

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

5 DATE: AUGUST 19, 2009

6
7 CASE NO.: 7/15/2009-2 (CONTINUED)

8
9 APPLICANT: ROBERT E. COOK, JR.
10 33 LONDONDERRY ROAD, #13
11 LONDONDERRY, NH 03053
12

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

14
15 BOARD MEMBERS PRESENT: YVES STEGER, ACTING CHAIR
16 NEIL DUNN, VOTING MEMBER
17 JIM SMITH, VOTING MEMBER
18 MICHAEL GALLAGHER, VOTING ALTERNATE
19 MATTHEW NEUMAN, NON-VOTING ALTERNATE
20 LARRY O'SULLIVAN, CLERK
21

22 ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/
23 ZONING OFFICER
24

25 REQUEST: EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS
26 IN ACCORDANCE WITH THE PROVISIONS OF RSA
27 674:33-a FOR VIOLATION OF THE SIDELINE SETBACK
28 DISTANCE REQUIRED BY SECTION 2.3.1.3.3 OF THE
29 ZONING ORDINANCE.
30

31 PRESENTATION: Case No. 7/15/2009-1 was read into the record with four previous cases
32 listed. Clerk Larry O'Sullivan also read Exhibit "F" into the record, a letter from the abutter at
33 36 Brewster Road.
34

35 LARRY O'SULLIVAN: And then we have, obviously, the authorization letter from Mr. Cook,
36 authorizing Attorney William Mason to represent him [see Exhibit "D"].
37

38 MICHAEL GALLAGHER: What number Brewster was that? Was that...?
39

40 LARRY O'SULLIVAN: Thirty six (36).
41

42 NEIL DUNN: Three-six (36).
43

44 JAYE TROTTIER: And these are handouts he just gave me and pictures. So there's a packet
45 there for each one of you.
46
47 YVES STEGER: Okay, so now, this is continued. At that time, we were already in the
48 deliberation phase. So...
49
50 LARRY O'SULLIVAN: Right, so we only can take new information at this time.
51
52 YVES STEGER: At this time, we will only take new information from the applicant. There were
53 specific requirements that were made to the applicant as a result of our deliberation. Also, we
54 were, at that time, five (5) members. Actually, four (4) full members and one (1) alternate. With
55 Vicki not being here now, we are essentially four (4) left from the last meeting. Now, in that
56 case, we could go with four (4), but Neil, you mentioned that you are familiar with the case?
57
58 NEIL DUNN: Yes, Mr. Chairman, I have read all the minutes from Case 7/15/2009-2 and
59 additionally, I watched the footage on the local television station. And today, I also drove by
60 the property.
61
62 YVES STEGER: Okay. So, in that case, we're gonna have Larry, Neil, myself and Jim...
63
64 LARRY O'SULLIVAN: Yeah, but you're appointing Jim as a full voting member.
65
66 JIM SMITH: No.
67
68 YVES STEGER: He is a full voting member.
69
70 LARRY O'SULLIVAN: I'm sorry, I meant Mike.
71
72 YVES STEGER: And then...and actually, Jim needs to be because he was there last time, so
73 essentially...and...
74
75 JIM SMITH: No, I was a full member then.
76
77 YVES STEGER: Sorry?
78
79 JIM SMITH: I was a full member.
80
81 YVES STEGER: Yes.
82
83 JIM SMITH: Okay.
84
85 YVES STEGER: And Mike was there last week, too, and he will be a voting alternate.
86
87 LARRY O'SULLIVAN: Right. He's a voting alternate today.

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YVES STEGER: Okay?

LARRY O'SULLIVAN: Mm-hmm.

YVES STEGER: So, we have received additional information from the applicant, as was requested [see Exhibits "B" through "D"]. And I will let some time to the members to review.

[pause while members review exhibits; approximately 6 minutes and 49 seconds]

YVES STEGER: Please let me know when you have reviewed the documents.

LARRY O'SULLIVAN: I'm still looking to see if I can find some things here. One of the things that we asked for was an elevation plan. I see the views from multiple elevations but no measurements, no distances, no perspective. Another thing we had asked for was the deck and walkway plans, information for the footings and what have you for those. The deck...and if they're here, I just...I don't see them. If you could point them out? I mean, the pages aren't numbered but I can count them real quick. We're looking at the measurements for the side walkway/deck.

ROBERT COOK: The house would sit in here [see Exhibit "B," page ten (10)].

LARRY O'SULLIVAN: Okay, so this is the side walkway?

ROBERT COOK: That's the walkway, here. That's the stairs.

LARRY O'SULLIVAN: Oh, that's...does everybody catch that?

MICHAEL GALLAGHER: What's that?

LARRY O'SULLIVAN: What this document is?

MICHAEL GALLAGHER: That's the...isn't that the side wrapping around to the deck, looking over the water?

LARRY O'SULLIVAN: It's a top view, looking down.

ROBERT COOK: Right.

MICHAEL GALLAGHER: Oh, it's a top-down?

NEIL DUNN: Do we know what the width of the walkway is?

LARRY O'SULLIVAN: Thanks a lot. Thanks very much.

132
133 NEIL DUNN: Do we know what the width of the walkway is?
134
135 JIM SMITH: Four (4) feet.
136
137 NEIL DUNN: But we don't have that certified anywhere?
138
139 ROBERT COOK: If you look at the certified plot plan [see Exhibit "A"], you can calculate that.
140
141 NEIL DUNN: Copies usually aren't to scale, though, so I just...
142
143 ROBERT COOK: No, the numbers aren't to scale, no.
144
145 LARRY O'SULLIVAN: Okay, Is there an elevation plan here? Elevation plan?
146
147 ROBERT COOK: I went to Rich and asked him about the elevation and he said that you're
148 looking for the elevation of the house, the sides of the house and stuff.
149
150 LARRY O'SULLIVAN: As opposed to the lot?
151
152 ROBERT COOK: I had asked that question. And that's what I...
153
154 YVES STEGER: Alright, so are we ready to start asking questions to the applicant?
155
156 LARRY O'SULLIVAN: Sorry, I already had.
157
158 YVES STEGER: Yeah, I know.
159
160 BILL MASON: If I could, Mr. Chairman, just for the record, I just want to introduce myself.
161 My name is Bill Mason. I'm representing Mr. Cook this evening. I understand that you may be
162 in the deliberative session now. Just wanted to make a couple of points of order. We've tried to
163 provide you with some of the documentation with regard to history of this parcel, which
164 includes the actual building plan that was submitted that Mr. Cook got a building permit for
165 and constructed on the lot [see Exhibit "B"]. I have also submitted, as part of the record, a copy
166 of the deed where he took title [see Exhibit "C"]. It describes what his frontage was and the
167 other dimensional side lot lines of this particular piece of property. I would, since you haven't
168 reviewed the minutes of your prior meeting that I know of, I would like to point out two (2)
169 things. There was a comment in those meetings that he was trying to build a fifty (50) foot
170 house on a fifty (50) foot lot. He's trying to...his original objective was to build a house that was
171 twenty eight (28) feet in width on a lot that had fifty nine point three three (59.33) feet of
172 frontage. So, his original intention was to build a structure on a lot that he thought would be
173 conforming, not knowing that there was a narrowing, a slight narrowing of the lot, which
174 caused the issue that's currently before this Board. A final point I'd like to make is there was
175 some suggestion that there were two (2) variances that Mr. Cook got as part of this whole

176 process. As the Board can appreciate, this is a preexisting, nonconforming lot of record that has
177 been made nonconforming as a result of subsequent changes in your zoning ordinance. He
178 received one (1) variance and that was a frontage variance because he doesn't have the requisite
179 frontage according to your current zoning ordinance. I believe it's a hundred and fifty (150) feet
180 and he has less than that and he received a single variance for that. So, for the record, without
181 having reviewed your minutes and acted on those, I would like those just brought to the
182 Board's attention in terms of what Mr. Cook's efforts have been with regard to the developing
183 or building his home on this piece of land.

184
185 YVES STEGER: Thank you for your comments.

186
187 BILL MASON: [inaudible]...to answer any questions you have.

188
189 NEIL DUNN: Point of order. I guess I'm still lost if we're in deliberations on...

190
191 YVES STEGER: Yes, we are in deliberation.

192
193 NEIL DUNN: Then do we have to reopen this up to get all this input and to have all this
194 outside conversation or...?

195
196 YVES STEGER: Well...

197
198 NEIL DUNN: I don't know. I'm just...from a point of order...

199
200 YVES STEGER: We're just accepting your comments but we do not have to act on them. We
201 went through the deliberation, we looked at all the facts and based on those, we ask Mr. Cook
202 some additional information that will enable us to provide...

203
204 LARRY O'SULLIVAN: A better decision.

205
206 YVES STEGER: ...better decision making. And that's all we are looking, so we're looking to get
207 some, actually, technical and dimensional information from Mr. Cook. That's about the level we
208 were at at the end of the deliberation last month.

209
210 BILL MASON: And that's fine, Mr. Chairman. My only comments were, since you haven't
211 reviewed your minutes, just to comment on some impressions that Board members had with
212 regard to factual events which were not true and I don't want to...

213
214 YVES STEGER: I'm sorry, sir. This is not the time anymore. We have been through the facts.
215 Whatever they were and the way they were laid out at that time and because we closed the time
216 for questions or information, the only thing at this time we're gonna do is ask questions to Mr.
217 Cook...

218
219 BILL MASON: Or to myself and I'd be glad to respond.

220
221 YVES STEGER: If you can respond on dimensional issues...
222
223 BILL MASON: ...I would be glad to do that, sir.
224
225 YVES STEGER: Thank you, sir. Okay. So, do we have questions, given the information that
226 has been given to us at this time? It's still pretty confusing.
227
228 LARRY O'SULLIVAN: Are there any other facts that we need to know about on this case?
229 That's the question.
230
231 YVES STEGER: Yeah. So I looked at the pictures and some of them are pretty confusing.
232
233 ROBERT COOK: They're all labeled on the back.
234
235 YVES STEGER: I'm sorry?
236
237 ROBERT COOK: Labeled on the back. As far as...
238
239 JIM SMITH: Labeled on the back of the...
240
241 YVES STEGER: No, they were...I know where they are, it's just that...There is one that shows a
242 door on what would be the north side and it is facing towards the pond, so I'm assuming that
243 that is the entrance to the kitchen?
244
245 ROBERT COOK: No, that's a garage door.
246
247 YVES STEGER: Okay.
248
249 JIM SMITH: If you look at...
250
251 YVES STEGER: Yeah.
252
253 JIM SMITH: In other words, that's the front...
254
255 YVES STEGER: Yup.
256
257 JIM SMITH: ...and that's looking at the rear. This is the side. You got one door in the garage
258 going to the side...
259
260 YVES STEGER: Yup.
261
262 JIM SMITH: ...that's [inaudible] that side. It's not showing any door than the other side.

263
264 YVES STEGER: Oh, okay.
265
266 JIM SMITH: So they evidently have the [inaudible].
267
268 YVES STEGER: There is also a picture that shows a big boulder. You're facing your house...
269
270 ROBERT COOK: Right.
271
272 YVES STEGER: ...there's the garage, there's a big boulder. That boulder is on your property?
273
274 ROBERT COOK: Yes.
275
276 YVES STEGER: And there is also a tree, a forked tree. That one is also on your property?
277
278 RICHARD CANUEL: Yes, it is.
279
280 YVES STEGER: Okay. And the entrance door here.
281
282 JIM SMITH: Yup.
283
284 YVES STEGER: And there's no other way to get there to go to this portion.
285
286 JIM SMITH: I think there's one thing that's a little confusing. I think from the plans, you've
287 made some changes and they're not indicated on this plan. I'm looking at the...
288
289 ROBERT COOK: Page three (3) [Exhibit "B"], that garage door is actually on the opposite side.
290
291 JIM SMITH: Yeah. That's what I was afraid of.
292
293 LARRY O'SULLIVAN: And there is no other entrance on the...
294
295 YVES STEGER: No. On the other side.
296
297 LARRY O'SULLIVAN: ...south side of the building? That would be the south, right?
298
299 ROBERT COOK: This is the south side. There is the entrance that we spoke about and the
300 walkway.
301
302 LARRY O'SULLIVAN: Is that the...?
303
304 ROBERT COOK: Page three (3).
305
306 LARRY O'SULLIVAN: Okay, gotcha. There is that entrance.

307
308 ROBERT COOK: Right. And that garage door on page three (3) moved to the other side, the
309 front corner.
310
311 JIM SMITH: Okay. On the rear of the house, are those sliders?
312
313 ROBERT COOK: Yes.
314
315 JIM SMITH: So you can access the deck from those sliders?
316
317 ROBERT COOK: Yes.
318
319 JIM SMITH: Okay. One of my suggestions was to eliminate that walkway and just leave it at
320 this point just to that side door.
321
322 YVES STEGER: Mm-hmm. Like here?
323
324 JIM SMITH: Right. That's what I was suggesting.
325
326 YVES STEGER: Yeah.
327
328 JIM SMITH: Which would reduce a little bit of the impact on that side of the building.
329
330 ROBERT COOK: If you look at the pictures, there is no impact until you get to the end of the
331 house and what I was going to suggest is that we cut a forty five (45)...not a forty five (45), a
332 fifteen (15) degree, which drops the...
333
334 JIM SMITH: Well, how can you say that? It's showing fourteen (14) point something feet to the
335 corner of the garage and thirteen point four (13.4) to the corner of that deck, so it's gotta be
336 encroaching into that fifteen (15) feet.
337
338 ROBERT COOK: The foundation doesn't. The deck does.
339
340 JIM SMITH: That's what I'm saying.
341
342 ROBERT COOK: Okay. Alright. Okay, I thought you meant the foundation.
343
344 NEIL DUNN: Well, the deck is a permanent structure, correct, Jim?
345
346 JIM SMITH: Right, but what I'm suggesting is to try to make this have less impact...
347
348 YVES STEGER: Mm-hmm.
349
350 NEIL DUNN: No, I understand that.

351
352 JIM SMITH: ...by removing that walkway from where that entrance door on the side is, from
353 that point back to the deck.
354
355 YVES STEGER: Yeah.
356
357 JIM SMITH: If we eliminate that, that would at least bring it back to the side of the building as
358 far as any encroachment on that side.
359
360 BILL MASON: We believe that that's a reasonable suggestion and we would agree that, as a
361 contingency, should the Board consider this favorably, that we would take that...I guess it's a
362 catwalk or whatever it is...
363
364 JIM SMITH: Yeah.
365
366 BILL MASON: ...that walkway, we would remove that walkway.
367
368 MICHAEL GALLAGHER: Can I see those pictures for a second, Jim?
369
370 YVES STEGER: Okay. So what did you think? And you would reduce also the...
371
372 JIM SMITH: Yeah, the deck would...
373
374 YVES STEGER: Would have to be cut as well.
375
376 MICHAEL GALLAGHER: Eliminate this whole walkway.
377
378 JIM SMITH: Yeah. Just leave it to the door...
379
380 MICHAEL GALLAGHER: Oh, he took the door out anyway...oh yeah. Right.
381
382 JIM SMITH: ...then cut it off at that point.
383
384 MICHAEL GALLAGHER: Yeah. Right.
385
386 YVES STEGER: So, all this walkway here and the portion of the deck that is attached to the
387 walkway.
388
389 JIM SMITH: Right.
390
391 YVES STEGER: But keep exactly to this post here.
392
393 JIM SMITH: Yeah, that's what I'm suggesting.
394

395 YVES STEGER: Yup. See what...?
396
397 NEIL DUNN: Mm-hmm.
398
399 YVES STEGER: So, this would go and the deck needs to be reduced to be aligned with...
400
401 [overlapping conversation]
402
403 JIM SMITH: And the rest of the house?
404
405 YVES STEGER: Yes. Plus, he has no door on the other side, you know, he cannot just jump or
406 do that, so, but it's our only way to reduce the impact. Larry, what do you think?
407
408 LARRY O'SULLIVAN: I think we got a lot of information here and if you don't mind me taking
409 a few more minutes to look over it.
410
411 YVES STEGER: Go ahead. Go ahead, please. And if you have more questions...
412
413 LARRY O'SULLIVAN: The issues...you know the issue that I have is that...
414
415 YVES STEGER: Yup.
416
417 LARRY O'SULLIVAN: ...the original variances that we had were regarding an area variance,
418 originally, that was requested to construct a house on a lot with no frontage.
419
420 JIM SMITH: Well, less than the required frontage.
421
422 LARRY O'SULLIVAN: Yeah. And we had a sixty (60) foot lot that we were presented and
423 which was approved. Where the variance was approved, it was approved for "as presented."
424
425 YVES STEGER: Mm-hmm.
426
427 LARRY O'SULLIVAN: And if you'd like book, chapter and verse, I went and got the minutes
428 and we all have them on the system. Jaye's got them there for us. That the presentation by Mr.
429 Michels included that we wouldn't have an issue with the building that was being allowed as it
430 was going to be a small, two (2) bedroom, in character with the other buildings in that
431 neighborhood. And I believe now that I've seen the house, now that I've seen the drawings,
432 that's not what we have and the original variance should be voted as null and void and I think
433 this Board has the right and the authority to do it. And I suggest we do it. That was
434 misrepresentation on the part of Mr. Michels to begin with, because he made the presentation
435 and what we have on this is not a little or a small house. So, with that said...
436
437 NEIL DUNN: What was the date of...I'm sorry...
438

439 LARRY O'SULLIVAN: It was October of '07. This really wouldn't have ever come up if there
440 wasn't a request for a waiver here of dimensional requirements. Because I don't believe our
441 zoning officer would have gone back to the record to see what exactly was approved for this
442 particular variance. I'm not aware of ever revoking a variance but I think we're very close to
443 doing it here and Richard, I'd like your opinion on this.
444

445 RICHARD CANUEL: Well, under what grounds would you be revoking that particular
446 variance?
447

448 LARRY O'SULLIVAN: Because it's misrepresentation from the original. The original variance
449 was applied for with an unbelievable amount of effort put in by the Board members, you
450 included...
451

452 YVES STEGER: Oh, yeah.
453

454 LARRY O'SULLIVAN: ...you almost heavily...
455

456 YVES STEGER: So what was that variance that you're talking about? What is...?
457

458 LARRY O'SULLIVAN: That's the one from '07, 11/21/07-2.
459

460 YVES STEGER: Eleven-twenty one-o-seven o-two (11/21/07-02). Do we have it in the records?
461

462 LARRY O'SULLIVAN: Yeah.
463

464 YVES STEGER: Can I...? ZBA case records...
465

466 LARRY O'SULLIVAN: 'Cause I can't imagine anybody thinking that this is a small house. A
467 small, two (2) bedroom house, similar to the characteristics of the ones in the neighborhood. I
468 think one of the neighbors is here who...
469

470 YVES STEGER: It's not a complete file.
471

472 NEIL DUNN: You wanted the minutes of the case?
473

474 YVES STEGER: Yes.
475

476 NEIL DUNN: Then you'd have to go minutes. Let's see what the summary says, though, if you
477 wanna check the summary real quick?
478

479 RICHARD CANUEL: Well, unless the granting of the variance was actually very specific,
480 restricting the construction of the house to a specific number of bedrooms...
481

482 LARRY O'SULLIVAN: "As presented." If it was presented as a two (2) bedroom, small house
483 and it was received as what he have here...
484

485 RICHARD CANUEL: But unless the Board actually put that as a specific restriction in granting
486 the variance, I can't see how you can determine that there's a violation of that variance. So you
487 would have to have those specific restrictions and criteria as part of your granting of the
488 variance.
489

490 YVES STEGER: Okay. November...
491

492 LARRY O'SULLIVAN: Well, when we grant a variance, it is "as presented." When we make
493 our grant, it is "as presented." So, if somebody came up and said they were gonna put up a
494 twenty four (24) by twenty four (24) seasonal building and it turns into something else that's
495 permanent, that's okay?
496

497 RICHARD CANUEL: Yeah, that's understandable. Yeah.
498

499 LARRY O'SULLIVAN: What is understandable? That it would not be...
500

501 RICHARD CANUEL: That if somebody built something other than what was represented,
502 yeah.
503

504 LARRY O'SULLIVAN: Right.
505

506 RICHARD CANUEL: Yes, that's understandable. Sure.
507

508 LARRY O'SULLIVAN: Okay, well, that's where I'm going with this.
509

510 RICHARD CANUEL: Well, that's what I'm saying, yeah, I think you would have a very
511 difficult time to show that the owner is in violation of that particular variance unless you had
512 that restriction on that granting of the variance. That was part of the condition.
513

514 LARRY O'SULLIVAN: Well, my understanding...I don't know if you reviewed any of those
515 notes from that meeting, but I did, because I remember this. I remember everybody hammering
516 Mr. Michels at the time, that it's a small lot on an unpaved road. We expect you not to have a
517 big house there and the comeback had been, in his own words, "a small, two (2) bedroom
518 house."
519

520 RICHARD CANUEL: And was that specifically part of the Board's deliberation and
521 consideration when they made their decision?
522

523 LARRY O'SULLIVAN: When who made that decision?
524

525 RICHARD CANUEL: When the Board made that decision.

526
527 LARRY O'SULLIVAN: To approve it?
528
529 RICHARD CANUEL: Yeah.
530
531 LARRY O'SULLIVAN: Absolutely.
532
533 RICHARD CANUEL: Yeah?
534
535 LARRY O'SULLIVAN: I believe that there was a misconnect or a disconnect between what Mr.
536 Michels had presented and what we have here.
537
538 YVES STEGER: So, we're going to have to...I recommend that all the members start reading the
539 minutes of the 11/21/07 case.
540
541 BILL MASON: For the record, Mr. Chairman, the living area of this house is thirty five (35) by
542 twenty eight (28) and it's a two (2) bedroom house. That should be reflected in the plans that
543 the Board was given tonight.
544
545 LARRY O'SULLIVAN: Thirty five (35) by twenty eight (28)? I thought thirty six (36) by twenty
546 eight (28) is what's...
547
548 BILL MASON: Excuse me, thirty six (36) by twenty eight (28).
549
550 YVES STEGER: That's interesting.
551
552 LARRY O'SULLIVAN: That's what's on the plan. What's above the garage? What's above the
553 garage?
554
555 ROBERT COOK: It's a piano room.
556
557 LARRY O'SULLIVAN: It's a room. Is it living space?
558
559 YVES STEGER: It's pretty interesting. The minutes...
560
561 LARRY O'SULLIVAN: Watch. Be specific with us.
562
563 YVES STEGER: This is...
564
565 LARRY O'SULLIVAN: Don't take the advantage of, you know, our experiences...
566
567 BILL MASON: I wasn't here in '07 when the...
568

569 LARRY O'SULLIVAN: Well, you just represented the house is twenty eight (28) by thirty five
570 (35). And that's the...
571

572 BILL MASON: Well, on the plans that I'm looking at, that's what it's reflecting.
573

574 LARRY O'SULLIVAN: And what's above the garage? You're not measuring the garage at all in
575 that.
576

577 YVES STEGER: Actually, it really doesn't matter if the garage is in there. Okay, "Yves Steger:
578 That's a pretty narrow lot. I see about fifty five (55) to sixty (60) feet. John Michels: Yes, about
579 sixty (60) feet. Mark Officer: Sixty (60). Yves Steger: Do you believe that you can put a house
580 in there that will meet all the setback requirements on both sides? John Michels: Yes, in fact,
581 there is a plan that shows how it...[Yves Steger]: Okay" [see minutes of Case No. 11/17/2007-2
582 and 3, page 5].
583

584 LARRY O'SULLIVAN: Have you read a little further...
585

586 BILL MASON: And I firmly believe he believed that. If the lot consistently, from the street
587 back to the pond, was fifty nine point three three (59.33) feet, we wouldn't be having this
588 meeting that we're having tonight. And if this error was picked up earlier on before this house
589 was complete, as opposed to a request to have a certified plot plan done prior to the certificate
590 of occupancy, we wouldn't be here tonight, right? We didn't do anything deliberately. We
591 thought we had a lot that was sixty (60) feet wide and we designed a house...
592

593 LARRY O'SULLIVAN: Mr. Chairman...
594

595 BILL MASON: ...that was twenty eight (28) feet wide...
596

597 YVES STEGER: I'm sorry, sir.
598

599 BILL MASON: ...it would fit on it.
600

601 YVES STEGER: I'm sorry, sir.
602

603 LARRY O'SULLIVAN: There's a reference to site specific plan and permit, Exhibit "C" which
604 was made. A copy of the plan where everything would be on the lot is Exhibit "B" for those
605 minutes [Case No. 11/21/2007-2]. And the restrictions, we said...Mike Brown said, I think, "the
606 applicant must still receive a State approved septic system and follow Town building and
607 zoning ordinances" [see minutes of Case No. 4/19/2006-2 and 3, page 8]. Right? That was
608 placed as a restriction, a deliberate restriction. What we were all expecting was a small house as
609 was presented. What we've got isn't. I believe it's a mistake to allow it to exist as a variance
610 because it was misrepresented and I do think that this Board has the authority to withdraw the
611 past variance and we should. To make it an unbuildable lot. Back to where we were. What
612 would happen to the building? Well, we have the option. We have the option to have the

613 applicant take us to court. Let's see how a court would say, 'this is what the record showed,
614 this is what was built, and they match,' because, you know, I think it's quite obvious that that
615 was not the intent when the presentation was made a two (2) bedroom...small two (2) bedroom
616 house, similar in character to the other houses in the area. When the house next door is a third
617 the size, perhaps.

618
619 YVES STEGER: Now, I understand what you're saying but...it's clear that a mistake has been
620 made.

621
622 LARRY O'SULLIVAN: Yes, it's obvious.

623
624 YVES STEGER: A gross mistake, okay? We were talking about a very small lot and we
625 approved with the understanding that what we were approving would meet all the setback
626 requirements. That's stated very clearly in the discussions and the presentations. So...

627
628 LARRY O'SULLIVAN: And then the restriction on top of that that was added to the approval.

629
630 YVES STEGER: Yup. Okay, but we can still give the benefit of the doubt that the mistake was
631 made in good faith. I mean...

632
633 JIM SMITH: Well, you know, one of the problems I have with this, under that section, it talks
634 about...how is it worded?

635
636 LARRY O'SULLIVAN: Are you talking about...?

637
638 JIM SMITH: "The violation was not the outcome of ignorance of the law or ordinance or failure
639 to inquire."

640
641 LARRY O'SULLIVAN: But you're talking about the current thing on the table.

642
643 JIM SMITH: Yeah.

644
645 LARRY O'SULLIVAN: Alright? So, we are speaking a little bit of a different thing. I'm talking
646 about the original variance. We wouldn't be here tonight if the original variance hadn't been
647 approved. We wouldn't be in this...Mr. Cook wouldn't be in this pickle if the presentation was
648 what he was going to build.

649
650 YVES STEGER: Well, but...We have to assume that at the time of the presentation, there was an
651 understanding on the part of the applicant or the person presenting that what they were
652 presenting was correct. I'm making that assumption. And that ultimately, through
653 misunderstanding, lack to inquire, not following through with the contractors, it didn't happen
654 to be what they presented during the granting of the variance.

655
656 JIM SMITH: I think the other problem you'd have with...it is, in fact, a two (2) bedroom house.

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YVES STEGER: Mm-hmm.

JIM SMITH: What your perception of small and what mine is and what their [sic] is may or may not be the same thing.

NEIL DUNN: If I may make a statement, that variance, 11/21/2007-2, was because they were denied a building permit.

YVES STEGER: Correct.

NEIL DUNN: And so they came to us to appeal the Building Department's request for a building permit. So we did, to Larry's point, we made sure we went through all this, 'hey look, it's an undersized lot.' It was very clear, so to come back, to know you have that small of a lot, you were denied a building permit and all these restrictions and the minutes of the case are public record, and those were made part of the variances granted subject to the minutes of the presentation as it was presented, and then to come back a year later or two and say, 'well, geez, guess what, it's too big now,' it gets a little disconcerting. So, to get back to the points of the equitable waiver...

YVES STEGER: Mm-hmm.

NEIL DUNN: ...and does it diminish the property values of the neighbors is one I'm having trouble with...

LARRY O'SULLIVAN: Mm-hmm.

NEIL DUNN: ...and was it made out of ignorance or lack of follow-through or something is what I'm having trouble with, so I guess it gets back to that. After that, I guess we can let the rest of the people worry about what goes on. As the Zoning Board, my thought is we're here to go through these steps, do these steps get answered favorably for the applicant?

YVES STEGER: Mm-hmm.

LARRY O'SULLIVAN: You're just considering and concerned about the existing request for...

NEIL DUNN: Right.

YVES STEGER: Yes.

LARRY O'SULLIVAN: ...an equitable waiver.

NEIL DUNN: I think for this case, now. Maybe other business would want to bring up where we go otherwise but I don't know, procedurally...

701
702 YVES STEGER: But it really doesn't matter whether we reject this one or we cancel the previous
703 variance...
704
705 LARRY O'SULLIVAN: Absolutely, it matters.
706
707 YVES STEGER: The result is identical...
708
709 LARRY O'SULLIVAN: Absolutely, it matters.
710
711 YVES STEGER: ...he has to rear down his house, period.
712
713 LARRY O'SULLIVAN: No, no, no, no. That's not the case at all. It really isn't the case.
714
715 YVES STEGER: Yes, it is.
716
717 LARRY O'SULLIVAN: No, it isn't.
718
719 YVES STEGER: Why not?
720
721 LARRY O'SULLIVAN: There's no way that he's gonna tear down that house.
722
723 YVES STEGER: So?
724
725 LARRY O'SULLIVAN: I mean, I don't think there's anybody in this room has any idea or
726 thinking that he's gonna do it. What I would suggest is that if we remove the original variance,
727 we, in effect, say that it was done in bad faith. I believe that we could be in a position where we
728 would have a new opportunity to provide a variance for that lot. For an existing building. A
729 nonconforming, existing building. Am I getting close here, Richard?
730
731 RICHARD CANUEL: I think you're talking two different subjects. And one of the reasons
732 why the equitable waiver provisions were created, simply because granting a variance for an
733 issue like this is very difficult for the Board to show, primarily, hardship in granting a variance
734 for something like this. Equitable waiver is probably the ideal way to go in a situation like this.
735 Considering rescinding the original variance, a building permit was issued based on the
736 approval of that variance. Construction proceeded based on approval of that variance, so
737 voiding the variance at this point in time isn't going to correct anything. I think that's a moot
738 point.
739
740 LARRY O'SULLIVAN: Oh, it would be? Alright.
741
742 YVES STEGER: Yeah.
743
744 RICHARD CANUEL: Yeah. Yup.

745
746 YVES STEGER: I agree. Essentially, you know, we were at, essentially, at the end of the
747 deliberation. We wanted to see, how can we limit the damage?
748
749 LARRY O'SULLIVAN: Yeah, but what brought this all up, though, is because I knew that we
750 had hammered away at the width of this...the lot and what have you...
751
752 YVES STEGER: Absolutely.
753
754 LARRY O'SULLIVAN: ...to make sure that we didn't wind up with something that went
755 outside the boundaries, and it did.
756
757 YVES STEGER: Yes, but if you read the minutes of last month...
758
759 LARRY O'SULLIVAN: I did...
760
761 YVES STEGER: ...we essentially did...we said exactly the same thing.
762
763 LARRY O'SULLIVAN: Mm-hmm.
764
765 YVES STEGER: Anybody building on such a small lot should have been there and should have
766 watched the contractor like a hawk to make sure that it was an inch on the right side as opposed
767 to an even an inch on the other side and it is several feet wrong on both sides. So, I mean...but
768 that's the fact. That's what he's coming now for the equitable waiver, because, you know, if we
769 say, 'well, no, you don't get it,' essentially, the house can never get a building...
770
771 LARRY O'SULLIVAN: Occupancy. Right.
772
773 YVES STEGER: ...occupancy, okay?
774
775 LARRY O'SULLIVAN: Yeah, we're not gonna let...
776
777 YVES STEGER: Which is equivalent to essentially saying...and I think that the gist of what we
778 discussed last time was okay. The interest of the community, including the neighbors...
779
780 LARRY O'SULLIVAN: Well, we haven't heard from the neighbors, except for that letter.
781
782 YVES STEGER: Well, that was last time. There is no opening for any additional statement at
783 this time. We're in deliberation.
784
785 JIM SMITH: Could I ask a question?
786
787 YVES STEGER: Yup.
788

789 JIM SMITH: Richard? Do you have the copy of what he submitted for a plot plan when he
790 applied for the building permit?
791
792 RICHARD CANUEL: With the building permit?
793
794 JIM SMITH: Yeah.
795
796 RICHARD CANUEL: Well, what we have is a copy of the septic plan, which often times we do
797 rely on...
798
799 JIM SMITH: Yeah.
800
801 RICHARD CANUEL: ...the proposed location of the structure because that needs to be shown
802 along with the septic plan for elevations and so forth. And I'm presuming that that was the
803 plan that was relied on when we issued the building permit. And if you look at the structure
804 that's on that plan, that structure appears to meet the sideline setbacks. There is clearly, you
805 know, fifteen (15) feet on both sides of that.
806
807 YVES STEGER: Yup.
808
809 RICHARD CANUEL: I don't have a scale with me...
810
811 YVES STEGER: Yeah, and there is no deck that protrudes here and an...
812
813 LARRY O'SULLIVAN: There's no side walk.
814
815 YVES STEGER: Yeah, and no side walk. So, yeah, you know, and if this is the kind of thing we
816 received when we did the variance in 2007, we would...
817
818 LARRY O'SULLIVAN: It's reinforcing my point.
819
820 YVES STEGER: No, so, you know, how come that they didn't build that? And actually, even
821 the elevation are on this one, so, that's probably one of the best one I've seen in a long time.
822
823 JIM SMITH: Mm-hmm. Do you have a scale so we could scale that?
824
825 RICHARD CANUEL: I didn't have one with me, no. But I did look at the plan previously and
826 it certainly meets the fifteen (15) foot setback.
827
828 YVES STEGER: Use this.
829
830 JIM SMITH: Well, I was trying to figure out what the size of the...
831

832 YVES STEGER: Oh. 'Cause you see, essentially, looking back at what should have happened
833 and what did happen, today we are facing a situation where what was built was not what was
834 represented or what even potentially the applicant expected, okay? That's what we are facing,
835 so there are no two (2) ways around. Either we do not accept the equitable waiver, in which
836 case, that house will never be lived in because he will not have an occupancy...
837
838 LARRY O'SULLIVAN: Or we approve it with a restriction.
839
840 YVES STEGER: Or we approve it with a restriction.
841
842 JIM SMITH: No, it's either...it's an equitable waiver, so either you approve it or you don't.
843 This is not a variance.
844
845 LARRY O'SULLIVAN: Right.
846
847 YVES STEGER: Are you saying we cannot put restrictions on an equitable waiver?
848
849 JIM SMITH: No, I don't believe you can.
850
851 YVES STEGER: Sure, we're the Board.
852
853 [laughter]
854
855 YVES STEGER: I mean, from a legal point of view, is there anything that will stop us to put
856 restrictions or conditions? Like those that you suggested about the fact that there will not...that
857 we will reduce the size of the walkway...
858
859 JIM SMITH: Yeah.
860
861 YVES STEGER: ...and the size of the...so that the encroachment on the neighbors is limited and
862 the only portion that will be limited, that will stay is the one that gives him access to his house
863 through the door. That is a reasonable restriction...
864
865 RICHARD CANUEL: There's a scale.
866
867 YVES STEGER: 'Cause if we can't put restrictions, you know, then...
868
869 LARRY O'SULLIVAN: Well, you can also be specific about what you do approve.
870
871 YVES STEGER: Mm-hmm.
872
873 LARRY O'SULLIVAN: What's approved is 'x,' 'y,' and 'z' without a porch or a deck or a side
874 room or what have you.
875

876 YVES STEGER: I'm quite sure that people will do that very, very carefully. We're good at that
877 in this Board.
878
879 JIM SMITH: Hey, Rich? Wanna come here for...? They only show twenty two (22) feet wide...
880
881 RICHARD CANUEL: [inaudible] say. [inaudible] the permit based on that...
882
883 JIM SMITH: [inaudible] plot plan...
884
885 YVES STEGER: See, even the house is bigger. See? It's not oriented correctly, but in addition,
886 you see, it is...
887
888 JIM SMITH: Yeah, I know.
889
890 YVES STEGER: How much is this one? That's about twenty...
891
892 JIM SMITH: Twenty two (22).
893
894 YVES STEGER: It's twenty two (22) here. Well, it is twenty...
895
896 JIM SMITH: This is showing about twenty two (22) feet.
897
898 YVES STEGER: Twenty two (22) feet?
899
900 JIM SMITH: Yup. Which gives it just over fifteen (15) feet on that side and just over...
901
902 YVES STEGER: Sixteen (16) on the other.
903
904 JIM SMITH: Right.
905
906 YVES STEGER: Okay. So they didn't put...they put the house, first of all, it is now twenty six
907 (26) here and twenty eight (28) here...
908
909 JIM SMITH: Right.
910
911 YVES STEGER: Plus there is a walkway and a deck. And at twenty six (26)...what is the
912 distance here?
913
914 MICHAEL GALLAGHER: Fifty nine (59) and change, sixty (60)...
915
916 JIM SMITH: Fifty five (55).
917
918 MICHAEL GALLAGHER: Oh.
919

920 YVES STEGER: Fifty five (55) minus thirty (30)...

921

922 RICHARD CANUEL: So it gives you only about twenty five (25) feet.

923

924 YVES STEGER: Twenty five (25) feet and he put...and he put twenty eight (28) feet.

925

926 JIM SMITH: Yeah, see, here's where the problem comes in. That's almost sixty (60), but that's

927 at an angle.

928

929 YVES STEGER: Yeah, no, I understand.

930

931 JIM SMITH: Versus the...

932

933 YVES STEGER: So it is fifty five (55). He essentially could put a house that is...how much is

934 this one, you said?

935

936 JIM SMITH: Twenty two (22).

937

938 YVES STEGER: Twenty two (22). And is house is twenty six (26) and twenty eight (28) with a

939 deck that is thirty two (32).

940

941 LARRY O'SULLIVAN: [inaudible] there.

942

943 YVES STEGER: Okay? So that was what was proposed. Twenty two (22), fifteen (15) and

944 fifteen (15).

945

946 JIM SMITH: I mean, that's what was shown on the septic.

947

948 YVES STEGER: And, but we have...

949

950 JIM SMITH: The septic is showing you approximately fifty five (55) feet of usable space. The

951 building width on this was showing about twenty two (22) feet.

952

953 YVES STEGER: Mm-hmm. And it is not...

954

955 LARRY O'SULLIVAN: As opposed to twenty eight (28) feet.

956

957 YVES STEGER: It is not aligned with the lot, one thing, which makes it worse, and it is twenty

958 six (26), twenty eight (28) for the house, which in here, is contiguous, and here has an indent

959 and there is a deck which is thirty two (32).

960

961 MICHAEL GALLAGHER: The building permit says twenty eight (28).

962

963 BILL MASON: Just a point of order, I don't believe my client had that septic system designed,
964 so I don't know who the applicant was on that septic system design. I'm advised that when he
965 purchased the lot, he purchased it with an approved septic system design for a two (2) bedroom
966 home, not a particular sized two (2) bedroom home.

967
968 JIM SMITH: I understand what you're saying.

969
970 BILL MASON: Okay.

971
972 JIM SMITH: But what I'm saying, what the plan is showing, that the width of the lot was, in
973 fact, around fifty five (55) feet. The sixty (60) feet is at an angle of the street. So that's why the
974 misconception was that the lot was, in fact, sixty (60) feet wide. In reality, it was only fifty five
975 (55) feet. The proposed house per the septic plan was approximately twenty two (22) feet wide,
976 which gave him about sixteen (16) feet on either side of the house.

977
978 BILL MASON: I don't know who that plan recites as the owner, but I'm told it's not Mr. Cook,
979 so...

980
981 JIM SMITH: Well...

982
983 NEIL DUNN: He submitted it, though.

984
985 JIM SMITH: He used...is this what you used to submit for your building application?

986
987 ROBERT COOK: No, I...they had that already because it was submitted before by the...I think
988 their name was Yetka's.

989
990 YVES STEGER: Yeah, Joanne Yetka. That's the previous owner.

991
992 ROBERT COOK: I submitted a set of blue prints. I submitted a set of blue prints that were
993 twenty eight (28) by sixty two (62) when I went for the building permit. And I was never
994 refused a building permit, like was stated earlier. It was my variance had lapsed because of the
995 six (6) month period, so I was just told I had to get another variance and I was never refused a
996 building permit. That was misstated. So, for the record, I went to get a variance because my
997 variance had lapsed.

998
999 BILL MASON: Expired.

1000
1001 ROBERT COOK: It expired. And I submitted twenty eight (28) by sixty two (62) for the
1002 building permit, which was approved and states on the building permit that size.

1003
1004 LARRY O'SULLIVAN: See, what we have the issue with is the original case was heard for this
1005 presentation of the septic. The original notes that we have here in the beginning of this case was
1006 that this is all referring to that as being what was submitted and again and again, it had been

1007 referred to as "the septic design," "the septic design." It was the only one we've seen was that
1008 one. So, that's where we're coming from. You claimed it as your own during last meeting.
1009 That's why we have a problem with it. So, but besides that, let's go along with the...we see that
1010 there was an error. There was an error in measurement. Can we continue on?
1011
1012 YVES STEGER: Alright. So, what would you like to propose?
1013
1014 LARRY O'SULLIVAN: I think we need to go through the points. We have multiple points that
1015 we have in a worksheet for an equitable waiver.
1016
1017 YVES STEGER: Somehow I lost all my papers.
1018
1019 NEIL DUNN: This is...
1020
1021 LARRY O'SULLIVAN: Do you have extras?
1022
1023 NEIL DUNN: Well, if you want...
1024
1025 YVES STEGER: No, I had a whole stack of papers. Thank you. That will help me a lot. Alright.
1026 Let's go to the worksheet. One (1), explain the violation was not noticed or discovered by any
1027 owner, former owner...until a structure has been substantially completed or until after a lot or
1028 other division in land has been subdivided by conveyance to a bone fide purchaser for value.
1029 Okay, so when was the...the issue was discovered at the time he asked for an occupancy, you
1030 know, and he submitted the plan...
1031
1032 LARRY O'SULLIVAN: Occupancy permit, right.
1033
1034 YVES STEGER: ...the Town said, 'well, that's not correct.'
1035
1036 LARRY O'SULLIVAN: Despite the fact that the original variance said that he had to conform
1037 with all of the requirements and one of the requirements is to submit...
1038
1039 JIM SMITH: Well...
1040
1041 NEIL DUNN: Yeah, but...
1042
1043 LARRY O'SULLIVAN: ...to submit the...what is it, the footings...
1044
1045 JIM SMITH: Certified footings.
1046
1047 LARRY O'SULLIVAN: Certified footings plan. And it wasn't.
1048
1049 JIM SMITH: Okay, but I think there's no argument that number one (1) was met. It wasn't...

1050
1051 LARRY O'SULLIVAN: It wasn't found until...
1052
1053 JIM SMITH: The violation was not found...
1054
1055 NEIL DUNN: Correct.
1056
1057 YVES STEGER: Until afterwards.
1058
1059 JIM SMITH: ...until it was substantially complete.
1060
1061 YVES STEGER: So, it's completed.
1062
1063 JIM SMITH: So, that's not...that's okay.
1064
1065 YVES STEGER: Okay.
1066
1067 LARRY O'SULLIVAN: That's okay, but it wouldn't have been okay if it had been followed...
1068
1069 JIM SMITH: Well, no, but we have to look at that one (1) question.
1070
1071 YVES STEGER: If it wasn't wrong, he wouldn't be here.
1072
1073 JIM SMITH: Right, but...
1074
1075 YVES STEGER: Remember, it is...
1076
1077 NEIL DUNN: [inaudible] probably could be...
1078
1079 JIM SMITH: [inaudible] When was it discovered? It was discovered when the building was
1080 substantially complete.
1081
1082 LARRY O'SULLIVAN: Right.
1083
1084 JIM SMITH: That, we have to agree, is correct.
1085
1086 YVES STEGER: The thing is...yup. Now...
1087
1088 JIM SMITH: I would like to skip number two (2)...
1089
1090 YVES STEGER: For the time being?
1091
1092 JIM SMITH: Go to three (3) and four (4).
1093

1094 YVES STEGER: Three...
1095
1096 NEIL DUNN: Two (2), or three (3), the physical or dimensional violation does not constitute a
1097 public or private nuisance or diminish the value of other property in the area, nor interfere with
1098 or adversely affect any present or permissible future uses of any such property. I kind of think
1099 it...perhaps thirty six (36), right next door to them, it could diminish their property value. The
1100 building and the deck are...
1101
1102 LARRY O'SULLIVAN: It does diminish the property value. It's called "external obsolescence"
1103 when somebody outside your realm, outside your property, does something that is outside of
1104 your control, that makes their property worth less. And because there's a huge wall that was
1105 built and the house on top of it, that yard, that lot, that house that's there now is perpetually in
1106 shade. I was there at twelve...
1107
1108 YVES STEGER: Are you saying that you recommend that it be torn down? Well, you have to
1109 be consistent with your arguments. You cannot go one way or the other way, okay?
1110
1111 LARRY O'SULLIVAN: I believe that we made a recommendation to somebody else in similar
1112 circumstances where they changed the roofline to...instead of being a flat, two (2) story roof...
1113
1114 YVES STEGER: I remember that one, too.
1115
1116 LARRY O'SULLIVAN: ...to being a dormered roof to accomplish the same thing with less
1117 intrusion on their neighbors. However, in this case, I believe that that three (3) feet at one end
1118 and a foot in the other end isn't a major reason for the shade in the yard next door but it's
1119 incrementally larger area of shade that and obstructed view that the existing homeowner has to
1120 deal with.
1121
1122 YVES STEGER: No, I understand but remember, the things that we can still impact at this
1123 time...
1124
1125 LARRY O'SULLIVAN: Right.
1126
1127 YVES STEGER: ...is that walkway and the deck.
1128
1129 LARRY O'SULLIVAN: And the roof.
1130
1131 YVES STEGER: We can look into that...
1132
1133 LARRY O'SULLIVAN: Well, let's go on.
1134
1135 YVES STEGER: But...
1136
1137 LARRY O'SULLIVAN: Let's not let that be the sticking point.

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YVES STEGER: Okay.

NEIL DUNN: Mr. Chairman, if I may, when you look at 674:33-a, if you look at the premise of the whole thing, it says, one or "I," "When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings." And those are the findings we're going through.

YVES STEGER: I understand.

NEIL DUNN: Okay.

YVES STEGER: Mm-hmm. That's what we're going through, so, essentially...and it has to be all of them, okay? For example, we've not gone through two (2) yet at this time, but...

NEIL DUNN: So, I guess, if we're skipping two (2) and we're still going and we're looking at three (3), it would come down probably to a vote of whether we think it diminishes the property value of surrounding property. I personally believe it does. It's such a narrow lot and a small neighborhood like that, that much encroachment on the setback definitely could hinder the property value, is my thought.

YVES STEGER: Anybody else has an opinion on that?

LARRY O'SULLIVAN: Well, we have to talk about our Master Plan as being the reason that we have a fifteen (15) foot minimum...alright? That is the minimum. We don't want anything any closer by building, by our ordinances, and our Master Plan calls that crowding. When things get...the discussions that took place in determining what fifteen (15) feet meant, it meant, to some people, the foundation, to others, the side of the building, to others, the overhang of the roof, to others, the deck off the side or the back, meant all those things. Where do you start your measurements from? So they assume that fifteen (15) feet would be whatever we consider to be fifteen (15) feet. Well, if you took fifteen (15) feet from the roofline, the roof overhangs the side that we're looking at by a foot or more, doesn't it? And that, while it's not ground level, at the same time, where would snow fall? There's a walkway and then there's a fall off, a drop off with what is, in effect, a man-made retaining wall. Have you seen the property, Richard?

RICHARD CANUEL: Mm-hmm.

LARRY O'SULLIVAN: So, what would you estimate the height of that wall?

RICHARD CANUEL: There's two (2) retaining walls on the property.

1182 LARRY O'SULLIVAN: I'm talking about the one on the side where 36 abuts.
1183
1184 RICHARD CANUEL: Five (5), six (6) feet maybe?
1185
1186 LARRY O'SULLIVAN: Five (5) or six (6) feet? And then a building. By the way, we don't
1187 really have where those rocks are on that lot, do we?
1188
1189 YVES STEGER: No.
1190
1191 LARRY O'SULLIVAN: Where that cliff is or where that retaining wall was built? Is that on
1192 there?
1193
1194 YVES STEGER: No.
1195
1196 LARRY O'SULLIVAN: Is that on any drawing?
1197
1198 YVES STEGER: No. So, one (1) and four (4), in my opinion, are okay. We have problems with
1199 two (2) and three (3). Oh, and by the way, you can have comments or restrictions.
1200
1201 JIM SMITH: Okay.
1202
1203 YVES STEGER: So, if we want to do that...
1204
1205 LARRY O'SULLIVAN: I beg your pardon?
1206
1207 YVES STEGER: We can do comments or restrictions. Michael. Any grand idea? This is a
1208 difficult one.
1209
1210 MICHAEL GALLAGHER: Yes, it is.
1211
1212 YVES STEGER: This is a mess.
1213
1214 LARRY O'SULLIVAN: This is a public interest one more than anything else. There's a public
1215 interest here. We're talking about a foot, a three (3) foot, you know?
1216
1217 YVES STEGER: Mm-hmm.
1218
1219 LARRY O'SULLIVAN: But this was really a public interest thing as far as I'm concerned. We're
1220 not really representing, you know, ourselves. We are representing, almost exclusively here,
1221 because we haven't heard from any abutters, we're only representing the public interest. Public
1222 interest and the fairness in our zoning requirements and regulations, as well as the things that
1223 we're presented with here in the way of the request for the waiver. So, go ahead, Mike.
1224

1225 MICHAEL GALLAGHER: I'm just...I'm still trying to, you know, fathom knowing...knowing
1226 the size of this lot and how meticulous...once that foundation was poured, I know, personally, I
1227 would have been measuring, so...you know, as far as to go back, Neil, what you said about the
1228 properties, I think, what is it? The house to the left of it's another house, too, but I guess what
1229 I'm saying, it might possibly work the other way as far as the land itself goes, you know? And,
1230 you know, pertaining to the value, these other homes...because that house, I believe, is pretty
1231 small. The other side of it.
1232

1233 YVES STEGER: On the other side?
1234

1235 MICHAEL GALLAGHER: Yeah.
1236

1237 YVES STEGER: Thirty six (36)? Yeah, it's a very small house. It is, yup. Actually, it shows on
1238 the pictures.
1239

1240 MICHAEL GALLAGHER: Yeah, I drove by there. I've seen it.
1241

1242 LARRY O'SULLIVAN: Well, the deck is at the roof line of the other house.
1243

1244 MICHAEL GALLAGHER: Yes, well, when I looked at it from that angle, yes. You're right.
1245 That deck is...it dwarfs the...you're right. If you're looking down at the roof of the house.
1246

1247 YVES STEGER: Correct, but the windows of the house do the same thing. See?
1248

1249 MICHAEL GALLAGHER: Yeah.
1250

1251 YVES STEGER: And probably even if it had been a twenty two (22) foot house as originally
1252 planned, you know, he would be looking directly in there, so, that's really not the main issue.
1253 The main issue is that, are the multiple feet on each side, which is against the law, against the
1254 zoning ordinances, enough of a burden to the value of the property of the other owners or to the
1255 community at large, to essentially, to rip the house? 'Cause, I mean, let's face it, guys, you
1256 know, the decision today is...the reason we are agonizing is because there are two (2) things;
1257 one (1), we can approve with restrictions or we can reject it based on the four (4) points that are
1258 in here and remember, we have to agree on all four (4) because if there is one (1) that is none,
1259 that's it, we have to reject the application.
1260

1261 LARRY O'SULLIVAN: Correct.
1262

1263 YVES STEGER: So, I hope you all realize that this is pretty important.
1264

1265 LARRY O'SULLIVAN: Well, two (2) out of the five (5) of us who have mentioned anything
1266 think that there's gonna be external obsolescence and diminution of the neighbor's value simply
1267 because snow, rain is gonna be falling on the house next door and then flooding the lot. There
1268 is no place for runoff to go. What we would need to do is put a restriction in there to include

1269 special gutters in order to eliminate the runoff and what have you from the house and the
1270 walkway so that they go elsewhere, rather than on the abutting property. Because, you know,
1271 that's, to me, something that needs to be noted.
1272

1273 YVES STEGER: Yeah, and you could argue that actually for point two (2), definitely, there was
1274 ignorance of the law or a failure to inquire.
1275

1276 LARRY O'SULLIVAN: We're not doing two (2), I thought you said we were skipping that...
1277

1278 YVES STEGER: Yeah, I know.
1279

1280 LARRY O'SULLIVAN: ...until we got to four (4).
1281

1282 JIM SMITH: Okay, to your point, the existing gutters that are on the house, where do they
1283 drain to?
1284

1285 ROBERT COOK: Into the ground, into leaching lines.
1286

1287 JIM SMITH: Okay. So, essentially, he's addressed that. There are gutters on the house, they
1288 have...
1289

1290 LARRY O'SULLIVAN: I saw the gutters on the house.
1291

1292 JIM SMITH: Yup.
1293

1294 LARRY O'SULLIVAN: What I'm concerned about is, there's runoff from the deck and the
1295 walkway, if we're gonna leave the walkway in place. If your intention is to leave the walkway
1296 in place. The snow is not gonna stay in the gutter. The snow's gonna fall off just like everybody
1297 else's does, out into the...away from the house. Where's it gonna wind up? It's gonna wind up
1298 in the neighbor's yard, so, with the retaining wall there, there's very little space to do anything
1299 on that side of the house and including in that, I believe, is handling the runoff or the fall-off of
1300 the snow.
1301

1302 YVES STEGER: Well, given the elevation plans, they are gonna have a great tendency to fall
1303 towards the pond rather than to go laterally. You've seen the lines? So, yes, they are way too
1304 close but they are a couple of feet too close on each side. And we looked into that.
1305

1306 LARRY O'SULLIVAN: Well, I've walked the lot.
1307

1308 YVES STEGER: What?
1309

1310 LARRY O'SULLIVAN: I've been on the lot. I walked the lot. I walked around it. I have a
1311 pretty good impression and feel that what we're gonna wind up with is, or what the neighbor is
1312 gonna wind up with is snow.

1313

1314 MATT NEUMAN: I just think, I think you may have a problem proving that's a diminution of
1315 value. Snow may fall into the neighbor's lot.

1316

1317 LARRY O'SULLIVAN: That is just one of them. I already said the reason why. The reason why
1318 is because the additional foot of the overhang and the height of the building as it was put there
1319 puts the whole lot into the shade....as opposed to if the building had been built with a larger
1320 foundation or if a flat or a more level, instead of being built...

1321

1322 MATT NEUMAN: Well, they couldn't do it with a larger foundation, though.

1323

1324 LARRY O'SULLIVAN: No, I meant taller. I don't know if you saw the building, Matt, but it
1325 was built...backfill was brought in and to a hillside. The lot was built up and the foundation
1326 was built into what was built up. So what you have is on this hillside, a retaining wall and then
1327 a small walkway and then twenty six (26) feet of house, twenty eight (28) feet of house with a
1328 walkway right there. So you have the house, the walkway and this drop-off. So, the issue isn't
1329 what it did to the lot that he was building on. It was the lot that existed.

1330

1331 MATT NEUMAN: Right. Where was 36 throughout the building process?

1332

1333 LARRY O'SULLIVAN: What difference does it make?

1334

1335 MATT NEUMAN: I mean, that's who's directly impacted, according to what you're saying, so I
1336 just...I find it hard, if 36 didn't raise any objections throughout the building...

1337

1338 LARRY O'SULLIVAN: One of our basic functions is to act in the best of the public interest,
1339 regardless of whether there's anybody who's an abutter who is offended or upset or
1340 in...whether they show up or not.

1341

1342 MATT NEUMAN: Mm-hmm.

1343

1344 LARRY O'SULLIVAN: And that's where I'm coming from. You have to put yourself in the
1345 shoes of the person that would be there. See, I put myself in Mr. Cook's shoes and his abutter's
1346 shoes. I think that's what we all have to do, so...I know there's a compromise that we're
1347 coming to here, it's just a matter of can we pull through a compromise...?

1348

1349 YVES STEGER: Would you have one to present?

1350

1351 LARRY O'SULLIVAN: You mean...?

1352

1353 NEIL DUNN: Do we want...?

1354

1355 LARRY O'SULLIVAN: ...make a motion?

1356

1357 YVES STEGER: Sorry?
1358
1359 NEIL DUNN: Did we want to...is everybody finished discussing the points? I know Jim had
1360 recommended we skip two (2) for a minute.
1361
1362 YVES STEGER: Yup.
1363
1364 NEIL DUNN: Is everybody happy with...?
1365
1366 YVES STEGER: So, for three (3), essentially, we have two (2) thoughts, you know, one (1), yes,
1367 there is small impact but not sufficient to justify a reduction in property value or a public or
1368 private nuisance.
1369
1370 LARRY O'SULLIVAN: That's what you say.
1371
1372 NEIL DUNN: I personally do believe it's a...would diminish...
1373
1374 YVES STEGER: No, I understand.
1375
1376 NEIL DUNN: Oh, okay.
1377
1378 YVES STEGER: I said we had different opinions about the...
1379
1380 JIM SMITH: We're split on that.
1381
1382 YVES STEGER: ...that we are split.
1383
1384 JIM SMITH: We're split on three (3).
1385
1386 YVES STEGER: I agree with you. You said...
1387
1388 NEIL DUNN: I thought you said not substantial, though...
1389
1390 YVES STEGER: No, no. I'm saying some people believe it's more important than others and
1391 that's why we have a board and we vote...
1392
1393 NEIL DUNN: Exactly.
1394
1395 YVES STEGER: ...[inaudible] otherwise, you know, with one (1), it would be very easy to make
1396 a decision and that's how the interest of both the Town and the applicants are being protected
1397 by the law.
1398
1399 MICHAEL GALLAGHER: You know, I didn't pay as close attention, Larry, to what you were
1400 saying about how it was raised...

1401
1402 LARRY O'SULLIVAN: Mm-hmm.
1403
1404 MICHAEL GALLAGHER: ...you know, so, that kind of...
1405
1406 YVES STEGER: But remember, it would be raised even if it was twenty two (22) feet wide.
1407
1408 LARRY O'SULLIVAN: Yeah, but it would have been three (3) feet back or a foot back or so
1409 many feet back.
1410
1411 YVES STEGER: Correct. Correct.
1412
1413 NEIL DUNN: To me, it wouldn't be...
1414
1415 LARRY O'SULLIVAN: The thing that it appeared to me was that it wasn't given any
1416 consideration. And that's, you know...
1417
1418 JIM SMITH: You know, when you look at the zoning regulation, I believe there's a maximum
1419 of height of what, thirty five (35) feet?
1420
1421 RICHARD CANUEL: Yeah, thirty five (35) feet for a structure.
1422
1423 JIM SMITH: So, as long as it's less than thirty five (35) feet...
1424
1425 YVES STEGER: It's perfectly allowed.
1426
1427 LARRY O'SULLIVAN: It's permissible, right.
1428
1429 JIM SMITH: It's permissible.
1430
1431 YVES STEGER: Mm-hmm.
1432
1433 JIM SMITH: So, I don't think you can...
1434
1435 LARRY O'SULLIVAN: I'm not saying it's not permissible...
1436
1437 JIM SMITH: ...put an additional standard on this, over and above what would be expected.
1438
1439 YVES STEGER: Mm-hmm.
1440
1441 LARRY O'SULLIVAN: I'm just saying...I'm not saying it's not permissible. I'm saying in the
1442 circumstances that we're talking about, it's negatively impacting his neighbor.
1443
1444 YVES STEGER: Okay. I think we have different opinions on that one.

1445
1446 JIM SMITH: Yeah.
1447
1448 YVES STEGER: But we respect your opinion.
1449
1450 NEIL DUNN: So then number two (2)?
1451
1452 YVES STEGER: And then we go to number two (2), so we are...
1453
1454 LARRY O'SULLIVAN: Did we hit number four (4)?
1455
1456 YVES STEGER: Well...
1457
1458 NEIL DUNN: Either way, we have to hit them all.
1459
1460 YVES STEGER: What do you think?
1461
1462 LARRY O'SULLIVAN: Was it ignorance of the facts?
1463
1464 NEIL DUNN: Failure to...
1465
1466 YVES STEGER: Or...but let's say that the degree of past construction...
1467
1468 MICHAEL GALLAGHER: Or investment made...
1469
1470 YVES STEGER: The cost of correction far outweighs any public benefit to be gained. I think
1471 that's pretty okay.
1472
1473 LARRY O'SULLIVAN: I have a problem with that, too, because there's one thing when you
1474 don't know that you've done something wrong and it's another thing when you don't want to
1475 know that you've done something wrong. And that's where I think we're at because when you
1476 don't go for the multiple permitting...
1477
1478 YVES STEGER: Well, that's why I recommended we start talking about number two (2)...
1479
1480 JIM SMITH: Right.
1481
1482 YVES STEGER: ...because number two (2) then is, you know, you're making some assumptions
1483 that there is bad faith and I don't want to go there.
1484
1485 LARRY O'SULLIVAN: No I'm not.
1486
1487 YVES STEGER: Maybe not taking care of business, you know, carelessness, but...so, number
1488 two (2) is 'outcome of ignorance of the law or failure to inquire.' The other one, I'm not gonna

1489 make those assumptions. Is it a good faith error in measurement or calculation? This is a big
1490 one. I mean, given the circumstances, as you said, and we have already said last time, last
1491 month that everybody on such a small lot should have been like a hawk over how it's done.
1492
1493 LARRY O'SULLIVAN: Especially since we hammered away at it at the prior...original variance
1494 request.
1495
1496 YVES STEGER: Mm-hmm.
1497
1498 NEIL DUNN: Well, I guess I would not say it was ignorance of the law 'cause it was quite
1499 clearly brought up in the variance that allowed him to build there that we're very concerned
1500 about all this. So, I wouldn't think we could say he was ignorant of the law. I think that was
1501 quite clear.
1502
1503 JIM SMITH: I think there's one problem with that. If you look at that case and who
1504 represented who...
1505
1506 LARRY O'SULLIVAN: John Michels was representing.
1507
1508 JIM SMITH: Right and I believe somewhere in here it talks about where Mr. Cook was.
1509
1510 YVES STEGER: In India.
1511
1512 JIM SMITH: He was in India. So he was not present at that hearing.
1513
1514 YVES STEGER: Yeah, but for the presentation, it doesn't matter. It's the failure of the owner,
1515 owner's agent or representative. So they are, you know, it doesn't matter. As long as he had
1516 somebody that was entitled to speak to him. Otherwise, we wouldn't even have accepted the
1517 person to talk...
1518
1519 JIM SMITH: No, no, no, the point I'm trying to raise is the fact that he wasn't there, he didn't
1520 hear the requirements of the fifteen (15) feet and so forth...
1521
1522 LARRY O'SULLIVAN: It doesn't matter, Jim.
1523
1524 JIM SMITH: ...unless he read the minutes or...
1525
1526 MATT NEUMAN: No, but his...
1527
1528 LARRY O'SULLIVAN: It doesn't matter, Jim.
1529
1530 NEIL DUNN: Let him finish. Let him finish.
1531
1532 JIM SMITH: Yeah. Okay.

1533
1534 MATT NEUMAN: It's just as if he was there.
1535
1536 JIM SMITH: Okay.
1537
1538 YVES STEGER: Yeah, that's the same.
1539
1540 LARRY O'SULLIVAN: That's what an agent's about.
1541
1542 JIM SMITH: Okay, when I look at this, I have a hard time over ignorance of the law or failure
1543 to inquire.
1544
1545 YVES STEGER: Yup. Exactly.
1546
1547 JIM SMITH: Failure to inquire. Part of where I have a problem is he depended upon a septic
1548 plan which he evidently didn't understand or ever really looked at to support his building
1549 application. He evidently did not understand how wide the lot was. He didn't understand
1550 how wide the proposed building was on that septic plan. And evidently, from what we can
1551 gather, I don't believe he made any effort to find out, unless he can prove otherwise. So that's
1552 where I have a problem with that part of it. Now when you look at the last part, it says "caused
1553 by either a good faith error in measurement," well, how can you make a good faith error in
1554 measurement...
1555
1556 NEIL DUNN: If you never measured.
1557
1558 JIM SMITH: ...if you don't know how wide the lot is in the first place? That's my impression
1559 of that.
1560
1561 YVES STEGER: Mm-hmm.
1562
1563 LARRY O'SULLIVAN: Well, we haven't made all of the following findings but I think we need
1564 to...did anybody have anything...I'm sorry, I don't mean to take that away from you, Yves, but
1565 I don't have anything to add to that. I think it's right up the alley that I think we're all...I was
1566 looking anyway, but I also think, though, that I have, I guess, a question, is that I've said all
1567 along that I don't believe we're gonna tear down this lot...tear down this house. Right? Or do
1568 anything drastic like that for this. Now, the reason being if...if we can place restrictions on
1569 what we require, we have to come up with something that's reasonable.
1570
1571 YVES STEGER: You cannot do that and approve unless we agree that he meets all four (4).
1572
1573 LARRY O'SULLIVAN: Oh.
1574

1575 YVES STEGER: So all your efforts to discredit the points, essentially, would prevent that.
1576 You're essentially...you have already asked that the house be torn down. That's what you have
1577 done so far.
1578
1579 NEIL DUNN: No, we haven't asked...
1580
1581 LARRY O'SULLIVAN: Moved. Moved.
1582
1583 YVES STEGER: Well, in the discussion, we have agreement that some of them are not a
1584 problem. We have two (2) and three (3) which constitutes a problem. Unless we all agree that
1585 they are not a problem and that those points are met, we cannot approve the equitable waiver.
1586
1587 NEIL DUNN: Three (3) out of five (5) can.
1588
1589 YVES STEGER: There are only four (4).
1590
1591 NEIL DUNN: No, no, I meant of the board members.
1592
1593 YVES STEGER: Yes, correct. Correct. As long as three (3) of the five (5), at least three (3) of the
1594 five (5) thinks that all four (4) are met, we cannot approve.
1595
1596 LARRY O'SULLIVAN: Okay, so do you want to do a polling here or do you feel we've
1597 discussed this enough?
1598
1599 YVES STEGER: And so, essentially, we have either to make a...approve with restrictions or
1600 deny the application. There are only two (2) things that we can do, okay? And we cannot
1601 approve with restrictions unless at least three (3) out of us, of those that are going to be voting,
1602 will say that those four (4) points are met. That's the law. We are bound by the law, okay? It's
1603 not our opinion that counts. We have to agree that at least three (3) of us needs to agree that
1604 those four (4) points here, and it says "if and only if the board makes all of the following
1605 findings," okay? And that's in the RSA and it is in here.
1606
1607 LARRY O'SULLIVAN: Richard, any input on that one? Please?
1608
1609 RICHARD CANUEL: Yves is correct. I mean, you do have to make the finding on all four (4)
1610 of those points...
1611
1612 YVES STEGER: Yeah.
1613
1614 RICHARD CANUEL: ...in order to grant the waiver.
1615
1616 YVES STEGER: Absolutely. So, either we have at least three (3) people that will...that believe
1617 that all four (4) points are acceptable or it's gonna be rejected. And so, I'd like to get, essentially,

1618 I would like to get a pole, because we don't even need to discuss what are the restrictions unless
1619 we are to that level. Correct? So, Larry?
1620
1621 LARRY O'SULLIVAN: Yup. What? What do you want from me first?
1622
1623 YVES STEGER: Oh, okay.
1624
1625 LARRY O'SULLIVAN: Do you want to talk about the first section, one (1), second, third...?
1626
1627 YVES STEGER: No, no, no, no. At this time, we have already discussed this for half of the
1628 night. Okay, so, Mike, deny or restrictions? Simple, you know?
1629
1630 MICHAEL GALLAGHER: Restrictions.
1631
1632 YVES STEGER: Jim?
1633
1634 JIM SMITH: I have to deny.
1635
1636 YVES STEGER: I am for restrictions.
1637
1638 NEIL DUNN: Deny.
1639
1640 LARRY O'SULLIVAN: Deny.
1641
1642 YVES STEGER: Okay. Somebody is ready to make a motion?
1643
1644 LARRY O'SULLIVAN: We have to have a discussion on why, I think. I think it's best to discuss
1645 where we have the disagreements between us of the...we have four (4) items that we have to
1646 absolutely all say yes to, correct?
1647
1648 YVES STEGER: Correct.
1649
1650 LARRY O'SULLIVAN: And we don't. I don't say yes to number three (3) because I believe that
1651 it does diminish the value of the housing...the property next door. But that's one thing. The
1652 second thing that I disagree on is that there were plenty of times and opportunities to get it
1653 squared away, the measurements squared away, and it was disregard for the requirements of
1654 the Town, I believe, is really what it was, that they had been warned again and again and again
1655 and even during our variance request, the original variance request that "It's a narrow lot. It's a
1656 narrow lot. What are you gonna do to protect the side, those setbacks," and so forth. And that
1657 wasn't met. And that's why I think that's...
1658
1659 YVES STEGER: I understand, but essentially, because we have differing opinion, which is
1660 normal, essentially, it is the board, not individual opinions, that count when we vote, correct?
1661

1662 LARRY O'SULLIVAN: Well, I'm trying to go through the different items where I agree or
1663 disagree for...
1664
1665 YVES STEGER: Yeah, we've...
1666
1667 LARRY O'SULLIVAN: I think we all need to do that.
1668
1669 YVES STEGER: I think we've been through that ad nauseam. So, if somebody makes a motion
1670 to deny and there are three (3) votes in favor of denying, we don't have to go into the detail.
1671 That means there are at least three (3) people who believe that all four (4) are not met. And
1672 unless we get at least...
1673
1674 LARRY O'SULLIVAN: Can I get one of the people who say that they all are met, where that
1675 comes from?
1676
1677 JIM SMITH: No.
1678
1679 LARRY O'SULLIVAN: I mean, I'm willing to listen to a conflicting opinion or argument.
1680
1681 JIM SMITH: I think where we're at, we have three (3) people who are stating that they don't
1682 believe that all four (4) conditions were met to grant the equitable waiver.
1683
1684 YVES STEGER: And two (2) who believe they are.
1685
1686 LARRY O'SULLIVAN: Okay, and we have to be very specific about which don't.
1687
1688 JIM SMITH: Right.
1689
1690 LARRY O'SULLIVAN: Alright?
1691
1692 YVES STEGER: And those who don't at this time, from all the discussions we have are two (2)
1693 and three (3), correct?
1694
1695 NEIL DUNN: Correct.
1696
1697 YVES STEGER: You believe that there has been failure to inquire or ignorance of the law and
1698 you believe that there is a diminution of property value and it will constitute a public or private
1699 nuisance. That's what you have said and what is in the record, okay? And I believe that there
1700 are potentially there but to such a small extent that I don't think they warrant the denying the
1701 equitable waiver. And as far as the 'explain how the violation,' I have a tough time, you know,
1702 although there is a level of carelessness, I don't think we can get into the level that is explained
1703 into ignorance of the law or obfuscation, misrepresentation or bad faith. I don't believe so. That
1704 is my opinion and you have the right to not agree with me.
1705

1706 LARRY O'SULLIVAN: Okay, so, you're saying that for number two (2), that it was
1707 carelessness?
1708
1709 YVES STEGER: Yes.
1710
1711 JIM SMITH: I would say it would be ignorance of...ignorance of the law and failure to inquire.
1712 And the failure to inquire is the key one.
1713
1714 LARRY O'SULLIVAN: That's where you're headed, Yves. That's exactly what you're saying, is
1715 the carelessness was that, a failure to inquire, right?
1716
1717 JIM SMITH: Right.
1718
1719 LARRY O'SULLIVAN: Isn't that what you were saying? Or you were saying of carelessness in
1720 measurement? Yves?
1721
1722 JIM SMITH: See, it's any one of those in that litany that's there.
1723
1724 LARRY O'SULLIVAN: But there's nothing there that says carelessness and...
1725
1726 JIM SMITH: Right.
1727
1728 LARRY O'SULLIVAN: An error in measurement or calculation.
1729
1730 JIM SMITH: Okay, I would like to make a motion to deny case 7/15/2009-2 for failure to meet
1731 the criteria of part two (2) of the equitable waiver of dimensional requirements [i.e. item two of
1732 the Town of Londonderry Equitable Waiver Worksheet, a/k/a 674:33-a, I (b)], in that there was
1733 a failure to inquire and understand the size of the lot.
1734
1735 LARRY O'SULLIVAN: And the house that's on it or...?
1736
1737 JIM SMITH: Yeah.
1738
1739 LARRY O'SULLIVAN: Then the building that was placed on it or...?
1740
1741 JIM SMITH: Yeah, and the resulting building as it was installed.
1742
1743 YVES STEGER: Okay.
1744
1745 NEIL DUNN: I'll second that.
1746
1747 YVES STEGER: Okay. We have a motion to deny by Jim and seconded by Neil. Do you want
1748 to have any more discussion on the subject?
1749

1750 LARRY O'SULLIVAN: Sure. Should that be the only thing or do you feel that was the only
1751 thing that...
1752
1753 JIM SMITH: That's the only thing that I can feel comfortable with.
1754
1755 YVES STEGER: And he can, he's the one doing the motion.
1756
1757 LARRY O'SULLIVAN: Alright, well, my question was if that was the only one or not, really.
1758
1759 JIM SMITH: Right. That's the only...I have a hard time with number three (3). I think that's
1760 a...
1761
1762 LARRY O'SULLIVAN: You don't think that's a diminution?
1763
1764 JIM SMITH: No, I don't believe it's...I think the critical one is number two (2).
1765
1766 LARRY O'SULLIVAN: I think you're right, too, but...
1767
1768 JIM SMITH: Well, the way the law is written, you have to have all four (4), so if there's a good
1769 case that number two (2) isn't met, it should be sufficient.
1770
1771 LARRY O'SULLIVAN: Yup. Mike?
1772
1773 RICHARD CANUEL: While the Board is in discussion of their motion, if I could just make a
1774 comment before you proceed to a vote and it's too late. You have to consider, if you're voting to
1775 deny this variance, that I would have to order Mr. Cook to move his house. That I would have
1776 to order him to take three (3) feet off of that house to comply with the setbacks. And that brings
1777 up point number four (4); does the cost outweigh the public good? The cost of correcting that
1778 violation.
1779
1780 YVES STEGER: Now, the number four (4) is only one (1) of the four (4), so...
1781
1782 RICHARD CANUEL: That's right. That's right.
1783
1784 YVES STEGER: ...you must meet four (4) and the others, okay?
1785
1786 RICHARD CANUEL: That's right. I'm just trying to get the Board to consider the
1787 ramifications of their decision and what would have to happen as a result of that, so...
1788
1789 YVES STEGER: And, you know, I think I have repeated during this meeting that there were
1790 only two (2) cases, you know? Either we will grant it with restrictions or we will deny and we
1791 all understand the consequences of denying this.
1792
1793 RICHARD CANUEL: Okay.

1794
1795 YVES STEGER: We do.
1796
1797 NEIL DUNN: It's not easy.
1798
1799 LARRY O'SULLIVAN: Okay?
1800
1801 YVES STEGER: So we have a motion and it is seconded. Any further discussion? All in favor
1802 to deny, say 'aye.'
1803
1804 JIM SMITH: Aye.
1805
1806 NEIL DUNN: Aye.
1807
1808 LARRY O'SULLIVAN: Aye.
1809
1810 YVES STEGER: All against the motion, say 'nay.'
1811
1812 MICHAEL GALLAGHER: Nay.
1813
1814 YVES STEGER: Nay.
1815
1816 RESULT: THE MOTION TO DENY CASE NO. 7/15/2009-2 WAS APPROVED, 3-2-0.
1817
1818 RESPECTFULLY SUBMITTED,
1819
1820
1821
1822 LARRY O'SULLIVAN, CLERK
1823 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY
1824
1825 **APPROVED SEPTEMBER 16, 2009** WITH A MOTION MADE BY LARRY O'SULLIVAN,
1826 SECONDED BY JIM SMITH AND APPROVED 5-0-0.