

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

DATE: AUGUST 18, 2010

CASE NO.: 5/19/2010-1 (REHEARING)

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
MICHAEL GALLAGHER, VOTING ALTERNATE
JOE GREEN, VOTING ALTERNATE
JAY HOOLEY, VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

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

REQUEST: VARIANCE TO ALLOW CONSTRUCTION OF A PORCH WITHIN THE 40-FOOT FRONT
SETBACK AS REQUIRED BY SECTION 2.3.1.3.3.

PRESENTATION: CASE NO. 5/19/2010-1 WAS READ INTO THE RECORD WITH 2 PREVIOUS CASES LISTED.

JIM SMITH: The applicant, do you want to come forward and present your case?

SCOTT MARTIN: Okay, so, as just stated, the reason we're here...the reason we got a rehearing was based on the fact that we had applied for the equitable waiver, which we have since received, so that part has been taken care of. Another big part of what happened last time was I wasn't here to clarify exactly what we wanted and I'm here to happily do that so you'll know exactly the dimensions of the deck as I originally intended. It was misconstrued at the last meeting. There was a lot of talk about "porch" versus "deck" and all that kind of language, but I have noticed that on the sheet that I received, I was very careful to use the word "deck" because it never was a porch from the beginning. The representative that we had on the first meeting called it a porch, but it's deck. A porch would imply a roof and there is not going to be any roof. So I was very careful on the reapplication to not use the word porch, yet it still showed up. You know, it says "Scott and Marie Martin request a variance to allow construction of a porch within the forty (40) foot front setback." It's not a porch. It's a deck. I just wanna clear that up right off the bat. I mean no roof. Alright? So I guess as, like last time, should I just go through the...?

JIM SMITH: Yes, you need to go through all those five (5) points...

SCOTT MARTIN: Okay.

JIM SMITH: ...because this is essentially a brand new case.

SCOTT MARTIN: Okay. No problem. Okay, so a variance is requested for the following reasons: to repair our deteriorating cement front steps by replacing them with a wooden deck. I did include a drawing [see Exhibit "A"] that everybody should have a copy of up there to show exactly the old structure, the way it exists now and the proposed structure. Facts supporting this request. The variance will not be contrary to the public interest. There is no adverse effect on the public interest. The spirit of the ordinance is observed. No part of the new deck will be closer to the road than the original existing stairs, or the original existing structure. I'll get into exact dimensions a little later on. Substantial justice is done. We will be able to repair our steps while enhancing the appearance of the front of the house. Also, our daughter will be able to use the deck while waiting for the bus instead of standing in the driveway. This will improve safety, given the fact that our house is closer to the road than the current setbacks allow. The main reason we're here. The values of surrounding properties are not diminished. Repairing the currently deteriorated structure will not adversely affect the surrounding property values. Okay, no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property. It is not uncommon to see houses with front decks in Londonderry. It's a very common thing. The proposed use is a reasonable one. The home does not meet the current forty foot setback, which puts the front of the house in violation of the traditional building permit. We simply wish to extend the stair platform to the left underneath the front window. The new stairs...the new platform will be four (4) feet by fourteen (14) feet, versus the current four (4) feet by four (4) feet. The stairs will be in the same place and will be the same size as the current stairs. There are two (2) steps right now from the walkway that we have. Two (2) steps and then a four (4) by four (4) platform at the top of the steps. And all we want to do, as I just stated, is take that platform and extend it underneath a window that we have to the left of our house. So it just makes it longer along the house. And the last thing, a special condition that exists is the fact that the home is too close to the road by today's standards, so...I think that's about all I have to present. It's pretty simple, as you can see by the drawing. I really don't have any more to add.

JIM SMITH: Okay. At that point, do the Board members have any questions?

LARRY O'SULLIVAN: Sure. When you had your variance the first time through, you had requested to have a twenty five (25) foot from the road setback. Right? For your new addition.

SCOTT MARTIN: Yes.

LARRY O'SULLIVAN: Right. So what this is is four (4) feet closer to the road.

SCOTT MARTIN: Right.

LARRY O'SULLIVAN: Okay.

SCOTT MARTIN: But not closer than the existing stairs that are there.

LARRY O'SULLIVAN: Okay, well you didn't measure from the stairs the first time, so why would you measure from the stairs this time? The last time, we said twenty five (25) feet for your addition and it was.

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: So now we're twenty one (21) feet.

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: Okay, so that's a significant difference. It's not a major thing...

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: ...as far as I'm concerned.

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: But at the same time, we have the drawing that we have in front of us that needs some clarification. We have a six (6) foot, in the middle of the drawing, there's the two (2) arrows that point to the, I suspect, to the bottom of the steps?

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: Which is six (6) feet...

SCOTT MARTIN: Yes.

LARRY O'SULLIVAN: ...from the road.

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: ...I'm sorry, six (6) feet from the house.

SCOTT MARTIN: Yes.

LARRY O'SULLIVAN: Okay. So, that went from four (4) feet total to six (6) feet, right? And your new section is four (4) feet, correct? The new...I suspect that will be the wood section? So you'll have, like, a brick section and then a...or a stone section and then wood?

SCOTT MARTIN: Right. Right. Right.

LARRY O'SULLIVAN: Okay. Decks.

SCOTT MARTIN: So, I'm not sure I understand what you're saying. The twenty five (25) feet is from the front of the house, not from the front of the deck.

LARRY O'SULLIVAN: Right. It's not from the steps, either.

SCOTT MARTIN: Right. Right.

LARRY O'SULLIVAN: Right?

SCOTT MARTIN: Right.

LARRY O'SULLIVAN: Thank you.

SCOTT MARTIN: Okay.

JIM SMITH: So, essentially, we're saying it's gonna be twenty one (21) foot setback to the deck.

SCOTT MARTIN: Right.

JIM SMITH: Okay.

SCOTT MARTIN: That's what's existing. That's what's there now.

JIM SMITH: Okay.

JOE GREEN: Actually, I'm still...

LARRY O'SULLIVAN: That's where the stairs go.

SCOTT MARTIN: Yes. With the stairs.

LARRY O'SULLIVAN: With the stairs, right.

SCOTT MARTIN: Yeah, yeah.

MICHAEL GALLAGHER: So the six (6) feet, your including is in the stairs?

SCOTT MARTIN: Is with the two (2) stairs, yes.

MICHAEL GALLAGHER: Okay.

SCOTT MARTIN: Yes. It's a four (4) foot platform at the top with two (2) stairs.

MICHAEL GALLAGHER: Okay.

SCOTT MARTIN: That's the entire distance from the front of the house.

MICHAEL GALLAGHER: Right.

SCOTT MARTIN: That will go out.

JOE GREEN: Can you walk me through your...on page three (3), the proposed structure? 'Cause I interpreted it a little different. I just wanna make sure that we all are still on the same page because I'm a little confused.

SCOTT MARTIN: Okay.

JOE GREEN: If you look at your edge of the prop...Hall Road...

SCOTT MARTIN: Mm-hmm.

JOE GREEN: ...it says "proposed structure"...

SCOTT MARTIN: Mm-hmm.

JOE GREEN: ..."Hall Road," and then there's an arrow, "25" ...

SCOTT MARTIN: Mm-hmm.

JOE GREEN: ...and it actually points to the tip of the "new section."

SCOTT MARTIN: Right, that's my...yeah, it should be same as up top. It should be to the house.

JOE GREEN: Okay.

SCOTT MARTIN: Yeah. I didn't do this on graph paper or anything. I probably should have done it that way to make it more precise.

JOE GREEN: Okay. I just [indistinct] wanna be clear.

SCOTT MARTIN: Right.

JIM SMITH: The other way you could correct that drawing would be to change that twenty five (25), showing the "new section" to twenty one (21).

SCOTT MARTIN: Right.

JIM SMITH: Right. Any other questions? Okay, I'll open it up to anybody in support.

LARRY O'SULLIVAN: Excuse me, Jim, I'd like to ask for some clarification. One of the responses was that the home...that you're requesting a variance for a deck in front because the home is too close to the road, yet you're building closer to the road.

SCOTT MARTIN: I'm not building any closer to the road than what's there currently.

LARRY O'SULLIVAN: Yes you are.

SCOTT MARTIN: No. No, it's not coming any further out. It comes out six (6) feet right now.

MICHAEL GALLAGHER: Right.

LARRY O'SULLIVAN: We didn't measure anything...

SCOTT MARTIN: The platform is going to be six (6) feet...I mean four (4) feet...

LARRY O'SULLIVAN: Right.

SCOTT MARTIN: ...going over to the left of the...underneath the window.

LARRY O'SULLIVAN: Nothing was ever measured to the platform. Nothing was ever told in your variance request about a platform. It was to the existing structure, the house itself.

SCOTT MARTIN: Right.

LARRY O'SULLIVAN: Right. So, what I'm talking about is that the four (4) feet that was there, nobody was counting the steps to your house at that time. So why would we count them now? That's my point, is we shouldn't be counting them now. It's the deck that's the concern.

SCOTT MARTIN: Okay.

LARRY O'SULLIVAN: So, with that, you said it's too close to the road, therefore, you'd like to build closer to the road.

SCOTT MARTIN: All I wanna do is take this and extend out underneath. I really don't see what the problem with that is.

LARRY O'SULLIVAN: You used it as an excuse, Mr. Martin.

SCOTT MARTIN: It's not coming any closer to the road.

LARRY O'SULLIVAN: I don't mean to be argumentative. I mean to get some clarification on it. You said you're requesting a variance because your house is too close to the road.

SCOTT MARTIN: Mm-hmm. We have to. That's the way we have to go about it. We can't just build a deck on the front.

LARRY O'SULLIVAN: Well, that has to be the significant issue about the home.

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: The reason why you got the first variance was so that you would be able to use the property...

SCOTT MARTIN: Right. Absolutely.

LARRY O'SULLIVAN: ...up to twenty five (25)...

SCOTT MARTIN: Because otherwise we'd have to offset it off the, you know, the addition would be offset and that just wouldn't work the way the property is laid out.

LARRY O'SULLIVAN: Right, so the purpose of the deck...when you had it included as a ramp or a ramp to make access for a wheelchair, right...?

SCOTT MARTIN: Yeah, that was a possibility.

LARRY O'SULLIVAN: Because that isn't showing here and you didn't mention anything about it...

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: ...is it something you still plan on?

SCOTT MARTIN: Now that we know we don't have to go through the exact same channels for that to happen, that was a "maybe." Alright? When we know we need to do it for sure, then we'll take it out. But it was a "maybe" at that point.

LARRY O'SULLIVAN: Okay, so it's still a potential in your plan?

SCOTT MARTIN: Possibly.

LARRY O'SULLIVAN: Okay, two (2) years down the road, five (5) years down the road?

SCOTT MARTIN: It could happen. It could happen.

LARRY O'SULLIVAN: I'm looking for some help in making a significant difference between your property and everybody else's.

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: Because I don't think "you built your house too close to the road" is a reason to build closer to a road.

SCOTT MARTIN: Okay.

LARRY O'SULLIVAN: So, what makes your property unique is what I'm stuck on. Therefore, I'm suggesting that you suggest or you promote the fact that you have a ramp that you'd like to build sometime in the future because that's going to allow us more flexibility.

SCOTT MARTIN: Okay.

LARRY O'SULLIVAN: Anybody care to discuss that one?

JOE GREEN: Well, I think we're still "in public", right?

JIM SMITH: Yeah. No, yeah, we're in public. To try to clarify, I think what he's trying to get across is the idea of using the fact that your house is too close as the unique characteristic of your house to ask to build something which, in fact, is, in fact, closer to the front property line.

SCOTT MARTIN: Mm-hmm.

JIM SMITH: I think what he's trying to get you to say is you need some other fact or some other justification other than the fact that it's just too close to the road.

SCOTT MARTIN: Okay. The ramp is a possibility in the future.

LARRY O'SULLIVAN: Good step in the right direction there. Now the other...

JIM SMITH: We need something to hang our hat on.

LARRY O'SULLIVAN: Where are you going to go...the steps, for example, are going to be about six (6) feet from the front of the house, right? To bottom step.

SCOTT MARTIN: Yes. Mm-hmm.

LARRY O'SULLIVAN: Okay. So you'll already have intruded into that area. You don't feel it's unsafe? You don't have any question or qualm about putting your walkway where you've drawn it here or issues there?

SCOTT MARTIN: No.

LARRY O'SULLIVAN: Okay. Because you know, as you get closer to the road...

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: ...our concern is always gonna be health, safety and your neighbors.

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: Of course, we have all of those things written into our zoning ordinances. They're written into the requirements for building requirements as well.

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: So, if you're comfortable with it, it's your home. Those reasons plus the fact that you're comfortable with it, all those things are in your favor, okay, to get this thing through.

JIM SMITH: Any other questions of the Board members? Okay, now it's open to the public in support. Please identify yourself.

AL BALDASARO: Thank you, Mr. Chairman. Al Baldasaro. I come here not only as his neighbor but as a friend and a good friend of his father and also as his State Rep who he contacted there on, you know, trying to figure out how to handle this here. You know something that's weird, I drive down that street every day. There's some houses, it's out of his control. Now, Maria's mother had owned that house way before. Had that house built, lived there, she grew up in that house. The bottom line here is the house has been there, there's many others on my street just like it. When they cut the road in, there's houses that come out even closer. This is a win-win for him. I'm surprised he's not even putting a roof on because I told him, you got a little girl that's going to first grade, she's gonna be out there in many snowstorms there and you're not even gonna have a roof but if you look at the house, two (2) houses over that's even closer, they got a nice, beautiful porch there, nice roof on there, you know, to protect the interest of the children in the morning. So this is something here that, you know, it's a shame because everyone's worried they're gonna get turned down and he's got a set of stairs he's gone through now for the last three (3) months that are all broken up and unsafe. And he's going in and out of here to try to figure out what to do. This is why people watching this here and other things that go on in our town, trying to be business friendly here and friendly to our community to help them. I wish you guys would roll down my street and take a look at some of them houses that are even closer. Some of them probably even built them without even coming here. He took the time and energy to even do the right thing, come here, and all he's asking to put this porch in. He's done so much work to that house, which was a shack before. I mean, [to Marie Martin] no disrespect to your mom's house, but I mean it needed a lot of work. He brought it back to life. Brought taxes up in the property and this is a win-win for his family to be in a safe condition, especially for his little girl that's there. I see her out there every day there, you know, waiting for the bus there, standing in the little driveway. So I'm asking you to support this here so they can move on and get this done. Thank you.

JIM SMITH: Anyone else wish to speak? Any opposition? If not, I'll bring it back to the Board. Any other questions?

SCOTT MARTIN: There is actually one other thing.

JIM SMITH: Okay.

SCOTT MARTIN: If I'm still able to.

JIM SMITH: Sure.

SCOTT MARTIN: I had completely forgot. I'm just overwhelmed with everything else. I do have a petition that, along the lines of what Al just said that everybody in our neighborhood is in support of this and I don't know if it's necessary to have copies for everybody, but I do have...

JIM SMITH: You can just give it to the Clerk.

SCOTT MARTIN: Okay.

LARRY O'SULLIVAN: And I'll give it to Jaye.

SCOTT MARTIN: Alright, this is the original and there's all the copies.

JIM SMITH: Is there any text to that?

LARRY O'SULLIVAN: I'll read it.

JIM SMITH: Yeah.

[Exhibit "B" was read into the record]

SCOTT MARTIN: There are thirty five (35) signatures.

LARRY O'SULLIVAN: Okay. Mr. Martin, none of us have an objection to you building a deck.

SCOTT MARTIN: Right. I just wanted to...

LARRY O'SULLIVAN: Right? The issue is is that the building's too close to the road and the deck's gonna be even closer. You didn't mention where you were going to be with the...and your circumstances in this letter.

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: However, no matter what you brought to us, unless you meet those five (5) points...

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: ...or six (6) or seven (7) points now...seven (7) points, you don't get a variance.

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: Okay? So that's what we'll be discussing, is meeting those seven (7) points. I believe we've asked a couple of questions to help you clarify those points.

SCOTT MARTIN: Mm-hmm.

LARRY O'SULLIVAN: So...

JIM SMITH: Okay. At this point, we'll close the public hearing and go into deliberative...

DELIBERATIONS:

JOE GREEN: Well, I can start. I don't wanna start a big fight here but at the same time, I'm still in the same place I was the last hearing. I was one of the only people that voted for this variance and I still stand the same way, saying I don't think it matters whatsoever. As I said before, I completely disagree, respectfully. The four (4) foot out on the stairway, the two (2) additional with the stairs; he's not getting any closer to the road, period. I mean, you can't tell me he is. We have a twenty five (25) foot from the building, okay, to the side of the road. That's not changing. He's not pushing his whole house forward. Obviously, you have to have stairs. Obviously, you have to have a landing. He's just extending his landing. This is a very simple case in my idea.

MICHAEL GALLAGHER: I agree, I just think that...oh, I'm sorry, Jay...

JAY HOOLEY: Go ahead.

MICHAEL GALLAGHER: I agree, I just...I think there was a little confusion with the drawings is all. So, you know, as you said, Joe, it looks like the deck is four (4) feet and that hasn't changed.

JOE GREEN: And that's twenty one (21) feet, guys. That's what we were talking about earlier.

MICHAEL GALLAGHER: Yeah.

JIM SMITH: Yeah.

JOE GREEN: So it's...the twenty five (25) is still...

JIM SMITH: Jay?

JAY HOOLEY: I didn't sit on the original case but I'm viewing that the request for the addition, the addition was twenty five (25) feet. The existing porch, which now has an equitable waiver, was already there and was encroaching four (4) more feet into the setback than the addition.

LARRY O'SULLIVAN: Mm-hmm.

JAY HOOLEY: We're simply allowing that other four (4) feet that already existed to be wider.

MICHAEL GALLAGHER: Yes.

JAY HOOLEY: There is no further encroachment into. Nothing is closer than what the edge of that original set of stairs and deck was thirty (30) odd years ago. It's just a little wider. The encroachment distance remains the same. That's how I'm viewing it.

MICHAEL GALLAGHER: Yeah.

JIM SMITH: Okay. Does anyone have any problem with any of the points of law?

LARRY O'SULLIVAN: Nope.

JAY HOOLEY: No.

JIM SMITH: No? Okay, I'd accept a motion at this point.

LARRY O'SULLIVAN: Motion to approve case number 5/19/2010-1, a variance to allow construction of a porch within the forty (40)...actually, that is, it does say "porch," but we understand that to mean "deck" in this case...

JAY HOOLEY: Right, deck.

LARRY O'SULLIVAN:within the forty (40) foot front setback as presented.

JOE GREEN: I'll second that.

JIM SMITH: All those in favor?

JOE GREEN: Aye.

JAY HOOLEY: Aye.

MICHAEL GALLAGHER: Aye.

LARRY O'SULLIVAN: Aye.

JIM SMITH: Aye.

RESULT: THE MOTION TO GRANT THE VARIANCE WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "Larry O'Sullivan". The signature is written in a cursive, flowing style.

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

APPROVED NOVEMBER 17, 2010 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JIM SMITH AND APPROVED 3-0-1 WITH MATT NEUMAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.