

CITY OF SOUTH PORTLAND
Minutes of the South Portland Board of Appeals
Council Chambers, City Hall
February 26, 2014

To: South Portland City Council
From: Cathy Counts, Secretary to the Board
Re: Board of Appeals Meeting of February 26, 2014
Location: Council Chambers, City Hall

At approximately 7:04 p.m., Chairman Greg Perry called for the Pledge of Allegiance, reviewed Board policies and procedures, and introduced Board members and staff in attendance.

MEMBERS PRESENT
Greg Perry (Chairman)
Alex Anastasoff
Cara Biddings
Daniel Fortin
Aaron Hackett

STAFF PRESENT
Patricia Doucette, Code Enforcement Officer
Cathy Counts, Secretary to the Board

MEMBERS ABSENT – Claude Morgan & Sara Orbeton

1. Accepted Minutes of the January 8, 2014 meeting.

Ms. Biddings moved and Mr. Hackett seconded to accept the minutes of the previous meeting.
Accepted 5-0.

2. Approved request of Cheryl A. Plourde – 21 Edwards Street – 15' front property line setback variance– A Residential Zone – 012*0000*016* (2014-02)

Cheryl A. Plourde, owner of property at 21 Edwards Street, had requested a fifteen foot (15') front property line setback variance in order to construct a fourteen foot by twenty-nine and a half foot (14' x 29.5') single story addition to her home for additional living space. The existing home is zero feet (0') from the front property line. The proposed addition will be five feet (5') from the front property line. Following the applicant's address of the criteria of practical difficulty, public hearing and discussion, the Board voted separately on each of the criteria, with all items receiving majority vote, thus the variance was granted 5-0. Mrs. Doucette read the Findings of Fact, followed by a motion for acceptance of the findings by Mr. Fortin, seconded by Ms. Biddings, unanimous 5-0. (2014-02)

Mrs. Doucette read the public hearing notice and listed items submitted by the applicants.

Applicant Cheryl A. Plourde, owner of property at 21 Edwards Street, came forward to address the Board. She told the Board she needed a fifteen foot (15') front property line setback variance in

order to construct a fourteen foot by twenty-nine and a half foot (14' x 29.5') single story addition to her home for additional living space. The existing home, built in 1910, is zero feet (0') from the front property line. The dimensions and orientation of the lot to the street are such that, if staying within today's setbacks, a house built on the lot could only be ten feet (10') deep. The proposed addition will be five feet (5') from the front property line. The would like to have a house with decent flow and two bedrooms.

Ms. Plourde then proceeded to address the criteria of practical difficulty. *Strict application of the Zoning Ordinance to the applicant and the applicant's property cause practical difficulty and certain additional conditions exist as follows.*

- 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.* The house is very small based on today's standards (715 square feet). There is only one bedroom and one closet, and the kitchen has minimal cupboard or counter space.
- 2) *The strict application of the ordinance to the property results in significant economic injury to the applicant.* The market for a one bedroom house is limited, very hard to sell. This would present an economic hardship to sell it today. Also, a smaller addition wouldn't be cost effective.
- 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 property's shallow depth is unique. This home is very small and was built in 1910, prior to zoning.
- 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.* Rather than producing an undesirable change, the addition will blend in well with the existing home and will increase its value, and so will enhance the neighborhood.
- 5) *The practical difficulty is not the result of action taken by the petitioner or a prior owner.* The house and lot were created by others in 1910, before zoning, and no additions have been made to the house since that time.
- 6) No other feasible alternative to a variance is available to the petitioner. There is no feasible alternative, as any expansion would require a variance. This request puts the addition on the side of the house toward the dead end of the street, which will have the least effect on the neighbors. No matter what expansion would be proposed, it would require a variance.
- 7) *The granting of a variance will not unreasonably adversely affect the natural environment.* It will not have a bad 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.* It is not located in the shoreland zone.

Mike Kelley of 22 Edwards Street, proponent, came forward to address the Board in public hearing. He stated that he has owned his property for 29 years. The applicant has always kept up her property very nicely, and the neighborhood is blessed to have her there. Bungalows are increasing in value. He lives across the street from this property, and this proposed addition would increase the value of his home. Also, her house is really small, with no second bedroom, and the house is too cramped to entertain people. To meet setbacks, she could only build a 10' long addition and that would be awkward and would not meet her needs.

Ms. Plourde came forward again for Board questioning. Mr. Perry asked when she purchased the home. She answered that she bought it four years ago. She didn't recognize that the house sat on the property line, because trees and lawn are in front of the home, between the house and the street. Setbacks were never discussed and because the house is on a dead end with no houses in the direction of the proposed addition, she thought she could easily put an addition onto her home.

Mrs. Doucette read several letters in support of this request, as follows:

Tim Baker of 7 Edwards Street emailed Mrs. Doucette on 2/26/14. He stated in his email that all but a few of the houses on Edwards Street consist of small bungalows built approximately 100 years ago. These bungalows were all built on or very near the front property line. This lack of front setback gives the street an old time charming appeal. Mr. Baker commented that the only house looking out of place was his own, a ranch built in the 1950s and is set back from the street substantially. He stated that the applicant's proposed addition near the front property line will continue that old-time charm character the street currently has and that he supports the variance. He added that most of the bungalows on this street have had an addition of some type over the years, necessary due to the original footprints of the homes being less than 800 sq. ft. He said the addition would add to the street and would enhance Ms. Plourde's well-kept property.

Jennifer Joaquin and Paul Cunningham of 20 Edwards Street wrote a letter dated 2/21/14. They live directly across the street from Ms. Plourde and stated that they have absolutely no worries that the proposed addition will negatively affect the character of the neighborhood. They added that after seeing the plans, they are confident that the addition will enhance the character of the neighborhood while ensuring that their neighbor would not need to move elsewhere. They concluded by stating that the addition as proposed is truly the only feasible means for Ms. Plourde to expand her tiny home, as the house is very close to 3 of the 4 property lines.

John Gailey of 36 Sterling Avenue signed another copy a similar letter, this one dated 2/22/14, expressing support for granting the variance.

Andrea Bolduc of 16 Edwards Street signed a letter dated 2/12/14 stating “support without hesitation” for this request.

Jean C. Ray, also of 16 Edwards Street, signed another copy of the same letter and added that Ms. Plourde has been her neighbor about 20 years and is very quiet and a great neighbor. There is no reason she should not be granted a variance. Ms. Plourde keeps a very nice landscaped yard.

No one else came forward to address the Board at public hearing, pro or con. Public hearing was closed.

Ms. Biddings asked the applicant whether she had rented the home before buying it. Ms. Plourde said she had. She had been a long term renter, and when the house was put up for sale, she offered to buy it.

The Board then voted on each of the 8 criteria of practical difficulty separately. The breakdown of motions, seconds and votes for each criteria is as follows:

- 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.* Mr. Perry moved and Mr. Anastasoff seconded to find that this criterion was met. The Board voted that the application met this requirement 4-1 (Mr. Perry opposed).
- 2) *The strict application of the ordinance to the property results in significant economic injury to the applicant.* Mr. Perry moved and Ms. Biddings seconded to find that this criterion was met. Mr. Anastasoff said he wasn't clear as to how the applicant would suffer economic injury without the variance. Mr. Hackett agreed that not adding a significant amount to potential revenue might not qualify for meeting this criterion.

Ms. Plourde was allowed to address the Board on this matter. She said the size of the house was fine for one person, but she does not wish to live alone any longer. The house is not big enough for two people, but she would like to stay there.

Ms. Biddings said that buyers face this issue a lot, not realizing setback requirements and not having a feasible alternative.

Mr. Hackett stated that what Ms. Plourde said changed his opinion and he can now see economic injury if she has to move.

Neighbor Michael Kelly was also allowed to speak and he said that building up is not a good alternative for property owners advancing in years.

Pat Grove of 2 Two Lights Terrace in Cape Elizabeth, carpenter for the applicant, was allowed to speak to this matter. He said building up would be very costly and not feasible. It would ruin the look of the bungalow.

Mr. Fortin said it would be very hard to sell the home at that size, so he found that not granting the variance would cause an economic injury.

Mr. Perry said the applicant rented the property for a while, knew the square footage, and bought the house after having been there a while.

The Board voted that the application met this requirement 3-2 (Mr. Anastasoff and Mr. Perry 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.* Mr. Perry moved and Ms. Biddings seconded to find that this criterion was met. The Board voted that the application met this requirement 5-0.
- 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.* Mr. Perry moved and Ms. Biddings seconded to find that this criterion was met. The Board voted that the application met this requirement 5-0.
- 5) *The practical difficulty is not the result of action taken by the petitioner or a prior owner.* Mr. Perry moved and Mr. Hackett seconded to find that this criterion was met.

Ms. Biddings noted that the home was built in 1910 when there were no zoning laws, so where the house sits on the property was not due to an action of the current property owner, nor was it due to a faulty action of a prior owner.

The Board voted that the application met this requirement 4-1 (Mr. Perry opposed).

- 6) *No other feasible alternative to a variance is available to the petitioner.* Mr. Perry moved and Ms. Biddings seconded to find that this criterion was met.

Finding that building up was not an option, Mr. Hackett asked Mrs. Doucette whether there was any way for an addition to be placed on the house without a variance. Mrs. Doucette said there was no way, and any addition, whether building out or going up, would require a variance, due to the 20' front and rear setbacks.

The Board voted that the application met this requirement 5-0.

- 7) *The granting of a variance will not unreasonably adversely affect the natural environment.* Mr. Perry moved and Ms. Biddings seconded to find that this criterion was met. The Board voted that the application met this requirement 5-0.

8) *The property is not located in whole or in part within the shoreland areas as described in MRSA Title 38 Section 435.* Mr. Perry moved and Ms. Biddings seconded to find that this criterion was met. The Board voted that the application met this requirement 5-0.

With all items voted through, the result was approval of the requested variances 5-0. Mrs. Doucette read the Findings of Fact, followed by a motion for acceptance of the findings by Mr. Fortin, seconded by Ms. Biddings, unanimous 5-0. (2014-02)

3. Discussed Old and New Business.

Mrs. Doucette said that the administrative appeal of Stephen Treat relative to a functional subdivision proposed for his 549 Preble Street property, tabled at the January 8, 2014 meeting, would likely be coming forward again for the March meeting.

4. Adjourned 8:42 P.M. Mr. Hackett moved to adjourn at 8:42 p.m., seconded by Mr. Fortin. Unanimous 5-0.

The next meeting will be Wednesday, March 26, 2014. Deadline for applications is Thursday, March 6, 2014.

Respectfully submitted,

Cathy Counts
Secretary to the Board