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# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

R-2 Residential Zone  
Practical Difficulty Variance Appeal

### DECISION

Date of public hearing: December 1, 2016

Name and address of Appellant: Noel Poirier  
280 Brighton Avenue  
Portland, Maine 04102

Location of property under appeal: 111 Cobb Avenue  
CBL 210 A010001, 210 A011001

### For the Record:

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

Noel Poirier  
Scott Regan  
334 Broadturn Rd  
Scarborough, Me 04072

Tim Raymond  
110 Cobb Ave.

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 § 14-80(c), which requires that lots have a minimum street frontage of 50'. The applicant seeks a variance reducing the minimum street frontage to 25'.

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."

Satisfied  Not Satisfied

Reasons and supporting facts:

*frontage reduction from 50' to 25 feet*

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."

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."

Satisfied  Not Satisfied

Reasons and supporting facts:

693,000 P+S, if not sold as a residential lot - value is open space - no other frontage on street. would have less value.

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

Reasons and supporting facts:

Road was vacated mistakenly by the City leaving only 25 feet of frontage instead of 50 feet.

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

Reasons and supporting facts:

*Residential neighborhood, residential use - is compatible. Character of neighborhood won't be changed.*

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

Satisfied  Not Satisfied

Reasons and supporting facts:

*Practical difficulty caused by City's mistaken location leaving 25 feet.*

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

Satisfied  Not Satisfied

Reasons and supporting facts:

*Variance is necessary to have a buildable lot; could only be used as a recreational lot.*

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

Satisfied  Not Satisfied

Reasons and supporting facts:

*Residential use consistent with neighborhood. No adverse testimony.*

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, as defined in this article.

Satisfied  Not Satisfied

Reasons and supporting facts:

*Not within the shoreland zone.*

**Decision:**

*Katherine Meyer*

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 Sec. 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:

*Until private rights are vacated, set back of any house built on the lot will be set back measured from the southern ~~western~~ edge of the vacated way and not the center line of the vacated way.*

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

Dated: *December 1, 2016*

*[Signature]*  
Board Chair