

E. LARSSON
W. GETZ
S. MORRIS
K. AVERET
D. KATSIARAKIS

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

"Practical Difficulty" Variance Appeal

DECISION

Date of public hearing: June 4, 2015

Name and address of applicant: Jodie Lapchick & Mark Barnette
7 Cushman St.
Portland, ME 04102

Location of property under appeal: 7 Cushman St.

For the Record:

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

JODI LAPCHICK - APPLICANT
NANCY BARBA - ARCHITECT
(APPLICANT)

NO PUBLIC TESTIMONY

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

Findings of Fact and Conclusions of Law:

The applicants would like to extend their existing deck four feet, three inches by ten feet and to enclose the area underneath the deck for storage. Accordingly, appellants are requesting a variance from the 14-139(a)(4)(b) & (c) to reduce the required rear setback to five inches and to reduce the required side setback to two inches. The appellants are also requesting a variance to increase the maximum allowable amount of lot coverage under § 14-139(a)(5) to 68.7 %.

Several amendments to the R-6 zone became effective on June 3, 2015, subsequent to the appellants' filing of their application, but the day prior to hearing being held in this matter. Those amendments are not consequential to this decision. The amendments reduced the required rear setback from twenty feet to ten feet, and the required side setback from ten feet to five feet. Those amendments also increased the maximum allowable lot coverage from 50 percent to 60 percent. Accordingly, whether under the prior incarnations of the applicable code sections or those effective June 3, 2015, the extension of the deck would be impermissible without granting of the requested variances.

"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 5 Not Satisfied 0

Reason and supporting facts:
+ TESTIMONY

APPLICATION STATES REQUEST FOR
SETBACK + LOT COVERAGE VARIANCE.

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 2 Not Satisfied 3

Reason and supporting facts:

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 5 Not Satisfied 0

Reason and supporting facts:

TESTIMONY - SMALLEST LOT IN
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.

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

TESTIMONY + APPLICATION REFLECT
A POSITIVE CHANGE

LETTER FROM NEIGHBOR SUPPORTS
APPLICATION.

NO TESTIMONY AS TO DETRIMENTAL
EFFECT

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

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

DIFFICULTY IS NOT SIZE +
CONFIGURATION OF BUILDING ON LOT.

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

Satisfied 2 Not Satisfied 3

Reason and supporting facts:

SNOW BLOWING COULD BE CONTRACTED
W/ LANDSCAPER, ETC..

ITEMS COULD BE STORED OFF-SITE.

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

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

NO TESTIMONY AS TO ADVERSE
EFFECT.

HARD SURFACE THROUGHOUT
LOT.

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 5 Not Satisfied 0

Reason and supporting facts:

PER ZONING ADMIN. — NOT
IN SHORELAND ZONE OR FLOOD
HAZARD ZONE. 4

3 2
ON MOTION

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:

Option 3: The Board finds that the standards described above (1 through 8) have NOT all been satisfied and therefore DENIES the application.

3 IN FAVOR OF MOTION
2 OPPOSED TO MOTION

Dated:

6/4/2015


Board Chair