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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 Monday, September 30, 2024, IN THE TOWN COUNCIL CHAMBERS -6:30 p.m.

Chair Ronald Regis: Good evening. This is a public hearing of Old Orchard Beach Zoning Board of Appeals on this 30th day of September 2024. The meeting is called to order at 6:30 PM. Mr. Haskell, will you call the roll? Yes.

Rick Haskell: Ethan Scott.

Ethan Scott: Here.

Rick Haskell: Irvin Paradis.

Irvin Paradis: Here.

Rick Haskell: Ron Regis.

Chair Regis: Here.

Rick Haskell: Excuse me. Ed Bones?

Ed Bones: Here.

Chair Regis: This is a public hearing unless the board specifically votes to go into an executive session. You have the right to hear everything that is being said and to look at all exhibits that are offered if you desire to do so. The board will work from a prepared and advertised agenda. The meeting will adjourn as soon as possible and as the current issue at that time is resolved. I want to stress that in each incident, the burden of proof is upon the applicant and the board's task is to judge the members of each appeal.

Appeals from adverse decisions must be filed with Superior Court within 45 days of this board's decision. Appeals will proceed as follows. We will hear the testimony of the appellant with questions from the board members through the chair. We will hear anyone speaking for the appellant. Be sure you state your name and address for the records. We will then hear anyone speaking against the appellant. Again, be sure to state your name and address.

Any written documentation received by the board will then be read into the records. The chair will review the four justifications of variance for review of the administrative appeal, with each member of the board having an opportunity to comment on them. 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 approval is given, you must record it in the registry of deeds within 90 days or your decision is null and void. We will stand for the Pledge of Allegiance.

All: 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.

Chair Regis: All right. Item number one, proposal for variance consideration, reduction of the front setback from the required 20 feet to a proposed 12 feet and a reduction of the right-side setback from the required 15 feet to a proposed 2.6 feet to allow for the modification of an existing deck stairway to be rebuilt to meet existing code requirements

Eva Tomecka: My name is Eva Tomecka, and I own 3 14th Street. I bought it four years ago, and I have not altered the exterior at all. I believe the deck and the exterior stairs are getting old and they're ugly and I'd like to replace them. I met with two contractors, both reputable and expensive, and they both advised me that if I rebuilt the deck, or if they rebuilt the deck as is, it wouldn't meet code because of the depth of the tread of the stairs. We just need a little bit more space.

The proposal that I put forth was a recommendation from one of these contractors. It includes a platform to reduce the number of stairs and then it turns the stairs 90 degrees so that they come out toward the road. That does require an additional 76 square feet of my land. The deck, as it is, does not conform to the setback requirements, so this new one also would not. That's why I'm here. That's where I'm at.

Chair Regis: Any questions from the board?

Irvin Paradis: The narrative or the rationale for the variance primarily relates to the stairs, from what I've read. You provide no justification for why you need a larger deck, but you do talk about the stairs being steep and you want safer stairs. I'm bothered, however, in that you propose a set of stairs that are exactly the same size as the current ones.

These diagrams don't show that you're doing anything to make the stairs wider and with less of a rise than what already exists because on the current diagram, you show that the stairs, the existing steps are 10 feet long and 4 feet wide. If you look at your proposed diagram, the proposed stairs are exactly the same dimensions. There's a fundamental flaw, a discrepancy between the narrative and what is on these diagrams.

Additionally, on many places on these diagrams, you've confused inches with feet. It would be much better if you use the same denominations because we're really talking about feet here. For instance, on the proposed deck, 20 inches. It's not 20 inches. It's 20 feet you want. This application is-- something in this is flawed and I cannot support this application until we have a narrative that fits with what you're proposing to do.

Eva Tomecka: Can I ask you about the steps? Did you consider that the platform would be slightly lower than the deck so that the actual-- the length of the stairs is the same but it is now not going as high because it's meeting a platform that is lower than the current deck? They're sure the same number of steps, and they're about the same distance, but they're not going as high. The rise over run that we were lacking was-- I'm not the contractor, but I believe it was a foot or so. It wasn't as significant.

Irvin Paradis: It's not. I measured your steps.

Eva Tomecka: Oh, you did?

Irvin Paradis: Yes, I went to your property and I measured them. They currently measure-- your steps are 10 inches wide, and the height is 8 inches. In general, what's acceptable, and I don't know specifically what the code requirements are in Old Orchard Beach, but in my readings, what people go by is a so-called 7-11 rule, 7 inches in height, a rise of 7 inches, yours is 1 inch higher than that.

Ethan Scott: That's a commercial code. That's not for residential.

Irvin Paradis: That's not residential? What's residential?

Ethan Scott: Seven and three-quarter rise maximum.

Irvin Paradis: I've read that, too. Seven and three-quarters.

Ethan Scott: She's close.

Irvin Paradis: Eight is pretty much-- hers are eight. She has a rise of 8 inches.

Ethan Scott: It's close.

Irvin Paradis: It's close. She has a width of 10. What I read is that it should be 11 inches, an inch lower and an inch wider than what you currently have, is what is the generally accepted requirement. You're not that far off of what you need, even with the stairs you have right now. I have to say that in looking at this platform, I could not see that it is depressed lower than the deck. That is not shown either on this.

Eva Tomecka: I'm so sorry about the amateur-ness of the drawings. I did them myself, so I did the best I could with what I could.

Irvin Paradis: How far down is the platform?

Eva Tomecka: I believe it's a step.

Irvin Paradis: One step?

Eva Tomecka: Yes. That would be seven and three-quarters inches, right?

Irvin Paradis: Well, it would be-- yours are eight inches, so it would be eight inches lower than your other steps. Based on what I add, I figured out that if you use the 7-11 rule, all you need is basically one more step. You would have that with the depressed platform. In fact, I don't see why you don't start a depression or stairs back closer to where your deck is, extending where your existing deck is. Your deck currently is 16 inches above the doorway. You could easily bring it down one step right there. You could probably bring it down another step before you get even to that platform. Depending on how high of a rise you want, five inches, just a small rise with each step, you could easily get two steps.

Eva Tomecka: Are you suggesting keeping the current deck in the same shape as it is?

Irvin Paradis: Yes. You would keep the current deck, but you could build that extension that you want. You want to extend the deck from 12 feet, I think is what it is now, to 20 feet. You want to extend the deck by eight more feet than what you have currently.

Eva Tomecka: If you'll allow me-

Irvin Paradis: You could still do it.

Eva Tomecka: -I do have an argument for it. The current parking situation for an average car. I have a regular SUV, the tail end sticks out into 14th Street when it's parked there. That's because of the post that hold up the deck. The way that the contractor explained it to me is if we made it quite bigger, that they could put in some sort of an LVL beam so that the front end of two vehicles could poke under, and it would just allow for more parking. Expanding the deck sort of lengthwise allows that. With the exception of the steps that are taking up more square footage, it's not coming closer to the road any more than the current deck.

Irvin Paradis: These are the kind of details that should have been in this plan. What we have to go on is what is written here. You've obviously got more information in your head that we don't have. We don't have any architectural plans at all about-

Eva Tomecka: No, there aren't. I don't have any either.

Irvin Paradis: -of how we're going to build that deck, and your contractor can provide that. That's all I have to say.

Chair Regis: I went over and looked at it. What is the height of the deck from the ground?

Eva Tomecka: The height of the deck from the ground, I have--

Irvin Paradis: Nine feet. I measured it.

Eva Tomecka: You measured at nine feet?

Chair Regis: Nine feet from the top of the deck?

Irvin Paradis: From the top of the deck to the-

Eva Tomecka: 110 inches.

Irvin Paradis: -bottom of the post, the middle. There were two posts that she had. I measured it to the bottom of this post on which the number three was located. That's nine feet.

Chair Regis: Rick, what is the length of the stairs running down? Isn't it? You can't be so many--?

Rick Haskell: The tread has to be no less than 10 inches from the nosing of the stair above. Your tread will be 10.5, 11. That's for a residential set of stairs. Maximum rise, as Ethan says, seven and three-quarters. There is no minimum.

Chair Regis: I'm talking about the run.

Rick Haskell: You can go 12 feet on a single--

Chair Regis: The bottom, doesn't that have to be a platform because it's over eight feet?

Rick Haskell: 12 feet.

Chair Regis: It's 12 feet?

Rick Haskell: Once you hit 12 feet, you would have to have a platform and break the set of stairs. [silence]

Chair Regis: Any more questions from the board? Ethan? Ed?

Ed: No, no, I think I'm good.

Chair Regis: Okay. We'll go through the criteria. Is there anybody here speaking for the defendant? Anybody here speaking against the defect applicant?

Eva Tomecka: He said the general comment at the end of the hearing, is there a possibility she risks losing this opportunity? Is it a possibility for her to withdraw her current request and then do some homework and then come back in? Is that a possibility?

Chair Regis: Yes.

Irvin Paradis: Yes, absolutely.

Chair Regis: Yes.

Irvin Paradis: Come back next month. If we vote it down, however--

Chair Regis: There'll be "yay" before you can come back.

Irvin Paradis: Yes, you can't come back for a year.

Eva Tomecka: Thank you. [unintelligible 00:13:08] [crosstalk]

Chair Regis: Is that what you would like to do?

Eva Tomecka: It's not a big deal. Excuse me?

Chair Regis: Is that what you would like to do?

Eva Tomecka: No, thank you. I'll continue.

Chair Regis: You'll continue?

Eva Tomecka: Yes.

Chair Regis: Okay. All right. We'll go through these. Item A, the existing building or structure on the lot for which is limited reduction or yard size, limited expansion of lot coverage is requested or erected prior to date of adoption of this provision. For the lot is a vacant, non-conforming lot of record. The existing building was erected prior to date of adoption of this--

Irvin Paradis: I think we're in--

Ethan Scott: Yes, you're on the wrong one.

Irvin Paradis: This, you're on the wrong application.

Rick Haskell: Yes, that's the wrong one.

Irvin Paradis: Not this one.

Chair Regis: Yes. That's how I got that.

Chair Regis: Yes. All right. Here we are. The land in question cannot yield a reason for return unless the variance is granted. A deck and safe stairs are necessary for reasonable use of residential property. The deck and stairs are aging and need to be replaced. The footprint of the existing stairs is not allowed for the new stairs to be built safely to code in the same location because the current steps are too steep. In order for new stairs to be built properly, a slightly larger footprint will be required. Placement of the existing windows, doors, and driveway parking limit other possible locations of posts and steps along the house. Ed?

Ed Bones: I disagree.

Chair Regis: Ethan?

Ethan Scott: Disagree.

Irvin Paradis: I disagree.

Chair Regis: I also disagree. The need for a variance is due to unique circumstances of the property and not the general conditions in the neighborhood. This property has two stories, reasonably for fire safety and everyday use. It should have a deck and safe stairs built to code landing on the second floor adjacent to the main living space. In order to build the exit stairs with the correct slope, a slightly larger footprint will be required. The support posts must be placed in a way that allows for parking in the driveway. It is reasonable to conserve parking space on the property because there is no street parking in the immediate vicinity. Ethan?

Ethan Scott: I agree.

Chair Regis: Irvin?

Irvin Paradis: I agree.

Chair Regis: Ed?

Ed Bones: I agree.

Chair Regis: I also agree. The granting of variance on unaltered exceptional character of the locality. A deck and stairs are already present on the property. Replacing the deck and stairs with unaltered exceptional character of the locality. On the contrary, the new deck and stairs will improve the appearance and safety of the property, and in doing so, will add the character of the locality. Irvin?

Irvin Paradis: I agree.

Chair Regis: Ethan?

Ethan Scott: I agree.

Chair Regis: Ed?

Ed Bones: I agree.

Chair Regis: I also agree. It is not the result of action taken by the appellant or a prior owner. The appellant has not yet taken any action related to the deck and stairs, nor to her knowledge as the prior owner. The setback requirement, the results of the original building layout, existing location of windows, parking areas, and housing land plot. Ed?

Ed Bones: I agree.

Chair Regis: Ethan?

Ethan Scott: I agree.

Chair Regis: Irvin?

Irvin Paradis: I agree.

Chair Regis: I also agree. Do I have a motion?

Irvin Paradis: I'm afraid I would make a motion to deny the application for variance based on basically an incomplete application.

Chair Regis: Do I have a second?

Ed Bones: I'd second that.

Chair Regis: Do we have a move?

Rick Haskell: Move. Motions have been made to deny the variance application. Do you agree with it or disagree? Ethan?

Ethan Scott: I agree.

Rick Haskell: Irvin?

Irvin Paradis: I agree.

Rick Haskell: Ron?

Chair Regis: I agree.

Rick Haskell: Ed?

Ed Bones: I agree.

Eva Tomecka: Thank you for your time.

Chair Regis: Item two, miscellaneous appeal, reduction of right-side setback from the required 15 feet to a proposed eight foot six. This reduction would allow for an addition to be built to the primary structure for the addition of the first-floor bedroom. Pamela Day and Michael Petit.

Pamela Day: Hello. My name is Pamela Day, my husband Michael Pettit. We are owners of 42 Temple Avenue. We've owned the property since 2001. We are requesting an approval of an appeal, miscellaneous appeal, in order to slightly extend existing first floor of our property. All of the bedrooms currently are on the second floor. It can only be reached by a steep stairway. Michael, my husband, has Parkinson's disease and limited vision. This has been a safety issue for us for some time, and we really feel like it has to be addressed.

The extension would involve moving the wall on the eastern side of the property, the right side of the property to 8-foot 6-inch setback as opposed to the required 15. It's an 8-foot extension. It would only be on the first floor. It would involve minimal obstruction in any direction. It would also enable us to have access through a door to an adjacent bathroom so that Michael and myself, but especially Michael, could easily access the bathroom. That's our request with regard to the side setback. Are there questions?

Chair Regis: Any questions from the board?

Ethan Scott: Has there been any feedback to the abutter on the addition side? From the abutter on the addition side?

Pamela Day: He is okay with it. He's fine. Mr. Barry, yes, we spoke with him.

Ethan Scott: Do we have anything from him? I didn't see anything from that address.

Chair Regis: From who--

Ethan Scott: The abutter on the addition side. I think--

Rick Haskell: I think there was an email that he's the one to the east side.

Chair Regis: I have letters from the abutter.

Ethan Scott: Yes. I have those. I just didn't see-- I wasn't sure of the address there.

Pamela Day: Yes.

Irvin Paradis: That would be 42.

Pamela Day: I know that he verbally gave his okay to us about it. We spoke with him.

Irvin Paradis: We don't have a letter from the 42.

Ethan Scott: That's what I was wondering. We have them from everyone else.

Irvin Paradis: 42?

Ethan Scott: No, this subject property is 42, so it would be 40.

Irvin Paradis: 44?

Pamela Day 40, I believe.

Irvin Paradis: No, it would be 40 then.

Ethan Scott: Yes.

Irvin Paradis: You're closer-- if we're looking at 40, then it would be the abutter in law concerned about--

Ethan Scott: You didn't receive anything from--?

Rick Haskell: Negative. The four emails that I got, those were them. I thought one of the emails said he was to the east. Wouldn't that be--?

Ethan Scott: There's a few from across the street. There's one from 45. That's across the street. 44, which is the other side.

Chair Regis: We don't have the paper on here of the abutters being notified either.

Rick Haskell: Oh, excuse me?

Chair Regis: We don't have the paper in here of the abutters being notified.

Rick Haskell: They've been notified. I got the mail list over here.

Pamela Day: I have receipts from all of the registered letters if you need that.

Chair Regis: I wouldn't say that it's a perfect system. It'll get mailed to the address on the property card. If they moved and didn't update it, it will go to the address on the property card. It's the best system we have. It's not perfect. There's an outside chance that an abutter didn't get it because it went to an address they no longer live at. We'll get that letter back, but it'll be way after this meeting. Any more questions? Yes?

Irvin Paradis: I have a problem with your paperwork in that it's very skimpy, and it's hard to understand what's going on. One thing that is clear is that the existing deck

that you show on this diagram is actually much smaller than what is currently present. You show an existing deck that goes all the way across the back of your house to the point where this new addition is going to be built, but the existing deck really only goes back to where the first bump out is on the side of your house.

After that, there's three feet, six inches for a set of stairs, and then there's a four-foot section that is just land. You're claiming to have an existing deck of 7 feet 6 inches that doesn't exist right now. This is an erroneous diagram. I think that leads me to be kind of skeptical of all of your plans. Furthermore, you want have a-- you're asking a lot. You want to reduce already.

In fact, the deck that you do have goes right to the property line. You have zero already. You're at the zero-foot setback. You propose to extend that all the way across to where this new addition is going to be built. That's a big ask. I think that does change the character of the neighborhood. If we do this for you, we have to do this for other people. I've never seen-

Pamela Day: If I could add--

Irvin Paradis: -anybody come and ask for a setback reduction to zero.

Pamela Day: I'm sorry, sir, but we're operating with a non-conforming property, as you know, and there is a deck that is already zero setback. Now, the width of it, we may need to revise if it's not exactly right, but it should be what we intended to show there were stairs, which would become a ramp. Again, not in any way encroaching beyond the existing zero because we wouldn't be able to do that.

Irvin Paradis: I understand that the deck that's already there is grandfathered. I don't know when this was approved, as well as two sets of stairs, one set of stairs by the existing shed, which you don't show on this diagram, but they are there, and another set of stairs off of the existing deck. You already have two sets of-- they're just three steps or maybe four steps.

They're not a long flight of stairs, but nonetheless, they should be shown on this diagram to be correct. That should have shown us that you already have stairs there. You are asking for the end of your existing deck to the end of your new addition, you are asking to reduce that setback requirement from the space that's by 7 feet 8 inches essentially to zero. That's a big ask.

Rick Haskell: If I could just interrupt just for one second? I had a discussion with the applicant signing just prior to the meeting. They're going to pull the non-conforming means of egress. They'll be able to do it temporarily with a permit strictly from me. That item number three is going to get pulled off. We're really going to just be looking at the setback reduction for the addition of the bedroom.

Irvin Paradis: Oh, I see.

Rick Haskell: If they do it temporarily for when the need is there, then I can do it on a permit. Then when the need is no longer there, it has to come out. It's not going to be a permanent fix to me. I apologize. That discussion just happened prior to the meeting.

Irvin Paradis: I see. Oh, I hadn't heard that before. [crosstalk]

Chair Regis: Yes, but why is the ramp going in the back when they already have a set of stairs on the left-hand side that they could put the ramp going right there on that left-hand side of the house?

Rick Haskell: By the time they get a ramp there, it's going to-- I mean, the ramps run quite a bit. I haven't been to a property to take measurements or anything. It seemed like a better use to have it wrapped in the back because of the length of it.

Irvin Paradis: Were you saying there's going to be no further encroachment on the rear setback?

Rick Haskell: It'll be whatever minimum is necessary to get a ramp to that deck. It'll be temporary. If they sell the house, that ramp's coming out. It's not going to be a grandfathered footprint for anything. It is solely for the use of access while they live in there.

Irvin Paradis: All of this designation of a new deck is not going to happen?

Rick Haskell: Yes. That part, like I say, we're going to pull out or rescind item number three. We'll take care of that. Really, what they're looking for is the miscellaneous appeal into that side setback.

Chair Regis: Just the new addition, not the new deck?

Rick Haskell: Not the deck. All that crosshatch area over there, that's not going to be a consideration for you tonight.

Chair Regis: Okay.

Irvin Paradis: Okay. We're really just talking about a side setback reduction?

Rick Haskell: Yes.

Irvin Paradis: That changes things a lot.

Ed Bones: I've got a question for you.

Irvin Paradis: Yes?

Ed Bones: One of my questions is, this is a summer home, if I'm correct?

Pamela Day: We use it more than summer. We use it quite a bit of the year.

Ed Bones: Okay. It's not your primary residence?

Pamela Day: It is not at this time, but we are selling our primary residence. We may well be here all year long.

Ed Bones: I guess one of my concerns when I look at some of these things is, when I read this, I go, "You just want to do an addition?" I understand there's a medical reason behind wanting to do the addition. The other side of me says, "What you're

saying is the house no longer suits your current needs?" In my mind, if they don't meet your current needs, replace it with the house that does. It sounds harsh, but I think that's how I look at this. When I started reviewing this, I started thinking, if every applicant that came in with a medical need was allowed to expand their house, these variances would be going out left and right.

When I thought about it, I said, "Okay, if the house doesn't suit your needs, it's probably time to sell the house and get another house." I appreciate your love for Old Orchard, and we don't want you leaving, but buying a ranch somewhere that would fill your needs makes sense to me, or taking one of the rooms on the first floor, and I don't know the layout of it, and making that a bed. Adding an addition doesn't necessarily make sense to me.

Pamela Day: I don't know if you'd like to say something here.

Michael Petit: My name is Michael Petit. I live at the 42 Temple address during the summer months and many of the fall and spring months. I grew up in Old Orchard. I went to public schools in Old Orchard through the 8th grade. It's been a great community, and it's always been friendly towards people in need. In our particular case, I've climbed mountains. I've traveled all over the place doing this and that. Now I've lost the ability to do those things, and I'm confined to the home more often than not. I can't do any of the things that I used to do.

I underwent botched surgery on a cataract, and what you see as steps I see as a ramp. Every trip down the stairs or up those stairs is an adventure. It looks like something could happen. The stairs we have right now, I struggle to go up, and especially coming down, they're dangerous. We're making a proposal to modify that in order to be able to stay at the house, aging at home.

I was commissioner of health and welfare in the state of Maine when Joseph Brennan was the governor. We began programs then to enable people to stay at home. It's what we're doing now. Where would we go? We don't want to go to a nursing home. I don't want to buy a house just because we have to sell another one. The amount of time-- oh, and the other thing I would just note is that it's a progressive illness. There's no cure or treatment for Parkinson's. It just keeps on going. As best we can, we try and stop it, but it continues.

Whether we're going to have another year of lifespan or 10 years of lifespan, I don't know, but I would not be able to sleep on the second floor of my bedroom if this progresses further. As it is now, it's double rails all the way down. I have to hang on with my right hand, with my left hand, to come down. We're hoping that that accounts for something. I know there are other reasons for your approval and disapproval of the project, but in this case, this is central to our life.

Pamela Day: If I could just add, we consider this a pretty modest project. It's 8 feet. It's one floor. It really does not make it a big house. It does not make it a bigger house. It's extending the current small room that could barely hold the bed now, so that we can actually access the bathroom and use the first floor to sleep. That's what it is. It's not making it a big house for us.

Ed Bones: It is making it a bigger house, regardless of how you want to look at it. That's part of the problem for me. It's making it a bigger house. Again, I'm not trying to belittle any of this. I understand your rationale for wanting to do it. My concern is that we start giving out variances to everybody who comes in because of a health issue. We potentially are doing this forever. That's part two.

Part three for me is, this is your summer home. You may be spending more time here, but this is not your primary home. Again, we're going to give you a variance to expand your summer home because of a medical condition. It's unfortunate. I just see we're opening a can of worms where we're issuing these things left and right, unfortunately. I'd be more apt to consider it if it was your primary home, but it's not.

Pamela Day: As I said, we are selling our other home. At this point in time, we expect to be staying in Ocean Park.

Ed Bones: I appreciate that. That was just my position.

Michael Petit: Let me say, in response to point two about if you do a variance, then that would mean more people will come forward.

Ed Bones: I'm sorry, I couldn't hear you.

Michael Petit: You're saying that, under item two, that if you started granting variances for medical reasons, a lot more people would be in here?

Ed Bones: No, I'm saying that if we get more and more people coming through because they've got a medical condition, then they need to expand their homes for whatever reason because Old Orchard's not covered with ranches. They're really covered with multi-level homes.

Michael Petit: Yes, I know that.

Ed Bones: If you start getting more people, I've got a medical condition, I'd like to do an addition onto my house for my first floor because that's really what you're asking us, and so that we can live there, I think you open the door to more and more people coming through, and that's the rationale for their expansions.

Michael Petit: I'm not sure that is necessarily a bad thing. We are encouraging people to age at home. We are discouraging, collectively, the culture of nursing homes. It's not what we want to be.

Ed Bones: I agree with you.

Michael Petit: We want to be in our own homes.

Ed Bones: I absolutely agree with you, but in your situation, what you're saying is, "We live in another house in another town. We're going to sell our house, and we may move here." That's what you said. The chances are you'll spend more time. This isn't your primary residence. You want to take your summer home, and you want to expand it so that you can live in it and be more comfortable. I absolutely understand that logic. Again, I'm not a heartless guy. I understand that logic, but that is my

concern. This is your other house that you're looking to do an addition on. Unfortunately, that's part of how I have to look at this.

Michael Petit: It seems a rather dramatic action to say, sell your house if you can't make an accommodation in it.

Ed Bones: No, not in your case. In your case, you have accommodations, I'm assuming, at the house you live in. This is your summer house you want to make an accommodation to. When I look at your application, I see a Portland address on it. I believe you live in Portland.

Pamela Day: We live right now at this house in Ocean Park.

Ed Bones: That's what you're telling me. I appreciate that. Your application is clear that your address is Portland.

Pamela Day: Our house is on the market. The house in Portland is on the market. We do not have another place to live.

Ed Bones: This is what I'm looking at. When I see this, this tells me you live in Portland. That's your primary home, 20 minutes from here, and you want to expand your summer house.

Pamela Day: We want to expand this modestly in order to stay in this house.

Ed Bones: You still want to expand it. Whether or not it's modest or larger, it's still an expansion. Don't get me wrong. The rest of the board may not see it the way I'm reading this.

Irvin Paradis: The other thing we're not given is a diagram of the first floor of your house to see if you could carve out a bedroom out of this area that's in your existing home now on Temple Avenue. When my mother-in-law got so ill, we had the same situation. We live on Weymouth. When she couldn't climb the stairs anymore, we carved out a section of the living room as her bedroom until she had to move into an assisted living facility, where she ultimately ended her life. There are other options too. Other than selling your home, perhaps you could carve out a bedroom out of this non-existent floor plan. We were not provided with one, but it's something that could be helpful to us.

Ethan Scott: Irv, I was going to speak to that point as well. Just looking at this from an architectural point of view, it looks like you have that open porch on the front corner, which is within 10 to 15 square feet of the same size as your proposed addition. Given what Irv said, I haven't seen the floor plan or the layout on the inside, but I think that there's an opportunity where that open porch is to create almost the same amount of square footage as you're proposing in the new addition without impeding on the setbacks.

Pamela Day: That's much smaller. Sorry?

Ethan Scott: Yes, it's tough to read the dimensions here, but you have roughly 11 foot 7 by almost 8 feet.

Pamela Day: That would be a hard place to put a bathroom in, but it's much smaller.

Michael Petit: It's 5 square feet. I think that's only 5 square feet.

Ethan Scott: Only what?

Michael Petit: The open area now on the porch.

Ethan Scott: It looks like your new addition is roughly 110 square feet, your proposed. That deck, I can't quite read the dimensions, but maybe 7.5 feet by 11.5 feet.

Michael Petit: I can't read it.

Ethan Scott: You're at almost 90 square feet, so it's a difference of almost 20. If you were to renovate that area, it would probably cost you less in general, and you'd stay within the setbacks. You may be accomplishing both tasks at the same time.

Irvin Paradis: That's true.

Ethan Scott: As I said, I haven't seen the inside or seen the layout, but that's just an option.

Chair Regis: Any more questions from the board? Is there anything more you want to say?

Pamela Day: I think this is just a very modest proposal that would meet needs that are current and very much a concern for safety. We are very committed to being part of the community. As we said, we're more than likely to just continue to be here. We're living there right now. This would enable us to do this in a very modest way and to remain here in the community. You want to say something else?

Michael Petit: No.

Pamela Day: I guess I would add that we've seen a lot of very large, expensive homes being put up in Ocean Park. Frankly, we like those homes. People should do what they want. We've seen a lot of very large homes, including the one that was just built right next to us. We can't afford to do that, nor would we want to do that. We'd like to see the character of Ocean Park continued. That's part of why we're trying to do this in a modest way. Thank you.

Chair Regis: Is there anybody here speaking for the appellant?

Chuck Egan: My name is Chuck Egan, owner of 41 Colby, the direct rear butter to 42 Temple. I'm just going to ad lib here. I prepared some remarks here. I felt it was going to be a formal type of situation, but there have been some remarks here tonight, which I'd like to just address briefly. First of all, these folks have been wonderful tenants and wonderful neighbors right behind our house. They've been there about 20 years or so. I hardly ever hear a peep out of them. We just wave a little bit across the back fence. They're the kind of neighbors that we would like to have in our little community there.

Another thing, too, is that their home is an antique, as is ours, probably about the same vintage. We like older homes that can be kept up as well. The new things I've heard tonight are interesting, like possibly doing something with the front porch, maybe rearranging the first floor in some area. One of my relatives mentioned possibly about a stairlift, but I'm not sure that would necessarily be workable for you folks with your abilities. I was thinking outside the box as I was listening to all of your wonderful remarks. I must say that we had a family member with Parkinson's disease. I appreciate the mobility aspects of that very much, and trying to find accommodations in that regard.

I also want to preserve, as I think some of the remarks have been, the integrity of our neighborhood, the quiet, the open space, the daylight, especially for our cottage, which has been in the family for many generations and hopefully for many generations in the future, one of the first ones in Ocean Park. I want to be protective of that while also being deferential to the needs here.

I feel that the expansion of 8 feet is quite a lot. I don't think the applicant realizes that the view from the backside of 41 Colby is significantly obstructed with this 8-foot addition, even if it's just on the first floor that extends out. This is our backyard. Our backyard is here. That was just an amateur redlining of what an 8-foot extension on the first floor could be. I'm only saying that because I think the applicant may not realize it, but what we think is a minimal extension. It is a significant one from my point of view.

With that being said, I'm still thinking, how can we make this work? How can we counter the variance? I was thinking, "Geez, maybe they are going to be full-time residents here." Maybe they can pull that lever right down and say, "Yes, we're going to go inside and make this our permanent residence." That may make a difference in some way. Just thinking outside the box there.

However, if an extension were to be made, a way to possibly qualify it so that it does preserve the integrity of our neighborhood, that it does address the specific medical needs, not necessarily a generalized expansion of the building itself, could be to put some qualifiers on any authorization for extension.

Chair Regis: Thank you.

Chuck Egan: You know the terminology for this a lot better than I do, and I'm sure Rick does as well. If the expansion were to be made, one condition would be that the first-floor bedroom, if it needs to be 8 feet, fine. If it could be 6 feet less would be better. If it is done, it doesn't set a precedent. It certainly precludes the idea of having a second-floor structure built on that same footprint.

If it is approved, whatever the dimensions are, it doesn't mean that you could build a second floor in the future on that specific space. That would be, I think, a nonstarter for me if, for some reason, they could build a second floor on that same expansion space. I would like that if there were to be approval, that there's a caveat that no second floor could ever be built on that area.

The second caveat that I'd like to put on, if it were to be accepted, would be that any footprint of the expanded space does not enlarge the overall footprint of the building

for future reference. I think it may be called the primary structure. In other words, the addition to the primary structure does not change the overall footprint of the building. If, in fact, the building were to be modified in the future, redeveloped, or something in the future, that the approvals could not look back and say, "Oh, wait a minute, we had this 8-foot extension over here, this reduction of the side setback. Oh, we need to get that again because we had it before."

I'm saying if it is approved, it doesn't set a precedent for future expansion in that direction. Am I making that clear, what I'm talking about?

Rick Haskell: Obviously.

Irvin Paradis: I think variances are irrevocable. If we give them permission to build this bedroom, they're expanding the footprint. They have to have that registered with the York County Registry of Deeds. It's permanent, as I understand it. It cannot be revoked. Another owner down the road is not, or these people are not required to. What you're essentially doing is, once they don't need this bedroom, you're asking them to tear it down and go back to the original footprint, right?

Chuck Egan: If it were as removable as the ramp, that would be nice, but I appreciate that it may not be. What I was talking about is along the lines you're saying is that the new footprint, including the bump-out, cannot be used-- It can't be revoked, but it can't be used as a precedent. Let's say somebody were to come in the future and say, "We're going to rebuild that whole property." "Oh, look at this. We have this reduced setback on the right side." We own that reduced setback. We can use that same reduced setback when we're going to build our new building here.

Irvin Paradis: Sure, we can.

Chuck Egan: I'm suggesting I don't like that idea. I don't think that should become a new permanent setback for that.

Irvin Paradis: It's part of this process. It's permanent.

Ed Bones: I don't think you've taken into account, even just from looking at your pictures, the roofline that would have to go on there, because it's going to have to have a roof. When I'm looking at your pictures, going, "It's already going to be blocked, this view." It's going to be even more blocked once you add a roof to it and tie it into the house. Because the addition may be 8, 9 feet, or 9 feet, 10 feet tall, but then you're probably going to have another 3, 4 feet of roofline.

Chuck Egan: To get a slant of the roof? To get the roof--

Ed Bones: Yes, to get a pitch on the roof up there.

Chuck Egan: To get a pitch.

Ed Bones: If you want it to match the house, it's probably going to be probably a 6, 12 pitch up there. You're going to probably end up having to take the windows out of that side of the house, blocking them off to put a roofline up. You were saying your view would be obstructed. Now, it's going to be even more obstructed once you throw a roof onto those pictures of yours.

Chuck Egan: I see. All right.

Chair Regis: You're trying to take away sunlight to go back out.

Chuck Egan: That's precious in the wintertime around here, right? I've been trying to find a way for a win-win here, and your comments are very helpful in this regard. I think the one thing you say there that I think is the most important is that the revised footprint becomes indelible.

Irvin Paradis: That's right.

Chuck Egan: Any new construction there could look back to that footprint and say, "We got that footprint too." Is that correct?

Rick Haskell: I hear what you're saying, and I think I can clarify for you guys. I think he's looking for a, and it may not be in the words you're using, but a condition on the appeal, stating any future vertical expansion would require additional zoning board relief.

Chuck Egan: Correct.

Rick Haskell: Someone couldn't just buy this house next year, build a second floor without having to come back to you guys.

Chuck Egan: It includes that vertical expansion, but also if the building were leveled and somebody were to come in and build new, that they could-- I wouldn't want them to be able to build all the way out to that reduced setback there. I want them to have to revert to what's currently the primary building footprint.

Ed Bones: Part of my concern with that, Rick, is the fact that even if you put those stipulations into an application, that gets recorded to the Registry of Deeds. When someone walks in codes to look for something, I don't believe codes is usually-- unless I'm wrong. I didn't think you guys were pulling the deeds on them to check for--

Rick Haskell: No, we do have a mechanism to flag properties. Like say someone were to come in with a building permit, we assign the property through our system, and we could flag a note, see zoning board of approval 93024. It is not typical for us to go-- every permit that we pull, to go see if there was a zoning board.

Ed Bones: In my head, I'm just envisioning someone comes in with a new set of plans for a new house. If there was a note in the file, maybe it gets pulled if there's no note.

Rick Haskell: Yes, we do have a mechanism that would help. I'm not going to say it's bulletproof, but it would definitely help to identify something like this.

Chuck Egan: Do you understand the point I'm trying to make about that footprint?

Michael Petit: I think so. I'm not sure. First, this sounds like an invitation to tear down the new CAD and build something up that we go through. As what's done right next to us, at 42 Temple, and a perfectly fine house, we thought, down across with a

west-ground, east-ground meeting. As I said before, as a meeting square, they built another large facility.

What I'm hearing is that you can put an elevator in it, and it's the one that goes up. Then we expand boundaries as much as is allowable under the law. Am I hearing you right in saying that if we want to go with a three-story, CAD footprint, that that would be something that you would consider in the interim possibility?

Ed Bones: Yes. If you were looking to tear that down and build a new house on that footprint, then you could go 35 feet tall on it. That would simply be through codes and nothing to do with us.

Irvin Paradis: Right. It wouldn't need a variance at all.

Michael Petit: I guess we'll go through this and decide what it wants to look like in the next 10, 20 years. Maybe it's all new construction. One of the things we'd all like to go to, I think, is the waterfront that's maintained its history for decades now. It looks like that's the same thing. Maybe this is a new way of doing this. What am I listening to?

Chuck Egan: I would much prefer to have the old-style house. If we can find a way to make this work, whether it be doing something with that front porch area, something inside, some modification here, and possibly looking into whether or not the revised footprint would be indelible in the future, or would they have to start from what's currently there as of right now?

Rick Haskell: I would refer to town council before to see if that is something that the zoning board has the power to do, to waive permanently a footprint. They can condition heights. They can do stuff like that, but I don't know that they can condition a footprint. Before we voted on that, I would suggest that the board seek town legal advice prior.

Chuck Egan: If I could throw this out, you've spent a lot of time on this. With all these factors spinning around, would it be appropriate to hold off on going for final approval right now and see about any of these other variables?

Michael Petit: We were hoping to have this construction done for winter, and we have contractors ready to await your approval. If it's not, then we lose the opportunity to get it done this winter. We have to wait until next spring. In the meantime, just a personal note, if I'm going downstairs, that's our challenge every day. That may be what we get down to with what you said, but for me, it's an existing presence. It doesn't go away.

Chuck Egan: I appreciate that. The major sticking point of all these topics is the indelible revised footprint, because that really is a game-changer for the coverage on that property. I'm wondering if there's some way that we can get around that.

Pamela Day: How long would it take to consult legal? Would that make enough room to come back here?

Ethan Scott: If you wanted to table it to do some more research or whatever, as long as I would have the new application by next Monday, you could be on October's

meeting, but I would need the application by next Monday. Other than that, you would shift to the November.

Pamela Day: It can absolutely mean for you to forgive?

Ethan Scott: If you table it and then you want to bring it back, I would need to know by next Monday. If I know by next Monday, I can put you on the agenda for-- it's the last Monday in October. I'm not sure what it is. If I don't have it by then, it'll be the last Monday in November.

Chuck Egan: I appreciate all your thoughts about this. It's a big thing for a building that's been in the family for 110 years, and preserving Ocean Park. Thank you so much.

Chair Regis: It's up to these people. Do you want to continue, or do you want to hold off?

Pamela Day: Continue with me and make a decision tonight. Holding off with me, and then we can put it on the next meeting.

Pamela Day: We'll be getting some consultation from legal regarding the building.

Chuck Egan: That's, I think, the biggest thing right now is the footprint.

Chair Regis: Can you come up to the mic? I can't hear you if you're sitting down.

Michael Petit: I'm sorry. What would it take to get your approval?

Chair Regis: What would it take to get the permission?

Michael Petit: What's that?

Pamela Day: To get approval?

Chair Regis: To get approval? We have to go through the criteria and everything. We need three members of the board to assess that we are going to take your application. If two of us decline it, then it's null and void, and you're going to have to wait another year. Otherwise, if you want to hold off and come back next month with more revised plans, then we'll just put it off until next month.

Michael Petit: Does that sound right?

Pamela Day: It sounds like we should go ahead and not continue but seek the advice on legal and get this back to you, Rick, by next Monday.

Irvin Paradis: You want us to table this tonight, correct?

Pamela Day: Yes, please.

Irvin Paradis: That's what it sounds like.

Pamela Day: Thank you.

Chair Regis: Will we ever request to table? Was there a motion from the board?

Ethan Scott: All motions tabled for the next meeting.

Chair Regis: Do I have a second?

Ed: Second.

Rick Haskell: We have a motion to table this item number two. Do you agree with this? Oh, my God, I'm going to lose my mind here. Ethan?

Ethan Scott: Agree.

Rick Haskell: Irv?

Irvin Paradis: Agree.

Rick Haskell: Ron?

Chair Regis: Agree.

Rick Haskell: Ed?

Ed Bones: Agree. Rick, do we need a motion to dismiss item three?

Rick Haskell: Yes.

Ed Bones: I'll make a motion that we dismiss item three, the ramp for 42 Temple Avenue, Ocean Park.

Chair Regis: Do I have a second?

Irvin Paradis: Second.

Chair Regis: Take the roll.

Rick Haskell: Motion has been made to remove item three. [laughs] My mind is going. Ed, do you agree with that?

Ed Bones: Agree.

Rick Haskell: Ron?

Chair Regis: Agree.

Irvin Paradis: Agree.

Rick Haskell: Ethan?

Ethan Scott: Agree.

Chair Regis: Any other motions from the board? No? Do I have a motion to adjourn?

Irvin Paradis: Make a motion to adjourn.

Chair Regis: Do I have a second?

Ed Bones: Second.

Chair Regis: All those say aye.

Council Members: Aye.

Meeting Adjourned