

**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 August 16, 2005** in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Vice Chairman David Witham, Nate Holloway, Alain Jousse, Robert Marchewka, Arthur Parrott, Alternate Steven Berg, Alternate Duncan MacCallum

**EXCUSED:** Chairman Charles LeBlanc

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**I. OLD BUSINESS.**

A) Approval of Minutes:

August 25, 2004	November 23, 2004
October 19, 2004	December 14, 2004
October 26, 2004	April 26, 2004
November 16, 2004	July 26, 2005

*It was moved, seconded and passed unanimously to defer consideration of the specified Minutes until the August 23, 2005 meeting.*

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B) **140 Edmond Avenue.** Review engineered site plan, as stipulated in the May 17, 2005 meeting of the Board of Adjustment.

After consideration, the Board voted to accept the engineered site plan. This will now need to be submitted for additional City approvals.

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**II. PUBLIC HEARINGS:**

1) Petition of **Durgin Square Shopping Center / DSP Endicott Partners c/o C W Group, owner**, for property located at **1600 Woodbury Ave** wherein a Variance from Article IX, Section 10-906(A)(1)(a) was requested to allow the relocation of the existing 150 sf freestanding Primary Entrance Sign to the new entrance with a 5' right side yard where 25' is the minimum required. Said property is shown on Assessor Plan 238 as Lot 16 and lies within the General Business district. Case # 8-1

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

- That the 4' open area under the sign remain open and kept clear for the line of sight.

The petition was granted for the following reasons:

- The variance will not be contrary to the public interest as the sign will be the same as that approved and used previously, but in a more effective location at the new mall entrance.
- An existing easement prevents placing the sign where it would meet the setback requirements and not require a variance.
- There is no better place to locate the sign than at the entrance. Any other option would cut into the parking area.
- The variance is consistent with the spirit of the ordinance in that traffic will be directed away from side streets and to the main entrance to the shopping center.
- The sign has been in place since 1998 with no impact on surrounding property values.

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2) Petition of **Jonathon P. and Cheryl G. Booth, owners**, for property located at **19 South School Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 6' x 16' two story addition with a 4'6"± left side yard where 10' is the minimum required. Said property is shown on Assessor Plan 101 as Lot 73 and lies within the General Residence B and Historic A districts. Case # 8-2

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

- This would be a small addition to an existing structure which would be tucked in a corner and not visible to the public.
- A hardship exists requiring a variance due to the shape of the lot being narrow and deep and the house being a conventional width.
- With the existing floor plan, there is no other feasible way for the applicant to achieve the benefit sought without a variance.
- It is consistent with the spirit of the ordinance to seek the minimum relief.
- There will be no diminution in the value of surrounding properties and the abutter affected has spoken in favor of the petition.

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3) Petition of **Daniel C. Bogannam, owner**, for property located at **71 Baycliff Road** wherein the following were requested: 1) Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) to allow a 14' x 14' two story addition to the existing building with a 22'5"± front yard and a 3'± rear yard where 30' is the minimum required in both instances, and 2) an Equitable Waiver as allowed in NH RSA 674:33-a (Equitable Waiver of Dimensional Requirement) to allow the existing garage/deck with a 2'± left side yard where a Variance for 8' was previously granted based on an earlier survey. Said property is shown on Assessor Plan 207 as Lot 46 and lies within the Single Residence B district. Case # 8-3

The Board voted to **table** the petition until the September 20, 2005 meeting so that sufficient information could be provided to the Board to enable them to make an informed

decision. The Board is specifically requesting an as-built site plan, in addition to the two surveys to which the applicant referred in his presentation.

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4) Petition of **Theresa N. Pesarik, owner**, for property located at **214 Elwyn Avenue** wherein the following were requested for the construction of a 15' x 28' garage with loft: 1) a Variance from Article IV, Section 10-402(B) to allow a 3' left side yard at the front left corner and a 6' left side yard at the rear corner where 11' is the minimum required, and 2) a Variance from Article III, Section 10-302(A) to allow 29.1% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 112 as Lot 26 and lies within the General Residence B district. Case # 8-4

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

- A small lot and the setback of the existing garage to the property are special conditions which create a hardship so that a variance is needed.
  - The variance is consistent with the spirit of the ordinance by making the garage less non-conforming.
  - The structure is moving away from the property line. An alternate plan to site the garage in the back would render the backyard useless.
  - Substantial justice is done in that the garage is a more functional structure and better conforms to current expectations.
  - The value of surrounding properties will not be diminished. An existing fence divides the garage from the abutting property and, while it was noted by a Board member that an abutter had opposed a previous submittal, no one had come forward in opposition that evening.
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5) Petition of **Dennett Prospect Realty Investments LLC, owner**, for property located at **69 Prospect Street** and **Dennett Prospect Realty Investments LLC, owner**, for property located at **73 Prospect Street** wherein the following were requested: 1) Variances from Article III, Section 10-301(A)(2), Article III and Article IV, Section 10-401(A)(1)(b & c) to allow two of the six dwelling units (on lot 28) to be relocated into a separate building (on lot 29) with both lots being combined and the building on lot 29 being expanded to accommodate the dwelling units, and 2) Variances from Article XII, Section 10-1201(A)(3)(a)(3&4) to allow 8 parking spaces to back out onto the street and 6 of the 8 spaces to be double stacked. Said property is shown on Assessor Plan 142 as Lots 28 & 29 (to be combined) and lies within the General Residence A and Historic A districts. Case # 8-5

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

- With no change in the number of units, it is in the public's interest to develop this property as presented and the delineation of parking spaces should improve the street parking situation.
- Special conditions exist so that the zoning restriction would interfere with the landowner's reasonable use of the property. There currently are six units and that will not change – they will just be spread into two buildings.

- Multi-unit properties are not out of character for this neighborhood so no fair and substantial relationship exists between the ordinance and the restriction on the property.
- Providing a better situation will not injure the public or private rights of others.
- The variance is consistent with the spirit of the ordinance as, combining the two lots will bring the overall property more in conformity.
- Substantial justice will be done and the value of surrounding properties will not be diminished by allowing the applicant to improve the property for his benefit and that of the neighborhood.

*It was moved, seconded and voted unanimously to invoke the ten o'clock rule and table the following petitions to the reconvened meeting on August 23, 2005.*

6) Petition of **Cynthia Caldwell, owner**, for property located at **147 Martha Terrace** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) a 24' x 24' attached garage with a 10'4"± left side yard where 20' is the minimum required and a 27' 3/4"± rear yard where 40' is the minimum required, b) a 14' x 20' deck with a 27' 6"± rear yard where 40' is the minimum required; and, c) 19.9% building coverage for all where 10% is the maximum allowed. Said property is shown on Assessor Plan 283 as Lot 8 and lies within the Single Residence A district. Case # 8-6

7) Petition of **Murat and Sandra Ergin, owners**, for property located at **251 Walker Bungalow Road** wherein Variances from Article III, Section 10-302(A) and Article XV, Section 10-1503(A)(D)(2) were requested to allow a 10' x 44' front porch with an 18.5' front yard where 30' is the minimum required. Said property is shown on Assessor Plan 202 as Lot 13-2 and lies within the Single Residence B district. Case # 8-7

8) Petition of **Adam H. and Francis Price, owners**, for property located at **127 Martha Terrace** wherein the following were requested: 1) a Variance from Article III, Section 10-302(A) to allow a 22' x 60' addition to the right side of the existing single family dwelling with: a) a 7' right side yard where 20' is the minimum required and b) a 6' x 28' covered connecting breezeway creating a total for both additions of 19% building coverage where 10% is the maximum allowed, and 2) Variance from Article II, Section 10-206 to allow two attached dwelling units on a lot where only one dwelling unit per lot is allowed. Said property is shown on Assessor Plan 283 as Lot 7 and lies within the Single Residence A district. Case # 8-8

9) Petition of **Harold and Elizabeth Cummings, owners**, for property located at **39-41 Newcastle Avenue** wherein a Variance from Article III, Section 10-301(A)(2) was requested to allow conversion of an existing garage into a 4<sup>th</sup> dwelling unit in a district where all dwelling units shall be in one building. Said property is shown on Assessor Plan 101 as Lot 36 and lies within the General Residence B and Historic A districts. Case # 8-9

**III. ADJOURNMENT**

The motion was made, seconded and passed to adjourn the meeting at 10:00 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary

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