

**THE TOWN OF OLD ORCHARD BEACH, MAINE ZONING BOARD OF APPEALS
MEETING ON Monday, June 29, 2020, IN THE TOWN
COUNCIL CHAMBERS -6:30 p.m.
MEETING MINUTES**

CALL TO ORDER: 6:30 PM

ROLL CALL:

Present: Stan DeFreese, Ryan Howe and Vice Chair Ron Regis

Absent: Chair Ray DeLeo and Thomas Mourmouras

Vice Chair Ron Regis read over the criteria of an Appeal.

PLEDGE TO THE FLAG

ITEM 1: Election of Officers: The Board of Appeals shall annually elect a Chairman and Vice-Chairman from its membership:

The Election of Officers was postponed until the next meeting so that all of the members could be present.

Item 2: Variance Consideration (rear setback and expansion of lot coverage) and Public Hearing

Owner: Matthew & Heather Fountain

Location: 45 Colby Avenue, MLB; 323-14-7

Zone: R-3, Residential Activity Shoreland

Variance request an increase in lot coverage from the required 40% to a proposed 61.55% (existing 54.9%) and reduction in rear setback from the required 20' to a proposed 11'.

Adam Goodwin, Contractor from Carl Goodwin, Inc. introduced himself. He is representing Mr. and Mrs. Fountain. This item was tabled at last month's ZBA meeting based upon wordage on the deed. Mr. Goodwin found the original deed and sent that and the code restrictions to the code officer. The only one that is taken into consideration anymore is that anyone in Ocean Park that has an Ocean Park deed has to get permission from the Ocean Park Association to sell their lots. This was done when they bought their lot. The Ocean Park Association has met since the last ZBA meeting and have come to the conclusion to support this addition on their house. This letter was forwarded to the Code Enforcement Office as well.

Vice Chair Regis read the letter from the Ocean Park Association:

Ocean Park Association

May 9, 2020

Dear Chairperson DeLeo and the Members of the Zoning Board of Appeals Committee;


The Executive Committee of the Ocean Park Association met this morning to discuss the question that tabled Item 3: Variance Consideration for 45 Colby Ave, MLB; 323-14-7 at the last Zoning Board Meeting. After some research and discussion with the owner, Heather Kenney Fountain, our committee voted to positively support her proposal and to provide clarity on the deed restriction. As stated on our Association website, and on every deed for the original lots created in 1881, the restriction is as follows:

"Association approval is required for the sale of the property."

Since the 1970s this has been only a formality and is the only restriction stated on the original deed granted to Clifton K, Flanders (book 448, Page 9).

We hope this adequately clarifies the question posed by the committee and assists them in moving forward with this request. Should you have any further questions please feel free to contact me at 207-934-9068 option 1.

Respectfully,



Gerard G. Gosselin

Executive Director

Ocean Park Association

Mr. Goodwin added that when they originally had this Variance approved, it was to take away the sheds to gain the lot coverage. The homeowner would like to keep both sheds, and if possible the larger of the two sheds because she doesn't have a garage or any place to store things.

Ryan Howe asked if the kitchen was still fully functional and can they can still utilize the property. Mr. Goodwin stated that is true.

The Public Hearing opened at 6:35 PM.

Clifford Kenney who lives at 30 Main Avenue introduced himself. He stated that this is a summer cottage. The owners are planning to move here to make their home a full time residence. The kitchen that they have is a small kitchen and they want to expand it because they want to live there year round.

There being no other person speaking for or against this appeal, the Public Hearing closed at 6:40 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 existing house has a tight, minimal kitchen, which may be tolerated for summer use, but it would not function comfortable for permanent use by fulltime residents. To make a larger kitchen within the existing footprint as required by the lot's sub-standard size would require a full renovation of the house to make it fit at a considerable expense. It is more reasonable to add to the house's footprint and not have to spend considerably more due to the lot's size.

Ryan Howe – Disagree
Stan DeFreese – Disagree
Vice Chair Ron Regis - 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: The house was built on this lot in 1890 utilizing a cape style with a large wrap-around porch. The inefficient use of space causes the house to cover more than the current ordinance's lot coverage. The house has been kept in good order keeping the original look. Granting this variance would allow the original character to remain while at the same time allowing a new master suite and larger kitchen.

Ryan Howe – Agree
Stan DeFreese – Agree
Vice Chair Ron Regis – Agree

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

Applicant's response: The granting of this variance will not alter the character of the locality because the look of the house remains intact. Though more of the lot will be utilized, it will be unlikely noticed when driving by. The addition does not encroach any lot lines more than the existing house already does.

Ryan Howe – Agree
Stan DeFreese – Agree
Vice Chair Ron Regis – Agree

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

Applicant’s response: The hardship at 45 Colby Avenue is created by the existing 1890 house being built on a lot that is so sub-standard in all ways as defined by the adopted ordinances when this and neighboring lots were created, they should have been made much larger. At the time this house was built, Ocean Park was primarily a destination. Ocean Park is increasingly becoming a permanent residence and its sub-standard lots often create a hardship.

Ryan Howe – Agree
Stan DeFreese – Agree
Vice Chair Ron Regis – Agree

MOTION: Ryan Howe made a motion to disapprove the Variance consideration for a rear setback and expansion of lot coverage for 45 Colby Avenue, MLB; 323-14-7, seconded by Stan DeFreese.

Code Official Rick Haskell called for the vote:

VOTE:

Ryan Howe – Agree
Stan DeFreese – Agree
Vice Chair Ron Regis – Agree

DENIED
(3-0)

Item 3: Miscellaneous Appeal (left side setback) and Public Hearing

Owner: Ronald and Dawn Houle

Location: 29 Summit Street, MLB; 206-28-6

Zone: R-1

Miscellaneous Appeal request for reduction in left side setback from the required 15’ to a proposed 9’.

Applicant Rob Houle introduced himself. He recently bought this property and as he was trying to remodel it he notice a few underlying conditions. So they thought it would be more beneficial to tear it down after they had a water main break underneath the house. The original house was 8’ from the property line, they want to go 9’ from the left side of the property line. They will have 20’ setback from the front, 30’ in the back and 20’ on the right side.

The Public Hearing opened at 6:46 pm.

There being no one speaking for or against the appellant, the Public Hearing closed at 6:47 pm.

Vice Chair Ron Regis read the Justification of Misc. Appeals:

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: Due to the nonconforming lot size, the new structure will be 9 ft. off property line on left side of property.

Ryan Howe - Agree

Stan DeFreese – Agree

Vice Chair Ron Regis - 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.

Applicants Response: The reduction on the left side of the property is necessary to allow for the driveway on the right side of the property.

Ryan Howe - Agree

Stan DeFreese – Agree

Vice Chair Ron Regis - Agree

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

Applicants Response: Due to the non-conforming lot size it would not be practical to place the new structure any other way on the property.

Ryan Howe - Agree

Stan DeFreese – Agree

Vice Chair Ron Regis – 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: The size and footprint of the new home/structure wall nicely fits in the neighborhood. Taking down the old structure and building new wall more value to the neighborhood.

Member Ryan Howe stated that when he read through this, the reasoning and the care and the efforts that were taken by the applicant to try to alleviate the congestion on the street are the type of things that the ZBA Board is looking for consistently in the community. Definitely appreciates the efforts that the applicant took on this.

Ryan Howe - Agree

Stan DeFreese – Agree

Vice Chair Ron Regis – Agree

MOTION:

Stan Defreese made a motion to approve the Miscellaneous Appeal from Ronald and Dawn Houle Location: 29 Summit Street, MLB; 206-28-6 request for reduction in left side setback from the required 15’ to a proposed 9’, seconded by Ryan Howe.

Code Official Rick Haskell called for the vote:

Ryan Howe - Agree

Stan DeFreese – Agree

Vice Chair Ron Regis – Agree

VOTE:

Passed (3-0)

Item 4: Appeal for Administrative Interpretation and Public Hearing

Owner: Darya Zappia

Location: 86 Portland Avenue, MLB; 104-1-23

Zone: RD

Appeal of Administrative Interpretation of where an accessory structure can be placed on the property.

Paul Driscoll a lawyer from law office of Norman, Hanson & DeTroy Office introduced himself representing the Applicants.

They have a legal question whether the accessory structure are permitted in the front yard. There is a reference in the Ordinance Section 78- 1381 which Mr. Haskell, Code Enforcement Officer used to deny the application indicating that there could be no greenhouse or any accessory structure in the front yard. They do not believe that the legal conclusion is correct. The Ordinance says that no accessory building would be located in a required front yard and in the ordinance states that the required front yard is a reference to the area where there are setbacks. This is in the Rural District which is a 50’ setback from a street. The corner lot fronts on Portland Avenue and Miles Avenue, and from either dimension the

location of the proposed greenhouse is well more than the setback. From Miles Avenue it is more than 100' to the sideline of the street and from Portland Avenue is more than 60'. The Code Officer states that any portion of the front yard, that is on the front side of the house on either side is a front yard and no accessory structure can be there, and so in effect taking the word required out of the definition where the restriction exists. If you go to the bulk and density requirements for the Rural District, you will see that the minimum front yard setback for all structures is 50' so we meet that standard. Then if you go to the General Business District I, it says minimum accessory front yard setback (it says not permitted). This is an instance in which accessory structures in a front yard are not permitted, which is not the case in respect to the Rural District.

They do not feel that this is a legally correct conclusion.

This application meets all the applicable space, bulk and density requirements for this zoning district.

This will not be for commercial use.

Mr. Driscoll passed out paperwork to the Board Members which included property addresses in this zoning district that were granted the right to install a structure of some sort of accessory structure within the required front yard.

These property owners met the space and bulk density requirements for their properties. If the accessory structure is not allowed in the front yard that applies across the municipality, then every one of the approvals would have been improper because they were issued after the effective date of the ordinance.

This greenhouse will be used for personal use.

They believe that this is a greenhouse in a Rural District that meets all dimensional requirements.

Darya Zappia, the owner of 86 Portland Avenue introduced herself. The only reason for this greenhouse is that they like to garden and like to grown their own vegetables year round.

Member Ryan Howe stated that it seems that none of the proposed structures are nowhere in the setbacks as a whole and it is not for Commercial purposes. Code Officer Rick Haskell stated that it is.

The front door is facing Miles Avenue.

Vice Chair Ron Regis asked if they could put their greenhouse on the Miles Avenue side.

Darya Zappia stated that it would be difficult because there is ledge on that side as well as a large tree.

Member Ryan Howe asked if there is anything in our ordinance that specifically defines what required front yard means. Code Officer Rick Haskell stated that there is no definition of required front yard.

The Town Attorney was in full agreement with Codes decision that front yard simply just meant front yard of the property. Because there is no definition it is up to Codes to make an interpretation.

Vice Chair Regis suggested having the greenhouse attached to the house maybe an option.

All agreed that we need definition of this Ordinance and it has to come from the Town Council to change it.

Diane Fredette who lives at 81 Portland Avenue and is an abutter to the property in question introduced herself. Her neighbor Norm and Barbara DeLage sent a letter and some photographs of the said property to her phone.

Her concern is that a 30' x 35' structure on Portland Avenue will have an effect on the properties surrounding this greenhouse. She objects to a 30' x 35' plastic wrapped structure. There are other places that it could be placed where it wouldn't be so visible from the road and properties. This would affect their property values. They are already suffering from some of the choices that Landry's Market was allowed to make.

Along with this proposal, what she is seeing is a very gradual transformation of this property that doesn't feel like it is ever going to be complete. She is concerned that the greenhouse may have the same gradual project. She feels that it would be a more of a commercial rather than a personal greenhouse.

Vice Chair Ron Regis read a letter from Norman and Barbara DeLage, 23 Portland Avenue.

Mr. Regis:

We are writing because we received a notification we received regarding the building of a 30 x 35 greenhouse accessory building at 86 Portland Avenue. Not being able to attend tonight's meeting and we have concerns of the greenhouse location. We would like to express that we feel that if this is allowed to be built on Portland Avenue it will be breaking the following ordinance because of the size. It would be more of a commercial rather than a personal greenhouse.

Sec. 78-1381 Accessory Buildings and Structures.

- (a) Location in the front yard. No garage, swimming pool or other accessory building shall be located in a required front yard.

We understand the owner's argument of the formal front door being on Miles Avenue but the address of the property is 86 Portland Avenue and should be prominent consideration since it is the properties formal address also with an entry door. We are not trying to deny Mr. and Mrs. Zappia's enjoyment of growing their own food for personal consumption, we are just opposed on having it be the main attraction on Portland Avenue. Since we already have one at the rear of Landry's Market which has changed the flavor of the neighborhood with depreciating our property values. We would not be opposed to the Zappia's relocating it to the rear of the barn, there is plenty of room on Miles Avenue with just as much sun for them to build a greenhouse where it is out of view and will be shielded from anyone's view which Mr. Zappia has completed his berm with plantings someday. This solution would be a win win for all and no abutting homes would be affected by a normal structure which may or may not see final completion. Thank you in advance for allowing us to express our opinions, consideration and concerns. Please share this with Stan DeFreese and Ryan Howe since there is no way to contact them through the Town's website.

Norman and Barbara DeLage, 23 Portland Avenue, Old Orchard Beach, Maine.

The list of those other properties in the record would be important.

Member Ryan Howe made a motion to overturn Mr. Haskell's ruling on the ordinance on item #4 for Darya Zappia Location: 86 Portland Avenue, MLB; 104-1-23 for accessory structures to be placed in the front yard.

VOTE:

Stan DeFreese – Disagree

Vice Chair Ron Regis – Disagree

Ryan Howe – Agree

ITEM 5: Acceptance of May 28, 2020 Meeting Minutes.

GOOD & WELFARE

Vice Chair Ron Regis asked if they could get a determination from Town Council on this ruling. Code Official Rick Haskell stated that he will talk with the Planner Jeffrey Hinderliter to see if this could be written a little more clearly. Either put in a definition for a required front yard or change the terminology in the ordinance.

ADJOURNMENT

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 consist of Nine (9) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting held on June 29, 2020.

Valdine Camire