

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

DATE: JUNE 15, 2011

CASE NO.: 6/15/2011-2

APPLICANT: VIRGINIA ONEIL
6 GRIFFIN AVE
LONDONDERRY, NH 03053-3916

LOCATION: 2 GRIFFIN AVE; 1-16-1, AR-I

BOARD MEMBERS PRESENT: JIM SMITH, ACTING CHAIR
VICKI KEENAN, VOTING MEMBER
MICHAEL GALLAGHER, VOTING ALTERNATE
JAY HOOLEY, VOTING ALTERNATE
NEIL DUNN, CLERK

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING OFFICER

REQUEST: EQUITABLE WAIVER FOR A FIVE FOOT ENCROACHMENT INTO THE FRONT
SETBACK BY AN EXISTING GARAGE FOUNDATION WHERE 40 FEET IS
REQUIRED BY SECTION 2.3.1.3.3

PRESENTATION: CASE NO. 6/15/2011-2 WAS READ INTO THE RECORD WITH NO PREVIOUS CASES LISTED.

JIM SMITH: Who will be presenting? Okay, you want to come up to the microphones and introduce yourself?

VIRGINIA O'NEIL: Good evening, I'm Virginia O'Neil.

KEN GODUTI: I'm Ken Goduti.

JIM SMITH: We need a street address. A street address?

VIRGINIA O'NEIL: Street address? 6 Griffin Ave.

KEN GODUTI: 26 South Road and 3 Rockingham Road.

JIM SMITH: Okay.

KEN GODUTI: Do you want me to hand those out? Do you guys have a picture of the plot plan and...?

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JIM SMITH: No, I don't believe so.

JAYE TROTTIER: In the computer.

JIM SMITH: Oh, it's in the computer?

KEN GODUTI: Yeah, we'll hand them out. Okay? [see Exhibits "A" and "B"]. Basically, this was put in by a former...Ginny had purchased the property...what, twelve (12) years ago, I think at this point? And the foundation was existing when she purchased it and it is five (5) feet within the front boundary line and she's looking for an equitable waiver to allow her to build a garage on the existing foundation that's actually there. Hence the equitable waiver. When we came into the Town Offices, this is what they suggested we ask to grant us permission to allow to build a structure on the existing footings that are there. And they were measured to depth and checked by a previous Building Inspector in town. So they are to code as far as depth and whatnot. If you look at the picture; if you measure by the lot line, I believe it's thirty five (35) feet is about what they're figuring to the front, the square where the car is. I think when the original gentleman had probably done the garage, he measured from either the road or the stone walls which is something pretty common. That could have been an oversight on his part. So therefore, that's what puts that garage in the setback of that front forty (40) foot.

VIRGINIA O'NEIL: As you can see on the photo that I sent, the line, the aerial photo, is on the other side of the stone wall and I believe when they did it, they measured from the stone wall.

VICKI KEENAN: I can't tell by the photo...I'm sorry.

JIM SMITH: Before we go much further with this case, Richard, did you discuss the ten (10) year rule with them?

RICHARD CANUEL: Well, that's why I recommended the equitable waiver rather than applying for a variance, simply because if the difficulty of proving hardship for a variance and that's, you know, the reason why equitable waiver was established. This case certainly falls into that criteria. It's been there more than ten (10) years. I think there's a valid determination there. It was inspected when the foundation was installed at the time, however, within that ten (10) year period, there was no enforcement action taken in regards to encroachment on the setback at that time, so...

JIM SMITH: So...

MICHAEL GALLAGHER: Did you say it was inspected at that time, Richard?

RICHARD CANUEL: The foundation was inspected, a permit was issued for the foundation only for the garage at the time. This was back in '96, so...

JIM SMITH: According to this, '95. '95 according to...so that's even better.

89 RICHARD CANUEL: '95 then. No, the permit here says 1996, "foundation only for future garage."
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91 JIM SMITH: Oh, okay.
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93 RICHARD CANUEL: A garage was constructed sometime between 1996 and '97. A final inspection on the
94 foundation was done in '97. There was a note regarding a possible dimensional difference between the front
95 property line and the location of the garage, however, that was never pursued and there was no enforcement
96 action taken within at least a ten (10) year period regarding the encroachment, so just that alone qualifies for
97 the criteria for an equitable waiver. And because it is an encroachment, and it involves the issuance of a
98 building permit, I couldn't possibly issue a building permit to allow them to proceed with construction of the
99 garage itself because it encroaches on the front setback, so, one of two things needs to happen; an equitable
100 waiver or a variance.
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102 JIM SMITH: Okay. The reason I brought that up; if you establish those points, that's all that's needed to grant
103 the equitable wavier. So I would say judging from the information we have, we don't have to go any further
104 with the hearing and I would like to have someone make a motion at this point.
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106 NEIL DUNN: May I just have one question? When I went by there, that's the area that looks like a flower field
107 at this point?
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109 VIRGINIA O'NEIL: It's a mess.
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111 NEIL DUNN: I mean, it pretty looks overgrown. Would you have any concerns about the foundation sitting
112 there for ten (10) years? We don't know if it was backfilled, if it's....any concerns on your part in that regard,
113 Richard?
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115 RICHARD CANUEL: Well, the foundation was apparently backfilled at the time the inspection was done. It
116 hasn't been exposed. I haven't been out there to take a look at it but unless the foundation was exposed to
117 weather conditions for that period of time, I don't think I would have an issue with it.
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119 NEIL DUNN: Okay, thank you.
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121 VICKI KEENAN: I'll make a motion. I'll make a motion to grant equitable waiver in case no. 6/15/2011-2 for a
122 five (5) foot encroachment into the front setback by an existing garage foundation where forty (40) feet is
123 required by Section 2.3.1.3.3.
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125 MICHAEL GALLAGHER: I'll second.
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127 JIM SMITH: Okay. All those in favor?
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129 NEIL DUNN: Aye.
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131 VICKI KEENAN: Aye.
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133 MICHAEL GALLAGHER: Aye.

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135 JAY HOOLEY: Aye.

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137 JIM SMITH: Aye. Five (5), zero (0).

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139 VIRGINIA O'NEIL: Thank you very much. Appreciate it.

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141 RESULT: THE MOTION TO GRANT CASE NO. 6/15/2011-2 WAS APPROVED, 5-0-0

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144 RESPECTFULLY SUBMITTED,

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149 NEIL DUNN, CLERK

150 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

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152 **APPROVED JULY 20, 2011** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JAY HOOLEY AND APPROVED
153 4-0-1 WITH LARRY O'SULLIVAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.