

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

ACTION SHEET

TO: John P. Bohenko, City Manager

FROM: Mary Koepenick, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment regular meeting on June 21, 2005** in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, , Nate Holloway, Alain Jousse, Robert Marchewka, Arthur Parrott, Alternate Steven Berg and Alternate Duncan MacCallum

EXCUSED: Vice Chairman David Witham

I. PUBLIC HEARINGS.

1) **Petition of Myles Bratter, owner**, for property located at **159 McDonough Street** wherein a Variance from Article III, Section 10-302(A) was requested to allow a left side yard of 0' where 10' is required and building coverage of approximately 56.5% where a maximum of 35% is allowed. Notwithstanding the above, an Administrative Appeal is made seeking to overturn the Administrative Decision to deny the issuance of the applicant's building permit. Said property is shown on Assessor Plan 144 as Lot 46 and lies within the Apartment district. Case # 6-1

After consideration, the Board voted to **grant** the petition with the following stipulations:

- That the structure will be built as presented to this Board;
- That an as-built plan will be provided to the Inspections Department prior to the request for a Certificate of Occupancy; and,
- That this Certificate shall only be issued by the City when the two aforementioned conditions are satisfied.

The petition was granted for the following reasons:

- The variance will not be contrary to the public interest as this is an allowed use and the location of the structure has been the same for over sixty years.
- An area variance is needed to enable the applicant's proposed use of the property due to the special condition of needing to rebuild a non-conforming, damaged structure.
- The variance is consistent with the spirit of the ordinance, allowing the building of an improved structure which will no longer encroach onto adjacent property.
- Substantial justice will be done by allowing the applicant to fully enjoy his property.
- It will improve the abutting property to eliminate the encroachment and no concrete evidence has been presented that the value of surrounding properties will be diminished.

2) Petition of **Sheila Curtin Cail Revocable Trust 2002, Sheila C. Cail Trustee, owner**, for property located at **579 Sagamore Avenue Unit 122** wherein a Variance from Article III, Section 10-301(A)(7)(a) was requested to allow a 13' x 13' one story addition 97.3'± from mean high tide line (after the demolition of the existing 9' x 9' sunroom) where 100' from salt water marsh wetlands or mean high water line of Sagamore Creek is required. Said property is shown on Assessor Plan 223 as Lot 30 and lies within the Single Residence A district. Case # 6-2

After consideration, the Board voted to **grant** the petition, as presented and advertised, for the following reasons:

- The variance will not be contrary to the public interest as the encroachment is so minor as to have no effect on the salt marsh or wetlands.
 - The special condition creating a hardship is that the house is situated right on the 100 foot setback and there is no other way to expand except by a variance.
 - It is not reasonable to require the applicant to re-engineer a small room or chop off part of the building and there is no other way to achieve the desired benefit.
 - With no impact on the wetlands, the variance will be consistent with the spirit of the ordinance.
 - Substantial justice will be done by allowing the applicant to expand in a reasonable manner as other neighbors and condominium owners have been able to do.
 - The value of surrounding properties will not be diminished in any way and may be increased.
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3) Petition of **Mark Greenwood and Janet A. Greenwood , owners**, for property located at **475 Dennett Street** wherein a Variance from Article III, Section 10-302(A) was requested to allow a 5' x 11' front entry porch with: a) a 12'± front yard where 15' is required, and b) creating 25.4% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 160 as Lot 28 and lies within the General Residence A district. Case # 6-3

After consideration, the Board voted to **grant** the petition, as presented and advertised, for the following reasons:

- The variance will not be contrary to the public interest, as the covered entry would be in conformance with the neighborhood.
 - A special condition necessitating a variance is that there are existing steps within the setback and this will simply roof-over the steps.
 - The desire to cover the front steps is architecturally and functionally reasonable and there is no other way to achieve this benefit.
 - In the spirit of the ordinance, setbacks as they relate to crowding, green areas and adequate spacing, will not be violated.
 - Substantial justice is done by allowing a nicely designed front stoop.
 - The value of surrounding properties will not be diminished by an aesthetically attractive front-step roof and support pillars.
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4) Petition of **David A. Perrault, owner, Nancy Grigor and Gale G. Brown Jr. applicants**, for property located at **300 Court Street** wherein a Variance from Article III, Section 10-303(A) was requested to allow: a) two previously approved dwelling units to be relocated within the building having one unit on the 1st floor and basement and the second unit on the 2nd floor, b) an irregular shaped 154.5 sf 1st floor deck with a 9'± rear yard and a 2nd floor 46 sf irregular shaped balcony with a 13'± rear yard where 15' is the minimum required in each instance, and c) 42.5% building coverage where 40% is the maximum allowed. Said property is shown on Assessor Plan 108 as Lot 12 and lies within the Mixed Residential Office and Historic A districts. Case # 6-4

After consideration, the Board voted to **grant** the petition, as presented and advertised, for the following reasons:

- The interior space will not impact the public interest as the configuration is simply being rearranged and, in light of limited parking and a narrow road, this more residential use is a benefit.
- The special condition of the property requiring a variance is that this is a big building with a large interior volume.
- It is reasonable to allow this property to have an attractive deck and balcony and that benefit would not be achieved by any other method that the proposed location.
- The proposal is consistent with the spirit of the ordinance as decks and two units are allowed in the ordinance. An existing bumpout will be replaced by the deck.
- Substantial justice will be done in that the applicants will be able to beautify their property and use it to more conventional expectations.
- The value of surrounding properties will, if anything, be improved by an attractive non-industrial addition. There had been concern in the past about the exposure presented to the back abutting property and this proposal is a much more attractive alternative.

5) Petition of **Patrick M. Seymour, owner**, for property located at **46 Mangrove Street** wherein a Variance from Article IV, Section 10-402(B) was requested to allow a 14' x 30' one story detached garage creating 28% building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 218 as Lot 8 and lies within the Single Residence B district. Case # 6-5

After consideration, the Board voted to **grant** the petition, as presented and advertised, for the following reasons:

- The variance will not be contrary to the public interest as this modest, low profile garage does not present a threat of overbuilding.
- The small size of the lot represents a special condition requiring a variance.
- The variance is consistent with the spirit of the ordinance as garages are permitted in this district and all dimensional requirements are met except for coverage.
- Substantial justice would be done by continuing to improve the neighborhood and not force acceptance of a sub-standard garage.
- Neighbors were notified and there has been no objection. The value of surrounding properties will not be diminished by the addition of a garage, which is seen as a benefit in the marketplace.

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II. OLD BUSINESS.

A) Petition of **Brora, LLC, owner**, and **ProCon Construction, applicant**, for property located **off Dunlin Way aka Portsmouth Boulevard** wherein a Special Exception as allowed in Article II, Section 10-209(38) was requested to allow a portion of the vacant lot to be used for the temporary outdoor storage of raw or partially finished material, machinery, equipment and vehicles in conjunction with the construction of the Hilton Garden Inn and adjacent condo's off Hanover Street. Said property is shown on Assessor Plan 213 as Lot 11 and lies within the Office Research district. Case # 5-15

After consideration, a motion to grant the petition failed and the petition was **denied**. A major concern was that the neighborhood would be negatively impacted for a year, both visually and for safety reasons.

B) Request for Rehearing on application of Wal-Mart Real Estate Business Trust for property located at **2460 Lafayette Road**

After consideration, the request for rehearing was **granted**.

C) Request for Rehearing on application of 606 Realty Trust for property located at **606 Greenland Road**.

After consideration, the Board voted to **deny** the request as no new information had been presented and no error had been made in the application of the law.

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III. ADJOURNMENT

The motion was made, seconded and passed to adjourn the meeting at 10:20 p.m.

Respectfully submitted,

Mary E. Koepenick
Secretary

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