

ACTION SHEET

**BOARD OF ADJUSTMENT
PORTSMOUTH, NEW HAMPSHIRE
June 15, 2004**

To: John P. Bohenko, City Manager

From: Judith Claveau, Planning Department

Re: Actions Taken by the Portsmouth **Board of Adjustment** meeting held on **June 15, 2004**, in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

Present: Chairman Charles LeBlanc, Vice Chairman Jim Horrigan, Alain Jousse, Bob Marchewka, Nate Holloway, Arthur Parrott, Alternate Steve Berg

Excused: David Witham, Alternate Duncan MacCallum

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**I. OLD BUSINESS**

A) Request for a **One-Year Extension of Variance** by **Parrott Avenue Place, Inc.**, owners of property located at **127 Parrott Avenue**, whereby the following was requested: a Variance to allow 22 existing parking spaces onsite where 46 parking spaces are required in conjunction with a proposed 18' x 30' two story addition and existing uses onsite.

As a result of this consideration, the Board voted to **grant** the request to extend the Variance to June 15, 2005.

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II. PUBLIC HEARINGS

1) Petition of **Andrew J. Widen, owner, Jonah Fernald d/b/a Portsmouth Rent & Ride, applicant**, for property located at **955 Sagamore Avenue** wherein a Variance from Article II, Section 10-208(2) was requested to allow the rental and sales of bicycles, cross-country skis, snow shoes and related products in a district where such use is not allowed. Said property is shown on Assessor Plan 201as Lot 1 and lies within the Waterfront Business district. Case # 6-1

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

It was felt that given the environment in Portsmouth, it is difficult for a waterfront business to operate successfully year-round. They felt that it would present a hardship for both the owner of the business and the property owner, as the ability to rent out waterfront property in the winter can pose a problem, as opposed to a summer rental. At least $\frac{3}{4}$ of the building is used in a way that complies with

the code; and, the purpose of the other uses is to carry the business over from one kayak season to the next.

They felt that the additional uses proposed would complement the seasonal rental of kayaks; and, that it would not be fair to penalize a business owner if they want to make a living year round, by preventing them from engaging in other ventures which would be of interest to his customers year round.

It was stated that the Zoning Ordinance would interfere with the reasonable use of the property by prohibiting these related uses. It was felt that there would be no fair and substantial relationship between the purpose of the Zoning Ordinance and the specific restriction on the property; and if a kayaking business is encouraged, in other months, they might have to rent skis.

A minority of the members of the Board felt that there was no fair and substantial relationship between the general purpose of the zoning ordinance and specific property. They added that the waterfront district is constantly under potential attack from would-be developers and that this district is one of the variables that define the unique character of our community.

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2) Petition of **Richard J. Menard, owner**, for property located at **137 Elwyn Avenue** wherein a Variance from Article IV, Section 10-402(B) was requested to allow a 24' x 24' detached one story garage with: a) a 4' left 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 112 as Lot 48 and lies within the General Residence A district. Case # 6-2

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

The Board felt that the public interest would be met by allowing a garage for the property owner and removing some of his vehicles off the street to provide safer conditions on Elwyn Avenue and McNabb Court.

The Board explained that one of the parts of the area variance is to enable the proposed use of the property, given the special conditions of the property. They felt that a special condition exists in that a footing for the garage already exists and it would make sense economically and technologically to use part of that footing for the new garage.

It was noted that the proposed building would be located approximately along the same sideline as the previous garage; yet, it would be moved back 10'. They felt that it would be an improvement on the non-conforming conditions of the previous garage.

The Board stated that the benefit sought by the applicant could not be achieved by any other method as it is a very small lot and in order to build a two-car garage, they are bound to exceed the coverage. They stated that the spirit of the Zoning Ordinance encourages the development of garages on residential properties and it did not appear that anyone's public or private rights would be violated. They felt that rather than diminution of the value of the surrounding properties, the new garage would enhance the appearance and value of the property, as opposed to the former garage that was in need of repair. It was noted that the positioning of the garage would be the best location in respect to neighboring properties as it would abut the neighbors' garages. The 4% increase in lot coverage was not felt to be excessive.

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3) Petition of **Malthouse Exchange Realty Trust, owner, Everyone Does The Dishes LLC, applicant, d/b/a Slate**, for property located at **95 Brewery Lane Unit #7** wherein a Variance from Article II, Section 10-208(19) was requested to allow a 4,200 sf restaurant with a bar in a district where such use is not allowed. Said property is shown on Assessor Plan 146 as Lot 27 and lies within the Business district. Case # 6-3

The Board of Adjustment, at its meeting of June 15, 2004, withdrew the application for a Variance per the request of Attorney Bernard Pelech.

It was agreed that the petition would be withdrawn and re-advertised for the July Board of Adjustment meeting. Attorney Pelech agreed to assume the cost.
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4) 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 24 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 # 6-4

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

- That no neon or internally illuminated signage be allowed.
- That the sign be illuminated only during hours of operation.

It was stated that the intent of the Zoning Ordinance is not to imply that a business cannot have a sign for identification; and, that it would be in the public interest to allow them to do so. The Board felt that attaching the sign to the building was more sensitive to the residential abutters, as opposed to a sign out front. They felt there would be no injury to public or private rights of others due to the fact that the size of the sign had been reduced considerably and it would only be illuminated during business hours.

They felt it was consistent with the spirit of the Ordinance to allow this business to advertise and there would be no substantial justice issue since the size of the sign has been reduced. The Board stated that the present building was an improvement over the former building; and, allowing them to have a sign will not diminish the value of surrounding properties.  
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5) Petition of **E&V Truck Leasing Inc., owner, Premier Development Enterprises Inc., applicant**, for property located off **Lafayette Road** wherein a Variance from Article II, Section 10-208(53)(E) was requested to allow a temporary retail business in carts or trailers with an outdoor display area in excess of a 6' strip abutting and around the carts and trailers. Said property is shown on Assessor Plan 297 as Lot 2 and lies within the General Business district. Case # 6-5

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

- That the variance be granted contingent upon curb cut approval by the Department of Transportation

- That the variance expires on October 15, 2004

The Board felt that the variance would not be contrary to the public interest as the past sales of sheds, outdoor childrens' play yards and seasonal furniture has occurred on Route 1 without posing any major problems. The Board felt that a hardship existed in that the restrictions of the Zoning Ordinance would prohibit the sale of seasonal items and it was felt that it was not the intent of the Zoning Ordinance to do so.

They felt that it would not be contrary to the public interest as there was nothing on the land that would be impacted; and, it was consistent with the spirit of the Ordinance to allow seasonal sales on certain parcels of land. The Board felt that there would be no diminution of surrounding property values since the request would be of a temporary nature. They stated ingress and egress to the property would not pose a problem based on the experience of businesses that surround the vacant lot and have similar driveways.

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6) Petition of **David F. Meehan, owner**, for property located at **766 Sagamore Avenue** wherein a Variance from Article III, Section 10-302(A) was requested to allow 708 sf L-shaped two story attached garage with second floor study and basement with a 5' left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 223 as Lot 4 and lies within the Single Residence B district. Case # 6-6

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

- That the property remains a single-family residence property.

Given the nature of the lot, the location of the septic system and the presence of ledge, the Board felt that this would be the only logical place to put the garage. They also felt that it would be in the public interest to replace the existing garage with a new structure. They stated that it would be a reasonable use of property to construct an attached two-car garage, given the winter weather.

They felt that substantial justice would be done and granting the variance would not injure the public or private rights of others, referring to the fact that no one had voiced any opposing views. It was agreed that granting the variance would not diminish the value of surrounding properties but only serve to enhance that property and adjacent properties as well.

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7) Petition of **Derek M. and Wendy C. Rolfe, owners**, for property located at **419 South Street** wherein a Variance from Article III, Section 10-302(A) was requested to allow a 848 sf one story addition with an 11' rear yard and a 331 sf addition with a 12' rear yard where 20' is the minimum rear yard required. Said property is shown on Assessor Plan 112 as Lot 54 and lies within the General Residence A district. Case # 6-7

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

The Board felt that special conditions exist in the fact that the lot is oddly configured and largely taken up by a driveway, leaving little room for expansion of the home. They felt that the plan was reasonable and well-thought-out; and, that it would have the least amount of impact on abutting properties, which would be in the public interest.

They felt that the proposed expansion would fit in with the character of the neighborhood; and, that substantial justice would be done in allowing the expansion of this house, which is small by contemporary standards. They noted that there had been no negative input from neighbors. They stated that the renovation would increase the value of the property as well as surrounding properties.

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8) Petition of **Margaret M. Brennan, owner**, for property located at **86 Thornton Street** wherein the following were requested: 1) a Variance from Article II, Section 10-206 to allow one room and a bathroom in the basement to be used for a business (The Joyful Healing Place), and 2) a Variance from Article XII, Section 10-1204 Table 15 to allow no parking to be provided for the business where two parking spaces are required. Said property is shown on Assessor Plan 160 as Lot 2 and lies within the General Residence A district. Case # 6-8

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

- That it remain a one-person business with no employees
- That no signs advertising the business be allowed on the property
- That the hours not exceed Monday through Friday, 10 a.m. to 7 p.m.; and Saturday, 10 a.m. to 1 p.m.

The Board felt that this was a modest extension of the home occupation and a minor request. They noted that parking was a concern and felt that there would be a very limited demand on parking for this particular business use. The Board did not feel that that granting the variance would pose any harm to public or private rights as evidenced by the petition signed by neighbors in support of the request. They felt that the addition of one extra car at this business would not diminish the value of this property or surrounding properties.

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9) Petition of **Friends of The Music Hall, owner, Portsmouth Community Radio, applicant**, for property located at **28 Chestnut Street** wherein a Variance from Article III, Section 10-304(A) was requested to amend the previously approved 20' antenna to a 25' antenna with associated elements where the maximum height allowed is 10' for roof appurtenances. Said property is shown on Assessor Plan 126 as Lot 7 and lies within the Central Business B and Historic A districts. Case # 6-9

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

The Board felt that the purpose of this project was clearly related to the public interest. They stated that special conditions exist in respect to this property as established in the previous approval and that adding 5' to an antenna changes none of those concerns. Regarding hardship, the Board stated that this benefit could not be achieved by any other method since the extra 5' is required to meet FCC regulations.

They felt that the literal enforcement of the Ordinance would prohibit compliance with the FCC (Federal Communications Commission) regulations that are based on health and safety with respect to radio wave emissions. For these reasons, the Board felt that granting the variance would not injure the public or private rights of others and would serve to promote knowledge of the community. The Board

stated that substantial justice would be done in granting the variance since Portsmouth Community Radio has searched city-wide for a location and this location seems to work.

A motion was made and seconded and the meeting was adjourned at 10:00 p.m.

Respectfully submitted,

Judith A. Claveau,
Secretary