CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

"Practical Difficulty" Variance Appeal in R-6 Residential Zone

DECISION

Date of public hearing: August 20, 2015

Name and address of applicant: Legacy 18 Development Corporation
223 Smith Rd.
Windham, ME 04062

Location of property under appeal: 5-9 Romasco Lane

For the Record:

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

Judy Cerge
David Klenicki
233 Smith Rd.
Windham, Me.

Robert Haines
Holm Avenue
questions bank requirement of putting 2 condos under contract.
Dtee response: this requirement is common 2 must be under contract

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

Application + emails regarding Jeff Levine's appearance

Findings of Fact and Conclusions of Law:

Applicants intend to build a four story building with five residential condominiums on the property. The property is presently vacant. Section 14-139 requires a minimum lot area of 725 square feet per dwelling unit, thus to permit five condominiums, the lot would need to be 3,635. This lot is approximately 3,342 square feet. Applicants seek relief from section 14-139 by to permit them to build five residential condominiums on a lot that is approximately 3,342 square feet.

"Practical Difficulty" Variance standard pursuant to Portland City Code §14-473(c)(3):

1. The application is for a variance from dimensional standards of the zoning ordinance (lot area, lot coverage, frontage, or setback requirements).

Satisfied ✓ Not Satisfied ____

Reason and supporting facts:

~~difference of~~ seeking a variance from the 750 Sq. Ft. per dwelling unit standard

2. Strict application of the provisions of the ordinance would create a practical difficulty, meaning it 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. "Significant economic injury" means 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.

3 - 1 (Larsson)

Satisfied ____ Not Satisfied ✓

Reason and supporting facts:

- great economic injury? $200,000 loss by losing the 5th unit. - this is gross profit on project. - 4 unit they would make $100,000 profit - issue is getting financing.
- use isn't being precluded, it is the ~~value~~ density - 4 unit buildings allowed single family home as well

Larsson - believes that 5 units is permitted in zone - therefore denies use

3. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

Satisfied ✓ Not Satisfied ____

Reason and supporting facts:

- need not due to general condition of neighborhood - specific to this 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.

Satisfied ✓ Not Satisfied ____

Reason and supporting facts:

other multi-units in neighborhood - no apparent detrimental effect intention to create desirable change in neighborhood

5. The practical difficulty is not the result of action taken by the applicant or a prior owner.

Satisfied ✓ Not Satisfied ____

Reason and supporting facts:

due diligence was applied - used class D + tax map to make decision to buy

6. No other feasible alternative is available to the applicant, except a variance.

Satisfied ___ Not Satisfied ✓ 3 - 1 (Larrson)

Reason and supporting facts:

feasible alternatives exist - 4 units or less

7. The granting of a variance will not have an unreasonably adverse effect on the natural environment.

Satisfied ✓ Not Satisfied ___

Reason and supporting facts:

no testimony that adverse impacts could occur - would get site plan review typical use in the zone, no unusual environmental consequences

8. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, nor within a shoreland zone or flood hazard zone.

Satisfied ✓ Not Satisfied ___

Reason and supporting facts:

Not in zone per acting zoning administrator

Conclusion: (check one)

___ Option 1: The Board finds that the standards described above (1 through 8) have been satisfied and therefore GRANTS the application.

___ Option 2: The Board finds that while the standards described above (1 through 8) have been satisfied, certain additional conditions must be imposed to minimize adverse effects on other property in the neighborhood, and therefore GRANTS the application SUBJECT TO THE FOLLOWING CONDITIONS:

Katherine Chip -3-1 (Lowrey)

___ Option 3: The Board finds that the standards described above (1 through 8) have NOT all been satisfied and therefore DENIES the application.

Dated:

8/20/15

Board Chair

SECRETARY AND ACTING CHAIR