

**Arundel Zoning Board of Appeals**  
**Minutes**  
**April 3, 2019**

**Members Present:** Paul Chansky, Chairman; Raffaella Reimer, Vice Chairman; John Bell and Joanne Grace

**Members Absent:** Steve Dalzell and David Berg

**Also Present:** Laura Claudius, Applicant; and Wendy Lank, Recording Secretary

1. Paul Chansky opened the meeting at 7:00 P.M. in the Library of the Mildred L. Day School.
2. **Single-Family Dwelling Setback Variance Application – Laura & Jonathan Claudius, Owners – 773 Limerick Road; Map 17, Lot 14A; Zoned R-1**

Chansky went through all the documents that were submitted for review by the applicant. Those items were the application, list of abutters, Warranty Deed, Mortgage Survey, property card from the Town Hall and the building permit for the garage that does not meet the required setback. Chansky asked the Applicant to go through her submission with the Board

Laura Claudius stated that she and her husband have their home up for sale. The closing was supposed to have been on March 25<sup>th</sup> but found out a week before that the mortgage survey showed that they did not meet setbacks by 9 feet.

Raffaella Reimer asked if Claudius had been aware of this prior to putting the house on the market. Claudius explained that she was shocked when she heard of the discrepancy right before the closing. Claudius stated that they were not aware of the violation until after the survey was completed. Claudius also stated that she and her husband purchased the property 4 years prior and it was not picked up on at that time. Claudius stated that the buyers cannot purchase the property if a variance is not granted.

Chansky asked Claudius what her primary residence was. Claudius stated that until the proposed sale of the house it was 773 Limerick Road but now she lives in Kennebunk. Claudius stated that because the buyers had intended to sell their house and purchase hers simultaneously, they had become homeless. Claudius offered to let the potential buyers move into her house and she moved to Kennebunk.

Joanne Grace asked if there was an issue with the loan going through. Claudius stated that she wasn't sure if it was the Title Company or the Lender but one of them raised the issue while the purchasers were trying to buy the home. As a result of the survey the lender declined to proceed with the purchase until the issue with the setback was resolved.

John Bell stated that he took a ride by the residence and could not see where it is out of character with the other surrounding properties.

Chansky asked Claudius if she had anything else to add and she did not.

Chansky asked if there were any more questions or comments. There being none, he asked if the Board was ready to review each of the five criteria required for a variance. The Board stated that they were ready to proceed. Chansky stated that he felt there were three other requirements that needed to be met. The first requirement he felt needed to be met was that the petitioner's primary year-round residence be Arundel. Chansky stated that Claudius already told the Board she is now living in Kennebunk. After some discussion it was determined Arundel was the petitioner's primary year-round residence until about two weeks ago when they let the buyers move in so that they would not become homeless. The Board also determined that the requested set-back would not exceed 20% of the required set-back and that this will not cause the property to exceed the maximum lot coverage for this district.

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

Chansky stated that the variance is due to the unique circumstances of the property and not to the general condition in the neighborhood.

The Board voted 4-0 to pass.

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

Chansky stated that there were no neighbors present at the public hearing to voice any concerns and he believes by granting this variance that it would not alter the essential character of the locality.

The Board voted 4-0 to pass.

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

Chansky stated that this requirement does not give the Board sufficient flexibility, and strict interpretation would produce an unfair result.

The Board voted 4-0 to pass.

**The granting of the variance will not substantially reduce or impair the use of abutting property.**

Chansky stated that because the garage has been there for more than fifteen years, he feels that the granting of the variance would not reduce or impair the use of abutting property.

The Board voted 4-0 to pass

**That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.**

Chansky stated that the granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

The Board voted 4-0 to pass

**FINDINGS OF FACT**

1. The owner of the property is: Laura & Jonathan Claudius
2. The applicants are: Laura & Jonathan Claudius
3. Address of Property for which a variance is sought is: 773 Limerick Road
4. The Assessors tax map and lot number of subject property is: Map 17, Lot 14A
5. The land use district in which subject property is located is: R-1
6. The applicant requests a single-family dwelling set-back variance.
7. The completed Application for Variance was filed on March 20, 2019.
8. The Land Use Restriction(s) sought to be varied is the 50' front yard set-back.
9. A public meeting was held on April 3, 2019.
10. The Applicants have owned this home since June 18, 2015.
11. The Applicants found out that the garage did not meet the front yard set-back after they heard from their realtor saying the mortgage survey that was conducted showed the garage was only set back 41' instead of the 50' that is required for that zoning district.
12. The Applicants moved out and let the prospective new buyers move in because they closed on their house and could not close on this one because of the violation.
13. The garage in question was built in 2003 prior to the Applicants purchasing the property.
14. The Applicant and signer on the Building Permit Application for the garage was the contractor and not the owner of the property at that time.
15. The Applicant is requesting a 9' variance in order to be able to sell the property.
16. The proposed 9' variance falls within the 20% that the Zoning Board of Appeals can grant for a single-family dwelling set-back variance.
17. The Applicant meets each of the five relevant criteria for a variance in that:

- (a) The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.
- (b) The granting of a variance will not alter the essential character of the locality.
- (c) The hardship is not the result of action taken by the applicant or a prior owner.
- (d) The granting of the variance will not substantially reduce or impair the use of abutting property because it has been there for years without issue.
- (e) That the granting of a variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

### CONCLUSIONS

Based on the above facts, the Board has concluded that the Application for Variance is hereby granted.

### DECISION

Based on the above facts and conclusions, on April 3, 2019 the Arundel Zoning Board of Appeals voted to grant a variance nine (9) feet which meets the 20% of the requirement of the front yard set-back in the R-1 zoning district.

### **3. ADJOURNMENT**

Bell made a motion to adjourn the meeting at 7:20. Chansky seconded the motion with the vote being 4-0 in favor.

Respectfully Submitted,

Wendy E. Lank  
Recording Secretary