

**TOWN OF OLD ORCHARD BEACH
ZONING BOARD OF APPEALS MEETING MINUTES
November 26, 2012**

<p>Call to Order at <u>7:03 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, Ron Regis. Absent: Tianna Higgins.</p> <p>Staff: James Butler, Code Enforcement Officer, Val Helstrom, ZBA Clerk</p>	<p>PUBLIC HEARING</p>
<p><i>Chair DeLeo read the criteria for the Public Hearing.</i></p>	
<p><u>ITEM 1: Acceptance of the minutes of the September 24, 2012 meeting.</u></p> <p>Mark Lindquist made a motion to approve the September 24 2012 meeting minutes as recorded. Seconded by Ron Regis.</p>	<p><u>ITEM 1</u> <u>MINUTES</u> <u>Motion</u> <u>APPROVED</u> (4-0)</p>
<p><u>ITEM 2: Reconsideration of Decision: Terry Nagle, owner of 90 Ross Road, MBL 105-4-12 in the RD Zone to permit construction of a new single family home. Applicant is seeking approval of a miscellaneous appeal of the minimum lot size requirement without sewer or water. Owner is the appellant.(CEO requesting reconsideration of decision to grant this approval on 9/24/12)</u></p> <p>James Butler gave a brief overview of this item stating that there was a conflict of what the minimum lot size was in the RD zone. Mr. Butler stated that the Nagle’s do not need a miscellaneous or variance appeal because after further review they meet the minimum lot size. The Nagle’s have gone forward with the Planning Board and the Planning Board is dealing with the split now. We just need a motion to take back the decision on September 24th.</p> <p>Mark Lindquist made a motion to reverse the decision on September 24th, 2012 regarding the application of Terry Nagle of 90 Ross Road, MBL 105-4-12 in the RD Zone, Seconded by Owen Stoddard.</p> <p>Ron Regis – Abstain Mark Lindquist – Agree Chair DeLeo - Agree Owen Stoddard - Agree</p>	<p><u>ITEM 2</u> <u>MISC. APPEAL</u></p> <p><u>MOTION</u> <u>APPROVED</u></p> <p><u>VOTE</u> <u>(3-0-1)</u></p> <p><u>Unanimous</u></p>

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ITEM 3: Miscellaneous Appeal: Nancy & Daniel Napolitano, owner of 24 Odena Avenue, MBL 315-7-8 in the R-3 Zone to permit expansion of existing deck by 5'. Applicant is seeking approval of a miscellaneous appeal of the minimum side yard setback. Owner is the appellant

ITEM 3
MISC.
APPEALS

Opened the Public Hearing at 7:07 p.m.

Daniel Napolitano introduced himself to the Board Members. He and his wife would like to extend their deck another 4 -5'. His engineer briefed the Board on the expansion of the deck which has already been replaced. Ken Dolby from 22 Odena Avenue, President of Ocean Breeze Condominium Association and who also owns the unit that abuts the applicants land informed the Board Members that he is very much in favor of this appeal.

Public Hearing closed to the public at 7:10 p.m.

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.

Yes. Looking to add expansion on existing deck to limit the yard.

Ron Regis – Agree
Mark Lindquist – Agree
Chair DeLeo - Agree
Owen Stoddard - 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.

Due to the slope of the small yard, it is un-useable for a table or chairs in the yard. It was necessary to slope the yard due to water flow or melting snow. We would like to extend the deck ground level to utilize more space in the yard.

Ron Regis – Agree
Mark Lindquist – Agree
Chair DeLeo - Agree
Owen Stoddard – 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.

Again due to the sloping of the yard it is more practical to have a ground level deck to utilize the yard better.

Ron Regis – Agree
Mark Lindquist – Agree
Chair DeLeo - Agree
Owen Stoddard – Agree

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<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>We do not believe increasing the size of the ground level deck by 5 feet will impede the neighborhood or have a greater impact on the neighborhood.</p> <p>Ron Regis – Agree Mark Lindquist – Agree Chair DeLeo - Agree Owen Stoddard – Agree</p> <p>Owen Stoddard made a motion to approve the Miscellaneous Appeal for Nancy and Daniel Napolitano, owner of 24 Odena Avenue, MBL 315-7-8 in the R-3 Zone to permit expansion of existing deck by 5'. Seconded by Ron Regis.</p> <p><i>Code Officer James Butler called for the vote:</i></p> <p>Ron Regis – Yes Mark Lindquist – Yes Chair DeLeo - Yes Owen Stoddard - Yes</p>	<p style="text-align: center;"><u>MOTION</u></p> <p style="text-align: center;"><u>APPROVED</u></p> <p style="text-align: center;"><u>VOTE</u></p> <p style="text-align: center;"><u>(4-0)</u></p> <p style="text-align: center;">Unanimous</p>
<p><u>ITEM 4: Miscellaneous Appeal:</u> Christopher Whittaker & Joan Whittaker, owner of 80 Seaside Avenue, MBL 324-10-5 in the R-3 Zone to permit expansion of existing deck by 2'x16' Applicant is seeking approval of a miscellaneous appeal of the minimum front yard setback requirement. Owner is the appellant.</p> <p>The Public Hearing opened at 7:13 p.m.</p> <p>Tom Rutka, agent for Christopher and Joan Whittaker introduced himself to the Board Members giving a brief overview. The deck is on the front of the now 2 story ranch. The deck is an older deck that is in need of some replacement. If they could expand this to 2' out and 16' wide, it would allow for more usability to put a table and chairs out there. The proposed 2' expansion would be approximately 23' from the street on the southern corner to 21 ¾ ' at the 16' point.</p> <p>No one speaking for or against the appellant, the Public Hearing closed to the Public at 7:15 p.m.</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>Yes.</p> <p>Ron Regis – Agree Mark Lindquist – Agree Chair DeLeo - Agree Owen Stoddard – Agree</p>	<p style="text-align: center;"><u>ITEM 4</u></p> <p style="text-align: center;"><u>MISC.</u></p> <p style="text-align: center;"><u>APPEAL</u></p>

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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.

Yes. It expands the 2nd floor deck by 32 sq.ft. (10% of existing deck size) Expanding area to accommodate a table.

Ron Regis – Agree
Mark Lindquist – Agree
Chair DeLeo - Agree
Owen Stoddard – 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.

Yes. It does not appear to jeopardize lot coverage requirement.

Ron Regis – Agree
Mark Lindquist – Agree
Chair DeLeo - Agree
Owen Stoddard – 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.

Correct. It should not be any different than other deck users in the area.

Ron Regis – Agree
Mark Lindquist – Agree
Chair DeLeo - Agree
Owen Stoddard – Agree

Mark Lindquist made a motion to grant a Miscellaneous Appeal for Christopher and Joan Whittaker, owners of 80 Seaside Avenue, MBL 324-10-5 in the R-3 Zone to permit expansion of existing deck by 2' x 16' and reducing the minimum front setback. Seconded by Ron Regis.

Code Officer James Butler called for the vote:

Ron Regis – Yes
Mark Lindquist – Yes
Chair DeLeo - Yes
Owen Stoddard - Yes

MOTION
APPROVED

VOTE

(4-0)

Unanimous

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ITEM 5: Miscellaneous Appeal: Lena P. LaPointe Trust, owner of 14 Francis Street, MBL 205-6-3 in the DD-2 Zone to approve reduction in rear yard setback to 11' to allow abutter to purchase building. Applicant is seeking approval of a miscellaneous appeal of the minimum rear yard setback requirement. William Thompson from BH2M is the appellant.

The Public Hearing opened at 7:18 p.m.

William Thompson from BH2M Engineers, here representing Lena Lapointe Trust , introduced himself to the Board Members. They have submitted a request for an appeal for a rear setback.

What the Lena Lapointe Trust would like to do is to convey this to Armand Lapointe Trust. Based on a residential rear setback of 20' in this zone, they would need an appeal. They have 22' between the buildings, and to create a new lot line, to divide and convey that property, they would end up with an 11' setback. There is no new change of use or expansion of use of any kind.

This meets the minimum size lot requirements.

Jim Butler informed the Board that currently how it sits today it is residential. If they were to build on it, they would need the 20' setback, but once they add the 2-unit (which used to be a 4-unit rental property) to it, it really turns into a mixed use, so it triggers the zero setbacks and reduces it from 2500 to 1000. Mr. Butler did recommend that the Lena Lapoint Trust may want to have a conversation with Jeffrey Hinderliter, Town Planner regarding if any parking had changed. Mr. Butler and Mr. Hinderliter both agreed that it didn't need any ZBA approval if we deemed it was mixed use.

Mr. Butler believes that it has been vacant for a couple of years but in the future they are looking to make this property useable again and put some money into it and start renting it out.

Public Hearing closed at 7:25 p.m.

Owen Stoddard made a motion and to table item #5 with no action on this Miscellaneous Appeal for Lena Lapointe Trust, owner of 14 Francis Street, MBL 205-6-3 in the DD-2 Zone to approve the reduction in the rear yard setback to 11' to allow the abutter to purchase building. Seconded by Mark Lindquist.

Code Officer James Butler called for the vote:

Ron Regis – No
Mark Lindquist – Yes
Chair DeLeo - Yes
Owen Stoddard - Yes

ITEM 5
MISC.
APPEALS

MOTION
MISC.
APPEAL

VOTE
TABLE
WITH NO
ACTION

(3-1-0)

