

ITEM 1 – ROLL CALL

Present: Bill Hamilton, Chair; B. Cabot Trott, Vice Chair; John Marshall; Charles Rankie, Jr.; Ellen Lemire; Rosanne Adams, alternate member; Jay Meyer, alternate member

Also Present: Shelly Bishop, Code Enforcement Officer; Ann Lukegord, Recording Secretary

ITEM 2 – PUBLIC COMMENT PERIOD

The Chair called for public comment and when there was none: If not, I'll go on to our next item on the agenda which is Public Hearings.

ITEM 3 – PUBLIC HEARINGS

Mr. Hamilton: I am going to open the first public hearing which is an administrative appeal from James Folan, 291 Harold Dow Highway, Eliot, Maine, regarding a decision of the Eliot Planning Board under Section 33-82 (Site Review and Change of Use Ordinance) on property located at Map 29, Lot 27-1A. I am opening the public hearing but due to matters beyond our control and within reasonable protocol to the public health and safety, the applicant has requested and has been granted an extension of the hearing listed on the agenda this evening of 28 Levesque Drive to the next regular meeting of the Eliot Board of Appeals which is to be held on January 20th, 2022, at 7:00 p.m. Therefore, I open the appeal tonight and I'm continuing it to our meeting on January 20, and now I am closing this public hearing.

Mr. Hamilton: The next item on the agenda is an Appeal for a Practical Difficulty Variance by William Reichert Jr., 10 Country Lane, Eliot, Maine, Map 23, Lot 40, under Section 45, Article V, Subsection 194, regarding setbacks. Voting members on this appeal are, first of all, let me ask are there any conflicts of interest among the five members of the board? If not, the five regular members will be the voting members of this appeal. Let me briefly just go over the procedure of this public hearing. I will open the hearing. I did a brief summary of the request. We have determined the voting members. We have determined the parties to the action, in this case, parties in the action would be the appellant, and he is asking for a variance, a practical difficulty variance. The jurisdiction that we have, the Board of Appeals is charged to review this under Section 45, Article V, Subsection 194, and under Section 45-49B of the Eliot Code of Ordinances. Typically, we determine standing in the case of any appeal, meaning the legal right for someone to appeal to the Board of Appeals, so I will be asking that question. And timeliness, in this case, does not apply. Timeliness usually applies when there is an appeal against either the Code Enforcement Officer or the Planning Board, in which case once a decision is rendered by either of those two bodies, an appellant has

thirty days to submit an appeal. In this case, there is no time limit for a practical difficulty variance. And the type of appeal with regard to a practical difficulty variance is called a *de novo* appeal. In other words, we will take all testimony up until tonight, basically to make determination on whether to approve or disapprove your request. So, the procedure will be:

There will be testimony of the appellant to begin with, uninterrupted, you will have all the time you need to describe to us what exactly it is that you're looking for.

Then there will be questions from the board to the appellant if there are any questions regarding your testimony.

And then there will be testimony of parties to the action, which will be any abutters, the Code Enforcement Officer, interested parties.

And there will be questions from the board to those abutters or interested parties.

And then, after all the testimony is given, there will be a chance for the appellant to give us a final statement. If there is anything that needs to be clarified or a question may have arisen that hadn't been: by the appellant. So, he'll get the last statement.

And then, I will close the public hearing, and at that point, there will be no other testimony allowed. If the board has questions to anyone in the audience, abutters or the appellant, we can certainly ask those questions. Other than that, there are no other questions after the public hearing is closed.

At that point, the board will deliberate. And, hopefully, we will record findings of fact throughout the proceedings. And then, we hope to come to a deliberation and a vote of either to accept or deny.

Are there any questions about what I've just outlined as far as the procedure goes?

Mr. Hamilton: Okay, good. So, is Mr. Reichert here tonight?

Mr. Reichert: Yes.

Mr. Hamilton: Good. You have the floor, sir, and you may just tell us what you are interested in having us do.

Mr. Reichert: So, I'm actually looking to create an ADU with a garage I'm adding on for my parents to live in the house with me. I am looking to give them a good retirement home, so I will be able to take care of them farther on as they get older. They are

69 currently snowbirds, they go, fly down to Florida for the winter, so that is where they are
70 at.

71 Ms. Lemire: Could you slow down a little bit and speak a little louder.

72 Mr. Reichert: Yes. Sorry. As I said, this is an ADU for my parents that we are looking to
73 build for them as a retirement home. We want to put a two-car garage on. We are looking
74 to make it one floor, because for ADU purposes, so as they get older, and when we take
75 care of them, when they are older, I'd like to make it easy for them to get in and out of
76 the house. So, my current (paused), where it is going to be built currently is on, where the
77 driveway is at. Driveway and lawn. We do have a backup septic system in place. So, we
78 have had it inspected and it is currently running good. So we are, so like I said, we have a
79 backup septic plan. We started design; you can see the drawings that we provided. So, I
80 completed a design with my contractor. So, I said, hey, before we move on, we need to
81 take a look at the setbacks. I am looking to it in the front.

82 Ms. Lemire: Get what in the front?

83 Mr. Reichert: A variance on the front setback. Approximately ten feet where we're
84 looking to build according to the drawing, we're about eight feet over the line. So, I'd
85 like to go a little bit farther, the setback is across ten feet to give us that little bit of room.
86 We have at the righthand side corner, if you are looking from the house to the road, on
87 our neighbors, the Pietrowskis, looking for approximately a two- to five-foot setback
88 there. This would just be for the addition. So, it will just cross over a small area. We do
89 have a letter from the Pietrowskis in the package that they are fine with us crossing the
90 left setback. Essentially, I'm looking to build a retirement home for my parents.

91 Ms. Lemire: Was the septic already put in?

92 Mr. Reichert: So, we have the original septic in the back. It's not put in yet but we have a
93 backup designed. That design is in place. You have a copy of that too. I had the guy come
94 out and he did the design so we have that in case the septic does go, we have a plan in
95 place to cure, to solve that. I had Morgridge come out and inspect it and it is in good
96 working condition.

97 Mr. Hamilton: Could you just briefly go over the responses that, any sort of variance
98 requires that you meet certain conditions. There are five conditions for a Practical
99 Difficulty Variance. Could you just go over those with us? I know you've written them
100 down for us, but maybe for those who haven't seen them. Also, this is a chance for you to
101 elaborate a little more if you feel like you can.

102 Mr. Reichert reads the first condition: *The need for a variance is due to the unique*
103 *circumstances of the property and not to the general condition of the neighborhood.*

104 Mr. Reichert: The need for a variance is due to our road shape and our property shape. It
105 is a nonconforming lot. It is a very odd-shaped lot. And where the location of our utilities
106 – our well and our septic – where they are at, we cannot move it back any farther. Or else
107 it will go closer to the road than what we are trying to do.

108 Ms. Lemire: Where is your well located?

109 Mr. Reichert: The well is located on the front of the property, close to Country Lane.

110 Ms. Lemire: On the front lawn?

111 Mr. Reichert: Yes, do you want me to come up and point it out for you?

112 Ms. Lemire: Yes.

113 Mr. Reichert showed Ms. Lemire on her map and said: yes, we just had that brought up to
114 code. We just had a bunch of work done.

115 Mr. Hamilton: Just for clarification.

116 Mr. Reichert: yes, sir.

117 Mr. Hamilton: If we can hold the questions, please, from the board to the appellant to
118 after he has finished his testimony, it would make our job a little easier.

119 Mr. Reichert: Moving on to question number two and read *granting of a variance will not*
120 *produce an undesirable change in the character of the neighborhood and will not*
121 *unreasonably detrimentally affect the use or market value of abutting properties.*

122 Mr. Reichert: It is a bedroom neighborhood. We have four houses out on the road. Ours
123 is currently the only one that does not have an attached garage. The other four do. I feel
124 that by adding this garage with an ADU, we will definitely increase the value of the
125 properties in the area. And there won't be any detrimental effects to the area at all as far
126 as economically.

127 Mr. Reichert: Moving on to number three and read *The practical difficulty is not the*
128 *result of action taken by the applicant or a prior owner.*

129 Mr. Reichert: It is not at all from us but how it was, how it was set up initially. You can
130 see by the property map it is a very weird-shaped property.

131 Mr. Reichert read condition number four, *No other feasible alternative to a variance is*
132 *available to the applicant.*

133 Mr. Reichert: Like I said, due to the current location of our utilities, our septic is on the
134 backside of the property. We cannot move it back any further as that will encroach on the

135 setbacks that we need for the septic system to the building. And then if we go any
136 (paused), we're pigeon-holed to the size that we're creating right now. And have usable
137 space for an ADU with the garage.

138 Mr. Reichert: Moving on to question number five and read: *The granting of a variance*
139 *will not unreasonably adversely affect the natural environment.*

140 Mr. Reichert read his response the footprint of the ADU and garage will be over existing
141 driveway and grass. So, we are not going to affect anything that will be found in the
142 drainage area. There won't be any drainage issues.

143 Mr. Reichert read the final condition: *The property is not located in whole or in part*
144 *within the shoreland areas as described in title 38, M.R.S.A. section 435.*

145 Mr. Reichart: we are not located within shoreland areas as described.

146 Mr. Hamilton: Thank you, questions from the board to the appellant?

147 Mr. Trott: Mr. Chair.

148 Mr. Hamilton: Yes.

149 Mr. Trott: So, the septic design we have here outlines the existing field with the stone and
150 bed, correct?

151 Mr. Reichert: Yes.

152 Mr. Trott: And that right now is sitting off the back of the house is somewhere in the
153 order of, I'm guessing, twenty, twenty-five feet by the rough measurements that are on
154 that map?

155 Mr. Reichert: Yes.

156 Mr. Trott: Okay, so the reason why you're not going back another ten feet would have
157 been to meet the setback?

158 Mr. Hamilton: To meet that setback of the current field, yes?

159 Mr. Trott: No, why, I mean, move that addition ten feet back to meet your front setback.

160 Mr. Reichert: No, I'm not sure what that would solve, if we move it back ten feet then we
161 can meet the setback?

162 Mr. Trott: You're asking us to give you a practical variance for ten feet on the front.

163 Mr. Reichert: Yes.

164 Mr. Trott: So, if you moved the whole addition back ten feet, you would get your (spoken
165 over).

166 Mr. Reichert: Then the house would be too close to the current field. There are certain
167 setbacks we have to meet to that.

168 Mr. Trott: What is the current setback to the leach field?

169 Ms. Bishop: It varies depending on your site plans.

170 Mr. Marshall: I cannot understand you at all.

171 Ms. Bishop: It varies depending on the foundation, prop walls. It varies. There is a sheet
172 on it for different setbacks. I'll see if I can find it quickly for you.

173 Mr. Trott: The other thing, this is a nonconforming lot?

174 Mr. Reichert: Yes, sir, it is.

175 Mr. Trott: And looking at the other parts, I was looking at, your floor plan. I did notice
176 that you are over the square footage for an ADU.

177 Mr. Reichert: We were told that the square footage was the total livable space: living
178 room, kitchen, and bedroom.

179 Mr. Trott: From wall to wall.

180 Mr. Reichert: I was told that the area of the bathrooms and hallways do not count toward
181 total space.

182 Mr. Trott: I think you may re-read that. (Asks the code enforcement officer) Is that
183 correct?

184 Ms. Bishop: I believe that was the policy change that we had in between the old
185 ordinance and the new ordinance, the time between there. It used to call out walkable
186 space where you could walk within, and we changed that to habitable space to make it
187 more consistent. And after that was when the ordinance had gotten changed. So, the
188 discussion that we had, some confusion between the waiver application for the practical
189 difficulty and this one, the previous ordinance allowances. That is possibly where that
190 confusion is coming from.

191 Mr. Hamilton: But we're operating under the current ordinance.

192 Mr. Trott: Right, the current ordinance.

193 Ms. Bishop: Yes, when he and I were having this discussion back a few months ago, it
194 was under the old ordinance. It was habitable space.

195 Ms. Lemire: It no longer is, correct?

196 Ms. Bishop: It no longer is, correct.

197 Mr. Trott: So, with that, another question is, if you're reducing that square footage and
198 some kind of adjustments can make that fit into your variance, your setbacks.

199 Ms. Bishop: The setback with the foundation for a full foundation is fifteen feet.

200 Mr. Trott: Okay.

201 Ms. Lemire: Can you say that again, Shelly?

202 Ms. Bishop: The setback for a full foundation for the septic is fifteen feet.

203 Mr. Marshall: This is going to be a full foundation?

204 Ms. Bishop: Yes, a triple foundation. He has to have at least a four-foot cross wall for an
205 ADU.

206 Mr. Hamilton: So that gives you five feet in your setback, okay.

207 Mr. Hamilton: Any other questions from members of the board? (Mr. Rankie raised his
208 hand.) Charles.

209 Mr. Rankie: Have you looked at redesigning your septic system so you can conform to
210 the existing ordinance for setbacks?

211 Mr. Reichert: This is an option. We're trying to save a little bit of money currently, so not
212 to take care of the septic system just yet if it's in working condition.

213 Mr. Rankie: The answer is no, you didn't look at that or you're aware of that?

214 Mr. Reichert: I'm aware of that. Yes. So, it is a consideration but if we can avoid
215 replacing it right now for cost reasons that would be a much better option for us to leave
216 it currently.

217 Mr. Rankie: So, I didn't hear the answer you gave to Mr. Trott when he said if you'd
218 simply move the addition to the rear of the lot. What was the reason?

219 Mr. Reichert: The reason was we're encroaching on the setback from the current septic
220 system so if we go back to, I think approximately (paused).

221 Mr. Rankie: I don't understand what encroaching the septic system means.

222 Mr. Reichert: Well, we have to be away from the septic system so many feet. Correct?

223 Mr. Rankie: Yes.

224 Mr. Reichert: So, if I go back five feet, I'm not 100% sure what the correct measurements
225 are going to be from the new addition to the current septic. So, I'm not 100% sure what
226 that is but I know when we looked at everything, we were within twenty feet of the
227 septic. So, if it's fifteen feet, now we're moving it back five feet. If we go beyond that,
228 then we're within, we're beyond the setback of the current septic to the cross wall.

229 Mr. Rankie: I'm good.

230 Mr. Hamilton: Other questions from the board?

231 Mr. Trott: I just have one.

232 Mr. Hamilton: Cabot, you have one.

233 Mr. Trott: I am looking at this again, I'm not a civil engineer by design, looking at the
234 septic design, I see the 36 by 11, is that the backup if you need a new one?

235 Mr. Reichert: Yes.

236 Mr. Trott: Okay, and did that give you a reason why it goes farther to that side than what
237 the original did if you're digging out and having to replace? Because it says that you have
238 to replace existing soil.

239 Mr. Reichert: Removal of the whole entire septic system and replacing with a new system
240 thirty-six feet by eleven feet and we're going longer because we're going to account for
241 the extra from the ADU.

242 Mr. Trott: Right, so I am just looking at the why, I mean did it get shifted farther in your
243 way and not farther back.

244 Mr. Reichert: Because it got thinner.

245 Mr. Trott: Yes, again, if you went that way it would give you that possible space if it was
246 moved. I know we're trying to save money but we also look at all options that are to be
247 explored.

248 Mr. Reichert: Understood.

249 Ms. Reichert: Can I answer that? Being his wife, can I answer that?

250 Mr. Trott: You have to talk to the big guy here (gesturing to the Chair, laughter).

251 Mr. Hamilton: Certainly, you may!

252 Ms. Reichert: My name is Leslie. The idea is to not have to replace a whole working
253 system for ten feet off the property, off the private property. If you look at these plans, we
254 are clearly, even though we are over the setback to the private property, we are several
255 feet from the actual road where Country Lane meets our driveway. And we're a cul-de-
256 sac so this is, it is a nonconforming lot so that is why we are asking for this property. We
257 are still several feet from that road.

258 Mr. Trott: The cul-de-sac is what makes your lot nonconforming?

259 Ms. Reichert: That is correct. I believe.

260 Ms. Bishop: It's the lot size.

261 Mr. Trott: so, I mean, there is right now everything on your property is median – the
262 setbacks and the ordinances.

263 Mr. and Ms. Reichert: Agree.

264 Ms. Reichert: That is why we are asking your permission.

265 Mr. Trott: I understand that but the cul-de-sac is there. It was caused by the subdivision.

266 Mr. and Ms. Reichert: Agree.

267 Mr. Trott: This is pre-existing owners that created the issue and that's one of the things
268 that we look at.

269 Mr. and Ms. Reichert: Agree.

270 Mr. Trott: It wasn't the town's ordinance that created the issue.

271 Mr. and Ms. Reichert: Agree.

272 Mr. Trott: Thank you.

273 Mr. Hamilton recognized Ms. Lemire.

274 Ms. Lemire: I'm not sure quite how to ask this, the soils, testing? Any other testing on the
275 property? This way or that way?

276 Mr. Reichert: They just tested in the area of the permit.

277 Ms. Lemire: Okay, so he hasn't tested the soil to see if it would hold up or it could take
278 the septic system in a different location?

279 Mr. Reichert: We cannot move the location because of all the wells in the area. We're too
280 close.

281 Ms. Lemire: Oh, okay, so wells are around on the other properties?

282 Mr. Reichert: Yes, because of the wells on the other properties, we cannot move it from
283 that location. Yes, so obviously, our well is in the front. It's got to stay in the backyard
284 where it currently is.

285 Ms. Lemire: I wasn't saying to move it out of the backyard.

286 Mr. Trott: No, no, continue to shift it to one side.

287 Ms. Reichert: No, because we hit the Petrowski's.

288 Mr. Trott: If you shifted to one side to the extent of where your old field was, you're
289 going to be straight behind the house where you have all kinds of access.

290 Mr. Reichert: Yes.

291 Ms. Reichert: Right.

292 Mr. Trott: That's why I'm asking why it was over to one side, back to where you have all
293 the room in the world. I accept the fact that you don't want to have to. That I understand.

294 Mr. Reichert: Because of the wells.

295 Mr. Trott: It has to stay out back because of the wells.

296 Mr. and Ms. Reichert: Yes.

297 Mr. Rankie: Mr. Chairman.

298 Mr. Hamilton: Yes.

299 Mr. Rankie: As a point of order, people are not going through you to be recognized to
300 speak and it's difficult to hear with our faces all muffled to begin with and if people don't
301 go through you, it's very difficult to hear. There's a lot of overtalk, especially down here
302 in the corner. So, I'm asking if you could enforce going through you, please.

303 Mr. Hamilton: Yes, thank you. Thank you for bringing that up. As usual, everything goes
304 through the Chair for questions.

305 Mr. Trott raised his hand.

306 Mr. Hamilton: Yes.

307 Mr. Trott: Point of order, I did have the floor.

308 Mr. Hamilton: You did, that's correct.

309 Ms. Reichert: I'm sorry. I interrupted.

310 Mr. Hamilton assured her she was fine.

311 Mr. Trott: I'll try to speak up clearer, Charlie, so you understand but I did ask to go
312 through the Chair and I did have permission to go through the Chair.

313 Mr. Rankie: If I could, Mr. Chair.

314 Mr. Hamilton: Yes.

315 Mr. Rankie: It is when other people are speaking when you're speaking, Mr. Trott, it
316 becomes difficult to hear you. You have a pretty clear voice. Thank you.

317 Mr. Hamilton: Any other questions from the board?

318 Mr. Hamilton: I have one question, it's just a clarification. Exactly what are you asking
319 the board as far as setback from the side yard, which is a twenty-foot requirement. What
320 are you asking?

321 Mr. Reichert: We are going to be going over that twenty-foot requirement by
322 approximately two to five feet in a certain area.

323 Mr. Hamilton: So, you are asking the board to waive or (interrupted).

324 Mr. Reichert: Yes, to allow that variance.

325 Mr. Hamilton: To eighteen feet?

326 Mr., and Ms. Reichert: Yes, eighteen feet.

327 Mr. Hamilton: To eighteen feet. And what about the front yard?

328 Mr. Reichert: (to Ms. Reichert) What's the actual distance we're looking for?

329 Ms. Reichert: (to Mr. Reichert) Ten feet.

330 Mr. Reichert: It is currently thirty feet so we are looking for about eighteen feet from the
331 front.

332 Mr. Hamilton: You're looking to have (interrupted).

333 Mr. Reichert: So, I want just in case there's a little (unclear) in the construction and the
334 plans, so we currently, as far as eight feet over. Yes, we're approximately eight feet over
335 (unclear) I'm asking for a twenty-foot variance, breakdown, twenty feet, so twenty feet.

336 Mr. Hamilton: From thirty to twenty.

337 Mr. Reichert: From thirty to twenty.

338 Ms. Reichert: So, that's ten feet.

339 Mr. Reichert: Yes.

340 Mr. Hamilton: Okay, thank you. So, you are asking for two feet from the side yard and
341 ten feet from the front yard. Correct?

342 Mr. Reichert: Correct.

343 Mr. Hamilton: Okay, that's the only question I had. Anyone else? Charlie?

344 Mr. Rankie: I have a question.

345 Mr. Hamilton: Yes.

346 Mr. Rankie: So, if you were to lose the garage, you'd clearly get your twenty feet on the
347 side. However, you would have a problem with the front. Is that true?

348 Mr. Reichert: Well, if we lose the garage and not build the garage, that's part of the
349 reason why we're doing this. We'll have indoor storage. But if we lose the garage, we
350 will just have the ADU to just a small area.

351 Mr. Rankie: So, you'd completely conform?

352 Mr. Reichert: Yes, but the whole concept of doing this addition is to have indoor storage
353 for the vehicles.

354 Mr. Rankie: But you do understand that when your neighbors bought their properties,
355 they bought their properties knowing that there's a thirty-foot setback from the road and
356 there's a twenty-foot setback from the side lot. Two feet on the side lot isn't really a lot
357 but ten feet closer to the road, that's asking for quite a bit.

358 Mr. Reichert: There's actually another twenty to thirty feet beyond that garage the way
359 the road comes in.

360 Mr. Rankie: But it's still your property line. The road can be shifted. That's where the
361 road is today. But it's your property line that counts.

- 362 Mr. Reichert: As you can see, I do have a letter from my abutting neighbors.
- 363 Mr. Rankie: Excuse me?
- 364 Mr. Reichert: There is a letter from my abutting neighbor.
- 365 Mr. Rankie: But that neighbor could sell to someone else tomorrow. That's why the
366 zoning and setbacks and all that. The properties change.
- 367 Mr. Reichert: Agreed.
- 368 Mr. Rankie: A thirty-foot setback to a twenty-foot setback is asking for quite a lot. So,
369 I'm throwing that out to you so that when we (paused). Maybe you could come up with
370 something so that you are not asking for quite so much. So that when we make our
371 decision, we're not looking at giving you a whole additional ten feet in the front and
372 compromising the setback you have for your neighbors who purchased their properties
373 based on the thirty-foot setback. That's what we would have to deal with. So, that's why
374 I'm presenting that to you.
- 375 Ms. Reichert: May I ask a question?
- 376 Mr. Hamilton: Yes, you may.
- 377 Ms. Reichert: How often does a road really change in the town of Eliot? This road was
378 built in 1970-something when the development was built so how often does something
379 like that actually happen?
- 380 Mr. Hamilton: I can't answer that question. Anyone?
- 381 Mr. Rankie: I can somewhat answer it but it's a moot issue because that's why the
382 easement is what it is. That's why the Planning Board looks at new subdivisions as they
383 require whatever. It all depends on the whim of the town Public Works director when he
384 can present something to rebuild the road, which does happen. Not necessarily on such a
385 side road but it does happen. So, you really are living with the constraints of what your
386 lot physically is. That's what you have.
- 387 Mr. Hamilton acknowledged Ms. Lemire who had a question.
- 388 Ms. Lemire: Is your street a public way or private?
- 389 Mr. Reichert: It is a public way.
- 390 Ms. Lemire: It's a public way. It's been assessed by the town?
- 391 Mr. Reichert: Yes, it's been taken care of by the town.

392 Ms. Reichert: It's not a through way, it's a cul-de-sac.

393 Ms. Lemire: No, it's a closed subject.

394 Mr. Hamilton: Any other questions from the board?

395 Mr. Hamilton: Jay, you had your hand up.

396 Mr. Meyer: Yes, Mr. Chair. I would like to ask about the location of the mailbox, and
397 how that relates to the road. It appears to me that the mailbox is on town property.

398 Mr. Reichert: It's right on the road. The post office will not deliver if it's not right on the
399 road.

400 Mr. Meyer: Yes. So, that road has not changed in the amount of time since it was
401 originally built.

402 Mr. Reichert: Not to my knowledge, no.

403 Mr. Meyer: And it also appears that part of your property, the road is on your property at
404 this very corner of the triangle.

405 Mr. Reichert: Correct.

406 Mr. Meyer: So, the road appears that it goes in a natural flow.

407 Mr. Reichert: Yes.

408 Mr. Meyer: I suppose too, this triangular section, I detect potentially the surveyor put that
409 in a long time ago. And what you're asking for, that section of the road, it appears that
410 you're far from the road. I know that your property line is what counts but as you look at
411 the road, you actually have that, it appears that you may have almost that ten feet to the
412 road versus your actual property line.

413 Mr. Reichert: Yes.

414 Mr. Meyer: So, that area of encroachment is at that particular point in your driveway to
415 the road. And I can see that on the map, that you have, the red map you have here. So,
416 this particular point is where I thought you may have your encroachment here.

417 Mr. Reichert: Yes.

418 Mr. Meyer: And then potentially right here.

419 Mr. Reichert: Yes.

420 Mr. Meyer: Okay, thank you.

- 421 Mr. Hamilton: Any other questions from the board? Good enough. Thank you.
- 422 Mr. Reichert: Thank you.
- 423 Mr. Hamilton: Next, we will call abutters to the property if there is anyone who would
424 like to testify as an abutter.
- 425 Mr. Hamilton: Any interested parties that would like to testify?
- 426 Mr. Hamilton: I'd like to ask the code enforcement officer to give us a little rundown
427 from her perspective.
- 428 Ms. Bishop: Our review has concluded that they have a nonconforming lot in the
429 suburban zone due to lot size and frontage. They do have conforming structures with a
430 nonconforming lot size and frontage. Section 45-194 allows them to request the practical
431 difficulty variance which they have done this evening. And their lot coverage is fine at
432 45% right now, with the proposed increase would put them at 9.8%.
- 433 Mr. Hamilton: What percentage?
- 434 Ms. Bishop: 9.8% and at the maximum percentage so they would still be within the
435 allowed lot coverage.
- 436 Mr. Hamilton: Any other questions to the code enforcement officer by the board? If not
437 (paused).
- 438 Ms. Lemire: I do, I do have one question.
- 439 Mr. Hamilton: Ellen.
- 440 Ms. Lemire: Shelly, regarding the fact that the subdivision was approved without any
441 conditions does that have any implications on our decision tonight?
- 442 Ms. Bishop: It didn't appear to. It was approved in 1973, our ordinance was 82. As you
443 know, our planning board approval states that any changes go back before the board. In
444 this case, it did not appear to. And it also showed the lots versus houses on the lot. In this
445 case, it would just be an extension of their home, and the lot is already laid out with no
446 changes to it.
- 447 Ms. Lemire: Okay.
- 448 Mr. Hamilton: Any other questions to the code enforcement officer? Yes, Roseanne.
- 449 Ms. Adams: Just for clarification, because there was a lot of talk, what is the setback for
450 the septic system?

451 Ms. Bishop: Fifteen feet.

452 Ms. Adams: Fifteen feet, okay.

453 Mr. Hamilton: Before I close the public hearing, I want to ask the appellant if you have
454 any need to give us more information or respond to anything that has been brought up
455 tonight.

456 Mr. Reichert: No, thank you, sir.

457 Mr. Hamilton: Okay. So, before I close the public hearing, I'd like to hear from our two
458 alternate members, our non-voting members, if you chose to give us your opinion on this
459 appeal. If you chose to. Jay.

460 Mr. Meyer: Yes, when I look at the location of the mailbox and the location of the road in
461 the front and the natural flow of the road versus the property line as a surveyor put it
462 together, I feel the property line really flows with the road versus the actual property line.
463 So, I think that the front setback, with that area being open like that, I don't feel the
464 encroachment is as strict as we're looking at.

465 Mr. Hamilton: Okay. Thank you. If there are no other comments or questions from the
466 board, I'll close the public hearing and then we will begin deliberations. And again, if
467 you have questions to the appellant or the code enforcement officer or anyone else,
468 you're certainly welcome to ask. The public hearing is closed and we will begin
469 deliberations. The first thing I'd like to do is review the findings of fact before we
470 proceed and that is just for the record.

471 Mr. Hamilton stated the Findings of Fact.

472 1. The applicant is William Reichert, Jr.
473

474 2. The property is located at Ten Country Lane, Map 23, Lot 40, in the suburban area.
475 Country Lane is a public way.
476

477 3. The appellant has proven standing by being the owner of the property through deed.
478

479 4. There are no issues of timeliness.
480

481 5. This is a Practical Difficulty Variance, which has a *de novo* review.
482

483 6. The Board of Appeals' jurisdiction is under section 45-49B and 45-194, which is
484 nonconforming lots of record.
485

- 486 7. The appellant is requesting a variance to construct an ADU (additional dwelling unit)
487 for his parents with a two-car garage, single floor, to be built over a driveway and
488 existing grass.
489
- 490 8. The appellant is asking for a two-foot variance from the 20-foot side-yard setback and
491 a ten-foot variance from the 30-foot front-yard setback.
492
- 493 9. The need of the variance was testified due to an odd-shaped lot.
494
- 495 10. The ADU is within the allowable lot coverage of 9.8%.
496
- 497 11. The actual proposed size of the addition may not conform with existing ADU
498 specifications and current code requirements with respect to square footage.
499
- 500 12. A back up septic system will be constructed in the event the current septic system
501 fails.
502
- 503 13. The setback through town ordinance for a full foundation is fifteen feet from the
504 foundation for the septic system.
505
- 506 14. One option it was testified to redesign the septic system to fit within the current
507 setbacks.
508
- 509 15. The well is in the front yard centered in the middle of the front lawn approximately
510 ten feet from the road.
511
- 512 16. Other wells in the area could prevent moving the septic system to the front yard.
- 513 Mr. Hamilton: OK, let's begin deliberations. I will entertain a motion at this point and
514 then we can begin deliberations. I will entertain a motion.
- 515 Mr. Trott: Mr. Chair.
- 516 Mr. Hamilton: Yes.
- 517 Mr. Trott: Before deliberations, would you clarify ordinances as this is the first time
518 we've done one.
- 519 Ms. Lemire: A practical difficulty variance.
- 520 Mr. Trott: Practical difficulty variance. Verify what we have to meet, where those fits.
- 521 Mr. Hamilton: Yes. I think that would fit after a motion.
- 522 **Ms. Lemire moved that the request for a Practical Difficulty Variance by William**
523 **Reichert, Jr, Ten Country Lane, Eliot, Maine, at Map 23, Lot 40, under Section 45,**

524 **Article V, Subsection 194, regarding setbacks, be approved. Mr. Marshall seconded**
525 **the motion.**

526 Mr. Hamilton: Seconded. Under our request for a practical difficulty variance, there has
527 been a modification of previous code requirements. The appellant needs to meet the six
528 tests basically. And those test, he has testified to, they both have testified to. And those
529 are something, I think, the board should keep in mind. And I can go through them again
530 very quickly or, I think, we have them in front of us to reference. Previously, we had
531 these under a different provision regarding waivers which has been changed now. This is
532 the first time we've reviewed an application under the practical difficulty ordinance as a
533 variance. And we've been advised by the Town Planner that these six requirements have
534 to be met. We used to view them as recommendations or as suggestions to be followed to
535 review an application but now each one of them has to be met in order for us to approve
536 the variance request. So, keep that in mind in your deliberations. Did that answer your
537 question?

538 Mr. Trott: Yes, Mr. Chair. We previously took each one individually because we had to
539 pass each one. Are we still looking to do go that route?

540 Mr. Hamilton: Yes, we're looking to do that. We can do that now. Maybe it will promote,
541 stimulate conversation. "#1: The need for a variance is due to the unique circumstances
542 of the property and not to the general condition of the neighborhood." I ask board
543 members to respond individually to that. I'll start with you, John.

544 Mr. Marshall: I think is it met sufficiently.

545 Mr. Hamilton: Cabot?

546 Mr. Trott: I agree.

547 Mr. Hamilton: I believe that as well.

548 Ms. Lemire: As do I.

549 Mr. Hamilton: Charlie?

550 Mr. Rankie: I have a hard time with it. I'll say OK.

551 Mr. Hamilton: OK, so all five of us agree. "#2: The granting of a variance will not
552 produce an undesirable change in the character of the neighborhood and will not
553 unreasonably detrimentally affect the use or market value of abutting properties." I'll
554 start the other way this time. Charlie?

555 Mr. Rankie: I can't see that it would increase the value of the neighborhood but at the
556 same time, I don't see it would decrease it, so I am OK with it.

557 Ms. Lemire: Yes, I think they meet this.

558 Mr. Hamilton: I agree.

559 Mr. Trott: I believe they have met that.

560 Mr. Marshall: I agree.

561 Mr. Hamilton: OK. "#3: The practical difficulty is not the result of action taken by the
562 applicant or a prior owner." Start with you, John.

563 Mr. Marshall: I think the question is a little difficult to understand what that means, but at
564 this point, I can agree they are in concurrence with that.

565 Mr. Trott: I agree, John, it is a difficult question. I mean it's hard to witness prior to our
566 ordinance.

567 Ms. Lemire: Yes.

568 Mr. Trott: So that would be the only time that we would pause with the ordinance and say
569 that they do meet that. So, I would say it has been met.

570 Mr. Hamilton: I think it's also been met.

571 Ms. Lemire: I concur.

572 Mr. Rankie: I can't see that it was met. The applicant has the opportunity to build higher
573 which, not that I don't understand his presentation or why he doesn't want to, but he has
574 a main living unit that exists. It's not that he can't build on the property. It's already been
575 built on. And to build the additional main living unit is a luxury and it could be built in a
576 different way and not be imposing on the setbacks... So I don't see...

577 Mr. Hamilton: Doesn't that apply to the next "other feasible alternative" as opposed to
578 "the action taken by the applicant" or do you think...

579 Mr. Rankie: I'm having a hard time with saying that the whole thing isn't created by the
580 applicant, Mr. Chairman, because it pretty much is.

581 Mr. Hamilton: "#4: No other feasible alternative to a variance is available to the
582 applicant." John?

583 Mr. Marshall: I think that they have looked at the alternatives and they met...what they
584 are doing is reasonable.

585 Mr. Trott: I'm still a little concerned. What we are looking at for a footprint, not being
586 code enforcement.

587 Ms. Lemire: Can you repeat what you just said?

588 Mr. Trott: I am a little concerned about what we have for a footprint not being the final
589 footprint. It may need to be tweaked because it is above the requirements of square
590 footage.

591 Ms. Lemire: That will be by the authority of the CEO. She can officiate. If it's above or if
592 it goes over the maximum, she can deny the application, she can deny the permit.

593 Mr. Trott: But if it's reduced, does it fit to where it's supposed to be? Does it meet the
594 variance?

595 Ms. Lemire: I don't know.

596 Mr. Rankie: We're being asked to consider something that is an unknown. Isn't that what
597 you're saying, Cabot?

598 Mr. Trott: Yes.

599 Ms. Lemire: Well, we do know that right now that it's 42 by 42, right? Well, the whole
600 thing. Well, that includes the garage. We need to know the square footage. And I don't
601 know if you would know this, Shelly, the square footage of the ADU itself?

602 Ms. Bishop: I did some rough math on that. At a glance, it's about 900, 900 to 1000 for
603 the ADU without the garage.

604 Ms. Lemire: OK, so it is under the maximum?

605 Ms. Bishop: Yes.

606 Ms. Lemire: At this point.

607 Ms. Bishop: Yes, it's the whole. It's deceiving because with the garage added in, it
608 appears to be over the 1000 with the garage.

609 Ms. Lemire: But that's not an ADU.

610 Ms. Bishop: Correct.

611 Mr. Trott: So, with the numbers you have, they're at 900?

612 Ms. Bishop: I did that by scaling their plan, so I've got to scale it. But I have 532 living
613 and kitchen area, 330 master bedroom and dining hall. But with those numbers, it's under
614 the 1000 square feet. Where they're requesting relief from that setback, we would make
615 sure that that ADU does not exceed footage per the ordinance.

616 Mr. Hamilton: But, currently, as requested, it doesn't exceed it.

617 Ms. Bishop: It doesn't. No.

618 Mr. Hamilton: So, Cabot, I still need (spoken over).

619 Mr. Trott: My math comes out differently but that's okay. She's the one that signs the
620 permit and (interrupted).

621 Ms. Bishop: I just want to verify something I just said.

622 Mr. Trott: With that, I say, amen.

623 Mr. Hamilton: OK, I agree.

624 Ms. Lemire: I agree as well.
625 Mr. Rankie: I don't think so.
626 Mr. Hamilton: Can you tell us why.
627 Mr. Rankie: They can design differently and fit.
628 Mr. Hamilton: "#5: The granting of the variance will not unreasonably adversely affect
629 the natural environment."
630 Mr. Rankie: I agree with that.
631 Ms. Lemire: It will not adversely affect anything.
632 Mr. Hamilton: Yes. I don't think it will either.
633 Ms. Lemire: No.
634 Mr. Trott: I, as well, don't believe it will.
635 Mr. Marshall: I agree.
636 Mr. Hamilton: All right, thank you. And we know for a fact that the property is not locate
637 in whole or in part within the shore area, so we don't need to address that. OK. Any other
638 discussion? We do have a motion and a second to approve the application. Further
639 discussion?
640 Mr. Trott: We have two that did not pass in full. Previously, if a section did not pass in
641 full (interrupted).
642 Mr. Hamilton: But it did pass in full. The vote was 5-0, 5-0, 4-1, 4-1, 5-0.
643 Mr. Trott: Just clarifying how we looked at it before and how we're looking at it.
644 Mr. Hamilton: Any other discussion? If not, we'll take a roll call vote. Would the
645 recording secretary do the roll call?
646 Mr. Hamilton: Yes, to approve; no, to deny.
647 **Mr. Marshall: I vote yes.**
648 **Mr. Trott: Yes.**
649 **Mr. Hamilton: Yes.**
650 **Ms. Lemire: Yes.**
651 **Mr. Rankie: No.**
652 **Mr. Hamilton: The vote is 4-1, an approval. The motion carries. Your request has**
653 **been approved.**

654 William Reichert: Thank you.

655 Leslie Reichert: Thank you.

656 Mr. Hamilton: You have 90 days to record your variance with the York County Registry
657 of Deeds and to the Code Enforcement Officer. You have to be aware that any appeal to
658 Superior Court may occur within 45 days. So just be aware of that – any appeal to the
659 decision we made. Congratulations. Thank you.

660 Mr. and Ms. Reichert: Thank you.

661 Mr. Marshall: Be sure to record it.

662 Ms. Lemire: Yes, please record it and get a copy back to the town.

663 Mr. Rankie: Can I ask a question about one through six before we go on to another on to
664 another one so we are all clear on these?

665 Mr. Hamilton: Yes. Sure.

666 Mr. Rankie: Okay, so, Cabot, your question was about how do we deal with the one
667 through six? My understanding is if the majority of us said no on any given one of them,
668 we cannot possibly approve.

669 Mr. Hamilton: Yes, that is correct.

670 Mr. Rankie: Okay, thank you.

671 Mr. Hamilton: It's a majority vote on each requirement.

672 Mr. Hamilton: Anyone have a need for a break? It's been an hour. Shall we proceed?
673 Okay. The third appeal tonight is a request for a Practical Difficulty Variance by Julie
674 Weiss, 678 Main Street, Eliot, Maine, Map 6, Lot 86 under Section 45, Article VIII,
675 subsection 405, also under 45-49, regarding setbacks. Is the appellant here?

676 Ms. Weiss: Yes. My husband, John Shibley, is going to do the presentation.

677 Mr. Hamilton: Okay. Thank you. So, go ahead, uninterrupted, tell us what you'd like.

678 Mr. Shibley: I think what I'd like to do is admit this is one of the most embarrassing
679 moments in my life. When we originally did the design for this, we brought it to Shelly
680 because we knew that there would be some need for action by the Planning Board. At
681 that point, the addition was seven feet from the property line. Understanding that the
682 ordinance called for a twenty-foot setback, the counsel we received was that a thirteen-
683 foot setback was going to be a high hurdle for this board to meet. But that there was
684 another option available where we could perhaps more easily get a 50% variance. And
685 here, I understand, the new Practical Difficulty Ordinance was where that was; the
686 application process that resulted from the ruling. When I put together the application, we
687 went back to our designer and had him figure out a way to move the entire structure three
688 and a half feet to the southeast so that would be ten and a half feet away. The narrative in

689 the application talks about that, however, if you look at the plot summaries, again I was
690 mistaken, I dropped in the plot summaries from the first application we did when it was
691 seven feet. So, the application is wrong. I'm sorry. I'm truly embarrassed by this. I have
692 too many versions of files on my hard drive.

693 Mr. Hamilton: Well, here's an opportunity for you to ask us what you are interested in
694 having us rule on tonight.

695 Mr. Shibley: What I would be asking you to rule on if I made out the application
696 correctly would be a variance away, to allow us to build ten-feet away from a property
697 line that requires a twenty-foot setback. However, the schematics you have don't actually
698 show where that building would be. So, I made the assumptions, when I realized this
699 sitting over there going through notes, that you would want to delay this until you had an
700 application that contained the correct plot designs. I may be wrong in that assumption.

701 Mr. Hamilton: No, you're correct in the assumption.

702 Mr. Trott: It would be better for you as we would better understand what you are asking
703 for.

704 Mr. Rankie: Mr. Chairman, on the second page, it specifically states, "I seek a waiver for
705 a ten-foot setback." So, that's what it says and that's what I'm hearing.

706 Mr. Hamilton: Yes.

707 Mr. Rankie: And that's what I studied when I looked at this as probably you all did.

708 Mr. Shibley: Mr. Chair, how should we proceed?

709 Mr. Hamilton: Well, it seems your application is within the Practical Difficulty Variance
710 standard which would be up to 50%. Anything beyond 50% would require a hardship
711 variance.

712 Mr. Shibley: And the fact that on page 8 and 7, I assume, as that is listed as a seven-foot
713 distance is immaterial?

714 Mr. Hamilton: No, no, it's not. So, you have a discrepancy within the application. It
715 might be better if we continue this to another time so that you have a chance to make
716 amendments to your drawing.

717 Mr. Shibley: Again, I apologize to the board for taking up your time on this.

718 **Mr. Rankie moved to continue the hearing until a time when all the paperwork is**
719 **reviewed and presented to us accurately. Ms. Lemire seconded the motion.**

720 Mr. Hamilton: Okay, a motion has been made and seconded to continue the hearing.
721 Again, we don't know when. I cannot give a date-certain because I'm not sure how long
722 it's going to take. So, my question is do we have to re-advertise this. I'm not sure exactly
723 what costs are going to be involved to re-hear this proposal. That's something I'll have to
724 talk to the town administration about whether you're liable for another fee. A

725 continuation is usually not based on this sort of a discrepancy. So, a motion has been
726 made and seconded, any discussion? If not, a roll call vote please.

727 Member of the public: I have a question.

728 Mr. Hamilton: I'm sorry, I haven't opened the public hearing.

729 Member of the public: I am the other side of the argument.

730 Mr. Hamilton: Since we are not going to proceed any further, you should hold those
731 comments until when we actually do review this.

732 Member of the public: That's fine.

733 Mr. Hamilton: Basically, he's asking us (interrupted).

734 Member of the public: Basically, I want to say no.

735 Mr. Hamilton: You mean you are against the appeal.

736 Member of the public: Against it, yes.

737 Mr. Hamilton: You can come back, but I cannot give you a date, not knowing when the
738 application will be submitted. I imagine it will be a new application. And I don't know if
739 we should continue this application or move to (interrupted).

740 Ms. Lemire: Continue it, because the only thing that is going to change is the plot plan.

741 Mr. Rankie: My motion is that we continue it and which would mean with a number and
742 then we get corrected paperwork.

743 Mr. Lemire: Well, we'd have to continue it to the next meeting, which is what...

744 Mr. Rankie: I think he's talking to me because it's my motion.

745 Mr. Hamilton: There's another way to go about this, too. We can table it as well as,
746 opposed to continue it. We can table it and then you'd basically have to apply again.

747 Mr. Rankie: I think if we continue it, we don't muddy it and complicate things. Whereas,
748 we could deny it but then you can't come back.

749 Mr. Hamilton: If we continue it, I can't set a date. All the abutters have to be re-notified;
750 the paper has to be.

751 Mr. Rankie: So, I would modify my motion to say we continue it to the earliest
752 opportunity to re-hear it. That way, we re-advertise it like it's new.

753 Mr. Hamilton: Could you rephrase that as a corrected application?

754 Mr. Rankie: Did you second it, Ellen?

755 Ms. Lemire: I did.

756 Mr. Rankie: Are you okay if I rephrase?

757 Ms. Lemire: Yes.

758 **Mr. Rankie moved to continue the Practical Difficulty Variance request until the**
759 **next available opportunity after the appellant provides corrected paperwork.**

760 Mr. Hamilton: Okay. And you are okay to second that, Ellen?

761 Ms. Lemire: I just want to make sure, because there is language in the ordinance around
762 continuances. And I always thought it was to a certain date.

763 Mr. Hamilton: Typically, it is, yes.

764 Mr. Rankie: Well, we can't make it a date-certain because it's up to the appellant to give
765 us corrected paperwork. Generally speaking, when we continue with a date-certain, it
766 would be a case where we took too long and we just can't get there. So, we had
767 everything and we were going to move and Bill has asked us once or twice to move it.
768 But this is on the appellant because we don't have final paperwork.

769 Mr. Marshall: Does the appellant feel confident that you can have it by the next meeting?

770 Mr. Shibley: Actually, we would need it before the next meeting and I can certainly do
771 that.

772 Ms. Lemire: Yes, you would need it three weeks before the meeting.

773 Mr. Hamilton: I don't know if you would have it by the next meeting.

774 Mr. Shibley: I can have it to you by Tuesday. But it's a matter of bumping someone who
775 is already in your queue. I know how long the queue is.

776 Mr. Rankie: By saying the next available opportunity, then that gives staff the
777 opportunity to see what they have. The paperwork comes in on time. There are no hoops
778 that are going to be jumped through.

779 Mr. Hamilton: I'm just concerned that a continuance is the right way to do it.

780 Ms. Lemire: (to Mr. Rankie) I don't disagree with where you are going at all, I just, I'm
781 concerned about written language in the ordinance that it has to say to a time-certain.

782 Mr. Shibley: Mr. Chair, can I withdraw the application?

783 Mr. Hamilton: Yes, you can. That would probably be the simplest, to simply withdraw
784 the application and start over.

785 Mr. Marshall: Very good.

786 Mr. Shibley: Do I have to have one of you make a motion to allow me to withdraw?

787 Mr. Hamilton: No.

788 Mr. Rankie: But I think that you need to ask Julie since you represent her and she is the
789 gal that has to withdraw it.

790 Ms. Weiss: I would like to withdraw this.

791 Mr. Hamilton: Be it noted that the motion was not brought to a vote. Do you care to
792 rescind your motion?

793 **Mr. Rankie withdrew his motion. Ms. Lemire withdrew her second.**

794 Mr. Hamilton: Okay. We don't have that to contend with, and the application.

795 Mr. Shelby: I apologize.

796 Mr. Hamilton: That's okay. Thank you. I appreciate it.

797 Ms. Weiss: Thank you.

798 Mr. Trott: (to the member of the public) We'll see you also.

799 Member of the public: You will. Thank you.

800 Mr. Hamilton: Thank you. So, you will be notified as an abutter about the next meeting.

801 **ITEM 4 – REVIEW AND APPROVE PREVIOUS MINUTES**

802 Mr. Hamilton: Next item on the agenda is to approve and review the previous Minutes
803 from November 16, 2021.

804 Review and discussion of the Minutes of the November 16, 2021, meeting of the Board
805 of Appeals take place.

806 **Ms. Lemire moved to accept the Minutes of November 16, 2021, as amended. Mr.**
807 **Trott seconded. All approved.**

808 **ITEM 5 – OTHER BUSINESS**

809 Mr. Hamilton: Any other business?

810 Mr. Rankie: Yes, Mr. Chair.

811 Mr. Hamilton: Mr. Rankie.

812 Mr. Rankie: I have five items here. The first item. And again, I studied your work quite
813 thoroughly and wasn't able to give any input at the meeting. I would propose that when, I
814 made copies of this (hand out attached), based on the potential for remote meetings, that's
815 when a person is going to be remote, I recommend that we adopt this to put on both the
816 bottom of our agenda and on the public notice. I'll be quiet while all of you read this.

817 Mr. Rankie: I think it needs to be tweaked to say where the agenda is though for when it
818 goes out to the public notice.

819 Mr. Hamilton: I think it's intent on (paused).

820 Mr. Rankie: Because that's wholly new.

821 Mr. Hamilton: You've got a couple of issues going on here, Charlie.

822 Mr. Rankie: You can put that to the side if you want because I have, I think, three other
823 related items I'd like to talk about.

824 Mr. Hamilton: Okay, what do you want us to do with this one?

825 Mr. Rankie: Why don't you put it off to the side.

826 Mr. Hamilton: Okay.

827 Mr. Rankie: The second item I have is, you all have a copy of the request we had today
828 so if we all look down.

829 Ms. Lemire and Mr. Hamilton: What request?

830 Mr. Rankie: Both cases that we did here tonight.

831 Mr. Hamilton: Practical Difficulty Variance?

832 Mr. Rankie: Yes. I think there's wording in there we can do better on. So, if we go down
833 where it says test six, then there's two paragraphs. Look at down at the second paragraph
834 below test six.

835 Ms. Lemire: On the second page?

836 Mr. Rankie: On the second page.

837 Mr. Rankie: It says, "Again please understand the Board of Appeals does not have to
838 grant your request."

839 Mr. Hamilton: Where are you reading from?

840 Ms. Lemire: Five paragraphs from the bottom.

841 Mr. Rankie: Actually, that's not correct. Second paragraph from the bottom.

842 *Again, please understand that BOA does not have to grant your request. You must prove*
843 *that you meet the requirements for a variance. As the BOA is required to uphold the*
844 *zoning requirements, and the purpose of zoning is to gradually do away with non-*
845 *conforming conditions...*

846 Mr. Rankie: I would submit that the purpose of zoning it to avoid non-conforming
847 conditions as opposed to gradually doing away with.

848 Mr. Hamilton: Okay.

849 Mr. Rankie: Especially my colleague down there Mr. Marshall would agree with that, I
850 think. So, I think we should change this form and strike those four words and put in
851 "avoid additional." Because we're not taking away anything at all.

852 Mr. Hamilton: Okay.

853 Mr. Rankie: We're just avoiding creating nonconforming conditions.

854 Mr. Hamilton: That's a good point.

855 Mr. Rankie: We have no right to take away anything that's already built.

856 Mr. Hamilton: They didn't say "take away," they say, "do away."

857 Mr. Rankie: To me it's the same thing.

858 Mr. Hamilton: Well, to do away means you may not act at all and it will just disappear.

859 Mr. Rankie: Well, if someone does away with gas, they've taken it away.

860 Ms. Lemire: That's semantics. Did you check the language of the ordinance to make sure
861 it's not in there?

862 Mr. Rankie: I did not.

863 Mr. Marshall: That whole issue is not hardly even a purview of this body. That's the
864 Planning Board.

865 Mr. Rankie: Yes, that's why I believe we should make that change.

866 Mr. Marshall: We don't create or take away nonconformities. We make adjustments for
867 those.

868 Mr. Rankie: Exactly, and when.

869 Mr. Marshall: And the nonconformities that are out there are out there and they will be
870 there for a long time.

871 Mr. Rankie: Yes, exactly, that's why I think this wording should change for two reasons.
872 One is exactly as John just stated, that's not what we're doing. And number two, we want
873 the person who reads this who is asking us to grant them some kind of a variance, this is a
874 kinder, gentler way for them to understand that they perhaps will not get it. And our job
875 is to make sure we follow the standards the town has established as best we can.

876 Mr. Hamilton: I think it's a good recommendation, for sure.

877 Ms. Lemire: Well, and part of the language in here is that we will give them minimum
878 required, we will not go further than that.

879 Mr. Rankie: Should I make a motion that we change this to that? Or, Mr. Chairman, can
880 we just do it by consensus?

881 Mr. Hamilton: I think consensus is fine. We'll just basically get in touch with the Town
882 Planner and say we'd like to make this change.

883 Mr. Rankie: Okay, so I don't take too much time up, I'll move to my next item.

884 Mr. Trott: Well, I don't think that needs to be changed, honestly.

885 Mr. Hamilton: Oh, you don't?

886 Mr. Trott: No.

887 Ms. Lemire: You don't what?

888 Mr. Trott: I don't think that needs to be changed because the purpose of zoning it to
889 gradually do away with nonconforming structures. With zoning, correct zoning, it does
890 correct problems of nonconformances if zoning is being followed.

891 Mr. Hamilton: Yes, but there's a provision in our ordinance to address nonconforming
892 lots of record.

893 Ms. Lemire: Yes.

894 Mr. Hamilton: And it's always going to be there.

895 Mr. Trott: But this is not addressing that. This is saying that zoning, in general, the goal is
896 as we're doing zoning, as we're being asked (interrupted).

897 Ms. Lemire: Gradually going away with it (paused).

898 Mr. Trott: Gradually we should prevent or do away with nonconformance. Meaning,
899 we're not creating any more.

900 Mr. Marshall: That's what it should say.

901 Mr. Rankie: Right.

902 Mr. Trott: Do away is not removal.

903 Mr. Marshall: It sounds like removal to me.

904 Mr. Rankie: So, there we need a vote on this, Mr. Chair.

905 Ms. Lemire: Maybe we should have it vetted first.

906 Mr. Hamilton: Yes, I think we need more discussion.

907 Short overtalk between members about zoning in general.

908 Mr. Hamilton: Let's think about this a little more before I make any suggestions. I hear
909 both sides of the story here.

910 Mr. Marshall: I agree.

911 Discussion between members on the difficulty of language and continuing the discussion
912 on the next agenda.

913 Mr. Rankie presented his third item to the members, which was allowing a member to
914 call in. He said, there was a hang-up in the point you were talking about and justifiably
915 so. He directed the members to lines 45 and 46 of the last Minutes.

916 *The chair or presiding officer of the body, in consultation with other members if*
917 *appropriate and possible, will make a determination that remote methods of participation*
918 *are necessary in as timely a manner as possible under the circumstances.*

919 Mr. Rankie's fourth item was about the Chair assigning voting members. He referred to
920 the Charter, specifically page 28 of the Charter, 8.7 (A) 2., which describes the
921 responsibilities of a board, committee, and commission chairperson.

922 Mr. Rankie: This highlights the importance and trust we have in our Chair. So, I propose
923 that we make a vote that we delegate our chairman to make that decision should one of us
924 call in or whatever that we'd like to meet from a distance.

925 Mr. Hamilton told the members that he had spoken with the Town Manager on this issue.

926 Mr. Hamilton: He told me that any board that votes to have a remote meeting must have
927 this OWL at every meeting. We cannot amend that.

928 Discussion between the members turned to the OWL (the Town's video conferencing
929 system for use by remote participants) and how it works, the service it provides, and how
930 the Board will use it at all meetings. Also discussed was the OWL's function to capture
931 whoever was speaking, whether the person was in the room or remote. It was stressed
932 that board members should be physically present at meetings and only use the OWL
933 remote-access service if there is an emergency.

934 As Mr. Rankie and Ms. Lemire were not in attendance at the last meeting where the
935 remote policy was discussed, this was an opportunity for the full board to discuss
936 concerns about board participation, OWL use, and remote testimony versus in-person
937 interaction.

938 Mr. Rankie's fifth and final item concerned the timely recording of Minutes of each
939 meeting. He asked that two items be entered into the meeting's Minutes from tonight:

940 Mr. Rankie: Ordinance 5 (8) states that boards shall record Minutes of each meeting. And
941 then it specifies what must be in the Minutes.

942 Mr. Rankie: In the by-laws, I-D: The conduct of business of the board shall be in
943 accordance with the ordinance governing boards, commissions, and committees.

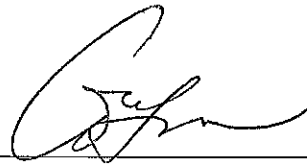
944 The members discussed the September 2021 Minutes which were not completed as the
945 recording secretary at that time had left her position. It was decided that the current
946 recording secretary (Ms. Lukegard) would work complete the work of the town
947 administrative assistant (Ms. Metz) to complete the September Minutes.

948 **ADJOURNMENT**

949 Mr. Hamilton: The Chair will entertain a motion to be adjourned.

950 **Mr. Trott made a motion to be adjourned. Mr. Marshall seconded the motion. All**
951 **were in favor.**

952 The meeting was adjourned at 9:26 p.m.



Bill Hamilton, Chair

Date approved: 2/8/22

Respectfully submitted,
Ann Lukejord, Recording Secretary

