

Town of Old Orchard Beach
 Zoning Board of Appeals
 November 24th, 2014 6pm

Call to Order 6:05pm	Call to Order
<p>Roll Call: Ray DeLeo Chair, Ronald Regis, Mark Lindquist, Owen Stoddard, David Boudreau, Paul Weinstein</p> <p>Staff: Dan Feeney, Code Enforcement Officer, Molly Phillips, Meeting Minutes Notetaker</p>	
Zoning Board Legal Notice	Ray De Leo
Pledge to the Flag	
<p>Item 1: Acceptance of the minutes of the October 27, 2014 meeting.</p> <p>David Boudreau motions to accept minutes as they are, seconded by Ron Regis. All in favor, motion passes.</p>	ITEM 1
<p>Item 2:</p> <p>Reconsideration of the 10/27/14 vote that denied Saco Ave. Rentals the right to be heard on their appeal of permit 14-B208.</p> <p>Saco Avenue Rentals, LLC Co-Owner of 155 Saco Avenue MBL: 207-2-12 in the GB-1 Zone. The Appeal is for a Construction Permit issued for a Commercial Building to build a 10,000 sf structure.</p> <p>Robert Crawford, Town Attorney: The first thing we ask is if the wrong law was applied. I don't think so having reviewed the record, but that is for you to decide. The second thing is are there facts that were not otherwise available at that time of the original proceedings to reconsider. It's not a re-trial, or a new opportunity for people to come back and try again. Having looked at the materials being put forth tonight there are a couple e-mails that will be brought here tonight. As to the packet that was provided for council, I would be very careful about reading it and deciding if there is anything here that is different than last time. If you do decide to reconsider it, I would suggest a limited review of new evidence. One point of order, there is a new member here this week, you may have to decide who can vote on things reaching a quorum of 5.</p> <p>Ray De Leo: He has to recuse himself anyway. The first thing we need is a motion to re-open?</p> <p>Robert Crawford: It would be appropriate to make a motion to decide whether or not you want to reconsider this.</p> <p>Owen Stoddard: I motion that the appeal was submitted in a timely manner and we should reconsider hearing it.</p> <p>David Boudreau: I second that.</p>	ITEM 2

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Robert Crawford: So, if I understand the motion, it's to grant the reconsideration request? What is before you is this procedural nicety and not the underlying efforts of the appeal.

Dan Feeney: The town charter states that the council can't reconsider unless there's a prevail mode to do it.

Ray De Leo: We've had it where a board member might have changed their mind. But we've never had it where the board already voted and we'd reconsider.

Ron Regis: If they want reconsideration, it should have been us to bring it up for reconsideration, not one of them or legal counsel.

Owen Stoddard: We made the decision that the appeal wasn't filed timely. The last time we ended with us saying that the appeal wasn't filed timely.

Robert Crawford: That's right. The reconsideration now would be to re-open based on new evidence. I think I brought up before that there are two issues one is procedural and one is substantive. You have to get the procedural out of the way first and then the substantive. Reconsideration provision under section 96-21 states that the board may reconsider any decision in 45 days of its prior decision. The request for the reconsideration has to be filed within 10 days of the decision. The statute is silent on who can bring the request. I think it's implied that the party affected can bring the request.

Ron Regis: Then can anyone on the board respond to that request and put it on the agenda. Or was it put on the agenda by Mr. Mead?

Robert Crawford: It was put on the agenda by request of a timely receipt of a request for consideration.

Ray De Leo: I was called by the Town Manager and he did ask if I was willing to put that on the agenda.

David Pierson: Excuse me Mr. Chair. I'd like to address the board if I may. With respect only to the basis of reconsideration. I understand at this point that we aren't going to get into any of the underlying issues.

Ray De Leo: Don't we have to vote then just to hear what he's saying?

Robert Crawford: I think you have a motion pending, and you can go into discussion once that motion is seconded. You can include Mr. Pearson in that.

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David Pierson: Thank you. Thank you Mr. Chair. You received a package today that includes a timeline. Much of that timeline relates the things that were presented a month ago. A few of these items are new. The town consistently said that you had to file an appeal within 30 days based on the date of June 20th. If you look at Exhibits A & B to the timeline you have an email from Scott and Marina Narowetz to which there was no response from Mr. Dan Feeney talking about the exploration of ownership rights. That's on July 9th. The second exhibit, Exhibit B, is from the attorney Peter Schroeter, saying he represents Saco Ave Rentals and the Narowetz family stating that the development rights had expired in 1995. He attached a copy of the relevant portion of the condominium declaration. The next day Mr. Feeney wrote to King Weinstein and KRE Realty putting a hold on construction. So the town is taking action with the developer but not communicating back to the Narowetzs or a representative of Saco Rentals to say that they have to file an appeal and that they have until July 20th to do it. The Town Planner, Jeffrey Hinderliter, emailed Mr. Saucier at Bernstein/Shur, asking questions about the status of the property rights. Part of that email is a memo from Mr. Crawford with the fact that Mr. Weinstein had asked for an abatement and received it based on the fact that his position that the development had expired and he didn't have to pay taxes on it. Those things are new and add to the case. At no time did they tell Saco Ave Rentals that they had 30 days to appeal from the 20th.

Ray De Leo: I have questions on A & B. These letters were mailed, but were they certified?

David Pierson: These were e-mails sent to the town.

Ray DeLeo: So if these were e-mails we normally see who they were received by.

David Pierson: These e-mails were found in our records, where they exist with the town we don't know. It's fair to presume they were received since exhibits C & D which are responses raised to Mr. Schroeter's emails. There is a letter from Mr. Feeney to Mr. Weinstein the next day saying let's put the permit on hold. There is also a letter from Mr. Hinderliter to Philip Saucier asking for legal advice.

Dan Feeney: I would like to add some things to that. This hasn't been opened, which is the material we received from Mr. Narowetz, in this packet with this information or at least part of the information that is in your packets. This letter, that you submitted, Declaration of Condominium and Title this is the one in question?

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David Pierson: What's different here is that this has Mr. Schroeter's e-mail. The Condominium Declaration I know was received, has a page that I don't know when it was seen but was provided to the town that was recorded in 1988. Therefore the declaration expired 1995. Which was provided to the town on July 9th by Mr. Schroeter.

David Boudreau: (to Mr. Feeney) So this information with the deed, did you have that prior to our last meeting. I don't think we had this at the last meeting. I just want to make sure, if we did have this before.

Dan Feeney: It was already in the package.

David Pierson: I just wanted to make a distinction. You all know that the Condominium Declaration was in the record last time. Not in the record is the e-mail from Mr. Schroeter stating that he is providing this information and making the point that the development has expired. If that's in the record, we need to see that. The important part is the level of communication with the town that did not involve a response saying that you need to file this appeal by July 20th.

David Boudreau: Is there a reason why we don't want to listen to more information? I understand based on last meeting that they are in negotiations of some sort. This could go on for months. I just want to understand why we can't listen to more information. I request we vote on this motion.

Owen Stoddard: Alright, I request item 2, (reads item) I make a motion that we go forward.

Ray De Leo: Before we go into a vote, I want to make sure this motion is not something that is between Mr. Weinstein and the Condo Association or is this between the Condo Association and the Town? The letter, or the rights, was that within the Condo Association.

Robert Crawford: The letter that was brought by former counsel to Saco Avenue Rentals was the Condo Association Declaration. The declaration has points in it that identify that there is an expiration of a right to develop certain units 7 years after the declaration. I do not believe this declaration was before Mr. Feeney when he issued the building permit.

Ray De Leo: Right. And was it necessary that he would have seen that or is that between the Condo Association and Mr. Weinstein?

Robert Crawford: I think that the issue of right, title and interest that underlies this appeal is a matter between Mr. Narowitz and Mr. Weinstein.

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As I understand from last time, Mr. Weinstein indicated he had a majority interest in the Condominium Association LLC. He came forward and let Mr. Feeney know that fact that he had the right to go forward with this development. As we talked about, there was my memorandum from 2011 when the matter was before the tax appeal. I would point out that in the final part of the letter I did say that those rights could change at some time in the future. I'm not suggesting that this board go into the details of sorting out complicated rights of ownership under a condominium arrangement.

David Boudreau: Mr. Chairman there is motion to reconsider it, nothing else. If this doesn't go through the discussion is mute. Point of order, I ask the chair to move this motion. No more discussion.

Call for a Vote:

Mark Lindquist: Yes

Owen Stoddard: Yes

David Boudreau: Yes

Ron Regis: Yes

Ray De Leo: No

Paul Weinstein: Abstain due to recusal

The vote is 4-1 to reconsider

Ray De Leo: So we'll revisit it then.

Robert Crawford: At this point what you would do with the reconsideration is to decide what evidence would be allowed in. I coached you a moment ago with I think the appropriate level of evidence. This is not a re-trial of everything, this is for reconsideration of the outcome based on new information in these additional documents.

David Pierson: Separately the attachment to exhibit B was already in your packet. But Exhibit A & Exhibit B weren't in your packet already. From our perspective the email to Mr. Feeney from Mr. Schroeter and the letter from Mr. Feeney to Mr. Weinstein indicating the permit is on hold was on the record before. Nor was Mr. Hinderliter's email to Mr. Saucier already on record. Although, some of the attachments were in the record previously, portions of the condominium documents and Mr. Crawford's memo in regards to the development rights. What's really new here are all 4 new exhibits, but several incorporate previous documents.

Ray De Leo: So, were do we go from here?

Robert Crawford: I think the board would entertain discussion amongst itself regarding the inclusion of Exhibit A & B to see if it changes things for you. However, if we get to the point where timing of the appeal is an issue, I

**Vote on
Reconsideration**

**4 Yes – 1- No – 1
Abstain**

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<p>don't think this board has the authority to extend the 30 day appeal period. It is a judicial matter and outside the providence of this board. Irrespective of the sympathy you may have, or the facts around the tardiness of this appeal, you don't have the authority to extend it. It may be a little unfortunate, but the court has told us that it is their decision.</p> <p>David Pierson: What the court has done is create a judicial good cause exception. In those instances, the board that was charged with hearing the appeal, denied the appeal based on it being untimely. What the court did, made a decision based on the exception and the requirements for the decision are met here. Whether or not boards have the authority, the court doesn't rule on that. I am not aware of any case where the board would overstep its authority granting an exception. I think it is within your authority to accept the appeal and expedite our process.</p> <p>Robert Crawford: With all due respect Mr. Chair I have the language of the decision that I can read to you. When we review the application of the good cause exception, we reviewed the decision of the superior court because the application of the exception is a judicial and not an administrative decision. So in other words, this is a judicial standpoint not an administrative standpoint. There is no deference to the board having authority. There is also no ordinance to support an extension of the appeal.</p> <p>David Boudreau: As I understand it the reconsideration is to allow the appeal beyond the 30 days. Based on the information we have this evening, it isn't about the appeal, it's about the land ownership. So, If I may, I would like to make a motion that we do not allow the appeal past the 30 days, based on the information that was given tonight.</p> <p>Ray De Leo: I will second that.</p> <p>Call for a Vote: Mark Lindquist: Yes Owen Stoddard: No David Boudreau: Yes Ron Regis: Yes Ray De Leo: Yes Peter Weinstein: Abstain due to recusal</p> <p>Robert Crawford: So based on the outcome of the motion, it was allowed to be reconsidered but no change in the outcome in regards to no expansion of the appeal period.</p> <p>David Pierson: Thank you.</p>	<p>Vote to Extend Appeal Period</p> <p>4 Yes – 1 No – 1 Abstain</p>
<p>Item 3:</p>	<p>ITEM 3</p>

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William and Joanne Tullis, Owner of 12 Francis Street, MBL 205-6-4 in the DD2 Zone. Applicant Michael Tousignant is seeking a sideline setback for a proposed 27'x 30' (2) car garage from 15 ft. to 7 ½ ft. Zone requires 15 ft.

Michael Tousignant: Good Evening Gentlemen! I think you should have all received a packet of information. Essentially what we are asking for is regarding 12 Francis Street which is a 50' X 80' vacant lot. I think there was a house on it years ago. 2000-2001 the house was torn down. The land owners purchased the land at that time and tore down the house. They had the intention of building a garage on it someday. We would like to build a two-car garage 27 feet wide. Asking for a 7 foot reduction on one side. I am asking for that because the neighbor was given a variance to build 4 feet to the line. To cut to the chase I am asking for the same courtesy. We're in the same zone, nothing has changed. In all fairness, perhaps a mistake was made at that time. We have researched it. I spent some time with Dan, I have spent some time with the Town Planner, some time with the Assessor. It's just one of those things that's there and done. We're more than happy to meet the setbacks on the right hand side of the lot with 15' there. I've got more than enough room to do what I want to do depth wise. A typical car garage is 25' wide. Two 9' doors and a space in the middle. Essentially we want to avoid a 20' wide building.

Ray De Leo: The garage is just going to be garage? There's no second story?

Michael Tousignant: It would be no more than 17 feet high. 9 foot wall with with a 5/12 pitch. We put 17' on the application. We were told that we needed a variance. So, we weren't going to spend money to draw up a garage until we got the approval. It's really very simple.

Ray De Leo: So we'll go through the criteria.

Michael Tousignant: Yes, thank you.

Ray De Leo: Anybody for or against the appellant? Closed to public comment at 6:55pm.

So

SECTION 1: A: The Lot is Vacant

Mark Lindquist: Yes
Owen Stoddard: Yes
David Boudreau: Yes
Ron Regis: Yes

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<p>Ray De Leo: Yes</p> <p>1: B: Yes, looking to build a garage, two car, 27' wide x 30' deep, on a 50' X 80' lot. Building would be 810sf.</p> <p>Mark Lindquist: Yes Owen Stoddard: Yes David Boudreau: Yes Ron Regis: Yes Ray De Leo: Yes</p> <p>1: C: The lot is fifty feet wide, current setbacks would reduce the lot to 20' of buildable area. We would like to build a two car garage. If we could get a reduction to 7.5' on the north side this would allow for a 27' wide building which would work much better for our cars.</p> <p>Mark Lindquist: Yes Owen Stoddard: Yes David Boudreau: Yes Ron Regis: Yes Ray De Leo: Yes</p> <p>1: D: One of the abutters was able to build within 4 feet of the property line in the early 2000's time frame. We were told at that time that there were no setbacks. We would like to have the same courtesy. We would be 7.5' to the property line.</p> <p>Mark Lindquist: Yes Owen Stoddard: Yes David Boudreau: Yes Ron Regis: Yes Ray De Leo: Yes</p> <p>SECTION 2: A: N/A B: N/A</p> <p>Motion to Approve this appeal by Mark Lindquist Ron Regis seconded it.</p> <p>Call for a Vote:</p> <p>Mark Lindquist: Yes Owen Stoddard: Yes David Boudreau: Yes Ron Regis: Yes</p>	<p>Vote on Appeal</p>
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Ray De Leo: Yes	5 Yes – 0 No
<p><u>Item 4:</u></p> <p>James and Lisa Chaloner, Owner of 22 Randall Avenue, MBL 323-9-8 in the R-3 Zone. Applicant Diane Doyle is seeking a sideline setback to allow appropriate stairway from raised structure. Zone requires 15 ft. principal structures, 10 ft. accessory structures. Reduction request is from 16 ft. to 11 ft. right side setback.</p> <p>Diane Doyle: I am representing the builder and also the Chaloners. We had a building last year that wasn't as high as this and needed a big step for the FEMA laws. But now the banks are requiring that the new zones for FEMA be taken into account even if they haven't come into effect yet. We have redesigned the house and had to lift it up to 15 feet which means we need to put a stair at elevation 15'. Currently there is a stair squeezed up on the left side and a little room in the back. (Turns away from the mic and toward the elevation board, can't hear what she's saying) So, just asking for the sideline to be reduced to 7.5' for the stairs to reach the main living of the house. We are not increasing the lot coverage but we are at 40% lot coverage.</p> <p>Ray De Leo: Anyone speaking for or against the appellant? (Diane shows plans to an abutter.)</p> <p>Dan Hayes: I am an abutter at 25 Temple but my lot goes all the way back to Randall. We approve of this effort to get a variance.</p> <p>Ray De Leo: Anyone else? Closed to the public at 7:02pm.</p> <p>SECTION 1: A: The House was constructed in 1975.</p> <p>Mark Lindquist: Yes Owen Stoddard: Yes David Boudreau: Yes Ron Regis: Yes Ray De Leo: Yes</p> <p>1: B: The current house will be demolished and the new structure will be built to the proposed FEMA flood guidelines. This will require the new house to be elevated requiring additional stairs. The only locations to put the stairs within the lot lines is on the right side or back of house. Having the main entrance on the back of the house is not practical so we ask that the right side line setback be reduced to allow the side stairs/entrance.</p>	ITEM 4

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Mark Lindquist: Yes
Owen Stoddard: Yes
David Boudreau: Yes
Ron Regis: Yes
Ray De Leo: Yes

1: C: The house is 3 feet from the front line and 4 feet from the left side, that leaves the back and right side. The main entrance can not go on the back of the house so it must go on the right side.

Mark Lindquist: Yes
Owen Stoddard: Yes
David Boudreau: Yes
Ron Regis: Yes
Ray De Leo: Yes

1: D: Locating the stairs on the right side of the house will permit an 11 foot setback, only 4' less than what is required. This is typical for the neighborhood.

Mark Lindquist: Yes
Owen Stoddard: Yes
David Boudreau: Yes
Ron Regis: Yes
Ray De Leo: Yes

SECTION 2: A: Dan Feeney requested the stairs and platform by designed as shown. The platform is 4'6" by 5'6" and the stairs are wide enough for a railing.

Mark Lindquist: Yes
Owen Stoddard: Yes
David Boudreau: Yes
Ron Regis: Yes
Ray De Leo: Yes

2: B: The lot is 50' X 65' and the house is 30' X 40'. We can't position the house in a way it will meet the setbacks. We are proposing to reconstruct it more or less where it is and locating the stairs on the side that has the most room.

Mark Lindquist: Yes
Owen Stoddard: Yes
David Boudreau: Yes
Ron Regis: Yes

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<p>Ray De Leo: Yes</p> <p>Motion to approve appeal by Owen Stoddard. Seconded by David Boudreau.</p> <p>Call to Vote:</p> <p>Mark Lindquist: Yes Owen Stoddard: Yes David Boudreau: Yes Ron Regis: Yes Ray De Leo: Yes</p>	<p>Motion</p> <p>Vote</p> <p>5 Yes – 0 No</p>
<p><u>Item 5:</u></p> <p>Adam and Toni MacQuinn, Owner of 71 Cascade Road, MBL: 103-3-10 in the RD Zone. Applicant is seeking a reduction in setback in dwelling right side setback of 25 ft. to existing and actual 16 ft. And pool area setback from required 25 ft. to existing and actual 22 ft.</p> <p>Adam MacQuinn: We built the house in 2003 and we thought that we met all the setbacks when we re-built it. Then we did a re-finance from Saco/Biddeford and it was flagged at that time. It was a shock to us, we had no idea.</p> <p>Ray De Leo: When was the house built?</p> <p>Adam MacQuinn: It was built in 2003, 11 years ago, we thought we got all the relevant permits, the town came out, but for some reason it was flagged. The line skews, it's 22' on one side and 26' on the other. Like I said, we thought we were all set. We were trusting someone to check it, the code enforcement officer at the time was very busy. We were very busy, that was a hotbed time.</p> <p>Ray De Leo: Anybody for or against? Closed to the public at 7:08pm.</p> <p>Adam MacQuinn: What's the process on this, how quickly will it go through?</p> <p>Ray De Leo: We're going to go through the criteria and vote on it, same with the others. If it passes then you fill out some papers at Town Hall, and it will have to be registered. You'll know tonight right away.</p> <p>Section 1: A: No Change</p> <p>Dan Feeney: From looking at the file, what I understand is that they assumed the lot was rectangle, but it was skewed in a little. That caused it to be measured on the skewed side which caused the pool and house to be off by</p>	<p>ITEM 5</p>

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<p>a little bit. There is a Certificate of Occupancy and all the correct documents on this one. It was correct at that time.</p> <p>Mark Lindquist: Yes Owen Stoddard: Yes David Boudreau: Yes Ron Regis: Yes Ray De Leo: Yes</p> <p>1: B: Due to the previous owner the actual setbacks were improperly placed causing a setback issue to develop.</p> <p>Mark Lindquist: Yes Owen Stoddard: Yes David Boudreau: Yes Ron Regis: Yes Ray De Leo: Yes</p> <p>1: C: Not Applicable</p> <p>Mark Lindquist: Yes Owen Stoddard: Yes David Boudreau: Yes Ron Regis: Yes Ray De Leo: Yes</p> <p>1: D: No impact will be caused by change in setbacks, "Due to this corrective order."</p> <p>Mark Lindquist: Yes Owen Stoddard: Yes David Boudreau: Yes Ron Regis: Yes Ray De Leo: Yes</p> <p>Motion to grant appeal by Mark Lindquist, seconded by Ron Regis</p> <p>Call for a Vote: Mark Lindquist: Yes Owen Stoddard: Yes David Boudreau: Yes Ron Regis: Yes Ray De Leo: Yes</p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p> <p style="text-align: center;">5 Yes – 0 No</p>
<p><u>Other Business:</u></p>	

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<p>Mark Lindquist: I just have a question about submissions of paperwork and when they are due. It seems like things come in last minute and it makes it hard to get the packets done and give us time to review them.</p> <p>Dan Feeney: Why is information being submitted and accepted late, is my question to the Town Attorney. So, I'm on the same plain, I will get you the answer in writing for the next meeting. My understanding when I took this position, was that everything would be due the first week of the month, then we prepare the packages and get those out to you in a timely manner. We also post those agenda items in the newspaper and do all the clerical and administrative things downstairs.</p> <p>Mark Lindquist: My perspective is that the abutters certainly have a right to come-in and review. It seems like the last couple of meetings we have had last-minute things come in.</p> <p>Dan Feeney: I agree, a few things were put on the agenda last minute and I apologize for that whether it was my staff or not.</p>	
<u>Good and Welfare</u>	
<u>ADJOURNMENT</u>	

I, Molly Phillips, Secretary to the Zoning Board of Appeals of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of thirteen pages (13) is a true copy of the original minutes of the Zoning Board of Appeals Meeting of November 14, 2014.

Molly Phillips