

ZONING BOARD OF ADJUSTMENT
268B MAMMOTH ROAD
LONDONDERRY, NH 03053

DATE: NOVEMBER 15, 2012

CASE NO.: 11/15/2012-1

APPLICANTS: JASON VACHON
100 ROCKINGHAM ROAD
LONDONDERRY, NH 03053

LOCATION: 100 ROCKINGHAM ROAD; 13-27; AR-I

BOARD MEMBERS PRESENT: JIM SMITH, ACTING CHAIR
LARRY O'SULLIVAN, VOTING MEMBER
JAY HOOLEY, VOTING MEMBER
JAMES TOTTEN, VOTING ALTERNATE
NEIL DUNN, CLERK

REQUEST: VARIANCE TO ALLOW A DUPLEX (2-FAMILY DWELLING) ON AN EXISTING
1-ACRE LOT WHERE INCREASED LOT AREA IS REQUIRED BY SECTION
2.3.1.3.1.4.

PRESENTATION: Case No. 11/15/2012-1 was read into the record with no previous cases listed. The Clerk also read a letter from an abutter into the record; see Exhibit "A."

JIM SMITH: Who will be presenting?

JASON VACHON: Hi. I'm Jason Vachon, applicant and owner of 100 Rockingham Road. I guess I just have to go over these points, I guess?

LARRY O'SULLIVAN: Would you mind telling us what you're trying to do first?

JASON VACHON: Oh, sure. I have a single family house located on Rockingham Road that I'm trying to convert into a duplex. The property runs short on square footage. It exceeds the road frontage, so I'm falling short on square footage by the Town's existing laws.

LARRY O'SULLIVAN: Do you know what we require?

JASON VACHON: I believe it's 52,000 square feet.

LARRY O'SULLIVAN: And what do you have?

45 JASON VACHON: I have 43,560.
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47 LARRY O'SULLIVAN: So 9,000 square feet short...
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49 JASON VACHON: Yes.
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51 LARRY O'SULLIVAN: ...of the requirement for a two family?
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53 JASON VACHON: For...yes.
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55 LARRY O'SULLIVAN: Now, can I ask if you'd considered an in-law apartment or something along those lines as
56 well or as an alternative.
57
58 JASON VACHON: When I asked, the apartment would have been too large to be considered an in-law. I guess
59 an in-law can only be 712 square feet I believe. Or 740?
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61 LARRY O'SULLIVAN: And there's a limitation on the number of bedrooms and so forth as well, so...
62
63 JASON VACHON: Right. But the existing apartment that's there exceeds that size. There was a pre-existing
64 apartment when I bought the house, which is still there.
65
66 LARRY O'SULLIVAN: Oh, so it's a nonconforming use.
67
68 JASON VACHON: I...it's...it's just an apartment that was there.
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70 LARRY O'SULLIVAN: Okay, so it's a house with an apartment. Right now you have a house with an apartment.
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72 JASON VACHON: Yes, I bought it with the apartment and I'd like to basically legitimize something that, I mean,
73 I have an older tax card here dating back to 1984 that shows this apartment already here. I made copies. I
74 don't know if you'd like to see them or not.
75
76 LARRY O'SULLIVAN: Yup, we would. I would, please. Thank you.[See Exhibit "B"].
77
78 JAY HOOLEY: Thank you.
79
80 JAMES TOTTEN: Thanks.
81
82 NEIL DUNN: And how long have you owned it, Mr. Vachon?
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84 JASON VACHON: I bought it...good question...a year and a half ago.
85
86 JIM SMITH: Did the seller have any comments about the apartment when you bought it?
87

88 JASON VACHON: It was a bank foreclosure. Everything was 'as is.' 'As seen.' You know, 'We take no
89 responsibility for anything' type of situation. The actual signature on the bottom is 1982 for when first noted
90 this apartment.
91
92 LARRY O'SULLIVAN: So does this...do you know if this lot meets the soils requirement for the size lot that
93 you've got?
94
95 JASON VACHON: I do not, no. I was gonna have a septic company come out and check everything, but I was
96 told...
97
98 LARRY O'SULLIVAN: Oh, it's on septic. It's not city?
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100 JASON VACHON: It is septic, yes.
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102 LARRY O'SULLIVAN: Oh. How many bathrooms in it?
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104 JASON VACHON: Two. Two full baths.
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106 LARRY O'SULLIVAN: Do you plan on adding any bathrooms to it?
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108 JASON VACHON: No.
109
110 LARRY O'SULLIVAN: Do you plan on making any additions to the building?
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112 JASON VACHON: No.
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114 LARRY O'SULLIVAN: So this is really just...
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116 NEIL DUNN: Cleaning up.
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118 LARRY O'SULLIVAN: You're not changing anything.
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120 JASON VACHON: No.
121
122 LARRY O'SULLIVAN: You're just trying to clean up the paperwork behind you.
123
124 JASON VACHON: Just trying to legitimize something that's been, you know, I guess something that's
125 already...not that it makes it right that somebody already did it, but, you know...It's not gonna change the
126 aesthetics of the house whatsoever. I mean, it's, you know, for the neighboring houses that have been looking
127 at it for 30 years, it's exactly the same as it's always been, so...
128
129 JIM SMITH: Okay, why don't you go through the five points of law, just so we...
130

131 JASON VACHON: Okay. I never did this before, so I'm...from what I learned tonight, I know I answered at least
132 two of these questions wrong, so...Let's see, the first question, will the variance be contrary to the public
133 interest? I see no adverse effect of the public interest. The spirit of the ordinance...I wrote that the size and
134 the shape of the house will not change, therefore the neighboring properties will not be affected. Based on
135 what I learned tonight, I guess I should have wrote something like it would provide a rental opportunity. The
136 substantial justice, I wrote; in my opinion, because this house is located on a very busy street, traveled heavily
137 by both automobile and any commercial truck traffic and because it borders the industrial area, I don't think...I
138 think you can justifiably consider it for a multi-family dwelling. And the fourth; in my opinion property values
139 will not be diminished. Case in point, this property's been like this for, you know, 30 years, close to 30 years,
140 so, and it hasn't affected anybody's property as of yet. And number five, the literal enforcement of the
141 provisions, I wrote; according to Town records, this house has been used as a two family since 1984 or
142 perhaps earlier. In my opinion, the proposed use of this property is reasonable because it will not alter the
143 character of the neighborhood.

144
145 LARRY O'SULLIVAN: So there's not gonna be any more bedrooms, there's not gonna be any more bathrooms.

146
147 JASON VACHON: Nope.

148
149 LARRY O'SULLIVAN: There's not gonna be any more parking.

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151 JASON VACHON: No. Actually, less parking. I sold two cars, so...

152
153 LARRY O'SULLIVAN: Good.

154
155 [Laughter]

156
157 LARRY O'SULLIVAN: The issues that we have to have is like where we...you may have heard the first couple, is
158 because you say so doesn't mean it's so.

159
160 JASON VACHON: Mm-hmm.

161
162 LARRY O'SULLIVAN: So what we have in the public interest is our concerns are safety, health, the things that
163 you wouldn't want something to happen near you where you live. This is totally a residential area, right?
164 This...

165
166 JASON VACHON: Technically, yes. I mean, if you've traveled Rockingham Road, I'm wedged between two
167 commercial areas. It's just, you get off Exit 5, I mean, within a half mile of my house, there's a truck stop, gas
168 stations, and then you travel past my house and you get past Stonehenge, and then it opens back up to, you
169 know, industry again.

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171 LARRY O'SULLIVAN: Mm-hmm.

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173 JASON VACHON: I have Walmart trucks racing past my house all house all hours of the night, so it's not
174 exactly a quiet cul de sac.

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JIM SMITH: Questions?

NEIL DUNN: Jim, maybe you could help me, or Jaye. If I look at the current card, there's no reference to it, even though it was referenced way back then. Is...just a thought. You know, I'm looking to see if they put in there...

JIM SMITH: You'd have to ask the Assessor on that one.

NEIL DUNN: Okay. I'm just...

JIM SMITH: You know, again, what we're faced with is a situation where somebody without a building permit made alterations to the house. For whatever reason, it never came to light. My only real concern would be whether or not the work in the apartment meets any kind of codes.

LARRY O'SULLIVAN: That may be a requirement if you're not...if you're doing any work with the apartment, that's what Jim is saying, is that when people typically put on an addition, when they get a permit to do it, they ensure that the place isn't gonna burn down on you...

JASON VACHON: Right.

LARRY O'SULLIVAN: ...and it's not gonna, you know, flood or what have you. And that you have the proper sized septic system and that you have a...you know...

JASON VACHON: Yes. No, I...

LARRY O'SULLIVAN: All the things that are associated with that. And this one doesn't have it. So there has to be some kind of a balance between what you've got...

JASON VACHON: Mm-hmm.

LARRY O'SULLIVAN: ...and the things that you can get a permit for.

JASON VACHON: Okay.

LARRY O'SULLIVAN: You know, if you're changing an electrical outlet or service or something along those lines, you know, the...

JASON VACHON: Right.

LARRY O'SULLIVAN: ...apply for the...you will apply for all the permits that are proper.

JASON VACHON: But everything's already...

219 NEIL DUNN: Buried.
220
221 JASON VACHON: ...has been done a long time ago and I'm not condoning what's already been done.
222
223 LARRY O'SULLIVAN: Understood.
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225 JASON VACHON: And I wouldn't be...
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227 LARRY O'SULLIVAN: We don't want you to rip down the walls to tell us, you know, to show it to anybody
228 anyway, so...But the point is that anything that requires a permit, that you get a permit.
229
230 JASON VACHON: Mm-hmm.
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232 JIM SMITH: Has the Building Inspector looked at this property at all?
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234 JASON VACHON: No, not since I've owned it, no.
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236 JIM SMITH: Okay.
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238 LARRY O'SULLIVAN: It might be a suggestion to have the Building Inspector walk through...do a walk through.
239 What we're concerned about is having something that's unregulated burn down.
240
241 JASON VACHON: Yeah, oh I...
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243 LARRY O'SULLIVAN: That we approved.
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245 JASON VACHON: I have no problem with that.
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247 LARRY O'SULLIVAN: Well, the...so you have two separate entrances, you have all of the requirements then for
248 a two family.
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250 JASON VACHON: Yes.
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252 LARRY O'SULLIVAN: As opposed to an apartment or what you.
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254 JASON VACHON: Mm-hmm. And, I mean, I know it falls short square footage size, but for the area, I mean,
255 two houses down there's a two family house across the street that is condexes. And I mean, I know because
256 they have the larger lots, that's allowed, but...
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258 LARRY O'SULLIVAN: Mm-hmm.
259
260 JASON VACHON: You know, I don't feel it's gonna change the character. I understand and I have no problem
261 with somebody coming through the house and making sure that everything's on the up and up, you know?
262 And meeting whatever requirements the Building Department would have.

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NEIL DUNN: Jim, do you know what the difference from a duplex to a house with an apartment does? And...

JIM SMITH: Well...okay.

NEIL DUNN: ...again, though, something 30 years old?

JIM SMITH: Well, this is the dilemma you're in. Typically, if it's a typical two family home, there is a rated fire wall separating the two units.

NEIL DUNN: That was my concern.

LARRY O'SULLIVAN: That's a big thing, yeah.

JASON VACHON: Well, the apartment was a two car garage before. So I would assume yes. Again, I'm assuming...

JIM SMITH: Well, again...the rating of the wall between a garage and the house...

NEIL DUNN: One hour.

JIM SMITH: ...is not the same that would be required for two separate dwelling units. It does provide some separation but it's not built to that standard. If you look at your building code, I think what you'd find, that you'd need to have a half inch sheetrock wall and they just spell it out like that. Where if it was a duplex, you'd actually have to have a rated assembly, which is a wall built to a standard. Either a UL approved or something like that. And basically, that tells you you need this type of sheetrock, your receptacles have to be placed in a certain positive relative on either side of the wall and the openings have to be treated. I almost, without looking at it, would guarantee what you're suggesting probably doesn't meet the true requirements of a separation wall.

JASON VACHON: Well, yeah, I wouldn't know. But...

JIM SMITH: But again, the thing was done a long time ago. My biggest concern would be the wiring, as to how they did it. When you...say you look at a kitchen, there's a certain specific on how you lay out your outlets.

JASON VACHON: Mm-hmm.

JIM SMITH: Also, typically, you have to be in ground fault circuit interrupters and all those types of things. Whether or not that apartment has those things would be the question.

JASON VACHON: Okay.

306 JIM SMITH: Some things could be fixed relatively easy, some things...So if by having the Building Inspector
307 take a look at the unit, he could at least take a look at it and decide as a minimum, you need to do x, y, and z
308 to make it closer to what it's supposed to be.
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310 JASON VACHON: Okay.
311
312 JIM SMITH: It probably won't get there, but it'll get close.
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314 LARRY O'SULLIVAN: But on the septic side, you said you were gonna have the septic looked at?
315
316 JASON VACHON: I was gonna have somebody come out and...
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318 JIM SMITH: Do you know what the septic system was designed for and the number of...?
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320 JASON VACHON: It's for a four bedroom, which the house is.
321
322 JIM SMITH: Okay.
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324 JASON VACHON: Even with the two apartments.
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326 JIM SMITH: So at least you got that much.
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328 JASON VACHON: And it was done in 1996 and I mean, it's worked fine up to this point.
329
330 JIM SMITH: Okay.
331
332 JASON VACHON: And if need be, I was gonna have somebody take a look...
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334 JIM SMITH: Yeah.
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336 JASON VACHON: ...and, you know, I just didn't wanna spend the \$1,100 if I wasn't sure if I was gonna get
337 approved or not, you know?
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339 JIM SMITH: Again, part of the problem is the bank, in selling it, they didn't take any interest in trying to figure
340 out whether it was...
341
342 LARRY O'SULLIVAN: To code or not?
343
344 JIM SMITH: They just didn't...weren't interested. Okay.
345
346 JAMES TOTTEN: I have a question.
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348 JIM SMITH: Sure.
349

350 LARRY O'SULLIVAN: Funny, but they wouldn't give you a loan if it wasn't, right?
351
352 JAMES TOTTEN: Is there a garage still?
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354 JASON VACHON: Yes.
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356 JAMES TOTTEN: Is that in the front?
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358 JASON VACHON: Yes.
359
360 JAMES TOTTEN: So is the apartment split down the middle of the house? So like, left side, right side?
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362 JASON VACHON: Yes. It's...
363
364 JAMES TOTTEN: So...
365
366 JASON VACHON: I only have one of these. I can...I don't know, can I come up there and just...?
367
368 JIM SMITH: Sure.
369
370 LARRY O'SULLIVAN: Sure.
371
372 JASON VACHON: This is actually the current card [see Exhibit "C"]. So here's the line between the two
373 apartments and then the garage is up here in the front, so it's actually kind of behind the garage, so it's a little
374 deceptive.
375
376 JAMES TOTTEN: So what's that space there?
377
378 JASON VACHON: That's part of the apartment. It's oddly shaped and the garage is "L" shaped. That's what
379 that is. So it's only a one car garage.
380
381 JAMES TOTTEN: Gotcha.
382
383 JASON VACHON: And there's just a little area, like a work bench there.
384
385 JAMES TOTTEN: Okay. And that driveway...
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387 JIM SMITH: So that little squared area is the apartment?
388
389 JASON VACHON: Part of, yes. This little square right there. Yes.
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391 JIM SMITH: That's the apartment?
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393 JASON VACHON: This is all, from this line over, this, and then that's part of it.

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JIM SMITH: Oh, okay. So this is the main house.

JASON VACHON: Yes.

JIM SMITH: And this is the apartment. This is all a one story building?

JASON VACHON: Correct, yes.

JIM SMITH: What he's saying is that, from here over, and including that little extra's the apartment.

LARRY O'SULLIVAN: How big is this?

JIM SMITH: Well, it's not...

LARRY O'SULLIVAN: It's listed someplace.

JIM SMITH: It's less than half

LARRY O'SULLIVAN: No, how big...what's the footprint? Twenty two fifty? The two places, two apartments? Two thousand two hundred and fifty square feet?

JASON VACHON: Yeah, the whole house total is 2,250. One side is 1,181.

JAMES TOTTEN: So I see one front door.

JASON VACHON: When you go in that front door, there's two doors.

JAMES TOTTEN: Oh, it's split...

JASON VACHON: That front door is like an enclosed porch and then there's two entrances on either side and then they both have two regular exit doors.

JAMES TOTTEN: And each side's two bedrooms?

JASON VACHON: One side's three and one side's one.

JAMES TOTTEN: So one side's three? One side's...the apartment's...?

JASON VACHON: The apartment's one.

JAMES TOTTEN: With the one bedroom?

JASON VACHON: Mm-hmm.

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JAMES TOTTEN: And you have enough parking in the driveway?

JASON VACHON: Yes. Yeah, I actually...despite the letter [see Exhibit A"], there is quite a bit of parking there. I just...I own a lot of vehicles. I'm not gonna lie to you.

LARRY O'SULLIVAN: You don't put them there, though. Do you? ...

JASON VACHON: Well, I mean, I have like five registered vehicles, so there's a couple there.

JAY HOOLEY: And the one not.

JIM SMITH: All on...Okay. Any other questions? Anyone speaking in favor or opposition? Opposition.

PETER MCLINN: Opposition.

JIM SMITH: Or have questions.

PETER MCLINN: And have questions.

JIM SMITH: Okay, just go to a mic and identify yourself and then...

PETER MCLINN: Peter McLinn, 3 Melody Lane. Neighbor. I know the other family that wrote the letter there. Wasn't aware there was an apartment in this particular house until we noticed the cars, the traffic in there and the other family that showed up at a bus stop. We had concerns over the septic. That sounds like the bedrooms and total number of people isn't being in the considered into the calculation for the septic and the water. Very sensitive to that, having lived in a similar situation in another city where I had drainage from another neighbor come into my yard and cause an entire mess where I ended up picking up a bill after they went into foreclosure. So the sensitivity to this issue, for me, is great. And my family. Live with kids that are there. And we're separated by this document [i.e. certified abutter notice] stating 200 feet. So I guess I'm the closest one to this, so when I talked to other neighbors, said I'd come down today. In general, just worried about what's going on here. The lot is obviously not the size for a duplex. It falls, I think we've already pointed out, significantly short for that. And that...therein lies my concern about the environment around my house and the impact that this gonna have to the surrounding neighborhood there. I do know that the commercial area is further down the road, out of our area, and the sound is isolated down on that side between the two lots. We have noticed, you know, like I said, more activity in the neighborhood now off of Melody and the traffic that we're talking about and the cars in the front has changed the lot. So we're glad to see an owner in the house and not in foreclosure but right now we are concerned about those general items. And so I have to oppose this as of today.

LARRY O'SULLIVAN: So you're saying that there are too many cars there and too many people on the lot?

480 PETER MCLINN: Too many cars, too many people. So we're glad to see an owner in the house and not in
481 foreclosure but right now we are concerned about those general items. And so I have to oppose this as of
482 today.
483

484 LARRY O'SULLIVAN: So you're saying that there are too many cars there and too many people on the lot?
485

486 PETER MCLINN: Too many cars, too many people. You know, we came out...and like I said, this hit us by
487 surprise. I don't even know if the previous owner had anyone in there or if they were family or not. It was our
488 understanding that it was an in-law apartment. If that, if they [indistinct], it was in a separate apartment
489 altogether, from what we were told from other neighbors too when we had moved in. So that was part of
490 our...when we moved into this neighborhood, we moved out of a neighborhood that had duplexes and that
491 was part of our reason for moving into this neighborhood. So that was part of our consideration. So this
492 house being right on the side of our property is a concern and that's why I'm here today. That's all I have.
493 Thank you.
494

495 JIM SMITH: Okay.
496

497 PETER MCLINN: Do you have questions for me, I guess?
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499 JIM SMITH: The problem we have is that this is in a home that's been there in this condition for...
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501 NEIL DUNN: Thirty years.
502

503 LARRY O'SULLIVAN: Thirty years anyway, right?
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505 JIM SMITH: Yeah, 30 plus years.
506

507 LARRY O'SULLIVAN: The current condition is something I guess the current owner can take care of. Have you
508 spoken with him about it before? You know, what's going on here?
509

510 PETER MCLINN: This is the first time that I've actually met him. I've had other...
511

512 LARRY O'SULLIVAN: Glad we could be of service.
513

514 PETER MCLINN: I've had other experiences. My wife's been out, we met kids at the lot, so...I mean, it's just
515 something that just...it came in, I got this, and I was actually kind of disappointed this is the way it went down,
516 as a neighbor. If this were to come to me and said "Hey, we're looking at a septic. We're thinking about a
517 duplex. We're concerned about you as a neighbor," I think I would have a much different opinion here today.
518 But that's not what's happened, you know, we've...it's been pretty much an isolated event here. We're seeing
519 this traffic, we're seeing the house, we're seeing the property. It looks like it's degrading. The cars. Right?
520

521 JASON VACHON: The cars are...
522

523 PETER MCLINN: Wish it were not hiding in the front lawn. Devalues my property by seeing that. I lived in a
524 neighborhood, same thing happened. I had a person that started putting in his own driveway without pulling
525 permits, extending it through his front yard, and I watched my property values go down. At the time, that was
526 one, again, another one of the reasons why I moved to Londonderry. I love the zoning in Londonderry. I love
527 the way the lots are set up. I love the way we're setting the town up and I'm a big advocate for that type of
528 [indistinct]. So, changing that environment changes my home and that's what I'm here to say. You know,
529 we're talking about fire code safety also for people living in this house. Again, I've lived in coal town
530 Pennsylvania and I've watched some of these homes burn down. And that's concerning. I mean, this house
531 was not set up for this. Unfortunately, it was probably created for a family member, something along that
532 line, which I can understand. I'm gonna have parents I'm gonna probably wanna come down here at some
533 point and petition, but I will go through the Zoning Board in order to get that done. And get a building permit.
534 So I would say that if we have a lot size and zoning specific laws that are stated here, this is...this is it. This is
535 what we have today. I understand that there's now on paper something that dates back to the '80's I was
536 unaware of. That being said, nothing's changed. The zoning has not changed. We're still short significant
537 footage here for that lot, the soil, everything. We don't have answers to that yet. So there's other concerns.
538 So I guess I'm bringing forward several issues here, right?

539
540 LARRY O'SULLIVAN: Mm-hmm.

541
542 PETER MCLINN: That I'm concerned about as a citizen of Londonderry. Been here for a while. Just looking for
543 some help here as a citizen.

544
545 JIM SMITH: I think one of the things the Zoning Board, in a situation like this, is trying to come up with some
546 sort of an equitable solution to it. The problem that you have, you have a building that was altered by
547 someone in the past. That person is long gone. I mean, it could have been the owner who was foreclosed on
548 or it could have been somebody else, I mean, 30 years, that building could have had multiple owners over the
549 time. The bank, when it sold it to you, evidently didn't bother checking the zoning regulations or anything like
550 that to try to figure out whether it was a legitimate piece of property the way it was set up. I know when they
551 typically are financing something, they do a much more thorough job of checking it, but when they're trying to
552 get rid of a piece of property, they're just trying to get their money back or some part of it. So, to ask this
553 gentleman to return that to a single family house is a significant cost and I'm not sure that we're in a position
554 to...

555
556 PETER MCLINN: And I think that what's bankruptcy court, you know, basically when these things go through
557 bankruptcy court, they say "Hey, when you buy this and you pick it up from the bank, there is a significant risk
558 to that investment." And I don't think that, you know, that we, as citizens, let this happen and we end up with
559 these cases and they're our neighbors and then we have these problems and God forbid, this house burns
560 down or we get one side that isn't built to code. This is a problem, you know? I see your point. I think, you
561 know, I can tell the way you're leaning here on the property, but...and I, you know, when this house was sold
562 and we have a new neighbor, it's great. I think that's fantastic. I'm glad that house...but when you bought the
563 house, there was an inherent risk with that investment. This is the risk, right? And we have zoning laws to
564 protect...

565
566 JIM SMITH: And I understand what you're saying.

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PETER MCLINN: ...the citizens from development, right? And we have other areas that, you know, we've said we're gonna build in and we're gonna do certain things with. Well, this area's been zoned. We have restrictions there. I follow those restrictions. My neighbors follow those restrictions when they built their homes. You bought a property with a risk, you know? I'm not asking him to disable his house, but I'm asking that the house be a single family house. You know? With an in-law apartment's fine. I mean, I think that was brought out, you know?

JIM SMITH: We've thrown that one out. The only problem with that, there's a certain area restriction of, I believe, 750 square feet or something like that. Obviously, this area is larger than permitted under that particular section of the regs.

JASON VACHON: That was my intentional goal, was to make it an in-law apartment and it can't because of the size. I was told...

LARRY O'SULLIVAN: You could always cut it down.

JASON VACHON: I know, but...

LARRY O'SULLIVAN: I mean move a wall...

JASON VACHON: Realistically, I know I could, but it would be...

JIM SMITH: Well, okay...

NEIL DUNN: Where's...?

JIM SMITH: Just...the way that house is laid out right now, that piece that's cut into the garage...

JASON VACHON: Yeah.

JIM SMITH: What is that used for?

JASON VACHON: It's like an office. Like, just an extra room.

NEIL DUNN: This falls under one of those...

JIM SMITH: Okay, if I can read this correctly and I'm...it looks like the area, when you're not including that area, is 604 feet or something like that.

LARRY O'SULLIVAN: Not including?

JAYE TROTTIER: Jim, you can see it on our website.

611 JIM SMITH: Is that 604?
612
613 JAYE TROTTIER: You can see it bigger.
614
615 LARRY O'SULLIVAN: Our website?
616
617 JAYE TROTTIER: Yeah, you can go into the Assessing records on our website and you can see a bigger
618 footprint. A picture. You can even click on it to make it bigger.
619
620 JIM SMITH: Yeah. But it's 604 feet in that...?
621
622 JAMES TOTTEN: In here?
623
624 JIM SMITH: No. In the area above that.
625
626 JAMES TOTTEN: Eight hundred and ninety four.
627
628 JAY HOOLEY: Eight ninety four.
629
630 JIM SMITH: *Eight* ninety four? Okay. So you are...and that's over...
631
632 JAMES TOTTEN: Well, then there's another room in the back.
633
634 NEIL DUNN: Where...?
635
636 JAMES TOTTEN: Is that a room in the back or...?
637
638 JAY HOOLEY: Patio.
639
640 JAMES TOTTEN: a pat...oh, just a patio? It looks like 268 in there.
641
642 NEIL DUNN: My question was gonna be, Jim, that it's...we have documentation that it was documented in '82.
643 So it is a nonconforming use that's...?
644
645 LARRY O'SULLIVAN: Absolutely.
646
647 NEIL DUNN: That...he doesn't...he's trying to do the right thing and clear it up.
648
649 LARRY O'SULLIVAN: Paper-wise.
650
651 NEIL DUNN: But I guess I'm just trying to go to see where we're at. I mean, we can't...
652
653 LARRY O'SULLIVAN: We can ask to have him...
654

655 JIM SMITH: Okay.
656
657 LARRY O'SULLIVAN: ...check out all the electricity and..
658
659 JIM SMITH: I think part of what we run into...
660
661 LARRY O'SULLIVAN: ...plumbing.
662
663 JIM SMITH: When you look at the assessing cards, the Assessor goes out and assesses what's on the property.
664 Sometimes they bring it to the attention of the Building Department, sometimes they don't.
665
666 NEIL DUNN: Yeah.
667
668 JIM SMITH: Especially if it's a reval. If it's picked up in a reval, you can almost guarantee that that's as far as
669 it's gonna go. So, while Assessing may be aware of it, the Building Department may not be. I'm not saying
670 they are or not.
671
672 NEIL DUNN: Right. Yeah, no...
673
674 JIM SMITH: Okay? Just because it's assessed that way doesn't make it legitimate.
675
676 NEIL DUNN: No, right, but it gets back to one of those nonconforming existing use things that after so many
677 years, what do you do kind of...I'm just trying to get a better hold on it.
678
679 JIM SMITH: Well, again, that's the whole dilemma that we're at.
680
681 NEIL DUNN: Right. Okay.
682
683 JIM SMITH: And, again, that's part of what we're faced with. We've got a building that's been in this
684 condition for...
685
686 NEIL DUNN: Thirty years...
687
688 JIM SMITH: ...thirty plus years...
689
690 LARRY O'SULLIVAN: I guess what...
691
692 JIM SMITH: ...and suddenly say...and, you know, multiple owners have probably owned the thing over the
693 years.
694
695 PETER MCLINN: Right, so do we have any proof of a tenant there, or anything like that that would...
696
697 JIM SMITH: Well...
698

699 PETER MCLINN: ...a precedent or...?
700
701 JIM SMITH: ...he's got that assessing card that shows...
702
703 LARRY O'SULLIVAN: That's how it's written...
704
705 JIM SMITH: That was how it was assessed in 1984.
706
707 LARRY O'SULLIVAN: They wrote it up as a two family...
708
709 JASON VACHON: I also...and I don't know if this makes a difference, but I also still get mail for unit A and unit
710 B.
711
712 JIM SMITH: Yeah, well...
713
714 JASON VACHON: Not that that matters, but...
715
716 JIM SMITH: Yeah. So it's not something that he suddenly went out and did yesterday. You know, it's
717 something that's been...it agrees with the septic system, a four bedroom. That system is designed for four
718 bedrooms, so the septic system should be sufficient for the particular use you have. Septic systems are
719 designed around bedrooms, not people. So you could have a four bedroom unit...I mean a four...yeah, four
720 bedroom house and have three people live there. You can also have 15 people living there. There's no way of
721 controlling that. I mean, in my own house, I went from two to four to seven, back to two depending upon
722 who was living there at the moment. I had my sons there and then they moved out, then my son with his
723 family moved back in, then they left, you know, so you have no control over things like that.
724
725 LARRY O'SULLIVAN: But it sounds like the thing that brought everything to a head here of discussions is the
726 way that it's being taken care of, so...
727
728 JIM SMITH: Well, no, I...no.
729
730 LARRY O'SULLIVAN: This is what we're talking about. This lot here. Just stick with this one, okay?
731
732 JIM SMITH: Okay. No, I mean he can...
733
734 LARRY O'SULLIVAN: Now...
735
736 JIM SMITH: Why did you...how did you get involved with the Building Department?
737
738 JASON VACHON: What do you...?
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740 JIM SMITH: I mean, did you voluntarily come in...?
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742 LARRY O'SULLIVAN: You came here for a variance.

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JIM SMITH: ...to do...to straighten it out or did somebody...?

JASON VACHON: Yeah, I came in with questions and I asked them what would be process in...

JIM SMITH: Okay,.

JASON VACHON: ...in making this house a two family house.

JIM SMITH: Okay.

JASON VACHON: And I explained to them that I bought it that way and when they dug out the file on it, they were the ones that showed me that old card and said that, "Well, according to these, somebody made note of this back in the early '80's, '82..."

JIM SMITH: Yeah.

JASON VACHON: "...stating that this had already..." There was already an apartment there, so...

JIM SMITH: Yeah. So basically, that I'm trying to get at is he voluntarily tried to straighten this thing out. It wasn't an enforcement issue. A lot of times, we end up with these types of scenarios because somebody does something, then somebody complains about it, then it filters through and comes back to the Zoning Board trying to straighten it out one way or the other.

LARRY O'SULLIVAN: What he's saying is that if you've got all these cars parked all over the place and somebody saw that and complained, they'd go to the Building Department. The Building Department would call you up and say "What are you doing with all these cars here? You're a single family house." Therefore, here you are, so...

JIM SMITH: Yeah, but it didn't happen that way. This...

LARRY O'SULLIVAN: Okay, well, I think I'm making my point for his neighbor.

JIM SMITH: Yeah, I mean, it could, you know. It could have. You know, if you had registered a complaint with the Building Department, then maybe they would have gone through this thing and we would end up back here at the...you know, at the same point. It didn't do that. Again, it all comes back to the fact, it's been there a good number of years, this gentleman happened to buy this building the way it was, as is. Like you suggest, he bought a potential problem. He's trying to correct it in some way.

PETER MCLINN: Well, he's trying to justify the two family home, right, based off of what we have here...

JIM SMITH: Right.

PETER MCLINN: ...but we have building code, right? Which is something...

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JIM SMITH: Well, that's where I'm suggesting that we...

PETER MCLINN: Right.

JIM SMITH: ...if we grant it, we put a restriction on it saying he has to have the Building Department come in and take a look at this building to try to see...

LARRY O'SULLIVAN: To ensure that it's at code.

JIM SMITH:what changes need to be made to try to bring it into compliance as...within a reasonable...

PETER MCLINN: And as his neighbor, I mean, I think that's fantastic. Like I said, I have concern over the lot size. Septic, drainage. Right? We have an independent person saying that the septic's okay. We had no building inspection because no one would have bought a house...we have a foreclosed property with a septic that, I don't know, we have building code, no fire wall, I...I'm sitting here looking at a disaster, you know, as far as resale goes for me. I got multiple cars out in the front, multiple neighbors complaining about it, and I'm looking at it going, this doesn't meet...this doesn't meet this lot size. So we're granting something based off of something was drawn wrong initially. We bought an investment. We moved in a single family. We expanded it, we're renting an apartment on the side of it to another family and this isn't to code. Right? So maybe this is the wrong...maybe zoning's not the way to go after...maybe it is Building, right? So...

JIM SMITH: Okay.

JAMES TOTTEN: I don't see....

PETER MCLINN: Contingent on the...

JAMES TOTTEN: ...if this goes one way or the other, how your concerns are...right?

PETER MCLINN: So...so the septic...

JAMES TOTTEN: Your concerns are contrary...

PETER MCLINN: ...for example, right...?

JAMES TOTTEN: The septic's approved for a four bedroom. There's no increase to the bedrooms.

PETER MCLINN: A septic that's workings approved for that, right? But we don't have a bank that's approved a septic there, so I'm trying to block this just in fact that having lived next to a similar situation, seeing this go down, I'm worried about the outcome that's finally gonna happen if this...we have a problem here.

JAMES TOTTEN: But your concerns exist whether there's an apartment there or not.

831 PETER MCLINN: They do.
832
833 JAMES TOTTEN: Right.
834
835 PETER MCLINN: They do. I think that apartment is a major concern, though.
836
837 JIM SMITH: Okay.
838
839 LARRY O'SULLIVAN: Okay, Mr. Vachon, you said you were gonna...you're doing what you can to upgrade the
840 building and you're gonna have the septic checked and so forth, right? You were...
841
842 JASON VACHON: Yeah, I have no problem with having the Building Department come in and check out...
843
844 LARRY O'SULLIVAN: Good. Good. Do you have a well?
845
846 PETER MCLINN: And if we had the Building...
847
848 LARRY O'SULLIVAN: Do you have a well?
849
850 PETER MCLINN: I should state that. You know, if he has the Building Department come in and they think this
851 is okay and they find everything is alright and we can have it as a habitable place, then I'll withdraw my
852 objection to him having the two bedroom, seeing as that he has paperwork dating back all the way that far, I
853 would not argue with him as a neighbor. 'Cause if he moved in under that expectation that he had that
854 property, I completely see your point. This is knowledge to me. My understanding was this was done after
855 the fact. So this is new information to me, so...
856
857 JIM SMITH: Yeah.
858
859 PETER MCLINN: ...if we have at least a building inspection on this, contingent, to two family, for a building
860 inspection, I think that would be fair.
861
862 JASON VACHON: I have no objections to that.
863
864 JIM SMITH: Okay.
865
866 LARRY O'SULLIVAN: Do you live there, Mr. Vachon?
867
868 JASON VACHON: I do.
869
870 LARRY O'SULLIVAN: It's not just a...
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872 JIM SMITH: Are you currently renting the apartment or not?
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874 JASON VACHON: Yes.

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JIM SMITH: Okay. Okay, any other questions?

LARRY O'SULLIVAN: You don't want to hear from anyone else in the audience?

[Laughter]

LARRY O'SULLIVAN: It's 11:30 at night.

JIM SMITH: Please. I would entertain, unless there's any additional...

LARRY O'SULLIVAN: I just wanna talk about the restrictions and the restriction that I would be promoting on this would be the inspection, whether that be by the Town or by a licensed inspector or however it gets accomplished, I'm not sure how that's done, on both the apartment and the house, that they meet the Londonderry code. Other than that, I don't see an issue here.

NEIL DUNN: Well, when you say "meeting the Londonderry code"...your house probably doesn't meet today's code, so you have to draw the line somewhere.

LARRY O'SULLIVAN: My house doesn't meet the code?

JIM SMITH: No.

NEIL DUNN: Do you have arc faults? Do you have smoke detectors in every bedroom? Do you have arc faults?

LARRY O'SULLIVAN: Every bedroom?

NEIL DUNN: Yeah.

LARRY O'SULLIVAN: No.

NEIL DUNN: That's the code today.

LARRY O'SULLIVAN: That's the code today?

JIM SMITH: Are they interconnected with battery backup?

NEIL DUNN: Yeah, that's the code today. You can't expect somebody to meet the code.

LARRY O'SULLIVAN: Okay. The 1982 code.

[Laughter]

919 NEIL DUNN: There might be a...
920
921 JIM SMITH: Well, again, what he's alluding to, codes evolve over time. What were the code in 1984 versus
922 today are two different things.
923
924 NEIL DUNN: Except to say Londonderry code...
925
926 JIM SMITH: In fact, he would also probably, you would need CO2 detectors as well.
927
928 NEIL DUNN: Yup.
929
930 LARRY O'SULLIVAN: That's natural, though. I mean, everybody's got those, but you don't put them in every
931 bedroom, do you?
932
933 NEIL DUNN: You have to have a smoke in every bedroom to today's code. So when you're...my only point is
934 you're saying the "Londonderry code." Today's code is...we're probably doing 2011? We'll never meet that,
935 so we have to come up with some...if you're gonna put that restriction, a reasonable...
936
937 JASON VACHON: I have...I mean, whatever, I mean, I live there with my family. Trust me, that house is safe. I
938 mean, you can have anybody come in that you want. I have an eight year old daughter, you know, I
939 just...believe me, I do have CO2. I have dual smoke detectors, both CO2 and smoke. In all the bedrooms.
940
941 JIM SMITH: Okay, but the point we're raising is if you look at the building code right now, what it says
942 basically is you need a smoke and CO2, I believe, on every level...
943
944 JASON VACHON: Right.
945
946 JIM SMITH: ...in the vicinity of your bedrooms and in each bedroom.
947
948 JASON VACHON: Mm-hmm.
949
950 JIM SMITH: They have to be interconnected with a battery backup. You know, if you got a house that's more
951 than a few years old, you're probably not gonna meet those requirements.
952
953 NEIL DUNN: Nobody does.
954
955 LARRY O'SULLIVAN: Okay, so rather than say that, I would say something along the lines of we wanna make
956 sure that their electricity is up to code, right? And the plumbing is up to code. Other than that...
957
958 JIM SMITH: That is reasonable.
959
960 LARRY O'SULLIVAN: You know, we're not gonna control...
961
962 NEIL DUNN: Reasonable.

963
964 JIM SMITH: Yeah.
965
966 LARRY O'SULLIVAN: ...the amount of candles that they light either so the place doesn't burn down, so...You
967 know, this is...I don't really think that Mr. Vachon should have the expense of upgrading the home to current
968 code.
969
970 JAMES TOTTEN: No, it's basically utilities, right?
971
972 LARRY O'SULLIVAN: It's basically the utilities.
973
974 JAMES TOTTEN: Water, sewer...
975
976 JIM SMITH: Yeah.
977
978 LARRY O'SULLIVAN: Yes.
979
980 JAMES TOTTEN: ...electricity.
981
982 LARRY O'SULLIVAN: Yes.
983
984 JAMES TOTTEN: Right?
985
986 LARRY O'SULLIVAN: Alright, that's the way...
987
988 JIM SMITH: See if there's any obvious...
989
990 LARRY O'SULLIVAN: You wanna make that motion James? Go right ahead.
991
992 JIM SMITH: Who's making a motion?
993
994 LARRY O'SULLIVAN: James.
995
996 NEIL DUNN: James.
997
998 JAMES TOTTEN: You want me to make a motion?
999
000 JIM SMITH: Sure, why not.
001
002 JAMES TOTTEN: I make a motion to approve case 11/15/2012-1 with the restriction that the utilities; water,
003 electricity, septic, plumbing...
004
005 JIM SMITH: Be inspected for obvious safety issues.
006

007 JAMES TOTTON: ...be inspected for obvious safety issues.

008
009 LARRY O'SULLIVAN: Bingo.

010
011 JIM SMITH: That would cover...and it would give some wiggle room. Who's gonna second?

012
013 JAY HOOLEY: I'll second that motion.

014
015 JIM SMITH: Okay. All those in favor?

016
017 NEIL DUNN: Aye.

018
019 JAY HOOLEY: Aye.

020
021 JAMES TOTTON: Aye.

022
023 LARRY O'SULLIVAN: Aye.

024
025 JIM SMITH: Aye. Aye.

026
027 RESULT: THE MOTION TO GRANT CASE NO. 11/15/2012-1 WITH RESTRICTIONS WAS APPROVED, 5-0-0.

028
029
030 RESPECTFULLY SUBMITTED,

031
032 Handwritten signature of Neil Dunn in cursive script.

033
034
035 NEIL DUNN, CLERK

036 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

037
038 **APPROVED DECEMBER 19, 2012** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY NEIL DUNN
039 AND APPROVED 3-0-0.