

**THE TOWN OF OLD ORCHARD BEACH,  
ZONING BOARD OF APPEALS  
Tuesday, November 7, 2022, IN THE TOWN  
COUNCIL CHAMBERS @6:30 p.m.  
MEETING MINUTES**

**Call to Order:** The meeting was called to order at 6:30 pm.

**Roll Call:**

**Present:** Vice Chair Stan DeFreese  
Ethan Scott  
Irvin Paradis  
Brian Perro  
**Absent:** Thomas Mourmouras  
Chair Ron Regis  
**Staff:** Code Officer Rick Haskell

**Pledge to Flag**

***Vice Chair Stan DeFreese read the criteria for an appeal.***

**Item 1 Variance Consideration**

**Owner:** Patricia Tracy

**Applicant:** John Tracy

**Location:** 51 Randall Avenue; MBL 323-7-1

**Zone:** R-3, Shore land RA

**Proposal:** Variance Consideration-Reduction of side yard setback from the required 15' to a proposed 12'6" to allow for installation of 2 stairways to a newly constructed duplex.

Applicant John Tracy introduced himself. They are asking for an additional 2 ½ ft. from the side setback. They are looking to get a variance for the steps.

Irvin Paradis state that when the applicant was here the last time, he offered you a way to get a second egress without the need for a variance by putting the stairs in the garage, then they could exit through the back door of the garage that he already shows on the plan. Then he wouldn't need a variance.

Irvin Paradis stated that what they are proposing to do is essentially the same thing that they proposed a month ago.

Mr. Tracy stated that it was discussed at the last meeting however if he did that he would only be able to do one set of stairs. They could put stairs on the right side. The garage is only 22' wide.

Patricia Tracy introduced herself. She states that she has had property in Ocean Park for 72 years.

Her concern is that she is getting older they need a little more space and needs to have a quicker way to get out of the house if needed.

John Tracy, the father of applicant John Tracy introduced himself. He stated that they have a very nice place and he would like to be a part of it. He stated that his son has built many homes.

There is no one speaking for or against the appellant.

**Vice Chair Stan DeFreese 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:** 51 Randall Avenue has only 31 ft wide of buildable space. In order to have back stairs and second means of egress, we would require a relief of 2 ½ x 11 ft. for each unit.

Vice Chair Stan DeFreese - Agree  
Ethan Scott - Agree  
Irvin Paradis - Agree  
Brian Perro – 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:** 51 Randall Ave is a corner lot which has a 20 ft. setback on right and with a 100 ft. shore land setback on left. A back set of stairs will not fit on either side of house.

Vice Chair Stan DeFreese - Agree  
Ethan Scott - Agree  
Irvin Paradis - Agree  
Brian Perro – Agree

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

**Applicant's response:** Adding a second set of stairs for means of egress will not alter the neighborhood or be unique to this house

Vice Chair Stan DeFreese - Agree  
Ethan Scott - Agree  
Irvin Paradis - Agree  
Brian Perro – Agree

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

**Applicant's response:** The current owner is also the prior owner of 51 Randall Avenue.

Vice Chair Stan DeFreese - Agree  
Ethan Scott - Disagree  
Irvin Paradis - Disagree  
Brian Perro – Disagree

Mr. Tracy doesn't understand that he is creating the hardship in regards to question D.

Ethan Scott stated that it is at his opinion that the applicant is causing the hardship because unfortunately this is a new construction and a new design and there are other opportunities to create a design that has a second means of egress for each unit not in the setback.

**MOTION:** Ethan Scott made a motion to deny the Variance, seconded by Irvin Paradis.

**Code Official Rick Haskell called for the vote:**

**VOTE:**

Vice Chair Stan DeFreese - Agree  
Ethan Scott – Agree  
Irvin Paradis - Agree  
Brian Perro – Disagree

**DENIED**

**(3-1)**

**Item 2 Miscellaneous Appeal**

**Owner: Steven M. and Johanne Berry**

**Applicant: Steven M. and Johanne Berry**

**Location: 40 Temple Avenue: MLB 323-14-19**

**Zone: R-3, Shore land RA**

**Proposal: Request for reduction in the side and rear setbacks. Left side from the required 15' to a proposed 9' setback. Right side from the required 15' to a proposed 13' setback. Rear from the required 20' to a proposed 10' setback. This would allow for the construction of a new home after demolition of the nonconforming existing home.**

Jim Fisher, Engineer who works with Northeast Civil Solutions introduced himself. They are here representing Mr. Berry along with builder Jim Bernard.

The house is 127 years old and has some serious problems. This home is not insulated and does not have a working heating system. The whole house leans to the left. He stated that this house needs to be replaced for safety reasons.

They are proposing to replace the home with a new house that is built completely to code. It will be taller than the old house because they will be building a single car garage and a storage area underneath it in the structure itself, therefore there will be no off street parking. The new house will be almost 200 sf less in its footprint. They will also be getting rid of the shed. This house will be in the floodplain when the flood plain maps change officially from FEMA, however this building will be built with flood vents in it. There are no burdens of easement on this property. Percent of lot coverage, goes from 35% right now down to 30%.

Public hearing began at 7:15 pm.

Charles Agan who lives at 41 Colby Avenue introduced himself. He is a rear abutter to 40 Temple Ave. His concern about this project is the proposed 10' rear setback. A setback this narrow and space this confined will increase shadows as the sun travels in the southerly sky especially during the wintertime. It will increase crowding among the four abutting buildings and decrease privacy. His proposal would be to shift the footprint of the house 5' forward, then allowing for a 15' rear setback.

Irvin Paradis read a letter from an abutter from 38 Temple Avenue.

**From: Joseph McElhinney**  
**Date: September 9, 2022 at**  
**To: Steve Berry <[viking5424@hotmail.com](mailto:viking5424@hotmail.com)>**

**Attention of Zoning Board of Appeals**

**We Joe and Mary McElhinney owner of 38 Temple Ave Ocean Park, Steve Berry has shared the plans for his new home to be built 40 Temple Ave with us.**

**We approve the design and are looking forward to seeing it finished. 781-389-8790**

Public hearing closed at 7:30 pm.

**Vice Chair Stan DeFreese read the Justification of Misc. 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 single-family residential structure was constructed in 1895. This structure pre-dates all municipal and State zoning ordinances.

Vice Chair Stan DeFreese - Agree  
Ethan Scott - Agree  
Irvin Paradis - Agree  
Brian Perro – 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 property on which the present house sits is in a suburban neighborhood of Ocean Park. The majority of structures throughout the neighborhood are single-family dwelling. This particular house is 127 years old, is uninsulated, has no workable furnace, is principally supported on cedar tree trunks, has settled over the past century such that most doors and windows are not squared, electrical wiring is outdated, cast iron plumbing is deteriorating, and the house is structurally unsound. A new house, built to code, is required to ensure safe habitation for its owner occupants.

Vice Chair Stan DeFreese - Agree  
Ethan Scott - Agree

Irvin Paradis - Agree  
Brian Perro – 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:* The existing lot 50' x 68' (3402 sf). The new structure will be moved further back from the road to comply with current front setback requirements (20'). The lot is exceptionally small and any new habitable structure would not fit practically on the lot without obtaining a limited reduction of setbacks and an allowed increase, from current zoning requirements, of lot coverage. The proposed house will have a smaller footprint than the existing structure. The lot's building footprint pursuant to current zoning would have a building envelope of 20' x 28' (560 sf) approximately the size of a single car detached garage.

Vice Chair Stan DeFreese - Agree  
Ethan Scott - Agree  
Irvin Paradis - Agree  
Brian Perro – 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:* Due to the exceptionally small size of all of the lots in this area, it is highly impractical for any new house to meet current zoning setbacks and still be considered practical for habitation. Not one of the houses on the lots in the immediate neighborhood of this parcel meets current zoning requirements. The proposed house will have a smaller footprint than the existing house, and will comply with front setbacks and off-street parking. The proposed house is similar to or smaller than the other houses in the neighborhood (see attached plan).

Vice Chair Stan DeFreese - Agree  
Ethan Scott - Agree  
Irvin Paradis - Agree  
Brian Perro – Agree

**MOTION:** Ethan Scott made a motion to approve the Miscellaneous Appeal, second by Irvin Paradis.

**VOTE:**

Vice Chair Stan DeFreese - Approve  
Ethan Scott - Approve  
Irvin Paradis - Approve  
Brian Perro – Approve

**APPROVED  
(4-0)**

**Item 3**

**Acceptance of July 25, 2022 and September 26, 2022 meeting minutes.**

**MOTION:** Brian Perro made a motion to accept the meeting minutes for July 25, 2022 and September 26, 2022, seconded by Ethan Scott.

**GOOD & WELFARE**

**ADJOURNMENT 7:37 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 consisting SIX (6) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting held on November 7, 2022.*

*Valdine Camire*