

**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 27, 2004**, in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

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

**EXCUSED:** Robert Marchewka

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**I. OLD BUSINESS**

6) Petition of **Susan Henderson, owner**, for property located at **227 Cass Street** wherein the following were requested: 1) Variances from Article III, Section 10-302(A) and Article IV, Section, 10-401(A)(2)(c) to allow a 16' x 28' two story addition with a 2' left side yard where 10' is the minimum required, and 2) a Variance from Article II, Section 10-206(2) to allow a single family dwelling with a new addition to be converted into a two family dwelling on a lot having 4,190 sf of area where 7,000 sf of area is required for two dwelling units (3,500 sf per dwelling unit). Said property is shown on Assessor Plan 147 as Lot 3 and lies within the Apartment district. Case # 4-6

As a result of this consideration, the request was **denied** by a 6 to 1 vote, as it did not meet all the requirements of the five criteria.

The Board stated that the neighborhood is extremely congested and noted that the abutters' concerns regarding availability of parking were valid. They stated that the house is on a small lot, and turning it into a duplex, may increase the number of cars, leading to a detriment. They felt that granting the request would not be in the spirit of the Ordinance which is to maintain light and air and overintensification of the use of the property.

They could find no hardship, since it is a large house that has been successfully used in its present configuration for a long time, and is consistent with houses in the neighborhood.

The Board felt that the intent of the Ordinance was to keep the houses intact and it was important to maintain the character of the neighborhood. They felt that granting the request for a large addition would be detrimental to the neighborhood as a whole; and, therefore, not a benefit to the public.

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7) Petition of **Barry and Carol L. Shore, owners**, for property located at **91 South Street** wherein the following were requested: 1) a Variance from Article IV, Section 10-402(B) and Section 10-401(A)(2)(c) to allow a 3' 10" x 15' - 1 ½ story addition to the left side of the existing garage with an 8.1' left side yard and an 11' rear yard where 12.3' is the minimum required for both, and 2) a Variance from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow a 13' 3" x 18' 5" - 1 ½ story addition to the rear of the existing dwelling with a 6" right side yard where 10' is the minimum required and b) a total of 355.25 sf of new building footprint creating 42.4% building coverage where

30% is the maximum allowed. Said property is shown on Assessor Plan 102 as Lot 46 and lies within the General Residence B and Historic A districts. Case # 4-7

The Board of Adjustment, at its reconvened meeting of April 27, 2004, acted on a written request to **table** the petition to the May 18, 2004 Board of Adjustment meeting.

8) Petition of **Timothy Griffin, owner**, for property located at **172 Elwyn Avenue** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 9' x 13'8" deck and a 14'6" x 11'4" sunroom creating 32.7% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 112 as Lot 39 and lies within the General Residence A district. Case # 4-8

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

The Board felt that the requested relief was very minimal and that it would not be contrary to public interest, as reflected by the neighbors' support. They stated that the proposed renovation would enhance the value of the property and abutters' properties as well. They felt that allowing the owner to ensure the preservation of the barn would also be in the public interest.

The Board stated that granting the request would be consistent with the spirit of the Ordinance, maintaining the same use, and that special conditions existed in terms of the size of the lot. The Board indicated that preventing the owner from making minimal changes to his home would not be reasonable, in respect to the intent of the ordinance which allows owners to make small improvements to their homes.

9) Petition of **Kimberley S. Andrews, owner**, for property located at **202 Dennett Street** wherein Variances from Article III, Section 10-302(A) and Section 10-401(A)(2)(c) were requested to allow a 462 sf deck with a 15' rear yard where 20' is the minimum required. Said property is shown on Assessor Plan 143 as Lot 4 and lies within the General Residence A district. Case # 4-9

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

- That the deck shall remain clear and open to the sky.

The Board felt that the requested relief was very minimal, causing no encroachment; and therefore would not be contrary to the public interest. They stated that the intent of the Ordinance was not to prevent owners from enhancing the livability of their homes or establishing recreational spaces. Hardship was found in the orientation of the home on a small, somewhat angular lot, whereby adding the deck would necessitate some setback relief.

10) Petition of **Elizabeth B. Larson, owner**, for property located at **668 Middle Street** wherein the following were requested: 1) a Variance from Article III, Section 10-301(A)(2) to allow the conversion of the existing freestanding carriage house with new additions into a dwelling unit in a district where all dwellings are to be located in the same building, and 2) Variances from Article III, Section 10-302(A) and Section 10-401(A)(2)(c) to allow a 22' x22' one story attached garage with a 4' right side yard where 10' is the minimum required. Said property is shown on Assessor Plan 147 as Lot 18 and lies within the General Residence A district. Case # 4-10

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

The Board felt that the request for a Variance would not be contrary to the public interest and that special conditions exist, given the fact that the building already exists with the present setbacks. The Board felt that the zoning restriction as applied to this specific property, would interfere with the reasonable use of the property. Given the size of the property, the Board felt that adding one unattached dwelling on this property would not be contrary to the spirit of the Ordinance and that substantial justice would be done in granting this Variance.

They stated that the requested number of units is allowed, and given the large size of the lot, there will be no infringement on the rights of others. They felt it would be a very good reuse of the building and granting the Variance would not diminish the value of surrounding properties, as it is not clearly visible from either of the two streets which abut the property, and also abuts another large piece of land. They also felt that the driveway to the rear may help alleviate the ingress and egress of cars off Middle Street.

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11) Petition of **T-Beyar LLC, owner**, and **Hisham El Sayed, applicant**, for property located at 141 Banfield Road wherein a Variance from Article II, Section 10-209(13) is requested to allow the retail and wholesale of used and new vehicles with no outside display of "For Sale" vehicles within 500' of a residential district. Said property is shown on Assessor Plan 254 as Lot 2 and lies within the Industrial district. Case # 4-11

This petition was withdrawn prior to the hearing per the request of Bernard Pelech, Esq.

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12) Petition of **Lafayette Plaza LLC, owner**, for property located at **2454 Lafayette Road** wherein a Special Exception as allowed in Article II, Section 10-208(36) was requested to allow a bay car wash (with recycling water) in a 60' x 40' in a district where such use is allowed by Special Exception. Said property is shown on Assessor Plan 273 as Lot 3 and lies within the General Business district. Case# 4-12

The Board of Adjustment, at its reconvened meeting of April 27, 2004, acted on a written request to **table** the petition to the May 18, 2004, meeting. Also noted was a request to re-advertise the petition for this meeting.

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13) Petition of **KWA, LLC, owner**, for property located at **85 Middle Street** wherein a Variance from Article II, Section 10-208(19)(a) was requested to allow the entire building to be used for a restaurant and associated bar area on a lot directly abutting a mixed residential district. Said property is shown on Assessor Plan 116 as Lot 16 and lies within the Central Business B district. Case # 4-13

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

- The square footage bar will remain as presented on Scheme A, submitted at the April 27, 2004 Board of Adjustment meeting.
- There shall be no live entertainment and any piped-in music shall not be audible at street level.

The Board noted that a restaurant is a permitted use in the Central Business B zone but given that it abuts a Mixed Residential District, a Variance would be necessary. The Board expressed that the type

of restaurant proposed would not attract loud patrons and they felt that the heavy masonry construction of the building would contain sound well. They felt that the concerns regarding a buffer zone would be satisfied with the above-referenced stipulations, and therefore not contrary to the public interest.

The Board noted the difficulties encountered with keeping the building occupied due to the interior layout, and felt that the proposed restaurant would be a good fit for the structure. They also felt that the limitation which has been set regarding the size of the bar will ensure no injury to the public or private rights of others.

They felt that it was consistent with the spirit of the Ordinance to allow businesses to thrive in the Central Business District and that substantial justice would be done in granting the Variance as it would allow a building that has been vacant for two years to be used. Granting the Variance will not diminish the value of the surrounding properties; but rather act as an attraction to the area.

They felt that the overall traffic impact would be minimal and that parking would be manageable, as noted by the experience of several adjacent restaurants that have operated successfully with no designated parking.

## **II. ADJOURNMENT**

The motion was made and seconded to adjourn the meeting at 11:00 p.m.

Respectfully submitted,

Judith A. Claveau,  
Secretary

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