

McCall
Katsigoras
Avery
Yamson
Bartels

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

A-B Airport Business Zone
Practical Difficulty Variance Appeal

DECISION

Date of public hearing: April 20, 2017

Name and address of Appellant: Mark Goodwin
Northeast Air
1011 Westbrook Street
Portland, Maine 04102

Location of property under appeal: 1101 Westbrook Street
CBL 199 A001013

For the Record:

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

Owens McCullough
Sabapo Henrichs - Applicant
Northeast Air
Mark Goodwin - Northeast Air

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

Application & Exhibits

Findings of Fact and Conclusions of Law:

The applicant is seeking a practical difficulty variance from the requirements of City of Portland Code of Ordinances § 14-199(c)(1), which requires a pavement setback from a lot boundary of 20 feet. The applicant seeks a variance reducing that setback to 7.5 feet.

The Board of Appeals has jurisdiction to hear and grant or deny applications for practical difficulty variances pursuant to § 14-473(c)(3).

Findings:

The board of appeals may grant a variance from the dimensional standards when strict application of the provisions of the ordinance would create a practical difficulty, and 1) "the need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood;" 2) 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;" 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 "variance will not have an unreasonably adverse effect on the natural environment;" and 6) the property is not located in a shoreland area, shoreland zone, or flood hazard zone. § 14-473(c)(3)(a).

1. The application is for a variance from dimensional standards of the Land Use Ordinance, which is defined as those provisions that "relate to lot area, lot coverage, frontage, and setback requirements." §§ 14-473(c)(3)(a), 14-473(c)(3)(b)(1).

Satisfied Not Satisfied

Reasons and supporting facts:

Applicant is looking to reduce setback from 20 feet to 7.5 feet per application + testimony.

2. Strict application of the provisions of the ordinance would create a practical difficulty, which is defined as a "case where strict application of the dimensional standards of the ordinance to the property for which a variance is sought 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." §§ 14-473(c)(3)(a), 14-473(c)(3)(b)(2).

Significant economic injury exists where, "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." § 14-473(c)(3)(b)(3).

Satisfied Not Satisfied

Reasons and supporting facts:

*substantially lower value to property
based on cash flow of property -
significantly lower without the
variance*

3. The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood. § 14-473(c)(3)(a)(1).

Satisfied Not Satisfied

Reasons and supporting facts:

*Application shows - this is a jetport -
no unique circumstances*

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. § 14-473(c)(3)(a)(2).

Satisfied Not Satisfied

Reasons and supporting facts:

No change in configuration of property hangar is simply being replaced surrounding properties might improve in value due to improvements

5. The practical difficulty is not the result of action taken by the applicant or a prior owner. § 14-473(c)(3)(a)(3).

Satisfied Not Satisfied

Reasons and supporting facts:

Set back of original building complied with original zoning. zoning changed over time - need for variance not caused by applicant

6. No other feasible alternative is available to the applicant, except a variance. § 14-473(c)(3)(a)(4).

Satisfied Not Satisfied

Reasons and supporting facts:

Testimony indicates hangar can't be placed in different spot Can't reduce size of building & house the aircraft that need to be housed there.

7. The granting of a variance will not have an unreasonably adverse effect on the natural environment. § 14-473(c)(3)(a)(5).

Satisfied Not Satisfied

Reasons and supporting facts:

*Hazard already exists
stormwater plan in place*

8. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S. § 435, nor within a shoreland zone or flood hazard zone, as defined in this article. § 14-473(c)(3)(a)(6).

Satisfied Not Satisfied

Reasons and supporting facts:

*Not in shoreland ~~zone~~ area / Flood
zone per FEMA Flood Map*

Decision:

*Kate
Burt*

Per 14-473(e) - granted for 1 year

Option 1: The Board finds that the applicant has satisfactorily met all of the standards for a practical difficulty variance and GRANTS the variance without limitation.

Option 2: Pursuant to § 14-473(d), the Board may impose conditions on a practical difficulty variance. The Board finds that the applicant has met all of the standards described above, however, reasonable conditions are necessary to prevent injurious effects upon other property and improvements in the vicinity or upon public facilities and services, and it GRANTS the variance SUBJECT TO THE FOLLOWING CONDITIONS:

Option 3: The Board finds that the applicant has NOT satisfactorily met the standards for a practical difficulty variance and DENIES the variance.

Dated: *4-20-17*

[Signature]
Board Chair