contrary to the public interest due to the fact that it backs up to City property. Special conditions exist in respect to the location of the property at the end of a one-way street, whereby literal enforcement of the Ordinance would gain nothing for the property owner nor the public.

The Board felt that the requested Variance was consistent with the spirit, allowing owners the full use of their property. They felt that in this case, the owner was unable to use his property as the structure is substandard and the foundation was poor to non-existent. Substantial justice would be done by granting the Variance, allowing full utilization of the property by the owner. Granting the Variance would create no diminution but rather would enhance the value of this and surrounding properties. The Board also felt that the plan was well-thought out and the scale appropriate, creating no over-intensification of the area.

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D) 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

As a result of this consideration, the Board voted to **deny** your request as advertised and presented as it did not meet the required criteria. The Board felt that the operation of the proposed business could have a detrimental effect on the abutters. They felt that the property was located at a very busy intersection and that it would not be an appropriate use for the neighborhood. They felt that protecting the character of residential zoning was very important and that it was necessary to look at the nature of the requested use, rather than the volume of activity that might be involved. They stated that it would be a commercial use in a residential zone and based on the principles of maintaining the integrity of the residential area, they felt they could not grant the request.

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E) A Request for Rehearing for **2400 Lafayette Road, owners**, and **Wash Me Now, LLC, applicant**, requested by Bernard Pelech, Esq. for property located at **2400 Lafayette Road**. Said property is shown on Assessor Plan 273 as Lot 6 and lies within the General Business District.

As a result of such consideration, it was voted that your request be **denied**.

The Board found that no procedural errors had been made in the decision and that no new evidence had been presented, that was not available at the time of the hearing.

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## I. PUBLIC HEARINGS

1) Petition of **Barney A. Share Revocable Trust and Diane L. Share Revocable Trust, owners**, for property located at **38 Thaxter Road** wherein a Variance from Article IV, Section 10-402(B) is requested to allow a 22'x 22' one story garage with: a) 3' rear yard where 10' is the minimum required and b) 25.1% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 166 as Lot 36 and lies within the Single Residence B district.  
Case # 4-1

As a result of this consideration, the motion to grant failed; therefore, the petition was **denied** with a vote of 3 to 4.

Some of the Board members felt that a hardship had not been demonstrated in this case nor had the applicant met the requirements of the five criteria in the areas of uniqueness of property and diminution to the neighboring properties. They felt that the applicant could move the garage 10' from the property line and still meet the dimensional requirement.

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2) Petition of **Michael W. Derhammer and Mary M. Calhoun, owners**, for property located at **21 Burkitt Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 12' x 19' deck including stairs with: a) a 3.5' rear yard where 20' is the minimum required, b) a 9' right side yard where 10' is the minimum required; and, c) 36.4% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 160 as Lot 18 and lies within the General Residence A district. Case # 4-2

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

- That the deck remain clear and open to the sky

The Board felt that granting the Variance would not be contrary to public interest and that it would enhance the property. Considering the size of the lot and the close proximity to Burkitt Street, they felt that it was reasonable to construct a deck on the rear of the house. There is no fair and substantial reason that the ordinance would not allow a deck to be constructed on this property. They felt that the public and private rights of abutters would not be harmed, stating that no one had stated any opposition to the petition.

They also stated that granting the Variance would be consistent with the spirit of the Ordinance, allowing the owners to enjoy their property fully. They felt that the proposed deck would improve the value of their property as well as the surrounding properties.

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3) Petition of **William C. Jr. and Sharon H. Imtloff, owners**, for property located at **150 Elwyn Road** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) a 13'4" x 6'6" two story addition with an 8' ± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 112 as Lot 41 and lies within the General Residence A district. Case # 4-3

As a result of this consideration, the Board voted to **grant** the request as advertised and presented as it met the five criteria.

The Board felt that there was no fair and substantial reason to restrict the owners from this plan and that it had been done in a manner respectful to the private rights of the abutters. They stated that granting the Variance would be consistent with the spirit of the Ordinance, as it would allow the addition of a needed bathroom, allowing the owners to fully utilize their property.

They felt that the narrow configuration of the lot posed problems with the expansion of the house without some zoning relief being granted, and that the request for this moderate expansion was reasonable. They also felt that the proposed expansion would increase the value of the property and surrounding properties as well.

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4) Petition of **James J. and Carla J. Murphy, owners**, for property located at **214 Leslie Drive** wherein Variances from Article III, Section 10-302(A) and Article IV Section 10-401(A)(2)(c) were requested to allow an 8' x 21' front deck with: a) a 16' front yard where 30' is

the minimum required and b) 22% building coverage where 20% is the maximum allowed Said property is shown on Assessor Plan 209 as Lot 54 and lies within the Single Residence B district. Case # 4-4

As a result of this consideration, the Board voted to **grant** the request as advertised and presented as it met the five criteria.

The Board felt that it would be in the public interest to replace the narrow, deteriorated front steps with a deck entrance and that the owner's plan was thoughtful regarding impact to surrounding neighbors. They felt that there was no fair and substantial reason to restrict this plan as it was an improvement over outdated construction that needed replacement and that it would be consistent with the spirit of the Ordinance to allow the owners to enjoy their property.

The Board felt that the request was minimal and that no over-intensification of the property would occur as a result of granting this request. They also stated that it would be an enhancement, creating added value to the owner's home and abutting properties.

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5) Petition of **Scott Buchanan, owner**, for property located at **293 Austin Street** wherein Variances from Article IV, Section 10-402(B) and Article III, Section 10-302(A) were requested to allow an irregular shaped 324 sf shed with: a) a 1' left side yard, a 0' right side yard and a 0' rear yard where 10' is the minimum required for each and b) 49.4% building coverage where 35% building coverage is the maximum allowed. Said property is shown on Assessor Plan 145 as Lot 57 and lies within the Apartment district. Case # 4-5

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

- That the proposed structure remain a shed and not a residential dwelling

The Board felt that the request would not be contrary to the public interest due to its location at the back of the lot and that the building had resided in this location for many years successfully. They felt that special conditions existed in the small size of the lot, limiting the size of the proposed structure and its location on the lot; therefore, literal enforcement of the Ordinance would result in hardship to the owner. They stated that granting the Variance would not harm the public or private rights of others, and noted that no opposition to the plan had been presented.

## **II. ADJOURNMENT**

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

Respectfully submitted,

Judith A. Claveau,  
Secretary

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