


CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

To: City Clerk
From: Marge Schmutkal, Zoning Administrator 
Date: January 10, 2003
RE: Action taken by the Zoning Board of Appeals on January 9, 2003.

The meeting was called to order at 7:02 p.m.

Roll Call as follows:

Members Present: Patric Santerre, William Hall, Joseph Lewis, Nan Sawyer and Kimberly Boggiatto acted as secretary
Members Absent: Catherine Decker Julie Brady resigned as of 12-22-02.

APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, January 9, 2003 at 7:00 p.m. on the second floor in Room 209 at the Portland City Hall 389 Congress Street, Portland, Maine to hear the following Appeals:

1: **Unfinished Business:** There was no unfinished business

A. Interpretation Appeal

John W. and Marco S. DiSanto of 108 Veranda Street/12 Hodgins Street, Tax Map #431, Block #L, Lot #002,3,5 & 7 in the R-5 Zone is requesting a Interpretation Appeal from section 14-471(a) (Jurisdiction of Board of Appeals to hear and decide appeals from, and review orders, decisions, determinations or interpretations made by the building authority). The property is legally 3 dwelling units. This zone states that a multiplex (defined as three or more attached dwelling units) is required to have 6,000 square feet of land area per dwelling unit (section 14-117) or 18,000 square feet for three dwelling units. The land division proposal would reduce the current lot size from 19,354 square feet to just under 13,161 square feet. This reduction of a lot size is not allowable under section 14-422 and 14-117. The lot split proposal would reduce the existing garage rear setback from 49 feet to 7 feet. Section 14-120 requires a minimum rear setback of twenty (20) feet. This reduction is not allowed under section 14-422 and 14-120. The newly proposed lot and new single family along Hodgins Street does not meet the requirements of the R-5 zone. Section 14-120 requires a minimum street frontage of fifty (50) feet. The proposal is showing only 42 feet of street frontage. Section 14-120 requires a minimum lot width of sixty (60) feet thru the principal structure. The proposal is showing only 42 feet thru the principal structure. The newly proposed lot and two story dwelling shows only a five-foot side setback to the property line. Section 14-120 requires a 12-foot side setback for a two-story building. This reduction is not allowed under of section 14-120. Mr. James Haddow; Esquire will be representing the applicant. The Board voted 3-2 on the applicability of section 14-433 and as to whether the applicant met the requirements of section 14-433 in regards to lots of record. This vote constituted a denial because it lacked four (4) votes in the affirmation.

2: **New Business:**

A. Conditional Use Appeal

Portside Learning Center of 1976 Washington Avenue, Tax Map #369, Block A, Lots 003 in the R-2 Zone is requesting a Conditional Use Appeal under section 14-78.c.3 (Daycare Facility) of the Portland Zoning Ordinance. The applicant is proposing a daycare facility/nursery school up to 50 children. The facility will no longer be a church. Marlene Martin Annette Hogland are the applicants. The Board granted the Conditional Use 5-0 to open a daycare/nursery school facility up to 50 children.

MAINE SUPREME JUDICIAL COURT

Decision: 2004 ME 60
Docket: Cum-03-642
Submitted
On Briefs: March 24, 2004
Decided: May 6, 2004

Reporter of Decisions

Panel: SAUFLEY, C.J., and CLIFFORD, RUDMAN, DANA, ALEXANDER, and LEVY, JJ.

108 Veranda St

12 Hodgins St

43-L-2,3,5,7

JOHN B. DiSANTO and SONS, INC.

v.

CITY OF PORTLAND

RUDMAN, J.

[¶1] John B. DiSanto and Sons, Inc. appeals from a judgment entered in the Superior Court (Cumberland County, *Humphrey, J.*) affirming a decision of the City of Portland's Zoning Board of Appeals interpreting the city's land use ordinance as irreversibly extinguishing the grandfathered status of a nonconforming lot because it had been held in common ownership with an adjacent lot. We affirm the decision of the Superior Court.

[¶2] For a nonconforming lot to enjoy grandfathered status, the Portland ordinance requires, among other things, that it be "held under separate and distinct ownership from the adjacent lots." Portland, Me., Code § 14-433 (Jan. 30, 1989). DiSanto and Sons, Inc. contends that a grandfathered, nonconforming lot does not

permanently lose its grandfathered status when held under common ownership with an adjacent lot, and that it regains its grandfathered status when, again, its ownership is separate from the ownership of the adjacent lots.

[¶3] In 1968, John and Marco DiSanto purchased a parcel of land (lot 94) in Portland, and then in 1974, purchased an adjacent parcel (lot 93). At that time, lot 93 did not conform to the setback and lot width requirements of Portland's land use code, but enjoyed grandfathered status. In 2002, the DiSantos conveyed lot 93 to John B. DiSanto and Sons, Inc., who then applied for a building permit to construct a single-family dwelling on the lot.

[¶4] Despite DiSanto and Sons, Inc.'s attempt to distinguish this case from our precedents, the issue is resolved by our ruling in *Farley v. Town of Lyman*, 557 A.2d 197, 201 (Me. 1989). In *Farley*, a conforming lot was created when two adjacent, grandfathered, nonconforming lots came under common ownership. *Id.* at 198. The ordinance provided that a grandfathered lot "may be built upon *provided* that such lot *shall be* in separate ownership and not contiguous with any other lot in the same ownership." *Id.* at 200. One of the lots was then conveyed to a different owner and was no longer held in common ownership with the adjacent lot. *Id.* at 198. The owner asserted that once the nonconforming lot was again in separate ownership, it regained its grandfathered status. *Id.* at 200. We held that the loss of grandfathered status was "permanent and irreversible," noting that to

give the ordinance “any other construction would ignore both the context and the purpose of the disputed language.” *Id.* at 201. Our holding and rationale in *Farley* require the same result here.

The entry is:

Judgment affirmed.

Attorneys for plaintiff:

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