

**TOWN OF OLD ORCHARD BEACH
ZONING BOARD OF APPEALS MEETING MINUTES June 28, 2010**

<p>Call to Order at 7:07 pm</p>	<p>Call to Order</p>
<p>Pledge to the Flag</p>	
<p>Roll Call: Present: Chairman Ray DeLeo, Ms. Tianna Higgins, Mr. Robert Quinn, and Mr. Phil Denison. Mr. Philip Weyenberg, was excused. Staff: Mike Nugent, Code Enforcement Officer. Tori Geaumont, ZBA Clerk.</p>	
<p>ITEM 1: Variance: Jane Mount, owner of 4 Boisvert Street, MBL 305-4-8, in the DD-2 Zone to permit the adjustment of the side and rear setbacks to allow the reconstruction of a two-family dwelling. Shawn Doustan from Doustan Construction Inc. is representing the appellant.</p>	<p style="text-align: center;"><u>Item 1:</u> <u>Variance: Jane</u> <u>Mount, 4</u> <u>Boisvert Street,</u> <u>MBL 305-4-8</u></p>
<p>Shawn Douston, Douston Construction explained the request. The project had prior ZBA approval in 2008, but after going to the DEP which took a long amount of time, the variance expired. The DEP also requested them to slightly change the footprint, and Mr. Douston approached the board with the plan to show the difference. Chairman DeLeo asked what the specific changes were. Mr. Douston pointed out the minimal changes, and also stated that the parking will be the same. Ms. Higgins asked if there was a variance from 2008 at the meeting. Mr. Douston presented the board with the variance from 2008. Mr. Quinn asked if the density of 1 100 sf will stay the same. Mr. Douston stated it would, there is a change in the footprint, but the 1 100 sf is the same as now. Chairman DeLeo called for any abutters or correspondence. PUBLIC HEARING CLOSED</p>	<p style="text-align: center;">Public Hearing</p>
<p>Chairman DeLeo read the criteria for number one. With regards to part A. The land in question cannot yield a reasonable return unless the variance is granted the appellant stated the existing lot is approximately 40'W X 55'D. Using the DD-2 setbacks (15' front, 15' side, and 20' rear) it would leave a buildable area of 10'W X 20'D. A two hundred square foot footprint at the max building height would not provide the minimal living area requirements for the DD-2 zone. Mr. Quinn agreed. Mr. Denison agreed Ms. Higgins agreed. Chairman DeLeo agreed. With regards to part B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood the appellant answered the existing lot is approximately 2200 sq ft per zone. DD-2 minimum lot size per family unit is 2500 sq ft. The lot does not meet the 100 ft minimum lot</p>	

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<p>frontage. Mr. Quinn agreed. Ms. Higgins agreed. Mr. Denison agreed. Chairman DeLeo agreed. With regards to part C. The granting of the variance will not alter the essential character of the locality the appellant stated the existing building does not meet the design criteria of the downtown business district; in size/height or aesthetics. The existing asbestos siding and frame are "eye sores" in comparison to other properties on the street and in the zone. The existing building does not reflect the "community character" set forth by the town. Mr. Quinn agreed. Ms. Higgins agreed. Mr. Denison agreed. Chairman DeLeo agreed. With regards to part D. The hardship is not the result of action taken by the appellant or a prior owner the appellant stated the residence has been owned since 1966 when the town ordinance allowed for the requested changes on this application. The residence today is beyond reasonable repair, see included photos, but the current ordinance takes these "rights" away. Ms. Higgins agreed. Mr. Quinn agreed. Mr. Denison agreed. Chairman DeLeo agreed. Ms. Higgins moved to grant the variance to permit the adjustment of the side and rear setbacks to allow the reconstruction of a two-family dwelling. Mr. Denison seconded. Motion passes unanimously.</p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p>
<p><u>ITEM 2: Variance:</u> Pamela F. Francis, owner of 31 Wintergreen Street , MBL 205-8-10, in the R2 Zone to permit the reduction of the front and rear yard setback to allow the reconstruction and expansion of a garage. The owner is the appellant.</p>	<p style="text-align: center;"><u>Item 2:</u> <u>Variance:</u> <u>Pamela Francis,</u> <u>31 Wintergreen</u> <u>Street, MBL 205-</u> <u>8-10</u></p>
<p>Chairman DeLeo asked for the appellant to come forward, but she was not present. Ms. Higgins moved to table Item 2 until the July 26th Zoning Board of Appeals meeting. Mr. Quinn seconded.</p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p>
<p><u>ITEM 3: Variance:</u> Karl E. Agan, Jr., owner of 41 Colby Avenue, MBL 323-14-5, in the R3 Zone to permit the adjustment of the density standards and off-street parking to legalize the existing second dwelling unit. The owner is the appellant.</p>	<p style="text-align: center;"><u>Item 3:</u> <u>Variance: Karl</u> <u>E. Agan, Jr. , 41</u> <u>Colby Avenue</u> <u>MBL 323-14-5</u></p>
<p>Chuck Agan, father is owner of the property. He is here as Mr.</p>	<p style="text-align: center;">Public</p>

Agan's agent. He then went on to explain the variance. He stated in 1976 the building was raised up and a building permit was taken out for this. In 1982, the first floor was finished and the building became a two-unit. The contractor who did the work was Robert Corliss who was the building inspector at the time. There is no record at Town Hall of a building permit, and the family does not have a copy of it either. Mr. Agan pointed out copies of an estimate, as well as a materials list and a bill for the work from Mr. Corliss at that time. He then stated that the family has rented out the first floor in the 80's and 90's, but the family has used it over the last 10 years or so. He stated that the family now wishes to obtain a rental license, and cannot get one until the ZBA fixes the problem. The main problem here is the lack of the building permit which would show when the work was done legally which was before the current zoning standards.

Ms. Higgins asked if it had ever been licensed. She asked if it was a requirement to have a license at that time. Staff was not sure.

Mr. Agan stated no.

Chairman DeLeo asked if there were any assessor's records showing that the property was considered a 2-family in 1982.

Mr. Agan pointed out that there was an assessor's card from 1983 which did point out the property was a two-unit with each unit having a full kitchen.

Mr. Quinn asked if Mr. Agan was saying that the town has no record of the building permit, but the family may have a copy of the permit if it was issued.

Mr. Agan stated he felt they probably would have had a copy if there was one issued.

Mr. Quinn stated he felt this was probably something that was done back in the 1980's and it was "cozy" that the building inspector was also the contractor.

Mr. DeLeo asked if there is any delineation between an in-law apartment and a two-family.

Ms. Geaumont stated there is no allowance for an in-law apartment anywhere in town. There is just a two-family delineation.

Mr. Borg also pointed out there is something called an accessory dwelling which is similar to an in-law apartment.

Ms. Higgins stated that the assessors report back in the 1980's had writing stating that the finished part was only on the first floor.

Mr. Agan explained that meant that the first floor is finished with sheetrock, etc, but the floor above is very rustic and has only single-plank studs making it much more than a camp. The first floor of the building is the only part that is winterized. There are actually two separate water lines so the floor above can be drained because it is not winterized.

Ms. Higgins asked if the entrance and exit needs to be separated from the main unit according to zoning.

Hearing

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<p>Staff was not sure.</p> <p>Mr. Agan explained that there are separate entrances and exits to the house. There is a direct entrance from the left side of the building into the apartment.</p> <p>Mr. Quinn asked if we are looking at this now because of an application for a rental unit.</p> <p>Ms. Geaumont answered yes.</p> <p>Mr. Quinn asked if this is due to a change of usage.</p> <p>Mr. Agan stated the family circumstances in the last ten years were such that family used the building and that has changed so we wish to change the use.</p> <p>Mr. Quinn asked the staff if we had the building permit we would not be here.</p> <p>Ms. Geaumont answered yes.</p> <p>Chairman DeLeo stated this is just staying this is legal or not legal.</p> <p>Ms. Higgins stated this is making it legal.</p> <p>Mr. Quinn asked if this was something we have the authority to do.</p> <p>Mr. Borg pointed out that he felt Mr. Nugent was working very diligently to clean up issues in the town. He has great respect and admiration for him. He felt that Mr. Nugent was saying the building was there and it has been used this way for a very long time so just make it legal.</p> <p>Mr. Agan pointed out that in conversation with Mr. Nugent asking where we would be right now if we had found the building permit for the work in 1982, he stated they would be on their way to getting a license right now. Mr. Agan felt this would go ahead but for not a piece of paper they would be getting their license.</p> <p>Chairman DeLeo called for any abutters or correspondence.</p> <p>PUBLIC HEARING CLOSED</p>	
<p>Chairman DeLeo read the criteria for number one.</p> <p>With regards to part A. The land in question cannot yield a reasonable return unless the variance is granted the appellant stated the owner is seeking formal designation of this property as a tow-family so as to receive a business license to resume renting the ground floor apartment. The owner invested in a vertical expansion in 1976 (see permit) and in finishing of the apartment in 1982 with the intent of receiving rental income. The apartment returned some rental income in the 1980's and 1990's however the owner has not actively marketed the apartment for rent in the last ten years. Because a building permit for the 1982 finishing of the apartment cannot be located in Town records, the owner understands this designation is required to receive a business license to renew renting the apartment. Without this designation and business license the property cannot yield a reasonable return.</p> <p>Mr. Quinn agreed.</p> <p>Ms. Higgins agreed.</p> <p>Mr. Denison agreed.</p>	

Chairman DeLeo agreed.

With regards to part B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood the appellant stated the unique circumstances relate to the fact that this two-family building conformed to zoning requirements when the apartment was completed in 1982 (see former zoning requirements). However, a permit for that work cannot be located. The contractor who completed this work was also the building inspector for the Town of Old Orchard Beach at the time (see signed estimate and sample invoices related to construction).

Mr. Quinn agreed.

Ms. Higgins agreed.

Mr. Denison agreed.

Chairman DeLeo agreed.

With regards to part C. The granting of the variance will not alter the essential character of the locality the appellant stated no change in the building dimensions or set-backs are requested for this application. Egress windows would be installed in the two bedrooms of the apartment to meet safety requirements for the license among other interior upgrades. The footprint of the building is as it has been for approximately 100 years.

Mr. Quinn agreed.

Ms. Higgins agreed.

Mr. Denison agreed.

Chairman DeLeo agreed.

With regards to part D. The hardship is not the result of action taken by the appellant or a prior owner the appellant stated as mentioned above, a building permit for the 1982 construction cannot be located in Town records. The owner was not aware of an issue regarding a building permit for the finishing of the apartment because the contractor who completed this work was also the building inspector for the Town of Old Orchard Beach at the time. The zoning density in 1982 was 1000 sf per unit (see former code). This two-family building is on a 3350 sf lot. The property has been assessed as a two-family building since the 1980's (see 1983 OOB property description report and 1990 property card). Preliminary construction of the ground floor apartment occurred in 1976 when the property underwent a vertical expansion through which a new foundation, concrete floor, a garage, and roughed-in space for an apartment was completed (see permit and photos taken upon completion of this work). Central Maine Power stated in a phone call that it installed separate electrical service/2 meters in Feb. & Mar. 1976 to the two units (awaiting letter from CMP confirming this; also see two meters on photo and copies of separate electric bills for apt. and upper unit).

Ms. Higgins agreed.

Mr. Quinn agreed.

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<p>Mr. Denison agreed. Chairman DeLeo agreed. Mr. Quinn moved to grant the variance to permit the adjustment of the density standards and off-street parking to legalize the existing second dwelling unit. Mr. Denison seconded. Motion passes unanimously.</p>	<p>Motion</p> <p>Vote</p>
<p><u>Item 6 Approval of Minutes</u> May 17, 2010 Ms. Higgins moved to accept the minutes from May 17, 2010. Mr. Denison seconded. Motion passed unanimously</p>	<p>Motion</p> <p>Vote</p>
<p><u>Good & Welfare</u></p>	
<p>Mr. Denison moved to adjourn. Ms. Higgins seconded. Motion passed unanimously. Meeting adjourned 8:15 pm</p>	<p>Adjournment</p>

I, Tori Geaumont, Secretary to the Zoning Board of Appeals of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of six (6) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting on June 28, 2010

Tori Geaumont