

TOWN OF BUENA VISTA
ORDER GRANTING/DENYING A VARIANCE

The Board of Adjustment for the Town of Buena Vista, held a public hearing on April 11, 2014 to consider Case Number 04.01.2014, submitted by Desmond and Molly Jones, for a request for a variance to use the property located at 248 Oak Drive in a manner not permissible under the literal terms of the ordinance. The motion considered by the Board of Adjustment to grant the variance failed by a vote of three in favor to one opposed; the reasons for the vote of the dissenting member are noted below, at the beginning of this Order. The FINDINGS OF FACT and CONCLUSIONS proposed in the failed motion to approve the variance are noted at the end of this Order.

After the vote was taken, the Chair asked the dissenting member to explain her vote; these are her Conclusions and Findings:

- The first variance standard in the statutes and our ordinance states, “Unnecessary hardship would result from the strict application of the ordinance.” This standard is not met, because if the applicants chose to build a smaller addition, or one of a different configuration, they could meet the setback and continue living in their home.
- The second variance standard in the statutes and our ordinance states that hardships resulting from personal circumstances may not be the basis for granting a variance. The hardship in the present case results from personal circumstances. The applicants wish to remain in their current home rather than find another one, and have spent a lot of time and money making this addition fit this lot rather than move.
- The third variance standard in the statutes and our ordinance states, “The hardship did not result from actions taken by the applicant or the property owner.” This standard is not met for the same reason as the first one – it is the action of the applicants insisting that they cannot change the size or shape of the addition that is really the issue.
- The fourth variance standard in the statutes and our ordinance states, “The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.” This standard is not met because the harm that would be done to the neighbor on the side where the addition is proposed outweighs the harm that would be done to the applicants by having a smaller addition, or one of a different configuration, that meets the setback requirement.

Board Chair

Date

I certify that the above decision was filed with the clerk to the board of adjustment on May 11, 2014 and mailed to the petitioner and each person making a written request for a copy of the decision at the hearing. The mailed copies were deposited in the U.S. Mail addressed to the attached list of recipients, on May 11, 2014.

Clerk to the Board of Adjustment

Date

NOTE: If you are dissatisfied with the decision of this Board, an appeal may be taken to the Superior Court of Pleasant County within 30 days after the date this order is served on you. See Section 10.5 of the Buena Vista zoning ordinance.

The original motion to grant the variance was based on the following findings of fact and conclusions:

1. It is the board's CONCLUSION that there are unnecessary hardships in carrying out the strict letter of the ordinance, specifically section 312 (c).

This CONCLUSION is based on the following FINDINGS OF FACT:

- Unless the Joneses receive a variance of three feet from the side yard setback requirement, they will be forced to sell their property, losing the substantial investment they have already made in making renovations to their home. The variance is the minimum possible deviation from the terms of the ordinance that will make possible the reasonable use of the property.

2. The hardship results from conditions that are peculiar to the applicant's property such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public may not be the basis for granting a variance. This CONCLUSION is based on the following FINDINGS OF FACT:

- The report of the Zoning Administrator, which has been entered into evidence as Exhibit A, including the analysis by the Environmental Health section staff. Due to the rock outcrops and high water table that are present on much of the property, the Environmental Health section staff determined there is only a small area where the expanded septic drain field can be located.
- Research done by the applicants in the county tax office indicates that owners of other homes in the subdivision have been able to construct additions to their homes without problems.

3. The hardship did not result from actions taken by the applicant or the property owner. This CONCLUSION is based on the following FINDINGS OF FACT:

- The applicants met three times with the Building Inspector in an effort to make the addition fit within the constraints of the zoning ordinance.

4. It is the Board's CONCLUSION that, if granted, the variance will be consistent with the spirit, purpose and intent of the ordinance such that public safety is secured, and substantial justice is achieved. This conclusion is based on all of the FINDINGS OF FACT listed above, as well as the following:

- A survey of other homes in the subdivision show that over one-half of the homes are approximately the size the applicants' home will be, once the addition is built. The applicants are not asking for a privilege that no one else in the subdivision has.
- There are no public safety issues involved regarding having the addition extend three feet into the side yard setback. It will not impair emergency vehicle access, create a fire hazard, or otherwise be contrary to public health and safety.
- The essential character of the neighborhood will not be changed because there are many other homes this size in the subdivision.
- If a fence is built by the applicants, between 7 and 10 feet high, and built of wood and stone, meeting the design suggestions that adjacent property owner, Mr. Robert Brown, presented during the hearing, then the construction of an addition to the residence 12 feet from the east property line, as opposed to 15 feet as required in the ordinance, will not have a negative impact on the adjoining property. If the planned addition to the residence cannot be constructed on their property, there will be harm done to the applicants.