



Planning & Urban Development Department

*Jeff Levine, AICP, Director**Marge Schmuckal, Zoning Administrator*

TO: Zoning Chair and Board Members

FROM: Marge Schmuckal, Zoning Administrator

SUBJECT: 12-14 Alba Street Appeal

DATE: January 30, 2014

I am addressing the Board to supplement the submitted appeal. The appellant has three areas of the R-5 zone requirements before the Board. The Practical Difficulties Variance defines the meanings of the dimensional standards outlined under this type of variance. Clearly "lot coverage" is listed as one of the dimensional standards allowed under a Practical Difficulty Variance. "Lot area" is also a listed dimensional standard. I have determined that the lot area per dwelling unit requirements result in a minimum required lot area. Therefore, the lot area per dwelling unit would be captured under the dimensional standards allowed for a Practical Difficulties Variance. I understand that "lot width" is not specifically listed under the dimensional standards for a Practical Difficulties Variance. However, I believe that lot width encompasses strong similarities and directly relates to setback requirements. I don't believe that the specific list is meant to prohibit other dimensional requirements that are similar and relate to the dimensional requirements listed. Therefore, I believe that the three dimensional requirements that are before the Board can all be heard under a Practical Difficulties Variance.

I have also attached a copy of the Ordinance from section 14-473(c)4.f. referring to specific variances that the Board is prohibited from granting. Please note that the prohibition clearly refers to *more than three (3) dwelling units*. This request is for three units and not more than three units. Therefore, if the Board votes to grant this appeal, it will not be in violation of the Ordinance.

I have also included documentation denoting the history of this property. The pre-1957 Assessor's cards show that the building had been used as a residential four (4) unit building. Further information implies that that use was maintained until a 1986 fire after which the building was vacated. The building remained vacated for at least three years and lost its nonconforming rights for the four dwelling units. There was an interpretation appeal that upheld the Zoning Administrator at that time concerning the lost rights. Later in 1989 a variance appeal was granted allowing two dwelling units. Those two units are maintained today in the front portion of the structure with the rear portion remaining empty.

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City of Portland
Code of Ordinances
Sec. 14-473

Land Use
Chapter 14
Rev. 3-4-13

18, 1984, no variance shall be granted which would permit the alteration of a structure to accommodate any additional dwelling unit as a conditional use without meeting the requirements which would otherwise be a condition precedent to such conditional use treatment.

14-473 (c) 4. f.

f. No variance shall be granted which would permit the alteration of an existing residential structure in an R-4 or an R-5 zone to accommodate more than three (3) dwelling units. No such variance shall be granted unless:

1. No additional unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;
2. No open outside stairways or fire escapes above the ground floor shall be or have been constructed in the immediately preceding five (5) years;
3. A lower level dwelling unit shall have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level;
4. No existing dwelling unit shall be decreased to less than one thousand (1,000) square feet of floor area;
5. The building shall have been in existence prior to January 1, 1984;
6. A minimum of nine thousand (9,000) square feet of land area shall be required;
7. A minimum of four (4) on-site parking spaces shall be required;
8. A minimum of seventy-five (75) feet of street frontage shall be required; provided, further, before a building permit may be issued, site plan approval under article V of this chapter

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City of Portland
Code of Ordinances
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shall be required with the following additional review standards:

- (i) Any addition or exterior alterations such as facade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the structure;
- (ii) The scale and surface area of parking, driveways, and paved areas shall be arranged and landscaped to be compatible in size and scale with neighboring properties in the area and to properly screen vehicles from adjacent properties and streets;

provided, further, that no variance shall be granted with respect to any of the preceding additional requirements.

- g. No variance shall be granted from the minimum lot sizes set forth in section 14-433 for lots in the IR-1, IR-2 and I-B zones.
- h. No variance shall be granted from the requirements in Section 14-403.

(d) *Conditions on variances; variances less than requested.* Reasonable conditions and safeguards relating to construction, character, location, landscaping, screening and other matters may be imposed upon the premises benefited by a variance as considered necessary to prevent injurious effects upon other property and improvements in the vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the resolution granting the variance and in the notice informing the applicant thereof. Violation of such conditions and safeguards shall be a violation of this article. A variance less than or different from that requested may be granted when the record supports the applicant's right to some relief but not to the relief requested.

(e) *Limitations on variances.* No variance permitting the erection or alteration of a building shall be valid for a period longer than six (6) months, or such other time as may be fixed at

rear Bldg - P94

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RECORD OF BUILDINGS

GRADE DENOTES QUALITY OF CONSTRUCTION: A-EXCELLENT; B-GOOD; C-AVERAGE; D-CHEAP; E-VERY CHEAP

YEAR 19

YEAR 19

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CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



12-14 Alba Street

7
MERRILL S. SELTZER
Chairman

JOHN C. KNOX
Secretary

PETER F. MORELLI
THOMAS F. JEWELL
DAVID L. SILVERNAIL
MICHAEL E. WESTORT
CHRISTOPHER DINAN

April 21, 1989

Mr. Nicholas J. Sangillo
2 Clinton Street
Portland, Maine 04103

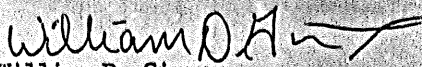
Dear Mr. Sangillo:

At the meeting of the Board of Appeals on Thursday evening, April 20, 1989, the Board voted by a vote of five members present to uphold the decision of the Building Inspection Services that the nonconforming use became abandoned one year after the closing by the City of the four-unit building in 1986 when the premises once again became vacant.

In a request for variance on the same agenda, you sought to obtain approval by the Board of Appeals for a change of use to recognize four apartment units on a lot containing only 5,500 square feet of land area. The City Zoning Ordinance requires a minimum of 3,000 square feet of land area per apartment in the R-5 Residence Zone in which the building is located.

The Board voted by a vote of four members opposed to one in favor to deny this request for a space and bulk variance to change the use of the building at 12-14 Alba Street and to recognize it as a four apartment building. We can not therefore comply with your application for a change of use permit.

Sincerely,


William D. Giroux
Zoning Enforcement Officer

Enclosures: Copies of Board's Decisions (2)

cc: Merrill S. Seltzer, Chairman, Board of Appeals
Joseph E. Gray, Jr., Director, Planning & Urban Development
P. Samuel Hoffses, Chief, Inspection Services
Kathleen Taylor, Code Enforcement Officer
Warren J. Turner, Administrative Assistant
Charles A. Lane, Associate Corporation Counsel

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CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



MERRILL S. SELTZER
Chairman
JOHN C. KNOX
Secretary
PETER F. MORELLI
THOMAS F. JEWELL
DAVID L. SILVERNAIL
MICHAEL E. WESTORT
CHRISTOPHER DINAN

APPEAL AGENDA

The Board of Appeals will hold a public hearing in Room 209, City Hall, Portland, Maine on Thursday evening, April 20, 1989, at 7:00 P.M. to hear the following appeals:

1. UNFINISHED BUSINESS:

79 Allen Avenue, Timothy P. Flaherty, owner is requesting a change of use from a two-family dwelling to a sheltered group care facility for thirteen people at 79 Allen Avenue and located in the R-5 Residence Zone not allowed unless authorized by the Board of Appeals. Section 14.118.1.b of the zoning ordinance. This item has been postponed by vote of the Board of Appeals from the April 6, 1989 meeting.

2. NEW BUSINESS:

Interpretation Appeal:

12-14 Alba Street, Mr. Nicholas J. Sangillo, owner, is requesting a decision from the Board of Appeals to authorize four apartment units at the above location which is in the R-5 Residence Zone. The building has been vacant for more than a year and Inspection Services believes the nonconforming use has lapsed.

3. CONDITIONAL USE APPEAL:

Mr. Jeffrey Gray, Portland Manager of the American Red Cross, owners, are petitioning the Board of Appeals to authorize accessory offstreet parking (55 parking spaces) on land owned by the American Red Cross which is accessible from Ashmont Street in the R-5 Residence Zone, not allowed according to Section 14-344 of the City Zoning Ordinance.

4. Variance:

a. Space and Bulk - Section 14-473(c)1 of the Ordinance must be met by the following requests:

12-14 Alba Street, Mr. Nicholas J. Sangillo, owner. If the interpretation appeal is denied, Mr. Sangillo is requesting authorization of four apartment units for the building at 12-14 Alba Street, which has contained four apartments since he purchased the building in 1957. The building, which was subject to a fire in 1978, has been vacant since 1986.

191-B-15, End of Lassell Street, Brown Homes, owners are requesting a variance to reduce the parking requirements by 50 parking spaces for the proposed elderly project located in the vicinity of Lassell, Mitton and Powsland Streets and located in the R-5 Residence Zone. A total of 175 parking spaces is required according the the City Zoning Ordinance and 125 parking spaces would be provided if this variance is granted.

874-8300

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



MERRILL S. SELTZER
Chairman

JOHN C. KNOX
Secretary

PETER F. MORELLI
THOMAS F. JEWELL
DAVID L. SILVERNAIL
MICHAEL E. WESTORT
CHRISTOPHER DINAN

12-14 Alba Street

May 30, 1989

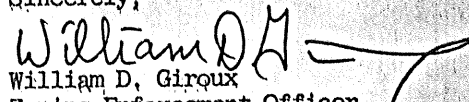
Mr. Nicholas J. Sangillo
2 Clinton Street
Portland, Maine 04103

Dear Mr. Sangillo:

At the meeting of the Board of Appeals on Thursday evening, May 25, 1989, the Board voted by a unanimous vote of six members present to grant your request for a variance for the building at 12-14 Alba Street in the R-5 Residence Zone, which would enable the building to be converted to a two family dwelling, following the approval of a building permit.

A certificate of variance will be prepared to accompany this letter as an enclosure with the copy of the Board's decision. Your application for a building permit may now be processed. Please have the enclosed certificate of variance recorded within 30 days from the date of its approval at the Cumberland County Registry of Deeds, 142 Federal Street, in Portland.

Sincerely,


William D. Giroux
Zoning Enforcement Officer

Enclosures: Copy of Board's Decision
Certificate of Variance

cc: Merrill S. Seltzer, Chairman, Board of Appeals
Joseph E. Gray, Jr., Director, Planning & Urban Development
P. Samuel Hoffses, Chief, Inspection Services
Kathleen Taylor, Code Enforcement Officer
Charles A. Lane, Associate Corporation Counsel
Warren J. Turner, Administrative Assistant

CITY OF PORTLAND, MAINE
MEMORANDUM

10

TO: Jane Durgin, City Clerk
FROM: Warren Turner, Administrative Assistant-Inspection Services
SUBJECT: Report of Actions Taken at the Board of Appeals Meeting on May 25, 1989

Warren J. Turner

DATE:
May 31, 1989

Chairman Merrill Seltzer called the meeting to order at 7:00 P.M. on Thursday evening, May 25, 1989, in Room 209, City Hall, Portland, Maine. There were six members present. Mr. Christopher Dinan was absent.

Unfinished Business

Interpretation Appeal:

Corner of Island & Welch Streets, Peaks Island, William A. Bonn, owner, requested an interpretation appeal as to whether the Board would uphold the decision of the Code Enforcement Officer regarding possible conversion of the former Innes House to a two family dwelling. The Board voted by a unanimous vote of six members present to deny this appeal.

Conditional Use Appeal

Corner of Island & Welch Streets, Peaks Island, William Bonn, owner, was granted this appeal to permit a change of use from single to two family for the building formerly known as the Inness House at the above address by a vote of 6 to 0.

New Business

Conditional Use Appeal

1093 Washington Avenue, Mr. and Mrs. James Ascanio, owners, were granted their appeal authorizing a day care center for 20 to 24 children at the above address by a vote of 6 to 0 subject to the condition that adequate turn around space be provided.

Variance, Space and Bulk:

12-14 Alba Street, Mr. Nicholas J. Sangillo, owner, was granted his request by a unanimous vote of six members, for the building at 12-14 Alba Street allowing it to be occupied as a 2 family dwelling. Formerly a four unit apartment house, the lot contains only 5,500 square feet of land area in the R-5 Residence Zone.

The meeting was adjourned at 8:25 P.M.

Enclosures: Agenda for May 25th
Copy of Decisions

205 Sandy Hill Rd. Sc. Pctd. 04106

BUILDING PERMIT APPLICATION

MAP #

LOT #

City of Portland

For Official Use Only

Owner: Nicholas J. Sangillo 772-6072

Address: 2 Clinton Street Pctd. 04101

LOCATION OF CONSTRUCTION 12-14 Alba St

CONTRACTOR: BAREX D-N Handy SUBCONTRACTORS: 767-3408

ADDRESS: 1101 Highland Ave. So Pctd. 04106

Est. Construction Cost: 4,000. Type of Use: 2 Family

Permit Use: Residential

Building Dimensions L W Sq Ft # Stories Lot Size

Is Proposed Use: Seasonal Condominium Apartment

Conversion - Explain interior renovations as per plan

COMPLETE ONLY IF THE NUMBER OF UNITS WILL CHANGE sheet rock walls

Residential Buildings Only

Of Dwelling Units # Of New Dwelling Units

Foundation:

1. Type of Soil:

2. Set Backs - Front Rear Side(s)

3. Footings Size:

4. Foundation Size:

5. Other:

Floor:

1. Sills Size: Sills must be anchored.

2. Girder Size:

3. Lally Column Spacing: Size: Spacing 16" O.C.

4. Joists Size:

5. Bridging Type: Size: Spacing

6. Floor Sheathing Type: Size: Spacing

7. Other Material:

Exterior Walls:

1. Studding Size: Spacing

2. No. windows

3. No. Doors

4. Header Sizes: Yes No. Spacing(s)

5. Bracing: Yes No. Spacing(s)

6. Corner Posts Size

7. Insulation Type: Size

8. Sheathing Type: Size

9. Siding Type: Weather Exposure

10. Masonry Materials

11. Metal Materials

Interior Walls:

1. Studding Size: Spacing Spacing(s)

Covering Type: If required Materials

Form with fields for Date (May 2, 1989), Inside Fire Limits, Block Code, Truss Limit, Estimated Cost (4,000), Value of Structure, Fee (40.00), Subdivision Name, Lot Block, Permit Expiration, Ownership (Public/Private).

Ceiling section with fields for Joists Size, Strapping Size, Type Ceilings, Insulation Type, Ceiling Height, Truss or Rafters Size, Sheathing Type, Roof Covering Type, Other.

Roof section with fields for Truss or Rafters Size, Sheathing Type, Roof Covering Type, Other.

Chimneys section with field for Number of Fire Places.

Heating section with field for Type of Heat.

Electrical section with fields for Service Entrance Size, Smoke Detector Required, Approval of soil test if required, No. of Tubs or Showers, No. of Finishes, No. of Lavatories, No. of Other Fixtures.

Plumbing section with fields for Approval of soil test if required, No. of Tubs or Showers, No. of Finishes, No. of Lavatories, No. of Other Fixtures.

Swimming Pools section with fields for Type, Pool Size, Must conform to National Electrical Code and State Law.

Zoning section with fields for District, Street Frontage Req., Required Setbacks: Front, Back, Side, Provided.

Review Required section with fields for Zoning Board Approval, Planning Board Approval, Conditional Use, Shore and Floodplain Mgmt, Other (Explain), Date Approved.

Permit Received By section with fields for Name (Deborah Goode), Signature of Applicant, Date (5/2/89), Signature of CEO.

Inspection Dates section with fields for White-Tax Assessor, Yellow-GPGOG, White-Tax Assessor, White-Tax Assessor.

68-50-5

