

TOWN OF OLD ORCHARD BEACH
ZONING BOARD OF APPEALS MEETING MINUTES
 May 31, 2018

<p>Call to Order at <u>6:33 pm</u></p>	<p>Call to Order</p>
<p>Roll Call: Present: Chair Ray DeLeo, Vice Chair Ron Regis, Mikaela Nadeau and Tom Mourmouras. Absent: Mark Lindquist Staff Present: Interim Code Officer/Planner Jeffrey Hinderliter, Administrative Assistant Valdine Camire. Others Present: Town Attorney Phil Saucier.</p>	
<p>Pledge to the Flag</p>	
<p><i>Vice Chair Ron Regis read the criteria for the Public Hearing.</i></p>	
<p><u>ITEM 1: Administrative Appeal</u> Appellant: Walter Murphy Location: 184 Portland Ave; MBL: 103-1-20 Zone: RD</p> <p>Proposal is an administrative appeal from the Code Enforcement Officer’s interpretation of the ordinances and failure to act to enforce zoning in the Rural District.</p> <p>Attorney Keith Richard introduced himself. He is here representing Walter Murphy. They allege that there has been an unlawful failure to act and there are clear violations of the ordinance. There was a complaint with relevant correspondence they have had with the town.</p> <p>There is an excavation business in town with a fleet of vehicles which is in operation. There was also a frack tank which has since been removed. A letter was written to Dan Feeney, former Code Enforcement Officer back in November and he didn’t do anything about it. In January they spoke to Town Manager Larry Mead and he admitted that the frack tank was not a permissible use in the Rural District. But stated that the extent of the excavation activity whether permitted or not permitted hasn’t been determined pending further review. The Planning Board acknowledge that the excavation business is illegal because they considered amending the ordinance to accommodate it. Attorney Richard asked why change a law if something is already permitted under the town’s current zoning.</p> <p>In a Rural District it states that you have to preserve the Rural aesthetic. The types of uses allowed in that area are low intensity. Code Enforcement in Old Orchard Beach has been lacking for some time. They are here to urge the Zoning Board to direct the Code Enforcement Officer to enforce the law. An inspection would cast light on the extent of the violation. This business does not have a Conditional Use Permit for their uses. They only have a Condition Use Permit for a flower shop. The ordinance states that when you have an illegal use, the CEO shall/must issue a notice of discontinuance however the town refuses to take action.</p>	<p style="text-align: center;"><u>ITEM 1</u> <u>ADMIN.</u> <u>APPEAL</u></p>

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Planner Jeffrey Hinderliter sent an email on 04/6/2018 which he stated “We have not yet formally determined if the zoning ordinance is being violated.”

Ordinance Section 78-32(b) there is no formal determination contemplated by the ordinance. It is either legal or it is not. No one has ever argued that the MacDonald’s Excavation operation is legal. The Planning Board voted 3-2 against this proposed amendment.

Attorney Richard stated that it is the Boards obligation as government officials to decide the matters that are before them and to undertake their duties impartially to all of the citizens that they represent and to uphold the law. To correct the Code Enforcement Officer’s refusal to act and a notice of discontinuance should be issued immediately pursuant to the town’s ordinance.

Old Orchard Beach Town Attorney Phil Saucier introduced himself. He stated that the first job in an appeal is to determine if the Board has jurisdiction to hear an appeal. This is a decision for the Board to make. In this case the appeal is an appeal from the Code Enforcement Officer’s interpretation of the ordinance and failure to act, to enforce zoning in the Rural District.

The Administration Appeal section states “The Board only has the power/duty to hear appeals whereas alleged there is an error in any order, decision or determination made by the Code Enforcement Officer in writing.”

Section 78-111: Appeals from a Code Enforcement Officer’s decision in writing must be done in 30 days.

If the Board doesn’t find jurisdiction then the appeal is over and if they do find jurisdiction you go on to decide the merits of the case.

Interim Code Officer/Planner Jeffrey Hinderliter stated that Code Enforcement Officers have looked at the property for numerous years and they have not come back with a written violation.

Mikaela Nadeau read part of an email from March 26th between Jeffrey Hinderliter and Keith Richard “The Code Enforcement Officer has some discretion with enforcement matters as we have not yet formally determined if the zoning ordinance is being violated”. Ms. Nadeau asked if this would count as something in writing.

Town Attorney said that this would be a determination that they hadn’t decided.

Ron Regis was concerned that they have a business there that they have no permits for.

Attorney Keith Richard agreed that the written email would constitute a decision in writing in the relevant section of our ordinance Section 78-92(a).

Attorney Harry Center is here representing Debbie MacDonald. He stated that this

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meeting tonight represents the facts before the Zoning Board of Appeals.

There is no jurisdiction to hear this appeal. The Maine law is clear that the Zoning Board only has the authority to hear those issues which have been delegated by either charter or ordinance.

There is no evidence in this record tonight that shows us exactly how many vehicles are there or what the scope of any businesses that is there.

There is also the concept of pre-existing non-conforming uses, of grandfathered uses, of whether other businesses in the area are operating in the exact same way. The Zoning Board does not have jurisdiction to hear a failure to act.

The town cannot just shut down a business that has been operating for a number of years. There are preexisting non-conforming rights, issues of a waiver etc.

This needs to be sorted out by the Code Office. They need to make a determination of what is and what is not allowed.

Robin Dayton asked the Planner to explain how this item got to the ZBA.

Planner Jeffrey Hinderliter stated that Mr. Murphy and his lawyer filed an appeal with the ZBA because they didn't agree with the Code Officers determination or how they were moving forward with this matter.

Planner Hinderliter said that this is a totally different matter than what was presented at the Planning Board meeting. This has nothing to do with the ordinance change. And if there is an ordinance change, it will then go to the Council.

Chair Ray DeLeo would like to table this item because there is nothing for the ZBA to vote on.

The ordinance says that that Board of Appeals shall have the power and duty to hear and decide appeals where it is alleged that there is an error in any order, decision or determination made by the Code Enforcement Officer in writing. The Board may affirm or reverse in whole or in part or may modify the Code Enforcements order, decision or determination.

It is not yet determined in the email if the zoning ordinance has been violated.

Attorney Keith Richard stated that we have 2 determinations in writing, a letter from Town Manager Larry Mead and an email from Jeffrey Hinderliter.

Attorney Phil Saucier added that the ordinance gives the power to the ZBA Board to decide errors, determinations or decisions by the Code Enforcement Officer.

They are appealing the fact that the Code Enforcement Officer has not yet acted. Code Officers have the right to make a determination whether this is a violation or not.

Planner Hinderliter stated that the primary reason there has not been a determination is because to be fair with numerous people who are in this area. He did some research and found that there are issues throughout Portland Avenue in this particular area where there are real possibilities that violations exist beyond what is

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alleged with the MacDonald's.

As soon as the Code Officer claims a violation, he also has to claim numerous properties in that area that are in violation. The first approach to this was to look at all of the options. One of the options seems to be an ordinance amendment which may or may not work. So by not determining that a violation exists it gave the town more options to work with.

Mikaela Nadeau asked at what point does the town step in and state that a business application is needed, this has been going on 6 months that they have not gotten a business license.

Planner Hinderliter stated that they have been working towards a resolution. He added that it is ultimately the Council who makes the decision on business licenses, staff only makes recommendations.

Attorney Saucier told the Board Members that they can only act in their authority. The authority under the ordinance states that you can either overturn, approve or modify the Code Officer's decision that is in writing. In this case the Code Officer has not made a decision so the ZBA Board has no jurisdiction. He added that what they can do is to table this application for now, hold it open and then request the Code Officer to make a determination. If the Code Officer comes back next month and hasn't made a determination then the Board will have to decide whether the ZBA has jurisdiction and then the board needs to decide what to do.

The ordinance requires the Code Enforcement Officer's opinion in writing is what is appealed or not appealed.

Attorney Center stated that the ZBA does not have jurisdiction to hear an appeal for a failure to act for a non-action. He feels that the board should dismiss this appeal for no objection for no jurisdiction.

To help with the public's comments Planner Hinderliter suggested that if a determination is made and you have that determination and it is available to the public then we can talk about that determination.

MOTION:

Mikaela Nadeau made a motion to table the Administrative Appeal, Appellant: Walter Murphy, Location: 184 Portland Ave; MBL: 103-1-20, Zone: RD with the understanding that the Code Enforcement Officer will visit this business within 30 days and make a determination if the zoning is legal or not, seconded by Ron Regis.

Interim Code Officer Jeffrey Hinderliter called for the vote:

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

MOTION

VOTE:

(4-0)

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ITEM 2: Variance

Owner: Sandra Fayorsey

Location: 17 West Old Orchard Avenue; MBL: 312-5-7

Zone: R2

Front and Side Yard Setback: Construction of an addition that will encroach within the front and side yard setbacks. R2 front setback: 20'; proposed: 16.4'. Side setback: 15'; proposed: 11.3'.

Sandra Fayorsey introduced herself to the Board Members.

She explained that she would like to extend her building 8' out from her existing sunroom to build a kitchen and bedroom. They will be taking down the sunroom for the expansion.

The Public Hearing opened at 7:30 PM.

No one speaking for or against the appellant, the Public Hearing closed at 7:31 PM.

Chair DeLeo read the Justification of Variance:

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

Response: Our ultimate intent is to retire into this home and our current efforts are to work towards that goal in terms of function, practicability and comfort.

Tom Mourmouras - Yes

Chair DeLeo – Yes

Mikaela Nadeau – Yes

Ron Regis – 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 structure is a narrow rectangle with a side attached sunroom that is not properly aligned and the intent is to correct this with a more open concept floor plan that enhances safety.

Tom Mourmouras - Yes

Chair DeLeo – Yes

Mikaela Nadeau - Yes

Ron Regis – Yes

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

Response: This property is a trailer shaped structure with a side attached sunroom as against other neighborhood structures that are full sized houses with regular kitchens.

ITEM 2
VARIANCE

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<p>Tom Mourmouras - Yes Chair DeLeo – Yes Mikaela Nadeau - Yes Ron Regis - Yes</p> <p>D. The hardship is not the result of action taken by the appellant or a prior owner.</p> <p>Response: To the best of our knowledge, the structure as it stands has not created this hardship as a result of actions by prior owners but rather is an inherent inefficiency of function and safety.</p> <p>Tom Mourmouras - Yes Chair DeLeo – Yes Mikaela Nadeau - Yes Ron Regis – Yes</p> <p>MOTION: Ron Regis made a motion to grant Sandra Fayorsey, 17 West Old Orchard Avenue Old Orchard Beach, Me. MBL: 312-5-7 Zone: R2 a Variance for the expansion to build a second bedroom and kitchen, seconded by Mikaela Nadeau.</p> <p><u>Interim Code Officer Jeffrey Hinderliter called for the vote:</u></p> <p>Tom Mourmouras - Agree Chair DeLeo – Agree Mikaela Nadeau – Agree Ron Regis – Agree</p> <p>VOTE: (4-0)</p>	<p style="text-align: center;"><u>MOTION</u></p> <p style="text-align: center;"><u>VOTE</u></p> <p style="text-align: center;"><u>(4-0)</u></p>
<p><u>ITEM 3: Miscellaneous Appeal/Nonconforming Means of Egress</u> Owner: Jessica & Patrick Nannery Location: 6 Seaglass Terrace; MBL: 205-16-106 Zone: GB1</p> <p>Front Yard Setback: Extension of front porch and stairs into front setback. GB1 front setback: 20'; proposed: 15'.</p> <p>Tom Gillis, representing the owners Jessica and Patrick Nannery introduced himself to the Board Members.</p> <p>There was a misinterpretation of the setbacks of the ordinance on his part. Mr. Gillis had thought that the steps were not part of the structure but found out later from the Town Planner that the steps were part of the structure. Mr. Gillis pulled the steps off so that the homeowners could move in and they would just like to replace the steps so they will have the original character and the look that it had before.</p>	<p style="text-align: center;"><u>ITEM 3</u> <u>MISC.</u> <u>APPEAL</u></p>

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The Public Hearing opened at 7:50 PM.

There being no one speaking for or against the appellant, the Public Hearing closed at 7:50 PM.

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.

Response: The question may not be applicable because we removed the non-conformity and would like to replace it in the same location.

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

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.

Response: The dwelling was placed on the front setback line as shown on approved subdivision plan. Applicant would like to put back the deck and porch covering giving the homeowner a reasonable egress. This encroachment will remain less than 25%.

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

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.

Response: Applicant believed that the front of this development, due to the proximity to the “gateway” to the town center, would be a more aesthetic feeling or flavor to people traveling by the development.

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

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Ron Regis - 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.

Response: The impacts and effects will add positive appeal to those passing by, and be in keeping with other houses along Cascade Road.

Tom Mourmouras - Yes

Chair Ray DeLeo - Yes

Mikaela Nadeau – Yes

Ron Regis – Yes

2. NON-CONFORMING MEANS OF EGRESS CONSTRUCTION

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

Response: This construction of the deck is reasonable and in keeping the design of the current home and adds to its attractiveness.

Tom Mourmouras - Yes

Chair Ray DeLeo - Yes

Mikaela Nadeau – Yes

Ron Regis – Yes

b. Due to 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.

Response: The requested deck represents a reasonable minimum allowing the dwelling unit owner to gain access to their home.

Tom Mourmouras - Yes

Chair Ray DeLeo - Yes

Mikaela Nadeau – Yes

Ron Regis – Yes

MOTION: Tom Mourmouras to approve the Misc. Appeal for Jessica and Patrick Nannery, 6 Seaglass Terrace MBL: 205-16-106 Zone: GB-1 allowing them to replace the porch/stairs that was removed initially due to the setback issue, seconded by Ron Regis.

MOTION

Interim Code Officer Jeffrey Hinderliter called for the vote:

Tom Mourmouras - Agree

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<p>Chair DeLeo – Agree Mikaela Nadeau – Agree Ron Regis – Agree</p>	<p style="text-align: center;"><u>VOTE</u> <u>(4-0)</u></p>
<p>ITEM 4: Acceptance of the minutes February 26, 2018 and April 30, 2018.</p> <p>Tom Mourmouras made a motion to approve the February 26, 2018 meeting minutes, seconded by Mikaela Nadeau.</p> <p>Tom Mourmouras - Agree Chair DeLeo – Agree Mikaela Nadeau – Agree Ron Regis – Agree</p> <p>Tom Mourmouras made a motion to approve the April 30, 2018 meeting minutes, seconded by Ron Regis.</p> <p>Tom Mourmouras - Agree Chair DeLeo – Agree Mikaela Nadeau – Agree Ron Regis – Agree</p>	<p style="text-align: center;"><u>ITEM 4</u> <u>MINUTES</u></p> <p style="text-align: center;"><u>MOTION</u></p> <p style="text-align: center;"><u>VOTE</u> <u>(4-0)</u></p> <p style="text-align: center;"><u>MOTION</u></p> <p style="text-align: center;"><u>VOTE</u> <u>(4-0)</u></p>
<p><u>OTHER BUSINESS:</u></p>	
<p>GOOD AND WELFARE</p>	
<p>ADJOURN</p> <p>Mikaela Nadeau made a motion to adjourn the meeting at 7:55 PM, seconded by Tom Mourmouras.</p>	<p style="text-align: center;"><u>ADJOURN</u></p> <p style="text-align: center;"><u>VOTE</u> <u>(4-0)</u></p>

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 of Nine (9) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting held on May 31, 2018.

Valdine Camire