

**TOWN OF OLD ORCHARD BEACH
ZONING BOARD OF APPEALS MEETING MINUTES October 18, 2010**

Call to Order at 7:03 pm	Call to Order
Pledge to the Flag	
<p>Roll Call: Present: Vice Chair Robert Quinn, Mr. Philip Weyenberg, Chairman DeLeo, and Tianna Higgins arrived at approximately 7:14 pm. Mr. Phil Denison excused. Staff: Mike Nugent, Code Enforcement Officer. Tori Geaumont, Secretary to the ZBA.</p>	
<p><u>ITEM 1: Miscellaneous Appeal:</u> Michele S. Trahan, owner of 109 West Grand Avenue, MBL 316-12-4, in the NC-2 Zone, to permit the construction of a non-conforming stairway for means of egress. The owner is the appellant.</p>	<p><u>Item 1:</u> <u>Miscellaneous Appeal: Michele S. Trahan, 109 West Grand Ave, MBL 316-12-4</u></p>
<p>Mr. Nugent explained that this item needed to be tabled until next meeting due to some abutters not being property notified.</p>	
<p><u>ITEM 2: Miscellaneous Appeal:</u> Steven & Alex Harris, owners of 53 Cedar Avenue, MBL 312-8-12 in the R2 Zone to permit the reduction of the rear yard setback and lot coverage to allow for the construction of a garage. The owner is the appellant.</p>	<p><u>Item 2:</u> <u>Miscellaneous Appeal, Steven & Alex Harris, 53 Cedar Avenue MBL 312-8-12</u></p>
<p>Steven Harris, owner of 53 Cedar Avenue. Mr. Harris explained they wish to demolish/remove two sheds that are currently on the property and build a garage. With doing this, they will need to go into the back setback approximately 4 feet; therefore, distance from the rear property line will be 16' as opposed to the 20' requirements. Mr. Nugent pointed out that with Mr. Harris' approval, he would ask to change this to 14' and add 2' on to what Mr. Harris is asking for. This will account for roof overhang. With current dimensions the overhangs will not be in accordance. Mr. Harris agreed and thanked Mr. Nugent. Chairman DeLeo called for any abutters or correspondence. <i>PUBLIC HEARING CLOSED AT 7:08 P.M.</i></p>	<p>PUBLIC HEARING</p>
<p>Chairman DeLeo read the criteria for number one. With regards to part A. The existing buildings or structures on the lot for which the limited reduction of yard size/limited expansion of lot coverage is requested were erected prior to the date of adoption of this provision or the lot is a vacant nonconforming lot of record the appellant stated true; the current structures were built before the current zoning laws were put in effect. The house was built in 1900. Mr. Quinn agreed. Mr. Weyenberg agreed. Chairman DeLeo agreed. With regards to part B. The requested reduction is reasonably necessary to permit the owner or occupant of the property to use and enjoy the property in essentially the same manner as other similar properties are utilized in the zoning district the appellant stated to build a garage within the front and rear setbacks would limit it to 20' deep. A basic Ford F150 is 20' plus so as an example said vehicle would not fit in. Mr. Quinn agreed. Mr. Weyenberg agreed. Chairman DeLeo agreed. With regards to part C. Due to the physical features of the lot and/or the location of existing structures on the lot, it would not be practical to construct the proposed expansion, enlargement or new structures in conformance with the currently applicable yard size or lot coverage requirements the appellant stated this is true. The current setbacks will force the garage to be too narrow to hold most vehicles. Mr. Quinn agreed.</p>	

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<p>Mr. Weyenberg agreed. Chairman DeLeo agreed. With regards to part D. The impacts and effects of the enlargement, expansion or new principal building or structure on the existing uses in the neighborhood will not be substantially different from or greater than the impacts and effects of a building or structure which conforms to the yard size requirements the appellant stated the difference we are requesting is 6 feet closer to the back edge of the lot. Currently there is a metal shed set back further and the house sits almost on the back property line. Building this allows us to remove a metal shed enlarging our back yard and this will make the lot more attractive. Mr. Quinn asked if he was going to remove both sheds or just the one metal shed he referred to. Mr. Harris stated that they were going to remove both sheds. Mr. Quinn agreed. Mr. Weyenberg agreed. Chairman DeLeo agreed. Mr. Weyenberg moved to permit the reduction of the rear yard setback and lot coverage to allow for the construction of a garage. Mr. Quinn seconded. <i>Motion passes unanimously.</i></p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p>
<p><u>ITEM 3: Miscellaneous Appeal:</u> Peter & Jill Kelly, owners of 7 Frances Street, MBL 205-7-12 in the DD2 Zone to permit the right side setback to allow for the construction of a 21' x 28' addition. Michael Tousignant is representing the owner.</p>	<p style="text-align: center;"><u>Item 3:</u> <u>Miscellaneous</u> <u>Appeal, Peter &</u> <u>Jill Kelly, 7</u> <u>Francis Street</u> <u>MBL 205-7-12</u></p>
<p>Michael Tousignant, representing Peter & Jill Kelly. Mr. Tousignant explained that it was the Kelly's wish to add on to their summer cottage. This is a seasonal cottage, and they would like to add two bedrooms to the back of the home for family members to come and visit in the summer. Ms. Higgins asked if it is the Kelly's intention to keep the shed that is currently on the property. Mr. Tousignant said yes they would like to keep it. Mr. Weyenberg asked if all the abutters were notified. Mr. Nugent stated they were; there were quite a few of them and ended up costing the appellant over one hundred dollars. Chairman DeLeo called for any abutters or correspondence. <i>PUBLIC HEARING CLOSED AT 7:16 PM</i></p>	<p style="text-align: center;">PUBLIC HEARING</p>
<p>Chairman DeLeo read the criteria for number one. With regards to part A. The existing buildings or structures on the lot for which the limited reduction of yard size/limited expansion of lot coverage is requested were erected prior to the date of adoption of this provision or the lot is a vacant nonconforming lot of record the appellant stated were erected prior to the date of adoption of this provision. Mr. Weyenberg agreed. Ms. Higgins agreed. Mr. Quinn agreed. Chairman DeLeo agreed. With regards to part B. The requested reduction is reasonably necessary to permit the owner or occupant of the property to use and enjoy the property in essentially the same manner as other similar properties are utilized in the zoning district the appellant stated property was purchased two years ago and new owners would like to add two more bedrooms to accommodate their family. Mr. Weyenberg agreed. Ms. Higgins agreed. Mr. Quinn agreed.</p>	

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<p>Chairman DeLeo agreed.</p> <p>With regards to part C. Due to the physical features of the lot and/or the location of existing structures on the lot, it would not be practical to construct the proposed expansion, enlargement or new structures in conformance with the currently applicable yard size or lot coverage requirements the appellant stated owner is hoping to expand directly off the back of existing structure. The expansion is to add two more bedrooms. Would like to keep bedrooms at rear of lot.</p> <p>Mr. Weyenberg agreed.</p> <p>Ms. Higgins agreed.</p> <p>Mr. Quinn agreed.</p> <p>Chairman DeLeo agreed.</p> <p>With regards to part D. The impacts and effects of the enlargement, expansion or new principal building or structure on the existing uses in the neighborhood will not be substantially different from or greater than the impacts and effects of a building or structure which conforms to the yard size requirements the appellant stated this lot is extremely large compared to other lots in the neighborhood. After new construction the lot will only be using 35% of lot coverage. Most structures in this neighborhood are probably 75% or greater.</p> <p>Mr. Quinn commented that the application had stated 19% and this states 35%, and he was unsure which was correct.</p> <p>Mr. Tousignant answered that the 19% coverage is what is currently there, and with the addition, the lot coverage will be 35%.</p> <p>Mr. Weyenberg agreed.</p> <p>Ms. Higgins agreed.</p> <p>Mr. Quinn agreed.</p> <p>Chairman DeLeo agreed.</p> <p>Mr. Quinn moved to permit the right side setback to allow for the construction of a 21' x 28' addition.</p> <p>Ms. Higgins seconded.</p> <p><i>Motion passes unanimously</i></p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p>
<p><u>ITEM 4: Variance:</u> Karen Anderson, owner of 23 Massachusetts Avenue, MBL 322-3-2 in the R2 Zone to permit the adjustment of the front setback and lot coverage to allow for the infill of the space between the garage and main dwelling unit. Diane Doyle is representing the owner.</p>	<p style="text-align: center;"><u>Item 4: Variance:</u> <u>Karen Anderson,</u> <u>23 Massachusetts</u> <u>Avenue,</u> <u>MBL 322-3-2</u></p>
<p>Mr. Nugent suggested moving this item to the end, as the appellant or her representative was not present.</p> <p>Chairman DeLeo agreed.</p>	
<p><u>ITEM 5: Extension of Variance Approval:</u> Peaches LLC, owner of 88-90 Saco Avenue, MBL 206-9-7 in the GB2 Zone to reaffirm the Variance granted on October 27, 2008. The owner is the appellant.</p>	<p style="text-align: center;"><u>Item 5: Extension</u> <u>of Variance</u> <u>Approval;</u> <u>Peaches LLC, 88-</u> <u>90 Saco Avenue,</u> <u>MBL 206-9-7</u></p>
<p>King Weinstein, manager of Peaches LLC. Mr. Weinstein explained that this is just an extension of what the variance was approved for before.</p> <p>Mr. Nugent explained that the case has not changed at all. This is the exact same plan that came in front of the board. There are abutters here so the board should hear them.</p> <p>Ms. Higgins asked where the paper street was.</p> <p>Mr. Nugent showed the street and how the buildings were reduced to fit on the lot for that district.</p> <p>Chairman DeLeo called for any abutters or correspondence.</p> <p>Janice Bourgault, 5 Bower Lane.</p> <p>Time Line from Mrs. Bourgault:</p>	<p style="text-align: center;">PUBLIC</p> <p style="text-align: center;">HEARING</p>

Original density variance request June 25, 2007

ITEM 3: Variance: Peaches LLC, 88-90 Saco Avenue, Map#206, Block#9, Lot#7, in the GB-2 Zone, requests a relief from the space and bulk requirements of the required minimum lot area per unit from 5,000sf to 2,028sf in order to reconstruct six existing cottage units.

At this first meeting, neighbors expressed concerns around water, sewer, and additional traffic on Bower Lane among other items.

Tabled without prejudice due to too many unanswered questions:

1. Concerns brought up by abutting neighbors
2. Request to reconstruct 6 existing units when only 5 really existed
3. Board questioned whether applicant seeking to achieve maximum return on land instead of reasonable return (from 6/25/07 meeting: Mr. Murphy asked if applicant were not trying to yield the maximum return with five units since he felt that applicant was asking for 100%.)

Second density variance request October 17, 2008:

ITEM 1: Tabled Variance: 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.

Neighbors again brought up same concerns:

Water
Sewer
Traffic

King Weinstein presented his request. The only required variance is from the density standard, which has changed from the time when the buildings were originally built and makes the existing situation non-conforming. Mr. Weinstein presented photos to the board. He indicated that the proposed development would be served by the sewer line on Saco Ave. He stated that the property would continue to have private trash removal. He indicated that the Biddeford/Saco Water Co.'s rep., Tom Carr advised that the Bower Lane water line has adequate capacity for this project without adversely affecting Bower Lane. There had been a customer on Bower that was experiencing some pressure deficiencies, but that was apparently from their own corroded lateral connection. Traffic will access the property from Saco Ave. There will be a gated emergency entrance on Bower Ln. at the request of the Fire Chief.

Mr. Weyenberg asked the applicant if he was pursuing the water and sewer improvements with the Town. The applicant advises that they will bring in new lines for the project. He stated that he has confirmed that the water lines can

handle the units and that the pressure issue for the Bower Ln. resident was do to corrosion on their personal line. Mr. DeLeo asked the applicant to elaborate on the traffic issue. Mr. Weinstein advised that all traffic would enter from Saco Ave. and only a locked gated emergency entry would be on Bower Ln. at the request of the Fire Dept.

Comments on Mr. Weinstein's response to neighbors' concerns:

Sewer: Mr. Weinstein commented multiple times on how the sewer would be served by Saco Ave. We have now been told that the sewer will be served by Bower Lane. Richard Green of 3 Bower Lane, was home when the sewer line was inspected. He was told by the individual that he would not recommend using this line for additional units due to its age and size. He also commented on the overall condition of the line as being poor.

Water: In the 2008 meeting, Mr. Weinstein attributed the pressure deficiencies experienced by an abutting neighbor as being caused by their own corroded lateral connection. I would like to clarify that there is not **currently** a deficiency in pressure, but the deficiency was experienced during the summer months when the cabins were occupied and potentially may now be experienced year round with these new year round units accessing the water line from Bower Lane.

Traffic: Mr. Weinstein addressed this concern, by stating that only a locked gated emergency entry would be accessible from Bower Lane at the request of the Fire Dept. We spoke to the Fire chief shortly after the meeting and he stated that this was not discussed nor would he approve a gated entrance as the fire dept would not have the time to search for the appropriate key should an emergency arise. Neighbors are still unclear as to how the traffic concerns are being addressed.

In addition, we have a letter from the town (see attached) dated May 22, 2009 reassuring the neighbors that the items discussed at the October meeting would be fully enforced. Again, neighbors are finding out otherwise.

Site review (October 27, 2008 meeting)

Mr. Weinstein advised that this proposal also will have Site Plan Review through the Planning Department if successful with the Variance Appeal.

Mr. Weinstein asked Mike Nugent if this would require Planning Board approval for all of the technical standards. Mike Nugent advised that Site plan review through the Planning Board is required where they will review traffic, drainage, sewer and water infrastructure capacity, snow storage, dumpster location, and parking.

Mr. Denison thanked the abutters and reminded them that many of the issues raised at the meeting are under the review authority of the Planning Board and not the Zoning Board. The ZBA simply reviewed the density request only.

On the May 22nd letter, neighbors were informed that this plan does not require site review because this project does not trigger subdivision review.
Explanation being:

Although a subdivision is created in the creation of 3 or more dwelling units, this project does not constitute a subdivision: "And while a total of four dwelling units are being created, they are replacing dwelling units which already exist -reducing, rather than increasing, the number of dwelling units on the property. That, it seems to me, is not a process of "division", which is what the subdivision statute regulates." Also, since the cabins were in existence prior to September 23, 1971 – they are therefore a "grandfathered" subdivision under section 4402(2).

Comment: Information that was not taken into account when this opinion was rendered is that, these units had not been occupied for over 10 years (since summer of 1998).

Sec. 78-177. Nonconforming use of land.

Continuance of nonconforming use of land shall be subject to the following:

- (3) If any such nonconforming use of land ceases for any reason for a period of more than two years, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located.

Sec. 78-180. Appeals from restrictions on nonconforming uses.

Notwithstanding sections 78-177(1) through (3) and 78-179(b) through (d), a nonconforming use of land or a nonconforming use of a structure may be enlarged, increased, extended, moved to another portion of the lot or parcel, reconstructed, structurally altered, resumed after cessation for a period of more than two years, but less than ten years, or converted to another nonconforming use on the lot which it occupied on the effective date of the ordinance from which this chapter derives or amendment of this chapter, upon approval of the planning board as conditional use pursuant to article VII of this chapter.

The planning board may not approve any such enlargement, increase, extension, movement, construction, alteration, resumption or conversion, unless it finds that the impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use.

If the water, sewer and traffic is to be accessed from Bower Lane, this will greatly impact the neighborhood – it will be a greater impact to the neighborhood than it was previously since the cabins have now not been occupied for over 12 years and previous to that they were only occupied during the summer months.

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TOWN OF

A FOUR SEASONED COMMUNITY

Old Orchard Beach

May 22, 2009

To: The Abutters of 90 Saco Ave.
From: Mike Nugent—Code Enforcement Officer

RE: Permit Process for the Bower Lane Condo's

Earlier this year the Zoning Board of Appeals granted a variance to allow Peaches LLC to demo the 6 cottages and construct two duplexes on the above lot.

After meeting with the Planning staff, it was found that the ordinance does not require Site Plan review for this construction and the Town's Attorney has rendered the opinion that the construction does not trigger subdivision review. (copy attached)

The purpose of this notice is to advise you that the building permit is under review and will likely be issued within the next several days. I have included copies of the elevations for the proposed structures and will insure that all of the items discussed at the ZBA meeting will be fully enforced, such as:

- 1) Traffic Access from Saco Ave. only with a gated entry on Bower for emergency vehicles only.
- 2) The Sewer & water sources will be from Saco Ave.
- 3) The off street parking will be in compliance with the Zoning Ordinance as shown on the Approved ZBA plan.
- 4) The Structures will comply with the Town's Zoning and Building, plumbing and electrical codes.

Please call me at 934-5714 ext. 237 if you have any questions.

Thanks!

BERNSTEIN SHUR
COUNSELORS AT LAW

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April 8, 2009

VIA E-MAIL and U.S. MAIL

Gary Lamb, Town Planner
Town of Old Orchard Beach
1 Portland Avenue
Old Orchard Beach, Maine 04064-2245

Re: Peaches, LLC, Map 206, Block 9, Lot 7

Dear Gary:

I am writing in response to your question about whether the proposal of Peaches, LLC to replace six existing cabins with two newly constructed duplex buildings requires subdivision review. For the following reasons, I do not believe subdivision review is required.

Under 30-A M.R.S.A. sec. 4401(4), a subdivision is created in one of two ways: creating three or more lots or creating three or more dwelling units. Obviously, no lots are being created by the Peaches proposal. And while a total of four dwelling units are being created, they are replacing dwelling units which already exist – reducing, rather than increasing, the number of dwelling units on the property. That, it seems to me, is not a process of “division,” which is what the subdivision statute regulates.

30-A M.R.S.A. sec. 4402(2) exempts from subdivision review “[s]ubdivisions in actual existence on September 23, 1971 that did not require approval under prior law....” My understanding is that the Peaches cabins were in existence prior to September 23, 1971. They are therefore a “grandfathered” subdivision under section 4402(2). To replace those six “grandfathered” dwelling units with four units does not, in my view, create a new subdivision or remove the exemption of section 4402(2).

BERNSTEIN, SHUR, SAWYER & NELSON, P.A. | Portland, ME | Augusta, ME | Manchester, NH

LEXIPOL MUNDI
THE FUTURE. LEADING A REVOLUTION
IN HOW PRACTICE LAYS FORWARD

Mrs. Bourgault passed out a timeline for the project as well as information regarding sewer, water, and traffic issues. She explained that the neighborhood has many concerns regarding all three. She is most concerned that when this was originally approved, the Zoning Board was under the impression it would need to go to Planning Board which is now not the case. She feels this should have some bearing on whether the Board extends the variance. The water line is a problem, and abutters are also concerned about tying into the sewer system on Bower Lane, as opposed to Saco Avenue as agreed upon when the initial variance was granted. She felt that the abutters concerns are not being taken into account.

Chairman DeLeo asked Mr. Nugent to clarify some of this.

Mr. Nugent explained that the Planning Board and the town’s attorney reviewed this and felt that there was no need for this to go to Planning Board. Mr. Nugent spoke to the sewer superintendent about coming in from Saco Avenue, and he stated that they can connect up to either 30’ or 50’; he was unsure of the exact measurement. He stated that the

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<p>Superintendent knew that at some point in the future the town will need to replace the rest of the line. There will be no traffic on Bower Lane. Mr. Weinstein stated this at a public hearing, and staff will hold him to that and not issue a certificate of occupancy.</p> <p>Ms. Higgins said that at the Public Hearing sewer was going to come in from Saco Avenue, and now they can go from Bower Lane. She felt that abutters should be notified.</p> <p>Mr. Nugent stated that staff can definitely do this. This should go to Public Works, but we can send another letter as a courtesy.</p> <p>Mr. Quinn stated since he was not on the board when this was first granted, and he was unsure why it is here again.</p> <p>Mr. Nugent explained that there has been a significant time lapse from 10/27/2008.</p> <p>Mr. Weyenberg stated that the stipulation last time was that it was going to go to Planning Board.</p> <p>Mr. Nugent pointed out that getting the variance was the first step.</p> <p>Chairman DeLeo stated this was not in our purview to evaluate something the Planning Board would.</p> <p>Mr. Weyenberg pointed out that it is up to the town to make sure the utilities are okay.</p> <p>Mr. Nugent stated that Public Works does not like to cut the pavement on Saco Avenue. There will be no gated entry to Bower Lane, and we are obligated to stand by that.</p> <p>Mr. Weinstein stated that they voluntarily had the Planning Staff review the plans. Public Works had a sewer inspection from Bower Lane to Saco Avenue. There is a 6" line so the Sewer Superintendent wanted the connection to be only up to either 30' or 50' from Bower. Nothing has changed. As far as the water problem there were no reports at the water company regarding pressure issues, according to the water company. When construction at 90 Saco Avenue was done they tapped into the water line on Saco Avenue, and they will be tapping into that line for this project.</p> <p>Mr. Weyenberg stated he was not clear on the gate issue. If approved, is the board to assume that there will be a gate.</p> <p>Mr. Weinstein stated that Chief Glass did not want one entry.</p> <p>Ms. Higgins stated there are many versions of a gate.</p> <p>Ms. Bourgault asked for clarification on the sewer line.</p> <p>Mr. Nugent stated that Bill Robertson, the Director of Public Works, used a camera to check the sewer line and recommended the 30' – 50' limitation of where to hook into and felt that after that section the town will need to be replacing the rest of the line on Bower Lane. Public Works knows there are some issues there and certainly do not want to make the situation worse.</p> <p><i>PUBLIC HEARING CLOSED AT 7:46 PM</i></p> <p>Chairman DeLeo asked Mr. Nugent if the board needed to go through each criteria or could they just make a motion to reaffirm.</p> <p>Mr. Nugent stated it was up to the board.</p> <p>Ms. Higgins moved to approve the extension of the variance granted on October 27, 2008.</p> <p>Mr. Weyenberg seconded.</p> <p><i>Motion passes unanimously.</i></p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p>
<p>Ms. Higgins moved to table without prejudice items 1 and 4.</p> <p>Mr. Weyenberg seconded.</p> <p><i>Motion passes unanimously.</i></p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p>
<p><u>Item 6: Acceptance of Minutes:</u> September 27, 2010</p> <p>Mr. Quinn moved to table the acceptance of the September 27, 2010 minutes until the next meeting.</p> <p>Ms. Higgins seconded.</p> <p><i>Motion passes unanimously.</i></p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p>
<p>Ms. Higgins moved to adjourn.</p> <p>Mr. Weyenberg seconded.</p> <p><i>Motion passes unanimously.</i></p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p>

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	Adjournment
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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 ten (10) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting on October 18, 2010

Tori Geaumont