

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

DATE: JUNE 15, 2011

CASE NO.: 6/15/2011-3

APPLICANT: PHILLIP AND PRISCILLA DALRYMPLE  
PO BOX 1045  
LONDONDERRY, NH 03053-3916

LOCATION: 53 PILLSBURY ROAD; 10-14-8, AR-I

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

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

REQUEST: VARIANCE TO ALLOW A DECK ADDITION TO ENCROACH ON THE SIDE LINE  
SETBACK WHERE 15 FEET IS REQUIRED BY SECTION 2.3.1.3.3

PRESENTATION: CASE NO. 6/15/2011-3 WAS READ INTO THE RECORD WITH NO PREVIOUS CASES LISTED.

JIM SMITH: Who will be presenting?

PRISCILLA DALRYMPLE: I'm Priscilla Dalrymple and I live at 53 Pillsbury Road. And we would like to put a deck on the back of our house. We've lived there for forty two (42) years and the side deck won't be changed at all. He's just gonna extend it toward the back of the house and then put a deck on the back. It won't interfere with any of our neighbors. It will improve our property, I would think. It won't affect the public at all. There will be no crowding of properties. The separation of houses will be the same. And the house was built when we purchased it in 1968 and that's where it was too close to the lot line. My husband did replace the deck probably thirty (30) years ago and he did have a building permit to do that. So we just would like to bring it around to the back and make it a little bit larger so that we can enjoy it. And less noisy. I don't know if you people know Pillsbury Road, but if we sit on our side deck, you can't talk. It's just dreadful. And I've spoken to neighbors on both sides and they don't have any objections. You do have pictures.

VICKI KEENAN: We do.

44 PRISCILLA DALRYMPLE: And I do have pictures of the front of the house, if that would be helpful [see Exhibit  
45 "A"].  
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47 JIM SMITH: Okay. Anyone have any questions or comments?  
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49 NEIL DUNN: No, I mean, it looks like it's basically extending the existing infringement just to get it around the  
50 back of the house, but I guess would be the five (5) points of law.  
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52 JIM SMITH: Anyone else? Okay, you want to go over the five (5) points of law?  
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54 PRISCILLA DALRYMPLE: The first one, the variance will not be contrary to the public interest. It will not affect  
55 any of the neighboring homes. This deck will not bring the addition any closer to the lot line than our existing  
56 deck and it will be primarily in the back of the house, away from the neighbors. Three, this addition will not  
57 affect the public in any way and the values of the surrounding properties are not diminished by this. And then  
58 there is no other location on the house that we could put the deck. There will be no crowding of properties.  
59 Separation of houses will be the same. And the house was built where it is when we purchased it in 1968. The  
60 addition of the deck will only add to the value of our home.  
61  
62 JIM SMITH: Okay, do we have anybody in the public that would like to make any comments, for or against?  
63 Seeing none, anyone on the Board have any additional questions?  
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65 JAY HOOLEY: I guess I would just pose a question to Richard if I might. The existing deck is within the setback?  
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67 RICHARD CANUEL: Yes. As a matter of fact, the entire house is. The house is just about twelve (12) feet from  
68 the property line.  
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70 JAY HOOLEY: Okay.  
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72 PRISCILLA DALRYMPLE: Right.  
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74 JAY HOOLEY: And in this case you didn't recommend the equitable waiver for that prior to the construction?  
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76 RICHARD CANUEL: No, not in this particular case, simply because an equitable waiver is really a relief for  
77 something that has already occurred.  
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79 JAY HOOLEY: That's what I mean.  
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81 RICHARD CANUEL: Yeah, this hasn't occurred yet, so...  
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83 JAY HOOLEY: But the home and the existing deck within the setback?  
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85 RICHARD CANUEL: That's you know, an existing, nonconforming situation. I suppose you could do a...  
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87 JAY HOOLEY: Oh, did the '68 predate the....?

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JIM SMITH: No.

RICHARD CANUEL: No, not necessarily.

JAY HOOLEY: Okay.

RICHARD CANUEL: I see what you're getting at. I suppose the Board could take that approach and grant the equitable waiver for the encroachment as it exists but there would still be the requirement for the variance for the deck because that's an additional encroachment. So I don't think that's necessarily gonna cure anything by taking that route.

JIM SMITH: I think when we had a similar situation, didn't we make the applicant go back and get an equitable waiver on the existing problem, then come back and apply for the variance?

RICHARD CANUEL: That's right. That is right.

JIM SMITH: I think that would make more sense.

RICHARD CANUEL: That was the procedure.

JAY HOOLEY: I believe that was the home on Hall Road?

RICHARD CANUEL: That's right. That was the one, yup.

JIM SMITH: Yes.

JAY HOOLEY: Yeah, the only reason I ask is the immediate previous case, we, you know, I was just curious if there was something that would differentiate this, that we wouldn't follow the same...

RICHARD CANUEL: Well, like I said, that portion of the structure that already encroaches on that sideline setback is a preexisting, nonconforming condition. It can remain that way forever, provided there is no more encroachment or the encroachment isn't enlarged without a variance.

JAY HOOLEY: Whereas the garage is in addition to the...?

RICHARD CANUEL: The garage was, again, constructed in...

JAY HOOLEY: An additional sight encroachment, if nothing else.

RICHARD CANUEL: Yeah, the garage was constructed with a permit and the error was not noticed at the time and allowed to remain, so...

JIM SMITH: Well, okay...

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VICKI KEENAN: Isn't that really the applicant's risk at that....I mean, if...

JIM SMITH: Okay, here's where I'm coming from. I think the reason you should apply for an equitable waiver is that if you try to refinance it or sell this piece of property, the banks may call that as a problem. I had a similar thing with my own property, where I had an existing house; it turned out to be two (2) feet too close to the front property line. I came in and got an equitable waiver. I wasn't trying to refinance. But now that makes that legal so no matter what happens in the future, that issue goes away.

VICKI KEENAN: We can give her that advice but I don't think that not having the equitable waiver should prevent us from making a judgment on the variance requested tonight, right?

JIM SMITH: Well, the logic we used on the other case was that we couldn't.

RICHARD CANUEL: I can't see why not. I mean, the structure is existing. We're not doing anything to that particular encroachment as it stays. The building remains as-is. This variance would be to allow that deck to encroach on that sideline setback.

JAY HOOLEY: I was only looking for clar...I just think we should be as...no two cases are exactly alike, but we should try to be as, in my mind, reasonably consistent as possible in the approach, I would think.

NEIL DUNN: I'm kind of with Vicki on this. I see where the existing condition...I mean, it's way over the time period and all that. Although I totally understand with cleaning up the equitable waiver. It's kind of like, do we just make them bounce back and forth or do we do this and...it doesn't really change the merits of the variance, which is being in front of us, which is technically all we're looking at right here, now.

VICKI KEENAN: Well, let them make that decision on that afterward.

NEIL DUNN: Right, exactly. Exactly.


JIM SMITH: Yeah.

VICKI KEENAN: And the existing conditions of the house as it sits today, in the situation that it is, I mean, very clearly class prong 5.(A).(i). So, there's no point of law in here that doesn't pass for me that would allow us to say you have to get an equitable waiver. I just don't think we have that right to do that. Let them take the risk. If they wanna take the risk and come back for it, if they think it's appropriate, which, by the way, I think it is, but it shouldn't hold up this variance tonight.

PRISCILLA DALRYMPLE: But we could go ahead and start on the deck and I could get the equitable...

JIM SMITH: It's more of a procedure type thing and, again, given the length of time and everything else, she's clearly fit the criteria and the reason they came up with the whole equitable waiver was to clean up these types of cases.

176 PRISCILLA DALRYMPLE: Right.  
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178 JIM SMITH: And it's clearly in your best interests to do that because it then clears that issue from your  
179 property, so if you, for any reason, have to sell it or do something with it or refinance it or whatever you  
180 wanna do, it can't be made an issue at that point.  
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182 PRISCILLA DALRYMPLE: Okay.  
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184 JIM SMITH: And I understand what everybody else is trying to say that we can give a variance on the deck but  
185 it's still...the other part would still remain a problem.  
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187 PRISCILLA DALRYMPLE: Okay.  
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189 JIM SMITH: Technically a problem. Okay, let's continue with the case.  
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191 PRISCILLA DALRYMPLE: So it would be alright to start the deck?  
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193 VICKI KEENAN: If we granted you the variance tonight without the equitable waiver, you could start the deck.  
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195 PRISCILLA DALRYMPLE: Okay.  
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197 VICKI KEENAN: But it's something that you could follow up on at a later date.  
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199 JIM SMITH: Yeah.  
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201 PRISCILLA DALRYMPLE: I would be willing to do that.  
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203 JIM SMITH: Okay, did we get through all the points?  
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205 JAY HOOLEY: Yeah, I think, as far as the points, it's pretty straightforward.  
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207 VICKI KEENAN: Very. Yeah. Very clear.  
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209 JIM SMITH: Okay. Do we have any other questions? Any comments? In that case, the case is closed. We'll  
210 go into deliberation and...  
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212 VICKI KEENAN: No one in the public?  
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214 JIM SMITH: I asked. I already asked but there wasn't anybody there to even...I made a blanket question,  
215 'anybody for or against?' because I didn't see anybody out...okay, so the case is closed. We now go in  
216 deliberation.  
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218 DELIBERATIONS:  
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220 JIM SMITH: Anybody have any comments or do you just wanna make a motion?  
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222 VICKI KEENAN: I'm ready to make a motion on this unless anybody has anything they wanna say.  
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224 JIM SMITH: Okay, make a motion.  
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226 VICKI KEENAN: I make a motion to grant a variance to allow a deck addition to encroach on the sideline  
227 setback where fifteen (15) feet is required by Section 2.3.1.3.3 for case number 6/15/2011-3.  
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229 JIM SMITH: Do I have a second?  
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231 JAY HOOLEY: Second.  
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233 JIM SMITH: I have a second. All those in favor?  
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235 NEIL DUNN: Aye.  
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237 JAY HOOLEY: Aye.  
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239 MICHAEL GALLAGHER: Aye.  
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241 VICKI KEENAN: Aye.  
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243 JIM SMITH: Aye.  
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245 PRISCILLA DALRYMPLE: Thank you.  
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247 RESULT: THE MOTION TO GRANT CASE NO. 6/15/2011-4 WAS APPROVED, 5-0-0  
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250 RESPECTFULLY SUBMITTED,  
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255 NEIL DUNN, CLERK  
256 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY  
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258 **APPROVED JULY 20, 2011** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JAY HOOLEY AND APPROVED  
259 4-0-1 WITH LARRY O'SULLIVAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.  
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