

McCall  
Harrison  
Avery  
Katsifias  
Yamane

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

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  
Robert Heins  
Holm Avenue

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

Application, Exhibits, Google Earth maps

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. ~~lot~~ 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 to 7% 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:**

*Katsigias, Larson*

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