

**TOWN OF OLD ORCHARD BEACH
ZONING BOARD OF APPEALS MEETING MINUTES
September 30, 2013**

<p>Call to Order at <u>7:05 pm</u></p>	<p>Call to Order</p>
<p>Pledge to the Flag</p>	
<p>Roll Call: Present: Owen Stoddard, Chairman Ray DeLeo, David Boudreau. Absent: Tianna Higgins, Paul Weinstein, Mark Lindquist and Ron Regis.</p> <p>Staff: James Butler, Code Enforcement Officer, Valdine Camire, Secretary to Code Officer.</p>	<p>PUBLIC HEARING</p>
<p>Chair DeLeo read the criteria for the Public Hearing.</p>	
<p><u>ITEM 1:</u> Acceptance of the minutes of the August 26, 2013 meeting.</p> <p>Owen Stoddard made a motion to accept the August 26, 2013 meeting minutes as presented. Seconded by David Boudreau.</p> <p>Owen Stoddard – approved David Boudreau – approved Ray DeLeo – approved.</p>	<p><u>ITEM 1</u></p> <p><u>MOTION</u></p> <p><u>VOTE</u></p> <p><u>(3-0)</u></p>
<p><u>ITEM 2: Miscellaneous Appeal:</u> Scott McLeod, Applicant for 6 Brown Street Owner AMS Brown Street Apartments, LLC, MBL 305-1-2 in the DD-2 Zone. Applicant is seeking miscellaneous appeal to reduce side yard setback to permit construction of nonconforming means of egress construction. This is required by the town fire prevention code. Applicant is Appellant on behalf of the owner.</p> <p>Scott McLeod, builder and owner of AMS Brown Street Apartments, LLC introduced himself to the Board Members. Mr. McLeod stated he is here requesting ZBA approval for a non-conforming means of egress on the side staircase which is required by the town fire prevention code. The building was torn down because of safety issues and when it was rebuilt, they realized that they would have to extend past the original footprint to meet current code requirements. They have limited space and there is no other place for the stairs to go.</p> <p>Roger Sage who owns 2 Brown Street introduced himself to the Board Members and is the abutting owner of 6 Brown Street. The new footprint for the building will impact his property. His concern is that this property is not a residential use building. He understood that the plan of one of the owners, Mike Strum was to rent the apartments on a weekly or nightly basis which is seasonal/transient lodging, therefore this property would be considered commercial use, hence this cannot be appealed under the Miscellaneous Appeal Process. He referred to Section 78.94 Section B:</p>	<p><u>ITEM 2</u></p> <p><u>MISC. APPEALS</u></p>

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

(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; or

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

Jim Butler stated that he believes that the building will be the same use prior to it being torn down. Mr. Butler also stated that this appeal tonight is strictly about the non-conforming means of egress.

He mentioned to Mr. Sage that if he thinks that there is a zoning violation and that the ordinance wasn't appropriately followed, there is a process that he can file for.

The occupancy will still be used for residential use so the non-conforming means of egress is still appropriate.

Donna Saxby, also an owner of the Skylark Beach Inn, 2 Brown Street, introduced herself to the Board Members. She explained that her issue is that the owners of 6 Brown Street should have had known about this fire prevention code at the beginning of rebuilding instead of now needing the extra foot and encroaching on their property. She stated that snow and water is coming onto their property. What they are contesting is that this is not agreeable without the owners of 6 Brown Street having their permission to do that.

Code Officer Jim Butler stated that because of time restraints, he and Jeffrey Hinderliter, Town Planner gave them permission to re-issue the permit to the same footprint. Mr. Butler was going to get a set of as-built plans once it was completed, but it didn't happen until they had started building the decks and the structure was already up when they realized that the stairs didn't meet code. Mr. Butler could not issue them a permit because it was an increase to the footprint. The appropriate thing to do was to have them apply for a Miscellaneous Appeal for a non-conforming means of egress. Mr. McLeod then immediately got in touch with Mr. Butler to go to the site and see what could be done. There were no other options to where staircase could be put.

Scott McLeod informed the Board Members that he had spoken to the owners of 2 Brown Street and assured them that they would be installing rain gutters on the roof to direct water run off away from their property.

Mr. Butler suggested that they hear the appeal tonight and if the owners of 2 Brown Street are not satisfied with the results and if they need to take the steps with the courts then they have that opportunity.

Mr. Butler also stated that Section 78-94 deals with Miscellaneous Appeals, whereas Section 78-95 deals with strictly the guidelines for non-conforming egress construction and within Section 78-95, it doesn't state anything about commercial or residential.

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

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(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 person with a disability.

(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 ramp 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 ramp 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; Town Council adoption 5-17-11; effective date 7-15-11, date of DEP approval)

Mr. Butler states that the only criteria that comes with these appeals is if the ZBA agrees or not that what he is constructing is the minimum requirements of the towns fire life safety code.

There being no further business to discuss, the public hearing closed to the public at 7:40 p.m.

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<p><i>Chair DeLeo read through the criteria.</i></p> <p><u>NON-CONFORMING MEANS OF EGRESS CONSTRUCTION</u></p> <p>A. The requested stairway or ramp is the minimum structure, dimensionally, as required by the Town of Old Orchard Beach Building Code.</p> <p>RESPONSE: <i>In order to get compliant stairs, the deck on the east side of the structure had to be built 2' wider than the last deck.</i></p> <ul style="list-style-type: none"> • <i>Note. This puts us within 2" of property line at is closest point. So stairs are very close in size for minimum width of 36".</i> <p>Owen Stoddard made a motion for a Miscellaneous Appeals for Scott McLeod, Applicant for 6 Brown Street Owner AMS Brown Street Apartments, LLC, MBL 305-1-2 in the DD-2 Zone to reduce side yard setback to permit construction of nonconforming means of egress construction. This is required by the town fire prevention code. Seconded by David Boudreau.</p> <p>Jim Butler called for the vote:</p> <p>Owen Stoddard – Yes David Boudreau – Yes Ray DeLeo - No</p>	<p><u>MOTION</u></p> <p><u>VOTE</u></p> <p><u>(2-1)</u></p>
<p><u>ITEM 3: Miscellaneous Appeal:</u> Barbara and Frank Christina, Applicant for 81 Park Ave, MBL 314-5-6 in the R-2 Zone. Applicant is seeking miscellaneous appeal to reduce Front yard setback by 25% to 15' and reduce Rear Yard Setback by 50% to 5' to permit construction of Front Porch and rear deck expansion. Owners are the Applicant</p> <p>Owen Stoddard made a motion to table this item until the applicants are able to be here to present their appeal. Seconded by David Boudreau.</p> <p>Owen Stoddard – Yes David Boudreau – Yes Ray DeLeo - Yes</p>	<p><u>ITEM 3</u></p> <p><u>MISC. APPEALS</u></p> <p><u>MOTION</u></p> <p><u>VOTE</u></p> <p><u>(3-0)</u></p>
<p>ADJOURN</p> <p>There being no further business to conduct, the meeting adjourned at 7:45 p.m.</p>	
<p>GOOD AND WELFARE</p>	

I, Valdine Camire, Secretary to the Zoning Board of Appeals of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of Four (4) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting held on September 30, 2013.

Valdine Camire