

2/4/88

11:25

Webster Del
93 Kensington St
Porter R

01103

Attn: Ed Meichand

Letter of 1565-1571
requests copy of B.D. of
Appeals Decision
Sent-approved P.S.H.

112

May 14, 1987

FINDINGS OF FACT
ALL APPEALS

TYPE OF APPEAL Use Variance

1. Name of Applicant Morris Greenberg + Mary Rogers

2. Address of Applicant 1565-1571 Congress St.

3. Right of applicant to appeal.
Owner ☒

Option to Purchase ☐

4. Location of property under appeal 1565-1571 Congress St.

5. Zone in which the property is located R-5

6. Present use of property Gas station

7. Proposed use if the appeal is granted. Gas station

extension of non-conforming but pre-existing
use

8. Names and addresses of those appearing in support of the application:

Morris Greenberg owner

9. Names and addresses of those appearing in opposition to the application:

John Tibbets 1544 Congress

10. Listing of the documentary evidence presented to the Board (e.g., plans, photos, maps, etc.)

VARIANCES

A variance may be granted if the Board finds that it will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the Ordinance would result in "undue hardship". The following questions must all be answered, with supporting findings of fact, in order to grant the appeal.

1. Can the land yield a reasonable return (not the highest return) without the granting of a variance?

Yes 4 (deny the appeal)
No 2

Reasons (including evidence) Operation is profitable

2. Are there factors which are unique to this property, and not to the general condition of the neighborhood, which create a need for a variance?

Yes 6
No 0 (deny the appeal)

Reasons (including evidence) an existing non-
conforming use

3. Will the granting of the variance alter the essential character of the locality?

Yes 0 (deny the appeal)
No 6

Reasons (including evidence) Gas station exists
on property

4. Is the hardship a result of action taken by the applicant or a prior owner (self-created hardship)?

Yes 1 (deny the appeal)
No 5

Reasons (including evidence) general deterioration
of property

If the appeal is granted, does the Board wish to impose conditions which will further the intent and purpose of this Ordinance?

Yes _____
No ✓

Specific Conditions _____

Reasons _____

Date of Public Hearing 5/14/87

Motion _____

(including conditions and findings of _____

Votes in Favor 2

Robert Sanderson
Christopher Rein

Votes Opposed 4

John C. Kuyper
Marshall & Leiber
Robert E. Lister
Clair D. Lawrence



CITY OF PORTLAND

REQUEST FOR VARIANCE APPEAL *Use Variance.*

Applicant's name and address: Mary Rogers 440 Forest Avenue
Morris Greenberg
97A Exchange Street, Portland, ME 04101 Portland, Maine 04101

Applicant's interest in property (e.g., owner, purchaser, etc.):

Owner

Owner's name and address (if different): _____

Address of property (or Assessor's chart, block and lot number):

1565-1571 Congress Street, Portland

Zone: R-5

Present use: Gas Station

Change of use
(if applicable) Same

Variance from: Section 14- _____

Relief requested from Board:

See Attached

APR 13 1987

NOTE: If site plan approval is required, attach preliminary or final site plan.

The undersigned hereby requests a variance as above-described, and certifies that all information herein supplied by him is true and correct to the best of his knowledge and belief.

Dated: April 13, 1987

[Signature]
Signature of Applicant

(See other side for variance standards.)

This is an application for a variance to modernize the facilities and upgrade the existing gas station presently operating at the corner of Frost and Congress Street.

A background of the gas station will show that the existing station, in its present location, has been operating since the middle or late 1930's without any change or improvement.

The present owners first acquired an interest in February, 1950, and the station has been operating under several companies since that time.

The station consists of a small wooden frame building and two gas pumps, in a row, situated close to the roadside. No changes have ever been made and considering the upgrading of the area and principally Frost Street, it is an eyesore and obsolete.

It is not the intention of the owners to enlarge the station. The present building would be torn down and a new building would be exactly the same in size, but would be of brick construction. The pumps would be the same, that is two in number, and the driveway on Frost Street would be moved away from its intersection with Congress Street.

1565-1571

Congress St.
2

There is presently no canopy over the existing pumps and we request the erection of a canopy over the new pumps for the protection of customers and employees in inclement weather. All new and modernized stations have a canopy over the pumps.

The wooden building, which is about 22 1/2 feet from Congress Street, would be moved back to about 58 feet from Congress Street.

The two pumps, now in a row, would be separated on different islands and would be self service.

All unused areas would be re-surfaced and landscaped in front of the station and around the borders, and curbing would be installed along the driveways.

There is an undue hardship imposed upon the owners by its present operation for the following reasons:

1. The appearance of the station, which many call a "shack", is a deterrent for many people coming to the station.
2. Two pumps in a row make it difficult to disperse fuel properly, causing delays for customers, and customers to drive away because of the delay.

3. The present operation requires operators to come out of the station and service the customer and frequently the station has been closed, especially in cold winter months, because the employee either quits or refuses to go out to service the customers. The new station would be self-serve.

4. The lack of a canopy over the pumps is a hardship because of the inclement weather. Employees quit rather than go out and service customers during the snowy or rainy days, and especially during the cold winter months. All present modern gas stations now have a canopy and consumers prefer the safety of the overhead lights and protection from the elements.

5. Because of the appearance of the station, lack of a canopy, and frequent closings for lack of employees, the monthly volume of gas sold has gone from approximately 62,000 gallons per month to the present rate of 42,300 gallons per month. The change requested would in no way alter the essential use of the property and its original nature and purpose, to wit, a gas station, would remain the same.

6. The hardship is not the result of any action taken by the owners or any prior owner, but is the result of circumstances beyond their control.

500²

(220-E-1) 1565-1571 Congress St. (37) (1)

Mary Rogers / Morris Greenberg

220-E-1 - Mary R. + Morris Greenberg - appealant

5-⁷ Edward S. + Gola Sarter Jts. ✓
1513 Congress 04102

X

8 - Cdeon G. Hattie Jts. ✓
1555 Congress 04102

2 ^{196-E-2} Guligal. Beaumier ✓
1545 Congress St. 04102

3 ¹⁹⁶ C M P Repeat

220-A-1 - Don. M. Billette ✓
1552 Congress St. 04102

3 } Janet al. + John L. Fittelle ✓
1544 Congress St.
04102
2 }

(2)

~~220-A-4~~ ⁴/₂ Repeat

220-A-12 Derry C. & Bessie H. Johnson ✓
16 Brewer St., Port. 04102

220-B-4

10 - Elwood Derry Johnson ✓
3 Cliff St., Portland 04102

9 - Maurice B. Johnson Repeat
3 Cliff St., Portland 04102

6 - Kenneth R. Haskell and Frances ✓
Johnson Jrs. - 1956 Congress 04102

220-B-1 - Lauretta M. Lawson ✓
1562 Congress St. 04102

2 - John C. & Arlene M. Thompson Jr. ✓
1566 Congress St. 04102

3 - Erlene M. & Frank E. B. Stuart Jr. ✓
11 Brewer St. 04102

③

220-5- 4-Richard W. Dumaire ✓
13 Brewer St., Portland 04102

5- } Peter H. & Terry V. Weyl Jr. ✓
17 Brewer St., Portland 04102
6- }

7-Mary K. & Peter J. Rogers ✓
440 Forest ave., Port. 04101

~~220-6~~ 8-James A. & Judith A. Lynch ✓
1 Cliff St., Portland 04102

9-Clwood Perry Johnson Repeat
3 Cliff St., Portland 04102

14-Maurice B. & Elsie H. Johnson Jr. ✓
3 Cliff St. 04102

+15
10-Dexter Enterprises ✓
1600 Congress St. 04102

(4)

~~220-B-11~~
220-B-11 - City of Portland - Geo. Glabets
55 Portland St. Public 04101

221-A-7
220-C-1 - Wilma Runo ✓
109 Brigham St., S. P. 04106

D - Francis G. & Helen S. Michael, Jr.
150 Hobart St. 04102

D-2⁴ - Central Me. Power Co. of Augusta
Box 1801, Portland, 04104

~~D-4-2~~

196-G-8 - Steven M. Viola ✓
134 Frost St., Port. 04102

3 - C M P Repeat.

(5)

196-G-cm 8 *Repeat*

196-F-Portland Terminal ✓
Rigny Rd. West, S. P. 04106

196-E-1 - Homer Michal ✓
1531 Congress St. 04102

~~2~~ Repeat

+ Mary Ann ✓
3 - Robert C. Underkoffler Jrs.
5 Kimball Dr., Scar., Me. 04074

196-D-12 } John O. + Marlene Y. Doughkinett
1530 Congress St.
Portland, Me. 04102

4 - Walter M. Rumery ✓
1347 Westbrook St. 04102

5 - George A. + Naomi B. Curry Jrs. ✓
1542 Congress St. 04102

(6)

196-D-1- Repeat

✓
6-220-A-1
C. Derry & Bessie H. Johnson
16 Brewer St. 04102

~~196-D-2~~

195-B-49 - Hazel M. Wallace ✓
25 Bancroft St. 04102

20- Repeat

53-270
your Home, Inc. ✓
P.O. Box 81
Woodford St., Port. 04101

52- Leo C. & Bernice H. King ✓
225 Bancroft St. Ely, Port. 04102

69- Dewey & Alberta Ferguson ✓
231 Bancroft St. 04102

22- Robert R. Inger ✓
133 Frost St., Port. 04102

⑦

195-D-32 - Grace L. Abourjaily ✓
117 Frost St., Port. 04102

195-C-5

6

Anthony D. Romano ✓
114 Frost St. 04102

8 - Tina M. Lavoie ✓
128 Frost St. 04102

221-B-1 - City of Portland - Geo. Flaherty

221-A-7 - Repeat (Rumo)

May 9, 1937

City of Portland, Maine
Zoning Board of Appeals
City Hall
Portland, Maine 04101

re: 1565-1571 Congress Street

Gentlemen:

As I am unable to get to the public hearing at City Hall on May 14th at 3:30 P.M. regarding the property at 1565-1571 Congress Street owned by Mary Rogers and Morris Greenberg requesting the Board of Appeals to grant approval of expansion of a nonconforming but pre-existing use, please use my letter as not approving this request.

Since such a use is not permitted under the Ordinance in the R-5 Residence Zone in which this property is located, I request that this petition not be granted by the Board of Appeals. I feel this is just a way of coming in the back door to get the building he requested the time before and the majority of the neighbors spoke against it. Also this property has always been a nuisance with robberies and breakins.

I thank you for giving this matter much thought and consideration before making your decision to grant or refuse the foregoing request.

Very truly yours,

Julia I. Beaumier

Julia I. Beaumier
1545 Congress Street
Portland, Maine 04102

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



1565-1571 Congress St.

MERRILL S. SELTZER
Chairman

JOHN C. KNOX
Secretary

ROBERT J. GAUDREAU
THOMAS F. JEWELL
DAVID L. SILVERNAIL
MICHAEL E. WESTORT
CHRISTOPHER DINAN

April 29, 1987

Mr. Morris Greenberg
and Mrs. Mary Rogers
97A Exchange Street
Portland, Maine 04101

Dear Mr. Greenberg and Mrs. Rogers:

Receipt of your application for a use variance is hereby acknowledged for consideration before the Board of Appeals at their meeting on Thursday afternoon, May 14, 1987, at 3:30 P.M. in Room 209, City Hall, Portland, Maine.

It is my understanding that you wish to obtain approval of a use variance to permit expansion of the existing service station, a nonconforming but pre-existing use in the R-5 Residence Zone at the intersection of Congress and Frost Street. If this use variance is approved, the gas station will be modernized and the facilities upgraded and more appropriately landscaped. It is understood that the existing gas station has operated at its present location since the middle 1930's without any change or improvement.

Your plans for modernization of the station would include replacing the present building with a new building exactly the same size, but of brick construction. A new canopy over the new gas pumps would be installed for the protection of both customers and employees. The wooden building would be moved back to about 58 feet from Congress Street side line. Gas pumps would be separated on two separate islands, with landscaping and curbing bordering the resurfaced areas.

As you know, the basis for approval of any variance is "undue hardship" as described in Section 14-473 (C) of the City Zoning Ordinance. Such hardship is described in your submission in support of this use variance request.

Sincerely,

Warren J. Turner

Warren J. Turner
Zoning Enforcement Inspector

cc: Merrill Seltzer, Chairman, Board of Appeals
Joseph E. Gray, Jr., Director, Planning & Urban Development
Alexander Jaegerman, Chief Planner
P. Samuel Hoffses, Chief, Inspection Services
Kevin Carroll, Zoning Enforcement Officer

389 CONGRESS STREET • PORTLAND, MAINE 04101 • TELEPHONE (207) 775-5451

City of Portland, Maine
Zoning Board of Appeals

May 7, 1987

1565-1571 Congress Street

As I am unable to attend this meeting on Thursday, May 14, 1987 at 3:30 P.M. in Room 209, City Hall, I am writing to state that I am against any change under the ordinance in the R-5 Residence zone which we now have. This is a residential district and let's keep it that way. Some, who own our homes and live in them, may be able to enjoy them awhile longer without increased traffic or undesirable businesses. I am of the older generation, having lived in the same house for over 30 years, and would like to be able to enjoy my remaining days, months or years, whichever, as it is now. Thank you for your attention and consideration.

Sincerely,

Lawrence M. Lawson

1562 Congress Street
Portland, Me., 04102

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



MERRILL S. SELTZER
Chairman

JOHN C. KNOX
Secretary

ROBERT J. GAUDREAU
THOMAS F. JEWELL
DAVID L. SILVERNAIL
MICHAEL E. WESTORT
CHRISTOPHER DINAN

1565-1571 Congress Street

All persons interested either for or against this Use Variance Appeal will be heard at a public hearing in Room 209, City Hall, Portland, Maine on Thursday afternoon, May 14, 1987 at 3:30 P.M. This notice of required public hearing has been sent to the owners of property within 500 feet of the property in question as required by the Ordinance.

Mary Rogers and Morris Greenberg, owners of the property, an existing gasoline station at 1565-1571 Congress Street, under the provisions of Section 14-473.C of the Zoning Ordinance of the City of Portland hereby respectfully petition the Board of Appeals to grant approval for expansion of a nonconforming but pre-existing use. Such a use is not permitted under the Ordinance in the R-5 Residence Zone in which this property is located

LEGAL BASIS OF APPEAL: Such permit may be granted only if the Board of Appeals finds that the conditions imposed by Section 14-473.C of the Zoning Ordinance have been met.

John C. Knox
Secretary

/el
4/24/87



CITY OF PORTLAND

DEPARTMENT OF PLANNING & URBAN DEVELOPMENT
INSPECTION SERVICES DIVISION

May 18, 1987

RE: 1565-1571 Congress Street

Mr. Morris Greenberg
97A Exchange Street
Portland, Maine 04101

Dear Mr. Greenberg:

At the May 14th meeting, the Board of Appeals voted by a 4 to 2 vote to deny your request for a use variance to enable your service station located in an R-5 Residence Zone to be expanded and improved as a pre-existing but nonconforming use.

Due to this decision, this office is unable to issue a building permit for the upgrading or improvement of the service station at 1565-1571 Congress Street.

Sincerely,

Warren J. Turner
Zoning Enforcement Inspector

/el

Enclosure: Copy of Decision

cc: Mrs. Mary Rogers, 440 Forest Avenue, Portland, Maine
Merrill Seltzer, Chairman, Board of Appeals
Joseph E. Gray, Jr., Director of Planning and Urban Development
Alexander Jaegerman, Chief Planner
P. Samuel Hoffses, Chief of Building Inspections
Hugh Irving, Code Enforcement Officer