

**THE TOWN OF OLD ORCHARD BEACH,
ZONING BOARD OF APPEALS
Monday, December 20, 2021, IN THE TOWN
COUNCIL CHAMBERS -6:30 p.m.
MEETING MINUTES**

Call to Order: 6:30 PM

Roll Call:

Present:

Stan DeFreese, Vice Chair

Brian Perro

Sam Dupuis

Absent:

Ron Regis, Chair

Tom LaCasse

Thomas Mourmouras

Staff Present:

James Butler, Code Enforcement Officer

Dimitri Baumann, Deputy Code Enforcement Officer

Valdine Camire, Administrative Assistant

Vice Chair Stan DeFreese read the criteria for an appeal.

Pledge to Flag

Vice Chair Stan DeFreese stated to the public that there was a procedural issue at the last meeting because the meeting was not recorded, so tonight's meeting we will go through items 1-3 for the record and this meeting is being recorded and is live streamed as well.

Item 1 (Needs to be Re-done due to procedural issue from 10/25/2021)

Proposal: Variance-Request to Reduce front yard setback to 10' and the right & left side yard setbacks to 7.5', and rear yard setback to 10'. Reduction of setbacks to allow for a livable sized home.

Owner: Norman Nielsen

Applicant: Diana Doyle

Location: 15 Ancona Ave; MBL 321-3-5

Zone: R-3/Shoreland Zone-RA/HAT Zone

Code Enforcement Officer Jim Butler read a letter from Seth and Lynn Blank who lives at 18 Colby Avenue in Old Orchard Beach, Me 04064 which was written on December 13, 2021:

*Zoning Board of Appeals
Old Orchard Beach Town Hall
1 Portland Avenue
Old Orchard Beach, ME 04064*

Re: Proposed Variance at 15 Ancona Avenue; MBL 321-3-5

To the members of the Zoning Board of Appeals,

We are writing to ask that the Board deny this request for yard setbacks. The requested variance would reduce the front and rear setbacks to 10 feet and the side setbacks to 7.5 feet. This is not a minor variance. It impacts four abutters - #17 Ancona Avenue, #13 Ancona Avenue, #18 Colby Avenue (our property) , and #16 Colby Avenue. The primary issues raised for abutting owners are related to loss of sunlight, privacy, views, spacing and openness which would result from the mass, height and bulk of the proposed development. In particular, the proposed structure would look directly down on our patio and picnic table, depriving us of any privacy in the use of our property.

We also ask the Board to recognize that the requested variance would result in the smallest setbacks of any of the requests listed on the agenda for 12/20/21. The requested setbacks would not conform to the building code in the front, back or either side. The building code is meant to prevent unreasonable projects such as this.

We do not speak for any of the other abutters, but we would imagine that they share similar concerns. We respectfully request that the Board deny this unreasonable variance.

Respectfully,

Seth and Lynn Blank

The public hearing opened up at 6:35 PM.

There being no one speaking for or against this proposal, the public hearing closed at 6:35 PM.

Vice Chair Stan DeFreese read the Justification of Variance:

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

Response: If Variance to reduce the setbacks is not granted, the maximum sized footprint allowed is 5' x 20', 100 sf. 100 sf is too small for a livable house.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

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: 15 Ancona is very unique as it is the only vacant buildable lot in the area. All of the surrounding houses were built, or had established grandfathered footprints, before there was zoning or setbacks.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

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

Response: The granting of a variance will allow a +/-875 sq. ft. house to be built, which is in keeping with the neighborhood. The decrease in the setbacks will still allow for setbacks greater than the majority of surrounding homes.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

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

Response: The hardship is due to the fact that the small, 50' x 45' lot of record was established long before there was zoning and required setbacks.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

MOTION: Sam Dupuis made a motion to approve the Variance for Norman Nielsen, 15 Ancona Ave; MBL 321-3-5, Zone: R-3/Shoreland Zone-RA/HAT Zone to Reduce front yard setback to 10' and the right & left side yard setbacks to 7.5', and rear yard setback to 10'. Reduction of setbacks to allow for a livable sized home, seconded by Brian Perro.

Code Enforcement Officer Jim Butler called for the vote:

VOTE:

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

Unanimous (3-0)

Item 2(Needs to be Re-done due to procedural issue from 10/25/2021)

Proposal: Variance- Request reduction to of rear yard setback to 7'8" to allow for ADA egress point for fully accessible first floor.

Owner: Irvin & Cynthia Paradis

Applicant: Irvin & Cynthia Paradis

Location: 7 Weymouth Ave; MBL 324-11-4

Zone: R-3/Shoreland Zone-RA/Within 100' HAT Zone

The public hearing opened up at 6:50 PM.

There being no one speaking for or against this proposal, the public hearing closed at 6:50 PM.

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

Response: The structure on our property was built in 1890 as a single family residence with a main house and an attached barn. It appears that the attached barn was converted into a separate dwelling unit around 1961. It has been used as a seasonal and year round rental until we purchased the property in October 2019. The attached barn/second dwelling unit has been vacated since we purchased the property. Our goal is to return the structure to its original single unit family residence. We are currently in the process of accomplishing this goal. The barn has been completely demolished and a new structure is being constructed on the footprint of the former barn. This structure will create a fully handicapped accessible bedroom and bath on the first floor that will be on exactly the same level as the first floor of the main house. This will allow us to live in this structure as long as possible. Two fully handicapped accessible egress points, however, are necessary in order to be compliant with the American with Disabilities Act (ADA). Our new structure does have one such egress point on the front of the structure facing Weymouth Ave. Another egress point is needed in order to be ADA compliant. The former barn did have a second egress point via a 3'0" wide by 4'0" long porch on the East or ocean side facing wall with a set of stairs descending along the side of this wall in the direction of the main house for a distance of 6'8". That porch and stairs can be reconstructed as part of our current project as it is part of the barn footprint. However, that porch is not ADA compliant due to its small size and the space for the new stairs is not long enough for the stairs to reach the ground. This is because the new structure is 28" higher than the old structure in order for the first floor of the new structure to be level with the first floor of the main house. This requires a longer stairway and there is not enough available space to accommodate a longer stairway in the space occupied by the former stairway. A larger porch of at least 4'0" x 4'0" in size is required for ADA compliance and the stairs would have to be located in a new configuration.

Our proposed solution is to connect a new ADA compliant porch on the new structure to an existing porch on the South or rear facing (Sandpiper Road facing) main house. That porch measures 4'0" x 4'0" and it has a stairway to the ground. A variance is needed because a larger ADA compatible porch on the new structure will reduce the area of the setback in the rear of our property. Failure to be granted this setback will mean that our reconstructed structure will not be ADA compatible in only that respect. A fully ADA compliant first floor would undoubtedly increase the value of our home especially as our society ages and most people would rather age in their own home rather than in an institutional facility. Thus failure to be granted this variance will render our property not completely ADA compliant regarding egress requirements. This will undoubtedly decrease the value of our property if and when we or our heirs decide to sell the property.

The increase in the area of the proposed variance is as follows. The area of the former barn porch was 12.0 sf (3'0" x 4'0") and the area of occupied by the stairs attached to this porch was 20.3 sf (3'0" x 6'8"). The area of the existing porch on the rear of the main house is 16.0 sf (4'0" x 4'0"). This adds up to a total of 48.3 sf (12.0' + 20.3' + 16.0). The proposed new porch that would connect both porches would have a surface area of 144.0 sf (12'0" x 12'0"). Thus this variance is requesting a decrease in the rear setback of our home by 95.7 sf (144.0 sf – 48.3 sf = 95.7 sf).

Currently the rear or South wall of the main house that faces Sandpiper Road is 19'8" from the property line. Thus, the 4.0' x 4.0' porch on that side of the main house reduces the rear setback to 15'8" (19'8" – 4.0' = 15'8"). The former porch and stairs on the structure that has been demolished extended 10'8" from the South wall of the main house. Thus, that porch reduced the setback to the property line to 9.0' (19'8" – 10'8" = 9.0'). We propose that the porch extend 12'0" along the rear side of the main house which is 7'8" from the property line. This is 4.2' (12.0' – 7.8' = 4.2') further into the setback as measure from the South edge of the porch on the main house and 1'4" (12.0" – 10.8" = 1.4") as measured from the edge of the porch that was attached the demolished barn structure. We propose that this porch extend 12'0" along the rear side of the main house in an East-West direction. This is in line with the current East edge of the porch on the rear of the main house. The current stairway from this porch would also serve the new porch.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

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 uniqueness of our property is that the lot is small at 60 feet in depth and 75 feet in length along Weymouth Ave. which is an area of 4,500 sf. There is little or no room for any expansion of structures on the property when taking setback requirements into consideration. Since this proposed porch is a structure, setback requirements would prohibit construction of a porch larger than what was present before the barn portion of our structure was demolished. This variance is necessary because the small lot size otherwise prohibits the construction of this porch.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

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

Response: The essential character of our neighborhood lies in its multigenerational history where families visit or own property (frequently the same property) generation after generation. This variance does increase the rear porch size from 48 sf. to 144 sf. resulting in a setback decrease of 12.0' from the rear of the main house, of 8.0' from the rear edge of the porch on the main house and of 1'4" from the rear edge of the porch that was attached to the barn. This is not likely to be a significant change to the appearance of our home and thus not to the essential character of our community. In fact, we believe that one contiguous porch and only set of stairs instead of two small porches and two sets of stairs will aesthetically improve the appearance of our property. Enhancing the appearance of our property aesthetically improves the appearance of our community and makes it a more desirable place to visit and live thereby continuing its unique character.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

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

Response: Our current hardship is not the result of action taken by the appellant or a prior owner except prior owners might have foreseen the need to create handicapped accessible housing.

This house with an attached barn was built in 1890 in the pre automobile era as a seasonal cottages with space provided by the barn for the horse and buggy. The owners and the use of the property prior to 1923 are unknown to me. The property was purchased by a Mr. Wilbert H. Staples in 1923 and it appears to have been used as a seasonal residence. Mr. Staples sold the property to the Ocean Park Association (OPA) in 1939. It appears to have used as a seasonal rental by the OPA. The OPA sold the property to Aaron and Edith Lund in 1944. According to long time Ocean Parkers, the Lund's used the main house as their seasonal cottage and Mr. Lund used the barn as his workshop. Mr. Lund was a developer and builder. During his tenure, I am told that he built most of the cottages on Weymouth Ave at a rate of about 2 cottages per year. Mr. and Mrs. Lund sold the property to sisters, Grace and Edna Roby in 1957. Initially they used the main house as their seasonal residence and they also rented rooms in the main house. It was around 1960 that they converted Mr. Lund's workshop in the barn into a second residential unit which was then used as a seasonal rental. I believe that this property has been considered as a 2-unit residence by the Town of Old Orchard Beach since that time. In 1966 Grace Roby sold her half interest in the property to her sister, Edna. Edna sold the property to my wife's mother, Kathleen Fox, in 1975. Mrs. Fox converted the main house and the former barn into year round residences in 1979-1980. Thereafter main house was used as her permanent residence and the former barn was used as a year round rental until she died about 10 years ago. My wife and her brother, David Mead-Fox, then inherited the property and, thereafter, the main house and former barn were used only as seasonal rentals. My wife and I purchased my brother-in-laws half share in the property in 2019. The main house has since been our primary residence and the former barn has been vacant. As mentioned under Criteria A, our goal is to make the former barn an integral part of the main house and, in doing so, create a fully handicapped accessible first floor bedroom and bathroom so that we can live here as long as possible. A fully handicapped accessible dwelling requires 2 ADA compliant points of egress. One ADA compliant egress point is the front entrance to the new structure. The second ADA compliant egress point is via the proposed porch. Thus, only by this variance can we have a fully handicapped ADA compliant structure as part of our home.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

MOTION:

Sam Dupuis made a motion to approve a reduction to of rear yard setback to 7'8" to allow for ADA egress point for fully accessible first floor for Irvin & Cynthia Paradis, 7 Weymouth Ave; MBL 324-11-4, Zone: R-3/Shoreland Zone-RA/Within 100' HAT Zone, Seconded by Brian Perro.

Code Enforcement Officer Jim Butler called for the vote:

VOTE:

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

Unanimous (3-0)

Item 3(Needs to be Re-done due to procedural issue from 10/25/2021)

Proposal: Miscellaneous Appeal- Request for front yard reduction to 15', right side yard to 7'6", and rear yard to 15'. This approval would allow applicants to remove existing structure and construct a new one and place it in a more conforming location.

Owner: Christopher & Mary Taggart

Applicant: Christopher & Mary Taggart

Location: 9 Hampton Ave; MBL 319-2-7

Zone: R-3

The public hearing opened up at 6:53 PM.

There being no one speaking for or against this proposal, the public hearing closed at 6:53 PM.

LIMITED REDUCTION OF YARD SIZE/LIMITED EXPANSION OF LOT COVERAGE.

A.The existing buildings or structures on the lot for which the limited reduction of yard size/limited expansion of lot coverage is requested were erected prior to the date of adoption of this provision or the lot is a vacant nonconforming lot or record.

Applicants Response: The existing building and lot were both created and constructed prior to the date of this provision. The tax property card shows that the structure was built in 1925, well before the adopted provision on February 3, 1988.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

B. The requested reduction is reasonably necessary to permit the owner or occupant of the property to use and enjoy the property in essentially the same manner as other similar properties are utilized in the zoning district.

Applicant's Response: The desired reduction will not produce any undesirable changes in the character of the neighboring properties and will allow the owner to enjoy the property in a similar manner as other similar properties in the zoning district. The façade character, size and orientation of the structure matches harmoniously within the surrounding structures and will actually bring up the value of the neighborhood with the proposed structure.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

C. Due to the physical features of the lot and/or the location of existing structures on the lot, it would not be practical to construct the proposed expansion, enlargement or new structure in conformance with the currently applicable yard size or lot coverage requirements.

Applicant's Response: Due to the physical features of the lot, and the parcel being a corner lot, it would not be practical to construct a new structure within the required building envelope. The building envelope is too small to support any kind of new structure that would match into the conformance of the surrounding character. Due to the lot size, a structure was designed to help match the ratios of the existing lot and abutting properties and it was determined a limited reduction of setbacks is the only practical alternative.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

D. The impacts and effects of the enlargement, expansion or new principal building or structure on existing uses in the neighborhood will not be substantially different from or greater than the impacts and effects of a building or structure which conforms to the yard size requirements.

Applicant's Response: The new structure will fit into the character of the lot and the neighborhood. The new structure will actually bring the lot more into conformance with the zoning standards with a smaller footprint, overall site impact, pulling the structure farther away from the property lines and abutting parcel while centering the building on the lot. The impacts of this new proposed structure will match harmoniously into the neighborhood and will not produce any greater impacts or effects of a building or structure, which conforms to the yard size requirements.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

MOTION:

Brian Perro made a motion to approve the Miscellaneous Appeal for Christopher & Mary Taggart Location: 9 Hampton Ave; MBL 319-2-7, Zone: R-3 to Request for front yard reduction to 15', right side yard to 7'6", and rear yard to 15'. This approval would allow applicants to remove existing structure and construct a new one and place it in a more conforming location, seconded by Sam Dupuis.

Code Enforcement Officer Jim Butler called for the vote:

VOTE:

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

APPROVED:

(3-0)

Item 4

Proposal: Miscellaneous Appeal- Request for front yard reduction to 15', right side yard to 7'6", and rear yard to 15'. This approval would allow applicants to build a new single-family dwelling on this existing lot of record.

Owner: Raymond & Linda Janson

Applicant: John & Jean Augusta

Location: 6 Lewis Ave; MBL 205-18-10

Zone: R-1

Vice Chair Stan DeFreese read the Miscellaneous Appeals Criteria.

The public hearing opened at 7:01 pm.

Tim Aden, a realtor from Assist to Sell, located at 13 Park Street, Saco, Maine here working with John and Jean Augusta. He helped the Augusta's purchase 3 Miles Avenue, which abuts this property and the same owner of the 6 Lewis Ave property gave them first right of refusal. Mr. Aden then came to the code office to see what could be done on this lot. The current zoning only allows for an 8 ft. wide home. He is here tonight to ask the Zoning Board what could be done going forward. They are not looking to change the character of the neighborhood.

Craig Rancourt, Attorney from Biddeford, Maine introduced himself. He stated that he is here representing Raymond and Linda Janson. It appears that this is a valid lot of record. This was made a valid record on May 19, 1986. At that time, this was an R-3 Zone. The building standards for an R-3 Zone at that point, you could build a house on a 2500 sf lot with a 50' frontage. Side setbacks and back setbacks were 10'. He had a discussion with the Code Office and Mr. Rancourt is not sure this should even be a variance, he believes this is just an appeal of a lot of record. He also believes that the lot is legal. His clients support the approval of a building on that lot.

Code Officer Jim Butler stated that they did have a conversation today and what is applied for today is a Miscellaneous Appeal (to clarify). Attorney Rancourt did get some historical information thru our Clerks office of the zoning back then, and he provided the ZBA members with the zoning back in 1986. Also checking with the Old Orchard Beach Assessing Office, this is a non-conforming lot of record. It is a buildable lot as it sits but it would have to be an 8' wide home. Vice Chair Stan DeFreese read the Justification of Variance:

They are asking the maximum that the Board is allowed to give through the Misc. Appeals process.

Ken Jensen, brother of owner Raymond Janson introduced himself. When they created the lot, the setbacks were such that you could build a livable home on it. Then the zoning subsequently changed and they called it grandfathering.

Samantha Sals who lives at 8 Lewis Avenue introduced herself stating that she would be an abutter to the adjacent lot. She asked for clarification of the setbacks they are asking for.

Code Officer Jim Butler stated that they are looking for front yard to be reduced from 20' to 15', the left and the right to be reduced to from 15' to 7 ½' and the rear to be reduced from 20' to 10'.

Ms. Sals was also asking where the driveway would go in. She mentioned that if the Board does approve the granting of the appeal, she suggested that they put in a clause to have a fence put it depending on where they would be putting a driveway in for safety purposes.

ZBA members stated that there would be a requirement for parking requirements and a driveway permit.

Code Officer Jim Butler read a couple of letters that were sent to the Code Office in regards to this request.

November 27, 2021

Dear Zoning Board of Appeals:

I'm writing to you in advance of your November 29th meeting as an abutter of 6 Lewis Avenue. I am opposed to this variance application. This very small non-conforming lot was created by the current property owners, Raymond and Linda Janson, when they chose to break it off from the property their house is located on at 3 Miles Avenue. I live directly across the street from the lot in question and can attest that the lot has been vacant of any structure and actively used for decades by the property owners—not as a separately owned parcel but as a side yard for their existing home at 3 Miles Avenue.

Based on what the State of Maine statutes say about towns issuing variances, I don't understand how the Town of Old Orchard Beach could possibly grant a variance for the 6 Lewis Avenue lot. For your reference, I have attached a copy of MRS Title 30-A, 4353 Zoning Adjustment, Subsection 4-B Set-back variance for single-family dwellings (Source: <https://legislature.maine.gov/statutes/30-A/title30Asec4353.html>). Section 4-B of this statute states that "setback variance for single-family dwellings... may permit a variance from a set-back requirement only when strict application of the zoning ordinance to the petitioner and the petitioner's property would cause undue hardship." This variance application does not meet the "undue hardship" standard for several reasons including the compelling fact that the current owners of the property created their "hardship" by creating a non-buildable lot when they separated their side yard from 3 Miles Avenue.

Furthermore, the Statute states that:

"An ordinance adopted under this subsection is strictly limited to permitting a variance from a setback requirement for a single-family dwelling that is the primary year-round of the petitioner.,"

It is my understanding that the proposed structure would NOT be a primary year-round family dwelling of the petitioner.

The Statute continues:

"A variance under this subsection may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. An ordinance may allow for a variance under this subsection to exceed 20% of a setback requirement, except for minimum setbacks from a wetland or water body required within shoreland zones by rules adopted pursuant to Title 38, chapter 3, subchapter I, article 2-B, if the petitioner has obtained the written consent of an affected abutting landowner."

Granting the setbacks requested in this variance application would exceed the 20% set-back requirement. The statute specifically states that the only way a variance could be granted for setbacks exceeding the 20% would be if the petitioner has "obtained written consent of an affected abutting landowner."

For the reasons stated above, I believe this variance application should be denied.

Sincerely,

Kim Smith
5 Lewis Ave
Old Orchard Beach

November 29, 2021

Dear Zoning Board of Appeals Members,

As we are unable to attend this evening's meeting, we are writing to express our concerns about the notification we received regarding the building variance application for the R-1 zoned property located at 6 Lewis Avenue.

Maine statute provides towns with limited circumstances in which a variance should be approved, with a Zoning Board of Appeals granting a variance only if "undue hardship" is proven.

Maine's standard for reviewing variance requests states that:

"the board may grant a variance only when strict application of the ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

- A. The land in question cannot yield a reasonable return unless a variance is granted;
- B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
- C. The granting of a variance will not alter the essential character of the locality; and
- D. The hardship is not the result of action taken by the applicant or a prior owner." 30-A M.R.S. § 4353

An applicant needs to demonstrate all four of the components of undue hardship to receive approval for a variance. It is our position this variance application for the lot located at 6 Miles Avenue does not meet Maine's undue hardship criteria as defined above for the following reasons.

I. The granting of a variance will not alter the essential character of the locality

Granting a variance to squeeze a house onto a 3,715 sq. ft. lot in a neighborhood where this lot size is clearly not the norm would further change the appearance and feel of this R-1 District. The small size of a lot should not excuse overbuilding.

The R-1 zoning required minimum lot size is 20,000 sq. ft. The 6 Lewis Avenue lot is a mere 3,715 sq. ft. Reducing the setbacks to allow for the proposed dwelling of 1403 sq. ft. would result in a building on a 'postage-stamp' sized lot. There are no other homes this close to one another in this R-1 neighborhood. 35% of 3,715 is 1300.25 sq. ft. (refer to the following Space and Bulk Requirements table). If variance is granted home shouldn't be any larger than this.

In addition to the setbacks, there are issues with the R-1 zoning ordinance's space and bulk requirements overall as noted in the right-hand column below. This lot meets none of those requirements. Why is the variance only for setbacks? Would not the below requirements also need variance approval?

of 3

Space and bulk requirements in the residential I district (R-1) shall be as follows:

Zoning Standard	Residential Uses	6 Lewis Ave
Minimum lot size	20,000 s . ft./NDD*	3,715 S . Ft.
Minimum net lot area per family unit	10,000 sq. ft.	3,715 sq. Ft.
Minimum buildable area	5,000 sq. ft.	3,715 S . Ft.
Minimum lot frontage	100 ft.	77 Ft.
Minimum lot width	100 ft.	48 Ft

Maximum building coverage		35% of 3.715 Is 1.300.25 sq. Ft. if var. granted home shouldn't be an larger than thls
Maximum principal building height	35 ft.	
Maximum accessory building height	20 ft.	
Minimum front yard setback, all structures	20 ft.	15 Ft
Side yard setback, principal structures and detached area	15 ft.	7.5 Ft
Side yard setback, accessory structures, excluding areas	10 ft.	
Rear yard setback, principal structures and detached areas	20 ft.	10 Ft
Rear yard setback, accessory structures, excludIn areas	10 ft.	

II. The hardship is not the result of action taken by the applicant or a prior owner

The need for a variance for this non-conforming lot is the product of the current landowners' own actions and meets the definition of a "self-created hardship." Because the landowner subdivided off the small parcel located at 6 Lewis Avenue from a larger piece located at 3 Miles Avenue, the landowner created the nonconformity by dividing a larger parcel as detailed below:

- 1978: The landowners, Linda and Ray Janson, purchased 3 Miles Avenue (see attached 1978 deed).
- 1986: Linda and Ray Janson carved out of the 3 Miles Avenue deed the 3,715 Sq Ft lot (see attached 1986 deed) and deeded it to Ray Janson's brother, Ken Janson.
- 1991: Ken Janson deeded it to his nephew, James Granger, Linda Janson's biological son and Ray Janson's step-son (see attached deed 1991).
- 2000: James Granger deeded the land back to the original owners, his parents, Linda & Ray Janson (see attached deed 2000).

For the past 43 years this vacant lot has abutted the 3 Miles Avenue lot of which it was originally part of that parcel. We need to ask the following questions:

Was the deed manipulation done in the hopes of, with the passage of time, we would lose the trail of the non-conforming lot's origin in order to circumvent R-1 zoning regulations?

What were the building lot requirements at the time this lot was carved out of the 3 Miles Avenue deed in 1986? Based on the other lots on Lewis Avenue, one would assume it was in the vicinity of 5,000 sq. ft. minimum lot size.

- Was this an illegal lot from the time it was carved out of the 3 Miles Avenue deed?

As you make your decision, please keep in mind nonconforming uses are a thorn in the side of proper zoning and should not be perpetuated any longer than necessary. The purpose of zoning is to abolish nonconforming uses as swiftly as justice will permit.

Thank you for this opportunity to share and we appreciate your consideration of our concerns.

Sincerely,

Norman & Barbara Delage
83 Portland Avenue
Old Orchard Beach, Me 04064

There being no one speaking for or against, the public hearing closed at 7:12 PM.

Vice Chair Stan DeFreese read the Miscellaneous Appeals Criteria:

LIMITED REDUCTION OF YARD SIZE/LIMITED EXPANSION OF LOT COVERAGE.

A. The existing buildings or structures on the lot for which the limited reduction of yard size/limited expansion of lot coverage is requested were erected prior to the date of adoption of this provision or the lot is a vacant nonconforming lot or record.

Applicants Response: If it is a vacant lot of record with a current building envelope or approximately 8' x 47'+ is too small for a livable house.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

B. The requested reduction is reasonably necessary to permit the owner or occupant of the property to use and enjoy the property in essentially the same manner as other similar properties are utilized in the zoning district.

Applicant's Response: Current zoning only allows a building envelope of 8' x 47'. The desired reduction will not propose any undesirable changes in the character of the neighboring properties and will allow the new owner to enjoy the property in a similar manner as other properties in this zoning district.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

C. Due to the physical features of the lot and/or the location of existing structures on the lot, it would not be practical to construct the proposed expansion, enlargement or new structure in conformance with the currently applicable yard size or lot coverage requirements.

Applicant's Response: The building envelope is too small to support any kind of new structure that would match into the conformance of the surrounding properties.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

D. The impacts and effects of the enlargement, expansion or new principal building or structure on existing uses in the neighborhood will not be substantially different from or greater than the impacts and effects of a building or structure which conforms to the yard size requirements.

Applicant's Response: The granting of a variance will not alter the character of the neighborhood. The granting of the variance will allow a 1200-1400 sf house to be built which will not change the character of the neighborhood.

Stan DeFreese - Yes

Brian Perro - Yes

Sam Dupuis – Yes

MOTION:

Sam Dupuis made a motion to approve the Miscellaneous Appeal requested for front yard reduction to 15', right side yard to 7'6", and rear yard to 15'. This approval would allow applicants to build a new single-family dwelling on this existing lot of record. Owner Raymond & Linda Janson, Applicant John & Jean Augusta, Location: 6 Lewis Ave; MBL 205-18-10 Zone: R-1. Within this approval, the Board would like to make a motion to set forth that they are required to put a fence/boundary of sorts between property 205-18-6 and 205-18-4, seconded by Brian Perro.

Point of order from Code Officer Jim Butler:

In reference to the square footage requirement. They are limited to how big the structure can be as far as square footage and this will be looked at as part of the building process. If they come forward and it exceeds the 35 % lot coverage, they would need to come back for another approval.

Code Enforcement Officer Jim Butler called for the vote:

VOTE:

Stan DeFreese - Yes
Brian Perro - Yes
Sam Dupuis – Yes

APPROVED:

(3-0)

Item 5 Acceptance of October 25, 2021 meeting minutes.

MOTION:

Stan DeFreese made a motion to accept the meeting minutes of October 25, 2021, seconded by Sam Dupuis.

VOTE:

Stan DeFreese - Yes
Brian Perro - Yes
Sam Dupuis – Yes

PASSES:

(3-0)

GOOD & WELFARE

ADJOURNMENT

There being no further business to conduct, the meeting adjourned at 7:07 PM.

Chairman

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 SEVENTEEN (17) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting held on December 30, 2021.

