

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
Tuesday, October 18, 2011
TOWN HALL CHAMBERS
7:00 p.m.**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, October 18, 2011. Chair Quinn opened the meeting at 7:02 p.m.

The following were in attendance:

**Chair Bob Quinn
Vice Chair Michael Tousignant
Councilor Shawn O'Neill
Councilor Robin Dayton
Town Manager Jack Turcotte
Assistant Town Manager V. Louise Reid**

Absent: Councilor Shawn O'Neill

**Pledge to the Flag
Roll Call**

ACKNOWLEDGEMENTS:

COUNCILOR DAYTON: Our special thanks to the members of the Community Animal Watch Committee for their hard work on the yard sale held this past weekend at Traci Gikas house on Portland Avenue. We thank Traci for permitting us to use her yard for the sale even though her father-in-law passed away several days before the scheduled event. Our sympathy is extended to Traci. We thank Kim Schwickrath and her husband who cooks the best chocolate chip cookies which he made not only for the sale but for Woofstock as well. Nancy Tate, Mary Ann Caret, Linda Smith and Jacqui Deveneau worked very hard as well. Over \$500 dollars was raised to aid in the care of injured animals and in the trapping of animals. We would also like to thank Nancy Tate and Arlene Dolgan who give many hours in the trapping program and often providing transportation and expense money to cover spading programs to and from the Vet. We would also like to thank Kim McLaughlin and all those who participated in Woofstock which was a wonderful event with many individuals strutting with pride their beautiful pets. Many also benefits from the reduced price provided by Dr. Maloney who travels as a Mobile Veterinarian clinic. It was another fabulous citizen event at the Ballpark and to all those who made it successful, our sincere thanks.

COUNCILOR MACDONALD: She expressed appreciation to the Ballpark Commissioners and to the volunteers who have presented a stellar year in the success of the Ballpark programming and expressed thanks to Jen DeRice as the General Manager. She indicated she will be fully involved in the Ballpark activities next year and looked forward to another stellar year.

PRESENTATION: The General Manager, Jen DeRice, and members of the Ballpark Commission presented a report on the activities of the Ballpark this past summer and their plans for future programming. Included in the presentation are plans for a new Ballpark Commission Database which is in progress of being designed. Subjects such as Ballpark Grounds/Environmental Setting; Field and Stadium Accommodations; Clubhouse Amenities; Concession Stand and Restrooms; Merchandise Building, Areas for Special Sponsor Booths and Signage; Practice Fields; Alternative Team Housing; Portland International Airport; Ballpark Location; Parking Lot Size; Emergency and Safety Support; Media Support; Directions to local activities; Trolley, Tri-City and Intercity Bus Service; Amtrak; Community Support, Summary of local communities assets; Old Orchard Beach Assets; History of the Ballpark; Usage Form; and Policies and Processes.

Paul Crossman, Chairman of the Ballpark Commission, spoke about the rebirth of the Ballpark indicating that it has been a very busy season and a very interesting time on many levels. He thanks all those who through their dedication helped and continue to help the Ballpark activities move through to a successful conclusion. Although a detailed report on the Ballpark's financial status was not available for the Council at this time, it will be forthcoming. He indicated that the Ballpark has revenue left over but there are some more invoices to be received.

Ms. Rice began with a quarterly report highlighting the many accomplishments and experiences at The Ballpark during the 2011 season, and reminds you that it's not yet over. With a few more events and projects to complete before winter sets in, there is still much to do this year at the Ballpark's physical location as well as on a year-round basis from the home base at the Recreation Department. She hoped that this report will give you some insight into the magnitude of events and activities that have gone on this season, but more importantly, it is hoped that we will convey to you the scope of the projects we have begun to delve into now that she completed the first full season as General Manager. As of the last report given by Commission Chair, Paul Crossman, on June 7th, much has happened at the Ballpark. We welcomed the addition of the NECBL franchise, The Raging Tide, who helped jump-start our inaugural season with 21 home games and about 8,000 fans that came to watch them play.

In addition to the 21 Raging Tide games, The Ballpark hosted over 150 games and events from May 1st through the end of October. This does not account for the dozens of groups for which we had to deny field time requests because we simply couldn't fit in any more dates during the height of the season in June and July. In the spirit of social responsibility and community service, the Ballpark is proud to have partnered with several organizations, clubs, and community groups who were able to take advantage of one of Old Orchard Beach's greatest assets, the field and stadium. From the Southern Maine Men's Baseball League, to local high school teams, youth leagues, and charity groups, the facility is an active and thriving addition to the community. As a result of partnering with the Fire Department, they were able to collect over \$12,000 and attract nearly 1,800 fans to a charity softball game at our facility. The new community garden was alive and well and we look forward to partnering again next year. Additionally, we are collaborating on plans to build a new skatepark within the confines of the ballpark property. The American Legion Northeast District Championship Tournament, organized by OOB365 and the local American Legion Post, was a definite boost to our community and to the Ballpark. Financially, the tournament proved to the Ballpark Commission that we need more of these types of events. The old adage, "if you build it, they will come" is not exactly how it works.

Perhaps more appropriate is the notion that, “if you build it, they MIGHT come,” but only if word spreads and if we leverage ourselves as one of the premier baseball and entertainment venues in the State. One thing we know is that once they come, they want to return. With an estimated 25,000 fans, players, coaches, professional scouts, and festival-goers that have entered our gates since 2010, the excitement surrounding the rebirth of our facility continues to build, but it is the anticipation of its potential that draws the most attention. We can’t help to wonder what percentage of those 25,000 fans had a direct impact on the economics of this community. How many restaurants, hotels, convenience stores, and shops were visited before or after an event at the Ballpark? What is the potential impact as we work to take this facility to the next level? Since April, when I was appointed as General Manager of this facility, I could have never predicted the type of report we, the Commission and I, would be giving tonight. On a personal level, I am both humbled and honored to be managing this facility as I am fully aware that this responsibility is something bigger than me and the weight of which I carry with great pride and determination to help it succeed. A tremendous group of volunteers steer the Ballpark Commission, many of whom have become personal friends. They are a caring and dedicated group who are selflessly giving of their own time, energy, and individual expertise. Our Ballpark Crew, both the field and concession stand crews who are paid a nominal fee for hard, manual labor, have been extraordinary this year. Often going above and beyond and scraping by with as little as possible, this staff has mastered the art of “getting by with what we have!” Both Charlie Taylor, our Concession Manager, and Tom Lachance, our Facility Manager have given their best efforts this season and I am grateful for their continued hard work. Likewise, I must also mention the steady core of volunteers who have helped us through this season. Together with our original and loyal group of volunteers, and also the new members who have joined the ranks this year, I am amazed at the number of people who have continued their volunteerism in a quiet and meaningful way since the beginning of the rejuvenation project. From painting, cleaning, mowing, working in the concession stand and providing leadership when it’s needed most, we are fortunate to be the recipients of such dedicated workers. I want to personally say thanks to all who have contributed and invite anyone who is listening to join our team! We need you now more than ever as we move forward. Speaking of moving forward, this is the direction in which I have been looking ever since the beginning of September. After making my way through the bulk of the season, and no longer being in “survival mode,” I began to look ahead to the future. The first order of business is to in some small way, pay tribute to the hundreds of volunteers and donors who have provided assistance over the past couple of years. With hundreds of hours of volunteer labor and over \$300,000 in financial contributions, we have much for which to be grateful. On behalf of the Town of Old Orchard Beach, and the Ballpark Commission and staff, I would like to invite all past and present volunteers and donors, as well as the Town Council, to a cookout and volunteer appreciation day at the Ballpark on Sunday, October 23rd at 12:30 pm. If possible, please send me an e-mail or call me directly if you would like to RSVP for this event so we can prepare enough food for our guests. The second order of business, and perhaps the most coveted information is with respect to our plans for next season, now that the NECBL franchise, The Raging Tide is for sale and rumored not to return to the Ballpark next year. As Jack Turcotte announced at a recent Town Council meeting, the agreement we had with the team was a one-year commitment. At this point, we must determine if it will be in our best interest to enter into a new agreement with a different team, or pursue other sources of revenue stream for the coming season. There has been some interest from local investors

as well as from others outside of the NECBL. At this time, the Commission is weighing its options and will work toward making an informed and responsible decision before offering a recommendation to the Council. As we transitioned ourselves this year from a volunteer based organization to one with a new management structure with some paid staff as well as volunteers, it has become clear, now more than ever, that we are at a crossroads as we look to the future of where we are going. It is time now to begin the process of bringing this facility to the next level. We, the entire community, need to take responsibility and come together to truly create a real vision for this facility. The Ballpark has the potential to be the Region's Premier Amateur Baseball Field and Entertainment and Recreation Complex.

Aside from the beach, this Town-owned property is the greatest potential revenue generating property we have in Old Orchard Beach. We must be thoughtful and calculated as we work to turn this potential liability into a revenue-driven community asset that provides valuable open space, recreational opportunities for all, and visibility to the community in a positive and meaningful way. Baseball alone will not take us to the next level. In fact, without building in enough time for the field to rest and to allow the field crew the necessary time to work on the field on a regular basis, we will no longer sustain our asset nor be able to bill it as a premier field. How do we begin to make this happen? This past season was about lessons learned. In many respects it was an on-the-job training experience for me as much as it was about managing the staff and facility. More than a matter of scheduling games, flipping burgers, and parking cars, it was a process for which I was afforded the opportunity to live through an experience so that I could better absorb the necessary information to help prepare me as we move forward. The experience gained during the past two seasons at the Ballpark have helped me, and the Commission, to better plan for the future as we work to put in place new policies and procedures to hold ourselves accountable as well as to manage in a way that is both efficient and effective. By prioritizing our needs and expenses, and projecting our source of income, I can work with the Commission and the Town Manager to build a responsible budget based on valuable lessons learned and one that will not commit us to more than we can afford. One example of how to leverage our asset is through a newly developed and constantly evolving database of information that outlines by category all that we offer at the Ballpark. Copies of the database are provided to each of you for review, but please keep in mind it's a work in progress. Thanks to the guidance and vision of Bob Rings, a local sports fanatic and neighbor to the Ballpark, this database exists. Bob has spent countless hours doing research on behalf of the Ballpark group and already it's proven to be an invaluable resource as I solicit potential user groups of our facility. Another example of how to leverage our asset is through a visual marketing campaign. With plans to develop a new professional website, logo design and on-line brochure to help showcase our many amenities in Town, we will further our ability to compete with other Baseball, Recreation, and Entertainment Complexes in Maine and New England. In recent weeks, I have reached out to the University of Southern Maine in an effort to work with interns to help create a marketing study at the Ballpark as well as to benefit from the assistance of overall facility operations in the future. I have met with executives from the Portland Seadogs who have offered support as well as representatives of some Maine colleges such as UMaine, SMCC, and USM. I am reaching out to other facility managers in Maine, from Bangor to Portland and beyond, to learn from their expertise. A road trip to other baseball stadiums in New England is on my agenda as well. By networking, connecting, and doing my homework, I hope to better position The Ballpark as we move to the next level. Dozens of

dates for next year have been requested already. Some highlights include both the Northeast District and the State American Legion Tournaments; Regional Boy Scouts Camporee, UMaine Scouting Day, a POW/MIA recognition weekend, and two possible dog shows, a National and New England competition. Aside from planning next year's events, which we hope to include more festivals, small concerts, and special events, I am working to put in place policies regarding sponsorships – specifically to help fund a new electronic sign for the Town as well as for possible naming rights to the stadium. With the potential of several capital expenditures on the horizon, we need to plan ahead for ways in which we can fund the infrastructure of The Ballpark without placing an additional burden on the Town's budget. I've researched multiple grant opportunities and intend to pursue those that make the most sense for us. With a combination of sponsorships, grants, user fees, and a commitment from the Town of Old Orchard Beach, we can work toward making the necessary improvements to this facility as we move forward. On another note, it would be difficult for me to recognize all of the people who have supported both me and the Ballpark this year with various projects. I'd love to list all of those people by name, but I'm sure we don't have that kind of time, and I'd be afraid to inadvertently leave out someone. I think, however, it's important to note that in December of this year, the Ballpark Commission will be losing two valuable and trusted friends, Paul Crossman and Sheila Flathers who have opted not to renew as Commissioners for another term. Personally, this will be a huge loss. Both have been invaluable resources and have given countless hours to the Ballpark. Though I will miss them on the Commission, I know their involvement at the Ballpark will remain in tact and for this we are all grateful. And lastly, I would be remiss if I didn't mention the valuable partnership and attention paid to the Ballpark by our Town Manager, Jack Turcotte. Jack has been the foundation to the Ballpark group since he first arrived in Old Orchard Beach two years ago. His thoughtful leadership and engaging management style has provided the stability we all needed to get us through this early stage of bringing the Ballpark back to life. A hard worker in every sense of the word, his guidance and support will be sorely missed after December. Saying, "Thank you!" doesn't fully express the gratitude we feel for the work he has done. For this reason, a dedication earlier this summer by the Ballpark Commission and Staff was made to name a section of the Ballpark, Turcotte Terrace, in honor of Jack Turcotte. Scratching only the surface of all that needs to be done at the Ballpark, it is you, the Town Council, to whom we will look for guidance. We welcome your input and your ideas. We hope you will make a commitment to the Ballpark group to work with us in developing a vision and a mission for our Ballpark. And, in the coming months, we hope to come together with you to coordinate ways in which we can move forward and to help this facility, our greatest revenue generating asset, to grow and flourish in the future.

ACCEPTANCE OF MINUTES: Special Town Council Meeting Minutes of September 30, 2011; Special Town Council Meeting Minutes of October 2, 2011; Town Council Meeting Minutes of October 4, 2011; and Special Town Council Meeting Minutes of October 13, 2011.

MOTION: Councilor MacDonald motioned and Councilor Dayton seconded to Accept the Minutes as read.

VOTE: Unanimous.

PUBLIC HEARING: Shall We Amend Chapter 78, Article I, Section 78-1, Article II, Section 78-34, 78-38, 78-68, 78-70, 78-94, 78-95, Article III, Section 78-142, Article VII, Section 78-1268, Article VIII, Section 78-1625, 78-1627, 78-1629, 78-1631?

CHAIR: I open this Public Hearing at 7:25 p.m.

MIKE NUGENT: The Ordinance Review Committee and Planning Board has recommended the following revisions to Chapter 78, The Zoning Ordinance. The scopes of these amendments were limited to items that are not “Comp Plan” related items. The following is a summary:

Article I, Section 78-1,

These are primarily definitional changes that update terms that make Child Care consistent with State definitions, Update building code references for manufactured housing, a modification to the commercial parking lot definition, accessory structures, and non-conforming uses to clarify complimentary uses

Article II, Section 78-34, 78-38, 78-68, 78-70, 78-94, 78-95,

These are procedural changes to make the processes more user friendly. They include:

- 1) The ability to extend a permit if expiration is eminent.
- 2) The ability to have discretion with late fees.
- 3) Assigning the abutter notification cost for an Administrative appeal to the Town
- 4) Allowing a designee to attend ZBA meetings in lieu of the CEO.
- 5) To allow Limited Yard reductions for all uses, not just residential uses.
- 6) To remove ramps from misc. appeals as they are exempt from setbacks

Article III, Section 78-142

These also are procedural changes to make the processes more user friendly. They include:

- 1) Proposed setback reductions for previously developed properties.

Article VIII, Section 78- 1625, 78-1627, 78-1629, 78-1631.

Allowing more options for “temporary” Signage and Electronic Signs

Article VII 78-1268 Child Care Facilities, This proposal addresses the definitional changes in Article 1.

NOTE – MATERIAL HE MAY DISCUSS.

~~Cafe, sidewalk, means an outdoor seating area, ancillary to an indoor food service facility, providing customer seating located adjacent to a public or private sidewalk, and is separated from the sidewalk by elevation change, fence or wall or any combination thereof.~~ means the establishment of tables and chairs on the public or privately owned sidewalk directly in front of, and accessory to a licensed victualer. Outdoor dining on

private property, other than a sidewalk is not regulated by Chapter 50 Streets, Sidewalks and Other Public Places, but is regulated by this Chapter.

Child care facilities mean as follows:

~~(1) Day care facility means a house or place in which 13 or more children may for consideration be cared for, on either a regular or nonrecurring basis, and which is licensed by the state department of human services as a day care facility, also which conforms to section 78-1268.~~

(1) Child Care Facility means a house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for three (3) or more children under thirteen (13) years of age. Any program for children under 5 years of age that is located in a private school and programs that contract with one or more Child-Development Services System sites are required to be licensed as a Child Care Facility by the state department of human services as a day care facility, also must conform to section 78-1268

There are two types of Child Care Facilities:

(a)Child Care Center means house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for thirteen (13) or more children under thirteen (13) years of age or any location or locations operated as a single childcare program or by a single person or persons when there are more than twelve (12) children being cared for.

(b)Small Childcare Facility means a house or other place, not the residence of the operator, in which a person, or combination of persons, maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for 3 - 12 children under the age of thirteen (13).

“Child Care Facility” does not include a facility operated by a family child care provider, a summer camp established solely for recreational and educational purposes, programs offering instruction to children for the purpose of teaching a skill such as karate, dance or basketball or a private school recognized by the Department of Education as a provider of equivalent instruction for the purpose of compulsory school attendance, or a formal public or private school in the nature of a kindergarten or elementary or secondary school approved by the Commissioner of Education in accordance with Title 20-A.

~~(2) Family day care home means a house or other place in which one to six children may for consideration be cared for and which fully complies with the rules and regulations of the state department of human services, also which conforms to section 78-1268.~~

(2) Family child care provider means a person who provides day care in that person's home on a regular basis, for consideration, for 3 to 12 children under 13 years of age who are not the children of the provider or who are not residing in the provider's home. If a provider is caring for children living in that provider's home and is caring for no more than 2 other children, the provider is not required to be certified as a family child care provider by the State Department of Health and Human Services and also which conforms to section 78-1268.

(3) Group day care home means a house or other place in which seven to 12 children may for consideration be cared for and which is licensed by the state department of human services as a day care facility, also which conforms to section 78-1268.

(4) Nursery school ~~means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program which provides care for three to 12 children, provided that:~~

~~a. No session conducted for the children is longer than 3 1/2 hours in length;~~

~~b. No more than two sessions are conducted per day;~~

~~c. Each child in attendance at the nursery school attends only one session per day; and~~

~~d. No hot meal is served to the children.~~

~~e. Also, which conforms to section 78-1268.~~

means a house or other place in which a person or combination of persons maintains or otherwise carries out for consideration during the day a regular program that provides care for 3 or more children 33 months of age or older and under 8 years of age, provided that:

(a) No session conducted for the children is longer than 3 1/2 hours in length;

(b) No more than 2 sessions are conducted per day;

(c) Each child in attendance at the nursery school attends only one session per day;

and

(d) No hot meal is served to the children.

(e) Also, which conforms to section 78-1268.

Manufactured housing unit means a structure, transportable in one or more sections, which was constructed in a manufacturing facility and is transported to a building site and designed to be used as a dwelling when connected to the required utilities, including plumbing, heating, air conditioning and electrical systems contained therein. For the purpose of this chapter, a manufactured structure constructed in compliance with the ~~BOCA/CABO~~ International Residential building codes as referenced by the State's Manufactured Housing Act and regulations and being at least 20 feet in width shall not be considered a manufactured housing unit. The term manufactured housing unit does not include a "park model" recreational vehicle.

Structure, accessory, means a structure of a nature customarily incidental and subordinate to that of the principal use or structure. Accessory uses, when aggregated, shall not subordinate the principal use of the lot. A deck or similar extension of the principal structure or a garage attached to the principal structure by a roof or a common wall is considered part of the principal structure. ~~For the purpose of this chapter, swimming pools shall not be considered accessory structures.~~

Use, nonconforming, means a building, structure, use of land or portion thereof, existing at the effective date of adoption or amendment of the ordinance from which this chapter derives which does not conform to all applicable sections of this chapter for the district in which it is located. Existing complementary uses in the DD-1 and DD-2 Zoning Districts which do not comply with Sections 78-719. Distribution of uses; 78-720. Spacing of drinking establishments and 78-749. Distribution of uses shall be considered nonconforming uses.

Sec. 78-34. Building permits.

(a) Required. No building or other structure shall be erected, moved, renovated or structurally altered without a permit issued by the code enforcement officer.

(b) Approval or denial. The code enforcement officer shall issue or deny a building permit for the construction of a new principal building no ~~earlier than seven days and not~~ later than 21 days of receipt of the proper application. All other permits shall be issued or denied within seven days.

(c) Expiration. Expiration of building permits is as follows:

(1) If the work described in any building permit has not begun within 180 days from the date of issuance thereof, the permit shall expire ~~and be canceled by the code enforcement officer with written notice of the cancellation given to the persons affected.~~ Permits may be extended for an additional 6 month upon receipt of a written request from the owner/agent received prior to the expiration of the original permit.

(2) If the work described in any building permit has not been substantially completed within two years of the date of issuance thereof, the permit shall expire.

(Ord. of 9-18-2001, § 15.3)

Sec. 78-68. Notification of public hearing.

(a) Posting notice. Before making a decision on any appeal or other matter before it, a notice from the chairman of the board of appeals shall be published and posted in the town office at least ten days in advance of the public hearing.

(b) Abutters. The notice of the public hearing shall be sent to the owners of all properties which touch any lot line of the property which is the subject of the hearing (referred to as "the subject property") or which is located across a street from the subject property and which touches any line which could be drawn from any part of the subject property at right angles to the street sideline opposite the subject property. The applicant shall mail the notice of public hearing by certified mail, return receipt requested, at least ten days in advance of the hearing. At the time of the hearing the applicant shall submit to the board of appeals proof of mailing in the form of certified mail receipts. Failure of the applicant to produce such proof of mailing shall cause the board to reschedule the hearing until the proper notice has been provided. For purposes of this subsection, the term "owners" means those persons identified as the owners of the property in the records of the town tax assessor. The cost of abutter notification for administrative appeals shall be the responsibility of the Town. All other appeal notifications shall be the responsibility of the applicant.

(Ord. of 9-18-2001, § 14.2.1)

Sec. 78-94. Miscellaneous appeals--Limited reduction of yard size; limited expansion of lot coverage.

(a) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Limited expansion of lot coverage means the expansion of maximum lot coverage by no more than the sum of five percent ~~of~~ in addition to the the requirement allowed in the zoning district.

Limited reduction of yard size means the reduction of a required front yard by no more than 25 percent or of a required side or rear yard by no more than 50 percent of the requirement of the zoning district in which the property is located.

~~Lots in residential use~~ Previously developed lot means a lot on which a ~~dwelling structure~~ exists on February 3, 1998 or a vacant nonconforming lot of record on which a ~~residential-dwelling structure for which a use permitted in the zoning district where it is located~~ is proposed.

(b) Authority. The board of appeals shall have the power and duty to hear and decide requests for a limited reduction of required yard size or limited expansion of lot coverage for a lot ~~solely in residential use~~ in order to permit:

(1) The expansion or enlargement of an existing building or structure the use of which is permitted in the zoning district where the structure is located and the erection of an accessory structure on a previously developed lot; or

(2) The construction of a new building or structure on a vacant nonconforming lot of record.

(c) Vote required; conditions. A limited reduction of yard size or limited expansion of lot coverage may only be granted by a majority vote of those members present and voting and may include such conditions and safeguards as are appropriate under this chapter.

(d) Requirements. The applicant for a limited reduction of yard size or limited expansion of lot coverage must demonstrate the following:

(1) The existing buildings or structures on the lot for which the limited reduction of yard size or limited expansion of lot coverage is requested were erected prior to the effective date of the ordinance from which this section derives (February 3, 1998) or the lot is a vacant nonconforming lot or record;

Sec. 78-95. Same--Nonconforming means of egress construction.

(a) Generally. The board of appeals shall have the power and duty to hear and decide requests for the construction of means of egress stairways ~~or ramps~~ in order to permit:

(1) The expansion of a stairway which is legally nonconforming with regard to space and bulk requirements solely to conform to the building code as adopted by the town.

(2) The construction of a means of egress on a structure that is required by the town fire prevention code or that is required to make a structure or use accessible to a physically disabled person.

(b) Vote; conditions. An appeal to permit a nonconforming means of egress construction may only be granted by a majority of those members present and voting and may include such conditions and safeguards as are appropriate under this chapter.

(c) Requirements. Requirements are as follows:

(1) The use or structure is legally nonconforming, as set forth in section 78-176, if the use or structure is nonconforming.

(2) The requested stairway ~~or ramps~~ is the minimum structure, dimensionally, as required by the town building code.

(3) Due to the physical features of the lot or location of structures on the lot, it would not be practical to construct the proposed stairway ~~or ramps~~ in conformance with applicable space and bulk requirements.

(d) Interpretation as variance to relieve hardship. The granting of a request for a nonconforming means of egress pursuant to this section shall not be construed as the granting of a variance to relieve hardship. Notwithstanding section 78-113, the denial of a variance requested under section 78-93(b) shall not preclude a subsequent application a nonconforming means of egress under this section, and the denial on a request under this section shall not preclude a subsequent application for a variance under section 78-93(b). If an application for a variance is pending, the town shall not accept an application for a

nonconforming means of egress on the same property. If an application for a nonconforming means of egress is pending, the town shall not accept an application for a variance on the same property.
(Ord. of 9-18-2001, § 14.3.3.2)

Sec. 78-142. Conformance required.

(1) No land or water area shall be used; no building or structure shall be erected, altered, enlarged, rebuilt, moved or used; and no premises shall be used unless in conformity with the sections of this chapter except those existing which, by this chapter, become lawfully nonconforming.

(2) Notwithstanding the requirements of subparagraph (1) above, the code enforcement officer may issue a permit allowing construction which does not conform to the minimum setback or building coverage requirements of this ordinance for the purpose of making a **dwelling structure** accessible to a person with a disability who resides in or regularly uses the **dwelling structure**. The code enforcement officer shall restrict any such permit solely to the installation of equipment or construction of structures (including railing, wall or roof systems needed for the safety or effectiveness of the structure) that are necessary for access to or egress from the **dwelling structure** by the person with a disability. The permit shall be limited in duration to the time the person with a disability resides in or regularly uses the **dwelling structure**. There shall be no time limitations for accessibility enabling structures created pursuant to this section for non-residential uses. Disability under this subparagraph has the same meaning as physical **handicap disability** under Title 5, Section 4553-A of the Maine Revised Statutes.

(3) Notwithstanding the requirements of subparagraph (1) above, the code enforcement officer may issue a permit allowing construction which does not conform to the minimum yard space or building coverage requirements of this ordinance for the purpose of allowing the construction of additions and accessory structures. This shall be limited to:

(a) the reduction of a required front yard by no more than 25 percent or of a required side or rear yard by no more than 50 percent of the requirement of the zoning district in which the property is located and;

(b) the expansion of maximum lot coverage by no more than the sum of five percent in addition to the requirement allowed in the zoning district.

This reduction is only allowed if both of the following conditions exist:

(i) The existing buildings or structures on the lot for which the reduction of yard size or expansion of lot coverage is requested were erected prior to February 3, 1998, and;

(ii) The addition or accessory structure cannot be placed in conformance with the required setbacks or lot coverage.

If the proposed project does not qualify for this exception because there are conforming locations for the proposed construction on the property, the applicant may apply for a Miscellaneous Appeal pursuant to Section 78-94.

(Ord. of 9-18-2001, § 4.2.1; Ord. of 4-21-2009(4))

Sec. 78-1625. Prohibited signs.

To preserve public safety and control nuisances to adjacent property owners, the following signs and display characteristics are expressly prohibited:

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(1) Any rotating signs, signage with moving parts, ~~flashing illumination, illumination that depicts movement~~, or emits noise or sound effects, excepting bonus area signage permitted in the DD-1, DD-2, BRD and AO district performance standards and such portions of a sign as consist solely of indicators of time and/or temperature or changeable message signs permitted by this Ordinance pursuant to the following standards:

a. The property must be located in the General Business 1, General Business 2, DD1, DD2, AO or Industrial Zoning District.

b. The applicant must demonstrate to the satisfaction of the chief of police that the sign will not constitute a driving hazard.

c. Each message shall be a fixed static display with a five second hold rate of change minimum between changes including the use of subtle transitions such as fade, dissolve, travel and scrolling or similar transitions and with frames that appear to move or change in size, or be revealed sequentially rather than at once including the movement of illumination or the scintillation or varying of light intensity as long as the intermittent lighting is used to change messages and not solely to attract attention. Definitions related to changeable message signs shall have the meanings from 23 M.R.S.A. § 1914(11-A). Time and temperature signs are allowed to change display with a two second message hold rate.

Sec. 78-1627. Temporary signs.

The following temporary signs may be permitted and exempt from the size and dimensional requirements of the zoning district, provided that the signage does not pose a safety hazard and meets all relevant conditions prescribed:

(1) Window posters.

(a) Temporary signage placed inside of building windows announcing community events, provided the signage is removed within five days following the event.

(b) Temporary posters or banners placed inside building windows advertising sales, special events or bargains.

(c) Exterior banners for a period not exceeding 30 consecutive days announcing sales, events or similar activities.

Sec. 78-1629. Performance standards for signs in all districts.

The following performance standards for signs are applicable to all districts of this chapter:

(1) All proposed signs shall be sited on the same parcel as the principal building and may be freestanding, located in windows, attached to the building wall at any location below the roof eave or on projecting awnings.

(2) No signage may be located in a public street, sidewalk, or within any sidewalk or entrance used by the public except a side walk "A" frame signboard not exceeding 2 feet by 2 feet that has received a permit from the Code Enforcement Officer pursuant to Section 78-1623 of this Article. Sidewalk signs are not included in the allowable square footage allowances.

Sec. 78-1631. General exemptions.

(d) Menu Boards and Food Selection information. Menus, food selection and pricing information affixed to restaurants, food stands and other licensed victualer establishments

are exempt from the standards of this division provided that such signage does not exceed 1 square foot for each 12 square feet of facade of the building.

Sec. 78-142. Conformance required.

(1) No land or water area shall be used; no building or structure shall be erected, altered, enlarged, rebuilt, moved or used; and no premises shall be used unless in conformity with the sections of this chapter except those existing which, by this chapter, become lawfully nonconforming.

(2) Notwithstanding the requirements of subparagraph (1) above, the code enforcement officer may issue a permit allowing construction which does not conform to the minimum setback or building coverage requirements of this ordinance for the purpose of making a **dwelling structure** accessible to a person with a disability who resides in or regularly uses the **dwelling structure**. The code enforcement officer shall restrict any such permit solely to the installation of equipment or construction of structures (including railing, wall or roof systems needed for the safety or effectiveness of the structure) that are necessary for access to or egress from the **dwelling structure** by the person with a disability. The permit shall be limited in duration to the time the person with a disability resides in or regularly uses the **dwelling structure**. There shall be no time limitations for accessibility enabling structures created pursuant to this section for non-residential uses. Disability under this subparagraph has the same meaning as physical **handicap disability** under Title 5, Section 4553-A of the Maine Revised Statutes.

(3) Notwithstanding the requirements of subparagraph (1) above, the code enforcement officer may issue a permit allowing construction which does not conform to the minimum yard space or building coverage requirements of this ordinance for the purpose of allowing the construction of additions and accessory structures. This shall be limited to:

(a) the reduction of a required front yard by no more than 25 percent or of a required side or rear yard by no more than 50 percent of the requirement of the zoning district in which the property is located and;

(b) the expansion of maximum lot coverage by no more than the sum of five percent in addition to the requirement allowed in the zoning district.

This reduction is only allowed if both of the following conditions exist:

(i) The existing buildings or structures on the lot for which the reduction of yard size or expansion of lot coverage is requested were erected prior to February 3, 1998, and;

(ii) The addition or accessory structure cannot be placed in conformance with the required setbacks or lot coverage.

If the proposed project does not qualify for this exception because there are conforming locations for the proposed construction on the property, the applicant may apply for a Miscellaneous Appeal pursuant to Section 78-94.

(Ord. of 9-18-2001, § 4.2.1; Ord. of 4-21-2009(4))

Sec. 78-1268. Child care facilities.

(a) All child care facilities, ~~family day care homes~~, family day care providers, group day care homes, ~~day care center facilities~~, and nursery schools shall comply with the following conditions:

(1) Required play areas for children shall be permitted in rear and side yards only.

- (2) All play areas shall be enclosed by a fence 48-inch in height above finished grade. Fence gates shall be latched at the top.
- (3) ~~Day-care facilities~~ Child care centers are prohibited in multifamily housing units.
- (4) Individual child care facilities shall be situated no closer to another child care facility than five times the minimum frontage requirement for the zoning district within which the proposed facility is located.
- (5) Off-street parking shall be provided as follows: One parking space per each nonresident employee and a minimum of one parking space per every four children, or portion thereof, of the total number allowed under the state license.
- (b) All child care facilities, ~~family day care homes,~~ family day care providers, group day care homes, ~~Day-care center facilities~~ child care centers, and nursery schools shall comply with the following conditions, if applicable:
- (1) ~~Family day care homes~~ family day care providers not subject to inspection by the state fire marshal's office shall request an inspection and written report by the local fire inspector's office determining that there are no fire safety hazards present in the home. If fire safety hazards are found to exist, the applicant shall comply with the recommended corrective actions prior to the issuance of a statement of compliance by the code enforcement officer.
- (2) Group day care homes, ~~day-care facilities~~ child care centers and nursery schools shall comply with the following conditions:

Sec. 78-1625. Prohibited signs.

To preserve public safety and control nuisances to adjacent property owners, the following signs and display characteristics are expressly prohibited:

- (1) Any rotating signs, signage with moving parts, ~~flashing illumination, illumination that depicts movement,~~ or emits noise or sound effects, excepting bonus area signage permitted in the DD-1, DD-2, BRD and AO district performance standards and such portions of a sign as consist solely of indicators of time and/or temperature or changeable message signs permitted by this Ordinance pursuant to the following standards:
- a. The property must be located in the General Business 1, General Business 2, DD1, DD2, AO or Industrial Zoning District.
- b. The applicant must demonstrate to the satisfaction of the chief of police that the sign will not constitute a driving hazard.
- c. Each message shall be a fixed static display with a five second hold rate of change minimum between changes including the use of subtle transitions such as fade, dissolve, travel and scrolling or similar transitions and with frames that appear to move or change in size, or be revealed sequentially rather than at once including the movement of illumination or the scintillation or varying of light intensity as long as the intermittent lighting is used to change messages and not solely to attract attention. Definitions related to changeable message signs shall have the meanings from 23 M.R.S.A. § 1914(11-A). Time and temperature signs are allowed to change display with a two second message hold rate.

Sec. 78-1627. Temporary signs.

The following temporary signs may be permitted and exempt from the size and dimensional requirements of the zoning district, provided that the signage does not pose a safety hazard and meets all relevant conditions prescribed:

(1) Window posters.

(a) Temporary signage placed inside of building windows announcing community events, provided the signage is removed within five days following the event.

(b) Temporary posters or banners placed inside building windows advertising sales, special events or bargains.

(c) Exterior banners for a period not exceeding 30 consecutive days announcing sales, events or similar activities.

Sec. 78-1629. Performance standards for signs in all districts.

The following performance standards for signs are applicable to all districts of this chapter:

(1) All proposed signs shall be sited on the same parcel as the principal building and may be freestanding, located in windows, attached to the building wall at any location below the roof eave or on projecting awnings.

(2) No signage may be located in a public street, sidewalk, or within any sidewalk or entrance used by the public except a side walk “A” frame signboard not exceeding 2 feet by 2 feet that has received a permit from the Code Enforcement Officer pursuant to Section 78-1623 of this Article. Sidewalk signs are not included in the allowable square footage allowances.

(c) Cornerstones and plaques. Memorial signs, names of historic buildings and commemorative plaques, and cornerstone dates are exempt from the standards of this division, provided that such signage is permanently affixed to or engraved into the building or freestanding, as long as the signage does not exceed four square feet.

(d) Menu Boards and Food Selection information. Menus, food selection and pricing information affixed to restaurants, food stands and other licensed victualer establishments are exempt from the standards of this division provided that such signage does not exceed 1 square foot for each 12 square feet of facade of the building.

Discussion was lengthy on the many issues discussed. Councilor Dayton spent a great deal of time on her concerns relative to the sections that would provide for a six month extension to permit which she felt needed more procedural information. She again raised the issue of the verbiage “shall” to “may” for late fees which would relax the code and people would be allowed to work without permits. She also felt that the Planning Board was not really aware of the details during their review process and stated that she spoke with the Chairman of the Planning Board and that he was not aware of the details during their review process. It should be noted that Mark Koenigs, a full member of the Planning Board, negated that claim by indicating the process by which they review the material. He also gave credence to the work of the Ordinance Review Committee. He confirmed that the Planning Board reviewed the revisions and that they had them for three or four months and they were aware of the content and voted to send them to the Council for approval. He strongly suggested that they had done their job and sending them back to the Planning Board as suggested by Councilor Dayton was not necessary. Vice Chair Tousignant’s concern was the limited yard reduction allowances are a band aid approach to the ordinance and if the setbacks need to be reduced, they should be done in the individual district. John Bird spoke of his concern about the requirement for the removal of an access

ramp, once it is no longer needed. This, however, is not a proposed change; it is already in the Ordinance. He agreed with the allowance for a designee to attend the ZBA meetings if the CEO cannot, as it agrees with the proposed Charter revisions. He also suggested that these ordinance changes should go to a Workshop.

CHAIR: I close the Public Hearing at 8:27p.m.

PUBLIC HEARING BUSINESS LICENSES AND APPROVAL:

CHAIR: I open the Public Hearing at 8:28 p.m.

Deidre Mitchell-Maalouf (207-2-13-207), 161 Saco Avenue, Unit 208, one year round rental; Jeff & Sharon Tourigny (210-1-15-18), 25 Smithwheel Road, Unit 18, one year round rental; Domenic Pugliares (307-1-3-A), 27 West Grand Avenue, one year round rental; and William B. Dederer (316-4-1-4C), 1 Seacliff Avenue, Unit 4C, one year round rental..

CHAIR:I close this Public Hearing at 8:29 p.m.

MOTION: Councilor MacDonald motioned and Vice Chair Tousignant seconded to approve the Business Licenses as read.

VOTE: Unanimous.

PUBLIC HEARING SPECIAL AMUSEMENT PERMIT:

CHAIR: I open this Public Hearing at 8:30 p.m.

HFY Enterprises, Inc., dba/Oceanside Grille at the Brunswick (310-6-1), 39 West Grand Avenue, Music Inside and Outside; 11:00 a.m. to 1:00 a.m.; Inside: Lounge/Year Round; Outside: Patio/Seasonal.

VICE CHAIR TOUSIGNANT: He questioned the closing hour outside which was discussed in September on the very same issue.

TOM LACASSE: The owner indicated that the closing hour outside would be 12:30 a.m. and Inside 1:00 a.m.; as that was indicated incorrectly on the permit.

CHAIR: I close this Public Hearing at 8:35 p.m.

MOTION: Vice Chair Tousignant and Councilor Dayton seconded to approve the Special Amusement permit with the correction to include that the closing hour outside would be 11:00 a.m. to 12:30 a.m.; and 11:00 a.m. to 1:00 a.m. year-round inside.

VOTE: Unanimous.

TOWN MANAGER'S REPORT: The Town Manager gave a lengthy report on the repairs that need to be done at the fire station and those that have been done to this point with little or no expense to the Town. He commented further on the Ballpark update. He further updated the Council on the status of the town hall repairs. A further report was provided on the hiring status of the Code Enforcement Officer position and the other positions open in the Town Hall. The Town Manager updated the Council on Dispatch and a meeting with the new Dispatch Director, Ray Parent. He indicated there have been many meetings including Chiefs Kelly and Glass and Deputy Chief Babin. Negotiations are continuing with the Police and the Public Works and there is a positive nature to these discussions. He congratulated everyone on the success of Woofstock. He reported that he and the Public Works Director would be going to PACTS this week to request approximately \$85,000 to conclude the Intersection Project at the corner of Saco Avenue and E. Emmons Cummings.

NEW BUSINESS:

5505 Discussion with Action: Authorize the Town Manager to issue an RFP for the building of a Storage Garage for use by the Police and Fire Departments and also to permit storage of Town Hall legal and election documentations, to be funded from Account Number 31143-50891—FY 10 Bond – New Police Station, with a balance of \$273,012.58.

TOWN MANAGER: The Chief of Police, Dana Kelley, reported that during the planning phase for the new Police Facility, one of the areas of concern and one that we desperately needed to address was storage. As you still know we have a significant amount of seasonal equipment that needs to be stored after Labor Day. The list includes bicycles, ATV's, a motorcycle, parking meters, portable message board, as well as several vehicles. We also need a place to store our archived reports and other paperwork required by the law to keep safe and secure. Some of these items have to be kept for a lifetime. During the summer months the Fire Department allowed us to continue to utilize the old police garage and one bay of their building. We also were using a storage trailer that housed parking meters and other equipment. The trailer also housed an office used by parking enforcement. We had two trailers that we were utilizing prior to moving into the new facility. We have returned one and the Fire department purchased the other one to be used as a haunted house. We are currently storing some of our equipment in the ballpark garage. As we moved through the design process we found that if the building exceeded ten thousand square feet that we would have to sprinkle the facility. This was cost prohibitive so we had to reduce the size of the building to just under 10,000 square feet. In doing so, we were forced to eliminate most of our planned storage space within the facility. At this point we discussed a plan to build a 40 by 30 foot storage garage on the back of the parking lot. We decided to keep the storage building on hold until we were sure that the main building would not come in over budget. The first priority was to be sure that we had everything needed in the main building before we committed to building a storage building. Now the building is finished, Chief Kelley would like to address the storage issue by going out to bid for either a 30 by 40 foot storage/garage to be funded utilizing money remaining from the original bond. He believes that there is currently \$234,000 in that account. He has addressed a couple of contractors to submit an estimated cost for the structure and will forward that to the Manager and Council. He is

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asking the Council to allow me to go out for bid on this final phase of the police building construction project. In discussions with the Assistant Town Manager, she suggested that perhaps the Council might give consideration to expanding the size to accommodate the storage of records from the Town Hall since that facility is unable to handle the storage needs of not only documentation but election material and equipment needed during the election process. It is suggested that perhaps the Council might consider allowing for an expansion of the storage facility to include consideration of the administration's needs as well.

Discussion among the Council members included the expression of concern that perhaps this is a bigger project than originally planned and as such should be considered in a workshop setting and in collaboration with the issues related to the Fire Department. As a result it was discussed by Council that a workshop in the coming weeks should be held at which time more information would be available to the Council for consideration of the issue.

MOTION: Vice Chair Tousignant motioned and Councilor MacDonald seconded Table ("Remove without Prejudice) the Agenda Item to Authorize the Town Manager to issue an RFP for the building of a Storage Garage for use by the Police and Fire Departments and also to permit storage of Town Hall legal and election documentations, to be funded from Account Number 31143-50891—FY 10 Bond – New Police Station, with a balance of \$273,012.58.

VOTE: Yea: Councilor MacDonald, Vice Chair Tousignant, Chair Quinn
Nea: Councilor Dayton

5506 Discussion with Action: Accept, with regret, the resignation of Steve Urbach from the Community Animal Watch Committee.

MOTION: Councilor MacDonald motioned and Vice Chair Tousignant seconded to Accept, with regret, the resignation of Steve Urbach from the Community Animal Watch Committee.

VOTE: Unanimous.

5507 Discussion with Action: Move David Darling from Alternate to Regular Member of the Planning Board, effective November 1, 2011, term to expire December 31, 2013; and Appoint Michael Russo as an Alternate to the Planning Board, term to expire December 31, 2013.

MOTION: Vice Chair Tousignant motioned and Councilor MacDonald seconded to Move David Darling from Alternate to Regular Member of the Planning Board, effective November 1, 2011, term to expire December 31, 2013; and Appoint Michael Russo as an Alternate to the Planning Board, term to expire December 31, 2013.

VOTE: Unanimous.

5508 Discussion with Action: Approve Liquor License Renewal of HFY Enterprises, Inc., dba/Oceanside Grille at the Brunswick (310-6-1), 39 West Grand Avenue, s-m-v in a Restaurant/Lounge.

MOTION: Councilor Dayton motioned and Councilor MacDonald seconded to Approve Liquor License Renewal of HFY Enterprises, Inc., dba/Oceanside Grille at the Brunswick (310-6-1), 39 West Grand Avenue, s-m-v in a Restaurant/Lounge.

VOTE: Unanimous.

GOOD AND WELFARE:

Statement by Pat Brown to the Old Orchard Beach Town Council (for inclusion in minutes) - October 18, 2011

“We know that operating from a level of integrity encourages openness and honesty. Like the many who volunteer throughout Town, I volunteer and give of myself because I love and believe in Old Orchard Beach. I have no political aspirations or hidden agendas. My intention is and always will be to focus on issues that work for the greater good of our Town.

In answer to a question asked in an October 14th e-mail to Council and myself,... First, Conflict of Interest ...was pulled from the October 4th Town Council agenda (and we) now agree not to place it on the agenda again until after elections are held and the new Council is established. I suggest that it be after Thanksgiving and before Christmas and strongly recommend having the Town Attorney present so we can get immediate opinions to help guide us toward the best legally viable solutions.

Second, when Conflict of Interest goes to workshop or put on the Agenda, an item addressing Confidentiality needs to be added. A good starting point for that topic is to ask this question directly to the person who sent out an e-mail with an incorrect electronic Council agenda attached: “How did you get the electronic copy of a Council Agenda you e-mailed out before it was finalized and approved for release to the public by Chair Quinn?” That answer will allow us to constructively determine the steps necessary to prevent this type of release from happening in the future.

.....
I urge everyone to re-read the four page cover letter attached to the document, with particular attention to the last two paragraphs on page 2, some which follows here:

“The adoption of broader standards of ethics for Councilors, ...and Town officials does not (impugn) (sic) cast doubt on either their integrity or their dedication... If public confidence in government is to be maintained and enhanced, it is not enough that Councilors and Town Officials... avoid acts of misconduct. They must also (scrupulously) (sic) be very careful to avoid acts which may create an appearance or perception of misconduct.”

.....
In response to one final item in that October 14th e-mail, as the facilitator of this effort, anyone contacted by a reporter about this subject may refer them to me.

In closing, let me be clear. Our focus is to clarify the guidelines for ethical standards of conduct for Council and Town officials by assisting to make them consistent with those routinely acknowledged and accepted worldwide.

The first step in that process is to clarify the “gray areas” of Conflict of Interest and Confidentiality in order to make them as black and white as possible. Doing so protects our Councilors and Town Officials from unintentionally acting, or being perceived as acting, in any way that could be considered a conflict of interest or breach of confidentiality. Our efforts have never been meant to harm or inhibit the work of any Town Councilor, Town official or organization but is instead meant to be a means in which the ground rules are clear, which will enable all to work together in an organized, transparent and efficient manner for the greater good of Old Orchard Beach. “

Patricia Brown, 1 Fourth Avenue, Old Orchard Beach, ME 04064

MARK KOENIGS: He requested information on the DEP’s conditional approval of the Shoreland Zoning Documentation; the Status of the Communication Tower approval in light of the variance. He also asked if the property that the Town turned over to the RSU for the school facilities with the Transfer Station and Landfill and new Police Station include or separated from the RSU 23 and designated as High School Property and Athletic Fields? The Town Manager responded that the Tower Report is forthcoming as well as he is following up on the RSU request. It was also stated that the codification has been done and the DEP material was included.

JEROME BEGERT: Mr. Begert read a very extensive journalistic paper to the Council encouraging citizens to take their responsibility seriously as they ponder the many issues related to the upcoming election. Due to the lateness of the hour he indicated that he would provide to the Secretary the entire document which he will complete and read at the November 1, 2011 Town Council meeting. Mr. Begert sought to encourage citizens to recognize the importance of their vote; the blessing of the freedom to choose; and to collectively use the God-given opportunities provided to us as Americans. Again, his complete paper will be included in the next Council Minutes of November 1, 2011.

ADJOURNMENT:

MOTION: Councilor Dayton motioned and Councilor MacDonald seconded to Adjourn the Town Council Meeting at 9:45 p.m.

VOTE: Unanimous.

Respectfully Submitted,

V. Louise Reid
Town Council Secretary

I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of twenty (20) pages is a true copy of the original Minutes of the Town Council Meeting of October 18, 2011.

V. Louise Reid