



Planning and Development Department  
 Zoning Board of Appeals  
 Practical Difficulty Variance Application

Applicant Information:

MICHAEL T. DENNEY  
 Name

8 ARLINGTON ST  
 Business Name

PORTLAND ME 04101  
 Address

H: 207-518-9193  
 Telephone cell # Fax 207-543-4474

OWNER  
 Applicant's Right, Title or Interest in Subject Property:  
 (e.g. owner, purchaser, etc.):

R-3  
 Current Zoning Designation:

OWNER-OCCUPIED SINGLE-FAMILY  
 Existing Use of Property:

Subject Property Information:

8 ARLINGTON ST  
 Property Address

126-F-008-R3  
 Assessor's Reference (Chart-Block-Lot)

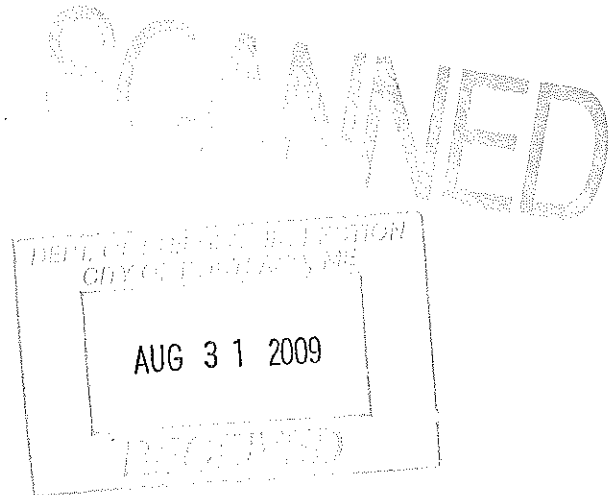
Same  
 Property Owner (if different):  
 Name

Address

Telephone Fax

Telephone Fax

388  
 Practical Difficulty Variance from Section 14 -



NOTE: If site plan approval is required, attach preliminary or final site plan.

The undersigned hereby makes application for a Practical Difficulty Variance as above described, and certified that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

Michael T. Denney  
 Signature of Applicant

Marleen Denney

Aug 31, 2009  
 Date

8/31/09

Notwithstanding the provisions of subsections 14-473(c)(1) and (2) of this section, the Board of Appeals may grant a variance from the dimensional standards of this article when strict application of the provisions of the ordinance would create a practical difficulty, as defined herein, and when all the following conditions are found to exist:

1. The need for the variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood:

*see attached*

2. The granting of the variance will not have an unreasonably detrimental effect on either the use or fair market value of the abutting properties:

3. The Practical Difficulty is not the result of action taken by the applicant or a prior owner:

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

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

6. Strict application of the dimensional standards of the ordinance to the subject property will preclude a use which is permitted in the zone in which the property is located:

7. Strict application of the dimensional standards of the ordinance to the subject property will result in significant economic injury to the applicant:

8. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. Section 435, nor within a shoreland of flood hazard zone as defined in this article:

## Variance from Dimensional Standards Questions

**1. The need for the variance is due to the unique circumstances of the property and not to the general condition of the neighborhood:**

Yes. The unique circumstances of 8 Arlington Street are: (1) there is currently no egress or direct access directly from the house to the rear yard, and (2) the current access from the unimproved basement to the rear yard is through a 42" high half-door (see photographs) that is impractical for regular use, is not easily accessible by us or repairmen or technicians, and is dangerous and could cause back injuries due its height - in fact, we have on several occasions hit our heads and backs on the top frame of the door opening trying to duck down to get in or out. According to our contractor, Ben Weigel, the height of the door opening cannot be increased as the door head elevation is equal to the bottom of the first floor and lowering the door sill below grade would create an avenue for rain water to pour into the basement.

Furthermore, we have three cats, and one of the criteria we used in selecting a house in Portland, ME, was that it had to have a fenceable back yard with direct access from the house so that the cats could freely exit and enter through a rear door into a safe, enclosed environment. To this end, together with Ben Weigel, we have designed an elaborate system of fence attachments, similar to the one we had at our prior home, to prevent our cats from climbing over the fence and to prevent other cats from entering the yard. Regarding the general condition of the neighborhood, most houses have rear additions and/or decks for the use and enjoyment of the owners, their guests and their pets.

Exterior access to the existing laundry room is only from the driveway on the east side of the house. Furthermore, the present design of the rear laundry room has many additional flaws, such as (1) poor drainage which has resulted in water in the basement requiring major repair at a substantial cost; (2) lack of direct ventilation from the front of the house to the rear of the house which results in poor air quality on the first floor; (3) inadequate/no access to the basement for storage of large items which is compounded by the extremely small turning radius of the existing interior door to the basement, just to name a few.

**2. The granting of the variance will not have an unreasonably detrimental effect on either the use or fair market value of the abutting properties:**

All abutting properties are single-family detached residential dwellings and the owners of those properties (west side and rear) have rear additions and decks on their properties. Not only will the granting of the variance not have a detrimental effect, it will both bring our property up to the standards and conditions of the abutting properties, and the expansion of the rear laundry room and the addition of a deck will constitute a significant improvement to the property that will increase its value and the fair market value of the abutting properties. It will also increase the assessed value of our property which will increase property taxes paid to the city of Portland. Furthermore, the property owners at 12 Arlington Street, who have invested substantially in the improvement and restoration of their home, are aware of our plans and wholeheartedly endorse the expansion of the laundry room and the addition of the deck.

**3. The Practical Difficulty is not the result of action taken by the applicant or a prior owner:**

The lack of direct access/egress to the rear yard from the rear of house is, we believe, a design flaw from the original construction in the early 1900s, and not the result of any action we have taken or any action taken from the previous owner(s). This design apparently existed for many homes in our neighborhood, but most owners have corrected it as evidenced by the rear additions and decks that have been added. It is our intention to correct the design flaw in the most practical manner, consistent with other properties in our neighborhood.

**4. No other feasible alternative is available to the applicant, except a variance:**

Together with our contractor and others, including neighbors, we have brainstormed alternative ways to design a plan to: (1) provide direct access to the rear yard for the cats with a door going directly from the laundry room to the yard via a small deck used as a landing and steps to the rear yard, while maintaining the most rear yard area possible; and (2) raise the height of the basement door to provide safe and easy access. To date we have not succeeded. There is simply no other way to provide direct access to an enclosed, safe, cat protected rear yard than through a door leading directly from the laundry room and steps down to the yard. To correct the basement access problem, we propose, as originally requested, to increase the depth of rear laundry room the minimum amount necessary to attach a pre-engineered bulkhead that will provide safe access to the basement.

**5. The granting of the variance will not have an unreasonably adverse effect on the natural environment:**

We are proposing only to add approximately 3% to the total lot coverage in the central area of the lot. No work will be performed on the setback area of the lot; therefore no changes in the existing natural drainage, driveway, or views to the area will occur. These changes will have no adverse effect on the natural environment with respect to the Practical Difficulty Variance we are seeking.

**6. Strict application of the dimensional standards of the ordinance to the subject property will preclude a use which is permitted in the zone in which the property is located:**

Yes. The subject property is a single-family detached residential dwelling in the R-3 Zone which permits improvements, alterations, additions, and the dimensional requirements for lot coverage, frontage and setback have been met. It is also our position that the lot size is sufficient to allow for enlarging the laundry room and adding a deck, as evidenced by adjacent properties with similar lot size who have made such alterations and improvements. It is also our position that Sections 14-90(a)(1) and 14-433 of the Ordinance allow for enlarging the laundry room and erecting a deck.

**7. Strict application of the dimensional standards of the ordinance to the subject property will result in significant economic injury to the applicant:**

Yes. The applicants purchased the property with the assumption that the inherent defects of the property discussed above and in the cover letter could be corrected as other adjacent property owners have done. Granting the variance will allow us not only to correct these defects, but the improvements will add significant value and utility to the property. The value of the property will be significantly lower if the requested improvements are not made.

**8. The property is not located, in whole or in part, within a shoreline area, as defined in 38 M.R.S.A. Section 435, nor within a shoreline of flood hazard zone as defined in this article:**

- A. The property is not located in a shoreline zone or a flood hazard zone.

Michael & Marleen Denney  
8 Arlington Street  
Portland, ME 04101  
207-518-9193

August 31, 2009

Zoning Board of Appeals  
City of Portland  
389 Congress Street, Room 315  
Portland, ME 04101

Re: Practical Difficulty Variance Application – Permit #09-0817

Dear Board Members:

By a letter dated August 18, 2009 (copy attached), Ms. Marge Schmuckal, Zoning Administrator, City of Portland, advised us, as owners of 8 Arlington Street, Portland, ME, and our contractor, Ben Weigel, Weigel Construction, Inc., that our permit to increase the depth of the rear addition laundry room from 6' x 17' to 12' x 17' and to erect a 12' x 20' deck on the rear of the property had been denied, based on: (1) inadequate lot size (5665 sq. ft.), in violation of Sections 14-90(b), "Minimum lot area per dwelling unit," and 14-388, "Nonconformity as to area of dwelling," of the City of Portland Land Use Zoning Ordinance ("Ordinance"); and (2) the rear yard setback on the submitted site plan was 21' and not 25', as required by Section 14-90(d)(2)(a) of the Ordinance. Our contractor, Ben Weigel, has prepared a new site plan that meets that 25' rear yard setback requirement.

We are seeking a variance from the dimensional standards of the Ordinance referenced in Ms. Schmuckal's letter because we believe that the strict application of those standards will create a practical difficulty and both preclude a use of our recently purchased property which is permitted in the R-3 Zone and also will result in significant economic injury to us.

Presently there are (2) inherent design deficiencies in the rear of our home that have existed since its original constructed in approximately 1920:

1. There is no exit from the first floor directly to the rear yard. We have three cats, and one of the criteria we used in selecting a home in Portland, was that it had to have a fenceable back yard with direct access from the rear of house so that the cats could freely exit and enter through a rear door into a safe, enclosed environment. This need is of maximum importance to us.

2. The entrance to the basement from the exterior driveway side and the existing grade would permit only the existing hatchway with a maximum height of 48". We have only been living in the home for a month and have sustained minor injuries trying to negotiate the hatch.

We propose the following alterations to provide relief and ultimately a safe environment to let our pets outside:

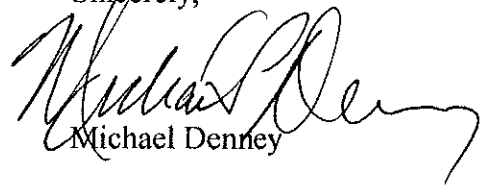
1. We would push the rear wall, +/- 17' long, of an existing one story laundry room area out 6'. This will provide 6' of side wall on the driveway side to install a conventional bulkhead basement door system with steps inside to safely enter the basement; and

2. We would also add a reasonable deck and landing with steps down to our back yard to facilitate letting our pets out to the fenced in area and provide us with better use and enjoyment of the space.

If permitted, these alterations will only increase our total lot coverage from +/- 1420 sq. ft., or +/- 25%, to 1582 sq. ft. or +/-28%.

In addition, all changes would meet the minimum setbacks required in 14-388, as well as maximum lot coverage. It is our understanding until recently, these types of alterations were routinely permitted. Our original plans were to add a small deck to enjoy the outside during the warm months, however, in an effort to convey the desire to appeal only to what is necessary for the safety of ourselves and our pets, we scaled back our request to what is presented. Thank you for your attention to this matter of great importance to us and we look forward to your decision.

Sincerely,

  
Michael Denney

  
Marleen Denney



