

TOWN OF OLD ORCHARD BEACH
ZONING BOARD OF APPEALS MEETING MINUTES
 August 27, 2018

<p>Call to Order at <u>6:35 pm</u></p>	<p>Call to Order</p>
<p>Roll Call: Present: Vice Chair Ron Regis, Mikaela Nadeau, Tom Mourmouras. Absent: Mark Lindquist, Chair Ray DeLeo. Staff Present: CEO Rick Haskell</p>	
<p>Pledge to the Flag</p>	
<p><i>Vice Chair Ron Regis read the criteria for the Public Hearing.</i></p>	
<p><u>ITEM 1: Variance</u> Owner: Jay and Patricia Oliveira Location: 1 West Casco Ave; MBL: 320-9-11 Zone: R3, Residential Activity Shoreland District</p> <p>Proposal to construct a single-family home that will encroach into Shoreland setback and possibly side setback. Option A: Proposed side setback is 7’6” (15’ required in R3); Proposed shoreland setback is 13’6” (100’ required in Residential Activity). Option A attempts to place structure away from wet area by greatest extent practicable while keeping a reasonable side setback reduction request. This is the applicants preferred choice. Option B: Proposed shoreland setback is 6’ (100’ required in Residential Activity). Option B conforms to all R3 setbacks but reduces setback to wet area.</p> <p>Owner Jay Oliveira introduced himself and told the Board Members that the prior owners of the lot, Nick and Francis Cerullo had previously gone to the Old Orchard Beach Code Office and talked to Code Officer Dan Feeney and Tax Assessor Bill DiDonato who told them that the lot was buildable.</p> <p>Additionally Mr. Oliveira came to Codes himself and spoke with Code Officer Dan Feeney and Tax Assessor Bill DiDonato and he was also told that the lot was a buildable lot. So Mr. Oliveria and his wife bought the land.</p> <p>Due to the wetlands on the lot which encroach the lot by approximately 20 ft. or so, there is nowhere on the lot that this would be buildable without this Variance.</p> <p>Vice Chair Ron Regis: Did anyone give you anything in writing that the lot was buildable?</p> <p>Mr. Oliveria: Stated that the only thing he had gotten in writing was from the previous owner Nick Cerullo who wrote a letter to the Town Of Old Orchard Beach. He then read the letter to the Board Members.</p> <p><u>Public Hearing opened at 6:50 PM.</u></p> <p>John Garon from 33 Ocean Ave: Asked if these 2 lots were ever separate at one time.</p> <p>Mr. Oliveria: Both lots were owned by 2 people, Nick Cerullo and Frances Cerullo. They were both owned by LLC’s. They were never merged lots. One was</p>	<p style="text-align: center;"><u>ITEM 1</u> <u>VARIANCE</u></p>

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1 West Casco and the other was 3 West Casco.

Mr. Oliveria purchased 1 West Casco Avenue.

John Garon: Does the City plan to put a road there?

Vice Chair Ron Regis: He doesn't think the City will be putting in a road anytime soon.

David Florig from 17 West Casco Avenue introduced himself and talked about his concerns with the following 3 of the 4 criteria:

B. The need for a Variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

"There is nothing unique or different about this property. The only distinguishing feature of this property is that it is undeveloped. Every property is restricted to building within 100 ft. of the wetlands. This would be a substantial encroachment. To grant the Variance, it would render the wetland setback provisions almost meaningless".

C. The granting of a Variance will not alter the essential character of the locality.

"Locality and neighborhood, as used in the Variance are more than just the structures that are currently in place that encompass the entire area. In this case it is defined largely by the streams, the wetlands and the growth that is there. As a side note, none of the abutters come close to this 35 ft. high structure, they are all single family, 1 story homes. The Applicants only argument in support of this criteria is that they intend to build a single family home that will add charm to Ocean Park. There is also no proof that this will not pose any health or safety problems. He believes that the Applicants are in error in focusing on the structure they intend to build. It's not whether the house will fit into other houses around, it's whether it will alter character of the locality. He believes that by encroaching on this protected area, the area would be altered to its detriment".

D. The hardship is not the result of action taken by the appellant or a prior owner.

"This isn't a case where the zoning laws changed after the property was purchased. The Applicants bought the property subject to these long standing wetland zoning ordinances in the R-3 District and they were apparently represented by Council. In a sense they knowing walked into knowing what the situation was. A verbal assurance doesn't create this undue hardship. The Applicant still had notice whether it was actual notice or constructive notice. So just being told that something is buildable doesn't really tell us in the long term whether this can be developed".

Mr. Florig stated that the burden of proof does fall on the Applicant in regards to these Justification of Variance questions, and he would respectfully suggest that they have failed on at least 3 of the questions. He requests that the Variance Application be denied.

Marc Guimond, a retired Civil Engineer introduced himself. His mother in law owns a parcel on Free Street. He is concerned about protecting our wetlands. They

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are invaluable to our Flood Management. Every time we fill a wetland we exacerbate our flooding.

Jackie Elliopulos from Winona Avenue introduced herself. She is concerned about encroaching into the wetlands. There doesn't seem to be any studies about any impacts of granting this type of Variance in this case. She requests that the Variance Application be denied.

Bill O'Donnell introduced himself. His family owns a house that abuts the property. Mr. O'Donnell read a short statement. The Appellant does not meet Criteria A, B or C. By granting this Variance it would be setting a dangerous precedent, and in effect it would eliminate all protections for wetlands and open them up for future development.

Steve Blais has been hired as an Engineer by the Applicants with consideration to driveway and culvert issues. Have already been in contact with the DEP and also with Boyle Associates for assistance in defining each of the issues for consideration and possibly building on this lot. Reviewing the need for water to get to the wetlands. Department of Inland Fisheries will be in contact to review issues with them as well.

Mr. Oliveria: He stated that they are not building in the wetlands, they are building off of the wetlands as far as they can. They are not filling any wetlands.

Mikaela Nadeau: A lot of those streets flood now and it is only going to continue to get worse.

Mr. Forman from 38 Randall Avenue introduced himself. He is concerned about parking cars that close to wetlands will do damage. He is against this proposal.

Barry Jackman lives in Ocean Park. He represents the Conservation Committee but tonight he represents himself. We need the marshes and we need to leave wetlands alone. He respectfully asks the Boards decision to be thorough and find an answer that they would want if they lived in that area.

There being no one else speaking for or against the Appellant, the Public Hearing Closed at 7:10 PM.

Vice Chair Ron Regis read the Justification of Variance:

A. The land in question cannot yield a reasonable return unless the variance is granted.

Response: Due to the 100' wetland setback and the apparent wetland on the property, a Variance is needed to build on the lot. The objective of this Variance application is to allow for the reduction of setback requirements to build a home (on pilins) on this property. In addition, see attached documents #1, 2 & 3. The previous owner had a meeting with Dan Feeney (Code Officer) and Bill DiDonato (Town Assessor) to establish this lot as buildable. I decided to buy this property based upon this information and after talking with OOB Town Hall myself, which confirmed the lot was buildable.

Tom Mourmouras - Yes

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<p>Mikaela Nadeau – No Vice Chair Ron Regis – Yes</p> <p>B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood. Response: The unique circumstances of this property is that it sits directly adjacent to wetlands on the East property line where the wet area crosses that line into our lot by approximately 25' This is the only lot in the neighborhood that sits entirely within the 100' wetland setback, thus not allowing for any structure to be built without a Variance.</p> <p>Tom Mourmouras - No Mikaela Nadeau - No Vice Chair Ron Regis – No</p> <p><i>Vice Chair Ron Regis did not continue with the Justification of Variance criteria.</i></p> <p>MOTION: Mikaela Nadeau made a motion to deny the Variance for Jay and Patricia Oliveria, 1 West Casco Avenue, MBL: 320-9-11 for the proposal to construct a single family home that will encroach into Shoreland setback and possibly side setback, seconded by Tom Mourmouras.</p> <p><u>CEO Rick Haskell called for the vote:</u></p> <p>Tom Mourmouras – No Mikaela Nadeau – No Vice Chair Ron Regis – No</p> <p>VOTE: (3-0) DENIED</p>	<p style="text-align: center;"><u>MOTION</u></p> <p style="text-align: center;"><u>VOTE DENIED (3-0)</u></p>
<p>ITEM 2: Acceptance of June 25 and July 30, 2018 minutes</p> <p>These minutes were not acted upon at this meeting and will appear at the next Zoning Board of Appeals Meeting.</p>	
<p>OTHER BUSINESS:</p>	
<p>GOOD AND WELFARE:</p>	
<p>ADJOURN 7:14 PM</p> <p>Mikaela Nadeau made a motion to adjourn the meeting at 7:14 pm., seconded by Tom Mourmouras. All in favor</p>	<p style="text-align: center;"><u>ADJOURN</u></p>

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I, Valdine Camire, Secretary to the Zoning Board of Appeals of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting Five (5) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting held on August 27, 2018.

Valdine Camire