

TOWN OF OLD ORCHARD BEACH
ZONING BOARD OF APPEALS MEETING MINUTES
 April 27, 2009

Call to Order at 7:05 p.m.	Call to Order
Pledge to the Flag	
<p>Roll Call: Mr. Ray DeLeo, Ms. Tianna Higgins, Mr. Philip Weyenberg, Mr. Phillip Denison, Mr. Robert Quinn, Present. Ms. Eileen Payette, Absent. Howard Evans, Absent.</p> <p>Staff: Mike Nugent, Code Enforcement Officer; Tori Geaumont, ZBA Clerk</p>	
<p>ITEM 1: Miscellaneous Appeal: Steve Berry, owner of 24 Free Street, MBL 320-1-10 in the R-3 zone to permit the adjustment of the front and side setbacks and lot coverage to construct code compliant exterior stairs. Norm Means is representing the owner.</p>	<p style="text-align: center;">ITEM 1: Miscellaneous Appeal Steve Berry 24 Free Street MBL 320-1-10 R-3 Zone</p>
<p>Chairman DeLeo read the appeal.</p> <p>Mr. Denison stated he is a neighbor of Mr. Means, but felt that he could hear the appeal objectively. The Board did not object.</p> <p>Norman Means stated that the raised the structure above the flood elevation and were going to fill in an area, but DEP did not allow them to, because of the proximity to the stream. They then went through DEP and received permission to fill and started construction. Three days later they were told by DEP they actually could not fill in where they wanted. Therefore, they needed to add more steps to reach the ground where the original stairs were.</p> <p>Chairman DeLeo called for Abutters and any correspondence.</p> <p>Chairman DeLeo read criteria number one.</p> <p>Chairman DeLeo read requirement of non-conforming means of egress construction.</p> <p>With regards to part A. The requested stairway or ramp is the minimum structure, dimensionally, as required by the Town of Old Orchard Beach Building Code the appellant stated the existing front stairway goes straight out, but because of lifting the house to meet elevation requirements the stairs have to be turned at a right angle and extended by 4 steps. The rear deck also needs 4 steps added.</p> <p>Mr. Weyenberg asked if until recently the steps came straight out.</p> <p>Mr. Means stated yes but because of the height of the building now they needed to move the steps.</p> <p>Mr. Weyenberg stated that the steps were probably not conforming before.</p> <p>Mr. Nugent confirmed this.</p> <p>Mr. Denison agreed.</p> <p>Mr. Weyenberg agreed.</p>	<p style="text-align: center;">Public Hearing</p>

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<p>Mr. Quinn agreed. Ms. Higgins agreed. Chairman DeLeo agreed.</p> <p>With regards to part 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 the appellant stated that the DEP would not allow us to fill the lot therefore steps need to be added. The front steps need to be turned to the side because the added steps would be too close to Free Street.</p> <p>Mr. Weyenberg agreed. Mr. Quinn agreed. Mr. Denison agreed. Ms. Higgins agreed. Chairman DeLeo agreed.</p> <p>Mr. Quinn moved to permit the adjustment of the front and side setbacks and lot coverage to construct code compliant exterior stairs. Ms. Higgins seconds.</p> <p><i>Motion passes unanimously</i></p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p>
<p>ITEM 2: Variance: Gail Murphy & Brian Krevosky, owners of 52 Atlantic Avenue, MBL 312-15-10 in the R-2 zone to permit the adjustment of front setbacks and lot coverage for the construction of exterior stairs to an existing deck for fire access. John St. Louis is representing the owner.</p>	<p style="text-align: center;">ITEM 2: Variance: Gail & Brian Krevosky 52 Atlantic Avenue MBL 312-15-10 R2 Zone</p>
<p>John St. Louis representing the owners. He stated the deck was built before set backs. The house is very close to the side boundary, and there is no way to put the stairs in that area. He stated he tried to make the stairs so they do not interfere and tried to tuck them in to the nook that is there. They wanted the variance because when they are up on the deck there is access to the house from the deck, but not to the ground, and they are concerned about fire safety and being able to get down if there is a fire. They asked him if he could work something out with the town. They would like to use the upper deck more, but are concerned about fire escape issues. Chairman DeLeo asked if the stairs would come out farther than the deck. Mr. St. Louis stated that initially it was going to be 30 inches, but after talking with Mr. Nugent he needed to make it bigger. Mr. Weyenberg stated it is going to go from the upper deck to the lower deck. Mr. St. Louis stated yes. He was hoping to have the stairs from the</p>	<p style="text-align: center;">Public Hearing</p>

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upper deck. He then points out on the diagram how he wanted to build the stairs in relation to the existing deck. The lower part of the stairs are just going to land down bottom.

Chairman DeLeo asks how many feet wide the upper deck is.

Ms. St. Louis stated it is approximately the width of the house. He believed the house is either 18' or 20' wide.

Chairman DeLeo stated the upper deck is 20' and asked how large the lower deck is.

Mr. St. Louis stated that the lower deck where he is going to land the stairs on is, he believes, approximately five feet. He then brought the diagram over to Mr. DeLeo to show him how it will be set and where the house is.

Chairman DeLeo then asked where the deck is on the diagram and which is the lower/upper deck.

Mr. St. Louis showed him the upper deck and lower deck. He stated it is like a double deck. There is a lower deck and a set of stairs to the upper deck. They wanted to build stairs to a small platform and then another set of stairs to the lower deck.

Ms. Higgins asked if there are stairs on the second floor up?

Mr. St. Louis stated there was.

Chairman DeLeo asked Mr. Nugent how far out the stairs will be.

Mr Nugent stated that they will be five feet from one lot line to the stairs. This section will be five feet.

Chairman DeLeo asked what it is now.

Mr. Nugent stated six feet.

Chairman DeLeo stated it will be another foot.

Mr. Nugent stated yes because you cannot build a stairway less than 36".

Mr. Quinn asked if it will extend outward from the lower deck.

Mr. Nugent stated yes.

Chairman DeLeo stated if we were to grant this variance could it be stated it would be only for the steps and not for anything else.

Mr. Nugent stated they can only build what you grant for a variance.

Chairman DeLeo asked if they could build the deck out to the same dimensions at some point.

Mr. Nugent stated no.

Mr. Quinn stated there is going to be a one foot void with no deck when you come down the stairs, if you do not extend the deck.

Mr. St. Louis came and showed Mr. Quinn the diagram he made concerning the steps and how they would be constructed per the variance application.

Mr. Nugent stated there is a fire escape guideline they can use for this which would allow for the stairs to be built less than the 36" and can be 22". We could make the stairs 30" so he does not need to extend the deck.

Chairman DeLeo called for Abutters and any correspondence.

Chairman DeLeo read the justification of the variance.

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With regards to section A. The land in question cannot yield a reasonable return unless the variance is granted the appellant stated the proposed stairs would provide access to the ground from the existing deck in the event of a fire in the home. Right now there is no access from the deck to the ground which prevents someone from escaping a fire if they are on the deck.

Mr. Higgins does not agree with answer. She does agree that fire escape stairs are necessary so she does agree.

Chairman DeLeo agreed.

Ms. Higgins agreed.

Mr. Weyenberg agreed.

Mr. Quinn agreed.

Mr. Denison agreed.

With regards to section B. The need for a variance is due to the unique characteristics of the property and not to the general conditions of the neighborhood the appellant stated the variance is needed because the house was built before the current setback requirements were established and therefore it is not possible to build the stairs within set back requirements.

Ms. Higgins agreed.

Mr. Denison agreed.

Mr. Quinn agreed.

Mr. Weyenberg agreed.

Mr. DeLeo agreed.

With regards to section C. The granting of a variance will not alter the essential character of the locality the appellant stated the majority of the houses in the neighborhood do not meet current set back requirements. Also, the existing lower deck that proposed stairs will be attached to is already not within current setback requirements and proposed stairs will not measure any larger than existing decks.

Mr. Denison agreed.

Mr. Quinn agreed.

Mr. Weyenberg agreed.

Mr. DeLeo agreed.

Ms. Higgins agreed.

Ms. Higgins stated the hardship is not due to the applicant, but due to the house being built before set backs.

All agreed.

Ms. Higgins motioned to approve variance

Mr. Denison seconded.

Motion

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<p><i>Motion passes unanimously.</i></p>	<p style="text-align: center;">Vote</p>
<p>ITEM 3: Reconsideration Request Joe Kline, abutter to 7 Saunders Ave. MBL 303-2-6 in the BRD Zone, owned by JADD Inc. to reconsider the variance granted on 3/30/09 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. The abutter is the appellant.</p>	<p style="text-align: center;">ITEM 3: Reconsideration Request: Joe Kline 7 Saunders Ave MBL 303-2-6 BRD Zone</p>
<p>Mr. Weyenberg motioned to reconsider the request for the property of 7 Saunders Avenue owned by JADD to reconsider the variance granted on 03/30/09</p> <p>Mr. Deleo seconded the motion. Mr. Nugent asked for the vote. Mr. Denison no. Ms. Higgins no. Chairman DeLeo yes. Mr. Weyenberg yes. Mr. Quinn abstained. Motion fails.</p> <p>Chairman DeLeo stated that Mr. Evans is not here. He questioned who is the one who would motioned to approve. Mr. Nugent stated according to the statute the hearing needs to happen within 45 days after the prior decision. We would need to have a special meeting if this was tabled. Joe Kline, 5 Scollard Rd. requested to speak. Chairman DeLeo stated yes. Mr. Kline stated that he may be wrong, but any one of the members could vote. Mr. Nugent stated that for a vote to be reconsidered, it contemplates some vote to happen. It would be contrary to Roberts Rules of Order to vote now. Maybe the town attorney needs to be present. The problem is that Mr. Evans is not here, and there is a dead lock board. The vote is 2-2 which means the motion fails. Chairman DeLeo asked if that means Mr. Kline could be heard at another meeting. . Mr. Nugent stated there would need to be a special meeting by 04/12/09 or 04/13/09. The minor problem is that he is away until 04/13/09. Mr. Weyenberg stated he will be gone that time as well. Mr. Kline asked if this could be put to the town attorney. He needed to drive 2 1/2 hours to get here, as he is under military orders to be at his base in Massachusetts. Mr. Weyenberg asks what we can do.</p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p>

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Mr. Nugent stated he can check with the town attorney, but we may not be able to find a good time for rescheduling where everyone necessary can be present.

Chairman DeLeo stated they needed to have all 5 here.

Ms. Higgins stated it would help, but the outcome is the outcome, and that is my reason why I did not want hear it again.

Chairman DeLeo stated he would not vote for it again, but if someone on the board wanted to hear it we should hear it.

Ms. Higgins stated that Mr. Quinn would need to abstain from that vote as well, and we would have the same problem.

Mr. Kline stated he would like to have that clarified. It should not be relevant who is sitting on the board. .

Ms. Higgins stated that Mr. Quinn has none of the information from the last meeting, as he was not here. She stated that he needs to have all the information.

Mr. Kline stated that it was two different issues. This is the third issue. He wants to give live feedback instead of a piece of paper. That is why he asked for a reconsideration.

Mr. Quinn stated that if the majority of the board wanted to hear this, and if there were no legal ramifications he would change his vote to hear it.

Ms. Higgins stated that unless Mr. Quinn has the entire packet, she does not feel one can make a good decision.

Mr. Quinn stated he could vote so the process could move forward now while people are here. He wanted to make sure that his vote does not taint the legal issues. He will change his vote if that is necessary.

Mr. Kline stated that he is not that familiar with Roberts Rules of Order, but the way we did it before was that
It still gives him the opportunity to rehear this.

Mr. Denison stated that he thinks they are putting their alternate in somewhat of an awkward position here. He thinks that if we want to consider hearing this again, then they need to schedule another hearing for it. He stated he is opposed to doing that, but he would consider it if the rest of the board felt it was appropriate.

Ms. Higgins asked Mr. Nugent if the board could vote to table it could it be at the next scheduled meeting.

Mr. Nugent stated it needs to be done within 45 days of the original request or the appellant has not right to be heard.

Ms. Higgins asked if the board said yes to rehearing it do they have to revote on the actual variance.

Mr. Nugent stated that the board could vote to rehear and then table to the next available date.

Chairman DeLeo stated that somebody would change their vote to rehear it, and then four of them then, without Mr. Quinn, would vote to approve or deny the variance. He asked Ms. Higgins if that is what she is saying.

Ms. Higgins stated no, she is willing to hear him out, but if it is not

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going to change her decision which she stated she is not saying, but if it not going to, why bother having another vote. She asked if we say yes to reconsidering we automatically need to revote.

Mr. Nugent stated yes the board would need to revote.

Mr. Kline stated that he is willing to come back. He feels it is important enough to address this and prove that a hardship is not present. A precedent could be make if the variance stands, and this would have some ill-effects to the community itself. Otherwise, he would not waste my time, the Boards time, or Diane's time.

Chairman DeLeo asked if anyone is willing to reconsider their vote to listen to this.

Ms. Higgins stated she did not.

Chairman DeLeo stated they have two options to either deny or revisit it as soon as possible.

Mr. Nugent stated that he would need to talk to all of the board members and see what would work.

Ms. Higgins stated we are not trying to be difficult, and they are sorry.

Chairman DeLeo asked if Mr. Nugent wanted to talk to the town attorney regarding this.

Mr. Nugent stated he wanted to do it correctly. He thinks the board would need to undo what has done today so far, and then move to table until a date can be determined.

Ms. Higgins stated that since that motion essentially failed they now need a motion on the table.

Ms. Higgins motioned to table this to be revisited within the next 15 days.

Chairman DeLeo seconded the motion.

Mr. Denison disagreed

Mr. Weyenberg agreed.

Motions passes 3-1

Mr. Nugent stated he would figure out when everyone would be available and it needs to be 10 days advertised. We will then get this together and take it from there. He stated he will email everyone in the morning.

Mr. Kline stated he thanks the board, Chairman DeLeo, and Mr. Nugent.

Ms. Lemenager asked what happens if everyone cannot make it?

Mr. Nugent stated once the 45 days are over, Mr. Kline would need to file suit in superior court. He still has an option.

Ms. Higgins stated they would make every effort to make it happen.

Ms. Lemenager stated she would like to be here.

Ms. Higgins stated she would like her to be here.

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<p>town would be required to raise houses, etc. He stated that those in the town who have flood insurance should see some savings due to this, probably not a lot, but something.</p> <p>Mr. Weyenberg congratulates Mr. Nugent.</p> <p>Mr. DeLeo asked how quickly the board could get this next meeting in.</p> <p>Mr. Nugent stated he would call the paper in the morning and see how quickly we could have it advertised. Hopefully, they can put something in. Ten days from Wednesday would be something like Friday the 8th or Monday the 11th. We would probably shoot for Monday the eleventh. He asked if everyone be here.</p> <p>Mr. Weyenberg stated he would not be here. He is leaving on the 8th.</p> <p>Mr. Nugent stated if we can get this in the paper tomorrow night, it will be for the 7th, and he will have Alan Borg sit in for him, as he will be at the Fire Academy in Emmetsburg, Maryland. He asked Mr. Weyenberg when he will return.</p> <p>Mr. Weyenberg stated that he will return on 05/17/09.</p> <p>Mr. Nugent stated he would do the best he can to get it in the paper. He also stated that the meeting would be in this building somewhere, as the Planning Board has a meeting in the chambers.</p>	
<p>Ms. Higgins motioned to adjourn.</p> <p>Mr. Denison seconded the motion.</p> <p><i>Motion carries unanimously</i></p>	<p>Motion</p> <p>Vote</p>
<p>Meeting adjourned 8:01 p.m.</p>	<p>Adjournment</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 nine (9) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting on April 27, 2009.