

McCall
Harrison
Avery
Katzgraben
Burdell

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

IR-2, Island Residential Zone
Practical Difficulty Variance Appeal

DECISION

Date of public hearing: October 5, 2017

Name and address of Appellant: Elizabeth Chase
c/o Shannon Alther
TMS Architects
1 Cate Street
Portsmouth, NH 03801

Location of property under appeal: 18 8th Maine Avenue, Peaks Island
CBL 085 N008001

For the Record:

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

Shannon Alther
TMS Architects
1 Cate St.
Portsmouth, NH

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

Application w/ exhibits
Plans & Drawings
Budget Outline

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 § 14-145.11(c)(3), which requires a minimum side yard of twenty feet.

The applicant seeks a variance reducing the side yard setback to 8.75 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

Reasons and supporting facts:

Applicant is seeking a reduction of the side yard setback 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

Reasons and supporting facts:

Property value could be increased by \$12,000 and save ~~off~~ approximately \$6,000 in renovation cost. No evidence to suggest value of property would be less if not granted - Cost of achieving increase in value is less if variance is granted.

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:

Building constructed 1902.
The condition is due to unique ~~and~~ circumstance of property. ~~not~~
Setback issue is specific to the property.

Ultimate value of property may not be different depending on which side datum is in. No evidence of significant economic injury.

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:

granting would produce desirable
change - no detrimental effect.
no public comment

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:

non conformity is as a result of
the ordinance. (setback came to the
property).

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:

Testimony - there is an alternative
to either not build a bathroom at
all, or build the bathroom on the
other side. or do alterations
within current footprint.

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:

Nothing suggests adverse impact on 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 Not Satisfied

Reasons and supporting facts:

Not within the shoreland zone per the map. map § 300 foot "circle" zoning Admin indicates not in 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:

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

Dated:

[Signature]
Board Chair

10-5-17