

**TOWN OF OLD ORCHARD BEACH  
ZONING BOARD OF APPEALS MEETING MINUTES  
February 27, 2012**

<p><b>Call to Order at <u>7:05 pm</u></b></p>	<p>Call to Order</p>
<p><b>Pledge to the Flag</b></p>	
<p><b>Roll Call:</b> Present: Mark Lindquist, Owen Stoddard, Tianna Higgins Chairman Ray DeLeo. Absent: Philip Denison, and Ron Regis.  Staff: Mark Mitchell, Code Enforcement Officer, Val Helstrom, ZBA Clerk</p>	<p><b>PUBLIC HEARING</b></p>
<p>Chair DeLeo read the criteria for the Public Hearing.  <b>ITEM 1: Acceptance of the minutes of the December 19, 2011 and January 30, 2012</b> Acceptance of the minutes will be approved at the end of the meeting.</p>	<p><b><u>ITEM 1</u></b></p>
<p><b><u>ITEM 2: Miscellaneous Appeal:</u></b> The continuation of Ms. Linda M. Sulkala, owner of 10 Tunis Avenue (MBL 319/7/6) in a Residential District (R3) is seeking an approval to reduce the 20' frontyard setback requirement by 25% to 15' to construct a deck 8' x 17' as allowed by the granting of a miscellaneous appeal.  Mr. Tom Rudka introduced himself to the Board stating that he is here representing Linda M. Sulkala in regards to her Miscellaneous Appeal. At the last meeting it was noticed that the Appeal was written up for a Variance rather than a Miscellaneous Appeal. So Mr. Rudka re-wrote the Appeal on the Miscellaneous Appeal form. Nothing had changed with the Appeal itself.  There being no one for or against the appeal, the Public Hearing closed at 7:12 pm.  Chair DeLeo read the four criteria for hardship:</p> <p style="padding-left: 40px;"><b>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.</b></p> <p style="padding-left: 40px;">RESPONSE: Existing main part of house was erected C. 1890. Two story addition was constructed in 1985.</p> <p>Stoddard – Approved Lindquist – Approved Higgins - Approved DeLeo - Approved</p> <p style="padding-left: 40px;"><b>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.</b></p> <p style="padding-left: 40px;">RESPONSE: The proposed deck would meet the 15' reduced front yard setback and still not be closer to the street than the original existing part of the house or adjacent properties.</p>	<p><b><u>ITEM 2</u></b>  <b><u>PUBLIC HEARING</u></b></p>

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Stoddard – Approved  
Lindquist – Approved  
Higgins - Approved  
DeLeo - Approved

**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 structure in conformance with the currently applicable yard size or lot coverage requirements.**

RESPONSE: It would not be practical to construct this deck elsewhere on this lot because it won't fit as well or service the occupants as well and other setbacks would be in conflict.

Stoddard – Approved  
Lindquist – Approved  
Higgins - Approved  
DeLeo - Approved

**D. The impacts and effects of the enlargement, expansion or new principal building or structure on 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.**

RESPONSE: Because the proposed deck and stairs are in the inside corner of the "ELL" there will be very little affect on this neighborhood.

Stoddard – Approved  
Lindquist – Approved  
Higgins - Approved  
DeLeo - Approved

A motion to approve the Miscellaneous Appeal was made by Mr. Lindquist and seconded by Ms. Higgins.

Mr. Mitchell calls for the vote:

Stoddard – Yes  
Lindquist – Yes  
Higgins - Yes  
DeLeo - Yes

Motion passes 4-0

**MOTION**

**MISC.**  
**APPEAL**  
**APPROVED**

**(4-0)**

**Unanimous**

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**ITEM 3: Variance: Mr. Cary Seamans is seeking a variance to allow a lot to be created without Town approved frontage where 160 ft is required by sec. 78-609 of the Zoning Ordinance. ( MBL 403/12/3) in the R5 Residential District**

**ITEM 3**

Cary Seamans introduced himself to the Board and stated why he was here seeking a variance and also changed the criteria for question A that was tabled from last months meeting. (*The land in question cannot yield a reasonable return unless the variance is granted*)

Mr. Lindquist stated that he suggested this item be tabled without prejudice from the last months meeting because there wasn't enough defined in the hardship in the first question of the application.

He bought a ¼ acre lot after being told by Jan Fisk, a prior Planner that he could combine a ¼ acre lot of his and make a building lot. He will not recover his costs of the lot from Judith Manning, survey costs and septic design costs unless the variance is granted.

Tianna asked that the house is on a private way with the ½ acre you want to break off? Where would the driveway be?

Mr. Seamans stated that it would be on Chestnut Street. He couldn't go on Fiero Drive per town specs.

There being no one speaking for or against the appellant, the public hearing closes at 7:18pm.

Mr. DeLeo read the four criteria of hardship:

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

RESPONSE: I bought a ¼ acre lot after being told by Jan Fisk, a prior Planner that I could combine a ¼ acre lot of mine and make a building lot. I will not recover my costs of the lot from Judith Manning, survey costs from Paul Godbois and septic design costs from Frisk and Associates unless the variance is granted.

Stoddard – Approved  
Lindquist – Approved  
Higgins - 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: My driveway is off Fiero Dr. I could not improve Fiero Drive up to town standards due to Milliken Stream. Per DEP. I do not have the improved street needed in Fiero Drive due to DEP ruling. So if I break off a lot on Chestnut, I would now be non-conforming. I could have built an improved street if Milliken Stream was not so close to my property. I would be conforming.

Stoddard – Approved  
Lindquist – Approved  
Higgins - Approved  
DeLeo - Approved

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

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<p>RESPONSE: Most all of the houses in our development are on ½ acre lots and ¼ acre lots. This lot would be a ½ acre lot.</p> <p>Stoddard – Approved Lindquist – Approved Higgins - 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: I paid for surveying, legal costs, and septic design per Jan Fisk telling me that I would have a lot of record. I would like to use the property the same way that the other owners do in my development. Single family dwelling affordable.</p> <p>Stoddard – Approved Lindquist – Approved Higgins - Approved DeLeo - Approved</p> <p>Mr. Stoddard made a motion to approve the variance to allow a lot to be created without Town approved frontage where 160 ft. is required by sec. 78-609 of the Zoning Ordinance. (MBL 403/12/3) in the R5 Residential District, seconded by Mr. Lindquist.</p> <p>Mark Mitchell calls for the vote:</p> <p>Mr. Stoddard - Yes Mr. Lindquist – Yes Ms. Higgins - Yes Mr. DeLeo - Yes</p> <p>Motion passes 4-0. unanimous.</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>(4-0)</u></b></p>
<p><b><u>ITEM 4: Extension of prior approval:</u></b> MCJ LLC is seeking an extension of six (6) months to the expiration date of a variance originally granted at the meeting dated Sept. 26, 2011.MBL 202-3-13</p> <p>Ms. Higgins moves to approve a 6 month extension of this prior variance approval, seconded by Mr. Stoddard.</p> <p>Mark Mitchell calls for the vote:</p> <p>Mr. Stoddard - Yes Mr. Lindquist – Yes Ms. Higgins - Yes Mr. DeLeo - Yes</p> <p>Motion passes 4-0. unanimous.</p>	<p style="text-align: center;"><b><u>ITEM 4</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>(4-0)</u></b></p>

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**ITEM 5: Variance** The Southland Corporation DBA 7-11 219 Saco Avenue is seeking a variance from the frontyard setback requirement to remove two non-conforming canopies and replace with just one canopy over fuel pumps which will be less non-conforming than the original two.  
MBL 211-9-16 in the GB-1 Zone.

**ITEM 5**

Chris Johnson, Designer from Harrison French & Associates introduced himself to the Board.

Mr. informed the Board Members that currently the existing canopies are located in the setbacks and due to the shape of the property, an upgraded canopy will not fit on the property without the overhangs encroaching slightly into the setbacks. The existing configuration of the fuel canopies and fuel dispensers does not lend itself to a good layout for customer access. The proposed canopy will improve traffic flow and add improved fuel dispensers to the site for improved customer service. This would also improve security measures. One single canopy, four dispensers.

Mr. Lindquist asked that it looks like the canopy going along Saco Avenue is going to be set back so there will be clearer lines of site along the more heavily traveled route. And on the Temple Avenue side of the canopy doesn't look like its going to extend any closer to the road than currently exists.

Mr. Johnson stated that this is correct.

Mr. Lindquist then stated that the only primary function that he had was the height of the canopy. Is it going to be raised... same height.

Mr. Johnson informed the Board that it is usually 15' and also stated that there will be no curb cuts.

There being no one speaking for or against this variance, the Public Meeting closed at 7:26 pm.

Mr. DeLeo read the four criteria of hardship:

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

RESPONSE: Currently the existing canopies are located in the setbacks and due to the shape of the property, an upgraded canopy will not fit on the property without the overhangs encroaching slightly into the setbacks. The existing configuration of the fuel canopies and fuel dispensers does not lend itself to a good layout for customer access. The proposed canopy will improve traffic flow and add improved fuel dispensers to the site for improved customer access.

Stoddard – Approved  
Lindquist – Approved  
Higgins - 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 property is unique in shape and size due to its location on the corner of both Old Orchard Road and Temple Avenue. The property does not have a true hard corner since it essentially reaches a point on the northwest corner.

Stoddard – Approved  
Lindquist – Approved



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**ITEM 6: Variance:** Ms. Heidi & Mr. Deleo seek a variance from the 20,000 sq/ft lot size requirement of the GB-1 Zone to create a lot with approximately 13,630 sq/ft for the construction of a single family home. MBL 205-25-1

**ITEM 6:**

Mr. DeLeo Recluses himself from this Agenda Item.

Mr. DeLeo informed the Board on what his intensions of this variance consists of. He also mentioned that this property in question is in the R-1 Zone and not the GB1- Zone. Mr. DeLeo wants to make the garage the Inn and combine lots 3, 4, and 5 (14,000 sq, ft,) but this requires a 20,000 sq. ft. lot. He would like to move the garage lot to the Inn lot. This would also be making the garage now conforming to the rear set back of the new lot. It has got to be 25' and right now the set back is about 16'.

**Ms. Higgins read an email from William D'Donato, Assistant Tax Assessor to Code Officer Mark Mitchell on the Atlantic Birches merger dated February 27, 2012:**

*The assessor's office found through deed research of the Atlantic Birches that a deed merger upon purchase of two parcels should have combined lots but were not (Book 10713/Page 199). Once I found the error I contacted Mr. DeLeo to inform him about the reduction of his property tax bills land value. He would not receive only one tax bill instead of two. Per the CEO on March 28, 2011 he said that if the lots were combined, and a split in the future was desired it is possible that the combined lot requirement could possibly be larger than 20,000 sq. ft. Through multiple conversations Mr. DeLeo, he decided on April 21, 2011 to merge the two properties per deed. By merging the properties the land value would be fewer taxes.*

Mr. Ken Gardiner introduced himself to the Board. He is here representing Steve Cecchetti who has property at 205-1-16 and had concerns that Mr. DeLeo is making this a more non-conforming lot.

There being no one else speaking for or against the appellant, the public meeting closed at 7:48 pm.

Ms Higgins read the 4 criteria of hardship:

**A. The land in question cannot yield a reasonable return unless the variance is granted.**  
RESPONSE: The property without its grandfathered status pre Sept. 2001 cannot get any return with its designation in the R-1 Zone with a minimum of a 20,000 sq ft. lot requirement. The lot was not purchased by the appellant or previous owner with the intent to expand the business of make a reasonable return on the investment it was purchased for their personal use. By granting this variance, the lot will become less non-conforming and correct the existing rear setback issue with garage along with allowing us the space to build a home similar to other homes abutting the lot and neighborhood.

Stoddard – Approved  
Lindquist – Approved  
Higgins - 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: Due to the feature of the polygon shaped lot and location of the existing seasonal structure on the lot, it would not allow us to construct the proposed home in conformance with the new current applicable lot size requirement of the R-1 Zone which is 20,000 sq. ft. enacted in Sept of 2001. The new house will conform to all lot size setbacks

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and will be way below the lot allowed percentage maximum.

Stoddard – Approved  
Lindquist – Approved  
Higgins - Approved  
DeLeo - Approved

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

RESPONSE: The granting of the Variance will be a marked improvement to the property and neighborhood. The new home will alleviate the existing eyesore of the overgrown lot and present beyond repair structure on the lot. (to be demolished) Numerous developed lots surrounding the proposed property are less than the required lot size of the required 20,000 sq. ft. minimum.

Stoddard – Approved  
Lindquist – Approved  
Higgins - Approved  
DeLeo - Approved

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

RESPONSE: There has been no physical or preemptive action taken by the appellant or previous owners to the lot. See Attachment C. Sept. 2001, OOB changed Zoning Ordinances I R-1 District and all lots combines as one and incorporating part of 205-25-1 zone GB1 into 205-15-1 (See attached A). All lots should have been combined by the assessor's office s GB1 but boundary line for zone R-1 ran through the middle of properties thus creating a dual zoned single lot.

Stoddard – Approved  
Lindquist – Approved  
Higgins - Approved  
DeLeo - Approved

Mr. Lindquist made a motion to grant a variance to Mr. DeLeo to construct a single family home in the R1 zone to be 13,630 sq. ft., seconded by Mr. Stoddard.

**MOTION**

Mark Mitchell calls for the vote:

**VOTE**

Mr. Stoddard - Yes  
Mr. Lindquist – Yes  
Ms. Higgins - Yes  
Mr. DeLeo - Yes

**(4-0)**

Motion passes 4-0. unanimous.

**Unanimous**

Mr. Stoddard made a motion to approve the minutes of December 19, 2011, seconded by Ms. Higgins.

Mr. Stoddard made a motion to approve the minutes of January 30, 2012, seconded by Mr. Lindquist.

Mr. Lindquist made a motion to adjourn at 8:00 pm.

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GOOD AND WELFARE ADJOURNMENT Chairman	
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*I, Valdine Helstrom, 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 held on February 27, 2012.*

*Valdine L. Helstrom*