

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

DATE: JULY 21, 2010

CASE NO.: 7/21/2010-3

APPLICANT: MARIE AND SCOTT 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
MICHAEL GALLAGHER, NON-VOTING ALTERNATE
JOE GREEN, NON-VOTING ALTERNATE
JAY HOOLEY, VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

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

REQUEST: EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS PURSUANT TO THE PROVISIONS OF RSA 674:33-A.

PRESENTATION: Case No. 7/21/2010-3 was read into the record with two previous cases listed.

VICKI KEENAN: Okay, if you could, again, state your name and address and then present your case and be sure to read through your application on your points of law.

SCOTT MARTIN: We also need a copy, actually, of the application. We did not...

VICKI KEENAN: Jaye, do you have an extra...? Okay.

LARRY O'SULLIVAN: I didn't keep anything.

JIM SMITH: All you have to do is the last one.

VICKI KEENAN: What's that?

SCOTT MARTIN: Okay, my name is Scott Martin of 93 Hall Road.

MARIE MARTIN: I'm Marie Martin of 93 Hall Road.

SCOTT MARTIN: Okay, we are here to request an Equitable Waiver of Dimensional Requirements at our home. Location of the property is 93 Hall Road, tax map 11, parcel 91-2, zoned AR-I. Should I just read through on the application?

VICKI KEENAN: Yeah, and add any color you deem appropriate.

SCOTT MARTIN: Okay. Okay, sure. Does the request involve a dimensional requirement and not a use restriction? "Yes" was checked. Please specify the situation that causes you to seek an equitable waiver. Our home was built in 1971. We moved in in 2006. We are now being told our house is non-conforming due to the fact that it's twenty five (25) feet from the road, not the required forty (40) feet. Okay, please answer either number six (6) or seven (7) through ten (10), whichever is applicable. Number six (6) is, in our case. Demonstrate to the satisfaction of the Board that the violation has existed for ten (10) years or more and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected. We applied for and received a variance in 2006 for an addition. No mention of the non-conforming status was ever mentioned. We are also able to present a letter from the previous owner, stating they never were made aware of the situation. No action against this condition has ever existed. That's it for the equitable waiver application. I do have letters, copies for everybody. Three (3) letters, actually, because there have been three (3) homeowners over the years since the house was built. The first one, Rita Fortin. The second one, Tina Roberge. The third is Marie and I. And I have a copy of letters written by all those parties [see Exhibit "A"].

VICKI KEENAN: That's great. Do we wanna read the letters for the record, you think? Or circulate?

LARRY O'SULLIVAN: Well, we're each getting a copy.

VICKI KEENAN: Okay.

JOE GREEN: Thank you.

LARRY O'SULLIVAN: I mean it's...

VICKI KEENAN: Thank you.

LARRY O'SULLIVAN: If you look at it and you want it read, I'll read it. Or read them. Can I ask Ms. Martin, did you close in 2006? Did you have a closing? A real estate closing?

MARIE MARTIN: We basically, and my mom transferred the name, or my sister transferred the name from her to us. It wasn't gone through, like a real estate. We just did a transfer through a lawyer.

LARRY O'SULLIVAN: Okay, so the registry of deeds has who as the owner?

MARIE MARTIN: Us now.

LARRY O'SULLIVAN: Through a transfer?

MARIE MARTIN: Right.

LARRY O'SULLIVAN: Right? Not a sale?

SCOTT MARTIN: Yes, it was a quitclaim.

MARIE MARTIN: I couldn't remember what it was called. Sorry.

SCOTT MARTIN: Yeah. Yeah, quitclaim. [indistinct].

LARRY O'SULLIVAN: That's probably the reason why you were unaware because you would have known if you had a closing.

SCOTT MARTIN: Right.

LARRY O'SULLIVAN: Right? So what this prevents, by applying for this, I'm sure you have a good understanding of this now...

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: ...is it prevents a real headache that you would have...

SCOTT MARTIN: Right. Absolutely.

LARRY O'SULLIVAN: ...if you wanted to sell the house. Right? Or do...or, you know, rebuild. Something along those lines.

SCOTT MARTIN: Right.

LARRY O'SULLIVAN: So, anyway, it's a...

SCOTT MARTIN: Which is exactly why we're here. So should I read the letters, or...?

VICKI KEENAN: I think we can just take a minute, everybody, to take a look of them.

MICHAEL GALLAGHER: Yeah.

VICKI KEENAN: Just everybody review them.

JOE GREEN: Will they still [indistinct] submitted into the record?

LARRY O'SULLIVAN: Absolutely.

VICKI KEENAN: When was the variance granted again?

LARRY O'SULLIVAN: '06.

VICKI KEENAN: What was that date? '06?

LARRY O'SULLIVAN: Five or six [indistinct]?

VICKI KEENAN: Yeah, for an addition.

SCOTT MARTIN: Right. Yes, back in 2006.

NEIL DUNN: And did you have ownership of the house at that time?

SCOTT MARTIN: Yes, we did.

NEIL DUNN: And didn't you come up in front of the Board for a variance and they talked about the fact that they kept your same line parallel to the road without croaching [sic] into the setback that you were violation of?

SCOTT MARTIN: Yes.

NEIL DUNN: So they may not have said that it was a non-conforming, but that you were indeed within that setback, so I'm wondering if it's more logistics than...

LARRY O'SULLIVAN: Do you have the minutes? We have the 2006 minutes here. Would you like them?

NEIL DUNN: No, I think we went through this last time when we spoke about it. I just...

VICKI KEENAN: Is it alright if you kept them?

[laughter]

NEIL DUNN: I guess my point is to say that you weren't aware of it, I thought there was a zoning...there was an adjust...excuse me, a variance granted and at the time that the variance was granted, we talked about the fact that the property did...they were allowing the variance for the addition, even though you were within the setback because you weren't encroaching any further, so I guess I'm just bringing it out, maybe the non-conforming wasn't understood or what was entailed with that, but in essence, you did know that you were within that setback.

SCOTT MARTIN: Of course. Yes.

LARRY O'SULLIVAN: Do you want me to read it?

VICKI KEENAN: I don't think...

LARRY O'SULLIVAN: From September '06-3?

I don't think so. Do you see anything in there?

LARRY O'SULLIVAN: In the first...end of the first page, the attorney said something along the lines of "we want to put on an addition," blah, blah, blah. And then Stephen asked, Stephen Lee said "It may help if, to clarify...I believe that the home is already in the setback? Is that...the issue, it's twenty five (25) feet back?" "Correct." "So I think we wanna establish that [first]. So, the home is already within the forty (40) foot..." "In the variance portion." "Yeah. Okay. And, so, you're trying to add onto the house and just by nature of that, you're going to be in the setback." "In a variance," Mr. LaPlante. Stephen Lee: "Okay." Robert LaPlante: "Correct." Stephen Lee: "Alright." Larry O'Sullivan: "...what are you trying to build?" Robert LaPlante: "Fifteen (15) by twenty four (24). A living room and a bedroom." "On the front of the house," Larry O'Sullivan. "Actually, on the side," Neil Dunn. Steve Lee: "No, on the side." And so forth.

VICKI KEENAN: Okay.

LARRY O'SULLIVAN: But it's all within the forty (40) foot setback, so the total discussion was around that.

VICKI KEENAN: Right.

LARRY O'SULLIVAN: Anything else that you wanted out of that one or peruse that at your leisure?

NEIL DUNN: No, I just...I was making it...it sounded like they didn't realize they were in the setback and I was just trying to clarify that I thought we had that discussion. That's all.

SCOTT MARTIN: No, we knew we were in the setback but we were under the understanding that the house was built before the forty (40) foot setback was put in place. The only time we figured out that these setbacks were actually started in 1965 was at the May 19th meeting.

LARRY O'SULLIVAN: Correct.

SCOTT MARTIN: Right?

VICKI KEENAN: Okay.

SCOTT MARTIN: Because we had heard nothing of the house being non-conforming up until that point. Yeah, we knew it was in the setback but we heard nothing of "non-conforming."

VICKI KEENAN: Any questions from the Board? Okay, seeing none, let's bring it out to the public. Anyone here to speak for or against the application?

AL BALDASARO: Al Baldasaro, 41 Hall Road. I come here basically as a State representative of a constituent and also a long time family friend. When he contacted me about this here and then I forwarded the letter over to the Town Manager asking what the procedures are. How we can get him to move forward. I live down the street. Of course, as you see the three (3) owners, the three (3) owners, the mother and the sister and...all family members.

LARRY O'SULLIVAN: Mm-hmm.

AL BALDASARO: This is a perfect example of what we have in Londonderry of our family keeping houses within and trying to maintain our young families. It's a shame that they didn't know they're non-conforming here, you know, about the non-conforming because I understand on the setbacks but nowhere did he even understand or didn't even know what the non-conforming was because him, like me, think we're grandfathered in certain areas. But anyways, I'm hoping and, which, because there are no issues or whatever, nobody's ever came forward with any problems within the last ten (10) years, that this gets approved because we've dragged this out now, because if you look at the porch, that's a shame. And if you look at the house, he's done a wonderful job on the property to raise the taxes. He pays more taxes now on the work he's done compared to where he was, so he's definitely been doing so much for that house, from the siding to the inside, the back area, I mean, it's a wonderful home and I'm hoping tonight we can just move forward, get this done so he can move and then fix this thing and then we're done and that we don't drag any more time or him leaving, 'cause he works nights. Every time he comes here, he takes a night off, loses a day's pay. Thank you.

VICKI KEENAN: Thank you. Anyone else in the audience that would like to speak? Okay, seeing none, we'll close the public portion and bring it back to the Board for deliberation.

DELIBERATIONS:

VICKI KEENAN: Again, I'll just start out. I don't have any issue with this application.

JIM SMITH: Yeah. I think this is a perfect example of what this law was written to take care of.

VICKI KEENAN: Mm-hmm.

JIM SMITH: A situation where something has been existing for a long time frame, multiple owners. The owners weren't aware of what the problem was, they weren't aware of what the solution was. I'm surprised they were able to get a mortgage without having this taken care of. This will put them in a much better situation if they wanna sell the house or get another mortgage in the future because now they have a legal way of explaining how that house is there. So I would like to make a motion to grant this equitable waiver or what's the case...7/21/2010-3.

JOE GREEN: Second.

LARRY O'SULLIVAN: Second. Oh, go ahead. Go ahead, Joe.

VICKI KEENAN: Okay, there's a motion to grant the equitable waiver and a second. Is there any discussion regarding the motion? Seeing none, we'll go to vote. All those in favor of granting the equitable waiver, signify by saying 'aye.'

JAY HOOLEY: Aye.

LARRY O'SULLIVAN: Aye.

VICKI KEENAN: Aye.

JIM SMITH: Aye.

NEIL DUNN: Aye.

VICKI KEENAN: Opposed? Abstentions?

Board members fill out their voting slips for the record, during which time there is incidental conversation.

RICHARD CANUEL: If I could just comment while we have the applicant here. The whole reason of requiring this equitable waiver is because they were looking to add to the front of the house. The denial of the variance originally. Now that this equitable waiver has sort of legalized the location of the structure, if the applicant chooses to build a porch on the front of the house, it would still require a variance to be allowed to do that.

SCOTT MARTIN: Yes, the paperwork is already in.

RICHARD CANUEL: Okay. As long as you have that understanding of that.

SCOTT MARTIN: Thank you.

RESULT: THE MOTION TO GRANT THE EQUITABLE WAIVER OF DIMENSIONAL

REQUIREMENTS REQUEST WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,

LARRY O'SULLIVAN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED AUGUST 18, 2010 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JOE GREEN AND APPROVED 5-0-0.