

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

1
2
3
4
5 DATE: MAY 20, 2015
6
7 CASE NOS.: 3/18/2015-1 AND 3/18/2015-2 (CONTINUED)
8
9 APPLICANT: RIVIERVIEW, LLC
10 P.O. BOX 898
11 WINDHAM, NH 03087
12
13 LOCATION: 6 MOHAWK DRIVE, 6-38, C-IV
14
15 BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
16 NEIL DUNN, VOTING MEMBER
17 JACKIE BENARD, VOTING MEMBER
18 JIM TIRABASSI, VOTING MEMBER
19 BILL BERNADINO, NON-VOTING ALTERNATE
20 DAVID PAQUETTE, CLERK
21
22 ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING
23 ADMINISTRATOR/HEALTH OFFICER
24
25 REQUEST: CASE NO. 3/18/2015-1: VARIANCE TO ALLOW A STRUCTURE TO
26 ENCROACH INTO THE 50-FOOT LANDSCAPE BUFFER AS REQUIRED BY
27 SECTION 2.4.3.B.2 [Formerly Section 2.4.3.2.2].
28
29 CASE NO. 3/18/2015-2: VARIANCE TO ALLOW PARKING TO ENCROACH
30 INTO THE 50-FOOT LANDSCAPE BUFFER AS REQUIRED BY SECTION
31 2.4.3.B.2 [Formerly Section 2.4.3.2.2].
32
33 PRESENTATION: Case Nos. 3/18/2015-1 and 3/18/2015-2 were read into the record with
34 four previous cases listed. Attorney Prolman provided an overview
35 related to both cases (pp. 2-9 below), then spoke specifically to Case
36 No. 3/18/2015-1 (pp. 2-9 below), and to Case No. 3/18/2015-2
37 beginning on p. 10 through p. 11.
38
39 JIM SMITH: I think we ought to read this letter in about the agreement just so ever body knows what is
40 happening on that issue.
41
42 Dave Paquette read into the record Exhibit "D".
43
44 JIM SMITH: Who is presenting?

45
46 ANDY PROLMAN: Mr. Chairman, members of the Board, good evening. My name is Andy Prolman. Attorney
47 with Prunier and Prolman and author of that letter. Sitting with me at the table is Earle Blatchford from
48 Hayner/Swanson, and I was going to open...I ask just making sure you had the letter that was just read into the
49 record. You will recall from our last meeting that was continued, we made revisions to the plan the night of
50 the meeting, and the plan with the revisions dated April, 14, 2015 is before you to Earl's left [See Exhibit "E"].
51 It is not the plan that is up on the screen behind you. Unless...yeah that's not the plan correct?
52

53 EARL BLATCHFORD: No that was the plan that was presented at the last meeting.
54

55 ANDY PROLMAN: Okay, the plan, right the plan that is up on the screen behind you, so folks know, is the plan
56 that was presented at the last meeting which has subsequently been revised pulling the building back and
57 pulling our request for the encroachment into the landscape buffer for the building portion of the
58 applications. Pulling that back ten (10) feet, so we have a ten (10) foot encroachment into the landscape
59 buffer, and our new plan, the April 14th plan also shows where the approximate location of where the fence is
60 going to run which is going to be from the side and rear lots of 8 Mohawk the neighboring property, and along
61 the side and rear lot lines of 6 Mohawk. So those were the two (2) substantive changes to the plan that you
62 asked us to come back with and in addition, we have been working with our neighbors to come to an
63 agreement with the Kendallwood Condominium Association. I don't have a lot to add, Mr. Chairman, perhaps
64 Earl can point out some things on the plan that are different from that plan that is up on the screen behind
65 you. We addressed the variance criteria for both applications at the last meeting.
66

67 JIM SMITH: So was that thirty (30) feet...?
68

69 ANY PROLMAN: Pardon me?
70

71 EARL BLATCHFORD: Yes, Earl Blatchford from Hayner/Swanson. That's the original plan that was submitted.
72 That shows a building footprint that's ninety (90) feet long by thirty one (31) feet wide with the thirty (30) foot
73 setbacks. The revised plan which we discussed at the last hearing, we proposed to change the setbacks to
74 forty (40) feet which means a ten (10) foot encroachment into the landscape buffer instead of a twenty (20)
75 foot encroachment. Because of that the parking layout is essentially the same, and we kind of shortened it
76 and widened the building footprint to basically try to replicate the square footage roughly. So it pulls the front
77 of the building basically to the Granite Street front yard setback and so the building now is seventy five (75)
78 feet long and forty (40) feet wide. Then as Attorney Prolman said, the fence that we are proposing, the six (6)
79 foot privacy fence starts at the front set back and it runs all the way along the rear and side property to the
80 Mohawk Drive front setback on the 8 Mohawk property. Those are really the two (2) main changes that were
81 discussed at the meeting and that we were asked to put into the plan to formalize it.
82

83 ANDY PROLMAN: Mr. Chairman, again I don't want to rehash our entire presentation last time, I did go over
84 the meeting minutes, and they capture the presentation that we made. Again, I would just emphasize the
85 Board the whole purpose of a landscape buffer is to have a buffer. The definition of a buffer is to create a
86 definition between a residential use and a commercial use. We believe we are doing that with the enhanced
87 landscaping especially with the solid fencing that would be installed. Again, without going over each point of
88 the criteria for the variances, I really have nothing further to add. Especially since over the past few days,

89 we've been working toward an agreement with our neighbors which we are happy to present tonight.
90 Attorney Tom Aylesworth is here on behalf of the Board of Directors of the Association, if the Board has any
91 questions.
92
93 JIM SMITH: Okay. I was hoping this plan would have been presented so that we could have had it on the
94 computers and up on the screen.
95
96 EARL BLATCHFORD: We didn't think to submit a PDF because the audio/visual wasn't available at the last
97 meeting, and we thought we'd be presenting the same way with a hardcopy plan. We did submit the...
98
99 JIM SMITH: Okay, okay.
100
101 EARL BLATCHFORD: ...We did submit the revised plan, so you should have copies of the revised plan...
102
103 JIM SMITH: Yeah.
104
105 EARL BLATCHFORD: ...in your packet.
106
107 JIM SMITH: Is there anything in the folder?
108
109 NEIL DUNN: Is there a date change that we can reference for this new drawing?
110
111 EARL BLATCHFORD: Yes, April 15th is one revision. April 15.
112
113 NEIL DUNN: Is the latest?
114
115 EARL BLATCHFORD: Sorry, April 14th.
116
117 [Overlapping]
118
119 NEIL DUNN: April 14th.
120
121 [Overlapping]
122
123 DAVE PAQUETTE: I don't see a digital copy of it?
124
125 NEIL DUNN: Do you know if we have a...?
126
127 [Overlapping]
128
129 NEIL DUNN: ...paper copy of it in the folder?
130
131 NICOLE DOOLAN: We don't have the latest PDF.
132

133 NEIL DUNN: No, not a PDF, but paper or whatever would have been handed in is my thought? At least
134 something in the folder with a date and the dimensions?
135
136 DAVE PAQUETTE: Receive April 21st, so I'd assume that that's what this is?
137
138 NEIL DUNN: Yeah.
139
140 DAVE PAQUETTE: Yeah, seventy five (75) by forty (40)?
141
142 [Overlapping]
143
144 ANDY PROLMAN: I can do it right now, if the Board had the patience to...Anyway, Mr. Chairman that is all we
145 have tonight.
146
147 NEIL DUNN: If I may, Mr. Chairman?
148
149 JIM SMITH: Sure.
150
151 NEIL DUNN: Where did the thirty eight (38) foot height come from?
152
153 ANDY PROLMAN: It reminds me of Spinal Tap where they got the thirty eight inches ...the ten feet, or the ten
154 inches of the Stonehenge. That is a number...originally the building ridge line with the original proposal was
155 coming in at thirty five (35) feet which a little bit lower obviously, but it was a little bit closer to building
156 number (10) of Kendallwood. Pulling the building back and trying to replicate the square footage...it goes up a
157 little bit higher to have all the features that my client wants to have in the wine bistro.
158
159 EARL BLATCHFORD: And also with the wider building and a gable roof, your peak is going to go up a little bit.
160
161 NEIL DUNN: Richard what's the typical height allowance there?
162
163 RICHARD CANUEL: The maximum height for that zone would be fifty (50) feet.
164
165 NEIL DUNN: So that was more for an agreement between you and the other party?
166
167 ANDY PROLMAN: Correct.
168
169 EARL BLATCHFORD: Mr. Chairman, in case there's any questions on the fence we indicate, we didn't really
170 hard line a location on it, we just indicated those beginning point and end point of it because we'd like to work
171 out an optimum location on our formal site design that will go before the Planning Board, and incorporate the
172 grade. We know they'll be some grade changes and what not, so once we get the site graded then we can
173 better site the fence specifically. If there's any questions about the way it's designated on the plan?
174
175 JIM SMITH: Well, okay. At one you say eight (8) feet and the other end you say six (6) feet, so where would be
176 the transition?

177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220

ANY PROLMAN: It's six (6) feet right?

EARL BLATCHFORD: It's proposed to be six (6) feet. If there's an eight (8) on it, it's a typo.

[Overlapping]

JIM SMITH: I was trying to figure out where it was going to be located. Any other questions from the Board at this point?

DAVE PAQUETTE: So that was the fence is just an agreed upon installation with your abutters, right? Kendallwood?

ANY PROLMAN: Well, yes I mean, we offered it up last time before we had an agreement with Kendallwood, but now should the Board be willing to grant the variance, we would encourage the Board to have that as a condition of approval.

NEIL DUNN: So, that is no explicit? The fence is not referenced in the letter?

ANDY PROLMAN: I thought it was?

[Overlapping]

NEIL DUNN: Last sentence, yeah.

ANDY PROLMAN: It's shown on the plan, we make reference to the plan...

[Overlapping]

ANDY PROLMAN: ...it's started in the letter.

JIM SMITH: Okay, any other questions, or comments? Do you want to go over the five points of law for each of the two cases?

ANDY PROLMAN: Of course. Mr. Chairman, we have two applications before the Board. One is for the parking lot encroachment in to the landscape buffer, and that encroachment touches both the rear portion of the property, and it also encroaches in to the Granite Street portion of the landscape buffer. You recall the landscape buffer is there because we have two competing districts. We have residential district across the both Granite Street, and then behind us for building number ten (10) with the Kendallwood condominium. So the parting lot variance request encroaches both the front and back. The second variance request is for the building which is proposed to encroach ten (10) feet into the landscape buffer as shown on the April 14th plan, not the plan behind you. The request is being made to allow this proposed wine bistro, and again, my client wants to bring something elegant and fabulous to the Town with the bistro itself with gardens very strong and detailed landscaping plans. To make all that work with the front yard setback, with the landscape buffers at

221 fifty (50) feet. The front yard setbacks on Granite and Mohawk at sixty (60) feet with a wetland pocket with a
222 storm water detention out front, it's a very tight lot. Relators call these things a failed lot, and so we are
223 looking for relief to have the ten (10) foot encroachment for the building and then the parking lot
224 encroachments as shown as on the plan. For each of these, I won't repeat these, but the...we are not contrary
225 to the public interest. Again, the public interest here is to have that separation between a residential use and
226 the commercial use. We believe we are providing that separation without adversely affecting the character of
227 the neighborhood. Especially with the fence into the mix, we believe we won't be adversely affecting the
228 health, safety, or welfare of the Town of Londonderry. The spirit of the ordinance is addressed because we
229 are maintaining that buffer and you will recall in addition to the fence there's going to be significant
230 landscaping between the fence and the building that eventually will grow up and provide an additional site
231 line buffering between the two properties. So we believe the spirit of the ordinance is being addressed.
232 Substantial justice is our favor for this application because we have a balancing test between any harm to the
233 community and the benefit to the applicant. The benefit to the applicant is the applicant gets to take a lot
234 that has had many proposals before the Town and nothings there today. We hope to develop it into this high
235 end wine bistro. At the same time, we have little if any harm or affect to the neighbors. Especially now, that
236 we have an agreement with our neighboring condominium condo association, and the fencing and the
237 landscape buffering. So we believe substantial justice is being done. You have a letter from Berkshire
238 Hathaway addressing the property values, and they'll be no diminution of property values. This is going to be
239 a project that going to come in well over one million (\$1,000,000) dollars. This is going to be very high end.
240 We believe this will be a catalyst to improve the area. We don't see that this is going to be any adverse effect
241 to the neighboring property values. Finally, in respect to the hardship, we do, I believe have very special
242 conditions for this property would be front yard setback on both Granite and Mohawk and then the fifty (50)
243 foot landscape buffer. Essentially, we have four font yard setbacks on this property which makes it very tight.
244 Especially, when we have some other conditions of the property with the wetlands and the storm water
245 system that is already there and designed and part of this project. Allowing the proposed wine bistro it is a
246 reasonable use of the property. It's an allowed use under either C-IV district, or the C-I district which the
247 property is now as a result of the recent zoning change. We don't see that there's any fair and substantial
248 relationship to prohibit proposed use given we have really addressed the main concern of the ordinance which
249 is the buffering between the two properties. That's an abbreviated version of the application...

250
251 JIM SMITH: Okay.

252
253 ANDY PROLMAN: ...for both applications, Mr. Chairman.

254
255 JIM SMITH: I just wanted to get it...

256
257 ANDY PROLMAN: Sure.

258
259 JIM SMITH: Refreshed in every body's minds.

260
261 ANDY PROLMAN: Sure. Thank you very much.

262
263 JIM SMITH: Okay, anything from the Board?
264

265 NEIL DUNN: If I may I?

266
267 JIM SMITH: Yeah.

268
269 NEIL DUNN: The requirements for your parking space, you're at the Town specified requirements? You're not
270 doing extra, or anything else?

271
272 ANDY PROLMAN: No there are...and you can speak, there are sixty (60) proposed seats wine bistro, and there
273 is a parking calculation right in the notes which I can't read from here, but Earl can...

274
275 EARL BLACHFORD: Yeah, in going through to meet the parking requirement...the Town parking requirement
276 what is proposed there are thirty nine (39) parking spaces required which includes the seventeen (17) existing
277 spaces which a couple of them will be modified with the new design, and we're providing thirty nine (39), so
278 there's no extra parking.

279
280 JIM SMITH: Anything further? Okay, opening it up to anyone who is in favor of this? Seeing none, anyone in
281 oppositions, or has questions? Okay, bring it back to the Board, and I guess that will close the public hearing
282 then?

283
284 DELIBERATIONS:

285
286 [Overlapping comments]

287
288 JIM SMITH: Why don't we go down the five points? The variance will not be contrary to the public interest. I
289 think what we'll do is deliberate them together and vote on them separately.

290
291 DAVE PAQUETTE: Okay.

292
293 JACKIE BENARD: So, we're going to do the first one?

294
295 JIM SMITH: Right.

296
297 JACKIE BENARD: Okay.

298
299 JIM SMITH: So the first one...?

300
301 DAVE PAQUETTE: First to the building. The structure encroachment and the ten (10) fifty (50) for landscape.

302
303 JIM SMITH: Comments?

304
305 JACKIE BENARD: I don't think it will be contrary to the public interest.

306
307 DAVE PAQUETTE: Especially with the one agreement they've made with the closet neighbors.

309 JIM SMITH: Um hmm.
310
311 DAVE PAQUETTE: I think we should definitely include those conditions.
312
313 JIM SMITH: Yeah.
314
315 DAVE PAQUETTE: In the event that we find...
316
317 JIM SMITH: I think whoever makes the motion just you could probably reference that letter as part of the
318 motion. If we get to that point?
319
320 DAVE PAQUETTE: Yeah.
321
322 JACKIE BENARD: So basically, it was positive enhancement, so it even was a stronger case that it would not be
323 contrary to the public interest.
324
325 JIM SMITH: Yeah, it's a very difficult lot because of the various setbacks to a couple of different roads. So it is
326 an unusual lot. Okay, spirit of the ordinance?
327
328 JACKIE BENARD: the spirit of the ordinance would be observed. It's meeting the criteria for...
329
330 JIM SMITH: It's providing a...
331
332 JACKIE BENARD: ...It's...
333
334 JIM SMITH: ...providing the buffer that we are looking for.
335
336 DAVE PAQUETTE: So, I guess the spirit of the ordinance is based on where those two zones are met right?
337
338 JACKIE BENARD: Right.
339
340 JIM SMITH: Yeah.
341
342 DAVE PAQUETTE: So, you've got two different zones meeting in the middle, so I think it would...it's with the
343 street there and the landscaping...what's going to be around with the fence...
344
345 JIM SMITH: Two streets actually.
346
347 DAVE PAQUETTE: Yeah, I think...
348
349 JIM SMITH: A street on the side. A street on the front. Then you've got wetlands in the front. So you can put
350 something very limited. Substantial justice is done.
351
352 DAVE PAQUETTE: There is not much more you can do with this lot right?

353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396

JACKIE BENARD: It's somewhat of a special condition type of lot?

DAVE PAQUETTE: Yeah.

JIM SMITH: Yeah. Values surrounding the properties will not be diminished?

DAVE PAQUETTE: I'd imagine that something like a high end restaurant like this is going to increase the area?

JIM SMITH: Yeah. And hardship? Special conditions of the property again you've got the multiple setbacks and the wetland, so that makes it a unique lot. So I'll entertain a motion on the first case.

DAVE PAQUETTE: Well to actually have the...what we just talked about laid out is the hardest part, I think? Are we okay to just go forward without any supporting evidence, or...?

JIM SMITH: Well, I think the site plan itself is the biggest supporting evidence.

DAVE PAQUETTE: Okay.

JIM SMITH: It shows the condition of this particular lot, and how it is unique. It is a use which is permitted in the district whether it's you know either the previous district, or the C...so either district it was a permitted use.

DAVE PAQUETTE: Okay.

JACKIE BENARD: Well, Mr. Chairman, I'd like to make a motion to grant the variance for Case No. 3/18/2015-1 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] for 6 Mohawk Drive.

JIM SMITH: And reference the letter.

JACKIE BENARD: And...

JIM SMITH: Get the letter.

JACKIE BENARD: ...to accept the letter dated May 20, 2015 from Gerald R. Prunier, Prunier and Prolman P.A.

JIM SMITH: As conditions.

JACKIE BENARD: As conditions.

ANDY PROLMAN: That was from me, not my partner.

JACKIE BENARD: Pardon?

397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439

JIM SMITH: That was...he's the writer.

JACKIE BENARD: Okay. As submitted by Andrew A. Prolman.

ANDY PROLMAN: Thank you.

JACKIE BENARD: Alright. Give credit where credit is due.

DAVE PAQUETTE: I'd like to second that motion.

JIM SMITH: Okay, all those in favor?

ALL: Aye.

RESULT: THE MOTION TO GRANT CASE NO. 3/18/2015-1 WITH CONDITIONS WAS GRANTED 5-0-0.

JIM SMITH: Discussion on the five points of the second case?

DAVE PAQUETTE: I think we are pretty much in the same position we were...

JIM SMITH: Yeah.

DAVE PAQUETTE: ...with the last case. It's a special lot so there's not much more that can be done to fit the building in.

JACKIE BENARD: So granting the variance would not be contrary to the public interest.

JIM SMITH: No, same basic reasons.

JACKIE BENARD: Yup, and the spirit of the ordinance is observed.

JIM SMITH: Again, for the same. Substantial justice is done. Again, it's an allowed use. Value of the surrounding properties I don't think are going to be affected. Unnecessary hardship...again, we have the multiple setbacks and buffers and wetland area that makes this lot unique, and it's really burdened with setbacks. Okay, you've got the letter?

NEIL DUNN: You want the letter back?

JIM SMITH: Yeah. Jackie you want to...

JACKIE BENARD: I'd like to make a motion Mr. Chairman to grant the variance for Case No. 3/18/2015-2, Riverview, LLC for the variance to allow parking to encroach into the 50-foot landscape buffer as required by

440 Section 2.4.3.B.2 [formerly Section 2.4.3.2.2] 6 Mohawk Drive with the conditions of the letter dated May 20th
441 as submitted by Andrew Prolman.

442
443 ANDY PROLMAN: Thank you again.

444
445 JIM SMITH: Um.

446
447 DAVE PAQUETTE: I second that.

448
449 JIM SMITH: Second. All those in favor?

450
451 ALL: Aye.

452
453 **RESULT: THE MOTION TO GRANT CASE NO. 3/18/2015-2 WITH CONDITIONS WAS GRANTED 5-0-0.**

454
455 RESPECTFULLY SUBMITTED,

456 

457
458 DAVE PAQUETTE, ACTING CLERK

459
460 TYPED AND TRANSCRIBED BY JAYE TROTTIER, ASSOCIATE PLANNER

461
462 **APPROVED (JUNE 17, 2015) WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JACKIE BERNARD AND**
463 **APPROVED 5-0-0.**
464
465