

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

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DATE: FEBRUARY 18, 2015

CASE NO.: 2/18/2015-1

APPLICANTS: JACK A. SZEMPLINSKI  
1F COMMONS DRIVE, SUITE 35  
LONDONDERRY, NH 03053

HAROLD KICZA  
86 ADAMS ROAD  
LONDONDERRY, NH 03053

LOCATIONS: 62 REAR ADAMS ROAD, 6-113-1, AR-I;  
86 ADAMS ROAD 6-90 AR-I; AND  
88 ADAMS ROAD, 6-90-1, AR-I

BOARD MEMBERS PRESENT: JIM SMITH, CHAIR  
JIM TIRABASSI, VOTING MEMBER  
JACKIE BENARD, VOTING MEMBER  
BILL BERARDINO, VOTING ALTERNATE  
NEIL DUNN, ACTING CLERK

REQUEST: VARIANCE TO ALLOW A SUBDIVISION TO CREATE A LOT WITH LESS  
THAN 30,000 SQUARE FEET OF CONTIGUOUS NON-WETLAND AREA  
AS REQUIRED BY SECTION 2.3.1.3.1.4.3.

PRESENTATION: Case No. 2/18/2015-1 was read into the record with one previous case listed.

JIM SMITH: Okay, who will be presenting?

JOSEPH MAYNARD: Good evening, my name is Joseph Maynard. I'm from Benchmark Engineering. I'm here to represent the application.

JIM SMITH: Okay, go ahead.

JOSEPH MAYNARD: Alright, this evening we were back before the Board for a couple of other items for relief for this lot line adjustment to happen. Primarily tonight the one lot we are talking about is the lot

42 that has the existing house. It's tax map 6 lot 90. During final review with the Planning staff a condition  
43 came forth from their comments that there's an existing drainage easement that exists on the  
44 neighboring property. They would like us to extend that drainage easement through our property to the  
45 edge of the wetlands. When that drainage easement goes on the plan, it bisects the useable area of that  
46 lot that's required by law under the ordinance for that section that's sited being 2.3.1.3.1.4.3 where  
47 under that ordinance we're required to provide at a minimum of thirty thousand (30,000) square feet of  
48 contiguous non-wetland area, and a proper configuration adequate to accommodate all housing and  
49 required utilities such as sewage disposal, water, wetlands and so forth. When that easement goes  
50 through that area, it bisects our thirty thousand (30,000) square feet of usable area. It now means that  
51 we have twenty thousand (20,000) square feet from that easement to the street, and the residual of the  
52 area is that the back side of that easement...that easement would go right in this general area which  
53 would bisect the green area. That's our thirty thousand (30,000) square feet of contiguous area.  
54 Drainage easements need to be subtracted from all of our lot size calculations, but the lots still meets  
55 area requirements except for the contiguous requirement under that section of the ordinance.  
56 Understood?

57  
58 JIM SMITH: Okay, what's the area to the rear?

59  
60 JOSEPH MAYNARD: To which area?

61  
62 JIM SMITH: It's in tan color.

63  
64 JOSEPH MAYNARD: This is a wetland.

65  
66 JIM SMITH: Okay, where's the...?

67  
68 JOSEPH MAYNARD: That's the drainage easement on the abutting lot...

69  
70 JIM SMITH: ...okay, what's the area of this lot?

71  
72 JOSEPH MAYNARD: The entire area of the lot?

73  
74 JIM SMITH: Yeah, just draw the outline. Trace the outline.

75  
76 JOSEPH MAYNARD: Sure.

77  
78 JIM SMITH: Okay, okay.

79  
80 JOSEPH MAYNARD: And again this is the lot that has the existing home on it now that is already  
81 developed. The house has been in this location since the 1940's. It has a septic system. It has a well. It

82 exists as it exists today. Whether this area is twenty thousand (20,000) square feet on this side of the  
83 easement, or it technically is contiguous, but what happens when we create these drainage easements,  
84 we deed them to the town. So the town has the right to come in and clean out, or maintain a drainage  
85 easement. So it creates a physical disturbance between our contiguous buildable or contiguous area as  
86 required by the ordinance. They also require by the ordinance. They also require us to extend that  
87 easement to the edge of the wetlands, so therefore we do not end up with a contiguous area of dry  
88 upland between the edge of the easement and where the wetland would be. So the requirement to put  
89 the easement is actually creating a separation between the continuity of the lot.

90  
91 JIM SMITH: Is this going to be an open drainage easement? Open drainage?

92  
93 JOSEPH MAYNARD: It's an open...it would be an open drainage easement, yes.

94  
95 JIM SMITH: Would it make any difference if it was an enclosed pipe?

96  
97 JOSEPH MAYNARD: No, it wouldn't make any difference whether it's an enclosed pipe, or an open pipe.

98  
99 JIM SMITH: Okay.

100  
101 JOSEPH MAYNARD: Just because you'd still have soil area. There's still continuity of soil area. It's just  
102 there's a break with a drainage easement that is granted to the town between the two sides of it.

103  
104 JIM SMITH: Okay, anything else. Do you want to address the five points?

105  
106 JOSEPH MAYNARD: Sure, I'll go through the five points. Under one, the variance would not be contrary  
107 to the public interest being that tax map 6 lot 90 is presently developed with an old home there is no  
108 additional construction or alteration proposed to the area where the existing home currently sits. The  
109 spirit of the ordinance is observed under number two. This property is fully improved with a house,  
110 septic system and well. All improvements did fully meet the regulations at the time of the original  
111 construction. There are no changes to the developed part of the lot where the house sits. Under three  
112 substantial justice is done. They'll be no change to this property visually. The house along with all  
113 existing improvements will remain unchanged. This will allow for the adjustment of the property  
114 lines...the lot lines with the adjacent properties, and allow all of the existing improvements to remain as  
115 they are. Four, values of surrounding properties are not diminished. There's no change to the existing  
116 buildable portion of the lot. This home existed for many years, and they'll be no visual change that  
117 would affect property values. Under 5(B), if the criteria in subparagraph A are not established an  
118 unnecessary hardship will be deemed to exist if and only if only to special conditions of the property that  
119 distinguish it from other properties in the area. The property cannot be reasonably used in strict  
120 conformance with the ordinance, and a variance is therefore necessary to enable a reasonable use of it.  
121 The improved portion of the property is separated by a large wetland from any other land owned by the

122 involved parties. The requirement by the town to add a drainage easement within the improved portion  
123 of the site will bisect the developable area that is currently existing leaving only twenty thousand  
124 (20,000) square feet on the existing house side of the drainage easement. There is no additional  
125 contiguous upland available to make the front part of this lot any more conforming.

126  
127 JIM SMITH: Okay, the existing septic system. Will it still meet the setback requirements?

128  
129 JOSEPH MAYNARD: Well, the existing septic system is pre-existing non-conforming situation. When we  
130 went through the state subdivision approval for this lot as you see it, we did show a 4K (4,000) area  
131 which would be the reserve or replacement area when a septic system needed to go on this lot. That  
132 would meet those requirements of both the town and the state regulatory things. It's actually show just  
133 in this corner of the lot which would put it up outside of all those setbacks. We did conduct test pits in  
134 that area. It's very sandy soil. There's property area and so forth in able to design a septic system in  
135 that area if it ever needed to be, or when it's needed to be.

136  
137 JIM SMITH: Any questions from the Board? Neil...?

138  
139 NEIL DUNN: Mr. Chairman, so is that the little square on the drawing that's next to the approved septic  
140 location, or approximate?

141  
142 JOSEPH MAYNARD: The approximate septic is this hatched area.

143  
144 NEIL DUNN: Um, hmm.

145  
146 JOSEPH MAYNARD: That's a shed the brown that....

147  
148 NEIL DUNN: Okay.

149  
150 JOSEPH MAYNARD: ...is on my map. This stippled area with the dots in front of it that's labeled "4K"  
151 area that's a state requirement to show that we put a four thousand (4,000) square feet of available  
152 land for replacement septic system. It's a subdivision requirement mandated by the state that shows  
153 that that area meets setbacks and criteria for a possible replacement septic system in the future.

154  
155 JIM SMITH: Any other questions?

156  
157 NEIL DUNN: Yes, if I may Mr. Chairman? So we're not really redrawing any of the lot lines. It's only  
158 because that easement is cutting through. Because the lot lines were adjusted last time you were here?

159  
160 JOSEPH MAYNARD: Well, I'm trying to get through the Planning Board process to finish that adjustment  
161 of the lot lines. There's no new lots created here. These are all lots. We're just cleaning up the lot lines

162 that were all over the place from prior years between the three properties. So the house exists in the  
163 portion of the lot that it has always existed on. Even if it had land on the other side of the wetland, it  
164 wouldn't serve the house any general purpose to have additional...in order to meet the ordinance after  
165 putting this easement in, I would have to give thirty thousand (30,000) square feet on the other side of  
166 the wetland, and show that I meet a thirty thousand (30,000) square foot area...

167  
168 NEIL DUNN: No, and I understand that, but I thought the last time you were here you did adjust lot  
169 lines? So are those physically changing again?

170  
171 JOSEPH MAYNARD: No. No. The plan...

172  
173 NEIL DUNN: Okay...

174  
175 [Overlapping comments]

176  
177 JOSEPH MAYNARD: It's just we haven't made it through the whole process yet.

178  
179 NEIL DUNN: Right.

180  
181 JOSEPH MAYNARD: This came up in the ninth hour.

182  
183 NEIL DUNN: So this is just because this easement is disrupting the thirty thousand (30,000) square feet?

184  
185 JOSEPH MAYNARD: Thirty thousand (30,000) of contiguous area...

186  
187 NEIL DUNN: None of the lot lines that were moved last time are being moved again?

188  
189 JOSEPH MAYNARD: Nope. The adjustments that were previously proposed are what are shown on this  
190 plan and are what we're trying to resolve, so...

191  
192 NEIL DUNN: Thank you.

193  
194 JIM SMITH: Any other questions from the Board? No? This care at that point, I'll open it up to the  
195 public for anyone who is in support? Anyone in opposition, or has questions? Seeing none, I'll bring it  
196 back to the applicant. Anything further you'd like to say?

197  
198 JOSEPH MAYNARD: No, we just feel this is something that's needed to be done to finish cleaning this up  
199 so I can resolve the final things with this, but it really doesn't affect the way the lot is developed at this  
200 point and time.

201

202 JIM SMITH: Okay. In that case, we'll close the public hearing and take this under advisement at this  
203 point.

204  
205 DELIBERATIONS:

206  
207 JIM SMITH: Okay, questions? Comments? Wanna look at the five points and go down through them?

208  
209 NEIL DUNN: Sounds good.

210  
211 JIM SMITH: Okay, on the first one it says no additional construction, alteration proposed to the area  
212 where the existing home currently sits. So basically just maintaining the status quo, so I don't see how  
213 that would be contrary to the public interest at this point?

214  
215 NEIL DUNN: And relinquishing...essentially relinquishing control to the town if they needed it, so I would  
216 think that would be in the public interest?

217  
218 JIM SMITH: Yeah. Yeah, suppose you could say it that way.

219  
220 NEIL DUNN: Yeah.

221  
222 [Overlapping comments]

223  
224 JIM SMITH: Basically, it allows him to go in and maintain that drainage soil. In the spirit of the ordinance  
225 observed...no change...develop part of the lot, and number three substantial justice done? This basically  
226 allows that preceding variance that was granted to continue.

227  
228 NEIL DUNN: No impact on surrounding values.

229  
230 JIM SMITH: Okay, number four values of surrounding properties are not diminished. Essentially, we're  
231 maintaining what's there. On number 5(B) there is no other part of the property where they could come  
232 up with the required thirty thousand (30,000) square feet so it's the only way allow the drainage to be  
233 taken care of and allow this to be continued in its present use, I guess? Any other comments?

234  
235 [Overlapping comments]

236  
237 JIM SMITH: Not getting much import from the Board tonight. I'm sure we'll get it later.

238  
239 [Laughter]

240  
241 JIM SMITH: In that case, I'd entertain a motion.

242  
243 NEIL DUNN: Mr. Chairman, I'd like to make a motion to grant 2/18/2015-1.

244  
245 JIM SMITH: Okay, who will second?

246  
247 JACKIE BENARD: Second.

248  
249 JIM SMITH: All those in favor?

250  
251 ALL: Aye

252  
253 RESULT: THE MOTION TO GRANT CASE NO. 2/18/2015-1 WAS APPROVED, 5-0-0.

254  
255 RESPECTFULLY SUBMITTED,



256  
257 NEIL DUNN, ACTING CLERK

258  
259 TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING AND ECONOMIC DEVELOPMENT  
260 DEPARTMENT SECRETARY.

261  
262 **APPROVED APRIL 15, 2015** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JACKIE BENARD AND  
263 APPROVED, 5-0-0.