

**TOWN OF OLD ORCHARD BEACH  
ZONING BOARD OF APPEALS MEETING MINUTES  
January 26, 2009**

<b>Call to Order at 7:08 pm</b>	<b>Call to Order</b>
<b>Pledge to the Flag</b>	
<p><b>Roll Call:</b> Mr. Ray DeLeo, Mr. Robert Quinn, Mr. Howard Evans, and Ms. Tianna Higgins, Present. Mr. Philip Weyenberg, Mr. Phillip Denison, and Ms. Eileen Payette, Absent.</p> <p><b>Staff:</b> Mike Nugent Code Enforcement Officer, Tori Geaumont ZBA Clerk</p>	
<p><b><u>ITEM 1: Tabled Variance Appeal:</u></b> JADD LLC, owners of 7 Saunders Ave., MBL 303-2-6 in the BRD Zone to permit the adjustment of the minimum lot size, density, lot coverage and rear setbacks to allow a division of the vacant parcels on Scollard Rd. from the developed parcel on Saunders St. Diane and Don Lemanager represent JADD LLC.</p>	<p><b><u>ITEM 1:</u></b> <b><u>Tabled</u></b> <b><u>Variance</u></b> <b><u>Appeal:</u></b> <b>JADD, LLC</b> <b>7 Saunders</b> <b>Ave, MBL 303-</b> <b>2-6</b> <b>BRD Zone</b></p>
<p><b>Chairman DeLeo</b> read the appeal.</p> <p><b>Mrs. Lemanager</b> explained there were originally three lots that were merged by the town. She is asking to separate the one lot from the other two which were merged. Mrs. Lemanager explained the buildings were decrepit. She states that they have repaired them and rent them to family members. They would like to build a house on the abutting empty lot.</p> <p><b>Mr. DeLeo</b> asked where they wish to build a house on one of the lots.</p> <p><b>Mr. Lemanager</b> explained where they would like to split the lot to build to house.</p> <p><b>Mr. DeLeo</b> asked if this would be 6 and 7.</p> <p><b>Mr. Lemanager</b> stated yes. Mr. Lemanager explained which lot they would like to build on and split out. He then showed pictures of the two existing homes and footprints which exist on the lots already and then showed the new lot. He explained the lot has full exposure to Scollard. He stated the lot size would be the same as existing lot sizes on the street. He stated they would only have 5400 sf and 90 ft of frontage. Mrs. Lemanager stated that is almost twice the size of the existing homes and lots.</p> <p><b>Mr. Quinn</b> asked about the parking situation.</p> <p><b>Mr. Lemanager</b> stated parking is between the two lots, and can fit approximately four cars, one behind the other.</p>	<p><b>Public</b> <b>Hearing</b></p>

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**Mr. Evans** asked if their request is a re-alignment of the two lots.

**Mr. Lemanager** stated that this is all they can ask for tonight as to his understanding. He stated they were misguided by their lawyer and told to split the land. They had the land surveyed and split it according to the lawyer.

**Mr. DeLeo** asked if this is commercial or residential.

**Mr. Nugent** stated that the property is residential, and even if the property is rented, it is still a residence and considered residential.

**Ms. Higgins** asked if they were joined because of tax purposes.

**Mr. Nugent** stated that the only thing they can not join is improved parcels. They can merge unimproved parcels.

**Ms. Higgins** stated they purchased it all as one.

**Mr. Lemanager** then stated they purchased three lots and had three deeds.

**Mr. Higgins** stated they were originally 3 non-conforming lots.

**Chairman DeLeo called for Abutters or correspondence.**

**Bruce Bornstein, East Grand Avenue.** Mr. Bornstein stated his have owned the abutting property for 45 years. He stated that they are not opposed to building, but there is little parking if any, and as long as he has been there the parking has always existed as is. If there was any company at the property, there would be zero parking for the houses. That is the greatest opposition.

**Chairman DeLeo read a letter from Joe Kline, 5 Scollard Rd.**

Memorandum for: Old Orchard Beach Zoning Board of Appeals

23 January 2009

RE: Variance Request JADD LLC

Dear Board Members,

My name is Joseph Kline and I reside and own the property located at 5 Scollard Rd. I am listed as an abutter to part of the property starting at 7 Saunders Ave and extending onto Scollard Rd.

I am writing concerning the request from JADD LLC to change the zoning requirements or provide a variance from the

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zoning set backs, coverage and minimum lot sizes.

My wife, (Anie) and I were principle owners of JADD LLC (Joe, Anie, Don, Diane). We are friends with the applicants and prior investors together. I write this letter of concern and care because I do not want to harm our relationship but I do not support their request.

We invested into this property together with the idea of preserving the open space in front of my property and the property Don and Diane own adjacent to it. We were concerned when the former owner had the property for sale, someone would build on this open space (we did not know at the time of the zoning requirements). It was a concern for Anie and I because the street is very narrow and there is little space between buildings. Don and Diane have very little space on their property adjacent to it. We thought investing together (at the time we could not do it on our own), we could preserve the open space and potentially rehab the two buildings on Saunders Avenue and ask the town if we could rent the buildings to off set the investment costs.

We then contemplated to split the property but were informed by the planning office and zoning office it was not permitted. Don and Diane wanted to split the property on Scollard Ave and join it to their house property. We were informed that is not allowed either.

Our other neighbor, David Murphy, tried to split his property at the end of Scollard Rd but he was also denied.

We were provided an option through the planning and zoning department. We were informed we could demolish the two buildings on Saunders Rd and build one house to maximize the use.

Currently, there is no parking available for the Saunder Ave property so the open space on Scollard Rd is used as the designated parking. Also, the sewer on Scollard Rd may be able to handle additional load. The public works department has to clear the line at least twice a year because it is very old and undersized. The street is very narrow and does not allow parking. There is no separate drain under Scollard Rd so water un off is a problem.

As stated earlier, the Lemenager's are our friends but I cannot support the request. The property was inappropriately split through a county deed and the town does not recognize it. The neighborhood is very compact and cannot tolerate additional building nor is their parking support for the building on Saunders Ave.

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Respectfully submitted,

Joseph Kline

**Ms. Higgins** asked to be able to rent property, what is the requirement for parking.

**Mr. Nugent** explained that if it originally did not have any parking requirements it does not have any now.

**Ms. Higgins** asked if they split the property would they not have the parking. She then asked if they actually do have the parking or not. She questions whether they will bear the burden of proving parking.

**Mr. Nugent** stated they would need to prove the parking situation if this passes.

**Mr. DeLeo** asked if Joe Kline has any part in JADD, LLC.

**Ms. Lemanager** stated no, they are no longer part of JADD, LLC. She also stated that the property is not their primary residency, and they rent all summer.

**Mr. Nugent** stated if it is clear to support parking.

**Mr. Bornstein** stated the property that abuts them is used for parking. He stated on the left side there is no parking because it is split down the middle.

**Ms. Higgins** asked for clarification on paper (point to it).

**Mr. Bornstein** pointed out what they are talking about along with Mr. Nugent.

**David Murphy**

**79 Gorham Rd, Apt I52 Scarborough.**

Mr. Murphy stated his brother and he have been trustees for the property for 6 years. He stated his concern is not so much for splitting as it is the next step in the process which are the set backs. He also stated he wished to speak about the traffic on Scollard Road and stated Mr. Kline's letter was accurate, but clarified that he and his brother never fully pursued splitting their property. He is concerned with traffic and not sufficient parking. He stated that Saunders Ave is a tight space, and the town houses that exit behind

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2 and 4 do not support access to much of the public safety vehicles. If the Fire Dept is called it is difficult to get trucks through there, and he is concerned about that. He also emphasized the importance of keeping set backs.

**Mr. Quinn** asked Mr. Nugent if this is split, and in terms of the parking situation on Saunders Ave, is that acceptable to the town. He asked how it is going to work.

**Mr. Nugent** stated it does increase the non-conformity which is not a desirable effect. It is not allowable without the ZBA allowing it.

**Mr. Quinn** asked if this board can grant that if they request a variance for parking standards.

**Mr. DeLeo** stated that in the past, parking was not a concern of the board and it would be the concern of the planning board.

**Mr. Nugent** then stated that if ZBA is granting a variance it is the board's position to deal with the parking. He explained Planning Board would be responsible of parking if it was a new build. If the ordinance is related to parking, then it is the ZBA decision.

**Mr. DeLeo** stated they are changing density, and he did not think parking had to do with it.

**Mr. Nugent** stated ZBA still needs to deal with the parking situation.

**Ms. Higgins** stated they are asking for the variance because of splitting the lot which made the density too small.

**Mr. Quinn** stated that the parking problem is intensified by the variance.

**Mr. Nugent** stated it is part of the fact finding; it would be all part of the findings, as well as uniqueness of the property, affect on character of local, etc.

**Mr. Lemanager** stated there would be no problem with parking as far as Mr. Murphy. He also stated that the set backs would be the same as before. He understood the concern on Scollard, but quite often people park in the street for children to play in the driveway.

**Robert Fournier, son-in-law of Rita Noel, 1 Scollard.**

Mr. Fournier stated his only concern was the sewer situation which backs up 2-3 times a year. Mrs. Noel is at the very end of the line and everything comes in her direction. Another house would be a

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concern, as the pipe now is not enough for what houses are there currently.

**Ms. Higgins** stated that tonight the only thing to do is approve or deny splitting the lots. She states they would need to come again for another variance to build.

**Mr. Nugent** stated that if they met the requirements they would not need to have another variance.

**Mr. Lemanager** stated the set back would be all within reason.

**Mr. Nugent** stated if the board allows this the new lot would be a new non-conforming lot, and if they can meet the set backs currently they would be fine.

**Chairman DeLeo** read the 4 criteria for Justification of Variance.

With regards to a). whether the land in question cannot yield a reasonable return unless the variance is granted.

**Ms. Higgins** stated she agreed with the statement that this will be the largest lot on Scollard Ave and previous to the previous owner there were already 2 smaller lots.

**Mr. Quinn** stated that it seems to tie to some of the history of the property. The letter stated that this corporation was formed in part to provide open space. He stated that he does not know with that in mind that we can say the land not being able to be used is an unreasonable expectation, as that was the reason for the purchase to begin with.

**Mr. Higgins** stated that if the previous owner never bought the original parcel, there would have been 3 unconforming lots. Then the town put the three lots together.

**Mr. Quinn** asked if they bought 3 at one time.

**Ms. Higgins** stated they were aware it was 3 different lots, as they had 3 different deeds. She stated she is not sure if that matters. She stated that they wanted to do something once, but not now.

**Mr. Quinn** explained his reasons.

**Mr. DeLeo** stated the property does not have yield the maximum dollar amount as what was bought originally.

**Mr. Evans** agrees, Mr. Quinn does not agree, Ms. Higgins does not

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agree, and Chairman DeLeo does not agree.

With regards to b). the need for variance is due to the unique circumstances of the property and not to the general condition of the neighborhood. There were no questions. Mr. Quinn agrees, Mr. Evans agrees, Chairman DeLeo agrees, and Ms. Higgins agrees.

With regard to c). the granting of a variance will not alter the essential character of the locality, Ms. Higgins agrees, Mr. Evans agrees, Mr. Quinn agrees, and Chairman DeLeo agrees.

With regards d). the hardship is not a result of action taken by the appellant or a prior owner

**Mr. Quinn** stated that in regards to that, he did not know if this takes into account the 2 cottages on the property.

**Ms. Higgins** stated that it did not matter, since they are not changing size.

**Mr. Quinn** stated it goes back to parking size.

**Ms. Higgins** stated that is because they did not know what they were going to do with the lots if combined.

**Chairman DeLeo** asked if they are the prior owner.

**Mr. Nugent** stated that may not be relevant because they may have not known what they were buying.  
Mr. Evans agrees, Mr. Quinn agrees, Ms. Higgins agree, and Chairman DeLeo.

**Mr. Quinn** then points out ALL criteria must be satisfied.

**Mr. DeLeo** asked if we can put this on hold. He asked if one of the buildings could be taken down and could they divide the lot.

**Mr. Nugent** stated no, but there are other options such as removing the cottages and putting a single family dwelling.

**Mr. Evans** asked if the property alone can be divided.

**Mr. Nugent** stated not without creating a nonconforming lot.

**Ms. Higgins** stated the variance is because of creating 2 nonconforming lots.

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<p><b>Mr. Nugent</b> stated that the point of zoning is to make this more conforming.</p> <p><b>Mr. Evans</b> asked what the owner could do with this one piece of property.</p> <p><b>Mr. Nugent</b> then stated at least one family home, possibly 2 family zone.</p> <p>Mr. Nugent then read from the ordinance stating that they could build a two-family home on the property if set-backs were met.</p> <p><b>Mr. Evans</b> moved to deny the adjustment of the minimum lot size, density, lot coverage and rear setbacks to allow a division of the vacant parcels on Scollard Rd. from the developed parcel on Saunders St. Diane and Don Lemanager represent JADD LLC.</p> <p><b>Ms. Higgins</b> seconds 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 2: Miscellaneous Appeal:</u></b> Hartley Grandin, owner of 85 Randall Ave, MBL 322-7-7 in the R3 zone, to permit the adjustment of the side lot line to replace the existing stairs with a slightly large set of stairs. Tom Rutka is representing the owner.</p>	<p style="text-align: center;"><b><u>ITEM 2:</u></b>  <b><u>Miscellaneous</u></b>  <b><u>Appeal:</u></b>  <b>Hartley</b>  <b>Grandin</b>  <b>85 Randall Ave</b>  <b>MBL 322-7-7</b>  <b>R3 Zone</b></p>
<p><b>Chairman DeLeo</b> read the appeal.</p> <p><b>Tom Rutka representing Hartley Grandin</b></p> <p><b>Mr. Rutka</b> stated that this is an inside corner of the building where the rear door comes out. He stated that the door needs to be changed, and the homeowner wished to remedy the stairs. Mr. Rutka suggested a landing which is in an inside corner. There is a section of the building that comes within the setbacks, but it would leaver greater than 50% of the side yard setback.</p> <p><b>Mr. DeLeo</b> asked if what is being added is 4 inches of steps.</p> <p><b>Ms. Evans</b> asks how close is the next building from those steps.</p> <p><b>Mr. Rutka</b> stated he believes the adjacent property is only 3 feet away from the property line. Therefore the adjacent house off of Mr. Grandins house is approximately 10 feet away.</p> <p><b>Mr. DeLeo</b> stated that it is close.</p> <p><b>Mr. Rutka</b> stated that it is not closer than what exists on the</p>	



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<p>Grandin property currently.</p> <p><b>Chairman DeLeo called for Abutters or correspondence.</b></p> <p><b>Chairman DeLeo</b> read the 4 criteria for the Yard Size reduction;</p> <p>With regards to a). Mr. Quinn agrees, Mr. Evans agreed, Ms. Higgins agreed, and Mr. DeLeo agreed.</p> <p>With regards to b). Mr. Quinn agrees, Mr. Evans agreed, Ms. Higgins agreed, and Mr. DeLeo agreed.</p> <p>With regards to c). Mr. Quinn agrees, Mr. Evans agreed, Ms. Higgins agreed, and Mr. DeLeo agreed.</p> <p>With regards to d). Mr. Quinn agrees, Mr. Evans agreed, Ms. Higgins agreed, and Mr. DeLeo agreed.</p> <p><b>Ms. Higgins</b> motioned to approve the adjustment of the side lot line to replace the existing stairs with a slightly large set of stairs.</p> <p><b>Mr. Evans</b> seconded the Motion.</p> <p><i>Motion passes unanimously</i></p>	<p style="text-align: center;"><b>Motion</b></p> <p style="text-align: center;"><b>Vote</b></p>
<p><b>ITEM 3: Approval of Minutes:</b> December 29, 2008</p> <p>The Minutes from December 29, 2008 were not included in the packets.</p>	<p style="text-align: center;"><b>ITEM 3 Approval On December 2008 Minutes</b></p>
<p><b>GOOD &amp; WELFARE</b></p>	
<p><b>Mr. Nugent</b> congratulated the board for making a difficult decision on Item 1.</p> <p><b>Mr. Higgins motions to adjourn</b></p>	
<p>Meeting adjourned 8:14 pm</p>	<p style="text-align: center;"><b>Adjournment</b></p>

*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 nine (9) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting on January 26, 2009.*