

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

DATE: FEBRUARY 17, 2016

CASE NO.: 2/17/2016-2

APPLICANT: BRIAN J. CHRISTIANSEN AND LORI CHRISTIANSEN

LOCATION: 22 GERRY LANE, 18-5, AR-1

BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
JACQUELINE BENARD, VOTING MEMBER
JIM TIRABASSI, CLERK
NEIL DUNN, VOTING MEMBER
DAVID PAQUETTE, VOTING MEMBER
SUZANNE BRUNELLE, ALTERNATE NONVOTING MEMBER
BILL BERARDINO, ALTERNATE NONVOTING MEMBER

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

REQUEST: **A VARIANCE TO LZO, SECTION 2.3.1.3.B.1 TO ALLOW
CONSTRUCTION OF A HOUSE ON A LOT WITH NO
FRONTAGE ON A CLASS V OR BETTER ROAD – 22 GERRY
LANE, MAP 18 PARCEL 5, ZONE AR-1**

PRESENTATION: J. TIRABASSI READ REQUEST INTO RECORD. NO
PREVIOUS CASES.

JIM SMITH: Ok, who will be presenting?

PAUL ENGLISH: I will.

JIM SMITH: Are there any other cases?

JIM TIRABASSI: no, there are no other pertinent cases.

PAUL ENGLISH: Good evening, my name is Paul English (Attorney Paul English, 16 Salmon Street, Manchester, NH 03104). I am an attorney and I representing the Christiansens and

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John Marino who is to my right who is, has the parcel under contract for sale pending the variance approval. Mr. Marino with Mr. Christiansen's permission submitted variance for this approval. Obviously, it is for 22 Gerry Lane and I will await the Board's instruction and I will make my pitch whenever you are ready.

JIM SMITH: There are already a couple of houses on this street, right?

PAUL ENGLISH: Correct. There are two on this street and then two that appear to be on this street. The driveways off the street butt the address is on Old Derry Road.

JIM SMITH: Does everybody have an idea where this location is? It backs up to the highway.

[OVERLAPPING COMMENTS]

JIM SMITH: Ok, who will be presenting?

PAUL ENGLISH: Paul English, I will be presenting. Does the Board have any sort...did they look at a map? I do have a little print out of the zoning map. I do not know....

JIM SMITH: Yeah, we have it.

PAUL ENGLISH: Ok, good. So let me begin by stating I did check the names that no of the current board members are sitting on the board back into 2006. At least I did not see any or were not in attendance that evening. But in any event, maybe you were sitting but not in attendance. This has already come before the Zoning Board for this variance, the exact same variance that we are requesting. This property or lot is down a Class VI road that would not be maintained by the Town. My clients collectively looked to construct a single family home on the property. It is a four acre lot and it is the agricultural zone so the minimum lot size is one acre. The way I understand it, is I could not tell from the zoning maps actual to the dimensions of the property. I do not believe when we say there is no frontage on the road it is because it is a Class VI road and there is really no road there. This road would need to be developed in and continued on from where it is so there is no road and hence there is no road frontage. But if one were to build a road, it that road had been continued which it can't be now. Obviously with interstate 93 that cuts behind it, there would have been more than the 150 feet required. It is not that it is an odd shaped lot. The lot is in fact a decent size, a decent shape and had the road continued we certainly would have plenty of frontage. So with regards to, what basically happened back in 2005-2006 by the way of brief history before I get into the five variance points. Mr. Christiansen applied and was granted these requests which is one for the building permit on the...that is not on a Class V or better road and two, to waive the area variance for lack of frontage on Class V road. That was approved and he had engineering difficulties. I think he was also working with the historic. I read old, historic committee and so forth. Basically, the cost of engineering on this was going to be very expensive and they are quite intensive because there are numerous approvals that are going to be required by DES to get this. It nears some wetlands so there will need to be some wetlands approval and obviously

soil sampling tests for septic and well which we don't think will be a problem but there is going to be two rounds of approvals there that will take some time which we believe in part may be why Mr. Christiansen had some delay the first time around. So his applications have expired and that is why we are here today again with the same request. Basically looking to renew although nine or ten years have passed. So, Mr. Marino and Mr. Christiansen have submitted their application. I did not prepare it so I have a few other additional comments that I will add as to the five bases for the variance. It will not be...with regards to number one, it will not be contrary to the public interest. What is being proposed to be built on this location that we are seeking a building permit for is a single family home. That has the least impact on services. Again it is not even going to be tied to public water and sewer but it is going to bring an increase to the tax base of Londonderry. It is not, the building is not inconsistent with anything. We are not talking commercial, industrial or anything like that. In fact, it backs up to a highway. They abutters are great distance. So there is really no negative impact on anyone and in fact, you are going to have another person who is going to assist in the maintenance of this road. The second position that it is in the spirit of the ordinance is observed. As this board is aware, the zoning ordinances were not created to limit building. Created to propose a common scheme of development and to limit commercial being in residential and so forth. In this case, this is one property amongst others that is going to be single family homes. It is actually going to be occupied Mr. Marino. It is going to be his residence. So, it does not go against the ordinance. It is just a fact that this lot kind of got off by being at the end of a road and backed up to the highway. Substantial justice will be done because it is not in contrary to the ordinance but more importantly there is a hardship. This lot has a hardship. If this request is not approved which a single family home, being the least restrictive use then there is no use of this property. Other than wooded area, as any sort of buildable lot, this is the least restrictive use and otherwise, the hardship is that nothing else can be built on it. Secondly, as mentioned before, it abuts a current right of way and it was cut off by Route 93. I do not know when but way back, obviously. Finally, to make this, to upgrade the road would be...I looked at the figures proposed. For just extending the road back in 2006 and they were talking \$200,000 and I got to think that it is probably double that with the cost, with the cost of petroleum, these days. But the cost to improve that road would be significant and also if it became a greater class road then it is a greater burden on the city or excuse me, the Town in this case. Mr. Marino and the applicants understand that a waiver would be needed, would be conditionally upon this and would be recorded in the Registry of Deeds, meaning they acknowledge that fire hydrants are not close by. They have to maintain it. It is essentially, they are on their own and they understand that that is a condition of the building application. I think it is a condition of the certificate of occupancy before one can be granted that that needs to be recorded at the registry. Finally, I guess I kind of already addressed number five that literal enforcement of the provisions result in an unnecessary hardship again because there would be no other use of, no other reasonable use of the property but for the this property. This property is not an odd property except for its location. It is not like a pork chop lot or anything like that. Single family home would be a realistic use of this property and if the variance is denied there would be no other use of this property. Essentially, the Town would be taxing and denying someone its right to develop its own land and that is all I have.

NEIL DUNN: So the property owners of record are the Christiansen and Mr. Marion? Am I saying that right? I apologize. You are under contract to purchase the land?

JOHN MARINO: Yes.

NEIL DUNN: And were you involved in 2006?

JOHN MARINO: No, I wasn't.

NEIL DUNN: That was different group of folks. And to follow up if you can help me. Based on the map, do the Christiansen's own the abutting properties that are basically going to be landlocked?

PAUL ENGLISH: I am not sure who owns that one. Lot 6?

NEIL DUNN: Yes, 6, 7 and whatever that is, 15.

JOHN MARINO: I believe when I looked lot 7 and lot 8 are owned by the same person. Lot 6 is owned by, I believe it is a business in town.

PAUL ENGLISH: Lot 6 Evans Family Limited Partnership. Lot 7, Gerrity Company Inc. These two appeared to be landlocked against the highway.

NEIL DUNN: I only asked because if the Christiansens were owning all that. I was kind of surprised that the subdivision...I guess that has no standing on your application other than that they do that, they lock up a lot of land.

PAUL ENGLISH: Right.

NEIL DUNN: Richard, do buses not have to go down these roads once they sign those waivers and they have a bunch of little children running off to school?

RICHARD CANUEL: That is strictly up to the school district. The buses are not obligated to go down the road, no.

NEIL DUNN: And I guess if I may since no one is raising their hand. A follow-up, you make sure the CLO and then they go register with the town on the deed?

RICHARD CANUEL: No.

NEIL DUNN: Opposite?

RICHARD CANUEL: That needs to be done before a building permit can be issued.

NEIL DUNN: Ok, well that makes me feel better.

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RICHARD CANUEL: Yep, according to the state statutes 674:41, a building permit cannot be issued to erect a building on a lot that does not have access to a Class V or better road. And in issuing the building permit, it has to be that release of municipal liability so it is called recorded at the registry of deeds. All that needs to be done before the building permit can even be issued.

NEIL DUNN: Ok, I was reading it the other way but that is good. Thank you. Well, I think in the old writing, file with the registry of deeds upon given a certificate of occupancy. In 2006, it was kind of like at the same time but today it is much more...great, good.

RICHARD CANUEL: For situations like this, we actually have drafted up a release form for the applicant to fill out and record. So we are already prepared.

JIM SMITH: Ok, we can probably use the same language but just change the....[OVERLAPPING COMMENTS]...

Any other comments? Ok. Why don't we go through the five points? The variance will not be contrary to the public interest.

NEIL DUNN: No real impact to public interest. I suppose.

NEIL DUNN: I agree with that. It is not contrary to the public interest. In lots like that that are off the beaten path like that, that is what we are here for, I guess.

JIM SMITH: The spirit of the ordinance is observed. Allows for the best use of the property.

NEIL DUNN: The town's liability is covered by compliance with RDA 674 and the registry of deeds.

JIM SMITH: Substantial justice is done. It allows the lot to be used as a single family.

NEIL DUNN: Residential, and in a residential neighborhood.

JIM SMITH: Surrounding, values of surrounding properties are not diminished. And the last one, unnecessary hardship, owing to the special conditions of the property that distinguish it from other properties in the area. It is on an undeveloped road.

NEIL DUNN: But how is that different from the other properties in the area?

JIM SMITH: There are already two other properties on the same thing.

JIM TIRABASSI: I am assuming that those properties have already signed waivers of liability.

JIM SMITH: I will entertain a motion.

DAVID PAQUETTE: Mr. Chairman, I would like to raise a motion in regards to Case 2/16/2016-2 to grant the variance to build on a not Class V or better road for lack of better words finding that all five points are satisfied.

JIM SMITH: Ok, do I have a second?

JIM TIRABASSI: Second.

JIM SMITH: All those in favor?

ALL VOTING MEMBERS: Aye.

PAUL ENGLISH: If I may ask a question. What if Mr. Marino runs into the same problems at the end of the year that Mr. Christiansen had back in 06. Is this still limited to one year and full application or is there any waiver of that?

RICHARD CANUEL: Yes. Once a variance is granted and that variance involves the issuance of a building permit. Building permit has to be applied for within 12 months of the granting of a variance otherwise the variance goes null and void.

PAUL ENGLISH: Ok and there is nothing, no waiver of that.

RICHARD CANUEL: No.

PAUL ENGLISH: Ok. I did not think so. Thank you for your attention this evening.

JIM TIRABASSI: In Case No. 2/17/16-2 , the vote was 5 for and 0 against.

RESPECTFULLY SUBMITTED,

Jim Tirabassi

JIM TIRABASSI, ACTING CLERK

TYPED AND TRANSCRIBED BY, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT SECRETARY.

APPROVED (X) WITH A MOTION MADE BY X, SECONDED BY X AND APPROVED 0-0-0.