

ZONING BOARD OF APPEALS
ON Monday, November 30, 2020, IN THE TOWN
COUNCIL CHAMBERS -6:30 p.m.
MEETING MINUTES

CALL TO ORDER: 6:30 pm

ROLL CALL:

Present:

Vice Chair Ray DeLeo

Sam Dupuis

Ryan Howe

Thomas Lacasse

Stan Defreese

Absent:

Chair Ron Regis

Thomas Mourmouras

PLEDGE TO THE FLAG

Vice Chair DeLeo read the criteria of an Appeal

Item 1: Miscellaneous Appeal (front setback) and Public Hearing

Owner: David & Patricia Robinson

Location: 11 Oceana Avenue, MLB; 321-15-1

Zone: R-3, Shoreland Residential Activity

Miscellaneous Appeal request for reduction in the front setback from a required 20' to a proposed 7' to allow for a code compliant exterior egress stairway.

Diane Doyle, builder working with the Robinson's introduced herself to the Board Members.

The front stairs to the house is on a diagonal. The house has to be lifted to meet the FEMA flood code, and if it is lifted, they need more stairs to get into the house.

They were here in front of the ZBA last month and asked for a set of stairs along Oceana Ave. similar to what other had in the neighborhood and it was denied because it was too close to the sidewalk.

They are now asking for the stairs to be located on Seaside Avenue. They will be eliminating the staircase on the back side of Oceana Avenue and replacing them with one stair that comes only on Seaside Avenue and will not be impacting Oceana at all. Mr. Robinson would like to have the garage under his house so that he will be able to access his car.

The Public Hearing opened at 6:37.

There being not one speaking for or against the appellant, the Public Hearing closed at 6:37 pm.

Vice Chair Ray DeLeo read through the criteria

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.

Applicants Response: The stairs are 3' wide, the minimum required.

Sam Dupuis - Agree

Ryan Howe – Agree

Stan DeFreese – Agree

Thomas Lacasse – Agree

Vice Chair Ray DeLeo - Agree

b. 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: Neither the front back on sides meet setback anywhere the stairs are located will not meet setback.

Sam Dupuis - Agree

Ryan Howe – Agree

Stan DeFreese – Agree

Thomas Lacasse – Agree

Vice Chair Ray DeLeo - Agree

MOTION:

Stan DeFreese made a motion to approve the Miscellaneous Appeal request for reduction in the front setback from a required 20' to a proposed 7' to allow for a code compliant exterior egress stairway for David & Patricia Robinson, Location: 11 Oceana Avenue, MLB: 321-15-1, seconded by Ryan Howe.

Code Officer Rick Haskell called for the vote to approve the Miscellaneous Appeal request for reduction in the front setback from a required 20' to a proposed 7' to allow for a code compliant exterior egress stairway.

VOTE:

Sam Dupuis - Agree

Ryan Howe – Agree

Stan DeFreese – Agree

Thomas Lacasse – Agree

Vice Chair Ray DeLeo - Agree

PASSES:

(5-0)

Item 2: Variance Consideration (reduction in setback from an intersection to a driveway) and Public Hearing

Owner: David & Patricia Robinson

Location: 11 Oceana Avenue, MBL; 321-15-1

Zone: R-3, Shoreland Residential Activity

Variance consideration for a reduction in the setback of a driveway from an intersection from the required 50' to a proposed 39'.

Diane Doyle, builder here representing the owners introduced herself.

They would like to move the driveway so that they can access a garage that would be under the house. They would be moving the driveway from the 50' to 39'. Ms. Doyle also stated that there is a letter included from Alpha One stating that allowing the proposed location of the driveway for the new garage will enable the Robinson's to safely use their vehicle to remain independent in the community during all Maine seasons. There is also a letter from Mr. Robinson's Dr. as well stating that he would appreciate the Board's consideration of Mr. Robinson's appeal for handicapped accessible renovations to his home, requiring a building waiver requested renovations to his home, handicapped accessibility with a lift for a wheelchair may help maintain his safety and promote independence as his disease progresses. Ms. Doyle stated that she also talked to Public Works about where they would suggest that the driveway be located, and apparently it is no longer their decision. They referred her to talk to Larry Mead. A note from Larry Mead suggesting that the driveway be located on Seaside because that maintains a greater distance from the intersection than if they put it on Oceana.

The distance is 11' feet from the width of the driveway from the edge of the back of the house to the driveway.

Code Officer Rick Haskell stated that the whole driveway ordinance has been re-written will be on the Council agenda for the next meeting. However, there will be no change to the ordinance with the 50' setback.

The Public Hearing opened at 6:53 pm.

There being no one speaking for or against the appellant, the Public Hearing closed at 6:53 pm.

Vice Chair Ray DeLeo read through the 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: A garage for a year round house in Maine is almost a necessity especially for aging residents. In order to access a garage a driveway is necessary. Any driveway accessing a garage will be within 50' of the intersection.

Stan DeFreese: Agree
Ryan Howe: Disagree
Sam Dupuis: Agree
Thomas Lacasse: Agree
Vice 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 house is located on a small lot. Anywhere the driveway is located to access a garage will be within 50' of the intersection, thus requiring a variance.

Stan DeFreese: Agree
Ryan Howe: Disagree
Sam Dupuis: Agree
Thomas Lacasse: Agree
Vice Chair Ray DeLeo: Agree

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

Applicant's Response: May of the surrounding houses located on intersections have driveways located within 50' of the intersection. The intersection of Seaside and Oceana has a driveway stop and excellent site distance. Additionally it is on a side street with little traffic.

Stan DeFreese: Agree
Ryan Howe: Agree
Sam Dupuis: Agree
Thomas Lacasse: Agree
Vice Chair Ray DeLeo: Agree

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

Applicant's Response: The existing house is in a state of disrepair and does not meet the new FEMA Flood Elevation. Therefore it will be removed, replaced which will accommodate a garage. A driveway is allowed per Sec. 78-1466 (a) Number of driveways along local streets, one driveway shall be permitted for each street fronting the parcel.

Stan DeFreese: Agree
Ryan Howe: Disagree

Sam Dupuis: Agree
Thomas Lacasse: Agree
Vice Chair Ray DeLeo: Agree

MOTION:

Ryan Howe made a motion to approve Item # 2 Variance Consideration reduction in setback from an intersection to a driveway at 11 Oceana Avenue, MBL; 321-15-1, Zone: R-3, seconded by Stan DeFreese.

Code Officer Rick Haskell called for the vote to approve the Variance Consideration reduction in the setback from an intersection to a driveway at 11 Oceana Avenue, MBL; 321-15-1, Zone: R-3, seconded by Stan DeFreese.

VOTE:

Stan DeFreese: Yes
Ryan Howe: No
Sam Dupuis: Yes
Thomas Lacasse: Yes
Vice Chair Ray DeLeo: Yes

PASSES:

(4-1)

Item 3: Variance Consideration (extension of time period to rebuild a nonconforming structure and reduction in front setback) and Public Hearing

Owner: Michele J. Guyette

Location: 19 Pleasant Street

Zone: R-2

Variance consideration for an extension of the 2 year time period from the demolition and replacement of a nonconforming structure to 3 years 1 month. Reduction of front yard setback from the required 20' to a proposed 15'.

Owner Michele Guyette introduced herself to the Board Members. She stated that she purchased the property in 2016 and at that time there were 2 houses. In 2017 she had torn down one of the houses then got sick and was unable to rebuild the other structure in the timeline that was necessary. So tonight she is seeking an extension to rebuild another structure on that property. The structure that she would like to build will be much more compliant than the house that she had torn down. The one that she had torn down had a setback that was pretty much on Pleasant Street. The new one will be 15' back from the street. There are 2 separate driveways on the property.

Code Officer Rick Haskell stated that If she did get the extension, that extension would go with the property. This would be built within the setbacks. This will basically turn this property into a 2 family and they will share the same roofline.

The public hearing opened at 7:10 pm.

There being no one speaking for or against the appellant, the Public Hearing closed at 7:10 pm.

Vice Chair Ray DeLeo read through the 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 property was purchased in 12/16 as two separate residences on one lot as an investment with the intension of improving the 1906 residence for owner occupancy. In late summer of 2017 I was diagnosed with cancer and put the project on hold. During that time my homeowner's insurance mandated repairs to maintain my insurance. Unable to do the repairs, I hired Chris w/SBB construction to tear down the old structure with the intention of building another in its location. My health mandated my resources and subsequently I missed the grandfathered timeline for rebuild. This rebuild will complete the intentions of the purchase.

Stan DeFreese: Agree

Ryan Howe: Agree

Sam Dupuis: Disagree

Thomas Lacasse: Agree

Vice 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: Home was built in 1906 when there were no set back requirements. The rebuild is on a footprint complaint with all current setback requirements with the exception of the front setback. Please see the street site plan for positioning in relation to the abutting homes.

Stan DeFreese: Agree

Ryan Howe: Agree

Sam Dupuis: Agree

Thomas Lacasse: Agree

Vice Chair Ray DeLeo: Agree

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

Applicant's Response: The dilapidated property I purchased in 2016 was well known to have a tragic and checkered past with police frequenting the property. The proposed structure will not adversely

affect the character of the neighborhood. The property has steadily improved with maintenance and care since its purchase in 2016. This trend will continue with the addition of proposed structure.

Stan DeFreese: Agree
Ryan Howe: Agree
Sam Dupuis: Agree
Thomas Lacasse: Agree
Vice Chair Ray DeLeo: Agree

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

Applicant's Response: 19 and 19A Pleasant Street was established as two separate utilities. I intend to return the property to that scenario with the subsequent benefit of increasing surrounding property values.

Stan DeFreese: Agree
Ryan Howe: Agree
Sam Dupuis: Agree
Thomas Lacasse: Agree
Vice Chair Ray DeLeo: Disagree

MOTION:

Stan DeFreese made a motion to approve the Variance Consideration for Michele J. Guyette, 19 Pleasant Street. Zone: R-2 extending a 2 year time period from the demolition and rebuild a nonconforming structure to a 3 year and 1 month time frame and reduction in the front setback, seconded by Sam Dupuis.

Code Officer Rick Haskell called for the vote to approve the Variance Consideration for Michele J. Guyette, 19 Pleasant Street. Zone: R-2 extending a 2 year time period from the demolition and rebuild a nonconforming structure to a 3 year and 1 month time frame and reduction in the front setback.

VOTE:

Stan DeFreese: Yes
Ryan Howe: Yes
Sam Dupuis: Yes
Thomas Lacasse: Yes
Vice Chair Ray DeLeo: No

PASSES:

(4-1)

Item 4 Variance Consideration (reduction in rear setback) and Public Hearing

Owner: Diane R. Perlin Revocable Living Trust

Location: 3 Saunders Avenue

Zone: BRD, Limited Commercial Shoreland

Variance consideration for a reduction in the rear setback from the required 20' to a proposed 7.5'.

Vice Chair Ray DeLeo read letters into the meeting minutes:

Carol Morrisette with RDS Architects, introduced herself working with the owners trying to renovate their home. Diane Perlin purchased this home in 1945 and they built the house in 1947. The interior of the home has not been modified since its inception. Many of the houses around this home have been improved. Requesting this Variance would not be anything other than what has happened over time for a number of the other properties in the neighborhood.

The reason that they are requesting the 7 ½' rear setback, which is 2 ½ ' greater than the typical setback allowed and that is the direct result of the size of the building as it exists on a skewed parallelogram of a property. There is no portion of the existing building meets setback, no portion of any expansion that could meet setbacks. If they would stay with the existing footprint going vertical, it would create a financial hardship, in order to get a code compliance staircase they would lose at least one bedroom and the small kitchen. They are requesting only what they need.

The reason that they want this expansion is that they have family visiting and she doesn't know for sure if these family members were planning to move in permanently.

Ms. Morrisette stated that anything that they would do to the building would not meet current zoning. This will stay a single family home.

He stated that he is here to ask the Board to vote no on this proposal for 3 reasons:

The Public Hearing opened to the Public at 7:33 pm.

Nathan Bergeron introduced himself to the Board Members. He stated that he is here tonight to speak on behalf of his family who owns 5 Saunders Ave. (Debbie and Norman Bergeron). They are the abutters on the East Grand He stated that he is here to ask the Board to vote no on this proposal for 3 reasons:

- 1.) From their second floor, they have and ocean view, if they are granted this variance, his family would lose the ocean view. This property is in the dunes and also is in a flood zone.
- 2.) The area is condensed and tight as it stands today with the Condos and homes on Scollard, the request for a Variance does not legally meet the main lot as previously determined by the Maine Supreme Court. If this Variance was to pass, it would depreciate the value of his family's home.
- 3.) The Variance would increase the risk of flood in the neighborhood.

Mr. Bergeron states that he believes that he has the right to protect his family's home as well as the surrounding area.

Ms. Morrisette stated that if strict application of the ordinance without appeals were without a variance, this does cause undue hardship based on what they are trying to do. She stated that they are

so close to making what they want to do work, they are just 2 1/2 ' away. The cost that the Perlins's would be required to put up to alleviate the request for 2 1/2 ' far exceeds what others would consider to be a typical burden.

There being no one speaking for or against the appellant the Public Hearing closed to the Public at 7:45 pm.

Vice Chair Ray DeLeo read through the 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 1 ½ story home constructed in 1947 has (and will) remain in the family and has largely been unmodified since its original construction. As such, the sizes of interior spaces are very small and would be considered unmanageable by today's standards. Because no improvements or enlargements were made to the structure, pre-zoning, this property is uniquely burdened by its unaltered size and location on a small lot with askew property lines. This variance request for a reduced rear yard setback would allow for Code-compliance access to a modest vertical expansion (Sec. 7h8-178), (while still having to locate the refrigerator outside the kitchen) to provide legitimately sized bedrooms on the second floor with the ability for the first floor to be reorganized in the distant future, for aging in place accessibility.

Stan DeFreese: Disagrees because he feels that it can get a reasonable return as it is today.

Ryan Howe: Disagrees because he feels that the land in question can yield a reasonable return.

Sam Dupuis: Disagree because he feels that the land in question can yield a reasonable return.

Thomas Lacasse: Disagrees because he feels that it doesn't create a hardship and changes can be made to make it work with the current structure.

Vice Chair Ray DeLeo: Disagrees because he feels that they can build the structure above and still be within the requirements of not needing a variance.

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: Although the lot size is small, like many in the neighborhood, the skewed side lot lines and orientation of the original structure parallel to the street present a significant challenges. Many other houses in the neighborhood have been renovated, expanded and enlarged between the 1950's and the implementation of the zoning (and many thereafter, as well). Where this property has not, with the exception of the front porch in 2004.

Stan DeFreese: Disagree
Ryan Howe: Agree
Sam Dupuis: Disagree
Thomas Lacasse: Disagree
Vice Chair Ray DeLeo: Agree

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

Applicant's Response: The granting of this variance is very much in keeping with the essential character of the neighborhood. Even if a third floor were proposed for this parcel, it would remain in keeping with the neighborhood, as its direct abutter is a significant, new multi-family property. This variance will allow for a small expansion to the rear of the property for Code-compliance access to an allowable (per Section 78-178) second floor, but still requires a refrigerator to be located outside the existing kitchen. The intention has always been to preserve the character of this structure, as indicated by its 1940's form and interiors, as well as to preserve the character of the cherished neighborhood.

Stan DeFreese: Agree
Ryan Howe: Agree
Sam Dupuis: Disagree
Thomas Lacasse: Agree
Vice Chair Ray DeLeo: Agree

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

Applicant's Response:

The hardship is the result of the zoning being overlaid on an existing parcel that has its own challenges with askew side lot lines. The fact that the original 1947 structure (noted as 1953 in the Town's records) has not been enlarged or expanded, which further burdens the property. Today's modest request for a 7'6" rear setback is only 2'6" beyond that which is commonly granted via a Miscellaneous Appeal. Unfortunately, due to the existing size of the building, the 10' rear setback via a Miscellaneous Appeal is not enough to allow for Code-compliance stairs and refrigerator that must be relocated to access the stairs.

Stan DeFreese: Disagree
Ryan Howe: Disagree
Sam Dupuis: Disagree
Thomas Lacasse: Disagree
Vice Chair Ray DeLeo: Disagree

MOTION: Ryan Howe made a motion to disapprove item #4 Variance Consideration for Diane R. Perlin Revocable Living Trust, Location: 3 Saunders Avenue, Zone: BRD, Limited Commercial Shoreland, seconded by Sam Dupuis.

Code Officer Rick Haskell called for the vote to approve the Variance for Diane R. Perlin at 3 Saunders Avenue for a reduction in the rear setback from the required 20' to a proposed 7.5'.

VOTE:

Stan DeFreese: Disagree
Ryan Howe: Disagree
Sam Dupuis: Disagree
Thomas Lacasse: Disagree
Vice Chair Ray DeLeo: Disagree

DENIED:

(5-0)

ITEM 5: Acceptance of October 26, 2020 Meeting Minutes.

MOTION:

Stan DeFreese made a motion to accept the Meeting Minutes for the October 26, 2020 meeting minutes, seconded by Ryan Howe.

VOTE:

Stan DeFreese: Yes
Ryan Howe: Yes
Sam Dupuis: Yes
Thomas Lacasse: Yes
Vice Chair Ray DeLeo: Yes

PASSES:

(5-0)

GOOD & WELFARE

ADJOURNMENT: 8:01 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 consist of Eleven (11) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting held on November 30, 2020.



