

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

R-3 Residential Zone Practical Difficulty Variance Appeal

DECISION

Date of public hearing: April 5, 2018

Name and address of Appellant: Jayne Pasquali
84 Pennell Ave
Portland, Maine 04103

Location of property under appeal: 84 Pennell Ave
CBL 344 D020001

For the Record:

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

Jayne Pasquali - Petitioner
Francesca Pasquali - 271 Summit Street.

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

Submitted materials
Testimony
Adding 1 document "04/04/2018"

Sec Pro Temp 4/10
Joseph Zamboni

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 § 14-90(d)(3)(a), which requires a minimum side yard of eight feet.

The applicant seeks a variance reducing the side yard setback to five 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 the applicant meets the requirements of § 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 4 Not Satisfied 0

Reasons and supporting facts:

Addition to house is 3' into setback.

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 X Not Satisfied Y

Reasons and supporting facts:

Economic injury evidence does not appear to "substantial." Quality of evidence of economic injury could be improved. Some evidence to suggest \$20,000.00 injury.

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 Y Not Satisfied X

Reasons and supporting facts:

General conditions of neighborhood do not require need for variance.

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 4 Not Satisfied 0

Reasons and supporting facts:

Evidence of record neighbor has similar situation.

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 0 Not Satisfied 4

Reasons and supporting facts:

Applicant oversaw construction and took action.

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

Satisfied 0 Not Satisfied 4

Reasons and supporting facts:

Alternatives are expensive but appear to be available.

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

Satisfied 4 Not Satisfied 0

Reasons and supporting facts:

Nothing indicates this would have an adverse effect on the surrounding neighborhood.

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 4 Not Satisfied 0

Reasons and supporting facts:

Nothing indicates property is in shoreland or flood hazard zone.

Decision:

 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. *4-0*

Dated:

04/05/2018

ACKING
Donna M. Katsifras
Board Chair