

**CITY OF WESTBROOK
ZONING BOARD OF APPEALS
July 9, 2019
MINUTES**

Present: Aaron Burns (Chair), Michael Lemay, Nancy Milton Heath, David Morse (Alternate); Philip Brown (Vice-Chair), Sherri Quint, Karen Axelsen (Alternate)

Absent:

Staff: Brian Stetson

Administrative Agenda

1. Approval of June 11, 2019 minutes

Aaron Burns are there any changes to the minutes as submitted?

Hearing no changes to the minutes, any objections to approve the minutes as submitted?

Sheri Quint so moved

Aaron Burns any objection?

No objections

Aaron Burns minutes are approved

New Business

- 2. Variance Request – Anne Lunt, Lincoln Street, is requesting a four-foot front yard variance to allow the building of a twenty-four (24’) foot by twenty (20’) foot, ten (10’) by twelve (12’) foot “L” shaped single-family home. Tax Map: 038, Lot 087B, Zone: Residential Growth Area 1.**

MEMO

DATE: May 17, 2019

TO: Zoning Board of Appeals

FROM: David Finocchietti, City Code Enforcement Officer

Cc: File

RE: June 11, 2019 Zoning Board Meeting

Items in this memo:

3. Variance Request – Anne Lunt

- 4. Agenda Item #1 – Variance Request – Anne Lunt**, is requesting a four (4') foot front yard variance to allow the building of a single-family home on an irregular shaped lot located at Tax Map: 038, Lot: 87B Zone: Residential Growth Area 1.

Project Description:

This is a variance request from Anne Lunt – To build a single-family home needing a four (4') foot front yard variance.

For the Board's reference:

Our Land Use Ordinances defines **Practical Difficulty Variance**.

*The Zoning Board of Appeals may grant a variance from the dimensional standards of the zoning ordinance when strict application of the ordinance to the petitioner and the petitioner's property would cause a practical difficulty **and when the following conditions exist:***

- A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
- B. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
- C. The practical difficulty is not the result of action taken by the petitioner or a prior owner;
- D. No other feasible alternative to a variance is available to the petitioner;
- E. The granting of a variance will not unreasonably adversely affect the natural environment; and
- F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

Staff Comments:

The applicant's request is to build a single-family home. Staff is providing comment on each of the tests of the ordinance for the ZBA's consideration in this matter.

- A. The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;
 - a. Staff finds the subject lot to be triangular.
- B. The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;
 - a. Staff sees no issues on this point.
- C. The practical difficulty is not the result of action taken *by the petitioner* or a prior owner;
 - a. Staff finds this test is met for the following reason:
 - i. The lot was created as part of the Mitchell Farm subdivision.
- D. No other feasible alternative to a variance is available to the petitioner;
 - a. The building could be made smaller or layout changed to fall within the setbacks.

- E. The granting of a variance will not unreasonably adversely affect the natural environment; and
 - a. Staff has no issues on this point.
- F. The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.
 - a. Staff sees no issues on this point.

In closing, Staff does not support this variance request to build a single-family home. To date there have been no abutter concerns received by the Code Department from the neighborhood.

Anne Lunt I was originally going to build that L shaped building, now I want to build a rectangular building.

Aaron Burns I read that on the application. You are still seeking a four-foot variance?

Anne Lunt yes

Aaron Burns I do not think the shape of the building really matters.

Anne Lunt explained the setbacks at the angle. It decreases as it goes down.

Aaron Burns you are seeking a triangular shaped variance on your triangular shaped lot.

Anne Lunt exactly, thank you. This is my first time building a house and I have stumbled a few times. I had looked initially at the L shaped house and had a design made but I realized when I went and talked to Contractors that it would cost considerably more money just because of that shape. I decided I would rather have a regular shape. There are more reasons than that, it will be more energy efficient. When I decided that and because I went with post and beam and the post takes up extra space, shortening the horizontal length of the house, so if it is a rectangle it would have to be almost 18 feet by 24 feet. That is why I am asking for a variance so I can have it be 22 feet instead of 18 feet. Which the 18 feet by 24 feet makes it more difficult to adhere to the internal space. The City says you have to have a space 180 square feet and you have to have a bedroom that is at least 72 square feet, so when you add that all together, it does not leave much room for the rest of the house. So that is why I added a few more feet.

Aaron Burns I am looking at the shape of the proposed house it appears to be an L, is that no longer the design?

Anne Lunt that is no longer the design. I just want it to be a rectangle.

Aaron Burns so are you going to cut off this jog?

Anne Lunt yes I am removing that.

Aaron Burns so you are not seeking an additional variance, you are just cutting off the jog and making that flush.

Anne Lunt right, that flush area does make another triangle and comes a little into the setback.

Aaron Burns I am looking at this plan and it shouldn't, or it does not change this right-angle area that is going into the set back.

Anne Lunt that stays the same.

Mike Lemay there is a corrected plan on page 2 of the plans.

Aaron Burns what is the square footage of the house that you are looking to build?

Anne Lunt it is like 22 x 28

Aaron Burns there are two floors, right?

Anne Lunt the second floor is a loft.

Aaron Burns so is the total square footage going to be 1,000 or less?

Anne Lunt about 1,000

Aaron Burns how many bedrooms?

Anne Lunt one on the first floor. The second floor is just loft space.

Aaron Burns is the second floor like storage only?

Anne Lunt pretty much storage with a craft area.

Mike Lemay in the plans it called for a bathroom on the second floor.

Anne Lunt that is what the newest designer came up with. I am not sure if I want a bathroom there or not. It could be a 1/2 bath, with a toilet and a sink. I know he designed it as a full bathroom, but I do not want that.

Aaron Burns even though you are not using the second floor as a bedroom, would it be considered as a 2-bedroom, two bath home?

Anne Lunt if someone else came along, they would be able to do that, yes.

Aaron Burns will you have a basement?

Anne Lunt no it is on a slab.

Mike Lemay does this effect where the driveway can go?

Brian Stetson I am not sure if that was part of the packet.

Mike Lemay there is nothing on this plan that shows where a driveway will be.

Brian Stetson that is true and that would be through an application with the City Engineer, Eric Dudley for site distances. I do not believe this part of the project has come before him as to

where the driveway would go. It is in a preapproved subdivision, so it might be on the subdivision plan prior to this. I do not have that information before me at this time.

Mike Lemay so this is a pre-approved subdivision including this lot.

Brian Stetson this is an existing lot of record in the pre-approved subdivision plan from Mitchell Farm Subdivision.

Aaron Burns so what other alternatives for designs have you explored before seeking a variance?

Anne Lunt looked at the L shape to maximize the amount of space I could have, within the lot. But as I said it was a lot more expensive I would have imagined without really knowing much about construction.

Aaron Burns what was the difference?

Anne Lunt here are the quotes I got for that house; \$278,000

Aaron Burns for construction

Anne Lunt yes, then \$191,000. That are the quotes I got.

Aaron Burns and what is the difference between that and the conventional shape house?

Anne Lunt what I am looking at now ... I actually met with the person doing the slab today, so I do not have a quote on that, but I did have a quote on the L-shaped house, and it was \$20,000 so I am figuring about that same amount. The house I am looking at is not a modular home it is pre... it is called bungalow in a box so it is made before they put it on the slab and that is like \$62,000 with some other work, but will come in a lot less than \$191,000 or \$278,000.

Aaron Burns so were any of the L Shaped designs that you were looking at fit within the building envelope, without a variance?

Anne Lunt yes

Aaron Burns so the difference is between the variance and the real money difference north of \$100,000, is that fair to say?

Anne Lunt yes, very significant.

Aaron Burns have you explored seeking a rear yard variance rather than a front yard setback variance?

Anne Lunt I did not. I think it would be more because both the back yard and front yard are 15' feet. This side near Osaka is 10' feet. I do not know how the neighbors would feel about getting closer to their property line. They do not have a lot of property as it is there. The way it is now is it is the triangular shape variance. If I went the other way it would be the entire side, so it would actually be more footage.

Do you think there would be an advantage to doing that?

Aaron Burns I am just asking.

Anne Lunt I did not consider that.

Aaron Burns any questions from the members of the Board?

Phil Brown so the diagram you gave to us shows the triangular lot and indicates a setback of 15' feet on one side and 10' feet on another and 15' feet in the front. Has there been some discussion about the setbacks and what the requirement is?

Anne Lunt I was told by Rick Gouzie that those were the correct setbacks.

Phil Brown I think that needs further discussion.

Anne Lunt Dick Eaton was the surveyor who did the setbacks.

Aaron Burns I am not sure that this is a corner lot as it does not have frontage on two streets. It has only frontage on Lincoln Street.

Phil Brown I think a pertinent question is given the odd shape of the lot, clearly we know what the front setback looks like, the other two I think you could argue as to whether they both are rear yard variances. If that are side yard variance why are they different?

Aaron Burns sounds like a question for staff.

Brian Stetson showed the lot on the overhead screen and explained the setbacks on each side.

Phil Brown so I still have the question, if you are standing on Lincoln Street, looking at it why is the left hand setback 15' feet which must lead to a side yard assumption and right hand setback is indicated to be 10 which is the rear yard.

Brian Stetson when it comes to a triangular lot you have to choose the front, a side and choose a rear. With a triangular lot there is no fourth side. Depending on the angle of the home, the opposite could be done where this could be the 10' foot setback as the side and this could be the 15' foot setback as the rear but you have to establish those three when figuring the setbacks for the proposed structure.

Phil Brown based upon what?

Brian Stetson based upon the layout of the home and as this is a lot of record in Residential Growth Area 1, it is allowed a side setback of 10' feet.

Karen Axelsen so would it be as simple as changing that 15' foot setback to 10' feet and then just shifting back? Then you would not need the variance in the front. Assuming that is about five feet.

Mike Lemay I think you would have the same issue with the geometry of it.

Aaron Burns it would just create a different variance request. One of these lot lines has to be rear and one needs to be the side. You pick your poison if you move it. You are shifting the problem elsewhere.

Philip Brown I still question that. With a rectangular lot we have front setbacks and we know what that means, we have side setbacks and we know what that means and a rear setback which is opposite the front. In this case we have a triangular lot, so we know what the front setback is. The other two legs of the triangle could just as well be rear yards as side yards. I do not find anything in the definition that clarifies that.

Aaron Burns I think the easy answer to that is no one has files an administrative appeal regarding the interpretation of that issue being asked to decide whether to grant a variance or not. So, it is not before us at this point.
Any other questions to the applicant or staff?

Nancy Milton-Heath have you had any feed-back from the neighbors?

Anne Lunt no, I spoke to one neighbor about the variance and they had no problem and the other neighbor I tried to get in touch with and they did not get back me. I do not live in the area, so it is not easy to contact them. I do not know their telephone number.

Nancy Milton-Heath they have all been given notice.

Anne Lunt yes, they have all been given notice both by the City of Westbrook and me.

Aaron Burns I understand the administration is opposed to the application?

Brian Stetson the objection from the Code Office is technically the building could be made smaller or the layout could be changed to fall within the setbacks. That is the only hang-up I have to issue this permit.

Aaron Burns are you receiving a lot of application for houses smaller than this?

Brian Stetson not in this town, in other towns I have.

Aaron Burns this seems fairly modest.

Brian Stetson it is a very modest home based on the size. Once you get to the 2 x 6 framing it leaves a very small interior layout.

Aaron Burns she certainly does not appear to be building a mansion here.

Brian Stetson absolutely not, it is a modest house. It looks to be the best use of the space for what she can get but she does have the issue with the four feet in the front.

Aaron Burns I am not aware of the bungalow in a box, do they come in standard sizes?

Anne Lunt yes

Aaron Burns is this the smallest size bungalow you can buy?

Anne Lunt I think it could be smaller, I think there is a smaller size.

Aaron Burns what would that leave you for living space?

Anne Lunt it would feel very cramped to conform to the internal space, open space and bedroom size.

Aaron Burns does the Code Office have any other problems other than what is stated in the memo?

Brian Stetson Staff have no issues with the other criteria since the lot is triangular and it does present a unique issue to the applicant besides the front setback of four feet. From what is proposed we have no issue processing a building permit as presented with the setback variance being granted.

Aaron Burns any other questions from the Board?

Philip Brown perhaps someone could refresh my memory about this area, was this part of the Paper Street settlement some years ago?

Linda Gain yes it is, Mitchell Farm

Philip Brown with that settlement, some lots of record got resolved and were there any conditions attached to those lots for future use?

Linda Gain are you talking about the lots of record that were not relinquished to the Cite? There was a tradeoff of certain parcels.

Philip Brown let me ask it a different way. The settlement included the triangular lot we are talking about. With that history, it is a buildable lot.

Linda Gain correct, as researched by Richard Gouzie.

Philip Brown were there any other conditions attached to the use?

Linda Gain to that lot?

Philip Brown yes

Linda Gain not to my knowledge.

Aaron Burns at the risk of opening a can of worms, I have been on this Board for almost ten years now and I never heard of this settlement.

Linda Gain Mitchell Farm was the extension of Kennard Street and Osaka Street.

Philip Brown I thought there was some discussion about applying the setbacks.

Linda Gain that is when they changed the setbacks to lots of record to 15 front and rear and 10 on the side; as it was at one time (if I recall it correctly) 10 feet all the way around and it was recommended to change the setbacks and the Council approved the changes of the setbacks to 15 feet front and rear and 10 feet on the side.

Philip Brown so weren't the setbacks grandfathered as well?

Linda Gain that was part of the negotiation between the City and the developer. I do not have the details on that. I do know that the setbacks were changed for lots of record when this subdivision was proposed to be built.

Aaron Burns since we do not have any of those documents in evidence, I think the easiest way to deal with this is to consider the request as she is making it. Then should it turn out later that the setbacks are really ten feet around, under some grandfathering theory, which can be presented to the Code Officer later, then an Administrative Appeal could be filed if there is a disagreement on that.

Aaron Burns I know how I will vote, but I need to see what the rest of the Board will do.

Just to complete the package, we are more than 200 feet from the river for Shoreland Zoning?

Brian Stetson showed the Shoreland Zone area on the overhead.
It is well over 700 feet away from the water.

Aaron Burns questions from the Board? Any comments for the Public?

Public Comment Opened

No comments

Public Comment closed

Aaron Burns we are going to work-shop through the requirements.

The Findings of Fact

Anne Lunt, Lincoln Street Tax Map 038, Lot 087B, is requesting a four-foot front yard variance to allow a slightly larger footprint in the building envelope to build a house on an irregular triangular shaped lot seeking a practical difficulty variance.

The strict application of the ordinance precludes the use in the zoning district which the property is located.

The applicant has testified in evidence that the house she intends to build which is 22' x 24' feet would not exceed the building permit that she has available to here on this property. That is a use that would otherwise be allowed in the zoning district.

Board Affirmed

The strict application of the ordinance to the property results in significant economic injury to the applicant:

The applicant is closing into retirement age and wants to build a modest affordable house. Alternatives to fit within the irregular shaped variance are non standard construction a d would cost a significant amount more, north of \$100,000 dollars more than the house that is currently being proposed.

Board affirmed

The need for a variance is due to the unique circumstances of the property and not to the general condition of the neighborhood;

The need for the variance is due to the triangular shape lot which is a rather unique circumstance.

Board affirmed

The granting of a variance will not produce an undesirable change in the character of the neighborhood and will not unreasonably detrimentally affect the use or market value of abutting properties;

That does not seem to be indicated and there are no objections from the abutters for the variance request and we have one note from an abutter supporting the request.

Board affirmed

No other reasonable alternative to a variance is available to the petitioner.

The alternatives being discussed is significantly more expensive than is what is being proposed and downsizing the house is not really compatible with the new construction going on in Westbrook at this time and would not create a desirable living situation.

Aaron Burns does anyone have any alternative views to that?

Michael Lemay I actually have an issue with the whole application itself. I know we had a problem with something similar where the City Attorney came back and said that we had agreed that someone could not use a lot for her grand daughter that was different than proposed in the RGA 1 Zone and they appealed it. I have a problem allowing a front yard variance of four feet, now a bunch of builders will come in and want the same consideration.

I have a problem with the whole thing being that is the house is going to be eleven feet from the road. You can not park a car in eleven feet, which is why I asked about the driveway.

Aaron Burns that is true and I think the way the road is situated and the driveway permit is not before us, but look at map and it looks like there is space between the boundary line. The right of way is much larger than Lincoln Street. You can see a full pickup truck parked within the right of way. It is not on the property line on this picture. It seems that is quite a bit of green space that is otherwise not being used.

I am not aware of any plans to expand Lincoln Street, it will not be a collector road I do not think.

Mike Lemay but if Westbrook decides to go in and build a sidewalk we still have no driveway.

Aaron Burns she would have a curb cut.

The application you are talking about was over by Blue Spruce and that was a bit of a... there was a lot of intertwined issues that we were not made aware of at the time which actually started the Code Office not telling us what they thought about application and so from that point forward they started advising us of their opinion on it. Then we did reconsider hearing that, and we resolved the issue, but I do not know that the same situation is here.

I do not know how you can get a reasonably sized house on this lot without giving a small variance.

Mike Lemay it was approved on the original plans to have a house there d=so there must show where the house and the driveway was going.

Aaron Burns we heard earlier that this is an old lot of record and consibly when this was made the setbacks were 10' feet all the way around.

I do not know that to be true, but it sounds right for an old subdivision lot. That is one of the reasons you have variances.

Do you want to vote separatley on number 6

Mike Lemay no that is fine.

Aaron Burns it is important that we have clear resons. I am going to vote yes on all the criteria. If there is anyone that is goin to vote other than yes we will vote separatley on the specific criteria.

Sheri Quint I have a question on the measurements 22 x 24 but the measurements on these elevations show a diffrent amount, 25.2 and 23.2

Aaron Burns is that the overhang? This is going to be fronting Lincoln, correct?

Anne Lunt it is almost at an angle.

Aaron Burns is that four-foot jog going to be taken up by the roof line?

Anne Lunt it is the non overhang side of the house. The front of the house is really going to be facing that property. The 24' foot side faces that.

Aaron Burns the issue becomes the way it is being sited, if you have a 2' foot overhang for the roof line even not, even though that is not connected to the ground belo it, you still need a variance for use of that air space. Are you comfortable that all you need is 4' feet?

Anne Lunt yes

Aaron Burns does that satisfy you question?

Sherri Qunit yes

Karen Axelsen is the house a Cape or a bungalow?

Anne Lunt I do not know the diffrence between a cape and a bungalow, really.

Karen Axelsen a bungalow wuld not have eaves and this shows eaves so I was not sure which type it is.

Anne Lunt the house I had before was called a bungalow and it it what I am thinking this will be so, the roofline does come beyond the wall, on the front and the back but not on the sides.

Aaron Burns any other questions?

The property is not located in whole or in part within shoreland areas as described in Title 38, section 435.

We received evidence that it is more than 700 feet from the river and not in the shoreland zone.
Board affirmed

Aaron Burns those are the items we workshopped, and it seems that it is unanimous except for item six (6), which is the feasible alternative. I typically would take a vote on individual findings, or we can just do one through eight, except for six and do six separately. How does the Board want to proceed?

Philip Brown it seems to me that one of the issues is certainly the shape of the lot, but related to that also the face that the four foot variance being sought as the applicant has pointed out, is just corner of building which is different in my mind from a four foot variance that goes the whole length of the building.

My question is, if that is a valid observation where do we put it in the motion?

Aaron Burns I think it would be pursuant to the sketch she has provided the Board.

Philip Brown I would like to see it clearly identified, because I think it sends a different message to other developers who may want a four-foot variance.

Aaron Burns what do you propose?

Philip Brown I think it could be included under number six.

Aaron Burns I think we can describe the variance as a triangle which is at its furthest point four feet from the lot line.

Philip Brown I think it is important to place that there.

Mike Lemay I agree with Phil.

Sherri Quint I have another question on the plans. On the first page it says 22 x 24 Cape with six-foot eave wall and 30-foot rafter the name on it is Fisher and then on page three it says 22 x 24 Cape with five-foot eave wall, and it says Lunt

Anne Lunt I did not notice that, but the builder is building one similar to mine so if that accidentally got sent. The one with my name on it is the correct one.

Aaron Burns called variance for a triangular area four feet into the dimension as depicted

Philip Brown application estimate of the square foot – useful reference

Aaron Burns so we can call it a triangular variance with the furthest point going 4 ft. into the setback diminishing thereafter as depicted on the boundary survey which we can attach as exhibit one.

So, the variance approval would be to grant the for a triangular variance as up to four feet within the front yard setback as depicted on the R.W. Eaton Associates survey dated 07/17/2017 and adopt the Findings of Fact as workshopped earlier.

Aaron Burns is there anyone that will vote in opposition of that variance? I need to know that so we can vote on the items separately.

No opposition

Aaron Burns I would entertain a motion to approve the variance for Anne Lunt on property located on Lincoln Street based on the Findings and Fact and Conclusions of Law as stated on the record for the property depicted on Tax Map 038. Lot 087B, Zone RGA 1 as depicted on the 07/17/2017 R. W. Eaton Associates survey plan showing with building envelope and the proposed building thereon. Then we can call it exhibit A to that.

Aaron Burns I will restate it, I would entertain a motion from the Board motion for approving the following variance application. The Findings and Fact and Conclusions of Law as follows the name of the applicant is Anne Lunt, her mail address is 844 State Street #51, Bangor Maine. The owner of the property is Anne Lunt. The address of the property is Lincoln Street, Westbrook Maine as depicted on Tax Map 038. Lot 087B, Zone RGA 1. The nature of the variance to allow a four-foot triangular front yard setback variance as to build a small house on an irregular triangular shaped lot. The variance area is depicted on exhibit one, the 07/17/2017 R. W. Eaton Associates Survey submitted to the Board depicting a proposed dwelling with a four-foot front yard setback.

The Board has unanimously found all 8 criteria for granting the variance have been satisfied based on the discussion on the record.

Based on all agreed the Board grants the variance to Anne Lunt for the triangular four-foot front yard setback variance to build the house as set forth in her application.

Does anyone wish to vote on them separately?

No comments

Aaron Burns hearing none, I would entertain a motion to grant the variance as just described.

Philip Brown so moved

2nd Nancy Milton-Heath

The Board vote is unanimous in favor 5-0

Aaron Burns explained the Variance Certificate must be recorded within 90 Days at the Cumberland County Registry of Deeds. If the Variance Certificate is not recorded within 90 Days, you will lose the variance and becomes void.

Seeing no other items this meeting is adjourned.

Adjourn

THANK YOU, respectfully submitted by Linda Gain lgain@westbrook.me.us

