

**Appeal for a variance set back filed by John Meviet on Waycross Way.  
Tax Map 46 Lot 146 in Lake Arrowhead.**

Members Present:

Michael Carroll-Chairman  
Kimberly Oliver-Co-Chairman  
Steven Mclean  
Kathy Ward

Members Absent:

David Coleman

Public Present:

Jon Metivier - Appellant  
Michael Connelly- Brother of Abutter  
Ronald Phinney –CEO  
Dottie Richard  
Andrew Ready  
Steve Malmude

Michael Carroll, Chairman opened the meeting of the Limerick Board of Appeals on July 28, 2016 at 7:01 with the flag salute with everyone in attendance.

Michael Carroll stated that this meeting was for an appeal for a variance set back filed by John Meviet on Waycross Way. Tax Map 46 Lot 146 in Lake Arrowhead. He noted that there were 4 members of the five that were present so a quorum was established. He asked for a motion, and Kimberly Oliver made a motion that they did have a quorum and there with no known bias's, Kathy Ward seconded it. Without any discussion all were in favor.

Michael Carroll stated that the Limerick Zoning Ordinance and state statute gives the Board of Appeals jurisdiction to hear the appeal. He asked for a motion, Kimberly Oliver made a motion that based on the zoning ordinance and the state statute that the board did have jurisdiction. Kathy Ward seconded it and with no discussion all were in favor.

Michael Carroll stated that the applicant has a purchase and sales agreement contingent upon the Board of Appeals granting the variance. Kimberly Oliver made a motion that with the purchase and sales agreement contingent upon the granting a variance the applicant has standing, Kathy Ward seconded it and with no discussion all were in favor.

Michael Carroll stated that the applicant has paid the fee and submitted a completed application. Kimberly Oliver made a motion that the board received a completed application, Kathy Ward seconded it and with no discussion all were in favor.

Michael Carroll explained the process that Jon Metivier

would first present his case. The board would then ask any questions that they had for the applicant. Ronald Phinney, the CEO would then present the reason Jon Metivier needs a variance. The board would then ask Ronald Phinney any questions they would have for him. The board, Ronald Phinney and Jon Metivier would then have any rebuttals back and forth and then it would be opened to the general public. He noted that anyone wishing to ask questions or make comments would need to be recognized by the chair.

Jon Metivier gave a copy of the map which he is requesting the variance for to the board and to Ronald Phinney and proceeded to the podium.

He began by stating that he had a purchase and sales agreement for the property lots 1933-1938 and that these properties were purchased from the Town of Limerick in 1988, by the Roberge Estates. He continued to explain that part of the purchase and sales there is a deed restriction placed that all the lots were adjoining lots and it is a condition of the conveyance that the adjoining lots are merged and cannot subsequently be conveyed separately, and must always be conveyed together. He stated that he will be speaking about parcels and lots but he will be speaking about one piece of property they will not be divided and he understands that they cannot be divided and that it is not his intention to divide the properties. He stated that he was sure that the board was more familiar with the Saco River Corridors rule and regulation than he had been when he embarked on this process.

He continued, that the sellers engaged Kenneth Gardner last year to do soil testing and placement of a dwelling on this parcel. Mr. Gardner found the spot that had the most depth which is between Lake Arrowhead and a 20 ft. right of way that runs down a peninsula. Doing that to try to meet the Saco River Corridor's requirements it pushes the house all the way up towards the 20 foot right of way. The proposal is to have the dwelling exactly 100 feet, the shortest point from Lake Arrowhead. The dwelling is 24 by 36 and it leaves 8 ft. to that 20 foot right of way. Speaking with Ronald Phinney, even though the right of way is not wide enough to be a road, under your rules and regulations, it would still require a front setback, which is 15 feet. He stated that the right of way was originally laid out on the plan as access to all the individual parcels. It would have been the only access for lot 1934 through 1938. Now that these have all been merged they have a total of 235 feet of frontage on Waycross and the parcel is 2.7 acres. The right away does serve as the only access to 1939 which is owned by an abutter. He continued that there was a water main that runs down that right of way and veers off, which he had highlighted in yellow on the map it runs out and across and under Lake Arrowhead. He noted that there is no easement on record where it dissects 1936 and 1937. He had been working with Lake Arrowhead regarding that and they will work with their attorneys to draw up the proper easements for those parcels. He also noted that Ronald Phinney had suggested using that access as a driveway for this house and he has correspondence that the Lake Arrowhead board

had voted to allow that right of way to be used as a driveway for this proposal. He concluded that it is the widest part of his parcel and anywhere else it would be too close for Saco River's requirements.

Kimberly Oliver asked for clarification that Lake Arrowhead is basically saying that they would allow Jon Metivier to use the right of way as a driveway in exchange. Jon Metivier replied that he had brought up these issues to the board and they decided to draw up the necessary documents. Kimberly Oliver confirmed that when he brought up the three things they decided to do it and that it was not contingent on each other. Jon Metivier replied that was correct. He added that he did not ask them to convey, to the Roberge's, the very end of the right of way where the Roberge property encompasses the whole portion, they decided in a meeting to draw up a deed and convey the whole thing to the Roberge's whether he purchases the property or not. Steven Mclean asked him if the blue mark was where the house would be placed and he confirmed that. Kimberly Oliver asked if he would have 205 feet for a driveway and he answered that was correct. He added that this was a gravel road. Steven Mclean asked for confirmation that Lake Arrowhead would not recognizing this as a road in Lake Arrowhead, it would be a driveway and Jon Metivier confirmed that and added that the road has to remain a right of way for access to parcel 1979.

With no other questions at this point for Jon Metivier, Michael Carroll asked Ronald Phinney to speak on this matter. Ronald Phinney stated that between the application and what Jon Metivier presented everything had been covered. He stated that he believed the reason why they did not put an easement across there when the water main was put in, was because it was Lake Arrowheads land and they would not need an easement for land that they owned. He added that they did cross a lot, but it is outside of the scope of this application. He continued that he has a 20 foot right of way that he can use for a drive way. He noted that there may be a problem if that water main were to have a leak, he may need to find a new way to access his home for a few days while it was being repaired. He also stated that the piping is fairly new and not likely to happen.

Michael Carroll wanted to know where the frontage would be. Ronald Phinney answered that he could use the Waycross Way road for frontage. If he built his road to town standards he could also use that for frontage. He continued that if he used the road for his driveway he could put a sign at the end of it for emergency vehicles could use it if required. Michael was questioning the front setback versus the side setback. He wanted to know how Ronald Phinney determined that is a front setback. Ronald Phinney answered that a side setback is only 10 feet which would mean he would need a 2 foot variance. He would need a variance either way, if he uses it for a front setback he would need 7 feet because he would need a 15 foot setback. Michael Carroll stated that his point that he was getting as was, he wants to build a 24 foot house and if that is the side setback it is a 10 setback, so it is 2 feet in the setback. He continued that in the process of a variance.18:15 you need to look at all the options. He noted that 22 feet versus 24 feet is 2 feet difference and that would be legal without a variance. Ronald Phinney questioned the applicant. He wanted to know if the applicant was going to have a basement in the house and the applicant answered that he was. Ronald Phinney replied that you cannot put basement stairs in anything

less than 22 feet. He continued that the main reason he called it a front setback was the dimension of the house that is going to be the long area and the definition of a front yard, which isn't frontage is the yard that runs parallel with the house. He further stated that is where the road will come in, so this is the reason he considered this to be a front setback.

Steve Mclean asked Ronald Phinney on Lot 1939, which does not belong to Jon Metivier, if it is a buildable lot. Ronald Phinney answered that he has not looked at it so he at this time does not know. Steven Mclean stated that Jon Metivier would be getting a drive way to his lot, would this be continued all the way to the other person. Ronald Phinney answered that he would only need to bring it down as far as his house and if somebody wanted to build there, it would have to be extended. He continued that the zoning ordinance allows 2 homes to one driveway without being built up to the road standards and the right of way could handle both his lot and the other lot further down. Steve Mclean stated that if they did that they should have a turnaround down there for emergency vehicles.

Jon Metivier addressed this stating that where the water main is, they basically made that a road. He thought it would be quite easy to make that navigable. He also wanted to state that lot 1939 is 110 feet at its widest dimension, so he did not believe with that anything would fit. Steve Mclean was concerned that the owner of that property may want to go further down with the easement.

Michael Carroll stated that they would review the four conditions of the setback variance and stated that all four conditions would have to be met in order to be granted a variance. The board needs all the information to make a decision.

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

Applicant's response: Jon Metivier stated that the right of way really is a unique circumstance in this case and of course Lake Arrowhead's restrictions that have been imposed on the entire Saco River Corridor after these lots had been created. Jon Metivier felt that these two things make in a unique circumstance.

2. The granting of the variance will not alter the central character of the locality.

Applicant's response: Jon Metivier stated that this proposal would be comparable with all the other houses in that area. He stated that he had drawn many designs with a 16 foot house, but all of them resembled a mobile home and it was not comparable to the other homes and that mobile homes are restricted by the Lake Arrowhead Association.

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

Applicant's response: Jon Metivier stated that the property went from the Town of Limerick as one piece to the current owner. He continued that there has been no changes or sub-divisions or alterations of lot lines.

Michael Carroll explained that the applicant would be creating the action by wanting to build a house. Jon Metivier responded that it would render this property unbuildable. He continued to explain that in Lake Arrowhead he could not use this property to camp or park a trailer. He also stated that he believed when the Town of Limerick sold it to the Roberges that the intent was to build a single family dwelling. Michael Carroll stated that variances are hard to obtain and that he was not trying to make things difficult, but the board needed to follow the ordinance. Steve Mclean asked Jon Metivier if he knew when the right of way was established. Jon Metivier responded that the plan they were looking at was date 1971.

Ronald Phinney stated that the layout of Lake Arrowhead you will find skinny pieces of lots, and he felt they were originally intended for green space between lots and it was utilized for a place to put a water main. Steve Mclean asked Ronald Phinney who owned the right of way and Jon Metive said answered that Lake Arrowhead owned that right of way. 27:00 Michael Carroll stated that he understood what Ronald Phinney had stated regarding the frontage, but it is only a 20 foot right of way. The reason he was skeptical is it takes it back to a 2 foot variance. It is not up to the board to maximize the property. He would like to work it out without a variance, because in Michael Carroll's opinion, as a single member of the board, he would not be getting a variance. Jon Metivier replied that when he initially met with Ronald Phinney, he looked it up and Jon Metivier, admitting that he was not familiar with the zoning to say which section it was, that any public or private way would require a front variance. Jon Metivier stated that he went through the same thought process as Michael Carroll was referring to. If there was a way for him to this without getting a variance. He stated that he argued with Ronald Phinney that it was a side setback, because he has frontage on Waycross Way. Michael Carroll noted that it was a 20 foot right of way and most right of ways in Limerick are 50 or 60 feet and that this was done in 1971 for a specific reason. Kimberly Oliver agreed that this was a green buffer not to be a right of way. Steven Mclean asked Jon Metivier if he could come in off of Waycross Way and he replied that he could not be 100 feet from the water which is Saco River's Requirement. Michael Carroll asked if the septic was on this proposal and Jon Metivier confirmed that it was. He stated that he was a builder and he has studied this every way possible with no other alternative. Michael Carroll stated that if he could convince the board that he was not the cause of this then he would stand a good chance of getting the variance. Kimberly Oliver asked Ronald Phinney if the Saco River Corridor rules came after the Lake Arrowhead subdivision that was done in the 1970's and he replied that he thought it was and also the Shore land Zoning. Shore land zoning is 100 foot minimum. Kimberly Oliver continued that she could understand the easement restrictions that the Town of Limerick put on, when they took the parcels for tax acquired property, was so that it would have a minimum impact. She stated that originally the intent was there would be a house put on each one of the lots. She continued that the Lake Arrowhead subdivision was approved prior to Saco River Corridor putting the restrictions on. Jon Metivier stated that he thought the act was approved in 1979 by the legislature, but admits that he did not know when it actually went into effect and that it was 8 years later before there were any restrictions on that. Michael Carroll states that the 100 feet comes from Shore Land Zoning and not from Saco River Corridor and Jon Metivier and Kimberly Oliver answered that it is both. Ronald Phinney stated that he believes the argument would pass the straight face test

that the one that created the problem was the State of Maine with both the Shore Land Zoning and Saco River Corridor. Michael Carroll stated that they would need something like that to hang their hat on to pass that criteria. Ronald Phinney further commented that they had created the problem because they had done this after the Lake Arrowhead subdivision was approved. He is just trying to build a house on the problem that they created. Michael Carroll asked if the septic would have to be pumped up and Jon Metivier answered that it would. Steve Mclean asked Jon Metivier if the other lots would be shown on the tax maps as one lot. Kimberly Oliver spoke to this explaining that when the Town of Limerick acquired these lots for unpaid taxes, they sold them as one piece and the deed reflects that, however, with the subdivision it shows all the lots on the tax maps. The deed restrictions states that it cannot be broken, split or merged. She continued that the point at the time this was done was to slow down growth and to create larger lots. His restriction is only one.

4. The granting of a variance is based on demonstrated need, not convenience and no other feasible alternative is available.

Applicant's response: Jon Metivier admitted that he tried very hard not to have to come before the Board of Appeals. He could not find any other alternative.

Michael Carroll at this point opened it up to the general public.

Michael Carroll recognized Michael Connelly who was speaking in behalf of his sister, Susan Middleton, and John Barger who are abutters of the property that the applicant is seeking a variance for. They were unable to attend the meeting because they live in Massachusetts. He stated that his primary concern was if this would impact their property in anyway. Michael Carroll asked Michael Connelly what lots they owned and he answered 139-1942. He explained that they thought Jon Metivier was building on the point and was concerned that the town would grant setbacks that would impact Susan Middleton and John Barger's property. He continued that he was not sure how a turnaround could be made without clearing out some land and that could possibly impose on Susan Middleton and John Barger's property. He was inquiring if they would have any input as abutters. Michael Carroll stated that any input would have to be done at this meeting. Michael Connelly asked if this would impact Susan Middleton and John Barger's property and Michael Carroll and Kimberly Oliver both answered that this would not impact their property if it is granted. He stated that the turnaround was not in the Board of Appeals jurisdiction. That would be CEO.

With no one else wishing to speak from the general public, Michael Carroll asked the board members if they had any more questions and Steve Mclean stated that with the dates and the information they had it was clear it was not the cause of Joh Metivier. Michael Carroll asked for a motion to close the public hearing at which time Kimberly Oliver motioned and Kathy Ward seconded and with no discussion realized all were in favor.41:00

Michael Carroll stated that they would need to go down the four criteria and review the findings of facts and conclusions and make their decision.

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

Michael Carroll stated that his personal opinion was that Jon Metivier had met this criteria. He asked if anyone had any comments and with none Kimberly Oliver made a motion that variance criteria no. 1 had been met with the information that had been supplied by the applicant due to the unique shape of the lot, Kathy Ward seconded it, Michael Carroll added that they had the map, and the subsurface waste disposal application giving the dimensions that are necessary and Ronald Phinney's testimony. With no discussion realized all were in favor.

2. The granting of the variance will not alter the central character of the locality. Michael Carroll stated that this is a residential neighborhood and the building proposed is a single family dwelling and will not alter the central character of the locality. Kimberly Oliver made a motion that the applicant met the requirements for criteria section no. 2 and that the central character is comparable to the rest of the neighborhood residential use. Kathy Ward seconded it. With no discussion realized all were in favor.

3. The hardship is not the result of action taken by the applicant or a prior owner. Michael Carroll stated that this is the toughest and that it is important that the board review this one thoroughly. He continued that the facts that were found that the lots were created in 1971. Kimberly Oliver read from the Board of Appeals manual under variances the hardship is not the result of action taken by the applicant or a prior owner and may be found by the Board of Appeals where the land use ordinance as applied to the applicant's property decreased the value in question or permission is allowed to use and she believed that the original subdivision was approved in 1971 through Lake Arrowhead lost some of its ability to do what it had originally had intended when the restrictions from the Saco River Corridor and Shore Land Zoning that came after the subdivision was developed. Michael Carroll asked when the subdivision was created, Kimberly Oliver and Steven Mclean answered that it was in 1971. He then asked when the Shore Land Zoning was developed and Kathy Ward answered in 1979 and he continued what about Saco River Corridor, Kimberly Oliver answered in 1978 or 1979. Michael Carroll concluded that this was created prior to both those restrictions which would limit the applicant from building his house and without this variance there would be no way that he could build a house and Kimberly Oliver added to meet the standards of Lake Arrowhead for building a house. Both Kimberly Oliver and Michael Carroll agreed that it would render this piece of property useless. Steven Mclean added that the Town of Limerick said to combine them all into one lot. Kimberly Oliver also added that if the Town of Limerick is going to sell lots to combine them for this specific use and it is purchased in this way, then the buyers are not allow to use it. This was not the point of selling these properties this way. Steven Mclean stated that in the best interest of the town this is the only place for a dwelling. Kimberly Oliver added that it would also be a tax value. Michael Carroll continued that the subdivision was prior to both Shore Land Zoning and Saco River Corridor, and it is beyond the 100 foot from the water as well as in the setback 7 feet. Michael Carroll asked for a motion. Kimberly Oliver made a motion that the applicant did not create the hardship with this piece of property based on the fact that the subdivision was created prior to the restrictions that were placed on by

Saco River Corridor and State of Maine's Shore Land Zoning. Kathy Ward seconded it. With no discussion realized all were in favor.

4. The granting of a variance is based on demonstrated need, not convenience and no other feasible alternative is available. With no discussion realized all were in favor. Michael Carroll stated that without the variance Ronald Phinney said that he would not be able to issue a building permit. In his opinion, with no mobile homes or manufactured housing allowed in Lake Arrowhead if he cannot build a house without the variance the lot is an unbuildable lot and therefore valueless. Kimberly Oliver concurred. Michael Carroll felt that the board had covered all the facts. Kimberly Oliver made a motion that applicant met the requirements of criteria no. 4, Kathy Ward seconded it.

Michael Carroll stated that the findings of facts of all 5 conditions of criteria for a variance had been met. The conclusion is that the application for a variance has been approved. He told that applicant that he would receive their decision in is writing within 10 days.

Jon Metieve inquired about the appeal period and Michael Carroll answered that he thought it was 45 days. Jon Metieve thanked the board for their time and consideration.

Michael Carroll asked the board members if they would like to discuss July 13<sup>th</sup> meeting. He asked if they had a chance to review the minutes. Kimberly Oliver stated that they only had two voting members of the July 13<sup>th</sup> meeting present, therefore, the minutes would have to be tabled until David Coleman the third voting member for the July 13<sup>th</sup> meeting was present to vote. Michael Carroll agreed and said they would postpone until David Coleman was present.

Michael Carroll stated that they had a meeting on August 4<sup>th</sup> at 7:00 p.m. He asked for a motion to adjourn. Kimberly Oliver made a motion to adjourn, Kathy Ward seconded it and with no discussion realized all were in favor.

Respectfully Submitted,

Laura L. May