

Maqri  
Larson  
Avery  
Katsupias  
Zamboni

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

I-Lb Industrial Zone  
Practical Difficulty Variance Appeal

### DECISION

Date of public hearing: January 19, 2017

Name and address of Appellant: Anderson Street Realty, LLC  
322 Fore Street, Third Floor  
Portland, Maine 04101

Location of property under appeal: 122 Anderson Street  
CBL 012 N001001; CBL 010 H005001;  
CBL 010 H008001

### For the Record:

Names and addresses of witnesses (proponents, opponents and others):

Michael Courdente  
07610 Anderson Street Realty, LLC  
Affow Realty - Part owner of the LLC

Kevin D'Espardian 07610 Coffee by Design For Applicant  
Concerns for employee parking - traffic safety  
& safety of employees. 64 St. lot trailers delivered to

Exhibits admitted (e.g. renderings, reports, etc.):

Application & Exhibits

Coffee by design.  
There have been 3  
accidents as a result  
of deliveries.

Findings of Fact and Conclusions of Law:

The applicant is seeking an after-the-fact practical difficulty variance from the requirements of City of Portland Code of Ordinances § 14-234(h), which requires a pavement setback from a lot boundary of fifteen feet. The applicant seeks a variance reducing that setback to 0'.

The Board of Appeals has jurisdiction to hear and grant or deny applications for practical difficulty variances pursuant to § 14-473(c)(3).

Findings:

The board of appeals may grant a variance from the dimensional standards when strict application of the provisions of the ordinance would create a practical difficulty, and 1) "the need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood;" 2) the variance "will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties;" 3) "the practical difficulty is not the result of action taken by the applicant or a prior owner;" 4) "no other feasible alternative is available to the applicant, except a variance;" 5) the "variance will not have an unreasonably adverse effect on the natural environment;" and 6) the property is not located in a shoreland area, shoreland zone, or flood hazard zone. § 14-473(c)(3)(a).

1. The application is for a variance from dimensional standards of the Land Use Ordinance, which is defined as those provisions that "relate to lot area, lot coverage, frontage, and setback requirements." §§ 14-473(c)(3)(a), 14-473(c)(3)(b)(1).

Satisfied  Not Satisfied

Reasons and supporting facts:

*Variance reducing pavement setback  
from 15 feet to 0*

2. Strict application of the provisions of the ordinance would create a practical difficulty, which is defined as a "case where strict application of the dimensional standards of the ordinance to the property for which a variance is sought would both preclude a use of the property which is permitted in the zone in which it is located and also would result in significant economic injury to the applicant." §§ 14-473(c)(3)(a), 14-473(c)(3)(b)(2).

Significant economic injury exists where, "the value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land." § 14-473(c)(3)(b)(3).

Satisfied  Not Satisfied  3 - 2 - 3 against

Reasons and supporting facts:

- \$125,000 decrease in value of property by not having parking lease for 5 spaces per applicant parking is an allowed accessory use on lot. but prohibited principal use. loss if parking lease goes away - lose \$1,000/month.

3. The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood. § 14-473(c)(3)(a)(1). *value of property w/ and w/out variance*

Satisfied  Not Satisfied

Reasons and supporting facts:

Alleyway was already half paved. spatial configuration on the lot - and obitery loading docks peculiar to property.

4. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties. § 14-473(c)(3)(a)(2).

Satisfied  Not Satisfied

Reasons and supporting facts:

desirable change in neighborhood  
improve property values and character  
of neighborhood.

5. The practical difficulty is not the result of action taken by the applicant or a prior owner. § 14-473(c)(3)(a)(3).

Satisfied  Not Satisfied

4-1 Avery

Reasons and supporting facts:

neighborhood is quickly developing. parking is needed  
because of redevelopment.  
asking for parking due to redevelopment of  
parcel; need to redevelopment of the area  
has caused a problem with using loading docks.

6. No other feasible alternative is available to the applicant, except a variance. § 14-473(c)(3)(a)(4).

Satisfied  Not Satisfied

4-1

Reasons and supporting facts:

(loading docks -> trucks are large. delivery  
times can't be scheduled. traffic safety  
issues for blocking traffic. traffic  
safety issues for parking issues. -

Parking issue - 4 for no one is stipulating  
to parking; parking is across the street on  
marginal way. safety issues in having parking  
on a narrow way lot.

7. The granting of a variance will not have an unreasonably adverse effect on the natural environment. § 14-473(c)(3)(a)(5).

Satisfied  Not Satisfied

Reasons and supporting facts:

*Industrial area, the nature of  
won't alter what is already there  
won't really affect natural environment.*

8. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S. § 435, nor within a shoreland zone or flood hazard zone, as defined in this article. § 14-473(c)(3)(a)(6).

Satisfied  Not Satisfied

Reasons and supporting facts:

*Not in shoreland zone per zoning  
administrator.*

**Decision:**

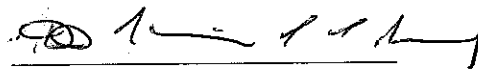
Option 1: The Board finds that the applicant has satisfactorily met all of the standards for a practical difficulty variance and GRANTS the variance without limitation.

Option 2: Pursuant to § 14-473(d), the Board may impose conditions on a practical difficulty variance. The Board finds that the applicant has met all of the standards described above, however, reasonable conditions are necessary to prevent injurious effects upon other property and improvements in the vicinity or upon public facilities and services, and it GRANTS the variance SUBJECT TO THE FOLLOWING CONDITIONS:

Option 3: The Board finds that the applicant has NOT satisfactorily met the standards for a practical difficulty variance and DENIES the variance.

Dated:

*1-19-17*

*Hankani, Larsson*  
  
Board Chair