

24 Seeing no one.

25 Anybody else? Board members, any

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1 questions of this witness.

2 MR. HEALY: No.

3 THE CHAIRMAN: Okay. We can proceed.

4 THE WITNESS: Thank you for your
5 consideration.

6 THE CHAIRMAN: Thank you, Mr. Rudin.

7 MR. BEEKMAN: So the next up we'll
8 call Mr. Kenny.

9 MS. KOWALSKI: Mr. Kenny, can you
10 please raise your right hand?

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12 B R I A N K E N N Y, witness sworn.

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14 MS. KOWALSKI: Please state your name
15 and your business credentials for the record.

16 THE WITNESS: Brian Kenny, BK Custom
17 Builders, Ocean Grove.

18 THE CHAIRMAN: Can you tell us what
19 the situation is with the building permits?

20 MS. KOWALSKI: Can we just establish
21 some base testimony?

22 THE CHAIRMAN: Sure. Go ahead.

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24 EXAMINATION BY MS. KOWALSKI:

25 Q. Mr. Kenny, so your business is located

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1 in Ocean Grove?

2 A. Correct.

3 Q. Where?

4 A. New location is on the corner of
5 Pilgrim Pathway and Main Street. Just getting my
6 mercantile license established. Actually the CO
7 inspection is tomorrow.

8 Q. Well, congratulations. Good luck.

9 A. Thank you.

10 Q. Sir, how long have you been building
11 in Ocean Grove?

12 A. 15, 20 years.

13 Q. Okay. Are you a licensed contractor,
14 sir?

15 A. I am.

16 THE CHAIRMAN: Okay. Would you
17 explain to us what the procedure is when you have a
18 client in Ocean Grove that wishes to work on the
19 outside of the house? What do you do with that?
20 Do you ask if there's a building

21 permit?

22 Do you tell them you're going to get
23 one yourself or he should get it or how does that
24 work?

25 THE WITNESS: It's different a lot of

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1 times. Sometimes the architect provides it and then
2 they pass us the plans and we provide or go for the
3 permits.

4 THE CHAIRMAN: What happened in this
5 case?

6 THE WITNESS: This case I looked at it
7 and I said it's -- whatever we're building was a
8 rebuild of the porch but yet it's like the guy's
9 knees were hitting the railing. So it's like we
10 could just put this right here. I stretched it out.

11 THE CHAIRMAN: Okay. Now, you didn't
12 say he needed a permit or you didn't go get a permit
13 or a zoning --

14 THE WITNESS: That's correct. I
15 didn't get a permit.

16 THE CHAIRMAN: Okay. HPC, you didn't
17 go to HPC?

18 THE WITNESS: I did.

19 THE CHAIRMAN: For the porch?

20 THE WITNESS: Correct. For the cedar
21 shakes and the brick veneer.

22 MR. STROUD: We're discussing the
23 porch, Mr. Kenny. Did you go to HPC for the porch?

24 THE WITNESS: Yes.

25 MS. BEAHM: No. I'm going to stop you

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1 right there. That is not correct. The HPC
2 Resolution is for paint and shingles only. The porch
3 is not part of that Resolution at all.

4 THE WITNESS: I think there were
5 railings in there as well.

6 MS. BEAHM: No. No.

7 THE WITNESS: No?

8 MS. BEAHM: No, that's absolutely
9 incorrect.

10 MR. BEEKMAN: It was for the cedar
11 shakes.

12 THE WITNESS: Okay.

13 THE CHAIRMAN: All right. So it's
14 just the paint and the cedar shakes you went to the
15 HPC for.

16 So there was no approval from the HPC
17 or the town to extend the porch?

18 THE WITNESS: That's correct.

19 THE CHAIRMAN: So what we have now is
20 a situation where the homeowner is in front of us
21 because you didn't or you didn't ask him to get
22 the -- did you ever mention to the homeowner that he
23 had to get a permit?

24 THE WITNESS: No. I think I -- I
25 basically said in my mind it was such a small stretch

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1 and I said I'll push it out. It's my fault.

2 THE CHAIRMAN: That's what happens in
3 Neptune Township a lot. So that's got to stop. I
4 think you realize that now, I hope?

5 THE WITNESS: Yes, I do.

6 MR. MARTINS: Mr. Kenny, I'm
7 interested to hear -- you know, I'm sympathetic to
8 what you're saying. Quite frankly, I agree with you,
9 but I am curious to hear why you -- what led you to
10 feel comfortable doing that? Meaning was there --
11 had there been -- you said you've been building in
12 Ocean Grove for 15 years, right?

13 Did you -- were there -- were you
14 consistently exposed to the same rules and
15 requirements every single time you built or did you

16 or not or was there something that made you feel
17 like, oh, this might be okay?

18 THE WITNESS: Yeah. I think as simple
19 as this one was in my own mind I thought this would
20 be fine without going through the whole process of
21 what we would go through for this, now that we're
22 here.

23 MR. MARTINS: Sure. And I guess what
24 I'm trying to ask is some insight as to what made you
25 believe that this one would be fine?

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1 Was it you didn't think that they'd
2 get caught?

3 Is it that you didn't think the town
4 would care?

5 Is it that you didn't think the camp
6 would care?

7 Like what made you feel like this one
8 would be fine?

9 MS. KOWALSKI: Mr. Martins, before you
10 ask that, Mr. Kenny, can I just ask do you have a
11 copy of the HPC application with you that allowed for
12 the paint and the veneer?

13 MR. BEEKMAN: I have the Resolution.

14 MS. KOWALSKI: No. That's not what

15 I'm asking you.

16 MR. BEEKMAN: I don't have the
17 application.

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19 EXAMINATION BY MS. KOWALSKI:

20 Q. So, Mr. Kenny, were you present for
21 the HPC application?

22 A. Yes, I was.

23 MR. MARTINS: Wait. Can I get an
24 answer to my question?

25 MS. KOWALSKI: I was going to come

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1 back to your question. It's going to be circular.

2 So we're going to get an answer to it.

3 BY MS. KOWALSKI:

4 Q. So when you went for the HPC
5 application, was there any part of that application
6 that was withdrawn or denied?

7 A. No.

8 Q. In other words, did you mention the
9 porch to the HPC?

10 A. I think the whole thing was talking
11 about the porch 'cause I -- I actually remember
12 sending them samples of the railings, so it was

13 brought up.

14 MS. KOWALSKI: Mr. Beekman, is there
15 any reference in the Resolution to any of this?

16 MR. BEEKMAN: There's not.
17 (Inaudible).

18 MR. BEAHM: I mean, it basically says
19 the applicant is seeking to, one, remove brick on the
20 front elevation, replace it with cedar shakes with a
21 five-inch exposure and, two, residential structures.
22 That's what the application was before the HPC. So
23 I'm not sure --

24 MR. MARTINS: Wait. Sorry. Hold on.
25 I'm seeing here the Resolution. The owner shall

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1 make -- application is granted following to the --
2 subject to the following conditions: Four, the owner
3 shall make application for a Certificate of
4 Appropriateness for the previously nonsubmitted work,
5 including such existing conditions such as railing
6 and retaining wall, which gives --

7 MS. BASCOM: The wall that was taken
8 down.

9 MS. KOWALSKI: Yeah.

10 MR. MARTINS: I'm saying if our
11 witness here is saying that his recollection is he

12 did mention the porch to the HPC at some point and
13 we're looking at the four corners of this document
14 and it doesn't mention the porch --

15 MS. BASCOM: I think you're looking at
16 an older application when he -- when the wall came
17 down.

18 MR. MARTINS: I'm just looking at the
19 one that was submitted with this application and I
20 have no -- I do not -- I'm so -- I'm not sure why we
21 would -- if he's saying he told the HPC about the
22 porch, why wouldn't we believe him?

23 MS. KOWALSKI: Well, that's why I
24 asked for, if you remember, the actual copy of the
25 application to the HPC.

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1 Mr. Beekman, did you represent the
2 applicants?

3 MR. BEEKMAN: I did not.

4 MS. KOWALSKI: Do you know if they had
5 legal counsel for the HPC?

6 MR. BEEKMAN: I don't believe so.

7 Correct?

8 MR. RUDIN: No. I took it on myself
9 to the HPC.

10 BY MS. KOWALSKI:

11 Q. So in 15 years of having your
12 construction, 15 to 20 years of building in Ocean
13 Grove, how many projects would you say you've done in
14 Ocean Grove?

15 A. 20.

16 Q. Okay. So of those 20 projects, how
17 many times have you appeared before the HPC?

18 A. 17.

19 Q. Okay. So in those 17 appearances,
20 have you always provided architectural drawings or
21 renderings of what you were going to do?

22 A. Yes.

23 Q. And was it required to submit things
24 such as shakes, shingles, materials that were going
25 to be affixed to the front of the house?

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1 A. Yes.

2 Q. Okay. So in this instance do you
3 remember any discussion before the HPC of an
4 extension of two feet of the porch to increase the
5 depth?

6 A. We did not discuss that.

7 Q. Okay. In those 17 to 20 builds that
8 you did in Ocean Grove, did you ever go to the zoning

9 office to obtain a zoning permit?

10 A. Yes.

11 Q. How many of those times had you gone
12 to the zoning office?

13 A. Every time.

14 Q. Every time.

15 So you knew that at least some type of
16 permit had to be filed with the zoning officer.

17 Is that a fair statement?

18 A. Yes, it is.

19 Q. Okay. So it's fair to say that you
20 didn't do it in this instance, which is what we've
21 established, correct?

22 A. That is correct.

23 Q. And you didn't talk to the HPC about a
24 two-foot extension of this porch, correct?

25 A. I did not.

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1 Q. Okay. So that being said, would it be
2 fair to say that within 20 times you maintained
3 consistency of your procedure in approaching the
4 zoning -- the zoning officer for a zoning permit and
5 in 17 of those instances you maintained consistency
6 in approaching the Historic Preservation Commission

7 for a Certificate of Appropriateness?

8 A. That is correct.

9 Q. Okay. And in this instance we did not
10 do so, correct?

11 A. Correct.

12 MS. KOWALSKI: Okay.

13 MR. STROUD: But why is the question?
14 I mean, there -- it's not just, oh, I thought we can
15 just go ahead and extend it. There had to be a
16 reason why. In 17 of the 20 cases you did it. In
17 this case you didn't. And so now the resident is in
18 front of us and he's at fault, not you. That's an
19 issue and we're not going to continue to allow things
20 to go on in this town that's against the rules and
21 the ordinances if you're just going to come in here
22 and just shrug your shoulders, oh, because I thought
23 it would be okay. It's not okay. And we know that
24 there's an ordinance in place to tell you that it's
25 not okay, and in 20 years of experience we should

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1 know that.

2 MR. MARTINS: Are we reverting back to
3 my question?

4 MR. STROUD: I'd love to have an
5 answer to that as well.

6 MR. MARTINS: I don't even remember
7 what it was at this point.

8 MR. STROUD: It was what made you feel
9 comfortable in the Township of Neptune in the Ocean
10 Grove section to just think that, oh, this will be
11 fine?

12 THE WITNESS: The reason why is
13 because most of the times I go for a variance there's
14 so much more involved, and when I looked at this
15 little porch on this tiny house and these people
16 rubbing their knees up against the railings when they
17 sit in the rocking chair, I --

18 MR. STROUD: Please, sir, please with
19 the rubbing your knees because it sounds like a
20 politician. Pretty much you tried to get over. You
21 tried to make a deal without, over this guy's head
22 without anybody noticing and you got caught, plain
23 and simple.

24 THE WITNESS: Correct.

25 MR. STROUD: Correct. So we're done

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1 hearing your testimony. We'll revert to the attorney
2 at this point 'cause now you're telling the truth and
3 that's all I'd like to hear. Thank you.

4 MS. BEAHM: I think what I'll say is
5 regardless of the situation with the existing porch,
6 I think that that, the fact that it was so narrow and
7 unable to be utilized is justification that this
8 Board would have preferred to have heard as
9 justification for the relief --

10 MS. KOWALSKI: For the permission
11 rather than the --

12 MS. BEAHM: Exactly. So I think what
13 you're seeing is months and months and months of
14 frustration over many, many individuals, obviously
15 not just this particular application having been kind
16 of caught and cited by code enforcement and zoning
17 and have come here as a remediation measure, and it's
18 becoming frustrating.

19 I mean, you know, I have no issues
20 with what it looks like. Obviously, you're going to
21 have to go to HPC and get that approved. I think
22 it's beautiful-looking but what you're just hearing
23 from the Board is just frustration over the fact that
24 every single time, it's almost every meeting we have
25 an application that's coming here, basically, giving

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1 the same drawn out explanation as, you know, we
2 didn't think it was a big deal.

3 I mean, at the end of the day as a
4 builder in Ocean Grove, are you aware what the
5 zoning -- are you aware of the zoning requirements
6 associated with porches?

7 THE WITNESS: Yes, I am.

8 MS. BEAHM: Okay. So in this
9 particular instance you chose to ignore it?

10 THE WITNESS: Correct.

11 MS. BEAHM: All right. So, I mean, I
12 don't really know how much else we're going to get
13 out of it.

14 MS. KOWALSKI: No. And listen, part
15 of this is, you know, we do. We serve a public --
16 public record because if there were other members of
17 the public here who may be in a similar situation or
18 applying for variance relief or appeals to the HPC,
19 you know, one of our Board members mentioned
20 consistency. Well, you know, this is an obvious case
21 where we do have consistency issues because you're
22 still going to have to go regardless of whether or
23 not the applicant is granted a variance for the
24 setback, they're still going to have to go back to
25 the HPC.

1 And you're going to really run into an
2 issue is even if you have a variance for the setback
3 relief, what happens if the HPC deems that a two-foot
4 extension inappropriate for a house that's facing the
5 front and deems that this is not historically correct
6 for a house that's on the National Historic Register?
7 They're going to run into problems. So I'm just
8 setting that up.

9 If the Board decides that you give the
10 bulk variance, it's fine, but we're not -- we don't
11 have the ultimate authority to talk about the
12 architectural enhancements. So I'm just stating that
13 for the record. The public needs to be aware of it.

14 MR. HEALY: I want to say also that,
15 Mr. Kenny, if this happens again under your
16 construction, I would caution you not to come here.
17 I am not happy with this at all. I would not make
18 this man take this porch down, but you've been in
19 business 15 to 20 years in Ocean Grove and you should
20 know better.

21 MS. KOWALSKI: And you do exquisite
22 work. Let me just say that. You really you have a
23 product that a lot of people really, you know, really
24 rely on. So the fact that you just kind of pushed
25 the rules aside is fairly egregious. You have a

1 great product. Stand behind it.

2 MR. MARTINS: I, you know, I know here
3 I am again, right, trying to get back to that same
4 one question, but this is what I'm trying to get at.
5 Okay? You know, I agree with what the gentleman has
6 said, you know. I am disappointed, but you didn't
7 testify to and I'm not -- I'm not assuming, but I can
8 put, you know, usually two and two together and all
9 of these meetings that we have, and the reality is we
10 don't have the level of consistency in this township
11 that I think we need to ensure compliance with these
12 ordinances.

13 And I can understand. I have a
14 neighbor who is very curious about some things
15 happening in town, who is redoing her porch and she
16 refuses to get a construction, a zoning or an HPC
17 permit, and I said, oh, no, no. Don't tell me that.
18 And her response was why? Other -- other things
19 don't need to get it.

20 And so we have an issue. Whether we
21 want to admit it or not is fine. I'm not bringing up
22 specifics of other cases, but what I am saying is, I
23 mean, he didn't just decide one day that he was going
24 to stop following the rules. He felt comfortable

25 thinking, oh, you know, maybe he had seen maybe those

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1 the three out of the 20, right, so not the 17 maybe
2 nothing happened. Maybe he wasn't held accountable.
3 Maybe nothing was enforced. That was -- maybe that
4 was him getting away easy.

5 THE WITNESS: That was just the reason
6 why I would say 17 to 20 is 'cause the other stated
7 three times there was an architect taking it through
8 this whole step, just handing me the package.

9 MR. MARTINS: Okay. Sure. My point
10 is that we either need to have the same expectations
11 for everyone in Ocean Grove or none. Thank you.

12 MS. KOWALSKI: Well, you know,
13 unfortunately, we can only deal with the applications
14 and we have had this decision. We've had --

15 MR. MARTINS: That's correct.

16 MS. KOWALSKI: We can deal with the
17 applications that are before us and we're setting the
18 tone for consistency. So, you know --

19 MR. MARTINS: Which is why I think
20 it's important to be on the record what I just said
21 to ensure consistency of what we are promoting.

22 MS. KOWALSKI: I understand what you

23 just said. So our job is to maintain consistency
24 with the ordinances and with the testimony that's
25 presented on each application. So that's what I'm

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1 asking this Board to do. So regardless of what else
2 is going on, you know that we deal with this on a
3 case-by-case basis and we are charged with the duty,
4 and you have all sworn to uphold the ordinances of
5 the Township of Neptune for purposes of each
6 application. So let's focus on this.

7 We have someone here who's asking for
8 forgiveness rather than permission. We understand
9 that the situation is that the builder did what he
10 wanted to do in the instance despite the fact that he
11 knew better, didn't advise the Applicant accordingly
12 and if the bulk variance is granted then they're
13 still going to have to go to the HPC.

14 And although you could get the
15 variance here, once again, if the HPC decides that
16 this is not historically accurate for this particular
17 piece of property and the materials are not correct,
18 it can get torn down.

19 MS. DICKERT: And this has happened
20 outside of Ocean Grove.

21 MS. KOWALSKI: Absolutely.

22 Absolutely.

23 MS. BASCOM: And I was just going to
24 say this isn't just Ocean Grove. I wanted to correct
25 you on that two feet needs to be not rubbing the

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1 railing because that's the size of my porch because I
2 would need to get a variance.

3 MS. DICKERT: And where do you live?

4 MS. BASCOM: In Shark River Hills.

5 MS. DICKERT: Okay. Thank you.

6 MS. BASCOM: And that's the size. I
7 cannot make my porch any wider unless I go for a
8 variance. I can't add two feet. That piece of
9 furniture that you have there is where the railing
10 would come on, you know, those two feet that's my
11 porch. Same thing. You would have needed a
12 variance. I didn't get one. So it's that way. My
13 knees don't hit the railings.

14 MR. MARTINS: We're just dealing with
15 the application in front of us is my understanding.

16 THE CHAIRMAN: All right. Board
17 members, any other questions of this witness at this
18 point?

19 Okay.

20 MS. RILEY: Hold on, hold on, hold on.

21 Just one.

22 Mr. Kenny, I hope under the
23 circumstances you understand how important it is to
24 abide by the rules and regulations. You've been a
25 contractor for a very long time and working in Ocean

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1 Grove, knowing that it's a historic goal place. So
2 you don't want to put your businesses, you know, the
3 business that you're getting from Ocean Grove in
4 jeopardy because you could possibly face the fact
5 that he's going to have to tear that porch down.

6 THE WITNESS: Yes. This was a very
7 bad call on my part. You know, I do understand. I
8 wouldn't be doing this again, that's for sure.

9 MS. RILEY: I hope not.

10 THE CHAIRMAN: And if you will tell
11 your other contractor friends in Ocean Grove and in
12 Neptune, what you just had to witness this evening,
13 maybe you could spread the word for us.

14 THE WITNESS: I'll do that.

15 THE CHAIRMAN: Thank you.

16 MR. STROUD: I'd just like to say I
17 appreciate your honesty. I know it was a little hard
18 on you, but it's for a reason because we constantly