



Town of Old Orchard Beach
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Zoning Board of Appeals Meeting Minutes

I, Tim Fleury, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting is a copy of the original minutes from the meeting of the Zoning Board of Appeals.

Prepared By:
Approved By:

Tim Fleury
Zoning Board of Appeals

Respectfully
Submitted,

Tim Fleury
Town Council
Secretary

PURSUANT TO THE ZONING LAWS OF THE TOWN OF OLD ORCHARD BEACH, MAINE, MEETING MINUTES FOR THE ZONING BOARD OF APPEALS FOR THE MEETING ON November 24th, 2024, IN THE TOWN COUNCIL CHAMBERS 6:30pm

Vice Chair Stan DeFreese: Good evening. Welcome. The zoning board's appeal is now in session. Can we have a roll call, please?

Rick: Yes. Vice Chair Stan DeFreese?

Vice Chair DeFreese: Here.

Rick: Ethan Scott?

Ethan Scott: Here.

Rick: Irv Paradis?

Mr. Irvin Paradis: Here.

Rick: Edwin Bones?

Edwin Bones: Here.

Vice Chair DeFreese: We're going to stand and pay allegiance to the flag, please.

Members: I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all

Vice Chair DeFreese: All right. I've got new eyes and glasses today, so bear with me on this. All right. Good evening. The public hearing of the Orchard Beach Zoning Board of Appeal this day, the 11-25-2024, is called at 6:30. We already did the roll. This is a public hearing. Unless the board specifically votes to go into second sessions, you have the right to hear everything that's being said, and look at all the exhibits that are being offered if you decide to do so.

The board will from repair, advertise agenda. This meeting will adjourn at 11:00 PM or as soon as the current issues of the time is resolved. I want to stress to each instance that the burden of approval is upon the applicant, and the board's task is to judge the merit of each appeal. Appeal from this advised decision must be filed within Superior Court in 45 days of this board decision. The appeal will proceed as follows. One, we'll hear testimony from the appellant with the questions from the board members through the chair.

Two, we'll hear anyone speaking for the appellant. Be sure to state your name, address for the record. Three, we will then hear anyone speaking against the appellant. Again, be sure to state your name and address for the record. Four, any written documentation received by the board will then be read into record. Five, the chair will review the justification of the variance, or review the administrative appeal

with each member of the board having an opportunity to comment on them. Six, the chair will close the public portion of the appeal and ask for a motion to approve or deny the variance, miscellaneous appeal or an administrative appeal.

The roll call will then be called. If approved, it's given you must record-- Yes, it must be recorded within 90 days of your decision is not in void. All right, so we're going to start with the first one, item one. This is the opposed miscellaneous appeal. Reduction of a setback from 20 feet to 15 feet reduction in the size. Setback required to 15 feet to oppose 7.5 feet. Reduction of rear setback required to 20 feet appeal. Proposed to 10 feet. This appeal was to allow for construction of an accessory dwelling unit. Prior to this appeal approved 2-6-24, expired 8-26-24. The owner is Constant and Raymond. Connie, can you please come up, state your name, and--

Connie Karen: Good evening. My name is Connie Karen and my husband Ray. We live at 23 Odena Avenue. We were here in February of this past year, and we were granted a reduction of setbacks. We misunderstood a little bit. We thought we had more time than we did, but to throw a monkey wrench into it, we were granted the certificate of approval. The approval has been filed at the York County Registry of Deeds, but I got diagnosed with cancer, and that just threw everything into a pile of nothing. We let the certificate of approval lapse unknowingly because we were so wrapped up in treatments, and doctor's appointments and everything.

Basically, we're just back here tonight to see if we can renew what we were granted in February. We're in a better place now, and we're ready to move forward. Just requesting that we get a renewal on the certificate and can go forward from there.

Irvin: Can I ask a question?

Vice Chair DeFreese: Oh, absolutely. I'm just reading the thing there. We're going to read this in the record, too. Absolutely. Go ahead, Irvin.

Irvin: You're really looking for three variances. One, to reduce the rear setback from 20 feet to 10 feet, the front setback from 20 feet to 15 feet, and the left side setback, from 15 to 7.5 feet. That's three different variances. They are part of this overall variance. I have no problem with the front and the rear setbacks, but on the left side, you propose reducing the setback from 15 to 7.5 feet. The question I have is, could your new house be built a little closer to your existing house? Then you wouldn't need the variance on that side, on the left-hand side of the property.

What my question is is, your existing house, what's the distance between your existing house and the proposed house? You say that the right side yard is 80.5 feet. Actually, I calculate it to be 105.5 feet, but whatever. You've got a huge right side yard, but between the edge of this new property that you propose to build and the end of your right side yard is your current house. The main thing that's the stumbling block is the current house that you have, but there still appears to be quite a distance between your house, your existing house, and where you propose to build this new accessory dwelling unit.

If you moved your proposed new unit over 7.5 feet, you wouldn't need a variance for the left side of your property. I would like to know how far [crosstalk] that proposed new building is going to be from your current house plans.

Connie: You're asking if we can move the new place closer to our house?

Irvin: Closer to your current house.

Connie: We could do that. We could do that.

Irvin: Just eliminate one of the variances.

Ray: Is there a problem with that?

Rick: Do you know what the distance is now?

Ray: I'd say I'm guessing, it's probably 15, 14 feet.

Rick: Once you get closer than 10 feet, then you've got to start looking into fire rating of the structures.

Irvin: If they could build it within 10 feet, then that would be okay. What's the distance did you say it is approximately?

Ray: I'm guessing probably 12, 13 feet, maybe 14 max.

Irvin: You could move it over at least a few feet, and would minimize how much of additional distance-- How much of additional variance you're asking for. I didn't pick that up the first time around when you were here in February. I looked at the papers again, and I was wondering if you could just nudge it over a little bit.

Connie: Nudge it a little bit, we can do that.

Rick: Would you have to get a variance on that right side, though?

Ray: No. I don't believe so.

Rick: They can do this all at once.

Vice Chair DeFreese: They can do it all at once?

Rick: Yes. You can come to, all right, we're all set in the front. We're good with the back. We can reduce the setback on the side to 10 feet versus 7.5. You can do that for that. It's all in the motion that gets made.

Irvin: Okay.

Edwin: Rick, I got a question for you. The ADU can only be a certain size. Does that fall to the 800?

Rick: I'm sorry.

Edwin: They're indicating 800 square feet. Will it meet that criteria?

Rick: That would be part of, when they go through the ADU acceptance, there is an administrative site plan through the planning department, and that would all get worked out there.

Edwin: I know it's been quite a while, but now that you're further along, have you created any plans for your new house?

Connie: Have we created? No, we had some plans in the works for when we thought, we didn't realize the ADU had to be as small as it is, but that still works for us. No, we've been pretty consumed with my health, so we haven't. We want to make sure that we've got permission before we create a plan.

Edwin: I understand.

Connie: Thank you.

Vice Chair DeFreese: Any other questions? All right. I'm going to read this, a letter that you submitted to Connie and Ray, 10-28-24. "Good evening, board members, Rick Haskell, and the other town officials."

Rick: To understand, though, all those emails and stuff were for 2 Parcher, for the next one.

Vice Chair DeFreese: He was looking at the letter.

Rick: Oh, I'm sorry.

Connie: Yes.

Ray: You don't have to talk to

Edwin: If they've got it, that's fine.

Vice Chair DeFreese: Do we need to write this and submit it in the record or not?

Edwin: Yes.

Vice Chair DeFreese: Okay. "Good evening to board members, Rick Haskell and the other town officials. On February 24th, Connie and I filed for a miscellaneous appeal application that was granted a certificate of approval based on an annual decision allowing a setback reduction. Within a few days, the certificate of approval was filed at the York County Register of Deeds. We went up to the meeting, we were jubilant because we thought we were all set to go, and we had to do this pickup, a building permit, which we thought was a mere formality.

We would then be able to build a structure which would enable one of our daughters to live next door and help care for us as we age. We either never knew or forgot that there was a six-month deadline to begin construction. Rather, we thought the deadline was one year. Excuse me. We started potentially process by getting pre-approved by a local bank, and then moved on to finding a safe surveyor, which were not easy tasks. Almost all the surveyors were backed up. Then in May, we received a shocking and totally unexpected setback when Connie was diagnosed with lymphoma.

This project has been placed on the back burner. After the chemo, immunization, therapy started, we became slightly optimistic and sought an architect. When the

architect met with the town official, we learned that our certificate of approval had expired in August. Meanwhile, during the past two months, Connie developed cardiac issues for which she is ongoing treatment. This was another setback and now we're back to square one. Our plans have now been downscaled to build a small 800 square foot auxiliary dwelling unit, ADU, on a 25 foot by 35 foot plot. Tonight we really ask to approve our application to ease the setback as we request a thank you to Connie, and Ray. Thank you, guys.

Connie: Thank you.

Vice Chair DeFreese: Any other questions from the board?

Ethan: I have one here.

Vice Chair DeFreese: Excuse me. Excuse me, you two. We've got a question from the board.

Connie: Oh.

?Panelist: One more.

Ethan: In your letter here, it states a 25 foot by 35 foot plot, and on the plan it also shows that, but the 25 is crossed out on my plan. I'm not sure if you guys have the same one. Written in handwriting is 31 feet. Is it going to be 31 feet wide or is it going to be 25 feet wide? Because your application says it's 800 square feet.

Ray: 25 feet wide by 35 feet long. That would include the edge.

Ethan: Okay. On my sheet here, it shows--

Vice Chair DeFreese: Yes, I see the 25 too on mine.

Ethan: It shows it crossed out.

Vice Chair DeFreese: Is that a 31 or a 3, then a 1 there?

Ray: It looks like 31.

Vice Chair DeFreese: Yes. You're seeing right now is 35 length, 25 width?

Connie: Yes.

Vice Chair DeFreese: We'll put that into the thing to make sure that's that.

Edwin: That would be the max because once they look at it may have to be smaller.

Ray: I think that was in the original one probably, but I'm not sure.

Vice Chair DeFreese: Okay. Any other questions? Okay, let's go through this. Okay, you can sit down.

Connie: Now we can sit down? Okay.

Vice Chair DeFreese: A limited reduction of yard size and limited expansion of lot coverage. The existing building or structure on the lot, which is the limited reduction of yard size slash limited expansion of lot coverage is requested to erect prior to the date of adoption of the provision or the lot is a vacant, non-conforming lot of record. You reply, a certificate of approval reducing the setback to 7.5 on site, and from 15 to 10 in rear. It was approved on 3-6-24, but allowed six months later due to misunderstanding and a registration of deed and the cancer diagnosis that Connie made on 27

Edwin: That's the letter.

Vice Chair DeFreese: Okay, yeah, the letter. All right. Ed?

Edwin: I agree.

Vice Chair DeFreese: Irvin?

Irvin: I agree.

Vice Chair DeFreese: Ethan?

Ethan: I agree.

Vice Chair DeFreese: Okay. B, the requested reduction is reasonable and necessary to prevent the owner or the occupier of the property to use and enjoy the property. Essentially, in the same manner as other similar properties are utilized in the zoning district. Attach note at expansion. Attach note at expansion. Would that be this question here then? As we live on oversized lot described on deed of two lots, we would like to utilize all of it rather than paying significant taxes. \$282,500 on total cost or a portion of which is unoccupied. This would enable us, being senior citizens, to live the remainder of our life at a location we have loved and family owned since 1965. We continue to occupy the property in essentially the same manner as other properties that are utilized in the zoning district. Ethan?

Ethan: I agree.

Vice Chair DeFreese: Irvin?

Irvin: I agree.

Vice Chair DeFreese: Ed?

Edwin: I agree.

Vice Chair DeFreese: Okay. C, due to the physical feature of the lot and the lot location existing structure on the lot, it would not be practical to construct a proposed expansion. Enlargement of the new structure and conformance in the current applicable yard, size or large coverage required. Attach note C. That would be C. Okay. In conformance with the present trend standard, we are able to utilize our entire property unless a variance is granted because the land is deemed to be non-conformable with the current applicable yard size requirement. Ed?

Edwin: I agree.

Vice Chair DeFreese: Ethan?

Ethan: I agree.

Vice Chair DeFreese: Irvin?

Irvin: I agree.

Vice Chair DeFreese: I also agree. Okay. D, the impact of the effect of enlargement and expansion of new principal building or structure on existing use in the neighborhood would be substantially different from or greater than the impact and effect of buildings or structure which conforms with the yard size requirement.

Irvin: All right.

Vice Chair DeFreese: We're going to go to D. The effect of a new ADU house on a lot as large as almost all of the other lots on the street will not alter the complexity of the neighborhood, rather the neighborhood will be enhanced. Indeed, the new home would architecturally be designed to blend in and complement the other structure that we have. Both cottage and more modern higher buildings. Irvin?

Irvin: I agree.

Vice Chair DeFreese: Ethan?

Ethan: I agree.

Vice Chair DeFreese: Ed?

Edwin: I agree.

Vice Chair DeFreese: I also agree. Okay. With that being said, do I have a motion on this?

Irvin: Can I make a motion?

Vice Chair DeFreese: Yes.

Irvin: I make a motion that we approve all three of these variances, but with the proviso that the variance for the left side yard be as minimal as necessary to avoid encumbering fire code issues in the building of this, with regard to their main house, and in regards to this new ADU that they propose to build.

Ethan: I think we should also include the width of the building.

Vice Chair DeFreese: Yes, the width of the building must be, we said it's--

Ethan: It's 25 feet or less with the overhangs.

Vice Chair DeFreese: Yes, 25 feet or less, and also with the length of 30.

Irvin: Yes, I agree.

Vice Chair DeFreese: Do I have a second?

Ethan: Second that.

Vice Chair DeFreese: Okay. Motion has been passed. Oh, well.

Rick: There was a motion to approve with a couple of slight changes. First being building envelope maximum 25 by 35. Second, allowing the left setback to fall where fire rating will not affect the buildings, will probably decrease to around 10 feet. The motion has been to approve. Ethan?

Ethan: I agree.

Rick: Irv?

Irvin: I agree.

Rick: Stan?

Vice Chair DeFreese: I agree.

Rick: Ed?

Edwin: I agree.

Vice Chair DeFreese: Motion been approved. You're all set.

Connie: Thank you.

Vice Chair DeFreese: Members, just come pick up your approval. All right. Number two. Item two, a proposed miscellaneous appeal. Reduction of left side setback required 15 to oppose 7.6. Reduction to rear setback required 20 feet to oppose 18. The reduction will allow for construction of a new single family home on a vacant lot. Owner is Sharon Jonkus. Did I say that right?

Sharon Jonkus: Jonkus.

Vice Chair DeFreese: Jonkus. Okay, and Shelly Maslini. Excuse me?

?Sharon: Sheila Maslini.

Vice Chair DeFreese: Yes, Sheila. Okay. Hey, I'm trying. Come on up. State your name, and who you are, and what you got.

Mike Richmond: Good evening. Mike Richmond, Custom Concepts Architecture in Scarborough. I'm here on behalf of Fred and Sharon Jonkus, and Sheila Maslini?

Sheila: Yes.

Mike: Thank you, of 2 Parcher Ave. We're here requesting this relief to allow them to shift the location of their new house due to the unique conditions of this particular

property. I've been working with them for quite a while, and bring this request to you to make the impact of this home as little as possible in the long run for their neighborhood. Fred and Sharon have lived at this property a long time and really understand it well. This parcel, just so you understand, was created from a larger parcel that the family has owned for a long time. I should probably take advantage of this, if it works.

It's basically been carved off from a much larger parcel. They have lived here for many years, and plan to hopefully build their forever house in this new parcel here that I've outlined in pink. As described in our submission, we came to this request for the following reasons, and I'll briefly describe them. First, really to allow for as much off-street parking as possible. It's well known that parking and vehicular traffic on this small, narrow street, it's an issue. These few extra feet of depth that we're asking for, about two more feet, really would make a big difference in allowing them to get probably one more car off the street. Anybody who's been down to that area can attest to the parking issues. It's very tight.

Second, this project, it involves providing parking for the remaining portion of the property, the existing structure, which is staying as is. We've done this by utilizing the existing entry, which I included a photo of that in the submission, to allow off-street parking for that house as well. Part of the request before you tonight came to allow the new Jonkus' home to be further away from that parking area. To be honest, if we didn't allow for that parking area for the other house, we'd be forcing more cars in the street. We're trying to do the right thing by getting more cars off the street, and by this request, we're trying to get them further away from that parking area.

Third, there's a beautiful row of trees along this property. We would like to maintain these trees by using the two existing driveway entrances that exist now. If we shift them one way or the other, we're going to lose a beautiful tree, and they're very stunning. By allowing this relief for us, we're able to keep the two entries right where they are, have a nice, clean shot to their new house without people trying to navigate in a dangerous way, or lose a tree. The last point is the only other home on this side of Parcher Ave, their current home, sits back pretty far from the street. It's about 56 feet back. It's noticeable.

By shifting this new home back as well and a little further away from it, to me, we'd almost be blending more in with the streetscape. The houses on the other side of the street are relatively close, but on this side, there's some nice relief. If we have our house, this new house, where we'd have to have it without relief, I'm afraid it might actually stick out a little bit. Please keep in mind that this proposed house is about 27 feet tall. It's much shorter than the allowable 35 feet. We're doing this on purpose to try to minimize the impact to the area visually.

Please keep in mind, I don't know if you were able to visit the site, the lot next door and behind this property is a large commercial parking lot for the big high-rise behind it. It's a really big structure. The lot to the left towards East Brand, even if it was sold somehow, I don't know if it ever would be, it'd be very challenging to build on. We think there's a very low impact to any potential neighbor that could ever even be there. I say that only because I hope it relieves any fear of us setting a precedent in the neighborhood because this is really the last lot. That's all I would have to say. I think, would you like to say a few words as well?

Sharon Jonkus: Sure. My name is Sharon Jonkus. I'm here tonight with my husband, Fred, and my daughter, Hannah. As Mike reviewed with you in detail, we are looking for two variances. A smaller one, one, 7.5 feet, and then the other one was 2 feet. Just some personal information about my family. I was fortunate enough to purchase this property from my parents who owned it for many years back in 2017. The property itself has a lot of memories to us. My husband and I are hoping to spend, this will be our primary residence here in Old Orchard.

Initially, when Mike came up with the plans, we had designed a two-car garage, and we changed that to a one-car garage, knowing what the setbacks are to the property and keeping it within that envelope of, was it 2,000 square feet? We have minimized it already, and we're hoping that based on this new design that you'll see, it will blend well with the front house, allowing the front house to have that parking, new parking.

Vice Chair DeFreese: Where will that new parking be in the front house?

Sharon: It will be right in this top entry. There are two pillars that are existing there now. This whole area here will be parking for this house.

Vice Chair DeFreese: Now, who's living in that house right now?

Sharon: My sister and I own the property.

Vice Chair DeFreese: I'm understanding you want to build a house for you and your husband, and your sister's going to live in the other house?

Sharon: Yes.

Vice Chair DeFreese: That's what you're doing. You're building another house there for you and your husband?

Sharon: Yes.

Vice Chair DeFreese: You got a picture of the house that you're going to build?

Mike: Oh, yes, we do.

Sharon: It's similar. I wanted to keep it similar to the front house, that cottagey, New England-style look. If you saw pictures of the front house, it really looks similar to what this is with the big umbrellas.

Vice Chair DeFreese: Have you guys went already and did your due diligence and had this property split legally?

Sharon: We've had it surveyed, yes. There are two lots.

Vice Chair DeFreese: Surveyed, but did it go to the town already and do that process?

Sharon: There's two lots in the deed.

Vice Chair DeFreese: Is it?

Sharon: Yes.

Edwin: I think you've got about five lots on this deed, actually. Regardless of that, have you split this-- You've had it surveyed, but have you recorded the second lot?

Sharon: Yes.

Edwin: You have?

Sharon: Yes.

Edwin: It's recorded with the Registry of Deeds as two separate lots currently?

Sharon: Yes, lot one and lot two.

Edwin: I don't believe we got paperwork for that.

Sharon: I think I have.

Vice Chair DeFreese: I see lot 42 and 43.

Sharon: No, these are lots 37, 38.

Vice Chair DeFreese: Lot 36, and turn to the right side, the purchase, then there's lot 39 and 40, and a feet to lot 42.

Edwin: You should have a recorded deed for this new lot. That's, I guess, part of what we're looking for.

Sharon: Oh, well, I do have the deed here.

Edwin: Yes, you have. You've provided us with a number of deeds. The question is, has it been split?

Vice Chair DeFreese: Legally.

Edwin: When you go and we pull your deeds at the registry, we get off this whole package?

Sharon: Yes.

Edwin: What you're proposing is two parts right now, consists of that entire five lots. That's right. Hypothetically, if this were approved today, in my opinion, this would be an ADU, not a second house, first of all, unless you have recorded the deed for a separate lot. To me, that's one big lot you have right now. There's no separation. You're requesting a variance on something that doesn't technically exist. I mean, you could see it, but on paper it doesn't exist. Legally, it doesn't exist. It's not a separate lot yet. It's one big lot.

Sharon: In this deed that we have, it does say lot one and lot two.

Edwin: I understand that. Are they separate? That's still a big question for us.

Rick: Basically, you have two schedule As. One describing lot A, one describing lot B. Unless a deed has been recorded to separate them with the registry, it's still considered one lot. You basically have your schedule A written for you. It's just a matter of getting it to the registry and separating them legally.

Mike: If I may, not a surveyor or an attorney here, but the one that was submitted before you is registered at the registry of deeds, has the book and page number on the top, and clearly says it's one, two, three, four, five, and six down, those are the dimensions of this new lot. It's 100 feet, and then the next paragraph, it's another 100 feet, right? So that is describing this highlighted lot that we're applying for. It's 100 feet by 100 feet. The overall lot is much larger than that. It's 100 feet deep, but it's much longer.

Rick: If the board is satisfied with anything other than that, you can condition the approval that the deed be recorded prior to the issuance of a permit.

Edwin: Yes, that makes sense.

Edwin: Is there anything else you have?

Vice Chair DeFreese: However, you can get the deed before we voted on this, because if we vote not to do this, this is going to be something that you're not going to be able to come back for a while, a long time. The question might be, is to try to get this legally separated prior. I mean, we can go through this thing right now, but if we vote against you, you know?

Edwin: I understand what Rick's saying, that if they show up with it. I think there's a number of other things that we need to address.

Vice Chair DeFreese: Well, you've got questions. Please, we're going to go through the questions here. This is one question I had.

Edwin: As soon as you're completed, if you're done, I've got a bunch of questions for you.

Mike: Sure. Are you done with your presentation?

Sharon: I think so.

Edwin: All right. What is the actual square footage of this house?

Mike: 2,000 square feet. We're allowed 20% of the lot.

Edwin: All right. The way I see this is-- I was out there today. You've got a massive lot. 100 by 100 is massive in our country. I don't see any reason for any setbacks for this property. I think when I look at this, all you're required to do is shift your house over to the right to meet the setbacks for the side, or build a smaller house. As far as access for the driveway for the second home, that's sort of irrelevant also for me. Because that's now going to be someone else's property or whatever. You can give them a right-of-way across your property. You don't have to. They can put in another driveway.

The idea of removing trees, people remove trees constantly. The fact that you need extra parking, again, is sort of irrelevant when it comes to this. All you need is what's required by the town to be able to park there. In my opinion, this house got shifted forward. This is the way I looked at this. This house, in my opinion, got shifted forward to take advantage of a view. That's all it was. You can build a smaller house. You can meet all the setbacks. You have plenty of land for that. My position would be this would be a denial for me. Period.

Mike: Can I just speak to one of those things?

Edwin: Absolutely.

Mike: Not contradict. Just so you know, by them moving back, their view gets worse.

Edwin: Their view gets worse?

Mike: Correct. Their view gets worse.

Edwin: I agree with you.

Mike: It's not because they're wanting something. They don't want the view, put it that way.

Edwin: I think for me it's, you're here requesting a variance when you don't need one. You have plenty of room to place a house on that 100 by 100-foot lot. We just gave a variance to some folks who got a 40 by 60-foot lot. We can make it fit. You've got 100 by 100 feet. You've got plenty of space to place a house and meet all the setback requirements that are necessary. I don't know why you're requesting a variance.

Sharon: I think they left the parking because we're moving the existing parking to--

Sharon: I understand what you're saying, the smaller house, and started all over again. The reason we were asking for this variance right here, this one is not really. I don't really care about that. I'm not going to get into the lot. We just put it in. This one, we're moving it back to stay away from this new parking lot.

Edwin: I understood that. When I look at this, I say, "Shift the house over to the right and put a new driveway in for the other house."

Sharon: This side?

Vice Chair DeFreese: No, to the right. No, no, to the right, towards your house, towards the ocean.

Edwin: Towards the existing house. You can shift it to the right, and you can put in a new driveway for the other house.

Sharon: This driveway?

Edwin: Yes, you can move it.

Vice Chair DeFreese: Yes.

Sharon: That's our claim.

Edwin: Then you don't need the setback.

Sharon: We do, because this house would be right on top of.

Vice Chair DeFreese: Not if you move it to the right.

Edwin: Again, I understand what you're saying. Again, you saw the couple previous to you that are moving, their new house has to be within 10 feet of their other house. In this case, what are you going to have, 60 feet, 40, 50 feet to that?

Sharon: From this?

Edwin: No, to the house itself, not to the property.

Vice Chair DeFreese: Not the parking lot.

Sharon: From this to this?

Edwin: Yes. Again, there's no reason in this case that you can't pick that house up, shift it over, so that you need the setbacks on both sides. If you need to reduce the size of the house to fit into that envelope, I think that's what you need to do.

Mike: If we did that, it would be at the expense of a beautiful tree, is that all I'm [crosstalk]--

Edwin: I have no problem with taking out a tree or two over there.

Vice Chair DeFreese: The question comes down to this, is you can think about this, talk with yourself about how you want to proceed, or we can go through this. If the board decides to deny it, then--

Mike: Yes, understood.

Vice Chair DeFreese: The question is, do you guys want to think about your house size and everything before we proceed, or do you want us to go ahead and proceed? Do you guys want to go back and think about this?

Edwin: I would also argue that, again, there's no reason to come back to the board. I think you have a 100 by 100 foot envelope that you can fit a house into. There's no need to be before us for a variance for anything. You can come back and ask for one. You can ask for it, certainly. I don't think in this case it would be a deserved variance, period. Unfortunately.

Sharon: Okay. If any of this is not granted, then we don't really need to be reporting.

Edwin: Correct.

Sharon: We can just file for building permits, right?

Edwin: Correct.

Vice Chair DeFreese: Just change the size of your house and stuff, look at it. Like he was saying, he's giving you a good opportunity here because basically, if we go through these questions, it is now on record, and we will have to decide. Okay. Hence to what the board member here is saying, and maybe think about something or-- Oh, you got a question?

John Year: Yes. I'm John Year from 33 Ocean Avenue. I was thinking about, if they don't legally separate these two lots, if they build this house, would it be an ADU?

Edwin: I believe it would be.

John Year: There's really restrictions for an ADU, aren't there?

Edwin: The restrictions are different, the size that you can build, et cetera. That would be if we were to approve it. I don't envision I'm going to approve any of that. If they were to get approved, then they would only be, in my opinion, building an ADU today, because they've requested a variance for 2 Parcher.

Vice Chair DeFreese: The thing is that you guys have options and opportunities right now.

John Year: Just want to make sure they understood that.

Vice Chair DeFreese: Yes. Options and opportunities, look at all those, and we can proceed, or you can go back and huddle up and figure out best options and opportunities you guys want to use to go forward.

Mike: Question, if I may?

Vice Chair DeFreese: Yes, absolutely.

Edwin: Certainly.

Mike: Would there be an opportunity to meet in the middle somewhere on that side setback? We're asking for seven and a half feet. Would there be an opportunity [crosstalk]--

Vice Chair DeFreese: What we have today is what you guys put together. Now, if you want to go back and put something halfway or whatever, I suggest you think about that. We got to go on what we have right now.

Rick: No. If the board comes to a common ground with the applicant, it's all in the motion that's made. The motion doesn't quote what they applied for. It would be for what you guys are going to approve.

Vice Chair DeFreese: When they asked the board, were you, Ethan and Irvin?

Edwin: If the board wants to consider this, yes, maybe they can come to common ground. I can tell you without any hesitation that this would be a denial for me. Maybe the rest of the group is interested in approving it.

Irvin: I happened to meet your husband when I was visiting the lot on this proposal. The issue that this gentleman brought up about the left-sided setback, reducing the setback from 15 to 7.5 feet, I discussed with your husband. We did not discuss any of this between us. We're not supposed to. He highlighted the exact same issue I had with your husband. I brought up the issue that there's actually plenty of room here for you to build what you want to build without even needing a variance at all, and that it was up to you folks to decide what you wanted to do.

I did tell him that there is sometimes room to negotiate with the board. Instead of reducing from 15 to 7.5 feet, how about if we just reduce it by 5 feet or 10 feet? Is that an adequate compromise? I said, "It's a possibility. It's up to the board." This was discussed with your husband at least six weeks ago because this was kicked ahead to the next meeting. You had a lot of time to prepare for this sort of scenario, which is exactly what I thought would come up. You may want to consider postponing this, but it looks like as proposed, you could be denied.

Rick: Basically, right now you've got three decisions. One would be to go forward with what you did. If it gets denied, you can't reapply for 12 months with anything even close to what you applied for. You could go through with what you've got. You could try to see if there is some type of a negotiation that can be made. Then that goes to the vote. You take a chance of that being denied. You may meet an agreement with one member, but not the other three. You can do that. You can try to negotiate a third. You can table it. You could come back as quick as next month if you want, and maybe try to find a way to make it more appealing for the board. You hear their comments.

Sharon: If we tried to negotiate right now and everybody voted against--

Vice Chair DeFreese: You'd be denied for 12 months plus. Then you've got to change everything coming back. If we table it and you guys can go back, think about-- Obviously, some people on the board have communicated with your husband. One of the board members also gave you opportunities. Some other board members have said some things as well that you guys can go back and think about that will give your chances a whole lot better than what you're hearing from the people on the board right now.

Mike: We would like to table.

Vice Chair DeFreese: We'll table this then. Do we do a roll call on that?

Rick: Yes. Someone's going to make a motion.

Vice Chair DeFreese: Someone's going to make a motion?

Edwin: I make a motion that we table 2 Parcher Avenue until further notice.

Ethan: I'll second that.

Rick: A motion has been made to table this application for 2 Parcher. Again, motion has been made to table. Ethan Scott?

Ethan: Approve.

Rick: Irv?

Irv Irvin: Approve.

Rick: Stan?

Stan Vice Chair DeFreese: Approve.

Rick: Ed?

Edwin: Approve.

Vice Chair DeFreese: It's been tabled. Thank you.

Mike: Thank you all.

Vice Chair DeFreese: Thank you, guys.

Edwin: When you come back, I'd actually recommend that you bring the-- That this lot be separated when you do that.

Mike: Trust me, we'll.

Vice Chair DeFreese: Yes. Cross the Ts and dot the Is and it will be no problem. All right. Item 3, variance consideration, reduction of rear setback from 20 feet to oppose 1 foot, and reduction of left-handed setback from 15 feet to 1 foot. These reductions allow for placement of utility shed. Frank Ashley? Come on up, Frank.

Frank Ashley: Good evening, board members. Appreciate it.

Vice Chair DeFreese: How are you doing?

Frank Ashley: It's my first time doing this. I am requesting a variance on the left-side setback of my 672-square-foot house. I am one of those people in town who has a super small lot. I have one closet inside of my house that's being fully used. This shed will allow me to put extra storage space outside, get things out of my attic that I want to have regular access to every day. I have a picture on my phone. Irv was helpful enough to come by today and take a look at it. I'm open to sharing a picture of my property.

Vice Chair DeFreese: Oh, I've seen it.

Frank Ashley: Oh, you did?

Vice Chair DeFreese: No, I was back there yesterday when I saw you outside.

Frank Ashley: Oh, you saw me? Okay, good.

Vice Chair DeFreese: Yes, I saw you outside.

Frank Ashley: I'm always outside.

Vice Chair DeFreese: I had to go past that twice, three or four times, just to find the place, it was so small. I know exactly what you're talking about.

Frank Ashley: I am one of those people that unfortunately doesn't have a lot of space. Putting this free-standing shed is going to be a low impact. I also, checking with my neighbors, I sent them the letters, but also gave them a verbal heads-up and no concerns. I just want to be compliant, and hopefully one day have a family in this town, and this extra space will allow me to do that.

Edwin: My only concern was, I went by there earlier today, and I'm going to assume it's where you placed those pavers. My only concern was the 8 by 12. In my opinion, that seemed like a little excess, even for that lot to go that big. I drove by and looked at it. I could see a 5 by 8 shed here, but I don't know that I could see an 8 by 12 shed there.

Frank Ashley: Could we negotiate on 8 by 10? That reduction would be perfect for me.

Edwin: That was just my opinion.

Frank Ashley: Oh, okay. Irvin and I talked, and I'm leaning away, no pun intended, from not going with an 8 by 12, but more of an 8 by 10. It would be about 80 square feet. Then, like I said, free-standing, so it'd be up on the pavers. I've already leveled it out.

Irvin: I happened to be there when Frank was working in his yard, and we actually measured it out. An 8 by 10, and you said it would be an 8 by 10.

Frank Ashley: Would be perfect.

Irvin: This business here about estimated 8 by 10 or 10 by 12, the motion we should make is just 8 by 10.

Frank Ashley: I completely agree.

Irvin: No 10 by 12. It's squeezing too much on there.

Frank Ashley: Just wanted to clarify, it is only one variance request, correct? It's from the left side. My current house structure is within one foot of the backside, so that wouldn't require variance if there's already--

Edwin: Actually, it would.

Frank Ashley: For an additional. Okay.

Edwin: Every new structure requires-- If I'm right, your side structure should set back 20 feet, and I think your back might be 15 or 20, which you don't have.

Frank Ashley: Yes. Any questions for me?

Vice Chair DeFreese: No questions? All right. We'll go through the questions here. Okay. All right. Certification of a variance. In order for a variance to be granted, the

appellant must demonstrate to the Board of Appeals that the strict application of the terms of the zoning ordinance will cause undue hardship. There are four criteria, all which must be met before a board can find hardships exist. Please explain how your situation meets each of these criteria listed below. Land in question cannot yield a reasonable return unless the variance is granted. I'm soon to be a-- Your answer. "I'm soon to be a dad, expecting my first child with my wife, Karen." Karen?

Frank Ashley: Yes. She's listening in.

Vice Chair DeFreese: Congratulations, by the way. "We recently moved to Orchard Beach this year. Our family's growing. However, I don't have much land or storage space on my property. The shed will allow me to have easy access to everyday and long-term supplies and storage." Ed?

Edwin: I disagree.

Vice Chair DeFreese: Irvin?

Irvin: I agree.

Vice Chair DeFreese: Ethan?

Ethan: I agree.

Vice Chair DeFreese: I also agree.

Frank Ashley: Awesome.

Vice Chair DeFreese: Well, B, "Need for a variance is due to unique circumstance of the property and not general conditions in the neighborhood. It's not the general condition in the neighborhood. The properties are very small, and it is my first home purchase. The variance will allow our family to grow stress-free. My home also has only one closet and a very small bedroom. The additional space will enhance our living situation and provide a place for us to keep our belongings safe, dry, and accessible. I have looked at every option to put the shed outside of five feet, and there are not any variable solutions. I do not have any front yard, and my backyard is even smaller. Very limited space on my lot." Ethan?

Ethan: I agree.

Vice Chair DeFreese: Irvin?

Irvin: I agree.

Vice Chair DeFreese: Ed?

Edwin: I agree.

Vice Chair DeFreese: I also agree. C, "Granting the variance will not alter the essential character of the locality. It will not impact the character of locality, is a freestanding shed, estimate, 8 by 10.

Frank Ashley: Correct.

Vice Chair DeFreese: Less than 120 square feet, estimate, 8, or 100, or 120 square feet. Ed?

Edwin: I agree.

Vice Chair DeFreese: Ethan?

Ethan: I agree.

Irvin: I agree.

Edwin: I agree also.

Vice Chair DeFreese: D, "The hardship is not a result of action taken by an appellant or a prior owner. The hardship is a result of my family growing and expecting a newborn next year. I'm hoping to add a small amount of storage as I have limited space indoors, and will make my second bedroom into a nursery for the baby. This will allow me and my wife to live comfortably." Ethan?

Ethan: I agree.

Vice Chair DeFreese: Irvin?

Irvin: I agree.

Vice Chair DeFreese: Ed?

Edwin: I agree.

Vice Chair DeFreese: I also agree. Do we have a motion?

Irvin: I move that we accept this application for the variances requested by the applicant with the stipulation that it would only be an 8 by 10 shed, nothing larger.

Ethan: I'll second that.

Frank Ashley: Not an inch bigger.

Ethan: I'll second the motion.

Vice Chair DeFreese: Do you second it? We have a roll call.

Rick: Okay. We have a motion to approve the variance with the criteria of no larger than an 8 by 10 shed. The motion is to approve. Ethan?

Ethan: I agree.

Rick: Irv?

Irvin: Agree.

Rick: Stan?

Vice Chair DeFreese: Agree.

Rick: Ed?

Edwin: Agree.

Vice Chair DeFreese: Motion approved. There you go.

Frank Ashley: Thank you, board members. I appreciate it.

Vice Chair DeFreese: All right. That is it, unless you have--

Speaker 6: Senator, how about the first couple? When they have the ADU, can they--
- Let's say they sell a property. Can they rent that ADU? Does the main property have to be owner-occupied?

Rick: One of the structures need to be owner-occupied, and the other one can be rented, but not short-term.

Speaker 6: Okay. That's what I thought, but I wasn't sure.

Rick: Yes. 30 days or more.

Speaker 6: Okay. Thanks.

Irvin: Thank you.

[background conversation]

Vice Chair DeFreese: We got to adjourn, and we have a motion to adjourn.

Rick: I move that we adjourn.

Vice Chair DeFreese: Can I get a second?

Edwin: I'll second that.

Vice Chair DeFreese: We're adjourned. Thank you.