

ZONING BOARD OF APPEALS
Monday, January 28, 2019 IN THE TOWN
COUNCIL CHAMBERS -6:30 p.m.
MEETING MINUTES

CALL TO ORDER 6:30 PM

Present: Mikaela Nadeau

Ryan Howe

Vice Chair Ron Regis

Mark Lindquist

Tom Mourmouras

Absent: Chair Ray DeLeo

Staff Present: Rick Haskell, CEO

Valdine Camire, Administrative Assistant

Others Present: Attorney Phil Saucier, OOB Town Attorney

PLEDGE TO THE FLAG

Vice Chair Ron Regis read the Appeals Criteria.

ITEM 1: Develop Findings of Fact

Owner: Jay and Patricia Oliveira

Location: 1 West Casco Ave; MBL: 320-9-11

Zone: R3, Residential Activity Shoreland District

At the ZBA's 8/27/18 meeting, the Board denied the Oliveira's variance to construct a nonconforming structure. ZBA must develop findings on each variance criteria which must then be reflected in the decision.

Attorney Sandra L. Guay from Woodman Edmands, Danylik Austin Smith & Jacques, P.A. representing the Oliveira's introduced herself. She stated that the facts will be based on the evidence and testimony that was before this Board on August 27, 2018 and that there will be no new additional testimony, it all has to be based on the original testimony.

Town Attorney Phil Saucier stated that this was an appeal that was in front of the ZBA Board back in August 27, 2018 and the ZBA Board denied the Variance Request.

The decision letter noted that it was denied without any written findings.

The Oliveira's appealed that decision to Superior Court.

It went to Superior Court and the parties realized it was going to need Findings of Facts.

The Judge issued an order and Attorney Saucier read the one sentence in letter to the Board Members so that the Board knows what they are charged to do tonight.

This case was remanded back to the Zoning Board of Appeals with instructions with those (3) members in attendance who voted at the August 27, 2018 hearing made insufficient written Findings of Facts based on evidence in the record obtained at the aforesaid hearing to support its decision to deny the Variance Application and to allow for proper review in the municipal decision by the court.

Attorney Saucier stated that the (3) ZBA Board Members who voted to deny the August 27, 2018 Variance need to write down why they found that the Oliveira's didn't meet the 4 hardship criteria that evening.

This will go into a form, it will go back to the Board Members and the Town to brief then it will go back to the Courts and that starts the process of the Appeal.

Vice Chair Ron Regis read the Justification of Variance.

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

Owner's 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 pilings) on this property. In addition, see attached documents #1, 2 & 3 that show 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.

(AUGUST 27, 2018) VOTE PASSED (2-1)

Mikaela Nadeau response: (January 28, 2019)

Ms. Nadeau voted no because on the Tax Map GIS System, the land assessed value was \$8,100 and the purchase price was \$70,000 and her thought process was that the value of the land assessed at the time and the purchase price was not indicative of a hardship. She added that their contractor had come before the board had mentioned that they tried applying for a DEP permit and they couldn't do one of them for the Natural Resource Protection Act due to the fact that they have such a strict requirement within the 25 ft. setback so this is what she based her decision off of.

Mikaela Nadeau stated that her decision was based on the purchase price and the assessed value wasn't necessarily indicative of a reasonable return.

Attorney Guay stated that she had recently watched the tape from that meeting and this wasn't in the record back in August 27, 2019. She also thinks there was a misstatement about the Natural Resources Protection Act and that there is a permit that they can apply for. It was just not a Permit by Rule, it was a Tier 1 permit that they needed to go for. Ms. Guay also mentioned that when this vote occurred in August it actually passed that standard and she's getting confused by the testimony tonight.

Tom Mourmouras response: (January 28, 2019)

Mr. Mourmouras agreed that based on the setback and the fact that the owner could not do anything else with the land because there is no reasonable return.

Ron Regis response: (January 28, 2019)

Mr. Regis agreed to this because there is not enough land there with the amount of setback that it would have to be to meet the 100' setback.

Attorney Saucier stated that the standard did pass. The vote was (2-1) the one who didn't vote for it was Mikaela Nadeau.

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

Owners 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 ft.. This is the only lot in the neighborhood that sits entirely within the 100 ft. wetland setback, thus not allowing for any structure to be built without a variance.

(AUGUST 27, 2018) VOTE DID NOT PASS (3-0)

Mikaela Nadeau response: (January 28, 2019)

Ms. Nadeau stated that her reasoning was that some of the things that came up at the August 27th meeting was that it wasn't a unique circumstance of the property because this was a known fact where it was located and they had known prior to buying the piece of land that it was within that setback.

Tom Mourmouras response: (January 28, 2019)

Mr. Mourmouras stated that he does not agree because it didn't seem like a unique circumstance and they should have understood that there was a wetland there and the neighbor has one bordering it also.

Ron Regis response: (January 28, 2019)

Mr. Regis also agrees with Tom Mourmouras' statement.

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

Owners response: The granting of this variance will allow for a beautiful single family home to be built that will add to the charm of Ocean Park for years to come and will not pose any health or safety problems.

Attorney Phil Saucier stated that the Board Members did not make findings on Items C & D at the August 27th meeting because one of the standards weren't met so it is important to make those findings at tonight's meeting.

Mikaela Nadeau response: (January 28, 2019)

Ms. Nadeau voted no because the applicants mentioned that they would be putting this house on pilings and cars would be parking underneath, that is not anything like the locality with the houses in that particular area. Also their contractor that spoke that night stated that there would be a disbursement of water but they weren't sure how much but that it would alter the water flow and they couldn't necessarily guarantee at the particular time specifically how they were going to ensure that any runoff was going to alter that area especially to the neighbors who are already prone to flooding. So that does pose safety hazards let alone the health hazards of being that close to a wetland with a septic system etc.

Ron Regis response: (January 28, 2019)

Mr. Regis votes no because of the wetland purposes of the overlap of all of the land abutting it. They would have to build up their lot because they are already sitting low to begin with.

Tom Mourmouras response: (January 28, 2019)

Mr. Mourmouras votes no because the setbacks are very close to the wetlands and he believes that this would affect the character of that property.

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

Owner's response: The prior owner is faultless in this regard. The land was owned by its previous owner since 1989 and was left undeveloped as they lived in a home on the lot adjacent. (Lot 320-9-10)

Past history of the property is relevant under this criteria. An example might be one where the prior owner split the lot in question out of a larger parcel and in doing so created a substandard lot after zoning was enacted. You may, therefore, need to present to the Board the history of how the property was created and a chronology of land use activities.

Attorney Guay stated that she believes that the night of the hearing on August 27th Mr. Oliveira had the deeds with him and he talked about that and how both lots were owned continually in two separate ownerships and at the time they were being held by two different LLC's, one was held by the Mr. and one was held by the Mrs. but the night of the hearing he went back and talked about they had been separate lots as far back as he could.

Tom Mourmouras response: (January 28, 2019)

He disagrees. He believes the hardship stems from not doing proper due diligence prior to buying the property and making sure that it was a buildable lot through every avenue that he could search for.

Mikaela Nadeau response: (January 28, 2019)

Ms. Nadeau also agrees with Mr. Mourmouras statement. They did not follow every avenue that they could have done and in addition to that we never received a written letter from the town itself on town paperwork stating that this was a buildable lot at the time of record.

Vice Chair Ron Regis response: (January 28, 2019)

Mr. Regis stated that he agrees with Ms. Nadeau's response.

Attorney Saucier stated that he will work with staff to get this in the right form, will bring it back to the Board to make sure that it looks accurate and then we will adopt it at the next meeting.

ITEM 2: Variance Consideration (front and rear setbacks, building coverage) and Public Hearing

Owner: John and Lisa Wilson

Location: 43 15th Street; MBL: 311-10-1

Zone: R2

(Tabled at November meeting) Proposal to construct 595 sq. ft. addition that will encroach into 2 front setbacks, 1 rear setback and exceed allowable building coverage. 15th St. front setback: proposed 9', required 20'. Wesley Ave front setback: proposed 10', required 20'. Rear setback: proposed 8', required 20'. Max allowable building coverage: 1,067 sq. ft. (35%). Proposed building coverage: 1,338 sq. ft.

Mikaela Nadeau abstained because she is a neighbor.

Owner John Wilson introduced himself. The purpose of the variance is to add a first floor bedroom with a bathroom. The home currently has a second floor bedroom and is fairly small. They have owned the house 15 years. He feels that this will not affect the neighborhood as far as visual. This would have the least impact in the area that is proposed. They have a lot that is a little larger than most of the properties around and it is not a rental property.

The Public Hearing opened at 6:57 pm. There being no one speaking for or against this proposal, the Public Hearing closed at 6:57 pm.

Vice Chair Ron Regis read the Justification of Variance:

JUSTIFICATION OF VARIANCE: In order for a variance to be granted, the appellant must demonstrate to the Board of Appeals that the strict application of the terms of the Zoning Ordinance would cause undue hardship. There are four criteria, ALL of which must be met before the Board can find that a hardship exists. Please explain how your situation meets each of these criteria listed below:

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

Applicant's response: The lot is abutting 3 town ways. 15th St., Wesley Ave. and Maplewood Drive. The proposed addition is for a first floor bedroom and the proposed location based on the lot configuration reflects the minimum effect on site distances from all intersecting ways. It will also present itself better in regards to the adjoining properties. Currently there are 2 small bedrooms on the second floor. The position of the proposed addition will leave sufficient clearance between the neighboring structures to the East on Wesley Ave. There is no way possible to create this first floor bedroom within the existing structure.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Abstained

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

Applicant's response: The property is bordered on 3 streets and its proposed location, although not compliant with setback requirements is still well behind the street line facing structure alignment of adjacent structures along 15th street and Wesley Avenue. Aesthetically there will be no negative impacts on the neighborhood and will only be an enhancement. The existing parking for 3 vehicles will remain as currently on Maplewood Ave.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree

Vice Chair Ron Regis - Agree
Mikaela Nadeau – Abstained

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

Applicant’s response: The granting of the variance will not alter the character of the neighborhood which consists of single family residences. The structure will be matched architecturally to the existing cottage styles of the neighborhood and the attached dwelling. Proposed location is still well behind adjacent structures on Wesley Ave. and 15th St.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Disagree
Mikaela Nadeau – Abstained

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

Applicant’s response: No change has been made to the lot boundaries since originally created. Est. 1920’s.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Abstained

MOTION:

Mark Lindquist made a motion to grant the Variance to John and Lisa Wilson, 43 15th Street, MBL: 311-10-1 in the R-2 Zone to construct a 595 sf. addition for a 1st floor bedroom and bathroom that will encroach into the 2 front setbacks and 1 rear setback and exceed the allowable building coverage. The 15th Street setback to be no less than 9 ft., the Wesley Ave. setback to be proposed no less than 10’ and the rear setback to be no less than 8 ft. The maximum allowable building size on that lot to meet the square footage as indicated, seconded by Tom Mourmouras.

Code Official Rick Haskell called for the vote:

VOTE:

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Disagree
Mikaela Nadeau – Abstained

VOTE PASSES (3-1-1)

ITEM 3: Non-Conforming Means of Egress Appeal and Public Hearing

Owner: Cynthia Lyons

Location: 21 Winona Ave; MBL: 321-6-3

Zone: R3

Remove existing non-conforming front staircase and replace with longer staircase. Structure will not extend further into the front and side setback than what exists but will continue to be non-conforming. This staircase is used as a code required means of egress.

Walter Wilson from Design Company here representing Cynthia Lyons introduced himself. The existing house is going to be updated and elevated with a new foundation. The new elevation requires more steps getting from the ground level up to the first floor. There is no place on the lot to relocate the stairs because it will not fit the side yard setbacks and the building itself fits relatively close to the street. During elevation we cannot move the building back further because that would be increasing the non-conformity of the rear yard and would put us in a flood zone in the back of the house. The only location for the house is where it is now which means that the stairs have to be added to in order to gain access from the grade to the first floor level. The stairs will not be any closer to the street and the width of the stairs would remain the same, we have to extend the length to accommodate the extra risers involved in getting into the house. The partial roof over the stairway will be removed.

The Public Hearing opened at 7:07 pm.

The owner introduced himself and stated that they are trying to put a basement in the crawl space because the house is sagging and the stairs are just going up higher.

There being no one else speaking for or against, the Public Hearing closed at 7:08 pm.

Vice Chair Ron Regis read through the Non-Conforming Means of Egress Construction:

A. The use or structure is legally nonconforming, as set forth in section 78-176, if the use or structure is nonconforming.

Applicant's response: The existing front stairway which provides access to the residential structure is within the front yard setback. This building was constructed prior to the establishment of Zoning Ordinance in the Town of Old Orchard Beach. The Ordinance requires a front yard of 20 ft. The front yard entry stairway is within this setback and therefore is a legally non-conforming structure. The owner proposes to elevate the existing home, remove the existing wood post foundation and install a concrete foundation. The existing first floor elevation of 9.76 will become 1533 ft. The proposed elevation is in anticipation of the proposed and soon implemented new flood zone elevation of 14 ft. This new elevation will require a front stair with additional steps to provide egress to the home. Due to the age and structural and components of the existing stair construction the exterior stairs need to be rebuilt as shown on the site plans. The existing stair construction is 8'10" in length with a roof extension above. The proposed stairway will be 16'10" in length and the roof extension will be eliminated. Due to the building placement on the property the proposed stair will not be any closer to Winona Ave. than now exists. The removal of the roof extension will reduce the encroachment of the existing structure within the front yard.

Tom Mourmouras – Agree

Ryan Howe - Agree

Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

B. the requested stairway or ramp is the minimum structure, dimensionally, as required by the Town of Old Orchard Beach Building Code.

Applicant’s response: The proposed stair will need 12 risers with platform in order to walk up to the proposed 1st floor elevation. The stair construction of 7-1/2” risers and 10” treads is proposed and the stair guardrail will be built to code. The stairs will be supported with 6x6 posts and concrete sonotubes.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

C. Due to physical features of the lot or location of structures on the lot, it would not be practical to construct the proposed stairway or ramp in conformance with applicable space and bulk requirements.

Applicant’s response: The lot is 40.88 feet in width. The existing structure is within the 20 ft. yard setback and the 15 ft. side yard setbacks. A minimal width driveway located on the easterly side of the lot within the setback area eliminates the possibility of egress stairs in this location. The features of the lot do not allow for the stairway to be located in conformance with the applicable space and bulk requirements.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

MOTION:

Mark Lindquist made a motion to grant Cynthia Lyons, 21 Winona Ave; MBL: 321-6-3
Zone: R-3 to remove the existing non-conforming front stair case and replace it with a longer staircase and moving the door slightly to the side to allow for the additional stairs. The structure will not exceed into the front setback any greater than what currently exists and the project will continue to be non-conforming, seconded by Mikaela Nadeau.

CEO Rick Haskell called for the vote:

VOTE:

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

PASSES (5-0)

ITEM 4: Variance Consideration (allow parking in front setback) and Public Hearing

Owner: Donald R. Bouchard Trustee

Location: 189 Saco Ave; MBL: 208-3-12

Zone: GB1

Variance requested to allow parking within the front setback on Macarthur Ave for one proposed duplex. The GB1 District does not allow parking in the front setback (Sec. 78-806).

Jim Fisher from Northeast Civil Solutions representing Mr. Bouchard introduced himself.

Mr. Bouchard would like to construct 2 building structures on his property at the corner of Macarthur and Saco Avenue.

Looking at a provision in the regulation that generally prohibits without ZBA or Planning

Board Approval to be able to park cars for residential uses in the front portions of the driveway that exist within the front setback.

Mr. Bouchard purchased the property in 2006. There is a drainage swale that is on the lot and with the permission of the municipality and DEP they installed a culvert. At the time of the installation of the culvert Mr. Bouchard asked DEP if there were any issues as far as going up to the extent of that culvert. DEP stated that he could build up to within that culvert except for over the top of the culvert. Mr. Bouchard initially wanted to build 5 units. This past year DEP came back and said that the rules have changed and they could not build up to the culvert anymore. There is now a 75' distance from that which would include most of the lot. DEP agreed with the proper permit to be able to go down to 25' in that area. So they created 4 instead of 5 duplex units. Because of the grading of Saco Ave. and Macarthur stormwater comes down and doesn't go into the proper catch basin systems. There is a detention pond that is back there to treat the off-site water that comes down from Saco and Macarthur Ave. DEP told them to minimize the impact to the greatest extent and they were able to get the DEP permit and they approved the storm water drainage function as well. In addition there is a flood zone attached to this drainage swale. Because there is no actual easement for this drainage swale, the town would like them to provide an easement that would be 15' on either side of the drainage swale. Because of these recommendations this is the only place for these units to go.

Planning Board asked that they come to the ZBA to speak about the particular regulation which talks about the prohibition of parking in the front. We were able to move the building further back on Saco Ave. but not on Macarthur Ave. Macarthur is a dead end road

Overall what they are asking for is to be able to allow 1 vehicle (per these 2 units) on Macarthur Ave. to be able to park in that front setback area in their own driveway.

Mark Lindquist asked what may have been an existing foundation on the corner of the lot and they are proposing that be one of the snow storage spots. He believes that this will impact the traffic from coming and going from Macarthur and proposing to put a parking spot in that setback area which would further make it difficult for those property owners to leave that street easily during winter months. He is concerned with the drainage.

Mr. Fisher explained that the driveways to both of these units are a minimum 50 ft. away so the snow will not be up at the very corner and there is also a manhole that will take some of the water that is coming down Saco Ave. and comes around the corner to Macarthur. The entire site has been graded to take snowmelt and any stormwater and put it through the detention system and be able to slowly infiltrate into the drainage swale. So this would not affect anyone coming out of Macarthur Ave as this pushes snowmelt away from the main road.

Tom Mourmouras asked how many parking spaces will there be.
Mr. Fisher stated that there are 2 parking spaces per unit.

The Public Hearing opened at 7:15 pm.
There being no one else speaking for or against, the Public Hearing closed at 7:15 pm.

Vice Chair Ron Regis read into the record a letter from Janice Hebert:
I am the property owner of 180 Saco Avenue, #7 and would be opposed to the building of 189 Saco Avenue, it will add to the water problems that have been created by the building of the Summerwinds Condominiums. Addition building would add further water problems for the surrounding homes.

Vice Chair Ron Regis read the Justification of Variance:

JUSTIFICATION OF VARIANCE: In order for a variance to be granted, the appellant must demonstrate to the Board of Appeals that the strict application of the terms of the Zoning Ordinance would cause undue hardship. There are four criteria, ALL of which must be met before the Board can find that a hardship exists. Please explain how your situation meets each of these criteria listed below:

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

Appellant's response:

The buildings on the lot are placed to minimize, to the greatest extent practicable, the disturbance of land adjacent to the existing stream on the property and also meet the town's standards for vehicle/traffic safety. A reasonable return on the property can only be accomplished with the construction of at least 4 condo units, a single building of less than this will not make the project financially feasible. The space and bulk will allow up to 5 units on the property, 4 are proposed due to the limiting factors of the site. The best way to make 4 condo units work is with two separate duplex buildings.

Because of the limiting factors by the state (Maine DEP) relative to setbacks from the stream, and by FEMA relative to the future expansion of flood hazard in the area, there is only one location on the lot for the Macarthur Avenue building to be located outside of the stream setback and flood plain. Locating the building as such results in a driveway that could allow parking of residential vehicles within the front setback, even though each unit in the duplex has its own garage that is beyond the setback line. Granting the variance would allow vehicles parked in their respective driveways to back out onto Macarthur Avenue when leaving the site, just as the 15 other properties along the road already do.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

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

Applicant's response: The placement of the buildings was determined through a back and forth process with the owner, DEP and the Town, and was restricted by natural and existing features. The resulting placement of the buildings are such that one building, with access off Saco Ave. (Building A), is located to allow parking that meets the ordinance and prevents backing into the street, and one building, with access off Macarthur Ave. (Building B), that will require parking to be within the front setback of the lot. The placement of Building A was determined by a series of factors. First, the driveway for Building A is required to be a certain distance from the intersection of Saco Ave. and Macarthur Ave. Second, it was moved far enough away from the front setback line to allow parking to be outside of the front setback. Third, we were not able to move further away from the intersection due to an existing drainage easement and 36" drain pipe that runs across the property. And fourth, the DEP mandates that we minimize and avoid impacts adjacent to the stream next to the property.

The final placement of Building A prevents Building B to be placed far enough off Macarthur Ave, maintaining fire safety setbacks, to locate the parking out of the front setback. The other reasoning for the existing placement of the buildings is to reduce disturbance adjacent to the stream which is located next to the property. Since we are not able to move Building B far enough away to meet the parking requirement, we have moved it as far away from the natural resource as possible, satisfying the DEP mandate. Since Macarthur Ave. is a dead-end road it won't cause traffic disturbance for vehicles to back out of the driveway. The same maneuver onto Saco Ave. could cause a disturbance and is why extra room was created for the turn-around areas.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Disagree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

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

Applicant's response: Granting the variance will not change the character of the neighborhood. The street, Macarthur Ave. is a dead-end street that serves 15 house lots. Allowing parking to be within the setbacks on this lot will not cause any undue hardships on the neighboring lots and will not cause vehicle or traffic disturbances. The placement of Building B is setback slightly further away (2'-3') from Macarthur Ave. as compared to the closest neighbor.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

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

Applicant's response: The hardship of building placement is due to the protected natural resource (stream) located adjacent to the property and that the property is a corner lot with two frontages. The DEP mandate is to minimize and avoid disturbance adjacent to a resource. The placement of Building A is also encumbered by a drainage easement that runs across the property with a 36" drain pipe. A minimum setback from this pipe/easement is necessary to allow for future maintenance and repair of the pipe.

Tom Mourmouras – Disagree
Ryan Howe - Disagree
Mark Lindquist – Disagree
Vice Chair Ron Regis - Disagree
Mikaela Nadeau – Disagree

Mr. Fisher questioned that if the property created over 100 years ago and they are limited in terms of the overall size, this is not something that the owner has control over. In reading the question in letter D (*The hardship is not the result of the action taken by the applicant*). They have a vacant lot that is allowed for the zoning to be able to do what they are doing. Because the lot was created prior to the enactment of zoning, he is not sure what the applicant would have to do with that.

Mark Lindquist stated that to construct these units in a very dense space will change the neighborhood. There is already a drainage problem. To build 2 duplex units may not be the direction for that unique piece of property as it currently exists. He suggested a new design or idea.

Tom Mourmouras stated the hardship was being created by the applicant is trying to force as much as he can onto that property.

Mr. Fisher if they were to cut back to one unit they would still have the same problem because due to the retention system and DEP setback from the stream and the flood plain, this is the only area where any structure could to. The only way to make it practicable based on the value of the property is to put the 4 units on the property.

Mikaela Nadeau stated that the only thing that ZBA is legally supposed to be voting on tonight is the parking issue and not the actual scope of the buildings itself.

MOTION:

Mark Lindquist made a motion to table this item without prejudice and revisit the Variance request at the next meeting, seconded by Mikaela Nadeau.

CEO Rick Haskell called for the vote:

VOTE:

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

PASSES (5-0)

ITEM 5: Miscellaneous Appeal (side setback) and Public Hearing

Owner: 3 Weymouth OPM, LLC

Location: 3 Weymouth Ave; MBL: 324-11-2

Zone: R3

Miscellaneous Appeal request to allow building addition to encroach into right side setback by 2.4' (Side setback: 15' required, 12.8' proposed).

Attorney Sandra L. Guay from Woodman Edmands, Danylik Austin Smith & Jacques, P.A. representing 3 Weymouth OPM, LLC introduced herself.

This building was built in the 1930's and has never been expanded. The applicants are looking to bump out the bathroom area for more space and to modernize. They are looking for a 12'8" setback and that allows for a 4 ½ ft. bump out plus the overhang. Most of the surrounding houses have been significantly enlarged over time and this is one of the smallest houses on the street.

Chair Ray DeLeo read the criteria for a Miscellaneous Appeal.

1. 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 of record.

Applicant's response: The house located at 3 Weymouth Avenue was constructed in approximately 1930.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

B. The requested reduction is reasonably necessary to permit the owner 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: Most of the surrounding houses have been significantly expanded over time. 3 Weymouth Avenue is one of the smallest houses in the area, has not been expanded and has a very small original bathroom. The setback reduction is only to allow for a modest expansion of that original bathroom.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

C. Due to the physical features of the lot and/or the location of the 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: With the side setback as it is, the bathroom could only be expanded by approximately 2 feet to the overhang meaning a very limited interior expansion.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

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: Again, 3 Weymouth Avenue is one of the last of the original cottages on Weymouth Avenue not to have been significantly expanded even with the setback reduction and modest bathroom expansion. The structure is dwarfed by the surrounding expanded residential structures.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

MOTION:

Mark Lindquist made a motion to grant this Miscellaneous Appeal for 3 Weymouth OPM, LLC, 3 Weymouth Ave; MBL: 324-11-2 Zone: R3 to allow the addition and encroachment into the right side setback by 2.4’ to a setback of 12’ 8” seconded by Mikaela Nadeau.

CEO Rick Haskell called for the vote:

VOTE:

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

PASSES (5-0)

ITEM 6: Miscellaneous Appeal (front setback) and Public Hearing

Owner: Heather Allen Trustee, Robert & Joanne Duffy Asset Protection Trust

Location: 15 Foote St; MBL: 205-12-2

Zone: R2

Miscellaneous Appeal request to allow construction of a deck to encroach into front setback by 5' (Front setback: 20' required; 15' proposed).

Robert Duffy, owner introduced himself and explained that he would like to add a front deck. From the front of the house to the front of the roadway is presently 22 ft. With a 7 ft. deck coming off the house would reduce that to 15ft.

Chair Ray DeLeo read the criteria for a Miscellaneous Appeal.

1. 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 of record.

Applicants response: The existing structure was built in 1938.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

B. The requested reduction is reasonably necessary to permit the owner 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.

Applicants response: Similar properties have front porches.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

C. Due to the physical features of the lot and/or the location of the 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.

Applicants response: The frontage of the lot measures 22 ft. the proposed deck is 7 ft. We are required to have a remaining available frontage of 20 ft. The lot will be 6 ft. under that required amount.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

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.

Applicants response: We are adding a deck to the front of the house that should not impact any other residences. The deck will be the remaining front out 6 ft. from required amount.

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

MOTION:

Mark Lindquist made a motion to grant a Miscellaneous Appeal to Heather Allen Trustee, Robert & Joanne Duffy Asset Protection Trust., 15 Foote St; MBL: 205-12-2 Zone: R2 to allow the construction of a deck to encroach into the front setback by 5 ft. to a proposed 15 ft. setback seconded by Tom Mourmouras.

CEO Rick Haskell called for the vote:

VOTE:

Tom Mourmouras – Agree
Ryan Howe - Agree
Mark Lindquist – Agree
Vice Chair Ron Regis - Agree
Mikaela Nadeau – Agree

PASSES (5-0)

ITEM 7: Acceptance of November 26 Meeting Minutes. The November 26, 2018 meeting minutes could not be voted on as there were not the majority of members present that were at that meeting to approve.

GOOD & WELFARE

Vice Chair welcomed new member Ryan Howe to the Zoning Board of Appeals Board.

ADJOURNMENT at 8:15 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 Sixteen (16) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting held on January 28, 2019.

