

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

5 DATE: DECEMBER 16, 2009  
6

7 CASE NO.: 12/16/2009-4  
8

9 APPLICANT: RALPH AND MICHELLE BRUTUS  
10 30 WEST ROAD  
11 LONDONDERRY, NH 03053  
12

13 LOCATION: 30 WEST ROAD, 2-27-4, AR-I  
14

15 BOARD MEMBERS PRESENT: VICKI KEENAN, CHAIR  
16 YVES STEGER, VOTING MEMBER  
17 NEIL DUNN, VOTING MEMBER  
18 JIM SMITH, VOTING MEMBER  
19 MICHAEL GALLAGHER, NON-VOTING ALTERNATE  
20 MATTHEW NEUMAN, NON-VOTING ALTERNATE  
21 JOE GREEN, NON-VOTING ALTERNATE  
22 LARRY O'SULLIVAN, CLERK  
23

24 ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/  
25 ZONING OFFICER  
26

27 REQUEST: AREA VARIANCE TO ALLOW A TWO-FAMILY  
28 DWELLING TO REMAIN ON A LOT WITH LESS THAN  
29 THE REQUIRED AREA IN ACCORDANCE WITH SECTION  
30 2.3.1.3.1.4.  
31

32 PRESENTATION: CASE NO. 12/16/2009-4 WAS READ INTO THE RECORD WITH NO  
33 PREVIOUS CASES LISTED.  
34

35 BRUCE GILDAY: Good evening, Board members, my name is Bruce Gilday. I'm with BAG  
36 Land Consultants, an environmental consulting firm out of Concord, New Hampshire. My  
37 background is in civil engineering and I've been a septic designer for twenty five (25) years.  
38 When I was working in the 80's, I helped design some of the streets and did a lot of septic  
39 designs in the town of Londonderry. And I also volunteered two (2) years to do your prime  
40 wetland study back in the 90's but that's beside the point. Right now I started an environmental  
41 consulting firm that is certified to do wetland delineations and also septic designs and soil  
42 mapping. With me tonight is Mr. Ralph Brutus from 30 West Road, representing himself and

43 his wife, Michelle. And in the audience is Ralph's mother-in-law, Elaine. I was asked by the  
44 applicant to come here because I know the parcel of land that he has. It's, I think, map 2, lot 27-  
45 4. It shows up on your tax maps as being approximately sixty five thousand (65,000) square  
46 feet. The house originally was a three (3) bedroom home with an inground septic system. I  
47 guess Ralph built a non-descript one bedroom unit for his in-laws above the garage. And that  
48 has turned it into, not a single-family, but into a duplex. So, [Assistant Building Inspector] John  
49 Gilcreast requested that Mr. Brutus get a soil scientist, Mr. Gilday, to come out and do a high  
50 intensity soil map. That's a requirement in this town to meet the minimum lot size. I came out,  
51 I looked at this land. I mapped it. I handed you two (2) photos [see Exhibits "A" and "B"]. I  
52 handed you one that was a one (1) inch equals a hundred (100) certified plot plan that has an  
53 overlay of my three (3) types of soils that I found out there. All the soils are very, very good.  
54 I'll get into a little more detail. There are no ledge outcrops. There are no steep soils on this  
55 parcel. There's a 221C series soil, this is a well drained glacial till with no restrictive features. It  
56 requires a minimum of forty six thousand (46,000) square feet. There's a 321, which makes up  
57 the majority, 321B soil type H.I.S.S. mapping that I mapped out there. That requires fifty four  
58 thousand, five hundred (54,500) square feet. That makes up about ninety thousand (90,000)  
59 square feet of the lot. That's a moderately well drained, seasonal high water tables between  
60 fifteen (15) and thirty eight (38) inches. And then there's a 321C soil which is out in the very  
61 front corner, it's approximately about six thousand (6,000) square feet and that requires sixty  
62 thousand, five hundred (60,500) square feet. All these soils are very good soils. Originally, the  
63 soils were mapped as a Chatfield-Hollis-Canton. That's a complex soil that Rockingham County  
64 mapped. It's a broad mapping of the soils. The smallest area that they can actually show on  
65 those county maps is three (3) to four (4) acres. I asked why about twenty (20) years ago and  
66 they said because we have to put a symbol in there and that's the smallest that we can get for  
67 the symbol. But when you require, like the Town of Londonderry did, a high intensity soil map  
68 to show that a lot, a residential lot can hold a house, a driveway, a lawn, a residential drilled  
69 well with a well radius and also a septic, an inground system, there's a certain amount of area  
70 that's required and that's why the high intensity is adopted. The minimum area that a soil  
71 scientist will map out is two thousand (2,000) square feet for a high intensity soil map. So I kind  
72 of envision a forty (40) by fifty (50) foot area. If it's any smaller than that, then we don't have to  
73 call it out. It's at the discretion of the soil scientist. But if it's a minimum of two thousand  
74 (2,000), then we have to call out that soil type. Well, we had two (2) soil types out here. We had  
75 the well drained glacial till in the back, that's the 221CH and we had the 321, the moderately  
76 well drained and the only difference there is that there's a B Slope, zero (0) to eight (8) percent,  
77 and there's a C Slope in the very front corner, which is eight (8) to fifteen (15) percent. These are  
78 quite common throughout Londonderry, these soils. If you look at these soils and you do the  
79 calculations for the minimum soil based lot sizing in Londonderry, you come out with  
80 approximately one point two one (1.21). So it does meet that requirement. Where Mr. Brutus  
81 has gone from three (3) bedrooms originally for the dwelling, by adding the one (1) bedroom  
82 above the garage, it goes to four (4) bedrooms. These soils, these good soils, and I'm a septic  
83 designer and a soils...can accommodate up to six (6) bedrooms on this lot. I think John  
84 Gilcreast would agree with that. It's just that the lot is sixty five thousand (65,000) square feet

85 and John Gilcreast says that you basically need seventy two (72) or seventy three thousand  
86 (73,000) square feet for a duplex lot. So we're here for a variance because we have less than the  
87 required area. I would say with the aerial photo that I had, the second one, that shows the  
88 county soils and this 30 West Road property, this sixty five thousand (65,000) square feet, has  
89 one (1) abutter to the south on West Road. It's a corner lot and the abutter to the direct east is  
90 about six hundred (600) feet through the woods, so, it hasn't really...if you look at the one (1)  
91 bedroom unit that was placed above the garage, you wouldn't tell it was any different from any  
92 other house and you can see in that aerial photograph that it's not a huge McMansion or  
93 anything of that nature. It blends in nice with the community and I don't think it looks any  
94 different than any of the other houses as your drive by. So with that, I'll entertain some  
95 questions.

96  
97 VICKI KEENAN: Would you like to walk through your application and then we'll open it to  
98 the Board?

99  
100 BRUCE GILDAY: Yes, and I'm gonna ask the applicant to talk. I've waited here three (3) hours.  
101 He wrote this up with his wife, Michelle.

102  
103 RALPH BRUTUS: So starting with four (4)?

104  
105 VICKI KEENAN: Yes, please.

106  
107 RALPH BRUTUS: Okay.

108  
109 VICKI KEENAN: And state your name just for the record.

110  
111 RALPH BRUTUS: My name is Ralph Brutus. I live on 30 West Road.

112  
113 VICKI KEENAN: Thank you.

114  
115 RALPH BRUTUS: The variance is basically to get an in-law apartment or second family, I don't  
116 know exactly how it's gonna be at the end. But the facts to support this request is there are  
117 several other two (2) family properties in the neighborhood. The appearance at the house also  
118 does not appear as a two (2) family. It is a well kept home that adds appeal to the family  
119 shopping Londonderry for new homes at the present time. It is not used as a rental property. It  
120 is strictly a family home used for elderly parents. The variance is needed due to a shortage of  
121 square footage. It would be extremely costly to change the existing space. Taxes for the Town  
122 were increased and the property value for the house was increased. Even though the space is  
123 short in footage, the appearance of the building on the lot does not overwhelm the property.  
124 That's it.

125

126 VICKI KEENAN: Can I start with the first question? You mentioned there were a couple of  
127 other multi-family lots in the neighborhood. Do you happen to know what those lots are and  
128 what sizes those lots are?  
129

130 RALPH BRUTUS: Actually, me, personally, there are some, if you go by the West Road, the  
131 soccer fields, as you go towards the wetland, there's a couple two-family houses on the left.  
132 And also driving around, it's just that you only notice it until you get up to them to see there's  
133 two set of doors and that's when you could see them. I didn't really go and check out their  
134 zoning, how much space they have or anything like that, so I couldn't really tell you exactly  
135 how much space their using.  
136

137 NEIL DUNN: If I may...?  
138

139 VICKI KEENAN: Sure.  
140

141 NEIL DUNN: So you're saying you're not sure if your duplex...I know your Town card doesn't  
142 show you as a duplex...Richard, do we know when the addition was put on and are there  
143 kitchens and bathrooms and everything that's making it a duplex?  
144

145 RICHARD CANUEL: Well, the addition was put on in 2008 and it was for a garage with living  
146 space above with great room and office area and at some point, between that time and now, the  
147 space was either converted or being used as additional living space. Because of the area, it's  
148 twelve hundred (1,200) square feet, it doesn't comply with our ordinance as far as accessory  
149 apartments go because they exceed the seven hundred and fifty (750) square feet. So it was  
150 either renovate the unit to comply to the seven hundred and fifty (750) square feet, but because  
151 of the configuration of the construction there now, it would be difficult to do that and meet the  
152 seven hundred and fifty (750). The only other option is to apply the two-family criteria of the  
153 ordinance. Once we get to that issue, because of the requirements in our ordinance for two-  
154 family units not served by municipal water and sewer, there's additional area required for the  
155 property, so...  
156

157 NEIL DUNN: Yeah, I understand that.  
158

159 RICHARD CANUEL: So, that's why...  
160

161 NEIL DUNN: So it has separate entrances, it's not connected, it's truly a duplex.  
162

163 RICHARD CANUEL: Well it's all connected. It's not a duplex. It's a two-family. By definition  
164 of our ordinance, a two-family is a duplex.  
165

166 YVES STEGER: Is that why...

167  
168 RICHARD CANUEL: It may not appear as a duplex but it is a two-family residence.  
169  
170 YVES STEGER: Is that why he is recommending that another option is to remove the kitchen,  
171 so that will make it a single-family?  
172  
173 RICHARD CANUEL: Well, no, it would take more than just simply removing the kitchen.  
174  
175 YVES STEGER: I thought it was one of his three (3) options that he presented.  
176  
177 RICHARD CANUEL: Oh, to make it a single-family? Yes, I'm sorry. Yeah. It would be more  
178 than just removing the kitchen to make it an accessory apartment.  
179  
180 YVES STEGER: Exactly, so...  
181  
182 RICHARD CANUEL: They'd have to remove the kitchen and revert it back to, you know, a  
183 great room or whatever the original intent was for that living space. Anything other than a  
184 separate living area.  
185  
186 LARRY O'SULLIVAN: So he has a forty thousand (40,000) square foot lot, is that what the...?  
187  
188 RICHARD CANUEL: The lot is sixty five thousand (65,000) square feet, just over.  
189  
190 BRUCE GILDAY: Yeah, one point five (1.5) acres.  
191  
192 RICHARD CANUEL: Yup.  
193  
194 JIM SMITH: You need one point four (1.4) times whatever you need for a single-family lot. So  
195 by what percentage are you below the one point four (1.4)?  
196  
197 BRUCE GILDAY: Seven thousand (7,000) square feet, is that...? Oh, percentage?  
198  
199 NEIL DUNN: Percentage.  
200  
201 JIM SMITH: Yeah.  
202  
203 BRUCE GILDAY: Well, if I did the calculations, it would be one point two one (1.21).  
204  
205 JIM SMITH: So you're at one point two one (1.21) versus the one point four (1.4).  
206  
207 BRUCE GILDAY: Yes.  
208

209 JIM SMITH: So you're approximately nineteen (19) percent below what you should be.  
210  
211 YVES STEGER: Sixty five (65) to seventy three (73), correct?  
212  
213 NEIL DUNN: Yeah.  
214  
215 YVES STEGER: So...  
216  
217 MATT NEUMAN: That's a lot of math.  
218  
219 JIM SMITH: What?  
220  
221 MATT NEUMAN: That's a lot of math.  
222  
223 NEIL DUNN: Sixty five (65) and seventy (70)...  
224  
225 JIM SMITH: Well, see, the complication with the high intensity soil study...  
226  
227 MATT NEUMAN: Mm-hmm.  
228  
229 JIM SMITH: It has to be a weighted average of the various types of soils that are on the  
230 particular piece of property.  
231  
232 MATT NEUMAN: Right. Mm-hmm.  
233  
234 VICKI KEENAN: So you mean this 221CH, which doesn't comply? It's not...?  
235  
236 JIM SMITH: No, no. What they do is, they take this number here...  
237  
238 VICKI KEENAN: Yup. Yup.  
239  
240 JIM SMITH: ...and take what percentage of one point four (1.4) times that would be...  
241  
242 VICKI KEENAN: Okay.  
243  
244 JIM SMITH: ...then they take the next one and the next one and they add it together...  
245  
246 NEIL DUNN: Mm-hmm.  
247  
248 JIM SMITH: ...as a weighted percentage.  
249  
250 VICKI KEENAN: Okay.

251  
252 JIM SMITH: And what he's suggesting is he comes up with approximately a total of one point  
253 two one (1.21) percent...  
254  
255 VICKI KEENAN: Right.  
256  
257 JIM SMITH: ...of what would be required...  
258  
259 VICKI KEENAN: Okay.  
260  
261 JIM SMITH: ...versus the one point four (1.4) which is...  
262  
263 VICKI KEENAN: Got it.  
264  
265 NEIL DUNN: They have to have.  
266  
267 VICKI KEENAN: Okay.  
268  
269 BRUCE GILDAY: So, it's over one (1), so it could serve as a single-family residence but because  
270 it's a two-family duplex, it has to be one point four (1.4) and the calculations for these good  
271 soils, and these are very good soils, it's point one nine (.19) short.  
272  
273 LARRY O'SULLIVAN: Okay, so our issue is...my issue with this is the waste water, obviously,  
274 that's why the Town has these requirements. He has a lot of area, there's a soil area, and then  
275 there's how you rate the soil. Isn't that correct in the way you do your calculations, the drainage  
276 and what have you?  
277  
278 BRUCE GILDAY: Yeah, basically, the sizing of the lot is so you can have all your influences on  
279 that lot. Your home, your foundation, your driveway, your impervious, your well radius  
280 separated a good distance from your septic system.  
281  
282 LARRY O'SULLIVAN: Right.  
283  
284 BRUCE GILDAY: And this soil, it's a Chatfield-Hollis-Canton soil but without any ledge  
285 or...which are some of the other...it's a complex soil. It's more of a Canton type soil but when I  
286 was doing by augering and digging out there, I found that the seasonal high water table was not  
287 in the well class, so I classified and typed out a moderately well drained for the majority of  
288 these soils. But there's no steepness, there's no ledge, there's not gonna be any breakouts,  
289 there's no hardpan like you have in a lot of areas, like your apple orchards, that caused raised  
290 septic systems that you need. So, the system is in the back of the house, it's pretty level. It's not  
291 a big mound and it could accommodate up to approximately six (6) bedrooms, where you're  
292 allowed a hundred and fifty (150) gallons per day per bedroom. So that would be a total

293 loading for this soil, for this sixty five thousand (65,000) square foot lot of approximately nine  
294 hundred (900) gallons per day.  
295  
296 LARRY O'SULLIVAN: In the existing septic?  
297  
298 BRUCE GILDAY: In the existing septic, was designed... three (3) bedroom?  
299  
300 RALPH BRUTUS: It's a three (3) bedroom, yup.  
301  
302 BRUCE GILDAY: Yeah, three (3) bedroom and now it's a four (4) bedroom. So, that's six  
303 hundred (600) gallons per day.  
304  
305 LARRY O'SULLIVAN: Richard, on that...?  
306  
307 RICHARD CANUEL: No, the original septic design is for a four (4) bedroom...  
308  
309 BRUCE GILDAY: Okay.  
310  
311 RICHARD CANUEL: ...that was done many years ago. Yeah, it is for a four (4) bedroom.  
312  
313 BRUCE GILDAY: I have not seen that, I didn't do the design.  
314  
315 RICHARD CANUEL: Yup.  
316  
317 BRUCE GILDAY: But it was three (3) when he put the additional living unit above the garage.  
318 That's the fourth bedroom, so he can't go any higher than that. The septic tank and the  
319 leachfield are designed for four (4) bedrooms and approved for four (4) bedrooms. Six hundred  
320 (600) gallons per day. But the lot could handle nine hundred (900) gallons per day.  
321  
322 RICHARD CANUEL: Yeah, the number of bedrooms is not a question. Otherwise, the permit  
323 wouldn't have been issued for the addition in the first place, but...so that's not an issue. The  
324 only issue is that the lot is deficient to support a two-family dwelling, according to our  
325 ordinance.  
326  
327 YVES STEGER: Yeah. So, I think we need to go back to the (C.1) and (C.2).  
328  
329 VICKI KEENAN: That's what I think, too.  
330  
331 YVES STEGER: Because I don't think that that has been covered adequately. The other ones are  
332 probably not a problem. The way you word it is really not enough for us because in (C.1), the  
333 area variance is needed, given the special conditions of the property. So, what is special about  
334 this property that would allow us to grant the variance? Why would we do that? What is so



335 special about this property compared to other properties? Essentially, if you live in there as a  
336 single-family home, you don't even have to come here. Even with four (4) bedrooms. The fact  
337 that you make it a separate in-law apartment with separate kitchen and bathroom and bedroom  
338 makes it a duplex. What is special about your property that you need a duplex?  
339

340 RALPH BRUTUS: Well, one of the reasons that we choose to do that is because my father-in-  
341 law is elderly, he's diabetic and he cannot really do much around the house anymore, so, when  
342 my wife and I talked about the whole situation, we're like, 'well, it's a good idea because at least  
343 we know where they are.'  
344

345 YVES STEGER: Yeah. I'm gonna stop you. The condition of your parents, whatever it is...

346  
347 RALPH BRUTUS: Mm-hmm.  
348

349 YVES STEGER: ...have no impact on the property. Because this variance will stay with the  
350 property even after you leave and so would apply to any new owners and they could rent the  
351 second part and that's one of the reasons that we have to review this very carefully, so the  
352 conditions of the inhabitants is not relevant. It is what is special about the property.  
353

354 RALPH BRUTUS: Okay, I understand.  
355

356 YVES STEGER: Not the people who live in there.  
357

358 RALPH BRUTUS: Well, if you were to go into the house, we have two (2) doors in front of the  
359 house. The original door, which is set to the left side of the house, that's for the original house.  
360 The second door basically splits a breezeway... basically, the door comes into a mudroom, a  
361 breezeway for the staircase and the garage. And basically, we all could go to any door we want.  
362 It's not separated totally where you cannot get to one side or the other. It's well open  
363 to... accessible to both sides of the house. And you cannot really rent it out to be a two-family,  
364 you cannot really rent it out to be that way. It's just basically... it's used as a family and there's  
365 no keys to those doors, it's basically you just go in and out as you want.  
366

367 JIM SMITH: Well, I think part of what... you're not quite getting what we're trying to drive to.  
368 The home is going to be there for an indefinite time frame. You may live there for the moment.  
369 If you sell it, the potential buyer could then turn around and rent this as a separate unit. See,  
370 this why you're here, because you've turned this into a two-family structure and the size of the  
371 one-bedroom section is too large to be considered a in-law apartment. If you met that, that  
372 would be a simpler solution. So the only other way out of it is to get a variance on the amount  
373 of land that you have for you particular lot to support a two-structure. So what we're looking  
374 from you is something that's unique about the property that justifies us giving you a variance  
375 for that reason. What is unique about the property? Configuration of the land or something  
376 along that line.

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RALPH BRUTUS: Well, it is a corner lot. There's not...if you were to drive by the house, you cannot really see that there is a two-family there or an in-law apartment or anything. All you could basically see is just a house with a two car garage on next to it. That's about it. It's a corner lot, the neighbors don't even really notice anything unless we tell them there's something there. It's kind of hard to say what's special about it. It's just that...

BRUCE GILDAY: Well, the soils. The soils themselves don't pose any limitations at all. There would be no ledge problems. It's all wooded. The front of the lot, like he says, is where the development is with the septic system behind. The back half of the lot is undeveloped, it's all wooded and everything. It's just some of the best soils that you could possible want to develop on and it can handle the sewerage loading. Special? I mean, it's quite common throughout Rockingham County. I know you're working with us really hard. This is not my forte.

JIM SMITH: We're looking for something to hang our hat on.

BRUCE GILDAY: I understand.

VICKI KEENAN: What can be achieved...what can be done to make this compliant without granting a variance? I'd be curious to know what that is.

YVES STEGER: Removing the kitchen.

VICKI KEENAN: Just removing the kitchen?

YVES STEGER: Yeah. Then it's a single-family home because then you don't have that. And that's gonna be the next question because, you know, the benefits cannot be achieved by any other reasonable method.

VICKI KEENAN: Right. That's why I'm going there.

YVES STEGER: And if you do it just because you're parents...

RICHARD CANUEL: This is the plan that was submitted with the permit [see Building Department file]. As you can see, it's shown as a great room, an additional master bedroom, it was labeled as an office area.

YVES STEGER: This is all on top of the garage?

RICHARD CANUEL: This is all above that garage addition. Now granted, it certainly lends itself to be used as additional living space but that wasn't the intent as shown here when the permit was issued.

419  
420 VICKI KEENAN: Here's the kitchen.  
421  
422 RICHARD CANUEL: So, yeah, there's no kitchen shown on that, as you can see.  
423  
424 YVES STEGER: So if there was no kitchen in there, it would be acceptable?  
425  
426 RICHARD CANUEL: Yeah, because then it could not be considered as separate living space  
427 where someone could live independently from the main house.  
428  
429 VICKI KEENAN: Okay.  
430  
431 YVES STEGER: Mm-hmm.  
432  
433 VICKI KEENAN: So the kitchen that was built need to be removed.  
434  
435 YVES STEGER: Yeah, because it is actually completely separate, you know? There is a  
436 breezeway, that's why it...  
437  
438 RICHARD CANUEL: You know, like I say, it certainly lends itself to be a separate living space.  
439  
440 NEIL DUNN: Where is the kitchen at in that? In the office area or the...?  
441  
442 VICKI KEENAN: Where is it in now, today?  
443  
444 RICHARD CANUEL: I don't know where it is now. I haven't seen the site.  
445  
446 VICKI KEENAN: Can you come up and show us where the kitchen is now? Just...  
447  
448 RALPH BRUTUS: Sure. Sure. Okay, as you go up the stairs right here, this is basically like a  
449 family room. The kitchen's right here.  
450  
451 NEIL DUNN: And that was, on the original print, gonna be a what?  
452  
453 YVES STEGER: A great room.  
454  
455 VICKI KEENAN: A great room.  
456  
457 YVES STEGER: So there is master bedroom, there are two (2) bedrooms, an office...  
458

459 VICKI KEENAN: And a living room.  
460  
461 YVES STEGER: A living room.  
462  
463 VICKI KEENAN: Right?  
464  
465 YVES STEGER: And a kitchen. Yeah.  
466  
467 VICKI KEENAN: Mm-hmm. Feels pretty...  
468  
469 NEIL DUNN: Larry hasn't seen it.  
470  
471 LARRY O'SULLIVAN: When Jim's done. Thanks.  
472  
473 YVES STEGER: See? That's the kitchen now.  
474  
475 VICKI KEENAN: Would you like to present anything more to the Board? [indistinct] sort of  
476 officially bring it back for questions.  
477  
478 BRUCE GILDAY: Just that we didn't hear from the abutters and I don't think you've had any  
479 complaints from the abutters at all.  
480  
481 RALPH BRUTUS: No, none whatsoever.  
482  
483 VICKI KEENAN: Okay. So we'll bring it back to the Board to ask questions, even though  
484 we've started already. Any other questions from the Board?  
485  
486 NEIL DUNN: What kind of hardship would it...?  
487  
488 MATT NEUMAN: [indistinct]  
489  
490 NEIL DUNN: What kind of hardship would it be to remove the kitchen?  
491  
492 RALPH BRUTUS: It would be basically a waste of money. It's over twenty thousand (20,000)  
493 dollars worth of kitchen. And it's very useful into the fact that right now, yeah, it could be do  
494 without of, but later on, is very useful to the fact, that I know it doesn't mean anything being  
495 elderly or anything, but going up and down a flight of stairs could be an issue. But, at the same  
496 time, too, thinking about it, the way the land is set up is that there's no really any other way to  
497 build anything. It basically, the lots were changed to be where they're sectioning out the plot  
498 plans for a certain amount of space, there's no way to build anything towards the back of this  
499 house. Or even the neighbors. Because it's one (1) corner lot and there's like, probably seven  
500 hundred (700) square feet.

501  
502 YVES STEGER: Yeah, that's not our concern. You see, the apartment that is on top in there  
503 could be totally self sufficient and totally independent the way you designed it here.  
504  
505 RALPH BRUTUS: Yes.  
506  
507 YVES STEGER: That means that if you sell the property, because the variance will stay with the  
508 property, that means that the next buyer could actually rent that. So, as long as you use it as a  
509 single-family home, you don't even to come here. But if you use it as a duplex and somebody  
510 else in the future does, then we have a problem. So, it's not that they have to build. They can  
511 use that and rent that apartment...  
512  
513 RALPH BRUTUS: Mm-hmm.  
514  
515 YVES STEGER: ...if there is a new owner. And that's the thing that we want to prevent because  
516 that would be contrary to the ordinances.  
517  
518 RALPH BRUTUS: I have no problem with it being a single-family home at all. That's not an  
519 issue to me at all, whatsoever.  
520  
521 BRUCE GILDAY: But the hardship, like the question from Mr. Dunn was the removal of the  
522 kitchen. Does that pose a hardship and you said it was just money and that really doesn't cut it.  
523  
524 RALPH BRUTUS: It'll cost us twenty thousand (20,000) dollars for the kitchen to be removed.  
525 And also due to the fact that what I'm preventing is later on. It's not right now. It's very hard to  
526 say what's gonna happen later on but it's just a matter of ten (10), fifteen (15) years from now, as  
527 they get older, it'd be very hard for them to get up and down those stairs. And that's the main  
528 reason we built the kitchen, to make sure that everything's there for them.  
529  
530 VICKI KEENAN: The other option is to reduce the square footage of the apartment to an area  
531 seven hundred and fifty (750) square feet or under.  
532  
533 YVES STEGER: Yes.  
534  
535 VICKI KEENAN: Is there...?  
536  
537 YVES STEGER: Not really...  
538  
539 VICKI KEENAN: I'm not seeing how that could happen, either. Unless...  
540  
541 NEIL DUNN: Can you block off a door and never access it?

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583

[laughter]

VICKI KEENAN: I was just gonna say, could an area be converted to like, multiple uses?

YVES STEGER: Or put a [indistinct] in there.

VICKI KEENAN: Like that the family uses? I mean, is that gray? Am I being...? Am I stretching here?

MATT NEUMAN: Well, if you...can he block it off and then have an outside entrance to it?

RICHARD CANUEL: Well, the whole intent of the living space is that it can sustain itself independently. If the space where someone's going to live is equivalent to seven hundred and fifty (750) square feet, then I can say they meet the accessory apartment requirements. If that kitchen area was moved to a different section of that second floor area so that we can say, 'yes, you have an independent seven hundred and fifty (750) square foot area that we can call an accessory apartment,' what the other space is used for doesn't matter. It could be storage, it could be a joint family room, it doesn't matter.

LARRY O'SULLIVAN: A big closet.

RICHARD CANUEL: As long as that access to the apartment is completely separate and it doesn't exceed the seven hundred and fifty (750) square feet.

YVES STEGER: [indistinct]

VICKI KEENAN: No, but I just mean this piece.

YVES STEGER: But he can't do that. That's not...

VICKI KEENAN: [indistinct]

RICHARD CANUEL: So, if you look at that plan, just based on the construction of the plan, you know...

YVES STEGER: Yeah.

RICHARD CANUEL: ...just the layout would be very difficult to do that.

YVES STEGER: Yeah, it wouldn't make any sense.

584 RICHARD CANUEL: I mean, yeah, maybe they could split this up here like this and, you  
585 know, completely wall this area off and say this would be the accessory apartment and then  
586 have a separate access to this family area, if you wanna call it that.  
587  
588 YVES STEGER: Yeah, it doesn't make sense because that's the kitchen and the...  
589  
590 VICKI KEENAN: That's probably more difficult than the kitchen.  
591  
592 YVES STEGER: These things are related and you can't do it without the bedroom, so the only  
593 thing you would eliminate is probably the office and the laundry room...  
594  
595 VICKI KEENAN: Which is probably not the square footage.  
596  
597 YVES STEGER: It is a complete, self sustained apartment.  
598  
599 RICHARD CANUEL: That's why I say based on the configuration of that second floor, it  
600 would be difficult to try to split that up to make it an accessory apartment at this point.  
601  
602 YVES STEGER: Yeah.  
603  
604 RICHARD CANUEL: And that's why it is better off just classifying it as a two-family.  
605  
606 JOE GREEN: How big is the square foot of the second apartment?  
607  
608 RICHARD CANUEL: It's twelve hundred (1,200)...  
609  
610 VICKI KEENAN: Twelve hundred (1,200).  
611  
612 YVES STEGER: Twelve hundred (1,200), yeah.  
613  
614 RALPH BRUTUS: Now, would you call a staircase part of the twelve hundred (1,200) square  
615 feet or...?  
616  
617 JIM SMITH: Well...  
618  
619 NEIL DUNN: Well, you're still way over seven fifty (750).  
620  
621 JIM SMITH: That's only gonna take out a hundred (100) feet, maybe.  
622  
623 VICKI KEENAN: Yeah.  
624  
625 LARRY O'SULLIVAN: That's not gonna take you five hundred (500)...

626  
627 YVES STEGER: Yeah.  
628  
629 JIM SMITH: I think the bottom line is this was constructed without talking to the Town and  
630 finding out what the rules were and being guided on building something which could have  
631 conformed. So now we're stuck with a situation where we have an area above the garage which  
632 is too large to be called an accessory apartment, we really haven't got any real argument to  
633 justify the...  
634  
635 YVES STEGER: Special conditions.  
636  
637 JIM SMITH: ...hardship on the land.  
638  
639 YVES STEGER: Yeah.  
640  
641 JIM SMITH: So we're kind of stuck on this one.  
642  
643 YVES STEGER: We are definitely stuck.  
644  
645 NEIL DUNN: Mmm.  
646  
647 VICKI KEENAN: Why don't we...do you have anything else you want to provide the Board in  
648 terms of information? If not, we'll bring it back to the Board...or we'll open it up to the public  
649 for comment.  
650  
651 RALPH BRUTUS: I understand that it does not matter with, like I said, the money aspect.  
652 There is no rent being received or anything like that whatsoever. It's just strictly for them to live  
653 in. It's not...I understand if you sell the house later on there could be problems speculating if  
654 it's a two-family, in-law, whichever. If it were to be called a single-family home, it's still a  
655 single-family home to me because it does not matter to me what it's called because I'm not  
656 planning on selling it or making a profit on it, whatever it is, it's just a matter of what it is just  
657 a place where my family lives. That's about it.  
658  
659 LARRY O'SULLIVAN: If it was common area, if it was shared by one (1) family, we wouldn't  
660 have the issue either but the possibility exists in the future because the variance that we...that  
661 you're requesting goes forever.  
662  
663 RALPH BRUTUS: Mm-hmm.  
664  
665 LARRY O'SULLIVAN: And it goes with the land. We have an issue because the lot size isn't in  
666 spec with what we require for everybody else in town. So you've made your own situation and



667 now we're attempting to help you pull information so that we can see how it'll fit. I'm having a  
668 hard time...

669

670 VICKI KEENAN: Me, too.

671

672 LARRY O'SULLIVAN: ...all the way around.

673

674 VICKI KEENAN: I think everybody is.

675

676 YVES STEGER: Yes.

677

678 VICKI KEENAN: Yeah.

679

680 LARRY O'SULLIVAN: If you had information for us that showed the uniqueness of this  
681 property, we would have a leg to stand on if your neighbors brought us to court as a Town, for  
682 example.

683

684 VICKI KEENAN: Yeah.

685

686 YVES STEGER: Yup.

687

688 LARRY O'SULLIVAN: But you haven't.

689

690 VICKI KEENAN: We have very specific points by which we have to make a decision on a case.

691

692 RALPH BRUTUS: Okay.

693

694 VICKI KEENAN: And it's, you know, special conditions of the property. If there are no special  
695 conditions of the property that are presented to the Board, we cannot approve the case. So, you  
696 know, and there are four (4) other prongs that have to be approved or accepted or denied. So I  
697 guess the point I'm trying to say is we're having a hard time justifying some of these five (5)  
698 prongs. That there are special conditions. There is a hardship situation. There's no other  
699 reasonable method. We're not...and that's where I'm at.

700

701 YVES STEGER: Yeah. Mm-hmm.

702

703 BRUCE GILDAY: Would the special conditions of the property be limitations on where you can  
704 build on the property, would that...?

705

706 JIM SMITH: No...

707

708 LARRY O'SULLIVAN: You mean like we just had.

709

710 JIM SMITH: No, what makes this lot different from other lots which are in the same general  
711 neighborhood?

712

713 VICKI KEENAN: Unique. That...

714

715 BRUCE GILDAY: It's unique because it's pretty...only has one (1) abutter on one (1) side. It's  
716 on a corner lot. It's protected visually from other neighbors.

717

718 JIM SMITH: I'm gonna broach one other possibility. Has there been any effort to try to see if  
719 we could reconfigure this lot by possibly purchasing some land from adjacent lots which may  
720 be oversized as single-family lots?

721

722 RALPH BRUTUS: That's a good question, but...

723

724 BRUCE GILDAY: He doesn't know his neighbors that well but if you look at the aerial, there is  
725 a neighbor, the one (1) abutter to the east, if you go up Betty Lane and there is a substantial  
726 amount of good uplands, not just non-usable wetlands, but it's good uplands in between, so  
727 that is an option, Mr. Smith, that hasn't been pursued.

728

729 VICKI KEENAN: Well, why don't we, unless you have anything more to present, why don't  
730 we open it up to the public and sort of bring it back to our procedure? Okay? Anything else?  
731 Okay, we'll open it up to...actually, I'm sorry, to the Board for questions. We've already sort of  
732 started this process already, but I'm trying to be official. Any other questions from the Board?

733

734 YVES STEGER: No.

735

736 VICKI KEENAN: Okay, we'll open it up to the public for comment. Would you like to speak in  
737 favor?

738

739 RALPH BRUTUS: Honestly, this is my first time ever coming to something like this. It's very  
740 confusing to me at this point 'cause my whole doing with this out of good. It's not anything to  
741 be malicious, try to underhand anybody. It's a matter of that...it's not something that is done  
742 deliberately to do anything with a profit or whatever it is. It's just, I'm just confused at this  
743 point about something that's unique or special about the land. All that I can say it's my home.  
744 That's where I live, that's where my family lives. That's where my in-laws live. And I don't see  
745 any difference with it because, like I said, even if it was a two-family, a single-family, an in-law  
746 apartment, whichever it is, I'm good with it 'cause I plan on being there a long time. I  
747 understand if I sell it, it's gonna be an issue for whoever buys it if they want to rent it out and so  
748 on and so forth. Whatever needs to be done physically to it, it's pretty hard because you see the  
749 layout, you see how it is. It's pretty hard to just say, 'okay, I'm gonna tear this whole thing  
750 apart to change it around.' It's pretty hard 'cause all the plumbing, all the wiring, all the

751 electrical would have to be redone. And, believe me, I've thought of this for the past three  
752 months pretty hard. I've sketched and sketched and sketched and sketched and there's no  
753 really much way around it. And being a corner lot, to me, it's a good thing because there's no  
754 one, it's not an eyesore, it's not in the middle of nowhere, everybody could just go, 'well, I could  
755 just pick up this house right there, it's a two-family.' There's no way you could tell unless you  
756 go in and if you... I don't know. I don't know if you guys ever do walk-throughs or whatever it  
757 is, it's very hard to use it as a two-family apartment. It's very hard because the garage is an  
758 entrance and the mud room is an entrance. And the mudroom has a door off it that has a  
759 staircase that goes up and it would be very hard for a person, unless you do construction to the  
760 existing parcel that's brand new, it's going to be very hard to rent it out as a second family.  
761 That's the only thing I can say.

762  
763 VICKI KEENAN: Okay. Is there anyone in the audience that would like to speak regarding the  
764 application?

765  
766 BRUCE GILDAY: Do you wanna say something, Elaine?

767  
768 ELAINE: No.

769  
770 VICKI KEENAN: Okay. In that case, we'll bring it back to the Board and we will deliberate.

771  
772 DELIBERATIONS:

773  
774 VICKI KEENAN: I guess I'll start. I don't see any special conditions of this property and  
775 therefore I don't know how that we can grant this area variance.

776  
777 YVES STEGER: And there is an alternative, which is to just disable the kitchen.

778  
779 VICKI KEENAN: Right.

780  
781 JOE GREEN: Is the special circumstance ever thought about as an oversized lot or in a corner or  
782 anything like that? I mean, is this lot more, kind of larger than the norm for a one-family or...?

783  
784 JIM SMITH: Well, it's larger than for a single-family...

785  
786 JOE GREEN: Right.

787  
788 MATT NEUMAN: But not larger...

789  
790 JIM SMITH: The trouble is, it doesn't come up to the standard for...

791  
792 JOE GREEN: Two.

793  
794 YVES STEGER: It's a duplex.  
795  
796 JOE GREEN: ...what it was, one point nine (1.9), right?  
797  
798 JIM SMITH: Well, it was supposed to be twenty (20) percent larger.  
799  
800 JOE GREEN: Right.  
801  
802 JIM SMITH: I think that goes up to five (5) bedrooms and if you have additional bedrooms,  
803 then it goes up even more. So in this particular situation, he's about nineteen (19), call it twenty  
804 (20) percent less than what he's supposed to have for a duplex.  
805  
806 JOE GREEN: I just wondered if the special circumstance could be that he's at point one nine  
807 (.19) away from it being within our standards. So, I mean, thinking about it from that side of it,  
808 you know, where it's so large. The other thing I was thinking about, because I'm not familiar, so  
809 I'm just gonna throw this out. I'm not familiar with this part of it but seven fifty (750), is there  
810 any way that you can get a variance for that, seven fifty (750), as far as bringing it to where it's a  
811 thousand (1,000)?  
812  
813 LARRY O'SULLIVAN: That's what he's here for.  
814  
815 JOE GREEN: No, I'm talking about the accessory apartment? I didn't know if that's something  
816 that's in a different area.  
817  
818 NEIL DUNN: I don't think we've had that. That's a pretty interesting concept, though.  
819  
820 VICKI KEENAN: Yeah, that is.  
821  
822 RICHARD CANUEL: Well, unfortunately, by our ordinance for accessory apartments,  
823 variances cannot be granted.  
824  
825 JOE GREEN: Okay.  
826  
827 [overlapping comments].  
828  
829 JOE GREEN: ...out of the question, yeah?  
830  
831 RICHARD CANUEL: Yup. Otherwise, you would have accessory apartments twelve hundred  
832 (1,200) square feet, so...  
833

834 VICKI KEENAN: Could we say that the unique conditions are the fact that the soil conditions  
835 could support a two-family?  
836

837 LARRY O'SULLIVAN: That's what I was hoping to get to but then we had evidence presented  
838 that most of Rockingham County's like that, so...  
839

840 VICKI KEENAN: That's true. Alright.  
841

842 LARRY O'SULLIVAN: And every corner you...right now, just looking at the overhead map, a  
843 corner lot may work in some instances, but there's four (4) of them within two hundred (200)  
844 feet.  
845

846 YVES STEGER: Yup.  
847

848 VICKI KEENAN: Yeah, I see that, too.  
849

850 LARRY O'SULLIVAN: Right?  
851

852 VICKI KEENAN: And none of them are two-families.  
853

854 YVES STEGER: Yup.  
855

856 JOE GREEN: I just keep getting stuck on the size of it, that's all, it's just so close. That's all I was  
857 trying to say, you know?  
858

859 LARRY O'SULLIVAN: Yeah.  
860

861 JOE GREEN: It's not...  
862

863 JIM SMITH: You know, when you come right down to it, when you look at what we're  
864 requiring for lot sizes, they're much larger than what really would be required to support. In  
865 this particular case, you have soils that would support a nine hundred (900) discharge.  
866

867 JOE GREEN: Right.  
868

869 JIM SMITH: Which would get you up to...  
870

871 BRUCE GILDAY: Six (6) bedrooms.  
872

873 JIM SMITH: ...six (6) bedrooms. But when you look at our ordinance, to get up to six (6)  
874 bedrooms, you need a lot more land than that.

875  
876 JOE GREEN: Mmm.  
877  
878 VICKI KEENAN: Why don't we take a minute and walk through the five (5) points of law and  
879 where they pass, let's say 'pass,' where they fail, let's maybe give some justification for that,  
880 okay?  
881  
882 LARRY O'SULLIVAN: Let's talk through it anyway, yeah.  
883  
884 VICKI KEENAN: Yeah. So the proposed use would not diminish the surrounding property  
885 values.  
886  
887 YVES STEGER: I think that's clear. It was mentioned because it doesn't look like a duplex.  
888  
889 VICKI KEENAN: That's right.  
890  
891 JOE GREEN: So that's fine.  
892  
893 MATT NEUMAN: Mmm.  
894  
895 YVES STEGER: So it would look like any other house in the neighborhood. There should be no  
896 impact, so that's no problem.  
897  
898 VICKI KEENAN: So that's a pass. Granting the variance would not be contrary to the public  
899 interest. This one's iffy too.  
900  
901 JOE GREEN: Well, I don't think it would affect the public interest, would it?  
902  
903 YVES STEGER: Yeah, there's no public interest that is...  
904  
905 VICKI KEENAN: Okay, you're right. I'm confusing that with spirit.  
906  
907 NEIL DUNN: Well, it could be...  
908  
909 JIM SMITH: Well, the public interest is that we, as a town, have determined that for a duplex  
910 lot, we wanna have a certain amount of land.  
911  
912 YVES STEGER: Correct, but that's the spirit of the ordinance.  
913  
914 VICKI KEENAN: You're right. I'm confusing it with the spirit of the ordinance.  
915  
916 YVES STEGER: So that one...

917  
918 JIM SMITH: Okay.  
919  
920 YVES STEGER: That one is okay.  
921  
922 VICKI KEENAN: Yup, that's a pass. An area variance is needed to enable the applicant's  
923 proposed use of the property, given the following special conditions of the property.  
924  
925 LARRY O'SULLIVAN: Can we go back to public interest for a second?  
926  
927 VICKI KEENAN: Sure.  
928  
929 LARRY O'SULLIVAN: Groundwater contamination. That's what public interest is, okay? Stick  
930 with that one. He can cover that.  
931  
932 YVES STEGER: He did.  
933  
934 LARRY O'SULLIVAN: He did cover that.  
935  
936 YVES STEGER: Correct.  
937  
938 LARRY O'SULLIVAN: And that's what our concern is about size of the lot.  
939  
940 YVES STEGER: Mm-hmm.  
941  
942 LARRY O'SULLIVAN: Right? By comparison to the number...the two-family. Correct?  
943  
944 JOE GREEN: So it's still okay. You know what I'm saying?  
945  
946 JIM SMITH: Yup.  
947  
948 VICKI KEENAN: Yeah, so it still passes.  
949  
950 [overlapping comments]  
951  
952 LARRY O'SULLIVAN: But that's the reason.  
953  
954 JOE GREEN: Right. Okay.  
955  
956 MATT NEUMAN: But is that a special condition?  
957  
958 MICHAEL GALLAGHER: Are you then...forward that to the special condition, is...

959  
960 LARRY O'SULLIVAN: Well, no, half of Rockingham County's got the conditions, but...  
961  
962 MICHAEL GALLAGHER: Yeah.  
963  
964 JIM SMITH: When you look at special condition, you have to have something which makes  
965 this property unique when compared to similar properties in the area.  
966  
967 YVES STEGER: Yup. The other corner lots that have different soils, that have all those things.  
968 And we didn't see that. That is not being presented...  
969  
970 LARRY O'SULLIVAN: There's no proof of that.  
971  
972 YVES STEGER: ...and I can't even see it, you know? So...  
973  
974 VICKI KEENAN: I know. Okay.  
975  
976 LARRY O'SULLIVAN: Alright, sorry.  
977  
978 VICKI KEENAN: No.  
979  
980 JOE GREEN: Is the...I'm just trying to think of every possibility here.  
981  
982 VICKI KEENAN: That's okay.  
983  
984 YVES STEGER: Yeah?  
985  
986 JOE GREEN: The percentage, and I'm gonna get into this more technical and you probably  
987 would be able to answer me. Because of, again, going back to the house lot size, okay, what the  
988 percentage of the moderately well drained, which is the better of the soils, is that what you said  
989 before?  
990  
991 BRUCE GILDAY: The moderately well drained is the most predominant, it's point nine two  
992 (.92) of the sixty five...ninety two (92) percent of the lot is actually higher. It's almost like ninety  
993 seven (97) percent is moderately well drained.  
994  
995 JOE GREEN: But does this lot, as a special circumstance in comparison to other lots, would this  
996 lot have a better soil to sustain a two-family than other lots?  
997  
998 BRUCE GILDAY: Absolutely. And like Mr. O'Sullivan said, there would be no overloading or  
999 a possibility of any danger to the public for a breakout of any effluent.  
1000



1001 JOE GREEN: But would you say, in your professional opinion, that the amount of soil that's in  
1002 this lot, because this lot is larger than some of the other lots surrounding it, would be more  
1003 sustainable to a two-family because of that? And that would be the special circumstance that  
1004 we would be talking about?  
1005

1006 BRUCE GILDAY: Absolutely. And I think in the town of Londonderry, I have seen other lots  
1007 in design of some of my subdivisions that I did in the 80's, two-families that were on were on a  
1008 lot worse soils. They had shallow to ledge and a lot of hardpan in this town, too, which has the  
1009 perched water table. So, these soils could definitely handle...  
1010

1011 JIM SMITH: Okay, what you're alluding to, was that...those subdivisions done before or after  
1012 the high intensity soil study...?  
1013

1014 BRUCE GILDAY: That was Sunnycrest, Anthony Drive, when Cannuli, Frank Cannuli cut out  
1015 those lots, Wiley Hill Estates in there, a lot of hardpan soils. Some shallow to ledge. We had to  
1016 do soil based lot sizing. Yes, we did.  
1017

1018 LARRY O'SULLIVAN: Aren't there really two issues here that you're addressing, Joe?  
1019

1020 JOE GREEN: Right, I'm trying to.  
1021

1022 LARRY O'SULLIVAN: The size of the septic system, the ability for it to handle six (6)  
1023 bedrooms...  
1024

1025 JOE GREEN: Right.  
1026

1027 LARRY O'SULLIVAN: ...and then the entire lot has better soils, right? So we have less chance  
1028 of groundwater contamination. And that's what our concern is.  
1029

1030 JOE GREEN: That's public interest, right?  
1031

1032 YVES STEGER: Mm-hmm.  
1033

1034 LARRY O'SULLIVAN: So...  
1035

1036 BRUCE GILDAY: And I would back that up with my experience, my professional opinion.  
1037

1038 JIM SMITH: Okay. Well, to go to the next step. When you look at the whole high intensity soil  
1039 study system, when you have poorer soils, you need larger...  
1040

1041 LARRY O'SULLIVAN: Septics.

1042  
1043 JIM SMITH: ...pieces of land...  
1044  
1045 LARRY O'SULLIVAN: Okay.  
1046  
1047 JIM SMITH: ...to compensate for that.  
1048  
1049 LARRY O'SULLIVAN: Right.  
1050  
1051 JIM SMITH: So if this had poorer soils, instead of needing what you have, you'd probably need  
1052 another half (1/2) acre or something.  
1053  
1054 JOE GREEN: But it would be safe to say that...would it be safe to say, and again, I don't know  
1055 because I wasn't the person that wrote that ordinance, but it would be safe to say that they  
1056 would be [indistinct] that as far as square footage-wise, taking into consideration a average type  
1057 of soil, right?  
1058  
1059 JIM SMITH: No. Each soil type has its own square footage assigned to it.  
1060  
1061 JOE GREEN: Okay.  
1062  
1063 JIM SMITH: For a given lot.  
1064  
1065 JOE GREEN: Okay.  
1066  
1067 JIM SMITH: And what we've done here, he's got three (3) different soil types, he's looked at  
1068 each one of those and determined what percentage of what would be required for the lot that  
1069 represents, then you add up that weighted average together to come up with an overall score  
1070 for the lot.  
1071  
1072 BRUCE GILDAY: That's correct.  
1073  
1074 JOE GREEN: And that's we...that's where the special circumstance comes is because this is  
1075 lot...  
1076  
1077 YVES STEGER: No, we don't because that's the problem. Because he's using the actual soil to  
1078 measure what would be required based on the ordinance and they are below that.  
1079  
1080 JOE GREEN: And that's based on the size?  
1081  
1082 JIM SMITH: Right, each...  
1083

1084 VICKI KEENAN: Right, the size needs to be...  
1085  
1086 JIM SMITH: Each particular soil type has a different...  
1087  
1088 JOE GREEN: Right.  
1089  
1090 JIM SMITH: So...  
1091  
1092 JOE GREEN: I'm sorry to not be knowledgeable about that.  
1093  
1094 VICKI KEENAN: No, that's okay.  
1095  
1096 JIM SMITH: Right.  
1097  
1098 JOE GREEN: Just trying to walk through it.  
1099  
1100 VICKI KEENAN: It's confusing.  
1101  
1102 JIM SMITH: So, if you got soil "A," you may need fifty thousand (50,000) square feet. Soil "B"  
1103 may require sixty thousand (60,000).  
1104  
1105 JOE GREEN: Mm-hmm.  
1106  
1107 JIM SMITH: And so forth through the whole table. So when you look at each of those different  
1108 soil types, if you got twenty five thousand (25,000) of the fifty (50), that would count as half of  
1109 the required...  
1110  
1111 JOE GREEN: Okay, right. So it...  
1112  
1113 JIM SMITH: Then if you had thirty (30) or a sixty (60), then that would be the other half.  
1114  
1115 VICKI KEENAN: So, they need seventy three thousand (73,000) square feet...  
1116  
1117 JOE GREEN: Right.  
1118  
1119 YVES STEGER: And they have sixty five (65)  
1120  
1121 VICKI KEENAN: ...of their soil types in order to support a duplex.  
1122  
1123 JOE GREEN: Okay.  
1124  
1125 VICKI KEENAN: Is that the right way to say it?

1126  
1127 YVES STEGER: Yes.  
1128  
1129 VICKI KEENAN: Yeah.  
1130  
1131 YVES STEGER: So that's not different.  
1132  
1133 VICKI KEENAN: Nn-hmm.  
1134  
1135 YVES STEGER: Otherwise they wouldn't be here.  
1136  
1137 VICKI KEENAN: Right.  
1138  
1139 YVES STEGER: If the soil was better than that, then it would require fifty thousand (50,000),  
1140 they wouldn't even be here. This is a tough one.  
1141  
1142 VICKI KEENAN: So special conditions of the property?  
1143  
1144 YVES STEGER: I can't see that.  
1145  
1146 VICKI KEENAN: I don't see anything that's unique or different than any other...  
1147  
1148 LARRY O'SULLIVAN: I think we gave it a good try.  
1149  
1150 VICKI KEENAN: I do, too.  
1151  
1152 YVES STEGER: Yeah, we tried everything we could.  
1153  
1154 MATT NEUMAN: Yeah.  
1155  
1156 LARRY O'SULLIVAN: And then you have part two...  
1157  
1158 VICKI KEENAN: Right, cannot be achieved by some other method reasonably feasible.  
1159  
1160 LARRY O'SULLIVAN: And we know that you can take out a kitchen or you can put up a wall.  
1161  
1162 VICKI KEENAN: It's not ideal, but it can be done.  
1163  
1164 LARRY O'SULLIVAN: I mean, there are other things and it may be expensive, but is it  
1165 reasonable?  
1166  
1167 YVES STEGER: Actually, removing the kitchen automatically makes it a single-family.

1168  
1169 VICKI KEENAN: Right.  
1170  
1171 YVES STEGER: It also prevents any future owner...  
1172  
1173 LARRY O'SULLIVAN: Right. Well...  
1174  
1175 YVES STEGER: Unless they build a kitchen. We would be contrary to the ordinance and they  
1176 would have to...  
1177  
1178 VICKI KEENAN: And be back here again.  
1179  
1180 YVES STEGER: So I think it's missing the (C.1) and (C.2).  
1181  
1182 VICKI KEENAN: Right.  
1183  
1184 YVES STEGER: Both of them.  
1185  
1186 LARRY O'SULLIVAN: Does anybody think that it covered that? Jim, did you think that it  
1187 covered (C.1) and (C.2)? Special conditions?  
1188  
1189 JIM SMITH: No.  
1190  
1191 LARRY O'SULLIVAN: Or reasonable...?  
1192  
1193 JIM SMITH: The only possibility that I suggested was whether or not there's a possibility to  
1194 trying to but some additional land from an adjacent lot, which hasn't been explored.  
1195  
1196 LARRY O'SULLIVAN: Has not been. Right.  
1197  
1198 VICKI KEENAN: Right. I agree.  
1199  
1200 JIM SMITH: Or...  
1201  
1202 YVES STEGER: Correct, but then they don't have to be here.  
1203  
1204 VICKI KEENAN: Right.  
1205  
1206 JIM SMITH: If they could do that, then they're...  
1207  
1208 [overlapping co moments]  
1209

1210 VICKI KEENAN: Right.  
1211  
1212 YVES STEGER: That is actually another feasible solution...  
1213  
1214 VICKI KEENAN: Right.  
1215  
1216 YVES STEGER: ...so there are already two (2) things.  
1217  
1218 JOE GREEN: Possible.  
1219  
1220 YVES STEGER: Buy nine thousand (9,000) square feet from somebody else or remove the  
1221 kitchen. So there are at least two (2) feasible...  
1222  
1223 JOE GREEN: What's the definition of "feasible"? I mean, I hate to get into semantics this late,  
1224 but...  
1225  
1226 LARRY O'SULLIVAN: It is in our...  
1227  
1228 JIM SMITH: Reasonable.  
1229  
1230 MICHAEL GALLAGHER: Reasonable...  
1231  
1232 JOE GREEN: Reasonable? Is it reasonable to...?  
1233  
1234 LARRY O'SULLIVAN: ...ordinances.  
1235  
1236 JOE GREEN: ...ask him to buy property that...?  
1237  
1238 LARRY O'SULLIVAN: Our ordinances all have definitions in them. That would be a good  
1239 thing to, you know, that's a good nighttime reading thing.  
1240  
1241 JOE GREEN: Yeah.  
1242  
1243 MICHAEL GALLAGHER: Right after this meeting.  
1244  
1245 YVES STEGER: What is the cost of a square foot right now?  
1246  
1247 JIM SMITH: I have no idea.  
1248  
1249 YVES STEGER: Anybody?  
1250  
1251 VICKI KEENAN: Purchasing, from a purchase standpoint?

1252  
1253 YVES STEGER: Yeah.  
1254  
1255 VICKI KEENAN: Or to demo?  
1256  
1257 YVES STEGER: No, to purchase.  
1258  
1259 VICKI KEENAN: On the land? Oh, I don't know about up here. Down in Massachusetts, like a  
1260 hundred (100)...  
1261  
1262 BRUCE GILDAY: Well, a lot in Londonderry might be a hundred thousand (100,000) square  
1263 feet.  
1264  
1265 YVES STEGER: I'm sorry?  
1266  
1267 BRUCE GILDAY: I mean it might be a hundred thousand (100,000) dollars for...  
1268  
1269 YVES STEGER: Per square foot?  
1270  
1271 BRUCE GILDAY: No, for a lot.  
1272  
1273 JIM SMITH: For the lot.  
1274  
1275 VICKI KEENAN: Just maybe an acre.  
1276  
1277 BRUCE GILDAY: And a lot would probably be one point five (1.5) acres. So, that would be  
1278 seventy thousand (70,000) dollars an acre. Sixty...  
1279  
1280 JOE GREEN: I'm just saying, we're saying "feasible," and one of the things that we're not...I  
1281 mean, the point is right. I mean, absolutely, he could seek that. But what feasible means is also  
1282 the fact that this person who owns that property will sell it. You know?  
1283  
1284 VICKI KEENAN: But it...  
1285  
1286 JIM SMITH: Well, yeah.  
1287  
1288 YVES STEGER: Mm-hmm.  
1289  
1290 JOE GREEN: Is it reasonable to think that they would sell it?  
1291  
1292 VICKI KEENAN: But it doesn't even matter because...

1293  
1294 JOE GREEN: I understand.  
1295  
1296 VICKI KEENAN: ...there are still no special conditions.  
1297  
1298 JOE GREEN: No, I understand.  
1299  
1300 VICKI KEENAN: So that whole prong fails, (C).  
1301  
1302 MATT NEUMAN: Right.  
1303  
1304 VICKI KEENAN: 'Cause you have to meet one (1) and two (2) of (C) in order to pass (C).  
1305  
1306 YVES STEGER: Yup.  
1307  
1308 NEIL DUNN: The other thing was, I was thinking about possible other reasonably feasible was,  
1309 I believe the soils gentleman said he used moderate numbers to make the calculation. Could  
1310 they do a little bit more intense survey with the soils and come up with a better documentation  
1311 that says, 'yeah, maybe it can be reduced by [indistinct] square footage and then it would  
1312 [indistinct] that way?  
1313  
1314 LARRY O'SULLIVAN: I don't think it does any good to...  
1315  
1316 NEIL DUNN: I don't know. No, I'm just...I know, but I'm looking at the other feasible...  
1317  
1318 LARRY O'SULLIVAN: [indistinct] a continuance or something or...?  
1319  
1320 NEIL DUNN: Well, I mean, they could always do that but...a continuance could be possible or  
1321 some other reasonably feasible...I guess that doesn't...  
1322  
1323 YVES STEGER: 'Cause it's already a third reasonable option.  
1324  
1325 NEIL DUNN: I guess I...  
1326  
1327 [overlapping comments]  
1328  
1329 NEIL DUNN: ...take a final resolution and see if you can get better information, I guess was my  
1330 thought.  
1331  
1332 YVES STEGER: No, because if...  
1333



1334 BRUCE GILDAY: Well, the soils aren't gonna change. I mean, at least, you'd have to really,  
1335 you know, log the whole thing or... the best soils you possibly can have with the lowest  
1336 minimum lot size requirement would be a 221BH and that would probably be requiring maybe  
1337 forty four thousand (44,000), I don't have the chart in front of me. Is it less than that, forty...?  
1338  
1339 JIM SMITH: I don't know that.  
1340  
1341 BRUCE GILDAY: Yeah, so... Yeah, we could ask for a continuance and we could get a backhoe  
1342 out there and we could do another soil survey and come back with some new calculations.  
1343  
1344 YVES STEGER: If you do the new calculation and you have enough area, you don't even have  
1345 to go here.  
1346  
1347 VICKI KEENAN: Right.  
1348  
1349 YVES STEGER: You just send that to the city and that...  
1350  
1351 BRUCE GILDAY: That's correct.  
1352  
1353 JOE GREEN: You're saying you're so close to point one nine (.19), right? That's based off of all  
1354 the different calculations? That's right.  
1355  
1356 YVES STEGER: Mm-hmm.  
1357  
1358 JIM SMITH: Nineteen (19) percent.  
1359  
1360 VICKI KEENAN: Right.  
1361  
1362 JOE GREEN: I'll stop.  
1363  
1364 VICKI KEENAN: Yeah.  
1365  
1366 YVES STEGER: Yes.  
1367  
1368 JOE GREEN: That's right.  
1369  
1370 VICKI KEENAN: Alright, granting the variance would do substantial justice.  
1371  
1372 NEIL DUNN: Well, let's see what we were given for an answer on that one. Taxes to the Town  
1373 were increased, property value for the house was increased.  
1374

1375 VICKI KEENAN: "Perhaps the only guiding rule is that any loss to the individual that is not  
1376 outweighed by the gain to the general public is an injustice" [State of New Hampshire Office of  
1377 Energy and Planning, "The Board of Adjustment in New Hampshire: A Handbook for Local  
1378 Officials," October 2009, p. 15]. So that would pass for me.  
1379  
1380 YVES STEGER: Yup.  
1381  
1382 VICKI KEENAN: Okay. And contrary to the spirit of the ordinance.  
1383  
1384 JIM SMITH: The argument I had before.  
1385  
1386 VICKI KEENAN: I agree.  
1387  
1388 LARRY O'SULLIVAN: So our findings are that we have, out of the one, two, three, four, five,  
1389 six, seven (7), there's four (4) of them anyway that don't meet.  
1390  
1391 VICKI KEENAN: Right. Okay. Unless there's any more discussion, I'd entertain a motion and  
1392 I will sort of advise whoever makes the motion that when you're making your motion, if you  
1393 choose to not grant the area variance, you are very specific about the reasons why. And maybe  
1394 what prongs, or the...on the criteria. So, make sure you state that. Okay?  
1395  
1396 [laughter]  
1397  
1398 VICKI KEENAN: I know, it's lousy.  
1399  
1400 YVES STEGER: You want that to be my last action here?  
1401  
1402 JIM SMITH: Yeah, why not?  
1403  
1404 [laughter]  
1405  
1406 JOE GREEN: No...  
1407  
1408 VICKI KEENAN: No. We'll give you a reprieve from this one.  
1409  
1410 LARRY O'SULLIVAN: How about we work on the motion together? Alright?  
1411  
1412 VICKI KEENAN: Yup, okay.  
1413  
1414 LARRY O'SULLIVAN: I make a motion that we deny case 12/16/09-4 on the basis that no  
1415 conditions, no special conditions of the property were found and that there are other methods to

1416 reasonably accomplish or pursue to accomplish the same goal and that the granting doesn't do  
1417 substantial justice.  
1418  
1419 VICKI KEENAN: I think we said it...  
1420  
1421 LARRY O'SULLIVAN: And it is...I'm sorry?  
1422  
1423 VICKI KEENAN: Just a step...I think we said it would do substantial justice.  
1424  
1425 JIM SMITH: Would do...  
1426  
1427 LARRY O'SULLIVAN: I made a note, though, okay. We'll skip that one, then.  
1428  
1429 YVES STEGER: We only need the two (2).  
1430  
1431 VICKI KEENAN: Yeah.  
1432  
1433 LARRY O'SULLIVAN: Then we'll go to the use is contrary to the spirit of the ordinance.  
1434  
1435 JIM SMITH: Yeah.  
1436  
1437 VICKI KEENAN: Okay.  
1438  
1439 JIM SMITH: The more you have, I think, the better.  
1440  
1441 VICKI KEENAN: Yeah, I agree. So there's a motion...  
1442  
1443 JIM SMITH: I'll second that.  
1444  
1445 VICKI KEENAN: Okay, and there's a second. Any further discussion around the motion?  
1446 Seeing none, all those in favor of the motion, signify by saying 'aye'.  
1447  
1448 JIM SMITH: Aye.  
1449  
1450 NEIL DUNN: Aye.  
1451  
1452 LARRY O'SULLIVAN: Aye.  
1453  
1454 YVES STEGER: Aye.  
1455  
1456 VICKI KEENAN: Aye. Opposed? Abstentions?  
1457

1458 JOE GREEN: Abstention [non-voting alternate].  
1459  
1460 RESULT: THE MOTION TO DENY CASE NO. 12/16/2009-4 WAS APPROVED, 5-0-0.  
1461  
1462 RESPECTFULLY SUBMITTED,  
1463  
1464  
1465  
1466 LARRY O'SULLIVAN, CLERK  
1467 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY  
1468  
1469 APPROVED JANUARY 20, 2010 WITH A MOTION MADE BY JIM SMITH, SECONDED BY  
1470 MATT NEUMAN AND APPROVED 5-0-0.