

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

DATE: APRIL 15, 2015

CASE NOS.: 3/18/2015-1 AND 3/18/2015-2 (CONTINUED)

APPLICANT: RIVIERVIEW, LLC
P.O. BOX 898
WINDHAM, NH 03087

LOCATION: 6 MOHAWK DRIVE, 6-38, C-IV

BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
JACKIE BENARD, VOTING MEMBER
JIM TIRABASSI, VOTING MEMBER
ANNETTE STOLLER, NON-VOTING ALTERNATE
BILL BERNADINO, NON-VOTING ALTERNATE
NEIL DUNN, ACTING CLERK

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

REQUEST: CASE NO. 3/18/2015-1: VARIANCE TO ALLOW A STRUCTURE TO
ENCROACH INTO THE 50-FOOT LANDSCAPE BUFFER AS REQUIRED BY
SECTION 2.4.3.B.2 [Formerly Section 2.4.3.2.2].

CASE NO. 3/18/2015-2: VARIANCE TO ALLOW PARKING TO ENCROACH
INTO THE 50-FOOT LANDSCAPE BUFFER AS REQUIRED BY SECTION
2.4.3.B.2 [Formerly Section 2.4.3.2.2].

PRESENTATION: Case Nos. 3/18/2015-1 and 3/18/2015-2 were read into the record with
four previous cases listed. Attorney Prolman provided an overview
related to both cases (pp. 1-5 below), then spoke specifically to Case No.
3/18/2015-1 beginning on p. 5 and to Case No. 3/18/2015-1 beginning on
p. 7 through p. 9.

JAMES SMITH: Who will be presenting?

ANDY PROLMAN: Mr. Chairman, members of the Board, good evening. My name is Andy Prolman. I'm an
attorney with Prunier and Prolman in Nashua, speaking on behalf of the applicant, Riverview, a limited
liability company. Sitting with me is Earle Blatchford from the Hayner/Swanson office, project engineer. And
together, we'll be presenting the case. Mr. Cor de Jong is unfortunately away on business, the owner of the
Riverview LLC, owner of the property, and he could not attend tonight. So with that, Mr. Chairman, I would

46 like to do an overview for the two variances and then address each one, each of the criteria separately. Oh
47 yeah, we can we have a projection of the...plan or we have a board that we brought with us as well.
48
49 JAMES SMITH: Possibly.
50
51 [Laughter]
52
53 ANDY PROLMAN: Understood.
54
55 JAMES SMITH: We don't have an IT person that is dedicated to these meetings.
56
57 [Pause]
58
59 JAMES SMITH: Is Al familiar with that stuff?
60
61 ANDY PROLMAN: We can work from our easel and our board, if you would prefer.
62
63 JAMES SMITH: Yeah, why don't we go ahead with that.
64
65 NICOLE DOOLAN: You should start with that.
66
67 ANDY PROLMAN: Okay.
68
69 [Laughter]
70
71 ANDY PROLMAN: Mr. Chairman, I want to start at the outset by modifying our application, if we could please,
72 with respect to the building setback...building in the landscape buffer. We had requested an encroachment
73 twenty (20) feet into the fifty (50) foot landscape buffer. We want to do two things to the plan; first is to
74 reduce that request to a ten (10) foot encroachment into the landscape buffer so that we would have a forty
75 (40) foot landscape buffer, not the thirty (30) that was originally requested.
76
77 JAMES SMITH: Okay. Going in that direction, I don't see any problem with that.
78
79 ANDY PROLMAN: That's typically...I understand that we can reduce a request but not increase because of
80 notice provisions. The second thing that is not shown on the plan that we want to add to the plan, if you can
81 visualize that we will be adding a six (6) foot solid fence on the rear and side lot lines between Lots 37 at 8
82 Mohawk and Lot 36, 6 Mohawk, the entire way. The applicant also owns the neighboring property that's
83 shown as Lot 37 on this plan. It's 8 Mohawk, and so in addition to the pulling back the building ten (10) feet,
84 we're going to be adding a ten (10) foot solid wooden fence on the back and side lot lines. So those are the
85 two modifications just at the outset, just to let you know. And those come as a result of our kind of back and
86 forth discussions with the neighbors, the Kendallwood Condominiums. I'll speak more to that in a bit, but we
87 want the Board to be aware of that at the outset. The proposal before you is for a high end, upscale wine
88 bistro. It is my client's hope and goal to bring something just fabulous and elegant, as he would say, to the
89 town that will be entirely upscale with a wine and beer license only. There's not a bar, this will not have a full

90 alcohol liquor license. The wine and beer will be accompanied by minimal and nominal food. The State liquor
91 law requires that food, a certain percentage of food...

92
93 JAMES SMITH: Before you go too much further, on the plan where it says "thirty (30) feet" and you're
94 increasing that to forty (40) feet, are you actually moving the building to do that?

95
96 ANDY PROLMAN: On both sides, yes.

97
98 JAMES SMITH: Okay.

99
100 ANDY PROLMAN: Pulling it back from the...if I could? Pulling it back from this rear lot line ten (10) feet, so it's
101 forty (40) foot on this side and then forty (40) feet on this side as well.

102
103 JAMES SMITH: Okay. Everybody understand that? Just so we know what we're talking about. Okay, go
104 ahead.

105
106 ANDY PROLMAN: Sure. The footprint of the building is approximately twenty seven hundred (2,700) square
107 feet, which was less than what was previously approved at this site. The inside of the building, I won't spend
108 a lot of time on this, this isn't really for a Zoning Board, but it is sixty (60) seats maximum, it's going to have an
109 art gallery, fountains, very luxurious. It'll have a two (2) story kind of barreled ceiling in the middle of the
110 building, a small kitchen toward the back and a small wine bar toward the back. The outside of the building is
111 intended to be a reclaimed brick and it is going to have granite trim. It is very particular and stylized. It is to
112 be...we provided some elevations with the application and those elevations are the pitched roof, and it's
113 supposed to be a long townhome-style building. Again, the intent of this style of the building, as opposed to
114 what was previously approved in the area, was to have more of a residential look because we recognize that
115 we're right on the border of a residential area. And so that was the intent of the building. And along in part
116 and parcel with the whole proposal are very formal English style, or French style, gardens that are going to be
117 part of the whole essential part of this entire project. You can see those on the plan. And those are very
118 important to my client and a part of the entire of the ambiance of the whole effort of this application. Just
119 generally speaking to the constraints of this lot, this is a very difficult lot. We have...I'm trying to get to my
120 plan real quick...we have double frontage setbacks of sixty (60) feet off of Mohawk and off of Granite Street.
121 And then we have then fifty (50) foot landscape buffer setbacks on the back of the two lot lines. In addition,
122 we have a wetlands pocket, we have stormwater detention areas out front. And then you have everything
123 that goes with development of a property; you have parking, building, septic, and then what my client
124 proposes to do with respect to the bistro, the wine bistro and the gardens that go with them. So it's a very
125 tight lot, a very difficult lot to work with. Mr. Dunn read a number of cases that have been before this Board
126 before and before the Planning Board as well. They have all been...some have been denied but most have
127 been approved in one form or fashion and yet there's nothing happening on this lot. Realtors call this a "failed
128 lot" because of the constraints and the difficulties with this lot, which is a shame because it's otherwise mostly
129 a flat lot that should or could be, you know, appropriately developed. The ordinance, what's driving this, is
130 the landscape buffer and the ordinance...I just want to quickly read to you the definition of "buffer" in your
131 ordinance. A buffer is define as "A combination of physical space and vertical elements, such as plants, berms,
132 fences or walls, the purpose of which is to separate and screen incompatible land uses from each other." We
133 have the Kendallwood Condominiums behind us and with what we're proposing, between the six (6) foot solid
134 fence and then the additional landscaping that's going to be in between the fence and the building, and

135 perhaps Earle can speak to that a little bit further, but between the fence and then the enhanced landscaping
136 that is proposed to be installed in between the fence and out building, we believe that we're going to be
137 providing that landscape buffer as defined in your ordinance. If I may, I want to submit a letter from Berkshire
138 Hathaway/Verani Realty with offices in town, Mr. Chairman [see Exhibit "A"]. Plenty of copies. This is from
139 Michael Scanlon, who you can see has been licensed and practicing in real estate in New Hampshire for over
140 twenty five (25) years and is a licensed broker for over twenty (20) years, again, with offices here in town. He
141 took a look at the site and he concludes that the application as was presented to Mr. Scanlon back in March
142 would not have any adverse effect on the value of the surrounding properties. I say that, when he looked at
143 the property back in March, because that was when there was the full request for the twenty (20) foot
144 encroachment into the landscape buffer, but we pulled that back ten (10) feet on both sides. In speaking with
145 Mr. Scanlon, what he relays is that the immediate neighboring property is a parking lot. If you can see the
146 Kendallwood Condominiums, this is building ten of the condominiums right here [see Exhibit "B"] and the
147 thought is if this parking lot and its building were reversed, if the parking lot was over here and the building
148 was close to our property, we would be impacting people's yards and their decks and their backyards, really.
149 But the movement of our proposed building, at that time twenty (20) feet but now ten (10) feet, did not have
150 any impact upon the Kendallwood Condominium values because, you know, we're right next to a parking lot
151 which has cars and bikes and trash receptacles or whatnot, so that was the thinking and analysis behind that.
152 Mr. Chairman, if I may ask, some time ago we submitted a traffic report from Steven Pernaw...do you have
153 that? Everyone have that?

154
155 JAMES SMITH: Is it in there?

156
157 JIM TIRABASSI: Yes, it is.

158
159 JACKIE BENARD: Yeah, it is.

160
161 JAMES SMITH: Yeah.

162
163 ANDY PROLMAN: Okay. I'm not a traffic engineer. Perhaps Earle could speak to this better than I can. I've
164 suffered enough traffic presentations that I can speak to them a little bit. What traffic engineers look to are
165 peak hour volume, because at peak hours, we have the most impact and volume on the roads and we're
166 looking for any potential conflict at the peak hours. And Mr. Pernaw, who's done work for the Town and a
167 well-respected traffic engineer, he talks about the volume of traffic that's going to be created at peak hours
168 from this wine bistro [see Exhibit "C"]. And using...on page six of his report, he speaks to a worst case scenario
169 of peak hours, using gross floor area analysis, as opposed to sixty (60) seats and he comes up with weekday
170 peak hours, trips in and out of our site of twenty six (26) trips, Saturday peak hours of thirty eight (38) trips,
171 using the ITE, the Institute of Transportation Engineers handbook. Their bible. When he does his analysis of
172 where those trips are going to go, where do they come from, ninety five (95) percent of those trips are going
173 to go out Mohawk to either 102 or to cut through the...

174
175 EARLE BLATCHFORD: Crossroads Mall.

176
177 ANDY PROLMAN: Crossroads Mall. Alright? So we have ninety five (95) percent of those twenty six (26) and
178 thirty eight (38) trips at peak hours going to 102 or through... cutting through the parking lot at Crossroads,
179 and that leaves on a weekday peak hours, one (1) vehicle is expected to go through...cut through Granite to

180 Boulder to Kendall Pond Road, which you'll hear the neighbors say that that happens...there's a lot of that cut
181 through traffic. We're not going to be adding to that with any significance. Saturday peak hours, we have a
182 grand total of possibly two (2) cars that are going to make that cut through from Granite to Boulder to...over
183 to Mammoth. And so Mr. Pernaw's conclusion, Mr. Chairman and members, you can see on page ten (10)
184 that he does not see any impact to the traffic conditions, roadway capacity, level of service, not to be
185 significantly affected by this project. So that's for the Board's consideration. Mr. Chairman, starting to turn
186 toward the variances themselves; again, we have two variance applications, the first of which I would like to
187 speak to is the parking variance. And...unless if I could stop for a second and catch my breath and ask Earle if
188 there's anything you want to chime in on?
189

190 EARLE BLATCHFORD: Not at this point, no.

191
192 ANDY PROLMAN: Okay. Mr. Chairman...

193
194 JAMES SMITH: Okay...

195
196 ANDY PROLMAN: Yup.

197
198 JAMES SMITH: The way we've got them in order, we've got the...

199
200 ANDY PROLMAN: Oh, do you have the other one first?

201
202 JAMES SMITH: ...fifty (50) foot...

203
204 EARLE BLATCHFORD: Structures first.

205
206 JAMES SMITH: ...buffer is the first one.

207
208 ANDY PROLMAN: Oh. Okay. Alright, I'm sorry.

209
210 EARLE BLATCHFORD: On the structure, yeah.

211
212 JAMES SMITH: That would follow along in how it's presented on the...in the computer.

213
214 [PRESENTATION OF CASE NO. 3/18/2015-1]:
215

216 ANDY PROLMAN: Again, just...I mean, you have my application, I'm not going to beat this up too much. It's
217 just reciting the facts of the variance application. But again, just to start out, we are pulling back the proposal
218 ten (10) feet on both directions. We have a six (6) foot fence to add and to really effectuate the proposed
219 buffer. The recent case law in New Hampshire tells us that we look at the public interest and the spirit and the
220 intent of the ordinance as very similar. They're taken hand in hand by the case law in New Hampshire. And
221 we look to whether this application is going to unduly and to a marked degree violate the basic zoning
222 objectives. That we can alter the character of the neighborhood with the application before the Board. And I
223 would say no to both of those. Again, the purpose of the landscape buffer is to segregate between
224 incompatible uses. We are going to be having that fence, we are going to be landscaping as much as possible,

225 working with Cynthia May and her team to have the landscaping as thick as possible between the fence and
226 the building so that when your neighbors look, you know, above the fence, they're going to see plenty of
227 green between the fence and the building. We believe that substantial justice will be done with this
228 application. Again, we have a very difficult lot that has been before this Board a number of times. It has been
229 before the Planning Board with nothing on it today. This application will allow my client to proceed with this
230 upscale wine bar and bistro and given what we're doing for the building itself, with the design of the building,
231 the residential look, the townhome, the pitched roof, plus the fence and the landscaping, we believe that we
232 will not be having any harm to any individual. This project is going to be well over \$1 million when completed.
233 I just, as a quick aside, this project is not being brought to you by a developer. Your typical developer would
234 not be going down this road. This is a passion for my client, who wants to bring something just fantastic to the
235 town. We... with Mr. Scanlon's letter from Berkshire Hathaway, we don't believe there'd be any adverse
236 effect upon the properties of the Kendallwood Condominium units, or any of the other properties in the
237 neighborhood. And finally, with respect to the hardship, Mr. Chairman...

239 JAMES SMITH: Did you hit substantial justice?

241 ANDY PROLMAN: I did. I can do it again.

243 JAMES SMITH: Yeah, I'm not sure if I...Go ahead, please.

245 ANDY PROLMAN: The Board has the record before you about the many applications, some of have been
246 approved, some have been denied, the Planning Board has approved this property in one fashion or another
247 and after all the years, we have an empty lot there today. We have any empty lot because it's a very difficult
248 lot with all the constraints. We believe that in granting the variance, you would be doing a great service to
249 substantial justice to Riverview, for Mr. de Jong, without any adverse impact to the neighbors. The
250 substantial justice standard is a balancing test by and large, and we don't see that there's any harm to
251 neighbors, while a significant gain to our client. Okay? With respect to the hardship, and I said at the outset,
252 we have a very unique lot. We have a lot that essentially has four (4) front yard setbacks. We have Mohawk,
253 we have Granite, and then you have on both sides the landscape buffer, a fifty (50) foot setback on the side, I
254 kind of say the rear from Mohawk and then the rear from Granite, so this is a very difficult lot, very tight lot,
255 very unique to the area. We've taken a look at all the other lots in the this area and we don't see anything
256 close to the constraints on this lot as opposed to other lots in the area. The two-part test for the hardship.
257 We look at the purpose of the landscape buffer is to have that screening, have that separation between the
258 incompatible uses. We believe that we're doing that and there would be no fair and substantial relationship
259 to prohibit that use, given what we're proposing to the Board. And we believe we have a reasonable use; the
260 use is allowed, the restaurant use, although my client would be very upset with me if I called it a restaurant.
261 The bistro use is an allowed use in either both C-I and C-IV. And given the unique nature of the lot, what we're
262 proposing to do with the screening, we believe we're presenting a reasonable use to the Board. And with
263 that, that is our building application. Marching on.

265 [PRESENTATION OF CASE NO. 3/18/2015-2]:

267 ANDY PROLMAN: The parking application, again, I'll go a little bit quicker this time, but there are some subtle
268 differences. The parking application, the parking area is encroaching into the fifty (50) foot landscape buffer in
269 two places; toward the back of the lot...I guess I should say to the back of the lot off Granite...here, which is a

270 thirty nine (39) foot proposed landscaped area from the back lot line to this sidewalk. And the sidewalk is
271 probably four (4) feet.

272
273 EARLE BLATCHFORD: Five (5) feet.

274
275 ANDY PROLMAN: Four or five feet?

276
277 EARLE BLATCHFORD: Yup.

278
279 ANDY PROLMAN: And then to the parking lot. So we have an eleven (11) foot encroachment on the, say the
280 back lot line from Granite to the parking lot and the landscape buffer. Along Granite, we have a similar
281 landscape buffer setback because on the other side of Granite, we have the Kendallwood property as well. So
282 where you have the zoning line, the zoning districts, one to the residential, to the commercial. We have the
283 fifty (50) foot landscape buffer setback here. We have a thirty four (34) foot distance from the front lot line to
284 the parking lot. So a sixteen (16) foot encroachment into the landscape buffer. I will also say that in some
285 form or fashion, parking encroachments into the landscape buffer haven't been approved by this Board a
286 couple different times, not only for this lot, 6 Mohawk, also there was one granted for 8 Mohawk with a Mr.
287 Winings, that LLC that we couldn't pronounce. "Astitidgi" or something like that. So this has been, not this
288 particular layout, but parking relief has been given with respect to the landscape buffer. And with respect to
289 the landscape...excuse me, to the parking, the one thing we're concerned about with parking as it impacts is
290 noise and headlights. Really nighttime headlights. Here we have a bistro and we're gonna be serving at night
291 and so the headlights are going to be coming in from Mohawk. This layout from Mohawk has been approved
292 by the Planning Board and this is the plan that would be proceeding. Headlights would be coming in toward
293 the bistro, pulling in, that's northward, on the back of the property. Again, you can see that our headlights
294 would not be heading toward the Kendallwood Condominiums, though. They're heading toward my client's
295 other property right here. Further, there'd be the fencing that we talked about. On this side, we'd have
296 headlights coming toward Granite Street, but again, there's gonna be enhanced landscape buffer and
297 plantings along Granite Street and then across Granite Street there's a very thick buffer the Kendallwood
298 Condominium common area has right now and... and I lost my train of thought. Which I will come back to.
299 But the...I'll come back to that. So we have...we believe we're not going to have any headlights or noise
300 effects from the parking. Addressing the criteria. Again, with respect to the public interest and spirit of the
301 ordinance, we...toward the back of the property, we're going to have the fence I spoke of, we're not going to
302 be adversely affecting the health or safety or general welfare of Londonderry with respect to either the public
303 interest or the spirit of the ordinance. We're gonna be keeping the character of the neighborhood. The
304 encroachment of the parking will not adversely affect the character of this neighborhood. Same comments
305 with respect to the substantial justice. The property is a very difficult property. It's constrained in many
306 different ways. Allowing the property to go from a failed lot to a usable lot would do substantial justice to our
307 client and the parking encroachment would not have any harm to the folks at Kendallwood or anyone else in
308 the neighborhood. Again, you have Mr. Scanlon's testimony, his letter from Berkshire Hathaway with respect
309 to the value of this...not the value, but that there's no impact to the value of the property and again, my
310 client's going to spend a healthy amount of money developing this site. With that, we don't see that there's
311 any impact to the neighboring property values as a result of the parking encroachment into the landscape
312 buffer. And similar with respect to the hardship criteria. Again, we have multiple setbacks all over this lot.
313 The parking is going to be outside the...or within the allowable setback area to the thirty (30) feet that we're
314 allowed to do. The parking...allowing the parking...I'm sorry...the purpose of the landscape buffer, again, is to

315 have that separation. What we're doing with the fencing and where we are on the front of the lot, when you
316 consider that, there'd be no fair and substantial relationship to prohibit the parking in the landscape buffer
317 setback. And again, we have a reasonable use; parking, as we all need parking spaces. We have a reasonable
318 use with this application. And that's all I have for now, Mr. Chairman. I might have some...another comment.
319 Do you have anything?

320
321 EARLE BLATCHFORD: Yeah, I just...relative to the parking. Just the parking that's facing Granite Street, one
322 thing the Board should note is that on the corner of Granite and Mohawk is a commercial lot. It's the parking
323 lot for the animal hospital. So it's really just the last few spaces on the right side as you come around the
324 corner that are part of this request. And then as Attorney Prolman pointed out, that the proposed six (6) foot
325 fence is going to be very effective in preventing any headlight encroachment. And then the orientation of the
326 space is...are such that they're pointing away from the Kendallwood units nearest us. But the fence will be
327 very effective in controlling any potential headlight encroachment.

328
329 JAMES SMITH: Okay. Does that conclude your presentation?

330
331 ANDY PROLMAN: That concludes...just one last comment, Mr. Chairman. We have...we reached out to meet
332 with the folks from Kendallwood. We met in this room about a month ago, just had a private meeting. And
333 I've been talking with their attorney. We're trying to find some middle ground, trying to find some agreement
334 that we can reach. We haven't got there yet. You're going to hear their opposition. They're opposed to this
335 application, which is okay. This does not mean that we're not going to continue to try talking and kind of
336 working out the differences, but I would just say anything that goes on this lot, as the Board can well imagine,
337 is going to impact the neighbors, and so we're trying to respect that. We're trying to keep the roofline as low
338 as possible, given what my client wants to do, and we believe with tonight, I just got authority tonight to say
339 this, but pulling back the building ten (10) feet, we think that's a healthy compromise from what we were
340 originally were looking to do. So I would leave it with that, Mr. Chairman, unless the Board had any further
341 questions.

342
343 JAMES SMITH: Okay, I'll open it up to the Board.

344
345 NEIL DUNN: Could you re-clarify the...number two point you made on changing the plan?

346
347 ANDY PROLMAN: Oh, sure.

348
349 NEIL DUNN: There's some facts I'm good on, but that number two point you were talking, I think, about
350 another lot that he owns and so if you can just go over that again, 'cause I...

351
352 ANDY PROLMAN: Sure. The second point. The first point was pulling the application back ten (10) feet in
353 both directions. The second point I wanted to say is that we're gonna be adding a six (6) foot solid fence to
354 the plan that was not shown on the plan that was made with the application. So we're gonna be adding that
355 fence and where we're gonna be adding that fence, just to be clear, my client owns the neighboring lot, 8
356 Mohawk, it's shown as Lot 37 on this plan. The fence is not going to go all the way to the street. The fence is
357 gonna go approximately parallel with this building, roughly, where the number 37 is on this lot, all this
358 side...side yard line, follow this back lot line, follow this back end side lot line all the way to here, and then

359 come up probably roughly halfway to...along this back lot line opposite Mohawk. So it's going to capture as
360 much as possible without having kind of a jailed look going all the way up to the street.

361
362 NEIL DUNN: And if I may, Mr. Chairman, you reference on application, case -2 that there was some precedent
363 set with allowing pavement to encroach. It looks to me like Lot 37 pavement is actually in Lot 38. Is that
364 correct?

365
366 ANDY PROLMAN: That's correct. One of the applications that made it through the Planning Board and
367 through this Board, and I can't recite the gyrations exactly, but there was a ...this Board and the Planning
368 Board approved shared parking...or shared access, rather, between the two properties. And as a result,
369 there's additional parking...there's a little bit of additional parking now, currently, on the lot before you to
370 service Lot 37, 8 Mohawk.

371
372 NEIL DUNN: Okay, so I guess that was my question because it looked like it was more than access. It looks like
373 there's parking there.

374
375 ANDY PROLMAN: There's a little bit of parking. A couple spaces on our lot today.

376
377 EARLE BLATCHFORD: They basically built...there were two (2) office buildings previously approved. They
378 basically built the first one and the parking necessary to support that. Didn't get around to building the
379 second building and parking. But it does share a single access off Mohawk.

380
381 JAMES SMITH: Any other questions? Comments? Okay, at this point I'll open it up to anyone who is in favor
382 of this.

383
384 ANDY PROLMAN: Thank you very much.

385
386 JAMES SMITH: Seeing none, anyone who is either in opposition or has questions? Would you please approach
387 a mic, identify yourself for the record.

388
389 TOM AYLESWORTH: My name is Tom Aylesworth, and that's spelled A-Y-L-E-S-W-O-R-T-H. And I'm an attorney
390 from Braintree, Massachusetts, and I represent the Kendallwood Condominium Association, the abutter. My
391 office is in Braintree, Massachusetts. I've been a New Hampshire attorney, though, I started in New Hampshire
392 and I've practiced here continuously for the last twenty (20) years. And so, as you heard from Mr. Prolman,
393 my client, the Kendallwood Condominium Association, is opposed to the variance applications for a number of
394 reasons. What I'm looking for is the date that that traffic study was submitted. Because my comments may
395 be pretty limited if...depending on that date, so...

396
397 NICOLE DOOLAN: I see March 6.

398
399 JACKIE BENARD: That's the date I thought I had saw...I just want to verify it is.

400
401 [Overlapping indistinct comments].

402
403 ANDY PROLMAN: It was March 6.

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TOM AYLESWORTH: March 6 [indistinct]...?

BILL BERARDINO: March of 14.

The data is March 3rd.

TOM AYLESWORTH: March [indistinct].

It says "Data Analysis" dated March 3rd.

ANDY PROLMAN: Okay, so it probably was the 6th when I emailed it in. I had a cover letter...

TOM AYLESWORTH: Ok.

ANDY PROLMAN: ...I just can't find it, so...

TOM AYLESWORTH: Alright. So, my opening is going to be that we're going to ask for a continuance and the reason is under New Hampshire's Right to Know Law, RSA 91-A, my client's agent, the property manager, Nicole Yergeau, and one of the Board members for the Association, went to the Town Clerk on the 13th of March, Friday the 13th. It was a couple of days before the first hearing before the Town Council on the variance application, the variance change application. And they specifically asked for "the entire file" on the variance applications. And we were not given the traffic study. And so that means that you can either deny on that basis or, what I would submit is the correct course of action under the Right to Know Law, would be to continue this hearing, give us an opportunity to review the traffic study and, not to mention the appraisal letter that came in tonight that I've never seen before and move forward. I will tell you in all candor that I was involved in another case, it's an appeal of a zoning...I think it was a...it was a subdivision...no, it was...it was variances. We had a minor role. But in that case, the abutter argued to the Superior Court on appeal that the case had to...that the Zoning Board in that case, that their decision had to be reversed and it had to go back to the Zoning Board on the ground that when the abutter went to the Town Hall and asked for all the documents in the Town's file, several reports, including in that case, I believe it was a groundwater study, were not given to the abutter and on that basis, the Hillsborough South Superior Court judge issued...granted the request to...to reverse the Zoning Board and to send it back to the Zoning Board because all of the documents in the Town's file were not given to the abutter and that's what clearly happened in this case. So rather than create an appeal issue and come back on that issue in a year or six months after it goes to court, I would submit that the wiser course of action would be to continue this hearing so that we can get all the documents that are in the Town's file. And if you agree with me, then my comments are done. But if you don't, then I'm happy to go through our presentation on the impacts of this proposal.

NEIL DUNN: May I, Mr. Chairman? Richard or Nicole, aren't these documents all available online to anybody? Or do they have to come in to the office and it's all available?

NICOLE DOOLAN: They're in the file.

NEIL DUNN: So is there electronic files that can be accessed by people...

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NICOLE DOOLAN: The only...

NEIL DUNN: ...or they have to request paper and then if we miss a piece of paper, we're out of luck?

NICOLE DOOLAN: The only letter we didn't have is the one you submitted tonight. But the traffic study is in the file.

NEIL DUNN: It's a paper file or electronic that they access?

NICOLE DOOLAN: It's both.

NEIL DUNN: It's both.

NICOLE DOOLAN: Yeah, online...

NEIL DUNN: So they could have accessed the electronic data and it would have been there.

NICOLE DOOLAN: Mm-hmm.

TOM AYLESWORTH: Well...but that's [indistinct].

NEIL DUNN: I'm just trying to get clarity because...

TOM AYLESWORTH: Understood. And the fact that it's accessible really isn't the point. The Right to Know Law says that we're entitled to the entire file if we ask for it and that's what we did. And it wasn't given to us. So I don't know that that would be excused by the fact that it's available online. So it seems...it just seems to be prudent since we haven't seen the traffic...

JAMES SMITH: Just so I get the sequence of events.

TOM AYLESWORTH: Yup.

JAMES SMITH: What date did you apply for this information?

TOM AYLESWORTH: March 13th.

JAMES SMITH: March 13th. And who did you apply to?

TOM AYLESWORTH: The Town...the Town Clerk's office, wasn't it? The Town Clerk's...yeah.

[Unidentified, indistinct comment]

UNIDENTIFIED: I can witness...I can witness she was there.

494 UNIDENTIFIED: Yup.
495
496 JAMES SMITH: Well, I mean...okay. You're saying one thing, but it's not the...
497
498 NICOLE DOOLAN: It's the Planning office, but...
499
500 JAMES SMITH: The Planning office.
501
502 NICOLE DOOLAN: ...yeah, Town Clerk's is downstairs.
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504 JAMES SMITH: Not the Town Clerk.
505
506 NICOLE DOOLAN: That's what we were confused with.
507
508 NEIL DUNN: Yeah...
509
510 NICOLE DOOLAN: Yes. Yes.
511
512 JAMES SMITH: Town Clerk is separate.
513
514 NICOLE DOOLAN: Yes.
515
516 TOM AYLESWORTH: Sure.
517
518 JAMES SMITH: Okay. Just so we're clear on the terms. You were confusing me by saying you went to the
519 Town Clerk...
520
521 TOM AYLESWORTH: Understood.
522
523 JAMES SMITH: The Town Clerk wouldn't have those records.
524
525 UNIDENTIFIED: We did go to both offices.
526
527 JAMES SMITH: Okay.
528
529 UNIDENTIFIED: We went all around the building, though, taking files.
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531 JAMES SMITH: Okay.
532
533 TOM AYLESWORTH: And I would also suggest that a continuance is warranted given the changes that were
534 only presented for the first time tonight. If there's gonna be a change in the application, then let's see the
535 plan. We don't know what the change is going to be, how that's going to affect the rest of this proposed
536 development. We're grateful that at least the application amendment's going in the right direction, even
537 though we're still opposed to it, but if that's going to be the case, then let's see what the plan looks like now.
538 What's gonna happen to the building? What's gonna happen to the stormwater drainage? I don't think

539 any of that information was given to you because I don't think they know because they only received authority
540 to make that change from their client tonight, so, well, let's see what the plan looks like and give us an
541 opportunity to see that traffic report.

542
543 JAMES SMITH: Okay. What's the pleasure of the Board?
544

545 NEIL DUNN: Because there is new data and I mean, the electronic records were available, so that's not as big
546 as maybe the impact of stuff that was presented tonight. In this day and age, why the Town has to come up
547 with paper when there's electronic available for review, I'm not quite sure on that one. However, because of
548 the new data, I'm not opposed to continuing it, to give people time to study it.

549
550 ANNETTE STOLLER: I'm not opposed to continuing it, but I would like date certain. I don't like open ended
551 continuances. I mean, here there is a particular...

552
553 JAMES SMITH: Well...

554
555 ANNETTE STOLLER:there's a particular request and if we can say their request is met by 'x, y, z,' that's
556 reasonable.

557
558 JAMES SMITH: Okay. I think based on what she's saying, I want to ask the attorney on...do you want to
559 approach a mic [indistinct]? We have two lawyers sitting next to each other.

560
561 ANDY PROLMAN: Yes, we're going to wrestle.

562
563 [Laughter]

564
565 JAMES SMITH: Are you gonna to revise this plan, given what's been said tonight?

566
567 ANDY PROLMAN: We certainly can. There's not...it's not a lot of rocket science to the revision. We're shifting
568 the building over. The building stays mostly the same.

569
570 JAMES SMITH: Okay, I'm just...okay. When could you have that revised plan available?

571
572 ANDY PROLMAN: It wouldn't take Earle very long. A week? [Pause]. A week from today.

573
574 JAMES SMITH: A week from today. You would want a copy of that, sir?

575
576 TOM AYLESWORTH: Absolutely.

577
578 JAMES SMITH: Okay. If he gets that to you within the week and we continue it to the next meeting, which is
579 May 20th, that would satisfy everybody?

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581 TOM AYLESWORTH: We would be satisfied, yes.

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583 JAMES SMITH: Yeah, as far as...

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ANDY PROLMAN: We would...

TOM AYLESWORTH: As far as the schedule goes.

ANDY PROLMAN: Sure.

JAMES SMITH: As far as this particular issue.

TOM AYLESWORTH: Yeah.

JAMES SMITH: We're not talking about the whole thing.

TOM AYLESWORTH: Yeah.

ANDY PROLMAN: Yup. We would be satisfied if you approve the applications. That was my joke of the night, Mr. Chairman.

[Laughter]

JAMES SMITH: What I'm saying...

ANDY PROLMAN: Understood.

JAMES SMITH: Okay. So, based upon a revised plan of the lot being prepared within a week, which would be next Wednesday, I would hope, and by that time you'd have a copy of the other documentation you've been looking for, the next available meeting would be May 20th. Okay. One of the things about this continuance; there is no reason...or requirement that new notices of the hearing be mailed.

TOM AYLESWORTH: Understood.

JAMES SMITH: So this would be the only notice of the May 20th hearing. This continuance. So, having said that, I'll entertain a motion to continue.

NEIL DUNN: Mr. Chairman, I'd like to make a motion to continue Cases 3/18/2015-1 and 3/18/2015-2 to our next scheduled Zoning Board meeting of May 20, 2015.

JAMES SMITH: A second?

JACKIE BENARD: Second.

BILL BERARDINO: Second.

JAMES SMITH: Okay. Jackie seconded. All those in favor?

629 ALL: Aye.

630

631 JAMES SMITH: Okay, these two cases will be continued to May 20th.

632

633 [NOTE: The following comment was made for clarification later in the meeting]:

634

635 NEIL DUNN: And before we go to the next case, Nicole did do some checking. The only things that are online
636 are the agendas and the meeting notices, so plans and any of the lists and the letters would be paper copies,
637 so in reference to the case that we continued...And to my point, I thought it was all available, so it's not, so
638 they do need the paper copies and they didn't get it, so that'd just help support that.

639

640 RESULTS: THE MOTION TO CONTINUE CASE NOS. 3/18/2015-1 AND 3/18/2015-1 TO MAY 20, 2015 WAS
641 GRANTED, 5-0-0.

642

643 RESPECTFULLY SUBMITTED,

644 

645

646 NEIL DUNN, ACTING CLERK

647

648 TYPED AND TRANSCRIBED BY JAYE TROTTIER, ASSOCIATE PLANNER

649

650 **APPROVED MAY 20, 2015** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JACKIE BENARD AND
651 APPROVED 5-0-0.