

**TOWN OF OLD ORCHARD BEACH
ZONING BOARD OF APPEALS MEETING MINUTES August 29, 2011**

Call to Order at 7:00 pm	Call to Order
Pledge to the Flag	
<p>Roll Call: Present: Acting Chair Philip Weyenberg, Owen Stoddard, Ron Regis, and Mark Lindquist, J. Philip Denison were present Tianna Higgins and Ray DeLeo were excused.</p> <p>Staff: Mike Nugent, Code Enforcement Officer and Secretary.</p>	
<p>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 applicant.</p>	<p>Item 1: Variance: <u>Walter & Shirlie Murphy, 184R Portland Avenue, MBL 103-1-21</u></p>
<p>Attorney David Ordway represented the applicant. He explained the appeal. He indicated that app. 3000 sq. ft would be conveyed from on lot to the other. He stated that this is not a typical variance case. He stated that there is some precedence for a variance like this and the request is in harmony with the intent of the Zoning Ordinance. It is not contrary to public interest and that literal application of the ordinance would result in undue hardship. He explained that there are two contiguous lots, one with app. 16,800 sq.ft. and 23,550 sq.ft. They are seeking to roughly equalize the size of the lots while not making other aspects of the layout more nonconforming. The smaller lot does not comply with the newer front yard setback. The proposal would make the smaller rear lot more conforming to the front while not making the front lot non-conforming to the rear yard setback. Zoning's objective is to make situations more conforming.</p> <p>Ron Regis asked how much farther you are coming toward the front building and expressed that because there is a 50 foot right of way on the side there would not be much yard left for the front building.</p> <p>Mr. Ordway explained that lot 20 is the one closest to Portland Ave. Half of the grassed area will remain with lot 20. The space is 70 to 80 feet so about 40 feet would remain behind the building, conforming to the setback.</p> <p>Ron Regis asked if much of the lawn currently is not part of the rear lot.</p> <p>Mr. Ordway stated that this was correct. He explained the history of the development of the lots.</p> <p>Mr. Regis asked if they were merged. Mr. Ordway stated that they are not. The Ordinance that have principal dwellings are not merged.</p> <p>Acting Chair Weyenberg asked Mr. Ordway to explain the Right of way.</p> <p>There is a deeded R.O.W. from Portland Ave that serves Walter and Shirley's house.</p> <p>Mr. Weyenberg asked if lot 20 owned the land and the lot 21 people have the right to drive over it. Mr Ordway stated that that was correct and to complicate this, Walter's aunt also owned the house on the left side which had a setback violation (encroachment) that was corrected a couple of years ago by creating a jog in the R.O.W.</p> <p>Mr. Weyenberg called for abutters for or against.</p>	<p style="text-align: center;"><u>Motion</u></p> <p style="text-align: center;"><u>Vote</u></p> <p style="text-align: center;"><u>ITEM</u></p> <p style="text-align: center;"><u>TABLED</u></p>

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<p>Karen Stanheiser, owner of 182 Portland Ave, to the left of Walter's. She stated that they have not established whether the land will not yield a reasonable return or not, and still have not established this even though the Item was tabled earlier in the month. The second issue was that there is some question as to who owns what there. She recently discovered from the Town of Old Orchard Beach Assessor's Staff, Bill DiDonato, that she thought she purchased .56 acres, she may have only purchased .31 Acres. That is yet to be worked through with her and Mr. Murphy's attorney. She is concerned that a variance would be granted given that she found this discrepancy. Until this is resolved, she would have to appeal any variance granted. They haven't established that the land does not yield a reasonable return. Just making the property better does not authorize the ZBA to grant this variance. This is out of convenience and the applicant has to prove undue hardship. They didn't address this.</p> <p>Mr. Denison asked where the land that she thought she owned and may not is located.</p> <p>Ms. Stanheiser stated that it may be her lawn and back yard. She stated that Walter Murphy invited The Town's Assessor to her home and let him in her home without her knowledge to reassess the property. He discovered the discrepancy then.</p> <p>Mr. Regis asked if she owned the R.O.W.</p> <p>She stated that she does know who owns the land; she stated that she has been paying taxes on it. Mr. Regis surmised that that is why she was being assessed for the greater land amount.</p> <p>Mr. Regis moved to table this until the land ownership question is rectified.</p> <p>Mr. Stoddard advised the abutter that the Board needed to understand what land was owned by which party.</p> <p>Seconded by Mr. Denison.</p> <p>Four in favor with Mr. Stoddard voting in opposition.</p> <p>This item was not continued to a date certain as it was unknown how long it will take to clear up the ownership issues.</p>	
<p><u>ITEM 2: Variance:</u> Avital & Issac Naim, & Rachel & Edward Leeds, owners of 3 Ladd Avenue, Units 1&2, MBL 302-3-5-1/302-3-5-2 in the BRD Zone to permit the adjustment of the lot size, frontage, lot coverage, and setback requirements to allow the division of the two existing condominium units. Owners are the appellants.</p>	<p><u>Item 2: Variance:</u> Avital & Issac Naim, & Rachel & Edward Leeds 3 Ladd Avenue, Units 1&2, MBL 302-3-5-1 302-3-5-2</p>
<p>Acting Chairman Weyenberg read the item into the record.</p> <p>Ms.Naim represented the applicants, all parties were present at the meeting. She explained that they wanted to divide the lot , each subsequent lot would have one building. Mr Weyenberg asked if the subsequent division would not be in conformity with the Zoning in the area. Mike Nugent explained that the lot as it is today is smaller than the zoning requires. Mr. Weyenberg asked if they are nonconforming with respect to all of the space and bulk requirements. Mike Nugent indicated that they were.</p>	<p style="text-align: center;"><u>PUBLIC HEARING</u></p>

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Mr. Weyenberg asked if this was unique. Mike Nugent indicated that is as it is a single lot with two principal structures that were built a long time ago which have been condominiumized. The Naim's bought a unit there recently and not both owners seek to dissolve the condo association and divide the property.

Mr. Regis asked if these were two lots originally. Ms. Naim indicated that it has always been one lot with two buildings. She stated that in their view the lot is large enough so they could divide it and live separately. There is ample space and parking and it would be good to own our own property. Both Owners are in agreement.

Mr. Weyenberg asked how many units? Ms. Naim stated just the two. Mr. Weyenberg asked when it became a condominium. Ms. Naim indicated it was already a condo when she bought it. Mr. Regis asked if they owned both units, she stated that they did not and that the owners of the other unit were present. Mr. Stoddard asked if they would dissolve the association. She stated that they would after the created new deeds. Mr. Stoddard asked if the Board had the authority to do this. Mike Nugent advised that because these are all dimensional requirements it was within the Board's authority if hardship exists. Mr. Denison asked if they were able to put two houses on the lot because it was an association. Mike Nugent advised that it was a lot with two principal structure before it became an association. Since the 1920's.

Mr. Weyenberg expressed concern about precedence, and if this could lead to others wanting to do the same. Ms. Naim indicated that her property was different from other condos.

Mr. Weyenberg called for abutters. There were none Mr. Stoddard indicated support for the proposal.

The 4 Criteria of hardship;

- A. The land in question cannot yield a reasonable return unless the variance is granted. The Board agreed that it was reasonable use of the property to recognize the functional division of the lot.
- 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 agreed that the property was developed in the 1920's and were unique.
- C. The granting of a variance will not alter the essential character of the locality. The board agrees that nothing changes on the property.
- D. The hardship is not the result of action taken by the appellant or a prior owner. The board agreed that the situation has existed since the 1920's the current or prior owners did not cause this.

It was moved by Mr. Stoddard to approve the request and seconded Mr. Regis with the condition that the division complies with the Northeast Civil Solutions plan. Unanimous in favor.

Motion

Vote

Variance
Approved

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<p><u>ITEM 4:</u> Acceptance of Minutes: August 1, 2011 Mr. Regis moved to accept the minutes from August 1, 2011. Mr. Weyenberg seconded. <i>Motion passes unanimously.</i></p>	<p style="text-align: center;"><u>Minutes</u> <u>Approved</u></p> <p style="text-align: center;"><u>Motion</u> <u>Vote</u></p>
<p>GOOD & WELFARE</p> <p>Mr. Regis advised Karen Stanheiser that he would like to get this matter resolved so as to not keep this appeal in limbo. She stated that she just found out about this and is working on it.</p>	<p style="text-align: center;">Good & Welfare</p>
<p>Mr. Regis moved to adjourn, seconded by Mr. Stoddard—Unanimous approval</p>	<p style="text-align: center;">Adjourned</p>

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 on August 29, 2011