

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

5 DATE: OCTOBER 21, 2009

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

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: VICKI KEENAN, CHAIR
16 MICHAEL GALLAGHER, VOTING ALTERNATE
17 MATTHEW NEUMAN, VOTING ALTERNATE
18 JOE GREEN, VOTING ALTERNATE
19 YVES STEGER, ACTING CLERK
20

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

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

30 PRESENTATION: Chair Keenan entertained a motion to adjourn the meeting temporarily for
31 the Zoning Board members to attend a non-meeting in the Woodmont Orchard conference
32 room for the purposes of reviewing correspondence from Town Counsel and having a
33 conference call if need be. M. Neuman so moved. J. Smith seconded. The motion was
34 approved, 5-0-0.
35

36 The Board reconvened the meeting approximately ten minutes later. Chair Keenan presented
37 the meeting procedures to the public.
38

39 Acting Clerk Yves Steger read Case No. 7/15/2009-1 (REHEARING) into the record with four
40 previous cases listed. He then read Exhibit "G" into the record, a letter from the abutter at 36
41 Brewster Road.
42

43 Voting member Jim Smith recused himself from hearing the case, stating he was the Building
44 Inspector when the building permit for the house in question was issued. Although he did not

45 perform any inspections, he felt it was in the best interest to recuse himself. The consensus of
46 the entire Board was to allow him to do so.

47
48 VICKI KEENAN: So please state your name and...

49
50 BILL MASON: Good evening, Madam Chairman, my name is Bill Mason. I'm an attorney
51 from Salem, New Hampshire. I represent Mr. Cook. Mr. Cook is here with me tonight. I have
52 handed out to you just some information, just sort of a summary of information in terms of
53 what historically has gone on [see Exhibit "H"]. I think many of the Board members have heard
54 this at various times in the past three or four months, so we basically know what the issue is.
55 We're here for an equitable waiver this evening. I can go through the criteria or go through the
56 matters that I handed out to you, depending on which order you prefer that I address them.
57 Perhaps if I go through the materials that I handed you before I address the criteria, that might
58 be helpful in understanding the series of events that transpired on this particular piece of land.
59 For the record, so you'll know, Mr. Cook is a machinist, okay? And he manages a tool and die
60 or a machine company here in Londonderry and a number of years ago, purchased this lot and
61 through other counsel, got a variance to construct a home on this lot which was...the history of
62 the lot was read into the record by the Secretary, I guess, in this particular instance. And as part
63 of that process, he was his own...he was the owner/builder in this, in that he hired licensed
64 contractors to construct this home for him and utilizing engineered materials that were
65 provided both to the Town and to himself to obtain a subsurface disposal system permit for this
66 particular lot. Evidently, that contractor used that material to stake out where the foundation
67 went and began construction from there. And construction progressed from the foundation
68 man that he hired through the finish guy that finished the interior of the house. And at the time
69 the house was ready for a certificate of occupancy, he was asked to provide the certified plot
70 plan and when he provided the certified plot plan, which is the first document you have in your
71 packet, it was discovered that the house did not meet the fifteen (15) foot setback from each of
72 the property lines. It was eleven point seven (11.7) feet, if you're standing and looking at his
73 home, it was eleven point seven (11.7) feet on the left hand side and it was thirteen point four
74 (13.4) feet on the right hand side, which is Mr. Holland's side. So he was about eighteen (18)
75 inches too close to the boundary line between he and Mr. Holland and so he was advised to get
76 an equitable waiver which is the process that he has undergone. So I provided with you a copy
77 of the certified plot plan that establishes from the foundation to the side lot lines where his
78 house currently exists. I think it's important to note, and it doesn't show on this plan, that to the
79 left hand side of his property, there's a three (3) car garage which is about ten (10) feet from the
80 property line and to the right hand side, which is Mr. Holland's property, he is about ten (10)
81 feet from the property line, so neither one of those structures meets the fifteen (15) foot side lot
82 line setback requirement. The next piece of paper that...the next document you have in your
83 packet is just a copy of the building permit that was issued by the Town of Londonderry in
84 order to construct the dwelling. The next is the application for the building permit. The only
85 reason I included that is because if you look at the top portion of the building permit, it talks
86 about inspections required and it starts with foundation, rough frame, rough electrical, rough
87 plumbing, electrical service, insulation, bed bottom, leachfield, and it goes on and on and on.
88 And all of these inspections Mr. Cook had performed on his property, starting with the first one

89 which was the foundation, and I only point that out because in terms of good faith, I want the
90 Board to understand that he tried to comply with everything that he was asked to do by the
91 Town in order to comply with the construction requirements. And he did that up until the
92 discovery at the certificate of occupancy that the certified plot plan revealed the issue that we're
93 here before you tonight. The next document I have is a document entitled "Londonderry
94 Building Department" and the only reason I included that is for two reasons. One, you'll notice
95 that it's dated July 16, 2009, which was the day after Mr. Cook was before this Board to try and
96 straighten out this problem with the nonconformance with the setbacks. And in order to get a
97 building permit now in the Town of Londonderry, you'll receive this bold notice that tells you
98 that a certification of the foundation is required for construction and "the Building Department
99 shall require this document to be submitted to our office prior to the foundation inspection."
100 So, clearly, there was a recognition by the Building Department that this information was
101 critical to their department for enforcement of their Building Department regulations and
102 rightfully so. As was commented on in prior meetings before this Board, there is a recognition
103 that this is a narrow lot. It's as obvious to the applicant as it is to the Building Department and
104 when I make my comments later on with regard to what my client attempted to do in order to
105 comply with those requirements, hopefully you will see that somewhere the ball got dropped a
106 little bit in terms of nipping this in the bud before we got to a final occupancy permit in terms of
107 establishing where this building was sited on the lot. The next document I have, and the
108 Secretary has the original of that, I provided you with a copy, addresses the issue with regard to
109 property valuations and some side setback issues which basically, on a summary basis, in terms
110 of what this letter says, is that this structure on this lot is not detrimental to the marketability of
111 properties in the area. What you have here is you have, and you have it in Derry, you have it in
112 Atkinson, you have it in Windham, you have it in Salem, you have smaller lots with older
113 structures on them that are being purchased and with today's technology, are being basically
114 razed and new structures being put on them, so you end up with, to one degree or another, you
115 end up with communities around these ponds, whether it's Scobie Pond, Cobbetts Pond,
116 Arlington Pond, Big Island Pond, whatever it is, you end up with a mixture of what used to be
117 seasonal cottages that are slowly being turned into year-round homes and that's basically what
118 you have here. So, I would suggest to the Board, as it reviews this document, that what Mr.
119 Cook has done with regard to this, the development of this particular lot, perhaps raises the
120 values of properties in the neighborhood, doesn't diminish the value of properties in the
121 neighborhood. And I think this letter from the appraiser supports that position. Now, with
122 regard to the elements of a dimensional waiver, unless you have a question, I will go to that
123 now. If you have questions, I'll address those now, however you want to handle it, ma'am.

124
125 VICKI KEENAN: I think if you have anything else you want to say to the Board, I would ask
126 you to present it now but also spend some time and go through your application, please. Okay?

127
128 BILL MASON: Okay. There are basically four (4) elements, in order to get an equitable waiver,
129 okay? The first is, "explain the violation was not noticed or discovered by any owner, former
130 owner, owner's agent or representative or municipal official until after the structure in violation
131 had been substantially completed or until after a lot or other subdivision of land in violation
132 had been subdivided by conveyance to a bond fide purchaser." The long and the short of it is

133 Mr. Cook, when he reviewed his deed, believed he had fifty nine (59) feet of frontage on Scobie
134 Pond Road and the deed, which should be part of your packet by an earlier submission,
135 indicates that he had ninety (90) or ninety two (92) feet of shoreline frontage along Scobie Pond.
136 So basically, with fifty nine (59) feet of lot width, he had a house that would comply, okay, sited
137 in the middle of the lot, which would comply with your side setback regulations that you have
138 in this town. The certified plot plan indicates a slight narrowing of the lot, which results in
139 aneigheten (18) inch or a seventeen (17) inch deficiency on the left hand side of the lot and
140 probably a little more than a three (3) foot deficiency...I mean, on the right hand side of the lot,
141 a little more than a three (3) foot deficiency on the left hand side of the lot. So that it is not
142 something that he noticed, it's not something that her contractor noticed, and it's not something
143 that, I think, any Town official noticed in the multiple inspections that took place during the
144 course of constructing this house because had it been, we would have stopped and done
145 something different. I guess the point I'm really trying to emphasize is he didn't build this
146 house knowing that he had a violation or in spite of what your building codes are, he continued
147 to build this house with the expectation that the building he was building was conforming as it
148 was sited on the lot, based on the engineering material that he was provided with and that his
149 contractor or contractors as they built the house used to at least build it or get it built from the
150 ground up, which you start with the foundation. It says "explain how the violation was not an
151 outcome of ignorance of the law or ordinance [or] failure to inquire..." I can't pronounce the
152 next word, "...obfuscation, misrepresentation or bad faith on the part of the owner...but was
153 instead...by either a good faith error in measurement or calculation made by the [sic] owner or
154 the [sic] owner's agent. And I think I touched on that earlier in my earlier comments. He
155 believed he had, in good faith, he believed he had a lot that was fifty nine (59) feet in width,
156 okay? And he was presented information, produced by others, professionals, produced by
157 others, either to get a septic system approved or for other purposes, okay, that indicated he had
158 a lot that was fifty nine (59) feet in width so that when he built this, alright, he built it in good
159 faith, believing that he had a lot that was fifty nine (59) feet wide and it's not an ignorance of the
160 law. He understands what the setback requirements are. He didn't design a house that would
161 not fit on a lot that was fifty nine (59) feet in width, alright? So, it's not ignorance of the law or a
162 failure to inquire. It is a good faith error in terms of relying on documentation provided to him
163 that said he had a lot fifty nine (59) feet wide and that's the house that he built on there. It says
164 "explain how the physical or dimensional violation does not constitute a public or private
165 nuisance, nor diminish the value of other properties [sic] in the area, or [sic] interfere with or
166 adversely affect any present or permissible future uses of...such property." The property is
167 zoned for a single family residence. That's what's on there right now. It'll continue to be used
168 for that. I provided you with some documentation from the appraiser with regard to abutting
169 properties. He has satisfied all of the Town regulations with regard to the inspections. He has
170 had the DES come down just to confirm that he is compliant with regard to activities near the
171 shore of Scobie Pond and he is compliant with all of those. I don't believe that your file will
172 reflect any violations, and Mr. Cook can probably tell you most recently when somebody from
173 the State came down because this particular case has gotten a fair amount of press and there's
174 been follow up, there have been follow up inspections and everything that he's doing is
175 compliant with DES' requirements and so they're comfortable with him and what he has done.
176 And then the next says "explain how, due to the degree of past construction or investment

177 made in ignorance if the facts constituting the violation, the cost of correction so far outweighs
178 the [sic] public benefit to be gained, that it would be inequitable to require that the violation be
179 corrected [sic]." Mr. Cook purchased the lot, got a construction loan, built the house, had it
180 inspected and at the eleventh hour, this particular issue came up and from the file that I've
181 reviewed and the documents that I have looked at, this is a classic case for which an equitable
182 waiver statute was created, alright? You had somebody that in good faith built something, had
183 it inspected by the Town and what he thought was fifty nine (59) feet was fifty five (55) feet,
184 alright? And so we have a seventeen (17) inch problem on one side and we have a three and a
185 half (3.5) foot problem on the other side and that's what, I think, this is all about. There is
186 nothing that I have seen or that I have reviewed that indicates that Mr. Cook did anything but
187 follow the procedures outlined by the Town, nor did he do something deliberate, knowing that
188 it was not compliant with what the Town's regulations were. So, in summary, I think that he's
189 complied with the criteria and it should be granted. That's, I guess, the bottom line.

190
191 VICKI KEENAN: Do you have anything else you want to share with the Board?

192
193 BILL MASON: No, ma'am. No.

194
195 VICKI KEENAN: Okay. Seeing that, we will bring it back to the Board to ask questions. So, if
196 you could just raise your hand and we'll try to make sure everybody gets everything, ask
197 everything they want to ask. Yeah?

198
199 YVES STEGER: May I?

200
201 VICKI KEENAN: Yves, of course.

202
203 YVES STEGER: Okay, so essentially, your contention is that in good faith, Mr. Cook took the
204 oblique line of fifty nine (59) feet and thirty three (33) inches as the size of the lot as opposed to
205 the fifty five (55). And that's good faith error?

206
207 BILL MASON: Well, no, what he had is he had documentation created by others, engineers,
208 created by others in order to get the septic system approval, okay?

209
210 YVES STEGER: Mm-hmm.

211
212 BILL MASON: And that, okay, that documentation was used in good faith in his application
213 for a building permit, which was submitted to the Town and he got the State approval and he
214 got that. Now, if that document said that the lot width was fifty five (55) feet, he wouldn't have
215 built what he built, alright? That document indicated fifty nine (59) feet and he relied on that.
216 In good faith.

217
218 YVES STEGER: Okay, so we're gonna take the fifty nine (59) as a base. You mentioned that
219 there were multiple inspections. I'm trying to find out, there are essentially two documents,

220 actually, there are three documents that show the size of the house. There is the first one that
221 was the leachfield approval, which shows actually a smaller house than was built, correct?
222
223 BILL MASON: What you have, and I want to make sure we're clear on that, what you have is
224 when you have a submission for a leachfield...
225
226 YVES STEGER: Yup.
227
228 BILL MASON: ...they just use a...they use a box, okay?
229
230 YVES STEGER: I understand.
231
232 BILL MASON: But they don't use your house design. They use a box and the number of
233 bedrooms that this box is gonna have in it...
234
235 YVES STEGER: Mm-hmm.
236
237 BILL MASON: ...for your leachfield, okay?
238
239 YVES STEGER: Okay.
240
241 BILL MASON: What I'm saying to you is that he used that document with regard to the width
242 of his lot, not with regard to the size of his house.
243
244 YVES STEGER: Okay. No, I understand. So Mr. Cook believes he has fifty nine (59) feet.
245
246 BILL MASON: Correct.
247
248 YVES STEGER: And he has a house that is drawn where the house itself is twenty eight (28)
249 feet, correct?
250
251 BILL MASON: Twenty eight (28) feet in width, yes, sir.
252
253 YVES STEGER: And where is the first time that a plan was submitted to the Town?
254
255 BILL MASON: He would have to submit a set of building plans to get a building permit in the
256 first instance. He has to submit a...and it tells you...
257
258 YVES STEGER: So, do we have a copy of the...
259
260 MICHAEL GALLAGHER: Original?
261
262 YVES STEGER: ...the original of the building permits? Just wanna know, you know, what he
263 thinks he was...

264
265 BILL MASON: I have, in your packet, on page two (2), there is a building permit issued to
266 build a twenty eight (28) by sixty two (62) single family dwelling. That would be page number
267 two (2).
268
269 YVES STEGER: Correct. That doesn't show...
270
271 BILL MASON: So he would have submitted a set of plans to the Building Department...
272
273 VICKI KEENAN: It doesn't show on the building permit any dimensions. What I think Yves is
274 looking for is the drawings that were submitted to the Building Department.
275
276 YVES STEGER: Is there a lot plan with the house sited on the lot?
277
278 VICKI KEENAN: Did you bring those drawings?
279
280 YVES STEGER: That was provided at the same time as that application?
281
282 BILL MASON: I do not believe, okay, I don't believe that as a part of your building permit
283 process, that you have to submit the plans of the house and where it's gonna be located on the
284 lot. You have to submit a set of plans, I understand that.
285
286 YVES STEGER: Okay.
287
288 BILL MASON: But you can't submit where it's gonna be on the lot...
289
290 YVES STEGER: Okay.
291
292 BILL MASON: ...until you build it.
293
294 YVES STEGER: No, I understand. Okay, so...
295
296 BILL MASON: You have the lot...
297
298 YVES STEGER: So he got permission to build a twenty eight (28) foot lot...a thirty (30) foot
299 house...
300
301 BILL MASON: Twenty eight (28) by sixty two (62), yes, sir.
302
303 YVES STEGER: Which, on a fifty nine (59) foot lot with thirty (30) feet of setbacks would have
304 been okay, correct?
305
306 BILL MASON: Correct.
307

308 YVES STEGER: Now, who decided on the foundation?
309
310 BILL MASON: His foundation contractor, I assume. In response to these questions, Mr. Cook
311 is not a builder. Mr. Cook hired licensed builders in different trades to do this house for him.
312
313 YVES STEGER: No, I understand. I understand. He is essentially his own contractor and he
314 has other people that contract for him.
315
316 BILL MASON: Correct.
317
318 YVES STEGER: He paid an architect to draw the plans and then he's asking somebody else to
319 create the foundation. Now, he must have given some instruction to those people. I mean, if
320 the guys, 'Well, I'm gonna put the foundation across and going on both sides of my property,'
321 I'm quite sure he would have said that doesn't make sense, correct?
322
323 BILL MASON: If you have a house that's twenty eight (28) feet wide and you have a lot that
324 you believe is fifty nine (59) feet wide...
325
326 YVES STEGER: Mm-hmm.
327
328 BILL MASON: ...you would, and I'm not gonna speak for him, and I'm not a builder either,
329 but I would probably say with a fifteen (15) foot setback, you need to center the foundation on
330 the lot in order to meet your side setback requirements.
331
332 YVES STEGER: I'm trying to find out how much care did Mr. Cook make explaining to his
333 contractor before they poured a foundation that they didn't put it askew or too much closer to
334 one side?
335
336 BILL MASON: Perhaps he can respond.
337
338 YVES STEGER: Do you have some instructions to the people who did your foundation that will
339 essentially tell them, 'hey, this is a narrow lot, be careful putting in the...'
340
341 ROBERT COOK: Right, I told them it has to be in the center of the lot.
342
343 YVES STEGER: Yes. Do you have any evidence of that. Do you have drawings or anything?
344
345 ROBERT COOK: No, I just told him.
346
347 YVES STEGER: Okay.
348
349 ROBERT COOK: I just told him, you know?
350
351 VICKI KEENAN: Can I...?

352
353 YVES STEGER: Yeah, go ahead.
354
355 VICKI KEENAN: Do you have a drawing that you provided to your foundation contractor
356 indicating your...
357
358 ROBERT COOK: Yeah, and you have that. It's just the size of the foundation.
359
360 VICKI KEENAN: That first drawing here?
361
362 ROBERT COOK: No, no. It's in the packet that you had before with all my house drawings.
363 There's a drawing in there that has the foundation size. It's not a location, okay? Just the
364 foundation size and I said 'This has to go in the center of the lot.'
365
366 YVES STEGER: Okay. Now, so the foundation are complete. What is the next step?
367
368 ROBERT COOK: You call for an inspection.
369
370 BILL MASON: Inspection.
371
372 YVES STEGER: Okay. What does the Town inspection consist of?
373
374 ROBERT COOK: They come and inspect the foundation and...
375
376 YVES STEGER: Do they measure it?
377
378 ROBERT COOK: Pardon me?
379
380 YVES STEGER: Do they measure it?
381
382 ROBERT COOK: I couldn't answer that. I'm not an inspector. I don't know. And I wasn't
383 present, so, I mean, I honestly couldn't tell you that. I mean, my guess is that they probably do
384 because if they got a building permit that has a size of a house...so I would imagine that they
385 must measure to make sure that you put in exactly what you told them you were gonna.
386
387 BILL MASON: You can't...in most communities, and I believe it's this way in Londonderry,
388 and the Building Inspector can tell you, you can't go on to rough frame a house until they've
389 signed off on the foundation. They have to come, they have to look at the foundation. Correct?
390 And they have to sign off and then you go on to rough framing.
391
392 VICKI KEENAN: Can I ask Jaye a question? Jaye, where's the deed plan that they referenced
393 that shows the measurement? I just wanted to check that.
394

395 JAYE TROTTIER: It would be in the "exhibits" file and then there's a pdf of all of Mr. Cook's
396 exhibits from the July and August meetings. And it's towards the end of that packet, before you
397 get to the pictures. Exhibit "C."

398
399 VICKI KEENAN: Do you have a question, Mike? While I'm...
400

401 MICHAEL GALLAGHER: Yeah, I just think what we're trying to find out, was there a
402 drawing, an architectural drawing before this all started? In other words, I understand what
403 Mr. Cook is saying and of course, based on this, you know, this is definitely an honest mistake
404 here on the fifty nine (59), but this is a plot plan that kind of come in after the fact. Was there a
405 set of drawings that kind of laid this whole plot out prior to the start of the first step that you
406 took?

407
408 ROBERT COOK: No. There was just the house plans that I presented to the Town for the
409 permit.

410
411 MICHAEL GALLAGHER: Okay, and what did you use to instruct your foundation person to
412 pop that in the middle of the lot?

413
414 BILL MASON: We told him...and correct me if I'm wrong, from what Mr. Cook told me, we
415 had a set of house plans and the foundation gentleman was told to center the foundation on the
416 lot.

417
418 MICHAEL GALLAGHER: Okay.

419
420 ROBERT COOK: Right.

421
422 BILL MASON: Okay.

423
424 MICHAEL GALLAGHER: Without...I'm just trying to get an idea...

425
426 ROBERT COOK: Well, I asked him, I said it's gotta be on the center of the lot and he said 'No
427 problem, we do this every day,' and the excavator said, 'Not an issue. I'll shoot my lines and
428 we'll..."

429
430 MICHAEL GALLAGHER: So, what you're saying is you just told, kind of, and trusted it to...

431
432 ROBERT COOK: Yes. Right.

433
434 MICHAEL GALLAGHER: ...to the person that did the foundation?

435
436 ROBERT COOK: Mm-hmm.

437
438 MICHAEL GALLAGHER: That hopefully, I guess, that they knew what the...

439
440 ROBERT COOK: Well, that's what I hired them for is for their knowledge.
441
442 BILL MASON: Typically...
443
444 ROBERT COOK: I do have a foundation drawing if you wanted to see it.
445
446 VICKI KEENAN: I found it.
447
448 ROBERT COOK: Oh, okay.
449
450 BILL MASON: And typically, foundation guys and excavation guys have their own transits
451 and they do their own field work in order to make sure that the foundation is at the correct
452 grade and all of those sorts of things, so...
453
454 YVES STEGER: So, if I may, if the foundation people have received the instruction to put a
455 twenty eight (28) foot house in the middle of this lot...
456
457 ROBERT COOK: Mm-hmm.
458
459 YVES STEGER: ...I've never poured foundations, so I'm sorry, I'm ignorant, but I would say
460 the first thing to find out where the middle of the lot is would have been to put something and
461 measure the length of the width of, and then take half of it, say that's the center, now I have
462 fourteen (14).
463
464 ROBERT COOK: Mm-hmm.
465
466 YVES STEGER: How come they didn't discover that they had only fifty five (55) at that time?
467
468 ROBERT COOK: I have no idea. I have no idea why they didn't.
469
470 YVES STEGER: Because, I mean, if they had done their job the way you instructed them...
471
472 ROBERT COOK: Right.
473
474 YVES STEGER: ...I mean, they should have said...
475
476 ROBERT COOK: Exactly.
477
478 YVES STEGER: ...you don't have fifty nine (59). You have only fifty five (55) and...
479
480 ROBERT COOK: Exactly. Exactly. But they didn't. And they set all the...they set pins and
481 then they dug and then they put in a foundation.

482
483 YVES STEGER: Okay. Alright, so now the foundation is in place...
484
485 ROBERT COOK: And I'm wondering if they did the same thing by taking the fifty nine (59)
486 feet and just measure it, center it up at the top and run a line down. That's what I'm wondering,
487 if that's what they did. If they centered it at the top of the lot and ran a line down and centered
488 the foundation on it.
489
490 YVES STEGER: That would be very unlikely.
491
492 MICHAEL GALLAGHER: Yeah, and again, I'm just trying to figure out where they got their
493 initial measurement. What did they use?
494
495 ROBERT COOK: Well, they used the drawing for the septic. Everyone used that as original for
496 their sizes.
497
498 MICHAEL GALLAGHER: Is this the drawing for the septic, here?
499
500 MATT NEUMAN: Yeah.
501
502 ROBERT COOK: Yeah, and it shows fifty nine point three-three (59.33).
503
504 YVES STEGER: No, I understand that. And we're gonna agree that the fifty nine (59) is a good
505 faith error that you made.
506
507 ROBERT COOK: Mm-hmm.
508
509 YVES STEGER: I don't think we have...that is the discussion. I'm trying to go now through the
510 fact, because you started with something which is the leachfield plan, which does not really say
511 anything more than you think you have fifty nine (59).
512
513 ROBERT COOK: Right.
514
515 YVES STEGER: But it doesn't show anything including the house.
516
517 ROBERT COOK: Right.
518
519 YVES STEGER: Based on that, you say I have a house that can be twenty eight (28) feet. Now,
520 the building permit does not contain any plans except the house that says it's twenty eight (28).
521
522 ROBERT COOK: Right. No, exactly. Right.
523
524 YVES STEGER: It doesn't say how you're gonna put it on the thing.
525

526 RICHARD CANUEL: Right. Mm-hmm.
527
528 YVES STEGER: So the Town doesn't know anything. Next step, you have the foundation and
529 they don't discover the fact that you have only fifty five (55) at that time.
530
531 ROBERT COOK: Right.
532
533 YVES STEGER: Did you have the foundation surveyed at that time?
534
535 ROBERT COOK: No.
536
537 BILL MASON: No.
538
539 YVES STEGER: Was there a foundation plan made available to the Town when they came
540 and...?
541
542 ROBERT COOK: They had all that, yes. A foundation plan.
543
544 BILL MASON: To answer your question, they had a foundation plan but, to speak directly to
545 what your question is, they did not require my client to provide a certified location of the
546 foundation after it was poured.
547
548 YVES STEGER: Okay.
549
550 BILL MASON: Okay? You'll notice that now it has become, as of July 16th, it has now become a
551 policy...
552
553 YVES STEGER: Yeah. It should be because we don't want anybody else to get...
554
555 BILL MASON: ...and that probably should be done. If they had asked...
556
557 YVES STEGER: Mm-hmm.
558
559 BILL MASON: ...'cause he complied with every request that they made in every inspection.
560
561 YVES STEGER: Mm-hmm.
562
563 BILL MASON: If they had said, 'Listen, before you rough frame this, you gotta give me a
564 certified plan after you pour your footings or your foundation in,' we would have done that. We
565 would have found the problem. We wouldn't be here now. We would have done one of two
566 things, we would have either been before you earlier saying, 'Listen, this is what we found
567 when we...after we poured the foundation...'
568
569

570 YVES STEGER: Mm-hmm.

571

572 BILL MASON: '...this is what we found, this is the relief,' and you would have said to us,
573 'Okay,' or you would have said to us, 'Take up the foundation 'cause it's only a foundation and
574 do something different.' We're here now 'cause we didn't find this out until the end of the
575 process.

576

577 YVES STEGER: I understand. Richard, could you explain to us what the foundation inspection
578 consists of?

579

580 RICHARD CANUEL: Well, when we show up to a site to do a foundation inspection, we're
581 looking for the structural conformity of the foundation in compliance with the provisions of the
582 building code. We don't show up to the site with a transit, we don't determine where the
583 property lines are or the location of the building. That is left to a professional surveyor to
584 determine. That is why, as part of our building regulations, we require that certified foundation
585 plan. So, basically, we're looking at the foundation to determine that the foundation is installed
586 in accordance to the permit that was issued, the size of the foundation that was proposed for the
587 house, and that the foundation itself meets the structural provisions of the building code.

588

589 YVES STEGER: So essentially the Town does not warrant that the foundation actually meets
590 setbacks?

591

592 RICHARD CANUEL: Not whatsoever.

593

594 YVES STEGER: Okay. Is that written somewhere in the Town instructions?

595

596 RICHARD CANUEL: Yes. That is written in our local building regulations. That a certified
597 foundation plan has to be submitted for the property.

598

599 YVES STEGER: No, I'm talking about...that is now. Before that.

600

601 RICHARD CANUEL: That's always been in our building regulations, for a number of years.

602

603 YVES STEGER: Okay.

604

605 RICHARD CANUEL: The only thing that's changed is, you know, an in-office policy change as
606 a result of this, of course. I've informed staff that we will request to have that certified
607 foundation plan in hand before we would even schedule a foundation inspection at this point in
608 time but, you know, that doesn't help the situation now but...

609

610 YVES STEGER: Mm-hmm.

611

612 MATT NEUMAN: So the only thing that's new is that you have this bulletin now.

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656

RICHARD CANUEL: That's right. Yeah.

YVES STEGER: So, essentially, you're also contending that further good faith is the fact that Mr. Cook felt that the Town was actually approving the position and the size and the setbacks while that is not the case, correct?

BILL MASON: And that's not what I'm saying. And the Building Inspector is correct. We're not asking the Town to certify this, okay? We're talking about the factual events that took place out in the field, okay?

YVES STEGER: Mm-hmm.

BILL MASON: Alright? And we understand it was a narrow lot. It's as obvious to the applicant as it is to the Town Building Official, okay, that comes out and looks at your foundation and this is not a blame game thing. This is saying we thought we had fifty five (55) feet and we didn't. We had something narrower than that. And we're not saying the Town certified, okay? We're not saying that the Town certified that it was properly sited or that they knew that on this narrow lot, that it was noncompliant or anything of that. What we're saying is that we went through the process, 'cause we have nothing to hide, we went through the process of having those inspections that are required done and it was with an expectation that we had a lot fifty five (55) in width.

ROBERT COOK: Fifty nine (59).

BILL MASON: Fifty nine (59) feet in width, I'm sorry. Fifty nine (59) feet in width and that we had a...forget about the size of the house on the septic system design. The septic system design, it has to have some. It has to have some merit or relevancy or accuracy with regard to the size of the lot that you're putting a septic system on.

YVES STEGER: Mm-hmm

BILL MASON: So it should have the boundaries accurately reflected. So forget about whether you're putting a little house or a big house, if I get a septic system designed, whether it's on an older lot or an a recent subdivision and it says this is what my lot size is, I rely on that, I mean, because this is what...there has to be a degree of accuracy when you submit this stuff to the State to get a septic system approved. There has to be a degree of accuracy. And, you know, should he have gotten a second opinion? Well, you know, we can all say that maybe he should have. Was he unreasonable in relying on the document that he did? I say that he wasn't, 'cause I've relied on those documents in other matters, in other situations and they need to have a degree of accuracy when you submit them, so...

YVES STEGER: So when you submitted for the building permit, you mentioned twenty eight (28) feet. Did you have a building permit for the deck?

657
658 BILL MASON: On this application I sent to you?
659
660 ROBERT COOK: No.
661
662 BILL MASON: Those are separate.
663
664 ROBERT COOK: Right, those are separate.
665
666 YVES STEGER: Have you received a building permit for the deck?
667
668 ROBERT COOK: Yes. Yes.
669
670 YVES STEGER: Separately?
671
672 ROBERT COOK: Yes.
673
674 BILL MASON: Yes.
675
676 VICKI KEENAN: When you planned the deck and sort of, that walkway that's on the right side
677 of the property if you're standing in the driveway...
678
679 ROBERT COOK: Mm-hmm.
680
681 VICKI KEENAN: ...at that point, did it occur to you that that would be...were you still under
682 the assumption that your lot was fifty nine (59) feet?
683
684 ROBERT COOK: Yes. Yeah, throughout the whole process, until the very end.
685
686 YVES STEGER: Well, actually, your house is thirty two (32) feet.
687
688 ROBERT COOK: No.
689
690 YVES STEGER: Yes.
691
692 ROBERT COOK: Well, the deck is...that.
693
694 YVES STEGER: The deck is a structure.
695
696 ROBERT COOK: Mm-hmm.
697
698 YVES STEGER: So, it's part of the house. So your house is thirty two (32) feet, which is too big,
699 even if you have fifty nine (59) feet.
700

701 ROBERT COOK: Oh, right, but I would have never...I would never...I mean, my knowledge, I
702 would never count the deck as part of the house. I count the house as living space, but...
703
704 BILL MASON: Yeah.
705
706 ROBERT COOK: But that's me, because...
707
708 YVES STEGER: You don't know that...
709
710 ROBERT COOK: I don't do this for a living.
711
712 VICKI KEENAN: On your building permit, it clearly states, on the second page of your
713 handout, that the build was twenty eight (28) by sixty two (62) single family dwelling.
714
715 ROBERT COOK: Right.
716
717 BILL MASON: Correct. Correct.
718
719 VICKI KEENAN: Note, in big bold letters, "this permit DOES NOT include a porch or deck. A
720 separate permit will be required for those structures."
721
722 BILL MASON: Correct. And he applied for those and he got those.
723
724 VICKI KEENAN: Richard, is it...
725
726 YVES STEGER: Do you have those?
727
728 VICKI KEENAN: ...clearly written in our building rules that a deck or structure is considered
729 part of the dwelling?
730
731 RICHARD CANUEL: If it's attached to the dwelling, yes.
732
733 YVES STEGER: Of course, yes.
734
735 BILL MASON: Yes.
736
737 ROBERT COOK: Yeah, well...
738
739 YVES STEGER: I'm sorry?
740
741 ROBERT COOK: I don't...I didn't know that. I don't...
742
743 YVES STEGER: That's ignorance of the law.
744

745 ROBERT COOK: No...

746

747 BILL MASON: We applied for the permit and they granted the permit. I assume that when the
748 permit was applied for, I assume that there was a site inspection done in terms of what they
749 were going to build and the permit for the deck was issued. A deck, typically, is not included as
750 living area. When we deal with shoreline protection issues on bodies of water, you're allowed
751 to have an uncovered deck. You're allowed to have an uncovered deck up to twelve (12) feet
752 into the shoreline protection area because it's an open deck and it's not considered living area,
753 so...

754

755 YVES STEGER: Richard, do we have copies of the deck permit?

756

757 RICHARD CANUEL: Yes.

758

759 VICKI KEENAN: Could we see that?

760

761 YVES STEGER: Could we see that?

762

763 RICHARD CANUEL: Yes.

764

765 VICKI KEENAN: Is that in this package, Jaye?

766

767 JAYE TROTTIER: No.

768

769 YVES STEGER: Because...I don't have a problem with twenty eight (28) feet...

770

771 BILL MASON: We had talked before in an earlier hearing, okay, about that deck, or the deck
772 along the side of the house.

773

774 VICKI KEENAN: I think...

775

776 BILL MASON: If that becomes an issue, we can deal with that this evening, okay?

777

778 VICKI KEENAN: It is. We have to deal with it. We're in a rehearing, so...

779

780 BILL MASON: Okay.

781

782 VICKI KEENAN: We're gonna re-address and revisit everything. So, if the Board asked a
783 question about a deck, I would ask that you address the question, okay? And not rely on
784 previous meetings.

785

786 BILL MASON: Okay.

787

788 VICKI KEENAN: So give us just a second to take a look at this drawing.

789
790 BILL MASON: Yes, ma'am. Yes, ma'am.
791
792 VICKI KEENAN: Okay.
793
794 [pause]
795
796 VICKI KEENAN: This is the aerial?
797
798 YVES STEGER: Yes, but it doesn't show the fact that it encroaches further into the setback.
799
800 VICKI KEENAN: Yeah, but it does say it's thirty two (32) feet.
801
802 YVES STEGER: Yes.
803
804 VICKI KEENAN: Right.
805
806 YVES STEGER: Yes.
807
808 [pause]
809
810 VICKI KEENAN: I'm struggling with the instruction provided to the foundation contractor in
811 placing the foundation. You say you were the general contractor on this project and I think, if it
812 were me, and the amount of money that I was investing, my own personal funds, investing in
813 this project, there would have been more than instruction, 'Just place this foundation on the
814 center of the lot,' so, what I'd like to know is how do you understand, or what do you know
815 about the method by which they measured and the locations in which to pour the footings and
816 place the foundation? Because that I'm not very clear on.
817
818 ROBERT COOK: Well, I told them to put it in the center of the lot.
819
820 VICKI KEENAN: Mm-hmm.
821
822 ROBERT COOK: And they said, 'Not a problem, we do this all the time.' And the excavator
823 said, 'Not an issue, I'll shoot the line and put it on center.' And that's what they were supposed
824 to do and that's what they did but no one ever said that the lot narrowed.
825
826 VICKI KEENAN: So...
827
828 ROBERT COOK: And that's why I tend to believe that they took the fifty nine three-three
829 (59.33), went to the center and shot a line to put the foundation in.
830
831 VICKI KEENAN: Explain to me, "shot the line." So, they went to the center of your lot, they
832 shot a line, they...

833
834 MICHAEL GALLAGHER: Straight down...
835
836 VICKI KEENAN: ...put it side to side at the lot, put a string out and built fourteen (14) feet on
837 either side...
838
839 ROBERT COOK: Well, they do it was a transit, probably. They did it with a transit, probably, I
840 would think. You know, I can't honestly say that but I would think that, 'cause, I mean, if they
841 went pin to pin and went to the center and ran a string down, I mean, they'd have to, you know,
842 shoot from the center or something...
843
844 VICKI KEENAN: But they would have a marker, right?
845
846 ROBERT COOK: ...and have a marker.
847
848 VICKI KEENAN: To determine where that center point is? I mean, if you have to measure
849 how...
850
851 ROBERT COOK: Right, they'd have to measure pin to pin.
852
853 VICKI KEENAN: Right.
854
855 ROBERT COOK: And then, you know, this is the center, right.
856
857 VICKI KEENAN: So, do you think at that point, when they were shooting that line and
858 measuring where the center line was, they would have been able to determine at that point they
859 didn't have fifty nine (59) feet? 'Cause they have to measure it to find the center point.
860
861 ROBERT COOK: Right, and if they measured, like I said, if they measured the front of the lot,
862 from pin to pin, it would have given them the fifty nine point three-three (59.33).
863
864 VICKI KEENAN: The front of the lot on the street?
865
866 BILL MASON: Correct.
867
868 ROBERT COOK: Right.
869
870 VICKI KEENAN: So, you're saying that the lot, then, sort of narrows as it goes...
871
872 ROBERT COOK: Right.
873
874 YVES STEGER: No, no, no, no.
875
876 VICKI KEENAN: Okay.

877
878 YVES STEGER: Look, it's just, that is oblique and the rest is fifty five (55).
879
880 VICKI KEENAN: Got it. Okay.
881
882 YVES STEGER: Okay?
883
884 VICKI KEENAN: I got it.
885
886 ROBERT COOK: Yeah.
887
888 YVES STEGER: So, even if they think fifty nine (59), okay...
889
890 ROBERT COOK: So they...
891
892 YVES STEGER: ...and you go...
893
894 ROBERT COOK: They split the fifty nine three-three (59.33) and then that's how they ran the
895 center of the foundation.
896
897 VICKI KEENAN: From the front of the lot.
898
899 YVES STEGER: From where?
900
901 ROBERT COOK: If they split the fifty nine three-three (59.33)...
902
903 YVES STEGER: I understand.
904
905 ROBERT COOK: Right. So they...
906
907 YVES STEGER: Now, you are in the middle of your lot.
908
909 ROBERT COOK: Right.
910
911 YVES STEGER: You're not anymore at the fifty nine (59). You're here.
912
913 ROBERT COOK: Mm-hmm.
914
915 YVES STEGER: How do you measure where the center is?
916
917 ROBERT COOK: I honestly can't tell you. I'm just surmising what they did. You asked me
918 what they did, I'm surmising that they split the fifty nine point three-three (59.33) and just ran a
919 line down.
920

921 VICKI KEENAN: The center of the lot?

922

923 ROBERT COOK: Right.

924

925 VICKI KEENAN: From pond to roadway?

926

927 ROBERT COOK: Mm-hmm.

928

929 [pause]

930

931 VICKI KEENAN: So, I guess, back to what Yves was saying about the foundation being...just,
932 let's assume, alright, that the lot was fifty nine (59) feet based on what you're saying at that
933 point and that all of that was done in good faith. You have a twenty eight (28) foot foundation,
934 plus thirty (30) feet on either side for setbacks. That gets you to fifty eight (58) feet. When you
935 add your decks, that's get you, and I did the quick and dirty math, maybe somebody can check
936 it for me, to sixty two (62) feet. That clearly takes you over your setback limits at that point.
937 Wouldn't, at that point, doing those measurements, you would have sort of gone back to check
938 everything, knowing that you would be going over your setback limits with your
939 appurtenances, such as your decks and your walkways? And with it sort of clearly stated in our
940 building regulations that decks and walkways are considered, as long as their attached to the
941 home, part of the dwelling?

942

943 ROBERT COOK: The builder who built them said it wasn't, so...

944

945 BILL MASON: And...

946

947 ROBERT COOK: And he builds in Londonderry all the time.

948

949 BILL MASON: And it some communities, and I thought Londonderry was the same way, if
950 you have a walkway that's an entryway, okay, and it's uncovered, it's not considered part of the
951 structure, so it's not factored into the setback. That's the way it is in Windham...

952

953 YVES STEGER: I wasn't talking about the walkway. I was talking about the deck itself, which
954 is attached to the house and a pretty significant one because it is pretty high and a long post and
955 so on and even the building permit here shows thirty two (32) feet.

956

957 ROBERT COOK: Right.

958

959 BILL MASON: Right.

960

961 YVES STEGER: So, thirty two (32) plus thirty (30) is sixty two (62).

962

963 ROBERT COOK: Oh, because it's for the deck, they wanted the size of the deck.

964

965 YVES STEGER: Yes, correct.
966
967 ROBERT COOK: Mm-hmm.
968
969 YVES STEGER: Which is part of your structure.
970
971 ROBERT COOK: But I wasn't...
972
973 YVES STEGER: And on your house is...
974
975 ROBERT COOK: I wasn't told it was part of the house. The builder who built it told me he
976 builds in Londonderry all the time and told me that, you know, you're all set, we're just gonna
977 put a four (4) foot walkway up and a deck.
978
979 VICKI KEENAN: Richard, where does it say in our building rules and regs about decks and
980 what they're defined as?
981
982 RICHARD CANUEL: You would have to look at the definitions in our zoning ordinance for
983 what a structure is.
984
985 YVES STEGER: Let's do that.
986
987 VICKI KEENAN: Let's take just a second, if you would.
988
989 [pause]
990
991 MICHAEL GALLAGHER: "Structure," on one fifty five (155).
992
993 VICKI KEENAN: Where are you?
994
995 MICHAEL GALLAGHER: One fifty five (155).
996
997 YVES STEGER: Where is it?
998
999 VICKI KEENAN: At one fifty five (155)?
1000
1001 MICHAEL GALLAGHER: Yeah. Gotta go back here.
1002
1003 VICKI KEENAN: Okay, I have that in my...
1004
1005 MICHAEL GALLAGHER: Okay.
1006
1007 VICKI KEENAN: Can you read that for us?
1008

1009 MICHAEL GALLAGHER: Sure. Alright, "structure," it's page one fifty five (155). "Anything
1010 constructed, the use of which requires permanent location on the ground, or attached to
1011 something having permanent location on the ground. Antenna, awnings, driveways, exterior
1012 light fixtures, fire hydrants, gardens, mailboxes, parking surfaces, retaining walls less than three
1013 (3) feet in height, survey monuments, temporary storage areas, walks, and similar minor
1014 structures," alright, "shall not be considered structures for bulk regulation purposes." Okay,
1015 here we go, "In addition, unenclosed ground level decks, and unenclosed elevated decks which
1016 project no more than ten (10) feet from the principal structure, shall not be considered structures
1017 for lot coverage purposes when constructed onto a single-family attached dwelling." Is that
1018 telling us it is not to be...?

1019
1020 VICKI KEENAN: No, it's saying that it is a structure.

1021
1022 MICHAEL GALLAGHER: Okay.

1023
1024 YVES STEGER: It is not?

1025
1026 VICKI KEENAN: It is considered part of the structure. It said, "in addition, unenclosed
1027 decks..."

1028
1029 MICHAEL GALLAGHER: Yeah, let me read it again. "In addition, unenclosed ground level
1030 decks, and unenclosed elevated decks which project no more than ten (10) feet from the
1031 principal structure..."

1032
1033 YVES STEGER: Shall not be, shall not be...

1034
1035 VICKI KEENAN: Shall not be...

1036
1037 MICHAEL GALLAGHER: "...considered structures for lot coverage purposes when
1038 constructed onto a single-family attached dwelling." So...

1039
1040 MATT NEUMAN: How big is the deck, though?

1041
1042 VICKI KEENAN: It is...

1043
1044 YVES STEGER: Four (4) feet.

1045
1046 MICHAEL GALLAGHER: "...which project no more than ten (10) feet..."

1047
1048 VICKI KEENAN: Thirty two (32) feet long, four (4) feet wide. So it...

1049
1050 YVES STEGER: Oh, wait a minute, no. The deck is twelve (12) feet.

1051
1052 MATT NEUMAN: So it looks like a walkway...

1053
1054 YVES STEGER: No, no. I'm talking about the deck itself.
1055
1056 MATT NEUMAN: Right. The walkway isn't part of it.
1057
1058 YVES STEGER: Correct.
1059
1060 VICKI KEENAN: Right.
1061
1062 YVES STEGER: The walkway is not.
1063
1064 VICKI KEENAN: But the deck is.
1065
1066 YVES STEGER: But the deck is twelve (12) feet, so it's definitely more than the ten (10) feet, so it
1067 is a structure.
1068
1069 [pause]
1070
1071 MATT NEUMAN: I have a question. Now, you had construction financing?
1072
1073 BILL MASON: Yes.
1074
1075 ROBERT COOK: Yes.
1076
1077 MATT NEUMAN: There was a lender involved? Did the lender require inspections for
1078 disbursement of funds?
1079
1080 BILL MASON: I'm sure they did, yes.
1081
1082 MATT NEUMAN: Did they require a foundation plan, a plot plan, at any point?
1083
1084 ROBERT COOK: No.
1085
1086 MATT NEUMAN: That wasn't part of their closing requirements?
1087
1088 ROBERT COOK: Nope.
1089
1090 MATT NEUMAN: I know, I...that's what I do for a living, is I do closings.
1091
1092 ROBERT COOK: Mm-hmm.
1093
1094 MATT NEUMAN: And a lot of construction lenders require a plot plan, at least at some point,
1095 to be done. I'm just a little surprised. I can't say to your specific loan...
1096

1097 ROBERT COOK: Mm-hmm.
1098
1099 MATT NEUMAN: ...that that wasn't a requirement. But it may be something you wanna go
1100 back and look at your actual closing papers...
1101
1102 ROBERT COOK: Mm-hmm.
1103
1104 MATT NEUMAN: ...and you may have, in fact, paid for a plot plan that quite possibly wasn't
1105 done or was done and wasn't told or the results weren't given to you.
1106
1107 ROBERT COOK: Mm-hmm.
1108
1109 MATT NEUMAN: So, you may want to inquire to that.
1110
1111 ROBERT COOK: Okay.
1112
1113 [pause]
1114
1115 VICKI KEENAN: Are there any more questions of the Board?
1116
1117 MICHAEL GALLAGHER: No.
1118
1119 VICKI KEENAN: No? Okay, seeing none, we are going to open it up for public comment. So,
1120 all those who are opposed to this application, I would ask that, one at a time, come up to the
1121 microphone, state your name and address and just speak clearly for us and that if you are
1122 coming up to speak, that you provide us with new information and not really reiterate things
1123 that we've heard before, if you would, please. Okay, so is there anyone in the audience that's
1124 opposed to this application that would like to speak now? Come on up.
1125
1126 ERIC HOLLAND: Hi, my name is Eric Holland, I live at 36 Brewster Road. I have pictures
1127 [Exhibits "I" through "M"], I don't know the best way is to do this, I should have made more of
1128 them...
1129
1130 VICKI KEENAN: If you...
1131
1132 ERIC HOLLAND: Do you want me to tell you what they are and bring them up?
1133
1134 VICKI KEENAN: Yeah, and we can pass them down the line.
1135
1136 ERIC HOLLAND: Okay. Or I'll tell you...go two by two...First of all, I wanna say one thing.
1137 This whole thing isn't rocket science. I mean, a measuring tape would have been...I mean, Mr.
1138 Cook was told about the small size of this lot many, many times and, I mean, we're talking
1139 about, he could have used a tape measure and measured where it is. It's not a complex thing.
1140 This picture...and by the way, Mr. Cook is, I believe, an engineer and his machine shop makes

1141 medical instruments, which are measured in, I believe, microns, so it's not a thing, I think,
1142 would be above, you know, his ability. This is a picture of...basically, just to remind you what
1143 it looks like, this is where the lot line is, up at the top, and it goes down, you can see how close it
1144 is.

1145
1146 [pause]

1147
1148 ERIC HOLLAND: One of the other...this one, underneath that side deck are two huge air
1149 conditioner/heat pump systems that I can hear inside my house with the doors and windows
1150 closed, okay? I won't go over every single picture. Another picture is drainage. I have a lot of
1151 drainage problems because this wall was built up. I don't know if you saw the retaining wall
1152 that was built on my side and that there's drains coming out of that and all of a sudden, I'm
1153 having drain problems. I have sand bags in my driveway, I have a pipe that comes right onto
1154 my property, which I don't know if that's legal.

1155
1156 VICKI KEENAN: Joe, can you pass those back?

1157
1158 JOE GREEN: Sure.

1159
1160 ERIC HOLLAND: The deck is, in my estimation, eleven (11) feet too close and his foundation's
1161 seven (7) feet too close. I mean, you can see by that picture, how that goes down. I don't know,
1162 did anyone go down to the water and look at the pin, at the water on his lot and my lot? It's
1163 way over. I mean, it...the other...I mean, it just doesn't seem that it was very complicated to me
1164 and simply using a tape measure, he could have avoided this whole thing. The other fact is that
1165 everybody that's come to my house, my family's been in real estate for thirty (30) years, they all,
1166 everybody that comes there, it's basically built on top of me, everyone comments, even delivery
1167 people. You know, the value of my house has been adversely affected and the drainage
1168 problems and I just don't...that's pretty much all I have to say. Thank you.

1169
1170 VICKI KEENAN: Thank you. Is there anyone else in the audience that would like to speak
1171 or...?

1172
1173 MICHAEL GALLAGHER: Yeah, I wanted to see the drainage stuff.

1174
1175 VICKI KEENAN: Yeah, I'm sorry.

1176
1177 JIM SMITH: I'd like to make a couple comments and ask a couple questions. One of the
1178 questions I have, when he said the centered the house on the lot, did he inform the foundation
1179 gentleman that there was, in fact, a fifteen (15) foot side setback? You know, instead of just
1180 saying he had to center it in the lot? The other question or other point I would raise about the
1181 foundation gentleman, as far as I know, no evidence has been given that he was, in fact, a
1182 licensed surveyor and really qualified to determine the size and location of a foundation.
1183 Typically, that's done by a surveyor. Are the lot lines identified by monumentation at the front
1184 and back, so that the lot lines can be actually determined? Was he aware that the required

1185 certified plot plan was, in fact, required at the point that the footings was installed? That's
1186 clearly stated in the building code amendments, which are available for anybody who wants to
1187 look at the regulations that we have for the Town of Londonderry. Okay, thank you.
1188
1189 VICKI KEENAN: So, Jim, could you just start with your first question and we'll direct it to the
1190 applicant...
1191
1192 JIM SMITH: Okay, the first question was, when he told the foundation gentleman, did he
1193 inform them that there was a fifteen (15) foot required setback in locating the foundation, versus
1194 just stating 'Center it in the lot'?
1195
1196 ROBERT COOK: Yes, and they told me it was a fifteen (15) foot setback.
1197
1198 VICKI KEENAN: Your foundation contractor did?
1199
1200 ROBERT COOK: Right, and the excavator. I said it and they both said it.
1201
1202 JIM SMITH: Okay. Was the foundation gentleman certified as a surveyor to be qualified to
1203 actually locate the foundation?
1204
1205 ROBERT COOK: I don't know that.
1206
1207 JIM SMITH: Okay. Are the lot lines identified by monumentation on the four corners?
1208
1209 ROBERT COOK: Yes.
1210
1211 JIM SMITH: Were you aware that the required certification of the foundation was, in fact,
1212 required under the building code to be submitted when the footings were installed, which is
1213 clearly stated in the building code and the amendments as the Town of Londonderry has in
1214 their ordinance?
1215
1216 ROBERT COOK: No, and you also said that you gave me one, which you never did. Your
1217 office never informed me or gave me one but you stated before that you did.
1218
1219 JIM SMITH: Okay. Well, the point I'm raising is, he's under the...he should have inquired on
1220 something like that.
1221
1222 VICKI KEENAN: Okay. Thank you.
1223
1224 JIM SMITH: Thank you.
1225
1226 VICKI KEENAN: Is there anyone else in the audience?
1227

1228 BILL MASON: Just to respond to that, okay, public servants have an obligation, okay, to
1229 enforce the regulations and to inform the public, okay? So if there's...they don't have
1230 any...there's no problem with...when you say to a building official, 'What do I have to do to get
1231 a building permit?', they tell you what you have to do, okay? 'And we will give you a permit.'
1232 They also tell you the inspections you have to have and what needs to get done before you can
1233 continue on building your house. The point I'm trying to make is, Mr. Cook did not ignore any
1234 of those and tried to comply with everything he was directed to do. He didn't not get a certified
1235 location on his foundation because he wanted to build the house and then be back here eight (8)
1236 or nine (9) months later, fighting this fight, okay? If he was told to do that...everything he was
1237 told to do by the Building Department in order to build his house, he did. Every permit he was
1238 required to get, he got. Every inspection, he got, alright? So, this is not something that
1239 subterfuge had took place in the middle of the night because he needed an extra seventeen (17)
1240 inches on one side of his house or three (3) feet on the other side of his house. He thought he
1241 was doing the right thing. He thought he was relying on contractors who work in
1242 Londonderry, who say they know what they're doing, and understand where the house needed
1243 to be sited. That's what he did, okay? Nothing more than that.
1244

1245 VICKI KEENAN: Is there anyone else in the public that would like to speak in favor or against
1246 this applicant? Sure, come on up.
1247

1248 CHARLIE EVANS: I just didn't know which side you were looking for, in favor or opposed or
1249 both?
1250

1251 VICKI KEENAN: I think we'll take everybody at this point.
1252

1253 CHARLIE EVANS: Okay. My name is Charlie Evans, I live on 11 Wilson Road in
1254 Londonderry. And I've known Bob Cook for a long time and I think what it comes down to is,
1255 you know, we're talking about who did what and what contractor did what, I think what it
1256 comes down to is the Board has to decide if he made an error in bad faith...I mean, I'm sorry, if
1257 he made an honest mistake and didn't exercise bad faith and didn't try to do something wrong
1258 to get his house bigger than it should be or closer to the lot line than it should be and I think that
1259 it's pretty clear to me, from the length of time I've known him that this is an honest mistake.
1260 There's nothing he...this is not a position he wanted to be in. I'm sure he's beat himself up more
1261 than the Board or anybody else has about being in this position because it's certainly not a place
1262 he wants to be. Secondly, if you look at that neighborhood, and I'm sure there's other houses
1263 that don't meet the setbacks, if you drive down the neighborhood and look at the houses, you
1264 can't...it's not evident to you by driving by that this one is encroaching by seventeen (17) inches
1265 and this one is not or this one is encroaching by five (5) feet. I mean, it's not apparent, it's not...I
1266 don't think it's a huge deal. The other thing is, when you folks read the regulation about decks,
1267 my understanding, I've always been under the impression, I've done a fair amount of building
1268 in town, that a deck was not part of...the foundation is what you have to meet the setback with,
1269 not with a deck. And I think the language about the deck being larger than ten (10) feet refers to
1270 the deck on the side line. I think the twelve (12) foot deck Mr. Cook has faces the lake. I don't
1271 think that it faces the side lines and his walkway, I don't think meets, you know, falls under the

1272 criteria that you have fall inside the fifteen (15) foot setback. I think if you read the language
1273 again, you know, the Board seemed to be on the fence of whether or not a deck was...should
1274 meet the setbacks. You know, some talk about a deck width of more than twelve (12) feet. I
1275 think someone said the deck is more than ten (10) feet. It's twelve (12) feet. But the twelve (12)
1276 foot deck, I believe, faces the lake. It's not facing the side line, so I don't know if that's part of
1277 the encroachment that you'd be looking at.

1278
1279 YVES STEGER: The deck is twelve (12) by thirty two (32).

1280
1281 CHARLIE EVANS: Correct, but not on the side line.

1282
1283 YVES STEGER: So any dimension is bigger than ten (10). So, it meets exactly the intent of the
1284 zoning regulation and in this discussion, we don't...the twelve (12) feet are only important
1285 because they are more than ten (10), in which case, they would not apply. Because it is twelve
1286 (12), it does apply and they encroach into the setback much more than the house, which is
1287 twenty eight (28).

1288
1289 CHARLIE EVANS: I think there's some gray area there, but...

1290
1291 BILL MASON: Right.

1292
1293 CHARLIE EVANS: Anyway, I think that the basic criteria of this is did he act in bad faith and I
1294 don't believe that he did.

1295
1296 VICKI KEENAN: Okay. Thank you. Is there anyone else in the audience? Come up.

1297
1298 JOE MCCARRON: I'm Joe McCarron from the Bank of New England. I gave him the
1299 construction loan. We depend on...we now have a new rule, similar to Londonderry's Building
1300 Department, because we rely on the towns that we lend in to follow the construction and the
1301 building codes, et cetera. You know, we have inspections that go on. I'm a licensed builder in
1302 Massachusetts. I came in after the fact of the house being up, as far as this particular loan falling
1303 in my book, but, again, we relied on the Town inspections and then we had a separate
1304 engineering company that comes out and inspects. But they inspect, you know, the dollars
1305 going into the property, not the side yards. But that was just to answer Mr. Neuman's...

1306
1307 MATT NEUMAN: And you don't require a plot plan?

1308
1309 JOE MCCARRON: Excuse me?

1310
1311 MATT NEUMAN: You don't require a plot plan at any point?

1312
1313 JOE MCCARRON: Typically...now we do. But typically, it's the town's...most of the towns in
1314 Massachusetts, again, and like Londonderry, you know, we were under the impression that it's
1315 a footing issue. That's my own piece of it. That you certify the footing and then, you know, at

1316 that point in time, if you have to move that footing, it's not huge dollars like it is at this point in
1317 the process. So, I just wanted to add that. Thank you.
1318
1319 VICKI KEENAN: Thank you.
1320
1321 ROBERT COOK: Thank you.
1322
1323 VICKI KEENAN: Anyone else? Last chance. Okay, seeing none, we will close the...
1324
1325 YVES STEGER: But we can still ask questions?
1326
1327 VICKI KEENAN: We can still ask questions. We'll close the public, sort of, comment section.
1328
1329 YVES STEGER: No, I would like still to ask questions of the...
1330
1331 VICKI KEENAN: Of the applicant?
1332
1333 YVES STEGER: Yes.
1334
1335 VICKI KEENAN: Yeah, I mean...
1336
1337 YVES STEGER: Oh, okay, I'm sorry.
1338
1339 VICKI KEENAN: I'm just closing the, sort of, public comment portion.
1340
1341 BILL MASON: Yeah...
1342
1343 VICKI KEENAN: Just a moment, please.
1344
1345 BILL MASON: Oh.
1346
1347 VICKI KEENAN: And so, just so you all understand who are sitting out there, there are no
1348 more comments from the public as it relates to this case. So now we will bring it back to the
1349 Board and we have some more questions of the applicant, so, Yves, if you could start with your
1350 question, please.
1351
1352 BILL MASON: Just a point. Could we look at the pictures that Mr. Holland submitted? We
1353 haven't seen those. In case you ask us a question about one of those pictures. We have not seen
1354 those.
1355
1356 VICKI KEENAN: Sure.
1357
1358 YVES STEGER: My question is when was the deck built?
1359

1360 ROBERT COOK: It was completed towards the end of the house.
1361
1362 YVES STEGER: When is that?
1363
1364 ROBERT COOK: Hmm?
1365
1366 YVES STEGER: When was that?
1367
1368 ROBERT COOK: In July.
1369
1370 VICKI KEENAN: Of 2009?
1371
1372 ROBERT COOK: Yeah.
1373
1374 YVES STEGER: You applied for the deck the day after your first hearing here.
1375
1376 ROBERT COOK: Hmm?
1377
1378 VICKI KEENAN: July 15th, I think, was our first hearing and the permit was when?
1379
1380 YVES STEGER: No, it was 7/15 and...
1381
1382 VICKI KEENAN: Yeah.
1383
1384 YVES STEGER: ...the building permit for the deck was made on 7/16.
1385
1386 ROBERT COOK: Right. Richard said I need to get the permit for that and he says, 'Come in,
1387 fill it out,' and I did.
1388
1389 YVES STEGER: You didn't know that you needed a permit?
1390
1391 ROBERT COOK: It...yeah, I mean, I guess I did but they put it in and then I went...I had to go
1392 to the Town for a permit.
1393
1394 VICKI KEENAN: What were the dates of the actual physical construction of the deck?
1395
1396 ROBERT COOK: Oh, I couldn't tell you. It was framed and then there was railings put on...
1397
1398 VICKI KEENAN: Approximate.
1399
1400 ROBERT COOK: ...I mean it would all be...it was done before the permit, I'm not telling you it
1401 wasn't.
1402
1403 MATT NEUMAN: But after the plot plan was done?

1404
1405 ROBERT COOK: Pardon me?
1406
1407 MATT NEUMAN: After the plot plan was done? Showing the dimensions?
1408
1409 ROBERT COOK: Yeah. Mm-hmm.
1410
1411 VICKI KEENAN: So the deck was built after the Duval survey was complete?
1412
1413 YVES STEGER: No, actually, it isn't.
1414
1415 ROBERT COOK: No, no, no. It was there.
1416
1417 YVES STEGER: On 6/11...
1418
1419 ROBERT COOK: Yeah, it was there.
1420
1421 YVES STEGER: ...it was already there...
1422
1423 ROBERT COOK: Right.
1424
1425 VICKI KEENAN: Got it.
1426
1427 YVES STEGER: ...so your deck was there by June.
1428
1429 ROBERT COOK: Right.
1430
1431 VICKI KEENAN: Right.
1432
1433 YVES STEGER: Not July.
1434
1435 ROBERT COOK: And I said, it wasn't...I said it wasn't...it was there and we had to get the
1436 permit.
1437
1438 RICHARD CANUEL: I asked Mr. Cook to apply for the permit for the deck so that we would
1439 have the information of the deck to verify the deck construction.
1440
1441 VICKI KEENAN: Okay. Are there any more questions for the applicant? We can always more
1442 questions during deliberation. So I think we'll bring it back to the Board. I will ask the Board
1443 that as we sort of go through our deliberations and we have these discussions, as you are sort of
1444 communicating findings that you think will be relevant in making a decision on this case, that
1445 you write them on the worksheets that I've given to you so that we don't forget them and we
1446 come back and we state them with our future motion. Because this is very important that we
1447 are very clear as to the reasons why we're making this certain decision that we're gonna be

1448 making, okay? So as we're going through, maybe we can assign somebody to be a scribe? Who
1449 has nice handwriting?
1450
1451 MATT NEUMAN: Not me. It's terrible.
1452
1453 VICKI KEENAN: I'll do it.
1454
1455 DELIBERATIONS:
1456
1457 VICKI KEENAN: Okay. Alright, so what I think, maybe, for us, to start out with and you tell
1458 me if you feel differently is why don't we go through our equitable waiver of dimensional
1459 requirements worksheet...
1460
1461 YVES STEGER: Absolutely.
1462
1463 VICKI KEENAN: ...and we'll sort of read through each one and have discussion about each
1464 and...
1465
1466 MATT NEUMAN: Sounds good.
1467
1468 VICKI KEENAN: It should be interesting. Okay. Number one (1), "Explain the violation was
1469 noticed [sic] or discovered by any owner, former owner, owner's agent or representative or
1470 municipal official until after a structure in violation had been substantially complete [sic], or
1471 until after a lot or other division of land in violation had been subdivided," et cetera. I think...
1472
1473 YVES STEGER: That it's clear.
1474
1475 VICKI KEENAN: It's very clear. I think it was clearly not discovered until...
1476
1477 YVES STEGER: Yeah, it was discovered when he came with a plan and...
1478
1479 VICKI KEENAN: Right.
1480
1481 YVES STEGER: And the Town refused the certificate of occupancy, so I think one (1) is
1482 definitely...
1483
1484 VICKI KEENAN: Pass.
1485
1486 YVES STEGER: Yes.
1487
1488 VICKI KEENAN: So, I'm gonna just make notes as we do this. So, "determined at time of
1489 certified plot plan."
1490
1491 MATT NEUMAN: Mm-hmm.

1492

1493 YVES STEGER: Certificate of occupancy and at that time, and that's when, actually, the plot is
1494 dated 6/11/09 and the house was built long before that. And the deck.

1495

1496 VICKI KEENAN: "...which [inaudible] post construction." Okay. I'm going to skip over
1497 number two (2) for the moment, 'cause I think that's gonna require the most...

1498

1499 YVES STEGER: Good choice. Good choice.

1500

1501 VICKI KEENAN: ...deliberation. So let's just be clear on the rest of them. Number three (3),
1502 "Explain how the physical or dimensional violation does not constitute a public or private
1503 nuisance, nor diminish the value of other property in the area, nor interfere with or adversely
1504 affect any present or permissible future uses of any such property." Why don't we start with
1505 you, Yves, if you have any comments.

1506

1507 YVES STEGER: Well...as usual, property values are very, very difficult to prove and it's mostly
1508 emotional, as we have seen in other cases, including a famous one. Clearly, people that are
1509 around that property are not gonna be happy. I mean, I wouldn't feel happy either. But all the
1510 properties themselves are noncompliant and that's just because it was like that when those
1511 things were built. It's just the difference is that this one is a new building and so we apply
1512 different rules that were applied before. So, I think it's gonna be difficult. I'm quite sure that
1513 people could argue one way or the other one, but as far as I'm concerned, it's gonna be very
1514 difficult. And I feel bad for the people around that, but does it make it really much bigger? I
1515 mean, let's say that it was really...assuming that it is twenty five (25) minus thirty (30), imagine
1516 that a house was twenty five (25), meets all the setback requirement and it is less than thirty (30)
1517 feet high, it's gonna be a problem for the people that are on both sides. There's no doubt about
1518 it. Now, does it make it much, much worse because it is now thirty two (32) feet instead
1519 of...yes, maybe. I mean, twenty eight (28) instead of twenty five (25) for the house and the big
1520 portion, thirty two (32) for the deck. Mmm, yes, maybe. But I'm not sure that I can use that to
1521 essentially deny on that ground alone.

1522

1523 VICKI KEENAN: I, sort of, and we'll go down the line, a couple comments I have. I would ask
1524 the Board this question: If the house were positioned, both the foundation, the structure itself
1525 and the deck, within the setback limits, would this stated diminution of value on the adjacent
1526 property, would that go away? Would that property value go up if the house were pushed back
1527 within those setback limits? I don't know the answer to that. I guess...

1528

1529 YVES STEGER: I'm saying I don't think so.

1530

1531 VICKI KEENAN: I would say probably not. I think a house in compliance on that lot would
1532 have the same impact as this existing house. Jaye, just for the record, Masiello Group had
1533 submitted what their professional appraisal on 36 Brewster Road [see Exhibit "N"].

1534

1535 JAYE TROTTIER: Mm-hmm.

1536
1537 VICKI KEENAN: And I wanted to make sure that the Board...I can't recall if that was...I
1538 wanna make sure that that was part of the public record because I think that came in after our
1539 last meeting.
1540
1541 YVES STEGER: Yes, it was.
1542
1543 JAYE TROTTIER: It was one of the letters, yup.
1544
1545 VICKI KEENAN: Everybody saw that? Just to make sure that all of the facts are laid out on the
1546 table and all of the exhibits have been put forth. Okay. So that's all I have to say. So, in other
1547 words, I don't have an opinion that any property values are impacted by the current structure.
1548 Mike?
1549
1550 MICHAEL GALLAGHER: I tend to agree. I think you could have an argument on either side
1551 of that. If it was, like you said, if it met all the setbacks, my personal opinion, I think the values
1552 around him may even go up but that has nothing to do here. It was the first time the drainage
1553 thing, you know, that was news to me and actually, the...
1554
1555 VICKI KEENAN: Air conditioning...
1556
1557 MICHAEL GALLAGHER: ...heat pumps and stuff, so...I don't know, does that bring anything
1558 up with the nuisance issue here but the pictures didn't really show. I didn't see much erosion
1559 from the drain but...
1560
1561 MATT NEUMAN: Can we get some clarification on that, though?
1562
1563 VICKI KEENAN: Sure.
1564
1565 MATT NEUMAN: The picture that shows that pipe?
1566
1567 ROBERT COOK: Mm-hmm.
1568
1569 MATT NEUMAN: What exactly that is and what's coming out of that pipe?
1570
1571 ROBERT COOK: That pipe...
1572
1573 MICHAEL GALLAGHER: What is that? Yeah, good question.
1574
1575 ROBERT COOK: That pipe comes from my roof drain.
1576
1577 MATT NEUMAN: Mm-hmm.
1578

1579 ROBERT COOK: And it comes down underground and just bleeds out at the wall onto rocks
1580 that I have below there which directs the water down my property line and that pipe is
1581 probably thirteen (13) feet in from my property line. So saying that it could pour in onto his
1582 property is, in all honesty, a fallacy. It's thirteen (13) feet in from the property line and it's
1583 directed to go down through the trees on my property.
1584
1585 MATT NEUMAN: How is that directed? Just by the rocks or...?
1586
1587 ROBERT COOK: Just by the lay of the rock, right.
1588
1589 MATT NEUMAN: Is that something that was naturally like that or that you put those,
1590 positioned those rocks there?
1591
1592 ROBERT COOK: I put those rocks in but it was, you know, when it was raining, I went there in
1593 the rain and saw where it was and put some rocks down there, primarily because of, you know,
1594 I did it just because of, you know how you put your roof lines coming down on your flowers
1595 and you put rocks there so that it's not digging the land up? And that's why I did it. That's
1596 why I put the rocks there but the natural flow goes into the trees. Not anywhere else.
1597
1598 MATT NEUMAN: Richard, with discharge like this from...I mean, does that come into play as
1599 far as the setback and is it...how that works?
1600
1601 RICHARD CANUEL: Well, there are no provisions in our ordinance that actually prevents
1602 someone from doing that.
1603
1604 MATT NEUMAN: Oh.
1605
1606 RICHARD CANUEL: If it were a case where Mr. Cook was purposefully discharging runoff
1607 onto the adjacent property, then we could make the argument that a nuisance is caused and
1608 damage is caused to the adjacent property. Where the drain discharges onto Mr. Cook's
1609 property and it runs naturally from there, it's a hard argument to say that there's a nuisance
1610 caused to the adjacent property because of that.
1611
1612 VICKI KEENAN: Could we require some sort of mitigation? I mean, depending on how we
1613 vote, as a condition of such, could we require mitigation on the HVAC or the drainage? I'm
1614 just...
1615
1616 YVES STEGER: Well, we're only here as a setback issue.
1617
1618 VICKI KEENAN: Yeah.
1619
1620 YVES STEGER: Pure measurement.
1621
1622 VICKI KEENAN: I know. Right.

1623
1624 YVES STEGER: Even if the house was meeting the setbacks, you could have a runoff problem,
1625 okay?
1626
1627 MATT NEUMAN: But this is causing a nuisance. I mean, that's gonna...
1628
1629 VICKI KEENAN: But it all comes down...
1630
1631 YVES STEGER: You're gonna have to equate the nuisance to the setback violation as opposed
1632 to the natural runoff conditions.
1633
1634 VICKI KEENAN: But it all comes down to equity and fairness at the end of the day, right?
1635
1636 YVES STEGER: Mm-hmm.
1637
1638 VICKI KEENAN: And sort of a balance of a number of different issues and I sort of see this as,
1639 you know, tearing down the house, and this is something I was gonna say later, but I'll say it
1640 now, is that tearing down the house fair or is it...if we determine that under one, two, three,
1641 four, particularly number two (2), which is the ignorance of law, failure to inquire, that there
1642 was nothing in bad faith and we don't see anything there, then we get to this sort of issue with
1643 equity and fairness, and we do grant an equitable waiver, and I'm struggling here getting my
1644 words out. What time is it, ten o'clock? Is it also fair that we require Mr. Cook to mitigate these
1645 issues that are a nuisance to 36 Brewster Road, which is the noise from the HVAC and then the
1646 drainage problem, so, I guess, after all of that, very elegantly said, are there means by which
1647 you could mitigate those issues?
1648
1649 ROBERT COOK: Yes. I've looked at it and had a landscape person look at it 'cause we talked
1650 here before about landscaping, trees, whatever and I could put arborvitaes along that side there
1651 which blocks all of that. There's also a sound barrier and that's stated to me by a landscape
1652 engineer. It works as a sound barrier also and I have the chance to acquire some mature that are
1653 ten (10) feet tall right now, but they'll grow to twenty (20) feet.
1654
1655 YVES STEGER: Okay. We actually, during a previous hearing on this one, we discussed the
1656 fact that if we approve the equitable waiver, this Board can put restrictions or requirements at
1657 any time.
1658
1659 VICKI KEENAN: Okay, that was my question.
1660
1661 YVES STEGER: Yes, absolutely.
1662
1663 VICKI KEENAN: Much better said than I said.
1664
1665 YVES STEGER: Because there was a question about, can this Board do that?
1666

1667 VICKI KEENAN: Yeah, that was my question.
1668
1669 YVES STEGER: Because this is not a variance. I mean, it's usual that we put, when we approve
1670 a special exception or a variance, you know, either use or area, we put restrictions and people
1671 said, 'well what about equitable waiver?' And there is nothing in the statute that says that we
1672 cannot do that.
1673
1674 VICKI KEENAN: Great.
1675
1676 YVES STEGER: And just in the...
1677
1678 VICKI KEENAN: That's important.
1679
1680 YVES STEGER: You know, just to be fair to everybody.
1681
1682 VICKI KEENAN: Mm-hmm. I think that's important. Okay. That's good to know. Matthew?
1683
1684 [pause]
1685
1686 MATT NEUMAN: I think that covers everything for me.
1687
1688 VICKI KEENAN: Joe?
1689
1690 JOE GREEN: I just have a question to Mr. Holland. Just in regards to the Better Homes and
1691 Gardens real estate letter that you have here from Rick Hatton? I just wondered how he
1692 assessed that there was a forty thousand (40,000) dollar reduction in the sale price. Did you
1693 know how he brought that number up? How he calculated that number?
1694
1695 VICKI KEENAN: Could you come up to the microphone, please to answer the question?
1696 Thank you. Just a moment. Just for a point of order, can we...
1697
1698 ERIC HOLLAND: I'm not aware of how he...
1699
1700 VICKI KEENAN: Wait just a moment, Mr. Holland. Point of order, can we ask questions of the
1701 public once the public session has been closed?
1702
1703 RICHARD CANUEL: Well, that's the Board's discretion. I mean, you're not asking for public
1704 comment, you're asking response to an inquiry, so...
1705
1706 VICKI KEENAN: I think we should allow the question. I think it's important.
1707
1708 YVES STEGER: Alright.
1709

1710 MICHAEL GALLAGHER: I think also because he brought a couple facts into light here, you
1711 know...
1712
1713 VICKI KEENAN: Yup. Okay, I'm sorry to interrupt you.
1714
1715 ERIC HOLLAND: I'm not aware of how he did that. I know he's been working in real estate a
1716 long time. I know that everybody that's seen pictures or been to my house thinks it's atrocious.
1717 I don't know how he came up with that. He's an expert and I didn't inquire as to how he came
1718 up with that figure.
1719
1720 JOE GREEN: If we had more of, 'okay, this is what happened during this scenario...'
1721
1722 VICKI KEENAN: Mm-hmm.
1723
1724 JOE GREEN: This particular house was, you know, devalued less than this house because of the
1725 proximity. It seems like the letter almost helped what we were talking about earlier, saying
1726 whether it would be fifteen (15) closer or less or...
1727
1728 YVES STEGER: Mm-hmm.
1729
1730 JOE GREEN: It's not gonna make much of a difference because the letter just said that size of
1731 house, regardless of how close it was.
1732
1733 VICKI KEENAN: I agree.
1734
1735 JOE GREEN: So it really didn't help us in determining whether it be...
1736
1737 YVES STEGER: That's correct.
1738
1739 VICKI KEENAN: Mm-hmm.
1740
1741 JOE GREEN: Right, so...
1742
1743 YVES STEGER: That is correct. Which actually relates to what I said exactly, you know?
1744
1745 JOE GREEN: That's to prove your point a little better.
1746
1747 VICKI KEENAN: Right.
1748
1749 YVES STEGER: It would be a problem even if it was compliant.
1750
1751 VICKI KEENAN: Right. I agree.
1752

1753 JOE GREEN: That's right. So, in his professional opinion, it still would have been a problem,
1754 so...
1755
1756 YVES STEGER: Mm-hmm. Okay.
1757
1758 JOE GREEN: Thank you.
1759
1760 VICKI KEENAN: Thank you, Joe. So, I guess...
1761
1762 ERIC HOLLAND: Is that it?
1763
1764 VICKI KEENAN: Thank you.
1765
1766 JOE GREEN: Thank you.
1767
1768 VICKI KEENAN: So I think we're all in agreement that there's not an issue, that the fact that the
1769 property is over the setback limit impacts value, but I would really ask the Board to seriously
1770 consider mitigation related to drainage and to HVAC.
1771
1772 MATT NEUMAN: Absolutely.
1773
1774 VICKI KEENAN: I think that's...as we go forward, I think it's reasonable and warranted. So I
1775 hope somebody's writing this down 'cause I'm not fulfilling my scribe duties very well. And
1776 then when we do notes, we'll all sort of chime in. Number four (4), "Explain how, due to the
1777 degree of past construction or investment made in ignorance of the facts constituting the
1778 violation, the cost of correction so far outweighs any public benefit to be gained, that it would
1779 inequitable to require the violation to be corrected."
1780
1781 YVES STEGER: There is no doubt about that.
1782
1783 VICKI KEENAN: That is clear as day.
1784
1785 JOE GREEN: I agree.
1786
1787 YVES STEGER: Mr. Cook gave, you know, estimates of construction costs. There's no doubt
1788 that that is true.
1789
1790 VICKI KEENAN: I agree. Anyone else have anything to say on that?
1791
1792 MICHAEL GALLAGHER: No.
1793
1794 MATT NEUMAN: No.
1795
1796 VICKI KEENAN: Okay. Let's see...

1797
1798 YVES STEGER: Now we have to go back to two (2).
1799
1800 VICKI KEENAN: I know. Let me just make sure we haven't missed anything else. Okay, so
1801 back to what I think is probably the meat of this discussion, which is "Explain how the violation
1802 was not an outcome of ignorance of the law or ordinance, failure to inquire," everyone has
1803 trouble pronouncing this word, "obfuscation, misrepresentation, or bad faith on the part of any
1804 owner, owner's agent or representative," which would include the contractors under hire, "but
1805 was instead caused by either a good faith error in measurement or calculation made by an
1806 owner or owner's agent, or by an error in the [sic] ordinance interpretation or...made by a
1807 municipal official in the process of issuing a permit over which the [sic] official had authority."
1808 Why don't we start with Joe at that end.
1809
1810 JOE GREEN: I think it was very clear, you made a point earlier about the deck and it's very,
1811 very clear in our ordinances that that is part of the structure, so regardless of any variances or
1812 overs or unders, if you were just to use simple mathematics to add, you would be in violation of
1813 that, so, I think it's very simple to say that it was in violation.
1814
1815 VICKI KEENAN: On the deck.
1816
1817 JOE GREEN: On the deck.
1818
1819 VICKI KEENAN: Yeah, I agree. Matt?
1820
1821 MATT NEUMAN: It's pretty clear. I mean, from everything, it appears that Mr. Cook relied
1822 upon people that he hired to do the math and that's where he based everything off of.
1823 Obviously, he should have done a little more homework but it doesn't look like that was
1824 done...it doesn't appear that, you know, there was the bad faith.
1825
1826 YVES STEGER: Well...so, we have accepted that in good faith, he thought he had fifty nine (59)
1827 feet, okay?
1828
1829 MATT NEUMAN: Mm-hmm.
1830
1831 YVES STEGER: So, we all accept that.
1832
1833 MICHAEL GALLAGHER: I don't.
1834
1835 YVES STEGER: Never...yeah, I accept the fifty nine (59) feet.
1836
1837 JOE GREEN: He said he...
1838
1839 VICKI KEENAN: That he thought...
1840

1841 MICHAEL GALLAGHER: No, no, no, I'm sorry. I wasn't saying...
1842
1843 YVES STEGER: Okay. We accept the fifty nine (59) feet. That's a good faith error. Putting a
1844 thirty two (32) foot structure is...
1845
1846 VICKI KEENAN: Right.
1847
1848 YVES STEGER: ...and he said he didn't know. That's ignorance of the law.
1849
1850 ROBERT COOK: No, I...
1851
1852 YVES STEGER: It's on the record.
1853
1854 VICKI KEENAN: ...you wanna finish your...
1855
1856 YVES STEGER: Yeah.
1857
1858 VICKI KEENAN: Okay.
1859
1860 YVES STEGER: So, in that case, there is definitely ignorance of the law because...and actually,
1861 it's very bizarre that, essentially he gets that structure attached, which makes it break more even
1862 than the twenty eight (28) which we can accept. I'm ready to accept the twenty eight (28) foot...
1863
1864 VICKI KEENAN: I agree.
1865
1866 YVES STEGER: ,...but I am not ready to accept the thirty two (32) feet and in addition, he gets
1867 only a permit after he has already been in front of this Board.
1868
1869 VICKI KEENAN: For the deck. When it clearly says in the initial permit for the house...
1870
1871 YVES STEGER: Exactly.
1872
1873 VICKI KEENAN: ...that it is not...
1874
1875 YVES STEGER: Exactly. So...
1876
1877 VICKI KEENAN: ...the deck is not part of the initial permit.
1878
1879 MATT NEUMAN: The deck is a huge issue.
1880
1881 VICKI KEENAN: Yeah. Without a doubt.
1882
1883 YVES STEGER: So there is definitely ignorance of the law and there is definitely failure to
1884 inquire. I mean, the number of times where he could reasonably, knowing that this was a very

1885 small lot, have talked to people, asked people to measure it. The first time this whole thing is
1886 measured for the first time is in June '09 and the building is already done. So, as far as I'm
1887 concerned, it's...I accept the good faith for the fifty nine (59) feet...
1888
1889 VICKI KEENAN: Mm-hmm.
1890
1891 YVES STEGER: ...and I would have accepted the twenty eight (28) foot for the house.
1892
1893 MATT NEUMAN: So, for the foundation...
1894
1895 YVES STEGER: For the foundation, I'm not even arguing with the foundation.
1896
1897 MATT NEUMAN: Mm-hmm.
1898
1899 YVES STEGER: The thirty two (32) feet for the deck, I'm not ready to do that.
1900
1901 VICKI KEENAN: And the walkway.
1902
1903 MATT NEUMAN: Yup.
1904
1905 YVES STEGER: That's definitely ignorance of the law.
1906
1907 MATT NEUMAN: I would agree with that.
1908
1909 VICKI KEENAN: I'm gonna ask a question of Mr. Cook. Can you make modifications to the
1910 deck and the walkway that exceed the twenty eight (28) feet or the boundaries of the
1911 foundation?
1912
1913 ROBERT COOK: Oh, there's gonna be mod...to the four (4) foot walkway?
1914
1915 VICKI KEENAN: Right. And also the deck.
1916
1917 ROBERT COOK: Yeah.
1918
1919 VICKI KEENAN: Which extends beyond the twenty eight (28) feet.
1920
1921 ROBERT COOK: Yeah, I mean, you can cut it off, right.
1922
1923 MICHAEL GALLAGHER: So, maybe bring it...
1924
1925 MATT NEUMAN: [inaudible] eliminate...
1926
1927 MICHAEL GALLAGHER: I'm sorry.
1928

1929 VICKI KEENAN: What's that?
1930
1931 MATT NEUMAN: Eliminate that four (4) foot walkway?
1932
1933 ROBERT COOK: Well, you can't eliminate it because it's an entranceway to the house. So
1934 you'd have to leave a section of it.
1935
1936 MATT NEUMAN: How much of a section?
1937
1938 ROBERT COOK: Ten (10) feet.
1939
1940 MATT NEUMAN: So not to the entire...not to the end of the...
1941
1942 BILL MASON: No.
1943
1944 ROBERT COOK: Right. Right, you could take out the end.
1945
1946 VICKI KEENAN: Richard, can I ask a question? On the walkway, just a point of clarification.
1947 The walkway...there's the deck and then there's the walkway. Are they both...the walkway
1948 does not exceed ten (10) feet...
1949
1950 ROBERT COOK: Right.
1951
1952 RICHARD CANUEL: Mm-hmm.
1953
1954 VICKI KEENAN: ...from the house. But the deck does. Are they considered...?
1955
1956 MATT NEUMAN: Considered one?
1957
1958 VICKI KEENAN: Yeah.
1959
1960 RICHARD CANUEL: Yeah.
1961
1962 MATT NEUMAN: Because they're connected?
1963
1964 RICHARD CANUEL: I would look at it as one because it's connected.
1965
1966 VICKI KEENAN: Because the walkway connects to the deck.
1967
1968 RICHARD CANUEL: The walkway does connect to the deck for access to the deck, yeah. It's
1969 part of the deck.
1970
1971 VICKI KEENAN: Can you modify the walkway and the deck so that...

1972
1973 ROBERT COOK: Yes.
1974
1975 VICKI KEENAN: ...you can comply...[inaudible]
1976
1977 ROBERT COOK: Now the other point I was trying to make earlier when you stopped me was
1978 that he said it's on the record, it's also on the record that the builder told me, and he builds in
1979 Londonderry all the time, and I was told this is not an issue, it's a deck, it's not the house. And
1980 that's what I based that on.
1981
1982 VICKI KEENAN: We understand that.
1983
1984 ROBERT COOK: And that's on the record from before.
1985
1986 VICKI KEENAN: But I think my question is, really, can you comply?
1987
1988 ROBERT COOK: No, and my understand to that is yes...
1989
1990 VICKI KEENAN: Okay.
1991
1992 ROBERT COOK: ...but to Yves' thing, it is on the record that I said that the builder told me that
1993 that was alright.
1994
1995 YVES STEGER: You are the person that is supposed to know the law.
1996
1997 ROBERT COOK: I understand that.
1998
1999 YVES STEGER: Okay?
2000
2001 ROBERT COOK: But I...
2002
2003 YVES STEGER: You cannot put that responsibility on everybody around you.
2004
2005 ROBERT COOK: I put it on the people I hired to do the right thing.
2006
2007 VICKI KEENAN: So, I think from my perspective on this, I think there was some major
2008 problems with the deck. You know, bad faith? I don't know. Ignorance? For sure. Failure to
2009 inquire? Absolutely. The math is very simple. I'm terrible at math and if I can do it, it's pretty
2010 clear. And I think that, you know, the cost to take down a few feet of the deck, you know, I'm
2011 torn as to whether it's worth it.
2012
2013 MATT NEUMAN: Well, I think it may be worth it to the abutter.
2014
2015 MICHAEL GALLAGHER: Yes. Exactly.

2016
2017 VICKI KEENAN: Yeah. No, I...yeah.
2018
2019 MICHAEL GALLAGHER: I think because it is...
2020
2021 VICKI KEENAN: We're talking about what [inaudible]...
2022
2023 MICHAEL GALLAGHER: ...that the setbacks are not met, I think...
2024
2025 YVES STEGER: Actually, given the way the house has been built like that...
2026
2027 VICKI KEENAN: On an angle.
2028
2029 YVES STEGER: It's that portion that encroaches even more...
2030
2031 MICHAEL GALLAGHER: Yes.
2032
2033 VICKI KEENAN: Yes.
2034
2035 YVES STEGER: ...than the big deck itself.
2036
2037 VICKI KEENAN: Right.
2038
2039 MICHAEL GALLAGHER: Well, you look at that picture also, that...
2040
2041 VICKI KEENAN: That corner.
2042
2043 MICHAEL GALLAGHER:I mean, you've got to admit...
2044
2045 JOE GREEN: It's crooked.
2046
2047 MICHAEL GALLAGHER: ...that that deck and everything dwarfs that...
2048
2049 JOE GREEN: It's crooked, yeah.
2050
2051 MICHAEL GALLAGHER: ...that other house.
2052
2053 YVES STEGER: So, if we cut everything, including the access deck...
2054
2055 MICHAEL GALLAGHER: You're right. It does...
2056
2057 YVES STEGER: ...we would be at twenty eight (28).
2058
2059 VICKI KEENAN: Right.

2060
2061 ROBERT COOK: You say "dwarfs." It dwarfs it because it's a small house and built at the
2062 bottom of a hill.
2063
2064 MICHAEL GALLAGHER: And that's, you know something, there's something to that. Yeah,
2065 I...but...
2066
2067 MATT NEUMAN: You know, so, in regards to that, to that walkway/deck part. How far into
2068 the house is the entrance?
2069
2070 MICHAEL GALLAGHER: It's kind of toward the end.
2071
2072 ROBERT COOK: I'd imagine that it's...
2073
2074 MATT NEUMAN: Is it towards the end where the...?
2075
2076 ROBERT COOK: Right, yeah. It's towards the garage. Right. So I'm gonna guess that the
2077 doorway...probably six (6) to eight (8) feet? I'm gonna guess.
2078
2079 MATT NEUMAN: So...
2080
2081 ROBERT COOK: So that's why I said if you left ten (10) feet...
2082
2083 MATT NEUMAN: Right.
2084
2085 BILL MASON: Yeah, let me make it simple. I mean, we would agree that the walkway that
2086 leads to the entrance to the house would be terminated just beyond the entrance to the house
2087 and that we would remove two (2) feet from the deck at the end.
2088
2089 ROBERT COOK: Well, no, you move it all the way down...
2090
2091 YVES STEGER: Four (4) feet.
2092
2093 VICKI KEENAN: It would be more than that.
2094
2095 MATT NEUMAN: Yeah, you need to remove the four (4) feet from the...
2096
2097 ROBERT COOK: Right, all the way down, making the deck twenty eight (28) feet.
2098
2099 BILL MASON: No, no, no, no. I'm sorry.
2100
2101 MATT NEUMAN: Yup, so that...
2102

2103 BILL MASON: What I'm saying is we're gonna terminate the walkway at the entrance to the
2104 house, remove the balance of the walkway and then take the deck in four (4) feet or whatever, to
2105 bring to twenty eight (28) feet, to bring it to the same width as the house.
2106
2107 VICKI KEENAN: To the same dimensions of the house.
2108
2109 MICHAEL GALLAGHER: To get to the lot lines, within the fifteen (15) on each side and...
2110
2111 MATT NEUMAN: Right, 'cause I don't know that once you eliminate that that you have to
2112 eliminate the width of the deck.
2113
2114 [overlapping comments]
2115
2116 VICKI KEENAN: The depth toward the water.
2117
2118 MATT NEUMAN: Correct.
2119
2120 BILL MASON: Because that's...
2121
2122 [overlapping comments]
2123
2124 MICHAEL GALLAGHER: Yeah, that's fine. That's...
2125
2126 MATT NEUMAN: As long as the width is [inaudible], you don't have to worry about the
2127 twelve (12) to ten (10) or anything like that.
2128
2129 BILL MASON: Right.
2130
2131 VICKI KEENAN: I agree. Yeah.
2132
2133 MATT NEUMAN: Yeah, that's the...that four (4) feet, I guess, is the...
2134
2135 VICKI KEENAN: Are we asking him to reduce...because the property still sits like this, so it's
2136 probably within the dimensions of the foundation that the deck would sit and not beyond that?
2137
2138 YVES STEGER: No.
2139
2140 VICKI KEENAN: It would be more than that, correct?
2141
2142 YVES STEGER: Oh, yeah.
2143
2144 VICKI KEENAN: Because it would have to come in because of the way it sits on the lot.
2145

2146 MICHAEL GALLAGHER: Right, and I think that if the side walkway was removed up until
2147 reasonable entrance and exit...
2148
2149 ROBERT COOK: Right.
2150
2151 MICHAEL GALLAGHER: ...to the entry, and then out on the deck, get within the fifteen (15)
2152 feet of each side...
2153
2154 VICKI KEENAN: Get [inaudible]. I agree
2155
2156 MICHAEL GALLAGHER: ...and I think that...
2157
2158 YVES STEGER: 'Cause you see the...the house plans that were submitted for the building have
2159 no deck. They have a deck in the back which is only ten (10) feet and twenty eight (28) feet.
2160
2161 VICKI KEENAN: Right. Go ahead.
2162
2163 ROBERT COOK: The plan submitted had the deck.
2164
2165 YVES STEGER: Yes.
2166
2167 ROBERT COOK: And the...okay. I thought you said...
2168
2169 YVES STEGER: Ten (10) feet long and the size of the house.
2170
2171 VICKI KEENAN: The deck.
2172
2173 YVES STEGER: Not thirty two (32) feet.
2174
2175 VICKI KEENAN: The deck is actually bigger than...as an addition on the plan.
2176
2177 ROBERT COOK: No, it was never bigger. It's always been the same. I can show you the
2178 original set that was given to the Town.
2179
2180 VICKI KEENAN: Could you bring those up? 'Cause we're looking at our drawings online and
2181 it shows it...
2182
2183 YVES STEGER: We have it in front of us.
2184
2185 VICKI KEENAN: Looks like it's the same thing.
2186
2187 ROBERT COOK: It shows the deck here and the four (4) foot there.
2188
2189 MATT NEUMAN: Yeah.

2190
2191 VICKI KEENAN: The dimensions there.
2192
2193 ROBERT COOK: That's the house.
2194
2195 MATT NEUMAN: We have...
2196
2197 [overlapping comments]
2198
2199 YVES STEGER: Deck and entry.
2200
2201 MATT NEUMAN: And it shows the thirty two (32) feet.
2202
2203 ROBERT COOK: And if you look there, it shows it.
2204
2205 VICKI KEENAN: But it shows dimensions here, eight (8) by twenty eight (28).
2206
2207 [indistinct conversations]
2208
2209 YVES STEGER: That is the diagram but that is the measurement.
2210
2211 ROBERT COOK: And that...okay, that changed.
2212
2213 YVES STEGER: So there is nothing here...
2214
2215 ROBERT COOK: And this...I understand what you're saying there but here...
2216
2217 VICKI KEENAN: Can you go speak into the microphone for the record, please? Thank you.
2218
2219 ROBERT COOK: I understand what you're saying on the floor plan. The floor plan drawing
2220 did not show the deck but if you look at the outside of the house, which was supplied, shows
2221 the four (4) foot deck and the deck in the front. So, what you're looking at here is a floor plan,
2222 not a deck drawing. The deck is showed on these drawings.
2223
2224 YVES STEGER: No, I understand.
2225
2226 ROBERT COOK: This is a full package that was given. So, because it's not on the floor plan
2227 doesn't mean it wasn't there.
2228
2229 VICKI KEENAN: Right, but the dimensions of the deck, which are considered part of the
2230 structure are not...the way it was built, do not comply with the drawings that you submitted.
2231 You submitted showing dimensions of the deck being eight (8) by ten (10) without the walkway.
2232
2233 ROBERT COOK: No, I understand that. I understand that. Right.

2234
2235 VICKI KEENAN: And that something far different was constructed there.
2236
2237 ROBERT COOK: Mm-hmm. And...right. Okay.
2238
2239 VICKI KEENAN: Okay.
2240
2241 ROBERT COOK: That was a mistake on that.
2242
2243 VICKI KEENAN: Okay.
2244
2245 ROBERT COOK: That was never intended to be that, so, it's a mistake in my checking it or
2246 whatever but...
2247
2248 VICKI KEENAN: Okay. So, I somewhat believe the deck needs to be brought within
2249 compliance of the setbacks.
2250
2251 MATT NEUMAN: I agree.
2252
2253 VICKI KEENAN: 'Cause I don't think, in this case, had they come before us, we would have
2254 granted a variance for that deck. I don't know, maybe I'm wrong, but, that's how I feel about it.
2255
2256 YVES STEGER: With everything I'm discovering, I'm starting to get more and more in the
2257 direction of bad faith because we have dimensional plans here that have been submitted
2258 officially to the Town and then that's not what is built, okay? Plus the deck, the permit is done
2259 after they start the first hearing here. C'mon, we're seeing a pattern here, don't we?
2260
2261 JOE GREEN: I do.
2262
2263 VICKI KEENAN: No, the deck was built before the first hearing here.
2264
2265 YVES STEGER: No, the permit was not...
2266
2267 VICKI KEENAN: Oh, the permit, I agree.
2268
2269 YVES STEGER: ...was not requested and the permit is only for the structure but doesn't show
2270 the impact on the setbacks. I'm starting to have problems.
2271
2272 VICKI KEENAN: I have a question. So if the deck was designed at eight (8) feet by twenty
2273 eight (28) feet, how did it get built much bigger than that and totally changed after the fact, if
2274 that's what your permit was for?
2275
2276 ROBERT COOK: It was told to change it on the drawing and she didn't. And I didn't realize it.

2277
2278 VICKI KEENAN: Okay.
2279
2280 ROBERT COOK: In the very beginning, it was always gonna be twelve (12) feet and the girl
2281 who did the drawings off of my drawings didn't change it.
2282
2283 VICKI KEENAN: What did the builder use to build the deck in its current layout today? Did
2284 you give them drawings to build that current deck? 'Cause I don't see drawings here to show
2285 them the dimensions that were to be built based on the current deck.
2286
2287 ROBERT COOK: He just used the house drawings but I always maintained that he said 'How
2288 big's the deck?' I said it's twelve (12) foot by twenty eight (28) and then the walkway.
2289
2290 VICKI KEENAN: But there were no drawings actually given to the contractor to use in building
2291 the deck?
2292
2293 ROBERT COOK: Well, the...
2294
2295 JOE GREEN: It says ten (10) feet...
2296
2297 ROBERT COOK: He had the drawings of the house.
2298
2299 VICKI KEENAN: Yeah.
2300
2301 JOE GREEN: [inaudible].
2302
2303 ROBERT COOK: That's what he used.
2304
2305 VICKI KEENAN: But then he would have a built a deck...
2306
2307 ROBERT COOK: No, no. And I've always maintained...I thought that that number was
2308 changed.
2309
2310 MATT NEUMAN: Then there is a deck drawing that was in with your exhibits.
2311
2312 ROBERT COOK: Right. They had asked me for a deck drawing, which I did for them at one of
2313 the meetings.
2314
2315 MATT NEUMAN: Oh, that was for the second meeting?
2316
2317 ROBERT COOK: Right, yeah.
2318
2319 MATT NEUMAN: Yeah.
2320

2321 YVES STEGER: That's actually part of the application for the deck permit. But that only came
2322 after the first meeting.
2323
2324 VICKI KEENAN: And after the deck was already built.
2325
2326 JOE GREEN: But to answer your question, in the Building Department file docs, there's a
2327 drawing that says ten (10) feet.
2328
2329 VICKI KEENAN: But that was filed after the deck was already built.
2330
2331 JOE GREEN: Right. I'm just saying that the variance, to your point...
2332
2333 VICKI KEENAN: Yeah.
2334
2335 YVES STEGER: Sorry?
2336
2337 JOE GREEN: ...the difference between the ten (10) and the twelve (12). To your point.
2338
2339 YVES STEGER: Mm-hmm.
2340
2341 MICHAEL GALLAGHER: This was filed after?
2342
2343 VICKI KEENAN: Yeah, 7/16 of '09, the deck permit.
2344
2345 YVES STEGER: And our first meeting was the 7 of the 15.
2346
2347 VICKI KEENAN: July 15th. And Richard had mentioned...Richard, why don't you explain that
2348 one more time.
2349
2350 RICHARD CANUEL: I asked Mr. Cook to submit the permit application for the deck just so
2351 that we would have the deck construction to refer to as part of the record.
2352
2353 VICKI KEENAN: On record.
2354
2355 MICHAEL GALLAGHER: Just so I'm clear...and he submitted a plan for a specific size deck
2356 or...?
2357
2358 RICHARD CANUEL: Yeah, that's the plan that we have there with the recent permit.
2359
2360 YVES STEGER: Mm-hmm.
2361
2362 MICHAEL GALLAGHER: Oh, the floor plan is what he submitted, is what you're saying,
2363 Richard? Or what...
2364

2365 RICHARD CANUEL: No, there should be a deck construction plan as part of that...
2366
2367 MICHAEL GALLAGHER: Right here.
2368
2369 RICHARD CANUEL: Yeah, that's it.
2370
2371 MICHAEL GALLAGHER: I meant to say what Mr. Cook was calling the floor plan,
2372 right...okay. So that doesn't jibe with that, either.
2373
2374 MATT NEUMAN: No. Can I see that?
2375
2376 MICHAEL GALLAGHER: Sure. Yeah, but that's only two (2) feet.
2377
2378 VICKI KEENAN: Richard, can we say that, you know, that the foundation and the house itself
2379 was built in error but in good faith but the deck wasn't and make a decision based on that?
2380
2381 RICHARD CANUEL: Oh, you can, sure.
2382
2383 VICKI KEENAN: Okay. Those would just be findings, correct?
2384
2385 RICHARD CANUEL: Yes. Yes Yup, and, you know, you could make, as a condition as part of
2386 your decision, is that the deck be modified to comply with the setbacks...
2387
2388 VICKI KEENAN: Okay.
2389
2390 RICHARD CANUEL: ...comparatively with the house as it sits now.
2391
2392 VICKI KEENAN: Okay. Alright. I would entertain a motion at this point and I would ask that
2393 any...Yeah, sure.
2394
2395 JOE GREEN: I have one more question. If the deck were removed, just hypothetically, would it
2396 be in compliance...I'm just trying to...it still wouldn't be in compliance, right?
2397
2398 YVES STEGER: No.
2399
2400 VICKI KEENAN: No. The foundation still sits...
2401
2402 JOE GREEN: I understand, but wouldn't that be a little bit closer to where we want it to be?
2403
2404 VICKI KEENAN: Mm-hmm.
2405
2406 YVES STEGER: Yes, it would but essentially, the whole discussion that we have here is we have
2407 accepted that, in good faith, Mr. Cook thought he had fifty nine (59) feet and so, if it was a
2408 house with twenty eight (28) feet, we probably could accept in good faith that that was the

2409 error. But now with the deck, which is built differently than what was submitted to the Town,
2410 and with a permit that comes after the fact, I mean, and the fact that the didn't know that a
2411 structure was part, we're not meeting...
2412
2413 JOE GREEN: The criteria.
2414
2415 YVES STEGER: ...the criteria.
2416
2417 JOE GREEN: Number two (2), yeah.
2418
2419 YVES STEGER: That's what I'm...
2420
2421 VICKI KEENAN: I know.
2422
2423 YVES STEGER: So, we have two choices. We can either deny or we can accept with a
2424 restriction that all of the four (4) feet have to go away because then it meets our definition of the
2425 good faith. And that's essentially meeting the law.
2426
2427 JOE GREEN: But we have to have all four meet, correct?
2428
2429 YVES STEGER: Yes.
2430
2431 JOE GREEN: And two (2) clearly does not, so we could never accept that.
2432
2433 YVES STEGER: What do you mean?
2434
2435 JOE GREEN: Number two doesn't...
2436
2437 YVES STEGER: Yes, number two...
2438
2439 MATT NEUMAN: He's saying if you eliminate the deck.
2440
2441 YVES STEGER: The only problem is the thirty two (32) feet.
2442
2443 JOE GREEN: We still have ignorance of the law and failure to inquire.
2444
2445 VICKI KEENAN: But I think what Richard was saying is that, remember the whole thing about
2446 fairness and equity is all a part of this.
2447
2448 YVES STEGER: Mm-hmm.
2449
2450 JOE GREEN: Right.
2451

2452 VICKI KEENAN: And I don't believe that the errors in the foundation and the home itself, the
2453 structure of the home, were done in bad faith. I don't have any evidence of that. I think that the
2454 structure of the deck, I'm not convinced was not done in bad faith and...

2455
2456 JOE GREEN: Yeah, but could I stop you there...

2457
2458 VICKI KEENAN: But, I know, and that's why I'm asking Richard is, how can we split findings?
2459

2460 JOE GREEN: We just established, let me, point of clarification here, we just established that the
2461 structure includes the deck. So we can't get away from that. We've already talked about that.
2462 It's twelve (12) feet. It's part of the structure, okay? So, we already established that building
2463 that structure, now which includes the deck, there was ignorance of the law and there was
2464 failure to inquire. So that's what we're proving here. To me, it's very clear. I know, I
2465 understand what your point is but we're going off of laws and regulations that were written
2466 long before we were sitting here, so I think that we have to respect those and understand why
2467 they were written. So, we already established clearly that the deck is part of the structure, so we
2468 can't get around that, even if we want to or not, if our hearts say we should, we can't get around
2469 it, it's the law. So it's part of the structure. So I'm just trying to...point of clarification there.
2470

2471 VICKI KEENAN: And I appreciate that but I think we have to remember this is what we're...if
2472 this is the way we're gonna go, what we're asking this man to do is to tear down his home he
2473 just built. So, we have to really think about how we're affecting the people around him and
2474 whether the impact on them really outweighs him having to tear down this house. And you
2475 have to think about fairness. And I think by Richard saying that we can make a decision with
2476 mitigation, I think is what ends up being equitable, what ends up being fair at the end of the
2477 day.

2478
2479 JOE GREEN: Mm-hmm.

2480
2481 VICKI KEENAN: And, we just...

2482
2483 JOE GREEN: If that's the case. I came into this session thinking that...

2484
2485 VICKI KEENAN: Yeah.

2486
2487 JOE GREEN: ...we had to disapprove or approve four things. It was very simple for us. I
2488 understand everything that you just said...

2489
2490 VICKI KEENAN: Yeah.

2491
2492 JOE GREEN: ...and it's really heart wrenching but unfortunately, we had to make four
2493 decisions.

2494
2495 VICKI KEENAN: The four points of law. I...

2496
2497 JOE GREEN: And we cannot make two (#2).
2498
2499 VICKI KEENAN: Yup.
2500
2501 JOE GREEN: So the question to you is, if we cannot make two, how can we make any
2502 restrictions? If we can't...
2503
2504 YVES STEGER: Mm-hmm.
2505
2506 JOE GREEN: If we say yes to four, then we can make the restrictions. But if we can't say yes to
2507 four, legally, how are we gonna make restrictions? And that's my question.
2508
2509 RICHARD CANUEL: Well, you can make the determination that the house, as it sits on the lot,
2510 meets the criteria.
2511
2512 VICKI KEENAN: Of an equitable waiver.
2513
2514 RICHARD CANUEL: ...of the equitable waiver. The deck creates more of an encroachment.
2515 As part of that condition of your approval and your determination that the house meets the
2516 equitable waiver requirements, to reduce the deck to comply with that encroachment that the
2517 house offers.
2518
2519 YVES STEGER: So, yes, but that would be if it was only the good faith error in measurement
2520 and we have already accepted that there was a good faith error in measurement...
2521
2522 MICHAEL GALLAGHER: On the house.
2523
2524 YVES STEGER: ...for the house itself, okay?
2525
2526 RICHARD CANUEL: That's right.
2527
2528 YVES STEGER: Because it was twenty eight (28) and with twenty eight (28), there would be no
2529 issues. But in this case, there was much more than that, so personally, I cannot approve. There
2530 was ignorance of the law and there was definitely failure to inquire. And for those two reasons,
2531 it doesn't matter. All the others. You have to meet the points of law.
2532
2533 JOE GREEN: And we're not gonna meet that second point of law. So, I mean, that's the issue,
2534 again, going back and I hate to reiterate...
2535
2536 YVES STEGER: And remember, I was in your position when I voted the last time.
2537
2538 VICKI KEENAN: I know.
2539

2540 YVES STEGER: Remember?
2541
2542 VICKI KEENAN: I do.
2543
2544 YVES STEGER: I voted 'for.'
2545
2546 VICKI KEENAN: I know.
2547
2548 YVES STEGER: And everything I have heard during this session today makes me change my
2549 mind.
2550
2551 VICKI KEENAN: But the mitigation sort of...I think it gets us there and remember, we're going
2552 back to equity. We're going back to fairness. And that is a big piece of this that we have to
2553 really think about. And I think that we're correcting, sort of, this issue with point two (2) with
2554 mitigation. We're making it fair. We're making it right. I'm sorry, we're closed for further
2555 comment.
2556
2557 BILL MASON: Okay. I just had a suggestion.
2558
2559 MATT NEUMAN: And Richard, let me ask you this. If we had the side entranceway or
2560 whatever, that completely eliminated, that deck, that four (4) feet, completely, can he still get a
2561 certificate of occupancy? Because that is eliminating an entryway.
2562
2563 RICHARD CANUEL: If the Board votes to grant the equitable waiver, he can obtain a
2564 certificate of occupancy.
2565
2566 VICKI KEENAN: 'Cause the foundation still remains noncompliant.
2567
2568 RICHARD CANUEL: That's right. That right.
2569
2570 JOE GREEN: Can I ask another question? Have Boards ever done this the way we're trying to
2571 do it? It seems like accept an equitable waiver of dimension without meeting the criteria.
2572
2573 RICHARD CANUEL: The Board has to determine that it meets the criteria. It has to meet all
2574 four points or the Board cannot grant the equitable waiver.
2575
2576 JOE GREEN: So that's what...
2577
2578 RICHARD CANUEL: So you need to make that determination.
2579
2580 JOE GREEN: Yeah, I really feel strongly that we need to make that determination and we have
2581 to understand that there's a law here that states very clearly that we include that twelve (12)
2582 foot structure. So, to me, I'm just saying, we need to make things a little bit more simpler than...

2583 we're getting into a lot of tangents and going off on a lot of different directions here because it's
2584 such an emotional decision, so...
2585
2586 YVES STEGER: Mm-hmm.
2587
2588 RICHARD CANUEL: Well, like I say, if you determine that the house itself meets the criteria
2589 for the equitable waiver, without even considering the deck...
2590
2591 YVES STEGER: Yes.
2592
2593 RICHARD CANUEL: ...and it meets those four points of criteria...
2594
2595 YVES STEGER: Yes.
2596
2597 RICHARD CANUEL: ...you're there.
2598
2599 YVES STEGER: That's a very, very good point.
2600
2601 RICHARD CANUEL: You're there.
2602
2603 YVES STEGER: Yes.
2604
2605 RICHARD CANUEL: the deck is now an issue because it encroaches as well, more so than the
2606 building itself does.
2607
2608 YVES STEGER: I agree.
2609
2610 VICKI KEENAN: So we could grant an equitable...
2611
2612 RICHARD CANUEL: So if you've already made the determination, I didn't mean to interrupt
2613 you...
2614
2615 VICKI KEENAN: No, that's okay.
2616
2617 RICHARD CANUEL: If you're already making the determination that the house meets the
2618 criteria for the equitable waiver...
2619
2620 YVES STEGER: Yup.
2621
2622 RICHARD CANUEL: ...you're done.
2623
2624 VICKI KEENAN: So we could...

2625
2626 RICHARD CANUEL: You can add the criteria that the deck be reduced to comply with the
2627 same encroachment as the house does.
2628
2629 YVES STEGER: Yeah.
2630
2631 RICHARD CANUEL: And you're done.
2632
2633 VICKI KEENAN: Okay.
2634
2635 YVES STEGER: Yes. I feel good about that.
2636
2637 VICKI KEENAN: I do, too.
2638
2639 RICHARD CANUEL: Yes.
2640
2641 YVES STEGER: I cannot accept the equitable waiver.
2642
2643 VICKI KEENAN: Right.
2644
2645 YVES STEGER: It does not meet it when the deck is there. Without the deck...
2646
2647 VICKI KEENAN: I agree.
2648
2649 YVES STEGER: ...those four feet are gone...
2650
2651 VICKI KEENAN: Yup.
2652
2653 YVES STEGER: ...and it meets the good faith error in measurement and I don't have a problem.
2654
2655 JOE GREEN: So we have to come back to this four.
2656
2657 YVES STEGER: Without it...
2658
2659 JOE GREEN: We would have to come back to this four after it's changed, right?
2660
2661 YVES STEGER: No.
2662
2663 MATT NEUMAN: No.
2664
2665 VICKI KEENAN: No, he would just then have to comply with those restrict...
2666
2667 YVES STEGER: He has to comply with the requirements that we were gonna to put into the...
2668

2669 VICKI KEENAN: The requirements.
2670
2671 JOE GREEN: On conditional approval.
2672
2673 YVES STEGER: ...in the conditions, yes.
2674
2675 VICKI KEENAN: Right.
2676
2677 JOE GREEN: Right.
2678
2679 VICKI KEENAN: So, I guess at this point, if someone is ready to make a motion, I would ask
2680 that you make the motion, you sort of state the findings for points one, two, three and four, why
2681 you think it's a pass or fail, and then add the requirements in addition to that, which, what we
2682 talked about is the removal of the deck and the walkway and the drainage, mitigation of the
2683 drainage issue and HVAC nuisance or noises.
2684
2685 MICHAEL GALLAGHER: Do we need to discuss the mitigation portion prior or...?
2686
2687 VICKI KEENAN: I don't think anybody in here is an engineer who could...
2688
2689 MICHAEL GALLAGHER: Right.
2690
2691 VICKI KEENAN: ...yeah, tell us what the mitigation is.
2692
2693 MICHAEL GALLAGHER: So how...? How are we going to...?
2694
2695 [overlapping comments]
2696
2697 MATT NEUMAN: ...ask Richard [inaudible] if that's gonna be the issue.
2698
2699 RICHARD CANUEL: You mean in relationship to the drainage issue?
2700
2701 MICHAEL GALLAGHER: The drainage, the noise...
2702
2703 YVES STEGER: Yes, the noise and the drainage.
2704
2705 RICHARD CANUEL: Well, the drainage and the noise issue, that's the first I hear of this, too...
2706
2707 MICHAEL GALLAGHER: And that was just brought up by an abutter, so...
2708
2709 RICHARD CANUEL: Yeah, that's the first I hear of it. That should be more of an enforcement
2710 issue, you know, for me to address directly.
2711
2712 MATT NEUMAN: I like that.

2713
2714 VICKI KEENAN: Okay.
2715
2716 RICHARD CANUEL: Not necessarily something that would be part of the equitable waiver
2717 because it has really nothing to do with the structure per se.
2718
2719 YVES STEGER: Okay.
2720
2721 VICKI KEENAN: Okay.
2722
2723 RICHARD CANUEL: So, you know, that would be something...
2724
2725 MICHAEL GALLAGHER: Oh, you can address the noise part, too, Richard?
2726
2727 VICKI KEENAN: And the drainage?
2728
2729 RICHARD CANUEL: Yeah, if it's considered a nuisance, yes.
2730
2731 MICHAEL GALLAGHER: Okay.
2732
2733 VICKI KEENAN: Okay.
2734
2735 YVES STEGER: Okay.
2736
2737 RICHARD CANUEL: Yeah. Sure.
2738
2739 VICKI KEENAN: Alright, that's good to know. Alright, so let's scratch that.
2740
2741 JOE GREEN: The conditions are based off of the deck.
2742
2743 MICHAEL GALLAGHER: So we don't have to deal with the drainage or the...or we can put it
2744 in there based on...we just...do we need to put that in our findings, Richard?
2745
2746 RICHARD CANUEL: I don't believe so because, you know, both the drainage and noise issue
2747 has nothing to do with the location of the structure whatsoever.
2748
2749 MICHAEL GALLAGHER: Okay, that makes sense.
2750
2751 VICKI KEENAN: And it's on public record at this point...
2752
2753 MICHAEL GALLAGHER: Yeah, right. Okay.
2754
2755 VICKI KEENAN: Okay.
2756

2757 MICHAEL GALLAGHER: Is that alright?
2758
2759 VICKI KEENAN: Good.
2760
2761 MICHAEL GALLAGHER: So...
2762
2763 YVES STEGER: I knew you were going to do that.
2764
2765 [laughter]
2766
2767 YVES STEGER: Let me think about it. Let me think about it seriously.
2768
2769 MICHAEL GALLAGHER: So we have to determine the deck. We've already determined that
2770 the house, as itself...equitable waiver for that, so...
2771
2772 YVES STEGER: Mm-hmm. Yup. Anything that is beyond the twenty eight (28) feet has to go
2773 because we are accepting the twenty eight (28) feet as a good faith error in measurement.
2774
2775 MICHAEL GALLAGHER: So we can determine that the deck in the back...
2776
2777 YVES STEGER: And the walkway.
2778
2779 MICHAEL GALLAGHER: ...and the walkway, well, I think the walkway...you know, get rid
2780 of it at a minimum from the entrance on down and then bring the deck...
2781
2782 YVES STEGER: To the house.
2783
2784 MICHAEL GALLAGHER: Yeah.
2785
2786 YVES STEGER: As it was in the original plan that was submitted for...
2787
2788 MICHAEL GALLAGHER: Yeah, make sure that deck gets...
2789
2790 YVES STEGER: It has to meet what was submitted.
2791
2792 VICKI KEENAN: I mean, I don't really care how he fixes it, as long as he complies, right?
2793
2794 YVES STEGER: Yup.
2795
2796 VICKI KEENAN: Within the setback limits.
2797
2798 MICHAEL GALLAGHER: Yeah.
2799

2800 VICKI KEENAN: So, I don't think we have to tell him he has to build it that way. He just has to
2801 comply with the setback limits.
2802
2803 YVES STEGER: Mm-hmm.
2804
2805 VICKI KEENAN: And that nothing...right?
2806
2807 YVES STEGER: No, no, no. We will never meet the setback limits.
2808
2809 MATT NEUMAN: Right, because we're already...
2810
2811 VICKI KEENAN: With the deck?
2812
2813 YVES STEGER: No, even without the deck, it doesn't...
2814
2815 VICKI KEENAN: Oh, that's right. I'm sorry. I'm sorry. Thank you.
2816
2817 YVES STEGER: We're already beyond that, so, no.
2818
2819 MATT NEUMAN: Right.
2820
2821 VICKI KEENAN: So maybe we need to put a measurement then of the foundation, that it's not
2822 more than five (5) feet, five (5) inches within the setback. I don't know, can that be achieved
2823 that way?
2824
2825 YVES STEGER: No, essentially, we agree...
2826
2827 VICKI KEENAN: Yeah.
2828
2829 YVES STEGER: ...that there is a good faith of measurement that has allowed him to build a
2830 twenty eight (28) foot house on a lot where there is not enough room, okay?
2831
2832 VICKI KEENAN: Okay.
2833
2834 YVES STEGER: However, all the additions, deck and others, that expand more than four (4)
2835 feet were not submitted for the building permit are beyond a good faith error in measurement.
2836 And for that reason, essentially, anything that is beyond the twenty eight (28) feet for the house
2837 has to go.
2838
2839 VICKI KEENAN: Okay.
2840
2841 YVES STEGER: Do you think that's fair?
2842
2843 MICHAEL GALLAGHER: Yeah, I think...yeah.

2844
2845 VICKI KEENAN: I think that's right.
2846
2847 MATT NEUMAN: Yeah.
2848
2849 VICKI KEENAN: Yeah.
2850
2851 YVES STEGER: Okay.
2852
2853 VICKI KEENAN: Okay. Go through your four points in terms of why you find for or against...
2854
2855 YVES STEGER: Yes, I'm going to go through all of them in all details, even though for an
2856 approval, it's less important than when you reject. I move that we grant case number
2857 7/15/2009-2, equitable waiver of dimensional requirements, based on the following findings:
2858 the violation was not noticed until after the building was completed, at the time a full site plan
2859 was submitted for the certificate of occupancy; two, the violation was the outcome in a good
2860 faith error measurement initiated by a misunderstanding of the size of the lot, based on
2861 preexisting lot plans; it does not create a public or private nuisance beyond what it would have
2862 been if it had met the setback requirements; and definitely, due to the degree of past
2863 construction and investment, any benefits far outweighed the cost to Mr. Cook [sic]. However,
2864 our findings indicate that the good faith applies only to what has been presented as a building
2865 permit, which is a twenty eight (28) foot house with a deck and as such, any extension beyond
2866 twenty eight (28) foot, either as a deck or a walkway, needs to be removed.
2867
2868 VICKI KEENAN: Is there a second to that motion?
2869
2870 JOE GREEN: I'll second that motion.
2871
2872 VICKI KEENAN: There is a motion to grant the equitable waiver with the findings and the
2873 conditions as presented, requirements, and a second. Any further discussion regarding the
2874 motion? Richard, do you have anything to add before we make a motion? Okay. All those in
2875 favor, signify by saying 'aye.'
2876
2877 JOE GREEN: Aye.
2878
2879 MICHAEL GALLAGHER: Aye.
2880
2881 MATT NEUMAN: Aye.
2882
2883 YVES STEGER: Aye.
2884
2885 VICKI KEENAN: Aye. Opposed? Abstentions?
2886
2887 [no response either opposed or abstaining]

2888

2889 RESULT: THE MOTION TO GRANT CASE NO. 7/15/2009-2 WITH RESTRICTIONS WAS
2890 APPROVED, 5-0-0.

2891

2892 RESPECTFULLY SUBMITTED,

2893

2894

2895

2896 YVES STEGER, ACTING CLERK

2897 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

2898

2899 **APPROVED NOVEMBER 18, 2009** WITH A MOTION MADE BY JIM SMITH, SECONDED BY
2900 MIKE GALLAGHER AND APPROVED 3-0-1 WITH LARRY O'SULLIVAN ABSTAINING AS
2901 HE HAD NOT ATTENDED THE MEETING.