

CHIP GAVIN  
WILLIAM GETZ  
KEENT AUERT  
GORDON SMITH  
DONNA KATSIAFICAS  
ERIC LARSSON

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

### "Practical Difficulty" Variance Appeal

#### DECISION

Date of public hearing: January 22, 2015

Name and address of applicant: John Jordan  
Lincoln Capital, LLC  
796 Forest Avenue  
Portland, ME 04103

Location of property under appeal: 142 East Kidder Street

#### For the Record:

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

JOHN JORDAN, APPLICANT  
TOM JEWELL, APPLICANT  
, CONTRACTOR - APPLICANT  
  
NO OPPONENTS.

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

APPLICATION + ATTACHMENTS  
LETTER FROM ROBERT GREENLAW, AS  
RE: SURVEY  
LETTER FROM LINCOLN CAPITAL, LLC  
RE: TITLE ISSUE  
MEMO FROM ANN MACHADO TO ZONING BOARD  
OF APPEALS  
CERTIFICATE OF OCCUPANCY + ATTACHMENTS

Findings of Fact and Conclusions of Law:

The applicant owns a new single family home located at 142 East Kidder Street, which was built by the prior owner of the property. A Mortgage Loan Inspection Plan completed on 11/21/2014 shows that the rear setback of the garage is 19 feet four inches, and the rear of the house at the rear entry is nineteen feet, which does not meet the 20 feet minimum rear setback requirement set forth in section 14-120(a)(4)(b). The applicant seeks a variance to reduce the required rear yard setback from twenty feet to nineteen 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 6 Not Satisfied 0

Reason and supporting facts:

ONLY ISSUE IS REAR SETBACK OF 20 FEET.

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 6 Not Satisfied 0

Reason and supporting facts:

ATTACHED GARAGE - PROPERTY NOT MARKETABLE AS IS + MOVING BUILDING AND/OR MORTGAGABLE WOULD CAUSE SIGNIFICANT ECONOMIC INJURY  
CITY REFUSED TO ISSUE NON-ACTION LETTER

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 6 Not Satisfied 0

Reason and supporting facts:

ISSUE IS SPECIFIC TO THIS PROPERTY ONLY.

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 6 Not Satisfied 0

Reason and supporting facts:

SINGLE FAMILY RESIDENTIAL PROPERTY IN SINGLE FAMILY NEIGHBORHOOD

NO OPPONENTS PRESENT & DE MINIMUS IMPACT DIFFERENCE - 1 FOOT OR LESS.

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

Satisfied 5 Not Satisfied 1

Reason and supporting facts:

NOT ACTION OF APPLICANT - LINCOLN CAPITAL ACQUIRED PROPERTY BY FORECLOSURE DEED IN LIEU. - AFTER CONSTRUCTION.

CONTRACTOR ERROR VS. PRIOR OWNER - POSSIBLE TECHNICAL ERROR.

LETTER OF ROBERT GREENLAW

NO OPPONENTS ADVERSE TESTIMONY.

PRIOR OWNER MAY NOT HAVE BEEN AWARE OF ISSUE

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

Satisfied 6 Not Satisfied 0

Reason and supporting facts:

- NO LAND AVAILABLE FROM ABUTTER(S)
- CITY HAS REFUSED TO ISSUE NO ACTION LETTER

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

Satisfied 6 Not Satisfied 0

Reason and supporting facts:

- NO ADVERSE TESTIMONY
- DE MINIMUS NATURE UNLIKELY TO HAVE ADVERSE 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 6 Not Satisfied 0

Reason and supporting facts:

- NO ADVERSE TESTIMONY
- CONFIRMED BY ZONING ADMINISTRATOR

Conclusion: (check one) ACTION -  
LARSSON


Option 1: The Board finds that the standards described above (1 through 8) have been satisfied and therefore GRANTS the application. 6/0

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:

1/22/15

  
Board Chair