

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

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4  
5 DATE: JULY 15, 2009  
6  
7 CASE NO.: 7/15/2009-2  
8  
9 APPLICANT: ROBERT E. COOK, JR.  
10 33 LONDONDERRY ROAD, #13  
11 LONDONDERRY, NH 03053  
12  
13 LOCATION: 38 BREWSTER ROAD, 13-125, AR-I  
14  
15 BOARD MEMBERS PRESENT: VICKI KEENAN, CHAIR  
16 YVES STEGER, VOTING MEMBER  
17 JIM SMITH, VOTING MEMBER  
18 MICHAEL GALLAGHER, VOTING ALTERNATE  
19 LARRY O'SULLIVAN, CLERK  
20  
21 ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/  
22 ZONING OFFICER  
23  
24 REQUEST: EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS  
25 IN ACCORDANCE WITH THE PROVISIONS OF RSA  
26 674:33-A FOR VIOLATION OF THE SIDELINE SETBACK  
27 DISTANCE REQUIRED BY SECTION 2.3.1.3.3 OF THE  
28 ZONING ORDINANCE.  
29  
30 PRESENTATION: Case No. 7/15/2009-1 was read into the record with four previous cases  
31 listed.  
32  
33 ROBERT COOK: My name is Robert E. Cook, Jr. and the address is 38 Brewster Road. We built  
34 a house up there and when drew one up and then the designer took it and made it, you know, I  
35 drew a box, said "I think this here," and the excavation company that we hired went in and did  
36 all their work and said, "Oh, nope, this is fine, this is gonna fit right here and everything's  
37 gonna be fine" and so I said, "Okay, fine," and we went to the Town, got the building permit,  
38 did all...we had to go for the variance because it had lapsed, I guess the time had lapsed or  
39 something and so we built this house and it's all completed now and at the end, we've been  
40 going through all our inspections and everything and so I said, "Okay, I wanna go for my  
41 final," and we did all that and then they said I had to have a certified plot plan. Okay, so I went  
42 to the engineer and said I need a certified plot plan and he came down and did it all and then,  
43 you know, I had called the Town and he hadn't faxed it to them, which I had said to him, "Send  
44 it to the Town right away," and so I went up there and he said, Don said, "We have a problem,"

45 and I said "What?" and he told me what the issues were on the drawing. You people have a  
46 drawing of the plot plan [see Exhibit "A"). Off the side line, the corners of the foundation in the  
47 front towards the lake side was thirteen point four (13.4) and the other side was eleven point  
48 seven (11.7). The back, the garage side on the road side, one corner was thirteen point seven  
49 (13.7) and the opposite corner was fourteen point one (14.1) which violated the fifteen (15) foot  
50 ruling. I don't know exactly how it happened but it did. You hire these people, you take their  
51 expertise and you hope that they're telling you the truth and...I believed everything I was told  
52 so we built the house and now we have a beautiful home there that I need to get a C.O. for, I  
53 need an Equitable Waiver so I can have a C.O. and move into.

54  
55 LARRY O'SULLIVAN: So the home is built?

56  
57 ROBERT COOK: Yes, the home is built. Yes.

58  
59 LARRY O'SULLIVAN: Can I ask who the contractor was?

60  
61 ROBERT COOK: It was me.

62  
63 LARRY O'SULLIVAN: You were the contactor.

64  
65 ROBERT COOK: Right, I hired the subs.

66  
67 VICKI KEENAN: Richard, do you have anything, based on sort of, permitting and...anything  
68 to add to this that...?

69  
70 RICHARD CANUEL: Yeah. Usually when we issue a building permit, we require submittal of  
71 a plot plan to show a proposed location of a structure just so that we can determine that that's  
72 structure's gonna meet the required setbacks before we even issue a building permit.

73  
74 VICKI KEENAN: Right.

75  
76 RICHARD CANUEL: Often times we rely on the septic design plan as that...

77  
78 JIM SMITH: Richard? The mic.

79  
80 RICHARD CANUEL: Oh, sure. Thank you. We often rely on the septic design plan as that  
81 proposed plot plan. Although it's not an engineered survey per se, that's reliable enough for us  
82 to determine that the proposed location of the structure is gonna meet the setbacks. Often times  
83 the structure, during construction, doesn't always get placed exactly where it's shown on that  
84 proposed plan and that's one of the reasons why we implemented the requirement in our  
85 building regulations to submit a certified foundation plan to us so that we can determine that  
86 the structure meets the requirements of the zoning ordinance. Unless it's very obvious to us  
87 when we do a site inspection, if we can determine where the property line is, where the location  
88 of the building is, unless it's very obvious that there is an encroachment occurring, the structure

89 usually continues construction until we get to the point where we issue the C.O., or the  
90 Certificate of Occupancy, and at that point, we require that submittal of that certified plot plan.  
91 Basically, the contractor or the property owner is proceeding with construction at their own  
92 risk, determining that they are siting that structure properly on the site until it can be  
93 determined by an actual survey to show where that structure is located. And that's what  
94 happened in this particular instance.

95  
96 LARRY O'SULLIVAN: Richard, do we require a certified foundation plan?  
97

98 RICHARD CANUEL: Yes, we do.  
99

100 LARRY O'SULLIVAN: And there wasn't one in this case?  
101

102 RICHARD CANUEL: Well, as I said, in most cases, the foundation certification plan doesn't  
103 come to us until occupancy time. You see, what happens is is the contractor...I mean, the  
104 contractor needs to be a responsible contractor and he is proceeding at his own risk siting that  
105 building on that site to be in compliance with our setback regulations. You know, these are  
106 things that are the property owner, the contractors are notified of even prior to construction,  
107 so...

108  
109 JIM SMITH: At this point, I'd like to bring out the fact, if you look at the amendments to the  
110 building code, under "Section R109.1.1.2" [Londonderry zoning ordinance as amended through  
111 April, 2009], "Certified Foundation Footing Plan: Upon completion of the [sic] foundation  
112 footings, a certified plot plan prepared and signed by a survey [sic] licensed by the State of New  
113 Hampshire indicating that the improvements shown on said plan are in compliance with the  
114 building setback requirements of the Town of Londonderry, and a notation of the elevation of  
115 the top of the foundation footing shall be submitted to the Building Inspector prior to the  
116 erection [sic] of the foundation walls."  
117

118 YVES STEGER: When was the amendment made?  
119

120 JIM SMITH: Well, this is the...When was this, do you remember?  
121

122 RICHARD CANUEL: Oh, that was when we adopted the 2006 edition of the residential code.  
123

124 JIM SMITH: Right.  
125

126 RICHARD CANUEL: That would have been, probably sometime 2007.  
127

128 VICKI KEENAN: When did you start...?  
129

130 JIM SMITH: We had the same language in the preceding building code.  
131

132 RICHARD CANUEL: Yeah.

133  
134 YVES STEGER: When did you get the building permit?  
135  
136 ROBERT COOK: I believe it was in '07. It was the end of '07. Or maybe it was '08, I'm not  
137 sure.  
138  
139 LARRY O'SULLIVAN: Well, case number (three) that we read from 11/21/07...  
140  
141 VICKI KEENAN: Mm-hmm...  
142  
143 YVES STEGER: Mm-hmm.  
144  
145 LARRY O'SULLIVAN: And that allowed the construction of a house on a lot with no frontage.  
146  
147 VICKI KEENAN: But you're saying that surveyed plot plan language was already adopted at  
148 that point, right?  
149  
150 JIM SMITH: We've adopted that...  
151  
152 VICKI KEENAN: Okay.  
153  
154 JIM SMITH: ...each succeeding adoption of the building code and one of the reasons was the  
155 idea was if you mis-located the footings, you had a minimal cost involvement in correcting it  
156 and the plot plan is supposed to be completed and submitted at that point.  
157  
158 ROBERT COOK: And if I was told that, I would have definitely did that.  
159  
160 JIM SMITH: I think what...we're not gonna meet the requirements of the equitable waiver...let  
161 me get down to it...when you read the RSA, when you get down to part (b) of it, it says "That  
162 the violation was not the outcome of ignorance of the law or ordinance, failure to inquire..."  
163 and I won't even try to say the next word, "...obfuscation..." I guess, "...misrepresentation, or  
164 bad faith on the part of the owner, owner's agent or representative, but was instead caused by  
165 either a good faith error in measurement or calculation made by the owner or owner's agent, or  
166 [sic] an error in the [sic] ordinance interpretation or applicability [sic] by the municipal official  
167 in the process of issuing the permit over which the official had authority." So, I think part of the  
168 problem I have with it, the way the ordinance is written, it specifically states that a certified plot  
169 plan of the footings should be done when the footings are completed. If you're ignorant of that,  
170 that's not an excuse.  
171  
172 LARRY O'SULLIVAN: That's what that's saying there. That's exactly what that's saying there.  
173  
174 VICKI KEENAN: I think we need to think, too, at this point, what...I'd be curious to see if  
175 there's anybody from the public here who has to speak against this and if there's any harm done  
176 in...I don't know what the reasonable alternative is. So, I mean, and that's for discussion, I

177 think, when the Board, when we bring it back here but...do you have any more, anything else  
178 you want to add?  
179  
180 ROBERT COOK: No, just I put my life savings into this, I mean, I wouldn't have put my life  
181 savings into something that I knew was wrong if I knew it was wrong, you know?  
182  
183 RICHARD CANUEL: You know, also part of the equitable waiver is the cost to correct the  
184 problem, you know, does that outweigh the public benefit, you know, the interest of the public?  
185  
186 VICKI KEENAN: Right.  
187  
188 RICHARD CANUEL: I mean that's really what we are protecting here, not the individual  
189 interest of the property owner. You know, correcting the mistake, requiring the property owner  
190 to move the structure at this point in time, what public good does that do? What injury to the  
191 public in general is the location of the structure harming?  
192  
193 LARRY O'SULLIVAN: Richard, we haven't finished any of the five (5) points.  
194  
195 JIM SMITH: Well, there is no five (5) points.  
196  
197 LARRY O'SULLIVAN: Oh, this is equitable waiver, that's right.  
198  
199 VICKI KEENAN: This is, right, yeah.  
200  
201 RICHARD CANUEL: Yup.  
202  
203 VICKI KEENAN: That's what I mean.  
204  
205 JIM SMITH: You know, I'm just reading what we have there in the law and it's kind of difficult  
206 to work with because when you look at the first paragraph that leads into this, the last part of it  
207 says "...if and only if the board makes all of the following findings."  
208  
209 VICKI KEENAN: Well, let's...  
210  
211 JIM SMITH: So...  
212  
213 YVES STEGER: That's not...  
214  
215 VICKI KEENAN: Do we have any more questions for the applicant? 'Cause what I'd like to do  
216 is, if we don't have any more questions, I'd like to see if there's anybody...  
217  
218 YVES STEGER: Yeah, I would like to ask, after the building permit which was somewhere at  
219 the end of '07, when was the foundation completed?  
220

221 ROBERT COOK: Probably in the spring, like May or something.

222

223 YVES STEGER: May, '08?

224

225 ROBERT COOK: Yeah.

226

227 YVES STEGER: And when was the building completed?

228

229 ROBERT COOK: Just the end of the June.

230

231 YVES STEGER: Okay, thank you.

232

233 VICKI KEENAN: Any more questions from the Board? Alright, let's open it up to the public.  
234 Is there anyone here to speak in favor? Is there anyone here that's opposed? Okay. Well, why  
235 don't we bring it back to the Board for deliberation. Okay?

236

237 DELIBERATIONS:

238

239 VICKI KEENAN: I guess at this point we have to make a decision as to whether it was done in  
240 good...you know, the error was made in good faith or not and like, to Richard's point about  
241 whether or not the correction outweighs the harm to the public good, so, I'm having a hard time  
242 to making that call.

243

244 RICHARD CANUEL: You know, there was a lack of discovery.

245

246 VICKI KEENAN: Yeah.

247

248 RICHARD CANUEL: There was a mistake that was made. You know, there's two (2) points  
249 right there.

250

251 VICKI KEENAN: Mm-hmm.

252

253 JIM SMITH: Was it noted on the building permit that the certified plot plan was required?

254

255 RICHARD CANUEL: What's noted on our building permit, simply because there's so many  
256 things to note on the building permit, what the building permit notes is to refer to our  
257 additional permit requirements and what we do is issue this little attachment that goes with the  
258 building permit application, goes with the permit, and it states, I've even highlighted here, just  
259 what Jim had read out of our building regulations. Is that that foundation certification is  
260 required at the time you do the footings.

261

262 JIM SMITH: So that was provided to the building app...?

263

264 RICHARD CANUEL: Yeah, that goes with every permit. That's right.

265  
266 ROBERT COOK: I can't honestly say I had that, to be honest with you, but I'm not gonna argue  
267 the point. It just...  
268  
269 YVES STEGER: Are we in deliberation now?  
270  
271 VICKI KEENAN: We are.  
272  
273 YVES STEGER: Okay.  
274  
275 VICKI KEENAN: Yeah.  
276  
277 YVES STEGER: This is a tough one.  
278  
279 LARRY O'SULLIVAN: Ooh, boy, I'll tell ya, this is...  
280  
281 YVES STEGER: This is a tough one. It's not gonna meet the...  
282  
283 LARRY O'SULLIVAN: What we have to, though, this is the thing that, when somebody comes  
284 before us, and in the past, this was, what, two (2) different variances for the same lot by the  
285 applicant. You know, we knew, walking into this, this was a thin lot.  
286  
287 YVES STEGER: Mm-hmm.  
288  
289 LARRY O'SULLIVAN: It is the thinnest lot on the road. And then to miss something that is so  
290 obvious and so apparent that you get eight (8) feet on one side and eight (8) feet on the other  
291 side too close, that's...  
292  
293 VICKI KEENAN: It's pretty blatant.  
294  
295 LARRY O'SULLIVAN: That's blatant.  
296  
297 VICKI KEENAN: Mm-hmm.  
298  
299 YVES STEGER: Mm-hmm. Yeah.  
300  
301 JIM SMITH: You know, part of the logic of putting that requirement in was to avoid these  
302 types of situations. It was put into the building code fifteen (15) or more years ago, so it's been  
303 in, you know, on the books for a long, long time. So it's not a new set of rules. I know from my  
304 own experience, a lot of the builders were very remiss in trying to get somebody to do this at  
305 the appropriate time. However, that doesn't make an excuse.  
306  
307 VICKI KEENAN: Mm-hmm.  
308

309 YVES STEGER: Mm-hmm.

310

311 JIM SMITH: Just like Richard said, if you don't do this, you're building at your own risk.

312

313 VICKI KEENAN: Right.

314

315 JIM SMITH: You're taking that responsibility. You're assuming that things are gonna work  
316 out and they are appropriate. I know the Building Department has made a major effort in  
317 trying to make sure everybody understands this rule, tries to provide the paperwork and  
318 information. But you can only go so far.

319

320 VICKI KEENAN: Why don't we sort of talk about the four (4) part test, so to speak...

321

322 LARRY O'SULLIVAN: Yeah, that's a good idea.

323

324 VICKI KEENAN: ...in RSA 674:33-a? So, basically it says that "the ZBA may grant a waiver  
325 only if each of the four (4) findings as outlined in the statute are made," ["The Board of  
326 Adjustment in New Hampshire; a Handbook for Local Officials," Office of Energy and  
327 Planning, March 2008], so (a) is lack of discovery. I would say yes, it was just discovered. It  
328 wasn't discovered during the process that we are aware of. We have to sort of take what we're  
329 hearing as, you know, make a judgment.

330

331 LARRY O'SULLIVAN: And despite the fact that I think it was obvious.

332

333 VICKI KEENAN: Right. But we have to...

334

335 LARRY O'SULLIVAN: We have to assume that...what the issue is, I think, is that we already  
336 have houses that are very close to the lot lines in this area and they're just skirting the fifteen  
337 (15) feet. Just skirting it. So we will have crowding on this street, on both sides of this property.  
338 And that's the think we're trying to avoid. However, that said, the cost to justify or rectify what  
339 this is is enormous and frankly, we're not gonna have somebody tear down or move their  
340 building. So, it's almost like...I wouldn't, in good faith, say that it's gonna cost, you know, 'x'  
341 amount of dollars to make it right, you know, make a number up...

342

343 VICKI KEENAN: Right.

344

345 LARRY O'SULLIVAN: ...and it's going to satisfy their neighbors, because it isn't. You know,  
346 the people who were speaking at the last...you know, a couple of years ago, had issues that  
347 there was gonna be anything built on that lot. Most of you guys were here.

348

349 VICKI KEENAN: But where are they now? You know?

350

351 JIM SMITH: Could I ask a question of Richard, just...In regards to the distance to the side  
352 setbacks that they presently have, would there have to be improvements made to make it



353 comply with the building code as far as being so close to the lot line? In other words, fire rated  
354 walls or anything of that nature?  
355  
356 RICHARD CANUEL: No, because it's not a separation issue between structures. Residential  
357 structures, we only require to have a ten (10) foot separation between adjacent buildings,  
358 so...and they're well beyond that.  
359  
360 JIM SMITH: Okay.  
361  
362 RICHARD CANUEL: So that wouldn't help anything.  
363  
364 JIM SMITH: Well, I'm just saying that...  
365  
366 RICHARD CANUEL: Yeah.  
367  
368 JIM SMITH: ...if we were in that envelope, then we'd have to...the building would have to  
369 have improvements to make it work on that point.  
370  
371 RICHARD CANUEL: Yeah, I would agree. I mean, if you're that close where you're adjacent  
372 to a building on an adjacent lot and you wanna protect that building because of the closeness  
373 requiring rated, you know, fire rated construction on that adjacent wall, it would make sense  
374 but I don't think that's the issue in this particular case.  
375  
376 VICKI KEENAN: Point number two (2) or part of the test, too, is to...is it an honest mistake?  
377 Number three (3) is no diminution in value of surrounding property and (d), is the cost of  
378 correcting the mistake outweighs any public benefit. That's it, I think, for me.  
379  
380 MICHAEL GALLAGHER: You know, like Richard was saying, the cost of it but part of it also,  
381 I mean, it appears that moving the thing, it still wouldn't fit, you know, meet the requirements,  
382 so...  
383  
384 JIM SMITH: It's just too big.  
385  
386 MICHAEL GALLAGHER: I think it'd be.  
387  
388 LARRY O'SULLIVAN: The other houses on either lot, either side, were already built. I'd  
389 suggest that he buy both lots, but...and that would probably diminish the overall effect in the  
390 area but I'm being facetious about that but, to me, it is quite obvious that if you're building in a  
391 fifty (50) foot wide lot, you don't build a fifty (50) foot wide house. I mean, I just don't  
392 understand that. I have built a house before and I tried to do everything that I could to get it in  
393 front of the people who do the inspections and come on site and so forth, and it can be a real  
394 hassle but it still has to be done. So, but we always come back to the issue of the expense of  
395 making it right versus what could have been an honest mistake and just an oversight.  
396

397 VICKI KEENAN: Yves, do you have any thoughts?  
398  
399 YVES STEGER: My problem is it's clearly...there was ignorance of the law.  
400  
401 VICKI KEENAN: Mm-hmm.  
402  
403 YVES STEGER: And anybody in his right mind should have seen that the house is not even  
404 oriented correctly. It's being made worse by the way it is being constructed. As we said, you  
405 know, this is a very, very narrow lot, so being careful about the setbacks on the sides was going  
406 to be very important.  
407  
408 VICKI KEENAN: Mm-hmm.  
409  
410 YVES STEGER: And, as you can see, it's pretty bad. On the other hand, if we don't allow it and  
411 we don't provide the equitable waiver, essentially it's a house for nothing.  
412  
413 LARRY O'SULLIVAN: It's not the position of the board, it's not the place of the board to make  
414 something right, though. That's what really gets me is that we're gonna be making this right,  
415 despite the ignorance of the law or the requirements and then the time frame, you know, how  
416 long it took, how many opportunities you might have had to see it, to have it measured, to have  
417 the requirements that we have in place met, and they were not. So, that is, you know, despite  
418 the fact that it's flagrant, I still don't see what we can do other than say "this has got to go." It's  
419 gonna be allowed, we're gonna approve this. I would put a restriction on this that buffering on  
420 both sides of the lot be required, that trees be planted and...  
421  
422 YVES STEGER: In ten (10) feet?  
423  
424 LARRY O'SULLIVAN: Yup.  
425  
426 YVES STEGER: You can't put trees in ten (10) feet. That's not gonna even work.  
427  
428 LARRY O'SULLIVAN: Bushes or things along those lines, to help your neighbors keep their  
429 sense of privacy 'cause that's who you're intruding on.  
430  
431 YVES STEGER: Mm-hmm. Yeah, because one of them, the back of the house is very close to the  
432 other house on the north.  
433  
434 VICKI KEENAN: Mm-hmm.  
435  
436 YVES STEGER: I just looked into that. I mean, they're right here.  
437  
438 VICKI KEENAN: Right.  
439  
440 YVES STEGER: So he has his back porch almost in the front portion of...

441  
442 VICKI KEENAN: I'm surprised they're not here.  
443  
444 YVES STEGER: What?  
445  
446 VICKI KEENAN: I'm surprised they're not here.  
447  
448 YVES STEGER: Well, it's their obligation.  
449  
450 VICKI KEENAN: That's right.  
451  
452 YVES STEGER: So whether they complain or not complain doesn't make a difference.  
453  
454 VICKI KEENAN: Mm-hmm.  
455  
456 YVES STEGER: Well, it does but we are already looking at the possibility, I mean, look at the  
457 other lot here...  
458  
459 VICKI KEENAN: I know.  
460  
461 YVES STEGER: They will restrict the ability to build in the lot on the south as well.  
462  
463 VICKI KEENAN: Mm-hmm.  
464  
465 YVES STEGER: So, yes, you know...  
466  
467 LARRY O'SULLIVAN: The other lots...  
468  
469 YVES STEGER: ...you're going to make a decision that actually is impacting on other people as  
470 well just because he didn't measure it right and didn't get it verified when it was still time  
471 because if you have a foundation that is too big, well, you can still put a smaller house on a big  
472 foundation and that is less of a damage than having too big a house.  
473  
474 VICKI KEENAN: Mm-hmm.  
475  
476 LARRY O'SULLIVAN: There's nothing about this land that is significantly different than its  
477 neighbors. The basic idea of a variance is to allow a person the same rights and privileges of  
478 land ownership as his neighbors, not to grant him special privileges that are denied to his  
479 neighbors. I know that's a variance again but that's what we were offering the last time. So, as  
480 far as I'm concerned, it's gonna be one extremely well worded approval if we...well, I'm sure  
481 that it's gonna be an approval. There's no doubt that we're not gonna make this man tear down  
482 his house. However, there is nothing that I feel that we can do to justify what he'll be doing to  
483 his neighbors in the way of sacrificing their...  
484

485 YVES STEGER: Mm-hmm.  
486  
487 LARRY O'SULLIVAN: ...privacy and ensuring that there's crowding on their side of the street,  
488 their property.  
489  
490 VICKI KEENAN: But they're not here and we can't make that assumption...  
491  
492 LARRY O'SULLIVAN: You know what? It doesn't matter.  
493  
494 VICKI KEENAN: Can I finish...?  
495  
496 LARRY O'SULLIVAN: If we're not representing...if we're not representing...  
497  
498 VICKI KEENAN: I give you the respect...I give you the respect to finish what you have to say,  
499 you can give me the same respect. They're not here to either oppose or agree with this and we  
500 can't make assumptions for their feelings about this and, you know, assume that they're feeling  
501 badly about this. We can't, they're not here. They're not speaking for or against it. So we have  
502 to be careful in how, you know, making assumptions in how they feel about where this house  
503 was built and how it impacts their land. If they were concerned about it or felt ill will about it,  
504 they'd be here. You know?  
505  
506 JIM SMITH: Can I ask a question of Richard? On the plot plan, it shows a deck and it also  
507 shows a rectangle on the one side. What does that rectangle represent along the...?  
508  
509 RICHARD CANUEL: Longitudinally along the edge of the building there?  
510  
511 JIM SMITH: Yeah.  
512  
513 RICHARD CANUEL: It's a walkway from the deck on the back portion of the house to the  
514 front.  
515  
516 MICHAEL GALLAGHER: What are you looking at, Jim?  
517  
518 YVES STEGER: Hmmm...  
519  
520 JIM SMITH: That...it says where "existing house," just below that on the plot plan.  
521  
522 VICKI KEENAN: Oh, I see what you mean, that skinny...  
523  
524 YVES STEGER: Mm-hmm.  
525  
526 JIM SMITH: Yeah.  
527  
528 MICHAEL GALLAGHER: Oh...

529  
530 VICKI KEENAN: Yeah, [inaudible]....  
531  
532 YVES STEGER: This thing here. That's a walkway then.  
533  
534 JIM SMITH: Is that...?  
535  
536 YVES STEGER: That's the deck.  
537  
538 JIM SMITH: Is that flat concrete or...?  
539  
540 RICHARD CANUEL: No, it's wood. It's a wooden walkway. Yup, constructed as part of...an  
541 extension of the deck that guides you out to the front portion of the house.  
542  
543 JIM SMITH: Okay. Okay, a suggestion I would have would be to remove that walkway and  
544 reduce the width of the deck to the width of the house. That would at least bring that deck back  
545 from the nine and a half (9.5) feet back to thirteen point four (13.4) and you would have  
546 eliminated that walkway as infringing into the setback. It would make it a little bit better. I  
547 think that's within a reasonable cost to make this conform a little bit. It's certainly not  
548 conforming fully.  
549  
550 VICKI KEENAN: Do you have any photos of the house that you can share with us?  
551  
552 ROBERT COOK: No, I don't.  
553  
554 VICKI KEENAN: No?  
555  
556 ROBERT COOK: That deck there is the access into the house on that side of the house. The  
557 door is right there, that strip.  
558  
559 VICKI KEENAN: Is the door at the front of this strip or in the...?  
560  
561 ROBERT COOK: The side entrance into the house, what you'd call the front door but it goes  
562 into the foyer.  
563  
564 MICHAEL GALLAGHER: There's an entrance to the garage, I'm assuming...  
565  
566 ROBERT COOK: On the left side of the house.  
567  
568 MICHAEL GALLAGHER: Pull in the garage and...pull into the garage...  
569  
570 ROBERT COOK: Yeah, pull into the garage and you walk down, go up three (3) stairs and  
571 down the deck to go into the house. And there was statement of eight (8) feet oversize. There's  
572 no eight (8) feet over size. It's a foot and something or six (6) inches on one, you know...

573  
574 JIM SMITH: Well, the way the dimensions are, you got eleven (11) foot, seven (7) inches on the  
575 one corner, thirteen point seven (13.7) on the front corner of that side and then on the south  
576 side, you got thirteen-four (13.4) and fourteen point one (14.1).  
577  
578 ROBERT COOK: Mm-hmm. And the setback was fifteen (15).  
579  
580 JIM SMITH: All the way around.  
581  
582 LARRY O'SULLIVAN: So we're talking...  
583 MICHAEL GALLAGHER: What's that nine-five (9.5) up there?  
584  
585 JIM SMITH: That's for the deck.  
586  
587 VICKI KEENAN: It's the deck.  
588  
589 ROBERT COOK: That's to the corner of the deck.  
590  
591 JIM SMITH: That's the worst encroachment.  
592  
593 VICKI KEENAN: Right. So, to Jim's point, it would at least alleviate that encroachment by  
594 requiring that the deck and that be pulled back...  
595  
596 JIM SMITH: But he's claiming the door off that...  
597  
598 VICKI KEENAN: Right.  
599  
600 JIM SMITH: ...is on that side.  
601  
602 YVES STEGER: I don't understand where the door is. The door is to the south or in the back of  
603 the house?  
604  
605 ROBERT COOK: No, you go up the stairs onto that strip deck and then you walk down there  
606 and go in on the...take a left turn into the house.  
607  
608 MICHAEL GALLAGHER: Onto the walk...what we're calling a walkway?  
609  
610 ROBERT COOK: Right, what you're calling the walkway, right. That's the main entrance into  
611 the house.  
612  
613 VICKI KEENAN: This, like right here.  
614  
615 YVES STEGER: Mm-hmm.

616

617 MICHAEL GALLAGHER: Jim's proposal, I think, would do something because that little  
618 house down to the right, I think, is pretty close to that deck. It's almost like that deck is kind of  
619 overhanging the...is it a cottage to the right? In other words, when you're up in your driveway,  
620 is that...?

621

622 ROBERT COOK: Yeah, that's...there's house there to the right, yup.

623

624 MICHAEL GALLAGHER: Right.

625

626 LARRY O'SULLIVAN: Mm-hmm.

627

628 ROBERT COOK: And the house is...between the corner of that deck and the house, I believe  
629 it's like twenty five (25) feet something.

630

631 MICHAEL GALLAGHER: But that house is almost positioned pretty much where that deck is.  
632 Is that pretty close?

633

634 ROBERT COOK: Yeah, probably it's a little up on it.

635

636 MICHAEL GALLAGHER: Okay. Alright, then I go down, I can see where it's a little bit  
637 [inaudible].

638

639 VICKI KEENAN: I don't if that...even that sort of alleviates 'cause the deck is much further  
640 back than the house.

641

642 LARRY O'SULLIVAN: There's also the issue...I'd like to get an answer from Richard if it's  
643 possible about the Shoreland Protection? Shoreland Protection Act? One of the things that  
644 [RSA] 483-B:6 says is that "Within the protected shoreline [sic], any person intending to [a]  
645 Engage in any earth excavation activity shall obtain all necessary local approvals in compliance  
646 with RSA 155-E."

647

648 RICHARD CANUEL: Yup, they're in compliance at this point.

649

650 LARRY O'SULLIVAN: Because they've gotten all the local approvals?

651

652 RICHARD CANUEL: Gotten their permit approval, yeah. There was no encroachment on the  
653 Shoreland Protection provisions on that particular lot.

654

655 YVES STEGER: And it's not the point of this equitable waiver.

656

657 LARRY O'SULLIVAN: No, my question was asked because I thought there was other oversight  
658 on this lot that we needed to be considerate of.

659

660 RICHARD CANUEL: Such...?  
661  
662 LARRY O'SULLIVAN: Because there's shoreland involved. It's a lot that abuts the shore of the  
663 lake.  
664  
665 RICHARD CANUEL: Mm-hmm. But the limit of their work was outside of the limits of the  
666 shoreland protection boundaries, so that wasn't affected at all.  
667  
668 LARRY O'SULLIVAN: And so the septic system that he puts in? That's not affected by the  
669 Shoreland Protection Act?  
670  
671 RICHARD CANUEL: Well, that's on the road side portion of the lot. Again, that's well beyond  
672 that Shoreland Protection limitation.  
673  
674 JIM SMITH: Does this slope to the pond?  
675  
676 RICHARD CANUEL: It certainly does, yeah.  
677  
678 JIM SMITH: Yeah.  
679  
680 YVES STEGER: The other way around would be nasty.  
681  
682 JIM SMITH: Well, there's some pretty good grades out there.  
683  
684 VICKI KEENAN: I don't know, for me, I'm having a hard time sort of making a determination  
685 whether or not this was an honest mistake.  
686  
687 YVES STEGER: Mm-hmm.  
688  
689 VICKI KEENAN: I think, you know, that...I don't think that there will be diminution of value.  
690 And that's just my own personal opinion. There wasn't any evidence brought to me that there  
691 would be, that I can point my finger to and say, "yes, that's the case." And I firmly believe that  
692 the cost of correction far outweighs the public benefit but I just...it's (b), was this an honest  
693 mistake, is the one I'm struggling with, to be perfectly honest with you. So if anybody has  
694 anything to help me, I will gladly hear it.  
695  
696 MICHAEL GALLAGHER: I question the integrity but I would think it was so close that it had  
697 to resonate.  
698  
699 JIM SMITH: How wide is the house?  
700  
701 ROBERT COOK: Twenty eight (28) feet.  
702  
703 JIM SMITH: Twenty eight (28) feet.



704  
705 YVES STEGER: That's about right.  
706  
707 VICKI KEENAN: What's the lot size? Fifty nine (59)?  
708  
709 ROBERT COOK: The lot was...  
710  
711 YVES STEGER: Plus two (2) times fifteen (15) is thirty (30), that's fifty eight (58) and I think the  
712 lot is about fifty...  
713  
714 MICHAEL GALLAGHER: Fifty nine (59), so you're fifty eight (58), you got like...  
715  
716 YVES STEGER: Yeah, it's exactly that.  
717  
718 VICKI KEENAN: It's right on it.  
719  
720 MICHAEL GALLAGHER: ...fifteen (50) inches.  
721  
722 VICKI KEENAN: Yeah.  
723  
724 JIM SMITH: Yeah.  
725  
726 ROBERT COOK: That's [inaudible] straight...  
727  
728 JIM SMITH: Well, the thing that gets me about it is it appears like it's wider.  
729  
730 VICKI KEENAN: When you do the...on the GIS? When you do the sort of measuring...  
731  
732 JIM SMITH: When you look at the certified plot plan.  
733  
734 VICKI KEENAN: It just must be the way the house is angled on the lot.  
735  
736 JIM SMITH: Because if you add up thirteen-seven (13.7) and fourteen-one (14.1), that's twenty  
737 seven point eight (27.8).  
738  
739 YVES STEGER: Well, the frontage, which is oblique, is fifty nine-three (59.3).  
740  
741 JIM SMITH: Right.  
742  
743 YVES STEGER: So it's gonna be definitely less than fifty eight (58) and...we have thirteen-seven  
744 (13.7) and fourteen (14), that's twenty seven-eight (27.8), instead of thirty (30), so we're in the  
745 ballpark. I mean, it's within inches.  
746  
747 VICKI KEENAN: It's right on.

748  
749 JIM SMITH: So that works out to...it's...  
750  
751 MICHAEL GALLAGHER: That's fifty five-eight (55.8), just for those numbers. It's close.  
752  
753 VICKI KEENAN: Mm-hmm. We're you gonna say...?  
754  
755 JIM SMITH: Well, if you add a fourteen (14)...  
756  
757 YVES STEGER: I had the same feeling that you do, I mean, we don't have evidence of truly,  
758 you know, bad faith. On the other hand, there is a lot of carelessness...  
759  
760 VICKI KEENAN: Right. Agreed.  
761  
762 YVES STEGER: And the price for that carelessness could be huge and...  
763  
764 JIM SMITH: You know, it's like the old thing, you can lead a horse to water but you can't make  
765 him drink?  
766  
767 YVES STEGER: Mm-hmm.  
768  
769 JIM SMITH: You know? You can provide all the information but you can't force somebody to  
770 actually read it and understand it.  
771  
772 VICKI KEENAN: Mm-hmm. Is there any more thoughts from the Board or do we think we're  
773 ready to make a motion on this case?  
774  
775 MICHAEL GALLAGHER: How wide is that walkway?  
776  
777 ROBERT COOK: It's...  
778  
779 MICHAEL GALLAGHER: Approximately.  
780  
781 ROBERT COOK: About thirty eight (38) inches, thirty nine (39) inches, something like that.  
782  
783 YVES STEGER: Thirteen-four (13.4) by nine-five (9.5), so it's about four (4) feet.  
784  
785 LARRY O'SULLIVAN: We don't have a picture of this, do we?  
786  
787 VICKI KEENAN: No. Do you have any schematics or construction drawings that you brought  
788 with you?  
789  
790 ROBERT COOK: No.  
791

792 VICKI KEENAN: You know, I almost might continue this case...  
793  
794 LARRY O'SULLIVAN: There you go.  
795  
796 VICKI KEENAN: ...for more information. For schematics and construction drawings.  
797  
798 LARRY O'SULLIVAN: And photos.  
799  
800 YVES STEGER: Pictures.  
801  
802 LARRY O'SULLIVAN: Please. Yeah.  
803  
804 VICKI KEENAN: Yeah. I would entertain a motion to continue the case to next month.  
805  
806 LARRY O'SULLIVAN: Let's make sure we know what we're asking for.  
807  
808 YVES STEGER: Yes.  
809  
810 VICKI KEENAN: Yup.  
811  
812 LARRY O'SULLIVAN: Let's be specific that we ask for the plans that are required...  
813  
814 VICKI KEENAN: Yup.  
815  
816 LARRY O'SULLIVAN: ...that you will require...that we will require...  
817  
818 VICKI KEENAN: Mm-hmm.  
819  
820 LARRY O'SULLIVAN: ...to see the elevation and the construction of the deck, of the  
821 entranceway, in both photographic, since it's already built and the plans.  
822  
823 YVES STEGER: Mm-hmm.  
824  
825 VICKI KEENAN: Mm-hmm.  
826  
827 YVES STEGER: Yup.  
828  
829 VICKI KEENAN: I agree.  
830  
831 LARRY O'SULLIVAN: The builder's plans.  
832  
833 VICKI KEENAN: Mm-hmm. Yup?

834  
835 JIM SMITH: On this certified plot plan, could we also get the dimensions of the house added to  
836 that plan?  
837  
838 ROBERT COOK: I'm sure I could Duval and tell him that we need that, yes.  
839  
840 VICKI KEENAN: Great.  
841  
842 JIM SMITH: So we actually know what the size of this building really is.  
843  
844 ROBERT COOK: Yeah. Well, I can tell you, it's twenty eight (28) by thirty six (36) and then the  
845 garage is twenty six (26) by twenty six (26).  
846  
847 VICKI KEENAN: Okay.  
848  
849 LARRY O'SULLIVAN: So that said, I make a motion to continue with the request that the  
850 applicant return with the information that we just requested. I suspect, Jaye, you have that. Do  
851 you have it already?  
852  
853 JAYE TROTTIER: Mm-hmm.  
854  
855 MICHAEL GALLAGHER: Certified plot plan.  
856  
857 JIM SMITH: Well, we have that but I mean...  
858  
859 VICKI KEENAN: With the house dimensions.  
860  
861 MICHAEL GALLAGHER: The architect's plans.  
862  
863 YVES STEGER: Pictorial diagrams and pictures of all the south side of the house, including the  
864 transition from the garage to the house, the walkway and the deck.  
865  
866 VICKI KEENAN: Okay, so there's a motion to continue the case.  
867  
868 YVES STEGER: I'll second that one.  
869  
870 LARRY O'SULLIVAN: 'Till next month. 'Till next month.  
871  
872 VICKI KEENAN: And there's a second. Until next month. With requested additional  
873 information. Any further discussion? No? All those in favor, signify by saying 'aye.'  
874  
875 JIM SMITH: Aye.  
876  
877 YVES STEGER: Aye.

878  
879 VICKI KEENAN: Aye.  
880  
881 LARRY O'SULLIVAN: In favor of a continuance? Yes.  
882  
883 VICKI KEENAN: In favor of continuance? Aye.  
884  
885 LARRY O'SULLIVAN: Aye.  
886  
887 MICHAEL GALLAGHER: Aye.  
888  
889 VICKI KEENAN: Opposed? Okay.  
890  
891 RESULT: THE MOTION TO CONTINUE CASE NO. 7/15/2009-2 WAS APPROVED, 5-0-0.  
892  
893 RESPECTFULLY SUBMITTED,  
894  
895  
896  
897 LARRY O'SULLIVAN, CLERK  
898 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY  
899  
900 **APPROVED AUGUST 19, 2009** WITH A MOTION MADE BY LARRY O'SULLIVAN,  
901 SECONDED BY JIM SMITH AND APPROVED 4-0-2 WITH NEIL DUNN AND MATTHEW  
902 NEUMAN ABSTAINING AS THEY HAD NOT ATTENDED THE JULY 15 2009 MEETING.