

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

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5 DATE: SEPTEMBER 16, 2015
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7 CASE NO.: CASE NO. 9/16/2015-2
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9 APPLICANT: DAVID AND LISA CAMPBELL
10 49 SEASONS LANE
11 LONDONDERRY, NH 03053
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13 LOCATION: 49 SEASONS LANE, 13-71-42, AR-I
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15 BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
16 JACKIE BENARD, VOTING MEMBER
17 BILL BERNADINO, VOTING ALTERNATE
18 JIM TIRABASSI, ACTING CLERK
19
20 ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING
21 ADMINISTRATOR/HEALTH OFFICER
22
23 REQUEST: EQUITABLE WAIVER OF DIMENSIONAL REQUIREMENTS TO ALLOW A
24 SOLAR ARRAY STRUCTURE TO REMAIN WITH AN ENCROACHMENT INTO
25 THE FRONT SETBACK WHERE 40 FEET IS REQUIRED BY SECTION 2.3.1.3.C.
26
27 PRESENTATION: J. TIRABASSI READ THE CASE INTO THE RECORD. NO PREVIOUS CASES.
28 ONE LETTER READ INTO THE RECORD. PAGES 23-39 ARE ATTACHMENTS
29 TO REFERENCE.
30
31 JIM TIRABASSI: Okay?
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33 JIM SMITH: This is not a variance, but an equitable waiver.
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35 JIM TIRABASSI: Excuse me?
36
37 JIM SMITH: What we're doing is a...
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39 JIM TIRABASSI: Oh, oh, oh...I thought...I thought...
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41 JIM SMITH: ...equitable waiver...
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43 JIM TIRABASSI: ...okay.
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45 JIM SMITH: ...which is under RSA. Who will be presenting?
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47 ALAN GAUNTT: My name is Alan Gauntt. I'm one of the partners at Granite State Solar. I pulled the permit
48 and did the install, and I'm here to represent David and Lisa Campbell.
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50 JIM TIRABASSI: Can I stop you for one second?
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52 JIM SMITH: Yeah.
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54 JIM TIRABASSI: There may be a conflict...I personally. Is the person who wrote the letter...I think...is he here?
55 No okay, then I won't...okay. I may know his family, but I wouldn't know unless I asked him, so it's impartial,
56 okay...
57
58 JIM SMITH: Okay.
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60 JIM TIRABASSI: ...that was I just wanted to...
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62 JIM SMITH: Okay, before we start you understand we only have four people? You need three positive votes
63 out of four. If you wish, you could ask for a continuance and we would possibly have five next month? Which
64 means you could get three out of five versus three out of four.
65
66 ALAN GAUNTT: I'll continue.
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68 JIM SMITH: Okay, continue with your presentation then.
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70 ALAN GAUNTT: I don't really understand the relevance of the letter being that some of it is untrue. I hope
71 that doesn't have any factor on whether you decide to give the...
72
73 JIM SMITH: Well.
74
75 ALAN GAUNTT: ...equitable waiver or not? I guess moving forward and I can give you the story of what
76 happened, and we can go from there. I've never had to do an equitable waiver. I'm very familiar with a
77 variance, but Richard kind of explained it to me as to what was going on, and the story of this is one of my
78 employees...well initially getting the permit we were aware of the 40 feet before we started the install I
79 called and had him make sure that it was 40 feet so there was no mistake. What he did, which is very similar
80 to most Town's is it's pulled from the actually street and not the property line. If they're next to a street
81 most of the time it's just a neighbor because the projects that we typically do are in the back yard. The one
82 that I had done prior to that that was on a road, it was...we had to pull the measurement from the actually
83 road. He called...it was his mistake. It was our mistake because I'm pretty sure he asked...she said from the
84 property line, and he assumed the property line was on the road. So, I took a measurement from
85 approximately 50 feet. I think its 52 feet just to be...just to make sure that we weren't anywhere close to the
86 line. So, we were very comfortable with where we had placed it. When Richard came out he made a note, or
87 I think he had called me and just said you didn't know exactly where the property line was, and I explained
88 that I pulled the measurement from the road and not the property line because I didn't know where the

89 property line was...was either, I went out there and I met with him. We walked around, I think you found a
90 marker prior to me getting there and we walked around and we found what we assumed...or there was the
91 markers. They were approximately 15 feet from the road. So, together we pulled a number and it ended up
92 being 6 feet away within the boundaries.
93

94 JIM SMITH: So, you're saying its 34 feet versus 40?
95

96 ALAN GAUNTT: Correct, and that is if you look at the array that is what we did was, I think it was...I believe it
97 was flat. It sticks out the most when it goes flat at night, or if there's wind. That's the only time that it will go
98 flat at night well after the sun goes down, or if there is wind that's coming through which basically wouldn't
99 happen in this area regardless, and we were going by...and there's also...I'm familiar with what's called free
100 space which is not...it doesn't, you do not have free space in this Town. If you did have free space then
101 where the pedestal comes out of the ground, we would have been within the 40 feet. I'm not trying to argue
102 that, but that was another...you know, I thought I was beyond even being close to what the line was when we
103 did it, and I'm kind of trying to address what they said in the letter. There's no reason for me to put it 6 feet
104 farther into the rough. It was a mistake. We weren't going against what we were supposed to do, or what
105 we weren't supposed to do. It was a mistake, and can it be moved? Yes, it would cost us thousands of
106 dollars to move it. We'd have to dig up a 3,200 pound pedestal that is buried in the ground. We would have
107 to re-dig the conduit that runs from the array to the house. So, it would cost thousands of dollars to move
108 back 6 feet. If we moved it back 6 feet, it's not going to change anything. It's not going to change the
109 appearance from anyone's location. Prior to us putting in the array, my business partner went to the
110 neighbors across the street and offered to put in trees. They have trees in front of their house. We offered
111 to put in more trees if they'd like it at our cost. So, if they thought that would help...you know with them not
112 having to look at it. We were told by the homeowners that...you know, I wasn't there, but there was some
113 kind of argument, and they weren't responding to us, but we did make every attempt that even...it wasn't
114 required by us, but we were willing to do something that...to make them happy and we were unsuccessful.
115 So, other than that that's my presentation.
116

117 JIM SMITH: Okay. Under our RSA 674:33A. Part A says "a violation was not noticed or discovered by the
118 owner, former owner, owner's agent, or representative a municipal agent until after the structure in violation
119 had been substantially completed, or until after lot or other subdivision of land in violation had been
120 subdivided by conveyance of...". When was this discovered, Richard?
121

122 RICHARD CANUEL: Well, it had been discovered after the panel had been mounted on the pedestal, and I
123 went back to do the final inspection on the installation.
124

125 JIM SMITH: So, it was in fact substantially complete?
126

127 RICHARD CANUEL: It was completely completed.
128

129 JIM SMITH: Okay, so we meet that requirement, I guess? B, "the violation was not the outcome of ignorance
130 of the law or ordinance. Failure to inquire...". This next word, I can never say right "...om... ", I guess
131 whatever that means..."misrepresentation or bad faith on the part of any owner, owner's agent, or
132 representative but what was still caused by either a good faith error in measurement, or calculation made by

133 the owner, or owner's agent, or by an error in the ordinance interpretation applicability made by the
134 municipal official in the process of issuing the permit of which this official has authority". So, what we have
135 to decide, is this a good faith error?
136

137 BILL BERNADINO: He admitted himself he thought, he assumed, and checked...

138
139 JIM SMITH: Yeah, that's the problem. He really didn't...

140
141 BILL BERNADINO: ...before settling a 3,400 pound block, I would have checked.
142

143 JIM SMITH: ...because I know in that subdivision there is in fact boundary markers at least along the
144 roadway. Is that correct, Richard?
145

146 RICHARD CANUEL: There's only one that I could find, and it was on the far corner of the property near the
147 intersection of one of the road ways.
148

149 JIM SMITH: Yeah.
150

151 RICHARD CANUEL: I could not find the second boundary, so even then, it was still kind of difficult to
152 determine the actual location of that front property line lacking an actual survey.
153

154 JIM SMITH: Now, the next part addresses the letter..."the physical, or dimensional violation does not
155 constitute a public or private nuisance nor diminish the value of other properties in the area, nor interfere
156 with, or adversely affects any present, or permissible future uses of any such property". D, "due to the
157 degree of past construction, or investment made in ignorance of the ...constitution or violation the cost of
158 correction so far outweighs any public benefit to be gained that it would be inequitable to require the
159 violation to be corrected". Those are the things we have to...part two isn't applicable because this
160 doesn't...hasn't existed for ten years, or more, so we're stuck with the first part of this.
161

162 JIM TIRABASSI: How big of an array of solar panels is this?
163

164 ALAN GAUNTT: The actual...?
165

166 JIM TIRABASSI: Yeah.
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168 ALAN GAUNTT: Approximately twenty by twenty.
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170 JIM TIRABASSI: No, no how many...not the individual panels. How many panels are there?
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172 ALAN GAUNTT: Twenty.
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174 JIM TIRABASSI: Twenty.
175

176 ALAN GAUNTT: Twenty panels.

177
178 JIM SMITH: Okay.
179
180 JIM TIRABASSI: Okay, so you've got twenty of these?
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182 ALAN GAUNTT: Look, no, no, no twenty...
183
184 JIM TIRABASSI: Okay, that's what I'm saying. You've just got a single thing of twenty panels?
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186 ALAN GAUNTT: That is actually a twenty four...that's a twenty four panel tracker. This one is slightly smaller.
187 It's four by five, so it's four across the bottom by five up. That is four across the bottom by six up, so it's
188 slightly smaller.
189
190 JIM TIRABABASSI: But what I'm saying is you've just gone one?
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192 ALAN GAUNTT: Just one.
193
194 JIM TIRABASSI: That's what I was getting at.
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196 ALAN GAUNTT: Yeah, the picture that was previously up there is the actual picture.
197
198 JIM TIRABASSI: Right, and what's the dimension of that roughly?
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200 ALAN GAUNTT: That is...that is roughly twenty by...actually that is the twenty by twenty, so it's roughly
201 twenty by twenty square.
202
203 JIM TIRABASSI: Okay.
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205 ALAN GAUNTT: And when I say, we're going to move it 6 feet back...I literally...it's going to be...if you were to
206 take a picture now, you wouldn't be able to...I mean 6 feet back. It's going to go directly 6 feet backwards, so
207 that is a picture from across the street...and that's where they have a tree located on the right and we told
208 them that we'd put as many trees as they want so they don't have to see it from their house which I don't
209 think that's the issue here because us moving it 6 feet back is not going to change...that picture will look
210 almost identical if we move it 6 feet back.
211
212 JIM TIRABASSI: So, that's in the front yard of...?
213
214 ALAN GAUNTT: That is in the front yard of their house right now.
215
216 JIM TIRABASSI: Just...
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218 JIM SMITH: Go on.
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220 BILL BERNADINO: It seems to be an issue because he's writing a letter saying it's an issue?

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222 ALAN GAUNTT: I know he has an issue with it, but it's...
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224 JIM TIRABASSI: His concern is different than the issue that we have been presented here.
225
226 ALAN GAUNTT: Correct.
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228 JIM TIRABASSI: Right, he's got a concern unrelated to the location...
229
230 JIM SMITH: Well, well....
231
232 [Overlapping comments]
233
234 JIM SMITH: When you read this...you know it comes under whether it's creating a nuisance.
235
236 JIM TIRABASSI: Right.
237
238 JACKIE BENARD: Nicole, number...we'll it's my page two, it's the picture of the panel and there's a shed.
239 Whose shed is that?
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241 ALAN GUANTT: That's the homeowners. My client.
242
243 JACKIE BENARD: Okay, okay.
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245 ALAN GUANTT: Yes.
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247 JACKIE BENARD: So, this is their back yard.
248
249 ALAN GUANTT: Correct.
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251 JACKIE BENARD: Okay.
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253 JIM TIRABASSI: Right, but...
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255 ALAN GUANTT: That's their property.
256
257 JACKIE BENARD: Okay.
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259 JIM TIRABASSI: ...what you're saying is that they are creating a nuisance. The thing is would the nuisance be
260 mitigated with it moved 5 feet back, or is the nuisance remain because it's there? That's what I was getting
261 at.
262
263 JIM SMITH: Yeah, I know again...
264

265 JIM TIRABASSI: Right, okay.
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267 JIM SMITH: That's one of the points we have to...
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269 JIM TIRABASSI: Right, right...
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271 JIM SMITH: ...consider.
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273 JIM TIRABASSI: ...Yeah, oh no...
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275 JIM SMITH: So, when I go down through this it appears like Part A of this they meet. So in other words, it
276 wasn't discovered until it was actually finished. Part B is a little iffy in my mind because they didn't really try
277 to determine the actually property line.
278
279 JIM TIRABASSI: Right, let me...Richard, about how far from that property did you find that marker?
280
281 RICHARD CANUEL: Well, it's quite a distance. I don't know if you can see the property on your GIS there, but
282 the one property marker that I did find...
283
284 JIM TIRABASSI: Right...
285
286 RICHARD CANUEL: ...as I said was on the corner of the lot.
287
288 JIM TIRABASSI: Well, I mean a couple hundred feet down, or...?
289
290 RICHARD CANUEL: At least.
291
292 JIM TIRABASSI: Okay, that's fine...okay, so...reasonably he wouldn't have found it? Yeah, okay. That's what I
293 was just getting at.
294
295 JIM SMITH: Well, okay.
296
297 BILL BERNADINO: Yeah, but the reason is he wouldn't have found it, but why wouldn't you get your land
298 surveyed to make sure they're doing the right job?
299
300 JIM SMITH: With the requirements that we typically have for foundation applied to something like this as far
301 as being surveyed?
302
303 RICHARD CANUEL: Our certified foundation plan requirements?
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305 JIM SMITH: Yeah.
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307 RICHARD CANUEL: That would have been a nice reference. Unfortunately, we don't have that in our file, so
308 like I said...

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JIM SMITH: No, I mean...would something like that...should that have been required for this because he's talking about...how big of a foundation do you have in this thing?

ALAN GAUNTT: Size, or weight?

JIM SMITH: The size, physical size of the... ?

ALAN GAUNTT: The size is...it's 4 feet in diameter by 6 feet tall, so it's buried 6 feet in the ground, and it's got 4 foot in diameter piece of concrete at the bottom.

RICHARD CANUEL: Yeah, it's not something that we would have required a certified plot plan for.

JIM SMITH: So, what I'm getting at is when you constructing a home when the footings go in you're supposed to do a certified plot plan which confirms the location of the...

ALAN GAUNTT: I understand.

JIM SMITH: ...of the foundation, but what you're suggesting is this one doesn't really fit that?

RICHARD CANUEL: No, it wouldn't.

BILL BERNADINO: This wouldn't fit to get your land surveyed?

RICHARD CANUEL: There really isn't any requirement for someone to survey their land. Like I say, even by our building regulations where we require a certified foundation plan that's not a survey either that just certifies as a location of the building on the lot, so there really is no requirement for a survey. Like I say, we didn't have any of that data available to us to really determine where that property line was with the exception of using our Town's GIS map.

JIM SMITH: Which is iffy at best?

RICHARD CANUEL: Well, it's close, but again it's not a survey.

BILL BERNADION: Yeah, but I also understand what the gentlemen mentioned in his letter that if it happens once it gets put in the ground twelve feet...oh I'm not going to move it again, it's going to cost me too much money, and give them that one too?

JIM SMITH: Well...I see...

[Overlapping comments]

JIM SMITH: ...in the background of this equitable waiver was...it gave us (the Zoning people) a way to address these types of issues without trying to make it into a variance.

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BILL BERNADINO: Right.

JIM SMITH: Because god knows how many of those that we have in the past. Okay. Jackie, any questions, or comments?

JACKIE BENARD: A question for Richard. So, when this homeowner wanted this solar panel they didn't have to come in for any type of permit?

RICHARD CANUEL: Yes, they did have to apply for the permit.

JACKIE BENARD: Okay, so they applied for the permit.

RICHARD CANUEL: Yup, yeah.

JACKIE BENARD: And they must have filled out where it would be located?

RICHARD CANUEL: Yeah, they did show a proposed location on a plot plan, but the plot plan was something similar to what you are seeing here.

JACKIE BENARD: Yeah, and they must have indicated that it was going to be 40 feet back?

RICHARD CANUEL: Yes.

JACKIE BENARD: So, alright, so that answers that for me. So, the homeowner did their part?

ALAN GAUNTT: Actually, I did it.

JACKIE BENARD: You did it for them.

ALAN GAUNTT: We do all the permits.

JACKIE BENARD: You did all the permits for them?

ALAN GAUNTT: Correct.

JACKIE BENARD: So, I'm going to scold you...

ALAN GAUNTT: I understand.

JACKIE BENARD: ...because you should know where you are supposed to be measuring because this puts...

ALAN GAUNTT: I clearly admit that someone in my office...

397 JACKIE BENARD: Have you done any others in Londonderry?
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399 ALAN GAUNTT: ...made a horrible mistake.
400
401 JACKIE BENARD: Have you done any others in Londonderry?
402
403 ALAN GAUNTT: Not a tracker, and not next to a road like this...no, not in this Town.
404
405 JACKIE BENARD: Okay, okay.
406
407 ALAN GAUNTT: But the Town, and again this is no excuse, but this is the first Town that the measurement is
408 from the property line and not the actually road, but that is not an excuse for what we did.
409
410 JACKIE BENARD: Okay.
411
412 ALAN GAUNTT: I mean...we will, we understand there is a very good chance that we are going to have to
413 move this. We are only going to move it six feet because that's what's required and it's not going to change
414 anything for the person across the street. So...but we are more than willing to comply.
415
416 JACKIE BENARD: Okay, thank you.
417
418 JIM SMITH: What would you say the costs would be to correct this would be?
419
420 ALAN GAUNTT: As far as...we'd have to take it apart completely. We'd have to dig up the 3,200 hundred
421 pound pedestal, and the lost time. I could cost anywhere from...I've never had to do this before but
422 anywhere from three to six thousand dollars.
423
424 JIM SMITH: Okay, because the reason why we are asking that question as part of this law that's one of the
425 considerations you have to take into account.
426
427 ALAN GAUNTT: I can't give you an honest answer without guessing. I've never had to take one of these out
428 before, but it would require excessive digging much more than we've already done because in order to get in
429 there we'd have to dig a 5 foot hole. In order to pull it out, I don't know how large that hole would have to
430 be, and it would most likely require a larger machine than putting it in?
431
432 JACKIE BENARD: So, the cost to just for the install...the cost for an actual install if you put a number to that
433 and times it by two, and then some because basically it's undoing a full set up obviously. So, is your number
434 to the Board too lean? Because it sounds...your install costs...
435
436 ALAN GAUNTT: I don't want to sound like I'm exaggerating, but I honestly don't know. What it costs us to
437 put in there?
438
439 JACKIE BENARD: Or what you charge?
440

441 ALAN GAUNTT: Are you talking retail?
442
443 JACKIE BENARD: Well, what you would charge on your estimates...proposal to a customer...you know my cost
444 is "x" to put this in...whatever that number is? Times it by two and you're going to need a bigger machine for
445 the hole to get this out, so I guess maybe a more honest answer of what that number would probably be is?
446
447 ALAN GAUNTT: If it was our customer's fault and they had to pay for it?
448
449 JACKIE BENARD: Yes.
450
451 ALAN GAUNTT: It would cost anywhere from eight to ten thousand dollars.
452
453 JACKIE BENARD: Okay, so...
454
455 ALAN GAUNTT: It might seem like a large number but...you know like again, I don't want to under estimate it
456 because if you're going by what it might cost will actually decide...I want to make sure that I'm putting it...I
457 mean my costs probably three to six thousand maybe more. I honestly don't know because you're
458 paying...everything is paid by the hour.
459
460 JACKIE BENARD: Um.
461
462 ALAN GAUNTT: Especially when you go and fix something. So...
463
464 JACKIE BENARD: Have you ever dug one of these things up because you put it somewhere that...?
465
466 ALAN GAUNTT: No, this no...
467
468 JACKIE BENARD: Okay.
469
470 JIM SMITH: Let me stop you at that point. Richard, to bring this into conformance would they actually have
471 to remove the cement block from the ground, or could they just cut off flush with the grade?
472
473 RICHARD CANUEL: That would be something better answered by the applicant. To tell you the truth, I...
474
475 ALAN GAUNTT: Cut off?
476
477 RICHARD CANUEL: ...wouldn't know how they do that?
478
479 JIM SMITH: In other words...
480
481 ALAN GAUNTT: Well, the piece that's in the ground is over a \$1,000 dollars, so it would just to get a new one
482 delivered is like \$1,200 hundred dollars. The cost of its \$1,000 dollars...
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484 JIM SMITH: Oh, okay...I think you're getting...is this a pre...?

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ALAN GAUNTT: It's a pre-cast.

JIM SMITH: ...cast piece?

ALAN GAUNTT: Correct.

JIM SMITH: Okay, well that changes it. Okay, it wasn't a cast in place thing? So, you would physically have to lift that block out, which is a pre-cast block...

ALAN GAUNTT: Yes, right. The concrete is on the bottom. It's about 2 feet high and 4 feet in diameter, and it has a 12 inch steel post that comes out of it another 4 feet out of the ground, and then it's got a flange on the top that the mast that you can see in that picture is connected to.

JIM SMITH: Why don't you go back to that picture.

ALAN GAUNTT: So, that piece there that looks like it's 6 to 7 feet tall is attached to the pedestal which is down in the ground by a flange. You can't see the pedestal sticking out of the ground. It's barely sticking out of the ground maybe 3 to 4 inches, and it's 6 feet down.

JIM SMITH: Okay. Jim do you have a question?

JIM TIRABASSI: I'm just trying to digest what he said...okay. It's a pre-formed piece that is put in the ground. Now, you said it would cost you about...I just want to work this through in my mind...about \$1,200 dollars to get a new pedestal and the component. Is that right?

ALAN GAUNTT: The piece that's in the ground, our cost is a few dollars under \$1,000, so we'll call it a \$1,000 dollars.

JIM TIRABASSI: Okay, so...okay...

ALAN GAUNTT: It's 3,200 hundred pounds, so having it delivered it not cheap as well.

JIM TIRABASSI: Right, okay...okay, but just...

JIM SMITH: Okay, just to...this is sitting on dirt at the bottom of the hole?

ALAN GAUNTT: Correct.

JIM SMITH: Okay, so there's no concrete pad placed under that?

ALAN GAUNTT: There is not.

JIM TIRABASSI: So, you're talking about a cost to dig this up? It could be \$3,000 dollars?

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ALAN GAUNTT: Well...not just digging it up. In order to dig it up, we'd have to take the entire thing apart.

JIM TIRABASSI: Okay.

ALAN GAUNTT: In order to dig it up, we'd have to disassemble the entire...

JIM TIRABASSI: The entire thing right. You'd just have the shaft sticking up that...?

ALAN GAUNTT: Correct.

JIM TIRABASSI: ...remaining, okay.

ALAN GAUNTT: We'd have to take it all the way down to the pedestal to the ground level.

JIM TIRABASSI: Right, okay, so how...so this came as a pre-assembled unit?

ALAN GAUNTT: What is inside the ground? Correct.

JIM TIRABASSI: Right, so you had to open up the ground and put it in?

ALAN GAUNTT: Correct.

JIM TIRABASSI: So, Jim was saying that if you left it in the ground and just put in another base...it's not just pouring another base, you're actually digging another hole?

ALAN GAUNTT: We'd have to dig another hole.

JIM TIRABASSI: Right, as opposed to taking this one out and just...would the cost be greater to just cut the pedestal off and eat that portion as a loss? Still disassemble the unit and not dig up the foundation of...take that bottom piece out. Just dig another hole and put another piece in?

ALAN GAUNTT: It's probably going to cost me \$1,000 to \$2,000 dollars to dig it back up, so I...it's going to be within \$1,000 dollars.

JIM TIRABASSI: Okay, okay.

JIM SMITH: So, fifty fifty.

JIM TIRABASSI: Yeah, I just wanted to see if there was a...

JIM SMITH: Yeah, I know that is part of it...

ALAN GAUNTT: We'll still have to come back there and dig another hole.

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JIM TIRABASSI: Oh, no, no, I know that regardless of whether you put in a brand new unit and you pull the other one up, but I was just wondering if it was cheaper to get something new and just shear that bottom piece off and just be done with it? Kind of what he was talking about, except you'd be throwing a \$1,000 dollars in the garbage.

BILL BERNADINO: He'd be saving a \$1,000. He's paying for \$1,000 to do a new hole that going to cost him \$3,000-\$4,000 to dig it up. Bring up the other one...it's a substantial savings.

ALAN GAUNTT: I'm not...

BILL BERNADINO: And that's at his cost.

JIM TIRABASSI: Right.

BILL BERNADINO: It doesn't matter what it cost the people that put it in.

JIM TIRABASSI: Right, right, right.

BILL BERNADINO: You know...

[Overlapping comments]

BILL BERNADINO: ...get a backhoe and dig it up. I don't see it costing \$3,000 dollars, but...?

JIM TIRABASSI: Right, I'm just talking hypothetical to see where it all was.

ALAN GAUNTT: Well, it's not just...

JIM TIRABASSI: Right.

ALAN GAUNTT: ...you need a machine to take that entire thing as well, so it's...

JIM TIRABASSI: Right.

ALAN GAUNTT: Again, I didn't know I needed to itemize...I apologize...

JIM TIRABASSI: No, no. It's just more of a fact finding...just a general idea. I don't need exact figures just a ball park. The wash isn't that great either way...that's all.

ALAN GAUNTT: In my opinion, it is not.

JIM TIRABASSI: Right, that's all I was getting at. Yeah, I wasn't looking for hard numbers.

617 JIM SMITH: Okay, see what we're looking at is Part D of this it says "the cost of correction so far outweighs
618 any public benefit to be gained it would be inequitable to require the violation to be corrected". That's what
619 we're trying to determine whether it's going to cost too much to correct it versus what is gained by the
620 public.

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622 ALAN GAUNTT: So I understand, you're saying it...you...

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624 JIM SMITH: And also what you said...even if you did do that all you're doing is moving it back 6 feet.

625
626 ALAN GAUNTT: Right.

627
628 JIM SMITH: And it's still going to be pretty much visible from across the street anyway.

629
630 ALAN GAUNTT: Yes, and at that point...I mean we're still willing to plant trees for the people across the
631 street. At this point, I'm...you know if they're...I'm going to have to move it back, I mean I'm out thousands of
632 dollars. You know, instead of \$500 or \$600 dollars, \$700 dollars putting trees in front of their house. For us,
633 it's really so the families kind of get along. I know they're never going to be a customer of ours most likely,
634 but you know, we went to them trying to you know...keep the two families...do whatever we could. We
635 understood they didn't like what was going on and I understand that, but we didn't think there was anything
636 else that we could do. The homeowners that's where they wanted it, and we don't really dictate...we well
637 them where they can put it and then they tell us where they want it.

638
639 JIM SMITH: Okay, shall we go through the...

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641 JACKIE BENARD: For and against?

642
643 JIM SMITH: Okay, anyone in favor of this? Anyone that has questions, or is against this? Okay, we...I think
644 what we'll need to do is go through the....

645
646 JACKIE BENARD: So, it's closed to the public?

647
648 **DELIBERATIONS:**

649
650 BILL BERNADINO: [Indistinct]...

651
652 JIM SMITH: Well, I think part of the problem and what the equitable waiver was trying to address...the whole
653 situation where somebody made a mistake. The cost to correct it is substantial. What the public would gain
654 outweighs the cost.

655
656 BILL BERNADINO: And I do understand that, but he didn't do his homework, he admitted he made a guess.
657 He assumed, and he just put it where he wanted it, now he's saying it's going to cost me all this money to fix
658 it to do it right...it's, we don't know what that person is looking at?

659
660 JACKIE BENARD: It'll still be viewed...

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662 JIM TIRABASSI: He'll be looking at the same thing...
663
664 JACKIE BENARD: ...he'll be looking at exactly the same thing.
665
666 JIM TIRABASSI: Just a couple of feet away.
667
668 BILL BERNADINO: We don't know that, we didn't see the property? We don't know...
669
670 JACKIE BENARD: We just...well we have that picture from...
671
672 BILL BERNADINO: ...you know?
673
674 JACKIE BENARD: ...what he sees, so that's 6 feet that's still going to be...
675
676 BILL BERNADINO: I still think...
677
678 JACKIE BENARD: ...it's 6 feet.
679
680 BILL BERNADINO: ...he should have done his homework a little bit more before he set something that deep
681 and that heavy.
682
683 JACKIE BENARD: But that site won't change. That's still...
684
685 BILL BERNADINO: Okay, alright, I'll just...
686
687 JACKIE BENARD: ...going to be looking like that...
688
689 BILL BERNADINO: Okay...I'll give you....
690
691 JACKIE BENARD: ...I mean that's...that's one problem.
692
693 JIM SMITH: Yeah.
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695 BILL BERNADINO: So that made it right for him not to do his homework and put it in the wrong spot?
696
697 JIM SMITH: Well...
698
699 JACKIE BENARD: Oh no absolutely not.
700
701 JIM TIRABASSI: No it didn't.
702
703 [Overlapping comments]
704

705 JIM SMITH: Okay, why don't we go through the points that are in the RSA?

706
707 JACKIE BENARD: Yup.

708
709 JIM SMITH: And then we can...okay, the first point is...was the violation discovered before it was substantially
710 complete?

711
712 JIM TIRABASSI: No.

713
714 JIM SMITH: It was not?

715
716 JACKIE BENARD: It was not.

717
718 JIM SMITH: Okay, the second part was it an outcome of ignorance of the law on his favor to
719 inquire...whatever that word is...misrepresentation of bad faith. Was it still caused by a good faith error in
720 measurement, or calculation made...okay, so that's...He did make an inquiry. He did submit a building
721 application. He showed a proposed location which was in fact in conformance with the 40 foot setback. His
722 mistake was, he didn't really know where the property line was. According to Richard, there was only one
723 boundary marker, and that wasn't even close to that...so, I kind of think he met that? Does anybody object to
724 that interpretation?

725
726 JIM TIRABASSI: No, I mean if you can't find it in a reasonable period of time you have to assume there's no
727 markers available.

728
729 JIM SMITH: Yeah, of course he also made the error thinking the measurement went from the edge of the
730 pavement not the actually property line.

731
732 JACKIE BENARD: And that's an assumption rather than asking.

733
734 JIM SMITH: Yeah, so I guess he met Part B.

735
736 JACKIE BENARD: Which was a good faith error in measurement?

737
738 JIM SMITH: Yeah.

739
740 JACKIE BENARD: Okay.

741
742 JIM SMITH: Part C says "the physical or dimensional violation does not constitute a public or private
743 nuisance, not diminish the value of any other property in the area, nor interfere with or adversely affects any
744 present or future permissible uses of any such property, and...". So, evidently C and B have to work together,
745 and D Part says "due to the degree of past construction and investment made in ignorance of facts
746 constitutes a violation...the cost of construction so far outweighs any public benefit to be gained that it would
747 be inequitable to require the violation to be corrected". So, what you're looking at is a balance between
748 public or private nuisance...

749
750 JIM TIRABASSI: Right.
751
752 JIM SMITH: ...and the overall cost to correct it and in view of the fact that even if it was corrected it only be
753 moved back...
754
755 JIM TIRABASSI: 6 feet...
756
757 JIM SMITH: ...6 feet...
758
759 JIM TIRABASSI: Excuse me a second? Approximately, how far away is it from the neighbor's front of their
760 house to this?
761
762 ALAN GAUNTT: I would guess, the front of their house is at least 40 feet from the road...I don't think they can
763 be any closer than that, but I think it's more like farther...I think it's more like 60 feet...?
764
765 JIM TIRABASSI: Okay.
766
767 ALAN GAUNTT: ...so you've got 60, I'm guessing the road is...
768
769 JIM SMITH: A 50 foot right of way, I believe? So you're talking 100...
770
771 ALAN GAUNTT: Oh, so the road has a 50 foot right of way?
772
773 JIM TIRABASSI: Right, so you've got 110 then you have 40 feet. You're inside the line, so 150...?
774
775 [Overlapping comments]
776
777 JIM SMITH: 140 feet anyways?
778
779 JIM TIRABASSI: ...yes.
780
781 ALAN GAUNTT: I see it right there.
782
783 JIM TIRABASSI: Right, right.
784
785 ALAN GAUNTT: I'd say 160 feet?
786
787 JIM TIRABASSI: Right, so...
788
789 ALAN GAUNTT: 120 and 160 feet, I think?
790
791 JIM TIRABASSI: So moving it 6 feet is going to be almost negligible. There's not going to be any difference in
792 it.

793

ALAN GAUNTT: In my opinion.

794

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JIM TIRABASSI: Right, at that distance, it'syeah almost unperceivable the distance...

796

797

JIM SMITH: So, I would say he met C and D.

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799

JIM TIRABASSI: Right.

800

801

JACKIE BENARD: So does...? Because how we'll answer...it does not constitute a public or private nuisance, nor diminish the value?

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JIM SMITH: Well, the only problem with this...see the way it's written in the RSA these two are tied together.

805

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JACKIE BENARD: Right, I'll like them here on this one.

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JIM SMITH: Yeah, yeah...

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JACKIE BENARD: So...so the first part is...

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JIM SMITH: The nuisance is not great enough to justify the cost.

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814

JACKIE BENARD: Okay...and so the last part? Do we still have one more part?

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JIM SMITH: No...

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818

JACKIE BENARD: Cuz this one addresses?

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JIM SMITH: No, that applies to when it's over ten years.

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JACKIE BENARD: Oh, this is over ten years. Okay, so I'll just transfer this for right here then. Alright.

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JIM SMITH: Is this the right sheet? I think...we'll we were just going through. These two need to be written together, and then the RSA because this one when you read it...it ends up being...?

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RICHARD CANUEL: Um...

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JIM SMITH: So, they really aren't independent...anybody, so maybe you could hit Jaye to...?

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831

RICHARD CANUEL: Or the subject...bring it to Jaye's attention...

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JIM SMITH: Or, other work it out with...thank you.

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JACKIE BENARD: The nuisance not great enough to justify the cost to move 6 apply?

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JIM SMITH: Yeah, yeah.

JACKIE BENARD: Okay, so I made sure that was in there.

JIM SMITH: Yeah.

JACKIE BENARD: Alright. Are we still discussing anything? Anymore questions?

JIM SMITH: No, no, we just need a motion.

JACKIE BENARD: Mr. Chairman, I'd like to make a motion this evening to grant Case No. 9/16/2015-2 for David and Lisa Campbell for an equitable waiver of dimensional requirements to allow the solar array structure to remain within the encroachment into front setback where 40 feet is required by Section 2.3.2.3.C.

JIM TIRABASSI: Seconded.

JIM SMITH: Okay. All those in favor?

ALL: Aye

RICHARD CANUEL: Mr. Chairman before we go onto the next case, I just want to comment on your request regarding the equitable waiver worksheet about combining item number three and number four.

JIM SMITH: Yeah.

RICHARD CANUEL: Basically, in granting the equitable waiver the Board has to make a finding of all four criteria. That's why it's divided up as one, two, three and four...

JACKIE BENARD: And I did do that.

RICHARD CANUEL: ...on this worksheet, so although number three and number four may sound very similar they have to be distinctly separate.

JIM SMITH: Well, the thing that I was looking at was the number three ends with an and...

RICHARD CANUEL: Yes, because you have to find all criteria number one and number two and number three and number four. That's why it's worded that way...

JIM SMITH: But the other two don't have the and?

RICHARD CANUEL: ...that is why it is worded that way, so you couldn't really combine these two. This would not work as far as filling out your decision. Do you follow me?

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JIM SMITH: Not really?

JACKIE BENARD: What I did is I used that worksheet and I put it on to our findings so that we answered all of those in that order.

RICHARD CANUEL: And that is very important in making your decision to show that you've applied all four...

JACKIE BENARD: All four?

RICHARD CANUEL: ...criteria...

JACKIE BENARD: Yes.

RICHARD CANUEL: ...that's right.

[Overlapping comments]

JIM SMITH: Richard, when you read this A ends in with a semicolon, B ends with a semicolon...

RICHARD CANUEL: Correct.

JIM SMITH: ...and then C ends with an and...

RICHARD CANUEL: That's correct. Yes, because doing one, two, three and four.

JIM TIRABASSI: So, if you were putting in a sentence it should have been a comma, a comma not a semicolon...

RICHARD CANUEL: Essentially, yeah.

JIM TIRABASSI: They just grammatically stretched it improperly.

RESULTS:

THE MOTION TO GRANT CASE NO. 9/16/2015-2 WAS APPROVED, 4-0-0.

RESPECTFULLY SUBMITTED,

Jim Tirabassi

JIM TIRABASSI, ACTING CLERK

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

926

927 **APPROVED (NOVEMBER 18, 2015)** WITH A MOTION MADE BY N. DUNN, SECONDED BY J. BERNARD AND
928 **APPROVED 5-0-0.**

929