

*mayor
Avery
Katsifis
Zamboni*

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

B-4 Commercial Corridor Zone
Variance Appeal

DECISION

Date of public hearing: January 5, 2017

Name and address of applicant: Harmonious Holdings, LLC
15 Locust Street, # 3
Westbrook, Maine 04092

Location of subject property: 31 Warren Avenue
CBL 292 D010001

For the Record:

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

*Samuel Hermon - owner
15 Locust St. #3
Westbrook, Me.
Paul Dion (Real Estate Broker)*

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

*Application w/ Exhibits
Memorandum from Ann Machado w/
Exhibits*

Findings of Fact and Conclusions of Law:

The property at issue is a legally nonconforming two-family structure that is currently being used as a three-unit building. The applicant is seeking to legalize the third unit by seeking a variance from the requirements of City of Portland Code of Ordinances Sec. 14-382(c), which provides that:

No alterations, modifications or additions shall be made so as to increase the cubical content or the degree of nonconforming use, nor shall a nonconforming use be extended to any other part of such building, unless such part was clearly arranged and designed for such nonconforming use prior to June 5, 1957, or such extension of a nonconforming use is solely for the purpose of bringing the use into compliance with health or safety codes, or to correct a condition that may not technically be in violation but which is determined by the board of appeals to constitute a health or safety problem. In either case, the expansion shall be limited to the minimum necessary to accomplish that purpose.

The Board of Appeals has jurisdiction to hear and grant or deny applications for variances pursuant to Sec. 14-471(b).

Findings:

Sec. 14-473 provides that "[A] variance may be granted by the board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship." An undue hardship exists where all of the four following criteria are satisfied:

1. The land in question cannot yield a reasonable return unless a variance is granted;

Satisfied _____ Not Satisfied 2-2

Reason and supporting facts:

Rental of a 3-unit is \$3,200 a month
rental of 2-unit is \$2,700 a month
appears to yield reasonable rent, not much
_____ differential for 2 unit

Not satisfied - Cost differential in sale
between 2 & 3 unit building
and cost of rehabbing building to
a 2 unit ² makes it not yield reasonable
result.

2. 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

Reason and supporting facts:

2 unit permitted, built out as a 3 unit. Not due to conditions of the neighborhood.

3. The granting of a variance will not alter the essential character of the locality; and

Satisfied Not Satisfied

Reason and supporting facts:

Building has existed for quite some time as 3 unit; character remaining the same.

4. That the hardship is not the result of action taken by the applicant or a prior owner.

Satisfied _____

Not Satisfied

Reason and supporting facts:

applicant didn't take the
action leading to hardship.
A permit is in the file for 2
units, assessor's card from 1950
shows a 2 unit building at
this location.

Decision: (check one for each item)

Option 1: The Board finds that the applicant has satisfactorily demonstrated that strict application of the ordinance, or a provision thereof, to the applicant and its property would cause undue hardship and GRANTS the variance without limitation.

Option 2: The Board finds that the applicant has satisfactorily demonstrated that strict application of the ordinance, or a provision thereof, to the applicant and its property would cause undue hardship and GRANTS the variance with the following limitations:

Option 3: The Board finds that the applicant has NOT satisfactorily demonstrated that that strict application of the ordinance, or a provision thereof, to the applicant and its property would cause undue hardship and DENIES the variance.

Dated:

12/14-17



Board Chair