

**Official**

**HOOKSETT ZONING BOARD OF ADJUSTMENT**

Tuesday, September 9, 2014

**HOOKSETT MUNICIPAL BUILDING**

**CALL TO ORDER**

Vice-Chairman Roger Duhaime called the meeting to order at 6:30 pm.

**PLEDGE OF ALLEGIANCE**

**ATTENDANCE:** Michael Simoneau, Roger Duhaime (Vice-Chairman), Don Pare, Gerald Hyde, Phil Denbow, Richard Bairam, Jackie Roy, and James Levesque, Council Rep.

**EXCUSED:** Chris Pearson, Chairman

**STAFF:** Matt Lavoie, Code Enforcement Officer

**APPROVAL OF MINUTES**

**August 12, 2014** – *G. Hyde motioned to amend the August 12, 2014 regular meeting minutes. Seconded by M. Simoneau. Motion carried unanimously.*

*G. Hyde motioned to approve the August 12, 2014 regular meeting minutes, with amendments. Seconded by J. Roy. Motion carried unanimously.*

**NEW PUBLIC HEARINGS**

**Gilles & Claudette Chalifoux  
6 Phyllis Drive  
MDR**

**Case #14-09  
Map 20, Lot 18**

**Variance is requested from Article 5, Section C, Article 26, Section B.2.a and Article 3, Section J of the Zoning Ordinance to permit a single family house to be built without further improvements to Phyllis Drive.**

Andy Sullivan (Attorney representing the Chalifoux's): Please go to Exhibit F.2. Plan 4590 was a plan approved by the Hooksett Planning Board, Dick Marshall signed it, on November 1, 1976, and it was recorded at the Merrimack Registry of Deeds, 4590. That plans lays out Phyllis Drive, 100' along the Chalifoux lot, which is Lot 18.

R. Duhaime: That is an approved site plan?

A. Sullivan: That is an approved sub-division.

R. Duhaime: Is there an engineer on that?

A. Sullivan: Yes. This is the recorded sub-division plan drawn by an engineer and approved by the Hooksett Planning Board. It weighs out Phyllis Drive and shows the Chalifoux lot. We are here to get waivers to call that a buildable lot without further improvements to Phyllis, but also because we are going to pursue a lot line adjustment and want to bring that to your attention. We plan to take part of the Chalifoux lot and swap with Desaulniers. Desaulniers will get the blue section I am showing you, Chalifoux will get the back section and it will square off rather than be a rectangle. Nothing changes on the Phyllis Drive aspect. We are just swapping. It makes one lot deeper and increases the distance between both the Desaulniers and Chalifoux lots. The objective is to seek a waiver of the applicable zoning articles so that Lot 18 will be construed to be a single family building lot without improvement to Phyllis Drive, and the lot line adjustment would be construed to be a buildable lot.

R. Duhaime: There is a lot there now?

A. Sullivan: Yes. The current lot has never been built on. I think this was before the Board a couple of years ago and I have brought forward a lot of historical background. I will go over Phyllis Drive, and Lot 18, and then we can get into the merits of the variance.

R. Duhaime: I would like to know what you are trying to accomplish.

A. Sullivan: I am seeking a waiver from various articles so that we can pull a building permit on that lot without having to improve Phyllis Drive. The last time the Board wanted more background on the status of Phyllis Drive, which is not a town accepted road. That plan was developed and approved in conjunction with the Desaulniers lot. The Desaulniers lot had a building permit in 1995 to build a house, a garage, and a couple of years later, a swimming pool. In terms of Phyllis Drive, when I look at RSA 231, it says “provides that a dedicated street retains its public status and a town approves a house to be built on it within 20 years of recording the plan.”

R. Duhaime: Is Lot 19-1 the road?

A. Sullivan: The original sub-division, and Evelyn Road as well, was developed by St. Hilaire back in the late 1950's and 1960's. My title search shows that lot of record, meaning a deed in the Merrimack County Registry of Deeds, does not appear to have been conveyed out, meaning 19-1 Phyllis Drive. However, the Desaulniers have filed a quiet title action at the Merrimack County Superior Court seeking a quiet title in that section, to themselves, subject to the rights of the Chalifoux's to use it for access. Of record, I don't see anything except St. Hilaire being the record owner, but the quiet title action has been submitted and there has not been any objection to it. When the dust settles, I believe the Desaulniers will own the green section I showed you and that will be part and parcel with their back lot.

R. Duhaime: So it is a lot?

A. Sullivan: It is a separate lot. Historically, sometimes the tax maps show it, sometimes it does not, sometimes it shows it at one length, sometimes at another length. It has been treated differently over the decades but nonetheless, for the majority of the tax plans, it shows it as a separate lot.

R. Duhaime: Could you please read the application into record.

***A. Sullivan read the application into record (see attachment). He stated all of the deeds are attached as exhibits to the application.***

M. Simoneau: Was the shared maintenance agreement between the Chalifoux and the Desaulniers for Phyllis Drive the one done that was done in 2012?

A. Sullivan: Yes, to be effective pending approval of this variance.

R. Duhaime: When you do a lot line adjustment will that make it conforming.

A. Sullivan: No. We are just swapping, almost to the square foot, area for area. It will not increase the lot size, nor will it diminish it's frontage on Phyllis Drive. It is just squaring it off to create more distance between the garage on the Desaulniers lot and this lot.

J. Roy: I see that we have this in the Merrimack County Registry of Deeds but what was the original Planning Board's approval for the road? Was it longer? It looks more like a driveway.

A. Sullivan: What you see on the plan is a 50' wide road, not a driveway. If you look at the tax map there are other lots above that.

P. Denbow: The Desaulniers have a driveway, but those other homes have frontage on Evelyn as well as on the non-road?

A. Sullivan: I believe their addresses are Evelyn Drive for emergency response purposes.

M. Simoneau: You are talking about Lot 15 and Lot 26 on either side of Phyllis Drive?

A. Sullivan: Correct.

M. Simoneau: There are no houses on those?

A. Sullivan: There are houses on those.

J. Roy: Going back to what the Planning Board approved and the original date, is that street that is not accepted by the town in accordance with the original sub-division plan, or was it cut short?

A. Sullivan: All I know is what is on the plan. That plan was approved by the town as a sub-division plan that only showed as Phyllis.

J. Roy: You have another exhibit that was longer. That is why I am asking.

A. Sullivan: That is the tax maps. The tax maps, over the years, some of them increased it, but if you follow the deeds and the deed descriptions it ends at a certain place. The deed descriptions are consistent with the plan. The tax maps have, off and on over the years, extended, shortened, and made this disappear. We follow the deeds, which are all in the exhibits, and all these deeds reference boundaries on Phyllis. It stops 100' into the Chalifoux lot.

J. Roy: Was was it never accepted by the town as a finalized street or sub-division?

A. Sullivan: As far as I know, no one asked.

J. Roy: Do we have any additional information on that?

M. Lavoie: There are a lot of unfinished sub-divisions in town. My take is it sat as it was. That house was built in 1995, so it sat for almost 20 years and basically turned into a driveway at that point.

A. Sullivan: A very wide one.

M. Lavoie: The right-of-way may be 50', but I measured the driveway and it is only 18'. Mr. Sullivan, who pays taxes on Lot 19-1?

A. Sullivan: I don't believe anybody does.

M. Lavoie: Is there a deed for 19-1?

A. Sullivan: No. St. Hilaire developed the other side as well. Everything has been sold except this is the remaining portion that has not been sold. That is what the Desaulniers quiet title action rectifies. When the dust settles in Merrimack County Superior Court, this will be owned by the Desaulniers. Right now, I don't believe the town taxes it because it doesn't have any value, per se.

R. Duhaime: I am sure it has some value.

M. Lavoie: Would you have to do a lot merger once you get the deed?

A. Sullivan: I think they would have to do a merger to bring it into this, but I am not handling that.

M. Lavoie: Mr. Desaulniers would own that property?

A. Sullivan: Yes.

M. Lavoie: It is no longer Phyllis Drive? We can forget Phyllis Drive?

A. Sullivan: When that happens, but in the quiet title action and by agreement, the Chalifoux lot continues to have the right to use it.

M. Lavoie: Correct, but they won't have a Phyllis Drive address?

A. Sullivan: That is a good question. I don't know what the Desaulniers address is.

M. Lavoie: It is 3A Evelyn Street. So it would be 3B? That may get confusing and we may have to renumber that.

A. Sullivan: I don't know the answer to that question.

J. Roy: This is based on you being successful with the title that is still pending, correct?

A. Sullivan: Right now my record search at the Registry of Deeds says this is owned by St. Hilaire because he never conveyed it out when he conveyed everything else. I have confidence, as does the attorney for the Desaulniers, that the Desaulniers will prevail on that quiet title action.

J. Roy: But it is pending, and we are not sure because it could go a different way?

A. Sullivan: It could.

M. Simoneau: If they petition for quiet title, if none of the heirs come back and argue, correct?

J. Roy: The surrounding property owners have access to that as well.

M. Simoneau: They do but they don't have a legal right to the property. When you petition for quiet title you are trying to get the estate or the heirs to come back to say they want the property or that it is their property and the other person can't take it. That is why it is called a petitioning for quiet title.

A. Sullivan: The quiet title seeks to address two issues. 1) Record ownership. 2) To exclude anybody who may have acquired an adverse ownership by constant use. This particular quiet title action is subject to the agreement between Desaulniers and Chalifoux for what they will continue to have use of, so it is a mute issue regarding this particular lot. They will always have use to that right-of-way.

P. Denbow: Is part of that agreement tied to the swapping of the lots or is that separate?

A. Sullivan: If we get the variance tonight, which I hope we do, the next step is to go to the Planning Board to get a lot line adjustment.

R. Duhaime: Matt, usually when there is a sub-division like this that deed would have gone to the town if the land had been approved as a road.

M. Lavoie: Correct.

R. Duhaime: So is that owned by the town?

M. Lavoie: I don't know. I checked the data base and don't have anything on it.

M. Simoneau: Especially if taxes were not paid on it.

M. Lavoie: Mr. Sullivan, did you speak with LeeAnn Moynihan about that property or just Lot 19?

A. Sullivan: I spoke with her about Lot 18 and Phyllis Drive. If I could make an observation this scenario happens all the time with sub-divisions. There are a lot of “paper streets” that have never been conveyed out. In the “old days” a lot of the towns didn't want the conveyance of the land because they did not want the liability. They would rather have it dedicated by an easement. Nowadays, the trend seems to take the fee so the town can control it. In 1976 most of the towns would prefer to not have the ownership of the land, they probably would have taken an easement, which is a formal dedication and acceptance to the town. By recording the sub-division plan it has been dedicated, it has not been accepted. Back in 1976, why would it have not been conveyed anywhere? Maybe they were waiting to dedicate by easement. The likelihood is it is going no place but except that one lot, and no one seemed to be wanting to build a house yet on the other lots, so no one was trying to make it happen because it was not needed.

J. Roy: You are going to request to switch the lot line adjustments, but the second house lot also will not have any road front, correct? You are going for an easement, at that point, because Phyllis Drive is not long enough to give them anything?

A. Sullivan: I am not sure what you mean by the second house lot. All we are doing is switching the far side of the rectangle to bring it to Desaulniers. There is no second or new lot being created. It is just a lot line adjustment.

R. Duhaime: The lot next to it, Lot 20-17, is there a home on that property?

A. Sullivan: No, there is not.

M. Simoneau: Is the Chalifoux lot, Lot 18, landlocked?

A. Sullivan: No. It has access through Phyllis.

J. Roy: That is not an accepted town road.

A. Sullivan: It is a dedicated way.

R. Duhaime: This seems like it is getting into being a Planning issue because if it is an approved sub-division, then it is an approved road. The key thing is if you are going to build homes you need a road. You need certain road frontage and lot requirements.

R. Duhaime: The sub-division is accepted as is the road. If you don't do the road then the sub-division should not be recognized.

A. Sullivan: That is not the case.

R. Duhaime: You are saying you want one without the other. You want the sub-division to be approved, but not the road.

A. Sullivan: The sub-division has been approved. It was approved in 1976 with a road. The road was apparently never asked to be accepted by the town but the sub-division is still there. Lot 19, the Desaulniers lot, was a non-conforming lot. The town approved a building on that lot and a dedicated street retains its public status if the town approves a house to be built on it within 20 years. That happened. We still have Phyllis as a dedicated way, but it has not been accepted. It is a dedicated way and a house has been built on it with permission from the town. It has maintained its status since then.

R. Duhaime: When was that accepted?

A. Sullivan: The building permit was in 1995, about 19 years. It is within the 20 years so it has maintained its dedicated way status.

J. Roy: Matt, do we have a copy of the original planning sub-division decision?

M. Lavoie: We only have one paper it is simply the plan.

J. Roy: Is the road built and conformed?

M. Lavoie: The road is dirt. I could not find any standards on the road listed anywhere. From what I understand, this sub-division plan was for Ralph St. Laurent to supply land to his son, Raoul. It is in the minutes that I found. I also have the minutes from 1995, as well.

R. Duhaime: Was there a variance given for this driveway? Without an approved road they should not have gotten a certificate of occupancy.

M. Lavoie: No. It was an administrative appeal from Ken Andrews decision to not allow the building permit on that property and the Zoning Board granted it.

A. Sullivan: Matt and I have attached the minutes from 1995 as Exhibit H.

M. Lavoie: They allowed it, but in the minutes, the Chairman talks about how it loses its public way and becomes a private way because it is only one house.

J. Roy: What you are asking for tonight is a non-conforming lot?

A. Sullivan: It already is a non-conforming lot. I am asking for waivers to be allowed to build on the non-conforming lot without having to improve Phyllis Drive.

R. Duhaime: Matt, from what you are saying, when they got the CO it became a private way?

M. Lavoie: It describes it in the minutes, Exhibit H, on page 4.

J. Roy: In these minutes there is a notation stating that the Planning Board got involved because it was an illegal sub-division because the sub-division regulations came into effect. Did that change everything? Did that sub-division plan go away? We also had something filed with the registry but it was never an accepted road?

A. Sullivan: What is on this one sheet of paper is the only plan of record relative to the sub-division and Phyllis Drive that I could find. I would say nothing subsequent has been done. On page 4, it states that this lot is on a 19-year old sub-division plan. In one-year it loses public way and becomes a private right-of-way. That is assuming it was not a building permit, but a building permit was issued and it continues to be a public way. It recognizes here that it is a sub-division.

R. Duhaime: Has the Planning Board looked at this at your request?

A. Sullivan: No. We are not ready to bring it forward until we bring it through this Board.

R. Duhaime: I think we are going to want the opinion of the Planning Board, before we do anything on it, of what they think should be done.

A. Sullivan: I am not sure how Hooksett works, but I think it would be premature to bring it to the Planning Board.

R. Duhaime: Our Boards try to work together.

A. Sullivan: I would be happy to continue this tonight, keep the public hearing open, and I can submit it to the Planning Board for review, or you can.

R. Duhaime: There seems to be some confusion about what the Planning Board had, whether it is a private way or not. Why would you not want to make improvements if you are going to have more people using this driveway?

A. Sullivan: It is not needed. There are only two lots.

R. Duhaime: Is this a paved driveway?

A. Sullivan: No, it is sand and gravel, leveled off, and is very nice.

R. Duhaime: Matt, don't we require a paved driveway for sub-divisions?

M. Lavoie: We require at least an apron to get out to the right-of-way.



R. Duhaime: To keep vehicles from dragging dirt onto the road.

A. Sullivan: On a private way, you also have the power to grant my request as well.

M. Lavoie: That would be a developmental regulation.

R. Duhaime: That is more of a Planning issue.

M. Simoneau: Matt, the fact that they have a maintenance agreement on the road, given the fact there are only two lots there, doesn't this help the situation?

R. Duhaime: There are three lots.

A. Sullivan: Yes. There are three lots, Chalifoux, Desaulniers and Golder, but the maintenance agreement is between Chalifoux and Desaulniers.

R. Duhaime: The people who own the other lot are not part of that?

A. Sullivan: No, they are not. It was not asked.

R. Duhaime: So the agreement is between two lot owners, not three.

A. Sullivan: Correct, but it encompasses the entirety of the right-of-way so it is going to get maintained.

R. Duhaime: What ordinance would this fall under? Private ways?

A. Sullivan: The size of the lot is it's non-conforming dimensional aspect.

R. Duhaime: So you are talking about frontage?

A. Sullivan: There is a difference between frontage and access. I am saying the size of that lot and the lack of frontage on a town accepted road is one of it's dimensional characteristics. Not only is it less than the 6,500 sq. ft., it does not any have frontage on an accepted town road.

A. Sullivan: Pursuant to RSA 674:41, we have a situation that meets that statutory requirement that allows this Board, in conjunction with review from the Planning Board, which I believe occurred in 1995, to issue a building permit.

R. Duhaime: I believe it was zoning.

A. Sullivan: I really don't know what happened. I do not know if the Planning Board did anything in 1995. It is unclear. Nonetheless, the building permit was issued with or without some sort of conference with the Planning Board, so I have a public way that is not accepted by the town and a building permit was issued according to the statute within the authority. Whether it

continues as a public way, meaning it does not get the quiet title to go through, or it continues as a private way, a building permit has been issued on this.

J. Roy: But you are requesting this based on a private way which isn't granted yet because you are still in action as far as the title, correct?

A. Sullivan: No. I am suggesting that either way, I am covered. Whether it is a public way or private way the town has authority to grant this relief by the statute.

J. Roy: But the quiet title action is pending for it to be considered a private way?

A. Sullivan: Yes. It is pending.

J. Roy: Right now it is based on a public way and this is not a public way?

A. Sullivan: It is a public way.

J. Roy: It hasn't been approved.

A. Sullivan: It doesn't have to be approved. A public way, by definition, is a dedicated street on an approved, recorded plan.

R. Duhaime: The town has legal counsel, and I suggest we address our legal counsel that represents the town and get his input.

A. Sullivan: I have no problem with that. I am just saying either it is or it is not a public way for tonight. If it is, you have the authority, if it is not, you have the authority independent of the quiet title action. All the quiet title action is going to do is put the ownership to Desaulniers. It is not going to affect the status of Chalifoux to use it as a private way.

R. Duhaime: Currently it is a private road. It is not owned by the town, that we know of.

A. Sullivan: It is a dedicated public way that is not owned by the town.

R. Duhaime: We will get legal counsel for that.

A. Sullivan: That is why went through the effort to get all of the title work.

R. Duhaime: I appreciate that. Are you saying this is a neighborhood?

A. Sullivan: It is one of the characteristics. It is a neighborhood.

R. Duhaime: But it is part of a bigger neighborhood. It was part of a bigger sub-division and I believe all of those homes have paved driveways and are on a paved road.

A. Sullivan: I don't know if they all have paved driveways but they are all on a paved road.

R. Duhaime: That was part of a bigger sub-division?

A. Sullivan: That was part of the St. Hilair that created Evelyn up to, I believe Joseph Street, and I am not sure who build out the rest. That was about 15 years ago.

R. Duhaime: As far as public interest, what you are looking at doing is having a private road and a private sub-division?

A. Sullivan: The sub-division has already been created. I have a non-conforming lot. Those are the facts. All I am asking is to be allowed a house to be built on a lot that is shown on the sub-division plan in a unique setting.

R. Duhaime: On behalf of the public interest, I want to get your best argument about this point. You are telling me it is not against public interest and I am trying to get all of your facts.

A. Sullivan: No, it is not against public interest.

R. Duhaime: I don't know what the economics were when this lot was bought in 1968. I don't know what the issue was and why the road was never built or finished.

A. Sullivan: This is their retirement lot and the reason nothing has happened, and now when they want to start doing something they found they couldn't. We have met the criteria. It is an unusual circumstance. We have given you a lot of information. If you feel you want to bring this to the Planning Board we can continue the public hearing, but not close it until you have discussed this with the Planning Board. We will revisit for any questions you may have that arise from Planning Board questions.

R. Duhaime: If you don't have to build the road there is a huge savings, why would you not at least pave this driveway?

A. Sullivan: It is 350'. That is a long driveway.

R. Duhaime: I believe there are other shared driveway's in town and I am pretty sure a lot of them are paved. You are saying no improvements and I am saying what about some. Matt what kind of apron did you mention?

M. Lavoie: Whatever gets you out of the right-of-way. Typically 10' to 18'.

A. Sullivan: They have gravel now.

R. Duhaime: We are talking about asphalt so the dirt does not get dragged out onto Evelyn Drive, but you are saying you don't want any.

A. Sullivan: No, we really don't. There is not a lot of traffic.

R. Duhaime: Would you be open to 18' or 20'?

A. Sullivan: I don't know. I will reserve that answer.

J. Roy: Are there any fire code requirements for the fire department to access the second house?

M. Lavoie: If access is hard for a fire truck, for example, they can't turn around or they can only get one truck up the driveway, they may require this house to be sprinkled and may suggest the addresses change. We cannot have a 3A, 3B, and a 3 Evelyn Street.

J. Roy: How about ambulance and police. Are there any town requirements for that or is it dependent on public vs. private?

M. Lavoie: It think it would be the later.

A. Sullivan: I am not aware either way. Whether there has been difficulty or not of any emergency vehicles going down, I don't know.

J. Roy: I am sure we have town guidelines for our public access, but depending on which way this ends up going, there could be a difference.

A. Sullivan: There is turn around availability on the Desaulniers lot, but it is not part of the rectangular. We have 50' and it is 300' long.

M. Simoneau: I like the idea of keeping this open and getting the opinion of legal counsel.

R. Duhaime: We need to find out who owns it, if the taxes are paid, and what is going on with the road.

A. Sullivan: There is no tax deed. Sometimes they get dropped out of sight.

R. Duhaime: If it is tax mapped, and has a lot number, it has to be taxed.

A. Sullivan: It has a zero valuation on the tax rolls.

R. Duhaime: These are some of the questions we need answered. Will it be a private road or private driveway?

A. Sullivan: Right now it is a public way.

R. Duhaime: Is it a private road with deeded access or a public way?

A. Sullivan: By legal definition, because I have an approved sub-division plan that is recorded, it is a dedicated public way. It has not been accepted, but it is dedicated. It is only being used for those three lots and that is all it will ever be used for.

R. Duhaime: You said it was approved in 1995?

A. Sullivan: The building lot was approved in 1995. The sub-division was in 1976. The ZBA meeting was June 13, 1995.

R. Duhaime: You said they owned this in 1968.

A. Sullivan: The Chalifoux's did, correct.

R. Duhaime: It was not an approved site plan until 1976?

A. Sullivan: Back then, there wasn't any need for that. But the lot was shown with metes and bounds, by definition, in 1976, in recognition that was an approved plan.

R. Duhaime: So in 1968 it was bought, 1976 it was approved by the town, and in 1995 they got their permit.

### **Open to abutters**

John Roy (attorney for Desaulniers): I have filed a petition in the Merrimack County Superior Court to quiet their title and to correct their deed because there were some missing bounds. In doing so, I have had occasion to go back over the history of the title to this sub-division. We agree with the facts as represented by Attorney Sullivan. We concur with his interpretation of the law and support his request. As he indicated, over the years the length of the road access has changed. Back when Mr. Ralph St. Laurent sub-divided this property, he did so consistent with his plan until he attempted to sub-divide a lot referred to as Lot 25. The oldest plan I have is 1983. That lot is shown on prior plans. On the 1983 plan it is shown only as a broken line without the number on it.

R. Duhaime: Attorney Sullivan, did you put that in your exhibit?

A. Sullivan: That is Exhibit F-1.2.

John Roy: I ask that it be noted on that plan the right-of-way, Phyllis Drive, extends from Evelyn Street to the rear of the property.

R. Duhaime: What year was that?

John Roy: I believe that was 1983. 1976 is the sub-division plan. The tax map that I have is from 1983. The 1976 sub-division plan does not show Lot 25 and it never existed in terms of Planning Board approval, however, Mr. Ralph St. Laurent decided to create it and convey it to his son. The Planning Board chairman, at the time, said that he could not do that. That is why he referred to that as being an illegal or improper sub-division and he said the only solution was to have a corrective deed prepared deeding it back to Mr. St. Laurent (from Raoul back to Ralph).

J. Roy: This is the plan I was talking about where Phyllis Drive is extended and somehow it got shortened. We are not sure how is got shortened, correct?

John Roy: I cannot explain that. If you look at any of the plans, particularly the tax map, where the number 19 is, that is the approximate location of my clients home. If you look just to the northwest point of Lot 18, just to the north of that by about 25' is my client's garage. The proposed lot line revision does help my client. It also helps out the petitioners because it gives them more area of land, that is not wetland. For building purposes that is desirable. When my clients father purchased the property from Mr. St. Laurent, the purchase and sale agreement said "what is being conveyed is the rest of the land I own." The rest of the land, per the 1983 tax map, includes what was previously Lot 25 and conveyed back to Ralph St. Laurent and it included Phyllis Drive. My petition is on record at the Merrimack County Superior Court. Included in the petition is a copy of the purchase and sale agreement as well as a copy of a letter from the Chairman of the Planning Board at the time, Mr. Dick Marshall, indicating that compliance was had and that he could make the conveyance. There was also an increased payment because it included this larger tract. There is also a letter from the town tax collector indicating the lot was being taxed to my client and there is a reference to Phyllis Drive. That is in my petition and I would be happy to provide the Board with copies. As Attorney Sullivan indicated, it would be expensive to bring Phyllis Drive to town specifications for a public road. Initially Phyllis Drive was offered to the town to be made a public road but they did not want to accept it. It was retained by Ralph St. Laurent until he conveyed it out. The lot doesn't have any access and my clients were happy to enter into an agreement with the Chalifoux's because it reduces their obligation to maintain it by themselves. While my clients are unable to bring it up to a town dedicated public street, they have maintained it for almost 20 years and it is passable by ambulance, fire trucks and police. In order to get their permit, they were required to demonstrate a turn around area for a fire truck with a ladder and they have done that. It does benefit the town, my clients, and the Chalifoux's to approve it.

P. Denbow: Obviously, the Desaulniers are affected.

R. Duhaime: What is the status of the driveway right now? Is there any paved apron right now?

John Roy: No. It is strictly gravel. Over the years my client has maintained it well on his own.

J. Roy: How long does it normally take the courts to approve or deny your request for the quiet title?

John Roy: I believe we have already reached the return date. There have been no objections filed. I am still awaiting a guardian's report. I have spoken to the guardian and he indicates to me he is not going to have any objections. I have not spoken with Town Council but we have exchanged letters and, based upon our letters, I think we are in agreement, the town concurs with my request.

J. Roy: So normally, if there are no objections, it goes through?

John Roy: Yes, unless there is something radically wrong. I spent a lot of time on this, believe that it is all correct, and there is an exhibit for every fact represented.

**Open to public.**

**No public comments.**

R. Duhaime: I think we should get Planning Board and legal counsel input. Matt, please find out what the rules are for a shared private driveway. I believe there are regulations for that.

J. Roy: The only other input I would have is on the request for the Zoning Ordinance Article 3 Section J. It references publicly approved street, frontage along limited highway access. I need to understand the difference between the private and public and what we can and cannot approve.

R. Duhaime: What you are saying is we need input on RSA 674:41. Matt can we request information from legal counsel and put a request into the Planning Board to get input on this.

M. Simoneau: Can we do this before the October 14 meeting?

R. Duhaime: We can request it. If we cannot we can postpone it.

***R. Bairam motioned to postpone Gilles & Claudette Chalifoux, Case #14-09, 6 Phyllis Drive, Map 20, Lot 18, MDR to the October 14, 2014 Zoning Board Meeting so we can receive input from the Planning Board and legal counsel. Seconded by M. Simoneau. Motion carried unanimously.***

M. Lavoie: Attorney Sullivan you will have to contact Planning to get put on their agenda.

**1378 Realty Trust  
1135 Hooksett Road  
PZ**

**Case #14-10  
Map 41, Lot 10**

**Variance is requested from Article 10-A, Section E of the Zoning Ordinance to permit the construction of eight (8) townhouse style multi-family housing units.**

Peter Holden (Holden Engineering): I am here with Chris Mastriano, who is the property owner. We are here to try and get relief from Article 10-A, Section E of the Zoning Ordinance which is the Performance Zone zoning which is where the property is located. This has been going on for some time. (Reference was made to the tax map from 2002 showing Mr. B's and the veterinary clinic.) Chris bought this property when it was partially in the commercial zone and partially in the medium density residential zone. Chris is in the car business. He will start a used car dealership, get the approvals and the building set up, and then lease the operation to people who can't do that on their own. He understands what needs to be in a car dealership and how to develop and build a property. He bought this thinking it would be a site for a repair facility that could service a used car dealership for those who cannot repair cars in their own facility. His idea was to put the commercial use in the front and a residential use in the back. He had a plan to build a duplex. There was frontage on Mammoth Road. He met with the neighbors and did a

boundary line adjustment with one of them. We put together this site plan. When we put the building in we graded this up as steeply as possible, we had a 10' retaining wall and 10 more feet of slop up to the property line. We have done a lot of things to try and make this work because we are stuck between the zoning line, the street, and the lot was narrow. In order to create a grade that was achievable for a parking area and a building, we ended building in a hole. Chris has been trying to actively market this for 10 years and no one is interested. He looked into building a building and between the time we worked on the site plan and got the approval the zoning changed so that now it is all Performance Zone so he can't build the duplex he wanted to. Now he finds himself in a situation where, as of yet, he cannot market this and cannot build a duplex. This land gets steeper. It is a 10 percent grade. We are already 18' in the ground and now we are going to be almost 35' in the ground, so it was getting less and less achievable because, if he were to excavate in here now, he would have huge retaining walls that would be 25' high. We looked at trying to use the lot as an automobile storage lot thinking if we build the road up we could pave it and people could store vehicles there, but being so steep we ended up with an average grade of 10 percent, so it was not feasible to try and store cars or motor homes outside on a slope like that. Since the zoning change that was all Performance Zone, I think the Planning Board thought they were doing Chris a favor when they proposed this, but they made it worse because now he cannot get up there to use the property very well. Even with this use, and a realtor working for him, there is zero interest. It will be virtually impossible to have any kind of retail use. This lot is narrow, only 135' wide. We came up with proposing some type of residential use, eliminate the access from Rt. 3, grade it, and buffer it from the single family homes around it by building some fencing and landscaping. We are proposing two 4-unit town house style buildings. We are trying to come up with a use to be able to use this property. We are not fixated on these townhouses, but we think this would be a use for the property that would allow him to use it. It would be less impact on the neighbors, as far as the use, because it is residential. We would have to try to buffer the driveway as it could be a potential issue for the neighbors. We thought we could step the property. You don't end up with as big a building because you end up with more driveway. Chris bought this thinking he would destroy the building as part of the site plan. Now it is a non-conforming use. It has been there for 10 years. I don't think you could even live in the existing structure as a house because they changed the zoning. We are trying to get some help on a use.

J. Roy: Is there a difference on the sewer use between the condo units and the Performance Zone?

M. Lavoie: I don't think it has a big impact, but they have not gone that far yet to see if there is capacity for it.

J. Roy: Your water and sewer is coming from Mammoth Road?

P. Holden: Mammoth Road would be the water. There is an existing sewer service that came over to Animal Crackers. We may be asked to upgrade to a bigger line.

G. Hyde: How does the excavation differ?

P. Holden: It slopes down and the reason we picked the townhouse style is because we can step



it down the hill and have the parking lot slope down. We end up with one area being quite a bit higher than the existing ground because we are trying to keep the driveway at a 6 percent maximum slope. One area would be in some fill and the units would step down, possibly a 2' difference in elevation between each single one. As you come down it would match the driveway. That is the only reason why we picked these buildings versus a multi-family apartment building. We are trying to make this fit with the ground.

J. Roy: If you took these buildings and stepped them down for individual commercial units, would you have adequate parking or is there a reason you have to go residential?

P. Holden: We had that version where we had a hole in the ground. When we had an 8 percent driveway it finally reached the surface of the ground. You would have this driveway and you would not have any parking. You would end up with a tiny building and I don't know if it could work.

G. Hyde: Jackie, are you asking why this couldn't this be an office complex instead of residential?

J. Roy: Right. You could step it down the same way and have the same entrance. I am not sure what would prevent it from becoming a commercial use building.

P. Holden: I guess we never thought about building an office building. I always thought the traffic for these units would be less and better than people going in and out all day.

R. Bairam: You will have no access from Rt. 3?

P. Holden: No.

R. Bairam: Are you going to have a wall on Rt. 3?

P. Holden: We would have to have some kind of wall. We would also have to have a detention area for the storm water.

R. Bairam: I like the idea of no entrance on Rt. 3.

R. Duhaime: Chris, did you come before this Board about 5 years ago trying to get a variance for that duplex?

Chris Mastriano: I think I did to try to resurrect what I once had before the Performance Zone came in and took it away.

R. Duhaime: At the time the Performance Zone came in, I was told that it was commercial only and there was no residential. That was incorrect. At that time, when you came in front of us, I want to apologize, because we could have granted you a variance for that duplex at that time that you wanted to build. That is one of the very few times this Board made a mistake and I wanted to clarify it. You try to do your best and make a judgment and we were told that we could not make

a judgment on that property. Since then we have granted variances in the Performance Zone for residential units.

*Peter Holden read the application into record.*

R. Duhaime: On the plan you are showing us, are there going to be other variances or anything else you are going to need to pass from Planning?

P. Holden: I don't think there is anything else we would need. We have the right parking and the right set-backs.

R. Duhaime: I see you put in some hedges.

P. Holden: That is pictorial. We have to do some serious work and planning and we recognize that.

**Open to abutters.**

Michelle Kenney (106 Mammoth Road): We have been at 106 Mammoth since 1981. At that time we were told there was not enough property area between us and the neighbor for any driveway so nothing would happen. Now there is less required space for a driveway to go in. We went through this in 2003 and, with the duplex, we thought Mr. Holden had made arrangements and got a little more space so the driveway would not interfere with us so much. That was 2003 and now in 2014 we are looking at eight families in there, with at least two cars each, and Mammoth Road has become extremely dangerous. We now have the apartments south of us that were condos, that were converted into the apartment areas and to get out in the morning it is almost as bad as Rt. 3. My husband and I were on vacation in October, 2004 and were called back home because a car drove through our garage, hit the fence on the side near the driveway we are talking about, drove through our backyard, through our fence to our other neighbor south of us, and tried to get up the hill. It was a drunk driver. This is what scares me about having a driveway in a very narrow area between my neighbor and myself, especially with eight families. We also have an issue that we have talked about as a neighborhood, and that is no sewer system. We are a small area and above and below us they have sewer. We are in between with leach fields and septic. Will this building have sewer and we do not? We are also concerned about a fire situation going into that area with such a narrow driveway. We have a great fire department and we trust them, and you, but it is a concern.

R. Duhaime: Is there an existing stone wall?

M. Kenney: It is very low and barely visible.

RD There is a wood rail fence?

M. Kenney: There is on the other neighbors side and we have the chain link fence. The other neighbor has a privacy fence near his pool.

Charles Windhausen (110 Mammoth Road): It is a concern with that driveway. That would be three driveways in a row and the snow is an impact. Getting onto Mammoth Road when we have snowstorms, it gets piled up and we are going to have no place to put the snow if we have a driveway there. It will be difficult.

R. Duhaime: Peter, is there fencing on the plan?

P. Holden: That is proposed fencing. We would meet with the neighbors and come up with something.

Charles Windhausen: It is concerning if you put up a fence and vegetation because it would be even harder to see. I don't know what you can do to about making an access off of Rt. 3, but it seems like that would make more sense because there is more frontage over there. It seems like there should be more research on trying to get some access. I know it is steep and difficult, but maybe some reconfiguration could be done.

R. Duhaime: That is more of a Planning issue. I know the state doesn't want more residential driveways on the highway. I am sure they would prefer to have it on Mammoth Road. Knowing this lot, as far as him wanting to do the duplex, now he is looking for more units and traffic. I don't know what Planning would recommend, but we would tend to follow what they would recommend. I agree that Mammoth Road is dangerous. The traffic is going to get heavier and heavier and that is an issue.

Charles Windhausen: Property values are an issue for all of us, but I would entertain keeping that in the Performance Zone and having office space. There would be traffic during work time, where with residential the traffic would be when we are there. Traffic wise it may be better. Maybe there is some other kind of proposal that would work better that would fit zoning and make everyone happy.

R. Duhaime: The key think with zoning is that this property was residential and then moved into the Performance Zone. You can't take something without giving some relief. That is what zoning is for. He came in and we gave him no relief and that was not right. You can't take someone's land away without giving them anything. That is what the Performance Zone did, but we don't want residential homes on a busy road. That is what they did with the Performance Zone. Everyone votes but I don't know if they realize what they are voting for.

Charles Windhausen: I would like to have that as a consideration.

Bruce Kenney: I can testify there is rough traffic because I was rear ended about three years ago. People are going 50mph in a 35mph zone. The history I remember of the businesses, we had one person who wanted to sleep at his business, but found out from zoning you can't do that. We had another person logging and found out he had no permission to do so. Then we found out that the distance between Charles and my house, is too small to put a driveway in and you have to have 50'. We have less than 22'. I believe commercial would be the wisest thing to do.

Clair Silkman (112 Mammoth Road): We are against any townhouses being built in the

backyard. There is not enough property to support such an endeavor and the zoning law, as it stands, does not allow for such a structure. We are not in favor of adjusting any zoning laws at this time to allow for the construction of townhouses. I am also here to represent my mother-in-law, Dorothy Silkman. She resides next door to the property in question. She will be the most affected by this development. Dorothy is elderly and has resided at this property for over 70 years. She has a shallow hand dug well that is situated within 25' of the boundary line. This is her only source of water. She does not want to have to worry about the quality and quantity of the water in her well. She also owns the property at 1141 Hooksett Road, which is adjacent to her home and there is also a shallow hand dug well on that property. If there should be a change to disrupt the flow of the water to these wells, both properties would be jeopardized. She is also concerned about the exit of the property in question. Getting out of the driveway onto Hooksett Road is horrendous. Add eight town houses to this and she cannot perceive how this would affect her home. At this time she is adamantly against the construction in question.

Ron L'esperance (111 Mammoth Road): I live across the road from this and I don't entertain the idea there are going to be townhouses there, or where the road would be, and having a variance. I am here to support that I would rather it be on Rt. 3 rather than Mammoth Road.

R. Duhaime: What is the elevation of your home? How far back is your home?

R. L'esperance: I am about 125' away from the road.

J. Roy: The abutters have raised a good question with respect to your frontage because you are going to be changing the road frontage to Mammoth Road which requires 200'.

P. Holden: But it is an existing lot. I would say it was a grandfathered, non-conforming lot.

R. Duhaime: If we go to Planning, this road is not going to meet the criteria?

P. Holden: It would because it is an existing lot and has 137' of frontage on Rt. 3 and 35' on Mammoth Road.

J, Roy: It is currently cut in half and you have one entrance from one road and one entrance from another road. What you are asking us to do is combine it as one lot, shut down the entrance from Rt. 3 and put the entrance only to Mammoth Road?

R. Duhaime: Jackie, all we are here for is the variance from the Performance Zone.

P. Holden: Currently, the whole lot is Performance Zone.

R. Duhaime: It is surrounded by residential. It used to be residential and now it is Performance Zone. What they are looking for is relief from the Performance Zone.

P, Denbow: Mr. Duhaime, on that back lot, on the Mammoth Road side, was there ever a home there?

P. Holden: No. There were lots cut out on Mammoth Road and Rt. 3. It was never two lots, just in two different zones. When we were here for the site plan approval, Mrs. Silkman came to the meeting and I also went to her house. She does have a dug well and was concerned if we did excavating we would undercut her well and she would not have any water. Chris told her he would work with Manchester Water Works to figure out how to get a water pipe to her house and he is willing to still do that. When we talked about connecting the sewer onto this lot, we were told to use the existing sewer connection. We can try to get it up to Mammoth Road so these people can have sewers.

J. Roy: I believe Mrs. Silkman is now residential in the Performance Zone as well. Matt, when she goes to sell, does that stay residential or does that convert?

M. Lavoie: It goes by use. The use right now is residential. It is kind of grandfathered. If that use was to discontinue for more than an year, that use expires and has to be commercial.

P. Denbow: We have talked about fully residential and fully commercial, have you looked at doing some commercial and residential on the same lot?

P. Holden: That is what he was going to do with this, but could not get anyone to move there or buy it.

R. Duhaime: That was before when the back half was in residential.

J. Roy: Confirming that was zoned commercial when it was purchased. The front part.

P. Holden: Correct.

J. Roy: That went into performance but was zoned commercial, it was never residential.

P. Holden: There was a residential house there.

R. Duhaime: It was residential, went to commercial, and then performance.

P. Denbow: In the old scenario, in the front part, what was the usage?

P. Holden: It was going to be a repair facility for a used car operator who could not repair vehicles on his own lot. Then he tried to sell it as a retail storage site but no one wants it.

R. Duhaime: I would like to get input from Planning. The only thing that scares me is this driveway. It is on Mammoth and maybe they would prefer to have it on Rt. 3. Neither road is great to pull out on. We can grant relief but I am looking for guidance on where the driveway should go.

J. Roy: If you look at the topography, I think the slope will always be a problem for commercial or residential. What is hard for me is it is performance now and even though Mrs. Silkman is currently residential, that will eventually be a performance lot as well. I like the concept and

would want input from the Planning Board on the driveway.

R. Duhaime: If you look at Carrington Farms and the elevation, could you imagine if they had access on Rt. 3 with that elevation?

J. Roy: If we shut this access down from Rt. 3, we are now converting this to Mammoth Road and they don't have 200' of frontage.

R. Duhaime: That is the job of Planning to determine access.

J. Roy: We have had a lot of public input and that needs to be taken into consideration.

M. Simoneau: I think we need the comments from the Planning Board.

G. Hyde: We did grant relief from the Performance Zone to the property next door, the Manchester Animal Hospital. There is a single bedroom residence in the basement of that facility for overnight emergencies. That still makes him commercial/residential. Our relief was given that he already had commercial. I think, historically, we have only done three more of these further up across from the truck center. He came back in and saying he could not do commercial and wanted 100 percent residential, and we said no. If they were to complete this project, as commercial, there could be 60-80 cars per day where if is residential there would be 16-18 cars per day.

R. Duhaime: Planning may not want this many units. We can't make that judgment.

G. Hyde: We are approving the relief from the Performance Zone only. It is not up to us where they put in a driveway.

P. Denbow: I think going to Planning is a good idea, but is this a case where a traffic study should be done or is that too complex?

R. Duhaime: That is not our job. That is more Planning.

M. Lavoie: That is Planning Board.

G. Hyde: That would be the only issue I would seek going to Planning first. If they say they won't let them have a driveway, will that bias us one way or the other?

P. Holden: The main concern from the public is traffic.

M. Simoneau: Traffic and water/sewer.

R. Duhaime: They are willing to provide access for water and sewer for the neighbors, from what I understand.

J. Roy: They are willing to extend it across their property line. That would still have to be

brought onto Mammoth Road for each person to have it. I think that is nice, but you would have to have easements for every neighbor to get the sewer. It is a start.

M. Simoneau: There could be charges associated with that.

R. Duhaime: The good thing is the water and sewer increases the property value because you can do more things with the property. Are you in any rush?

P. Holden: No a couple of months won't make any difference.

J. Roy: We are truly changing the road requirements. Right now, with the driveway to Rt. 3, they have 200'. If we block it off and switch it to Mammoth Road they have 32'.

G. Hyde: I see the argument both ways as far as frontage. The address is Hooksett Road. The access is from Mammoth Road. Does your number change and how do you do that?

M. Lavoie: I am looking at the definition of frontage and it says the distance in lot line dividing a lot from either a public highway, except limited access highway, as shown on an approved or recorded sub-division plan. This lot has frontage on two roads. I don't know what the Planning Board would apply to that.

J. Roy: I would like that input, because maybe that is not even a point.

M. Lavoie: It may not be a point. From what I gather, it is a lot of record which means it is an existing lot so it is grandfathered because it is not a new sub-division. Planning may not allow them to put the driveway in the 32' area. It just a matter of the lot being a existing lot. It is zoned Performance Zone and they are asking for relief.

R. Bairam: I think it is good use of the lot. You will not get any commercial use in that lot. It is too narrow and too high.

R. Duhaime: The other commercial lots are flatter, open to the road, and have bigger and wider lots. On either end the driveways would be tough.

G. Hyde: I know that each one of these applications is different, however, there is a legal term called precedent. Given the fact we have historically required dual use of these properties, if we grant single use residential here, even though we understand that each application is unique, we are creating that precedent of 100 percent residential in a Performance Zone.

R. Bairam: I have to disagree because each lot is different. This one is unique because there is not much else you can do with it. It is uphill.

P. Denbow: I don't think we will get past the traffic issue, regardless, if it is commercial or residential. The water and sewer issues will be there as well.

R. Duhaime: I don't think we should let the Planning Board sway what we do, but we should let

them have input.

*P. Denbow motioned to have a presentation made to the Planning Board regarding 1378 Realty Trust, Case #14-10, 1135 Hooksett Road, Map 41, Lot 10, PZ, variance request from Article 10-A, Section E of the Zoning Ordinance to permit the construction of eight (8) townhouse style multi-family housing units, before the next Zoning Board meeting, ask for their input, and continue to the next meeting. Seconded by R. Bairam. **Motion carried unanimously.***

P. Holden: I would just like to clarify what I am bringing to the Planning Board.

R. Duhaime: We would like input on the projects, in general. The driveway, water, sewer, fencing, landscaping, and the issues that the abutters brought up.

*G. Hyde motioned to adjourn. Seconded by R. Bairam. **Motion carried unanimously.***

### **ADJOURNMENT**

The meeting adjourned at 9:15 pm.

Respectfully submitted by,

AnnMarie White  
Recording Clerk