

**ZONING BOARD OF APPEALS
MEETING MINUTES FOR
Monday, July 15th, 2019 IN THE TOWN
COUNCIL CHAMBERS -6:30 p.m.**

CALL TO ORDER 6:30 PM

ROLL CALL: Ryan Howe, Mikaela Nadeau, Ron Regis, Tom Mourmouras and Ray DeLeo (Chair).

Staff Present: CEO Rick Haskell, Administrative Assistant Valdine Camire.

PLEDGE TO THE FLAG

Chair Ray DeLeo read the Criteria for an Appeal.

ITEM 1: Variance Consideration (side setbacks) and Public Hearing

Owner: Mary Ann Desanto

Location: 45 Summit Street; MBL: 206-28-9

Zone: R1

Variance request for reduction of side setback to proposed 6' on both sides from the required 15'. Current structure has a left side setback of 9' and right side setback of 3'.

Mary Ann Desanto introduced herself. She explained that she would like to replace her existing house with a new modular home and she is requesting a Variance to center her new home so that there is 6' on each side.

Opened the public hearing at 6:33 pm.

No one speaking for or against the appellant, the public hearing closed at 6:35 pm.

Chair Ray DeLeo 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: Existing home in need of replacement. Proposed location will center the dwelling on the lot.

Ryan Howe – Disagree

Mikaela Nadeau – Disagree

Tom Mourmouras - Disagree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - 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 existing 40' wide lot does not lend itself for a typical home width given the current 15' side setback. Lot would only allow for 10' wide structure given the 15' setback ordinance.

Ryan Howe – Disagree
Mikaela Nadeau – Disagree
Tom Mourmouras - Disagree
Vice Chair Ron Regis - Disagree
Chair Ray DeLeo - Agree

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

Applicant's response: Variance will not alter the essential character of the neighborhood which consists of single family homes.

Ryan Howe – Agree
Mikaela Nadeau – Agree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - Agree

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

Applicant's response: No

Ryan Howe – Agree
Mikaela Nadeau – Agree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - Agree

MOTION: Ryan Howe made a motion to deny the Variance consideration for side setbacks for 45 Summit Street, MBL: 206-28-9 Zone R-1, seconded by Mikaela Nadeau.

Code Official Rick Haskell called for the vote:

VOTE:

Ryan Howe - Yes
Vice Chair Ron Regis - No

Mikaela Nadeau – Yes
Chair Ray DeLeo – Yes
Tom Mourmouras – Yes

(4-1) DENIED

ITEM 2: Variance Consideration (reduction in net lot area per family unit) and Public Hearing

Owner: John and Marta Lacasse

Location: 164 East Grand Avenue; MBL: 302-7-5

Zone: BRD

Variance request for reduction in minimum lot area per family unit to 3,375 sq. ft. from the required 3,500 sq. ft. to allow a 4th family unit. Per building permit issued, the older cottage was to be torn down to allow for the new unit to be built.

John LaCasse introduced himself. He explained that he was born and raised in Old Orchard Beach. The property has been in the family since 1997. He believes that he has brought value to the town. The revenue it creates for the town and the local businesses in the community and has had no problems from the 12 years that he has rented this property. He explained that he is simply trying to keep this cottage and not have to tear it down. He would ask that the ZBA Board consider granting this Variance.

He has 13,500 sf. and he needs 15,000 sf. for the 4th unit.

Public Hearing opened at 6:40 pm.

Tom LaCasse, applicants brother introduced himself. He is the one who actually constructed the house.

They believed that they had to tear down the cottage to be able to build a new house. The issue is the 4th unit and need so much square footage per unit.

Michael LaCasse, another brother introduced himself. The unit that is comprised of 2 units is a 2 story. Tearing down the cottage will cause problems with extra noise because it is a buffer from the railroad tracks. He is not in favor of tearing down the cottage.

Jane Bean who lives at 165 East Grand Ave. introduced herself. She lives directly across the street from the LaCasse family. She has seen this property improve consistently throughout the years. She is in favor of not tearing down the cottage.

Closed to the public at 6:55 pm.

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

Applicant's response: Without the revenue that the cottage garners, it would be a financial

burden on the owners as it generates 33% of our yearly revenue, thus making it nearly impossible to pay taxes, insurance, etc. that we faithfully pay every year.

Ryan Howe – Disagree
Mikaela Nadeau – Disagree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - Disagree

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: No one in the immediate area or any surrounding areas are affected. The unique circumstances, as this point is that the cottage (unit 3) generates income that offsets the cost of taxes, insurance and any other miscellaneous expenses associated with summer rentals,. Further the property in question is rented for the entire summer based on the owners understanding that it could be rented by local town officials.

Ryan Howe – Agree
Mikaela Nadeau – Disagree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - Agree

Tom LaCasse asked the Board if they would consider if there could be some sort of extension to let him rent the cottage for the rest of the summer since they already have it rented it out. CEO Rick Haskell stated that this maybe something that the Town Manager Mead would have to decide. One suggestion to keep the cottage is to make the cottage a 1 unit instead of a 2 unit. Another option would be to purchase some land from an abutter.

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

Applicant’s response: The granting of the Variance does not alter or diminish the locality. The property continues to be upgraded and enhances the character of the locality. All units are clean, structurally sound and meet all inspections required by the Town of Old Orchard Beach.

Ryan Howe – Agree
Mikaela Nadeau – Agree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - Agree

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

Applicant’s response: N/A

MOTION: Mikaela Nadeau made a motion to deny the Variance consideration for John and Marta LaCasse, 164 East Grand Ave. MBL: 302-7-5 in Zone: BRD seconded by Ryan Howe.

Code Official Rick Haskell called for the vote:

VOTE:

Ryan Howe - Yes

Vice Chair Ron Regis - No

Mikaela Nadeau – Yes

Chair Ray DeLeo – Yes

Tom Mourmouras – Yes

(4-1) DENIED

Item 3: Miscellaneous Appeal (reduction in rear setback) and Public Hearing

Owner: Susan Fitts

Location: 47 Winona Avenue; MBL: 320-6-4

Zone: R3

Miscellaneous Appeal request for the reduction of the rear setback to 13' from the required 20'. This would allow for a 10'x15' deck to be built.

Susan Fitts from 47 Winona Avenue introduced herself. She is here with her husband Steven Fitts. She explained that they would like to build a deck and their neighbors will not be affected visually by this deck. The deck would be above the patio that is on the ground level. They are only asking for 7' reduction in the rear.

Mrs. Fitts handed out 3 letters from her neighbors that are included in these minutes:

July 15, 2019

Dear Members of the Zoning Board of Appeals, Old Orchard Beach, Maine

I am writing in heartfelt support of the request for a Variance by Sue and Steve Fitts which will allow them to build a deck in addition to their property at 47 Winona Avenue here in Ocean Park.

I own the property at 49 Winona Avenue, adjacent to the Fitt's property. Their proposed deck will not interfere whatsoever with my property, my privacy or my view of the marsh.

They are excellent, respectful neighbors. I urge you to grant them the Variance that they are requesting.

Sincerely,

Shannon Webster

49 Winona Ave

Ocean Park, Me

July 15, 2019

To: OOB Zoning Board of Appeals:

Re: 47 Winona Avenue, Ocean Park, ME

I have no issues with Sue and Steve Fitts plan to build a deck off of their home.

Sincerely,

Ken Fraser

44 Winona Ave

Ocean Park ME

(617) 686-1626

July 15, 2019

To Whom it May Concern Zoning Board

I approve Susan and Steve Fitts request for a deck proposal at their home on 47 Winona Ave,

Ocean Park, ME

Sincerely,

Cynthia Frazer Brown

44 Winona Ave

Ocean Park, ME

(617) 947-0939

Public Hearing opened at 7:15 pm.

Troy Goldstein from 42 Winona Avenue directly across the street from 47 Winona Avenue and he wanted to add his support to this proposal.

Public hearing closed at 7:22 pm.

Chair Ray DeLeo read the criteria for the Miscellaneous Appeal

In order for the Miscellaneous Appeal to be granted, the appellant must demonstrate to the Board of Appeals that the following criteria are met for a Limited Reduction of Yard Size/Limited Expansion of Lot Coverage or Nonconforming Means of Egress Construction as per Section 14.3.3.1 and 14.3.3.2 of the Zoning Ordinance.

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 house was built in the 1950's prior to the setback requirements. We are asking for a reduction in the rear setback to accommodate a deck.

Ryan Howe – Agree

Mikaela Nadeau – Agree

Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - Agree

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: We would like to build a deck off of our 1st floor so we can enjoy and have access to the back yard/grilling. (our 1st floor) is on the 2nd level. There are other decks with similar properties and circumstances in our neighborhood.

Ryan Howe – Agree
Mikaela Nadeau – Agree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - Agree

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 existing rear setbacks would not allow for a deck off the back of our house.

Ryan Howe – Agree
Mikaela Nadeau – Agree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - 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: The deck will conform with the neighborhood. Most homes are built on non conforming lots and have structures and/or decks that do not meet setback requirements. The deck will fit the environment of the neighborhood.

Ryan Howe – Agree
Mikaela Nadeau – Agree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - Agree

MOTION:

Mikaela Nadeau made a motion to approve the Miscellaneous Appeal reduction in the rear setback for Susan Fitts at 47 Winona Avenue; MBL: 320-6-4 in the Zone: R3 with the stipulation that it can only be a deck and will not be closed in in any way, seconded by Ryan Howe.

Code Official Rick Haskell called for the vote:

VOTE:

Ryan Howe - Yes
Vice Chair Ron Regis - Yes
Mikaela Nadeau – Yes
Chair Ray DeLeo – Yes
Tom Mourmouras – Yes

(5-0) PASSES

Item 4: Miscellaneous Appeal (reduction in rear setback) and Public Hearing

Owner: David Edwards

Location: 2 Cookman Avenue; MBL 317-8-1

Zone R2

Miscellaneous Appeal request for a reduction in the rear setback to 14' from required 20'. This would allow a deck and stairway from second floor.

David Edwards introduced himself. They gutted the upstairs because of moisture problems and they are wanting to build it back as a living space. His intention is to put an egress windows on one end and a door on the other end for an escape in case there was a fire. The door would have a deck and stairway. This is similar to other homes in the neighborhood.

Public hearing opened at 7:24 pm.

Ernest Tarbox who lives at 1 Cookman Avenue and a neighbor to Mr. Edwards introduced himself. He mentioned that Mr. Edwards will be adding 2 forms of egress for safety purposes and that he is in favor of this proposal.

Public hearing closed at 7:30 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: Built before setback laws.

Ryan Howe – Agree

Mikaela Nadeau – Agree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - Agree

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: Provide direct egress from 2nd floor.

Ryan Howe – Agree
Mikaela Nadeau – Agree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - Agree

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: Principal structure is already within setback.

Ryan Howe – Agree
Mikaela Nadeau – Agree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - 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: This will not affect other homes in area. Much like other homes.

Ryan Howe – Agree
Mikaela Nadeau – Agree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - Agree

MOTION:

Ryan Howe made a motion to approve the Miscellaneous Appeal setback for David Edwards at 2 Cookman Avenue, MBL 317-8-1 in the Zone R2 for a Miscellaneous Appeal reduction in the rear setback to 14' from the required 20', seconded by Ron Regis.

Code Official Rick Haskell called for the vote:

VOTE:

Ryan Howe - Yes

Vice Chair Ron Regis - Yes

Mikaela Nadeau – Yes

Chair Ray DeLeo – Yes

Tom Mourmouras – Yes

(5-0) PASSES

Item 5: Variance Consideration (reduction in front and rear setbacks) and Public Hearing

Owner: Brian and Jeanita O'Donnell

Location: 4 Fern Park Avenue

Zone: R2

Variance requested for reduction of front and rear setbacks. The front setback of the existing home is 10', 20' is required, this would allow an additional 14' of structure at the 10' setback. The rear setback of the existing home is 6', 20' is required and this would allow an additional 10'8" of structure at the 6' setback.

Brian and Jeanita O'Donnell introduced themselves. They have owned this property since 1986 and have been working to upgrade it over the years. Their front porch is showing some rot and in need of replacement. Also there is a side room off of the house that is sagging. They are requesting to take the porch off, replace it and expand it around the corner to the side room. Wanting to replace it with a 5' extension to make that a bedroom (currently a spare room). His wife, who has some health concerns is finding it hard to climb stairs.

Public hearing opened at 7:35 pm.

Dennis Baker from Kennebunk, Maine and the O'Donnell's contractor introduced himself. He explained to the Board Members what he will be doing and showed them a plan. He also explained that this had a flat roof and it needs to be pitched.

Public Hearing closes at 7:42 pm.

Chair Ray DeLeo 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: As we have owned our home for thirty-three years we have gone through the varying stages of life, young adulthood, parents of two children (who are now adults) and now approaching retirement age. My wife Gina has had Lupus and osteoarthritis for over twenty years, this has led to reduced stamina and mobility, especially affecting stair climbing ability. The proposed changes will allow for us to live mainly on the first floor and allow for the use of a wheelchair if eventually needed.

Ryan Howe – Agree
Mikaela Nadeau – Disagree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - 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 current room that will be re-built is not set on a foundation and has settled, causing the floor to be very unlevel. Additionally the room is not large enough to accommodate sufficient room for a full bed, related furniture and possible handicap access if needed. The existing porch is over 50 years old and is deteriorating, the roof leaks and has some rotting woodwork.

Ryan Howe – Agree
Mikaela Nadeau – Agree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - Agree

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

Applicant's response: Our house, which is set on a double lot, with the proposed changes, will have a footprint that takes up less of a percentage of the lot than most houses in the neighborhood. The added sections will still be farther away from the property line than many of the other houses in the neighborhood.

Ryan Howe – Agree
Mikaela Nadeau – Agree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo - Agree

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

Applicant's response: We purchased the property in 1986, it has always been our plan for it to remain in our family and eventually serve as our retirement home. Over the last 10 years we have

worked to update the home to replace and update sections that have had little work done over the previous 40 years. These proposed improvements will allow to rebuild the existing room on the first floor, replace the deteriorating existing porch and provide additional space to use during the warmer sections, without being fully exposed to the elements. It will also be built to accommodate a wheelchair access if needed.

Ryan Howe – Agree
Mikaela Nadeau – Agree
Tom Mourmouras - Agree
Vice Chair Ron Regis - Agree
Chair Ray DeLeo – Agree

Ryan Howe made a motion to approve Variance Consideration for reduction in front and rear setbacks for Brian and Jeanita O'Donnell, 4 Fern Park Avenue, Zone: R2, seconded by Ron Regis.

MOTION:

Code Official Rick Haskell called for the vote:

VOTE:

Ryan Howe - Yes
Vice Chair Ron Regis - Yes
Mikaela Nadeau – No
Chair Ray DeLeo – Yes
Tom Mourmouras - Yes

ITEM 6: Acceptance of May, 22 2019 Meeting Minutes.

Ryan Howe made a motion to approve the May 22, 2019 ZBA Meeting Minutes, seconded by Mikaela Nadeau.

VOTE:

Mikaela Nadeau - Yes
Ryan Howe - Yes
Tom Mourmouras - Yes
Ron Regis - Yes
Chair Ray DeLeo – Yes

APPROVED (5-0)

GOOD & WELFARE

Mikaela Nadeau mentioned to the public that we need more ZBA Members to serve on the Board.

ADJOURNMENT

Mikaela Nadeau made a motion to adjourn the meeting at 7:47 pm, seconded by Ryan Howe.

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 THIRTEEN (13) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting held on July 15, 2019.

Valdine Camire