

B notes

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

Judy George
Dawn Klenicki

“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):

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

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 3,635⁵⁴. 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 4-0 Not Satisfied

Reason and supporting facts:

type of request falls w/in parameter

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.

Satisfied 1 Not Satisfied 3

Reason and supporting facts:

unique situation / govt component -
not gen condition of neighborhood

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 4 Not Satisfied 0

Reason and supporting facts:

- distinguish use -
observed need for variance not related to
general condition of neighborhood - issue 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.

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

other multiunits in neighborhood -
- no testimony from public agent
- testimony to other or

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

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

Standard due diligence + no testimony
otherwise - not a retroactive
request

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

Satisfied 1 Not Satisfied 3

Reason and supporting facts:

No alt to get 5th unit w/o variance

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

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

no testimony of adverse effects

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 4 Not Satisfied 0

Reason and supporting facts:

not in shoreland or flood hazard

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:

DK
CS
3-1^{EL} ___ Option 3: The Board finds that the standards described above (1 through 8) have NOT all been satisfied and therefore DENIES the application.

Dated:

Board Chair

- Quidy

- good faith - based on Assessment -

- Class D - boundary survey

- enough for R-6 -

- proceeded w plans

- Practical variations

Business purposes -

- extra protection -

- 4th + 5th - profit

- margin to slim

Square footage

- made units smaller

275' // given up + sized
down condos -

- giving up 5th unit -

Remasio - not prime - location
not as .

- Marquis' help

- 5th family - if you

will grant - thought we
were buying

- lot line dimensions - precisely same
as tax map - no reason to

the square footage would be off

- not asking for all the sq -

same height
less footprint
smaller units -

- Class D - Deed + title -

\$5200 - Class A -

- turned over every stone
that's is typical -

- had it designed 1,000/unit -
850^{sq} - stay w/in allotted
area -

- not pay to redesign -
- not asking for extra sq ft

if lose cushion - risky
investment

- 2 condos under contract
to get financing
5th would sell -

- rent reduction - 11%

- \$200,000 / difference in price -

- get above 1,000^{sq} - can't get
price need -

- don't want to be in exposure unit w others - of a lot less
- large unit risky

~~Real Est~~

- trying to keep similar in size
- for equal votes -

Actual diligence + typical diligence

- City maps

3798 -

4% from what it: 465 - narrow margin

- if you can't build 5

- can't build 4 units -

- single family - (no one bought)

- financier - wanted under net apt -
- cost of const. - cash flow -

Public Comment

- Robert Hains

- financing contingent - on selling 2 units - C of O issued

- regular survey - good guess

- Judy - go under contract - C of O @ closing
- Done to 2 under contract - Conf close to C of O

Marquis Hoff -

- bought on set of drawings

can still be used 4 unit -

has a value

- Financial - economic injury -
- ~~set~~ unit is profit -

#

Chip - try to come to right decision
- difficult

- not judging a good or bad

- ^{just} have to apply standards

270

totality of P + Urban Dev.
no further testimony -

Q - facts of letter - opinion -
- not offering anything in addition

R. good pts for lot + neigh
- appraisable - hrs - net
w/ specific standards

etc.

I struggle -

- economic injury

- use is not excluded but
quantity -

- find it hard to

- single family - ~~10~~ + 4-family

EL - reviewed law courts -

5 units vs 4 unit - distinction
in use -

- not clearly

- what is a significant injury -

- we have a \$ -

- seems like a significant amt of \$

- 200,000 of our \$ in A - minimal

- come out even -

App^{1/2}

other practical use - we would

lose \$ -

no interest for

reasonable -

K

Some economic injury
not sure significant

DK -

not denying property
is a significant seen impact

Loss - break even - a better
- not a case - waste of -
- substantially lower value

DK - value bond - 4 vs 5 -
- 1 in profit -

EL - 4 units - if can add 5th
- cost more -
- don't know what that it is
- to invest - any # of calculations

- question of use - not taking away use
4 vs 5 - is a different use

Chp - use is matter of degree not
kind - need - matter of
degree - 1st is more

Kent - 4th same TI - 5th more
- weighs against 4 -

- short several hundred feet
- paid to mark -
- not likely to get funding
- met w/ bank - before bought
- short of being here now

173# - perceived lot size -
which is final lot size
4% - threshold -
- less germane - original
perceived -
- new -

ch. 8 - no 0

- feasible alternatives -
Kut - risk