

Present: Chairman Murphy, Mr. Deleo, Mr. Evans, Mr. Weyenberg and Ms. Higgins. Staff: Ken Shupe, Code Enforcement Officer and Caroline Segalla, ZBA Clerk.	
Call to Order – Mr. Murphy –Chairman	7:07 p.m.
ITEM 1: Miscellaneous Appeal: Thomas Huttie, 90 Saco Avenue Unit #3, Map#206, Block#9, Lot#7, in the GB-2 Zone, requests a reduction of the front yard (Bower Lane) setback from the required 15’0” to 11’0” in order to construct a 12’0” x 10’0” second story deck with railing and stairs to grade; Deck to be cantilevered to extend deck size to 12’0” x 12’0”.	ITEM #1 WITHDRAWN
ITEM 2: Variance: Eric & Wendy Brown, 1 Arnold Road, Map#103, Block#3, Lot#4, in the NC-4 Zone, request a relief of the front and rear yard setbacks in order to install a 15’0”diameter greenhouse.	ITEM#2
<p>Mrs. Brown explained lot configuration.</p> <p>Mr. Brown said the greenhouse is not intended to be a business, just to show their children where food comes from.</p> <p>Mr. Murphy explained the hardship requirement of a variance.</p> <p>Mrs. Brown said they desire to be self sufficient; discussed lot size and lack of amenities such as garage, basement and storage space; greenhouse would extend growing season; no access to sewer therefore leaching field required for septic takes up most of the yard.</p> <p>Mr. Evans said the lot is odd shaped.</p> <p>Mrs. Brown said they abut the very first lot down Arnold and their neighbors abut Cascade.</p> <p>Mr. Weyenberg asked CEO if the proposed structure was deemed a permanent structure?</p> <p>Mr. Shupe said it would be permanent if placed on footings with a concrete slab.</p> <p>Mr. Brown said it would be set on fresh gravel which would be considered temporary.</p> <p>Mr. Shupe said a temporary accessory structure still requires a variance.</p> <p>PUBLIC HEARING OPENS AND CLOSSES AT 7:15 P.M. with no one speaking.</p> <p>Ms. Higgins asked CEO if non-conforming lots are grandfathered since applicants are not constructing a house and half of their lot cannot be used because of a leaching field.</p> <p>Mr. Shupe replied anything that is not already there cannot be grand-fathered.</p> <p>Mr. Deleo asked what the definition of a “reasonable return” is.</p> <p>Mr. Weyenberg explained the unique physical limitations of the lot; Did not feel it would negatively impact the neighborhood; Discussed circumstances of a previous variance application that was approved last month; This temporary greenhouse structure would support a reasonable and noble use of the land.</p> <p>Mr. Evans asked what could be done without a variance.</p> <p>Mr. Shupe replied not much more than what has been done already; Any approvals to enlarge are ultimately up to the Board.</p> <p>Mr. Weyenberg asked about a cold frame.</p> <p>Mr. Shupe said a cold frame would be considered landscaping and the ordinance would not apply; A raised deck would need a permit but a patio on the ground with pavers would not require a variance.</p> <p>Mr. Murphy said he agreed with Mr. Weyenberg that the green house would not impact the neighborhood.; The reasonable return standard pertains specifically to the property; The request must not allow applicants to yield the maximum return but a reasonable one; The house should already yield a reasonable return without the greenhouse.</p> <p>Mr. Deleo asked if they could attach the greenhouse to the side of the building.</p> <p>Mr. Murphy said applicants are already exceeding the allowable requirement the Board can approve since their district requires 50ft setback and their lot is only 50ft deep.</p> <p>Mr. Weyenberg said this zone does permit agriculture uses.</p>	PUBLIC HEARING

<p>Mr. Murphy read four justifications into the record.</p> <p>A. Mr. Deleo disagreed based on how the ordinance is written and how the applicants have submitted their request; Mr. Evans disagreed based on a technical basis; Mr. Weyenberg agreed that if we are strictly talking about real estate value from a realtors point of view, then he would have to say that it does not meet that criteria but in voting “no”, it would negate this application and agreed that it meets the requirements just as well as other items the Board has reviewed in the past; Ms. Higgins agreed adding that the Ordinance’s regulations sometimes impede homeowners who are trying to do the right thing and unfortunately, ZBA cannot change that. Chair Murphy disagreed for reasons mentioned before, but did sympathize with applicants; Advised applicants that the application cannot be approved since the first justification did not pass, but continued to read the remainder justifications and went on to discuss the appeal process.</p> <p>B. Mr. Deleo agreed; Mr. Evans agreed; Mr. Weyenberg agreed; Ms. Higgins agreed; Chair Murphy agreed.</p> <p>C. Mr. Deleo agreed; Mr. Evans agreed; Mr. Weyenberg agreed; Ms. Higgins agreed; Chair Murphy agreed.</p> <p>D. Mr. Deleo agreed; Mr. Evans agreed; Mr. Weyenberg agreed; Ms. Higgins agreed; Chair Murphy agreed.</p>	<p>VARIANCE DENIED</p>
<p>ITEM 3: Variance: Peaches LLC, 88-90 Saco Avenue, Map#206, Block#9, Lot#7, in the GB-2 Zone, requests a relief from the space and bulk requirements of the required minimum lot area per unit from 5,000sf to 2,028sf in order to reconstruct six existing cottage units.</p>	<p>ITEM#3</p>
<p>Mr. Weinstein manager of Peaches LLC approached bench; This legally non-conforming lot allows multi-family uses; Zoning on density changed approx. 10 years ago; Back in 1965 the density was 1,000sf therefore lot was conforming at that time; Front units converted to condos and six rear units not used during last couple of years; Lot is served by public sewer and utility; Read response to first justification off application [See Attachment A] and motioned to display boards depicting proposal; Variance is only for density reduction since cottage area occupies more than 50% of lot; Read permitted uses in zone which are not conducive to this lot.</p> <p>Mr. Murphy opened the Public Hearing at 7:43 p.m.</p> <p>Richard Green of 3 Bower Lane was concerned with condition of existing sewer pipes.</p> <p>Janice Bourgault of 5 Bower Lane asked for confirmation on number of units since footing under one of the cottages depicted on the plan is currently crumbled; Cabins have not been in use since Peaches 2003 purchase; Should applicant also request a reduction of setbacks since cottages are within close proximity of abutting properties; Concerned with traffic flow since additional units impact visibility off of Saco Ave. and Bower Lane; Could Saco Ave be used to access units instead of Bower Lane? Concerned with sewer impact, water pressure, placement of dumpsters including frequency of refuse pick-up as well as parking.</p> <p>Michel Bourgault 5 Bower Lane asked CEO if applicant must retain 30% of what is already there if they tear the cabins down.</p> <p>Mr. Shupe said there was no such 30% regulation in Old Orchard Beach or in Maine; If units are razed, owner is allowed to rebuild using the same footprint within a year.</p> <p>Mr. Bourgault asked if this standard still applied since the cabins’ footing is currently set on an 8 inch block which is not really a true foundation. Some cabins have 16 inch footings and some have an 8 inch block.</p> <p>Mr. Shupe said applicant can rebuild on existing foundation only if it satisfies engineering requirements otherwise applicant would have to place new foundations.</p> <p>Mr. Bourgault provided brief history of cabins when used only as summer cottages;</p>	<p>PUBLIC HEARING</p>

Visibility and traffic flow off of Bower Lane are problematic during summer and winter; Applauded efforts but concerned if renovations create hazardous traffic conditions.

Nicholas Disalvo of 92 Saco Avenue concerned with traffic since he must constantly repair his lawn because residents of Bower Lane traverse his property due to the street's narrow width; Concerned with snow banks, parking, sewer impact, dumpster location and refuse pick-up; Asked if units were not sold, would they be maintained or would they revert to the existing conditions?

Mr. Goulet of 6 Bower Lane said a prior employee by the name of Mr. Nugent advised him he could not tear down and rebuild on the same footprint.

Mr. Shupe read from Sections 78-178 and 78-180 [See attachment B].

Alan Goulette 6 Bower Lane explained problematic history of the cottages.

Mr. Murphy added that should this item be approved, abutters would no longer be looking at something that is in disrepair.

Mr. Goulet said applicant has several condos throughout town he has been unable to sell so the next option would be to rent and explained problems with renters.

Mr. Bourgault asked if the proposed cottages with essentially no property could be deed restricted to seniors. The small lot size is a concern because they would be affordable to low-income individuals and he associates this demographic with problems.

Mr. Weinstein said cottages will be individually owned and will attract young professionals and/or couples; Asst. Town Planner recommended ZBA review for the density reduction which would be followed by an Administrative Site Plan Review to address abutters' concerns; In regard to sewer, applicant will have Blow Brothers TV the sewer line; No water pressure issues with existing condo units; Fire Chief would address whether Bower Lane could be converted into a one way street; Cabin use is allowed in district and units are considered legally non-conforming; Unsure of another use and the hardship would be on abutters if they remain vacant; Assured Board he would continue to work with neighbors to resolve their concerns.

Mr. Evans asked if applicant would consider making an appeal to convert cottages to only seasonal ownership which might minimize traffic concerns.

Mr. Weinstein said two out of six could probably be sold as second homes.

Mr. Deleo asked what the cottage height will be.

Mr. Weinstein said the structures will be 30ft high.

Mr. Murphy asked for confirmation on the number of cottages since he only saw five.

Mr. Weinstein pointed to plan which reflected a sixth cottage.

Ms. Higgins asked CEO if the previous structure still counted.

Mr. Shupe said he would have to seek legal opinion on whether the foundation of a previous cottage could be considered a structure and if it could be exempt under Sec. 78-180.

Mr. Weinstein said he would consider reducing down to five cottages to make it less non-conforming.

Ms. Higgins asked for confirmation on the cottages' square footage since her calculations reflected 284sf on the larger cottages and drawings reflect 24 x 16.

Mr. Weinstein said they vary slightly.

Mr. Weyenberg asked about the lot size.

Mr. Weinstein confirmed it is approx 30,000sf.

Ms. Higgins said the audience members' concerns pertain to Planning Board not ZBA.

Mr. Weyenberg asked if condo units were not conforming to the 5000sf requirement.

Mr. Shupe replied that was correct.

Mr. Weyenberg said this request is asking to reduce the density some more; Project has

potential for community; Asked if applicant could reduce number of units to two which would only impact the square footage and create fewer problems.

Mr. Weinstein said even if they conceded with five units, the sq. footage would still need to be less.

Ms. Higgins asked if he obtained a variance to convert units in front into condominiums.

Mr. Shupe said these were apartments prior to condos; Conversion from apartments to condos does not require Planning or ZBA review because neither the use nor the density was changed.

Mr. Deleo asked if there was a differentiation on whether they were to be used seasonally.

Mr. Shupe said seasonal units are still considered a residential use, only difference was in the terminology; When converting from seasonal to year round, conversion fees apply and Code must inspect for proper heating and insulation.

Mr. Murphy reiterated abutters' concerns and explained that ZBA has no authority over them; If (Addressing CEO) this is approved, does it still need to be reviewed by the Planning Board?

Mr. Shupe confirmed an Administrative Review done in house is all that is required since there is no change in use and a subdivision is not being created; Planning Board would not weigh in on this. An Administrative Review is required to make sure all site work requirements are satisfied including but not limited to: traffic, sewer, water, landscaping parking, dumpster etc.

Mr. Shupe said Planning Board prefers that ZBA review these issues first since the Planning Board would conduct the intensive reviews.

Mr. Murphy asked if the land could not already yield a reasonable return; It has been bought and resold and converted into condos and could now yield a maximum return with proposal; Asked applicant how Board should address this.

Mr. Weinstein said the units pertain to more than 50% of the lot.

Mr. Shupe said applicant could refurbish and rent the units.

The Bourgaults asked if existing units were condemned since there is evident rot.

Mr. Shupe clarified they are not condemned but are also not fit for occupancy at the moment.

Mr. Weinstein would consider reducing the cottages to five.

Ms. Higgins said the renovations are positive and better than what is existing now.

Mr. Weyenberg does not see where on application it states they would like to condo these.

Mr. Weinstein said the ownership aspect has nothing to do with the ZBA Board since there is no condo conversion in Town's Ordinance; The ownership is not relevant to the use;

Mr. Weyenberg asked CEO if applicant would need to come before Board if they were to remain as rental units.

Mr. Shupe said timeframes under Sec. 78-180 still apply and added that rehab can resume after cessation for a period of more than two years, but less than ten years.

Mr. Deleo asked how the reasonable return standard would apply in this case.

Mr. Murphy said the design is an improvement; Issues with sewer and parking are not ZBA's responsibility and asked if ZBA was setting a precedent on this matter? If the Town wants to reduce densities overall, should it not simply change the ordinance? There are many cottages in Town and do not believe ZBA should make this decision since the Board's responsibility is to uphold the ordinance.

Ms. Higgins discussed how the ordinance sometimes works against those trying to improve their properties.

Mr. Evans asked if it were reasonable to leave units as they are? More taxes could be generated with this proposal.

<p>Mr. Shupe read Sec. 78-180 regarding the Planning Board’s responsibilities. Mr. Weinstein said their application could be tabled allowing them to work with Planning/Code Staff to address some of the audience members’ concerns. Mr. Murphy said it would be easier on Board Members to review once the Administrative Review has been complete but added that if tabled, the first question could still be a problem. Mr. Shupe explained Administrative Review, ZBA and Planning Board process and added that the Board is not setting a precedent if they approve a density reduction since this is a one-time appeal for a specific lot, similar to all other requests they receive. Mr. Evans asked if another group would review this if Board did not take action tonight. Mr. Shupe replied no since there is no other appeal process for the applicants. Ms. Higgins suggested that applicant expand plan to show for ex. location of dumpsters because she would be able to respond to that question differently. Mr. Shupe reminded Board that applicant is willing to reduce the number of cottages. Mr. Deleo explained his quandary with the density reduction request. Mr. Shupe explained the timeframes under Sec. 78-180. Mr. Murphy asked CEO if this item would not require ZBA review had there not been a cessation of use. Mr. Shupe replied that was correct. Mr. Shupe explained tabling options and that the appeal would still be the same. Mr. Weyenberg asked if the Board should start with a clean slate so a precedent is not set. Mr. Murphy agreed with CEO that the Board should review each application individually since issues may be similar but factors are different; Tabling without prejudice would allow applicant to gather further information to help develop questions; Asked if applicant were not trying to yield the maximum return with five units since he felt that applicant was asking for 100%. Mr. Evans asked if Board could table with conditions. Mr. Murphy replied no. Mr. Evans said first question is a problem and asked how the Board will question the changes? Mr. Murphy said burden of proof is on applicant to show project has a reasonable rate of return and not the maximum. Mr. Weyenberg motioned to table without prejudice. Mr. Evans seconded this motion. Mr. Deleo agreed; Ms. Higgins agreed; Mr. Evans agreed; Mr. Murphy agreed. Motion carries 5-0</p>	<p>MOTION</p> <p>VOTE</p>
<p><u>ITEM 4: Approval of May 21, 2007 Minutes</u></p> <p>Ms. Higgins motioned to approve the minutes. Mr. Evans seconded the motion. Motion carries 4-0 Mr. Deleo abstained.</p>	<p>ITEM #4</p> <p>MOTION</p> <p>VOTE</p>
<p>Ms. Higgins adjourned the meeting at 9:05 p.m. Motion carried unanimously</p>	<p>ADJOURNMENT</p>

I, Caroline Segalla, Secretary to the Zoning Board of Appeals of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of five (5) pages is a true copy of the original minutes of the Zoning Board of Appeals Meeting of June 25, 2007.