

**TOWN OF OLD ORCHARD BEACH  
ZONING BOARD OF APPEALS MEETING MINUTES December 28, 2009**

<b>Call to Order at 7:06 pm</b>	<b>Call to Order</b>
<b>Pledge to the Flag</b>	
<b>Roll Call:</b> Present: Mr. Ray DeLeo, Mr. Howard Evans, Ms. Tianna Higgins, Philip Denison, and Mr. Philip Weyenberg. Mr. Quinn was excused. <b>Staff:</b> Mike Nugent, Tori Geaumont.	
<b>Mr. Nugent</b> presented Mr. Evans with a certificate of appreciation for his being a board member for five years. Mr. Evans has decided to not continue on the board after his term has expired this year. Mr. Nugent expressed his gratitude on behalf of the staff and the community for Mr. Evans service.	
<b>ITEM 1: Miscellaneous Appeal:</b> Richard Conlan, owner of 23 Maine Avenue, MBL 322-6-1, in the R3 Zone to permit the adjustment of the rear setback to permit the construction of a shed. Michael Connolly is representing the owner.	<b>ITEM 1: Miscellaneous Appeal: Richard Conlan, 23 Maine Avenue, MBL 322-6-1</b>
<p><b>Chairman DeLeo</b> read the appeal.</p> <p><b>Mike Connolly, 19 Merrifield Drive, Kennebunk.</b> Mr. Connolly explained the owners wished build a shed for lawn equipment. The owners needed this done because Mr. Conlan has medical issues. He cannot get his lawn equipment in the storage room. They have tried to put a ramp in to get the equipment in, but it is still much too difficult. The shed will not be encroaching on the neighbors either because there is a lot of wooded area between the properties. Mr. Connolly wanted to also point out that the lot coverage will still be under the required 40%.</p> <p><b>PUBLIC HEARING CLOSED 7:33 p.m.</b></p> <p><b>Chairman DeLeo</b> read the criteria for number one.</p> <p><b>With regards to part A.</b> The existing buildings or structures on the lot for which the limited reduction of yard size/limited expansion of lot coverage is requested were erected prior to the date of adoption of this provision or the lot is a vacant nonconforming lot of record the appellant stated the footprint was established well before the change in ordinance.</p> <p><b>Mr. Evans</b> agreed.</p> <p><b>Mr. Denison</b> agreed.</p> <p><b>Ms. Higgins</b> agreed.</p> <p><b>Mr. Weyenberg</b> agreed.</p> <p><b>Chairman DeLeo</b> agreed.</p> <p><b>With regards to part 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 the appellant stated the proposed small 4'X8' shed is to accommodate the physical and medical limitations of the owner due to Parkinson's disease and arthritis (see attached doctors note). It is difficult to store yard equipment in the existing elevated storage area room that is part of the existing house.</p> <p><b>Mr. Evans</b> agreed.</p> <p><b>Mr. Denison</b> agreed.</p> <p><b>Ms. Higgins</b> agreed.</p> <p><b>Mr. Weyenberg</b> agreed.</p> <p><b>Chairman DeLeo</b> agreed.</p> <p><b>With regards to part C.</b> 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</p>	<b>PUBLIC HEARING</b>

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<p>expansion, enlargement or new structures in conformance with the currently applicable yard size or lot coverage requirements the appellant stated placing the shed at the required 5 foot setback from the rear property line would obstruct access to the rear entrance of the existing house.</p> <p><b>Mr. Evans</b> agreed.  <b>Mr. Denison</b> agreed.  <b>Ms. Higgins</b> agreed.  <b>Mr. Weyenberg</b> agreed.  <b>Chairman DeLeo</b> agreed.</p> <p><b>With regards to part D.</b> The impacts and effects of the enlargement, expansion or new principal building or structure on the existing uses in the neighborhood will not be substantially different from or greater than the impacts and effects of a building or structure which conforms to the yard size requirements the appellant stated the small shed will be built to match the existing home both in color and style. The location will be in the back of the wooded property and the back of the abutting neighbors. The structure will blend with the surrounding.</p> <p><b>Mr. Evans</b> agreed.  <b>Mr. Denison</b> agreed.  <b>Ms. Higgins</b> agreed.  <b>Mr. Weyenberg</b> agreed.  <b>Chairman DeLeo</b> agreed.</p> <p><b>Chairman DeLeo called for Abutters or correspondence.</b></p> <p><b>Mr. Weyenberg</b> moved to permit the adjustment of the rear setback to permit the construction of a shed at 23 Maine Ave, MBL 322-6-1.</p> <p><b>Ms. Higgins</b> seconded.  <i>Motion passes unanimously.</i></p>	<p><b>Motion</b></p> <p><b>Vote</b></p>
<p><b>ITEM 2: Variance:</b> Mark Lippa, owner of 22 Oceana Ave, unit 6, MBL 321-19-2-6 in the R3 Zone to permit the adjustment of the right side yard and back yard setbacks for the construction of code-compliant stairway. Norman Means is representing the owner.</p>	<p><b>Item 2:</b>  <b>Variance: Mark Lippa, 22 Oceana, MBL 321-9-2-6</b></p>
<p><b>Mr. Denison</b> excused himself from this item.  <b>Chairman DeLeo</b> read the appeal.</p> <p><b>Norman Means, 31 Winona Ave.</b> Mr. Means explained where the existing stairway is and what is being proposed. The stairs are currently very steep and unsafe. The side set back is not adequate to build code-compliant stairs.</p> <p><b>Chairman DeLeo</b> asked if the steps will go past the building.</p> <p><b>Mr. Means</b> answered approximately one to two feet.</p> <p><b>Ms. Higgins</b> inquired if the walkway is being redone.</p> <p><b>Mr. Means</b> said no.</p> <p><b>Chairman DeLeo</b> asked why the owners wish to replace the stairway.</p> <p><b>Mr. Mean</b> explained that the steps are too steep and are unsafe.</p> <p><b>Ms. Higgins</b> asked if the new corner of the stairs will come to the corner of the building.</p> <p><b>Mr. Means</b> confirmed yes.</p> <p><b>Chairman DeLeo</b> asked how large the platform will be at the first landing.</p> <p><b>Mr. Means</b> answered 40” X 3 feet. There needs to be 36” between the railing and the wall.</p> <p><b>Mr. DeLeo</b> asked if the lower landing will be 40” square.</p> <p><b>Mr. Means</b> answered yes.</p> <p><b>Chairman DeLeo</b> asked the board if there were further questions.</p> <p><b>Chairman DeLeo called for Abutters or correspondence.</b></p>	<p><b>PUBLIC HEARING</b></p>

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A gentleman from the condo association came forth and stated he was not speaking for or against. He wanted to find out why no one has spoken to the condo association yet whether they would grant approval for this.

**Mr. Means** stated he thought Mr. Lippa had spoken to someone at the association.

**Mr. Nugent** explained that the procedure would logically be to get approval from the ZBA first to see what the owner was allowed to do by the town, then to approach the condo association for their approval. The only way staff would issue a building permit was if Mr. Lippa had approval from the ZBA **and** written approval from the condo association.

**Mr. Weyenberg** asked if the landing needs to be 40" wide for the door.

**Mr. Means** thought it had something to do with egress and fire access. The turn needs to be 40".

**Chairman DeLeo** asked Mr. Nugent if this was new construction would the stairs meet code.

**Mr. Nugent** stated no. He then informed the board of the President of the condo association having concerns. He then pointed out again that if the board grants the variance, Mr. Lippa would then need to go to the condo association for approval before any building permit could be issued.

**Chairman DeLeo** if code enforcement told the owners to change the stairway.

**Mr. Nugent** stated that was not something the town does or has the right to do.

**Mr. Means** explained that the owners have balance problems and are tired of dealing with the dangerous stairs. That is why they want to do this.

***PUBLIC HEARING CLOSED 7:27p.m.***

**Chairman DeLeo** read the criteria for number one.

**With regards to part A.** The land in question cannot yield a reasonable return unless the variance is granted the appellant stated the entry steps are dangerous and cannot be built to code and meet setbacks. Safe entry cannot be achieved without a variance. Safe access is a reasonable expectation.

**Mr. Denison** abstained.

**Ms. Higgins** agreed.

**Mr. Weyenberg** agreed.

**Mr. Evans** agreed.

**Chairman DeLeo** agreed.

**With regards to part B.** The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood the appellant stated entrance steps to unit #6 have no platform when existing as seen in picture #1. Also does not meet code.

**Mr. Denison** abstained.

**Ms. Higgins** agreed.

**Mr. Weyenberg** agreed.

**Mr. Evans** agreed.

**Chairman DeLeo** agreed.

**With regards to part C.** The granting of a variance will not alter the essential character of the locality the appellant stated the change to the steps will change the view of the owner below in unit #5. She realizes that the steps as they are, are dangerous.

**Mr. Denison** abstained.

**Mr. Weyenberg** agreed.

**Ms. Higgins** agreed.

**Mr. Evans** agreed.



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<p><b>Chairman DeLeo</b> agreed.</p> <p><b>With regards to part C.</b> The granting of a variance will not alter the essential character of the locality the appellant stated the proposed new deck is essentially the same as existing deck with the exception of the stairs being approximately 1-1/2 foot closer to street due to the widening of each tread of stair to make them safer.</p> <p><b>Mr. Denison</b> agreed.</p> <p><b>Mr. Evans</b> agreed.</p> <p><b>Mr. Weyenberg</b> agreed.</p> <p><b>Ms. Higgins</b> agreed.</p> <p><b>Chairman DeLeo</b> agreed.</p> <p><b>With regards to part D.</b> The hardship is not the result of action taken by the appellant or a prior owner the appellant stated the need for the variance is due to age of deck and stairs causing them to become structurally unsound and needing to be replaced.</p> <p><b>Mr. Denison</b> agreed.</p> <p><b>Mr. Evans</b> agreed.</p> <p><b>Mr. Weyenberg</b> agreed.</p> <p><b>Ms. Higgins</b> agreed.</p> <p><b>Chairman DeLeo</b> agreed.</p> <p><b>Ms. Higgins</b> moved to permit the adjustment of the front yard setbacks for the construction of code-compliant stairs at 39 Reggio Ave, MBL 318-8-7.</p> <p><b>Mr. Denison</b> seconded</p> <p><i>Motion passed unanimously.</i></p>	<p><b>Motion</b></p> <p><b>Vote</b></p>
<p><b><u>ITEM 4: Variance:</u></b> Town of Old Orchard Beach, owner of 204 West Grand Avenue, MBL 108-1-7 in the R3 Zone to permit the adjustment of the front, side, and rear setbacks to allow for installation of an emergency generator, pad, and access steps. Mike Nugent is representing the owner.</p> <p><b>Mike Nugent, Code Enforcement Officer, Town of Old Orchard Beach</b></p> <p>Mr. Nugent explained the West Grand pump station is being updated and repaired. There is a need for emergency power and the need for a generator. Because the property is currently in a flood zone the generator will need to be on a cement pad which has an engineered system for drainage and flooding. The pad will be in the setbacks.</p> <p><b>Chairman DeLeo</b> asked why the town cannot just do this by eminent domain.</p> <p><b>Mr. Nugent</b> stated the town must follow the rules just like every one else.</p> <p><b>Chairman DeLeo</b> then wanted to know why the town needs to have this approved when they did not need to have the temporary school building approved before it was set up at the school.</p> <p><b>Mr. Nugent</b> explained that the school building was basically “stored” at the school and is not a permanent structure. Also, the town was required to take delivery of the portable school building in a very timely fashion or else they would not be able to have it at all. It is really a completely different thing.</p> <p><b>Chairman DeLeo</b> asked if the generator will be more protected.</p> <p><b>Mr. Nugent</b> stated there will be some sort of a buffer.</p> <p><b>Mr. Weyenberg</b> asked why they could not put it out back.</p> <p><b>Mr. Nugent</b> stated that was where the sewer line was.</p> <p><b>Chairman DeLeo called for Abutters or correspondence.</b></p> <p><b><i>PUBLIC HEARING CLOSED AT 7:48 p.m.</i></b></p> <p><b>Chairman DeLeo</b> read criteria number one.</p> <p><b>With regards to section A.</b> The land in question <u>cannot</u> yield a reasonable return unless the variance is granted the appellant stated a standby generator is required</p>	<p><b><u>Item 4: Town of Old Orchard Beach, 204 West Grand Ave, MBL 108-1-7</u></b></p>

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<p>for a wastewater pumping stations of this size. It will provide for complete standby power of the upgraded pump station in the event of a short-term (brown/black out) or long-term (ice storm) power outage. Without a generator, sewage would quickly overflow the pump station or manholes in the event of a power outage. The proposed location is the only area where the generator can go.</p> <p><b>Mr. Denison</b> agreed.</p> <p><b>Mr. Evans</b> agreed.</p> <p><b>Mr. Weyenberg</b> agreed.</p> <p><b>Ms. Higgins</b> agreed.</p> <p><b>Chairman DeLeo</b> agreed.</p> <p><b>With regards to part B.</b> The need for a variance is due to the unique characteristics of the property and not to the general conditions of the neighborhood the appellant stated this lot is the only one in the area that contains a sewer pump station. The new posed upgrades include modern back up generator equipment. The equipment will not fit on the lot without a variance.</p> <p><b>Mr. Denison</b> agreed.</p> <p><b>Mr. Evans</b> agreed.</p> <p><b>Mr. Weyenberg</b> agreed.</p> <p><b>Ms. Higgins</b> agreed.</p> <p><b>Chairman DeLeo</b> agreed.</p> <p><b>With regards to part C.</b> The granting of a variance will not alter the essential character of the locality the appellant stated the lot has been a pump station for decades; the overall appearance will remain as a pump station. The south side yard is furthest away from any neighbors as well.</p> <p><b>Mr. Denison</b> agreed.</p> <p><b>Mr. Evans</b> agreed.</p> <p><b>Mr. Weyenberg</b> agreed.</p> <p><b>Ms. Higgins</b> agreed.</p> <p><b>Chairman DeLeo</b> agreed.</p> <p><b>With regards to part D.</b> The hardship is not the result of action taken by the appellant or a prior owner the appellant stated the interior standby generator is old, difficult to serve, difficult to get spare parts for and is undersized for the proposed upgrades. A new standby generator can not be installed inside the pump station because National Electric Code clearances can not be maintained; therefore, the new standby generator must be installed outdoors. The new standby generator can not be installed in the rear yard OR the north side yard because there are several wastewater forcemains, valves and cleanout/connection locations in these areas.</p> <p><b>Mr. Denison</b> agreed.</p> <p><b>Mr. Evans</b> agreed.</p> <p><b>Mr. Weyenberg</b> agreed.</p> <p><b>Ms. Higgins</b> agreed.</p> <p><b>Chairman DeLeo</b> agreed.</p> <p><b>Mr. Denison</b> moved to permit the adjustment of the front, side, and rear setbacks to allow for installation of an emergency generator, pad, and access steps, 204 West Grand Avenue, MBL 108-1-7.</p> <p><b>Ms. Higgins</b> seconded.</p> <p><i>Motion passed unanimously.</i></p>	<p style="text-align: center;"><b>Motion</b></p> <p style="text-align: center;"><b>Vote</b></p>
<p><b>GOOD &amp; WELFARE</b></p>	<p style="text-align: center;"><b>Good &amp; Welfare</b></p>
<p><b><u>ITEM 6: Approval of Minutes:</u></b></p>	

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<p>October 26, 2009.  <b>Mr. Weyenberg</b> moved to approve the minutes from September 28, 2009 with changes made to page 2.  <b>Mr. Evans</b> seconded.   <i>Motion passed unanimously</i>   <b>Mr. Denison</b> moved to adjourn.  <b>Ms. Higgins</b> seconded.  <i>Motion passed unanimously</i></p>	<p><b>Motion</b></p> <p><b>Vote</b></p> <p><b>Motion</b></p> <p><b>Vote</b></p>
<p><b>Meeting adjourned 7:53 pm</b></p>	<p><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 of seven (7) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting on December 28, 2009*