

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

DATE: NOVEMBER 19, 2014

CASE NO.: 10/15/2014-1 (CONTINUED)

APPLICANTS: JACK A. SZEMPLINSKI
1F COMMONS DRIVE, SUITE 35
LONDONDERRY, NH 03053

HAROLD KICZA
86 ADAMS ROAD
LONDONDERRY, NH 03053

LOCATION: 62 REAR ADAMS ROAD, 6-113-1, AR-I;
86 ADAMS ROAD 6-90 AR-I; AND
88 ADAMS ROAD, 6-90-1, AR-I

BOARD MEMBERS PRESENT: JIM SMITH, CHAIR
JACKIE BENARD, VOTING MEMBER
JIM TIRABASSI, VOTING MEMBER
ANNETTE STOLLER, VOTING ALTERNATE
BILL BERARDINO, VOTING ALTERNATE
NEIL DUNN, ACTING CLERK

REQUEST: VARIANCE TO ALLOW THE SUBDIVISION OF A LOT WITHOUT FRONTAGE
ON A CLASS V ROAD IN THE AR-I ZONE AS REQUIRED BY SECTION
2.3.1.3.2 AND TO EXEMPT PROPOSED LOTS FROM THE CONSERVATION
OVERLAY PROVISIONS OF SECTION 2.6.3.

PRESENTATION: Case No. 10/15/2014-1 was read into the record with no previous cases
listed.

JIM SMITH: Do we have a representative of the Conservation Commission?

[Overlapping comment]

JIM SMITH: Okay, just so everybody knows where we were at last time when we were hearing this case and checking the zoning regulations, it came to light that a case that involves a variance from the Conservation overlay district is supposed to be presented to the Conservation Commission before it's heard by the Zoning Board for their comment and recommendation regarding any variance to the Conservation overlay district. At this point, since that's where we were at the last time, I would like the Conservation Commission representative give a report of what they decided and recommend.

47 MIKE SPELTZ: Thank you Mr. Chairman, Mike Speltz representing the Conservation Commission. I live at 18
48 Sugarplum Lane. First I should note that neither we nor the applicant realized that we needed to have this
49 recommendation before this particular application came before the Zoning Board, so in effect, we gave them
50 the run around and for that and behalf on the Conservation Commission, I apologize. When it came before us,
51 we said well you should really go to the Zoning Board first which is contrary to our Zoning ordinance. He was
52 right to come to us first, but neither he nor we realized that that was the case so for that I apologize. They did
53 come back and we discussed it in great detail and basically what I explained to the Zoning Board at your last
54 meeting still holds. First, we take no position on the lack of frontage on a classified road. That's not part of
55 what we're asked to comment on, but as far as exemption this particular subdivision from the provisions of
56 the Conservation overlay district, we recommend that you not approve that. The basis for that is that the
57 ordinance provides a way for an applicant, that in this situation is to get a Conditional Use Permit by coming to
58 the Conservation Commission for its recommendation then going to the Planning Board for their approval or
59 override of that recommendation, so in denying this particular request you're not necessarily denying it for
60 actually doing what he wants to do and I think you'll hear the applicant explain this a little better. What
61 they're looking for is future flexibility. Everything that is in violation of the overlay district and there are things
62 that that are contrary to it that exists now are grandfathered. Those things will continue to be okay, but the
63 problem is what happens in the future. What if he wants to do something in the Overlay District in the future
64 and he's asking that that be today approved, and what we're saying is 'no'. We have a procedure to deal with
65 that kind of situation, which is the conditional use permit. Go through that process. Show that you meet the
66 four (4) points that are in the ordinance to get a Conditional Use Permit and it's granted. So I mean, those
67 points are met, so there's no need to be exempted today from this provision of the zoning ordinance. Now, I
68 realize it's a bit complicated, but if there's any questions, I'd be glad to elaborate further.

69
70 JIM SMITH: Okay...

71
72 NEIL DUNN: Mr. Chairman, I'm sorry, I do have a letter dated 11/3, but I guess you would have had that at the
73 last meeting?

74
75 JIM SMITH: No.

76
77 NEIL DUNN: No you would not, I'm sorry. [Exhibit "A" was read into the record; a letter of recommendation
78 from the Conservation Commission to the Planning Board regarding a Conditional Use Permit]. I think it was
79 supposed to be to the Zoning Board but instead to the Planning Board?

80
81 JIM SMITH: Yeah, yeah. Okay, that's the formal, he's giving the...

82
83 NEIL DUNN: Yes, I just...

84
85 JIM SMITH: Okay. Ah, do you have any further comments?

86
87 MIKE SPELTZ: No, not unless the Board has questions of me?

88
89 JIM SMITH: Okay, I've looked over this particular section. Now, one of the things I get out of this, and I'm
90 looking at 2.6.3.6 which says "preexisting residential structures uses of lots", and it says "notwithstanding
91 other provisions of this section, the construction of additions and extension of [sic] one (1) or [sic] two (2)
92 family dwellings and accessory residential uses shall be permitted within CO District, provided that: the
93 dwelling or residential use lawfully existed prior to adoption of this Section by the Town Council, [or]
94 proposed construction follows [sic] all other applicable ordinances and regulations of the Town..., [and] the
95 dwelling or use continues in its present use". And then it goes on in the next section "Buildable residential lots

96 existing at the time of passage of this [sic] Section 2.6.3 by the Town Council shall be exempt from 2.6.3".
97 Then "preexisting structures" and so forth and down where it says under "new subdivisions". Oh wait a
98 minute, ah where the heck is that? Okay, yeah. New subdivision; that's where what's you're referring to then
99 under that in parenthesis it says "Condominium conversions where there are no improvements proposed to
100 the site are" still exempt. Now, part of what I get out of that is the ordinance went out of its way to basically
101 allow existing lots, especially those that were developed to be exempt from the Overlay District and to
102 continue in their present use. Now, what we have, we got a three (3) lot scenario here. One lot has a
103 development on it, has a house other structure, well I don't know if there's other structures, but driveways
104 and so forth, and that seems to fit in to the logic of why they granted the exemption for existing lots. Now if
105 we don't grant a variance to this, that means that this lot, which has an existing building, is then going to
106 become a non-conforming preexisting use, and much like the applicant pointed out, if they want make an
107 addition they would probably have to get a variance to do the addition as well as talk to you about a
108 conditional use and all the rest of it. Now, I'm not sure how much of a financial burden that would present to
109 the owner of that particular property. I'm sure it's got to include some sort of money if nothing else. One of
110 the things I would like to suggest when we finally get to it would be that we grant and exemption for the lot
111 that has the preexisting building on it, and to not grant the exemption for the two (2) lots which are not
112 developed, and is that something that we could do within the granting or not granting of the variance? I'm
113 asking Richard at this point.

114
115 JOE MAYNARD: And actually, I'd like to speak just on behalf for a moment. When I came in to tonight's
116 meeting, I was hoping to amend my request to only ask for the existing house lot being that the two (2) other
117 lots do have usable area, and my meeting with Conservation led me to that they'd work with me on a
118 Conditional Use Permit for the driveway, and so forth for the two (2) new lots, but I still had a problem like
119 you had said, for the existing house, so at our request, we're looking to amend our application to not include
120 the two (2) vacant lots so to say, but only ask for that relief from for the existing house that's there.

121
122 JIM SMITH: Okay.

123
124 NEIL DUNN: What lot would that be on?

125
126 JOE MAYNARD: It is tax 6, lot 90.

127
128 NEIL DUNN: Is that eight six (86), or eighty eight (88)?

129
130 JOE MAYNARD: Good question, eighty six (86).

131
132 JIM SMITH: Okay, I guess we were thinking along a similar line. I would ask you for your comment on that
133 approach?

134
135 MIKE SPELTZ: Well obviously I can't give you a response [indistinct].

136
137 JIM SMITH: I know it's your personal opinion at this point.

138
139 MIKE SPELTZ: Right, I don't see that they are really gaining much that they don't already have. The Section
140 that you just quoted already protects them, so whatever action that you...

141
142 JIM SMITH: Well, not really because it talks about existing situation when that Section of the ordinance
143 [indistinct] was adopted. Once we redraw these lines, it's now a different lot, so it wouldn't be in existence
144 when the ordinance was adopted.

145
146 MIKE SPELTZ: Right, but that is still a preexisting non-confirming use even when the new lot with the structure
147 on it is created, so to make it very specific; for example, there's a driveway on that lot that leads to that house
148 the driveway is in the overlay district, so it is now not a non-confirming use because the lot as it exists today is
149 exempted. When the new lot...when that existing lot is modified, if you want to look at it that way, now it
150 becomes a non-confirming use, but it's still preexisting. The owner still has a right to have that driveway
151 there, so...

152
153 JIM SMITH: Okay...that isn't the point I'm trying to get to. I'm trying to address a scenario where if the owner
154 of the house decides to make an addition, now is the house in the Overlay District?
155

156 JOE MAYNARD: A portion of it is.
157

158 JIM SMITH: A portion of it is, so what would he have to get a variance to add to that part of the house in a
159 non-confirming use at that point?
160

161 RICHARD CANUEL: You're asking me?
162

163 JIM SMITH: Yeah.
164

165 RICHARD CANUEL: Okay, [laughter]. Yeah, as the ordinance reads, as it being an existing residence, it is
166 completely exempt from all of the provisions of the overlay district. Once we go to that subdivision process,
167 and a lot line adjustment by statute is subdivision, all of the provisions of the Overlay, I mean the Conservation
168 Overlay District are applicable. With an existing residence, they are allowed to do additions with a reduction
169 to the buffer with the granting of a conditional use permit by the Planning Board, so that would be the option
170 of the current property. At some point in the future if they wanted to add as to go through that current use.
171 I'm sorry, go through that Conditional Use Permit procedure with the Planning Board, which then they would
172 take the advice of the Conservation Commission and follow that process.
173

174 JOE MAYNARD: And actually, I just wanted to reiterate in one of the Sections you are under, 2.6.3.4.2, there
175 are certain buffer reductions that are allowed by a Conditional Use Permit, and one of those buffer reductions
176 which is just not allowed is construction of parking areas, you know for which a conditional use permit is being
177 sought. The way the house sits and the terrain, is it would lead to a garage under on that left side, that would
178 be where the CO District buffer does exist and therefore being that it would be a driveway with parking that
179 would not be allowed and would require a variance process. So my take again is just that anything this house
180 does for any expansion, and again it's a small cape as it sits today, it has potential for the expansion and would
181 require both a variance, Conditional Use Permit and Planning Board approval.
182

183 MILE SPELTZ: The thing is, Mr. Chairman, we are talking hypothetical. We have a house, somebody's in it,
184 they're using it, and what we're talking about is should they want to expand it in a certain direction in a
185 certain place, and the whole purpose of the provisions of this ordinance and the existence of the Zoning Board
186 is to deal with these particular unusual hardship cases. So the applicant has every right and can likely make a
187 good case for coming to the Board with an ordinance, but I don't think what we want to do here is write a
188 blank check. There's a reason that we have the overlay in place.
189

190 ANNETTE STOLLER: I had a question. Richard, you were saying before when you gave the definition
191 description, you did not mention them going for a Conditional Use Permit before the Conservation
192 Commission. Is that correct?
193

194 RICHARD CANUEL: No. The Conditional Use Permit is granted by the Planning Board with [indistinct]...with
195 advice...
196
197 ANNETTE STOLLER: But they don't need a prior one from the Conservation Commission?
198
199 RICHARD CANUEL: The Planning Board gets advice from the Conservation Commission prior to granting that
200 Conditional Use Permit, yes.
201
202 JIM SMITH: Much like we are doing right now.
203
204 RICHARD CANUEL: Correct.
205
206 JIM SMITH: I think part of what I'm concerned with is the additional expense the owner may have as a result
207 of this subdivision, which technically is a subdivision but it's such a minor lot line adjustment. It's...I think
208 they...I would just say ramifications are somewhat severe in my mind, but that's my opinion. At this point, is
209 there...I'll give the applicant any opportunity to address anything that's been brought up or anything that was
210 brought up in the previous meeting.
211
212 JOE MAYNARD: No, like we discussed, we did go back to Conservation Commission, as Mr. Speltz said and at
213 the Conservation, I did broach this idea of only asking for the house lot. I think that's part of why it won a 5-1-
214 0 vote, but I can't say for sure. I agree with you that it will be a hardship upon that existing house lot for
215 anytime that they do anything. Part of the septic system that exists today is behind this house. The septic
216 tank is behind the house. There all in the CO District, or directly adjacent to it. Any, you know, additional
217 work for that kind of thing, we'll be back before the Board just for any work for that. Again, I just don't want
218 to burden the existing property with having to go through that procedure, being that it does exist today and it
219 has existed in the state for longer than I've been alive so...
220
221 JIM SMITH: Okay, Richard, how does he formally modify his request for what he suggested earlier?
222
223 RICHARD CANUEL: He can just make that request verbally at this public hearing.
224
225 JIM SMITH: Okay.
226
227 RICHARD CANUEL: The Board can decide to accept that request or not.
228
229 JOE MAYNARD: You know, as I said earlier, we're looking to withdraw the request for the two (2) adjacent
230 parcels, but we would still like the request valid for the existing house.
231
232 JIM SMITH: Any comments, Neil?
233
234 NEIL DUNN: So clarification, Richard, maybe you're best to help with this? So if we were to accept a
235 modification and if we were to grant it for the one (1) parcel where the house is, then to Mr. Speltz's point,
236 that's almost a cart blanche where he can do what he can do, whereas I mean he basically...that's saying yes,
237 he can put a driveway wherever he wants, or basically do anything he wants within the Conservation Overlay?
238
239 RICHARD CANUEL: No, not at all.
240
241 NEIL DUNN: I mean without getting to the fifteen (15) [foot] borders for other controlled dimensions or uses,
242 or something?

243
244 RICHARD CANUEL: No, I don't think it does that because once a subdivision is done, the other lots stand alone
245 and any development that happens on those lots would be addressed at that point.
246

247 NEIL DUNN: Correct, but the lot that has the house on it that their looking for the CO exemption, or whatever
248 the terminology we are using, it pretty much does leave it almost wide open to do whatever he wants in that
249 zone, as long as he's not encroaching on the fifteen (14) foot sides and forty (40) fronts and stuff of that
250 nature.
251

252 RICHARD CANUEL: Oh, the standard set back for the lot, yes. Yeah, I think basically the provisions of the
253 Conditional Use Permit are still applicable simply because there is an existing structure there. There are
254 provisions to allow a reduction to that buffer by the granting of a Conditional Use Permit, so I think those
255 provisions would still be applicable.
256

257 NEIL DUNN: If we granted this?

258 RICHARD CANUEL: Yes.

259 NEIL DUNN: So, it would still come under review anyhow?

260 RICHARD CANUEL: Correct, because you're not granting a variance to that section of the ordinance.
261

262 JIM SMITH: He's asking to have a variance from the Conservation Overlay District.
263

264 UNIDENTIFIED AUDIENCE MEMBER: The entire ordinance.
265

266 JIM SMITH: That entire section?
267

268 RICHARD CANUEL: Yeah, okay, that is his request. That's correct.
269

270 JIM SMITH: Okay, so if we grant him that for the lot that has the existing building, he wouldn't have to go to
271 the conditional use correct, or not?
272

273 RICHARD CANUEL: You are correct, that's right because they did request that variance from the entire Section
274 of the ordinance. You're right.
275

276 JIM SMITH: Okay, so basically what Neil was saying, it would be addressed like any other lot in an AR-I district
277 that's not within the Conservation district?
278

279 RICHARD CANUEL: Right, that's right, yes.
280

281 JIM SMITH: With all of the setbacks and those types of issues? So that's kind of what we're...?
282

283 RICHARD CANUEL: Yeah, that's correct, yes.
284

285 JIM SMITH: Okay, just so everybody is clear on what we're...You know part of what I'm looking at. The way
286 the ordinance was originally written, it addressed those lots which happen to be within the Conservation that
287 were existing that had existing structures on them and so forth, and the ordinance was written to exempt
288 those lots from the provisions of the Conservation Overlay District, and I have a hard time in my mind with just
289
290
291

292 the simple redrawing of a couple lot lines to accommodate something to not follow that same logic that was
293 put into the original ordinance on that subject, but that's where I'm coming from. Now, any other comments
294 from the Board or questions? Any comments from the audience for or against? Any further comments from
295 the applicant, or...?
296

297 JOE MAYNARD: I'd just like I continue to restate is the fact that that lot, you know, it has a CO district, there is
298 a procedure so to say, but I feel that anything that happens is going to need both variance, special exception,
299 Conditional Use Permit, then Planning Board relief which will be an undue hardship. So to say on the property
300 owner for them to have to go through that exercise for something that is a situation that has existed in the
301 state for fifty (50), sixty (6) some odd years...
302

303 NEIL DUNN: If I may speak to that; but you're creating this yourself by trying to make 113-1 a buildable lot?
304

305 JOE MAYNARD: No, oh well 113-1, technically...
306

307 NEIL DUNN: It all ties together, and the rest?
308

309 JOE MAYNARD: It really doesn't because 113-1, I have a fifteen (15) foot right of way from another street on
310 the other side. It just it would be an extensive wetland crossing to get to the buildable area of the lot, 113-1
311 has ample buildable area it just does not have frontage out to Adams Road. That lot is fourteen (14) acres in
312 size. I probably have six (6), or seven (7) acres of useable land at that portion at this end of the site. It just
313 doesn't have access.
314

315 NEIL DUNN: Right, so your gaining a better access and making the rest of these other properties easier to
316 access and less expensive, but then we're leaving ourselves open in my eyes, I'm looking at we're leaving
317 ourselves open on the next one, that something that's self-imposed, so substantial justice will be done item
318 three (3) in your application says "granting this variance will allow 113 to become a buildable lot". That's
319 where I was reading that from.
320

321 JOE MAYNARD: And again, it'll allow it to have, I'm sorry, you probably should have said it'll allow it to have
322 more suitable access, and again we worked a deal with Mr. Kicza, I don't think you were here at the last
323 meeting, but part of the agreement with Mr. Kicza was to make his buildable lot which he had already
324 subdivided in the 1980's - 6-90-1 more suitable for as a buildable lot, right again, but I know...
325

326 NEIL DUNN: I appreciate that and that makes it less expensive, but then asking for the CO exemption for
327 something that's self-imposed might be an issue, although I doubt it because you're probably going to have
328 that argument when you come there that it was a conditional...it was exempted due to some lot lines. If it's
329 something minor with a garage. Again, I don't know. We don't know until we go down that road, but I'm
330 looking at a self-imposed adjustment that you're worrying about later. I guess sometimes that makes me say
331 you're the one opening the can of worms for that lot you're looking for the CO exemption?
332

333 JOE MAYNARD: Right, but again the CO district lot stands alone as it sits today. You know where that
334 buildable area is, the land that's being adjusted, doesn't affect that lot in any way. The house sits where it sits;
335 the buildable area on that lot is what it is. Again, we're stuck in kind of a [indistinct] conundrum of adjusting
336 some lot lines to make things better, but also from a hardship scenario the cost and expense to someone and
337 the time it'll take them to go through the procedure to be able to put an addition on their house. Again, I do
338 this for a living. You're talking three (3), four (4) months, you know, and thousands of dollars [indistinct] for
339 someone's expense just to be able to get through that process, so for me, you know, to me is a hardship
340 unique to that piece of property. Again, I've been around awhile, I remember when the ordinance was

341 written. You know it went through a couple of different variations so to say, and the very first variation of it
342 had it applied to every lot in town. They filled the high school, you know, it was a big hearing, and the only
343 way to get the ordinance through was to back off on these existing lots of record so to say, which again from
344 the way where that house sits, nothing's really changing from that buildable portion of the site.
345

346 NEIL DUNN: Thank you.

347
348 JIM SMITH: Any other questions? [Inaudible] Sure.

349
350 MIKE SPELTZ: May I respond?

351
352 JIM SMITH: Sure.

353
354 MIKE SPELTZ: I think, Mr. Chairman, that you put your finger on the key provision when earlier you quoted
355 Section 2.6.3.6.1 and begging your forbearance; I'll read it again. "Notwithstanding other provisions of this
356 section," and this section is called "Preexisting Residential Structures, Uses and Lots," so it doesn't only apply
357 only to preexisting lots. It applies to preexisting residential structures and uses, which is a residential use.
358 That's what we have here, and it allows 'the construction of additions and extensions to [one and two family]
359 dwellings and accessory residential uses.'" They're going to be permitted even in the CO district, so if you
360 grant...if you deny this waiver for this variance [indistinct], there's no reason why they can't do everything
361 they want to do.
362

363 JIM SMITH: Well, I think you also have to continue on and read 2.6.3.7 just a little bit beyond there.

364
365 MIKE SPELTZ: Right.

366
367 JIM SMITH: It say's "Preexisting Subdivisions and Site Plans: Subdivisions and Site Plans approved by the
368 Planning Board and existing at the time of the passage of [Section] 2.6.3 shall be exempt from Section 2.6.3, as
369 governed by the provisions of RSA 674:39". Then the key sentence is the next one "This ordinance becomes
370 applicable in the following situations", and you go to the bottom one, "New subdivisions."
371

372 MIKE SPELTZ: Right.

373
374 JIM SMITH: So, as soon as they do this subdivision, what you just read about the preexisting goes out the
375 window.
376

377 MIKE SPELTZ: Well, I guess we could ask Richard for a read on that, but it says "notwithstanding other
378 provisions of this section", and the section is 2.6.3.6, which as you know, part of what I guess...no, I'm sorry
379 you're in point seven (7). I mean I don't know, help us out here. Is it a catch twenty two, or is it not?
380

381 RICHARD CANUEL: No, it's not, and that's what generated the variance request in the first place, simply
382 because although it's an existing lot of record, because they're proceeding with a subdivision, all the
383 provisions of the Conservation Overlay District come into effect.
384

385 MIKE SPELTZ: So, but does that curtail his right under 2.6.3.6.1 to do an addition?

386
387 RICHARD CANUEL: Yes it does.

388
389 MIKE SPELTZ: Okay.

390
391 JIM SMITH: See that's the dilemma we're in.
392

393 MIKE SPELTZ: Right, right, and I mean that's a judgment, so what I'm saying is don't issue a blank check if
394 you're going to do something beyond what's on this plan, you have to come back to the Board and get
395 another variance. It's assuming a variance is supportable. That's why we have this procedure, and I respect
396 your argument about cost, and that [indistinct] the judgment the Board will have to take.
397

398 JIM SMITH: Well again, one of the provisions under hardship is finances now. At one time, it wasn't, but we
399 have to consider finances as being a possible hardship in the granting or not granting of a variance.
400

401 MIKE SPELTZ: Right, or...?
402

403 JIM SMITH: So if you're...by doing this, you're putting an additional financial burden on this lot that normally
404 wouldn't be there, that's the dilemma we're in.
405

406 MIKE SPELTZ: Would any other lot that wanted to violate the Overlay District, would have the same financial
407 obligation?
408

409 JIM SMITH: Well but again, I think what the provision of this was, if you're going to take a raw section of land,
410 say its fifteen (15) acres and it was exempt. Now you divide it up into fifteen (15) lots, or seven (7) lots or
411 whatever. It makes sense because you're creating a bunch of lots, but in this case you have three (3) lots.
412 You're trying to adjust the lot lines a little bit so that you have less impact on the wetlands because now he
413 doesn't have to try to construct a driveway approach over how much wetlands?
414

415 JOE MAYNARD: Seven, eight hundred (800) feet [inaudible] islands.
416

417 JIM SMITH: So you're reducing that impact and you can answer this question. Would the Conservation have
418 to grant or recommend that they allow that to access that upland?
419

420 MIKE SPELTZ: The impact is too great for what again; I think we wouldn't be the bad guys on that one. It
421 would be DES. I don't, I mean...
422

423 JOE MAYNARD: But it's designable, I've designed it. There's a lot of upland areas that we are able to hit. The
424 impact itself is about an eight hundred (800) foot CO District impact. They'd be able to cross it, but the Dredge
425 and Fill impact is approvable.
426

427 MIKE SPELTZ: If the Dredge and Fill was approved, then that drops it out of the Conservation District, the
428 Overlay District, so we wouldn't have a vote on it. It would be really up to DES and our recommendation as to
429 their Dredge and Fill, so it's...but you know, I agree it's far preferable to if you're going to develop that back lot
430 to do it this way then it would be to come across. I'm just not ready to see that as a practical matter you could
431 spare the expense and get the permit to do that.
432

433 JIM SMITH: Okay, does anybody else have any comments from the audience? I see our newspaper reporter in
434 the back is smiling [laughter]. Okay, well at that point, we'll close the public hearing and we'll take this under
435 deliberation at this point.
436

437 DELIBERATIONS:
438

439 JIM SMITH: What does the Board think? Neil?

440
441 NEIL DUNN: I guess, you know, again it's understood why we exempted existing properties, but when you
442 start self-imposing stuff, you know, what the big impact. I mean, how much can you really go, so I'm trying to
443 look and say what can he really do there without bumping into his side lots and some other requirement that
444 would put him in front of the Board, and so that's what I'm trying to get a handle on. If it's really he's going to
445 be ten (10) foot into the CO because they want a garage, then it's not more impact than it would have been if
446 nothing was done. When people self-impose this by doing other things, and for good reasons, I'm not arguing
447 that they are not, that's supposed to be part of the calculation before they come here, so I don't know, I'm
448 trying to get a better handle on how far they can theoretically go on the CO Overlay. I'm not seeing anything
449 on the map that it's that clear? You know, to Mr. Speltz's concern, are we giving away sixty (60) feet into an
450 area where you know if they didn't really need it so that they can put a huge addition and now, so looking at
451 the map, I don't really see that, so if anybody can help me with that, that's my thought and again it's one of
452 those sticky wickets, but it's self-imposed to.

453
454 JIM SMITH: Jackie, any comments?

455
456 JACKIE BENARD: I do agree that it is self-imposed so that's where my decision making is headed.

457
458 ANNETTE STOLLER: Mr. Chair, it seems like we have a couple of conditionals here, and we'd be making a
459 decision without the conditionals resolved. That's the only thing that's concerning me. If I understand it right,
460 they are not what was amended here tonight, or what was amended by the applicant only concerns the lot
461 with the house on it correct?

462
463 JIM SMITH: Correct, that's what he's asking for at this point.

464
465 ANNETTE STOLLER: Yeah, under that circumstance, we're still discussing extensions on the other ones, and...?

466
467 JIM SMITH: No, no. The way it would work out, we would be still be considering granting the variance for the
468 lots without frontage on the road. That's still on the table. The two (2) lots which are not developed the way
469 he's asking for, it is not asking for exemption from the Conservation Overlay District at this point. All he's
470 asking is for is the lot that has the building on it.

471
472 ANNETTE STOLLER: But the other two (2) would have to come under consideration at a later date?

473
474 JIM SMITH: No, they would just simply have to go through the normal procedure. They would not have to
475 come back to this Board unless there was some other unforeseen variance that they might want, but at this
476 point, the Conservation Overlay District would remain in effect for those two (2) lots. In my mind, the
477 advantage of granting it this way, you're now allowing access to those two (2) other lots with much less impact
478 on the wetlands because of their access. The way it is now, they have a fifteen (15) foot right of way, but that
479 right of way is in the back end.

480
481 ANNETTE STOLLER: It encroaches?

482
483 JIM SMITH: It would entail a major Dredge and Fill permit, impact on the wetlands in that area, and so forth.
484 Granting it this way, those two (2) lots would be made more accessible, lower impact on wetlands, and so
485 forth. So that's the logic of trying to readjust the lot line.

487 ANNETTE STOLLER: Although, they might be accessible, they might have to go back to the Conservation
488 Commission?
489

490 JIM SMITH: Yeah, I'm sure, you know, you'd still, if there were any issues there, and part of what I'm looking at
491 is if these lot lines were in this configuration when the ordinance was adopted, it'd be exempt anyways, but
492 since they're not, and there are twists, you know, adjusting these lot lines slightly is not a big change and it's
493 still essentially three (3) lots. We're not creating an additional lot, just that you're providing an easier access,
494 and I think, as I remember from the other night, if they were to do this, the other way they could do it would
495 be if they could get an easement to cross the other lot. And I guess the owner of that lot did not wish to grant
496 a double easement for that, which is understandable. Anybody else?
497

498 NEIL DUNN: One thing I am seeing here, though the back lot line is what's really being changed for this piece
499 of property...excuse me, for 6-90, we're talking map 6, lot 90, so I guess if anything, that that edge of the wet
500 where the CO actually is going to be and where they'd be impacting, it is hasn't really changed. They're only
501 changing the lot line back in the wet land area and widening it out, so he's...they're not really...that map is not
502 really accessing any new land and I think that was more of my bigger concern, that it would give them cart
503 blanche all the way through, but there's really not a whole lot of room for them to move, so I'm kind of siding
504 with you that there's really very little impact and yes, we might be, quote/unquote, "giving them cart
505 blanche," but because so much of that is wetland, nothing really changes by moving the lot line over here.
506

507 JIM SMITH: Yeah.
508

509 NEIL DUNN: You know, it doesn't really impact anything that he would have been grandfathered under, so
510 I'm, even though he's changing this lot line down to here and squaring it up and doing all that, it really doesn't
511 impact, he hasn't changed anything down in that exemption area on the CO. So I guess I'm feeling better
512 about that. I was concerned that they were changing those lines and it was really impacting, but those lot
513 lines are not impacting that at all. He doesn't have a lot of land to work with anyway on that existing building
514 around it. I'm mean he's going to be in wet [laughter], not going to be doing anything there so, I'm feeling a
515 little more comfortable.
516

517 JIM SMITH: Okay.
518

519 [Overlapping comments]
520

521 JACKIE BENARD: Oh, okay.
522

523 JIM SMITH: So what he's doing is he's taking everything and going like this.
524

525 JACKIE BENARD: Okay.
526

527 JIM SMITH: Creating this lot, so all this land here, it goes to that lot and this piece compensates for that.
528

529 JACKIE BENARD: Okay.
530

531 JIM SMITH: You still have the same [indistinct], you know, here.
532

533 JACKIE BENARD: On that, along that, okay.
534

535 NEIL DUNN: To my point, that he's not impacting anything near the house to build into that and then
536 everything around him is wet. If those markers are correct, it all says edge of wetland, so he can't build in the
537 wetland, and it's that Conservation Overlay that we're talking about. So nothing they did there really changed
538 that, what little room they have to work with anyway.
539
540 JIM SMITH: See there's the edge of wet.
541
542 JACKIE BENARD: Okay.
543
544 JIM SMITH: It very close to...
545
546 JACKIE BENARD: It's very close.
547
548 NEIL DUNN: So it's not like we're giving that whole lot away, I guess was my concern.
549
550 JACKIE BENARD: Okay, because that's how I interpreted it.
551
552 [Overlapping comments]
553
554 NEIL DUNN: Yeah, no, because he can't build in a wetland.
555
556 JACKIE BENARD: Okay.
557
558 JIM SMITH: Well, the difference is he could build up to the edge of the wetland. He wouldn't have to provide
559 the buffer.
560
561 NEIL DUNN: Right, [indistinct], but he...that would have been grandfathered and nothing in the
562 reconfiguration changed any of that. I was more concerned we were changing that and giving something
563 more up. If you follow that perspective.
564
565 JIM SMITH: Everybody?
566
567 ANNETTE STOLLER: It doesn't seem to be that much of a change.
568
569 JIM SMITH: Jim?
570
571 JIM TIRABASSI: [Indistinct].
572
573 JIM SMITH: Any further comments? So, if no further comments, I'll entertain a motion one way or the other.
574 Okay, what we're voting on at this point would be a variance on the frontage and whether or not to allow a
575 variance from the CO District for map 6, lot 90 with the proposed lot line changes. That's what we're looking
576 at at this point. Does someone want to make a motion? Okay, we have somebody working.
577
578 [Laughter/Overlapping comments]
579
580 NEIL DUNN: I just want to make sure that it's the right one; 6-90. It's not the dash-1 right?
581
582 JIM SMITH: Yeah, 6-90 – 6-91 would be the upper lot.
583

584 [Overlapping comments]

585

586 NEIL DUNN: Alright. Mr. Chairman, I'd like to make a motion to grant case 10/15/2014-1 with all the lots for
587 the provisions of the Class V (5) road in the AR-I zone as required by Section 2.3.1.3.2, and to grant the
588 exemption for relief from the Conservation Overlay Provisions of 2.6.3 only for 86 Adams Road, lot 6-90, as
589 presented with the lot lines.

590

591 JIM SMITH: Okay, do I have a second?

592

593 JACKIE BENARD: Second.

594

595 JIM SMITH: Jackie Seconds. All those in favor?

596

597 ALL: Aye.

598

599 JIM SMITH: Anyone opposed?

600

601 [No response in opposition]

602

603 RESULT: THE MOTION TO GRANT CASE NO. 10/15/2014-1 IN PART WAS APPROVED,
604 5-0-0.

605

606 RESPECTFULLY SUBMITTED,

607



608

609

610 NEIL DUNN, ACTING CLERK

611

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

614

615 **APPROVED FEBRUARY 18, 2015** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY JACKIE BENARD AND
616 APPROVED 5-0-0.

