



**TOWN OF OLD ORCHARD
BEACH**

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Zoning Board of Appeals Meeting Minutes

February 26, 2024

I, Rick Haskell, Secretary to the Zoning Board of Appeals of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of 41 pages is a copy of the original minutes from the meeting of the Old Orchard Beach Zoning Board of Appeals held on February 26, 2024.

Prepared By:	Rick Haskell
Approved By:	Old Orchard Beach Zoning Board of Appeals
Approval Date:	June 29, 2026

Respectfully
Submitted,

Rick Haskell

Secretary

Zoning Board of Appeals

Zoning Board of Appeals Mtg 02/26/2024

Stan DeFreese: Good evening. This is public hearing of the Old Orchard Beach Zoning Board of Appeals this 26th day of February 2024. It's called an order at 6:30 PM. Please call the roll.

Rick Haskell: Stan DeFries.

Stan DeFries: Here.

Rick Haskell: Tom Mourmouras.

Tom Mourmouras: Here.

Rick Haskell: Ethan Scott.

Ethan Scott: Here.

Rick Haskell: Irv Paradis.

Irv Paradis: Here.

Rick Haskell: Edwin Bones.

Edwin Bones: Here.

Stan DeFreese: Let's stand with the pledge of allegiance to flag.

Like to hear what you've acceptance of the August 28, 2023, meeting minutes.

Irv Paradis: I move that we approve them.

Ethan Scott: I second that.

Stan DeFreese: The minutes of August 28, 23 have been approved. Can I have a roll?

Rick Haskell: Stan DeFries.

Stan DeFries: Yes, approve.

Rick Haskell: Tom Mourmouras.

Tom Mourmouras: Yes.

Rick Haskell: Ethan Scott.

Ethan Scott: Yes.

Rick Haskell: Irv Paradis.

Irv Paradis: Agree.

Rick Haskell: Edwin Bones.

Edwin Bones: I abstain. I wasn't here for that.

Stan DeFreese: This is a public hearing, and unless the board specifically votes to go into the executive sessions, you have the right to hear everything that's being said and look at all exhibits that are being offered if you desire to do so. The board will work from a prepared advertised agenda. This meeting will adjourn at 11:00 PM or as soon as the current issue at the time is resolved. I wanna stress that each of the instances of the burden of proof is upon the applicant and the board task is to judge the merits of each appeal.

Appeal from a revised decision must be filed within superior court within 45 days of this board decision. Appeals will proceed as follows. (1) We will hear the testimony from the Appellant with the questions from the board member through the chair. (2) We will hear any speaking for the Appellant but please sure state your name, address for the record. (3) We will, we will then hear anyone speaking against the appellant. Again, be sure to state your name and address. (4), we will write a written documentation received by the board that will then be read into the record. (5), the chair will review the 4 justifications of the variance or review of the administrative appeal with each member of the board having opportunity to comment on them. (6), The chair will close the public portion of the appeal and ask for a motion to approve or deny the variance miscellaneous appeal or administrative appeal.

The roll call will then be called. If approved, it's giving you giving you, you must record it and register a deed within 90 days of your decision is non-avoid. Yeah. So today, item 2, is to propose interpretation of appeal. Applicant appealing decision of the director of code enforcement to rescind notice of violation of issue to the abutter at 27 Dash 29 Central Park Ave.

Ed Bones: I'm going to recuse myself because I have some prior knowledge.

Stan DeFreese: Okay. Ed will be recusing himself from this item number 2. We will hear now from the applicant of this, May Toussaint.

May Toussaint: Toussaint.

Richard Lambert: Toussaint. Yeah. Oh, no. We've got all kinds of stuff on this.

Richard Lambert: Good evening, Mr. Stan DeFreese, members of the Board of appeals. My name is Richard Lambert, and Ms. Toussaint has asked me to present this matter before the board. There is a letter of authorization in the record, I believe, already that's

been filed. Briefly, my background is I'm a retired code enforcement officer. I was an employee for the city of Saco for three to five years and before that, for almost five years, with the city of Biddeford. So, I have all my certifications with state of Maine including zoning, shoreland zoning, building standards, etcetera.

And I am still listed as a third party inspector with the city of I mean, with the state of Maine. This evening, this is administrative appeal that comes before you. There are three points that I would like to stress as part of this argument. The package that you have before you that I just gave you, the Scribner's attorney, also has a copy of it as well. So, everybody has a copy. But most of this information has already been provided. I just put it in order that would be easier for the board to look at as we as I present it. And I'm not gonna read this verbatim because you all can read as well as I can. It's no, it's not necessary for me to go through all this word for word.

So, what I'll do is I'll go in the order. And, if you have any questions, please feel free to stop me and ask. First of all, the matter before you is based on a rescinding of a notice of violation that was issued November 1st, by the code enforcement officer, Rick Haskell. And that was the result of a meeting that took place on December 14th in the town manager's office between, I believe it was the Scribner's, Rick, and the town manager. Not sure who else was at that meeting. My client, Ms. Toussaint, did not receive any notice that this meeting was gonna take place and it just happened.

She found out about it inadvertently, when her daughter came down to town hall to inquire about a different matter and found out that Rick had decided to rescind the notice of violation and that happened on December 22nd. There was going to be an email, I believe, that was gonna be sent advising her about that. First of all, the administration, the notes of violation, which are in your package, is the item just before all of the photographs, dated November 1st, outlines clearly what the process is for appealing this decision if you didn't agree with it. And that appeal actually comes before this board, and as administrative appeal.

The reason for that is because, first of all, we need to establish clear record of what the matters are, what the issues are, and how the law applies to it. Having a private meeting in the town manager's office, with the exclusion of my client, goes against her due process rights to know what's going on, and what evidence is being presented to ask them to overturn, ask Rick to overturn that decision. Section 7892 and 7811 of the town's zoning ordinance clearly outlines that process. Power and duty is granted solely to the zoning board, and not to the town administrator. This is done to preserve the due process rights, as I said.

In addition, involving the direct supervisor of the code enforcement officer in a meeting such as this may result in undue influence being placed on the code officer. 390 Main Street's appeal should have been to, directed to this board. And the process, as clearly laid out in the letter, that was sent to them. That let that process was circumvented.

Number 2, the 30-day appeal period of that notice of violation has since expired. And it was clear in that letter what the time limit was for filing this appeal. So, as of now, that 30-day appeal period has long since passed.

Stan DeFreese: I got a question. You're saying that there was no administrative appeal during this process, instead there was a meeting?

Richard Lambert: Right. As a result of the letter that was sent out by the code officer.

Stan DeFreese: In this letter, we have a copy of right here. Right?

Richard Lambert: Right. It's, it's the letter two-page letter that's just before the photographs that I submitted in my package this evening. And at bottom of page 2, it outlines what the process is for making such an appeal. And it clearly indicates that the zoning board is the correct venue for that. It's actually the second to the last paragraph in the letter. I'm assuming that the scriveners didn't agree with that letter and so asked for a meeting between the code officer and the town administrator to discuss it. That is clearly outside of the process that's out there.

Stan DeFreese: And is the letter dated December 28th?

Richard Lambert: Not sure. Is that a letter that you sent, Rick? December 28th?

Rick Haskell: It doesn't sound familiar.

Richard Lambert: Oh, okay. November 1 was the original, well, the primary notice of violation that was sent out. And the third item that I wanted to review here this evening is that the Scribner Scribner's did not receive the proper building permits required for what happened, what actually happened to this deck, this two-story deck that is behind their property. There are certain regulations that are listed, and I'm not gonna go through all of them, that outline what the process is to get permits in the town. And there's some definitions here.

The subject prop, the subject deck has been incrementally expanded over the years through various series of rebuilds and alterations to the layout of what I assume would be the interior of the structure. There was once a window that was facing the deck on the second floor. That was turned into a door. So, there was some accommodation that was made for that. But that was over a period of several years. Then, the information that I provided, from the copy of the tax assessor's records indicates that there were several different sizes listed for this deck. The 1972 card doesn't even show the deck. Now that might have been an oversight, or there may not have been a deck there. I was still in high school in 1972, so we have no idea what existed there. And I don't think the current owners may know either.

The 1978 card has a deck 5 feet by 18 feet. And as we know today, the deck is now 6, almost 6 and a half feet by 22 feet. So, the decks clearly increased in size over a period of

years. On August 29, 2023, after the issuance of building permit to repair the existing rear stairs, treads, and replace rotten boards and posts. Repaired railings as needed. That was under building permit 19 dash B265. And subsequently, another permit, number 19 dash B 333, that was issued September 18, 2019, where it was noted that no structural, structural, the deck, no structural, and I'm assuming that's all it says is no structural.

I'm assuming the building inspector issued that permit at that time, and I believe Tim Nelson was the signatory on that. I did not expect that any of the structural components of the deck were going to be changed. So that was the thought process, I think, that the code officer was using when, when they applied, when they issued the second permit, and the photographs actually indicate that there was a whole lot more that was done to the deck beyond the scope of that permit. And certainly, a lot of structural components were altered or replaced. There were some, it looks like there were some older structural components that were reused. But a majority, and you'll see from the photographs, the majority of that was brand new lumber that was used in the construction of the reconstruction of the deck.

A report, actually, that was commissioned by the Scribner's, as part of this, controversy was done by Southern Maine Inspection Services, dated June 22, 2022. And the top of page 5, and that's a copy that's in your package that I distributed here tonight, highlighted in green. It says that at the time of the inspection of May 2029, because this same inspector had inspected this property before the Scribner's purchased it as part of their due diligence to wanna know what they were buying. And he came back on June 22, 2022. At the top of page 5, it states at the time of the inspection in May 2019, I took photos included in the report of the deck condition and location to the rear property line. I noted the deck in need of replacement repairs. My inspection on the date of this inspection, 6/22/22, found the deck had been completely rebuilt.

So, there's no question that the deck had been torn down and rebuilt. Whether it was rebuilt in exactly the same position that it would be that the old one was in? Hard to tell. There's a lot of different components shown in those photographs, including new sonar tubes, the foundation that supports the rest of the deck that appears to have been installed in close proximity to the rear property line. Not sure why the applicants did not ask for a permit to rebuild the entire deck, as ultimately happened. It could be that the criteria for getting or obtaining a permit for rebuilding the entire structure is a little bit more stringent than just getting a permit to replace decks, and boards, and railings.

Certainly, in my experience as a code officer, when I receive a permit to replace a building or structure that is in a non-conforming position, I always asked for a survey of the property to make sure we knew where the position of the existing structure is, versus the position of the new replacement structure at a later date. If that had been done in this case, it would have been revealed that if the deck had been encroaching on the property line, or as is today, it encroaches over the property line, that would have been revealed. And at that time, the code department would have probably been able to correct the situation and say you've got to back off that property line and maintain, you can't get any closer than where you are now.

Whether it had been there before and encroached over the property line, it's hard to tell. You're trying to figure out what happened before the deck got replaced. So now we know it's over the property line. Doesn't meet any setbacks. Matter of fact, it violates setbacks because it's over the property line. And so, what we're looking for tonight is for the board to, rule that the meeting that happened where the decision was made to rescind the notice of violation was, not permitted by the zoning ordinance that the appeals period has elapsed, and that no appeal can be made to the notice of violation that was dated November 1st. And that the deck as constructed violates the town's zoning ordinance for the simple fact that they didn't get the right permits to do the job that they did.

I'll also I wanna whoops. Sorry. I want to introduce Michael Skolnick, who is also here on behalf of Ms. Toussaint. And he may end up adding more information if the board has questions.

Richard Lambert: Did you want to add anything, Mike?

Michael Skolnick: Thank you. Thank you, mister chair, have the rest of the members of the board. My name is Michael Skolnick. I'm here from Archipelago Law on behalf of Ms. Toussaint. I think Mr. Lambert actually did a terrific job of eloquently stating the issues that are at play here. I did wanna add one thing. There is this matter, there is some facts that just certainly aren't in dispute here. At least the second story at some point was expanded. Under the window and earlier property cards actually show that it was a smaller second story at a time. Any expansion towards the property line, and in this case encroaching over the property line, the town, although that may be able to expand the second story over the first story, that does not mean that the town can ever permit an encroachment onto the abutting property. And if the deck were to remain as is here, that's exactly what is happening. So, I'm just here to answer any questions that you have. I know, attorney Turcotte, I'm sure, wants to speak as well.

John Turcotte: Okay. Thank you, and members of the board. We submitted, my name is John Turcotte, and I represent 390 Main LLC. They're the property owner, and the LLC is owned by a husband and wife, it's Guy and Peyton Scrivener here tonight. And we submitted a packet in advance of the last CVA hearing, I hope everyone has it. So, you know, we're not here to argue about the 2019 permit, because the appeal period for that has long since lapsed. The appeal before the court, with all due respect, probably shouldn't be here.

Back in 2020, Ms. Toussaint had a property surveyed, and she discovered that my client's deck and stairs went over the property line by several inches. And a inch. And a copy of that survey is in the packet, in my packet, is exhibit 1. And a year later, she came to code enforcement, she made all the same arguments you're hearing tonight, and the town determined there was no expansion. They came out, did measurements. They found no expansion, and they said, quote, this is nothing the town is going to pursue. And that's exhibit 3 to my packet. Ms. Toussaint did not appeal. Instead, she filed a civil lawsuit.

She sued the scriveners down to superior court, making all those same arguments you're hearing tonight, and all those same arguments she made to the code enforcement office. She designated the same witnesses. Mr. Lambert, who I respect very much, was a witness to that case. And she lost. The court issued a decision and found, yes, there was a small encroachment. And had been in place for more than 30 years. That's exhibit 2 into your packets, page 9 and 10. So the encroachment had been there long before the Scribner's purchase in 2019. None of that information was, let me back up.

So, Mr. Lambert discussed, citing the inspection report issued by Southern Maine Inspection Services. He directed in Page 5 of that report, he submitted and we submitted it. And he says that the deck was completely rebuilt. He didn't stop at that period and didn't continue with the very next sentence, where Mr. Gerke found, I found the new deck and steps were built exactly on the same as the original deck and steps. And that's, that was borne out by the court's findings. So, the Scribner didn't create any expense. Let's just start there. That's undisputed.

It's been more than 30 years, Ms. Toussaint had her day in court, and the court found it had been there for more than 30 years. It further ordered that the encroachment could just stay in place. It's so minimal, it could just stay in place and that's an order by the court.

Stan DeFreese: So, you're saying that when he said he found the deck and the steps that were built, was that the same footprint, that was there for 30 years, the same footprint that you're saying?

John Turcotte: Yes. Encrode the language in the judgments on page 9, is that the encroachment has been in place for more than 30 years. We went back as far, and you've got the affidavits from the former owners. We went back to 1989. That's as far as we can go. So now, in response to the court order, she's come back to the town. She's come full circle. She's made all the same arguments that she made in 2021, she's making all the same in court. What she didn't do was she didn't share that order. She didn't share that lawsuit with code enforcement, or with anybody else. You look at, information, none of that is in the file. So, just like her appeal to you fails to make any mention of the order, it's not in your packet either. That's a public document, and it's been recorded.

So, it certainly appears that there's at least an argument to try to make an end run around a case that's already been decided. I mean, we've got, again, I respect Mr. Lambert very much, but when he says it's hard to tell when the expansion took place, it's not. We know it happened more than 30 years ago. That's when it happened. So now, when the code enforcement officer has re-declined to, pursue a notice of violation, and with, she's coming to you. And I want to respectfully represent you; it's a fourth bite at the apple is what she's trying to do. And just as she did before, she didn't want you to know she was coming to you after the court ruling on this specific issue. I served on the ZBA in Westbrook for many years.

I'm very familiar with what you're doing. I appreciate your sacrifice coming here. On the planning board now. I didn't do myself any favors there. And, what the ZBA doesn't do is

it doesn't relitigate cases. It doesn't overrule court findings. That's not what the ZBA is here to do. The ZBA's job is to review, in this case, his withdrawal of the notice of violation, which is his letter of rescission. And, and I'm not here to speak for the code enforcement officer. He can do that himself, but a code enforcement officer has the complete discretion to withdraw a notice of violation. He's got absolute discretion to do that, particularly as in this case, where the complainant, or excuse me, the not the complainant, the property affected, those owners provided him with complete and about is still over the property line.

Stan DeFreese: But the deck that you are talking about is still over the proper line. Right? And you're saying, if I get you right, that happened 30 years ago?

John Turcotte: Correct. And the court ordered that it could stay in place.

Stan DeFreese: Can you say that again?

John Turcotte: The court ordered that it could stay in place. That the scripters did not have to remove the encroachment.

Jeffrey: That's what the court ordered. Right?

John Turcotte: Yes, of course. I can only point out to you that all of this was litigated to the court. We presented our expert witness. They had their expert witness. The town has measured it. Mr. Scribner's here and he can speak to that directly, as he did the construction himself. And so, he can testify to that in just a moment.

I can add some valuable information there. If you're looking at a property card and it says 6 feet, I checked with our assessor. It could be 66, 67. They typically round down so the owner does not get overcharged. So, if they were to round up, they'd be getting taxed for property for a deck that they don't have. And for a deck to be 65 or 66 and so 66, 6 on a property card, they don't do decimals. So, it's very common for a deck of 65 to look like 6 feet on a property card.

Ethan Scott: But does it extend over the lots of her property?

John Turcotte: It does. Yeah. I think by 3 inches. 3 inches.

Ethan Scott: But that's been, like, one might have stayed for 30 years. Am I right?

John Turcotte: Yes.

Stan DeFreese: And we're saying right now, maybe, if I'm understanding, it's saying that some new decking or whatever to that deck was put down after, so that new deck material went on to a structure that was already on a property line over the property line. And since some of the zoning is that if you're replacing existing deck, right.

John Turcotte: With respect to some of the other points raised by, Mr. Lambert, there was not any older Beach resident, or property owner can make an appointment with any town official. That doesn't make it a town meeting, it's not an appeal, it's nothing like that. Further, the code enforcement officer, as part of his duties, can talk to any of the parties affected in a complaint that's been made. In fact, it'd be incumbent upon him to do so. And so, simply the Scribner, who, by him, by the way, weren't invited to any of Mr. Hussein's meetings with the code force in office. But when they find out there's a complaint lodged against them and does it would make sense for them to reach out to the code force in code enforcement officer, and among other things, provide him with a court order. That's not hearing. That's not an appeal. That's just a meeting. Today is the hearing.

With respect to them, there's this bizarre argument that they, 30 days lapsed and didn't appeal. There's nothing to appeal. He withdrew on day 30. The notice of violation was withdrawn, so there's nothing to appeal. I mean, if you think about it, what would they have filed an appeal of? Something that had already been withdrawn. So that they would be mooted the moment they filed it. And the evidence that was provided to the code enforcement officer, quite frankly, is a public document that's been recorded.

So, you know, where we are here tonight is we're asking that, the board deny the appeal. We believe that this has this you know that you can't do an end run around the court. You, she went to the town in 2021. The town took no action. That was her opportunity to appeal. She did not. Instead, she decided to, you know, court in Folsom, again to the court in Folsom, again. And then ask this board to take action when he fails to pursue, that would have been her third idea. So, we're asking if you would deny the appeal. And, Mr. Scribner's here, he can probably speak about some of the construction issues.

Scribner: So, when the deck was rebuilt, there were tenants in the building. I mean, the place was completely filled, and it had to be done piece by piece. So literally, the stringers are all the same. I sistered the deck joists. 68 percent of the outside rim joist is original. We, I actually placed pressure tray in between the sistered deck joists, and it had to be done in very small increments. The reason why? Because people had to come in and out. If you come and look at it, you'll see that some of the boards are, you know, just two stringers, deck joists.

You know what I mean? And then on the, the ledger board, everything so we took, you know, I took off the deck boards out. We took a small section. I think it's in maybe three or four pieces across. Everything, it took 10 times longer, and so the deck boards were replaced. The stringers were all the same. They're still stained red, the lower and the upper. We have a certificate of occupancy in 1986 for five units in the main building and four cottages, which says full access. I think it's in in your, in your paperwork. And in order back in 1986, I talked to many people, you still had to have 36 inch stairs. So, we got a certificate of occupancy in 1986.

In order the only way to get to the second floor, so they gave and David Denardo, is the man that pulled the permit, and he's in Florida right now. He came to the meeting with

Rick Haskell, and he came over and looked at it. And he said, we didn't put that in there, but I should have. He said that they wouldn't have given me the permit in 198 the, the certificate of occupancy if the stairs weren't 36 inches. And you say that, oh, it could be built, you know, it could have been built differently. From this door to the edge of the stairs there is 36 inches on the first floor.

The stairs are 36 inches. The stairs coming up are 36 inches. If it was one inch different, they wouldn't have given them a certificate of occupancy in 1986. There's no way because unless code was willing to just let everything go, but they wouldn't have filled and given a certificate of occupancy in 1986 if the stairs weren't 36 inches, and there wasn't clearance in 36 inches. So, I'm just telling you that the deck is as it's always been. I mean, there we have Earl Morrow. He owned it for 33 years. I asked him to come over and look. He came; he inspected. He said this is exactly the way the deck was. Now, Nick Burns, yeah, it's Nick Burns, was the owner we bought it from.

His wife is the assistant district attorney. They came. They looked at it. He said this is exactly the way it was. Right? So, it's not like I'm asking you to come. Well, and well, we wanna look at it before we fill anything in it. I said, of course, you can come look at it. He owned it for three and a half years, Nick and his wife, Shiloh. Then I went further back. So, I researched, and I found David Donardo, which was the owner of Earl Moore. He came and inspected. He came and talked to Rick. So, Rick had all this, you know, you know, because we knew that they had put this order in place because someone had, was complaining.

Well, we didn't get any notification that people were complaining. They didn't ask us for any information that the court said it's been there for over 30 years. It can stay. Right? So, if he would have had the right information, none of this would have happened because this has been going on for so long. It's absolutely exhausting. I did nothing wrong. And you know what? I'm not, I didn't do anything wrong. And I'm not gonna admit I did something wrong. I did not. And that's really the end of it. I mean, I will not lie. I will tell you the truth, and I'm tired of this going on even when the court says, well, you know, didn't do anything wrong. Of course, I didn't do anything.

There, the building itself had horrible tenants. We have year round tenants. You can ask next door. Mark Gagne. He retired from Thornton Academy. He wanted me. Here was his wife's birthday. He's a guy I have never seen this building run so well. No parts year round tenants. Doctor. I mean, we have good tenants, and I want good tenants. I want our neighbors to be happy with us. So, this deck, the way it is, I don't care what anyone says, is the way it's always been. So, and...

John Turcotte: I can only point, chair, one clarifying points settling wanna get lost. The survey issue was actually done after the deck was prepared. The deck prepared had already been done about a year at that point. No one knew that encroachment existed, nobody, until the 2020 survey. Thank you.

Micheal Skolnick: Thank you, folks. I do just wanna address a few things that the Scribner's and attorney Turcotte said. Respect attorney Turcotte, but in this case, he does not explain to you what actually that judgment was from the court. First off, this judgment was a summary judgment motion that is before trial. He continuously told you that our clients had their date in court. That trial's actually scheduled for April of this year. I don't know how he can say that they had their day in court, when this was a preliminary motion of summary judgment here.

What that motion does, it allows you to file summary judgment to have judgment on some of these claims that don't have any disputes of fact. There are only questions of law remaining. Those questions of law absolutely were their trespass. That's one of our claims. The court ruled, yes, there was a trespass, and the reason for that is because they ruled on a they filed motion for summary judgment asking the court to rule that they had they had adversely possessed a portion of the property. Meaning they occupied it openly, visibly, notoriously against our claim of right for a period which they claim is 30 years.

The court denied that motion for summary judgment. They did not rule that that deck has been there for 30 years. In fact, it was the Scribner's burden of proof to prove each element of adverse possession, and they couldn't do so. I really do not get where attorney Turcotte is saying that they had their day in court, that on their motion for summary judgment, that somehow the court said that this deck has been there for 30 years, that did not happen. It's as simple as that. Another point, we did in fact share that decision with the town immediately. I don't know where he gets that we did not do that also. We wanted to prove...

Stan DeFreese: Do what?

Micheal Skolnick: We shared the court's decision with the town right when it came out.

Stan DeFreese: Okay.

Micheal Skolnick: We wanted to prove that they couldn't prove that the deck has been there for 30, 20 years.

Stan DeFeese: So, you said to the town that they couldn't have proved the 30 years?

Micheal Skolnick: Yes. We sent that decision immediately. Because it really weighs in our favor here. Like I said, trial scheduled for this year, the only things that were actually decided on summary judgment here, were that, yes, a trespass does exist. That's not disputed. The deck is encroaching on the property. There's also, they couldn't prove adverse possession at this point. Yes. They did not make them remove the deck because they deemed it de minimis. However, that's not why we're here today. We're here today to show you, yes, they violated zoning regulations that are in your ordinance.

The issue at trial and the civil matter that's between these two parties is a completely different set of facts, different claims against the parties. We're not here for that. He's

trying to muddy the waters and show you somehow that the deck has been there, yet that's never been proven. We still have to go to court to prove that this is expanded. Yes. But we couldn't do oops, sorry. We could not file for summary judgment on that fact, because there's disputes of fact. That still has to be tried in front of the tribunal. We're sitting here today for completely different reasons. Like Mr. Lambert said, it's quite clear that something structurally changed about this deck. That's not disputed. There were many, many boards that were replaced, new sauna tubes, everything. That's outside the scope of the permit.

There's an NOV. There's a meeting behind closed doors. The result of that meeting was exactly what someone would come to this board for. It took place of an appeal. What should come to this board within 30 days is an appeal. However, there was a meeting behind closed doors. We were not allowed to attend that meeting or invited. I don't know if we would be allowed to attend the meeting, but we certainly were not invited to that meeting. And there was evidence presented. There were even prior owners from my understanding that attended, yet the neighbor that's actually affected by this could never have been invited.

As a result of that meeting, there was a rescind of an NOV, and that's why we're here today. We timely appealed that rescind notice. They, there was originally a July NOV. Nothing happened. We got all the way to November, and due to the persistence of our clients, yes, there is an encroachment on their property, and they want that removed. Understandably, there's a trespass that's occurring. However, there's the November NOV, still no appeal. Instead, closed door meeting, which violates due process. It's a simple fact here. The town wouldn't be able to permit that expansion, because there's no right title and interest in our property, or Ms. Toussaint's property. Although there's a possibility that they could have expanded the deck under non-conforming, or under the non-conformance ordinance, they couldn't expand it as to go as far as to trespass. That's for certain.

It's somewhat flabbergasting that attorney Turcotte presented the decision the way he did, but that's really not the case. We still have to go before the court, and that's where we stand today. I believe Mr. Lambert wants to address some of Mr. Scribner's comments as well.

Tom Mourmouras: I just have one question. Procedurally, so it's in court right now, in the, I believe, the main superior court. Say something went through the ZBA and there was, like, an appeal coming through the town, would that be on the same court or would that be a separate court?

Rick Haskell: It would start in district court.

Tom Mourmouras: Okay. If there was a decision made and someone, if there was a decision made and someone wanted to appeal, it would go to district court. And district court could put it right to superior court, but it was signed in district court.

Rick Haskell: But could it potentially end up in the court that they're scheduled for in April?

Ben McCall: No, I don't Yeah, I can take that question. I'll introduce myself. I'm Ben McCall. I'm from Jensen Baird in Portland. I'm here representing the Board of Appeals tonight, not representing either party, and once everybody's had a chance to say their piece, I'll have some thoughts and instructions for the board. But, uh, to your question, Tom, um, these are, these are two separate tracks.

Tom Mourmouras: Yeah.

Ben McCall: And two separate sets of issues. Um, there is a civil case that's going on. It doesn't involve the town of Old Orchard Beach. It's, um, I'm not involved in that, and so I won't try and categorize everything that's going on. But it's, it's, it's an encroachment dispute or trespass, um, issue that neighbors have with each other a lot. Um, that question involves property rights between two sets of individuals.

Irv Paradis: Speak into the mic. I can't hear you.

Ben McCall: I'm sorry. I'm a little bit closer.

Irv Paradis: Thank you.

Ben McCall: So, as I was saying, there is a pending case right now between both parties that you've heard from tonight. That case doesn't involve the town of Boulder Beach. Um, and it involves property rights between two sets of individuals. Um, it is true that one way or the other, this board is asked to make a decision on Ms. Toussaint's appeal. Um, anybody who, um, is aggrieved by that decision on either side has rights to appeal this board's decision to Maine Superior Court under Rule 80B, the main rules of civil procedure.

But, um, even though they may involve the same sets of issues, um, I, I think it's probably a lot of the same issues but not all, all the same issues. Um, that appeal would be dealt with separately. That would involve the town of Old Orchard Beach because it would directly involve a decision of this board.

Um, so I, I think I answered your question, but, but essentially, even though we're dealing with the same sets of issues, this case although I'll leave it to the litigants to decide that for themselves. This case, um, this appeal, any appeal of your decision won't necessarily affect, um, what I suppose is scheduled for trial in April.

Tom Mourmouras: Or vice versa, like would the trial in April potentially clear up, clear up this issue. Like, is this something that should potentially be, like, tabled until that one sees its day in court, I guess?

Stan DeFreese: Because I think, one of the questions I think I'm having with you is if we're looking at this as a zoning issue, zoning board issues, of what, what requirements that you use for this deck, we're supposed to be deciding on that.

Ben McCall: Correct.

Stan DeFreese: Okay. That's what we're supposed to be deciding on, on that, those rules.

Ben McCall: So, Boards of Appeals, and I'm sorry if I'm getting ahead of this 'cause I know, I know that Mr. Richard Lambert still wants, wants to speak. But Boards of Appeals in Maine, um, you're creatures of statute. So, you have a very limited scope of thing of types of issues that you can review. You're here tonight to look at an administrative appeal. It's from section, um, 78111 of your code of ordinances. And you are being asked to look specifically at the decision of the code enforcement officer.

That decision, um, was a December 1 letter that was sent to Ms. Toussaint that resend or gave notice of the decision of a notice of violation that was previously issued. Um, in previous years those types of decisions weren't even appealable. Um, the law has changed on that in, in, the last five or six years. Um, and although I haven't heard any argument one way or the other, I think it seems that both parties, um, agreed that this is a decision that can be appealed.

Um, what you're being asked to look at is the decision of the code enforcement officer to rescind this notice of violation, which although I'm not going to put words into his mouth, at least to the board could indicate that the town of Old Orchard Beach has determined that there is no longer, um, a, a violation of its code of ordinances that it considered to be active.

Um, we can get into the, the back and forth about how that decision is made. But I can tell you generally, um, I represent a lot of municipalities and, um, decisions to rescind notices of violation are made frequently. Um, they aren't made with, um, they're not made after hearing. They're administrative decisions of, of a code enforcement officer, which can be appealed, uh, like you're seeing tonight, but aren't necessarily the types of situations where a full hearing before the Board of Appeals would be needed before that type of, um, notice could be rescinded. Um, so I'll, I'll let Ms. Richard Lambert finish, but then we can discuss a little bit about the, the framing of, of what this board has really asked to do.

Richard Lambert: So, there were actually, uh, two issues that are under appeal here, uh, as far as whether or not there is a zoning violation, uh, that precipitated the, um, notice of violation that the code enforcement officer sent. One of them was, uh, whether or not the, uh, the deck actually was extended beyond the property line. But beyond that, uh, it is the fact that the deck was fully and completely reconstructed. Uh, although Mr. Scribner did say he, uh, the stringers were reused.

And in this photograph that you have in your packet, you can see some of these, uh, older stringers, that Mr. Scribner reused. But they're fastened to a brand new ledger board. Those stringers would have had to been removed and replaced because these are all new joist hangers that were installed on the brand new ledger. So, it's possible that he can, he refused a lot of the lumber that was still good.

Not all the deck was ripped was, was rotten and had to be replaced. And I don't blame him for wanting to save a little bit of money with use reusing, uh, lumber that was still good. Uh, but beyond that, uh, there is the fact that the deck on the second floor was expanded. Now, this photograph, it's also in your package, shows a j what they call a j channel, which is this white strip. It goes up to here and then stops.

Beyond that, there is no white strip. That part of the deck was added as part of this reconstruction project. And that part of the deck is actually this little piece here. The railing used to be on the other side of the window. It was extended so that the deck goes beyond the window now. There was nothing mentioned about this kind of expansion on the building permit application.

There was no mention on the building permit application of a whole new set of post offices being put underneath the existing deck. There's some of them that are, that have been reused. I grant you. But there's what looks like, what appears to be new sauna tubes that were installed. In order to do that, you would have had to have a good part of that deck or almost all the deck removed and replaced. There's no doubt that all of the lumber in this photograph is brand new. There was no existing structure, any part of that existing structure that's part of this, this photograph here.

So that is what I, what I had to offer, is that we still have the issue of the, the demolition and reconstruction of, of a deck that had no valid building permit. That is a violation of the zoning ordinance. And by that fact, the notice of violation should have still stood. Instead, it was rescinded. So, uh, we want to make sure that the board keeps that in mind as well. Question? Yes.

Richard Lambert: It could be. But it would, it would involve a good deal of alteration of the existing structure, uh, because the stairs that are in, uh, in the position they are in today actually go and sit above the overhead well, the, the, uh, cantilever part of the deck. Uh, the 1st floor deck, it would be difficult to, to remove it. It can be done. No doubt about it. And that's why when we get permits, when I used to get permits for reconstruction of a nonconforming structure, always ask for a survey because we don't know where the position is. And a lot of times, we can't find those survey markers out there in the field.

Uh, and so when they find out what the information is, the correct information, they can take appropriate action to remove any of the encroachments that, at that time. And it would have been an ideal time because if building if, if the deck had been reconstructed completely as, as, uh, is noted in the, uh, report from their inspector, there is no doubt that, that could have been corrected at that time. But it still could be? It could be. Yeah.

Ethan Scoot: It could be reconstructed on our own property.

Richard Lambert: Yes. No doubt about it. Any other question before that.

John Turcotte: Thank you. Thank you, Mr. Stan DeFreese. I just want to address the point of how we could say that Ms. Toussaint had her day in court. And the answer is, because she did.

The motion for summary judgment is a legal tactic that the attorney can address, but before trial, if you have a multi count complaint, so you have five different complaints in one civil action, you can knock out some of those complaints with summary judgment, and that's what happened.

So, in this case, and, and the order is part of the packet, summary judgment was granted, which knocked out count 1, count 3 of, plaintiff's complaint, counterclaim, count 1, 2, and 3. So five counts of the complaint are done. Those are resolved. Those will not be heard in April. Those are done. So, she did have her day in court. And then, on these issues, and the specific language of the court, I'm not making it up. It's right here. It's on page 9.

Most problematically, plaintiff, Ms. Toussaint's motion and supporting documents do not address how defendant's minor encroachment, in place and unnoticed for over 30 years, causes greater injury to plaintiff than the injury defendant will face if ordered to remove or alter the deck. Um, and Mr. Scribner can discuss the, um, what would, you know, whether or not it can be done, 'cause he's looked at that specific issue.

And, but I just want to point out, November, um, sorry, a July notice of violation was referenced here. Um, I've confirmed with Mr. Haskell, there's no record of a notice of violation ever being sent by the city in July. The only one we have is the one that he withdrew in December. Thank you.

Scribner: So, I can address a couple of things. There were two tenants upstairs. There was one tenant downstairs. They had to use these stairs every day. There's, there's no way I could have tore the entire deck down. It was impossible. It has to be safe every single day. We have to do as little work as possible so I can put it back together. And he said that I tore the whole deck down. It wasn't torn down.

The center post that he's speaking of was already there, and Earl Morrill came over. He put that in like 25 years ago. He owned it for 32 years. The center posts you're looking at? And I just [indiscernible] [00:58:00] it. I put two by 10s on each side. That's all it was done. That's after we so he, he says it can't be done. Well, it had to be done that way. How do you do it if there's people living there, if you tear the whole deck down?

And to say it can be rebuilt, we have, that's what this is about. To take 2 units out of commission. That's what the plan is. That, that's what this is all about, to take 2 units on

the second floor out of commission to have the most damage to us. That's what this is about.

Stan DeFreese: Taken out of commission to rebuild the deck. Right?

Scribner: No. There, I don't believe, and I've measured, and I've tried to figure it out. The stairs are 36 inches. The set of stairs coming up, the set of stairs to the 2nd floor. The distance between the door on the first floor and the stairs is 36 inches. Everything is exactly how it has to be. How else would you build it? There's no way. So, every, so if I lost a half inch, either the stairs or from the stairs, side to the door will be less than 36 inches. They won't meet code. So that's just the way it is.

So, I, if, if they say it can be done, I'll tell you, um, it will have to come from the other side of the building, which I'd have to have a path along the side of the building. We have two, uh, propane tanks, um, on the other side. It would, it would, it would just and then would the neighbors allow it? I don't know. And then maybe, but at this point, the way it's set up, if we shrunk it even an inch, the way it is with those stairs, that's the way it was. It was 36 inches when I bought it. It was 36 inches in 1986 when they gave the certificate of occupancy. The stairs, the door, and the stairs coming up. That's the way they've been.

Stan DeFreese: I got a question.

Scribner: Yeah.

Stan DeFreese: Did you put this in? 'Cause here, what of this here? This, this.

Scribner: So, this is right here. So, this was brought and replaced by the bathroom. If you take them, you have. So, if you look at the back side right here these are the originals stringers. This would be so red. This was put in. It was cut. That wasn't an ad to them, the deck. I think that's, like, three people.

Stan DeFreese: Uh-huh.

Scribner: No one's, no one's saying that the deck would decrease by three. Um, so this right here was rotted. And there's another picture, I think, that, uh, if you look through our packet, you can see where they, the pressure they put a [indiscernible] [01:01:09].

Stan DeFreese: Okay.

Scribner: And then again replaced it.

Stan DeFreese: So, you're just right here just replacing the rod?

Scribner: Just that was through rod, you're here, but 68% of the outside rim choice is original. So, this, towards the fence, 68% of that is original. But that's....

Scribner: That's not original. So measured it. So, take a look right here. That's the original, original post on the outside. Uh, let's take a look at 68% of the outside rim choice is original. You can see right here. So, I measure it. So, everything here is original. Do you see stairs? It's a picture and these are just the same pictures as this. And these are just the same pictures.

Stan DeFreese: Yeah, but obviously, your pictures are totally different. These are the pictures I have. Can't really see them, but I'm pretty sure that, uh, if you have a package, maybe you could show that the pictures we have are not the same as his.

Scribner So, this is the same path you have?

Stan DeFreese: Yeah. I got; I got their statement here. It was just they needed to see what you were talking 'cause we don't have those. He showed it to him.

Ben McCall: My only concern is if you're going to be showing the board information that isn't in your record, isn't provided, that we just need to make sure we keep track of it. And just for the, just for clarification's sake, are they the photos that you were just showing the board chair, are those included in the packet that your attorney already submitted? Or are those photos that haven't been seen?

John Turcotte: They're part of the packet.

Ben McCall: They are?

Micheal Skolnick: Yep.

Ben McCall: Okay. Mike, are you okay with that? Do you have, do you have what you feel like you need?

Michael Skolnick: Yes. I think.

Ben McCall: Just want to make sure everybody's on the same page.

Michael Skolnick: Absolutely. We obviously haven't had an opportunity to review the packets 'cause we were, uh, never provided with the package submitted by, submitted by the Scriveners. But, uh, from what it seems, everything that attorney Turcotte said was in here is the decision and any photos, but that really doesn't change anything that we have to say today, so.

John Turcotte: I just want to apologize. Uh, when I file the packet Ms. Toussaint has represent herself. I assume the town sent it to the applicant. So that's all I'm saying.

Stan DeFreese: Anyone else?

Ben McCall: If you're so, so one procedural point before I get into this, if, um, if nobody else needs to say anything, my suggestion would be for you to close the public hearing on this, which would end public comment from all sides, and then it would be up to the board to deliberate. You could ask questions of the parties if you have them and if they arise, but just to signal for the public.

Stan DeFreese: Do you have anything to say for or against? Okay. From the board.

Ben McCall: So again, um, I'm here representing the board, and I sort of see my job as, as twofold. One is to hopefully answer all the questions that you have as they may arise. But I, in administrative appeals, I feel like it's usually helpful for me to, as best I can, sort of set out the course of what your decision is tonight 'cause you've heard a lot of information from both parties. Um, I think I'll start by talking a little bit about code enforcement in general and, and the effect one way or the other of, of your decision.

So, um, municipal code enforcement is handled by the code enforcement officer, and their job is to perform inspections, to, um, to, issue building permits. And if they determine that there are, are violations of, of your code, to issue notices of violation. Um, those are issued regularly as part of, um, any code enforcement officer's job. But when there's a notice of violation issued, um, the property owner or the violator, if they're not a property owner, can always appeal to you and have you look at the substance of that notice of violation and perhaps either uphold the notice of violation or find that it was issued in error.

But regardless of that, the ultimate decision of whether to bring a land use enforcement case, which is we municipal attorneys refer to, refers to it in shorthand as rule 80k, uh, which is the, the rule of civil procedure that governs that. That's up to your town council. So, if there's a situation where a notice of violation has been issued, it hasn't been appealed, the issue is ongoing, and the town council wishes to use, um, its authority to bring enforcement action that can happen. Um, what you're looking at tonight is, is it an issue that's even narrower than all of that.

So, you've heard from the parties that there was a notice of violation issued. This is in your packets. Um, I think there are probably at least three or three copies of this notice of violation that are in the record. But, um, the packet that Mr. Richard Lambert handed out at the beginning is the, I think it's the, the document right after his, his summation of things. This was issued November 1 of 2023, uh, issued to 3 Main 90 Main Street LLC, and it notifies them of two specifics identified, um, violations of the code of ordinances.

The first is the expansion of an existing deck without a building permit, um, and the second is the increase of nonconformity of a nonconforming structure. So that was issued on November 1. And a month later on December 1, the code enforcement officer issued a letter not to, um, those who received the notice of violation, but to Ms. Toussaint that indicated that that notice of violation had been rescinded.

So that is the decision, that, that is, um, this outline is December 1 letter that decision to rescind that you're looking at directly tonight. So as your chair mentioned at the beginning, an applicant to this board always has the burden of proof. And your review of the code enforcement officer's decision is what we call de novo appeal. And what that means is, is that you're not looking, um, at, at, at a record that the code enforcement officer created. You are allowed and encouraged to take into account all of the information that's been submitted to you in writing, all of the information that you've heard from various, um, parties tonight.

And your job is, is somewhat narrow again. It's to determine was that December 1, 2023, letter that rescinded the notice of violation an error of the code enforcement officer. If you find that it is, then that would in effect reinstate the November 1, 2023, notice of violation. And so what that means, in effect, is that you need to con-, be convinced, it's this is a, it's a local administrative proceeding so we're not using the under reasonable doubt or, um, I supposed it's, the standard is generally, um, somewhere between a preponderance and clear and convincing evidence if you want to get really technical.

But, um, you need to be convinced that Ms. Toussaint and, and her representatives have proven to you, um, that the code enforcement officer was in error when they rescinded that, um, notice of violation, which in effect means that they were in error in determining, um, that one or both of those violations that were identified in November, in fact, weren't there anymore.

Um, if you agree with that argument, um, you will grant the appeal. If you believe that the Toussaint's have not met that burden, then you would deny the appeal. But regardless of what you do, that is no guarantee. And this is, I think, more to Tom's point earlier. That's no guarantee of what happens next. All that means that the violation would either remain not in effect or it would be reinstated. So that would be no guarantee of what happens next.

Tom Mourmouras: Would they be given 30 days, like, pretty much would be reinstated with a new timeline or is it effectively like what they were saying is that it's, it's already lapsed now?

Ben McCall: Well, so, so what would it, what would in effect happen is you're going to issue a decision. And, um, if your decision is well, there, there will be, by, by the nature of these things, one party that is perhaps more, um, has a better opinion of things or is, is happier with your result than the other. Both either of those parties have the option of appealing your decision directly to superior court that would look at your decision directly, um, and figure that out.

Um, it was noted, and I don't think it's really in dispute, um, there was no appeal necessarily issued of, um, or filed of the November 1, 2023, notice of violation. Um, that...

Ethan Scott: [Indiscernible] [01:12:17]

Ben McCall: There so, so it was issued, um, to the property owners, and that wasn't appealed. It was rescinded instead.

Tom Mourmouras: Rescinded by December 1st?

Ben McCall: It was rescinded on December 1st. And if it was reinstated, um, I suppose, uh, that's a question more for, the applicant and it's, it's getting into a situation that isn't really before you tonight about what the procedural posture of that would be. But there would either be an appeal to Superior Court of your decision, or perhaps if you were to consider that to be a new notice of violation that was issued in another appeal. But I think that muddies the waters more than it, than it needs to be.

Tom Mourmouras: And we don't know the reason why this, this, this, this notice of violation was rescinded to you.

Ben McCall: We don't. Um, there, there is not all that much detail. Um, and you're really, you are relying again on the administrative record that is before you. And so that, that includes everything in writing and everything that you've heard. Um, and so the, the board can draw its own conclusions. And in fact, you have to draw your own conclusions as to what, um, what that all means.

There are two points I want to point out though that were raised, um, by various parties. The first was raised by the appellant, about the effect or, or lack of effect. What effect if any, um, an alleged meeting behind closed doors had, um, between the, uh, the recipients of the notice of violation and the town manager and the code enforcement officer.

Um, like I said before, I think, I think it's fair for this board, um, to take that issue and set it aside. Um, for two reasons. One, um, and again this board could decide to, to ignore, ignore the advice on this point. But from where I'm sitting, it's regular practice, um, outside of the context of active litigation for notices of violation to be rescinded for a whole host of reasons. Um, their rescissions of NOVs rarely appealed, but that's beside the point.

Um, but even if you were, um, to agree with the argument that perhaps this was a violation of a, of a due process right, for instance, that was, that was alleged. Um, zoning boards of appeals don't have jurisdiction to decide constitutional issues. Um, and I think that goes directly, um, I think regardless of, of the means by which, um, the rescission occurred, you're still looking directly at, at that decision of the code enforcement officer and trying to surmise one way or the other whether that was correct.

Um, the second point has a lot to do with, um, this superior court case that is going on. I will mention, and I don't want to muddy the waters more on this. There is a principle called, *res judicata*. And what that essentially means is, is it prevents, um, parties from re litigating issues that have already been decided. Um, this is, I'll admit, the first time that I've ever seen effectively reverse *res judicata*.

Um, what will typically happen is a party may have a right to appeal a certain issue to this board. So, say, in an administrative appeal context, someone's issued a notice of violation, and they choose to appeal that to you, and you uphold the notice of violation. Um, if, uh, if an identical notice of violation was issued later and, um, and that decision hadn't been flipped by a court, it would effectively prevent somebody from relitigating those issues.

Um, I think it's ultimately up to this board to decide what weight, if any, you want to give to the superior court case. But I can make a couple of observations. The first of which is, um, this superior court case like I mentioned before doesn't involve the town of Old Orchard Beach. It doesn't involve any allegations one way or the other violations of the zoning ordinance. Um, it does involve and I, I'm not a trial attorney. Um, both of these gentlemen that you've heard from before having far more experience in that than I do.

But, um, it is true that what you saw was an order from, what are called motions for summary judgment, um, which are filed before trial to, to somewhat knock out issues that there may be no factual disputes on. Um, I can only give you my, you know, my opinion on this. There is, you've heard from attorney Turcotte. He cited 1, section on page 9 that seemed to indicate, um, at least in his opinion, and I'm, I'm, I'm going to keep my opinion out of all of us because the, the decision is yours, but he seems to indicate that, um, the court found that the deck and stairs in, in question had been there for over 30 years.

Um, I'm reading that in black and white. What weight you decide to put to that, if any, is up to you. Um, on the other side, you have Ms. Toussaint and her representatives have, have told you I think quite clearly that in their opinion, um, while we're still, while this litigation does involve the same set of deck and stairs, that the issues are totally separate. Um, and I think what you should do as a board is to first focus directly on, um, the issues that are particular to the town of Old Orchard Beach.

And that is, um, there was a notice of violation issued on November 1st. There was a rescission of that on December 1st, and there's now been an appeal, which nobody is arguing was not timely to you, asking you to, uh, in effect, undo the rescission, reinstate the notice of violation for November 1, uh, and go from there.

So, I'm going to stop going on and on. Um, my mouth is somewhat dry, and I've been talking for too long. Um, how this typically works procedurally and then and then any questions, I'm happy to answer. Um, this is an administrative appeal. This is unlike a variance in the sense that you don't have standards that you are going to be going through sort of as a checklist.

Ultimately, as I said, you need to determine whether, um, the appellant has met their burden of proof in, proving that in effect there are there remaining violations of the ordinance, um, contrary to what the CEO found. Um, you can get there in a lot of ways. Um, my job from here on essentially is to take down your thoughts and distill them to draft findings of fact.

Um, as a reminder, state law requires that you issue written findings. That's my job to help guide you both through the decision making process and also to put a draft together. The, the kicker, I suppose, is that, um, state law also requires that from the date of your vote, however, whenever you decide one way or the other to vote to uphold or deny the appeal, you have to issue written findings in seven days.

I don't know who created that timeline. Um, for boards that meet once a month, that can be pretty, that can be pretty tight. Um, so you have a couple of options. If you vote tonight, and that's if you feel that you've gotten there, that's your prerogative. Be prepared to meet sometime in the next week to review some draft findings, finalize those, and make sure that they're issued on time.

Um, if you would prefer not to do that, um, either way, it would be helpful from my perspective to get a sense of, of which direction the board is going, what your reasoning is, and then at your next meeting regularly scheduled, um, you'll have draft findings available for you. And then on that date, you can both make a final vote on the, on the application and then approve those findings.

Ben McCall: Doesn't matter to me. I can have them ready for you in a week, but it's more for your schedules, um, than...

Tom Mourmouras: Nothing can be entered into the record at that second one?

Ben McCall: Correct. So, so your public hearing is closed.

Ben McCall: You've received your information and the record is effectively closed now. So, if you were to, um, to continue this, um, after you've done some deliberating, um, it would only be to finish that part of it, to finish your decision making. Parties, of course, are free to, to come on that date and, and, and observe. It's an open public meeting. But that wouldn't be another opportunity unless you really felt the need to reopen and get more information. It was really just to finish the paperwork, so to speak.

Stan DeFreese: Yeah. Good. Um, this is what we're going to do now is then I'm going to look at the board. We're going to look at Ethan, Tom, and Ivan, and we're going to, I'm going to ask, uh, first, uh, how you want to proceed with this. Do you first do, Ethan, do you have any questions for the lawyer or for Rick?

Ethan Scott: I don't know.

Ivan: Me neither.

Stan DeFreese Ivan? Tom, are you?

Tom: Um, I guess the final question I just had was procedurally. So, if this, if it was voted in the affirmative with the appeal and then that brought that notice of violation

back, would the party be able to bring appeal back to us, back to the ZBA? 'Cause I know, like, in the appeal, it states that you can within that time frame. I guess that's where just a little unclear. Like, is there an opportunity for it to be brought back if that was rescinded? Just so it goes through the full democratic process of, I guess, here in both sides.

Ben McCall: I'm not going to punt that completely to your full time attorney, but I, I would give you, I, I would tell you this. I think these decisions are, there's another legal principle called the exhaustion of, of remedies. And the way I would interpret this, and other parties are free to disagree with me and pursue their own strategies. But, um, if you were to vote in the affirmative, that would have the effect of reinstating the notice of violation.

But I think the next procedural step would likely be to superior court to appeal your ruling, um, it would involve the same facts, and it would be the same process. It would still be a question again of whether there is a violation of the ordinance and whether you, in making that decision, did your job correctly. It would essentially be and this is the beauty or the, or the curse of a de novo review is you're being asked to step into the shoes of the code enforcement officer, not giving any preference to that decision and, and looking at everything in your work. Um, so that, in effect, would be the, would be the, um, that would be the available right of appeal, would be to Superior Court.

Tom Mourmours: Okay.

Ben McCall: Um, I would say, of course, that regardless of the status of the notice of violation, it doesn't guarantee the town is taking enforcement action one way or the other.

Stan DeFreese Okay. My second question would be to the board. I mean to the board. Are we ready to make a decision, or do we feel that a draft would be the pertinent thing to go? Do you feel, go ahead.

Irv Paradis: Can I make a couple of comments?

Stan DeFreese: Absolutely.

Irv Paradis: Okay. Thanks. Um, first of all, I carefully have reviewed all of the material, and it's blominious except what we received tonight. I know, looking at it briefly, it contains a lot of what we, what's in the other packets that we've received. The only thing that's missing that Mr. Scribner mentioned is a certificate of occupancy. My packet never had one, just for the record. But I don't think it's very relevant. What I find is that, um, most of the information that I looked at comes from, Mr. Turcotte. And I find some compelling evidence that, uh, compelling data that, uh, leads credence to what I think is central to this issue, is whether or not this deck has been expanded since 2019, um, when those building permits were issued.

If you go through the property cards, there's one from 1989, 94, 95, and 2023. All of them list that deck as 6 by 22 feet. Now, what we just heard Rick say is that 6 feet could be 6 and a half, up to 6 and a half feet. It would have been downsized too, rounded down to save the owner some, uh, taxes. So, we don't really know when this deck was expanded, but it is clear that it is, um, more than 6 feet. In fact, I measured it myself. I've examined the deck, and I, I also agree that the original building permits are somewhat disingenuous, and that a lot of work was done that is not really reported, uh, that's not really asked for in that, uh, in the deck.

Some of the material is, is there from before 2019, but most of that deck looks to me to be from the construction of 2019. Was that when the deck was enlarged? I really don't know, and I don't think it was enlarged beyond 6 feet to 6 and a half feet at that time? We don't know, and I can't tell either, especially because these property cards don't say whether it's 6 or 6 and a half feet. And per my own measurement, I agree with, I think Rick is the one who went to measure it. He measured it at 77 and a quarter inch from the beam attached to the house to another beam at the outer edge of the deck.

But it's actually more than 77 and a quarter. It's actually 78 inches because there's an additional 3 quarters of an inch from overhanging floorboards that extend over that last beam by 3 quarters of an inch. So, it is 78 inches in total width, which is in my view, exactly 6 feet and 7 inches. But nonetheless, that would still have been downsized to a 6 foot deck on those property cards, dating all the way back to 1989.

Additional evidence that we don't know exactly when this deck was enlarged is from the material that Mr. Turcotte submitted. And perhaps to me, the most compelling evidence is from a guy by the name of Dale Shannon. His affidavit from 12/1/22, uh, states that he, he, built a fence along the backyard of the Toussaint property. He says, I don't recall specifically the year, but it was approximately 10 years ago that Mr. and Ms. Toussaint hired me to put up a fence on their property.

Mr. Toussaint directed me to install the new fence all the way toward the back of their property, right up against the existing deck of their neighbor, which I now know to be the property located of the Scribner's property. I erected the fence as he told me to. In some places, the fence was only a few fingers' width away from the neighbor's deck. So, this tells me that whenever this fence existed built, presumably 10 years earlier would have been 2012. He doesn't know exactly the date. He said it was about 10 years ago.

At that time, it looks like it was, by this information, larger or wider than 6 feet. It might have been 6 feet and 7 inches because it was just, quote, a few fingers width away from his deck. And then there are affidavits from previous owners. One from Earl Morrow, who owned the property from 1989 to 2016, who said that visually, he thought that that over between 1989-2016, the deck that existed, exists today looks like the way it is today. And then there's another affidavit from a guy by the name of Brad Lodge, who, um, did a survey for a mortgage loan application for 2019 and then came back again to reevaluate the, the deck in relationship to, um, to where it is today. And he again said that he couldn't see from 2019 to the date of his affidavit, which is December 2022, that it had

been enlarged. He said it was the same deck. And there's another affidavit from another owner before the Schippers who also said the same thing that visually, uh, he couldn't see that there was any change in the width of the deck.

So, in my view, it looks to me like Rick basically made a mistake in issuing a violation in the first place, and he corrected his error in December. He said that his basic contention is that there was an expansion of an existing deck without a building permit. And, um, it, uh, probably, we have no way of knowing whether it was enlarged or not. At least, not enlarged since 1989, which certainly would, uh, grandfather it in place. So, there was probably no violation. My view is that there was no violation in the first place. So, Rick was right to rescind his notice of a violation. That's all I have to say.

Tom Mourmouras: I'm still struggling too, uh, unfortunately, we're not, we're not judges. Obviously, we're volunteers on this and just dealing with the procedure of this. Obviously, it's extremely confusing. I appreciate, uh, your comments guiding us through this. Um, yeah, ultimately, I think the question comes down to can it be proven that, or with the evidence shown to us today, can it be proven that this was expanded within that time frame? And I think, um, Irving kind of spoken to it where it's very difficult for us to, just going off of this prove in any way that it, it was expanded in that time? I mean, you look through the affidavits and everything.

Um, it is difficult. Um, uh, this is a tough position, I think, realistically, if it had been brought to us and done in a different way. Um, how do we have to work on it right now with, with that question, um, it'd be difficult for me to vote in the affirmative just based on the evidence that's, that's been given to us today.

Stan DeFreese: Right. So are we saying that we're ready to vote or we want to, uh, table this to the lawyer Ken or, oh, yeah. I'm sorry, Ethan. Go ahead. I'm sorry. Go, no, please go.

Ethan Scott: Yeah. In my opinion, I believe that that is expanded onto her property. Um, all the information that we provided is the property cards that we're. And they were all listed as 6 feet. I appreciate it. So that's the information I'm relying on. And seeing that they expand, um, that proved, in my opinion, based on the fact that we're.

Tom Mourmouras: Okay. I guess that's like my question is. And what I was trying to get it to is if there, like, if this was brought to us as an, as an appeal, usually on the other side of this, if it was encroaching or whatever, they'd have to come to us for variance and then we could kind of get stipulations on that. But where it's weird for us in this regard is just this, we're not, this isn't like an appeal in that regard. So, we just have to obviously look at it based off that code enforcement's decision. And that's where this account is still struggling because it's, um, this puts us in a pretty tough place. But I think just looking at that one, if that is the one very narrow thing we have to look at, it's tough.

Stan DeFreese: So, um, my question now is to the board is do we feel that we can decide or do we want to postpone and have the lawyer come up with drafts? Are we ready to make a decision?

Tom Mourmouras: So, I think with whatever we all are doing, realistically, we would have to, I mean, give him time to draft everything up and then bring it back here. Um, just because I don't know if you'd be able to turn that around that quickly there or not.

Ben McCall: I can turn it around in the week. That, that's just part of the job. Um, it's a question for you as a board, frankly, about whether you feel that scheduling wise, you can meet at some point in the next 7 days. Um, realistically, that's next Monday because, right. And so that, that's really the position that you're in. I mean, I'm one way or the other, I'll need to provide you with draft findings, and there, there is a draft for you to deliberate over and make sure that they're correct and, and mirror what your decision is. It's just a question of when you're going to review those.

Stan DeFreese: So, if we, um, do that Irvin took a boat right now then we don't have to do this 7 days later?

Ben McCall: If you, um, so, um...

Stan DeFreese; We decide...

Ben McCall: The statute, the statute reflects that you need to adopt written findings within 7 days of your decision. The decision is, is your vote. So, at this juncture, you've heard a lot of deliberations from your fellow board members, and I suppose you're at a, you're at a crossroads, um, or fork in the road, uh, depending on your preference. Um, you can take a vote tonight.

Um, you would still need to review draft findings that will be prepared for you that's going to happen in the next week. Um, if you prefer not, you can continue this to your next reading. Um, you will still have draft findings for you to review that reflect everything that I've heard up to this point, all the information that you've provided. And then at your next meeting, you'll be in a position to have that final vote and adopt those findings.

Tom Mourmouras: So that's where we could, like, table it for the next meeting, be able to kind of review everything that we've been present with today, review your draft findings, and then make that final decision at the next meeting?

Ben McCall: That's something that you can do. The only thing that wouldn't happen at the next meeting, like I said, is that it is not...

Tom Mourmouras: It's a closed meeting.

Ben McCall: It's not a, well, it's, it's, it's before public, but it's, um, right. You are not taking new evidence in at that point.

Tom Mourmouras: And then, but we're supposed to be getting some more time to just look through that.

Stan DeFreese: Okay. So, I'm, what I'm going to do is I'm going to close, close this. I'm going to propose that we postpone the decision on this to next, um, zoning board meeting to get a chance to review and do your drafts. Um, do I hear, uh...

Tom Mourmouras: So, everything, everything that's been on the record is what's going to be on the record for his findings. And then we'll be voting at the next meeting on those findings. Is that correct?

Stan DeFreese: And there's no new evidence coming in. We'll just vote on what we have.

Ben McCall: The only thing, Mr. Stan DeFreese, I'm not going to put you on the spot, but, um, I've heard from three board members, and I haven't heard from you, and I'm not going to ask you to, to go on the record on that tonight. But I guess two reminders. One, um, you have four board members voting, so you're going to need, um, you're going to need three to sustain an appeal. Uh, 2-2, uh, tie is in effect a, a, a, a, a, a, a, a, a, a denial of the appeal. Um, so that's one thing to keep in mind.

Stan DeFreese: Say it again.

Ben McCall: So, you have four board members voting.

Stan DeFreese: Yeah.

Ben McCall: Um, you need a, you need a majority of the board to approve an appeal.

Stan DeFries: So that would be three members.

Stan DeFreese Yeah.

Ben McCall: So, a 2-2 draw is an effective denial.

Stan DeFreese: Yeah.

Ben McCall: Um, so that's something to just keep in mind.

Stan DeFreese: Yeah. All right. Um, have I heard a motion to propose postponing to next meeting?

Tom Mourmouras: Um, yeah, I second it. Um...

Tom Mourmouras: So, I make a motion to, um, postpone the final vote until the next ZBA meeting, where we will review the findings drafted by the town's attorney, um, and then we'll make our, our decision, if that makes sense.

Stan DeFreese: Okay. This has been postponed for the next, next zone meeting.

Ben McCall: Do you have a, I, I hate to be a stickler, but...

Stan DeFreese Okay. Let's, okay, yeah, let's vote.

Rick Haskell: An affirmative vote on this would be to table it till the next meeting. Stan DeFries?

Stan DeFreese: Agree.

Rick Haskell: Tom Mourmouras

Tom Mourmouras: Agree.

Rick Haskell: Ethan Scott?

Ethan Scott: Agree.

Rick Haskell: Irvin Paradis

Irvin Paradis: Disagree.

Irvin Paradis: I wanted to get it done tonight.

Stan DeFreese: Um, item 3, uh, item 3 proposed miscellaneous appeal reduction of front setback from acquired 20 feet to proposed 15 feet, reduction of size setback required of 15 feet to proposed 7-point, 7 point 5 feet. Reduction of rear setback from required 20 feet to propose 10 feet. This bill will allow obstruction of accessory dwelling unit. Owner is Constance and Raymond D.

Stan DeFreese Uh, location 23 Odena Avenue, MBL 31562. Come on, brother. State your name.

Karen: Good evening. Um, my name is Constance Karen, and this is my husband, Raymond Karen. And we live at 23 Odena Avenue.

Irv Paradis: Can you pull the mic down closer to your [indiscernible] [01:42:29].

Karen: Oh, okay. Is that better?

Irv Paradis: Oh, yeah. That's better.

Karen: Okay, okay. Um, we're here tonight to request, um, permission to alter some setbacks on a piece of property that is, um, we have an oversized lot. That's 113 feet by 60 feet, and we'd like to use that extra land to build a year-round accessory home, um, on that lot. And our daughter and her husband have been looking for property to come back here in Old Orchard. And as you know, there hasn't been much property in the last few years that's been available. So, we kind of had the brainstorm that maybe they could, uh, build right next to us on that open piece of property we have.

And, um, if we do get permission to build that, they would occupy the home, um, which would be a win-win for us to have them near us and for them and for the town. Um, we're getting older. My husband's almost 83, and I'm in my late 70s. And we can see that things are getting harder for us to take care of, like shoveling and all that kind of stuff. And having our daughter and her husband next door would be a godsend and would enable us to stay in our home and enjoy our home for a longer period of time. And our goal is to not have to go into nursing homes somewhere. That's on our minds at this point.

Um, the year-round home would have a setback, uh, I'm sorry, would have a, um, footprint of 25 by 35 feet and would sit about 25 to 30 feet back from the road, which is a great deal more off the road than most of the properties on Odena Avenue. Um, to do this, we're requesting that the following setbacks be eased. The front from 20 feet to 15 feet, the back from 20 feet to 10 feet, and the two sides from 15 feet to 7 and a half each. The land, um, on our oversized lot would be slightly more than the 60 by 40 pieces of land that most of the properties on our road have been, um, built on.

Um, 23 Odena Avenue has been in my family for about 70 years. My aunts and grandmother owned it for many, many years. And growing up, I spent time there as a child. And then, um, my husband and I have now owned it for 8 years, and we are year-round residents. And, um, as I said, we've been here for the past 8 years. And since those 8 years that we've been back, the neighborhood has changed considerably.

Instead of a bunch of cottages, now we have, um, a combination of small cottages, which include ours, and brand-new high rises that go up to almost 35 feet, uh, limit. And we feel that a new house next door to us would not, um, what well, it would conform to the rest of the properties on that street. And that's all I really have to say. If you have any questions, we'll try to answer them. We don't have any lawyers with us or anything. So.

Stan DeFreese: Anyone, um, questions?

Irv Paradis: I don't have any questions.

Ed Bones: I've got a quick one for you. Do you happen to know the distance between your house and the new blue house to the left of you?

Karen: The blue house that's there now?

Ed Bones Yeah. The tall, yeah.

Raymond: Uh, that would be, I'm guessing about 10 feet.

Karen: No. To our property line.

Ed Bones: Yeah. Between your house and that, oh, and your property line.

Karen: It's more than 40 feet.

Raymond: It's, uh, 44 feet, I think.

Irv Paradis: Okay.

Raymond: Maybe 45.

Karen: Yeah. I think if you look on the site plan that looks like this, you might be...

Karen: It doesn't have an attachment number. It's just something that, oh, attachment number one.

Ed Bones: It's 35 feet? So, so the new house will be about 12 feet from your current house?

Karen: I'm sorry?

Ed Bones: The new house will be about 12 feet from your current house to the.

Karen: About.

Ed Bones: Okay. That, that was my question.

Karen: No. Would the new house be about 12 feet you said?

Stan DeFreese: All right. Anyone, um, talking for them?

Raymond: Could I just add one?

Stan DeFreese: Absolutely. Speak into the mic, please.

Raymond: I, I have stage fright. Um, I'm running out of time. I'm 85.

Karen: Eighty-three.

Raymond: See, I just told you. I'm, I'm going to be 83 next month and what matters to us is family. We have a very, very close family. Two daughters, two granddaughters that are, uh, 5 and 8. And if our younger daughter could move next to us, if I ever get sick, uh, Connie will have some help. You know, uh, running, get, going to the doctor, if we can't drive, uh, whatever. Uh, and if we could just get back together, that's my dream. That's all I want.

And, uh, you're going to laugh at this, but, uh, my favorite thing to do in the whole world, almost, is watching her and my younger daughter play, play scrabble. The conniving, uh, the treachery, the deceit. And I just laugh at them all night. If I can do that, that's all I want for the rest of my life. And I don't want to have them visit me in a nursing home, above all, and Connie too. That's about it.

Stan DeFreese: Yes. Anyone else, else? Anyone talking against? Questions from the board?

Tom Mourmouras: It's not like all your neighbors are aware of, of this proposal.

Raymond: Yeah.

Karen Scott: Well, they all done the left.

Karen: Yeah. Not to us. No.

Edwin Bones: I had, I had 2 of the neighbors, uh, inquire, but nothing beyond that. [indiscernible] [01:49:36] what are they looking at doing, and that was the end of this.

Ed Bones: I'm sorry. One, one last question. So, you want to do a footprint that's 25 by 35?

Raymond: Yeah.

Ed Bones: And three full stories?

Karen: We're not sure.

Raymond: Two and a half or three.

Ed Bones: Okay. Garage underneath like the neighbors?

Karen: Probably.

Raymond: Yep.

Ed Bones: Okay.

Raymond: The car garage. And if you've noticed our house, if you've been there, there, there were pictures there.

Karen: Were you there tonight?

Ed Bones: Yes.

Raymond: That was you. Okay.

Karen: In the black van?

Karen: Yeah. See, we're, we're, we're so alone on that street. When we see lights, we kind of like, oh, who's that? Is everything okay? Okay.

Raymond: And if you go way back to the original deed and some of the other exhibits here, this was originally, uh...

Karen: Two lots.

Raymond: Two lots. And somehow, they were merged when we don't know. But, uh, and if you look at exhibit, uh, I don't want to digress here, but attachment four, you can see that most of our lots are 60 by 40. And that's what we would have, basically. It'd be a foot bigger than the other structures, many of the other structures. And if you look at on that same exhibit, there's a 3-unit condominium, uh...

Karen: Across the street.

Raymond: Across the street from us on a much smaller piece of land. And so, I think we would fit in and complement the neighborhood. It would be well maintained as up, as long as I'm alive. It'll be nice. And the neighbors all complement what we have now. You've been there. It's a cute little house. And, but that, that's about all I have to say.

Ethan Scott: Have you imagined our actual designs are playing stunts with that 25 by 30 5 full term?

Raymond: What?

Ethan Scott: Have you had any plans drafted?

Raymond: No. I...

Ethan Scott: I just, I just want to make sure you're aware of that, uh, any

Karen: Yeah.

Ethan Scott: Would also have to be within that 25 by 35 foot.

Raymond: Yeah. So, so the house will be 24, really. These eaves...

Stan DeFreese: We, and we come to eaves. So just understand that.

Raymond: On the edge.

Stan DeFreese: Yes.

Raymond: I did my report. So, the house itself would be 24 by 34.

Raymond: Uh, yeah. Well, we're planning on doing it. We can have an architect do this. And we're what we're planning now go-, going in the house or along the side of the house, then going right into the garage. The steps will be in the garage. approach beyond that obviously. And if you need a step, we'll put a piece of ground up there. Just whatever.

Stan DeFreese: All right. Thank you.

Stan DeFreese: So, we're going to go through the miscellaneous appeal. I'm going to, uh, read these, these, these, um, questions that we have here. So, you can sit down.

Raymond: Yeah. Thank you.

Stan DeFreese: And we'll vote on this for you. All right. Limit reduction of yards size slash limit expansion of lot coverage. A, the existing building or structure on the land for which the limited reduction or yard size slash limit expansion of lot coverage is, is requested where erect period of date of adoption of this provision or lot is a vacated, non-conforming lot of records. See attached.

Question 1a. According to the present-day standard, our lot as well as the other 16 lots on Odena Drive Avenue is non-conforming. Many of the homes are situated on 60 feet by 40 lot. Three homes on, on this undersized lot, including an abutter, were recently granted variances, raised and rebuilt. We are vying for the variance so that our land can be fully utilized as is the case with other properties on the streets. Um, Ethan?

Ethan Scott: Agree.

Stan DeFreese: Irvin?

Irvin: I agree.

Stan DeFreese: Ed?

Edwin: I agree.

Stan DeFreese: Tom?

Tom Mourmouras: I agree.

Stan DeFreese: I also agree. Uh, the request reduction is re-, reasonable and necessary to prevent the owner or occupant of the property from using and then join the property essentially in the same manner as the similar properties are utilized in the non, in, in the zoning district.

Question 1b. We are living on oversized lot described on the deed as two lots. We would like to utilize all of it, all of it rather than paying significant taxes, um, purchase these \$282,500 on a total, on the total parcel, a portion of which is unoccupied. This would enable us, being senior citizens, to live and remain in our, remainder of our lives at a location where we love and principally family owned since 1965. We'll continue to occupy the property in additionally the same manner as other properties are utilized in the zoning district. Uh, Tom?

Tom Mourmouras: I agree.

Stan DeFreese: Uh, Ed?

Edwin: I agree.

Stan DeFreese: Ivan?

Irvin: I agree.

Stan DeFreese: Uh, Ethan?

Ethan Scott: I agree.

Stan DeFreese: I also agree. Um, 1c. Okay. Due to the physical feature of the lot and it in, right, in or slash the, in slash or the location of the existing structure on the lot where not be personalized to construct the proposed expansion, enlargement, or new structure of in conformance with the current applicable yard size or, or lot coverage requirement. 1c. Um, in, in, in conformance with the present standard, we are unable to utilize our entire property unless the variance is granted. Excuse me. I got to I'm sorry. Um, because the land is deemed to be non-conforming with current epi-, epical, epical yard, epical yard size requirements. Um, Ethan?

Ethan Scott: I agree.

Stan DeFreese: Irvin?

Irvin: I agree.

Stan DeFreese: Ed?

Edwin: I agree.

Stan DeFreese: Tom?

Tom Mourmouras: I agree.

Stan DeFreese: I also agree. Um, the, the impact and effects of the enlargement expansion of the new principal building and structure on existing use in the neighborhood would not be sensible different from or greater than the impacts of effect of the building or structure which the impacts of effect of the building or structure which conforms to the yard size requirement.

Uh, question d. The effect of the new house on a lot as large as almost all other lots on the street will not alter the complex, the, uh, com-, complex position of the neighborhood rather than the neighborhood will be enhanced. Indeed, the new homes were architecturally designed to blend in and complement other structures which have in both cottages and more modern higher buildings. And, um, Tom?

Tom Mourmouras: I agree.

Stan DeFreese: Ed?

Edwin: I agree.

Stan DeFreese: Irvin?

Irvin: I agree.

Stan DeFreese: Uh, Ethan?

Ethan: I agree.

Stan DeFreese: I also agree.

Tom: I make a motion to grant the miscellaneous appeal to the Karens located at 23 Odena Ave, uh, allowing the addition of a three-story single-family home on the 35 by 25 footprint.

Stan DeFreese: So, who'll second it?

Ed Bones: I'll second it.

Stan DeFreese: Okay. Going to get a roll?

Rick Haskell: Affirmative vote would be to approve miscellaneous appeal. Um, Ethan?

Ethan: I approve.

Rick Haskell: Irv

Irv: I approve.

Rick Haskell: Stan?

Stan: I approve

Rick Haskell: Ed

Ed: I approve.

Rick Haskell: Tom?

Tom: I approve.

Stan DeFreese: You're welcome. Okay. Item 4, Ms. Lena, Ms. Lena's appeal, reduction of rear setback from required 20 feet to propose 11 feet 10 inches. These appeals will allow for addition of a bathroom. Owner, Elizabeth Borthwick, GCC, and Biblical with Reality, Reality Trust. Um, the applicant is Vincent Seidl.

Seidl: Seidl.

Stan DeFreese: Seidl. Okay. Are you, are you, are you Vincent?

Seidl: I am.

Stan DeFreese: Okay. Can you state your name and...

Seidl: I'm Vincent Seidl, uh, representing Elizabeth Bostwick for 5 Morrison Street here in Old Orchard. Uh, great friend of mine for many, many years. You want me to go ahead and talk.

Stan DeFreese: Okay.

Seidl: Uh, there is a little mistake. Uh, it says 11 feet 10 inches. The closest it'll be on the drawing is 11 feet 4 inches. Okay. So, it's 11 feet 4 inches. So, what we need to do is to use the shower. Um, it's the only shower in the house. And so you have to go outside to use the shower and so we want to bring that into the house. Now you would think it would be easy, um, to put a doorway into that outside shower. But in the kitchen, that's right where the hot water heater is. Right to the left, uh, right in front of the wall where that shower is.

So, we want to come out approximately 4 feet and just come up to the entryway of the house is and follow that same roof line, um, which will give us access to the shower right off the kitchen. And, um, probably put a commode in there as well. That's what the goal is. And, um, we do have drawings. The architect has done. Um, if anybody wants them, oh, they have them all? Okay. So that's the goal, just to have an inside shower.

Irv Paradis: So, the little, the little bump out that we've got in our pocket that's here, is that part of the kitchen now? Or...

Seidl: No. That little bump out is the outside shower.

Irv Paradis: That's the outside shower.

Seidl: Mm-hm.

Irv Paradis: So that's basically going to be ripped out in the process of building this U-shape...

Seidl: Right. If I could approach.

Irv Paradis: Yeah. Yeah. I understand. Before and after. Yeah. Thank you.

Stan DeFreese: Anybody that needs to see the rest of these plans here?

Stan DeFreese: Okay. So, have any questions from the board before I start?

Irv Paradis: No.

Stan DeFreese: Okay. All right. We're doing administrative appeal. Uh, the limited reduction of yard and size limit [indiscernible] [02:03:00], um, expansion of lot coverage. Existing building of the structure of the lot of which the limited reduction of the yard size slash limit expansion of the coverage is requested where erect prior, where erect prior to the date of adoption of this provision or the lot is vacant, not a booming lot of record. Um, current structure slash home was built, uh, 1950. Ed?

Edwin: I agree.

Stan DeFreese: Uh, Tom?

Tom Mourmouras: I agree.

Stan DeFreese: Ethan?

Ethan Scott: I agree.

Stan DeFreese: Ivan?

Ivan: Agree.

Stan DeFreese: I also agree. Um, B, the request reduction is reasonably necessary to prevent the owner or occupant of the property from using and enjoying the property essentially in the same manner or other similar properties are utilized in his own district. The addition is to make the outside shower part of the home by bringing it inside. This will modernize the shower and allow the occupants to access the shower from the inside home. Um, Tom?

Tom Mourmouras: I agree.

Stan DeFreese: Ed?

Edwin: I agree.

Stan DeFreese: Irvin?

Irvin: I agree.

Stan DeFreese: Ethan?

Ethan Scott: I agree.

Stan DeFreese: I also agree. Um, C, due to the physical feature of the lot and slash or the location of the existing structure of the lot, it would be practical for the construction of the proposed expansion, enlargement of the new structure in conformance with the current yard size or block coverage requirement. Um, replacing existing outside shower with this small addition is the best solution with the current structure and liable setback. The addition would, would be within the allow the liable front and left side setbacks. Ivan?

Irvin: I agree.

Stan DeFreese: Ed?

Edwin: I agree.

Stan DeFreese: Tom?

Tom Mourmouras: I agree.

Stan DeFreese: Ethan?

Ethan Scott: Agree.

Stan DeFreese: I also agree. Um, D, the impact and effect of a large amount of expansion of new principal buildings or structures on the existing use in the neighborhood were not centrally different from the greater than the impact infecting of the building or structure, which conforms to the yard size requirement. The addition will enhance the current home and not, and no with no real impact. Ethan?

Ethan Scott: Agree.

Stan DeFreese: Ivan?

Ivan: Agree.

Stan DeFreese: Ed?

Edwin: I agree.

Stan DeFreese: Tom?

Tom Mourmouras: I agree.

Stan DeFreese: I also agree. Can I get a motion?

Irv Paradis: I move that we, um, allow this variance.

Stan DeFreese: Who's going to second it?

Rick Haskell: An affirmative would, affirmative answer to this would, uh, approve miscellaneous appeal. Uh, Ethan Scott?

Ethan Scott: Approve.

Rick Haskell: Irv Paradis

Irv Paradis: Approve.

Rick Haskell: Edwin Bones?

Edwin: Approve.

Rick Haskell: Tom Mourmouras?

Tom Mourmouras: Approve.

Rick Haskell: Stan?

Stan: I approve. Motion. Thank you. Yeah. Um...

Irv Paradis: There's an advantage to being last.

Seidl: Yes. Good, good, good welfare. I need to [indiscernible] [02:06:13].