

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

DATE: AUGUST 19, 2015

CASE NO.: CASE NO. 8/19/2015-5

APPLICANT: KEVIN AND STEPHANIE FISCHER
44 HUNTER MILL WAY
LONDONDERRY, NH 03053

LOCATION: 44 HUNTER MILL WAY, 18-13-45, AR-I

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

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

REQUEST: VARIANCE TO ALLOW AN ACCESSORY STRUCTURE WITHIN
THE REAR PROPERTY LINE SETBACK WHERE 15 FEET IS
REQUIRED BY SECTION 2.3.1.3.C.

PRESENTATION: NEIL DUNN READ THE CASE INTO THE RECORD. NO PREVIOUS CASES.
NO LETTERS.

JIM SMITH: Okay, who will be presenting?

STEPHANIE FISCHER: I will. This is very coincidental because we live...we are one of the families that purchase a home in Mill Pond because of the sign, so we didn't plan this at all, but we're in Mill Pond...

JIM SMITH: Do you want to state your name...

STEPHANIE FISCHER: Stephanie Fischer.

KEVIN FISCHER: I'm Kevin Fischer.

JIM SMITH: Strictly for the record.

45 STEPHANIE FISCHER: Um, hmm. So, the reason for our request, we understand the 15 foot requirements to
46 put a structure...we purchased a shed and the shed is a 12x16 from Reeds Ferry, and we want to comply with
47 the 15 foot requirement from our neighbor's lot which is to the left in some of the photos (see Exhibit #1).
48 We actually have some photos we'd like to show you, so you can get an idea of where we want to place the
49 shed, but to go through specifically...A, it's asking the reason why we're asking for the variance. We want to
50 maximize our usual land. The flat space of our land, or our lot for our children. We actually have a special
51 needs daughter. She's 6 years old with low vision. We don't want to lose 15 feet of the play space, if we
52 don't get this variance. We have a fence which we can show you for our two small dogs, and what we're
53 trying to do is between the fence and the end of our lot is where we want to place the shed, so the space in
54 between the end of the fence and where the shed would be is all a flat space. So number one, it says the
55 variance will not be...

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57 JIM SMITH: Okay, well...just to get a little. How far from the fence to the property line?
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59 KEVIN FISCHER: Probably 70 feet maybe...60 feet.
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61 JIM SMITH: How many?
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63 KEVIN FISCHER: 60 feet, I'm guessing? I'm 30 feet off the house. Maybe probably 50 feet – between 50 and
64 60 feet....
65

66 JIM SMITH: Okay, and
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68 KEVIN FISCHER: ... is an estimate.
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70 JIM SMITH: ...so you have the house, the fence...
71

72 [Overlapping comments]
73

74 KEVIN FISCHER: The fence comes 30 feet off the house.
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76 JIM SMITH: So you have a fenced in area behind the house?
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78 STEPHANIE FISCHER: right.
79

80 KEVIN FISCHER: Yes.
81

82 JIM SMITH: And you want to put it behind that, but why do you want it so far back?
83

84 STEPHANIE FISCHER: Because we're trying to maximize the space between the fence and the end of the lot
85 line at the back because when you look out back its forest and common space. Nobody's back there, so we
86 want to oblige with the 15 foot from our neighbors lot so from the neighbor, our lot 15 feet in absolutely not
87 a problem, but we want to put it all the way in the back of our lot. It doesn't face anything. It's not
88 obstructing anybody's view. It's a common space. It's forest.

89
90 KEVIN FISCHER: And we only...it's a half acre lot.
91
92 STEPHANIE FISCHER: Right, we don't have much space.
93
94 KEVIN FISCHER: It's common space.
95
96 STEPHANIE FISCHER: So, we're trying to be able to have that space in between for our children to run. To
97 play soccer hopefully in the future.
98
99 NEIL DUNN: Did you say you have some picture that might help us.
100
101 STEPHANIE FISCHER: We do. That's what...I'd like to show the pictures (see Exhibit #1).
102
103 NEIL DUNN: Is this a PUD? PRD?
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105 STEPHANIE FISCHER: A "P" what?
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107 RICHARD CANUEL: No, this is what the PRD had evolved into. This is what is known as a conservation
108 subdivision.
109
110 STEPHANIE FISCHER: Right.
111
112 [Overlapping comments]
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114 RICHARD CANUEL: Which allows increased density...smaller lots just like the PRD...
115
116 [Overlapping comments]
117
118 RICHARD CANUEL: ...open space preserve for conservation.
119
120 [Overlapping comments]
121
122 KEVIN FISCHER: I said 5 feet.
123
124 NEIL DUNN: Yeah, okay, gotch ya. Thank you.
125
126 KEVIN FISCHER: Again, we have flexibility, but our house is right here...
127
128 JACKIE BENARD: Okay.
129
130 KEVIN FISCHER: ...then the property line is approximately where that brown... [Indistinct].
131
132 ANNETTE STOLLER: Thank you. Wow.

133
134 KEVIN FISCHER: Ours is...[Indistinct].
135
136 ANNETTE STOLLER: Where is yours?
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138 KEVIN FISCHER: Our property is right here.
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140 ANNETTE STOLLER: Okay. What is that in back of the property? I know it's not a cow?
141
142 KEVIN FISCHER: Um, that was a swing set. That's actually moved...
143
144 [Overlapping comments]
145
146 KEVIN FISCHER: ...to right there...[Indistinct]...kind of show you a hill in back...where there's drainage...the
147 last picture...
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149 STEPHANIE FISCHER: Right, since taking these photos, we've moved...you can see that's a swing set, and
150 we've moved it away from that space.
151
152 KEVIN FISCHER: The last picture is of the drainage. They put in a swale for drainage behind all of the houses
153 for winter runoff when the snow melts. That's right at the back of our property line. It's in the common area.
154
155 [Overlapping comments]
156
157 KEVIN FISCHER: Yeah, approximately there. Yes...[Indistinct].
158
159 BILL BERNADINO: The property line goes up there?
160
161 KEVIN FISCHER: Yup, ours is about there and this is where the hill starts going up.
162
163 BILL BERNADINO: Okay.
164
165 KEVIN FISCHER: On that arc.
166
167 BILL BERNADINO: And, this is where you want to put the shed over here?
168
169 KEVIN FISCHER: Yup.
170
171 STEPHANIE FISCHER: Um, hmm.
172
173 KEVIN FISCHER: In that area in the back.
174
175 BILL BERNADINO: You might want to show...
176

177 JACKIE BENARD: Yeah, so this swale is where it's common.
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179 KEVIN FISCHER: Yes...
180
181 [Overlapping comments]
182
183 JACKIE BENARD: So, this is common.
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185 KEVIN FISCHER: ...our line is approximately right here...
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187 JACKIE BENARD: Okay.
188
189 KEVIN FISCHER: ...this is the drainage swale.
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191 JACKIE BENARD: And, you want to locate it somewhere here? Because...
192
193 [Overlapping comments]
194
195 JACKIE BENARD: ...Okay.
196
197 [Overlapping comments]
198
199 KEVIN FISCHER: The swale is just for run off from the hill. There's a pretty large hill in the back.
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201 JACKIE BENARD: So, everything behind you is conservation area type of...?
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203 KEVIN FISCHER: So, in the back...
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205 JACKIE BENARD: ...Yeah, all of this?
206
207 STEPHANIE FISCHER: Yes.
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209 KEVIN FISCHER: So, over this hill...
210
211 STEPHANIE FISCHER: Yup.
212
213 KEVIN FISCHER: ...is wetlands. It actually goes almost...[Indistinct].
214
215 JIM SMITH: Okay, you really need to be on a mic...
216
217 STEPHANIE FISCHER: Okay, come back.
218
219 JIM SMITH: ...so we get all this.
220

221 STEPHANIE FISCHER: To answer is yes. It's conservation land behind us.
222
223 KEVIN FISCHER: It's common land for the development.
224
225 [Overlapping comments]
226
227 KEVIN FISCHER: And then behind there is wetlands, and like a marsh and a pond area.
228
229 [Overlapping comments]
230
231 JACKIE BENARD: Which the first picture depicts all that?
232
233 STEPHANIE FISCHER: Correct. Yes.
234
235 JACKIE BENARD: Okay.
236
237 STEPHANIE FISCHER: So, this picture I think is a good example because you can see the fence that we are
238 talking about...
239
240 JACKIE BENARD: Okay.
241
242 STEPHANIE FISCHER: ...so can you see the tree right here? This is the end of our...this is close to the end of
243 the lot line.
244
245 JACKIE BENARD: Oh, okay.
246
247 STEPHANIE FISCHER: That's on our property so what we want to do is put it as close to the tree in the back
248 part of the lot right here.
249
250 KEVIN FISCHER: 15 feet off of the neighbors.
251
252 STEPHANIE FISCHER: From the neighbor's side.
253
254 JACKIE BENARD: From the neighbor's side?
255
256 STEPHANIE FISCHER: Correct.
257
258 JACKIE BENARD: Okay.
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260 KEVIN FISCHER: So we'll still observe that setback. It's just the rear line that we're trying to get the variance.
261
262 NEIL DUNN: If I may, before you get going? I don't see anything on any of the diagrams showing that its
263 common property to the development. Richard, is that...?
264

265 RICHARD CANUEL: It is. Yeah.
266
267 NEIL DUNN: It is. Okay. So, it wouldn't be on the maps here. It's not really showing it that way?
268
269 [Overlapping comments]
270
271 NEIL DUNN: Well, I mean...you can't tell. You have the lots, and you have their rectangles for their plots, so
272 maybe because its...it's not part of...I don't know? I guess, I'm verifying that's like the common ground...?
273
274 RICHARD CANUEL: Yeah. It is.
275
276 NEIL DUNN: It's not real clear.
277
278 KEVIN FISCHER: I actually missed that on the abutters list, and then they caught that...because I had all the
279 other houses with abutters for the variance application. I missed the common area as having to be on the
280 abutters list.
281
282 NEIL DUNN: And, is that run by an association of all of you folks?
283
284 KEVIN FISCHER: Um...it is...because right now, its LaMontagne Builders has control of the association. I think
285 it's until 75% of the homes are built, and then at that point they turn it over to the homeowners. Right now,
286 they're about half way done with the development.
287
288 NEIL DUNN: Okay, that sounds good. Do you want to proceed with the five points?
289
290 JIM SMITH: Yeah, do you want to go through the five points?
291
292 STEPHANIE FISCHER: Go through again? Okay. So, number one the variance will not be contrary to the
293 public interest; our property faces a large hill which is unoccupied that connects to the woods of the
294 conservation. Our shed that we've purchased is a 12x16 and we want to place it closer to our property line
295 facing the woods. The request is only for the setback not for the side. We plan to place the shed 15 feet
296 from our neighbor's lot from the side of our lot. Nothing's in the back other than the hill and the trees.
297 Number two; the spirit of the ordinance is observed will comply with the setback requirements for 15 feet
298 from our neighbor's lot line. We're only seeking a variance for the 15 feet from the end of our lot line which
299 faces the hill and trees. There are no further...future plans of develop in this space per Mill Pond. Three;
300 substantial justice is done; there's no harm to the general public. We live in Mill Pond subdivision and our
301 back lot faces the trees. Four; the values of surrounding properties will not diminish. The design has been a
302 custom design from Reeds Ferry and it matches our home. Many of the homes in our neighborhood already
303 had sheds that are very similar in design. I actually see one in one of the photos we showed you. You can see
304 our neighbor's. It's a grey color. They already put there's in...and then number five...I guess letter I? Because
305 we own half of an acre, we would like to use all available space for our children to play. It would not be safe
306 to place the shed the 15 feet closer to the house from our lot as our kids could not play behind the shed
307 because it goes into the large hill and woods. So we don't want anybody going back there...not...that's not
308 good. Two; the proposed use is a reasonable one, we seek to set the shed closer to our lot line faces the

309 woods so we can use our land to its fullest potential for our kids to keep them in the useable land space. B as
310 stated, we are seeking to place the shed at our lot line which faces the woods due to the size of our half acre
311 lot, we wish to place the shed 15 feet away from the side of our neighbors, but we want to be able to have
312 this variance from our back lot line to be able again to fully utilize our land.

313
314 JIM SMITH: Okay, questions?

315
316 ANNETTE STOLLER: I think it's pretty clear what they're trying to do. To create an internal play space for the
317 children.

318
319 STEPHANIE FISCHER: Right.

320
321 ANNETTE STOLLER: How old are your children?

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323 STEPHANIE FISCHER: Our special needs daughter is six, and we also have a nineteen month old.

324
325 ANNETTE STOLLER: Who's not going to be running back there real soon.

326
327 [Overlapping comments]

328
329 STEPHANIE FISCHER: They're not allowed to go up the hill, or in the woods. No. No.

330
331 NEIL DUNN: If I may...I'm sorry?

332
333 [Overlapping comments]

334
335 NEIL DUNN: So, if the association were to want to put something in there and we have a bunch more people
336 coming down here looking to put everything right on the property line in the back...would you...I'm just
337 thinking out loud...I don't know if anybody else cares? You know the reason why they come up with these
338 small developments with half acre lots and this common land is so that it still looks open without everybody
339 being in the common space.

340
341 STEPHANIE FISCHER: Um, hmm.

342
343 NEIL DUNN: Believe you me; we have people wanting to put pools in the common space, but...

344
345 STEPHANIE FISCHER: I'm sure.

346
347 NEIL DUNN: I'm just trying to figure out if we want to try to accommodate for something happening in that
348 space at some point? I guess I'm throwing it out there...if...

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350 ANNETTE STOLLER: You're...

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352 NEIL DUNN: ...I don't know if it ever would?

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ANNETTE STOLLER: ...throwing out a condition.

JIM SMITH: Okay, before you...

NEIL DUNN: What?

JIM SMITH: ...Okay, before we get to that...Richard?

RICHARD CANUEL: Yes.

JIM SMITH: What can be...

RICHARD CANUEL: Nothing...

[Laughter]

RICHARD CANUEL: Nothing can happen in that common area. That's one of the unique conditions of this being a conservation subdivision is that it's supposed conservation land even though its part of the subdivision in common land its conservation land that cannot be developed.

NEIL DUNN: Okay, well never mind.

[Overlapping comments]

NEIL DUNN: Well, it's good to know that though.

JIM SMITH: Yeah, okay, but I mean, if you can't do anything...

NEIL DUNN: Yeah.

JIM SMITH: ...you can't do anything.

NEIL DUNN: ...I thought it was going to be the ones with the pool in it?

BILL BERNADINO: Like they said, ones already started on the last page there's already one there.

STEPHANIE FISCHER: You can see that photo.

KEVIN FISCHER: That one...there lot goes back, if you look at the property on GIS, their lot goes deeper into the conservation area, so that's why that one looks like it's further back, but I think their within probably the 15 feet.

ANNETTE STOLLER: So, it's in their regular lot line?

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KEVIN FISCHER: Yes, our lot is just shorter because I think with the hill cutting in towards our lot...

JACKIE BENARD: Mr. Chairman, I have a question?

JIM SMITH: Sure.

JACKIE BENARD: Richard, is there anything that has to be addressed for conservation and property lines? Is there something that...because it's actually mixing two here?

RICHARD CANUEL: Yeah, no there is not a conservation buffer if that's what you're...

JACKIE CANUEL: Okay. Alright, thank you.

RICHARD CANUEL: Its common land, but its common land reserved as conservation land to be developed.

JACKIE BENARD: Okay. Okay.

JIM SMITH: There's a couple of lot further over then you might have a problem.

KEVIN FISCHER: Yes, the hill...

STEPHANIE FISCHER: Right, we agree with you.

[Overlapping comments]

KEVIN FISCHER: ...our actual immediate neighbor...

JIM SMITH: Uses some wetlands.

STEPHANIE FISCHER: Um, hmm.

KEVIN FISCHER: To the left, our immediate neighbor there the hill goes right into their back yard.

JIM SMITH: Okay. Any further questions? Anyone in the audience that has any comments? I guess there's only two people. One of them is the husband, and one is our members. Okay, we've got nothing further...take this under advisement and discuss then vote on it.

DELIBERATIONS:

JIM SMITH: I don't see any real problem with this one. Of course part of the problem with these types of divisions...subdivisions is they're smaller lots.

JACKIE BENARD: Well...

441
442 JIM SMITH: A lot of times, I don't think the real estate people are really make the buyers understand what
443 they're getting themselves into.
444

445 JACKIE BENARD: And that's what I was going to make a point...tonight we've had basically the same scenario;
446 one that was approved back in 1985, and now we have a current day one, so I guess my point is going to be
447 that we're going to be seeing a lot of these homeowners...our first case, he said he was not even aware of it.
448

449 JIM SMITH: Right.
450

451 JACKIE BENARD: And as time passes, so we're going to be seeing this time and time again because these
452 subdivisions are not just five house their fifty nine, or a hundred and eighteen, or so...we have to be prepared
453 for all of this and they are smaller lots, and I mean, I just...I want to put that out there because this isn't going
454 to be the only night that we discuss something like this.
455

456 JIM SMITH: No.
457

458 NEIL DUNN: We've been doing this for years because there's been people wanting to put pools in.
459

460 JIM SMITH: Yeah.
461

462 NEIL DUNN: If I may? I don't mean to...Richard, do you know if there's anything on the deed when they're a
463 PRD, or some kind of planned development or anything that states that it's such?
464

465 RICHARD CANUEL: I haven't seen the deed, but...
466

467 NEIL DUNN: No, no in general. I didn't know if it was a general rule do they?
468

469 RICHARD CANUEL: That's...in most cases...I shouldn't say in most cases. In every case when a subdivision is
470 approved there are those restrictive covenants that go along with each and every one of those properties.
471

472 NEIL DUNN: So, those are passed on when you sign the papers. Whether it's buried in all that other stuff...
473

474 RICHARD CANUEL: It should be described in the deed, that's correct.
475

476 NEIL DUNN: Okay, thank you.
477

478 RICHARD CANUEL: Because eventually when the property gets turned over to the property owners as an
479 association each one of those owners owns a percentage of that common land, so it should be described in
480 their deeds.
481

482 NEIL DUNN: So anyway, they were aware of it...the previous one...
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484 JACKIE BENARD: Yeah.

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JIM SMITH: Well, again it's an ongoing problem...part of it is the real estate people I don't think really make a point of talking about this probably? I don't know, I really don't know one way or the other, but...

ANNETTE STOLLER: We do.

JACKIE BENARD: Well...

JIM SMITH: Hopefully you do, but it seems like most of the people like you...you come in, or like the previous one...

JACKIE BENARD: Yes.

JIM SMITH: ...they have no idea it was a PRD. I've seen it on more than one occasion. Okay, on this particular one, I think because it is common land, it cannot be developed I don't see any big problem with it. Anybody else? I'll entertain a motion.

JACKIE BENARD: Mr. Chairman, I'd like to make a motion to grant Case No. 8/19/2015-5 as submitted.

JIM SMITH: Okay. Any second? Who seconded?

ANNETTE STOLLER: I seconded.

JIM SMITH: Okay. We have a second. All those in favor?

ALL: Aye.

RESULTS: THE MOTION TO GRANT CASE NO. 8/19/2015-5 WAS APPROVED, 5-0-0.

RESPECTFULLY SUBMITTED,



NEIL DUNN, ACTING CLERK

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

APPROVED (SEPTEMBER 16, 2015) WITH A MOTION MADE BY J. TIRABASSI, SECONDED BY J. BENARD AND APPROVED 4-0-0.



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