

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

DATE: MAY 19, 2010

CASE NO.: 5/19/2010-1

APPLICANT: SCOTT AND MARIE MARTIN
93 HALL ROAD
LONDONDERRY, NH 03053

LOCATION: 93 HALL ROAD, 11-91-2, AR-I

BOARD MEMBERS PRESENT: VICKI KEENAN, CHAIR
NEIL DUNN, VOTING MEMBER
JIM SMITH, VOTING MEMBER
JOE GREEN, VOTING ALTERNATE
MICHAEL GALLAGHER, NON-VOTING ALTERNATE
JAY HOOLEY, NON-VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

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

REQUEST: VARIANCE TO ALLOW CONSTRUCTION OF A PORCH WITHIN THE 40-FOOT FRONT SETBACK AS REQUIRED BY SECTION 2.3.1.3.3.

PRESENTATION: Case No. 5/19/2010-1 was read into the record with 1 previous case listed.

VICKI KEENAN: Can I ask just a quick question? Richard, was the work ever done for that area variance [i.e. the previous case mentioned above] that you know of?

RICHARD CANUEL: Yes.

VICKI KEENAN: Oh, it was? Okay.

RICHARD CANUEL: It's been completed.

VICKI KEENAN: Okay.

ROBERT LAPLANTE: My name is Robert LaPlante. I'm a cousin for Scott and Marie Martin, 93 Hall Road, tax map 11, parcel 91-2, AR-I. A variance is requested from Section 2.3.1.3.3 of the zoning

ordinance for the following reasons: allow a porch within forty (40) foot setback. The variance will not be contrary to the public interest. As you can see, there's no adverse effect on the public's interest. The spirit of the ordinance is observed. Granting the proposal will not affect the over crowding of the land. From street line to structure will not change. Substantial justice is done. This porch will be able to accommodate a handicap ramp if needed in the future as well. Her mom, at this point, is handicapped. The values of the surrounding properties are not diminished. Repairing a porch will not reduce the surrounding property's values. No fair and substantial relationship exists between the general public purpose of the ordinance provisions and the specific application of the provisions to the property. And...this home was built before today's setbacks were put in place. Other homes in Londonderry have a 6x14 porch. The proposal is a reasonable one. The home does not meet today's forty (40) foot setback which puts the front of the home in a violation of a traditional building permit. Do you want me to read the criteria part as well? Just keep...? Okay. If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguished it from other properties in the area, the property cannot be reasonable used in strict conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it. They would like a six (6) by fourteen (14) porch built. If needed in the future, a handicap ramp, again [indistinct] may be needed. This variance will allow this to happen.

VICKI KEENAN: Can you take some time and describe the porch and...there's a drawing on here, but a little bit about...

ROBERT LAPLANTE: Right now the porch is a three (3) by six (6) porch. Very minimum. It was built in 1971 out of concrete. Actually, the homeowner, Marie, her dad's the one that actually made the porch, so you can imagine what the concrete looks like today. It's not a usable front porch at all at this point. I guess we would, if the Town could, they'd probably red tag it. But they really just need a real porch for this home. What else would you like to know about it? If we were to build that existing footprint today, even using that footprint, it wouldn't meet today's codes because it's only a three (3) by six (6). By the time you put your handrails on, you won't meet the platform or even the...it doesn't even conform to today's codes.

VICKI KEENAN: Okay.

MICHAEL GALLAGHER: Are you adding a ramp to it or...? You mentioned...

ROBERT LAPLANTE: Well, if we're here...we're here for a three (3) by six (6) porch. So, at the time...do we need a ramp today? No. But if we're here for a variance, we probably should get a variance if, in fact, we do need a ramp. We don't want to come back here in six months or a year from now. If her mom...her mom lives one house away and she's, at this point in time, her sister's taking care of her, but if her mom needs to move in with her, then the problem is that there's really no way to get her in the home accessibly. The argument would be, well, they have a rear door. Well, correct. The rear door enters the home into a sunk-in living room. Well, that means if she was entered into the rear of the home, then you need a six (6) foot handicap ramp from the sunk-in living room to the kitchen and that, it just...that does not make sense. So we're here, if we can get at least

approval, so in the future, if a handicap ramp needs to be built, we won't have to come back to the Board to get this handicap ramp.

VICKI KEENAN: Can I ask a question? Just clarifying. You had mentioned that it's gonna be six (6) by fourteen (14)?

ROBERT LAPLANTE: Correct.

VICKI KEENAN: The application shows it being six (6) by eleven (11).

ROBERT LAPLANTE: It might be a mistake on my part. Do you remember...?

MICHAEL GALLAGHER: Well, just the...

MARIE MARTIN: I thought it was fourteen (14).

MICHAEL GALLAGHER: Well, you're saying it was three (3) by...what was that size?

VICKI KEENAN: The existing...

ROBERT LAPLANTE: It's three (3) feet wide, six (6) feet out.

MICHAEL GALLAGHER: Yeah, so it...

LARRY O'SULLIVAN: It's an addition that you're building to the existing porch and that's six (6) by fourteen (14), right?

MICHAEL GALLAGHER: Right, so, yeah, it looks like...yeah, right. The eleven (11) and three (3) will get to the fourteen (14).

ROBERT LAPLANTE: That's what it is. Exactly.

LARRY O'SULLIVAN: Eleven (11).

ROBERT LAPLANTE: We're asking for the Town for an additional...

MICHAEL GALLAGHER: Eleven (11).

ROBERT LAPLANTE: Eleven (11) feet.

VICKI KEENAN: So the existing is staying. So an additional eleven (11)...

ROBERT LAPLANTE: Well, we're gonna remove the existing, 'cause it...

MARIE MARTIN: It's crumbling.

VICKI KEENAN: Okay. So the new dimensions will be six (6) by fourteen (14).

ROBERT LAPLANTE: Correct.

VICKI KEENAN: Okay, so the...so then how far in are you going then, in terms on the encroachment?

ROBERT LAPLANTE: Six (6) feet.

VICKI KEENAN: Just six (6) feet?

ROBERT LAPLANTE: Correct. And, which, right now, we're at six (6) feet. So we're not going any further than what it is.

VICKI KEENAN: Okay.

MICHAEL GALLAGHER: They're making it wider.

JIM SMITH: When you rebuild the existing part of it, are you gonna continue having the stairs come straight out or are you gonna change direction or what?

ROBERT LAPLANTE: I'm not sure they made that decision at this point in time.

MARIE MARTIN: They were just gonna be in the same spot where they are now.

JIM SMITH: Okay. Now, take me one step further. How would you configure a ramp with this?

ROBERT LAPLANTE: We would use the side, that would be squared out to...obviously the stairs would change and then the fourteen (14) feet, we need fourteen (14) feet to put a ramp from the left side of the home to the right door, the right side of the door. It wouldn't be a ramp of handicap specifications but I think it would be around one point five (1.5) inches per foot on fourteen (14) feet.

JIM SMITH: So, looking at it from the front door, you're saying the ramp is gonna go to your left?

ROBERT LAPLANTE: Correct. Into the driveway.

JIM SMITH: Oh, into the driveway off the end of the...?

ROBERT LAPLANTE: See how the siding is...do you want pictures?

LARRY O'SULLIVAN: That would be good.

VICKI KEENAN: Yeah, that would be helpful.

[Robert LaPlante distributed copies of Exhibits "A" through "C"]

ROBERT LAPLANTE: So the ramp would come...and the home...and the fourteen (14) feet is actually right at that indent.

JIM SMITH: So you'd replace the deck...I mean the porch with the ramp?

ROBERT LAPLANTE: We would...exactly. This whole porch were to be removed anyhow. And it's gonna be a footprint for a porch. That's what we're asking for. And if a ramp is needed, the ramp's gonna come this way along the side of the home. And the access will be right here from the driveway to go to the ramp. Does that make sense to you?

JAY HOOLEY: So the ramp would not project any further into the setback area?

ROBERT LAPLANTE: Correct.

JAY HOOLEY: Where are...if you're removing the existing stairs, where are the new stairs going?

ROBERT LAPLANTE: They haven't made that determination yet. Depending on the Board's approval of how the porch is gonna be.

JIM SMITH: Okay, what's the elevation of the top of the existing porch to the grade at this point?

ROBERT LAPLANTE: I don't have that exact information, but my guess it's gonna be...it looks to be about twenty eight (28) inches. I thought I brought my calculator.

JIM SMITH: Okay. Twenty eight (28) inches. Richard, what's the ramp slope supposed to be?

RICHARD CANUEL: One (1) in twelve (12).

JIM SMITH: One (1) in twelve (12).

NEIL DUNN: When you say "one (1) in twelve (12)," what exactly do you mean? One (1) inch per twelve (12) inches, one (1) foot per twelve (12) feet? What...?

MICHAEL GALLAGHER: One (1) foot per...

RICHARD CANUEL: Yeah, one (1) inch or you can go one (1) foot for twelve...

NEIL DUNN: Either one...

RICHARD CANUEL: ...either one and it works out to be the same thing.

NEIL DUNN: ...and so it's just a ratio? Strictly a ratio?

RICHARD CANUEL: Yeah.

JIM SMITH: So, for every foot of run, you gain an inch. So if you're saying twenty eight (28) inches, that relates with a twenty eight (28) foot-long ramp.

RICHARD CANUEL: Exactly.

ROBERT LAPLANTE: Correct. If we were gonna do it by today's handicap standards. But in a residential area, we very rarely use one (1) inch per twelve (12) inches, per foot.

JIM SMITH: And how long did you say the ramp was gonna be?

ROBERT LAPLANTE: Fourteen (14) feet. Actually, it will be around ten (10) or it will be three...it will be eleven (11) feet. It will be eleven (11) feet of ramp.

VICKI KEENAN: Richard, if they decide to do the ramp, do they need to come back? Well, other than for a building permit, right? Is that it?

RICHARD CANUEL: Yes. Yeah, it would be strictly a building permit issue.

VICKI KEENAN: But not back anywhere? Okay.

NEIL DUNN: If I may, Richard, then what would...is that accurate that if someone builds a ramp, that they're not held to that one (1) in twelve (12)?

RICHARD CANUEL: Not necessarily for a single family residence, it's not. So, I mean, if they choose to build a ramp, you know, one (1) in ten (10), they can certainly do that. That's not gonna work very well for, you know, someone in a wheelchair, if it ever comes to that. But yeah, the accessibility rules do not apply to a single family residence.

NEIL DUNN: So one (1)...

JIM SMITH: It'd actually be greater than an inch and a half. If he's got a twenty eight (28) inch rise...

ROBERT LAPLANTE: Right.

JIM SMITH: ...to the top of that, then you have a step between the top of that to the actual floor level of your house. So it's almost impossible to build a ramp that would be usable.

LARRY O'SULLIVAN: It would be more like a ladder.

ROBERT LAPLANTE: Well, I think...well, kind of, exactly. But I mean, what we're asking for is...obviously, a person's not gonna be able to wheel themselves up on the ramp themselves. It's gonna have to be...other members of the family will have to assist the wheelchair. Unless you're looking to give the homeowner a footprint for twenty eight (28) feet, which we really didn't think that would have been put into this. We never even considered that.

VICKI KEENAN: But the ramp is just a "maybe," right? It's not...

ROBERT LAPLANTE: Right, it's just a "maybe." It's a...

VICKI KEENAN: A possibility...

ROBERT LAPLANTE: ...possibility.

VICKI KEENAN: ...for sometime in the future. So we're really just talking about a standard porch at this point, right?

MARIE MARTIN: Yes.

VICKI KEENAN: Okay.

LARRY O'SULLIVAN: And isn't the ramp going into the driveway anyway?

ROBERT LAPLANTE: Correct.

LARRY O'SULLIVAN: So if you need to make it longer...?

ROBERT LAPLANTE: I don't think we need to make it longer.

LARRY O'SULLIVAN: If you found you needed to make...

ROBERT LAPLANTE: I've built a lot of ramps at two (2) inches, inch and a half, and you just need assistance to push someone up the ramp.

JIM SMITH: Yeah, you're almost...

ROBERT LAPLANTE: No one wants, really, a twenty (20) foot ramp in front of their home. So, at the same time, you don't want to make it an eyesore.

NEIL DUNN: I guess one of my concerns would be when we look at the justification, a lot of it is based on the "possible" need for a ramp as justification.

VICKI KEENAN: Right.

NEIL DUNN: And a lot of times, we're looking for unique conditions or special conditions of the property and I haven't heard any of that addressed, I guess, so, if you could talk a little bit about that maybe?

ROBERT LAPLANTE: Unique conditions of the property?

NEIL DUNN: Well...

ROBERT LAPLANTE: This home was built in 1971, met all the setback rules back then. Somewhere along the line, the setback rules for this specific road was changed without consideration of the existing homes in the neighborhood. So every time a citizen needs to add a porch or have any type of building permit, they're here requesting for a variance. I think most homes in Londonderry...you guys have a, what, a ten (10) by ten (10) porch which is...isn't there a...? The other inspector was telling me that somewhere along the line, like a ten (10) by ten (10) porch, you don't even need...did I fall off on that? Misunderstand that?

RICHARD CANUEL: Yeah, I don't know where you're getting that there.

VICKI KEENAN: In following you, Neil, I'm having a hard time understanding what special conditions might exist at the property that might be unique to your property and not other homes that make it necessary for a variance?

ROBERT LAPLANTE: If this home met the setbacks, these people could build this porch without any...without coming here at all. A six (6) by fourteen (14) porch is not unreasonable.

VICKI KEENAN: Mmm. Did anybody drive the street?

NEIL DUNN: Yes.

LARRY O'SULLIVAN: Mm-hmm.

VICKI KEENAN: I got the impression that there were a lot of homes that had setback...were within the setbacks or they're...I didn't take specific measurements. I'm trying to do it now, but I don't know if anybody else had anything to add to that?

JOE GREEN: What it looks like from the map, it looks like that this home is probably one of the closest. Is that what you're getting to?

VICKI KEENAN: Yeah.

JOE GREEN: To the street. So the uniqueness is...

MARIE MARTIN: It was one of the first houses built on the road.

JOE GREEN: The uniqueness would be that this is so close to the street already, where it currently is...compared to other homes in the neighborhood.

LARRY O'SULLIVAN: That makes it unique?

JOE GREEN: Right.

LARRY O'SULLIVAN: Now, they got a variance before to actually have this house less than twenty five (25) feet...

JOE GREEN: Well, it was built before the setback rule.

JIM SMITH: That was the addition.

LARRY O'SULLIVAN: The addition was...

VICKI KEENAN: That was to the left side.

LARRY O'SULLIVAN: Right. The addition to the left side was approved but it was no closer than, what was it, twenty five (25) at that time? I'm not quite sure, I can't look at this drawing and see what was approved last time but what this is doing is it's further intruding on the setback, alright? So, my understanding is that right now the front of the building, for example, is twenty (25) feet at one end and twenty eight (28) feet from the other end to the street. And this six (6) foot wide...?

ROBERT LAPLANTE: Correct.

LARRY O'SULLIVAN: ...porch will be that much more of an infringement on the setback.

JOE GREEN: How much more would it be? [Indistinct] twelve (12).

VICKI KEENAN: Six (6) feet.

LARRY O'SULLIVAN: Six (6) feet.

JOE GREEN: Six (6) feet in addition to what it is now?

LARRY O'SULLIVAN: Right, so standard today is forty (40) feet.

MICHAEL GALLAGHER: It's already six (6)...right.

VICKI KEENAN: But the...

LARRY O'SULLIVAN: Standard today is forty (40) feet.

JOE GREEN: Because there's already a porch on there, so how deep is that?

JIM SMITH: Well, you know, when we use the term "porch," I think we're using it very liberally.

NEIL DUNN: Mmm.

JIM SMITH: It's a set of stairs.

VICKI KEENAN: Steps.

LARRY O'SULLIVAN: These are steps.

VICKI KEENAN: Stairs.

JOE GREEN: Set of stairs, okay. But to follow that point, the set of stairs come out a certain...

VICKI KEENAN: Come out six (6) feet.

JOE GREEN: Six (6) feet, right? So, how much more...what I'm saying is that you're just pushing that off to the right. You're not gonna extend it any further to the front for the setback, right?

LARRY O'SULLIVAN: Are you gonna have a roof over it?

MARIE MARTIN: No.

JOE GREEN: So if you were to make a line from the last stair, all the way over it, it's not gonna go any further into the street?

ROBERT LAPLANTE: I think...

JIM SMITH: Could I ask a question of Richard? I almost hate to ask. Do you have any idea when the setbacks were put into the regulations? I know I don't but...

RICHARD CANUEL: Well, not off the top of my head. I know our zoning ordinance was established in 1965.

JIM SMITH: Right.

RICHARD CANUEL: And there were residential criteria as a part of that because, of course, we were mostly residential back then anyway.

JIM SMITH: Right.

RICHARD CANUEL: And I think the setback criteria were established back then. The forty (40) feet and fifteen (15) and fifteen (15), so...

JIM SMITH: Well, if that's true, then they probably should be in here for an equitable waiver.

RICHARD CANUEL: Let me see. I happen to have our old zoning ordinance right here. Yeah, see, the front yard setback, "forty (40) feet," and that was 1965, so...

VICKI KEENAN: Did you have a question, Jay?

JAY HOOLEY: Yeah, I just wanted to come back, the stairs versus...the concrete set of stairs, as they exist, are six (6) feet out from the home. But when you say you don't know where you want to put the new stairs, am I to understand that they will be within the gray area or will they be...

ROBERT LAPLANTE: Exactly.

JAY HOOLEY: ...in addition to?

ROBERT LAPLANTE: Correct.

JAY HOOLEY: They will be within?

ROBERT LAPLANTE: They'll be within.

JAY HOOLEY: So you'll have a cutout, for lack of a better term, within this deck area somewhere?

ROBERT LAPLANTE: If they choose to put the stairs going out the same way they are now.

JAY HOOLEY: They may go to the side?

ROBERT LAPLANTE: I hope they go to the side.

JAY HOOLEY: But if they don't, they'll be within a cutout, there will not be an additional...?

ROBERT LAPLANTE: Correct.

JAY HOOLEY: Okay.

ROBERT LAPLANTE: Because they realize they have to stay within that footprint that...

JAY HOOLEY: I just...when you said you weren't sure, I didn't know if they were contemplating a set of stairs further towards the street from where this deck is designed.

ROBERT LAPLANTE: I'm not even sure if...if this is approved, I'm not sure he'll even use the footprint that is...that the variance board will allow, the six (6) by fourteen (14). He may only build a four (4) by six (6) porch and then wait to a later date if, in fact, they need to drop a ramp in or a slow pitch set of stairs. But we just don't want to be here in two months because their mom lives...your mom lives...backs up to the property. So there is a great consideration. Her mom may need to be moving to her home, versus living with her other daughter.

NEIL DUNN: If I may? Richard, do we define "porch" and "deck" in our ordinances?

LARRY O'SULLIVAN: As structure?

RICHARD CANUEL: Not really. There isn't a definition of "porch" specifically. There isn't a definition of "deck" specifically, either. I don't recall but let me see what I've got here.

JOE GREEN: Is that the point that you said earlier about having...have a roof? To me, a porch is with a roof. But a deck is without...

NEIL DUNN: That's what I'm thinking but if we don't have a definition, then I guess it's kind of a moot point for us to rely on but...

JOE GREEN: Right.

RICHARD CANUEL: Yeah, so we don't have anything specific for that.

LARRY O'SULLIVAN: Would a building permit be required to put a roof over the current whatever, what exists now in the way of a porch or steps?

RICHARD CANUEL: To roof over the existing stairs and landing?

LARRY O'SULLIVAN: Right.

RICHARD CANUEL: Sure, yeah, that's a structural building, sure. Yup. It would require a permit.

LARRY O'SULLIVAN: Okay, so if the applicant, in the future, wanted to come and put a roof over it in the future, they'd have to come back before this Board?

RICHARD CANUEL: Well, that depends. If the Board grants a variance to allow the six (6) by eleven (11), which is what is proposed on the application, porch, and they construct a six (6) by eleven (11) structure, whether that structure has a roof or not is irrelevant, as long as they don't go beyond that six (6) by eleven (11) that the Board grants.

LARRY O'SULLIVAN: That's really what I was getting at. So there could be a cover over this if we approve this? So...

JOE GREEN: We can approve it with an exception, though, so it wouldn't...right?

LARRY O'SULLIVAN: Ooh.

VICKI KEENAN: It doesn't matter. I mean, at that point, it's encroaching.

NEIL DUNN: Yeah, but I think...I'm looking and when you drive by to see maybe a deck there or something without a roof, then we're not building a height and a depth kind of thing into the setback. So, visually, it might not seem to encroach as much. Realizing that, yes, the house is that close to the property and that maybe they'd want to accommodate...make some special accommodations for somebody down the road. I think it would be easier on me if I thought it was not gonna have the roof on it and now, if you look at the height of that building, you know, it just adds more mass and it makes it more of an intrusion from my perspective. And that's why I was wondering what the difference on a porch and a deck because I guess I would have a better feeling if I didn't feel like it was...

JOE GREEN: A structure.

NEIL DUNN: ...a big, huge structure that was really cutting in and now it's start to really encroach on that. I mean, maybe some other people don't think it matters, but, to me, it kind of does when you start filling up the space that close to the road.

RICHARD CANUEL: Well, you have a good point there, because part of the newly rewritten statute that redefines the hardship criteria, part of that is the use is a reasonable one. If you consider a deck to be an encroachment to be reasonable but a porch not to be reasonable, then you're well within your rights to say that doesn't meet the criteria to grant the variance.

NEIL DUNN: But where we don't define a porch or a deck...

VICKI KEENAN: Let's not get into deliberations.

RICHARD CANUEL: That's right. But it's, you know, it's all to the Board's opinion.

JOE GREEN: Okay.

VICKI KEENAN: Are there any more questions for the applicant?

JIM SMITH: Okay, I wanna go back to one point. When you built the addition, you got a variance for the addition. They have a provision in the State law and under our regulations for what is known as an equitable waiver. And that addresses a building which has been built too close to a line and there's one of the provisions says that if it wasn't discovered in a reasonable time frame, you can get an equitable waiver and it makes it, basically, legal and it helps you as far as getting a mortgage or something like that because if they did a mortgage survey on your property right now, it could raise

a question of why that house is, in fact, twenty five (25) feet from the front property line. Now, if you come in to the Board and got an equitable waiver, that would solve that problem for you and anybody else who owns that house in the future. So, it's a suggestion that you might want to consider. Richard could probably give you additional information along that line and assist you on that if you...but it is something that would help as far as any future transactions and trying to sell that piece of property.

LARRY O'SULLIVAN: As opposed to a variance, you mean?

JIM SMITH: Right. Well, see, the variance addresses the addition. But the original house is in violation. According to Richard, the setback was there from almost day one, nobody has addressed that and a lot of times when somebody comes in...goes to get a mortgage, they do what they call a "mortgage survey." They look at the zoning regulations and say "this house doesn't conform," and now you've got a problem. And a lot of times, that doesn't show up until you're actually in the middle of the transaction. If you go in and get the equitable waiver, you've solved that problem, you know, for the future. So it's just something...

LARRY O'SULLIVAN: Well, we can't change it here now, can we?

RICHARD CANUEL: Well, really, all the equitable waiver is going to do is going to correct the situation that exists today.

JIM SMITH: Right, yeah.

RICHARD CANUEL: It's gonna legalize the impact of that structure on the front setback.

JIM SMITH: Right. Nothing to do with this...

RICHARD CANUEL: Nothing to do with the additions.

JIM SMITH: Right, but it is something you really should consider.

VICKI KEENAN: Any more questions for the applicant from the Board?

LARRY O'SULLIVAN: Yes. Did we come to a conclusion that there was something unique about the property?

ROBERT LAPLANTE: It was the first home that was built on the road.

LARRY O'SULLIVAN: Well, the road's been there for a long time. Since before the '70's, right? So...

ROBERT LAPLANTE: Yup.

MARIE MARTIN: It wasn't that...when I was a kid growing up, there wasn't that many houses on the road. So I don't know which order the houses came along.

LARRY O'SULLIVAN: But the road was there before the house was?

ROBERT LAPLANTE: Oh, I'm sure.

MARIE MARTIN: Yeah.

ROBERT LAPLANTE: Does that make sense? Yeah.

VICKI KEENAN: If they just needed the ramp, would they have to come before the Zoning Board for the variance for the ramp?

RICHARD CANUEL: Same thing as a set of stairs. It's a structure on the house that encroaches on the setback.

VICKI KEENAN: Okay. Even if it's less than what exists today? Or equal to...within the six (6) feet that exists today?

RICHARD CANUEL: If they were to rebuild the existing stairs...

VICKI KEENAN: Yeah.

RICHARD CANUEL: ...the three (3) by six (6) that's there, they wouldn't need the variance.

VICKI KEENAN: Gotcha. Okay.

NEIL DUNN: Would you, as applicants, have any objection to restricting that there would be no roof structure above the...?

MARIE MARTIN: There's not one now, so it's never bothered us before. So it doesn't make any difference to us.

ROBERT LAPLANTE: If you wanted to change the verbiage to deck...

NEIL DUNN: No, I don't think that...That's semantics. I think I would feel better saying "no roof structure." Would that be the proper way, or "covering," or...?

RICHARD CANUEL: Yeah. Like I said, you know, you have to apply the issue of it being a reasonable use. If you consider a deck to be reasonable, then that's well within your rights. If you consider a porch...

JIM SMITH: An unenclosed deck.

RICHARD CANUEL: ...roof and all, to be unreasonable, then...

JIM SMITH: Yeah.

VICKI KEENAN: Anyone else? Okay, we will close the question section. No one in the gallery, so we won't open it up for public comment and we'll bring it back to the Board for deliberation. Okay?

DELIBERATIONS:

VICKI KEENAN: Do you want me to start?

LARRY O'SULLIVAN: Of course.

JIM SMITH: [Indistinct].

JOE GREEN: Go ahead, boss.

VICKI KEENAN: I'm rusty. I hope somebody can convince me otherwise, but I do not see any special conditions of this property that distinguish it from others that would make this a unique situation. Just looking at the minutes from the last variance case, you know, the special conditions for this variance were that, yes, it was already within the setback, but the addition couldn't be put on the back of the home because the septic was there, which added, you know, to the special conditions. We're not talking about that. We're talking about something, I think, completely different. And, according to Richard, the setbacks were in place when the home was built. So I'm confused how the house got built.

MICHAEL GALLAGHER: How could it get built? I mean, and then there's no...

JIM SMITH: Well, they didn't require a certified plot plan after the foundation was in.

MICHAEL GALLAGHER: Okay. At that point in time...

VICKI KEENAN: Okay.

JIM SMITH: The reason we got that rule was because of things like this.

MICHAEL GALLAGHER: Yup.

VICKI KEENAN: Does anybody else feel differently?

LARRY O'SULLIVAN: Years ago, when this was submitted...

VICKI KEENAN: Yeah.

LARRY O'SULLIVAN: ...I'm pretty sure I was on this one, too, and...

VICKI KEENAN: You were.

LARRY O'SULLIVAN: ...it appears to me that the things that we spoke about then are true today as well. We have the issue that we've encroached on the setbacks with the house, okay? And now we've evened it off and that was a big part of the original application. That it now is going to be a single sight line, a straight line in the front of the house. And it's only twenty five (25) to twenty eight (28) feet from the road. So, right now, by doing an extra six (6) feet, I think that because we haven't been able to cover all of the conditions of the property that distinguish it from other properties in the area, we're having an issue. I'm having an issue with that one. So, before, on the first variance, it was...I believe it was allowable and I still think it was a fair use and a fair variance that was provided. This one, on the other hand, is bringing it another six (6) feet closer. I don't have any problems with people having porches. I do have a problem when they're getting too close to the street.

JOE GREEN: But it's not...

MICHAEL GALLAGHER: Larry, it's not...

JOE GREEN: It's not six (6) feet closer.

MICHAEL GALLAGHER: Yeah.

JOE GREEN: It's the same exact...the porch, the stairs, that are there right now, yes, I'm saying "porch," the stairs that are there right now are already where they are, so...

LARRY O'SULLIVAN: Okay, that's using your definition of the stairs as a structure.

JOE GREEN: Right.

LARRY O'SULLIVAN: What we looked at was the sight line, okay? You really aren't even gonna see those stairs. There's what, three (3) stairs? I think there was, you know, they're next to nothing. It's like having a rock in your driveway, right?

MICHAEL GALLAGHER: Yeah.

LARRY O'SULLIVAN: We're not talking about the same thing. That's not what my definition of a structure is. I understand that the Town looks at anything that's built manmade to be considered something that's, you know, got a definition. I don't consider that to be part of what we're concerned about here and that's why I thought when we gave the original variance, that we had a straight line in the front of the house and the porch or the steps didn't really intrude any further, right? So, as far as I was concerned, what you have there is making something worse as opposed to allowing something

because of the conditions of the property. There are no conditions of the property that make it any different than the other lots up and down the street.

JOE GREEN: Okay, so, I see it a little different. I see that, from at least the pictures, I haven't done a study yet of the neighborhood, but the front of the home is probably...I know that there wasn't proper permitting done but when this home...the home is there now and it is what it is, unfortunately, and it is significantly different than the other ones that I'm showing here because it's so close to the road. So that makes it unique to me. And I think we're getting hung up on the porch wording too much. I think it...I think really what they're asking for, and maybe they can clarify this a little bit more, I think what they're asking for is not a porch and it's more like a deck and it really is to replace what's there right now that's obviously a detriment to people's safety. So, I'm comfortable that it's not gonna encroach too far visually because if we allow a deck versus a porch, however we define it, we could define that, be more specific, I think it's not gonna have an adverse effect on the neighborhood. So, that's how I see it.

VICKI KEENAN: But they could replace what exists today in the same sort of six (6) by three (3) footprint with something that's safe, right? And have it be less of an encroachment because now you're talking about, instead of a six (6) foot setback for three (3) feet, you're talking about a six (6) foot setback for fourteen (14) feet.

JOE GREEN: Okay.

VICKI KEENAN: It's much more substantial than that.

LARRY O'SULLIVAN: There's also two ways to look at it, too, Joe. One way is, "It's already bad, why not let it get worse?" or you can look at it and say, "Geez, it's kinda bad, why should we let it get worse?" So...your opinion.

JIM SMITH: I think that's where I'm getting hung up. The addition...I mean, the proposed deck/porch, is six (6) by eleven (11), which is an additional sixty six (66) square feet of area which you're now encroaching in, versus the three (3) by six (6), which was eighteen (18), so you're increasing it substantially.

VICKI KEENAN: I guess...

JOE GREEN: When this house was built, was this person the...were you the owner, actually, when it was built?

MARIE MARTIN: I was six (6) months old. My dad was the one that built it.

JOE GREEN: Okay.

MARIE MARTIN: I don't know any of the legalities of what happened then. He passed away five (5) years ago, so...

VICKI KEENAN: Back to my initial question, though. Does anyone... 'cause I think this will end debate... does anybody see special conditions...

LARRY O'SULLIVAN: Special conditions.

VICKI KEENAN: ...of the property that make this a unique situation that would allow for a variance?

JOE GREEN: Yes.

VICKI KEENAN: I mean, that's the crest of it, right?

JOE GREEN: That's what I said, yup.

VICKI KEENAN: What's your special condition?

JOE GREEN: It's close to the road. More closer than any other house on this map. That's a special condition.

NEIL DUNN: I don't see any that were addressed, really, in the application, though.

LARRY O'SULLIVAN: Richard...?

VICKI KEENAN: Richard, do you have any thoughts on that?

RICHARD CANUEL: Yeah, can I just intervene?

VICKI KEENAN: Please, yeah. You always have good insight.

RICHARD CANUEL: Okay. If you take a look at the language of the statute as it was rewritten, especially that criteria for the unnecessary hardship, it talks about something unique about the property that distinguishes it from other properties in the neighborhood. Previously when you applied that criteria years ago, it had to be something inherent in the land. Now it's something about the property, which could be anything about the property. I think Joe is on the right track here in the fact that this house was built closer to the property line than the other houses in the neighborhood. Part of that criteria also is, is there any substantial relationship between protecting the public good and applying the strict criteria of the variance in this particular case? And is the use reasonable? The use is reasonable in that anyone can build a porch on the front of their house. The other houses along that property... I mean, along that Hall Road, they have the right to build porches on the front of their houses. This property owner should be allowed that same right. Basically, that's how the criteria of this statute works. In granting the variance, would public or private rights be damaged by doing so? So you need to look at that criteria in particular and, like I said, I think Joe is on the right track. It's not necessarily something with the land itself because it's too steep on one side or the leachfield is too

close to the house. It's everything about the property. You can even include the fact that this house is unique because it is closer to the property line than the other houses in the neighborhood.

VICKI KEENAN: I didn't feel that it was closer than many of the other properties. Does anybody know that for a fact?

LARRY O'SULLIVAN: Well, driving down there, as a matter of fact, you wouldn't know on either side of the road...

VICKI KEENAN: Right. I'm trying to do measurements on the GIS.

JAY HOOLEY: Many of the newer homes in that area certainly are built much further back.

LARRY O'SULLIVAN: The newer ones are back, right.

JOE GREEN: On page twelve (12), it's pretty...I mean, there's one, two, three, four, five, six, seven...seven (7) homes that are further back visually. I mean, I didn't measure them, but they look pretty far back compared to the other ones.

JAY HOOLEY: Yeah, on the opposite side of the street, number 92, is...

VICKI KEENAN: Ninety two (92) is pretty far back.

JAY HOOLEY: Quadruple, if not more, the distance as well as, actually, the remainder...

VICKI KEENAN: Okay.

JAY HOOLEY: It's when you get down to 84 that you start to see another similar...

JOE GREEN: But no, I...not close...that close.

JAY HOOLEY: Not as close but I assume that's...

JOE GREEN: But it's definitely...it's encroaching.

JAY HOOLEY: ...probably an older home as well.

VICKI KEENAN: I follow what you're saying, Richard. I...

NEIL DUNN: Well, I...

VICKI KEENAN: I mean, I don't see how it would injure the public or private rights.

LARRY O'SULLIVAN: Does it meet all the criteria, though?

VICKI KEENAN: Maybe we need to walk through the...

JOE GREEN: Let's go though it, yeah.

VICKI KEENAN: Wanna walk through the variance application?

JOE GREEN: Yup.

VICKI KEENAN: Let's walk through each point. I think that's a good suggestion. Granting the variance would or would not be contrary to the public interest? I think it would not.

JOE GREEN: Would not.

VICKI KEENAN: Anyone else?

LARRY O'SULLIVAN: I agree.

JOE GREEN: I agree.

VICKI KEENAN: Okay. The spirit of the ordinance would or would not be observed?

NEIL DUNN: I personally don't think it is. Anytime we encroach on a setback, you're going against the spirit of the ordinance in my eyes...which makes it a very tough hurdle to get over. Number two (2), typically...

VICKI KEENAN: I'm not....I mean...

MICHAEL GALLAGHER: I think. Oh...

VICKI KEENAN: Sorry.

MICHAEL GALLAGHER: No, sorry.

VICKI KEENAN: I mean, I'm not sure that six (6) feet is gonna make that front yard feel any more enclosed or tighter to the road than it is today. So, I'm on the fence with this one. I'm not sure...

NEIL DUNN: Yeah, I guess...and Richard was kind of...I mean, kind of what we were talking about, what Richard went over, is yes, this is a reasonable use because it's allowed in this AR...it's zoned for this type of use. However, I don't think the intent is that we should let people build right up to the road because it's a reasonable use. You know, so then you start getting subjective on, you know, what's reasonable, six (6), twelve (12), you know, fourteen (14) feet long, forty eight (48) feet long? So, it's...

JAY HOOLEY: So we'd only observe on that...

LARRY O'SULLIVAN: We've already decided that, though, gang. We've already decided that it's forty (40) feet. It's forty (40) feet everywhere. Front line, right? We're not making that decision. We're making that decision about this particular property only, so what we need to do is we need to focus here...

NEIL DUNN: Mmm.

LARRY O'SULLIVAN: This circumstance. I think Joe's got a point.

VICKI KEENAN: I do, too.

LARRY O'SULLIVAN: I don't agree with it but I do think you have a valid point. That my interest in this is not making...letting a variance be the reason we offer a variance. That doesn't make any sense to me. Because this house had a variance already. Now we're gonna give it a variance because we gave it a variance? Hello? Am I missing something here? To me...

VICKI KEENAN: I don't think anybody...you know, before I go on my point, the two of you had a comment you wanted to make. So, if you could...

JAY HOOLEY: It's actually a follow up on the prior, but the encroachment is no further.

MICHAEL GALLAGHER: Yeah, that's what I was...

JAY HOOLEY: The encroachment is six (6) feet now.

MICHAEL GALLAGHER: Yup.

JAY HOOLEY: From the front of the house into the setback, beyond where it ought to be.

LARRY O'SULLIVAN: Do you see any measurements that show that on the drawings?

JOE GREEN: Yeah, the...

VICKI KEENAN: Yeah, it said six (6) by eleven (11).

JOE GREEN: Yeah, six (6) by eleven (11).

LARRY O'SULLIVAN: No, I'm talking about the...

VICKI KEENAN: Or six (6) by fourteen (14).

JOE GREEN: Yeah, 'cause the gray area is the new area on that page.

LARRY O'SULLIVAN: Where are we?

VICKI KEENAN: I don't think anybody wants to give a variance because they got a variance before. I think what we're trying to establish is that they meet the criteria and that there is a unique...

LARRY O'SULLIVAN: Circumstance?

VICKI KEENAN: There's a special condition of the property.

LARRY O'SULLIVAN: Circumstance? Yeah.

VICKI KEENAN: Yeah, there's a special circumstance to this property that may have led to giving the variance before but it's still...there still needs to be a special condition for us to do that. So I think that's...as we go through these points of law, we should be considering that. So spirit of ordinance is observed. Jim, you've been kind of quiet. Do you say "would" or "would not"?

JIM SMITH: I've been thinking a couple other things. One of the things I'm looking at now is on...there's a sketch in here which shows the house location and it shows twenty five (25) feet on one corner versus twenty eight (28) on the other corner. So if that's true, actually the encroachment is not as great on one end as the other end, so...

VICKI KEENAN: The porch, yeah.

JIM SMITH: So the house is at a slight angle to the front property line.

MICHAEL GALLAGHER: That's where they're going with it.

JIM SMITH: Yeah, in that direction. So, actually, you're encroachment is...

MICHAEL GALLAGHER: Less.

JIM SMITH: ...it's gonna be somewhat less. Exactly how much less it would be a little difficult to...

JAY HOOLEY: But no further than the existing...

JIM SMITH: It would be less than the six (6) feet.

JOE GREEN: Right. That was my point, yup.

LARRY O'SULLIVAN: Okay, so you're saying on one end, it'll be twenty...what is that, twenty two (22) feet on one end?

JIM SMITH: No, it's twenty five (25) feet according to this...

LARRY O'SULLIVAN: Right.

JIM SMITH: ...to the...

LARRY O'SULLIVAN: So you add the six (6) feet.

JIM SMITH: ...left corner as you're looking at...

JOE GREEN: Right.

JIM SMITH: ...to looking towards the street and it's twenty eight (28) feet on the other side.

LARRY O'SULLIVAN: Okay.

JOE GREEN: Like three (3) at a slope.

LARRY O'SULLIVAN: Right.

JOE GREEN: Three (3) feet at a slope.

JIM SMITH: So you've got a three (3) foot variance between...

JOE GREEN: Yup.

LARRY O'SULLIVAN: Okay, so what you're going is six (6) foot closer. Does that square...that rectangle that we're looking at is the house.

JIM SMITH: So, there's three...

LARRY O'SULLIVAN: It's not the steps.

JIM SMITH: ...twenty six (26)...You know, if it's absolutely even. So that puts the center of the house twenty six and a half (26.5) feet back from the front property line. I'm just...

LARRY O'SULLIVAN: Ball parking.

JIM SMITH: ...presuming it's a...you know.

VICKI KEENAN: But at any point on the porch, it will be no more than six (6) feet.

JOE GREEN: Right.

LARRY O'SULLIVAN: So you're looking at the distance that we see on that drawing to the edge of the porch will be twenty two (22) feet to the road.

JIM SMITH: Well, based on that, it would be twenty three and a half. Well...

LARRY O'SULLIVAN: Okay.

JIM SMITH: I mean twenty...

LARRY O'SULLIVAN: It says twenty eight (28) on the map I'm looking at.

JIM SMITH: ...point six...

LARRY O'SULLIVAN: On the drawing I'm looking at.

JIM SMITH: ...would be twenty (20). It'd be about twenty (20) feet. So it's a little bit less.

LARRY O'SULLIVAN: So it'll be twenty (20) feet from the road.

JIM SMITH: Right.

LARRY O'SULLIVAN: Okay.

VICKI KEENAN: So back to the spirit of the ordinance. Are there any thoughts on that?

MICHAEL GALLAGHER: I...well, again, with this six (6) feet issue, I don't see them going out any further. So, with that, I...in other words, they're staying at six (6) feet coming out from the house. It's just a matter, I think...you mentioned the sight lines earlier, Larry. You know, it's adding for a little bit of width there and Jim just mentioned, it looks like they're going into the direction of the twenty eight (28) as opposed to the other way, so, I'm...

VICKI KEENAN: I think it would.

MICHAEL GALLAGHER: I think that's where...I think it would be observed.

VICKI KEENAN: Yeah, I don't think it poses any health or safety issues, you know, other dangers or...I don't think it encloses the front yard or any more...

LARRY O'SULLIVAN: There's no safety issue.

VICKI KEENAN: Yeah. Okay, so number three (3), granting the variance would or would not do substantial justice.

JIM SMITH: That's where I have a problem. The way they word it, this porch will be able to accommodate a handicap ramp. If they're really trying to build a handicap ramp...

LARRY O'SULLIVAN: Mmm.

JIM SMITH: They should be in for a variance to build a handicap ramp. Trying to justify the porch with the potential of a ramp, I...

VICKI KEENAN: But I think that we asked that question. I think they said it's a possibility. It's not a guarantee.

JIM SMITH: Yeah, but that's the...

VICKI KEENAN: They want to build a porch.

JIM SMITH: But that's how they're justifying that.

VICKI KEENAN: Yeah.

ROBERT LAPLANTE: Can I speak for a second?

VICKI KEENAN: We're closed at this point for deliberation.

ROBERT LAPLANTE: Okay.

VICKI KEENAN: But I guess the question, right, is does the benefit to the public outweigh the benefit to the applicant? That's really substantial justice, right? I don't know that it does.

LARRY O'SULLIVAN: I agree with that.

VICKI KEENAN: So I would agree that it would do substantial justice. Everybody agree with that?

NEIL DUNN: Well, I think I agree with that, the statement you made but when it's supported like Richard says that the porch will be able to accommodate a handicap ramp, then I don't know that it's supported in that statement and I think that's what we have to base on, what's being stated.

VICKI KEENAN: But we all...I mean, we're all sitting here having the same discussion. We know that that's a possibility or not a possibility and the reality is that...

JIM SMITH: Here's a question for Richard...

VICKI KEENAN: Just, wait, let me finish my...can I finish my thought, Jim?

JIM SMITH: Okay.

VICKI KEENAN: We all know that whether...let's just say they never mentioned the handicap ramp on here and it was gonna be a porch. The question is would the benefit to the public far outweigh the benefit to the applicant or vice versa? It doesn't really matter 'cause they basically said to us that they may never build a ramp, so I know it doesn't say that on the application but we heard it as fact out of the mouths of the applicant.

LARRY O'SULLIVAN: But that's not the reason that we would deny it, right?

VICKI KEENAN: Right.

LARRY O'SULLIVAN: Because they may build something.

VICKI KEENAN: Right.

LARRY O'SULLIVAN: I think the issue is gonna be the same all the way down the line. Let's keep going.

VICKI KEENAN: Yeah, okay.

NEIL DUNN: Mmm. Okay.

VICKI KEENAN: Did you wanna say...? I'm sorry, Jim.

JIM SMITH: Okay. Richard, isn't there an aspect of the law which addresses a handicap situation which kind of goes around this whole thing?

RICHARD CANUEL: Yes. Yes, there...

JIM SMITH: Which would make it much easier if it was, truly, in fact, for a handicap...

RICHARD CANUEL: Absolutely. Yeah, there was an addition on State statute that says you cannot be restrictive for accessibility issues. If they were asking for a variance specifically for a handicap ramp, that would be a different issue. You couldn't necessarily deny a variance because of that.

VICKI KEENAN: They're not really asking for that.

RICHARD CANUEL: So, I don't think that case necessarily applies here, but...

VICKI KEENAN: No.

RICHARD CANUEL: Yes, I don't know the statute off the top of my head, but yes, there is a statute that was rewritten specifically for that.

JIM SMITH: The point I'm trying to raise, if they came in for the handicap ramp, they could use that and it would be a cake walk versus this...

RICHARD CANUEL: Yup.

JIM SMITH: ...with the iffy reason.

RICHARD CANUEL: That's right. You cannot be overly restrictive for an accessibility use.

VICKI KEENAN: Alright, so for the following reasons, the values of the surrounding property would or would not be diminished.

LARRY O'SULLIVAN: There's no intrusion. There's no impact.

MICHAEL GALLAGHER: No.

VICKI KEENAN: I agree. Okay. Owing to special conditions of the property that distinguish it from other properties in the area, denial of the variance would result in unnecessary hardship because (A.i), there is or is not a fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of the provision to the property.

[pause]

VICKI KEENAN: The proposed use is a reasonable one.

JOE GREEN: Reasonable one, yup.

NEIL DUNN: Yeah.

JOE GREEN: Page eighteen (18). Right?

VICKI KEENAN: Yeah.

JOE GREEN: Yup.

VICKI KEENAN: So let's go to the next one. If the criteria in subparagraph (A) are not established, an unnecessary hardship will be deemed to exist if and only if owing to special conditions of the property that distinguish it from other properties in the area, can or cannot be reasonably used in strict conformance with the ordinance.

JAY HOOLEY: And I think that's...it exists already within the setback, the house itself.

VICKI KEENAN: Okay.

JAY HOOLEY: And it's certainly a reasonable use to have a front deck and because this home is built where it is, they could not have a front deck similar to the remainder of the homes. I believe, if not all, certainly the majority on that road have some form of front deck, porch or both. So it's certainly a reasonable use.

VICKI KEENAN: I think...

LARRY O'SULLIVAN: Can I ask Richard if this is an existing nonconforming use?

RICHARD CANUEL: Well, the structure is existing nonconforming.

LARRY O'SULLIVAN: Okay, so...

RICHARD CANUEL: The structure itself right now.

LARRY O'SULLIVAN: So...okay.

RICHARD CANUEL: And I think that's why Jim was making the reference to the equitable waiver issue, because that would more or less legalize the structure, so...

NEIL DUNN: I guess on (5), if we look at (A.i) and (ii), I think we'd probably all agree that it's a reasonable use, but the relationship between the general purpose of the ordinance and the specific application to this property...Larry kind of touched on that. I mean, how much do we let people keep intruding and intruding on that? Just because it's a reasonable use, I mean...

VICKI KEENAN: But are the special conditions that Joe pointed out earlier, do they...?

NEIL DUNN: I don't know that I agree with the fact that...

VICKI KEENAN: Yeah.

NEIL DUNN: ...intruding on the property line is a special condition and therefore you can intrude in a greater capacity. I'm not sure I agree with Joe. I understand where he's coming from but I don't believe I agree with that, personally, from what I'm...you know, being on the Board and looking at the ordinance.

VICKI KEENAN: Yeah. It's a unique perspective.

JAY HOOLEY: That was the specific reason I questioned where the undecided stairs were going. If they were going in addition to this deck, then that certainly is an increase in the encroachment beyond where they are existing and have apparently existed since the structure was put up, the concrete steps and landing. You know, beyond that absolutely would be an increase in the encroachment but as it stands, there's no further encroachment to the setback with the additional

piece to the side. If anything, it's slightly further from the road, within the forty (40), but slightly further from the road, off to that side, than the existing set of stairs coming in.

NEIL DUNN: You know, and I can understand that but I guess if they wanted to put a roof on it and run it the full length of the house, it's a percentage more encroachment, I guess is how I look at it. And it's...so, and then it's...

JAY HOOLEY: You're back where...

NEIL DUNN: ...we're exasperating a...

JAY HOOLEY: ...Richard mentioned, to "reasonable." Well, in this instance, a deck might be viewed as reasonable whereas a full three season structure might not be viewed as reasonable, based on this set of circumstances.

JOE GREEN: I think that's what we're getting really, really caught up on is the "porch" word. I mean, so...I think that's...we've got to kind of...I wish we could scratch that out and put "deck."

JIM SMITH: I'm gonna throw one other issue out, the way I'm looking at it. Richard identified the existing original structure currently as a nonconforming structure. It's not legal. It's never been legal.

LARRY O'SULLIVAN: Mm-hmm.

JIM SMITH: So now we're trying to give a variance to put something in front of a nonconforming, illegal structure. If they went to the Zoning Board and either got a variance for the original structure, which is what was done in the past before they had the equitable waiver to make the existing structure legal or under today's rules, go in and get an equitable waiver, then we would have a legal structure which we then could, in my mind, think about putting a variance for something in front of the legal structure. And that's where I'm having the problem with it. The building isn't legal at the point. Even though it's been there for thirty (30), almost forty (40) years, it was never legal, it was never made legal by any action by any board. So it's still illegal. And to put something in front of an illegal structure, I think just doesn't make sense.

LARRY O'SULLIVAN: I agree.

VICKI KEENAN: Yeah.

JOE GREEN: So has does...

JAY HOOLEY: May I pose a question to...

VICKI KEENAN: Hold on.

JAY HOOLEY: ...Richard? When they came for a variance previously, it was for the two (2) story section that we see?

RICHARD CANUEL: That's right.

JAY HOOLEY: And the variance was granted. Does that not make at least that portion of the existing legal, for lack of a better term, since a variance was granted to build that?

RICHARD CANUEL: Yeah, if a variance is granted, that pretty much legalizes the structure.

VICKI KEENAN: Right.

RICHARD CANUEL: But it does not legalize the entire structure.

LARRY O'SULLIVAN: It only...

JAY HOOLEY: So the left half of the house is...

RICHARD CANUEL: The variance was granted specifically for that addition.

LARRY O'SULLIVAN: I think we had that discussion...

RICHARD CANUEL: That is still an existing nonconforming structure.

JOE GREEN: Why are we going down that road if we already went through these?

VICKI KEENAN: Well, I'm not one hundred percent convinced that this is a unique condition. There are many homes in Londonderry that don't have the setback to put on a porch.

LARRY O'SULLIVAN: Mm-hmm.

VICKI KEENAN: On their home. But, just one...I think I've asked you this question and I've already forgotten. If they wanted to take...remove the steps that are there and put new steps in, do they have to get a variance?

RICHARD CANUEL: No. They could rebuild what was there.

VICKI KEENAN: They can rebuild what's existing?

RICHARD CANUEL: Sure.

LARRY O'SULLIVAN: And nobody does any real measurements from the road to the steps. When you are measuring almost anything, you're measuring to the building. You're not measuring to the steps. So that's like an afterthought and we're considering it to be part of the structure? Of course it

is. But it's so unobtrusive, it's, you know, two (2) feet high. That's what we're talking about. A two (2), a three (3) foot height slab that's six (6) feet wide. It's like a rock. Right? So, in this circumstance, I have no qualms about letting this...have an existing patio, porch, whatever you want to call it, deck, on the front of the house. I have a problem with a variance on a variance and on a non-standard building. Right? It's already nonconforming. So, that's, I guess, what my issue is, too.

VICKI KEENAN: I think...any more debate? Anybody ready for a motion? No? Do you have some more thoughts?

JOE GREEN: So what pieces of (1) through (5) are we hung up on? Because I thought we went through them all.

VICKI KEENAN: I know. I know, I'm hung up. I am hung up on (5). I'm not convinced this is a unique circumstance.

JOE GREEN: Reasonable. It's a reasonable one, right?

VICKI KEENAN: It is, but I...(A.i)...and then (B), the sub-criteria, special conditions of the property. I'm struggling with that.

JOE GREEN: Well, you're only struggling with it because we don't have the information as to know how many people within that neighborhood actually have that type of situation where their house was built on a...Would you be able to help us with that?

RICHARD CANUEL: Repeat the question? I didn't...

JOE GREEN: The special circumstance. How many...we're struggling with the fact that...is it factual that this structure is unique in the fact that it's that close to the road compared to others?

RICHARD CANUEL: Well, that's why I say you could use that for a reasonable argument, you know, that that particular house was built closer to the property line than the other houses in the neighborhood.

JOE GREEN: So I've heard you say that three (3) times. In your opinion, that's a special circumstance.

RICHARD CANUEL: Yeah, because that's a circumstance particular to that property. Not necessarily inherent in the land but that property.

JOE GREEN: Right.

RICHARD CANUEL: Anything particular about that property that makes it different from the other properties. And that is one factor right there.

JOE GREEN: So I can make a motion if you want.

VICKI KEENAN: Okay.

JOE GREEN: I make a motion to grant the variance to case number 5/19/2010-1 with exceptions; and the exception being that no enclosed porch will be allowed but a deck with no enclosure to it would be specifically stated within the variance.

VICKI KEENAN: So there's a motion to grant the variance with exceptions or restrictions. Is there a second?

[pause]

VICKI KEENAN: Then there must be more discussion. Right?

LARRY O'SULLIVAN: Or we'll take another...

VICKI KEENAN: Or another motion.

JOE GREEN: So what are we stuck on? We went through all of the items. We said "yes" to all of them. We have Richard saying that there's definitely...

LARRY O'SULLIVAN: I don't think we all said "yes" to all of them. But at the same time...

JOE GREEN: Well, okay, what didn't you say "yes" to?

LARRY O'SULLIVAN: Well I already said that a couple of times now.

JOE GREEN: Okay. Which one? I'm sorry.

LARRY O'SULLIVAN: We have the spirit of the ordinance is the main one because of putting a variance on a variance on a nonconforming use. Okay? Right there, that, to me, is an issue. I don't have any problems whatsoever with having, like I said, if the house was legal and there was a reasonable use, which I believe the porch or/patio/deck is, you have different circumstances. I don't think we're doing the right thing by exacerbating a problem that exists.

JAY HOOLEY: May I offer, that if I heard Richard correctly, since the variance was granted for the two (2) story section that is now considered legal, they could add the deck to that portion and you would not be putting a variance on a existing nonconforming. Is that accurate?

RICHARD CANUEL: Well, that addition would be nonconforming unless you grant the variance. "Addition" meaning the deck portion.

JAY HOOLEY: Yes. No, I understand that. But the two (2) story section is not considered...

RICHARD CANUEL: No, it was legalized...

JAY HOOLEY: ...nonconforming. It's legalized.

RICHARD CANUEL: It was legalized by the variance. That's right.

VICKI KEENAN: [Indistinct].

JOE GREEN: That's why I have my finger on it.

VICKI KEENAN: Yeah.

JOE GREEN: Okay, just so we go back to number (2), I wanted to get the book out because I want to know, when you say "the spirit of the ordinance," well, you have to know what the ordinance says and the ordinance says "In general, the provision must promote the health," the spirit, meaning, "promote the health, safety or general welfare of the community." So, I think it does because it's what everybody else wants, what everybody else has in the community, I mean, a porch. I mean, I know...I agree with what you're saying, you don't want to make a negative on top of another negative but they have a right to have a porch, they have a right to have stairs. The stairs right now are in detrimental condition and I don't think it's gonna be a problem for health, safety or the general welfare of the community. I think it's in the correct spirit of the ordinance. Page fourteen (14).

NEIL DUNN: I...no, I understand when you read that but I think you have to look at, what is the ordinance we're talking about? We're talking about the forty (40) foot setback, which is directly being the issue here. So, when you state it like that, it sounds like you believe that the forty (40) foot setback is not needed anywhere?

JOE GREEN: No, I didn't say that.

NEIL DUNN: Well, I mean, that's what I'm hearing, though, when you read it that way.

VICKI KEENAN: That's not what...Read that one more time. The health and safety of the general public.

JOE GREEN: Okay...

NEIL DUNN: Right, but the Town put in the forty (40) foot setback thinking that it kept safety, keeping people and their yards away from the street and traffic. So the more we encroach on it, I mean, I can only guess. I wasn't there when they enacted it, but...

VICKI KEENAN: That six (6) feet's not gonna create safety and traffic and all that...

NEIL DUNN: There's eight (8), there's ten (10), there's twelve (12)...

VICKI KEENAN: But we're talking about the case at hand. I mean, six (6) feet.

NEIL DUNN: Okay. Alright.

JOE GREEN: We have to define them case by case. And again, we can't just say that the stairs aren't there right now. I understand maybe that it's gonna be a longer area in front of the house but the stairs are still there and it's still, you know, six (6) feet away from the property, so...

VICKI KEENAN: Can we...let's go to (5.A.i), because that seems to be the hang up.

NEIL DUNN: Mm-hmm.

VICKI KEENAN: Alright, so the question is, there is or is not a fair and substantial relationship between the general public purpose of the ordinance and the specific application. So, I guess, this begs the question to determine that can relief be granted to this property without frustrating the purpose of the ordinance?

JIM SMITH: You know, I think one of the things I'm having a little bit of a problem with, we're talking about having a deck or a porch...I mean a porch or a...say a porch on the front of a house. If you ride around the town of Londonderry, not every house in Londonderry has a porch. In fact, I would dare say most of them don't. So it's not the most common thing...

VICKI KEENAN: Mmm.

JIM SMITH: Most people, if they want an area that they want to, say, sit out in the evening or something like that, they generally build a deck on the rear of the property some place. And, to me, if that's what they're trying to accomplish, it doesn't make a lot of sense to put this structure on the front of the property where it is, in fact, so close to the road, which is much closer than the norm, which is forty (40) feet. And I still keep going back to the fact that this part of the building is currently a nonconforming situation. It has never been made legal. And I have a hard time with that point.

VICKI KEENAN: Hey, Richard, I'm gonna just read something else, correct me if I'm wrong on this, okay? "This test," (5.A.i), "attempts to balance the public good resulting from the application of the ordinance," the public good, okay..."against the potential harm to a private landowner. It goes to the question of whether it creates a necessary or "unnecessary" hardship" [The Board of Adjustment I n New Hampshire, A Handbook for Local Officials, October 2009, page 17]. Is that correct? That that's what that test...? So, by them putting on this six (6) foot porch, and I know I'm going around on this, but I'm just trying to make sense of it, I'm trying to make a decision in my head, so by them putting on this porch, does it really outweigh the result of the public good? I mean, I think that their ability to not be able to use the property and have this porch does not outweigh any harm that would come to the public good as a result of it. And I think Richard has made a statement that this property has

an encroachment that is unique to this property that other properties in the area don't have. So, I'm sort of...I'm coming around full circle here on this. I think that...

JOE GREEN: And you have to have also...it has to be a reasonable one also.

VICKI KEENAN: And I think it's a reasonable use as well.

JOE GREEN: Right, because it has to go together. Yeah.

VICKI KEENAN: So, for me, at this point, based on reading that and thinking that through a little bit, (5.A.i), (5.A.ii) pass for me. So is there a motion or a second to Joe's motion?

JIM SMITH: I'll second just to get it on the floor.

VICKI KEENAN: Thank you. I was hoping somebody would do that. Alright, there's a motion to grant the variance with restrictions as stated and a second. Any discussion surrounding this motion? Or any further discussion surrounding this motion? Okay, seeing none, all those in favor of granting the variance, signify by saying "aye."

JOE GREEN: Aye.

VICKI KEENAN: Aye. Opposed?

JIM SMITH: Opposed.

NEIL DUNN: Aye.

LARRY O'SULLIVAN: Aye.

VICKI KEENAN: Abstentions? Okay.

RESULT: THE MOTION TO GRANT THE VARIANCE WITH RESTRICTIONS WAS DENIED, 2-3-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK
TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED JUNE 16, 2010 WITH A MOTION MADE BY MATT NEUMAN, SECONDED BY JOE GREEN AND APPROVED 5-0-0.