

McCall
Avery
Larrison
Kassidicas

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

R-3 Residential Zone
Interpretation Appeal Decision

Date of public hearing: February 15, 2018

Name and address of Appellant: Margaret E. Gaertner
11 Stevens Avenue
Portland, Maine 04102

Location of property under appeal: 11 Stevens Avenue
CBL 188 A004001

FOR THE RECORD

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

Margaret Gaertner
11 Stevens Ave.
Portland.

Matt Serapas, Housing Safety Officer
Anna Terzagosa, ASSO C. CORP Counsel
City of Portland

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

Application, Exhibits, City memo with
Exhibits, pictures, letter of 5013 from State
Fire Marshall's office.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The appellant appeals from the inspections violations issued by the Housing Safety Office, requiring her to replace a bedroom window that does not meet the code requirements for a secondary means of escape/egress. The appellant asserts that:

- (a) The Housing Safety Officer did not have the right to inspect her personal bedroom, as it is not a rental unit;
- (b) The bedroom in question already has two sufficient means of escape; and
- (c) That she should not be required to replace the window due to the financial hardship imposed.

The Board derives authority to review orders, decisions, determinations and interpretation of the building authority pursuant to §§ 14-471, 14-472 of the City of Portland Code of Ordinances.

Applicable Ordinance Sections

Authority to Inspect

Pursuant to § 6-117, the “building authority or his or her designee . . . shall have the right to enter at any and all reasonable times into or upon any dwelling or dwelling premises within the city for the purpose of inspecting the dwelling or dwelling premises in order to determine compliance with the provisions of [the Housing Code].” The Housing Code includes a prohibition that

No person shall occupy as owner-occupant . . . any dwelling . . . which does not comply with Chapter 10 of this code, including but not limited to the following minimum standards for safety from fire . . . Every dwelling unit and every rooming unit shall have safe, unobstructed means of egress leading to safe and open spaces at ground level in accordance with applicable statutes, regulations and ordinances.

§ 6-116(b).

By contrast, pursuant to § 10-3(n),

The authority having jurisdiction, upon proper identification, shall have the right to enter at any and all reasonable times for the purpose of inspecting in order to determine compliance with the provision of this Life Safety Code into or upon any of the following premises: any rental unit subject to registration under section 6-151; [and] any premises subject to this article, with the exception of premises subject to Chapter 24 of NFPA 101.

The authority having jurisdiction is the City of Portland Fire Chief. § 10-2. “Rental unit” is defined as,

a portion of any residential structure that is rented or available for rent to any individual or individuals for any length of time. Any portion of a Single-Family Home, Condominium, or Apartment that is rented or available to be rented to an individual or individuals who are not the owner or owners shall be considered a rental unit.

§ 6-150.1. Chapter 24 of NFPA 101 applies to single- and two-family dwellings. NFPA 101 (2009) Ch. 24.

Two Means of Escape

NFPA 101 § 24.2.2.1.1 provides that, "In dwellings or dwelling units of two rooms or more, every sleeping room . . . Shall have not less than one primary means of escape and one secondary means of escape." The secondary means of escape shall be "independent of and remote from the primary means of escape." NFPA 101 § 24.2.2.3.2.

Findings

- (a) Appellant has demonstrated that the Housing Safety Officer did not have the authority to inspect her personal bedroom for compliance with the Housing Code.

Satisfied _____ Not Satisfied

Reason and Supporting Facts:

§6 -117 building authority has right to inspect. City ~~to~~ building authority had right to inspect entire house of every dwelling unit.

- (b) Appellant has demonstrated that the Housing Safety Officer erred in his determination that her personal bedroom does not have two independent and remote means of escape.

Satisfied Not Satisfied

Reason and Supporting Facts:

Fire Marshall's memo of ~~2013~~ October 17, 2013 indicates windows of 20" w and 24" height will meet opening for required for egress, window must have 3.3 sq ft of egress. Applicant has provided evidence that windows comply. Measurements need to be verified. City states if windows measure in compliance with Fire Marshall's memo, notice of violation will be with drawn.
Independent and remote access. NFPA requires 2 remote means of egress. Exits through front door & garage. They are sufficiently independent to comply with NFPA requirements, Chapter 24 ~~501~~ 101. There are 2 different routes out of bedroom.

- (c) Appellant has demonstrated that compliance with the Housing Code, as determined by the Housing Safety Officer is financially burdensome, and that the financial burden is adequate justification for not complying with the order of the Housing Safety Officer.

Satisfied Not Satisfied

Reason and Supporting Facts:

Section 10 provides for financial hardship relief.

Section 6 is what is at issue here, and the violation ^{and inspection} ~~is~~ ^{under} section 6 of the Code.

Only financial burden was new window was \$500.

~~The Board~~ The Appellant has not adequately demonstrated that there is relief available for financial hardship under Section 6 of the Code.

Conclusions

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Option 1: The Board finds that the appellant has satisfactorily demonstrated she is not required to comply with the order of the Housing Safety Officer, requiring her to replace her personal bedroom window.

Option 2: The Board finds that the appellant has NOT satisfactorily demonstrated she is not required to comply with the order of the Housing Safety Officer, requiring her to replace her personal bedroom window.

Dated:

2-15-18


Board Chair