

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

DATE: NOVEMBER 18, 2009

CASE NO.: 11/18/2009-3

APPLICANT: JENNIFER MORIN
528 MAMMOTH ROAD
LONDONDERRY, NH 03053

LOCATION: 532 MAMMOTH ROAD, 15-222, AR-I

BOARD MEMBERS PRESENT: YVES STEGER, ACTING CHAIR
JIM SMITH, VOTING MEMBER
MICHAEL GALLAGHER, VOTING ALTERNATE
LARRY O'SULLIVAN, CLERK

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

REQUEST: AREA VARIANCE TO ALLOW AN EXISTING SINGLE-
FAMILY DWELLING TO BE CONVERTED TO A TWO-
FAMILY DWELLING (DUPLEX) WITH LESS THAN THE
REQUIRED FRONTAGE AND LOT SIZE ALLOWED BY
SECTION 2.3.1.3.1.1.

PRESENTATION: CASE NO. 11/18/2009-3 WAS READ INTO THE RECORD WITH TWO
PREVIOUS CASES LISTED.

YVES STEGER: Who would be presenting? As you know, we are only four (4) today, so you
have your option either to continue or to try your case today.

JENNIFER MORIN: Okay.

ERIC MORIN: We'll try our case.

YVES STEGER: Go ahead.

ERIC MORIN: Hi, I'm Eric Morin, 528 Mammoth Road.

JENNIFER MORIN: And I'm Jennifer Morin, 528 Mammoth Road.

45 YVES STEGER: So if you could just explain the case in general and then go through the points
46 of law, please.
47

48 ERIC MORIN: Yes, we're trying to add another little apartment in the basement for our in-laws,
49 so that's what we're...it's a basic little...this used to be a business called T-Rex on Mammoth
50 Road. I don't know if you folks are familiar with it.
51

52 JENNIFER MORIN: [inaudible]
53

54 ERIC MORIN: We kind of blew up this picture here. We would have had copies for everybody
55 but our ink cartridge kind of died on us while we were printing it out.
56

57 [see Exhibits "A" through "D"]
58

59 JENNIFER MORIN: But that's the property there. And that's how...you can kind of see the
60 basement part.
61

62 ERIC MORIN: It's right across from the Senior Center. I don't know if you folks are familiar
63 with it.
64

65 LARRY O'SULLIVAN: Would you mind circulating...?
66

67 JENNIFER MORIN: Absolutely.
68

69 ERIC MORIN: I have a couple copies. Our ink cartridge died on us tonight.
70

71 [overlapping, indistinct comments]
72

73 LARRY O'SULLIVAN: Yves.
74

75 YVES STEGER: Mm-hmm.
76

77 LARRY O'SULLIVAN: This is page two (2) and that's not on the computer.
78

79 YVES STEGER: Oh.
80

81 LARRY O'SULLIVAN: So she's gonna have to read through it. I figured you should have it...
82

83 YVES STEGER: Okay.
84

85 LARRY O'SULLIVAN: ...we can get it back.
86

87 YVES STEGER: Well, they're probably gonna read it and then I will supplement...
88

89 LARRY O'SULLIVAN: Or do you want me to follow it to see if there's any variation from what
90 they say?
91
92 YVES STEGER: That's okay. Please.
93
94 JENNIFER MORIN: Okay.
95
96 ERIC MORIN: This property, it's been used as a business all along, so it's not something that
97 we thought would be a very big change in the neighborhood, so, we thought it'd be something
98 that would work out pretty good in the neighborhood and it's something that would actually
99 spruce up the neighborhood and bring it back, bring the old Mammoth Road section there, the
100 village section, back to where we thought it would be more to what it should be. 'Cause we
101 own the house two (2) houses down from it and we thought it would be a great place for our,
102 well, her parents, my in-laws to live where her father's disabled and it'd be a great place for him
103 to live too, so I thought it'd be a really great place and where he's disabled, it would be the level
104 floor, the basement there, he could get right in, no stairs, and I could make it all handicap
105 accessible for him. I got some pictures there. I don't know if you saw it, but...
106
107 YVES STEGER: Yes.
108
109 ERIC MORIN: So it would be great for him. And they can't afford much, so that'd be a great
110 thing for him.
111
112 YVES STEGER: Okay.
113
114 LARRY O'SULLIVAN: So you don't live in the home.
115
116 ERIC MORIN: No, I don't live in this home.
117
118 LARRY O'SULLIVAN: So you rent out upstairs?
119
120 ERIC MORIN: Yup, we're gonna be renting out the upstairs. We're renovating right now.
121 Richard's actually been in a couple times to inspect it, the work we're doing right now,
122 so...We're doing a ton of work to it, so...
123
124 JENNIFER MORIN: That's why in the pictures it's not sided yet.
125
126 ERIC MORIN: Yeah.
127
128 LARRY O'SULLIVAN: Well, you see, the difference between an in-law apartment and a two-
129 family...
130
131 ERIC MORIN: Exactly. That's why we can't do the in-law, 'cause we're not living in it. That's
132 why we have to do the two-family. And we can't do it in our home because of the stairs and

133 everything. He can't manage the stairs, so, he'd have to do the up and down the stairs and he
134 can't do that anymore, so, that's why he's got the handicap plate and all that fun stuff, so...

135
136 YVES STEGER: Okay. If you could go through the points of law, please.

137
138 ERIC MORIN: Let's see.

139
140 YVES STEGER: And if you could actually read in detail all those that were on the second page
141 but didn't make it into our own file.

142
143 ERIC MORIN: Oh, okay.

144
145 LARRY O'SULLIVAN: There was a computer issue regarding getting the second page...

146
147 JENNIFER MORIN: We know how that feels, so...

148
149 ERIC MORIN: I know. We had the same problem with that today. An ink cartridge didn't
150 want to cooperate.

151
152 JENNIFER MORIN: Does that start with (C)?

153
154 ERIC MORIN: So we start with number four (4)?

155
156 YVES STEGER: You start with (A), "The proposed use will not..." Yes, correct. That's (4.A),
157 yes, (A).

158
159 ERIC MORIN: Oh, okay, that one? The proposed use would not diminish the surrounding
160 property values because many of the surrounding houses on the street are already multi-family
161 dwellings, one (1) being diagonally across the street, another is two (2) houses down, across the
162 street. The building has been unoccupied and not properly maintained for the last three (3)
163 years, so we can only increase the surrounding property values. Granting the variance would
164 not be contrary to the public interest because this was commercially used property. All business
165 attempts made at this property have been unsuccessful and each time the property has fallen
166 into neglect which would be unlikely to happen since the owners live only two (2) houses
167 down. And abutting neighbors directly on either side of this property agree that having two (2)
168 small residential apartments next door to them would be more appealing and would keep the
169 village feeling more than having a commercially used property with cars pulling in and out all
170 day. Want to do (C)?

171
172 JENNIFER MORIN: Sure. Special conditions exist where the literal enforcement of the
173 ordinance results in unnecessary hardship. One (1), an area variance is needed to enable the
174 applicant's proposed use of the property, given the following special conditions of the property.
175 The property has a hundred (100) feet of road frontage where a hundred (100) [sic] feet is
176 necessary. The property has just over half (1/2) an acre when one (1) acre is required for multi-
177 family. The driveway on this property is already more than sufficient to support the needs of

178 this home. Two (2), the benefit sought by the applicant cannot be achieved by some other
179 method reasonably feasible for the applicant to pursue other than an area variance because due
180 to my disabled father's health care needs, proximity is becoming a necessity and I will be
181 assisting more in his care. We are unable to add onto our current property due to the stairs and
182 the egress issues and have been unsuccessful at locating an affordable apartment for them due
183 to their limited income and health needs. And they wouldn't be able to afford the upstairs
184 apartment but could easily afford the low rent we could offer them in the basement apartment.
185 Their health care needs and limited income have made it impossible for them to keep the
186 current home and need to find alternate living close to us to help provide care as I'm a licensed
187 nursing assistant. Granting the variance would do substantial justice because not only would
188 this provide an immediate need for a low income apartment but this would open an
189 opportunity in the future for affordable living for someone working locally or someone who is
190 retired, on a fixed income and may want to have the benefit of being close to the Senior Center.
191 By adding a one bedroom apartment, this would not create an impact on the school system. We
192 are turning this non-conforming business property that was unoccupied and in disrepair into an
193 energy efficient home that now blends into the community rather than sticks out like an
194 eyesore. (E), the use is not contrary to the spirit of the ordinance because adding a one bedroom
195 apartment would not decrease the value of the homes in the neighborhood or visually change
196 anything in a negative manner. This neighborhood would remain unchanged because it has
197 more than six multi-family units within less than a third (1/3) of a mile from this property,
198 including one directly across the street. By adding the basement apartment, the outside
199 appearance of the home would be unnoticeable. We would only be further improving the
200 property as well as maintaining the surrounding property values.

201
202 YVES STEGER: Thank you.

203
204 JIM SMITH: What would be the total number of bedrooms?

205
206 JENNIFER MORIN: In the basement just one (1) and upstairs two (2).

207
208 LARRY O'SULLIVAN: Do you have Town sewer or Town water?

209
210 ERIC MORIN: Yes.

211
212 JENNIFER MORIN: Yes.

213
214 LARRY O'SULLIVAN: Both?

215
216 JENNIFER MORIN: Yes.

217
218 ERIC MORIN: Yup.

219
220 LARRY O'SULLIVAN: One of the reasons that you need to have, what is it, a hundred and fifty
221 (150) feet...
222

223 ERIC MORIN: Yeah, it's a hundred and fifty (150).
224
225 LARRY O'SULLIVAN: ...instead of a hundred? That was something that you misread, too,
226 was that you need a hundred and fifty (150), you don't need a hundred (100).
227
228 ERIC MORIN: Yes.
229
230 JENNIFER MORIN: Yes, I'm sorry.
231
232 LARRY O'SULLIVAN: It was correct in the application and what was submitted, we just don't
233 have that hard copy available tonight.
234
235 JENNIFER MORIN: Okay. Yes.
236
237 LARRY O'SULLIVAN: Okay, so, the difference between your request for a two-family and a
238 two-family across the street is they meet the requirements...
239
240 JENNIFER MORIN: Mm-hmm.
241
242 LARRY O'SULLIVAN: Alright? They have a hundred and fifty (150) feet of road frontage and
243 so forth, if that's what I'm looking at here. We have an overhead map...
244
245 ERIC MORIN: Yup.
246
247 LARRY O'SULLIVAN: ...of all the lots that are around, so, you have a very thin, long lot.
248
249 ERIC MORIN: Yes.
250
251 LARRY O'SULLIVAN: One of the concerns that we would have is if you have two families
252 living there, that means twice as many cars typically.
253
254 ERIC MORIN: Yes.
255
256 JENNIFER MORIN: Yes. Mm-hmm.
257
258 LARRY O'SULLIVAN: Alright? So the driveway and how you address the driveway is going
259 to be important.
260
261 JENNIFER MORIN: The driveway's already existing. If you see the picture, there's a very large
262 driveway that's...
263
264 ERIC MORIN: The parking is not an issue on this lot...
265
266 JENNIFER MORIN: There's a driveway that goes up...
267

268 ERIC MORIN: And we've spoken to John [Trottier] about the driveway and that's not an issue
269 on this property. I don't know if you've noticed the picture there. We have a ton of parking.
270 And we spoke to John about creating it so it would be only one (1) small entrance going into
271 that driveway. Shrinking the entrance. 'Cause right now it's like a hundred (100) foot entrance
272 into the driveway.

273
274 LARRY O'SULLIVAN: And any of the additions or additional work that you perform will be
275 inside the confines of the home?

276
277 ERIC MORIN: Yes.

278
279 LARRY O'SULLIVAN: There's nothing exterior going to be built?

280
281 ERIC MORIN: No.

282
283 LARRY O'SULLIVAN: Do you need ramps or what have you in order to...?

284
285 ERIC MORIN: Nope.

286
287 JENNIFER MORIN: No, because there will be no stairs. He'll be walking right into the
288 basement.

289
290 ERIC MORIN: No, no wheelchairs. He can still walk. It's just he has a hard time walking.

291
292 LARRY O'SULLIVAN: Okay. One of the differences between what normally, when we have an
293 in-law apartment, I mentioned before, this really can't be rated as an in-law apartment, so, one
294 of the things that you have requested, though, what this is is a variance. A variance lasts as long
295 as the property stays in that use or is it more than a year is it, unused, as a two-family or what
296 have you, would revert back to the prior...as if you didn't have a variance.

297
298 ERIC MORIN: Mm-hmm.

299
300 LARRY O'SULLIVAN: Okay. So, all the other variances for this property, the other variances
301 are now gone by the wayside, right?

302
303 RICHARD CANUEL: Right.

304
305 LARRY O'SULLIVAN: So they don't really exist on this land anymore?

306
307 RICHARD CANUEL: That's right.

308
309 YVES STEGER: I'm sorry?

310
311 LARRY O'SULLIVAN: The other variances that were on this property no longer exist. They're

312 in the record, they were granted variances, but they couldn't put another business back there.
313 The business use has been discontinued for more than a year.
314
315 YVES STEGER: Oh, okay.
316
317 JENNIFER MORIN: That's fine, we don't want another business there.
318
319 LARRY O'SULLIVAN: Yeah. That's a good thing.
320
321 JENNIFER MORIN: Yeah, it's a very good thing.
322
323 YVES STEGER: Yes. Yes.
324
325 ERIC MORIN: Yeah, 'cause we live two (2) houses down from it, so...
326
327 YVES STEGER: But that's not [inaudible] this application.
328
329 LARRY O'SULLIVAN: But I'm just saying that...
330
331 ERIC MORIN: Yeah, we don't want the business thing there anymore anyway.
332
333 LARRY O'SULLIVAN: ...there's the public interest involved here, too.
334
335 ERIC MORIN: That's good for us.
336
337 JENNIFER MORIN: Our neighbors were actually happy that there was no longer gonna be a
338 business on that property.
339
340 ERIC MORIN: Yeah.
341
342 YVES STEGER: Question?
343
344 JIM SMITH: [inaudible]. So the two main issues are the frontage, which is fifty (50) short and
345 we got approximately half (1/2) of what the required land area would be.
346
347 ERIC MORIN: Yup.
348
349 YVES STEGER: Now, I have a question for Richard. I think that the ordinance essentially was
350 made mostly for sewerage, correct?
351
352 RICHARD CANUEL: Right.
353
354 YVES STEGER: In terms of number of bedrooms and the size and that's why...
355
356 RICHARD CANUEL: The size of the lot, that's right.

357
358 YVES STEGER: But there is nothing in the ordinance that makes exceptions for people that are
359 on Town sewer?
360
361 RICHARD CANUEL: Yes. Yes, there is.
362
363 YVES STEGER: There is?
364
365 RICHARD CANUEL: Yes.
366
367 JIM SMITH: Yeah, this gives a reduced size in frontage. In other words, a duplex...
368
369 RICHARD CANUEL: The properties that are on private...
370
371 JIM SMITH: ...two (2) to four (4), you need a hundred and fifty (150) feet.
372
373 YVES STEGER: No, no, no...
374
375 RICHARD CANUEL: ...water supply and private sewerage, they're required to have increased
376 lot sizes based on the soil types.
377
378 JIM SMITH: Right.
379
380 YVES STEGER: Oh, okay.
381
382 JIM SMITH: So for a duplex, you would need two hundred (200) feet of frontage and one point
383 four (1.4) times whatever High Intensity Soil Study would be for a non-sewer lot.
384
385 LARRY O'SULLIVAN: So the frontage is really what the issue is here.
386
387 YVES STEGER: Oh, okay. "Served by municipal water and sewer."
388
389 JIM SMITH: Right.
390
391 YVES STEGER: Okay. That answers my question.
392
393 JIM SMITH: See, this is what you would have normally.
394
395 YVES STEGER: Yup.
396
397 ERIC MORIN: Where the property is in the village, that what causes the lot to be so small and
398 that's why the issue...
399

400 YVES STEGER: Okay. Alright. Anybody in the public who has questions or would like to
401 speak in favor or the application? Anybody opposed? Thank you. We'll come back to the
402 Board for additional questions. Did you read the text...?

403
404 LARRY O'SULLIVAN: Yeah...

405
406 YVES STEGER: Okay.

407
408 LARRY O'SULLIVAN: ...and I made the note where there was only one significant issue with
409 the hundred and fifty (150) feet.

410
411 YVES STEGER: Okay.

412
413 JIM SMITH: And the lot size.

414
415 LARRY O'SULLIVAN: Right, that's what was required as opposed to a hundred (100).

416
417 YVES STEGER: Yes.

418
419 LARRY O'SULLIVAN: I mentioned that to her, that...

420
421 JIM SMITH: Yeah.

422
423 LARRY O'SULLIVAN: ...she misread it.

424
425 YVES STEGER: Any more questions?

426
427 LARRY O'SULLIVAN: No, sir.

428
429 YVES STEGER: No? No, okay. Thank you. This is the end of the public questions. We'll take
430 it under advisement and we are going to enter the deliberations.

431
432 DELIBERATIONS:

433
434 LARRY O'SULLIVAN: So, Richard, did they get any special requirements to do this, electrical
435 lines, anything special that's necessary for the house, if it's granted, as a two-family versus an
436 in-law apartment? Do they have to put a separate meter outside and all the rest of that stuff?

437
438 RICHARD CANUEL: Yes. Yeah, I mean, it's two (2) separate dwelling units at that point,
439 yeah.

440
441 JENNIFER MORIN: Mm-hmm.

442
443 RICHARD CANUEL: I mean, those are building code and electrical code issues to deal with at
444 that point.

445
446. LARRY O'SULLIVAN: Okay, so this work hasn't been accomplished yet.
447
448 RICHARD CANUEL: No, it's under construction presently.
449
450 LARRY O'SULLIVAN: It shows it. The pictures show it and it's definitely, you know, despite
451 the fact that there's no siding, it was already an improvement, so those are good things.
452
453 YVES STEGER: Okay.
454
455 LARRY O'SULLIVAN: No other questions...
456
457 JIM SMITH: Well, I think what they're saying is the construction is the improvement of the
458 main floor. You haven't started work in the basement, right?
459
460 JENNIFER MORIN: No.
461
462 ERIC MORIN: No.
463
464 LARRY O'SULLIVAN: Mm-hmm.
465
466 YVES STEGER: Okay. So shall we go through the points of law?
467
468 LARRY O'SULLIVAN: Yes.
469
470 YVES STEGER: Okay.
471
472 JIM SMITH: Since you've got the written one.
473
474 YVES STEGER: The property value, I think, we should agree that it's not gonna be changed.
475 Probably an improvement.
476
477 JIM SMITH: Especially where the building's been unoccupied.
478
479 YVES STEGER: Yup. Not contrary to the public interest. That's probably okay, too. Special
480 conditions of the property. That's the one that...
481
482 LARRY O'SULLIVAN: Right, she was a little weak on because she said that the property has a
483 hundred (100) feet where a hundred fifty (150) is required. Well that's exactly why we're here.
484 That's one of the big reasons that we're here.
485
486 YVES STEGER: Exactly. So that's not really a good reason.
487
488 LARRY O'SULLIVAN: So, what I think the...since I know their part of the world, I think we all
489 know that part of the world. They're all small lots, they're typically smaller homes. I think the

490 issue really is that it is in the old part of Londonderry, the village, and they're just almost, by
491 itself, would allow this type of a thing, you know, forty (40) some odd years ago from 1970. I
492 suspect the house is from prior to that, so...

493
494 MICHAEL GALLAGHER: Also, any offset there, I mean, the parking, there is plenty from
495 what I saw of parking. The only thing, right on the...is there enough from the Town, what the
496 Town owns, into the...you know, the front area of the parking?

497
498 RICHARD CANUEL: That was one of my concerns when I looked at this, because being a two-
499 family dwelling, they need to provide two (2) parking spaces per living unit...

500
501 MICHAEL GALLAGHER: Right.

502
503 RICHARD CANUEL: ...which, as we know by our parking regulations, they have to be on
504 premise. They have to be off the street.

505
506 MICHAEL GALLAGHER: Right.

507
508 YVES STEGER: Mm-hmm.

509
510 RICHARD CANUEL: As the business was used previously, everyone parked perpendicular as
511 part of the business. They can provide adequate parking. If you can see on your diagram
512 there, just beyond the right of way line...

513
514 MICHAEL GALLAGHER: Right.

515
516 RICHARD CANUEL: ...if they were to park parallel, they could essentially get two (2) parking
517 spaces in the front and two (2) parking spaces along the side and just comply, so...

518
519 JENNIFER MORIN: Mm-hmm.

520
521 RICHARD CANUEL: ...I think they probably just make it.

522
523 LARRY O'SULLIVAN: And do you believe that that ought to be a restriction that we place on
524 it? That parking in the front would be parallel to the building, or...?

525
526 RICHARD CANUEL: Well, that would be more of an enforcement issue at some point after.

527
528 LARRY O'SULLIVAN: Okay.

529
530 RICHARD CANUEL: I don't think that's necessary for the variance.

531
532 LARRY O'SULLIVAN: Fine. Fine.

533
534 YVES STEGER: Okay. So what do you think about special conditions? Because citing the fact

535 that it's the same as the others doesn't make it special. It makes it special for that specific region
536 but not special in general. So...but essentially, they also mention that there are already multi-
537 family in the same neighborhood as well in the different conditions, so...
538
539 LARRY O'SULLIVAN: Mm-hmm.
540
541 YVES STEGER: ...that may be another. Achieved by another method.
542
543 JIM SMITH: There's no way they could add to the lot, so...
544
545 YVES STEGER: No. It's way too narrow.
546
547 JIM SMITH: Yeah.
548
549 YVES STEGER: Okay. Justice? Probably okay. Spirit of the ordinance. The main problem will
550 be with...well, it's usually parking and sewerage.
551
552 LARRY O'SULLIVAN: Mm-hmm.
553
554 YVES STEGER: And that will be part of the...some other body of the Town to review the
555 capabilities.
556
557 JIM SMITH: You know, and, on the restrictions, I think we should restrict it to a total of three
558 (3) bedrooms for the building.
559
560 YVES STEGER: Sounds like a good recommendation.
561
562 LARRY O'SULLIVAN: Are you writing one up, Jim?
563
564 JIM SMITH: What?
565
566 LARRY O'SULLIVAN: Are you writing it up?
567
568 JIM SMITH: No.
569
570 [laughter]
571
572 JIM SMITH: You're the writer. You're the scribe.
573
574 YVES STEGER: Okay. So I don't think we have any disagreements on the five (5) points of law.
575
576 LARRY O'SULLIVAN: I don't think so, either.
577
578 YVES STEGER: Any further discussion?
579

580 MICHAEL GALLAGHER: No.
581
582 LARRY O'SULLIVAN: You all set, Mike?
583
584 MICHAEL GALLAGHER: Yeah, I'm all set.
585
586 YVES STEGER: Somebody is ready to make a motion?
587
588 LARRY O'SULLIVAN: I make a motion to approve case number 11/18/2009-3 as presented for
589 the area variance with the restriction to three (3) bedrooms maximum for the building.
590
591 YVES STEGER: Somebody would like to second this?
592
593 JIM SMITH: Second.
594
595 YVES STEGER: Okay. So we have a motion to grant by Larry, seconded by Jim. Any further
596 discussion? No? All in favor, say 'aye.'
597
598 JIM SMITH: Aye.
599
600 MICHAEL GALLAGHER: Aye.
601
602 YVES STEGER: Aye.
603
604 LARRY O'SULLIVAN: Aye.
605
606 YVES STEGER: All against, say 'nay.'
607
608 [no response in opposition]
609
610 RESULT: THE MOTION TO GRANT CASE NO. 11/18/2009-3 WITH RESTRICTIONS WAS
611 APPROVED, 4-0-0.
612
613 RESPECTFULLY SUBMITTED,
614
615
616
617 LARRY O'SULLIVAN, CLERK
618 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY
619
620 **APPROVED DECEMBER 16, 2009** WITH A MOTION MADE BY LARRY O'SULLIVAN,
621 **SECONDED BY YVES STEGER AND APPROVED 4-0-2 (VICKI KEENAN AND NEIL DUNN**
622 **ABSTAINED AS THEY HAD NOT ATTENDED THE MEETING).**