

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

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5 DATE: OCTOBER 21, 2015
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7 CASE NO.: CASE NO. 10/21/2015-1
8
9 APPLICANT: BRIAN K. STOWELL
10 395 MAMMOTH ROAD
11 LONDONDERRY, NH 03053
12
13 LOCATION: 236 ROCKINGHAM ROAD; 15-147; C-I, WITHIN THE ROUTE 28 POD
14
15 BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
16 JACKIE BENARD, VOTING MEMBER
17 NEIL DUNN, VOTING MEMBER
18 DAVE PAQUETTE, CLERK
19
20 ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING
21 ADMINISTRATOR/HEALTH OFFICER
22
23 REQUEST: VARIANCE TO ALLOW VEHICLE SALES ON AN EXISTING RESIDENTIAL
24 PROPERTY WHERE OTHERWISE NOT ALLOWED IN THE C-I ZONE
25 ACCORDING TO SECTION 2.2, TABLE OF USES, AND NOT A PERMITTED
26 USE IN THE ROUTE 28 PERFORMANCE OVERLAY DISTRICT (POD)
27 ACCORDING TO SECTION 2.6.2.5.
28
29 PRESENTATION: D. PAQUETTE READ THE CASE INTO THE RECORD. ONE PREVIOUS CASE.
30 ONE LETTER READ INTO THE RECORD.
31
32
33 JIM SMITH: Okay, who will be presenting?
34
35 MICHAEL SCOTT: I will, Mr. Chairman and Members. My name is Michael Scott. I'm here on behalf of Mr.
36 Stowell.
37
38 JIM SMITH: Okay.
39
40 MICHAEL SCOTT: I had sent over just a brief memo (see Exhibit #1). The memo should be brief...kind of
41 outlines our application. Do you mind if I be seated?
42
43 JIM SMITH: Oh yeah, please do.

44
45 MICHAEL SCOTT: Thank you.

46
47 JIM SMITH: It makes the microphone more effective.

48
49 MICHAEL SCOTT: What I wanted to start off with is first of all is that it talks about vehicles, but for the most
50 part, these are going to be tractors and trailers which you normally think of as vehicular traffic. I know in our
51 part of the country we seem them traveling down the road, but's rare. So, the vehicles that we are talking
52 about is that some people when they purchase these tractors, or trailers they trade in a car, so that's why we
53 wanted to include in the variance that there could be some registered vehicles as it says here on the
54 property, but we've listed some voluntary restrictions that we want to place on the premises which we
55 believe may address some of the concerns. I'm not sure if we can address that first individuals concerns, but
56 we feel like we've tried to address most of the concerns that people might have that people might have that
57 this might offend...the current zoning ordinance in this area. We've indicated here that there would be no
58 one time more than ten (10) tractors, trailers, or registered vehicles on the premises. We've attached an
59 Exhibit B (see Exhibit #2), which is just an aerial view of the property, and if you look at the aerial view on
60 Exhibit B...the area where the property is located is right beside...you see the yellow triangle right beside that
61 loop where Stokes Road loops around and connects on both sides to Rockingham Road. There's a paved
62 space in there right before the first single family home, and that's the space that we are talking about, and
63 one of the voluntary long-term restrictions we placed is that we would not put more than ten (1) tractors,
64 trailers, or registered vehicles on that paved area. It's a pretty good sized paved area. This paved area was
65 the location for the special exception to Bockmon Mobile Homes when they were marketing mobile homes
66 on that paved tarmac, and I'm presuming from what I can gather the mobile homes are being marketed as
67 people moved out from the mobile home park, or as they changed, or updated mobile homes are sold there
68 on display. The other voluntary restrictions we have placed is that there be no signage. They'll be no actual
69 alternations of the location, so they'll be no cutting of trees. We'd just maintain the same configuration and
70 the same size of paved area. There be no excavation. No other improvements on there. It would just be the
71 paved area that now exists. There'd be no utilities, signage, or lighting. The only signs...I misspoke, the only
72 signs you'd see are the kind that you get at the department store that would say for sale on the actual units
73 themselves, but there'd be no permanent employees stationed there. Neither of the two-family homes, or
74 any other improvement of the property will be used for an office, so there would not be an employee
75 traveling to the site. The only time an employee would travel to the site would be by appointment to show
76 someone who saw the tractor, or trailer at the 395 Mammoth Road location and decided they wanted to
77 come over a take a look at it. So, those are some of the voluntary restrictions. Obviously, there'd be no fuel
78 storage tanks, no repairs conducted on the premises, and these vehicles will be positioned in such a way that
79 they wouldn't block the ingress, or egress to the property. There's two ways the property can be accessed
80 from both ends of the driveway that attach from between Rockingham Road all the way up to Stokes Road.
81 You can see the drive, and that would be clear. There'd be a clear line of site. The vehicles wouldn't block
82 that, or in any way impede the residential traffic from the two single family homes, or any emergency
83 vehicles that would try to access the property. The tractors, and trailers...obviously the trailers would be
84 moved by simply hooking up to a vehicle and be driven out, but the tractors are not so large that they would
85 require any wide-load provisions, or the tractors would be put on a trailer and removed from the site, if sold.
86 So, they wouldn't in any way create traffic problems – temporary, or otherwise. So, I think I covered that.

87 The other thing that we had here is that obviously the property would be fully insured under a commercial
88 general liability policy to cover the activities that were going on on the property. So, there'd be protection
89 for the general public as far as insurance coverage goes. So, those are the restrictions that we would
90 place...voluntary restrictions we'd place in the event we could have this variance granted. The current zoning
91 is C-I, but there are some as already been pointed out, there's some non-conforming uses already. There's
92 two single family homes that are on this property, and then to the adjacent to it, to the right is a C-II zone
93 where you have Heritage Truck and Automotive, so at that location, vehicles are being sold at a much greater
94 magnitude obviously. They're not the same type of vehicles, these are actually vehicular traffic. Across from
95 that at the triangle, there is a C-II zoning where you have a Mobil station on the opposite side of Rockingham
96 Road and vehicles are...every so often vehicles are placed there with for sale signs. There's vehicles at the
97 Mobil station, so it's similar, and it's a C-II zoned area. Then directly across from the premises is the C-I
98 zoning area that has a pizza, deli, a gun shop and another, I believe restaurant that are in the C-I zone area.
99 Behind the property towards Stokes Road is a manufactured home residential area, but there's really a
100 natural barrier of all the forest and trees and foliage there that actually block any line of site to the
101 Rockingham Road, or to any of the improvements that my client has on the property. Consequently, there
102 would be no way for anyone to visually see the ten (10) tractors, trailers, or vehicles on the proposed site.
103 So, that's what's there under the current zoning. So, going through the variance criteria...

104
105 NEIL DUNN: If I may, Mr. Chairman, first...?

106
107 MICHAEL SCOTT: Sure.

108
109 JIM SMITH: Sure.

110
111 NEIL DUNN: So, are you referring to the gray area, or the yellow here just for clarity?

112
113 MICHAEL SCOTT: The yellow area is...let me just look here...yes, the yellow area, you can see...I'm sorry, I
114 wasn't trying...I wasn't saying gray area. The yellow...

115
116 [Overlapping comments]

117
118 MICHAEL SCOTT: ...area you can see the little paved area right in front of that. There's a large single family
119 home, a smaller single family home right by the front...this isn't actually my aerial view. This is...I guess a
120 picture you have. I have one further down that's actually color that makes it a little bit clearer.

121
122 JACKIE BENARD: That's what we have, we don't have this one, so we actually have the colored one.

123
124 MICHAEL SCOTT: Oh, okay, yeah, well that wasn't the one on the screen, but it's this one that's down here at
125 the bottom corner, you see Stokes Road, and you see the triangle over there, and you can see...it doesn't
126 show the paved area, but...

127
128 NEIL DUNN: Do you have a picture showing the paved area? Because I'm...

130 MICHAEL SCOTT: Yes.
131
132 NEIL DUNN: ...I'm lost here, and I drove by and thought you were referring to the dirt section in the middle
133 of...
134
135 [Overlapping comments]
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137 MICHAEL SCOTT: May I approach? I'll just show you?
138
139 [Overlapping comments]
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141 MICHAEL SCOTT: It's this section right in here.
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143 JACKIE BENARD: Okay.
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145 MICHAEL SCOTT: Yeah, and there's a drive that goes...there's a single family home right at the beginning. It
146 drives up and then there's a single family home up the drive.
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148 JACKIE BENARD: Okay.
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150 MICHAEL SCOTT: ...I'm sorry...it isn't very clear on that screen.
151
152 [Overlapping comments]
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154 MICHAEL SCOTT: But, you can see...the pave...
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156 [Overlapping comments]
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158 JIM SMITH: Yeah, they've had containers to receive used clothing.
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160 DAVE PAQUETTE: Donations...
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162 MICHAEL SCOTT: ...We've actually...moved those to the back of the...they've been moved from the back of
163 the property those containers...
164
165 JIM SMITH: Yeah.
166
167 MICHAEL SCOTT: ...further down the road.
168
169 JIM SMITH: Okay, but I mean, that's something that's been ongoing?
170
171 MICHAEL SCOTT: That's something that's happened there frequently. So, there has been vehicles that have
172 obviously stopped off and dropped clothing off. I'm not sure, who is responsible? Whether it's Goodwill, I'm

173 not sure whose responsibility it is, but yeah, there is a clothing drop there, and those are frequented
174 obviously. We'd still have those on the property, but they wouldn't be in that location. So going through the
175 criteria, the variance criteria, really...

176
177 JIM SMITH: Why don't you start with number one and go right down through it.

178
179 MICHAEL SCOTT: I'll just go down number one...you have it there, I don't want to bore you by reading it, but
180 basically, this use is...It's not going to threaten any public health or safety. There's going to be no public
181 health or safety issues, and as I've tried to point out [indistinct] is that the character of this neighborhood is
182 pretty much similar to this. You see a lot of vehicles being sold. These are not like your normal motoring
183 vehicles because the ordinance, the spirit of the ordinance is it's trying to restrict to C-II the sale of registered
184 vehicles, and I'm not saying that some won't be sold, but for the most part, the vehicles being sold here are
185 tractors and trailers which people use to service other Town businesses such as agricultural businesses and
186 tractors that service people's yards and commercial and industrial locations where they are doing
187 landscaping, so these types of things are not...I don't think they really mirror the C-II provisions they're more
188 of a service oriented type of sale where people are using these vehicles for on-site and not for motoring.

189
190 JIM SMITH: Okay, just to clarify when you say tractors, are you talking more lawn tractors and that type of
191 mechanism?

192
193 MICHAEL SCOTT: They are smaller ones like I said. They aren't necessary lawn tractors. Some of them are a
194 bit larger for if you plow your driveway, or...but their compact.

195
196 JIM SMITH: Okay, but that's what we're talking about?

197
198 MICHAEL SCOTT: Yeah, but they are not industrial...

199
200 JIM SMITH: No.

201
202 MICHAEL SCOTT: ...not industrial level tractors.

203
204 JIM SMITH: No, they are more lawn or agricultural tractors?

205
206 MICHAEL SCOTT: That's correct. That's correct. So, they're not what you'd see traveling on an actual
207 industrial site or anything like that. There things that people in the community would use for their
208 agricultural businesses for their landscaping businesses that type of thing. So, because there's been mobile
209 homes sold from there, on display...there's been other display items and this property is closed in by C-II
210 districts that already display vehicles and are retail selling them. It's really not going to change the essential
211 character of this portion of the neighborhood and as I said because of the restrictions we are having there's
212 going to be no risk to public safety. There isn't going to be repairs on these. They aren't going to be driving
213 these around. The only time they are going to move from that place is if someone purchases them they are
214 put on a trailer and moved from the site. Even then, it's not going to be a wide load situation where's there's
215 any type of public safety concern. There isn't going to be fuel storage to fuel them. The vehicles, if there are

216 vehicles there will be registered, so there's not going to be any type of lighting there. It would be a
217 distraction to motorists driving down the highway. There's not going to be a big sign there. So, it's our
218 opinion at least for purposes of not being contrary to public interest there's no...it's not going to alter the
219 essential character of the neighborhood, nor will it threaten public health, or safety. So that's number one.
220 Number two the spirit of the ordinance, I think I alluded to a little bit is that they want sound [Indistinct] and
221 the ordinance is fairly similar they want Town servicing business activities. I know that they are looking for
222 law offices and medical offices and those kinds of things, but they are also looking for service oriented
223 businesses that are planned business center development. I think I mentioned that these type of...most of
224 what is going to be sold there are things that people will service their property...other property service
225 businesses in the community. So, it's not that far off. It's no obviously a tight fit, but it's not that far off from
226 what the spirit of the C-I zoning ordinance provides. So, we believe based on that it really doesn't in anyway
227 take away from the spirit of the ordinance in C-I zoning. Number three. Substantial justice will be done. This
228 property currently has two single family homes on it that bring in approximately \$32,000 dollars in rent
229 annually to the applicant. By being able to use this site as an overflow from the 395 Mammoth site and have
230 just ten (10) other inventory units on this site, they're able to increase their inventory to between \$30,000 to
231 \$40,000 dollars gross annually which is a nice increase to the size of their business. Their business
232 obviously...it's to everyone's advantage to have a business that's contributing to the tax base to the
233 community, and so and this is important to them to get this increased revenue particularly in these times
234 when you're striving to compete. So, as far as C-I zoning on the premises would cause significant economic
235 loss to Mr. Stowell which would outweigh any gain to the public by simply not having ten (10) displayed
236 tractors, trailers and vehicles on the site. There's already...the only real vehicles that are coming out of there
237 right now are the vehicles that are associated with the residences, so four (4) to six (6) vehicles are there
238 coming in and out, but these vehicles are not. They're not going to really impact the general public so the
239 income that my client projects that he would make off this sight outweighs any gain they get by enforcing
240 this. The substantial justice will be done if this variance is granted. Number four. I have a realtor here today
241 who's looked at the property. Who is familiar with the property. It's Jennifer Adams. I just preface her
242 remarks that she's going to indicate that the values have stayed pretty steady in this area and that ten (10)
243 displayed vehicles is highly unlikely to create a diminution in value, or cause a staff to purchase someone
244 else's property, or even desire to purchase someone else's property who may object to this. It's just ten (10)
245 units that are being place on there. It's not going to create great diminution of value. I can have her speak to
246 speak to this. I don't think she'll say anything differently than what I am saying.

247
248 JIM SMITH: It'll probably be better for the record just to have her on the record.

249
250 JENNIFER ADAMS: Do you want me to use this one?

251
252 JIM SMITH: Any one. Identify yourself for the record please.

253
254 JENNIFER ADAMS: I'm Jennifer Adams and I work for Kelleher realty, and I've had my real estate license for
255 about fifteen years. I've only worked in southern New Hampshire...I was actually involved in the sale of this
256 property, so I'm very familiar with it, and for what they're talking about where they're not changing the
257 character of the property essentially. It would not unfortunately...for your guy who wants to sell his property

258 is really probably not going to diminish his value, or any of the other surrounding properties. It's going to
259 stay the same. If they are going to have the ten (10) vehicles there, or they do not.

260
261 JIM SMITH: Okay, thank you.

262
263 MICHAEL SCOTT: So, and then number five. So, let me speak just a little bit in more detail to number five.
264 Literal enforcement of the provision of the ordinance would result in unnecessary hardship. This property is
265 somewhat unique because it already have unlike the other C-I zoned properties, it has already two non-
266 conforming uses in it – two single family homes, and what my clients have already determined is that
267 they...with the space that they have...because right behind that paved area, it's all wet in there. I don't know
268 if you can park Noah's Arc in there, but it's very very wet. Right behind that space, so there's no way that
269 they can construct a structure that had the sixty foot setback from the road and also had the necessary
270 setbacks from either that road or Stokes Road and had the necessary setbacks from two existing single family
271 homes that would satisfy the requirements of C-I limitation for constructing any type of service oriented
272 structure. So, this is a unique piece of property. It has two single family properties. You can't build another
273 residence on there, and you can't really build the type of structure that you might be seeing traditionally in a
274 C-I zoned area. So, because of this uniqueness the real logical use for this paved area is what it has been used
275 for before is to display merchandise and to really...because of the uniqueness of the property, because of
276 these restrictions that my client has place on it that are just unique to the property itself. I would be
277 unreasonable and really create unnecessary hardship for him not to be able to make that extra income on
278 that property by doing what seems to come natural and putting some displayed vehicles on there with some
279 signs. Particularly, when it's subject to the restrictions that I initially talked about when I opened my
280 discussion. So, that's our case. That's our position on this variance. Are there any questions?

281
282 JIM SMITH: Okay, questions from the Board?

283
284 NEIL DUNN: When was the property bought? You said you were involved with this sale of this property?

285
286 JENNIFER ADAMS: Yes.

287
288 MICHAEL SCOTT: I have a deed. It's attached as an exhibit. It looks like it was January, 2004?

289
290 JENNIFER ADAMS: No, that was the last time.

291
292 MICHAEL SCOTT: That was the last time, you sold...

293
294 JENNIFER ADAMS: Right, this was just recently.

295
296 MICHAEL SCOTT: It was just recently sold. That is correct.

297
298 [Overlapping comments]

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300 MICHAEL SCOTT: Oh, sorry...it was May of this year, right?

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[Overlapping comments]

MICHAEL SCOTT: I apologize, I have an older deed attached to the back. It was actually a deed that Agnes Bockmon gave, so it was a much older deed. So, just recently, it was spring of this year that it was purchased.

NEIL DUNN: So, it was quite aware at time of purchase that it's C-1 in an overlay zone? I was just curious because...

MICHAEL SCOTT: Yeah, yeah, I mean...

NEIL DUNN: We're going back to Bockmon...I've lived in Town thirty years, and I don't think I've ever seen Bockmon put anything over there?

MICHAEL SCOTT: Well, I live here. I have been over to their site, and I have seen trailers sitting on there that were for sale in the past twenty years.

NEIL DUNN: Well, huh.

MICHAEL SCOTT: Yeah, so...

NEIL DUNN: That must have been a while back? Maybe, I just forget?

MICHAEL SCOTT: No, he has. I've seen them there. It's actually kind of...I don't know kind of a captive sale audience because what happens when people move out they really can't sell those without Bockmon's permission really to put on this site, so it's actually kind of a nice situation where they can sell...they are the primary...really the only way they can sell those is to have the owner of the property of the mobile home park to sell those mobile homes. So, yes they have been sitting out there. I've seen them in the past.

NEIL DUNN: I haven't seen them recently.

MICHAEL SCOTT: I haven't seen them recently either, so I'm not trying to...

NEIL DUNN: Are you referring to paved area? I thought that was all stone, dust or sand or mud? Is that actually pavement underneath all of that?

[Overlapping comments]

MICHAEL SCOTT: It's a paved area, it's like a tarmac.

NEIL DUNN: When you look at it...when you drive by it to me it just looks like dirt. I know if floods and it's probably got dirt and...

344 MICHAEL SCOTT: Yeah, well one thing I do have to mention. It will obviously be maintained. It won't be...the
345 scope of it won't be expanded, but it would be maintained obviously.
346
347 NEIL DUNN: While I brought that up. It does flood a bit. I guess with tractors and cars you wouldn't be
348 worried about that...I mean...?
349
350 MICHAEL SCOTT: So, that's why we put out I think in one of our restrictions that one of the things that would
351 be done is that it would be maintained in good condition.
352
353 NEIL DUNN: Well, I don't' know how you're going to stop the flooding that goes in there half the time, but...?
354
355 MICHAEL SCOTT: I don't know how you stop the flooding in a lot of areas in New Hampshire?
356
357 NEIL DUNN: Well, no I'm just...concerned what could be there cars in there...
358
359 [Overlapping comments]
360
361 MICHAEL SCOTT: That might actually speak in favor of being one of the uses that has to be there because it's
362 really wet there in that area.
363
364 JIM SMITH: Any other questions?
365
366 JACKIE BENARD: Yes. Alright, so you would like to allow tractors and trailers? So, these tractors are a small
367 type tractor? Am I understanding that correctly?
368
369 MICHAEL SCOTT: Yes.
370
371 JACKIE BENARD: And are the trailers...trailers that are for these tractors?
372
373 MICHAEL SCOTT: Right.
374
375 [Overlapping comments]
376
377 JIM SMITH: Okay, would you approach one of the microphones and identify yourself for the record.
378
379 MICHAEL SCOTT: ...They just wanted...you're talking on the record and they just want to know who you are
380 so...
381
382 [Overlapping comments]
383
384 JIM SMITH: Yeah, for the record, you need to identify yourself and then...
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386 MERWIN STOWELL: Oh, Merwin H. Stowell, 395 Mammoth Road.

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JIM SMITH: Okay.

MERWIN STOWELL: Londonderry.

JIM SMITH: I know who you are, but I just...

[Overlapping comments]

MERWIN STOWELL: Okay.

MICHAEL SCOTT: You're all set. He just wanted to know who you were...

MERWIN STOWELL: Allright.

MICHAEL SCOTT: And, Merwin was the one who mentioned on the record that their landscaping trailers.

JIM SMITH: Yeah.

MICHAEL SCOTT: So, they're the trailers you can see...

JIM SMITH: Yeah, okay.

JACKIE BENARD: Okay.

[Overlapping comments]

JIM SMITH: I think for everybody's...it's a similar operation. What he's talking about is the trailers which are on display along Mammoth Road.

NEIL DUNN: 395 yeah.

JACKIE BENARD: Okay, so that's what I was going to ask you as well. So, that's your business as well?

MERWIN STOWELL: Right.

JACKIE BENARD: So, this is just an extension of that?

MERWIN STOWELL: Right.

MICHAEL SCOTT: Yes.

JACKIE BENARD: Okay. I don't recall any vehicles, cars at that location? Your present one.

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MERWIN STOWELL: We would maybe put one car out there if we happen to take one in trade on a tractor, so if we just want to get rid of it, we stick in up there and sell it, but mostly it's going to be all tractors and trailers.

JACKIE BENARD: Okay.

MICHAEL SCOTT: We just didn't want it to be in any way deceptive. Every so often, I don't know if I'd do this, but someone trades a car in on a tractor, or the trailer.

JACKIE BENARD: Okay, so say a vehicle should be taken in on trade. You put ...it'll be registered, but usually when you take it in on trade they don't become registered anymore because the owner then transfers...

MICHAEL SCOTT: We wouldn't have any unregistered vehicles on that lot.

MERWIN STOWELL: No.

JACKIE BENARD: Right, but you're not going to register them under your name?

MERWIN STOWELL: Well, if I have to, I have to.

JACKIE BENARD: Okay.

JIM SMITH: Okay, that leads me to another thing. Are you licensed as an auto dealer?

MERWIN STOWELL: I'm...it goes under Mert'z Outdoor Equipment.

JIM SMITH: But are you a licensed New Hampshire dealer?

[Overlapping comments]

MERWIN STOWELL: Automobile dealer?

JIM SMITH: Yeah.

MERWIN STOWELL: No.

[Overlapping comments]

JIM SMITH: Okay.

MERWIN STOWELL: No.

473 MICHAEL SCOTT: They wouldn't do the type of volume I don't believe under the statute that would require
474 that.
475
476 MERWIN STOWELL: No.
477
478 JIM SMITH: Okay, I just...so, it wouldn't [Indistinct]...
479
480 JACKIE BENARD: So, that's...that is what I was asking.
481
482 MICHAEL SCOTT: Okay.
483
484 JACKIE BENARD: Just to the whole scope of it because you are including vehicles.
485
486 MICHAEL SCOTT: Yeah, I think the scope would be very minor and totally ancillary to the tractors and the
487 trailers. I would be a rare occurrence, I guess, is what I am telling...
488
489 JACKIE BENARD: Okay.
490
491 MICHAEL SCOTT: Telling you.
492
493 JACKIE BENARD: Okay.
494
495 JIM SMITH: Yeah, I can't ever remember seeing a car for sale there. On that side of Mammoth Road.
496
497 JACKIE BENARD: See I don't recall any cars. It's always just the smaller equipment...so...
498
499 NEIL DUNN: If I may, so if it was just tractors and trailers would you need to be here?
500
501 MICHAEL SCOTT: Well, my client was informed that they would because obviously, it's not...it doesn't directly
502 conform to the uses that are specified under C-1. So, it's better to ask for permission than...
503
504 NEIL DUNN: Well, I'm just...because it says vehicles; I'm trying to figure out...so it's really for the whole
505 package.
506
507 MICHAEL SCOTT: That's correct.
508
509 NEIL DUNN: That's correct.
510
511 JIM SMITH: Any other questions? Okay, I'll open it up to anyone who is in favor of this? Would you
512 approach the microphone and identify yourself.
513
514 DAN BOUCHARD: Good evening, my name is Dan Bouchard. I'm the trustee of the Agnes Bockmon Trust. I
515 was involved in selling this property. I've been involved with this property for over 34 years. It's a very

516 unique piece of property. I'm in favor of this and I'll tell you why because 34 when I've been involved in it
517 yeah, we've sold cars on that lot. We've sold mobile homes on that lot. We've sold all kinds of trailers. The
518 biggest problem that we have was that people drive by and they see this vacant lot that's not really
519 maintained much when we were having it and we had the yellow bins there, and people were
520 constantly...junk...dump all kinds of junk over there. We were constantly cleaning that up. I would go by and
521 find...one time there was all these golf carts that were dumped there. Someone was trying to sell them. He
522 thought it was State property. I've had plows. I've had sanders...just dropped off there for sale. I call people
523 up and like...you know what are you doing? Well, I thought it was State property, I thought I could leave it
524 there. When we were trying to sell this property, it was a very unique piece of property...it was very difficult,
525 and I know that what C-I what they were looking for and all that, but we had people look at it for a
526 restaurant. We had people look at it for office space. They just couldn't do it because of the wetlands that
527 are there with the setbacks you had to meet. It was a very difficult piece of property to sell. We finally did
528 sell it, and you know, Mr. Stowell had done, I think a really good job as far as moving those bins a little closer
529 to one of the homes, and actually set up a camera there. You know, trying to stop people from dumping
530 there...I think it's a big plus. I don't think it hurts anything having a couple tractors there. Personally, myself
531 over 34 years, I've sold over 3 dozen vehicles out of that lot. So, the property goes all the way around 28...all
532 the way around Stokes. So, it does flood. The Town looked at it at one time to put a...their sewage pump
533 station over there on the corner, even though it was flooding...that's my take on it. If you have any questions
534 about the property, I'm very knowledgeable about the property and I can tell you everything about it. That's
535 been paved there over 34 years that I've known.

536
537 JIM SMITH: Any questions? Okay, thank you.

538
539 DAN BOUCHARD: You're welcome.

540
541 JIM SMITH: Okay, anyone in opposition? Seeing none, will bring it back to the applicant. Any further
542 comments?

543
544 MICHAEL SCOTT: Just consider that submitted. I don't think I need to...

545
546 JIM SMITH: Okay. Any questions from the Board?

547
548 NEIL DUNN: Maybe because Richard not here tonight, so maybe you can help me. If this was being
549 developed more thoroughly as a piece of property...my biggest concern right now is that it's right at that
550 intersection. It's changed a lot since 30 years ago. There wasn't a whole lot of this stuff here. So, I'm trying
551 to get a handle on people pulling in and out of there to look at the tractors. Pulling the tractors in and
552 out...obviously on trailers and stuff. I'm trying to get a handle on what the Planning Board would be looking
553 at if somebody was to go in and put this business in there if you follow me...

554
555 [Overlapping comments]

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557 NEIL DUNN: My safety concerns because it's right at that intersection.

559 JIM SMITH: I would suggest to you though that it would be almost impossible to do much to develop this
560 because of the wetlands. There's...the Town has adopted some very stringent setbacks to wetlands, and by
561 the time you add that back to the edge of the wetlands, I don't think there's much land left.
562

563 NEIL DUNN: Right, but...
564

565 JIM SMITH: So, trying to do anything on this...you know the two...I think one of those homes, the second one
566 and the first one in is kind of on top of a riser, or slight hill.
567

568 MICHAEL SCOTT: It's built up a bit.
569

570 JIM SMITH: Yeah, so that's the only high area on the whole property. The rest of it is all...
571

572 NEIL DUNN: Yeah, no, I mean he made the purchase recently, so I mean he should have had this in mind.
573

574 JIM SMITH: Yeah.
575

576 NEIL DUNN: My bigger concern is safety at the intersection. So, if this was going through some more of a
577 formal development process, what would they be looking at there? Would they need permission from the
578 State there? I don't know, right at the corner of that intersection with more traffic out of there, or something
579 a variance...I don't know, I'm trying to get a better feel that it's going to be safe and alright. What would the
580 Planning Board do differently if...?
581

582 JIM SMITH: I don't think they could do much with it.
583

584 NEIL DUNN: But, would they have requirements as far as the cut, the...I don't know, I'm really concerned
585 about safety, and I'm trying to help get over that. I understand how unique it is...
586

587 [Overlapping comments]
588

589 MICHAEL SCOTT: Can I maybe address that a bit?
590

591 NEIL DUNN: Oh, absolutely.
592

593 MICHAEL SCOTT: I'll try to address some of it. First of all, there isn't going to be vehicles going in and out, and
594 there's...you can actually egress from there along the drive to Stokes Road which is not as busy of a road
595 there. The only traffic that comes out of there...these are not going to be moving in and out. They're going
596 to be on display, so you're not going to have a lot of movement in and out. The only movement you have in
597 and out of there are the people...the residents that have...four different cars. Its two cars per residence there
598 that are using that drive to access the highway, or Stokes Road. So, It's not increasing the burden to that
599 intersection. I don't know if you're picturing and that there's people coming and there's 10 cars viewing
600 these tractors. That is not what's happening. This is just an overflow, so that people that see those vehicles

601 on their listings at 395 Mammoth Road can come over and come look at that by appointment, but it's really
602 not in our opinion increase the burden to that intersection.

603
604 NEIL DUNN: Well, I know I love tractors and trailers...I would definitely pull in there before I went up to 395.
605 Again, I'm more concerned about the safety...if there is something we should be looking at?

606
607 [Overlapping comments]

608
609 NEIL DUNN: ...I was just trying to get a better handle on that...

610
611 MICHAEL SCOTT: I understand your concerns, I think that maybe...it's not as serious as all that as far as
612 having to go to the Planning Board for it.

613
614 NEIL DUNN: No, I just...kind of things they'd be looking for, or the State that maybe we should be trying to
615 consider that's all?

616
617 JIM SMITH: I think Neil with those things and stuff on that site there's already a certain amount of...

618
619 NEIL DUNN: Right...

620
621 JIM SMITH: ...incidental traffic going in and out of there. This may even limit the traffic to some extent
622 because it wouldn't be as easy...also the problem with people just randomly dumping stuff...

623
624 NEIL DUNN: Oh, absolutely.

625
626 JIM SMITH: ...under more control, so if we have no other further questions?

627
628 JACKIE BENARD: One more question?

629
630 JIM SMITH: Okay.

631
632 JACKIE BENARD: Your...it is an unmanned lot?

633
634 MICHAEL SCOTT: That's correct; it's not got a permanent employee there. It's not...

635
636 JACKIE BENARD: So, nobody from the two houses would monitor that lot?

637
638 MICHAEL SCOTT: No.

639
640 JACKIE BENARD: Okay.

641
642 MICHAEL SCOTT: No, those are actually renters. Its residential businesses.

643

644 JACKIE BENARD: Okay. Okay, thank you.

645
646 JIM SMITH: Okay. If there's nothing else, we'll close the hearing at this point and take it under advisement.

647
648 **DELIBERATIONS:**

649
650 DAVE PAQUETTE: Does this...the variance for mobile home sales that was given in 1965 still stand right? So
651 the property...

652
653 JIM SMITH: Technically, yeah.

654
655 DAVE PAQUETTE: Technically, it has the variance to sell mobile homes?

656
657 JACKIE BENARD: Yes.

658
659 DAVE PAQUETTE: To me, I'd rather see tractors than mobile homes, but...

660
661 JIM SMITH: Yeah, the variance runs with the land.

662
663 DAVE PAQUETTE: Right.

664
665 [Overlapping comments]

666
667 NEIL DUNN: They didn't put sunsets on them back then?

668
669 JIM SMITH: No.

670
671 [Overlapping comments]

672
673 JIM SMITH: I think one other...the key thing is about this piece of property it is unique. It's very limited in
674 size. It's limited by the amount of wetlands. I don't think there's much else you can do with it. I think part of
675 it you have to remember is C-I is typically kind of a butter between the C-II and the residential, but this
676 already has some residential use on the property, and given how it's surrounded by wetlands type thing, I
677 don't think there's going to be much development around that site. Also, the adjacent site is probably one of
678 the more unique sites. The one just up the road, it has...I'm not sure what's in there at the present, but at
679 some point it had an auto repair, offices and a restaurant. That was one of the more unusual mixes of uses in
680 one building I always thought. Also, the site has been used for dropping off stuff. I think if anything, it would
681 control it. It would be an improvement.

682
683 DAVE PAQUETTE: I agree.

684
685 JACKIE BENARD: Because what its current previous use from 1965 would stand. So, if he bought it, he could
686 put mobile homes there without any...

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DAVE PAQUETTE: So, now we're just changing the product for that area.

JACKIE BENARD: We're probably maybe changing it to a cleaner product?

DAVE PAQUETTE: Um.

JIM SMITH: Yeah. I think tractors is...doesn't clearly represent what he's selling. Because I think a tractor...when I first thought of it...put tractors on a tractor trailer truck.

[Overlapping comments]

JIM SMITH: Which has had nothing to do with this, but again...English language and words don't always come out. Meaning what you're saying and what we are interpreting can be two different things. So...

JACKIE BENARD: I thing when we go through, and we approve this, then we cleanup that language for tractors, so that it couldn't...

JIM SMTIH: Yeah.

JAKCIE BENARD: ...construed.

[Overlapping comments]

DAVE PAQUETTE: Yeah, how do you define...lawn tractor?

JACKIE BENARD: We could state...

DAVE PAQUETTE: Agricultural?

[Overlapping comments]

JIM SMITH: Agriculture will probably be the better term. Yeah.

DAVE PAQUETTE: Okay.

JACKIE BENARD: Just so we don't have tractors, and trailers...

NEIL DUNN: Some of those can be bigger than a house you know.

JIM SMITH: I fully understand that. I mean some of those large farm tractors are really enormous.

NEIL DUNN: So, would this impact...still impact putting a mobile home on it?

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JIM SMITH: Well, that variance still stands.

NEIL DUNN: I mean this is less intensive when you figure out there's a running variance.

JIM SMITH: Yeah, Okay.

NEIL DUNN: It gets back to the safety.

JIM SMITH: Why don't we go through the five points of law...and then...

[Overlapping comments]

JIM SMITH: ...read the first one off and we'll go from there.

NEIL DUNN: The variance will not be contrary to the public interest because?

JIM SMITH: It would...how would you say it?

NEIL DUNN: According to the applicant it would not alter the character of the existing neighborhood, and I agree with that.

JIM SMITH: And, there are very similar uses within the neighborhood.

NEIL DUNN: You might even say, it's less intensive than the existing variance for mobile homes that would be pulled in and out of there. Again, when I first heard tractors, I really went to safety at that intersection...so, I guess based on what it could do probably not as bad?

JIM SMITH: Okay, the next one. The spirit of the ordinance would be observed, or not observed?

NEIL DUNN: Well, the applicant states the spirit of the Town zoning ordinance relative to C-I sub district promote Town servicing activities for the establishment of planned business center development should be encouraged.

DAVE PAQUETTE: I know my family has purchased multiple pieces from him so...

JACKIE BENARD: It's an extension of a present day...

DAVE PAQUETTE: Right.

JACKIE BENARD: ...Town business.

JIM SMITH: Yeah.

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JACKIE BENARD: It's just an extension of his present day. So, the spirit of the ordinance is observed.

JIM SMITH: Okay, number 3, granting the variance would, or would not do substantial justice because...

NEIL DUNN: I don't really care much for the answer that was given all being based on financial. I think it has more to do with the lot and you know, so many of these tie together. The existing variance for the mobile homes and the character of the neighborhood...you know, there's nothing really gained by the Town by enforcing that, and that's where I'm looking at the substantial justice. I don't necessarily care for the just the monetary thing on something that was just purchased. So, in my eyes, it's more that its...

JACKIE BENARD: Well, wouldn't it be that the substantial justice is due to the uniqueness of this lot? You really can't do anything else with it.

NEIL DUNN: Right.

JACKIE BENARD: And, I agree with you, so not much the monetary value.

NEIL DUNN: I'm good with that.

JACKIE BENARD: Okay.

JIM SMITH: [Indistinct]...values surrounding properties would not be diminished. It's not changing much of anything, so I don't think there is any effect.

JACKIE BENARD: Okay.

JIM SMITH: [Indistinct]...distinguish it from other properties in the area...the variance would result in unnecessary hardship because...

JACKIE BENARD: I guess again, I'm going back to the uniqueness of this lot, it...

JIM SMITH: Yeah.

DAVE PAQUETTE: And, the wetlands that surround it.

JACKIE BENARD: ...and the wetlands...

[Overlapping comments]

NEIL DUNN: So, it really falls more into Part B of 5. Wouldn't we agree?

JIM SMITH: Yeah.

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DAVE PAQUETTE: Yeah, I agree.

JIM SMITH: Yeah, probably fits with Part B better.

DAVE PAQUETTE: It cannot be reasonably used in strict conformance with the ordinance.

NEIL DUNN: ...to special conditions of the property that distinguishes it from others?

JIM SMITH: Yeah (i.e., the amount of wetlands). Okay. Accept the motion?

[Overlapping comments]

NEIL DUNN: Do you want to talk to the applicant's statement that he would limit it not to exceed 10 trailers, tractors, or vehicles?

DAVE PAQUETTE: 10 total pieces?

JACKIE BENARD: 10 total pieces?

NEIL DUNN: That's what he put...the numbers of tractors, trailers, or vehicles at any time shall not exceed 10.

JIM SMITH: Okay, why don't you make a motion and then add those to it.

NEIL DUNN: Well, I was trying to get it written up and then see what else is here before...

DAVE PAQUETTE: And, we want to talk specifically to...

JACKIE BENARD: ...We want to clarify what the tractor is.

DAVE PAQUETTE: ...agricultural...

JACKIE BENARD: Yeah.

DAVE PAQUETTE: ...agricultural.

JACKIE BENARD: ...because it's not clear in the applicant's application.

JIM SMITH: You want to say small agricultural tractors?

JACKIE BENARD: Yes.

DAVE PAQUETTE: Restrict to 10 pieces?

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860 JIM SMITH: Alright, at the property at any one time.
861
862 JACKIE BENARD: So, a restriction of a maximum...
863
864 JIM SMITH: Yeah.
865
866 DAVE PAQUETTE: Restrict to 10 pieces of equipment.
867
868 JACKIE BENARD: And, we're going to call it small agricultural tractors, and trailers.
869
870 JIM SMITH: Agricultural landscaping.
871
872 NEIL DUNN: Close enough. Define small?
873
874 DAVE PAQUETTE: I know, right.
875
876 NEIL DUNN: 100 horsepower.
877
878 [Overlapping comments]
879
880 JACKIE BENARD: Don't even write horsepower.
881
882 [Overlapping comments]
883
884 NEIL DUNN: I don't think he's going to sell too many of those big columbines there.
885
886 JIM SMITH: I don't think I've ever seen that type of tractor in this Town?
887
888 DAVE PAQUETTE: Well, I guess not in apple orchards and stuff you're not going to have much.
889
890 JIM SMITH: Even their tractors aren't that big.
891
892 DAVE PAQUETTE: Right.
893
894 JACKIE BENARD: Alright, so it's going to be a restriction of a maximum of 10 pieces combined of small
895 agricultural tractors, and or trailers.
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897 NEIL DUNN: And, vehicles.
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899 JIM SMITH: And, or their trailers.
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901 JACKIE BENARD: And...

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NEIL DUNN: And, or vehicles.

JIM SMITH: Yeah.

JACKIE BENARD: Okay.

JIM SMITH: Okay, now can we have a motion?

JACKIE BENARD: Neil?

DAVE PAQUETTE: Mr. Chairman, in regards to Case No. 10/21/2015-1, I'd like to raise a motion to grant the variance based on granting the variance would not be contrary to the public interest because it would not alter the character of the neighborhood, nor threaten public safety. The spirit of the ordinance would be observed by offering a Town service and business activities. Granting the variance would do substantial justice due to the uniqueness of the lot and surrounding wetlands. For the following reasons, the values of the property would be diminished. We'd have finding of impact to the property value. Knowing the special conditions of the property that distinguish it from other properties in the area denial of the variance would result in unnecessary hardship because the property cannot be reasonably used in strict conformance with the ordinance, and the variance is therefore necessary to enable a reasonable use of it. There's special conditions of the property for example the wetlands. We'd like to restrict to 10 pieces of equipment at any time and limit it to small agricultural and landscaping equipment and or trailers, and to we want to say cars as well?

JACKIE BENARD: I called it vehicles.

DAVE PAQUETTE: Vehicles? So, limit....restrict to 10 pieces of equipment at any time. Limit it to small agricultural and landscaping equipment and or trailers and vehicles.

JIM SMITH: Do I have a second?

JACKIE BENARD: I second.

JIM SMITH: Okay, seconded. All those in favor?

ALL: Aye.

RESULTS:

THE MOTION TO GRANT CASE NO. 10/21/2015-1 WAS APPROVED WITH RESTRICTIONS, 4-0-0.

RESPECTFULLY SUBMITTED,



945
946 DAVE PAQUETTE, CLERK

947
948 TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
949 SECRETARY.

950 **APPROVED (X) WITH A MOTION MADE BY X, SECONDED BY X AND APPROVED 0-0-0.**
951

DRAFT

Oct 21, 2015

To whom it may concern,

I'm writing in regards to Brian Stowell's request for a variance to allow vehicles sales on an existing residential property.

I'm concerned that if this is allowed the value of my property will decrease.

My property - Map - lot 15-1370

242 Rockingham Rd -

If anyone is interested in buying our property - we would be willing to sell at a reasonable price.

Thank you,

Christine Fitzgerald Coutts

236 ROCKINGHAM ROAD, 15-147; ONE PREVIOUS CASE:

CASE NO.	APPLICANT	REQUEST	DECISION
4/12/65-3	Homer L BOCKMON	1) Special Exception to use parking lot for sale and display of Mobile Homes.	GRANTED WITH RESTRICTIONS



LAW OFFICES OF
SCOTT & SCOTT P.A.

MICHAEL J. SCOTT
MICHELLE E. SCOTT
Of Counsel:
ANDREW D. JEANS†

† ADMITTED NH / MA

October 21, 2015

ELECTRONICALLY TRANSMITTED

Jaye Trottier
268B Mammoth Road
Londonderry, NH 03053

**Re: Case No. 10/21/2015-1; 232-236 Rockingham Road, Tax Lot No. 15-147;
Memorandum and Exhibits for October 21, 2015 ZBA Hearing**

Dear Ms. Trottier:

I have enclosed a Memorandum with Exhibits for review by the Chairman and Zoning Board of Adjustment members in the above-referenced matter. I will be in attendance along with Mr. Stowell and Jen Adams, a local realtor.

Thank you for your consideration.

Sincerely,

Michael J. Scott

MJS/pf
Enclosures
cc. Brian K. Stowell

MEMORANDUM

To: Town of Londonderry Zoning Board of Adjustment
From: Michael J. Scott, Attorney for Applicant, Brian K. Stowell
Re: Case No. 10/21/2015-1; 232-236 Rockingham Road, Tax Lot No. 15-147 (the "Premises") (See Deed and aerial view attached as Exhibits A & B, respectively)

A. **Variance.** Application for Appeal/Variance to allow vehicle sales on an existing residential property where otherwise not allowed in the C-1 zone according to Section 2.2, Table of Uses, and not a permitted use in the Route 28 Performance Overlay District (POD) according to Section 2.6.2.5.

1. **Voluntary Restrictions of Use.** The Applicant intends to use only the paved area of the Premises for the parking, display and sale of tractors, trailers and/or registered vehicles (taken in trade). The number of tractors, trailers and/or vehicles on the Premises at any one time shall not exceed ten (10). The paved area shall not be increased in area or changed in configuration, nor will trees be cut or site work be conducted to accommodate the use. The paved area will otherwise be reasonably maintained by the Applicant. None of the improvements (two single family homes) at the Premises shall be used in any way as offices or places of business to accommodate the proposed use, and no employees shall be employed exclusively at the Premises (although employees will visit the Premises from time to time to show inventory to prospective customers). No lighting, utilities, fuel tanks or signage (with the exception of "For Sale" signs posted on the tractors, trailers and/or vehicles) will be added to the Premises. No repairs to the tractors, trailers and/or vehicles will be conducted at the Premises. All customer sales will be transacted at 395 Mammoth Road, Londonderry, New Hampshire. None of the tractors, trailers and/or vehicles will be positioned on the Premises as to impede ingress or egress by occupants of the residential dwelling or emergency vehicles nor will line of sight be impeded. Tractors will be transported to the Premises by trailer and none of these will constitute a "wide load" transport. Adequate commercial insurance coverage will be maintained on the Premises to cover the intended use.

B. **Current Zoning Designation.** The Premises is currently designated as C-I on the Town of Londonderry Zoning Map (See Zoning Map attached as Exhibit C), and also falls within the Route 28 Performance Overlay District ("POD"). The Premises is abutted by Heritage Truck & Automotive zoned C-II on the same side of Rockingham Road; 501 Pizza Subs & Deli, Acme Armament and Hong Kong Taste directly across from the Premises (zoned C-1); and the Mobile Station across from the Premises (zoned C-II). Behind the Premises are manufactured homes in the residential zoned district.

C. **Variance Criteria**

1. *The variance will not be contrary to public interest.* The use of the Premises proposed by the Applicant will not "alter the essential character of the neighborhood" nor will it "threaten the public health, safety or welfare". See Farrar v. City of Keene, 158 N.H. 684 (2009). The display of vehicles for sale is already taking place, at a much greater

magnitude, at Heritage Truck & Automotive, Applicant's abutter. Also, for many years, the prior owner of the Premises, Bochman Mobile Homes was displaying "For Sale" manufactured homes in the same paved area of the Premises. Across from the Premises, Applicant's abutter, the Mobile Station, consistently has vehicles parked or otherwise located on its lot for extended periods of time. The manufactured homes to the rear of the Premises will not have a view of the tractors, trailers and/or vehicles parked on the Premises as trees and foliage create a natural line of sight barrier. Based on these circumstances, the Applicant does not believe his proposed use will negatively impact or otherwise alter the essential character of the neighborhood.

Currently with the two single family residences located on the Premises there are 4 to 6 vehicles entering and exiting the Premises via Rockingham Road or Stokes Road. Since Applicants customers will only be permitted to view the tractors, trailers and/or vehicles on the Premises by appointment, vehicular traffic exiting or entering Rockingham Road or Stokes Road, will not be significantly increased. Based on Applicant's Voluntary Restrictions of Use, there will be no exterior lighting or signage to distract drivers or disturb residential abutters. Also based on the Voluntary Restrictions of Use, neither residential occupants nor emergency vehicles ingress and egress will be impeded by Applicant's proposed use. No repairs or fuel storage will take place on the Premises thus eliminating environmental risks related to Applicant's proposed use. None of the tractors on the Premises will be driven to the site, but rather will be transported by trailer thus eliminating traffic concerns. Based on the foregoing, Applicant does not believe that his proposed use will threaten public health, safety or welfare.

2. *The spirit of the ordinance is observed.* The objective or "spirit" of Town of Londonderry Zoning Ordinance relative to the C-I sub district is to promote "[t]own-servicing business activities where the establishment of planned business center development shall be encouraged." The objective or "spirit" of the C-II sub-district is "to encourage the development of business areas designed to serve the motoring public." Although the Applicant will have traded vehicles on the Premises that can be more aptly viewed as serving the motoring public, the major activity that the Applicant is pursuing with the intended use is to retail sell tractors and trailers. These tractors and trailers are used by agricultural business and other businesses to maintain their business properties. Tractors and trailers cannot be reasonably viewed as serving the motoring public. The Applicant believes that his proposed used does not significantly offend the "spirit of the ordinance" relating to the C-I sub district.

3. *Substantial justice is done.* The Applicant estimates that with his ability to place the tractors, trailers and/or vehicles on the Premises for sale it will allow his business at 395 Mammoth Road, Londonderry to generate approximately \$30,000.00 to \$40,000.00 in additional gross business revenue annually. The Premises currently generates rents of \$32,400.00 in annual rents from the two single family homes.

To enforce the use restriction of C-1 zoning on the Premises would therefore cause significant economic loss to the Applicant which would outweigh any gain to the public. Based on this analysis, substantial justice would be done if the Applicant's variance were granted.

4. *The values of surrounding properties are not diminished.* The values of surrounding commercial and residential properties abutting the Premises have not fluctuated significantly over the past decade, and in the opinion of Jen Adams, a local realtor, and based on


the character of property uses in the general surrounding area, will not be negatively impacted or experience a diminution in should Applicant's proposed use be permitted.

5. *Literal enforcement of the provisions of the ordinance would result in an unnecessary hardship:* The Premises is currently configured so that no additional structure conforming to C-I sub district guidelines and specified uses could be constructed by Applicant. There is insufficient room for a 60 foot set back from Rockingham Road or Stokes Road and corresponding set back requirements relative to the two other single family homes without impinging on wetland area in the forested portion of the Premises. The Premises is "unique" as unlike other properties in the area designated C-I, it is improved with two nonconforming single family homes. See Garrison v. Town of Henniker, 154 N.H. 26, (2006). The space to be used by Applicant is a large paved area, and the proposed use, namely the display (for sale) of tractors, trailers and/or registered vehicles is well suited for that space. As indicated, the proposed use would approximately double the Applicant's income from the Premises.

In light of the nonconforming uses already at the Premises and the uniqueness of the Premises, "no fair and substantial relationship exists between the general public purposes of the [C-I zoning provisions] and the specific application of that provision to the [Premises]" See Harrington v. Town of Warner, 152 N.H. 74, 80 (2005). Therefore, denial of Applicant's variance would appear to interfere with Applicant's most reasonable use of the Premises.

Respectfully Submitted,
BRIAN K. STOWELL, APPLICANT
By His Attorneys,
SCOTT & SCOTT, P.A.

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By: 
Michael J. Scott
P.O. Box 1055
Londonderry, NH 03053
(603) 434-3426 P
(603) 437-0022 F
mscott@scottandscottpa.com