

## 4 LAND ORDINANCE REVIEW

### 4.1 OVERVIEW

The property currently lies within the City of Portland R6 zone. The following Space and Bulk requirements apply to the R6 Zone:

<b>R6 Zone Summary Dimensional and Parking Requirements Applied to 4 Russell Street</b>			
Zoning Requirements	R6	Variance*	Provided
Minimum Lot Size	2,000 sf	1,899 sf	1,899 sf
Minimum Lot Area per Dwelling Unit	725 sf	633 sf	633 sf
Minimum Front Yard	5 ft or avg. depth of adjacent front yards	-	Approx. 0.80 ft – in line with adjacent buildings on Hill St (Hill St)
Minimum Side Yard	5 ft, or none on a side street	-	5 ft and 0 ft along Russell St
Minimum Rear Yard	10 ft	-	10 ft
Maximum lot coverage	60%	63.67%	63.1%
Maximum Structure Height	45 ft	-	43.1 ft
Parking	1 space per unit, first 3 units exempt = 0 spaces		3 spaces
Bicycle Parking	2 spaces per 5 units = 2 spaces		2 spaces

\*The project site was granted a Practical Difficulty Variance by the Zoning Board of Appeals on July 13, 2017. The variance reduces the minimum lot size to 1,899 sf, increases the maximum lot coverage to 63.67%, and reduces the minimum lot area per dwelling unit to 633 sf for the purpose of constructing a three-family dwelling. A letter referencing this variance is included in this section.

### 4.2 SHORELAND ZONING

The site is not located within the Shoreland Zoning District.

### 4.3 ATTACHMENTS

Attachment 4-A: Practical Difficulty Variance Letter

**ATTACHMENT 4-A**

**Practical Difficulty Variance**



Permitting and Inspections Department  
Michael A. Russell, MS, Director

Ann Machado, Zoning Administrator

July 24, 2017

New Day Farm, LLC  
c/o Richard N. Bryant  
Van Meer & Belanger  
215 Commercial St.  
Portland, ME 04101

Re: 4 Russell Street, CBL 054-D-001, R-6 Residential Zone

Dear Mr. Bryant:

On July 13, 2017 the Zoning Board of Appeals voted 5-0 (Bartels absent) to grant a Practical Difficulty Variance for the above-referenced vacant lot, to reduce the minimum lot size to 1,899 square feet, to increase the maximum lot coverage from 60% to 63.67%, and to reduce the minimum lot area per dwelling unit to 633 square feet, for the purpose of constructing a three-family dwelling. I am enclosing a copy of the Board's decision.

Now that the variance has been granted, you will need to apply for a building permit for the project (application: <http://www.portlandmaine.gov/DocumentCenter/Home/View/2310>). Before applying for the building permit, the project will also require Site Plan approval through the Department of Planning and Urban Development. Please contact that Department directly for more details on the Site Plan approval process.


Under Section 14-474(f) of the ordinance and the board's decision, you have twenty-four months from the date of the meeting (July 13, 2017), to obtain the Site Plan and permit approvals and to start construction, or your Zoning Board approval will expire.

I am also enclosing the Certificate of Variance Approval. **The original must be recorded in the Cumberland County Registry of Deeds within 90 days of the date it was signed.** Failure to record the Certificate will result in it being voided. Our office must be provided with a copy of the recorded Certificate of Variance showing the recorded book and page before a building permit can be approved.

Appeals from decisions of the Board may be filed in Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Should you have any questions, please contact me at (207) 874-8695 or [estacey@portlandmaine.gov](mailto:estacey@portlandmaine.gov).

Sincerely,

  
Christina Stacey  
Zoning Specialist




**CITY OF PORTLAND**

**CERTIFICATE OF VARIANCE APPROVAL**

I, Kent Avery, the duly appointed Chair of the Board of Appeals for the City of Portland, Cumberland County and State of Maine, hereby certify that on the 13th day of July, 2017, the following variance was granted pursuant to the provisions of 30-A M.R.S.A. Section 4353(5) and the City of Portland's Code of Ordinances.


1. **Current Property Owner: New Day Farm, LLC**
2. **Property: 4 Russell Street, Portland, ME** **CBL: 054-D-001**  
 Cumberland County Registry of Deeds, **Book: 32044 Page: 36**  
 Last recorded deed in chain of Title: **01/23/2015**
3. **Variance and Conditions of Variance:**  
 To grant relief from section 14-139(a) of the Land Use Ordinance to reduce the required minimum lot size from two thousand (2,000) square feet to one thousand eight hundred ninety-nine (1,899) square feet, to increase the maximum required lot coverage from 60 percent to 63.67 percent and to reduce the minimum lot area per dwelling unit from seven hundred twenty-five (725) square feet to six hundred thirty-three (633) square feet.

IN WITNESS WHEREOF, I have hereto set my hand and seal this 18th day of July, 2017

  
 , Chair of  
 City of Portland Zoning Board,  
 Kent Avery (Printed or Typed Name)

STATE OF MAINE  
Cumberland, ss.

Then personally appeared the above-named Kent Avery and acknowledged the above certificate to be his free act and deed in his capacity as Chair of the Portland Board of Appeals, with his signature witnessed on July 18, 2017.

  
 (Printed or Typed Name)  
 Notary Public  
**Tricia L. Chayer**  
 Notary Public, State of Maine  
 My term expires **My Commission Expires January 25, 2022**

PURSUANT TO 30-A M.R.S.A. SECTION 4353(5), THIS CERTIFICATE MUST BE RECORDED BY THE PROPERTY OWNER IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS WITHIN 90 DAYS FROM FINAL WRITTEN APPROVAL FOR THE VARIANCE TO BE VALID. FURTHERMORE, THIS VARIANCE IS SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 14-474 OF THE CITY OF PORTLAND'S CODE OF ORDINANCES.

McCall  
Harrison  
Avery  
Kastropica  
Yankson

**CITY OF PORTLAND, MAINE**  
**ZONING BOARD OF APPEALS**

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R-6 Residential Zone  
Practical Difficulty Variance Appeal

DECISION

Date of public hearing: July 13, 2017

Name and address of Appellant: New Day Farm, LLC  
c/o Richard N. Bryant  
Van Meer & Belanger  
215 Commercial Street  
Portland, Maine 04101

Location of property under appeal: 4 Russell Street  
CBL 054 D001001

For the Record:

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

Richard Bryant, Ed. - Van Meer & Belanger  
Jeff Rosenblatt

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Robert Hains  
Holm Avenue

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

Application, Exhibits, Google Earth image

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. Minimum lot size of 2,000 sf;
2. Maximum lot coverage of 60%; and  
Minimum lot area per dwelling unit of 725 sf.

The applicant seeks a variance decreasing the minimum lot size to 1,899 sq. ft., increasing the maximum lot coverage to 63.67%, and reducing the minimum lot area per dwelling unit to 633 sq. ft.

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

Reasons and supporting facts:

*Applicant seeks variance from minimum lot size, maximum lot coverage and minimum lot per dwelling unit*

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

Reasons and supporting facts:

Unless min lot size & min. ~~area~~ lot area per dwelling unit - it is not economically feasible to develop the lot. No use is allowed @ less than 2000 sq feet - significant injury. Going from 60-63.67% lot coverage is minimal.  
Residential use appears to be the best 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. § 14-473(c)(3)(a)(1).

Satisfied  Not Satisfied

Reasons and supporting facts:

The lot is one of the 2 smallest lots in the immediate neighborhood. It is the only vacant parcel in the ~~lot~~ neighborhood. Property is a square lot as opposed to rectangle - the shape of most lots in the neighborhood.

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:

Residential neighborhood - proposed residential use. Fits into what is around it. Dense neighborhood + building will fit into the density.

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

Reasons and supporting facts:

No evidence it was due to applicant or prior owner.  
Applicant purchased a vacant lot.

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

Satisfied  Not Satisfied

Reasons and supporting facts:

Based on R-6 standards, no feasible alternative to a variance.  
Due to economics, a 3 unit is ~~not~~ feasible. Variance is needed to achieve it.



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:

*Not dense residential neighborhood adding 3 unit building won't change that. No public comment stating natural environment would be impacted.*

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 within either shoreland zone or flood hazard zone*

**Decision:**

*Katsifias, Larsson*

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. *for period of 2 years*

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:

*7-13-17*

*[Signature]*

Board Chair