

TOWN OF OLD ORCHARD BEACH
ZONING BOARD OF APPEALS MEETING MINUTES
 May 13, 2009

Call to Order at 7: 00 p.m.	Call to Order
Pledge to the Flag	
<p>Roll Call: Mr. Ray DeLeo, Ms. Tianna Higgins, Mr. Philip Weyenberg, Mr. Phillip Denison, Mr. Howard Evans. Mr. Robert Quinn, Excused. Ms. Eileen Payette, Absent.</p> <p>Staff: Mike Nugent, Code Enforcement Officer; Tori Geaumont, ZBA Clerk</p> <p>Joe Kline asked to address the board. Chairman DeLeo stated that Ms. Lemenager can then address the board after. He also asked if he needed to motion to request this. Mr. Nugent stated the board can have opening comments from appellant and then the original grantee. Mr. Nugent stated that after that, one of the original members who voted in favor of the original variance approval would need to move to reconsider. Mr. Nugent stated that this meeting is a continuation because the composition of the board was not intact at the last meeting. Mr. Denison asked if anyone else could speak. Mr. Nugent stated that they can if the chair wishes.</p> <p>Joe Kline, 5 Scollard Road. Mr. Kline stated he is here to request the reconsideration of the variance. He stated he is asking for an opportunity to speak for the appeal of the decision that was made. JADD had two changes because density was not met. He asked why would the board want to hear it again? He stated that he had information that is new to counter the decision. He also stated that the minutes of the March 30, 2009 meeting were verbatim, and he is asking for the opportunity to speak face to face with the board, as he was not here in person for the last meeting. Thank you.</p> <p>Diane Lemanager, 7 Saunders Ave. Ms. Lemanager stated that the board has gone through the process and a decision was made. The reason why there are variances is because there are exceptions to the rule. She wishes to be able to take down one house on her property and build another. She stated she has been open about everything and does not wish to hide anything. Ms. Lemanager then stated that two Sundays prior to the appeal, her and Mr. Kline spoke about the upcoming meeting, and Mr. Kline stated to Ms. Lemanager that it was not personal, but he was unhappy with the board for not allowing this before when they wanted to do this together as partners in JADD . Ms. Lemanager then stated that she was unaware that Mr. Kline had gone to the town to ask for this in the past. She stated that she and her husband bought out Mr. Kline and his wife and they went on being friends. She stated that Mr. Kline may feel that if he could not have split the lot then; someone else should not be allowed to do it later.</p>	

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<p>Mr. Denison stated that his understanding of the situation is that if the board approves the variance, one house gets taken down, the lot gets split. They do not approve building another home. What goes on the lot has nothing to do with the ZBA decision because it is a code enforcement thing.</p> <p>Mr. Nugent stated they need to comply with current rules for them to build a house on the new split lot.</p> <p>Chairman DeLeo stated one of the three members who voted in favor of the variance being passed needs to make a motion to proceed with this.</p>	
<p><u>ITEM 1: Tabled Item/Request for Reconsideration:</u> Joe Kline, abutter to 7 Saunders Ave. MBL 303-2-6 in the BRD Zone, owned by JADD Inc. to reconsider the variance granted on 3/30/09 to permit the adjustment to the minimum lot size and frontage requirements and density standard to allow the removal of one house on the Saunders St side of the property and divide the lot and allow construction of a dwelling on the Scollard Rd. side of the property. The abutter is the appellant.</p>	<p style="text-align: center;"><u>ITEM 1:</u> <u>Tabled Item</u> <u>/Request for</u> <u>Reconsideration:</u> Joe Kline, abutter to 7 Saunders Ave MBL 303-2-6 BRD Zone</p>
<p>Mr. Weyenberg moved to proceed with the request for reconsideration.</p> <p>Chairman DeLeo asked for a second.</p> <p>Chairman DeLeo seconded the motion.</p> <p>Chairman DeLeo called for the vote.</p> <p>Mr. Evans disagreed.</p> <p>Mr. Weyenberg agreed.</p> <p>Ms. Higgins agreed, but stated only because everyone had collected themselves here again.</p> <p>Mr. Denison disagreed.</p> <p>Chairman DeLeo agreed.</p> <p><i>Motion passes 3-2.</i></p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p>
<p><u>ITEM 3: Variance:</u> Diane Lemanager, owner of 7 Saunders Avenue, MBL 303-2-6, in the BRD Zone, to permit the adjustment to the minimum lot size and frontage requirements and density standard to allow the removal of one house on the Saunders St side of the property and divide the lot and allow construction of a dwelling on the Scollard Rd. side of the property. Owner is the appellant.</p>	<p style="text-align: center;"><u>ITEM 3:</u> <u>Variance</u> <u>Application:</u> Diane Lemanager 7 Saunders Avenue MBL 303-2-6 BRD Zone</p>

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<p>Chairman DeLeo read the appeal.</p> <p>Mr. Denison stated that he wanted to clarify that the board are not here to approve a building on the second lot.</p> <p>Chairman DeLeo confirmed this.</p> <p>Ms. Higgins stated that the variance states this.</p> <p>Mr. Nugent stated that if the variance is granted they are creating a buildable lot.</p> <p>Mr. Nugent stated that Ms. Lemenager will need to present her case.</p> <p>Chairman DeLeo asked if there are any other documents and if they need to be re-read into the record.</p> <p>Mr. Nugent stated we should read them back in the record when the time comes.</p> <p>Diane Lemenager, 7 Saunders Ave.</p> <p>Ms. Lemenager stated that the first map in the packet is the original map of the property before the town merged the properties. There is one lot on Saunders Avenue and two lots on Scollard Road. On the next map, the current map shows how the property current sits today, in an L-shaped lot. The town adjourned the two lots on Scollard and the one lot on Saunders into one lot. Her understanding was that the town was trying to make this a more conforming lot, but it is still a non-conforming lot. Ms. Lemenager then stated on the next page which shows two buildings, building A is closer to East Grand, and building B which is closer to the beach. She stated they are proposing to take down building A which will leave room for approximately 9 parking spaces. On one lot there would be one building, and then if the building permit is issued, there will be one building on the other lot. Ms. Lemenager stated how this will make more sense for the property. She stated that power lines would be eliminated; it would help passage of cars on that road, as the house which will be removed is very close to the road, and if the house is removed there will be substantial area for cars to park. She then referred to another page with the current set-backs and where the house would be located. She stated they would meet current set backs with the new house they would like to build. She stated if they remove one of the houses on Saunders Avenue which is less than two feet from the road. It improves the land to building ratio from 50% of the land occupied by buildings down to 23%. As far as safety is concerned, she stated the buildings are so close and fire issues are somewhat decreased with this plan. She stated that currently on Scollard Road they use the lot for parking. It will maintain a neighborhood environment and meet current set backs, and she stated that she would think the neighbors would rather look at a nicely landscaped new home as an empty lot. She then stated the benefits to the town would be to improve safety on Saunders, increase taxes, provide all off-street parking on both streets, reduce house compactness on Saunders, and more logical, reasonable use of the land. She stated she does not really know of any piece of property in Old Orchard that connects two streets.</p> <p>Mr. Weyenberg asked why Ms. Lemenager wants to separate it into two lots.</p> <p>Ms. Lemenager stated that she would like to build a new house. She has a current house right now and would like to be off of East Grand Avenue</p>	<p style="text-align: center;">Public Hearing</p>
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which is a busy road. She stated that she thinks it is logical to do this for the neighborhood. If it is viewed as a financial gain for her, she stated it was not because she will be removing a house. She stated her husband's family has lived here for a long time.

Mr. Weyenberg asked how it makes that different.

Ms. Lemenager stated that the two houses that are on the property are seasonal and are very small. She would like to have one-level living for her in-laws. They would need to tear down both houses and stay in the foot print. It is an awkward area. They considered both plans and have tried to winterize the houses, but they wish to do more. She stated that they are not the type she cares to live in long term.

Mr. Denison asked about the shed.

Ms. Lemenager stated the shed will go.

Chairman DeLeo asked for some history on the properties. He asked if they originally had one lot and then purchased the other?

Ms. Lemanger stated it was all one.

Ms. Higgins stated they were merged by the previous owner.

Ms. Lemanger stated this was done in approximately 1972.

Mr. Nugent stated that the deed description may reference separate parcels, , but the zoning ordinance states if you have multiple parcels of land in common ownership and if they are not separately improved with full time, year round structures, they become one to the extent that they satisfy the zoning requirements.

Ms. Lemanager stated that was confusing to them because the deed states one thing and the town states another.

Chairman DeLeo asked if anyone else has any questions.

Joe Kline, 5 Scollard Road.

Mr. Kline stated he would have been here at the March 30, 2009, but the U.S. government would not allow him. Also, he stated that if he had heard the information that was presented in the minutes he would have rebutted that. Mr. Kline stated that typically if someone does not have a strong argument they try to discredit someone. He wished to clarify that he is not upset with the board, but with the actions of the town. Mr. Kline then went on to explain different tactics of arguing and how this is similar to how Ms. Lemanager is arguing her case. He then stated that some of the things in the minutes were character assassinations probably because her argument is weak. He wished to clarify his opposition to it and also to clarify that he is a resident, not as Ms. Lemanager stated he is not.

Chairman DeLeo asked if he is speaking of the March 30, 2009 meeting.

Mr. Kline stated that it does not have any bearing on the facts, but the board is human and make decisions in that way. One of the statements that was made was he was not a resident, but he wanted to rebuke that. He then stated that Ms. Lemanager is not even a resident of Maine so she is not here enough to see if he is a resident or not. Mr. Kline then stated that one of the reasons why JADD was created to have the open space that is the open lot now. The Lemanager's have a sliver of land and wanted some open land. They had used this in the past from the prior owner, and when it came up for sale they purchased it for that reason. When the land was purchased back in 1958 they were merged. When researched through the tax office, people would ask to have their properties merged. This has been one large property since 1958. Mr. Kline then reiterated what Mr. Nugent

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stated about merging the lots in the 1990's. The town was taking one non-conforming piece of land and then created two, greater non-conforming pieces of land. The ordinance was created to have density requirements that they do. Mr. Kline stated that the house which is proposed to be torn down will create at least two parking spots. The variance would create a buildable lot whether they or someone else builds. The board will be creating a mirror image density issue with a house that will be larger than the smaller house that will be taken down. He then submitted some pictures of the lot. Mr. Kline then stated that there is a business license on record for only one of the properties. He then stated on the application for the variance it is asked whether the property is a hardship the way it is now. He stated that it is not a hardship in his opinion, as the buildings are usable and are up to standard. They have been brought up to the 2001 BOCA standards. Therefore, there is no hardship in his opinion. Mr. Kline stated that the fire safety issue is a weak argument as the buildings will be very close together. He then questioned splitting the lots and the financial gain of that, as they have listed the houses separately. Mr. Kline stated that he agreed that the houses are now up to date and agrees with Ms.

Lemanager that there have been a lot of work done to them. He stated that if the lot is split, the buildings are marketable which they are not now. Mr. Kline stated that JADD has already had a "special favor" granted with the business license, as they have been given permission to rent without parking. The permission was granted with a caveat that parking can be on the next street for the houses. He then pointed out that The Grand Victorian had huge issues concerning the 2 parking spaces, condition. Mr. Kline stated he does not agree with the hardship criteria. He then stated that the home that will be built will be a very skinny home which will look like a trailer. He then stated that drainage after the home will be built will be a problem. He stated that whoever owns on Scollard will have the hardships due to the drainage, etc. A new hardship has been generated. He also stated he does not think it meets the essential character of the neighborhood. He wished to reinforce the hardship criteria.

Chairman DeLeo stated that it is not the issue of the Zoning Board as far as what can be built on the lot. It is only the board's concern whether to split the lot. The Planning Board will be involved in drainage issues, etc. He stated he understood it being an inconvenience for neighbors etc, but it is for the Planning Board to deal with.

Mr. Kline stated he understood that. What the board is trying to do is make a determination as to whether they can break the rules. He stated that they have to make the decision whether to break the laws of Old Orchard Beach and what the people desired for set backs, etc.

Mr. Nugent noted that these are not laws, but ordinances.

Mr. Kline apologized, and stated these were ordinances not laws.

Mr. Nugent stated that it is considered a relaxation of the ordinance, not breaking the ordinance. The board has the right to relax the ordinance if the hardship exists, and it is not breaking the rules.

Mr. Kline stated the state makes laws, the towns make ordinances. They still vote and are still valid as a law. This is somewhat semantics. As far as the rule of the people, he stated that there are two entities that have the authority to override the code enforcement office; the ZBA which the charter stated can, or Superior Court. He

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stated he understood the processes.

Mr. Evans asked who he would personally be disadvantaged by this.

Mr. Kline stated that he does not have any disadvantages because he does not own the property. He stated if he was part owner of the property he would have a disadvantage because he would not have the ability to split and sell the properties off.

Mr. Evans stated that as a contiguous resident how would it be a disadvantage to you.

Mr. Kline stated you would increase the density of Scollard and decreasing it on Saunders.

Mr. Evans asked increasing it how?

Mr. Kline stated by giving permission to break off and have a buildable lot that will be greater than what is already existing on Saunders Ave.

Mr. Evans stated that we are not going that far. That is someone else's decision.

Mr. Nugent stated that for a point of clarification, the Planning Board does not need to review that. They just apply for a building permit and that is part of our review.

Ms. Higgins stated that Mr. Kline is trying to make a point that if the board agrees to separate the lots all they will be doing is sending someone else back to us to split their lot and claim hardship in the same way because they did not ask for the lot to be split. She stated she understood that, but the board cannot for see what is in the future and what will happen. It is not the board's job to be concerned about this. Just for the point of record, if there was a desire to have an open lot just for the open space, making it a parking lot isn't it. She stated it's nice that the appellant wanted to have an open lot and reduce density in the neighborhood, but they did not really do anything for the neighborhood except get some cars off the road. She stated they could have done something else with it. She stated she thinks looking at a house would be better than looking at a weeded field, but she stated it is not their job to decide or the board's opinion that matters.

Mr. Kline stated that justification of the variance needs to show that the land is question cannot provide a reasonable return. He stated that there is reasonable return because of the ability to rent the homes. Mr. Kline then stated that one of the homes does not have a license to rent.

Mr. Weyenberg asked if this was true.

Mr. Kline stated it was true and has been verified with the licensing clerk.

Ms. Lemanager stated that the license is for 7A and 7B.

Mr. Kline stated that no, it does not. He stated that when the license was originally pulled it was for 7 Saunders.

Ms. Lemanager stated she could get copies of the license for the board.

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Mr. Kline stated there was a deed change with Don Lemanager as an owner. He then went to look at the business license which was for 7A only. He stated that this is not relevant because it is a code enforcement issue. He only wanted to bring this up due to the parking situation. He stated that it already has a reasonable return. There is no reason in his opinion to break up and put another building on the property. This was told to Mr. Kline by Jim Naigle when Mr. Kline initially tried to do the same thing that Ms. Lemanager is doing now. He stated that he wanted the open space and have a reasonable return. He then stated that he felt the buildings were now more marketable, and if the property is broken up there will be a greater financial return from the property.

Chairman DeLeo asked if any of the board had questions.

Chairman DeLeo asked when this was passed on March 30, 2009; the building that was to be torn down was going to be for parking spots. Was that specified that they would be parking spots?

Mr. Nugent stated yes. He stated that the new building would either need to be very small to allow for parking near it or it would need to be elevated and have parking underneath.

Chairman DeLeo stated the stipulation is that one building must remain, and the one that is going to be torn down will be the parking area.

Mr. Nugent stated that is the reason why it is being torn down.

Chairman DeLeo asked if later on, if someone wanted to tear down the building on Saunders, build a building that meant the set backs they could do that?

Ms. Lemanager stated they need to build that within the footprint and within set backs.

Ms. Higgins stated that even though one board said no and another yes that is going to happen every time you have a volunteer board with different people who interpret the rules differently.

Chairman DeLeo stated that he agreed with this.

Mr. Weyenberg stated he would like to go back to the three lots that were joined together. He asked if this is a common thing in the town.

Mr. Nugent stated that it is common in all towns within this state and others. The intention of zoning is to ultimately do away with non-conforming lots. When there are vacant lots or lots with accessory structures or seasonal structures, they become merged to try to satisfy zoning, density, etc. If there were two year round buildings they would not be merged due to a supreme court ruling in the 1980's. All towns needed to change the provisions, and the town reflects that.

Mr. Weyenberg asked if what the board is doing, if they approve the original variance, he is concerned about setting a precedent.

Mr. Nugent stated that this board, by nature, is not a precedent setting board. If there are two appeals that are exactly the same, there may be some moral obligation to vote the same way. Just

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because the board does something today, it does not mean the board needs to do it tomorrow.

Ms. Higgins stated this is unique because there are two pieces of property that are not usable shape and makes it difficult to build a “normal” house.

Mr. Denison asked if there is anyone else who wishes to speak.

Chairman DeLeo stated he wanted to give Ms. Lemanager a chance to speak.

Mr. Nugent then stated that the chair should probably let other abutters speak.

Denis Twomey, 3 Scollard Road.

Mr. Twomey stated that he has been living there for 23 years, but the house he is living in has been in his family for over 100 years. He stated that all of the land in question was owned by his Great Aunt and Uncle. Lot 6 and 7, that are the lots in question on Scollard Road went from his Aunt and Uncle to Terrance O’Neil in 1944. He stated he does not know when the lots were joined, but he does know that they were joined from 1944 to 1987. He stated he had talked to Mr. O’Neil about the property, and he claimed these would never be allowed to be split.

Mr. Evans asked if Mr. Twomey abutted the property.

Mr. Twomey stated he lived across the street at 3 Scollard Road. He stated that when the certificate of approval is read it stated that it would allow construction on the property.

Mr. Nugent stated that it is not a building permit.

Mr. Twomey stated he wished to set the record straight concerning the meeting on 03/30/09. He wanted to rebut the fact that Ms. Lemanager stated the reason he was opposed to the variance was due to him either not having a place to plow his snow and/or wanting to have a nice view from the open lot. He wanted to express his concerns about a house being built on an undersize lot, but he stated he understands that is not germane here. He went on to state that there are a lot of problems with sewage back up on the street. The town has been by to deal with the issues in the past, and he wished to further express his concerns about the sewage back up. He has been told in the past that the town was seriously considering separating storm and sewer. At the past planners suggestion they put in something called a French Drain which has helped, but not alleviated. He stated his concern is about putting a building on the open lot and which is the only natural drainage on the street. He stated he understands this is not their concern and will take it up at a subsequent meeting. He then thanked the board for their time.

David Murphy, 2 Scollard Road

Mr. Murphy is the owner of Sand Dollar Vacation Homes, LLC for the properties at 2, 4, and 6 Scollard Road. 6 Scollard is a direct abutter for the land in question. He asked Mr. Nugent if the issues of

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drainage, sewer, and run-off are not the concern of the Planning Board.

Mr. Nugent stated that there is no statutory requirement for an application in that zoning district to appear before the Planning Board. As part the building permit process, waste water, parking, zoning requirements, structural requirements will be looked at. There is no requirement for an impact study for the roof run-off or the driveway run-off. Mr. Nugent stated it is just not part of the process for any home, anywhere in Old Orchard Beach.

Mr. Murphy asked if some of the drainage concerns would be addressed with the Planning Board.

Mr. Nugent stated that there is no Planning Board. He stated that it is not required by ordinance to seek Planning Board approval for a building permit for a single family home on a lot of record.

Mr. Murphy stated that the statements that Mr. Kline and Mr. Twomey have made to the Zoning Board are relevant in that no one else is going to address the potential drainage requirements in the future.

Mr. Denison stated that as part of the building permit process it will be addressed.

Mr. Nugent agreed and stated that the water line will be addressed, the sewer line will be addressed, can the toilets be flushed, etc., but there is no review process for roof runoff for single family dwelling anywhere in Old Orchard Beach unless it is part of a subdivision or a condo project. Those things have drainage calculations, etc. On a lot of record there is a fundamental right to build. As far as DEP is concerned, they may have concerns regarding the sand dune process.

Mr. Denison asked if this was a back dune area.

Mr. Nugent replied that he believes it in part of the front dune area.

Ms. Higgins stated that Old Orchard was originally a vacation town and now that people are trying to convert it into a year round town. One house will not fix the entire streets problems. The town needs to fix the whole streets problems. She stated that unfortunately that is a very painful and excruciating process.

Mr. Nugent stated that it looks as though there is a “parking lot” of pavement already right to the ocean, it appears. There are a lot of roofs, parking lots, etc, and there is no question there is a lot of water being directed to impervious surface at this time.

Mr. Denison stated that if they are going to build on the lot they will need to deal with DEP.

Mr. Nugent then stated that there will be a lot of limitations for those reasons.

Mr. Murphy stated that he used to live on the property when he was young, and he remembers needing to go undo the manhole cover to alleviate the drainage on the street. He stated that he wanted to make a clarification in the event of the allowance of the variance. He wished to clarify what may or may not be allowed on the property adjacent to 6 Scollard Road. He wished to put that in the

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record because of other properties that exit on Saunders. The town houses that exist on the end of the right are 3+ story dwellings, and they are very close. He wanted to state his concern the ability to build on the lot and to make sure that set backs will be enforced. He then stated he wished to clarify miscellaneous appeal and variance.

Mr. Nugent stated that there was a typographical error on the variance, but it was a variance and not a miscellaneous appeal.

Mr. Murphy stated it does not affect the set backs.

Mr. Nugent stated it does not unless they come back to the board. To qualify for a miscellaneous appeal your building must be built after 1998. They would not be able to do that.

Chairman DeLeo stated that if it is a non-conforming lot it needs to be built on the existing footprint of the prior building.

Mr. Murphy just wished to clarify that. He thanked the board for their time.

Chairman DeLeo asked for any other abutters.

Diane Lemanager agreed that a lot of what has been said tonight really does not have an impact on the variance or the appeal. She wished to set the record straight on some issues. As far the drainage is concerned, it is her understanding that the sewer will be addressed in the building permit process. She understands that if something is built, and there is a problem, she will be responsible for fixing the problem.

Mr. Nugent clarified that this was for sewer only.

Ms. Lemanager stated that the back up happens when it rains, and building a house will not change the rain water impact on the street. She stated they have followed every procedure they were told to follow. Their lawyer gave them the wrong information regarding the deed, and when Mr. Nugent contacted her she fixed the problem and has done whatever the town has asked. She also stated that she did not claim Mr. Kline was not a resident of Old Orchard Beach, but he did not reside in the house across from the lot. She also stated that she never has tried to sell the houses. She did put the for sale sign by owner with both houses because she has not been here for a long period of time. She pointed out that at the time they got the building license, Mr. Kline was not part of JADD, and she is not sure what the special favor was. They did need to specify where the parking would be, but this was not a special favor. She then stated that she has always had a rental license. They had inspectors, the fire department, etc. She stated that there are two rentals on one parcel of land. She did not know she needed to have two separate licenses. She stated that the DEP would obviously be involved. They were involved when they worked on the houses in the past. She then stated that if she does get the variance and gets the building permit, she is not sure if she could do this. It may be over her head. She stated she just wanted to build a house on her land.

Chairman DeLeo asked if anyone else would like to speak.

Mr. Twomey stated that the sewer back ups seems to happen during

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the summer months when there are more people in the buildings.

Chairman DeLeo stated that it could have been pump station being down. No one knows for sure why.

Ms. Lemanager stated regardless, they all wish to have it fixed.

Mr. Kline stated this is difficult because we are all friends. She is doing what he was trying to do in the past. He stated that he was told that he does not meet any of the hardship.

Chairman DeLeo stated that the first question on the variance is the hardest one to get through. If the first question is not passed there is no reason to continue.

Mr. Kline stated that there is a reasonable return on the land because they can rent the buildings. Mr. Kline stated that Mr. Naigle originally stated they need to tear down one building for the parking. He stated that it states there can not be a financial gain for the variance, and if the lots were split and sold there would be a financial gain. The other argument is that it is changing the character of the neighborhood because of greater density in the neighborhood.

Ms. Lemanager stated that the percentage on the land is not greater.

Chairman DeLeo asked about the qualifications of the hardship.

Mr. Nugent stated that the board was in the habit of talking about the financial hardship of the property and it has nothing to do with the finances. The focus is does the zoning ordinance deprive the property of a reasonable use.

Chairman DeLeo stated not maximum.

Mr. Nugent stated that the wording reasonable return gets misinterpreted as financial.

Ms. Lemanager stated the reasonableness of this lot in this current state is not, as far as she is concerned. She stated that there is one lot without a home and one lot with two buildings. She stated if she sells one building she will take a financial loss. It does not really matter what her intent it. She stated her intention is to stay on the street and not turn around and sell the house.

Mr. Weyenberg asked if it would be possible to remove the two houses on Scollard and build a code-compliant house on Saunders without coming to this board at all.

Mr. Nugent stated that it is true.

Mr. Kline stated that is one of the options that Mr. Nugent had given. He stated that people change their mind and that is fine, but things change. He explained when he bought the property and wanted to do their plan, they would told they could tear down the buildings and build a new one. He stated that he did not have enough money.

Mr. Denison asked if he can move for a question.

Ms. Higgins stated that anyone can make a motion at anytime once the public hearing is closed.

Chairman DeLeo closed the public hearing at 8:29 p.m.

Mr. Murphy needed clarification whether the variance would be approval to build a home on the split parcel on Scollard Road.

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Mr. Nugent stated it creates a fundamental zoning allowance to have a buildable lot.

Mr. Murphy asked if they still needed to go in front of the board.

Mr. Nugent clarified that there is no other board to go in front of. If this variance is passed, they need to meet all the requirements for their building permit to be approved as part of the building process. They would need to establish that the sewer line will take the sewage, that they have water capacity, the building meets building code, their structure will meet all the set backs and parking requirements, they have their coastal sand dune permit, and if there are any flood plain issues they will need to address those with elevation certificates, etc.

Ms. Higgins stated that getting through the DEP is going to be harder than getting the building permit.

Chairman Deleo reads justification of the variance.

With regards to section A. The land in question cannot yield a reasonable return unless the variance is granted the applicant stated “currently the property contains the use of two houses. We are proposing one of the houses on Saunders Avenue be taken down allowing adequate space for parking on the same street as the house is located, and a house will be built on the Scollard side of the land. Therefore, there will still be two houses. By doing this, the properties will be more consistent with the surrounding properties. The current situation with both houses on one street and the parking for them on the other street is awkward and unreasonable, and no other property on either street is joined in this manner. The variance will allow reasonable use of both properties in that one house would be on Saunders Avenue with adequate parking, and the other house will be on Scollard Avenue with its own adequate parking. The current lot lines are not uniform and by separating lots will produce a more uniform lot line on both streets. Without the variance there is no reasonable use of the land on Scollard Road.”

Mr. Evans agreed

Mr. Weyenberg stated that he has thought about this long and hard and he really has gone back and forth a lot. At first, he thought that it was a good idea for the good of the town and the good of the owner. It is really a judgment call. He felt that these parcels were joined as a standard procedure and made into one parcel. It comes down to the reasonable return. He stated he cannot see any major reason for this to happen in this way. There are two buildings on the property which conform to the neighborhood. He stated that he decided to change his vote and vote no on this.

Ms. Higgins disagreed

Mr. Denison agreed with the caveat that they are not approving the house on Scollard Road

Chairman DeLeo stated he concurred with what Mr. Weyenberg

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stated. He thought he may possibly change his mind, but he has not change his mind.

With regards to section 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 applicant states, “The conditions of the neighborhood would remain residential with no impact at all to the general neighborhood. No other property on Saunders Ave, or Scollard Road have lot lines that cross between the two roads or between the two adjacent roads wither (Durocher Street or Morrison Street). The layout and shape of the lot lines do not make sense to cross between the two roads. The request is to develop a piece of land with 90 feet of frontage on Scollard Road. All of the remaining 4 properties on Scollard Road contain less than 90 feet of frontage, average less than 50 feet of road frontage. As well, the two corner lots from Scollard Road to East Grand Avenue each contain less than 55 feet of road frontage on Scollard Road. This particular lot on Scollard would have more frontage than any other lot on Scollard Road, have the same depth as the other properties on Scollard, and not impact any other property on Scollard Road. The remaining property on Saunders Ave would be the same approximate lot size as every other adjacent lot on Saunders Ave and larger than all lots across the street from 7 Saunders.”

Mr. Weyenberg agreed

Mr. Evans agreed

Mr. Denison agreed

Ms. Higgins agreed

Mr. DeLeo agreed

With regards to section C. The granting of the variance will not alter the essential character of the locality the applicant states “The character of the neighborhood would remain the same. The area would be residential with the development of a single home on the property on Scollard Road. Entry, the front of the building facing on Scollard Road and the entry and exit of the property on Scollard Road. The land & building on Saunders Ave would continue to be unchanged and the character would see no change at all. Because the houses on Saunders Avenue are so close together, taking down one of them would reduce the risk of the spread of a fire if one happened. No additional health or safety issues would be created by this variance.”

Mr. Weyenberg agreed

Mr. Evans agreed

Mr. Denison agreed

Ms. Higgins agreed

Chairman DeLeo stated that he thinks a building of that size would

