

**TOWN OF OLD ORCHARD BEACH  
ZONING BOARD OF APPEALS  
Monday, August 25, 2008**

<p><b>Roll Call:</b> Mr. Ray DeLeo, Mr. Phillip Weyenberg, Mr. Howard Evans, Mr. Phillip Denison were present and Mike Nugent was present as Staff Support</p>	<p><b>Roll Call</b></p>
<p><b>ITEM 1: APPROVAL OF MINUTES</b> This was moved to the end of the meeting</p> <p>Mike Nugent advised that the applicant for Item 5 has requested that the item be tabled until the September 2008 meeting. The Abutters present were advised.</p>	<p><b>Approval of Minutes</b></p>
<p><b>ITEM 2 : Variance:</b> YP Enterprises LLC, Owner of 194 Saco Ave, MBL 211-12-4 in the GB-1 zone to permit the adjustment of the right side and rear yard setbacks to construct: 1) a handicap access bathroom where the current ramp is located; 2) a new handicap access ramp along the front of the existing outside seating area;.3) Add a Loading Dock on the back of the building; 4) Add a Bulkhead to the back of the structure. Alan Weinstein is representing the corporation,</p>	<p><b>Item 2 YP Enterprises Variance 194 Saco Ave. 211-12-4 GB! Zone</b></p>
<p><b>Chairman DeLeo read</b> the appeal.</p> <p>Mr. Weinstein explained that the aspects of the appeal as described above. He advised that the business is requesting to construct two accessible restrooms where the current ramp is on the left side of the building; Install a bulkhead on the rear because there is only a trap door to access the basement; Install a loading dock on the rear and create a new accessible ramp on the left front yard of the building.</p> <p><b>Chairman Deleon called for abutters</b></p> <p>David Pelletier, owner of 1 Center St., to the rear of the subject property, expressed concern about the noise generated from the loading dock abutting their property and the trash if the dumpster was relocated to the rear of their building. He presented pictures of the rear of the building. He challenged the hardship required to grant the variance. He challenged the dumpster location, which is not subject to zoning setbacks.</p> <p>Cathy Fletcher , resident at 1 Center St. was concerned about the Loading dock next to her home and the dumpster location</p> <p>Marjory Clay from 2 Center St, across the street, had concerns about additional traffic generated on her side of the building because of the loading dock, also cumulative impacts from the business in the area. She was concerned about buffering of the dumpster and the business and the affect on her property.</p>	<p><b>Public Hearing</b></p>

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There were no other abutters.

Mr. Weinstein stated that the property was unique, that's why they are in front of the Board. That the loading dock is proposed to be as small as possible to blend in better. The Rear of the building is the best location and trucks will be accessing from Saco Ave., not Center St.

Chairman DeLeo asked what makes this restaurant different from the past restaurants that makes this necessary.

Mr. Weinstein stated that he has a tenant with a long term lease and would like to make this the best they can be. The way this business operates is different and the needs are different. The tenant needs to use the cellar, no one has before. They would like to have two bathrooms for handicap accessibility and loading dock location is better for kitchen access.

Mr. Dennison asked about the stand of trees along the property line, were they on Mr. Weinstein's property or the abutters, would they be damaged or destroyed.

Mr. Weinstein responded that they were the abutters and there would be no impact on them.

Mr. Weyenberg asked if the proposed bathroom addition would be smaller than the existing ramp.

Mr. Weinstein replied that the bathroom building width is 10 feet and the ramp etc is 12 or 14 feet. It being cut back by two feet on the left side of the building.

Mr. Weyenberg asked if they needed a variance for the areas where there is existing structure.

Mike N. replied that they did because the areas were non-conforming and being taken down by the owner and not by means beyond their control.

Mr. Dennison asked if the dock and bulkhead were approved would the messy back yard be cleaned up.

Mr. Weinstein stated that it would.

Mr. Weyenberg indicated that the mess needs to be cleaned up regardless. Mr Weinstein agreed.

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Discussion ensued regarding the property layout.

Mr DeLeo asked about the dumpster

Mr. Weinstein indicated it would be a standard Dumpster with a 6' stockade fence around it.

Mr. Weyenberg asked where the dumpster is now.

Mr. Weinstein explained that it is on the left front side of the building.

Marjory Clay from 2 Center St. asked about the dumpster location and fence. David Pelletier, Owner shared her concern about the dumpster, fencing, maintenance and noise.

Mike N. Advised that the ZBA appearance was the first of a three level process. If the applicant is successful here, they then had to go to Site Plan review, where dumpster location, screening and buffering are all determined, which is also a public process with abutter input, the a building permit is obtained.

King Weinstein, an abutter for 25 years talked about the history of the property and felt that the current tenant was an asset to the neighborhood. And was in favor of the variance.

Cathy Fletcher expressed that the dumpster should stay where it is and be fenced.

The Board did not have further questions of the appellant.

**Chairman DeLeo read** the 4 criteria of hardship for a variance.

Mr. Evans asked what can be done without a variance.

Mike N. stated that there are conforming areas on the Saco Ave. side of the property but that is taken up by required off street parking. Most of the lot was nonconforming.

Mr. Weyenberg asked about the existing rear landing and stairway that goes to "nowhere" there is no door, why not use that as the dock.

Mr. Weinstein replied that this area was not in the kitchen and that they were trying to make the kitchen safer by providing a second egress.

Mr. DeLeo asked if the Board could grant portions of the request or if they have to approve or disapprove all.

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<p>Mike N. indicated that the Board could approve or deny some or all of the application.</p> <p>With regard to the first criteria, the Board agreed with the applicant that property does not yield a reasonable use for the Accessible Bathrooms and the ramp. But disagreed with the applicant for the Loading Dock and the Bulk Head (Mr. DeLeo agreed with the applicant with regards to the Bulkhead)</p> <p>With regard to the second criteria, the Board agreed with the applicant need for the variance is due to the uniqueness of the property for the Accessible Bathrooms and the ramp. But disagreed with the applicant for the Loading Dock and the Bulk Head (Mr. DeLeo agreed with the applicant with regards to the Bulkhead)</p> <p>With regard to the Third criteria, the Board agreed with the applicant the granting of the variance would not alter the essential character of the locality for the Accessible Bathrooms and the ramp. But disagreed with the applicant for the Loading Dock and the Bulk Head (Mr. DeLeo agreed with the applicant with regards to the Bulkhead)</p> <p>With regard to the fourth criteria, the Board agreed with the applicant that the hardship was not self-created for the Accessible Bathrooms and the ramp. But disagreed with the applicant for the Loading Dock and the Bulk Head (Mr. DeLeo agreed with the applicant with regards to the Bulkhead)</p> <p><b>Mr. Weyenberg</b> moved to grant the appeal as submitted for the Restrooms and Ramp, but to deny the appeal for the loading dock and the bulkhead</p> <p><b>Mr. Evans</b> seconded the Motion</p> <p><i>Motion carries Unanimously</i></p>	<p style="text-align: center;"><b>Motion</b></p> <p style="text-align: center;"><b>Vote</b></p>
<p><b><u>ITEM 3: Miscellaneous Appeal:</u></b> Jasco Investment, Ltd., Owner of 2 Tripoli Avenue, MBL 319-9-1 in the R-3 zone to permit the demolition of a portion of the building and replace with a new structure on existing footprint. This request requires a reduction in the side yard setback. Cynthia Howard AIA, Architect is representing the Owner, Owner is the appellant.</p>	<p style="text-align: center;"><b>Item #3 Jasco Investment Ltd. Miscellaneous Appeal 2 Tripoli Ave. 319-9-1 R-3 Zone</b></p>

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<p><b>Chairman DeLeo read</b> the appeal.</p> <p>Cynthia Howard explained the appeal and the configuration of the building. The current owner has owned it since 1945 and it has been in the same configuration as you see today. Originally they wanted to renovate the existing building but found that the structure was deteriorated and sinking facilitating the need to remove the rear portion and rebuild.</p> <p>Ms Howard presented photos that showed the sway back (sagging) of the structure. She explained that the ceiling height on the first floor was down to 6'5 ½" due to the sinking of the structure. She explained that they wanted to raise the elevation while complying with height restrictions and that they had secured a DEP sand dune permit.</p> <p><b>Chairman DeLeo called for abutters</b></p> <p>Jay Whitaker indicated that they were fortunate to be the immediate abutters to this property living at 5 Pavia Ave. They have been neighbors of the Jasmin Family for 23 years. He stated that the appellants have been open about the project since the beginning, going over every detail with them and that the proposal does not impede their view of the Ocean. He stated that he unequivocally supports the proposal and that it would benefit the family and the Town to approve this.</p> <p>Sue Giarollo, who lives across the street, also expressed approval for the project.</p> <p>The Chair read a letter from Jean Bellanger, owner of 5 Tripoli Ave. into the record also supporting the project. They have no objections to the project, also mirroring the sentiments of the other abutters.</p> <p><b>Chairman DeLeo read</b> the 4 criteria of approval for a miscellaneous appeal.</p> <p>The Board agreed that the structure, having been built in app. 1900, predated the effective date of this appeal provision (1998). They also agreed that the requested reduction is reasonable necessary to permit the owners to continue to use and enjoy their property. The Board agreed with the applicant's description that due to the existing location of the building on the lot it would not be practical to conform to current setback and that the impacts would not be substantially different than the existing structure's impact.</p>	<p><b>Public Hearing</b></p>
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<p><b>ITEM 1: APPROVAL OF MINUTES</b></p> <p>Mr. Denison moved to approve the minutes of the 7/28/08 ZBA Regular Meeting as written. Mr. Weyenberg Seconded the motion</p> <p><i>Motion carries Unanimously</i></p>	<p style="text-align: center;"><b>Approval of Minutes</b></p>
<p><b>ITEM 5: Variance:</b> Peaches LLC, Owner of 88-90 Saco Avenue, MBL 206-9-7 in the GB-2 zone to permit the demolition of 5 cottages and replace 2 duplex condominiums. This request requires a variance in the density requirement. King Weinstein is representing the corporation, Owner is the appellant.</p> <p>Tabled until the 9/29/08 meeting</p>	<p style="text-align: center;"><b>Item 5 Variance Peaches LLC 88-90 Saco Ave. 206-9-7  GB-2</b></p>
<p>The Meeting was adjourned</p>	<p style="text-align: center;"><b>Adjournment</b></p>

*I, Mike Nugent ,Acting Secretary to the Zoning Board of Appeals, do hereby certify that the foregoing document consisting of eight (8) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting of August , 2008.*