

**TOWN OF OLD ORCHARD BEACH  
ZONING BOARD OF APPEALS MEETING MINUTES  
SEPTEMBER 24, 2012**

<p><b>Call to Order at <u>7:02 pm</u></b></p>	<p>Call to Order</p>
<p><b>Pledge to the Flag</b></p>	
<p><b>Roll Call:</b> Present: Mark Lindquist, Owen Stoddard, Chairman Ray DeLeo, Tianna Higgins, and Ron Regis.  Staff: James Butler, Code Enforcement Officer, Valdine Helstrom, ZBA Clerk</p>	<p><b>PUBLIC HEARING</b></p>
<p><i>Chair DeLeo read the criteria for the Public Hearing.</i></p> <p><b><u>ITEM 1: Acceptance of the minutes of the August 27, 2012 meeting.</u></b> Approval of the minutes will be at the end of the meeting.</p>	<p><b><u>ITEM 1</u></b></p>
<p><b><u>ITEM 2: Miscellaneous Appeal:</u></b> Violet &amp; Stanley Day, owners of 13 Lawn Avenue, MBL 309-3-6 in the R-2 Zone to reduce the side yard setback requirement allowing appellant to build an addition of a bedroom. Owner is the appellant.</p> <p>Mr. Darren Day from 20 Coolidge Avenue, Saco introduced himself to the Board. He is here representing Stanley and Violet Day.</p> <p>The main reason to build the addition is so that they can have a bedroom on the first floor so that his parents can be closer to the bathroom since they are getting a little older and have some health issues.</p> <p>There being no one for or against this item, the meeting closed to the public at 7:07 p.m.</p> <p><i>Chair DeLeo read the four criteria for hardship:</i></p> <p style="padding-left: 40px;"><b>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.</b></p> <p style="padding-left: 40px;">The house was built in the 1950's, so I assume that is prior to the date of adoption of this provision.</p> <p>Ron Regis – Agree Mark Lindquist – Agree Chair DeLeo - Agree Tianna Higgins - Agree Owen Stoddard - Agree</p> <p style="padding-left: 40px;"><b>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.</b></p>	<p><b><u>ITEM 2</u></b></p>

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The property can still be used and surveyed. Due to the fact that the area that will be taken away is not the most used part of the yard. The property would be put to better use being that the occupants would not have to use the stairs to go the bedroom. Being that the occupants are getting older and have an impairment, it would be much safer as well.

Ron Regis – Agree  
Mark Lindquist – Agree  
Chair DeLeo - Agree  
Tianna Higgins - 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.**

The position of the structure is located on the plot to where the enlargement will have to be in non-conformance. The location of the enlargement is the only area on the structure that will work.

Ron Regis – Agree  
Mark Lindquist – Agree  
Chair DeLeo - Agree  
Tianna Higgins - 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.**

The impacts of the enlargement would not impact the neighborhood due to the fact of the enlargement is set back further than the original structure. Also the enlargement would not hinder any views of the neighbors.

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

Owen Stoddard made a motion to approve the miscellaneous Appeal for Violet and Stanley Day, 13 Lawn Avenue, MBL 309-3-6 in the R-2 Zone to reduce the side yard setback requirement allowing the appellant to build an addition of a bedroom. Seconded by Tianna Higgins.

**MOTION**

*Code Officer James Butler called for the vote:*

**VOTE**  
**(5-0)**

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

**MISC.**  
**APPEAL**  
**APPROVED**

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**ITEM 3: Variance:** The All American Family, LLC, owner of 13 Willow Avenue, MBL 204-3-43 in the R-1 Zone to adjust the side yard setback to create a separate lot. Owner is the appellant.

**ITEM 3**

Alex Anastasoff , part owner of The All American Family, LLC introduced himself to the Board. Mr. Anastasoff stated that they bought the property last year. There are 2 lots there and because of the placement of the house on the lot, it is keeping them from splitting the 2<sup>nd</sup> lot off to make full use of it.

All lots were bought by the prior owner and combined them. The first existing house appears that it was probably built on that lot before the ordinance was put into effect, so there is only about 2’ of setback on that lot because of poor house placement. Some of the other houses on that street are close to the lot lines so it doesn’t seem like it is out of character for the neighborhood. The house was built back in the 1960’s. All these lots were purchased separately by one owner and are combined now.

Mr. Anastasoff is looking for a side line variance. It cannot yield a reasonable return on that lot because it is unbuildable and completely useless at this point without the variance. They would just need the variance on the lot where the existing house is.

The prior owner bought 2 lots, Mr. Anastasoff only bought one lot.

Mr. Regis mentioned that if they removed the garage that would give them the other lot. Mr. Anastasoff stated that they probably wouldn’t move the garage, they would probably move the property line and push into the area that they are trying to stay out of.

Ray DeLeo asked when the lot was combined.  
Mr. Butler stated that he thinks that it was combined in 1973.

There being no one for or against this item, the meeting closed to the public at 7:22 p.m.

***Chair DeLeo read the four criteria for hardship:***

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

We purchased two lots on Willow Avenue. The first has an existing house, the second lot, otherwise buildable, cannot yield a reasonable return due to the location of the house. The side line variance will allow legal use, and a reasonable return on this lot.

Ron Regis – Disagree  
Mark Lindquist – Disagree  
Chair DeLeo - Disagree  
Tianna Higgins - Disagree  
Owen Stoddard - 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.**

This is unique in this property due to poor placement of an existing structure. Some other homes are also lacking the setback requirements. All of which may predate the ordinance.

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

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Tianna Higgins – Agree  
Owen Stoddard – Agree

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

Some other homes are also close to the line in this neighborhood. This will not alter the essential character of this location.

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

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

The house was not built by myself or the prior owner. Due to the other houses that do not meet setback requirements in the area, it appears that the construction in this neighborhood pre-dates the current zoning.

Ron Regis – Agree  
Mark Lindquist – Agree  
Chair DeLeo - Agree  
Tianna Higgins – Disagree  
Owen Stoddard – Agree

Tianna Higgins made a motion to deny the Variance for 13 Willow Avenue for the adjustment of the side yard setback to create a separate lot due to “not” meeting all criteria. Seconded by Mr. Regis.

**MOTION**

***Code Officer James Butler called for the vote:***

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

**VOTE**

**(4-1)**

**VARIANCE**  
**DENIED**

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**ITEM 4: Variance:** Trust of Ralph & Margaret Keene, owner of 11 Ancona Avenue, MBL 321-3-6 in the R-3 Zone to adjust rear yard setback requirements to divide 2 lots. Owner is the appellant.

David Keene, Trustee of the Ralph and Margaret Keene Estate introduced himself to the Board Members.

They are in the process of settling the estate. This involved 2 adjacent properties. Each improved with a single family house.

The reason for the request for the change to the lot line is because of the parking situation. 14 Colby Avenue has a driveway that services that house, but that driveway is actually on the 11 Ancona Avenue lot. There is no parking on Colby Avenue directly in front of the house.

Both of these lots are non-conforming lots but this requested lot line change would somewhat improve the conformity of the lots.

Without the lot line change, there would be no parking.

There will be no adverse effect on the community.

Trying to expand the small lot and moving it back from Colby Avenue.

These are 2 separate lots with 2 separate deeds.

The new lot line would be back 20' feet from the 11 Ancona Avenue House.

There being no one for or against this item, the meeting closed to the public at 7:45 p.m.

*Chair DeLeo read the four criteria for hardship:*

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

11 Ancona Avenue (321-3-6) includes the driveway and side yard used by the house at lot 321-3-3 or 14 Colby Avenue. There is no parking on the north side of Colby Avenue so the current lot configuration separates 14 Colby Avenue from its driveway or any parking for the 14 Colby property.

Ron Regis – Agree

Mark Lindquist – Agree

Chair DeLeo - Agree

Tianna Higgins – Agree

Owen Stoddard – 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.**

Both 11 Ancona Ave. and 14 Colby Ave. lots abut on Colby Ave. The requested variance would improve both lots by making each one a corner lot and by extending the current non-conforming setback of 6 feet at 14 Colby to 29 feet, or 85 feet of total frontage.

Ron Regis – Agree

Mark Lindquist – Agree

Chair DeLeo - Agree

Tianna Higgins – Agree

Owen Stoddard – Agree

**ITEM 4**



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**ITEM 5: Miscellaneous Appeal:** Jay & Tracy Kelley, owner of 13 Wintergreen Street, MBL 205-8-2 in the R-2 Zone to reduce front yard setback permit expansion of existing deck to 8'x12'. Owner is the appellant.

**ITEM 5**

Mr. Butler informed the Board Members that there was a mistake on the Agenda. The property in question is 13 Wintergreen Street, not their other property at 51 Wild Dunes Way.

Tracy Kelley introduced herself to the Board Members and informed them that they bought the house in August and they are completely renovating it. They would like to change the existing step that was on the house and add a deck instead and the only place to add the deck is on the front of the house. Changing the steps from 7' and they want to add 1' to the deck to the street side. The house is currently 21' from the street and it would be in line with other homes in the area.

Jim Butler received an email today and read it to the Board Members:

I own 8 wintergreen, directly across from the person wanting to build the front deck. I have no problem with him building a quality deck and having closer to the street.

Mike Richard

There being no one for or against this item, the meeting closed to the public at 7:47 p.m.

*Chair DeLeo read the four criteria for hardship:*

**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. Lot was created 4/13/74.

Ron Regis – Agree

Mark Lindquist – Agree

Chair DeLeo - Agree

Tianna Higgins – 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.**

A deck added to the front of the house will match the other homes on the street, which already have decks and porches. A deck will also enhance the value and enjoyment of the home.

Ron Regis – Agree

Mark Lindquist – Agree

Chair DeLeo - Agree

Tianna Higgins – 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**



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ITEM 6

**ITEM 6: Miscellaneous Appeal (Clarification):** 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.

Mr. Nagle introduced himself to the Board. Mr. Nagle is seeking clarification to be clear enough with regards to the Variance language to bring to the Planning Board.

He stated that what he sought in the submittal was the creation of 2 lots from the existing lot.

He needs not just frontage reduction on 1 of those proposed lots that would go to the Planning Board, but the actual reduction in lot size.

This was not conveyed in the actual language of the appeal.

Mr. Nagle did say that he had gone to the registry of deeds and got recorded the Miscellaneous Appeal Certificate of Approval to approve the minimum lot requirement of 150' frontage pending Planning Board approval.

Code Officer James Butler informed the Board that since the last meeting he consulted with the town attorney to get a clarification on the ordinance. Because at the last meeting we had questions on whether the lot size should be. We had thought at the time the requirements were 40,000. The requirements are actually 80,000 without water and sewer. And he asked the town attorney what the process would be to get this approved. Coming to the ZBA before going to the Planning Board was the right thing to do. There was the question whether he could put 2 houses on one lot and the ordinance says that he cannot. Reduction of road frontage was all that we thought we had needed at the last meeting however, he would also need the reduction from 80,000 to roughly 45,000 – 46,000.

Mr. Butler read the paragraph “Amendment of Restrictions” to the Board Members which got lifted from covenant and replaced with “each lot shall be used for residential purposes only”. Everyone in that subdivision signed off on that and it was recorded at the registry of deeds.

Tianna Higgins stated that she doesn't agree that this should be just a clarification, she agrees that this proposal needs to be totally *re-done*.

Mr. Butler stated that all of the abutters were again notified of this clarification meeting.

Tianna Higgins made a motion for the Board Members to go into executive session to review the original paperwork, seconded by Mark Lindquist.

The ZBA Board commenced with the meeting at 8:30 p.m.

*All agreed that this proposal will start all over from the beginning.*

**ITEM 6: Miscellaneous Appeal :** 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.

Mr. Nagle informed the Board that he is here to request a Miscellaneous Appeal. Their lot is approximately 400' frontage and 92,170 sq. ft.

Basically what the Nagle's are seeking is to take that lot and divide it in such a way that it is equal with the other 3 lots. The other 3 lots have frontages of 160, 150 and 145 ft.

The Nagle's are asking for a frontage of 150' on one of those lots and the one that has a

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structure on it is approximately 233' frontage. Mr. Nagle is also asking the Board to consider a reduction from approximately 90,000 sq.ft. to 2 lots that would have 46,100 and leave 48,700.

The request is for the reduction of the required 200 ft. frontage on 1 lot to 150' leaving behind 233'.

Mr. Nagle spoke with Ron Boutet, the previous owner of Dunegrass and Mr. Boutet was willing to grant them a water/sewer connection across from Ross Road and at the time the Public Water Works Director wasn't ready to entertain that because he didn't want to have individual sewer lines running across the road.

Mr. Nagle informed the Board Members that he contacted Fricken Associates and they gave him a new septic system design for a 3 bedroom house on August 23, 2012.

Ms. Higgins asked Mr. Nagle if he had asked the new owners of Dunegrass to hook into the water/sewer.

Mr. Nagle informed Ms. Higgins that it is no longer a public system. It is a private system that belongs to the Birches and they do not have any desire to have them hook into their system and it would also be cost prohibited now. He added that there are no utilities on Ross Road.

Chad Morin from 86 Ross Road introduced himself to the Board.

Mr. Morin stated that the current ordinance is 200' of minimum road frontage. He stated that he had to abide by that ordinance when he purchased that lot. Mr. Morin stated that he split off (according to the town ordinance in place) 80,000 sq. ft. minimum with no city water or sewer.

He also mentioned that if you split up Mr. Nagle's lot in half, they will be creating 2 non-conforming lots:

- 1.) Both will be under the minimum lot size without water/sewer.
- 2.) Both will be under the minimum road frontage.

Mr. Morin told the Board that something else to consider is that they had put up cluster subdivision right by his house for Mr. Bob Laprestee and all of their storm/waste water goes into the Tarbox brook. It puts that brook to over capacity. So another house in that area may contribute to more flooding in that brook.

Mr. Nagle addressed his concerns with Mr. Morin and states that the Laprestee property had no effect on Mr. Morin's property. The aerial photos are clear.

Mr. Nagle's developed area is in access of 400' from Mr. Morin.

Water is not available to him across the street.

Mr. Nagle added that the Miscellaneous Appeal is for cases just like his. He can not meet the demands of the ordinance. That subdivision was created in 1979, zoning on Ross Road was changed after 1979 to promote the growth of Dunegrass.

Peter Brennan from 88 Ross Road introduced himself to the Board. He bought 3 years ago and researched all of the zoning laws and ordinances and that is why they built where they did. The town charter describes to preserve its low density and its rural character.

Mr. Brennan states that if we are going to have ordinances, we should abide by the rules.

The public hearing closed at 8:45 p.m.

***Chair DeLeo read the four criteria for hardship:***

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**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.**

The house was built approximately 1980 as were others in this neighborhood. All homes are built on approximately 1 acre lots without the now required 200' frontage and lot width. This is a 2.1 acre lot with 400' frontage.

Ron Regis – Abstained  
Mark Lindquist – Agree  
Chair DeLeo - Agree  
Tianna Higgins – 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.**

Most lots are approximately 1 acre with an average lot frontage and width of 150'. All have homes with private water and sewer.

Ron Regis – Abstained  
Mark Lindquist – Agree  
Chair DeLeo - Agree  
Tianna Higgins – Disagree  
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.**

Existing house was located at the extreme end of the lot in anticipation of creating a second lot or house in the future.

Ron Regis – Abstained  
Mark Lindquist – Agree  
Chair DeLeo - Agree  
Tianna Higgins – 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.**

Allowing the creation of a second lot would make our lots 1 acre +like our neighbors. It would also allow us approximately 200' frontage – more than our neighbors. Again all of our neighbors have private water and sewer on lots of 1acre with less than 200' frontage. Public water and sewer is not available.

Ron Regis – Abstained  
Mark Lindquist – Agree  
Chair DeLeo - Agree  
Tianna Higgins – Disagree

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<p>Owen Stoddard – Agree</p> <p>Owen Stoddard made a motion to approve a Miscellaneous Appeal for Jim and Terry Nagle, 90 Ross Road, MBL 105-4-12 in the RD Zone to permit construction of a new single family home for the approval of a Miscellaneous Appeal of the minimum lot size required without sewer or water and the reduction of lot size as indicated. Seconded by Mark Lindquist.</p> <p><i>Code Officer James Butler called for the vote:</i></p> <p>Ron Regis – Abstained          Mark Lindquist – Yes          Chair DeLeo - Yes          Tianna Higgins – No          Owen Stoddard – Yes</p>	<p style="text-align: center;"><b><u>MOTION</u></b></p> <p style="text-align: center;"><b><u>VOTE</u></b></p> <p style="text-align: center;"><b><u>(3-1-1)</u></b></p> <p style="text-align: center;"><b><u>MISC. APPEALS APPROVED</u></b></p>
<p>Chair DeLeo read the resignation letter from Philip Denison, ZBA Board Member.</p> <p><b><u>APPROVAL OF MINUTES:</u></b></p> <p>Tianna Higgins made a motion to approve the August 27, 2012 ZBA minutes, seconded by Owen Stoddard.</p>	<p style="text-align: center;"><b><u>MOTION</u></b></p> <p style="text-align: center;"><b><u>VOTE</u></b></p> <p style="text-align: center;"><b><u>5-0</u></b></p>
<p><b><u>ADJOURNMENT:</u></b></p> <p><i>The meeting adjourned at 9:00 p.m.</i></p>	

I, Valdine Helstrom, Clerk to the Zoning Board of Appeals of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of twelve (12) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting held on September 24, 2012.

*Valdine L. Helstrom*