

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Philip Saucier
Sara Moppin-secretary
Gordon Smith-chair
Mark Bower
William Getz
Elyse Segovias

August 17, 2012

Melanie & Michael Desjardins
104 Shepherd Lane
Portland, ME 04103

RE: 104 Shepherd Lane
CBL: 351 A028
ZONE: R-2

Dear Mr. & Ms. Desjardins

At the August 16, 2012 meeting, the Zoning Board of Appeals voted 4-0 to grant the Practical Difficulty Appeal to reduce the side and rear setbacks so the existing shed would not have to be relocated. I am enclosing a copy of the Board's decision.

I am also enclosing the Certificate of Variance Approval. **The original must be recorded in the Cumberland County Registry of Deeds within 90 days of August 16, 2012, when it was signed.** Failure to record the Certificate will result in it being voided. Our office must be provided with a copy of the recorded Certificate of Variance showing the recorded book and page before the permit for the shed (#2012-07-4392) can be closed out.

You will also find an invoice for the fees that are still owed for the processing fee, the legal ad and the notices for the appeal. Please submit your payment on receipt of this invoice.

Appeals from decisions of the Board may be filed in Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Should you have any questions please feel free to contact me at 207-874-8709.

Yours truly,


Ann B. Machado
Zoning Specialist

Cc. file

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

ZONING BOARD APPEAL DECISION

To: City Clerk
From: Marge Schmuckal, Zoning Administrator
Date: August 17, 2012
RE: Action taken by the Zoning Board of Appeals on August 16, 2012.

Members Present: William Getz (acting secretary), Gordon Smith (chair), Mark Bower and Elyse Segovias

Members Absent: Phil Saucier and Sara Moppin

1. New Business

A. Practical Difficulty Variance Appeal:

102-108 Shepherd Lane, Melanie & Michael Desjardins, owners, Tax Map 351, Block A, Lot 028, R-2 Residential Zone: There is an existing twelve foot by sixteen foot shed on the property that was built without a permit. The applicants have applied to permit the shed, but it does not meet the required setbacks. The appellants are requesting a variance for the side setback from the required twelve feet to eight feet and for the rear setback from the required twenty-five feet to one foot [sections 14-80(d)(2)&(3)]. Representing the appeal are the owners. **The Zoning Board of Appeals voted 4-0 to grant the appeal to reduce the required rear and side setbacks so the twelve foot by sixteen foot shed did not have to be relocated.**

Enclosure:

Decisions for Agenda from August 16, 2012
One DVD

CC: Mark Rees, City Manager
Jeff Levine, Director Planning & Urban Development
Alex Jaegerman, Planning Division
Mary Davis, Housing and Neighborhood Services Division

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

"Practical Difficulty" Variance Appeal

DECISION

Date of public hearing: August 16, 2012

Name and address of applicant: ✓ Michael & Melanie Desjardins *Present*
104 Shepherd Lane
Portland, ME 04103

Location of property under appeal: 104 Shepherd Lane

For the Record:

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

Board: Elyse Segovias
Mark Bower
Gordon Smith
William Getz

No members of the public present

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

Application
Form
Narrative Letter (signed)
Plot Plan 104 Shepherd Ln.
Shepherd Ln. Map
Photos
Warranty Deed

Findings of Fact and Conclusions of Law:

The subject property is located in an R-2 residential zone. There is an existing twelve foot by sixteen foot shed on the property that was built without a permit. Applicants have applied to permit the shed, but it does not meet the required setbacks. Therefore the applicants are seeking a variance for the side setback from the required twelve feet to eight feet and for the rear setback from the required twenty-five feet to one foot (Sections 14-80(d)(2)&(3)). Representing the appeal are the owners.

“Practical Difficulty” Variance standard pursuant to Portland City Code §14-473(c)(3):

1. The application is for a variance from dimensional standards of the zoning ordinance (lot area, lot coverage, frontage, or setback requirements).

Satisfied Not Satisfied

Reason and supporting facts:

Set back requirements per zoning administrator

2. Strict application of the provisions of the ordinance would create a practical difficulty, meaning it 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” means 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

Reason and supporting facts:

Consideration of significant was in part based on injury to the applicant and not solely based on the overall value of the property.

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

Reason and supporting facts:

The topography and adjacent lots as well as the configuration of common space adds to the unique situation of the property.

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

Reason and supporting facts:

Testimony that the shed has been there at least 10 years
No opposition from the neighbors or members of the public
No evidence that the shed has any impact on the neighborhood or the environment.

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

Satisfied Not Satisfied

Reason and supporting facts:

The property was purchased with the shed in its present location.

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

Satisfied Not Satisfied

Reason and supporting facts:

Feasible alternatives were explored and ruled out due to cost and additional hardship

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

Satisfied Not Satisfied

Reason and supporting facts:

No evidence or testimony of an inverse impact.

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.

Satisfied Not Satisfied

Reason and supporting facts:

Per Zoning

Conclusion: (check one)

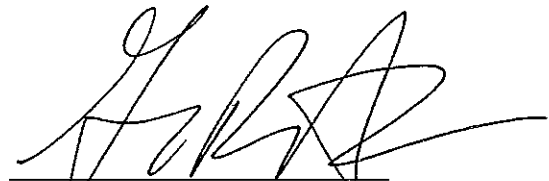
Option 1: The Board finds that the standards described above (1 through 8) have been satisfied and therefore GRANTS the application. *Segovins + Power*

Option 2: The Board finds that while the standards described above (1 through 8) have been satisfied, certain additional conditions must be imposed to minimize adverse effects on other property in the neighborhood, and therefore GRANTS the application SUBJECT TO THE FOLLOWING CONDITIONS:

Option 3: The Board finds that the standards described above (1 through 8) have NOT all been satisfied and therefore DENIES the application.

Dated:

8/16/12



Board Chair



CITY OF PORTLAND

CERTIFICATE OF VARIANCE APPROVAL

I, Gordon Smith, the duly appointed Chair of the Board of Appeals for the City of Portland, Cumberland County and State of Maine, hereby certify that on the 16th day of August, 2012, the following variance was granted pursuant to the provisions of 30-A M.R.S.A. Section 4353(5) and the City of Portland's Code of Ordinances.

1. **Current Property Owner: Michael & Melanie Desjardins**
2. **Property: 104 Shepherd Lane, Portland, ME CBL: 351-A-028**
Cumberland County Registry of Deeds, Book: 23573 Page: 250
Last recorded deed in chain of Title: 1/9/2006
3. **Variance and Conditions of Variance:**
To grant relief from section 14-80(d)(2) of the Land Use Zoning Ordinance to allow a rear setback of approximately one (1) foot instead of the twenty-five (25) foot required; and to grant relief from section 14-80(d)(3) of the Land Use Zoning Ordinance to allow a side setback of approximately eight (8) feet instead of the twelve (12) foot required.

IN WITNESS WHEREOF, I have hereto set my hand and seal this 16th day of August, 2012

, Chair of

City of Portland Zoning Board,

Gordon Smith

(Printed or Typed Name)

STATE OF MAINE
Cumberland, ss.

Then personally appeared the above-named **Gordon Smith** and acknowledged the above certificate to be his free act and deed in his capacity as Chairman of the Portland Board of Appeals, with his signature witnessed on August 16, 2012.

(Printed or Typed Name)

Notary Public

Margaret Schmuckal

My term expires June 28, 2019

PURSUANT TO 30-A M.R.S.A. SECTION 4353(5), THIS CERTIFICATE MUST BE RECORDED BY THE PROPERTY OWNER IN THE CUMBERLAND COUNTY REGISTRY OF DEEDS WITHIN 90 DAYS FROM FINAL WRITTEN APPROVAL FOR THE VARIANCE TO BE VALID. FURTHERMORE, THIS VARIANCE IS SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 14-474 OF THE CITY OF PORTLAND'S CODE OF ORDINANCES.

members Present: Gordon Smith, Bill Getz ^{Acting Sec}, Mark Bower, Elyse Segov

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Members Absent: Phil Sancier, SARA Moppin —

APPEAL AGENDA

Adjourned 6:30pm

The Board of Appeals will hold a public hearing on Thursday, August 16, 2012 at 6:30 p.m. on the second floor in Room 209 at Portland City Hall, 389 Congress Street, Portland, Maine, to hear the following appeal:

1. New Business

A. Practical Difficulty Variance Appeal:

GRANTED
4-0

102-108 Shepherd Lane, Melanie & Michael Desjardins, owners, Tax Map 351, Block A, Lot 028, R-2 Residential Zone: There is an existing twelve foot by sixteen foot shed on the property that was built without a permit. The applicants have applied to permit the shed, but it does not meet the required setbacks. The appellants are requesting a variance for the side setback from the required twelve feet to eight feet and for the rear setback from the required twenty-five feet to one foot [sections 14-80(d)(2)&(3)]. Representing the appeal are the owners.

2. Adjournment:



City of Portland Zoning Board of Appeals

August 8, 2012

Melanie & Michael Desjardins
104 Shepherd Lane
Portland, ME 04103

Dear Mr. & Ms. Desjardins,

Your Practical Difficulty Appeal has been scheduled to be heard before the Zoning Board of Appeals on **Thursday, August 16, 2012 at 6:30 p.m.** in room 209, located on the second floor of City Hall.

Please remember to bring a copy of your application packet with you to the meeting to answer any questions the Board may have.

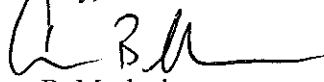
I have included an agenda with your appeal highlighted, as well as a handout outlining the meeting process for the Zoning Board of Appeals.

I have also included the bill for the processing fee, legal ad and the notices for the appeal. The check should be written as follows:

MAKE CHECK OUT TO: City of Portland
MAILING ADDRESS: Room 315, Attn: Ann Machado
389 Congress Street
Portland, ME 04101

Please feel free to contact me at 207-874-8709 if you have any questions.

Sincerely,


Ann B. Machado
Zoning Specialist

Cc: File

CITY OF PORTLAND
DEPARTMENT OF PLANNING & DEVELOPMENT

389 Congress Street
Portland, Maine 04101

INVOICE FOR FEES

Application No:	2012-553	Applicant:	Melanie & Michael Desjardins
CBL:	351 A028	Application Type:	Practical Difficulty Appeal
Location:	104 Shepherd Lane	Invoice Date:	8/8/12

<u>Fee Description</u>	<u>QTY</u>	<u>Fee/Deposit Charge</u>
Legal Advertisement	1	\$120.58
Notices	61	\$45.75
Processing Fee	1	\$50.00
Zoning Practical Difficulty	1	\$100.00

Total Current Fees:	\$316.33
Total Current Payments:	-\$150.00

Amount Due Now: \$166.33

Bill to:	CBL: 351 A028	Application No: 2012-553
Michael & Melanie Desjardins	Invoice Date: 8/8/12	<u>Total Amount Due:</u> \$166.33
104 Shepherd Lane		(due on receipt)
Portland, ME 04103		

Make check payable to: City of Portland and mail to Room 315, Attn: Ann Machado, 389 Congress St.,
Portland, ME 04101



PORTLAND MAINE

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Receipts Details:

Tender Information: Check , Check Number: 830

Tender Amount: 150.00

Receipt Header:

Cashier Id: amachado

Receipt Date: 8/6/2012

Receipt Number: 46758

Receipt Details:

Referance ID:	1706	Fee Type:	PZ-Z1
Receipt Number:	0	Payment Date:	
Transaction Amount:	100.00	Charge Amount:	100.00
Job ID: Project ID: 2012-553 - 104 Shepherd Lane - Practical Difficulty			
Additional Comments:			

Referance ID:	1707	Fee Type:	PZ-ZP
Receipt Number:	0	Payment Date:	
Transaction Amount:	50.00	Charge Amount:	50.00
Job ID: Project ID: 2012-553 - 104 Shepherd Lane - Practical Difficulty			

Ann Machado - Re: Zoning Board of Appeals Legal Ad

From: Joan Jensen <jjensen@pressherald.com>
To: Ann Machado <AMACHADO@portlandmaine.gov>
Date: 8/8/2012 10:07 AM
Subject: Re: Zoning Board of Appeals Legal Ad
Attachments: Portland 8:10.pdf

Hi Ann,

All set to run your ad on Friday, August 10.
The cost is \$120.58 includes \$2.00 online charge. I included a proof.
Thank you,
Joan

--
Joan Jensen
Legal Advertising
Portland Press Herald/Maine Sunday Telegram
P.O. Box 1460
Portland, ME 04104
Tel. (207) 791-6157
Fax (207) 791-6910
Email jjensen@pressherald.com

On 8/8/12 9:33 AM, Ann Machado wrote:

Joan -

Attached is the Zoning Board of Appeals Legal Ad for Friday, August 10, 2012.

Thanks.

Ann Machado
874-8709