

STATE OF MAINE
CUMBERLAND, ss

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SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-00-045
NM - CUM - 1/4/2001

JAMES W. FOYE, MARK C. FOYE,
and ANDREW L. BROADDUS,

Plaintiffs

vs.

DECISION AND ORDER

CITY OF WESTBROOK,

Defendant

The plaintiffs appeal the April 19, 2000 decision of the City of Westbrook Zoning Board of Appeals (ZBA). The ZBA denied the plaintiffs' request for a 10-foot front yard variance in order to construct a single family home. The plaintiffs argue that the ZBA's finding that the grant of the variance would alter the essential character of the neighborhood is not supported by evidence in the record and that the ZBA erred in failing to make findings with regard to the three other criteria required to establish undue hardship. See 30-A M.R.S.A. § 4353 (4) (Supp. 2000).

Based on the transcript of a VCR tape obtained from the City of Westbrook's cable television channel, which was provided at the court's request after the briefs were filed and without objection, there is competent evidence in the record to support the ZBA's finding that the granting of a variance would alter the essential character of the neighborhood. See, e.g., Transcript at 8-10, 17.

The better practice would be for the ZBA to address all of the criteria involved in consideration of a variance request. See Driscoll v. Gheewalla, 441 A.2d 1023, 1026-27 (Me. 1982). The plaintiffs must show, however, that the evidence compelled

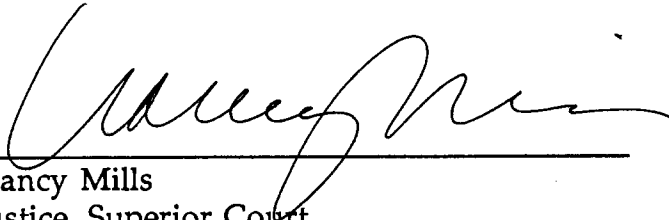
the ZBA to grant the variance. See Twigg v. Town of Kennebunk, 662 A.2d 914, 916 (Me. 1995). Because all four criteria must be shown for the granting of a variance, the plaintiffs cannot make that showing on this record. See Pepperman v. Town of Rangeley, 659 A.2d 280, 283-84 (Me. 1995).

The entry is

The Plaintiffs' Appeal is DENIED.

The Decision of the City of Westbrook Zoning Board of Appeals is AFFIRMED.

Date: December 31, 2000



Nancy Mills
Justice, Superior Court

Date Filed 05-19-00 CUMBERLAND Docket No. AP 00-045
County

Action APPEAL 80(B)

JAMES W. FOYE
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CITY OF WESTBROOK

vs.

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Date of
Entry