

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

DATE: MAY 15, 2014

CASE NO.: 3/19/2014-2; MOTION TO REHEAR

APPLICANT: CHARLIE EVANS
22 GOONAN ROAD
HOOKSETT, NH 03106

LOCATION: 199 ROCKINGHAM ROAD; 15-67; C-II, WITHIN THE RTE. 28
PERFORMANCE OVERLAY DISTRICT

BOARD MEMBERS PRESENT: JIM SMITH, CHAIR
NEIL DUNN, VOTING MEMBER
JACQUELINE BENARD, VOTING MEMBER
DAVID PAQUETTE, CLERK

REQUEST: TO GRANT A REHEARING OF CASE NO. 3/19/2004-2;

A REQUEST FOR A VARIANCE TO ALLOW AN EXISTING BUILDING TO
REMAIN WITHIN THE FRONT 60-FOOT STRUCTURE SETBACK AS
REQUIRED BY SECTION 2.4.3.1.1; TO ALLOW A PARKING AREA WITHIN
THE FRONT 30-FOOT GREEN SPACE AS REQUIRED BY SECTION 2.4.3.2.1;
AND TO ALLOW A PARKING AREA TO BE UNPAVED AS PROHIBITED BY
SECTION 3.10.13.2.1.

PRESENTATION:

JIM SMITH: Calling the Zoning Board meeting...of May 14th to order. This is a hearing...not a hearing but a meeting...to...make a decision on appeal for a rehearing. No public information will be taken other than...legal...not legal but...explanations from the Zoning Officer. And at this point I would like the Zoning Officer to kind of go over the criteria...of...what is required for a rehearing.

RICHARD CANUEL: Well just to advise the Board, when an applicant submits a request for a rehearing...it is the applicants obligation to list all the criteria for which he...figures that the Board may have made an error in their decision...I can say looking at the applicants request and the way it was written...he seems to make a valid weak...rather weak argument but I think he brings up...some valid points...at...at least enough to want a further discussion but...also...in a rehearing request...it is not only for the benefit of the applicant...it's also for the benefit of the Board. What the rehearing does is it gives the Board an opportunity to...clarify its decision. You have to consider the fact that someone is requesting a rehearing, there is a possibility that that is going to follow up with an appeal to a superior court so that Board wants to make sure that they have a very clear record with their decision...if that goes to court...so even if...if the Board feels that they're not going to change

46 their decision regarding the vote on the variance...rehearing does give the Board that opportunity to clarify
47 that decision and it also...it also gives the Board an opportunity to...reexamine their decision...to make sure
48 they didn't overlook anything or you didn't actually make any errors on your...on your decision as far as...far as
49 lawful decision...that's really the...the purpose of the rehearing.
50

51 JIM SMITH: Ok...I have one question myself. On the location of the building...would it have been more
52 appropriate for a....a...an appeal for an equitable waiver...
53

54 RICHARD CANUEL: I don't think so in this particular case...because...the setback was a result of change of
55 zoning when it was a residential zone...the structure may have met the setback requirements but now because
56 that front setback is increased because of the commercial zone, it rendered that structure nonconforming. So
57 it wasn't a situation where someone made a mistake in locating the structure where they need to correct that
58 through an equitable waiver so...you know the variance is the only appropriate way to go in this particular
59 case.
60

61 JIM SMITH: OK, I just wanted to bring that up...in case anyone was wondering about that.
62

63 NEIL DUNN: And...and if I can help everybody here too...the...the applicant talks a lot about two to three year
64 time period, so we could have the variance sunset from that time period.
65

66 RICHARD CANUEL: That is a decision that Board can make if...
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68 NEIL DUNN: No I...I...guess I'm just bringing that up because he was talking about the usage and returns and all
69 that so if...he was talking about a two to three year time period but I...typically if we don't put that on there,
70 more for the new members, it stays in properties forever variance...so unless we have a way to control that
71 and I don't know what triggers it in two or three years if we put an end to it...other than someone
72 remembering I mean there is no...there is no trigger mechanism that will automatically make us go back...
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74 DAVID PAQUETTE: No follow up right? No follow up to the...
75

76 RICHARD CANUEL: Yeah...yeah that does get flagged.
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78 NEIL DUNN: It does?
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80 RICHARD CANUEL: Yeah...yup...I will make a flag and note of that...yup...
81

82 NEIL DUNN: Up on your calendar?
83

84 [Laughter]
85

86 RICHARD CANUEL: Yes absolutely.
87

88 NEIL DUNN: Oh no that's great...
89

90 RICHARD CANUEL: Absolutely...if the use continues after that...for which the variance was granted, is no longer
91 valid, it...it sunsets so now we have an enforcement issue...so yeah that...that definitely gets flagged. And
92 again, you know...as you say if you want to put a sunset on...on granting a variance if the Board so
93 chooses...the rehearing gives you an opportunity to do that. Even though that may not have been your original
94 decision...you still have opportunity to change that through the rehearing process.

95
96 NEIL DUNN: So...and the other thing I think I have a question, if I may chairman...so...if we say we are...we are
97 okay with a rehearing we hit the thirty day thing and then we would bring him back in for more things or this is
98 a grant or no grant proposition?

99
100 RICHARD CANUEL: All this meeting for today is to decide whether to grant or deny the request for a rehearing.

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102 JIM SMITH: So we grant a rehearing, he has to apply and start the process from scratch.

103
104 RICHARD CANUEL: Well he doesn't have to reapply, it just gets noticed, again...as a new hearing and a...it gets
105 put on the Board's regular agenda.

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107 JIM SMITH: Ok.

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109 DAVID PAQUETTE: So judging by the...the persons letter...the requesters letter...that...the reasons for the
110 denial are not supported by the record. So...we did not give the appropriate reason for denial...during the first
111 hearing I take it.

112
113 NEIL DUNN: If I may Jim...to my point...and he was...he was speaking nice things specifically about me...me
114 letting the commercial thing catch up...so...my thought is yes I said that and he...we also talked about the
115 standards of the time...again he says... it's a grandfathered use on the standard of the time it was for as a
116 residential garage and commercial...I did talk about the zoning would have been different for commercial
117 garage....I can say it elegantly enough and find out if he has the proper fire ratings or if that's something
118 Richard would look at if we granted it...can you comment on that...I mean...

119
120 RICHARD CANUEL: Actually that's not something I should comment on...

121
122 NEIL DUNN: Ok....No that's ok...

123
124 RICHARD CANUEL: That's...that's a point of discussion...that should happen at a public hearing.

125
126 NEIL DUNN: Ok...so that...that...ok...gotcha...so if we go through the minutes, if I may Jim, only because he...he
127 was talking to my comment and it was on line 56 if anyone has it open...and he is talking about it being
128 grandfathered as on the application but it wasn't grandfathered for commercial uses it was grandfathered for
129 storage of a residential owner...and that I...further down I talked to you...I do agree that...for the...it doesn't
130 decrease the property values...and then I do talk...I guess the existing garage facility was built as a standard of
131 the time but the change of...use and the low impact commercial, it doesn't meet the commercial zoning. And
132 that...that is really a safety issue...at the time, again I didn't say it elegantly but...it is a safety issue of what is
133 going on in the building and is it property constructed for commercial uses. It's grandfathered and he didn't
134 offer anything to that point. We had asked specifically maybe...maybe we need more information I

135 guess...I...so to me he is picking the one point...maybe we can't do that if commercial use is allowed but we did
136 talk about substantial justice and public interest...I think there were some questions also in the minutes about
137 the gravel...
138
139 JIM SMITH: It talks about a gravel driveway...
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141 NEIL DUNN: And so I don't know...I...[Pause]...
142
143 JIM SMITH: Anybody else have any thoughts?
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145 JACKIE BERNARD: Well plus we were discussing his hours of operation, how many units would be...actually
146 would be there at one point...we talked about boats being picked up...you know we went from cars at the park
147 in ride as a clientele to possibly some boats...it just kept going on and on because he details...
148
149 NEIL DUNN: Yeah but he did say no to boats...
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151 JACKIE BERNARD: He...but he said they would be left or gone, was that what he had said?
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153 NEIL DUNN: He said...
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155 JACKIE BERNARD: Or no...
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157 NEIL DUNN: He said no to boats at this location.
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159 JACKIE BERNARD: Oh ok...at this location.
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161 NEIL DUNN: However he...
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163 JACKIE BERNARD: But he had that other location...ok
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165 JIM SMITH: Yeah he was very vague about the hours of operation...I really had a question on trying to figure
166 that out.
167
168 JACKIE BERNARD: So I mean it...it sounded...upon the first presentation...at the beginning of the
169 presentation...it was presented as a service to the people at the park and ride and he would be doing some
170 detailing and it was...low impact and...as we got further you know than we...learned about the other
171 location...it was only going to be a two to three year...
172
173 [Long pause]
174
175 JACKIE BERNARD: And then he talked about the...I wish I could find it...something about...handicap...[Pause]...
176
177 JAYE TROTTIER: Line four-ninety-three, page twelve, at the top.
178

179 JACKIE BERNARD: So you did commit on line five ninety five that some of the area would be paved and the
180 handicap access on page...so we were all basically concerned about safety too...[Long pause]...
181
182 JIM SMITH: David do you have any comments?
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184 DAVID PAQUETTE: I was just going back through my comments...as my first case...[chuckling]...raise a motion
185 to approve it was...I wasn't prepared to...
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187 JIM SMITH: Yeah well again it's...
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189 DAVID PAQUETTE: Yeah...I still stand on my position that...I think with...with Neil's comment on granting
190 some...the rehearing and then possibly granting the variance.
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192 JIM SMITH: Ok...
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194 DAVID PAQUETTE: There...there is no...I mean...the one that gets me is that...that...the denial is not supported
195 by the record so...I think that's probably the biggest reason the rehear so that we can...either approve or
196 deny...and...in the right manner so the record shows...details...for the approval and denial.
197
198 JACKIE BERNARD: You know...it's...it's an existing building...and it's residential use only...
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200 JIM SMITH: Yeah...well it was built for residential...
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202 JACKIE BERNARD: For residential...
203
204 JIM SMITH: It was built in 1970...so...
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206 JACKIE BERNARD: I mean...now that we have commercial operation out of it...you know we are not...we didn't
207 ask...
208
209 JIM SMITH: You know...just thinking ahead if we were to grant it we could say...the building would have to be
210 brought in to compliance with the building and electrical codes for commercial use...something to that effect.
211
212 JACKIE BERNARD: I think I feel better about that...
213
214 JIM SMITHL: Yeah...because I am sure that there is probably, if there is electricity in there I am sure there are
215 probably no provisions for ground fault circuit on the receptacles which would be required, especially
216 commercial garages.
217
218 RICHARD CANUEL: If...if I could just interject...I don't want to go too far into discussion on particulars of the
219 case here, but they did do renovations in the garage so the electrical has been brought up to current code,
220 they do have GFC protection from the receptacles in there so...they have at least known that...
221
222 JIM SMITH: Ok...
223

224 RICHARD CANUEL: And that was done by the previous owner...so and I...I think rather than getting too deep
225 into discussion on the particulars of the case I think the Board needs to stick to the point as to whether the
226 applicant has made a valid argument for a rehearing or not...and then discuss all these issues in a public
227 hearing.

228
229 JIM SMITH: Yeah...

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231 RICHARD CANUEL: If the Board so chooses.

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233 JIM SMITH: Ok...which basically brings us back to his letter of application.

234
235 DAVID PAQUETTE: Mr. Chairman...

236
237 JIM SMITH: Yeah...

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239 DAVID PAQUETTE: I would like to raise a motion to rehear this case based on the grounds that...the denial was
240 not supported by the record.

241
242 JIM SMITH: Ok...do I have a second?

243
244 NEIL DUNN: I will second it.

245
246 JIM SMITH: Neil seconds...all those in favor of the motion...

247
248 JACKIE BERNARD: Aye.

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250 JIM SMITH: Aye.

251
252 DAVID PAQUETTE: Aye.

253
254 NEIL DUNN: Aye.

255
256 RESULT: THE MOTION TO GRANT A REHEARING OF CASE NO. 3/19/2014-2 WAS APPROVED, 4-0-0.

257
258 RESPECTFULLY SUBMITTED,

259 

260 DAVID PAQUETTE, CLERK

261
262 TYPED AND TRANSCRIBED BY KIRBY WADE, EXECUTIVE ASSISTANT

263
264 **APPROVED JUNE 18, 2014** WITH A MOTION MADE BY JACKIE BENARD, SECONDED BY DAVID PAQUETTE AND
265 APPROVED 4-0-0.