

**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 December 19, 2006** in the Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

**PRESENT:** Chairman Charles LeBlanc, Vice Chairman David Witham, Alain Jousse, Duncan MacCallum, Robert Marchewka, Arthur Parrott, Alternates: Carol Eaton, Henry Sanders

**EXCUSED:** None

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**I OLD BUSINESS**

A) Appeal from Decision of the Historic District Commission regarding property located at **7 Islington Street.**

The Board voted to suspend further consideration of the Appeal until the January 16, 2007 meeting.

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B) Approval of Minutes – November 21, 2006

A motion was made, seconded and passed unanimously to accept the Minutes as presented.

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C) Petition of **Mark B. and Chong Jou Kim, owners, and Mark B. Kim dba We Care Dry Cleaning, applicant,** for property located at **3002 Lafayette Road** wherein a Variance from Article IX, Section 10-908 was requested to allow: a) a 5' x 10' (50 sf) free-standing sign in a district where free-standing signs are not allowed and b) a 2' x 12' (24 sf) internally illuminated sign and 5' x 10' (50 sf) free-standing internally illuminated sign where only externally illuminated signs are allowed. Said property is shown on Assessor Plan 292 as Lot 13 and lies within the Mixed Residential Business district. *This item was tabled at the November 21, 2006 meeting.*

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

- On a heavily traveled roadway, a sign will provide a safe and timely alert to the public seeking this destination.
- The building is set back approximately 120’ and blocked by abutting properties, making it difficult to see from the roadway.
- While the property is zoned Mixed Residential Business, it is situated along a route which is mainly businesses so a sign will not change the essential character of the neighborhood.
- In this location, an internally illuminated sign can create less glare and be easier to read than one that is externally illuminated.

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**II. PUBLIC HEARINGS**

1) Petition of **Anne Elizabeth and Alan Gregg Weston, owners**, for property located at **43 Pray Street** wherein Variances from Article III, Section 10-303(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) a 5’ x 13’ one story addition with a 3’± right side yard where 30’ is the minimum required, b) a 5’ diameter spiral stair with a 4’.6”± right side yard where 30’ is the minimum required, c) a 5’ x 15’ 10” first floor deck with stairs with a 5’ right side yard where 30’ is the minimum required and 10’ rear yard where 20’ is the minimum required, d) a 5’ x 11’ second floor deck with a 5’ right side yard where 30’ is the minimum required and a 10’ rear yard where 20’ is the minimum required; and e) 53.6±% building coverage where 30% is the minimum required. Said property is shown on Assessor Plan 102 as Lot 39 and lies within the Waterfront Business and Historic A districts.

The abutter requesting the rehearing, has withdrawn that request. The variances and stipulations granted at the October 17, 2006 meeting remain in effect.

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2) Petition of **William N. Genimatas Revocable Trust, owner, Nicholas Genimatas, Trustee**, for property located at **599 Lafayette Road** wherein a Variance from Article IX, Section 10-901(E) was requested to allow 2 existing signs (29 sf and 14 sf) and 1 proposed sign (17 sf) to be located above the level of the eaves on a vertical wall in front of a pitched roof where signs are not allowed to be located. Said property is shown on Assessor Plan 229 as Lot 8 and lies within the General Business district.

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

- This is a necessary relocation of existing signs
- Placing uniform signs on a vertical wall will be more attractive and better direct the public.
- Locating the signs under the eaves would reduce visibility and reduce clearance.

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3) Petition of **45 Pearl Street Properties LLC, owner, and Paul Gallant d/b/a Mahalos, applicant**, for property located at 45 Pearl Street wherein a Variance from Article II, Section 10-207 was requested to allow 315 sf within the existing building for the storage of alcohol for a catering company in addition to client meeting space where storage is not an allowed use. Said property is shown on Assessor Plan 126 as Lot 30 and lies within the Mixed Residential Business district.

After consideration, the Board voted to deny the petition as there was no hardship associated with the property and there would be a negative impact on parking, traffic and noise.

4) Petition of **Scott D. Healey and Emily A. Miller, owners**, for property located at **58 McDonough Street** wherein a Variance from Article IV, Section 10-402(A) was requested to allow a 7' x 9' shed with: a) a 0'± left side, a 5'± right side yard, and a 0'± rear yard where 5' is the minimum required in each instance, and b) 47.5%± building coverage where 35% is the maximum allowed. Said property is shown on Assessor Plan 138 as Lot 38 and lies within the Apartment district.

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

- This is the best location on a small lot for a needed shed.
- A shed that was in disrepair will be replaced by a new, attractive structure.
- A small replacement shed, rebuilt on the same footprint, is a minimal request.

5) Petition of **Betsy Patterson Rivers, owner**, for property located at **42 Cabot Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) an irregular shaped 390± sf two story addition with a 9.7'± right side yard where 10' is the minimum required and a 9'3"± rear yard where 20' is the minimum required, b) a 9.5' x 14' one story three season room with 3.5' x 8' stairs with a 5'8"± rear yard where 20' is the minimum required; and, c) 39.6% building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 135 as Lot 49 and lies within the Apartment district.

After consideration, the Board voted to deny the petition as this would be an overintensification of the lot, substantially increasing lot coverage.

6) Petition of **Steven F. and Anne B. Collins, owners**, for property located at **230 Park Street** 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 252'± L-shaped front porch with: a) a 3'± front yard where 15' is the minimum required and b) 32.3 % building coverage where 25% is the maximum allowed; and, 2) a Variance from Article IV, Section 10-401 (A)(2)(c) to allow a 24'2<sup>3/8"</sup> x 30'2<sup>3/8"</sup> second story and attic with a full front dormer and rear dog house dormer on an existing building having: a) a 12'± front yard where 15' is the minimum required, b) a 9'± left side yard where 10' is the minimum required, and c) a 13'± rear yard where 20' is the minimum required. Said property is shown on Assessor Plan 149 as Lot 49 and lies within the General Residence A district.

After consideration, the Board voted to consider the variance requests separately.

The Board voted to deny variance requests 1)(a) and (b) as they would result in an overintensification of the lot and contribute to overcrowding in the neighborhood.

The Board voted to grant variance requests 2)(a), (b), and (c) for the following reasons:

- This is an expansion which will not increase the footprint or lot coverage.
- With the size of the lot and orientation and size of the house, there is no practical way to expand on the ground.
- A vertical expansion is in character with other homes in the neighborhood.
- There will be no negative impact on the public or surrounding neighbors.

7) Petition of **Helen I. Garvey Living Trust, Helen I. Garvey Trustee, owner**, for property located at **518 New Castle Avenue** requesting an Equitable Waiver as allowed in NH RSA 674:33-a (Equitable Waiver of Dimensional Requirement) to allow a condenser and a portion of a retaining wall 97.17' to 95' 3" from mean high water where 100' is the minimum required in Article III, Section 10-301(7)(7)(a). Said property is shown on Assessor Plan 205 as Lot 3 and lies within the Single Residence A district.

- The Board believes that the applicant represented in good faith that the error in measurement was just recently discovered.
  - The Construction Manager provided a sworn affidavit that he made a good faith error in measurement. In considering the plan and the construction markings, it is reasonable to believe that such an error was made.
  - The dimensional violation does not create a nuisance or diminish the value of surrounding properties.
  - The cost to relocate the condensers would be prohibitive.
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8) Petition of **Society for the Protection of Forests, owner**, for property located at **400 Little Harbor Road** wherein a Variance from Article IX, Section 10-908 Table 14 was requested to allow a 12 sf freestanding sign with: a) a height of 7' where 3' is the maximum allowed, and b) a 5 ½' front setback where a 15' front setback is the minimum required. Said property is shown on Assessor Plan 203 as Lot 8 and lies within the Rural district.

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

- The sign will direct visitors to this public access site.
  - The configuration of the driveway and stone wall require a sign of this height and there is no other location that would meet its purpose.
  - A visible sign directing traffic into the site will eliminate the safety hazard of cars turning around on a narrow road.
  - The property values of surrounding neighbors will not be diminished.
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9) Petition of **Elsie B. Tuttle, owner**, for property located at **76 Sunset Road** wherein a Variance from Article III, Section 10-302(A) was requested to allow a 4' x 8' one story addition to the rear of an existing dwelling unit creating 20.4%± building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 167 as Lot 1 and lies within the Single Residence B district.

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

- The addition will result in a minimal increase in lot coverage.
  - Tucked into a u-shaped area, it will not affect density, or the light and air of abutters.
  - This is an undersized lot and there is no better location for this needed addition.
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10) Petition of **Blair W. and Janet B. McCracken, owners**, for property located at **212 Pleasant Street** wherein a Variance from Article IV, Section 10-402(B) was requested to allow a 13' x 22' one story detached garage with a 1'± right side yard where 10' is the minimum required. Said property is shown on Assessor Plan 109 as Lot 26 and lies within the Mixed Residential Office and Historic A districts.

After consideration, the Board voted to grant the petition as presented (8' ± right side yard) for the following reasons:

- With the modification of the plan, this is a minor intrusion into the right side yard.
- This location will have the least impact on surrounding properties.
- The sharp angle of the lot line makes it difficult to place the garage without intruding into the right side yard setback.

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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