

1 ZONING BOARD OF ADJUSTMENT
2 268B MAMMOTH ROAD
3 LONDONDERRY, NH 03053
4

5 DATE: OCTOBER 2, 2009
6

7 APPLICANT: ROBERT E. COOK, JR.
8 33 LONDONDERRY ROAD, #13
9 LONDONDERRY, NH 03053
10

11 LOCATION: 38 BREWSTER ROAD, 13-125, AR-I
12

13 BOARD MEMBERS PRESENT: VICKI KEENAN, CHAIR
14 YVES STEGER, VOTING MEMBER
15 NEIL DUNN, VOTING MEMBER
16 JIM SMITH, VOTING MEMBER
17 MICHAEL GALLAGHER, VOTING ALTERNATE
18 LARRY O'SULLIVAN, CLERK
19

20 ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/
21 ZONING OFFICER
22

23 REQUEST: MOTION TO REHEAR CASE NO. 7/15/2009-2, WHICH
24 WAS DENIED ON AUGUST 19, 2009, 3-2-0 "FOR FAILURE
25 OF THE APPLICANT TO MEET THE CRITERIA OF AN
26 EQUITABLE WAIVER IDENTIFIED AS RSA 674:33-A, I (B),
27 I.E. THAT THERE WAS A FAILURE TO INQUIRE AND
28 UNDERSTAND THE SIZE OF THE LOT AND THE
29 RESULTING BUILDING AS IT WAS INSTALLED."
30

31 CASE NO. 7/15/2009-2 WAS A REQUEST OF AN
32 EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS
33 IN ACCORDANCE WITH THE PROVISIONS OF RSA
34 674:33-a FOR VIOLATION OF THE SIDELINE SETBACK
35 DISTANCE REQUIRED BY SECTION 2.3.1.3.3 OF THE
36 ZONING ORDINANCE.
37

38 PRESENTATION:
39

40 VICKI KEENAN: We will begin the October 2nd Zoning Board of Adjustment meeting. The
41 purpose of today's meeting is to hear a motion to rehear a case. There will be no public
42 comment in this meeting. The Board has received a letter on this case and we will review the
43 letter and deliberate and take it under advisement.
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45 Chair Keenan introduced the Board members to the audience.

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VICKI KEENAN: So why don't we start by reading the details of the case and then I have somewhat of a lengthy speech prepared, so if you'll all bear with me. Okay?

LARRY O'SULLIVAN: Okay. This is in regard to case number 7/15/2009-2.

Clerk O'Sullivan read the original request of Case No. 7/15/2009-2 into the record.

VICKI KEENAN: The Board is in receipt of a letter dated September 18th from William Mason, who is the attorney of Mr. Cook, that outlined several points for us to consider in determining whether we hear this case. And, again, like I said, I have somewhat lengthy comments to go through, so bear with me. I'm struggling with a cold, so my voice isn't as strong as it should be. But I'd like to just sort of summarize the letter, provide you with my comment, let me finish and then we'll open it up to the rest of the Board to sort of talk through and deliberate everything, if that's fair? I spent the last couple of days sort of researching the record, scouring the minutes and speaking with the Town lawyer, so I've got some insight to sort of share with the Board. So the first point in Mr. Mason's letter, basically, to summarize, says that at no time was Mr. Cook afforded an opportunity to address the four criteria in his application. In my opinion, I sort of reject this point. I think it's almost utterly ridiculous. After reviewing the minutes and scouring what was said at the meetings, Mr. Cook and Mr. Mason were both given amply opportunities to present the case, both during the presentation portion of the meetings as well as the Board's deliberation time, which we all know is typical that an applicant usually does not have opportunity to present additional materials. So, I feel it's been clearly documented that there were plenty of opportunities for Mr. Cook or Mr. Mason to address the criteria in the application. Point number two (2), to summarize that paragraph, Mr. Mason has stated that they have some documentation that they could bring to a meeting that could materially affect our position in terms of values of the neighboring property. I think, based on what I saw in the minutes, I didn't see that the Board found that the finding on diminution of values of the adjacent property wasn't the primary finding for denying the application for an equitable waiver, so I sort of feel this point is moot but I am gonna come back to diminution of values later in my speech. Point number three, Mr. Mason refers to the fact that he feels that the evidence regarding the issue of municipal estoppel...he further sort of states that the Town should assume some responsibility for oversight of the construction, which, again, I utterly reject and think is completely ridiculous. In fact, on May 8th of 2008, a foundation inspection was complete and as I read it through the minutes, as the facts are stated in the minutes that we heard at both hearings, the foundation, and correct me if I'm wrong, Richard, was within the setback limits. It's the accoutrements of the structure that was actually built that go beyond the setback limits. Is that correct?

RICHARD CANUEL: In looking at the certified foundation plan that was submitted by the surveyor, there are measurements that are shown to the foundation that do not meet the setbacks requirements.

VICKI KEENAN: Okay. In my discussions with the Town Attorney, my understanding of a foundation inspection is not necessarily a moment in time to get out the measuring stick and

91 measure every inch in every location of that foundation but to purely check the structure of
92 such. Am I correct in saying that?

93
94 RICHARD CANUEL: Yes.

95
96 VICKI KEENAN: Okay, good. And then there is a last paragraph which speaks to conflicts of
97 Board members and Jim was, at the time of the permit, the Building Inspector. I think it's clear
98 that on the permit that Jim signed off on the permit. I think it's clear on his tag in front of him
99 that he is Jim Smith. At no time during either hearing did anybody bring forth an objection
100 about a conflict and, you know, I will defer to Jim later in the meeting but it is of my opinion
101 that Jim brought valuable work knowledge to the hearing and nothing more. And then last but
102 not least, there was a note about certain Board members making comments to the press. I did
103 some research and there were no...at any point, a Board member did not make any comment to
104 the press. All of the comments that were quoted in the Union Leader were comments that were
105 made at these meetings which are all public. So I just wanted to make that very clear. So, to
106 summarize, I found nothing in the letter from Mr. Mason that would give me an opinion that
107 we should rehear this case. However, now here's the curveball, I do think that the Board may
108 have misinterpreted sloppiness of managing a construction project for ignorance of the law.
109 And I think we should think about this and I spent sort of about an hour and a half on the
110 phone with the Town Attorney today, debating this issue quite a bit, and I think I'd like to just
111 go into that, and my opinion on that and then I'll talk about diminution of values. So, finding
112 number two (2) of the equitable waiver of dimensional requirement is defined as the violation
113 was not an outcome of ignorance of the law or an ordinance, or a failure to inquire, misinterpret
114 it, or in bad faith on the part of any owner, its agents or representatives, but was instead caused
115 by either a good faith error in measurement or calculation. I think that there was no ignorance
116 of the law. I think Mr. Cook clearly knew what the setback limits were because there was a
117 septic plan submitted that was proven to show that the structure would be built within the
118 setback limits, correct? He did go through an inspection. There was nothing identified at that
119 inspection of the foundation that he was within the setback limits and I believe that he went
120 forward in good faith and as I said, I think it's a mere case of sloppiness and unfortunately, the
121 four points of the equitable waiver of dimensional requirement have nothing to do with
122 sloppiness. It's merely ignorance of the law. So that's my point about that and we can get into
123 this and I know we're gonna have a pretty hefty debate about that and I am looking forward to
124 it. And I want to talk about property values of the abutter. There was a letter submitted after
125 the last hearing by the property owner of 36 Brewster Road that the Masiello Group had
126 completed, you all have a copy of it in front of you, that cited that as a result of the construction
127 of the Cook house, that there was a diminution of value of about forty thousand (40,000) dollars.
128 I walked the site today. I spent some time there. I've been in the real estate industry for about
129 fourteen (14) years. And I believe that there's no credibility with the letter. I believe that if the
130 house were set back three (3) feet further, which is, I believe, from where it is today, the
131 diminution of values would be exactly the same. Any house built on that lot to the dimensional
132 limits, at the approved heights, or the allowed heights, would diminish the values of the
133 adjacent property. It just is what it is. Furthermore, I just want to provide some more evidence,
134 Jaye helped me do some research today of other homes that actually sit on that same street and I
135 just want to tell you sort of what some of the existing conditions of those homes are. Number

136 forty (40) is within the setback limits and was granted a variance by the zoning board to build
137 their garage. Number thirty six (36), who is the abutter, is within five (5) feet within the setback
138 limits. This house was rebuilt on its original foundation, which was done in the 1950's which
139 was before zoning, so by right, they could rebuild in the existing footprint, however, it's within
140 five (5) feet of the setback. Number thirty four (34) and thirty two (32) to the south also do not
141 meet zoning board limitations. They are too close to the front line. So you can see, you know,
142 in my opinion, there is a neighborhood of lots that are very small with diagonal lot lines, a
143 geometry nightmare, and I can see how this could be very easy to make a mistake like this. So,
144 it's my opinion that the Zoning Board would do justice to rehear this case because I feel that the
145 corrections required to comply with the setbacks would far outweigh the justice to the public.
146 So that's my speech and I will open it up to the rest of the Board to debate me and have
147 comments and let's just get into it, okay? So, just to make it clear, tonight we will make a
148 decision on whether or not to rehear the case and then we would rehear the case at our next
149 zoning meeting if everyone's okay with that. That's how I sort of see this going forward, if we
150 make that decision, okay?

151
152 LARRY O'SULLIVAN: Makes sense.

153
154 VICKI KEENAN: Okay. So...

155
156 LARRY O'SULLIVAN: Okay, I guess I could start. I think you had a good opportunity to do
157 some research into the other properties. What this Board is usually doing isn't doing the
158 research because it's what the presenter brings to the party. That's what we use as our
159 information.

160
161 VICKI KEENAN: Right.

162
163 LARRY O'SULLIVAN: And the things that we have available to us online here and the
164 drawings and what have you are always going to be the same and they're gonna have abutting
165 properties that show where the buildings are and structures. We don't get to see where the
166 wells are and where the septic are, things along those lines, typically. And I think the
167 timeliness of the presentations isn't up to us and neither is the information that's made in the
168 presentation, so I understand what you've done in the way of your research on the project, on
169 this project, and it really doesn't do anything to change my opinion because it wasn't just
170 sloppiness, in my opinion. And I think we all pretty much stated our opinions at our meeting.
171 But anyway, my knowledge of real estate values and having walked the lot as well, I also
172 disagree with the thought that it would not diminish the value any further by being a few feet
173 closer. The drawings that were submitted on 6/11/09, that is the certified plot plan, clearly
174 shows that the deck is nine and a half (9.5) feet from the property line. The corner of the
175 existing house is thirteen point four (13.4) feet. That close corner there.

176
177 VICKI KEENAN: Mm-hmm.

178
179 LARRY O'SULLIVAN: And the far corner is fourteen point one (14.1) feet. And on the opposite

180 side it's as small, is eleven point seven (11.7) feet. So, that's what the drawing shows and the
181 house width at twenty eight (28) feet, I guess it is. Twenty eight (28) feet?

182
183 VICKI KEENAN: Twenty eight (28) feet. Yeah.

184
185 LARRY O'SULLIVAN: And the deck, even wider than that. When you have the information at
186 hand, in your hand in advance and you know that you need to have fifteen (15) feet on either
187 side, if you take thirty (30) feet, which is what the two (2) fifteen's (15's) are, away, you don't
188 have the width that this house is. You have twenty six (26) feet or twenty two (22) feet or
189 whatever it is and the net of it is that the sloppiness that you feel, versus the ignorance that...at
190 least one of the items that I think is a problem was ignorance, the failure to inquire, either one of
191 those things suffice for that item. So I still stand on the diminution is an incremental thing, it
192 isn't a one or the other, it isn't a 'what makes it better,' would three (3) feet make it better or do
193 these two (2) feet or whatever it happens to be make it worse? That's really what the issue is.
194 So, that's why I look at it like that.

195
196 VICKI KEENAN: Okay.

197
198 JIM SMITH: In the letter, it mentions that I was the Building Inspector when the building
199 permit was issued and it also implies that I was here when the actual construction took place,
200 which is not the case. I retired at the end of March. The first inspection, I believe, was
201 sometime in May.

202
203 VICKI KEENAN: That's May 8th.

204
205 JIM SMITH: So I was not involved with the actual construction. To answer one of your points
206 as far as ignorance, I think one of the things I was looking at in the information that was given
207 to the owner was a list of inspections and other things that were required to be done, one of
208 them being a certified plot plan was required when the footings were installed. He evidently,
209 from what we can see, either did not read that information and obviously did not act on it. A
210 certified plot plan was not prepared until the building inspector asked for it at the time of the
211 C.O. So that's where I was looking at the ignorance of it. Also, he evidently was ignorant of the
212 actual width of the lot. He presumed that the frontage along the road, which is at an angle to
213 the two side lines, was the actual width of the lot, where in fact it was not. So, I think there was
214 enough information there to show that he did not really do his homework and determine what
215 the size of the lot was, how it was laid out, he did not really look at the information that was
216 given to him and follow the rules that were in existence.

217
218 VICKI KEENAN: I completely agree with you, Jim, and that's sort of where I come back to my
219 "sloppiness" comment, for lack of a better word. You know, I know that there was a septic plan
220 prepared by a previous owner that was never verified; sloppy. There weren't dimensions taken;
221 sloppy. But that's not what the waiver of dimensional requirements says. The waiver says it's
222 ignorance of the law. It doesn't make it right. You know, sloppiness doesn't make it right but
223 that's not what the law says, unfortunately. You know, the equitable waiver of dimensional
224 requirements is strictly about ignorance of law or ordinance and I don't believe at any time

225 did Mr. Cook not understand what those requirements are. He was given the information,
226 which we clearly demonstrated in the minutes at both meetings and, in fact, is attached to the
227 building permit which I saw today. Again, I think it's a matter of being careless and sloppy
228 and, again, I think it is, you know, not a malicious intent to ignore the limitations of zoning. I
229 think these are truly just sloppy, good faith errors.

230
231 NEIL DUNN: If I may?

232
233 VICKI KEENAN: Sure.

234
235 NEIL DUNN: I know that when I look at 674:33-a, equitable waiver of dimensional
236 requirements, we don't have a whole lot of choice, what I'm reading. It says the
237 Board... "...grant an equitable waiver from the requirement if and only if the board makes all of
238 the following findings."

239
240 VICKI KEENAN: Right.

241
242 NEIL DUNN: And when you go to the section (b), that the violation was not an outcome of
243 ignorance, it's not just ignorance. It's "ignorance of the law or ordinance, failure to inquire,
244 obfuscation, misrepresentation or bad faith on either the part of the owner, owner's agent or
245 representative." So, I don't think...I think it was a failure to inquire. The reason he was able to
246 build on this lot was because he came to us for a variance to begin with. We gave that variance
247 with very specific concerns over setbacks. We nailed it so many times in the minutes of that
248 meeting, we were concerned about the setbacks, he knew we were concerned about the
249 setbacks, and so to later on say, "oh, geez, it was sloppy," or not, that was the contingent of his
250 original variance. So I'm kind of having trouble how he...I don't think it was ignorance of the
251 ordinance but I do think it was maybe failure to inquire or misrepresentation, I don't know. But
252 he was warned of that. And then the second one, part (c) of 674:33-a, I agree with Larry. I
253 mean, yes, if you build a house that big in a small lot, it's gonna impact the neighbor next door
254 but when you build it that big and it's into the setbacks, then I think it impacts it even more and
255 there is more of a diminution of property values. So, when I'm going through 674:33-a, and as a
256 Board member and for the Town, I don't see where I have a choice. It's if and only if the Board
257 makes all of the following findings and I couldn't make two (2) of those, so I don't know, I
258 haven't heard anything tonight that really has changed that.

259
260 JIM SMITH: I think one other point I would like to make, the information that you presented in
261 your research I think would carry more weight if it was presented in the letter...

262
263 VICKI KEENAN: Without a doubt.

264
265 JIM SMITH: Without a doubt.

266
267 VICKI KEENAN: Sure.

268

269 JIM SMITH: What we should be basing our decision on is what the letter says and what new
270 information the letter gives to us and not what was brought out by your inquiry into the record
271 itself. It's not our job to build their case.
272

273 VICKI KEENAN: I agree with you, however, I'm not approaching this to build their case,
274 because I don't think they built a case. I think both presentations were terrible. I think that the
275 letter presented by Mr. Mason is about...is worth that the paper that it's written on. However,
276 my research and sort of my statements were done in the best interests of the Town. I think that,
277 again, I think that we are, as a Board, misinterpreting the difference between ignorance of the
278 law and sort of, like I said, sloppiness. I'm gonna overuse that word tonight and I apologize in
279 advance. But I don't think there was, at any time, in my opinion, based on what I saw,
280 misrepresentation. Like I said, I don't think there was malicious intent to skirt the zoning
281 limitations of the zoning board or the zoning requirements. Do I think there was a failure to
282 inquire? I don't and I'll tell you why. There was a septic plan that Mr. Cook took in good faith,
283 that he believed was accurate, and submitted it for his permit. There was a foundation
284 inspection done and at no time was it identified that there were any setback issues. And I'm not
285 saying that we were at fault for not identifying them because I know that that's not the case.
286 That's not what those inspections are for. But he had gotten his inspection and moved forward.
287 Did he fail to get a foundation inspection done? Yes. Again, I attribute that to sloppiness and I
288 sort of go back to my other points about the lack of diminution in values of the neighbor's
289 property and I go back to the point that...again, it's not ignorance of the law, it's sloppiness.
290 And that the cost of correction is going to far outweigh the injustice done to the public or to the
291 neighbors, in my opinion.
292

293 YVES STEGER: Okay.

294
295 VICKI KEENAN: Okay?

296
297 YVES STEGER: So, it appears that a lot of people are trying to discuss what was discussed at
298 that time.

299
300 VICKI KEENAN: Right.

301
302 YVES STEGER: But in a motion to rehear the only thing we have to look at, the only thing is not
303 to retry the case...

304
305 VICKI KEENAN: Right.

306
307 YVES STEGER: ...it is essentially to find out two things: one, has there been any mistake done,
308 procedural errors done by the Board while making the decision or two, is there any data that
309 was made available to the Board and was not taken into consideration? So any new
310 information, for example, about the diminution in value, is irrelevant in a motion to rehear.
311 Actually, we didn't even make that decision on that point, you know?
312

313 VICKI KEENAN: Right. That's right.

314

315 YVES STEGER: Jim said no, he wanted to include, but essentially, we essentially denied the
316 case based on the fact that there was a preponderance, three (3) out of five (5) said they thought
317 that there was more than just sloppiness, there was essentially an attempt to circumvent the
318 law.

319

320 VICKI KEENAN: Right. Right.

321

322 YVES STEGER: Okay?

323

324 VICKI KEENAN: Mm-hmm.

325

326 YVES STEGER: And so that's essentially...and I'm gonna go back to the three (3) points, okay?
327 The first one is, as a matter of law, is the fact that we did not ask for Mr. Cook to go over the
328 four (4) criteria. And, thinking about, well, maybe. But it is not a requirement by law. That
329 doesn't work out that way. We do it very often, sometimes we don't. There is no requirement.
330 The only thing that is applicable is the fact that Mr. Cook had written them into his application.
331 That's the only thing. Now, whether we want to ask him to repeat them or rephrase them or we
332 ask questions, we did ask the questions on the points of the application. So the fact that we
333 really didn't do it and didn't ask is essentially not legally required. Now, if there was a
334 preponderance of the members of the Board who said well, maybe, because of the importance of
335 the case, and the amount of money involved, we would like to review that, just for that reason,
336 give him a chance to go back through his application and give him a chance to explain why he
337 thinks that he did be sloppy and not try to go around the law, personally, that would be fine.
338 And you know that I'm one of those that voted, essentially, exactly according to your rule. The
339 second one, the additional information from real estate and others is irrelevant. It is already
340 trying...to try the case in court or to do the rehearing but we're not at that point, so any new
341 information to me is irrelevant. The amount of data about what the Town did and Mr. Cook
342 did, again, we saw all the data when we made that decision, so that point three (3) is irrelevant.
343 We discussed the Building Inspector. I'd like to make a...for the record, I was called by the
344 Union Leader and I immediately told the reporter that under no circumstances would a member
345 of the Board make any comments on a case but that all the information was available through
346 public records and if he could just look at the rerun of the TV, he could get all the information
347 without talking to me. Now, the way the article was written, made it sound like the fact that I
348 had said, yes. I did, I did it during the public session, not on a separate discussion, so I
349 somewhat resent the implication, you know, we are here as nonpaid members and we have our
350 pride to take care. So, yes, we have an open mind, actually I don't understand why he said that
351 specifically about me because I am the one who voted in favor of Mr. Cook.

352

353 LARRY O'SULLIVAN: I think he was referring to me 'cause I was mentioned in the article
354 several times.

355

356 YVES STEGER: You too.

357

358 LARRY O'SULLIVAN: And, you know, with no phone call, nobody asked me anything...

359

360 YVES STEGER: I know. I think he called me first and he knew he wasn't going to have much
361 success anyway so he took what [inaudible] and he presented it as if he had talked to us but
362 actually they were all coming from there.

363

364 LARRY O'SULLIVAN: One of the things that we had discussed when we were talking about
365 the rules and regulations of this particular zoning board, was what would we do in those
366 circumstances...

367

368 VICKI KEENAN: Mm-hmm.

369

370 LARRY O'SULLIVAN: ...if we were asked by a member of the press before we had...the appeal
371 time went by...

372

373 YVES STEGER: Mm-hmm.

374

375 VICKI KEENAN: Right.

376

377 LARRY O'SULLIVAN: Right? And I believe we all agreed, at least the longer serving members
378 anyway, agreed that the public record is sufficient. Nobody seems to hold anything back...

379

380 VICKI KEENAN: I agree with you.

381

382 LARRY O'SULLIVAN: ...when we have...just because the microphone's on or because the
383 camera's on...

384

385 VICKI KEENAN: I agree.

386

387 LARRY O'SULLIVAN: ...we're not gonna say something different outside this room than we
388 are inside this room, so...

389

390 VICKI KEENAN: That's correct.

391

392 YVES STEGER: So, from the information in the letter...

393

394 VICKI KEENAN: Mm-hmm.

395

396 YVES STEGER: ...looking at 'are there grounds to rehear?' I would say no.

397

398 VICKI KEENAN: I agree with you. The letter doesn't...

399

400 YVES STEGER: But from...based strictly on the letter. Now, the number one is the only one I
401 could say it's not legally required, maybe given the importance and the amount of money
402 involved, maybe we should give him a chance, but that's one (1) out of potentially five (5) in

403 that case. I would not mind rehearing the case. I would definitely would like to have much
404 more information about what was presented to whom and when.

405 LARRY O'SULLIVAN: Oh, the timeline?

407
408 YVES STEGER: The timelines, what was shown and so on and I don't want to do it, the
409 rehearing, at this time, but one of the things, because I'm the one, and I'm on the record saying
410 that I thought that really, it was sloppy but there was no...I realized afterwards that actually
411 Mr. Cook is a builder. He's a builder.

412
413 VICKI KEENAN: Mm-hmm.

414
415 YVES STEGER: He's a professional. How could a professional do something like this? It's
416 unbelievable.

417
418 VICKI KEENAN: It happens all the time.

419
420 YVES STEGER: Well...and in addition, this is new information that was presented, so it is
421 irrelevant until they...if we rehear...

422
423 VICKI KEENAN: Can I just...I'm sorry to interrupt you, but can I just say one thing? We, as a
424 Board, can make a decision based on whatever information we want to bring to the table tonight
425 to rehear this case. Not as a result of their letter, but we can just as a Board make a decision...

426
427 YVES STEGER: Mm-hmm.

428
429 LARRY O'SULLIVAN: I agree.

430
431 VICKI KEENAN: And I felt as though it was my responsibility to make sure I understood all of
432 the facts, spend time with the Town lawyer, to really get into this so that I could bring forth
433 what I think is the right thing to do, which again, you all know what my opinion is but, I'm
434 sorry, to go ahead, but, yes, we can bring new facts.

435
436 YVES STEGER: Yeah.

437
438 VICKI KEENAN: It doesn't change our decision. We can make a decision on new facts or on
439 the letter, it doesn't really matter, but the Board can make a decision to rehear.

440
441 YVES STEGER: That's correct. So, I also got that new information which was not available at
442 that time which are the...one is the...the first approval from March, 2008....no...31/10/08....
443 3/10/08...March, '08...that's the one that is being used for a building permit?

444
445 VICKI KEENAN: That's right. The septic plan.

446
447 YVES STEGER: That's the septic plan?

448

449 VICKI KEENAN: Mm-hmm.

450

451 YVES STEGER: That's what everybody has been working with. That one is compliant. And
452 then you go down to what we were presented, this one is not even aligned with the property
453 lines. It has an extension of the house which was not in the original plan and it has a deck that
454 goes up to about nine (9) feet, so there is six (6) feet on one side, five (5) feet on the other side, so
455 he is missing the both, out of thirty (30), by nine (9) plus four (4), thirteen (13) feet out of thirteen
456 (13), that's a thirty (30) percent mistake. That is simply, you know, unbelievable. So, to me, I
457 can see the example of much more than sloppiness in here...from a professional.

458

459 VICKI KEENAN: Mmm.

460

461 YVES STEGER: That's what I have to say.

462

463 NEIL DUNN: I guess I would just add also that since we are here to really just rule or decide on
464 the motion to rehear, I don't see anything in the documents that were provided to us that offers
465 anything new or would make me want to consider rehearing.

466

467 VICKI KEENAN: Mike?

468

469 MICHAEL GALLAGHER: I, you know, as, Yves, we all know who voted what and how, you
470 know, my understanding is we're here or Mr. Cook is here to get a rehearing. You know, this
471 new information...I think we...this is no...there is no new information and I don't see where the
472 Board made a mistake or, I mean, if we overlooked something or...I don't see anything...and
473 again, this case is, you know, we all know what it is and Mr. Cook, again, being a professional,
474 to...I mean, it just seems like popping that house in there, knowing the size of the lot and how it
475 come out, I just...I can't understand it. But, be that as it may, I don't see where we, as a Board, I
476 don't see where we overlooked anything or made a mistake, so, I mean, unless there's
477 something compelling, I kind of, you know, feel the rehearing is...

478

479 VICKI KEENAN: I just want to go back to sort of two points I've already made and just belabor
480 them a little bit more. (B), again, you know, again, I don't think there was any ignorance in the
481 law, I don't think there was any failure to inquire about the law. Was there any
482 misrepresentation? Was there bad faith? I don't think there was any of those things. I have not
483 seen any evidence that shows me that there was a misrepresentation or bad faith. Because, I
484 think of the size of the lot, the angles, again, I think this is a disaster in geometry, that this
485 happens. What is it...as far as three (3) feet on one side? And, again, I go back to my argument
486 of sloppiness, but sloppiness is not the same as ignorance of the law, sloppiness is not the same
487 of failure to inquire. So, I sort of feel like we are stuck on a technicality here and that's sort of
488 my opinion. Unless anybody on this Board can say it was done in bad faith, I think we're stuck
489 on a technicality of sloppiness. And I know it sounds ridiculous and people should be
490 punished for not being meticulous but unfortunately, that's not what the waiver of dimensional
491 requirements says. And if you read it word for word, by definition, that's not what that means.
492 And again, I go back to my second point about the correction and that the correction far

493 outweighs, I think, any damage done. So, really, mostly on point (B), which is a technicality, I
494 think we rehear this case. And we may find, like Yves said, that we get into sort of the nitty
495 gritty details, the timelines, we may learn that there was something that, you know, proves that
496 they were in violation of finding (b). But I have not seen anything in the minutes, there was
497 nothing presented that shows that this was done in bad faith or that he was not aware of what
498 the laws or the ordinances read.

499
500 YVES STEGER: Actually, point (b) says "or bad faith."

501
502 VICKI KEENAN: Right, "or."

503
504 YVES STEGER: So, we didn't say bad faith.

505
506 VICKI KEENAN: Right.

507
508 YVES STEGER: But we're definitely saying ignorance of the law or failure to inquire.

509
510 VICKI KEENAN: But I didn't see anything anywhere that said he didn't know what the setback
511 limits were or that he didn't ask what they were. He submitted a septic plan that was fully
512 compliant...

513
514 YVES STEGER: Mm-hmm.

515
516 VICKI KEENAN: ...with the setback limits. You've gotta believe that he was fully aware of
517 what the conditions were. I mean, we even said it in this meeting that when he got his variance
518 in October of 2007, the Board was blatant about, and very vocal about how tight the lot was and
519 that setbacks were going to be a concern. So that's the distinction I'm trying to make here, is
520 that I don't think there was any ignorance. I think he knew what the limitations were. I don't
521 think this was done in bad faith. I don't think he set out to go beyond the setbacks intentionally.
522 What I do think is sloppiness, and if you read that, there is a distinct difference between
523 sloppiness and ignorance and bad faith. They're not one in the same.

524
525 YVES STEGER: How do you explain that there is such a difference between that septic plan,
526 which would have been okay, and the one that was actually built under his directions?

527
528 VICKI KEENAN: Have we seen the construction...were the construction drawings ever
529 submitted to the Board?

530
531 LARRY O'SULLIVAN: Yeah.

532
533 VICKI KEENAN: With the actual dimensions?

534
535 LARRY O'SULLIVAN: Yes.

536
537 VICKI KEENAN: I didn't see those.

538

539 VICKI KEENAN: The construction drawings, did they show the actual house within the
540 setback limits?

541

542 JIM SMITH: No, no.

543

544 YVES STEGER: No.

545

546 JIM SMITH: No, there was no...

547

548 YVES STEGER: No.

549

550 LARRY O'SULLIVAN: Not within the setback limits. No, it was after the fact.

551

552 JIM SMITH: Plans of the building were submitted...

553

554 VICKI KEENAN: Right.

555

556 YVES STEGER: So there is two levels. There was the one...

557

558 JIM SMITH: No additional plot plan was submitted.

559

560 VICKI KEENAN: Right. So how do we not know he was working off construction drawings
561 that showed a structure within the setback limits if we hadn't seen that?

562

563 JIM SMITH: No, he didn't have that.

564

565 YVES STEGER: Yeah.

566

567 VICKI KEENAN: That's what I mean.

568

569 JIM SMITH: Okay, I think part of the problem is, when I'm talking about ignorance, I think he
570 was ignorant of the actual dimension of the lot itself. That's one of the things I think he was
571 ignorant of. He was ignorant about how wide a building he could, in fact, build on that lot and
572 meet the requirements. Those are the things I was...I wasn't saying he was ignorant of the
573 fifteen (15) foot setback requirement.

574

575 VICKI KEENAN: Right.

576

577 JIM SMITH: But he was ignorant of the actual dimensions of the lot and he was ignorant about
578 how large a building he could, in fact, install on that.

579

580 VICKI KEENAN: Right, but it's not that he was...he had the wrong dimensions, I agree, but he
581 was given a septic plan that, in a sloppy way, he did not verify and continued, you know, in a
582 sloppy way, with building.

583
584 YVES STEGER: The septic plan would have been no problem.
585
586 VICKI KEENAN: Right.
587
588 YVES STEGER: If he had built the septic plan, we wouldn't be here tonight...
589
590 VICKI KEENAN: Right.
591
592 YVES STEGER: ...or last month or the month before. The fact is that there was a septic plan that
593 was part of the variance approval...
594
595 VICKI KEENAN: Right.
596
597 YVES STEGER: ...if he had just built that. The fact is, he didn't build that.
598
599 VICKI KEENAN: Right.
600
601 YVES STEGER: The size, the form, the geometry are the same.
602
603 VICKI KEENAN: I agree.
604
605 YVES STEGER: The only thing that happened is in between, he made the house bigger than
606 was on the septic plan...
607
608 VICKI KEENAN: Right.
609
610 YVES STEGER: ...and he made it oblique, which makes the situation even worse. We didn't do
611 that.
612
613 VICKI KEENAN: No, I agree.
614
615 YVES STEGER: Nobody ever saw that. He did that on his own.
616
617 VICKI KEENAN: I agree, but I don't think that that was done in bad faith, is what I'm saying.
618
619 NEIL DUNN: I feel like we're trying to re-deliberate the case and rehear it and I'm not sure if
620 that's where I really am comfortable going right now. The Board has already ruled on that.
621 We're here to rule on the motion to rehear. I don't see anything in what was submitted that
622 there was anything new that would give me cause to rehear the case.
623
624 VICKI KEENAN: I just think, it's my opinion, that we are, like I said, are confusing (b) and as
625 Chairman, I think it's important to bring it to the Board because I think that we will do justice
626 by the Town if this is not reheard because I think this case will go further. That's my opinion
627 based on my research and my discussions.

628

629 LARRY O'SULLIVAN: We knew that.

630

631 VICKI KEENAN: Because I think we're...I know, but I...

632

633 YVES STEGER: Yeah.

634

635 LARRY O'SULLIVAN: We made our decision knowing that he was either going to have to
636 move the house or make changes to the house.

637

638 VICKI KEENAN: But do you all understand what I'm saying, there is a distinct difference
639 between bad faith and ignorance of the law and just being sloppy?

640

641 YVES STEGER: Yes. Yes.

642

643 VICKI KEENAN: So, we can't find him...we can't deny it because of sloppiness. That's not
644 what the equitable waiver language says.

645

646 YVES STEGER: Wait. We did.

647

648 JIM SMITH: Well, I think you're trying to say sloppiness and ignorance. I think...

649

650 VICKI KEENAN: They're two different things.

651

652 JIM SMITH: Okay, but I think you're trying to define it by ignorance of the fifteen (15) foot
653 setback. I'm talking about ignorance of knowing how big the lot is, how large a house he could
654 build, ignorance of the fact that he needed a certified plot plan which was clearly given him
655 information to, that's the ignorance I was alluding to.

656

657 VICKI KEENAN: I understand that, but was those missteps done in good faith? Were those
658 mistakes made in good faith?

659

660 YVES STEGER: We did those discussions during the deliberation, okay?

661

662 VICKI KEENAN: Yeah.

663

664 YVES STEGER: And three (3) out of five (5) decided that that was the case.

665

666 VICKI KEENAN: Okay.

667

668 YVES STEGER: And so, we cannot do...grant a motion to rehear based on your opinion that we
669 made a bad decision, okay?

670

671 VICKI KEENAN: We certainly can. I can certainly bring information and opinions to the Board
672 that could change your opinion about how we made a decision on this case and you

673 could...may very well all agree with me that I am correct and that we should hear this case and
674 you know what? When I am done, you may all very well disagree and that's fine. But based on
675 what I've learned today, the conversations I've had and the research I've done, in my opinion,
676 I'm just bringing this to the Board, I think that this case should be heard on the basis that I've
677 presented.

678
679 LARRY O'SULLIVAN: It should be reheard, you're saying?

680
681 VICKI KEENAN: Yes, I think we should rehear. And I am not voting on this case. I have no
682 power to make any sort of change. This is up to you guys. You all were here for the final
683 decision. It's just sort of my opinion on what I think the outcome should be, based on my
684 understanding. So, I am not trying to re-deliberate the entire case, I'm just trying to bring forth
685 information that I've learned in my discovery to help us sort of make the right decision. And I
686 will stop beating that point and I'll leave it up to you guys to either further deliberate or make a
687 motion.

688
689 YVES STEGER: So, I don't think we have a requirement to rehear, based on the letter that we
690 have received, the motion to rehear, does not contain, in my opinion, either proof of a
691 procedural error or any information that we didn't consider. So that's not the case. On the
692 other hand, personally, given how important it is to Mr. Cook and, you know, the money
693 involved and every other thing, I think giving him a second chance is not necessarily a bad idea
694 and personally, I would support to rehear. And it doesn't, you know, there's no guarantee that
695 it's gonna be a change.

696
697 VICKI KEENAN: Right.

698
699 YVES STEGER: It could or it could not.

700
701 VICKI KEENAN: That's right.

702
703 YVES STEGER: And...so that's my position.

704
705 NEIL DUNN: Do we have any guidelines in our ordinance on the requirements for a motion to
706 rehear?

707
708 VICKI KEENAN: There are.

709
710 NEIL DUNN: I keep looking and they're tough to find.

711
712 VICKI KEENAN: Where did I see them...?

713
714 RICHARD CANUEL: That's RSA 677: 2.

715
716 VICKI KEENAN: Thank you.

717

718 NEIL DUNN: Thank you, Richard.
719
720 JIM SMITH: Seventy seven (77), you said?
721
722 VICKI KEENAN: Seventy seven (77), yeah.
723
724 LARRY O'SULLIVAN: Did you memorize that?
725
726 RICHARD CANUEL: No, I've got it all written down right here.
727
728 VICKI KEENAN: But do you want to...what are you looking for, Neil?
729
730 NEIL DUNN: Again, I have a lot of trouble when we're trying...I mean, we're all here to act to
731 the best of our capability and knowledge on what's written here and so I'm just...from what I'm
732 seeing is, there's no rational reason for a motion to rehear, so I'm just looking for some
733 guidance...
734
735 VICKI KEENAN: Mm-hmm.
736
737 NEIL DUNN: I mean, we already voted on the case. I'm looking for guidance on where,
738 maybe, I can find some leeway in the motion to rehear to, you know, address some of the
739 thoughts and ideas that you folks had.
740
741 VICKI KEENAN: Okay.
742
743 NEIL DUNN: But I hate to just jump outside of things that we are or are not allowed to do
744 without having a better understanding.
745
746 YVES STEGER: Mm-hmm.
747
748 NEIL DUNN: That's all.
749
750 VICKI KEENAN: Okay.
751
752 JIM SMITH: What it says in part...it talks about which Boards have to follow this
753 procedure..."may grant such a rehearing if in the [sic] opinion good reason therefore is stated in
754 the motion."
755
756 LARRY O'SULLIVAN: It's pretty vanilla.
757
758 JIM SMITH: Yeah. I don't know what else it...
759
760 [pause]
761

762 VICKI KEENAN: In speaking with the Town Attorney today, he did say that we can make a
763 motion to rehear based on sort of, like Jim had said, good reason. It does not have to be that
764 new evidence was brought forth to the Board or anything like that.

765
766 LARRY O'SULLIVAN: Just because of the extra cost that it's gonna be for rectification of the
767 issue, that we feel that it may be an opportunity to gather more information or what have
768 you...?

769
770 VICKI KEENAN: Exactly. Yeah, that maybe there were more details that could, you know, be
771 brought out at another case that...another hearing, you know. Exactly.

772
773 LARRY O'SULLIVAN: The first variances, and I do say the two (2) of them because there were
774 two (2), although they were the same item, the presentation had been approved based on
775 the...I'm sorry...the variance had been approved based on the presentation. The presentation
776 was well done, straightforward, no emotion, and our discussions, because I remembered it and I
777 had to reread it a couple of times, and I did say we spoke multiple times about the side lot line,
778 the side lot line, and then to have it not be attended to, at all, probably not with a surveyed lot in
779 mind by the builder, that makes it very difficult for me to say that it wasn't ignorance and it
780 wasn't just a failure to inquire. So...but at the same time, just because of the expense, I think
781 that there ought to be an opportunity for him to hear it again, or say it again. You know, this
782 is...it's been very difficult for me as being one of the deny votes to just say 'oh my God,' you
783 know, that could cost him an arm and a leg to, you know, remove three (3) feet of one side of
784 the house and a foot and a half (1.5) to three (3) feet of the other side of the house and that's
785 really what I thought was gonna happen was that we were going to wind up with some kind of
786 a compromise...

787
788 VICKI KEENAN: Mm-hmm.

789
790 LARRY O'SULLIVAN: ...and when none was offered and when none spoken about, I figured
791 that, well, we may have somebody who is willing to spend it on attorneys as opposed to the
792 corrections that needed to be made to make it right. So, my opinion then was, you know, if it
793 goes to court, it goes to court. I understand that there's a budget that the Town is concerned
794 about and, you know, it goes on our tax bill at the end of the year. We wind up paying for it.
795 Well, I've been paying the taxes for the things that I didn't agree with or did agree with and
796 have either approved them or disapproved them, not on this Board but other places and I think
797 that this might be an opportunity to rectify something but I would say that the guidance that we
798 get, that the things that the applicant volunteers as acceptable has to be something that is taken
799 seriously by the Board as an attempt at adjudication to get something squared away or
800 balancing because, frankly, I didn't think that there was a budge of an inch in the presentations
801 or discussions prior. So, if that sort of thing happens, I'm all in favor of a rehearing.

802
803 VICKI KEENAN: And you know what? I just wanna say to the Board, we may get through
804 another rehearing, if that's the way we decide to go and come out with the same decision...

805
806 LARRY O'SULLIVAN: Sure.

807

808 VICKI KEENAN: ...and it's not that I'm not in support of that, I just, again, didn't find
809 anything factual to show sort of bad faith and that's sort of where I sit and I struggle and there
810 may be...

811

812 LARRY O'SULLIVAN: Factual, as opposed to the way you felt?

813

814 VICKI KEENAN: I didn't see factual that this was done in bad faith. I didn't, like I said, I saw
815 something that was done maybe in error, but not in bad faith, so there may be more information
816 that Mr. Cook can go back and sort of get his ducks in a row that may show one way or the
817 other and I don't know what it is but I don't feel like that finding was explored enough and
818 given enough organization and time in order to sort of make that final determination,
819 considering what weighs in the balance here.

820

821 YVES STEGER: So, essentially, that's the point one (1) of the motion to rehear...

822

823 VICKI KEENAN: Mm-hmm.

824

825 YVES STEGER: ...which is we didn't explore his reason for the four (4) points in enough detail.

826

827 LARRY O'SULLIVAN: I beg your pardon?

828

829 VICKI KEENAN: No, I would disagree with you, Yves.

830

831 LARRY O'SULLIVAN: I wouldn't go there.

832

833 VICKI KEENAN: I think that he certainly had ample opportunity to present the four (4) points
834 that was on his application. I just did not see anything...I haven't seen anything in the record,
835 either through deliberation or by facts presented that showed bad faith and I just think it maybe
836 needs a rehearing to either affirm that or not. We may learn that it was and then end up, you
837 know, I don't know what we'll hear but I just felt more needed to be done on this.

838

839 NEIL DUNN: My thought is, though, there was more than just the bad faith or that there were
840 four (4) points and the Board's already voted on that, so, I personally...I go back to that we're
841 here for a motion to rehear. I don't see anything here that would give me a reason to rehear.

842

843 VICKI KEENAN: Do either of you have any more to add or should we...does someone want
844 to...does someone have a motion?

845

846 JIM SMITH: The only thing I have a little difficulty with, when you read this section, you have
847 to be careful of where the or's are and the commas are because when they talk about "or bad
848 faith" on the part of the owner, that's separate from ignorance of the law, which stands by itself,
849 or ordinance, failure to inquire, obfuscation and misrepresentation. Those three, four things go
850 together. Bad faith on the part of the owner is another separate item. "Owner's agent or
851 representatives [sic]...but was instead caused by either a good faith error in measurement or

852 calculation [made] by the owner." I have a little bit of difficulty with the good faith error in
853 measurement, because how can somebody make a good faith error in measurement and not
854 know how wide the lot is? How can they make an error when they don't even know how wide
855 it is to start with? But, you know, but again, I'm just looking at each part of this and you have
856 to, in my mind, look at each part separately.

857
858 VICKI KEENAN: I completely agree with you.

859
860 YVES STEGER: And essentially, that was the outcome, you know? The three (3) thought that
861 there was more than just sloppiness. Out of the five (5).

862
863 VICKI KEENAN: But there were...and not to rehear the case, 'cause I know that's not why
864 we're here but there was a septic plan done by a prior owner that showed fifty nine point three
865 three (59.33) feet was the lot and then...

866
867 JIM SMITH: No, no, no.

868
869 YVES STEGER: No.

870
871 VICKI KEENAN: No?

872
873 YVES STEGER: No.

874
875 JIM SMITH: No, that showed...

876
877 YVES STEGER: They're identical.

878
879 JIM SMITH: ...the frontage, which was at an angle to the two side lines.

880
881 VICKI KEENAN: What does the septic plan show for the lot width?

882
883 JIM SMITH: It doesn't.

884
885 YVES STEGER: This is the septic plan and in terms of dimension, it is identical to the other one,
886 so...

887
888 VICKI KEENAN: Okay.

889
890 YVES STEGER: What is not identical between this and the other one...

891
892 VICKI KEENAN: Is the house size.

893
894 YVES STEGER: ...is the house. Look, they are all the same. There is a deck here between...

895
896 VICKI KEENAN: Okay.

897
898 YVES STEGER: ...and now what this becomes, the rest of the lot has not changed...
899
900 VICKI KEENAN: Got it.
901
902 YVES STEGER: ...what has changed is that the house now has been enlarged here. There is a
903 walkway...
904
905 VICKI KEENAN: A deck.
906
907 YVES STEGER: ...and there is a deck.
908
909 VICKI KEENAN: Got it.
910
911 YVES STEGER: Okay?
912
913 VICKI KEENAN: Okay.
914
915 YVES STEGER: Plus, it has been put at an angle.
916
917 VICKI KEENAN: Okay.
918
919 YVES STEGER: Okay?
920
921 VICKI KEENAN: Yup.
922
923 YVES STEGER: So...
924
925 VICKI KEENAN: And I read something in the minutes today that talked about the initial width
926 being fifty nine point three three (59.33) feet and then what is actually there was fifty five (55)
927 but I guess that's not the case.
928
929 JIM SMITH: Well, I think that's part of the ignorance...
930
931 VICKI KEENAN: So is it fifty five (55) or is it fifty nine (59)?
932
933 JIM SMITH: Well, when we scaled it off, it appeared to be around fifty five (55) feet wide,
934 when we scaled off on the scaled septic plan.
935
936 VICKI KEENAN: Right.
937
938 JIM SMITH: But that dimension was not actually called out.
939
940 YVES STEGER: Yup.
941

942 JIM SMITH: The only dimension called out is the angle dimension, which is the frontage,
943 which is like the hypotenuse of a triangle...
944
945 VICKI KEENAN: Mm-hmm. Right.
946
947 JIM SMITH: ...which is obviously longer than the width would be.
948
949 VICKI KEENAN: But do we actually know what it is? Do we actually know if it's fifty nine
950 point three three (59.33) or fifty five (55)?
951
952 RICHARD CANUEL: Well, we do by the certified foundation plan. That should show what
953 the actual width of the lot is.
954
955 VICKI KEENAN: What does that say?
956
957 JIM SMITH: It didn't call it out.
958
959 RICHARD CANUEL: I don't know if it actually shows that on that plan or not.
960
961 VICKI KEENAN: Duval...
962
963 JIM SMITH: See, that was part of the problem.
964
965 VICKI KEENAN: It's the frontage.
966
967 JIM SMITH: See how the frontage is at an angle?
968
969 VICKI KEENAN: Yeah.
970
971 JIM SMITH: So that is like a hypotenuse of a triangle...
972
973 VICKI KEENAN: Right.
974
975 JIM SMITH: ...which is obviously gonna be longer than the actual width is.
976
977 VICKI KEENAN: Right.
978
979 JIM SMITH: And the best way you can come up was by adding thirteen seven (13.7), fourteen
980 three (14.2) and the width of the house at that point.
981
982 RICHARD CANUEL: Yeah, you'd have to add it up.
983
984 YVES STEGER: But do you see, these two are identical. In this case, essentially, the house was
985 supposed to be, what, twenty two (22) feet?
986

987 JIM SMITH: That's the way I scaled it off. Twenty two (22) feet.
988
989 YVES STEGER: Twenty two (22) plus two (2) times fifteen (15), that's thirty (30). Essentially, it
990 shows fifty two (52) feet.
991
992 VICKI KEENAN: Yup.
993
994 YVES STEGER: Okay?
995
996 VICKI KEENAN: I see that. Okay.
997
998 YVES STEGER: And actually, if it was fifty five (55), it would be even better but this, the septic
999 plan shows us, essentially, twenty two (22) plus thirty (30) shows fifty two (52).
1000
1001 VICKI KEENAN: Mm-hmm.
1002
1003 JIM SMITH: Well, again, the twenty two (22)...they don't call it out, do they?
1004
1005 YVES STEGER: Yes, it was mentioned in the presentation.
1006
1007 JIM SMITH: Well, no, we scaled it.
1008
1009 VICKI KEENAN: I remember, it was in the presentation.
1010
1011 JIM SMITH: We scaled it. The twenty two (22) was a scale. In other words, I scaled the plan.
1012
1013 YVES STEGER: No, it was mentioned in the variance approval.
1014
1015 VICKI KEENAN: It was in the presentation.
1016
1017 JIM SMITH: Oh, okay.
1018
1019 YVES STEGER: It was in the presentation...
1020
1021 VICKI KEENAN: That's where I saw it.
1022
1023 YVES STEGER: ...that was done the year before...
1024
1025 JIM SMITH: Okay.
1026
1027 YVES STEGER: ...and it was not even Mr. Cook, so, at that time, yes, it was twenty two (22)
1028 plus thirty (30), which is fifty two (52) for the lot. It appears that the lot is actually closer to fifty
1029 five (55).
1030

1031 VICKI KEENAN: I did see in the minutes, though, and I don't know the exact spot, I wish I'd
1032 written it down, but that at some point, Mr. Cook had the septic plan done which called out the
1033 lot to be fifty nine point three three (59.33) feet.
1034
1035 JIM SMITH: No. I think what you're getting...he, Mr. Cook, the way I interpret what he said...
1036
1037 VICKI KEENAN: Yup.
1038
1039 JIM SMITH: ...interpreted the plan...
1040
1041 VICKI KEENAN: Different, right.
1042
1043 JIM SMITH: ...from what it actually was.
1044
1045 VICKI KEENAN: Right.
1046
1047 JIM SMITH: He interpreted the frontage being equal to the width.
1048
1049 VICKI KEENAN: You're right. You're right.
1050
1051 YVES STEGER: Fifty nine (59) is this one.
1052
1053 VICKI KEENAN: So, going back to that point, I don't see that an error in bad faith. I see that in
1054 either a good faith error in measurement or calculation made by the owner or the owner's
1055 agent...not a misguided attempt to skirt the zoning limits. So that's sort of the point I'm trying
1056 to make here. I don't think it was done in bad faith.
1057
1058 JIM SMITH: I think that the hole that I see in the thing, you're saying his misinterpretation of
1059 the plan, which in my mind, is a form of ignorance, was...what we're you saying, a...?
1060
1061 VICKI KEENAN: Well, it says here in the waiver, "caused by either a good faith error in
1062 measurement or calculation." And so, I'm just thinking, if this goes to Superior Court and the
1063 judge, you know, this goes in front of a judge, I just have a hard time believing that a judge will
1064 think there was bad faith here. And that's sort of what I keep coming back to.
1065
1066 NEIL DUNN: But that...I think we're getting ahead of ourself, one thing, and there's more than
1067 bad faith in that, there's four (4) points.
1068
1069 VICKI KEENAN: No, I agree, but I don't...I don't see a finding on any of the other points,
1070 either.
1071
1072 NEIL DUNN: Well, the Board did.
1073
1074 JIM SMITH: Okay.
1075

1076 RICHARD CANUEL: If I could just add something...

1077

1078 VICKI KEENAN: Well, the Board...yeah.

1079

1080 RICHARD CANUEL: ...maybe just to interject here, if you wouldn't mind. You know, one of
1081 the primary purposes of a rehearing is to grant the Board the opportunity to reexamine its
1082 decision. That's the whole purpose of a rehearing. If the Board feels that there's some
1083 possibility to re-discuss the case, which you're practically doing that now...

1084

1085 VICKI KEENAN: Right.

1086

1087 RICHARD CANUEL: ...there may be good reason to rehear the case. Plus, if you look at the
1088 criteria for the equitable waiver, it says that the Board must find each of those four (4) points to
1089 either grant or deny the equitable waiver. I don't think the Board fully considered all those four
1090 (4) points in their decision because I think you were more focused on the ignorance of the law,
1091 that second criteria. You discussed all the four (4) criteria, but I don't think the Board actually
1092 made their decision based on all four (4) of those points. So, I think just in that paragraph two
1093 (2) of the applicant's request for a rehearing where it mentions the diminution of property
1094 values and providing evidence to show what the property values are, I think that's reason
1095 enough to say, gee you need to reexamine that additional criteria as part of the equitable
1096 waiver. So I think you do have reason, based on the applicant's motion for appeal, to grant a
1097 rehearing. And just the fact that, you know, you're sort of struggling with the decision here
1098 tonight, you know, that's probably reason enough, maybe, to reexamine and reopen the hearing
1099 again and acquire more data.

1100

1101 NEIL DUNN: I would like to stand on the record that I do feel the Board did look at all four (4)
1102 points and that again, we're straying off the motion to rehear. I understand that you wanted to
1103 make your comments on what the Board had decided on those four (4) points. I believe the
1104 Board, in the last meeting, was very clear in going through all four (4) of them, discussing them,
1105 and we're here for a motion to rehear.

1106

1107 YVES STEGER: Yeah, we did go point by point, you remember...?

1108

1109 VICKI KEENAN: I did see that.

1110

1111 YVES STEGER: ...according to the minutes, so we actually, we jumped above two (2) and three
1112 (3). We found out that both (a) and (d) were not applicable, so it was only (c) or (d) and there
1113 was not enough people at that time who believed that there was a significant impact, given the
1114 sizes of the lots...

1115

1116 VICKI KEENAN: Mm-hmm.

1117

1118 YVES STEGER: ...but that there was a definite, at least three (3) out of five (5) found that (b),
1119 definitely there was more than just good faith measurement errors. But that's all.

1120
1121 VICKI KEENAN: Mm-hmm. I agree. That that's how you went through the case, but the
1122 decision...the motion made on the decision was with finding (b), and there wasn't anything that
1123 was stated in the motion as it relates to (a) or (c) or (d) and, I think to Richard's point, I think
1124 that if you read through the minutes, again, the motion was made based on finding (b) and that
1125 was the finding that sort of carried the motion.
1126
1127 NEIL DUNN: But the minutes also did include discussion that some of us did believe that there
1128 was property value...
1129
1130 VICKI KEENAN: ...getting into a discussion...
1131
1132 NEIL DUNN: So all that information is there, that there was some folks who thought there was
1133 other, other than (b) was applicable, so, again, I think we covered it well and that there was
1134 more than just (b).
1135
1136 VICKI KEENAN: Is there any more comment? Or discussion on the Board? Would anyone
1137 like to make a motion?
1138
1139 LARRY O'SULLIVAN: I'd like to make a motion that we rehear case 7/15/2009-2 as the
1140 additional information that has been uncovered individually...well, maybe this isn't the best
1141 motion. I should think this one through a little bit better.
1142
1143 VICKI KEENAN: Well, what is your 'good reason' to rehear?
1144
1145 LARRY O'SULLIVAN: Simply the cost. The cost to rectify...to remove the home...isn't in value
1146 in relation to the benefit for the public.
1147
1148 VICKI KEENAN: Then that probably should state...
1149
1150 LARRY O'SULLIVAN: Now, the next door neighbor, on the other hand...
1151
1152 VICKI KEENAN: Right.
1153
1154 LARRY O'SULLIVAN: ...I do believe has a case and I do still think that there was diminution,
1155 additional diminution of value there. However, I also agree that we should have...he should
1156 have the opportunity to do the presentation with some help.
1157
1158 VICKI KEENAN: Then that's how I think you should state your motion. If you wanna rehear
1159 what the good reason is for rehearing.
1160
1161 JIM SMITH: Why don't base your motion off of what he wrote in paragraph one (1) of the
1162 letter?
1163
1164 YVES STEGER: Mm-hmm. Yup.

1165
1166 LARRY O'SULLIVAN: What *he* wrote in paragraph one (1)?
1167
1168 YVES STEGER: Yeah.
1169
1170 JIM SMITH: You can paraphrase that, I would think.
1171
1172 [pause]
1173
1174 JIM SMITH: Something to the effect like, 'grant a hearing to be in power to present the
1175 arguments on all four (4) points of the equitable waiver...'
1176
1177 LARRY O'SULLIVAN: That isn't what I'm talking about either, though.
1178
1179 VICKI KEENAN: I think it's that more information could...
1180
1181 LARRY O'SULLIVAN: You can make it.
1182
1183 JIM SMITH: I don't wanna make it.
1184
1185 VICKI KEENAN: Could it be that more information could be provided...?
1186
1187 YVES STEGER: So, do you want me to make the motion?
1188
1189 LARRY O'SULLIVAN: Sure, Yves, as long as it's the material cost versus the benefit.
1190
1191 YVES STEGER: Not necessarily.
1192
1193 LARRY O'SULLIVAN: That's what my motion would have been.
1194
1195 YVES STEGER: Yeah, I know, but it doesn't have to be.
1196
1197 LARRY O'SULLIVAN: Okay, well then I might not vote for your motion.
1198
1199 [laughter]
1200
1201 YVES STEGER: So, I move that we rehear case 7/15/2009-2 to give the opportunity to Mr. Cook
1202 to provide more evidence about the four (4) points of the equitable waiver, and we do that
1203 considering the importance and the financial impact of our decision.
1204
1205 LARRY O'SULLIVAN: Second.
1206
1207 VICKI KEENAN: That was beautiful.
1208
1209 LARRY O'SULLIVAN: I'll second that motion.

1210
1211 VICKI KEENAN: There is a motion to rehear case number 7/15/2009-2 and I'm not even going
1212 to try to restate because you did it so beautifully, and there was a second by Larry. Any
1213 discussion around the motion? Alright, seeing none, all those in favor, signify by saying 'aye.'
1214
1215 LARRY O'SULLIVAN: Aye.
1216
1217 YVES STEGER: Aye.
1218
1219 MICHAEL GALLAGHER: Aye.
1220
1221 VICKI KEENAN: Opposed?
1222
1223 NEIL DUNN: Aye.
1224
1225 VICKI KEENAN: Abstentions?
1226
1227 [no response]
1228
1229 RESULT: THE MOTION TO REHEAR CASE NO. 7/15/2009-2 WAS APPROVED, 3-1-1
1230 (with Jim Smith abstaining).
1231
1232 RESPECTFULLY SUBMITTED,
1233
1234
1235
1236 LARRY O'SULLIVAN, CLERK
1237 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY
1238
1239 **APPROVED OCTOBER 21, 2009** WITH A MOTION MADE BY JIM SMITH, SECONDED BY
1240 MICHAEL GALLAGHER AND APPROVED 4-0-1 (MATT NEUMAN ABSTAINED AS HE
1241 HAD NOT ATTENDED THE MEETING).