

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

R-6 Residential Zone
Practical Difficulty Variance Appeal

DECISION

Date of public hearing: May 4, 2017

Name and address of Appellant: Erica Schair-Cardona & Ivan Cardona
2 Stratton Place
Portland, Maine 04101

Location of property under appeal: 2 Stratton Place
CBL 044 B032001

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:

The applicant is seeking a practical difficulty variance from the requirements of City of Portland Code of Ordinances § 14-139(a), which requires:

1. Maximum lot coverage of 60%;
2. Landscaped open space of 20%; and
3. Minimum rear yard setback of ten feet.

The applicant seeks a variance increasing the maximum lot coverage to 89.3%, reducing the landscaped open space requirement to 10.7%, and reducing the minimum rear yard setback to six feet.

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 the applicant meets the requirements of § 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 *AGAINST* *IN FAVOR*

Reasons and supporting facts:

The application seeks a variance from ~~the~~ dimensional standard, the rear yard setback, and ~~the~~ lot coverage standards, the maximum lot coverage, and the landscaped open space coverage requirement.

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 4 AGAINST 0 SATISFIED

Reasons and supporting facts:

The existing use is residential. The inability to add a deck does not preclude a use permitted of the property permitted in the zone. There was no specific financial information provided to demonstrate a significant economic injury to the applicant.

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).

Satisfied Not Satisfied 4 NOT SATISFIED 0 SATISFIED

Reasons and supporting facts:

The applicant's property is similar to those in Sutton Place and is not unique in its size or configuration.

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 4 SATISFIED 0 NOT SATISFIED

Reasons and supporting facts:

There is no evidence that the granting of the variance would produce any detrimental effect on the use or the fair market value of abutting properties. The one abutting neighbor who spoke was in support of the application.

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 SATISFIED 0 NOT SATISFIED

Reasons and supporting facts:

The configuration of the applicant's ~~prop~~ property ~~is~~ predates the zoning code and the inability to construct a deck in the ~~existing~~ setback is not the result of action taken by the applicant or prior owner.

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

Satisfied Not Satisfied 0 SATISFIED 4 NOT SATISFIED

Reasons and supporting facts:

The applicant could build a ground-level patio without a variance

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

Satisfied 4 Not Satisfied 0

Reasons and supporting facts:

There was no evidence presented to indicate any adverse effect on the 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 4 Not Satisfied 0

Reasons and supporting facts:

The map supplied with the application and supported by statements of the zoning administrator demonstrate that the property is not located in a shoreland or flood hazard zone.

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:

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

Dated: 5/4/2017

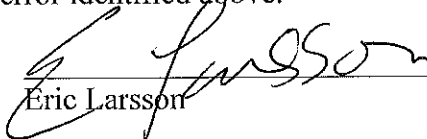

Board Chair

AFFIDAVIT CORRECTING LOCAL GOVERNMENT RECORD
5 M.R.S. § 95-B

I, Eric Larsson, being duly sworn, hereby depose and say:

1. On May 8, 2017, I was elected Secretary *pro tempore* of the City of Portland Zoning Board of Appeals.
2. Pursuant to 30-A M.R.S. § 2691(3)(B), I am responsible for maintaining a permanent record of the meeting that was held on that evening.
3. That same evening, I was also responsible for the preparation of the decision of the Zoning Board in the matter of the application of Erica Schair-Cardona and Ivan Cardona for a practical difficulty variance for their property at 2 Stratton Place.
4. The record and decision are local government records pursuant to 5 M.R.S. § 95 *et seq.*
5. It has come to my attention that the decision contains an error; specifically that the Board found that the first factor, that "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,'" was Not Satisfied and that the Board voted four against and zero in favor of finding that this requirement was satisfied.
6. The decision for the first factor should instead read that the requirement was Satisfied and that the Board voted four in favor and zero against.
7. I make this affidavit in order to correct the error identified above.

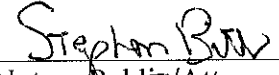
Dated: 5/9/17


Eric Larsson

STATE OF MAINE
CUMBERLAND, ss

Personally appeared before me the above-named Eric Larsson, who swore that the facts recited above are true to his own knowledge.

Dated: 5/9/17


~~Notary Public~~/Attorney at Law #3911
Stephen O. Bitter