

CITY OF SOUTH PORTLAND - BOARD OF APPEALS ATTENDANCE REPORT

12 MONTH PERIOD

THROUGH DECEMBER 1, 2016

Councilor Appointment	Morgan	1	Smith	2	Linscott	3	Cohen	4	Fox	5	Blake	AL	Beecher	AL	
	District One		District Two		District Three		District Four		District Five		At Large		At Large		
Member's District:	Bourke	1	Kelleher	2	Whyte	2	Cyr	3	Fortin	4	Biddings	4	Anastasoff	5	
Date	Type	100%	8	75%	6	100%	6	100%	8	75%	6	100%	8	88%	7
12/02/15	Regular	Bourke	1	Kelleher	1	vacant		Cyr	1	Fortin	1	Biddings	1	Anastasoff	1
01/27/16	Regular	Bourke	1	Kelleher	1	vacant		Cyr	1	Fortin	0	Biddings	1	Anastasoff	1
02/24/16	Regular	Bourke	1	Kelleher	1	Whyte	1	Cyr	1	Fortin	1	Biddings	1	Anastasoff	1
03/02/16	Regular	Bourke	1	Kelleher	1	Whyte	1	Cyr	1	Fortin	1	Biddings	1	Anastasoff	1
03/23/16	Regular	Bourke	1	Kelleher	0	Whyte	1	Cyr	1	Fortin	1	Biddings	1	Anastasoff	1
04/27/16	Regular	Bourke	1	Kelleher	0	Whyte	1	Cyr	1	Fortin	0	Biddings	1	Anastasoff	0
07/27/16	Regular	Bourke	1	Kelleher	1	Whyte	1	Cyr	1	Fortin	1	Biddings	1	Anastasoff	1
10/26/16	Regular	Bourke	1	Kelleher	1	Whyte	1	Cyr	1	Fortin	1	Biddings	1	Anastasoff	1
Total number of meetings in this 12 month period - 8															
All members are in good standing with a minimum of 75% meeting attendance.															
The 10/28/15 meeting was cancelled. Nov mtg rescheduled to 12/2/15. December 2015 mtg rescheduled to 1/6/16, then cancelled. Special meeting held 3/2/16 for acceptance of findings. May, June, August, September, November and December 2016 meetings cancelled.															
As of 12/28/16 there are no vacancies on the Board of Appeals.															

CITY OF SOUTH PORTLAND

Minutes of the South Portland Board of Appeals Council Chambers, City Hall October 26, 2016

Members Present

Cara Biddings, Chairman
Alex Anastasoff
David Bourke
Ryan Cyr
Dan Fortin
Ted Kelleher
Bob Whyte

Staff Present

Patricia Doucette, Director of Code Enforcement
& Deputy Director of Planning & Development
Cathy Counts, Secretary to the Board of Appeals

1. Acceptance of the minutes from the July 27, 2016 meeting

Mr. Whyte moved and Mr. Bourke seconded to approve the minutes, unanimous 7-0.

2. Acceptance of attendance report

Mr. Cyr moved and Mr. Bourke seconded to accept the attendance report and excuse the absences of Mr. Kelleher, which were due to work commitments, unanimous 7-0.

3. Approved request of Clifford Trott – 24 Deake St – Map 1 Lot 79 – AA Residential Zone - (2016-11)

*The applicant seeks permission to construct an enclosed entryway, expand the existing first floor living area, and build a second story addition over the existing garage in order to expand the master bedroom, requiring **a seven foot (7') front property line setback variance**. The second story master bedroom addition also requires **a five foot three inch (5'3") side property line setback variance**, and **a two foot (2') side property line setback variance** for an eighty-five square foot (85 SF) infill addition to expand the dining area of this home. The Board heard this request based on the "practical difficulty" criteria. Following public hearing and discussion, the Board approved these appeals unanimously as noted below.*

Mrs. Doucette read the public hearing notice and noted the items submitted by Port City Architecture as part of the application packet, including application form, a copy of the deed, bound copies of information that included existing and proposed conditions, a detail of each variance requested and narratives addressing each request, floor plans, elevations, existing conditions photographs, photos of adjacent properties, sketch plans, letters of support from adjacent property owners, and a sketch plan of the lot completed by Spurwink Surveying.

Mr. Mark Chaloupecky of Port City Architecture, representing the applicant, came forward to address the Board. The owners of the property were also present. He walked the Board through the project by displaying screens on both sides of the Chambers and noted he had a 3D model if necessary. He explained that soon after purchasing the home, the owners realized renovations would be necessary. There is an 8' height difference between the garage floor and the first floor. The old garage addition from the 1960's had living space above and protrudes about 8.5' in front of the house. The flat roof doesn't work in Maine and doesn't work with the cape-style design of the house. Also, the driveway and garage entry are located on the other side of the house and on a lower level from the main entry, which is at the first floor level. Anything done to correct these issues will need a variance from the front property line setback requirement.

In examining the issues regarding the garage, the applicant considered sliding the garage back to meet the front setback, but a ledge goes through most of the lot, all the way through the basement to the other side of the house, so that wouldn't work. In considering shortening the garage length to meet the front setback, but the existing 21' length

from back to front works now, while anything shorter wouldn't be adequate to serve as a garage. Also, due to the angle of the side property line, sliding the garage back would bring the structure too close to the side property line. The solution would be to build around the existing garage, incorporating a style more in keeping with the style of the house. To fix the entry issue, the proposal is to move the entry to the house onto the same level with the garage and next to the garage, which will be safer and more convenient. The pitch of the proposed roof over the garage's 2nd floor addition will be the same as on the main area of the house, in keeping with house style and neighborhood character. The side gable will also have a similarly pitched roof, going directly above the existing garage, and it will not jut out any further beyond the the garage, just up. Mr. Chaloupecky referred to floor plans, noting that only 98 SF will be added beyond the existing footprint in the front, and this will be just for the new lower level entry with interior stairs. The proposed infill addition for the dining area on the first floor will be approximately 85 SF.

He then addressed the criteria of practical difficulty for each variance requested, as included in the packet.

Variance 1 – Seven Foot (7') Front Property Line Setback Variance – to allow for the construction of an addition to the front of the existing residence that is flush with the face of the existing garage and includes a new entrance and an enclosed entrance stair, and to enlarge the second floor over the existing garage and existing first floor family room, 12'6" from the front property line.

- 1) *The strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district in which the property is located.* Currently the only entrance is either through the unfinished cellar basement or on exterior stairs beginning at the side of the house furthest from the garage and up a slope. The front entrance of the single family home needs to be reasonably correlated to the garage and needs to have an interior stairway to the upper level, both for safety and convenience. Due to the position of the house, the new front entrance and interior stairway must be located in the front setback.
- 2) *The strict application of the ordinance to the property results in significant economic injury to the applicant.* Due to steep grade differences on site, a stairway is required to access the first floor level of the house, yet strict application of the ordinance would preclude enclosing the stairway and locating it close to the garage, without which could be detrimental to the resale value of the home. Also, not allowing construction around the existing garage protruding from the house would preclude the incorporation of the garage into the existing traditional aesthetic which is predominate in the neighborhood and lessens the property's overall value. Furthermore, reconstructing the existing flat roof to fix any structural code deficiencies would not alleviate the snow, ice, and leak problems associated with it and will still require shoveling of the roof and the snowdrifts. If it is not changed, the owners will repeatedly expend significant dollars on otherwise unnecessary maintenance and repairs.
- 3) *The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.* The lack of a clear entry to the house due to garage placement is the major unique factor. Also, due to the unique flat-roofed garage addition that was built closer to the road than the house is, prior to the adoption of zoning setbacks, any construction to remedy the architecture would require a variance. Since the original residence is located immediately behind the adopted front setback, any connection between the house and non-conforming garage would require a variance.
- 4) *The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.* The variance will allow the residence to be more in keeping with the traditional architecture of the neighborhood, resulting in a positive effect, rather than a detrimental one. Seven letters of support for this project were written by abutters and nearby neighbors.
- 5) *The practical difficulty is not the result of action taken by the petitioner or a prior owner.* The existing construction was done prior to the City's adoption of setbacks, so what was built was conforming at the time, whereas upon adoption of the zoning ordinance, the building was no longer conforming, such that any construction to the front of the house and garage would require a variance.
- 6) *No other feasible alternative to a variance is available to the petitioner.* Because of the existing ledge, the garage cannot be "pushed" back, and eliminating the garage would be a significant loss to the property, so to lessen the protuberance of the existing garage, eliminate the problematic roof, and provide a connection between the garage and the house, building around the garage is required within the front setback.

- 7) *The granting of a variance will not unreasonably adversely affect the natural environment.* The entrance addition is less than is currently occupied by the front porch and exterior stairs to be removed (120 SF vs 131 SF).
- 8) *The property is not located in whole or in part within the shoreland areas as described in MRSA Title 38 Section 435.* The closest point of the property to the high water line is approximately 450', so it is not located within the Shoreland Zone.

Mr. Burke asked if the prior owner put in the flat roof, relative to #5. Mr. Chaloupecky confirmed. Mr. Fortin asked why a new pitched roof couldn't be put on the existing garage. Mr. Chaloupecky explained that to do so would not solve the entrance problem and would not bring the garage back to the appropriate mass for relation to the main portion of the home.

Ms. Biddings asked if the basement had a full ceiling. Mr. Chaloupecky said the existing stairway from the basement to the first floor is cramped in due to the presence of the ledge in the basement. That stairway is not to code and is not good for bringing guests into the house or bringing groceries in.

When Ms. Biddings wondered whether it was a finishable basement, Clifford Trott, co-owner of the property, came forward to address the Board. The presence of the basement ledge and the significant water that comes in during storm events precludes creating a finished basement. Mr. Chaloupecky added that an easement runs along the property from Deake Street and the ledge runs through there as well.

Mr. Cyr asked how cutting the retaining wall in the front to accomplish the project would affect the property. Mr. Chaloupecky said the wall is more decorative and extends from the existing concrete wall. The addition will go in that location. Mr. Cyr then asked if the garage roofline would be bigger than the peak of the house. Mr. Chaloupecky stated that the new peak would be higher. There will be a porch on the side, with a gable over it to balance aesthetically with the rest of the house. The 10:12 pitch gives a ridge for the gable end. They need the eave to match up, giving a ridgeline to the top. The new height will still be until the height limit.

Ms. Biddings asked whether there was a house on the other side of the property. Mr. Chaloupecky said there was, set "way further back." Mr. Bourke said the 5' right of way is coming from homes further back. Mr. Chaloupecky said the pathway to the water starts adjacent to the property line. That was why they didn't want to expand in that direction. It was established that there is a driveway on the other side of the home.

Clifford Trott came forward again and noted that more than one addition was made to the property, so the interior of the house is "chopped up." The chimney is "in your face" in one of the bedrooms. Some rooms are not readily accessible. Mr. Chaloupecky added that the chimney is to be replaced by another chimney in a different location within the footprint of the house.

Variance 2 – Five foot three inch (5'3") Side Property Line Setback Variance – to allow for the construction of an expansion of the second floor master bedroom over the existing garage, 4'9" from the side property line.

- 1) *The strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district in which the property is located.* Strict application of the ordinance would preclude the existing garage addition from being altered to remedy the existing flat roof and bring it back into the traditional architecture of the existing residence and the remainder of the neighborhood.
- 2) *The strict application of the ordinance to the property results in significant economic injury to the applicant.* Since the strict application of the ordinance would preclude construction over the existing garage addition to remedy the flat roof, the continuing issue of expense for snow and ice removal and damage repairs from continued leaks and water damage would result in significant economic injury to the applicant, because the flat roof against the gable end of the house leaks and ices up. It would also not allow the residence to have the traditional architecture that is expected and highly desired within this neighborhood.
- 3) *The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.* This property is unique in that the garage addition was constructed prior to the adoption of the setbacks and is now within the current setback. Also, it was not built using the vernacular of the existing

residence (or neighborhood) and was constructed with a flat roof. Since this garage is located within the setback, any construction to remedy this situation would be in need of a variance.

- 4) *The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.* The granting of the variance would allow the residence to be more in keeping with the traditional architecture of the neighborhood, eliminate the appearance of the garage as an addition, and will have a positive effect on the other properties in the neighborhood, not a detrimental effect. The applicant has filed with the application seven letters of support from abutters and nearby neighbors.
- 5) *The practical difficulty is not the result of action taken by the petitioner or a prior owner.* When the residence was constructed, it was a conforming use, and when the original renovation was done prior to the adoption of today's setbacks, that too was a conforming use. After the adoption of the setbacks, it became a non-conforming use and now any construction to this section of the house is within the setback and requires a variance.
- 6) *No other feasible alternative to a variance is available to the petitioner.* The garage protrudes from the main structure both to the front and to the side, was built with an untraditional flat roof, and it cannot be moved or eliminated. To remedy the current ice, snow, and structural issues around this protuberance and to incorporate it into a simplified massing of the residence is the only practical solution.
- 7) *The granting of a variance will not unreasonably adversely affect the natural environment.* The proposed second floor addition is within the current footprint of the residence and does not increase the amount of impervious surface of the lot.
- 8) *The property is not located in whole or in part within the shoreland areas as described in MRSA Title 38 Section 435.* The property at its closest point is approximately 450' away from the high water line and is therefore not located within the Shoreland Zone.

Ms. Biddings asked why a flat roof was built, to which Mr. Chaloupecky responded that he had no idea. Mr. Bourke directed a question to Mrs. Doucette as to whether she had any knowledge of the addition. She did not.

Peter Stanton of 20 Deake Street was allowed to come forward and address the Board. He said that he had lived at that property for 15 years. Formerly a porch was where the garage was, and it had been bumped forward for a garage. The flat roof may have worked for a porch, but not for a garage.

Variance 3 – Two Foot (2') Side Property Line Setback Variance – to allow an infill addition to the rear of the residence that encroaches on the existing 10' setback by 1.72'.

- 1) *The strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district in which the property is located.* Strict application of the ordinance would preclude the ability of the applicant to have an adequately proportioned dining area. The current dining area is small and only able to accommodate a small table of four. Because of the angle of the side setback, this area is not able to be expanded and aligned with the existing house without stepping the exterior wall and further complicating the structure and massing of this area.
- 2) *The strict application of the ordinance to the property results in significant economic injury to the applicant.* The kitchen/dining area is one of the most important, most lived-in portions of the home. An under-sized area is a detriment to the value of the residence. To not align this addition with the remainder of the house would produce an undesired complexity to the massing of the house in lieu of the simpler vernacular of the cape-style residences in the area. Not aligning the addition with the remainder of the house would also produce an unnecessary complexity to the interior of this space and to the new structure.
- 3) *The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.* The need for this 2' variance is due to the angle of the setback and the position of the current corner of the existing dining area. Because of the angle of the setback, it cuts off any addition that aligns itself with the existing residence.
- 4) *The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.* Granting this variance to reduce the side setback in this area by 2' will allow the existing dining area to be expanded and aligned with the current house. This would be a one-story addition and its roofline would be the same as the existing structure.

No views would be impacted, and the granting of this variance would allow the addition to be incorporated into the simplified massing of the house, fitting within its traditional architecture.

- 5) *The practical difficulty is not the result of action taken by the petitioner or a prior owner.* The practical difficulty is the result of the establishment of the setbacks after the original house was constructed. It is reasonable to assume that if the setbacks were in place, the house would have been located differently, and not at an odd angle to the setback, thus prohibiting any expansion to this area.
- 6) *No other feasible alternative to a variance is available to the petitioner.* An expansion of this dining area is very important to the residence. It would not be a viable alternative to offset the exterior wall from the existing exterior wall. This would unnecessarily complicate the interior space and overly complicate the structure. It would also not be a viable alternative to angle the wall and align it with the side setback, in order to avoid a 2' variance. Aligning the foundation of the new addition with the existing house foundation and extending the current roofline over this addition is the best and most practical course of action. This intrusion is still well behind the adjacent existing garage intrusion into the side setback.
- 7) *The granting of a variance will not unreasonably adversely affect the natural environment.* The area of this addition is 85 SF. The area of this addition, along with the mudroom addition, and the front entrance stair, bring the total footprint to 1538 SF. The total area of the property is 6696 SF and the building coverage would be slightly under 23%. Although there is not a maximum building coverage in the AA zone, the A zone across the street has a maximum building coverage of 25%. The proposed expansion would still be under the generally accepted limits of the neighborhood. Landscaping upgrades will also have a positive effect on the environment.
- 8) *The property is not located in whole or in part within the shoreland areas as described in MRSA Title 38 Section 435.* The property is not located within the Shoreland Zone, with the closest point of the property being approximately 450' away from the high water line.

Mr. Whyte asked about the wood shed on the back of the laundry area. Mr. Chaloupecky said the proposed roofline encapsulates that area. He stated that while the front 120 SF addition will also include removing 130 SF of existing structure, they would be adding 170 SF to the rear of the house. Mr. Whyte observed that it would be just a corner of the proposed dining room addition that would need the side setback variance. Mr. Bourke noted that the A zone is right across the street. Mr. Whyte noted that no objections had been stated by neighbors of the project.

Peter Stanton of 20 Deake Street, who had lived in this house for 15 years, was allowed to address the Board. He stated that he had wanted to deal with the issues of the house at the time he lived there and investigated the possibilities, but found it would be very hard to make the changes needed. He said he likes the owners and wants to see the improvements proposed, as they would be a great addition to the neighborhood. He noted that the height of the house won't matter to joggers and dogwalkers using the right of way path to the ocean.

Don Hale, owner of 23 Deake St, came forward to express his support for the proposed variances and said the project would enhance the neighborhood.

Rob Sellin of 5 Deake Street also came forward in support of the requests, noting that these would be significant improvements and the builder who would be working on it is a good builder who would do a wonderful job.

The Board proceeded to vote separately on each of the dimensional practical difficulty criteria, for each of the three variance requests.

Variance 1 – Seven Foot (7') Front Property Line Setback Variance

- 1) *The strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district in which the property is located.* Ms. Biddings moved, Mr. Bourke seconded, approved 7-0.
- 2) *The strict application of the ordinance to the property results in significant economic injury to the applicant.* Ms. Biddings moved, Mr. Kelleher seconded, approved 6-1 (Mr. Cyr opposed).
- 3) *The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.* Ms. Biddings moved, Mr. Whyte seconded, approved 7-0.

- 4) *The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.* Ms. Biddings moved, Mr. Cyr seconded, approved 7-0.
- 5) *The practical difficulty is not the result of action taken by the petitioner or a prior owner.* Ms. Biddings moved, Mr. Bourke seconded, approved 7-0.
- 6) *No other feasible alternative to a variance is available to the petitioner.* Ms. Biddings moved, Mr. Bourke seconded, approved 7-0.
- 7) *The granting of a variance will not unreasonably adversely affect the natural environment.* Ms. Biddings moved, Mr. Whyte seconded, approved 7-0.
- 8) *The property is not located in whole or in part within the shoreland areas as described in MRSA Title 38 Section 435.* Ms. Biddings moved, Mr. Cyr seconded, approved 7-0.

Variance 2 – Five foot three inch (5’3”) Side Property Line Setback Variance

- 1) *The strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district in which the property is located.* Ms. Biddings moved, Mr. Kelleher seconded, approved 6-1 (Mr. Whyte opposed).
- 2) *The strict application of the ordinance to the property results in significant economic injury to the applicant.* Ms. Biddings moved, Mr. Bourke seconded, approved 6-1 (Mr. Cyr opposed).
- 3) *The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.* Ms. Biddings moved, Mr. Bourke seconded, approved 7-0.
- 4) *The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.* Ms. Biddings moved, Mr. Whyte seconded, approved 7-0.
- 5) *The practical difficulty is not the result of action taken by the petitioner or a prior owner.* Ms. Biddings moved, Mr. Bourke seconded, approved 7-0.
- 6) *No other feasible alternative to a variance is available to the petitioner.* Ms. Biddings moved, Mr. Bourke seconded, approved 7-0.
- 7) *The granting of a variance will not unreasonably adversely affect the natural environment.* Ms. Biddings moved, Mr. Whyte seconded, approved 7-0.
- 8) *The property is not located in whole or in part within the shoreland areas as described in MRSA Title 38 Section 435.* Ms. Biddings moved, Mr. Bourke seconded, approved 7-0.

Variance 3 – Two Foot (2’) Side Property Line Setback Variance

- 1) *The strict application of the ordinance to the property precludes the ability of the applicant to pursue a use permitted in the zoning district in which the property is located.* Ms. Biddings moved, Mr. Bourke seconded, approved 6-1 (Mr. Whyte opposed).
- 2) *The strict application of the ordinance to the property results in significant economic injury to the applicant.* Ms. Biddings moved, Mr. Bourke seconded, approved 5-2 (Mr. Kelleher and Mr. Cyr opposed).
- 3) *The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.* Ms. Biddings moved, Mr. Bourke seconded, approved 7-0.
- 4) *The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties.* Ms. Biddings moved, Mr. Whyte seconded, approved 7-0.
- 5) *The practical difficulty is not the result of action taken by the petitioner or a prior owner.* Ms. Biddings moved, Mr. Bourke seconded, approved 7-0.
- 6) *No other feasible alternative to a variance is available to the petitioner.* Ms. Biddings moved, Mr. Whyte seconded, approved 6-1 (Mr. Kelleher opposed).
- 7) *The granting of a variance will not unreasonably adversely affect the natural environment.* Ms. Biddings moved, Mr. Bourke seconded, approved 7-0.
- 8) *The property is not located in whole or in part within the shoreland areas as described in MRSA Title 38 Section 435.* Ms. Biddings moved, Mr. Bourke seconded, approved 7-0.

Mrs. Doucette read the Findings of Fact for these three variance appeal approvals, with a motion for acceptance by Mr. Whyte, seconded by Mr. Kelleher, unanimous 7-0. (2016-11)

4. Discussion of old and new business.

Mrs. Doucette noted that if the Planning & Development office receives an application for the Board of Appeals by the 10th of November, the Board of Appeals will likely meet the Wednesday after Thanksgiving, November 30, 2016. Mr. Whyte moved and Mr. Fortin seconded to hold the November meeting on November 30th rather than the regularly scheduled date of November 23rd, Thanksgiving Eve, unanimous 7-0.

[Secretary's Note: no applications were received for either the November and December meetings. Therefore, if an application is received by January 5, 2017, the next regularly scheduled meeting will be January 25th. At that meeting, the Board needs to select a 2017 Chairperson.]

5. Adjournment 8:17 p.m.

Mr. Whyte moved and Mr. Bourke seconded to adjourn at 8:17 p.m.

Respectfully submitted,

Cathy Counts
Secretary to the Board