

TOWN OF OLD ORCHARD BEACH  
**ZONING BOARD OF APPEALS MEETING MINUTES**  
 March 30, 2009

<b>Call to Order at 7:08 p.m.</b>	<b>Call to Order</b>
<b>Pledge to the Flag</b>	
<p><b>Roll Call:</b> Mr. Ray DeLeo, Mr. Howard Evans, Ms. Tianna Higgins, Mr. Philip Weyenberg, Mr. Phillip Denison, Present. Ms. Eileen Payette, Absent. Mr. Robert Quinn, Absent.</p> <p><b>Staff:</b> Mike Nugent, Code Enforcement Officer; Tori Geaumont, ZBA Clerk</p>	
<p><b>ITEM 1: Miscellaneous Appeal:</b> Jo Roderick, owner of 34 Cookman Ave, MBL 317-6-1 in the R2 Zone, to permit the adjustment of the rear lot line to install a handicap ramp. Owner is the appellant.</p>	<p style="text-align: center;"><b>ITEM 1:</b>  <b>Miscellaneous</b>  <b>Appeal</b>  <b>Jo Roderick</b>  <b>34 Cookman</b>  <b>Ave</b>  <b>MBL 317-6-1</b>  <b>R2 Zone</b></p>
<p><b>Chairman DeLeo read the appeal.</b></p> <p><b>Jo Roderick, 34 Cookman Avenue.</b>  <b>Ms. Roderick</b> stated she takes care of a man who is wheelchair bound with MS and needs to have ramp built. Ms. Roderick stated the ramp is 43 inches wide and within code.  <b>Chairman DeLeo</b> asked Mr. Nugent if this part of the zoning ordinance will be changed in upcoming zoning amendments.  <b>Mr. Nugent</b> stated that it will change to allow staff to issue permit for any handicap structure. He stated it is not a structure, and once the need for the structure goes away the structure needs to be taken down. The change has not been approved yet by council so Ms. Roderick needed to come to the board.</p> <p><b>Chairman DeLeo called for Abutters and any correspondence.</b></p> <p><b>Chairman DeLeo</b> read criteria number one.  <b>Mr. Nugent</b> stated that page number 3 is what is applicable in this appeal.  <b>Chairman DeLeo</b> read requirement of non-conforming means of egress construction.</p> <p><b>With regards to part A.</b> The requested stairway or ramp is the minimum structure, dimensionally, as required by the Town of Old Orchard Beach Building Code</p> <p><b>Mr. Evans</b> agreed.  <b>Mr. Weyenberg</b> agreed.  <b>Mr. Denison</b> agreed.  <b>Ms. Higgins</b> agreed.  <b>Chairman DeLeo</b> agreed.</p>	<p style="text-align: center;"><b>Public</b>  <b>Hearing</b></p>

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<p><b>With regards to part B.</b> Due to physical features of the lot or location of structures on the lot, it would not be practical to construct the proposed stairway or ramp in conformance with applicable space and bulk requirements.</p> <p><b>Mr. Evans</b> agreed.  <b>Mr. Weyenberg</b> agreed.  <b>Mr. Denison</b> agreed.  <b>Ms. Higgins</b> agreed.  <b>Chairman DeLeo</b> agreed.</p> <p><b>Mr. Evans</b> moved to permit the adjustment of the rear lot line to install a handicap ramp.  <b>Ms. Higgins</b> seconded.</p> <p><i>Motion passes unanimously</i></p>	<p style="text-align: center;"><b>Motion</b></p> <p style="text-align: center;"><b>Vote</b></p>
<p><b>ITEM 2: Administrative Appeal:</b> Jeffrey Wu &amp; Janet Chao, owner of 42 West Old Orchard Avenue, MBL 312-8-6 in the R2 Zone, to review the determination that the structure is not legally a two unit building. Owner is the appellant.</p>	<p style="text-align: center;"><b>ITEM 2:</b>  <u><b>Administrative Appeal:</b></u>  <b>Jeffrey Wu &amp; Janet Chao</b>  <b>42 West Old Orchard Avenue</b>  <b>MBL 312-8-6</b>  <b>R2 Zone</b></p>
<p><b>Mr. Weyenberg</b> motioned to table without prejudice until the next meeting.  <b>Mr. Evans</b> asked why this is being tabled. .  <b>Mr. Nugent</b> stated they are trying to mediate the problem internally without involving the town. Mr. Nugent stated there are some compensation issues with the owner and the person they bought it from.</p> <p><b>Mr. Evans</b> seconded the motion.</p> <p><i>Motion passes unanimously.</i></p>	<p style="text-align: center;"><b>Public Hearing</b></p> <p style="text-align: center;"><b>Motion</b></p> <p style="text-align: center;"><b>Vote</b></p>
<p><b>ITEM 3: Variance:</b> Diane Lemanager, owner of 7 Saunders Avenue, MBL 303-2-6, in the BRD Zone, to permit the adjustment to the minimum lot size and frontage requirements and density standard to allow the removal of one house on the Saunders St side of the property and divide the lot and allow construction of a dwelling on the Scollard Rd. side of the property. Owner is the appellant.</p>	<p style="text-align: center;"><b>ITEM 3:</b>  <u><b>Variance Application:</b></u>  <b>Diane Lemanager</b>  <b>7 Saunders Avenue</b>  <b>MBL 303-2-6</b>  <b>BRD Zone</b></p>

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**Chairman DeLeo** read the appeal.

**Mr. DeLeo** asked if Ms. Lemenager was present.

**Ms. Lemenager** asked to give each board member a copy of visuals. The applicant stated she does not want to be redundant. She knows she has been in front of the board a month ago with the exception of Mr. Weyenberg, but basically she would like to have permission to actually take one of the structures down and build a structure on the vacant lot. She stated to understand a little more of what it looks like, the original map prior to the town merge, and this is a map from 1922. She stated you can see lots 2, 6, and 7 were the ones that were originally Mr. O'Neil's property. Because they were all in his name the town merged them thus creating the current town map on the next page. She pointed out that you can see it between Saunders and Scollard in the L-shaped area.

**Mr. DeLeo** asked if this is the red area.

**Ms. Lemenager** stated yes, the one below it. She stated once the town merged the lots, the property crosses two streets and visually, which as can be seen, it is very inconsistent with the rest of the neighborhood. What she has asked to do can be seen on the next page; the two structures on the current usage, one to your left actually sits about 2 feet from the road and also is pretty much on the property line. There was a picture of each of the houses. House A, as she had coded, has a larger footprint than House B. Right now, currently if that lot was divided, the current property occupies about 50% of the lot. If we take property A down, it reduces the property coverage of the lot by about 23%. She stated on the next page you can see one with and one without on the bottom with the house removed. Outlined in blue you can see the current town setbacks that a property could meet. So they would be removing the larger of the footprint on that property thus creating parking, and it seemed that parking was the issue that all of the neighbors had whether it be on Saunders or Scollard. Because the street is so tight, moving that house 2 feet away from the road does not really give you more driving area, but it is less crowded. So, the benefits to Saunders Ave would be removing the house on Saunders, as you are moving a structure away from the road which does not comply, it provides ample parking for the house that remains on Saunders Ave, it improves the land to building ratio which she states she knows is important to the town, it does not negatively impact the neighborhood whatsoever, it actually improves the safety because there is a wider passing if there was a fire truck or whatever, because some people actually do park on the street. The power lines, although they are within code on that little house, are lower, so it would remove the power lines. The benefit on Scollard Road is that currently they rent both of those homes, and the parking is on Scollard on the empty lot. Now you are not going to have parking for two on Scollard you are only going to have parking for one

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proposed building, and you are going to have parking for one house on Saunders also. It completely maintains the neighborhood environment. She stated that if this were allowed, they would meet the town set-backs, 20 feet in the rear, 20 feet on the side, and 15 feet in the front. It would also reduce the parking for Saunders because it would eliminate the parking for two homes and reducing it to one. The benefits to the town from their point of view, is that it improves the safety on Saunders, with the wires removed from the top of the street. Obviously, it will increase taxes to the town, provide off-street parking on both streets so there will be no parking on both streets for either property. It is improving the building to lot ration. It reduces the house compactness on Saunders. It is very, very tight, and she thinks when the buildings were built they did not assume there would be no parking if that land was separated. At the time, there was no land to separate. It is obviously a more logical lay out of the lot lines. To her knowledge, there is no other property that have frontage on two streets. Basically, it provides reasonable use of the land, trading one structure for another. She thinks in this scenario, they are listening to the neighbors, trying to comply with their parking issues, the traffic issues, kids play on the street all the time. She stated she understands that, and it would just keep that neighborhood feeling.

**Mr. Evans** asked if the drawing on page 5, the proposed new one, removing the house there on Saunders leaves enough room for parking right next to the house?

**Ms. Lemenager** stated enough parking for 9 cars.

**Mr. Evans** asked again, 9 cars?

**Ms. Lemenager** stated yes, 9 cars.

**Mr. Evans** asked in the red area? With the house?

**Ms. Lemenager** stated if you remove one house.

**Mr. Evans** asked if there are two houses now.

**Ms. Lemenager** stated if you look at the pages, that is what is there now. She stated if you remove one house it would provide parking for 9 cars.

**Mr. Evans** asks if the new house, in the blue, would have a driveway off the street on one side or the other.

**Ms. Lemenager** stated if it came to that we would have parking under the house so that there is no issue with parking whatsoever. The lot is big enough; double the size of any on the street. She doesn't think parking would be an issue.

**Mr. Evans** stated he just wondered where she had in mind for the parking.

**Ms. Lemenager** stated they have never parked on the street. She does not personally like to do it, and they would stay consistent with that. It is so crowded that when people do park on the road it is rude, if you will. The current parking that they have on Scollard is all on their property. They never allow tenants to park on the street.

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**Mr. DeLeo** asked if the house on Saunders Avenue side or Scollard Avenue side is going to be removed.

**Ms. Lemenager** stated it is on East Grand Avenue side, not on the beach side. It is house A on the left. This is the larger of the footprint.

**Mr. DeLeo** asked if there is still a lot that is not theirs or still a house almost facing that that is not theirs, lot #3?.

**Ms. Lemenager** stated yes, closer to the beach. Outside that red line is the next house.

**Mr. Denison** asked if the house they are going to put on Scollard fits all the current zoning requirements.

**Mr. Lemenager** stated that the shaded area on page 5 shows the area that could be built upon within the set backs. It is not what they are proposing.

**Mr. Weyenberg** asked if you are requesting a change of the front set backs.

**Mr. Lemenager** stated that no, it is within 15 feet.

**Mr. Weyenberg** asked if that is the setback.

**Mr. Nugent** confirmed that 15 feet is the front set back and 20 feet is the back set back.

**Mr. Lemenager** stated no, we are not asking for any change in that.

**Chairman DeLeo called for Abutters or correspondence.**

**Norm Bergeron**, Falmouth Maine. Mr. Bergeron is representing his in-laws who live on Saunders Avenue. He stated he just arrived a little late and coming in at the end of it. He asked if she is asking to remove, on page 3, house A?

**Mr. Higgins** stated that she is stating that she is going to remove house A if we grant the variance.

**Mr. Bergeron** stated he just wanted to make sure about that because when they received the information it did not state which was being removed.

**Mr. DeLeo** stated that it is the one on Saunders closest to the beach side.

**Mr. Bergeron** asked if the one on Saunders closest to the beach is the one that is going to stay?

**Mr. Evans** stated that no, it is going to be removed.

**Ms. Higgins** stated that no, it is not going to be that one. The one closest to the beach is going to stay. The pictures are upside down so it is a little confusing. She asked if Mr. Bergeron had any concerns regarding this.

**Mr. Bergeron** stated they only had concerns regarding parking. He asked if there is going to be two, separate lots.

**Mr. Nugent** stated yes, that is the request. The request is to demo the structure and then divide the lot.

**Ms. Higgins** stated that it is not dividing the lot that the two houses are on, but it is one, entire lot. The red and blue, she owns together as one lot right now, and she wants to split the lot.

**Public Hearing**

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**Mr. Bergeron** asked what the set-back rules are and the proposed new building. It is on the back side of their house.

**Mr. DeLeo** stated that all set-backs for the new building are in conformance with the town code.

**Mr. Lemenager** asked if the board is going to read abutter letters? And can she respond afterwards.

**Mr. DeLeo** stated yes, after they read them.

**Chairman DeLeo read a letter from Dennis & Linda Twomey:**

March 17, 2009

Dear Mr. Nugent:

Please accept our comments on the request for a variance from Diane Lemenager to build a house on Scollard Road.

We will be out of town March 30 and unable to attend the hearing so must make our for-the-record comment by letter.

We do oppose the granting of the variance. Our principal concerns are the lack of surface water drainage and inadequate sewerage.

We have had to contact the Public Works Department numerous times because of sewage backing up onto Scollard Road, and because of flooding, during the 23 years we have lived on the street. Another house could only worsen the situation.

Sincerely,

Dennis B. Twomey

Linda L. Twomey

**Chairman DeLeo read a letter from Marshall Frankel & Lillian Pollack Frankel:**

March 25, 2009

Dear Members of the Old Orchard beach Zoning Board of Appeals:

My wife and I own property at both #8 and #10 Saunders Avenue, Old Orchard Beach, ME. Saunders Avenue is a neighborhood with many young children playing on the very narrow street. We are also fortunate to have generations of families living on our street. We must keep our street safe and secure for the owners of the properties on Saunders Avenue.

The property in question at #7 Saunders Avenue is now being used as a rental property and we all know that owners take much better care of their property than more renters. I, myself, have served on

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the Bangor Zoning board of Appeals and I have also served for 12 years on the Bangor City Council. I was always told that the way to make decisions on variances was to know the zoning rules which should be followed and to stay within the boundaries of the law and ordinances.

We, as a Town, should not create more non-conforming situations than we now have in Old Orchard Beach. I have gone to Old Orchard Beach City Hall to discuss this matter and have been assured that a minimum lot size of 10,000 square feet is required, in order to be considered for splitting of that lot. This property (#7 Saunders Avenue) does not meet this criteria.

Let's protect our Town of Old Orchard Beach. We are counting on the Zoning Board of Appeals to help us maintain our neighborhood.

Thank you for your attention to this matter.

Sincerely,

Marshall Frankel  
Lillian Pollack Frankel

**Chairman DeLeo read a letter from Joe Kline:**

Memorandum for: Old Orchard Beach Zoning Board of Appeals

25 March 2009

RE: Variance Request by Diane Lemanager

Dear Board Members,

My name is Joseph Kline and I reside and own the property located at 5 Scollard Rd. I am listed as an abutter to part of the property starting at 7 Saunders Ave and extending onto Scollard Rd.

I am writing concerning the request from Diane Lemanager to change the zoning requirements or provide a variance from the zoning set backs, coverage, and minimum lot sizes and the removal of one house.

I do not support the request by the applicant. The reasons and rationale are similar to the past proposal from JADD LLC. The listed applicant technically is not the owner, she is a principle of JADD LLC that owns 7 Saunders Avenue and the property attached onto Scollard Road.

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There is no stated hardship why the minimum lot size and frontage requirements and density standard should deviate from the current zoning ordinance. Her past statement is for personal gain to build another house on Scollard Road and to break up and sell the property on Saunders Avenue.

If there is a desire to remove one building, the current zoning rules should apply to build a new building or consolidate two buildings into one building.

Please see the former letter scribed when a similar request was made earlier this year.

Respectfully submitted,

Joseph Kline

**Chairman DeLeo** read Mr. Kline's prior letter:

Memorandum for: Old Orchard Beach Zoning Board of Appeals

23 January 2009

RE: Variance Request JADD LLC

Dear Board Members,

My name is Joseph Kline and I reside and own the property located at 5 Scollard Rd. I am listed as an abutter to part of the property starting at 7 Saunders Ave and extending onto Scollard Rd.

I am writing concerning the request from JADD LLC to change the zoning requirements or provide a variance from the zoning set backs, coverage and minimum lot sizes.

My wife, (Anie) and I were principle owners of JADD LLC (Joe, Anie, Don, Diane). We are friends with the applicants and prior investors together. I write this letter of concern and care because I do not want to harm our relationship but I do not support their request.

We invested into this property together with the idea of preserving the open space in front of my property and the property Don and Diane own adjacent to it. We were concerned when the former owner had the property for sale, someone would build on this open space (we did not know at the time of the zoning requirements). It was a concern for Anie and me because the street is very narrow and there is little space between buildings. Don and



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Diane have very little space on their property adjacent to it. We thought investing together (at the time we could not do it on our own), we could preserve the open space and potentially rehab the two buildings on Saunders Avenue and ask the town if we could rent the buildings to off set the investment costs.

We then contemplated to split the property but were informed by the planning office and zoning office it was not permitted. Don and Diane wanted to split the property on Scollard Ave and join it to their house property. We were informed that is not allowed either.

Our other neighbor, David Murphy, tried to split his property at the end of Scollard Rd but he was also denied.

We were provided an option through the planning and zoning department. We were informed we could demolish the two buildings on Saunders Rd and build one house to maximize the use.

Currently, there is no parking available for the Saunders Ave property so the open space on Scollard Rd is used as the designated parking. Also, the sewer on Scollard Rd may be able to handle additional load. The public works department has to clear the line at least twice a year because it is very old and undersized. The street is very narrow and does not allow parking. There is no separate drain under Scollard Rd so water run off is a problem.

As stated earlier, the Lemenager's are our friends but I cannot support the request. The property was inappropriately split through a county deed and the town does not recognize it. The neighborhood is very compact and cannot tolerate additional building nor is their parking support for the building on Saunders Ave.

Respectfully submitted,

Joseph Kline

**Mr. Evans** asked if the town does not recognize the county deed. **Mr. Nugent** stated that what happened if that the property owner had already filed the split with the registry of deeds in 2008. The assessor's office brought it to the code office's attention. At that point, they contacted a lawyer and filed an administrative appeal. This was what started the process.

**Mr. DeLeo** asked if that is still active? Or is that closed and taken care of.

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**Mr. Nugent** stated the letter we sent them is still active and an open zoning case.

**Mr. DeLeo** asked what impact does that have on this.

**Mr. Nugent** stated that this is what really caused it. The letter caused this action. So if this board denies the variance request they go back to the property owner and say you need to fix your deed. If the board approves this then it nullifies this.

**Mr. DeLeo** asked if there has been any past precedent set similar to this in the town.

**Mr. Nugent** stated not to his knowledge with the same exact facts. This is on the unique side because it is an established property that has several dwelling units on it that was merged with another vacant parcel. What the board needs to struggle with is whether it is a hardship in its current use. Does it not have any current use? Does the property owner have other options with the parcel? It is a tough appeal.

**Mr. Weyenberg** stated that there was a question he would like to ask. Is it possible to remove the first house and build another house on the empty lot, but keep the entire lot intact?

**Mr. Nugent** asked in one ownership? The challenge would be this; there is a zoning change in front of the council that cleans up the whole thing that they were talking about with structures on the lot. That is going to be fixed by the council. There is a section of the ordinance that states if you have a lot, you cannot have more than one principal structure on it unless it is approved by the town. What happens, under the ordinance right now, if they remove that cottage they really could not put that second structure. Whether or not the zoning ordinance amendment created was not intended to fix that problem, he is not sure if they would be allowed to do that at our level or they would need to revisit and get a variance. He would need to check with the council.

**Mr. DeLeo** asked if the town went through the proper litigation that Mr. Nugent discussed earlier and stated, no you cannot split the lots. To him, what it looks like is that you are putting the emphasis on the board to say, pretty much, if they approve it you can split the lot.

**Mr. Nugent** stated, exactly. They are not going to sue anybody until they exhaust their local process.

**Mr. DeLeo** asked do they need to go through the other portion to say it is okay to split the lot.

**Mr. Nugent** stated what they are doing tonight will nullify the notice that I sent them.

**Mr. Howard** asked why was the notice sent?

**Mr. Nugent** stated because they had received notification from the assessor's office that a violation of the ordinance had occurred.

**Ms. Higgins** stated that even as joined units it is a non-conforming lot. They are still not large enough.

**Mr. Nugent** stated in its current state it is less than 10,000 sq ft.

**Ms. Higgins** stated it is 7950 sq feet. It is still a non-conforming lot.

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**Mr. Evans** stated for clarification it was a bit misleading. At least two of these letters make reference to “another house” which to him sounds like a third house. There are two there now, and if you say another one, to him it implies another one.

**Mr. Nugent** stated that was from the last appeal. The last appeal was to split the lot off as you see it and then build another house. This is slightly different.

**Mr. Weyenberg** stated the board has not come across something like this before.

**Mr. Nugent** stated this is a pretty unique situation.

**Ms. Higgins** stated the board have had times where other people have wanted to join other lots, but they were different in the sense that they were side by side. Someone bought one not knowing they were joined by no act of anybody other than ordinance before, but they have been two house lots side by side, not like this, which makes them quite different.

**Mr. Evans** stated just speaking, maybe as a wannabe architect or something, but to him looking at this it looks like a big improvement. You have two little places there on a small lot, and you have a big lot with nothing on it. If you take one of those small buildings off and place one on the larger open lot, just by appearances it looks better.

**Ms. Higgins** stated there is no doubt that is a better situation, but unfortunately, not their task. There is no provision for them.

**Mr. Weyenberg** stated that he would say the neighbors do not feel this way. They like this open space. That is their park, and that is why they do not want it.

**Mr. DeLeo** asked what the square footage of the building going to be demolished.

**Mr. Nugent** asked the little one?

**Mr. DeLeo** answered yes.

**Ms. Lemenager** stated 600 sq feet.

**Mr. DeLeo** asked what the square footage of the proposed new building was?

**Ms. Lemenager** answered there is no building proposed.

**Ms. Higgins** stated this is not the proposed building. It is just to show you what could be built within the acceptable lot lines.

**Ms. Lemenager** stated yes, that it is not necessarily a building, but just shows usable area.

**Mr. DeLeo** asks if there are any other questions.

**Mr. Denison** asked if the board approves this, at some point in the processing of issuing a building permit, would the sewer issue be addressed?

**Mr. Nugent** stated he would be negligent if he did not do everything within his power to make sure there is not an infrastructure issue there, and probably he would start with our Public Works department to find out exactly what their records are. Probably through the sewer ordinance they probably would have some

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leverage in having the property owner camera the lines to make sure that it is suitable to handling the additional affluent prior to allowing additional affluent.

**Mr. Evans** stated for clarification addition affluent; there is a certain amount of affluent is for two houses now, right?

**Mr. Nugent** stated he is not sure if they are connected on Saunders or Scollard. That is all stuff they would need to figure out. Another thing too, is that this is in a coastal sand dune, and DEP should be contacted regarding lot coverage, etc.

**Mr. Weyenberg** asked about the potential run-off problem?

**Mr. Nugent** answered it is a single-family home so it is going to be graded 3% away from the building and that kind of stuff, but it would be the same in-depth review as something like a subdivision.

**Mr. DeLeo** asked if there are any other questions. And any from the audience.

**Ms. Lemenager** wished to respond to the letters. She stated she would like to begin by just saying that yes, they had a lawyer for some of the issues, and she spoke to him about this. He advised them to just rewrite the deed. She asked him if it was that easy, and he said yes. So they did it, not thinking they were in violation of anything. After speaking with Mike, he let them know the procedure, and that is why they are here. They were not trying to pull anything by any means. If she may respond to the letters that were sent to the board. The first letter that was sent by Denis & Linda Twomey; their main concern, as they have stated, is the drainage issue. The drainage has been an issue for 23 years. This is the second person that has used this variance process to voice their frustrations with the infrastructure. They have their own agenda trying to get their point across with the problem. The neighbors like to look at the open lot and the trees, but just looking at an open lot and saying we do not want them to build there, she doesn't want to be petty, but it is very frustrating to her. Denis, who wrote the letter, plows his snow on to this lot every winter; they allow him to. He understands that if they build on this lot he will not be able to do this. So he does have a personal, vested interest not having a structure there. Neighbors are neighbors, and they all help each other, but it frustrates her that he wants to leave it open potentially for his use. Marshall Frankel who owns the two houses across from the rentals on Saunders Avenue; she just wants to say that these two houses have been maintained, been developed, and have looked better than they have in the last 50 years.. Yes, they are rentals. Ms. Lemenager stated she interviews every family that rents each of these houses and makes sure they are personally comfortable with each family who rents. In the six years they have rented them they have never had one complaint from the neighbors. In fact, her husband and her have been told numerous times over the years how nice their renters have been and how glad they are that they are so picky about whom they rent to. They also live on the other side.

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They do not want parties there. It is the only rental property. If they take one of them away and sell the property hopefully it becomes a home for someone else to enjoy. They understand the parking issue that Marshall has. He also needs to park one of his cars on the street thus narrowing the street for the children to play on. By taking down one of the houses, obviously, there will be one less house full of people, and as she said before it will create parking for up to 9 spots for the remaining house, thus not needing to park on the street whatsoever. They do not allow my tenants to do that anyway. Marshall has approached them to buy the property with the land because he wants to build a house there so there is personal gain for each of these people complaining. It was for sale, and they could have bought it. As far as Joe Kline's letter, she and her husband are 50/50 owners of JADD LLC who owns the properties. She is not exactly sure why Joe states in his letter that she is not an owner because I am a 50% owner of the property. Joe and Anie, and her and her husband invested in the property on Saunders Avenue. Joe and Anie were each 15% owners in the property. They were part of the partnership for less than 6 months. Ms. Lemenager stated her and her husband knew what we were getting in to and how demanding, and financially and physically burdening the houses were going to be. Her and her husband bought out Anie at a substantial profit because they were unwilling and unable to support their part of the partnership. Joe states he resides at 5 Scollard. Actually, he lives in Saco and has for years with his wife and son. Joe has always claimed residency on Scollard because at the time when he and Anie bought the house in Saco he was a councilman here in Old Orchard and did not want to give that up. He claimed he lived at 5 Scollard which all of the neighbors knew to be false. She really does not care where Joe lives, but now that he is telling you in the letter concerning her that he lives there, and he does not. Joe has rented out his house on Scollard for the last three years from a man from Las Vegas who creates more traffic some days from his daily and weekly guests than all of the street put together. Joe does not look out from his house daily to see an open lot because Joe does not live there. They have always liked Joe from the day we met him. He came over, grabbed a hammer, they were doing our roof, and he said let me help. She stated she really, really likes Joe as a person, but he is a great salesman, and as far as she is concerned both letters he wrote to the board are extremely misleading and in many cases just untrue. She understands the neighbors like the fact that neighbors like the open space is there and have their own personal interest in keeping the land open. For this reason, she believes the variance is not being supported by the neighbors. They have addressed the main concern which seems to be the parking and to make the properties more reasonable, as far as the esthetics of the neighborhood. They are not decreasing the value of any surrounding properties or causing harm to anyone around us. They are taking a

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financial hit by taking down one of the houses in order to satisfy all concerned. She asks the board to vote on the merit of the request and the use of the reasonable land, and not on the neighbor's opinion of the use of the land.

**Mr. DeLeo** stated he has a question for Mike. In going back to the filing of the deed to have these separated, if the town did not have this ordinance that says you cannot separate these lots would she be here now?

**Mr. Nugent** stated no, if we did not have zoning saying you cannot do it she would not be here now. Every town has zoning.

**Mr. DeLeo** stated he was not saying zoning. Right now the ordinance states if you buy one piece of property and then you buy another piece of property, can those pieces of property be combined.

**Mr. Nugent** stated this property was purchased as one parcel with single ownership.

**Ms. Higgins** noted that it was joined previously.

**Mr. Nugent** stated that what happened is that there was some significant case law in the 1980's that defined how towns have to treat merger provisions, and the ordinance in front of you reflects those changes. When the town merges, it can merge vacant land with vacant land, a house on one substandard lot and on a separate substandard lot that has a garage or a swimming pool you may merge those. Or say there is a seasonal cottage with a house, again with common ownership, they could be merged. But if you have two year-round, principal structures, two single-family homes that were year round and always had been they could not be merged. That really reflects that case law from the 80s. What happened in this case, the assessor's office merges the lots together for billing purposes, the zoning ordinance tries to eliminate non-conformity. When that action happened, at some point it was sold.

**Ms. Lemenager** stated the point of merging the non-conforming lots, as written, it says to make it conforming, still did not make it conforming. There still was not enough.

**David Murphy, 4 Scollard Road.**

Mr. Murphy stated he and his wife just moved into 4 Scollard Road, and he wanted to make a point of clarification. In Joe's original letter he stated that in the past they have attempted to split the lot in front of theirs, which includes 2, 4, and 6 Scollard Road. Unless that happened with his mother over 10 years ago, that has not happened. Just a point of clarification because it implies that this board or other boards before it have addressed this issue and said, no you cannot split the lot. They just wanted to make you aware that issue has not been presented via himself or his brother or family.

**Nathan Bergeron, grandparents own 5 Saunders Ave.**

Mr. Bergeron asked if they were to tear down one of the homes and sell the lot, would it be possible for the next owner to tear down the other house where the two houses were.

**Mr. Nugent** stated yes it would be allowed.

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**Mr. Bergeron** asked if they could tear down the other house and have a clear lot and start fresh.

**Mr. Nugent** stated the owners would need to satisfy the off-street parking ordinance. Once the zoning changes that are currently in front of the council pass there would be nothing to prevent someone to come in and do that.

**Mr. Weyenberg** noted there is not much room to build a house.

**Mr. Nugent** stated it would need to be on the existing foot print.

**Mr. Bergeron** stated to clarify it would need to be just one house, but they would need to build within the box of the house. So they could not split the difference. Where the two houses are now, they could not put a house in the middle area of where those are.

**Mr. Nugent** stated not without coming to a board like this. They would need to come to the zoning board to do that.

**Mr. DeLeo** asked if the house they are proposing to tear down to make room for parking, and some time down the line the bigger place gets sold and the smaller part gets sold, would that be the parking for the bigger house.

**Mr. Nugent** stated no. If this division occurs the new parcel would need to stand alone and have two off-street parking spaces for each dwelling unit.

**Mr. DeLeo** asked if having parking under the houses would satisfy the off-street parking.

**Mr. Nugent** stated yes, that would.

**Mr. Weyenberg** questioned what the greater or lesser good to keep the parcel as one parcel and remove one house and build another house in the back or make it two parcels, remove one house and build another house on the parcel.

**Mr. Nugent** stated that if you ask 8 people in that neighborhood you would get 4 different answers. Really, the character of the neighborhood is everyone' opinion of that. Obviously, from a public safety standpoint, new is always better than old, it is safer, etc. He stated as he does not live on Saunders he could not make a decision what the best thing as far as the character of the neighborhood.

**Mr. DeLeo** asked if this was to be voted no, does she still have an appeal to go against Old Orchard Beach in State. How does that work?

**Mr. Nugent** stated she would go to superior court.

**Mr. DeLeo** stated before when she went to Alfred and got the deed split, code said she could not do that. Is that a matter that is in the courts now?

**Mr. Nugent** stated no. They came to this board. The administrative appeal was never filed. Instead the owner chose to file for variance.

**Mr. DeLeo** asked if that is then an option?

**Mr. Nugent** responded that no, it would have to go to superior court. It could not come back down.

**Ms. Higgins** stated unless they were willing to change the deed back to being one parcel.

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**Mr. Nugent** stated they could come back with an entirely different variance request with some other configuration. They are allowed to do that, but once the board stated no, they would need to go to superior court.

PUBLIC HEARING ENDED AT 8:11 P.M.

**Mr. Deleo** reads justification of the variance.

**With regards to section A.** The land in question cannot yield a reasonable return unless the variance is granted the applicant stated “currently the property contains the use of two houses. We are proposing one of the houses on Saunders Avenue be taken down allowing adequate space for parking on the same street as the house is located, and a house will be built on the Scollard side of the land. Therefore, there will still be two houses. By doing this, the properties will be more consistent with the surrounding properties. The current situation with both houses on one street and the parking for them on the other street is awkward and unreasonable, and no other property on either street is joined in this manner. The variance will allow reasonable use of both properties in that one house would be on Saunders Avenue with adequate parking, and the other house will be on Scollard Avenue with its own adequate parking. The current lot lines are not uniform and by separating lots will produce a more uniform lot line on both streets. Without the variance there is no reasonable use of the land on Scollard Road.”

**Mr. Evans** agreed

**Mr. Weyenberg** agreed

**Ms. Higgins** disagreed

**Mr. Dennison** agreed

**DeLeo** disagreed

**With regards to section B.** The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood, the applicant states, “The conditions of the neighborhood would remain residential with no impact at all to the general neighborhood. No other property on Saunders Ave, or Scollard Road have lot lines that cross between the two roads or between the two adjacent roads wither (Durocher Street or Morrison Street). The layout and shape of the lot lines do not make sense to cross between the two roads. The request is to develop a piece of land with 90 feet of frontage on Scollard Road. All of the remaining 4 properties on Scollard Road contain less than 90 feet of frontage, average less than 50 feet of road frontage. As well, the two corner lots from Scollard Road to East Grand Avenue each contain less than 55 feet of road frontage on Scollard Road. This particular lot on Scollard Road would have more frontage than any other lot on Scollard Road, have the same depth as the other properties on Scollard, and



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not impact any other property on Scollard Road. The remaining property on Saunders Ave would be the same approximate lot size as every other adjacent lot on Saunders Ave and larger than all lots across the street from 7 Saunders.”

**Mr. Weyenberg** agreed  
**Mr. Evans** agreed  
**Mr. Denison** agreed  
**Ms. Higgins** agreed  
**Mr. DeLeo** agreed

**With regards to section C.** The granting of the variance will not alter the essential character of the locality the applicant states “The character of the neighborhood would remain the same. The area would be residential with the development of a single home on the property on Scollard Road. Entry, the front of the building facing on Scollard Road and the entry and exit of the property on Scollard Road. The land & building on Saunders Ave would continue to be unchanged and the character would see no change at all. Because the houses on Saunders Avenue are so close together, taking down one of them would reduce the risk of the spread of a fire if one happened. No additional health or safety issues would be created by this variance.”

**Mr. Weyenberg** agreed  
**Mr. Evans** agreed  
**Mr. Denison** agreed  
**Ms. Higgins** agreed  
**Mr. DeLeo** agreed

**With regards to section D.** The hardship is not the result of action taken by the appellant or a prior owner the applicant states “The land in question residing on 2 parallel streets is designated as 3 lots all of approximate size of 45X60; 45X60 on Scollard Road and 50X50 on Saunders Ave. On maps generated by Libby & Johnson dating back to March 1922 to the current knowledge of the present owners, no action was taken by any property owner to generate the hardship. After reviewing the maps and a site inspection will show that the parcel of land on Scollard will still be equal to or larger than all other parcels on Scollard and the parcel of land on Saunders would be equal to or larger than all parcels on Saunders.”

**Mr. Weyenberg** agreed  
**Mr. Evans** agreed  
**Mr. Denison** agreed  
**Ms. Higgins** agreed  
**Mr. DeLeo** agreed

**Motion**

**Vote**

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<p><b>Ms. Higgins</b> stated she had a question. This is not your normal variance request so by statement of variance that the request is to allow the removal of one house that means one house has to be removed.</p> <p><b>Mr. Nugent</b> stated the one specifically testified to. If she stated building A, it needs to be building A.</p> <p><b>Mr. Denison</b> asked if the shed on the property is being eliminated as well.</p> <p><b>Mr. Nugent</b> stated it is an encroachment so it is a title issue.</p> <p><b>Mr. DeLeo</b> asked if someone would like to make a motion.</p> <p><b>Ms. Higgins</b> noted that in the motion it should be noted that house A should be noted with part of the paperwork submitted, but she was not making the motion.</p> <p><b>Mr. Weyenberg</b> motioned to approve the variance of Diane Lemenager, owner of 7 Saunders Avenue to permit the adjustment to the minimum lot side and frontage requirements and density standards to require the removal of house A on Saunders Street and divide the lot and allow construction of a dwelling on the Scollard side of the property.</p> <p><b>Mr. Denison</b> seconds the motion.</p> <p><b>Ms. Higgins</b> disagreed.</p> <p><b>Mr. DeLeo</b> disagreed.</p> <p><b>Mr. Evans</b> agreed.</p> <p><b>Mr. Denison</b> agreed.</p> <p><b>Mr. Weyenberg</b> agreed.</p> <p><i>Motion carries 3-2</i></p>	
<p><b><u>ITEM 4: Approval of Minutes</u></b> February 23, 2009</p> <p><b>Ms. Higgins</b> motions to accept the minutes of February 23, 2009</p> <p><b>Mr. Evans</b> seconded the motion.</p> <p><i>Motion carries unanimously</i></p>	<p><b>Motion</b></p> <p><b>Vote</b></p>
<b>GOOD &amp; WELFARE</b>	
<p><b>Ms. Higgins</b> motioned to adjourn.</p> <p><b>Mr. Evans</b> seconded the motion.</p> <p><i>Motion carries unanimously</i></p>	<p><b>Motion</b></p> <p><b>Vote</b></p>
<p>Meeting adjourned 8:23 p.m.</p>	<p><b>Adjournment</b></p>

*I, Tori Geaumont, Secretary to the Zoning Board of Appeals of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of eighteen (18) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting on March 30, 2009.*