

**ACTION SHEET – BOARD OF ADJUSTMENT**

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

**FROM:** Mary Koepenick, Planning Department

**RE:** Actions Taken by the Portsmouth **Board of Adjustment** special meeting on December 14, 2004 in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Chairman Charles LeBlanc, Nate Holloway, Alain Jousse, Bob Marchewka, David Witham, Alternate Steven Berg and Alternate Duncan MacCallum

**EXCUSED:** Vice-Chairman James Horrigan, Arthur Parrott

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**I. APPROVAL OF MINUTES**

The Minutes of the Meeting of September 21, 2004 were reviewed and approved unanimously by the Board.

**II. PUBLIC HEARINGS**

1) Petition of **Lawrence and Ruth Gray, owners**, for property located at **80 Curriers Cove** wherein a Variance from Article III, Section 10-301(7)(a) was requested for retroactive approvals for the following where the minimum setback from salt water marsh wetlands / mean high water line is 100'. Item 1) Approval was sought for an existing second story deck with dimensions of 10' x 14' which differs from the plan submitted to the Board showing the second floor deck having dimensions of 8' x 14'. The second floor deck constructed by the Applicant's contractor has a curved front which results in the deck being 10' x 14', the maximum extent of the "bump out". The plan submitted shows this Item as being 74' from salt water marsh wetlands / mean high water line. Item 3) In June 2002 a building permit was issued to convert a screened porch and deck to living space. The screen porch converted to living space had a cropped corner to accommodate an existing tree. Subsequently the tree was removed and the cropped corner was extended and enclosed. The Application seeks approval for the enclosure of the corner. The plan submitted shows this Item as being 81' from salt water marsh wetlands / mean high water line. Item 4) In 2003 the Applicant received approvals to construct an 8' x 14' deck with a 4' x 4' platform and steps to the ground. Due to the geographical features on the ground, the steps and platform were configured in a manner different from plans submitted. The Applicant seeks approval of the platform and steps as they are presently configured in this Application. The plan submitted shows this Item as being 67' from salt water marsh wetlands / mean high water line. Item 5) During the renovation of the Applicants home, a new bow window was installed in the kitchen. The bow window makes no contact with the ground. The Applicants seek approval of this bow window. The plan submitted shows this Item as being 60' from salt water marsh wetlands / mean high water line. Said property is shown on Assessor Plan 204 as Lot 14 and lies within the Single Residence B district. Case # 9-2

After individual consideration and votes on each item of the request, the Board voted to **grant** all of the requests, as advertised and presented, for the following reasons:

- The variance will not be contrary to the public interest, which in this case, is protecting the wetlands. From professional testimony, it is determined that, even with the items currently existing, there is no measurable impact on the wetlands. In addition, demolition and repair would cause more disruption to the public interest.
- Literal enforcement of the ordinance would result in unnecessary hardship, and special conditions of the property require a variance to enable the proposed use. One special condition is the fact that two-thirds of the property is in an area which was designated a wetlands buffer area after the house was constructed. Another is that similar inland wetland protection ordinances make exceptions for existing homes, but this one does not.
- The benefit sought by the applicant cannot be achieved by some other reasonably feasible method. In the case of item 1, it was felt by the homeowners, builders and architects that a slight rounding of the deck would improve utility and/or aesthetics of the property. The change is a minor and reasonable one. With item 4, an alternative ending of the stairs at a rock wall was not feasible as the wall would not support the weight.
- The variance is consistent with the spirit of the ordinance as the wetlands buffer will not be adversely impacted. It is also within the spirit of another section of the ordinance which allows for small and reasonable expansion of existing properties. With specific reference to item 5, the bow window creates an overhang. Roof overhangs are allowed in the ordinance up to 30 inches, so this is not unreasonable.
- Substantial justice is done by not requiring the tear up and removal or alteration of elements that are already in place and which do not impact the wetlands.
- The value of surrounding properties will not be diminished. For the purposes of the wetland buffer and the environment of the surrounding properties, the deck and bow window constructions do not impede the flow of ground water.

## **II. ADJOURNMENT**

The motion was made, seconded and approved to adjourn the meeting at 12:30 a.m.

Respectfully submitted,

Mary E. Koepenick  
Acting Secretary

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