

Carlin
Larsson
Avery
Karsia Oscar

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

"Practical Difficulty" Variance Appeal

DECISION

Date of public hearing: May 7, 2015

Name and address of applicant: Laurie and Mark Brooks
14-16 Orkney Street
Portland, ME 04103

Location of property under appeal: 14-16 Orkney Street

For the Record:

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

Laurie + Mark Brooks, 14-16 Orkney St.

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

none other than application

Findings of Fact and Conclusions of Law:

The applicants own a residential two-family home with a two-car garage. The garage is presently situated in close proximity to the dwelling and as a result the applicants claim they are prevented from using the garage for vehicle parking because snow cannot be effectively cleared by a plow in the area between the dwelling and the garage. They are seeking to move their existing twenty foot by twenty foot garage closer to the rear property line and therefore request a variance for the required setback, pursuant to § 14-120(a)(4)(b) from twenty feet to five feet.

“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 Not Satisfied

Reason and supporting facts:

maps and exhibits + testimony show demonstrated standard is the issue

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 Not Satisfied

Reason and supporting facts:

*Use will continue to be residential
Property has been used as residence
since 1911 and as residential use
snow clearing activity could be
done in another manner other than
plow*

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 Not Satisfied

Reason and supporting facts:

*Reason lot is not dissimilar
from other lots*

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 Not Satisfied

Reason and supporting facts:

*Other gaps in neighborhood are
situated in ^{the} manner desired*

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

Satisfied Not Satisfied

Reason and supporting facts:

*Buildings have been there for decades,
predating the zoning ordinance
owner didn't ~~impact~~ take action
with respect to structures*

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

Satisfied Not Satisfied

Reason and supporting facts:

Other feasible alternatives for such removal exist - though not preferable to owners

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

Satisfied Not Satisfied

Reason and supporting facts:

no environmental impact

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 Not Satisfied

Reason and supporting facts:

per maps, not in shoreland or hazard zone per zoning administrator

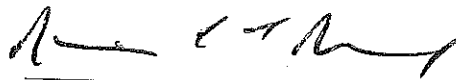
Conclusion: (check one)

___ 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.

Dated: *May 7, 2015*



Board Chair

*KENT AVERY
SECRETARY,
ACTING CHAIR*