

**TOWN OF OLD ORCHARD BEACH**  
**ZONING BOARD OF APPEALS MEETING MINUTES NOVEMBER 28, 2011**

<p><b>Call to Order at 7:04 pm</b></p>	<p>Call to Order</p>
<p><b>Pledge to the Flag</b></p>	
<p><b>Roll Call:</b> Present: Owen Stoddard, Philip Denison, Tianna Higgins, Philip Denison, Chairman Ray DeLeo.</p> <p>Staff: Mark Mitchell, Code Enforcement Officer, Val Helstrom, ZBA Clerk</p> <p><b>Public Meeting begins at 7:10 pm.</b></p> <p><b>Chair DeLeo read off the criteria for the Public Hearing.</b></p>	<p style="text-align: center;"><b>PUBLIC HEARING</b></p>
<p><b><u>ITEM 1: Variance:</u></b> Karen Anderson, Clare M. Anderson and Sarah J. Anderson, owners of 23 Massachusetts Ave., MBL 322-3-2 in the R3 Zone. A continuance of the proceedings of the meeting of October 24<sup>th</sup> 2011 to permit the adjustment of the front and side setbacks and lot coverage to demo, increase the lot coverage to approx.47 % and replace the existing dwelling. Owner is the appellant.</p> <p>Matt _____ representing the Andersons, introduced himself to the Board stating that for clarification purposes they are requesting the adjustment of the front and side setbacks and lot coverage to demo, increase the lot coverage to approx. 47% and replace the existing dwelling. Requesting to bring the house down to grade level for accessibility issues.</p> <p>There being no one for or against item #1 The Public Hearing closes at 7:12 pm</p> <p>Mr. DeLeo reads off the four criteria of hardship:</p> <p style="padding-left: 40px;"><b>A. The land in question <u>cannot</u> yield a reasonable return unless the variance is granted.</b></p> <p>RESPONSE: The home is being re-built to make it fully wheelchair accessible. The existing ramp will be removed and replaced with a landing dock from carport to house. This will allow transfer of wheelchair directly from vehicle to house. Without this variance, it is necessary for wheelchair to traverse long ramp which in winter months is a hardship. The coverage of rear porch allows space for handicap ADA shower.</p> <p>Stoddard – Approved  Weyenberg – Approved  Higgins – Approved  Denison – Approved  DeLeo – Approved</p> <p style="padding-left: 40px;"><b>B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.</b></p> <p>RESPONSE: The property is unique as it has an odd 5' x 20' open space between the house and garage which gathers wetness and mold. This unusable space is surrounded by structure on three sides. The rear deck which will be covered if variance is granted, also gathers mold and wetness from pine trees. The lot is low and wet with many trees. We plan to install a metal roof over property to navigate mold rather than remove trees.</p> <p>Stoddard – Approved</p>	<p style="text-align: center;"><b><u>ITEM 1</u></b></p> <p style="text-align: center;"><b>Karen Anderson  23 Massachusetts Avenue  MBL 322-3-2</b></p>

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<p>Weyenberg – Approved Higgins – Approved Denison – Approved DeLeo – Approved</p> <p style="text-align: center;"><b>C. The granting of a variance will not alter the essential character of the locality.</b></p> <p>RESPONSE: Filling in the 5’ x 20’ space between the builders will not affect the character of the neighborhood. The renovation will improve the appearance of the house which is correctly substandard. The covered back porch will also be ascetically pleasing, rather than a dark, moldy porch.</p> <p>Stoddard – Approved Weyenberg – Approved Higgins – Approved Denison – Approved DeLeo – Approved</p> <p style="text-align: center;"><b>D. The hardship is not the result of action taken by the appellant or a prior owner.</b></p> <p>RESPONSE: The house was constructed in the 1950’s as a seasonal camp. The garage was attached in the 1970’s. At that time they left a 5’ x 20’ foot space between house and garage. The hardship presently is a lack of accessibility from the occupants vehicle to the house.</p> <p>Stoddard – Approved Weyenberg – Approved Higgins – Approved Denison – Approved DeLeo – Approved</p> <p>A Motion to Approve the Variance was made by Mrs. Higgins and is seconded by Mr. Denison.</p> <p>Mr. Mitchell calls for the vote: Stoddard – Yes Weyenberg – Yes Higgins – Yes Denison – Yes DeLeo – Yes</p>	<p style="text-align: center;"><b><u>MOTION</u></b></p> <p style="text-align: center;"><b><u>VOTE</u></b></p> <p style="text-align: center;"><b><u>VARIANCE</u></b> <b><u>APPROVED</u></b> <b><u>(5-0)</u></b></p> <p style="text-align: center;"><b><u>Unanimous</u></b></p>
<p><b><u>ITEM 2: Variance:</u></b> Robert and Shirley Baggs Owners of a portion of Connecticut Ave. MBL 322-1-7 in the R3 Zone. Applicant is seeking a variance from the private way standards to reduce the width of the road by half. Applicant will be represented by Pierce Attwood LLP.</p> <p>Brian Rayback from Pierce Attwood LLP, representing Mr. and Mrs. Baggs is requesting a variance from the private way standards to reduce the width of the road by half to allow 4 vacant lots to be accessed. Mr. and Mrs. Baggs are proposing, therefore to build a private way along the undeveloped and unaccepted portion of Connecticut Avenue that will both provide access in accordance with the design standards for private ways and adequate frontage. This would allow for the parcel to be developed at some point in the future in compliance with the Zoning Ordinance for a single-family home, which is a conforming</p>	<p style="text-align: center;"><b><u>ITEM 2</u></b></p> <p style="text-align: center;"><b>Robert and Shirley Baggs Portion of Connecticut Avenue MBL 322-1-7</b></p>

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use in this zone.

Mr. Stoddard asked if the town owned the land.

Mr. Mitchell stated that the town had vacated interest.

Mrs. Higgins was questioning for others to have access, they would have to have a variance.

Mr. Mitchell stated that each property owner should be responsible to build for the length of their property.

Mr. Rayback stated that they have an easement to cross over that land.

Mr. Weyenberg stated that it would be helpful if the easements were in writing.

Mr. Stoddard asked what would happen if they don't approve the variance.

Mr. Rayback stated that they could not develop their property without the easement or Right of Way.

Mr. Weyenberg asked who owns the paper street.

Chair DeLeo stated that the town maintains the street.

Mr. Wade, abutter to this property introduced himself to the Board stating his concerns about what could happen if the variance is approved tonight. His concerns were for development and possible drainage problems.

Board members agreed that these issues were Planning Board issues.

Chair DeLeo asked if the Board would be granting the whole distance.

Mr. Mitchell stated that it would only have to be the minimum amount.

Mr. John Bird gave the Board some background on this property.

Chair DeLeo read letters from abutters: Mary Ann Boyle (25 Ct. Ave.) and Ted & Kathleen Wade (49 Mass. Ave.)

Mr. Weyenberg asked about the legalities for driving over someone else's land.

Mr. Mitchell stated they still reserve the right to travel over this land, but the owners still own the land.

There being no one for or against item #1 The Public Hearing closes at 8:10 pm

**A. The land in question cannot yield a reasonable return unless the variance is granted.**

RESPONSE: Without a variance, the parcel here cannot be developed at all because there is no way to access it and the Ordinance prohibits developing a parcel that cannot be accessed.

Stoddard – Approved

Weyenberg – Approved

Higgins – Approved

Denison – Approved

DeLeo – Approved

**B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.**

RESPONSE: The variance is necessary because Connecticut Avenue was never completed in this area, but rather ended just feet from the boundary line. The parcels to the west can all be accessed from the portion of Connecticut Ave. that was previously developed, and the parcel to the east can be accessed from Manor Street. Thus, the need for the variance for this parcel is unique, exists regardless of who owns the property, and is not due to the general condition of the neighborhood.

Stoddard – Approved

Weyenberg – Approved

Higgins – Approved

Denison – Approved

DeLeo – Approved

**C. The granting of a variance will not alter the essential character of the locality.**

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RESPONSE: The neighborhood is a residential subdivision. Allowing the Baggses to build a single driveway to access their lot will merely allow for the same kind of development that is already contemplated under the subdivision plan and is consistent with the rest of the area (including a similar project by the neighbors across the street, the Andersons). The driveway itself can be built to meet the current Ordinance standards for private ways in Section 78-1414(b). In addition, the rest of the property will be developed in accordance with other applicable standards, including, for example, construction of sanitary facilities (which can access an existing sewer line in Connecticut Avenue). Finally, Robert Baggs has discussed this project with the Andersons, who asked that he take down several dangerous trees within and near the right-of-way as part of the project, which will improve safety in the area. Therefore, developing the property will not pose health or safety risks, will be consistent with the type and intensity of development already in the area, and will not alter the essential character of the locality.

Stoddard – Approved  
Weyenberg – Approved  
Higgins – Approved  
Denison – Approved  
DeLeo – Approved

**D. The hardship is not the result of action taken by the appellant or a prior owner.**

RESPONSE: The hardship was not created by the Baggses, but rather by the decisions of others – over many years- about whether and how to build out Connecticut Avenue. Neither the Baggses, nor any prior owner, cause that situation. For example, had the Town decided to complete Connecticut Avenue, the Baggses could have accessed their parcel directly from a public street, as initially intended when Ocean Park was subdivided. Likewise, had the Town not vacated its rights to one-half of the width of Connecticut Avenue, the Baggses could have met the ROW width standard by utilizing the 40-foot ROW initially contemplated on the 1923 subdivision plan as a public street and not have had to rely on the wider, 50-foot private roadway standard. Thus, the need for the variance here from the ROW width standard is not the result of actions taken by the current or any prior owner. In fact, on the contrary, the current owners are actually improving the situation by combining multiple, permitted subdivision parcels to meet the modern lot size requirement (lots 85-90)

Stoddard – Approved  
Weyenberg – Approved  
Higgins – Approved  
Denison – Approved  
DeLeo – Approved

A Motion to Approve the Variance from the private way standards to reduce the width of the road required for the minimum length to 20' as approved and required by the Planning Board was made by Mr. Weyenberg and seconded by Mr. Stoddard.

Mr. Mitchell calls for the vote:  
Stoddard – Yes  
Weyenberg – Yes  
Higgins – Yes  
Denison – Yes  
DeLeo – Yes

**MOTION**

**VOTE**

**VARIANCE**  
**APPROVED**  
**(5-0)**

**Unanimous**

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<p><b><u>ITEM 3: Variance:</u></b> John and Elizabeth DeSimone 60 Fern Avenue MBL 312-7-1 in the R2 Zone To renew a variance which has expired to allow adjustments to the density requirements to repair and convert the existing 3 unit building into a two unit building . Owner is the appellant.</p> <p>A motion was made by Mr. Weyenberg to renew a variance which has expired to allow adjustments to the density requirements to repair and convert the existing 3 unit building into a two unit building, seconded by Mr. Stoddard.</p> <p>Mr. Mitchell calls for the vote:          Stoddard – Yes          Weyenberg – Yes          Higgins – Yes          Denison – Yes          DeLeo – Yes</p>	<p style="text-align: center;"><b><u>ITEM 3</u></b>  <b><u>John and Elizabeth DeSimone</u></b>  <b><u>60 Fern Street</u></b>  <b><u>MBL 312-7-1</u></b></p> <p style="text-align: center;"><b><u>Motion</u></b></p> <p style="text-align: center;"><b><u>Vote</u></b></p> <p style="text-align: center;"><b><u>VARIANCE APPROVED</u></b>  <b><u>(5-0)</u></b></p> <p style="text-align: center;"><b><u>Unanimous</u></b></p>
<p><b><u>ITEM 4: Variance:</u></b> Robert Riley Owner of 8 Willow Creek Lane MBL 205-19-40 in the R2 Zone. Applicant seeks relief from the side rear and front yard setback requirements to allow placement of a screen house. Owner is the applicant.</p> <p>Mr. Riley introduced himself to the Board and stated that he would like a variance for the side rear and front yard setback requirements to allow placement of a screen house. Mrs. Higgins asked if this would fall under Accessory Structures. Mr. Mitchell agreed.</p> <p>There being no one for or against. The Public Hearing closed at 8:44 pm.</p> <p><b>A. The land in question <u>cannot</u> yield a reasonable return unless the variance is granted.</b></p> <p>RESPONSE: To construct a screen house to enjoy our yard is a reasonable use of property to the configuration of lot, the building location on the lot and the brook. A screen house cannot be constructed to set backs depriving us from a reasonable return of our property.</p> <p>Stoddard – Approved          Weyenberg – Approved          Higgins – Approved          Denison – Approved          DeLeo – Approved</p> <p><b>B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.</b></p> <p>RESPONSE: Our lot is a large lot transected by a brook, limiting our building options. The lot is low and wet.</p> <p>Stoddard – Approved          Weyenberg – Approved          Higgins – Approved</p>	<p style="text-align: center;"><b><u>ITEM 4</u></b></p> <p style="text-align: center;"><b><u>Robert Riley</u></b>  <b><u>8 Willow Creek</u></b>  <b><u>Land</u></b>  <b><u>MBL 205-19-40</u></b></p>

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<p>Denison – Approved DeLeo – Approved</p> <p><b>C. The granting of a variance will not alter the essential character of the locality.</b></p> <p>RESPONSE: The granting of a variance will improve the appearance of the home.</p> <p>Stoddard – Approved Weyenberg – Approved Higgins – Approved Denison – Approved DeLeo – Approved</p> <p><b>D. The hardship is not the result of action taken by the appellant or a prior owner.</b></p> <p>RESPONSE: The building was placed in accordance to the regulations in effect at the time of construction. With increasing regulations, we are limited in our options to reasonably use our property.</p> <p>Stoddard – Approved Weyenberg – Approved Higgins – Approved Denison – Approved DeLeo – Approved</p> <p>A motion was made by Mr. Stoddard to approve a variance for the side rear and front yard setback requirements to allow placement of a screen house, seconded by Mrs. Higgins.</p> <p>Mr. Mitchell calls for the vote: Stoddard – Yes Weyenberg – Yes Higgins – Yes Denison – Yes DeLeo – Yes</p>	<p style="text-align: center;"><u>Motion</u></p> <p style="text-align: center;"><u>Vote</u> <u>VARIANCE</u> <u>APPROVED</u> <u>(5-0)</u></p> <p style="text-align: center;"><u>Unanimous</u></p>
<p><b>ITEM 5: Variance:</b> Ann Garvey and Gretchen Garvey of 99 Portland Avenue MBL 203-1-14 in the R-1 Zone. Applicant is seeking a variance from minimum lot size, minimum frontage requirements. and buildable area requirements. Owner is the appellant.</p> <p>Mr. Mitchell passed out letters to the Board that he had received today concerning this item on the agenda.</p> <p>Mrs. Higgins requested that they take a few moments to read these.</p> <p>The owner was informed that they bought this property and it was buildable, but she was informed that this property is not buildable now. She was informed that this was a non-conforming lot.</p> <p>Mr. Mitchell stated that the only issue was the variance at this time, no setbacks.</p> <p>Mr. Weyenberg asked what they are asking for.</p> <p>Chair Winch stated that they are only there for a variance for the frontage.</p> <p>Mary Jackson introduced herself to the Board stating that she was the one who is interested in buying this property, but she wants to know if she can build there before she buys.</p> <p>There being no one for or against. The Public Hearing closed at 9:42 pm.</p>	<p style="text-align: center;"><b>ITEM 5</b></p> <p style="text-align: center;"><b>Ann &amp; Gretchen Garvey 99 Portland Avenue MBL 203-1-14</b></p>

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**A. The land in question cannot yield a reasonable return unless the variance is granted.**

RESPONSE: The land in question “Lot 4” cannot yield a reasonable return unless the variance is granted because strict application of the ordinance would result in a practical loss of substantial beneficial use of the land. The lot is zoned as Residential 1 District (R-1) which limits the use of the land to residential uses. Strictly applying these ordinances renders the lot unbuildable because it does not meet these space and bulk requirements. Since the lot is undeveloped, zoned as residential uses only and strict application of the ordinance renders the lot unbuildable, the lot has no remaining lawful beneficial uses. Furthermore it is significant that the Lot 4 owners do not own or have any claim of title to any properties contiguous to and/or near Lot 4. Thus, strict application of the ordinance on this lot, in effect, practically deprives it of any substantial benefit uses.

Stoddard – Approved  
Weyenberg – Approved  
Higgins – Approved  
Denison – Disapproved  
DeLeo – Approved

**B. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood.**

RESPONSE: The pertinent property, “Lot 4”, was the result of a subdivision of property recorded in York County Registry of Deeds in Plan Book 37, Page 47 on May 1, 1964. The relevant Lot 4 dimension created by this May 1964 subdivision, are: 63.0 ft. of road frontage (abutting Portland Rd.) and 11,817 sq. ft. total lot size (see “Plot Map”) When the property was subdivided, these dimensions unlawfully conformed to the applicable zoning and building requirements. There were no buildings on Lot 4 when the property was subdivided nor when the current Space and Bulk Requirements for Residential I District were enacted. The other lots in the neighborhood that existed prior to this enactment but which did not meet the new standards, were deemed a lawfully non-conforming plot, the other lots had residences previously build on them which negated the need for variances for sub-standard buildable dimensions. Therefore although Lot 4’s substandard dimension are not a wholly unique circumstance, these substandard dimensions and the absence of a house together create a unique circumstance to Lot 4 unlike the general conditions of the neighborhood. It is also relevant that the Lot 4 neighborhood consists predominantly of lots featuring single-family residences; therefore, in the context of this neighborhood, a lack of a house is not a commonality and is itself a distinguishing circumstance. It should additionally be noted that the residential block on which Lot 4 is located does have two other lots (GIS ID 203-1-12 Lot and GID ID 203-1-4 Lot) without houses (see; “GIS Map”). Unlike Lot 4, however, these lots are owned in conjunction with a contiguous lot or are associated with and an accessory to a contiguous lot with a residential structure (GIS ID 203-1-3 Lot and GIS ID 203-1-5 Lot, respectively). The owners of Lot 4 do not own any contiguous lots, now is Lot 4 currently associated with the use of any other properties. The absence of houses on these properties is therefore distinguishable from the circumstances of Lot 4. In summary, the need for the variances requested herein is due to Lot 4’s unique circumstances as a categorically lawfully non-conforming residential property without a residence on it and/or associated with it and which has no other existing uses without a variance.

Stoddard – Approved  
Weyenberg – Approved  
Higgins – Approved  
Denison – Approved  
DeLeo – Approved

**C. The granting of a variance will not alter the essential character of the locality.**

RESPONSE: Lot 4 is zoned in a Residential 1 District. The Town of Old Orchard Beach Ordinances Article VI, Division 2, Section 78-486 establishes the purpose of Residential 1

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District (R-1) as a zoning district to be used principally for single-family residences in detached dwellings and other customary accessory, educational, public and religious uses. Lot use in District R-1 is intended to create and contribute to a “wholesome residential neighborhood environment ( ss 76-486).” Lot 4 is presently a vacant lot and as discussed above, under strict application of the dimensional requirements, no lawful conforming uses exist for it. Granting of the variances requested herein, however, will enable Lot 4 to have a lawful and beneficial use as a buildable single-family residential lot in furtherance of the enacted purposes for R-1. Absent a variance, Lot 4 will remain an unbuildable vacant lot. A vacant lot with no possible conforming uses has no marketable value, will necessarily remain vacant and become an eye sore to the neighborhood thereby detracting from the scheme of a wholesome neighborhood environment. Granting the variances requested herein will actually enable the lot to conform to the desired uses of R-1 lots and to contribute to furthering a wholesome residential neighborhood environment. Moreover, Lot 4’s dimension are not so minimal as to elicit any apparent health or safety problems.

Stoddard – Approved  
Weyenberg – Approved  
Higgins – Approved  
Denison – Approved  
DeLeo – Approved

**D. The hardship is not the result of action taken by the appellant or a prior owner.**

RESPONSE: The hardship necessitating a grant of variance is the result of the past history of the property and not the actions of the appellant or a prior owner. As previously described, Lot 4 was created out of a subdivision of a larger parcel, recorded May 1, 1964 in the York County Registry of Deed in Plan Book 37, Page 47 (see, Warranty Deed). On that date, the property created, Lot 4, was a lawfully conforming property. However, due to minimum lot size, buildable area, and lot frontage requirements, Lot 4 became a substandard lot after zoning was enacted. The record shows that subsequently, in June 2005, Lisa A. Minervino and Roy H. Milligan granted title and deed of Lot 4 to Excel Enterprises, LLC for consideration paid In November 2006, the current record and title owners, Ann M. Garvey and Gretchen Garvey, purchased Lot 4 from Excel Enterprises, LC for \$60,000. For some time the property was being used under an easement appurtenant to Lot 3 for additional parking of motor vehicles for Lot 3 owners, their lessees, invitees and guests. This easement was dissolved in 2006. Lot 4 is currently vacant.

Stoddard – Approved  
Weyenberg – Approved  
Higgins – Approved  
Denison – Approved  
DeLeo – Approved

Mrs. Higgins made a motion to approve a variance from minimum frontage requirements, seconded by Mr. Weyenberg.

Mr. Mitchell calls for the vote:  
Stoddard – Yes  
Weyenberg – Yes  
Higgins – Yes  
Denison – Yes  
DeLeo – Yes

**Vote**  
**VARIANCE**  
**APPROVED**  
**(5-0)**  
**Unanimous**

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**ITEM 6: Variance:** Carol Smith MBL 206-24-37 11 School Street in the DD-2 Zone Seeking a variance from the side yard setback requirement of 15' down to 6' to construct a farmers porch at the front a deck at the rear. Owner is the appellatant.

Mr. Michael Ramunnd, friend of the family who is the contractor introduced himself to the Board stating that they are seeking a variance from the sideyard setback requirement of 15' down to 6' to construct a farmers porch at the front a deck at the rear.

There being no one for or against. The Public Hearing closed at 9:58pm.

**A. The land in question cannot yield a reasonable return unless the variance is granted.**

The lot is too small for a house, therefore it was built within the setbacks possibly before they existed. To build a porch that fits the house as theistically it should be the same width of the house which would encroach on the setback, but no more than the house already does.

Stoddard – Approved  
Weyenberg – Approved  
Higgins – Approved  
Denison – Approved  
DeLeo – Approved

**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 problem is the lot size and also the fact that that the house is already located past the setback.

Stoddard – Approved  
Weyenberg – Approved  
Higgins – Approved  
Denison – Approved  
DeLeo – Approved

**C. The granting of a variance will not alter the essential character of the locality.**

The proposed deck will not encroach any further on the neighbor than the house and will be built with only finer materials.

Stoddard – Approved  
Weyenberg – Approved  
Higgins – Approved  
Denison – Approved  
DeLeo – Approved

**D. The hardship is not the result of action taken by the appellatant or a prior owner.**

The house and property have been here for over seventy years, possibly before the setbacks were enacted.

Stoddard – Approved  
Weyenberg – Approved  
Higgins – Disapproved  
Denison – Approved  
DeLeo – Approved

Mrs. Higgins made a motion to approve a variance from the sideyard setback requirement of 15' down to 6' to construct a farmers porch at the front a deck at the rear from minimum

**ITEM 6**

**Carol Smith  
11 School Street  
MBL 206-24-37**

Vote

**VARIANCE**

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<p>frontage requirements, seconded by Mr. Weyenberg.</p> <p>Mr. Mitchell calls for the vote: Stoddard – Yes Weyenberg – Yes Higgins – Yes Denison – Yes DeLeo – Yes</p> <p>Acceptance of Minutes for October 24, 2011.</p> <p>Mrs. Higgins moved to accept the minutes from October 24, 2011, seconded by Mr. Stoddard. Motion passes unanimously.</p> <p>There being no further business to conduct, the meeting closed at 10:08 pm</p>	<p style="text-align: center;"><b><u>APPROVED</u></b>  <b><u>(5-0)</u></b>  <b><u>Unanimous</u></b></p> <p style="text-align: center;"><b><u>APPROVED</u></b>  <b><u>(5-0)</u></b>  <b><u>Unanimous</u></b></p>
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*I, Val Helstrom, 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 held on November 28, 2011.*

*Valdine L. Helstrom*