

**TOWN OF OLD ORCHARD BEACH
ZONING BOARD OF APPEALS MEETING MINUTES
January 30, 2012**

<p>Call to Order at <u>7:05 pm</u></p>	<p>Call to Order</p>
<p>Pledge to the Flag</p>	
<p>Roll Call: Present: Mark Lindquist, Owen Stoddard, Chairman Ray DeLeo. Absent: Tianna Higgins, Philip Denison, and Ron Regis. Staff: Mark Mitchell, Code Enforcement Officer, Val Helstrom, ZBA Clerk</p>	<p>PUBLIC HEARING</p>
<p>Chair DeLeo read the criteria for the Public Hearing. <u>Item #1. Acceptance of the minutes of the December 19, 2011 meeting</u> The minutes from December 19, 2011 will be approved at the next ZBA meeting.</p>	<p><u>ITEM 1</u></p>
<p><u>ITEM 2: Miscellaneous Appeal</u> : Richard Hinkle, owner of 99 Cascade Road (MBL 104/4/25) in the Rural District is seeking a miscellaneous appeal to allow a shed to remain 17.5 feet from a side yard property line where 25 is required. A detached garage/shed may be as close as 15’ by the granting of a miscellaneous appeal.</p> <p>Mr. Hinkle introduced himself to the Board. Mr. Hinkle then stated that he had already built a shed without a permit before he realized that the setbacks were changed. Now his shed is 17 ½ ‘from the line instead of 25’. So he is asking for an appeal to allow the shed to remain. The shed is 12’ x 16’. The previous shed was 4’ x 6’.</p> <p>Nobody speaking for or against the appellant, the public hearing closed at 7:10 pm.</p> <p>Chair DeLeo read the four criteria for hardship:</p> <p style="padding-left: 40px;">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 style="padding-left: 40px;">RESPONSE: The new shed was built on the same sight as the old falling down shed within 15’ setback.</p> <p>Stoddard – Approved Lindquist – Approved DeLeo - Approved</p> <p style="padding-left: 40px;">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 style="padding-left: 40px;">RESPONSE: The shed will improve the property use by keeping things stored away without clutter all over the back and side yard.</p>	<p><u>ITEM 2</u></p> <p><u>PUBLIC HEARING</u></p>

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Stoddard – Approved
Lindquist – Approved
DeLeo - Approved

- 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: It would be impractical to locate the shed within the “new” setbacks because it would take up valuable yard space and would look out of place anywhere else.

Stoddard – Approved
Lindquist – Approved
DeLeo - Approved

- 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: The impact would be nearly non existent because all of the neighbors put their sheds on the side of their properties, closely related to the woods around the property lines.

Mr. Lindquist asked what the height of the shed was.
Mr. Hinkle stated that the height was 14’ high.

Stoddard – Approved
Lindquist – Approved
DeLeo - Approved

A motion to approve the Miscellaneous Appeal was made by Mr. Stoddard and seconded by Mr. Lindquist.

Mr. Mitchell calls for the vote:

Stoddard – Yes
Lindquist – Yes
DeLeo - Yes

MOTION

MISC.
APPEAL
APPROVED

(3-0)

Unanimous

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August 12, 1994 – Deed for Lot 8 Ocean Fairways, from Peoples Heritage Bank to Gerald E Nadeau and Elizabeth W. Nadeau.

September 18, 2001 – Enactment of Merging Provision in Zoning Ordinance.

Mr. Shepard then read section 78-145. Merger of Lots.

(b) if two or more contiguous lots are owned by the same person and if any of the lots do not meet the requirements for lot frontage or lot areas established by this chapter, the lots shall be merged to the extent necessary to create a lot which complies with the lot frontage so merged which does not meet the lot area and lot frontage requirements of this chapter may be built upon.

The Ocean Fairways subdivision is in the R 2 zone, which requires 20,000 sq. ft. minimum lot size. Lot #8 is listed as having 13,328 square feet, and Lot #2 has 8,524 sq. ft.

Under 78-145, these two lots would have merged in 2001 as one lot, as Lot #2 had a year round home and Lot #8 was un improved and below the minimum lot size.

June 14, 2007 – The estate of Elizabeth Nadeau deed Lot # 8 to Thomas Groves,

September 11, 2007 – The Estate of Elizabeth Nadeau deeds Lot #2 to John Nadeau.

October 30, 2007 – Thomas Groves conveys Lot #8 to Thomas F. Hickey.

Mr. Shepard stated that the applicant cannot satisfy the forth prong of the requirements for a variance which provides as follows:

*“The hardship is not the result of action taken by the applicant or a prior owner.”
(emphases added)*

Mr. Lindquist read a section of ordinance 78-145

Relief from requirements of this section may be granted only by the Zoning Board of Appeals and only by variance on showing undue hardship.

Mr. Stoddard stated that he doesn't think that Mr. Hickey would have purchased the lot if he knew he wouldn't be able to build. It is unclear to him how this is not grandfathered.

Mr. DeLeo states that he sees the hardship as that Mr. Hickey is not able to sell that lot unless the abutters want to buy it from him because it is unbuildable and to him that is considered a hardship.

Tim Perrigo from 41 Chestnut Street introduced himself to the Board. He stated that it is his understanding that the properties that are abutting, must be in the same name before they are joined.

Mr. Shepard stated that the acts of the prior owner divided the lots, it should have never been divided.

Mr. Stoddard doesn't know how Mr. Hickey doesn't meet the criteria, the hardship is not the action taken by the appellant or prior owner. He purchased this in good faith.

The Public Hearing closed at 8:05 pm.

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Mr. Deleo reads off the four criteria of hardship:

A. The land in question cannot yield a reasonable return unless the variance is granted.

Without its grandfathered status, this lot “cannot yield” any return. I did not buy this lot as an investment and do not expect even a “reasonable return” on it I am willing to sell the lot to the interested abutter, or any other interested party, for considerably less than I paid for it. This is viable only with its grandfathered status reinstated.

Stoddard – Approved
Lindquist – Approved
DeLeo - Approved

B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

This lot is one of the largest in the subdivision and the largest in its cluster of 6 lots. It has frontage on both Birkdale Circle and Knoll Avenue and has direct access to water and sewer.

Stoddard – Approved
Lindquist – Approved
DeLeo - Approved

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

The site of this lot will easily accommodate a 3 B/R 2 Bath house, while I believe observing all current set back requirements. The enclosed house plan (attachment #2) as an example only, similar to ones in the subdivision, would easily fit the lot and in no way “alter the essential character” of the locality.

Stoddard – Approved
Lindquist – Approved
DeLeo - Approved

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

There has been no preemptive or physical “action taken” to the lot(s) by the appellant or previous owners. See History of lot (attachment #3) Again, the purchase of this lot was in large part based on the assurances of the then Asst. CEO that it was, in fact a build able lot.

Stoddard – Approved
Lindquist – Approved
DeLeo - Approved

Mr. Stoddard made a motion to approve the Variance to Mr. Hickey to return Lot #8 of a subdivision approved by the OOB Planning Board in 1986 to a sellable legally non-conforming status, seconded by Mr. Lindquist.

Mark Mitchell calls for the vote:

Mr. Lindquist – Yes
Mr. Stoddard – Yes
Mr. DeLeo - Yes

Vote unanimous. 3-0

MOTION

VOTE

VARIANCE
APPROVED

(3-0)

Unanimous

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ITEM 5: Variance: Mr. Carey Seamans is seeking a variance to allow a lot to be created without Town approved frontage where 160 ft Is required by sec. 78-609 of the Zoning Ordinance. (MBL 403/12/3) in the residential District.

ITEM 5

Mr. Seamans introduced himself to the Board asking for a variance to allow to break a ½ lot from his 1 ¾ lot.

He stated that he bought a ¼ acre lot after being told by Jan Fisk, a prior Planner that he could combine a ¼ acre lot of his and make a building lot. His driveway is off Fiero Drive and he could not improve Fiero Drive up to town standards due to Milliken Stream.(per DEP) So if he breaks off a lot on Chestnut St. he would now be non conforming.

Shaun Kennedy from 28 Chestnut Street, stated that they these zoning laws and ordinances are there for a reason. He stated that it is Mr. Seamans responsibility to prove 100% hardship.

Tim Perigo from 41 Chestnut Street stated that he had previously gone before the Planning Board asking for a private way and they denied it.

There being no one speaking for or against the appellant, the public hearing closes at 8:25 pm.

Mr. Deleo reads off the four criteria of hardship:

A. The land in question cannot yield a reasonable return unless the variance is granted.

I bought a ¼ acre lot after being told by Jan Fisk, a prior Planner, that I could combine a ¼ acre lot of mine and make a building lot.

Stoddard – Disagree
Lindquist – Disagree
DeLeo - Approved

B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.

My driveway is off Fiero Drive. I could not improve Fiero Drive up to town standards due to Milliken Stream per DEP. I do not have the improved street needed on Fiero Drive due to DEP ruling. So if I break off a lot on Chestnut, I would now be non conforming. I could have built an improved street if Milliken Stream was not so close to my property, I would be conforming.

Stoddard – Approved
Lindquist – Approved
DeLeo - Approved

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

Most all of the houses in our development. Some are on a ¼ acre.

Stoddard – Approved
Lindquist – Approved
DeLeo - Approved

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<p>D. The hardship is not the result of action taken by the appellant or a prior owner.</p> <p>I paid for surveying, legal costs, and septic design per Jan Fisk telling me that I would have a lot of record. I would like to use the property the same way that the other owners do in my development. Single family dwelling, affordable.</p> <p>Stoddard – Approved Lindquist – Disagree DeLeo - Approved</p> <p>Mr. Lindquist made a motion to table this request for a variance for Carey Seamans until the next meeting without prejudice so that we can re-examine the criteria for question #1. Seconded by Mr. Stoddard.</p> <p>Mark Mitchell calls for a vote:</p> <p>Stoddard – Yes Lindquist – Yes DeLeo - Yes</p>	<p style="text-align: center;"><u>TABLED</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>(3-0)</u></p>
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I, Valdine Helstrom, Secretary to the Zoning Board of Appeals of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of Seven (7) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting held on January 30, 2012.

Valdine L. Helstrom