

Joseph Zamboni
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CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

B-1 Neighborhood Business Zone:

Variance Appeal

DECISION

Date of public hearing: May 5, 2016;

Name and address of applicant: Michael Keon (prospective tenant)
576 Congress Street
Portland, ME 04101

Location of property under appeal: 184 State St. Portland, ME 04101

For the Record:

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

John Goldberg, Esq.
Mittel Asea
Michael Keon

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

Application and Exhibits

Findings of Fact and Conclusions of Law:

The applicant is seeking two variances pursuant to §14-473(c)(1). The first of these is waiver of the four space off-street parking requirement for proposed restaurants pursuant to § 332(i). The second is a variance to permit the restaurant to operate until 1:00 A.M. instead of closing at 11:00 P.M.

VARIANCE 1, OFF-STREET PARKING

A. Conditions for variances pursuant to Portland City Code §14-473(c)(1)

The board may authorize variances from this Article where strict application of the ordinance, or a provision thereof, would cause undue hardship to the petitioner. "Undue hardship" exists when:

1. The land in question cannot yield a reasonable return unless a variance is granted;

Satisfied _____ Not Satisfied

21-0-1abtain zoning

Reason and supporting facts:

Board looks at property as a whole, not just a component. Lot contains retail and residential; this application deals with a portion of the building; no evidence on what the whole land parcel will return. Broker indicates Restaurants pay more than retail; appears to be a question of how much return. No evidence as to what the effect of denial of variance will affect the return on the lot. Previous tenant - 18 years - not a restaurant.

2. 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

5-0

Reason and supporting facts:

Dense development in the neighborhood - looks like other parcels in that neighborhood -

3. The granting of a variance will not alter the essential character of the locality;

Satisfied Not Satisfied

Reason and supporting facts:

Similar uses in surrounding area; use of on street parking is similar to other neighborhood uses (restaurant)

4. That the hardship is not the result of action taken by the applicant or a prior owner.

Satisfied Not Satisfied

Reason and supporting facts:

Hardship has not been found; therefore condition can't be satisfied.

Conclusion: (check one)

Option 1: The Board finds that Standards 1-4 have been satisfied, and therefore GRANTS the variance without limitation.

Option 2: The Board finds that Standards 1-4 have been satisfied, and therefore GRANTS the variance with the following condition(s):

Option 3: The Board finds that Standards 1-4 have ~~not~~ been satisfied and therefore DENIES the application.

Larson, Gavin

not all

Dated:

5-5-16

Board Chair

VARIANCE 2, HOURS OF OPERATION

A. Conditions for variances pursuant to Portland City Code §14-473(c)(1)

The board may authorize variances from this Article where strict application of the ordinance, or a provision thereof, would cause undue hardship to the petitioner. "Undue hardship" exists when:

1. The land in question cannot yield a reasonable return unless a variance is granted;

Satisfied

Not Satisfied

Zoning 1-4

Reason and supporting facts:

No Quantifiable showing land can't yield a reasonable return - no information on overall viability of the parcel - or the return on the parcel.

2. 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

Zoning
Hot Spices 2-3

Reason and supporting facts:

Nothing unique about property - restaurant in same building is grandfathered

3. The granting of a variance will not alter the essential character of the locality;

Satisfied Not Satisfied

Reason and supporting facts:

Won't alter character of locality
open Blackstone's (grandfathered) open
till 1:00 am

4. That the hardship is not the result of action taken by the applicant or a prior owner.

Satisfied Not Satisfied

24-0-7 (abstain)
Zalinski

Reason and supporting facts:

Board has found no hardship,
therefore this condition
can't be satisfied

Conclusion: (check one)

___ Option 1: The Board finds that Standards 1-4 have been satisfied, and therefore GRANTS the variance without limitation.

___ Option 2: The Board finds that Standards 1-4 have been satisfied, and therefore GRANTS the variance with the following condition(s):

___ Option 3: The Board finds that Standards 1-4 have not been satisfied and therefore DENIES the application. *Larson, Galt*
Not all

Dated:

5-5-16

[Signature]
Board Chair