TOWN OF OLD ORCHARD BEACH

ZONING BOARD OF APPEALS MEETING MINUTES September 26, 2011

Call to Order at 7:02 pm	Call to Order
Pledge to the Flag	
Roll Call: Present: Owen Stoddard, Ron Regis, and Ray Leleo. Tianna Higgins, Philip Weyenberg, Mark Lindquist, and J. Philip Denison were excused. Staff: Mike Nugent, Code Enforcement Officer and Carolyn Dulac Acting Secretary.	
ITEM 1: Variance: Walter & Shirlie Murphy, owners of 184R Portland Avenue, MBL 103-1-21/103-1-20 in the RD Zone to permit reduction of the minimum lot size and associated setbacks to reconfigure the lots. The owner is the appellant.	Item 1: Variance Walter & Shirlie Murphy, 184R Portland Avenue, MBL 103-1- 21/103/1/20
David Ordway, Esq., who represents the Applicants, spoke and explained the appeal, much the same as during the meeting of August 29, 2011, which would be to take a portion of the rear lot (184R Portland Avenue) and move it forward onto the front of the same lot (184 Portland Avenue). Mr. Nugent demonstrates the appropriate tax map to the Board and explains the proposal.	
Karen Stanheiser speaks out to oppose the changes proposed and explains that the Murphys have enjoyed an easement (perpetually) on Lots 10 ½, 11, and 12, and sees no reason to change as there is no dysfunction to the Murphys property. Ms. Stanheiser explains that unbeknownst to her until just recently, she has been paying taxes on the Murphys' easement and driveway since 2005 even though she was blocked from enjoyment of the easement. Attorney Ordway states, again, that the issue of taxes has no bearing on the present Application. Mr. Regis asked Ms. Stanheiser if the mentioned easement is written in her Warranty Deed. Ms. Stanheiser explains that it is, and shows the Board a copy of her Deed. When asked, Mr. Nugent explains that the easement will remain with the Warranty Deed after the property has been sold (perpetually).	<u>Public Hearing</u>
The meeting is closed to the public at 7:47 p.m. and there are no further questions.	
Mr. Deleo reads off the four criteria of hardship:	
 A. The land in question <u>cannot</u> yield a reasonable return unless the variance is granted. Mr. Regis and Mr. Deleo felt that the land can yield a reasonable use without this variance. Mr. Stoddard agreed with the applicant B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood. C. The granting of a variance will not alter the essential character of the locality. D. The hardship is not the result of action taken by the appellant or a prior owner. 	
The Applicant did not fill out the four criteria section in the usual fashion and instead responded with the attached.	<u>Motion</u>
Mr. Stoddard makes a motion to approve the Variance; saying that it is not unreasonable. The motion is not seconded.	Vote (2-1) Variance DENIED
Mr. Regis makes a motion that the Variance be denied due to a lack of hardship, which is seconded by Mr. Deleo.	
The Vote was 2-1 to approve the motion with Mr. Stoddard in opposition VARIANCE DENIED	
ITEM 2: Variance: MCJ, LLC, Mark Bureau, Owner of a parcel of land which is not yet numbered on East Grand Ave. MBL 202-3-13 in the Limited Commercial Shoreland Zone and BRD Zone, to permit the adjustment to the setback from the highest annual tide (high watermark) to allow the construction of a single family dwelling. Owner is the appellant. Jim Logan may be representing the owner.	Item 2: Variance MCJ, LLC, Mark Bureau, MBL 202-3-13

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James Logan spoke on behalf of Mark Bureau and explained that the lot cannot be built upon without a 100-foot reduction and explained that the Applicant wanted to build a single-family dwelling. There was discussion concerning the overall square footage and the driveway. Mr. Logan states that there will be no additional activity on the lot	PUBLIC HEARING
There were no questions or comments from abutters and the public portion of the meeting was closed at 8:04 p.m.	
Mr. Deleo reads off the four criteria of hardship:	
A. The land in question <u>cannot</u> yield a reasonable return unless the variance is granted.	
The board unanimously agreed that the subject property meets/conforms to all Town standards for frontage, space and bulk requirements for the Zone excepting the setback to forested wetland edge at the westerly corner of the lot. No building area exists on-site that meets required setbacks to East Grand Avenue, side property lines and wetland area.	<u>Motion</u>
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 board unanimously agreed that the specific location of the wetland area in the westerly corner of the lot and location of East Grand Avenue and the side property lines create a unique set of circumstances that prohibit residential construction of any type unless the variance is granted.	
C. The granting of a variance will not alter the essential character of the locality.	
The board unanimously agreed that the construction of one modest single-family dwelling on the site is in keeping with other residential structures in the neighborhood, in that many other such residences already exist.	
D. The hardship is not the result of action taken by the appellant or a prior owner.	
The board unanimously agreed that the hardship on the subject property is the result of the unique position of the encroaching wetland that extends nearer to East Grand Avenue off the southwesterly side of the lot, which provides for no area that meets the required 100' setback to waterbody or upland edge of a wetland. No action by the application nor prior owner caused this to occur.	<u>Vote</u>
A Motion to Approve the Variance is made by Mr. Stoddard and is seconded by Mr. Regis. Mr. Nugent calls for a vote: 3-0	Variance APPROVED (3-0)
ITEM 3: Variance: David and Marjorie Swyers, owners 3 Maplewood Ave., MBL 311-9-12 in the R2 Zone, to permit the adjustment of the front and side setbacks and lot coverage to 5' to the front porch. Owner is the appellant. The abutters were not notified so this matter was tabled.	Item 3: Variance David and Majorie Swyer, 3 Maplewood Ave. MBL 311-9-12
The abatters were not notified so ans matter was tabled.	
ITEM 4: Variance: George & Cynthia Kerr, Owner of a parcel of 206 East Grand Ave. MBL 202-3-10 in the Residential Activity Zone and RBD Zone, to permit the adjustment to the setback from the highest annual tide (high watermark) to allow the construction of a deck addition. Owner is the appellant.	ITEM TABLED Item 4: Variance George and Cynthia Kerr, 206 East Grand Ave. MBL 202-3-10
George Kerr explains that he held a permit in 2007 and that he had a four-foot drop from his bedroom onto the deck but that the ordinance changed since then and he did not make that discovery until after he tore the deck down. Mr. asks if he will have a multi-level deck and Mr. Kerr explains that yes, he will, and hopefully have coverage from the rain and snow.	Public Hearing

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ZONING BOARD OF APPEALS MEETING MINUTES September 2	2011
There are no questions and the matter is closed to the public at 8:20.	
Mr. Deleo reads off the four criteria of hardship:	
A. The land in question <u>cannot</u> yield a reasonable return unless the variance is granted.	
RESPONSE: A reasonable use of the property is safe egress. The building was not in the shore land Zone until 2011. In 2007, we received a permit to add on and install the sliding glass door (see pictures). The project stopped and when we applied for the permit to finish, the additional deck doesn't meet the new shore land zone – the room is unsafe.	<u>Motion</u>
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 lot is 475' deep with a dwelling very close to East Grand Ave. The property was undergoing renovations. The project was on hold. The permit lapsed and now is subject to new shore land setbacks that do not allow us to create a safe landing and access to the existing slider – see photo.	
C. The granting of a variance will not alter the essential character of the locality.	
RESPONSE: The property will not change in use and there will be no environmental impact from this small deck addition.	
D. The hardship is not the result of action taken by the appellant or a prior owner.	
RESPONSE: The Town's adoption of new regulations created a real hardship with regard to the safe use of our home.	<u>Vote</u>
A vote is taken on each of the hardship criteria: A. 3-0 The Board agreed with the appellant B. 3-0 The Board agreed with the appellant C. 3-0 The Board agreed with the appellant D. 3-0 The Board agreed with the appellant	<u>Variance</u>
A Motion to Approve the Variance is made by Mr. Stoddard and is seconded by Mr. Regis. Mr. Nugent calls for a vote: 3-0 in Favor, Variance Granted	APPROVED (3-0)
ITEM 5: Variance: David Lenzie, owner of 9 Lake Ave., MBL 314-3-2, in the R2 Zone to permit the adjustment of the front setback to allow the construction of a screen porch. Owner is the appellant.	Item 5: Variance David Lenzie, 9 Lake Ave. MBL 314-3-2
David Lenzie stated that he did not have his paperwork with him and Mr. Nugent offered Mr. Lenzie his folder. Mr. Lenzie explains that he needs additional living space. There are no questions and the meeting is closed to the public at 8:30 p.m.	Public Hearing
Mr. Deleo reads off the four criteria of hardship:	<u>Motion</u>
A. The land in question <u>cannot</u> yield a reasonable return unless the variance is granted.	
RESPONSE: Because of a small lot size as well as a small house, additional space is needed. There is a small back yard that I don't want to encroach on any more. Also, when front door is opened, the cold comes right into the living area.	
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: Most houses on the street have front porches that are enclosed. This house was constructed closer to the front property lines.	

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C. The granting of a variance will not alter the essential character of the locality.	, 2011
RESPONSE: Adjoining/abutting properties are in line with the proposed addition.	
D. The hardship is not the result of action taken by the appellant or a prior owner.	
RESPONSE: When the house was built, it was built closer to the front of the lot.	<u>Vote</u>
A vote is taken on each of the hardship criteria:	
E. 3-0 The Board agreed with the appellant	
F. 3-0 The Board agreed with the appellant	
G. 3-0 The Board agreed with the appellant	Variance
	APPROVED (3-0)
A Motion to Approve the Variance is made by Mr. Stoddard and is seconded by Mr. Regis.	
Mr. Nugent calls for a vote: 3-0 in favor	T
ITEM 6: Miscellaneous Appeal: David Lenzie, owner of 9 Lake Ave., MBL 314-3-2, in the R2	Item 6:
Zone to permit the adjustment of the Rear setback to allow the construction of a two story deck.	Misc. Appeal
Owner is the appellant.	David Lenzie, 9
	<u>Lake Ave.</u> MBL 314-3-2
David Lenzie explains that he is just taking his deck off the ground and raising it. There are no	MIDL 314-3-2
questions and the meeting is closed to the public at 8:35 p.m.	
Mr. reads off the four criteria pursuant to Section 14.3.3.2 of the Zoning Ordinance.	
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	Public Hearing
adoption of this provision or the lot is a vacant nonconforming lot of record.	
adoption of this provision of the 18018 to water monocinity many	
RESPONSE: Building was constructed well before 2/3/1998.	
b. The requested reduction is reasonably necessary to permit the owner or occupant of the	35.4
property to use and enjoy the property in essentially the same manner as other similar	<u>Motion</u>
properties are utilized in the zoning district.	
RESPONSE: Many properties have porches and decks in this neighborhood.	
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.	
RESPONSE: The floor plan is conducive to using the rear yard for this porch/deck.	
d. The impacts and effects of the enlargement, expension or new principal building or	Vote
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: There will be no adverse effect on the abutters – just an open deck.	
,	Miss Assa
A vote is taken on each of the limited yard reduction criteria:	Misc. Appeal
I. 3-0 The Board agreed with the appellant	APPROVED (3-0)
J. 3-0 The Board agreed with the appellant	
K. 3-0 The Board agreed with the appellant	
L. 3-0 The Board agreed with the appellant	
A Motion to Approve the Variance is made by Mr. Stoddard and is seconded by Mr. Regis.	
Mr. Nugent calls for a vote: 3-0 in favor.	

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ITEM 7: Miscellaneous Appeal: Priscilla A. Gallant, owner of 13 Foote St. MBL 205-12-1 in the R3 Zone, to permit the adjustment of the side setback to allow the reconstruction and relocation of the side entry steps. Owner is the appellant.	Item 7: Misc. Appeal Priscilla A. Gallant, 13 Foote St. MBL 205-12-1
Priscilla Gallant explained that she previously had a fire at her house and that she would like a 3-foot porch with stairs, which would also be a second exit.	Public Hearing
There were no questions and the public meeting was closed at 8:40 p.m.	
Mr. Deleo reads off the four criteria pursuant to Section 14.3.3.2 of the Zoning Ordinance.	
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 buildings and structures on the lot were there prior to the date of this provision. They were built in 1962.	
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.	
RESPONSE: The limited yard size prevents me from using or enjoying the property in the same manner as other properties in that zoning district.	
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.	
RESPONSE: I would not be able to build a small porch and stairs without encroaching into the 15 ft. setback by one foot. I need a second egress out of my house.	<u>Motion</u>
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: Without the variance, the house would not conform to the current building laws. I wouldn't be able to live in my house. A vote is taken on each of the limited yard reduction criteria: M. 3-0 The Board agreed with the appellant	
N. 3-0 The Board agreed with the appellant O. 3-0 The Board agreed with the appellant P. 3-0 The Board agreed with the appellant	Vote Misc. Appeal
A Motion to Approve the Variance is made by Mr. Stoddard and is seconded by Mr. Regis. Mr. Nugent calls for a vote: 3-0 in favor	APPROVED (3-0)
ITEM 8: Variance: J.Field Properties, owner of 5 Odena Ave., MBL 316-3-3, in the R3 Zone, to permit the adjustment of the front and rear setbacks and density to allow the demo and reconstruction of the existing single family dwelling and conversion to a two-family dwelling. Owner is the appellant. Carl A. Goodwin Inc. may be representing the owner.	Item 8: Variance J. Field Properties, 5 Odena Ave. MBL 316-3-3

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	ITEM TABLED
ITEM 9: Variance: Audrey Deloff, owner of 45 Colby Ave., MBL 323-14-7, in the R3 & RA Zones, to permit the adjustment of the rear setback and lot coverage to allow an addition on the rear of the structure. Owner is the appellant. Carl A. Goodwin Inc. may be representing the owner.	Item 9: Variance Audrey Deloff, 45 Colby Ave. MBL 323-14-7
	ITEM TABLED
ITEM 10: Miscellaneous Appeal: Randy & Ginger McMullin, owners of 26 Connecticut Ave. MBL 322-4-5 in the R3 Zone, to permit the adjustment of the front, side & rear setback to allow the construction of a garage. Owner is the appellant.	Item 10: Misc. Appeal Randy and Ginger McMullin, 26 Connecticut Ave. MBL 322-4-5
Randy McMullin explains that he would like to build a two-bay garage with work area so that he can insure his collectibles. Mr. McMullin shows a photograph to the Board. Gordon Anderson, an abutter states that he is cooperating with the Applicant as does John Bird.	Public Hearing
There were no questions and the public meeting on this matter was closed at 8:50 p.m.	
Mr. Deleo reads off the four criteria pursuant to Section 14.3.3.2 of the Zoning Ordinance.	<u>Motion</u>
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: My house was built in about 1968 or so. The total property is three 50'-60' lots.	
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.	
RESPONSE: I am trying to build a garage and woodshop for my hobbies. I intend to build a single store/garage about 36' x 28' and attached to the house at the roof to allow for a covered walkway to the back yard.	
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.	
RESPONSE: The current zoning would only allow for a 20' deep building including overhangs. That would not be deep enough to get my car into.	
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: I don't think the impact of this garage/woodshop would substantially be different than a conforming structure. This is a dead end street with one house past my house.	
A vote is taken on each of the hardship criteria: Q. 3-0 The Board agreed with the appellant R. 3-0 The Board agreed with the appellant S. 3-0 The Board agreed with the appellant	<u>Vote</u>
T. 3-0 The Board agreed with the appellant	Misc. Appeal APPROVED (3-0)

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A Motion to Appropriate Versiones is made by Mr. Staddard and is seconded by Mr. Pagis	T '
A Motion to Approve the Variance is made by Mr. Stoddard and is seconded by Mr. Regis.	
Mr. Nugent calls for a vote: 3-0 in favor	
	<u>Items 3, 8, & 9</u>
Mr. Regis moves to approve Tabling Item Nos. 3, 8, 9 and 11 the until the next meeting on Octpber 24 th , 2011. The motion is seconded by Mr. Stoddard. Mr. Nugent calls the vote: 3-0 in favor	ITEMS TABLED as abutters were not properly notified.
	Item 11 tabled as the applicant was not present at the meeting
<u>ITEM 12:</u>	
Acceptance of Minutes of August 29, 2011.	Minutes
Mr. Stoddard moved to accept the minutes of the meeting from August 29, 2011.	Approved
Mr. Regis seconded.	
Motion passes unanimously.	<u>Motion</u> <u>Vote</u>
GOOD & WELFARE	
	Good & Welfare
Mr. Stoddard moved to adjourn, seconded by Zoning Board Member. Unanimous approval	Adjourned at 8:57 p.m.

I, Mike Nugent, Secretary to the Zoning Board of Appeals of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of five (5) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting held on September 26, 2011.

Ray DeLeo

Chairman

Zoning Board Of Appeals

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