

**ZONING BOARD OF APPEALS
MEETING MINUTES
Monday, September 28, 2020
TOWN COUNCIL CHAMBERS – 6:30 p.m.**

CALL TO ORDER: 6:30 p.m.

ROLL CALL:

Present:

Chair Ron Regis

Vice Chair Ray DeLeo

Stan DeFreese

Sam Dupuis, alt.

Absent:

Ryan Howe

Tom Mourmouras

Staff Present:

CEO Rick Haskell

Admin. Asst. Valdine Camire

PLEDGE TO THE FLAG

Item 1: Variance Consideration (reduction in driveway setback from an intersection) and Public Hearing

Owner: David & Patricia Robinson

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

Zone: R-3, Shoreland Residential Activity

Variance request for a reduction of the required 50' setback for a driveway to a street intersection to a requested 24'.

Variance request for a reduction in front setback from the required 20' to a proposed 1'. This would allow for an extended exterior staircase because the home will be elevated to meet flood standards.

Code Officer Rick Haskell stated that this is not necessarily for a garage, this is for a road opening within the 50' setback of an intersection. This proposal would just be the placement of their garage in their plan. Our ordinance states that you cannot have a driveway entrance within 50' of an intersection, and they are proposing that their driveway would be within 16'.

They can use their existing driveway to get to a garage. They would just have to design their structure to make it work. If they stay within 7 ½ 'they could come back with a Miscellaneous Appeal.

The applicants stated that they will come back with another plan and try to get a Miscellaneous Appeal approved.

MOTION:

Stan DeFreese made a motion to table Item # 2 Variance Consideration for David and Patricia Robinson located at 11 Ocean Avenue, MBL 321-15-1, seconded by Ray DeLeo.

Code Official Rick Haskell called for the vote:

VOTE:

Stan DeFreese – Yes

Chair Ron Regis – Yes

Vice Chair Ray DeLeo – Yes

TABLED:

(3-0)

Item 2: Variance Consideration (reduction in front setback) and Public Hearing

Owner: David & Patricia Robinson

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

Zone: R-3, Shoreland Residential Activity

Variance request for a reduction in front setback from the required 20' to a proposed 1'. This would allow for an extended exterior staircase because the home will be elevated to meet flood standards.

David and Patricia Robinson introduced themselves. They explained that this home has been in the family since 1917. Mr. Robinson stated that he has a muscular disease and will become wheelchair bound soon. This is why they need to make changes to the cottage to make it handicapped and wheelchair accessible. They have hired an architect and a structural engineer to review the home. Both said that the structure was not sound enough to raise and repair. And their current building Diane Doyle said the same thing. They needed to decide whether to move or rebuild. They decided to rebuild. There are two variances to be requested. The stairs and the placement of the garage.

David and Patricia Robinson are requesting a variance to replace the indoor garage on Oceana Avenue because they want the garage to be in front of the home. There is less traffic on Oceana Avenue and a stop sign at the end of the street would make getting in and out of the driveway safer for us and for others. The parking code on Seaside was also recently changed due to high traffic flow. Building the garage on Seaside Avenue would interfere more with walkers and beach goers. The placement of the garage on Oceana Avenue also allows them the space with room to move a wheelchair around the car giving Mr. Robinson more mobility. Having the

indoor garage on Oceana Avenue will also give them better use of the basement floor space, for placing the stairs and the lift on the first floor, where they will have to now put the bedroom and a handicapped accessible bathroom.

The reason for the variance on the outside stairs is simply that the flood plain directives are forcing them to raise their house so they will need additional stairs to reach the front door on Oceana Avenue as this is the front of their home. Also to maximize the very small lot that they have for the garden and green space.

Chair Ron Regis stated that they already have an existing driveway that conforms to the policies. The new driveway that they are proposing is less than 25' from a corner which is against the law.

The Robinsons stated that they would have to have the garage under the house.

The Public Hearing opened at 6:46 pm.

Jerry and Pam Sheinfeldt from 13 Oceana Avenue introduced himself and he stated that he fully supports the requested Variance.

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 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: Stairs are needed to enter the house. All four sides of the house are non-conforming with regard to setback. Anywhere in the stairs are located, they will not meet setback.

Stan DeFreese – Agree
Chair Ron Regis – 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: The need for the variance is due to all four sides of the house not meeting setback therefore any place the stairs are located will not meet setback.

Stan DeFreese – Agree

Chair Ron Regis – Disagree
Vice Chair Ray DeLeo - Agree

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

Applicant’s response: Many of the surrounding houses have stairs to the edge of their front yard sidewalk.

Stan DeFreese – Agree
Chair Ron Regis – 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 need to relocate the stairs is due to complying to the new FEMA flood height. If additional steps were not needed, the stairs could remain where they are.

Stan DeFreese – Agree
Chair Ron Regis – Agree
Vice Chair Ray DeLeo – Disagree

MOTION:

Stan DeFreese made a motion to disapprove the Variance for Dave and Patricia Robinson located at 11 Ocean Avenue, MBL 321-15-1

Code Official Rick Haskell called for the vote:

VOTE:

Stan DeFreese – Yes
Chair Ron Regis – Yes
Vice Chair Ray DeLeo - Yes

DENIED

(3-0)

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

Owner: BMC Investments/Michael Conlon

Location: 24 Highland Avenue, MLB; 312-2-5

Zone: R-2

Miscellaneous appeal for a reduction in the right side setback from the required 15’ to a proposed 10’ and a reduction in the rear setback from the required 20 to a proposed 10’.

Applicant Michael Conlon introduced himself.

He stated that the house was constructed prior to any setbacks. The deck will serve as an entrance and exit to the side doors. He is looking for a required 15' proposed 10' reduction on the rear and 20' to 10' on the back and keeping with what was there.

The stairs that he is proposing will be 6' wide. There is already a deck on the back, they will be extending and connecting the decks. There will be a roof over the deck that will be located under the second floor over the deck at the 6' line. This roof will not be enclosed, it will just protect the deck.

The Public Hearing opened at 7:16 pm.

There being no one speaking for or against the appellant, the Public Hearing closed at 7:16 pm.

Chair Ray DeLeo read the criteria for the Miscellaneous Appeal

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: It appears the house was constructed prior to setbacks.

Stan DeFreese – Agree
Chair Ron Regis – Agree
Vice 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: Yes, the deck serves as an entrance/exit to the side doors. It reflects other porches and decks in the neighborhood. It brings the enjoyment of the outdoor living to the house.

Stan DeFreese – Agree
Chair Ron Regis – Agree
Vice 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: Yes, it does not conform to the setbacks current structures. Setback will require relief of setback.

Stan DeFreese – Agree

Chair Ron Regis – Agree
Vice 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: Yes, it will conform to other porches and decks and will not differ greatly.

Stan DeFreese – Agree
Chair Ron Regis – Agree
Vice Chair Ray DeLeo - Agree

MOTION:

Ray DeLeo made a motion to approve this Miscellaneous Appeal for BMC Investments/Michael Conlon located at 24 Highland Avenue, MLB; 312-2-5, Zone: R-2 for a reduction in the right side setback from the required 15' to a proposed 10' and a reduction in the rear setback from the required 20 to a proposed 10' with a stipulation that the porch is not to be enclosed or built above the roof line of the porch, seconded by Stan DeFreese.

Code Officer Rick Haskell called for the vote:

VOTE:

Stan DeFreese – Yes
Chair Ron Regis – Yes
Vice Chair Ray DeLeo - Yes

PASSES:

(3-0)

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

Owner: Arthur & Linda Pelletier

Location: 30 Colby Avenue, MLB; 321-2-4

Zone: R-3, Shoreland Residential Activity

Variance request for a reduction in the rear setback from the required 20' to a proposed 4.71'. This would allow the square of left rear of home.

James Bernard DBA Jim Bernard Custom Homes here representing owners Arthur & Linda Pelletier. Engineer Paul Gadbois is also present who did all of the surveying and all of the setbacks and prepared all of the plans. The owners are looking to renovate the home because they are making this their year round home. There are flood elevations currently in place with

FEMA and are expected to change in the next year. They are not looking to enlarge the home, they are looking to raise the home up. The mechanicals are all in the basement. This is a 100 year old home so the stairs do not meet any life safety issues. They are not looking to make a larger footprint, they are just looking to configure it so that they can make the inside work properly for staircases. They are proposing raising the elevation to meet the upcoming changes. That will bring all of the mechanicals to the second floor and basically the basement will become uncondition space. They are talking about putting an elevator in and the suggestion that James Bernard had is to run single door in the front for a garage door so that in the winter months, they would be able to have access to the elevator.

Owner Arthur and Linda Pelletier introduced themselves. They have owned this house since 2001. They want to keep the design of the house and only modernizing it. As far as the elevator, all of the mechanicals would be placed in the ceiling of the first floor. Nothing is changing with the garage.

Chair Ron Regis read (3) letters from citizens:

Carol H. Thurston
2400 Durston Rd
Bozeman, MT 59718

September 25, 2020

Old Orchard Beach Zoning Board of Appeals
One Portland Ave.
Old Orchard Beach, Maine

Dear Members of the Zoning Board of Appeals:

Thank you very much for this opportunity to voice my concerns about the variance request at 30 Colby. I am the abutter at 8 Clover, owning the property to the rear of the proposed project.

My comments boil down to the following two points:

- 1) Most of the rear wall of the existing structure at 30 Colby is already fewer than 5 feet away from the property line. A/C unit, clotheslines and other backyard add-ons take up some of that space, so just general foot traffic in their back yard already encroaches on my property. In the short term, with only five feet to work with, this planned large scale demolition and construction project will certainly spill over into my property. Further, the plan to increase the length of the back wall that would be fewer than 5 feet away will just increase the amount of activity that will infringe on my back yard. Consequently, I object to that wall being extended
- 2) It's my understanding the variance is being requested based on "hardship". I disagree that there is any hardship and address each of the criteria in the application
 - a. The new house could be built adhering much more closely to current zoning codes and yield a reasonable return as defined in the application
 - b. This property is not substantially different from many other properties in OP

- C. One of the "small" additions to "clean up the design," does in fact affect this neighbor.
- d. Part of the need to request a variance has to do with an action taken by the appellant. Had he not recently built a large garage on half his property he would have more options for this planned renovation and not face "hardship."

If the Board determines the variance request does indeed satisfy all four criteria, I would like some assurance that short term construction activity and long term general activity in the back yard at 30 Colby will not adversely affect my property. To that end, I respectfully request that a condition for granting the variance be that the appellant build a privacy fence on his side of the property line along the length of his back wall.

Carol H. Thurston

September 27, 2020

Dear Rick,

We would like to lend our support to the project that has been proposed by the Pelletier's at 30 Colby Ave. They took a neglected property years ago and tastefully renovated it and in seeing their new plans, it looks like they will once again, tastefully and thoughtfully transform 30 Colby Ave.

Sincerely,

Sue and Steve Fitts

47 Winona Ave.

Ocean Park

Sent from my iPad

September 28, 2020

To It May Concern 00B Zoning Board of Appeals
Attn: Rick Haskell

1 Portland Ave.

Old Orchard Beach, Maine 04064

Re: Pelletier Renovation Project

We am a resident of 35 Winona Ave. in the Ocean Park section of 00B...and am located several properties from the Pelletier project on Colby Ave. We are delighted to see the plans and welcome this project as a great addition to the neighborhood.

Best regards,



Jeff Chute

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 home is 100 years old and the result of many additions over the years. The electrical and mechanicals are all located below the flood plain and the home has many structural issues and does not meet current energy and life safety codes. The current foundation and basement slab is in poor condition and needs replacement.

Member DeFreese asked Mr. Bernard if they would they be able to just rebuild the house without the building additions.

Mr. Bernard stated that the issue that they have is if they need the house to meet code they have to bring all of the mechanicals upstairs; heating systems, staircases have to be enlarged, and the problem that they have is that they need to have a bedroom and bathroom combination on the first floor. So they looked at what they had for a footprint, squaring up the back allows them to do that.

Stan DeFreese – Agree

Chair Ron Regis – 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: The home was built 100 years ago along the right side boundary line on a small lot. The current width is 26’. The proposed width is 24’ to allow a reasonable design width. The proximity to property lines and the existing structure require the design to use existing footprint.

Stan DeFreese – Agree
Chair Ron Regis – 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 proposed design keeps the footprint very similar to the existing. The proposal moves the house 2’ away from the right side and front property line. The front architectural elevation is very similar to the existing. Two small areas to the rear house has been squared up to clean up the design. The proposal will not alter the look of the existing structure.

Stan DeFreese – Agree
Chair Ron Regis – 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 property is 100 years old and historic looking structure in Ocean Park. The current owners want to replicate the façade and the hardship was created years ago when zoning ordinances were drafted for future development.

Stan DeFreese – Disagree
Chair Ron Regis – Disagree
Vice Chair Ray DeLeo – Disagree

MOTION:

Code Official Rick Haskell called for the vote:

Stan DeFreese made a motion to deny the Variance Consideration for Arthur & Linda Pelletier At 30 Colby Avenue, MLB; 321-2-4 Zone: R-3, Shoreland Residential Activity Variance request for a reduction in the rear setback from the required 20’ to a proposed 4.71’. This would allow the square of left rear of home, seconded by Ray DeLeo.

VOTE:

Stan DeFreese – Yes
Chair Ron Regis – Yes

Vice Chair Ray DeLeo – Yes

DENIED:

(3-0)

Item 5: Variance Consideration (reduction in side and rear setback) and Public Hearing

Owner: Michael & Cherly Tikonoff

Location: 24 Winona Avenue, MBL; 321-13-4

Zone: R-3, Shoreland Residential Activity, Ae Flood Zone

Variance request for a reduction in the left side setback from the required 15' to a proposed 6' and a reduction in the right side setback from the required 15' to a proposed 8' and a rear setback from the required 20' to a proposed 14'.

MOTION TO TABLE (INCOMPLETE PACKET/NO DEED)

MOTION: Vice Chair Ron Regis made a motion to table Item 5 Variance Consideration for Michael & Cherly Tikonoff, 24 Winona Avenue, MBL: 321-13-4, seconded by Stan DeFreese.

VOTE:

Stan DeFreese – Agree

Chair Ron Regis – Agree

Vice Chair Ray DeLeo - Agree

TABLED:

(3-0)

Item 6: Miscellaneous Appeal (reduction in setbacks, increase in lot coverage %, construct within existing nonconforming building setback area) and Public Hearing

Owner: Chad M. & Lindsay A. Mongeon

Location: 35 Massachusetts Avenue; MLB: 322-3-7

Zone: R-3

Miscellaneous appeal for a reduction in the rear yard setback from the required 20' to a proposed 17'; increase in lot coverage percentage by no more than 5% of the 40% allowed in R-3; construct within an existing nonconforming building side and front setback area without decreasing the existing setback.

Jim Bernard from Jim Bernard Custom Homes Design Builder introduced himself. Mr. Bernard is here with Paul Gadbois who did the surveying and site plan for the project. They are here representing Chad and Lindsay Mongeon. The existing home is a 3 bedroom cottage with one bathroom and kitchen. They are looking at getting laundry space, they didn't have room for a washer and dryer in the house and they needed another bathroom. They had submitted another

project and staff stated that they were over exceeding the allowed 42% lot coverage, so they reduced the size of the proposal. It is their understanding that they have met the criteria for the area on the lot for the 42% and the setbacks are greater than half of what the existing setback is.

The Public Hearing opened at 7:50 pm.

There is one letter to be read into the minutes:

Monday, September 28, 2020

Hello Mr. Haskell:

I am writing to provide my full support of Lindsay and Chad Mongeon's request for renovation at 35 Massachusetts Avenue in Old Orchard Beach, Maine. The continued improvements to our neighborhoods will bring value to our town and ensure quality and sustainability for our future as a community.

Sincerely,

Tracey Hayes

152 E. Grand Ave.

Old Orchard Beach, Me 04064

There being no one here speaking for or against the appellant, the Public Hearing closed at 7:51 pm.

Chair Ray DeLeo read the criteria for the Miscellaneous Appeal

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 existing home was constructed and located on a corner not prior to the zoning ordinance being adopted.

Stan DeFreese – Agree

Chair Ron Regis – Agree

Vice 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: The requested addition is needed to allow construction of a needed mudroom, laundry closer and ¾ bath and will remain consistent in scale with similar properties.

Stan DeFreese – Agree
Chair Ron Regis – Agree
Vice 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: Due to the location on a corner lot, the building envelope is reduced and the proposed addition of 182 sf. The available building envelope is 105 sf. the Variance request is for an additional 77 sf.

Stan DeFreese – Agree
Chair Ron Regis – Agree
Vice 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 addition is proposed to the rear of the structure and was designed to have limited impact on neighbors or the street view from Bridge Street.

Stan DeFreese – Agree
Chair Ron Regis – Agree
Vice Chair Ray DeLeo - Agree

MOTION:

Stan DeFreese made a motion to approve the Miscellaneous Appeal (reduction in setbacks, increase in lot coverage %, construct within existing nonconforming building setback area) for Chad M. & Lindsay A. Mongeon, 35 Massachusetts Avenue; MLB: 322-3-7
Zone: R-3, seconded by Ray DeLeo.

Code Officer Rick Haskell called for the vote:

VOTE:

Stan DeFreese – Yes
Chair Ron Regis – Yes
Vice Chair Ray DeLeo - Yes

PASSES:

(3-0)

ITEM 7: Acceptance of August 31, 2020 Meeting Minutes:

MOTION:

Vice Chair Ray DeLeo made a motion to approve the August 31, 2020 meeting minutes, seconded by Stan DeFreese.

VOTE:

Stan DeFreese – Yes
Chair Ron Regis – Yes
Vice Chair Ray DeLeo - Yes

PASSES:

(3-0)

GOOD & WELFARE

ADJOURNMENT: 8:00 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 Fourteen (14) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting held on September 28, 2020.

