

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

DATE: JULY 1, 2010

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

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

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

REQUEST: MOTION TO REHEAR CASE NO. 5/19/2010-1, A VARIANCE
REQUEST TO ALLOW CONSTRUCTION OF A PORCH WITHIN
THE 40-FOOT FRONT SETBACK AS REQUIRED BY SECTION
2.3.1.3.3., WHICH WAS DENIED ON MAY 19, 2010

PRESENTATION: Clerk O'Sullivan read the written request for a rehearing, submitted by Scott Martin on June 18, 2010.

JIM SMITH: The floor is open.

LARRY O'SULLIVAN: Okay, well, we could take it step by step through each one of the points again. When one of us says 'I agree with this,' it doesn't necessarily mean that everybody does. That's item one (1). If somebody has the opportunity to speak and for whatever reason they choose not to but disagree, typically, we speak up. But due to the fact that, in this particular case, we were hearing various bits of information that came out from both the applicant and the Board, things that seem to be contradictory: Where...what we consider to be a structure; what we consider to be closer to the road. Things that were the definitions of those types of things, we had some conflicts about. So, in my opinion, I don't have an issue with the rehearing specifically based on the fact that they're gonna request an equitable waiver. My only issue is going to be that the points of fact...or the points in the letter, we never voted on every one of them. We spoke to them individually, so I think that may be what the difference is and why we have an appeal here. But I suspect that's a...right now it's a moot point but I think it's something we need to be cautious of in the future.

JIM SMITH: Neil?

NEIL DUNN: So at this point, we still don't have the equitable waiver, so I guess I'm trying to wrap my head around this. Typically, the motion to rehear is because something substantially new has been brought up.

LARRY O'SULLIVAN: And this is the equitable waiver. They're requesting an equitable waiver...

NEIL DUNN: But at this point...right. So, I guess procedurally, do we wait for the equitable waiver to...

LARRY O'SULLIVAN: Oh, I see what you mean.

NEIL DUNN: ...to be voted on or become something that makes this hearing substantially different? At this point, because it hasn't been approved or disapproved or whatever, we don't have any really information for us to reconsider hearing the case. I guess, so, logistically or procedurally or historically, there's something new that makes us say, 'yeah, we should rehear the case.'

LARRY O'SULLIVAN: Well, we're the ones who'd grant the equitable waiver, right?

NEIL DUNN: Right, but the case still hasn't been brought up, it hasn't been...so nothing's changed in the May 19th case. So by us holding this, does it allow them to request a rehearing after the equitable waiver is evaluated or brought before the Board and then be able to rehear this case? To me, I don't see anything right now that changes the substantial information on the case, I guess is my point. And that's typically what we use to determine if we're gonna rehear a case. Is anything new or...come up that would make our thought process, you know, should we revisit the facts?

JIM SMITH: Okay, the thing I would pick up on would be the fact is, Jaye, the equitable waiver will be heard next meeting, right?

LARRY O'SULLIVAN: It's on the schedule?

JAYE TROTTIER: Yup.

JIM SMITH: Yeah, it's already scheduled. If we were to grant this tonight, they couldn't apply until the following month for the rehearing. So, at that point, the equitable waiver would be decided one way or the other.

LARRY O'SULLIVAN: But it's on the agenda anyway, so...

JIM SMITH: No, but I'm saying, it would be another month afterwards. So that you would have another month after that point.

LARRY O'SULLIVAN: But it's already on our July agenda.

JIM SMITH: Right. Right.

LARRY O'SULLIVAN: So that's the significant issue, then.

JIM SMITH: So this, if we grant the hearing, that hearing wouldn't be until August.

NEIL DUNN: I guess my thought would be, so if the equitable goes through and everybody then deter...I think that's when we say, okay, now is it substantial, does that really change the facts in this case?

JIM SMITH: Well, I think the problem we run into is the time frame. We have to make a decision within thirty (30) days...

LARRY O'SULLIVAN: For the appeal.

JIM SMITH: ...of the appeal.

MICHAEL GALLAGHER: Mm-hmm.

JIM SMITH: We don't have the option...

LARRY O'SULLIVAN: So what you're saying, though, is in those thirty (30) days, nothing new has happened?

JIM SMITH: Well, they've applied.

LARRY O'SULLIVAN: That's the new point.

JAY HOOLEY: The application for the equitable wavier...

JIM SMITH: Right.

JAY HOOLEY: ...is the one thing that has occurred that would potentially make a difference.

LARRY O'SULLIVAN: And so...

MICHAEL GALLAGHER: Could we use that as a, you know, I mean, is that possible?

LARRY O'SULLIVAN: Why not? Is it substantially new information that we didn't have the last time? That is the only bit of information that we didn't have the last time and I do think it's substantial.

JOE GREEN: Well, I think it's also that they clarified their position on the porch, the roof. Because we had a big question about...

JIM SMITH: Yeah.

JOE GREEN: ...the structure and it's really...

LARRY O'SULLIVAN: I think we were bound to put a limitation on it anyway.

JOE GREEN: Right.

LARRY O'SULLIVAN: Right? On the porch.

JOE GREEN: But I think we had, if I remember correctly, I think we had the biggest problem with that word that they were using, so...How we defined it. If that word was a different word, we probably wouldn't have had as big of an issue.

JAY HOOLEY: Mr. Chairman, I think we do have one clarification in the applicant's letter where they state "the only difference will be extending the platform at the top, currently four (4) by four (4), to the left under the window, making it four (4) by fourteen (14)." My recollection and a quick reread of the minutes is there was...

LARRY O'SULLIVAN: We didn't have the numbers, right.

JAY HOOLEY: ...some variation on interpretation of the size of the deck location and extent of the stairs and whether or not this would, in fact, project any further into the setback than the existing. We have that certainly clarified in this letter. It's going to remain a four (4) foot projection.

JIM SMITH: If I recall, I think they said six (6) feet.

NEIL DUNN: He did.

JAY HOOLEY: I'm recalling that six (6) feet was mentioned during the meeting. I'm not sure if that was an interpretational issue or a revisit, but...

JIM SMITH: I think the big thing that we have to decide, and just like Neil was bringing up, is there substantial new information being presented in this application for a rehearing? And that's what we're supposed to base our decision on. If there's some new information that was not brought out and deliberated at that time.

LARRY O'SULLIVAN: Mm-hmm. And I believe there is.

JIM SMITH: Okay.

LARRY O'SULLIVAN: And it's the application that we have on our next month's calendar. On our agenda for next month. Just that by itself makes a difference as far as I'm concerned. It's a big step, I think, in my opinion, it was one of the points that I needed to get squared away is that, again, this is a variance on top of a variance on top of a...

JAY HOOLEY: Existing non...

LARRY O'SULLIVAN: ...nonconforming use.

JIM SMITH: Yeah. I printed out the first case when they put the addition on and one of the things...I didn't read the whole thing, but I happened to scan through one point and one of the points they made on their application for that addition, it was going into the same footprint that an existing car port/garage area was. So, they weren't really increasing anything at that point, other than changing how the structure looked. So I...you know, I'm not quite sure if that's quite the same thing as what they're doing on this one.

LARRY O'SULLIVAN: If I may, just...Richard isn't here, but I am pretty sure that when somebody asks if they can build, they don't need to ask if they wanna build a handicapped accessible ramp to their home. They need a permit, perhaps, but at the same time, they don't have to come in front of this Board.

JIM SMITH: Well...

LARRY O'SULLIVAN: And if they decided to build a four (4) foot...

JIM SMITH: No, they would still, but I believe the way the RSA is, it's almost like an automatic.

LARRY O'SULLIVAN: It has to be an automatic, yeah, so...

JIM SMITH: And I checked with Richard afterwards, the way that law is written, evidently, it gives them the right to get a variance to do that for the handicapped person.

LARRY O'SULLIVAN: Mm-hmm.

JIM SMITH: However, it's supposed to be there only while that need is there.

NEIL DUNN: It doesn't stick with the property like another variance would.

JIM SMITH: Right. Right.

LARRY O'SULLIVAN: Right.

JIM SMITH: So that's a difference. Any other comments?

LARRY O'SULLIVAN: No, I'd like to make a motion if you're ready.

JIM SMITH: Go ahead.

LARRY O'SULLIVAN: A motion to rehear case number 5/19/2010-1, being that we have been presented new information that's substantial.

JIM SMITH: Do I have a second?

JAY HOOLEY: Seconded, Mr. Chairman.

JIM SMITH: Jay has seconded. All in favor?

LARRY O'SULLIVAN: Aye.

NEIL DUNN: Aye.

MICHAEL GALLAGHER: Aye.

JAY HOOLEY: Aye.

JIM SMITH: Aye.

RESULT: THE MOTION TO GRANT A REHEARING OF CASE 5/19/2010-1 WAS GRANTED, 5-0-0.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Larry O'Sullivan". The signature is fluid and cursive, with a long horizontal stroke at the end.

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

APPROVED JULY 21, 2010 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JOE GREEN AND APPROVED 5-0-0.