

TOWN OF OLD ORCHARD BEACH

ZONING BOARD OF APPEALS MEETING MINUTES September 26, 2011

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| Call to Order at 7:02 pm | Call to Order |
| Pledge to the Flag | |
| <p>Roll Call: Present: Owen Stoddard, Ron Regis, and Ray Leleo. Tianna Higgins, Philip Weyenberg, Mark Lindquist, and J. Philip Denison were excused.</p> <p>Staff: Mike Nugent, Code Enforcement Officer and Carolyn Dulac Acting 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 appellant.</p> | <p>Item 1: Variance <u>Walter & Shirlie</u> <u>Murphy, 184R</u> <u>Portland Avenue,</u> <u>MBL 103-1-</u> <u>21/103/1/20</u></p> |
| <p>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.</p> <p>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).</p> <p>The meeting is closed to the public at 7:47 p.m. and there are no further questions.</p> <p>Mr. Deleo reads off the four criteria of hardship:</p> <ul style="list-style-type: none"> 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. <p>The Applicant did not fill out the four criteria section in the usual fashion and instead responded with the attached.</p> <p>Mr. Stoddard makes a motion to approve the Variance; saying that it is not unreasonable. The motion is not seconded.</p> <p>Mr. Regis makes a motion that the Variance be denied due to a lack of hardship, which is seconded by Mr. Deleo.</p> <p>The Vote was 2-1 to approve the motion with Mr. Stoddard in opposition VARIANCE DENIED</p> | <p style="text-align: center;"><u>Public Hearing</u></p> <p style="text-align: center;"><u>Motion</u></p> <p style="text-align: center;"><u>Vote (2-1)</u> <u>Variance</u> <u>DENIED</u></p> |
| <p>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.</p> | <p>Item 2: Variance <u>MCJ, LLC, Mark</u> <u>Bureau, MBL</u> <u>202-3-13</u></p> |

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| <p>There are no questions and the matter is closed to the public at 8:20.</p> <p>Mr. Deleo reads off the four criteria of hardship:</p> <p style="padding-left: 40px;">A. The land in question <u>cannot</u> yield a reasonable return unless the variance is granted.</p> <p>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.</p> <p style="padding-left: 40px;">B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.</p> <p>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.</p> <p style="padding-left: 40px;">C. The granting of a variance will not alter the essential character of the locality.</p> <p>RESPONSE: The property will not change in use and there will be no environmental impact from this small deck addition.</p> <p style="padding-left: 40px;">D. The hardship is not the result of action taken by the appellant or a prior owner.</p> <p>RESPONSE: The Town's adoption of new regulations created a real hardship with regard to the safe use of our home.</p> <p style="padding-left: 40px;">A vote is taken on each of the hardship criteria:</p> <ul style="list-style-type: none"> 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 <p>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</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>Variance</u> <u>APPROVED (3-0)</u></p> |
| <p><u>ITEM 5: Variance:</u> 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.</p> | <p style="text-align: center;"><u>Item 5: Variance</u> <u>David Lenzie, 9</u> <u>Lake Ave. MBL</u> <u>314-3-2</u></p> |
| <p>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.</p> <p>Mr. Deleo reads off the four criteria of hardship:</p> <p style="padding-left: 40px;">A. The land in question <u>cannot</u> yield a reasonable return unless the variance is granted.</p> <p>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.</p> <p style="padding-left: 40px;">B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.</p> <p>RESPONSE: Most houses on the street have front porches that are enclosed. This house was constructed closer to the front property lines.</p> | <p style="text-align: center;"><u>Public Hearing</u></p> <p style="text-align: center;"><u>Motion</u></p> |

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| <p>C. The granting of a variance will not alter the essential character of the locality.</p> <p>RESPONSE: Adjoining/abutting properties are in line with the proposed addition.</p> <p>D. The hardship is not the result of action taken by the appellant or a prior owner.</p> <p>RESPONSE: When the house was built, it was built closer to the front of the lot.</p> <p>A vote is taken on each of the hardship criteria:</p> <p>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 H. 3-0 The Board agreed with the appellant</p> <p>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</p> | <p style="text-align: center;"><u>Vote</u></p> <p style="text-align: center;"><u>Variance</u> <u>APPROVED (3-0)</u></p> |
| <p><u>ITEM 6: Miscellaneous Appeal:</u> David Lenzie, owner of 9 Lake Ave., MBL 314-3-2, in the R2 Zone to permit the adjustment of the Rear setback to allow the construction of a two story deck. Owner is the appellant.</p> | <p style="text-align: center;"><u>Item 6:</u> <u>Misc. Appeal</u> <u>David Lenzie, 9</u> <u>Lake Ave.</u> <u>MBL 314-3-2</u></p> |
| <p>David Lenzie explains that he is just taking his deck off the ground and raising it. There are no questions and the meeting is closed to the public at 8:35 p.m.</p> <p>Mr. reads off the four criteria pursuant to Section 14.3.3.2 of the Zoning Ordinance.</p> <p>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.</p> <p>RESPONSE: Building was constructed well before 2/3/1998.</p> <p>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.</p> <p>RESPONSE: Many properties have porches and decks in this neighborhood.</p> <p>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.</p> <p>RESPONSE: The floor plan is conducive to using the rear yard for this porch/deck.</p> <p>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.</p> <p>RESPONSE: There will be no adverse effect on the abutters – just an open deck.</p> <p>A vote is taken on each of the limited yard reduction criteria:</p> <p>I. 3-0 The Board agreed with the appellant 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</p> <p>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.</p> | <p style="text-align: center;"><u>Public Hearing</u></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>Misc. Appeal</u> <u>APPROVED (3-0)</u></p> |

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| <p>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</p> | |
| <p>Mr. Regis moves to approve Tabling Item Nos. 3, 8, 9 and 11 the until the next meeting on Octpber 24th, 2011. The motion is seconded by Mr. Stoddard. Mr. Nugent calls the vote: 3-0 in favor</p> | <p style="text-align: center;"><u>Items 3, 8, & 9</u> <u>ITEMS TABLED</u> <u>as abutters were</u> <u>not properly</u> <u>notified.</u> <u>Item 11 tabled as</u> <u>the applicant was</u> <u>not present at the</u> <u>meeting</u></p> |
| <p><u>ITEM 12:</u> Acceptance of Minutes of August 29, 2011. Mr. Stoddard moved to accept the minutes of the meeting from August 29, 2011. Mr. Regis seconded. <i>Motion passes unanimously.</i></p> | <p style="text-align: center;"><u>Minutes</u> <u>Approved</u> <u>Motion</u> <u>Vote</u></p> |
| <p>GOOD & WELFARE</p> | <p style="text-align: center;">Good & Welfare</p> |
| <p>Mr. Stoddard moved to adjourn, seconded by Zoning Board Member. Unanimous approval</p> | <p style="text-align: center;">Adjourned at 8:57 p.m.</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 held on September 26, 2011.



Ray DeLeo
 Chairman
 Zoning Board Of Appeals