

**ACTION SHEET – BOARD OF ADJUSTMENT**

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

**FROM:** Jane Shouse, Planning Department

**RE:** Actions Taken by the Portsmouth **Board of Adjustment** meeting held on November 16, 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, Bob Marchewka, Arthur Parrott, David Witham, Alternate Steven Berg

**EXCUSED:** Alternate Duncan MacCallum

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**I. OLD BUSINESS**

A) Petition of **Eric Weinrieb, owner**, for property located at **1 Jackson Hill Street** wherein the following were requested for the construction of a 28' x 32' two story single family dwelling: 1) Variance from Article III, Section 10-301(A)(2) to allow a freestanding second dwelling on the lot in a district where all dwelling units are required to be in one building, and 2) Variance from Article III, Section 10-302(A) to allow said building to have: a) a 14'+ rear yard where 20' is the minimum required, and b) to have two dwelling units on a 11,650 sf lot where 15,000 sf would be required. Said property is shown on Assessor Plan 141 as Lot 30-2 and lies within the General Residence A and Historic A districts. Case # 10-4

At the request of the applicant, the Board voted to **table the petition to a time indefinite.**

B) Request for a one-year extension of time for **Michael Clark, owner**, of property located at **325 Little Harbour Road**. A Special Exception was granted on January 20, 2004. Said land is shown on Assessor Plan 205 as Lot 2 and lies within a Rural District.

After consideration, the Board voted to **grant** the one-year extension.

**II. PUBLIC HEARINGS**

1) Petition of **Bruce D. Campbell, owner** for property located at **245-249 Lincoln Avenue** wherein the following Variances were requested from Article IV, Section 10-401(A)(2)(c) and Section 10-402(B) to allow: a) a 6' x 12' 2<sup>nd</sup> story deck and stairs on the left side of the garage with an 8'+ rear yard where 11.25' is the minimum required as a result of raising the roof to 15' at the midpoint and adding a dormer, and b) 48.9±% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 130 as Lot 46 and lies within the General Residence A district. Case # 11-1

As a result of this consideration, the Board voted to **deny** the request as advertised and presented for the following reasons:

- The project is overly ambitious for the purpose of replacing a roof and allowing access to a second floor, or "attic." area of the garage.

- The variance would be contrary to the public interest as the landing would serve as a deck and, with its height, be detrimental to the neighbors' enjoyment of their yards. Even without the deck, a variance would result in an over-intensification of the property.
- Literal enforcement of the ordinance would not result in unnecessary hardship as the same purpose could be accomplished without a variance. Other reasonably feasible methods, i.e. pull-down stairs, are available to achieve the sought benefit.

2) Petition of **Robert McDowell, owner**, for property located at **379 Newcastle Avenue** wherein a Variance from Article IV, Section 10-402(B) was requested to allow a 10'8" x 16' one story garage with an 8'± front yard where 30' is the minimum required. Said property is shown on Assessor Plan 207 as Lot 4 and lies within the Single Residence B and Historic A districts. Case # 11-2

As a result of this consideration, the Board voted to **deny** the request as advertised and presented for the following reasons:

- While the Board understands the desire of the applicant to have a garage, a permit was issued based on submitted plans which were incorrect so the project went forward incorrectly.
- The variance would be contrary to the public interest as a safety hazard would be created by the proximity to the street, which has heavy vehicular, bicycle and pedestrian traffic.
- A variance is not needed to enable the applicant's proposed use of the property. There is enough space on this lot, and there are other reasonably feasible locations available to achieve the benefit sought.
- The variance is not consistent with the spirit of the ordinance due to the safety issue.
- The value of the surrounding properties would be impacted by the location of the garage on the lot and the safety issue.

3) Petition of **Patricia A. Horvath, owner**, for property located at **69 Middle Road** 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 8' deck with 3' x 7' stairs creating 20.9% building coverage where 20% is the maximum allowed.. Said property is shown on Assessor Plan 152 as Lot 10 and lies within the Single Residence B district. Case # 11-3

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

- These are relatively minimal variances and an 8' x 8' deck size is reasonable.
- The variance is not contrary to the public interest.
- Given the slope of the property, a deck is needed at this height to be in line with the rooms that would be accessed from the deck and there are no other reasonably feasible methods of achieving the same benefit.
- The variance is consistent with the spirit of the ordinance and substantial justice would be done by granting it.
- The value of the surrounding properties will not be affected.

4) Petition of **Brian D'Amour and Justine Whitney, owners**, for property located at **107 Pearson Street** wherein a Variance from Article III, Section 10-302(A) was requested to allow a 20' x 26' one story addition with a 20' front yard where 30' is the minimum required. Said property is shown on Assessor Plan 232 as Lot 101 and lies within the Single Residence B district. Case # 11-4

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

- 1) That this must remain a single-family house.

The request was granted for the following reasons:

- In granting some relief in the front yard setback, no public interest problem or safety issue is created due to the fact that this is a dead-end street, with limited traffic.
- The property abuts to wetlands at the rear, creating a hardship and difficulty in renovating in that area.
- Other methods to achieve the benefit sought are not reasonably feasible as they could negatively impact the integrity of the existing building's architectural lines.
- The variance is consistent with the spirit of the ordinance and substantial justice is done by providing needed room and continuing a front yard setback, which is visually consistent with the neighborhood.
- The proposal is the most feasible and attractive for the surrounding property owners, preserving and enhancing the value of their property.

5) Petition of **Wal-Mart Estate Business Trust, David Glass Managing Trustee, owner**, for property located at **2460 Lafayette Road** wherein a Variance from Article XII, Section 10-1203(A)(2) was requested to allow 12 loading areas to be provided where 19 are required. Said property is shown on Assessor Plan 285 as Lots 16-1 and 16-2 (to be combined) and lie within the General Business district. Case # 11-5

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

- 1) That the temporary storage facilities be removed when this project is completed;
- 2) That the variance previously granted on September 21, 2004 for 7 parking berths is rescinded; and
- 3) That only vehicles making deliveries to Wal-Mart be allowed to park on the lot.

The request with stipulations was granted for the following reasons:

- The variance will not be contrary to the public interest as the layout is sufficient to handle the traffic that will come to the area without overflow to public streets.
- The variance is consistent with the spirit of the ordinance, providing for public safety and interest. Twelve berths provide sufficient paved square footage for delivery purposes and it is not in the public's interest to create more pavement and less open space.
- Substantial justice is done by granting a variance, and the value of surrounding properties would not be diminished.

6) Petition of **Jeffrey F. and Deborah S. Purtell, owners**, for property located at **31 Pleasant Point Drive** wherein a Variance from Article III, Section 10-302(A) was requested to allow: a) a 26' x 60' two story single family dwelling on an existing foundation after the removal of all of or portions of the existing single family dwelling with a 25.3'± front yard where 30' is the minimum required and a right side yard less than 10' where 10' is the minimum required, b) and attached 326 sf front porch with a 6.1± right side yard where 10' is the minimum required, c) a 12' x 16' addition replacing existing porch with an 11.5'± rear yard where 30' is the minimum required; and, d) a 24' x 26' garage and connector (720 sf) with living space above creating 23.7% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 207 as Lot 27 and lies within the Single Residence B district. Case # 11-6

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

- 1) That the porch may not be enclosed other than by screening.

The request was granted for the following reasons:

- The variance will not be contrary to the public interest. The features of light and air will still be respected and the areas impacted by two of the variances abut streets which are not heavily travelled so no safety hazard is presented.
- The variance is needed given the special conditions of the property, those being the unique shape of the lot and the way the existing foundation is situated on it. Any adding on results in a jut-out into a setback, but the dwelling has been designed to conform as much as possible to the setback requirements.
- The only other alternative to achieve the benefit sought would be to tear out the foundation and rebuild, which would not be reasonably feasible and could adversely affect existing septic and leach field systems.
- The variance is consistent with the spirit of the ordinance – to allow people to improve their property while still respecting the public issues of light and air and open space. A portion of the proposed additional building coverage is space that is already being used for parking, which would now be enclosed.
- Substantial justice is done by allowing the applicant to build on the existing foundation as opposed to the greater financial commitment and neighborhood disturbance of digging up the lot and stretching out the timetable for the construction.
- The value of the surrounding properties will not be diminished.

The motion was made, seconded and approved to adjourn the meeting at 10:30 p.m.

Respectfully submitted,

Jane Shouse,  
Secretary

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