

**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 **May 18, 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 Steven Berg and Alternate Duncan MacCallum

**EXCUSED:** Bob Marchewka

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**I. OLD BUSINESS**

A) 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) is 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 (**Tabled at April 27, 2004 Reconvened Board of Adjustment Meeting and has been re-advertised.**)

At the May 18, 2004 Board of Adjustment meeting, Chairman LeBlanc received a written request, dated May 14, 2004, **withdrawing** this application.

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B) 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

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

- That the foundation of the addition be constructed as presented in the foundation, plan dated and given to the Board of Adjustment on May 18, 2004.
- That there be no plumbing or residential use of the garage space. That the use be accessory only.

The Board felt that the concerns of the Planning Department, in respect to the foundation had been addressed; and, concerns regarding run-off from the house onto the street, would not be any worse as the house already sits on the street. They viewed the addition of gutters as a positive move in managing the run-off situation as well.

They felt that the request would not be contrary to the public interest as the property is located on a dead-end street where there wouldn't be much public interest or traffic.

The Board felt that special conditions exist in regards to the property, given its location on a short, dead-end street, the age of the house and the size of the lot. They stated that two of the additions would be interior to the property and thus would not affect anyone; nor would the garage addition cause anyone any problems. They felt that the literal enforcement of the Ordinance, in this case, did not apply.

The Board felt that the zoning restriction does deny the owners, somewhat, the use of their property, in that it is small and there would be no way to enlarge it within the requirements of the ordinance. They stated that the owners plan to enlarge their house, and will be doing it in an architecturally acceptable manner, including review by the Historic District Commission as well, which is a mitigating factor.

They felt that no fair and substantial relationship existed between the general purpose of the zoning ordinance, which refers to preservation of light, air and other factors affecting the general benefit of the public. They stated that the support of the neighborhood, who were in attendance at the meeting, was evidence that granting the request would not injure the public or private rights of others.

They stated that request for Variance is consistent with the spirit of the Ordinance which allows people to enjoy their property, within reason, and change it as it suits them, providing it does not injure the rights of others.

The Board felt that substantial justice would be done by granting the Variance, as there is no evidence to the contrary; and, that there would be no diminution of surrounding properties as a result of granting the Variance.

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C) 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) is requested to allow the construction of a two-unit dwelling having 12,064 sf where the minimum required is 15,000 sf (1500 sf of lot area per dwelling unit). Said property is zoned Residential Single-Family District 7-2 and lies within the General Residence A district. Case # 3-4

At the May 18, 2004, Board of Adjustment meeting, Chairman LeBlanc received a written request from Attorney Pelech, dated May 7, 2004, withdrawing this application.

D) **Request for Rehearing** for the 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**. 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 May 18, 2004, considered a Request for Rehearing. As a result of such consideration, it was voted that the request be **denied**.

The Board felt that no error had been made on the part of the Board; nor, did they find any recent information of substance to support the allegations of legal error.

They stated that in reviewing the issue, no new evidence was presented, as put forth by the applicant; nor could any basis be found on which the Board could grant a rehearing in good conscience.

**II. PUBLIC HEARINGS**

1) 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 3 bay car wash (recycled water) in a 2,400 sf building 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

This petition was re-advertised and then withdrawn per written request from petitioner's attorney. (See Old Business above)

2) Petition of **Vincent M. Yosua, owner**, for property located at **30 Spinney Road** wherein a Variance from Article IV, Section 10-402(B) was requested to allow an 8' x 10' deck adjacent to an above ground pool with a 3'± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 171 as Lot 2 and lies within the Single Residence B district. Case # 5-1

As a result of this consideration, the Board voted to **deny** the request as advertised and presented, as it did not meet the required criteria.

The Board felt that the request failed to meet any of the tests for hardship. They expressed the importance of adhering to the 10' requirement as a key part of the issue, and that this is a situation where an owner did something that is directly contrary to the spirit and the written letter of the ordinance, when compliance would have been fairly easy. The Board felt

that if the Inspection Department had been consulted before building, the matter of the set backs could have been addressed at that time.

The Board felt that granting the variance would not be in the public interest as it is contrary to the purpose of the ordinance, which exists for the general benefit of the public.

They stated that the zoning does not interfere with the owner's reasonable use of the property; and, that the deck could have been built in another location on the owner's property and still have met the requirements of the Ordinance. They felt there was a fair and substantial relationship between the purpose of the ordinance and the restriction on the property and that the abutter was within his right to ask that the owner respect the 10' requirement.

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3) Petition of **William F. Cowgill, Margaret S. Cowgill & Thomas M. Cowgill, owners**, for property located at **88-90 Wibird Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 10' x 16' deck with: a) a 7'± right side yard where 10' is the minimum required, and b) 29.4% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 148 as Lot 58 and lies within the General Residence A district. Case # 5-2

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 adding the deck would provide a safer environment and a more reasonable use of the property than the existing exit. They recognized the hardship regarding the windows on the back of the house in relationship to the positioning of the door. They noted that encroachment would be on the driveway and would cause no negative impact on the area and that the lot coverage increase of 2.5% was a minimal request.

They stated that granting the Variance would not be contrary to the public interest as there is no public on the side of the house in question. They felt there would be no negative impact on light or air by granting this Variance, as it abuts the driveway.

The Board felt that special conditions exist in that the house is only 7' from the property line; and, noted that the proposed renovation would encroach no further than what presently exists. If the zoning restriction were applied to this specific property, the Board felt it would interfere with the owner's reasonable use of the property and take away the function of the deck.

The Board stated that granting the Variance would not injure the public or private rights of others and they felt it would be within the spirit of the Ordinance to allow the owner to add a deck of minimal size. They felt that substantial justice would be served in permitting the owner to beautify and improve the utility of his property and they felt that no diminution would occur in surrounding properties as a result of granting this Variance.

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4) Petition of **Clear Channel Broadcasting Inc., owner**, for property located at **815 Lafayette Road** wherein a Special Exception as allowed in Article II, Section 10-10-208(51) was requested to replace 5 existing panel antennae with 12 panel antennae at the height of 165' on the existing 490' antenna. Said property is shown on Assessor Plan 245 as Lot 3 and lies within the General Business district. Case # 5-3

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

- That prior to the installation of the antenna package, a Licensed Civil Engineer perform an on-site inspection of the tower (as far as it can be seen), its foundation, attachments and guy system, to ensure that all is in sound condition and will support the existing and proposed antennas.

The Board felt that there would be no hazard to public or adjacent property as specified in the standards for granting Special Exception, due to the fact that there is nothing to burn nor any process occurring that would release any toxic materials.

They stated that granting the Special Exception would create no detriment to property values or change the characteristics of the area, as the tower is well established. They also felt that this passive operation would not create concerns with parking, access ways, odor, smoke, gas, dust or other pollutants; nor would there be noise, glare, heat or vibration as a result of granting this request.

The Board felt that there would be no traffic safety hazard or congestion; nor would there be any increased demand on municipal services or increase in storm water run-off as a result.

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5) Petition of **Joseph R. Gobbi Jr., owner**, for property located at **27 Elm Court** wherein Variances from Article III, Section 10-304(A) and Article IV, 10-401(A)(2)(c) were requested to allow a 12' x 18' two story addition with: a) a 3'± rear yard where 15' is the minimum required, and b) a 13' right side yard where 15' is the minimum required and 2) a Variance from Article IV, Section 10-401(A)(1)(b)&(c) to allow the expansion of a single family dwelling in a district where such use is not allowed. Said property is shown on Assessor Plan 164 as Lot 9 and lies within the Business district. Case # 5-4

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 allow this building to remain a residential use, as evidenced by various abutters who have expressed concerns about their rights and benefits as residential property owners in this small residential area.

They felt that there is hardship in the location of the property, bounded by the railroad, a very busy intersection, and a difficult access from Islington Street. They felt that given the size

of the house, it would be reasonable and within the spirit of the Ordinance to allow them to expand.

The Board stated that granting the Variance would not be contrary to the public interest, nor would it interfere with the public or private rights of others. They felt that the building was in need of renovation and what was proposed would increase the value of their property and surrounding properties as well.

The Board found no issue of substantial justice and commented that it would be a wonderful continuation of a revival currently occurring on Elm Court.

6) Petition of **Robert J. Chaffee and Barbara A. Trimble, owners**, for property located at **32 Miller Avenue** wherein a Special Exception as allowed in Article II, Section 10-207(8) is requested to allow the expansion of the 2<sup>nd</sup> floor of a proposed attached garage. Said property is located at 32 Miller Avenue and lies within the Mixed Residential Office district. Case # 5-5

This Petition request was no longer required as the owner eliminated the expansion of the Bed & Breakfast use in the second floor of the garage.

7) Petition of **Craig A. Hood and Amy N. Brnger, owners**, for property located at **139 Clinton Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 16' x 21' one story addition with a 4' right side yard where 10' is the minimum required. Said property is shown on Assessor Plan 162 as Lot 42 and lies within the General Residence A district. Case # 5-6

As a result of this consideration, a motion to grant failed and the Board voted to **deny** the request as advertised and presented as it did not meet the required criteria.

Some Board members felt that the setback requested was not out of character for the neighborhood and granting the Variance would not take away from the enjoyment of the abutter as the proposed addition would abut a building without windows.

The majority of the Board members could not support the motion to grant, stating that there were ample locations in which to place the addition. They felt it could have been placed in several spots along the back of the building or in a separate building on the lot and still meet the 10' requirement. They stated that the zoning Ordinance, in this case, was appropriately applied and that the 10' requirement was not excessive.

The Board found no special conditions, with respect to this property, such that literal enforcement of the Ordinance would result in unnecessary hardship to the owners. They noted that it was a rectangular lot and that the house was located in the middle. They felt that there were no features of the yard that would prevent the addition from being put in several locations. They felt there was no substantial reason why the owners could not comply with the Ordinance.

Some of the Board members felt that the proposed addition would affect the abutter's visual landscape and the circulation of air. They also expressed concern that granting the Variance would affect the potential improvements on the abutter's property for the future and thus potentially affect the value of his property.

8) Petition of **Sharan R. Gross Revocable Trust, owner**, for property located at **201 Cate Street** wherein a Variance from Article IX, Section 10-908 was requested to allow a 40 sf attached sign for a hair salon in a district where commercial signs are not allowed. Said property is shown on Assessor Plan 163 as Lot 32 and lies within the General Residence A district. Case # 5-7

As a result of this consideration, a motion to grant failed, therefore, the request was **denied**.

Some of the Board members felt that it would not be contrary to the public interest, noting that no one had voiced any opposition. They felt that a special condition existed in that one cannot have a business without advertising, allowing the public to be aware of the location and nature of the business.

The majority of the members could not support the motion to grant the Variance given the fact that it is proposed in a residential area. They felt that this area was surrounded by commercial properties and allowing an excessively large sign to exist would further detract from the character of the residential area.

9) Petition of **Stacey L. Bussing, owner**, and **Lee Gove, option holder**, for property located at **51 Morning Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow an irregular shaped 276 sf two story building after demolition of the existing 276 sf addition with 38.2% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 163 as Lot 16 and lies within the General Residence A district. Case # 5-8

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

The Board felt that the requested Variance would not be contrary to the public interest due to the fact that the proposed expansion was upward as opposed to outward, and was a single house on a single lot. It was felt that special conditions existed with respect to the size of the house and the lot and allowing the expansion would make the house more useful for the owners.

They stated that literal enforcement of the Ordinance would be an unnecessary hardship; and, that the restriction as applied to this specific property, interferes with the owners reasonable use of the property due to the small size of the house and lot.

The Board could see no relationship between general purposes and restriction on the property. They found no evidence that granting the Variance would injure either public or private rights as evidenced by the fact that no one was there to express any opposition to the Variance.

They felt that granting the Variance would be consistent with the spirit of the Ordinance, making the property more useful to the owner; and, substantial justice would be done by allowing the owner to improve his property. Lastly, granting the Variance would not diminish the value of surrounding properties as the proposed addition would be an improvement to the property.

The motion was made and seconded to adjourn the meeting at 11:15 p.m.

Respectfully submitted,

Judith A. Claveau,  
Secretary

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