

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

DATE: DECEMBER 17, 2014

CASE NO.: 12/17/2014-2

APPLICANT: RM16A HOLDINGS, LLC
3949 FOREST PARKWAY, SUITE 100
WHEATFIELD, NY 14120

LOCATION: 5 BUTTON DRIVE; 7-132-8; C-1, WITHIN THE ROUTE 102 PERFORMANCE
OVERLAY DISTRICT

BOARD MEMBERS PRESENT: JIM SMITH, CHAIRMAN
NEIL DUNN, VOTING MEMBER
JACKIE BENARD, VOTING MEMBER
ANNETTE STOLLER, VOTING ALTERNATE
DAVID PAQUETTE, CLERK

REQUEST: VARIANCE TO ALLOW AN ELDERLY HOUSING DEVELOPMENT ON A
PARCEL OF 12.658 ACRES WHERE A MINIMUM AREA OF 15 ACRES IS
REQUIRED BY SECTION 3.6.4.1; AND TO ALLOW AN INCREASE IN DENSITY
IN A AN ELDERLY HOUSING DEVELOPMENT TO 8.69 UNITS PER ACRE
WHERE ONLY 6 UNITS PER ACRE IS ALLOWED BY SECTION 3.6.4.14.2.1.

PRESENTATION: Case No. 12/17/2014-2 was read into the record with five previous cases
listed and other variances read into the record.

JIM SMITH: Are these the same variances that were granted in the first two (2)?

DAVE PAQUETTE: So, I noticed that, so on 3/19/2014-4 variance to allow an elderly housing development on a
twelve point seven two (12.72) acre parcel where fifteen (15) is required by section 3.6.4.1 was granted. The
request is to build on a parcel twelve point six five eight (12.658) acres, so that less than, a little bit less than
the variance that was granted at twelve point seven two (12.72), so the request states twelve point six five
eight (12.658) acres where the granted variance was twelve point seven two (12.72).

PATRICIA PANCIOCCO: You want to know why, I think.

[Overlapping comments]

PATRICIA PANCIOCCO: I thought about this all day, how am I going to explain this.

45 NEIL DUNN: We didn't use our calculators.

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47 PATRICIA PANCIOTTO: Well for the record, my name is Patricia Panciocco and I'm here on behalf of RM16A
48 Holdings, LLC who now owns the property for which the variances were granted. The reason why we're are
49 here, first of all two (2) of the variances, one (1) for the required fifteen (15) acres and the other that allowed
50 eight point it's on the back of the application, eight point six five (8.65) per acre be amended be stay eight
51 point six nine (8.69) per acre and previously it was twelve point seven two five (12.725) and we are asking it to
52 be revised to twelve point six five eight (12.658). These minor adjustments in the acreage. The acreage has
53 not changed, but to explain it, I brought these plans with me that I believed I shared with you during the public
54 hearing so that you can understand where we're coming from. The first page, is the initial plan that broke off
55 the front portion of the apparent parcel that was a whole thing at one time that went all the way to the
56 wetland way behind the duplexes, and the deed for this parcel most of which we now own has a
57 measurement of eight hundred (800) feet from the edge of the Route 102 right of way, so when the surveyors
58 went out there and they surveyed it, they measured it and everything's fine and after we got the variances, I
59 came to learn that there are some markers that have been put out there along the boundary that I showed in
60 yellow that aren't exactly where they should be. There off inches in a couple places, there off by a foot in
61 another location, and the only thing we can figure out is that they were placed when the second plan in the
62 little packet and I put a little "x" where I tried to orient the Board where our parcel is in the blue, so they
63 aren't exactly right as far as when we did the survey from 102. No to be clear, we still have the acreage we
64 represented to the Board, but the reason why I'm here in the new world of commercial lending, lenders want
65 title insurance for zoning, and the zoning and the calibration of all the numbers are so finely tailored that
66 they're off slightly is we take those areas where those markers are not quite right and put it aside and say
67 okay if there's ever a problem in the future and there is a question raised and we're certain we're insuring the
68 acreage of the parcel, but if there ever was as dispute, we didn't want our approvals to be inconsistent with
69 what the Board granted. Is that, am I explaining it so that is easily understandable. Because when it comes
70 right down to it, when a title insurance carrier issues a zoning endorsement, they say they're insuring the
71 zoning, and will do up a zoning opinion will say it's zone this all the nice things you've already explained and
72 discussed here we've got these variance, we went to the Planning Board, but the fine details of all those
73 approvals are incorporated into the letter that supports the endorsement and because of those markers being
74 in that area, the areas because they were surveyed from the other end, or perhaps instrumentation, we just
75 don't know, we thought it best to air on the conservative side because of the numbers are so specific in these
76 particular two (2) variances. The other variances they're all fine, we are not increasing the number of units
77 because we are not changing anything. All of our setbacks are fine, we just want to air on the conservative
78 side and make sure we have ourselves covered and we're consistent with the approvals that we have been
79 able to obtain. So this is really kind of just.

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81 NEIL DUNN: Housekeeping.

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83 PATRICIA PANCIOTTO: "Housekeeping," well put.

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85 DAVE PAQUETTE: So you're going to eight point six nine (8.69) units as well instead of eight point six (8.6).

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87 PATRICIA PANCIOTTO: Well what happens is David when we take out those areas and I think it's like twenty
88 four (2,400) square feet.

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DAVE PAQUETTE: Yeah.

PATRICIA PANCIOTTO: From the track size and then you re-run the numbers from what we've got.

DAVE PAQUETTE: Sure, a math change, yeah.

PATRICIA PANCIOTTO: Very slightly.

DAVE PAQUETTE: Right.

PATRICIA PANCIOTTO: And that's on the back page of the application so that you can see that I had the engineer prepare those numbers for you, so if you'd like, or if you have questions, I'm happy to read through it, otherwise I'll read through the application if you'd like me to, or I'll take a pass if you want me to?

JIM SMITH: Well, are the markers in the wrong place?

PATRICIA PANCIOTTO: Some, they're two (2) pins that are off very slightly, and they're just slid up from a corner as I understand. I have not seen them. One (1) of them is off I think it's off by a couple of feet and down the other end it's not off at all. It's not even consistent, and if the math doesn't close and when they do the survey and they measure all the angles, it has to close. It didn't close either, so we don't know whether they got shifted around perhaps when houses were built because this all was the land that we own wasn't touched until after all of this was picked up, or whether there was a instrumentation error, we just don't know. We just know they are wrong, and we know ours is accurate because we were the first parcel conveyed out of the parent and we have what surveyors call senior rights under the law that our boundaries being the first parcels, well the front piece when it was broken off from the back piece, we have senior rights, so we know our markers are accurate, and it's insured, so but we did not want to end up in trouble when there are approvals, we worked pretty hard and so didn't you.

NEIL DUNN: So do you go through the process of relocating them, or you're making this math match where they stand now?

PATRICIA PANCIOTTO: We're taking the conservative side Mr. Dunn and assuming, okay even if we didn't have that area where there's a little cloud out there from this perspective, we just want to make sure our approvals are in place and consistent with what we represented to the Board.

NEIL DUNN: So the markers in place will stay in place and will be accurate now, so is that what you are doing?

PATRICIA PANCIOTTO: Are's will be set and will be accurate, yes.

NEIL DUNN: Yours will be, but there were some other one's still in question, but that doesn't impact, I'm trying to get a.

132 PATRICIA PANCIOTTO: The markers that are there, we won't touch, so, in fact by state law, you can't touch
133 them. We don't know if somebody moved them or whether they weren't placed right in the first place. It is
134 what it is. We will set ours in the proper place they'll have markings on them for the surveyor and the licensee
135 who set those markers, and we stand by them and it's insured, but withstanding, we don't want to have a
136 problem in the future if there ever was a problem more than likely my client would say okay you thought you
137 owned that, we know we did but we're not going to fight about it. If that had to be the case, we don't want
138 our approvals to be amiss.

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140 JIM SMITH: So are you going to place additional markers near the misplaced markers?

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142 PATRICIA PANCIOTTO: Yes, they'll be dated and marked.

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144 NEIL DUNN: It'll be like a no man's land.

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146 PATRICIA PANCIOTTO: In the surveys are all recorded, it's all there, unlike the ones I just I've must have given
147 you, they'll older things were less sophisticated, the instrumentation wasn't as sophisticated and in tuned as it
148 is now either. It happens a lot. If I had a nickel for every boundary line dispute. It just happens not that
149 there's a dispute here there isn't, but we're just airing on the conservative side.

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151 JACKIE BENARD: It happens a lot in that area.

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153 PATRICIA PANCIOTTO: It happens a lot. So if you'd like me to read through the five (5) points, I will do that
154 very quickly. If you want to pass.

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156 JIM SMITH: Yeah, why don't you do that for the record?

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158 PATRICIA PANCIOTTO: We are requesting a new variance, Richard corrected me, I thought I could amend it,
159 but apparently not from section 3.6.4.1 and 3.6.4.14.2.1 these were two (2) prior variances approved on July
160 16, 2014 and it was case 3/19/2014-4 and 5. To allow de minimis changes to ensure strict zoning compliance
161 and numerical consistency for title insurances purposes. The variances will not be contrary to the public
162 interest amending, or revising the original relief granted by the Board to reflect a de minimis adjustment to
163 the permitted track size and number of unit permitted per acre will not be contrary to the public interest. It's
164 not materially impact the project in any manner and will allow the applicant to secure title insurance coverage
165 and in particular for zoning. The spirit of the ordinance is observed for the same reasons that the original
166 relief is consistent and not contrary to the public interest. Substantial justice will be done by granting the
167 requested revision to the prior variance because the public will suffer no loss and the applicant will be able to
168 more easily secure title insurance coverage. The values of the surrounding properties are not diminished and
169 it will not change the permitted use of the property. The track size, the number of units, or the setbacks, the
170 open space, and will be able to secure title insurance coverage for zoning. The values of the surrounding
171 properties will not be diminished because they'll be no changes to the track size, the units permitted, or the
172 approvals in general for that matter. The literal enforcement of the provisions of the ordinance would
173 not/would result in an unnecessary hardship because the de minimis change to the track size and the number
174 of units per area will only serve to clarify the relief granted for the title insurer and not modify the relief
175 granted in any way nor the approvals. The proposed use is permitted in accordance with the relief previously

176 granted by the Board on July 16, and this will allow the title of the property to be insured not withstanding
177 those errant markers that we have out there.

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179 JIM SMITH: Does the Board have any questions?

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181 [Overlapping]: No.

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183 JIM SMITH: Do we have anyone in the audience that would like to speak for or against?

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185 DAN CLARK: My name is Dan Clark, I live at 4 Reed Street. I'm opposed to this variance, I think number one it
186 doesn't meet the spirit of the intent of the ordinance. Two, I believe it does have a negative impact on the
187 neighborhood. Possibly a coincidence, but I just received an assessment at substantially lower after clear cut
188 was done on the project, and for those reasons, I would ask that you not grant the variance.

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190 JIM SMITH: Anyone else? Do you have any comments?

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192 PATRICIA PANCIOTTO: I'm not sure I understand the lower assessment?

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194 [Overlapping comments]

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196 DAN CLARK: You said it wouldn't have an impact on the.

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198 JIM SMITH: Well, wait a minute, if you're going to speak you need to get on a microphone sir.

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200 NEIL DUNN: To the Board.

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202 JIM SMITH: Speak to the Board, we're not, we don't want to get into crossfire.

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204 DAN CLARK: They claim that it wouldn't have a negative impact on the surrounding properties and maybe it's
205 a coincidence maybe it isn't, but I just received an assessment value substantially less than it was last year,
206 and I just got it within the last two (2) weeks after they clear cut the property. Coincidence, I don't know?

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208 NEIL DUNN: Are they doing reassessing territorially?

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210 RICHARD CANUEL: They are, yes.

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212 NEIL DUNN: I mean they do that every so often anyway.

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214 RICHARD CANUEL: I don't know if it's a coincidence, or not, but it might very well be?

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216 DAN CLARK: I also feel the increase on the density is a negative effect on the neighborhood due to the traffic
217 at the intersection of 102 and I think it's Meadow. You know, you've got a hundred and ten (110) units that
218 are going in there say there's only one hundred (110) cars, there's seventy seven (77) units, or seventy six (76)
219 units, I believe that are in there, you know you're talking a substantial increase in traffic.

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DAVE PAQUETTE: That's a different property than the one we are discussing now, right? You're talking to the larger this is for the.

NEIL DUNN: Assisted living?

JACKIE BENARD: It's not the same property.

[Overlapping comments]

PATRICIA PANCIOCCO: When you're referring to the seventy six (76) units are you referring to the duplex unit?

DAN CLARK: Yes.

PATRICIA PANCIOCCO: Okay, I think that's where the confusion is.

DAN CLARK: Seventy six (76) in the existing neighborhood.

DAN PAQUETTE: Okay, sorry, thank you.

PATRICIA PANCIOCCO: I can't speak to the assessed value most people are pretty happy about them. I don't know, and these variances were granted in July. I'm only here for some housekeeping, so.

JIM SMITH: Where are you in the Planning Board process?

PATRICIA PANCIOCCO: We were approved, and they're out there working already. We were approved in I want to say the end of October, the beginning of October, so we've been approved for quite some time. Beginning of October, I would have assumed I would have heard something from this gentleman before that, I don't recall? So, I can't speak to that, I can't imagine why cutting the trees to set up and do the site work and what not would have an impact unless they doing a reassessment, but I don't know for sure.

NEIL DUNN: Well, I guess the way I'm thinking here is that, so if we didn't approve it, then you wouldn't be able to get your insurance, but the standing variances would still be in place, so we're talking an adjustment of a lot line and whether you'd have title insurance which.

PATRICIA PANCIOCCO: We're not actually two (2) Mr. Dunn, we aren't even adjusting the lot line because...

NEIL DUNN: It's housekeeping for paperwork.

PATRICIA PANCIOCCO: Yes, yes. You're correct.

NEIL DUNN: So you leave it there so if we denied it, it wouldn't the project it would just deny you title insurance, or whatever.

264 PATRICIA PANCIOTTO: That's exactly right. Just a zoning endorsement for that matter.

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266 NEIL DUNN: Yeah, really.

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268 PATRICIA PANCIOTTO: That's all it is.

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270 JIM SMITH: I think the point we are trying to raise is the project has already gone through the Zoning Board,
271 Planning Board and it's been approved. It's in the process of being under construction, so if we were to deny
272 this it wouldn't really affect the project one way or the other except for the insurance aspect.

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274 PATRICIA PANCIOTTO: That's exactly right. The appeal periods have passed on everything. The last day to
275 appeal the road discontinuance is tomorrow.

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277 [Overlapping comments]

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279 DAVE PAQUETTE: It's already today/tomorrow.

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281 JIM SMITH: Any other comments from anybody, any questions? If not, I'll close the hearing, take it to
282 deliberation.

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284 DELIBERATIONS:

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286 DAVE PAQUETTE: Are we ready to make a motion as presented?

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288 JIM SMITH: Yes.

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290 DAVE PAQUETTE: Mr. Chairman, I'd like to make a motion to grant the variance requested as presented.

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292 JIM SMITH: Second?

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294 JACKIE BENARD: Aye, second.

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296 JIM SMITH: Thank you. All those in favor?

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298 ALL: Aye.

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300 **RESULT: THE MOTION TO GRANT CASE NO. 12/17/2014-2 WAS APPROVED, 5-0-0.**

301
302 RESPECTFULLY SUBMITTED,

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306 DAVID PAQUETTE, CLERK

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308 TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT
309 SECRETARY.
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311 **APPROVED JANUARY 21, 2015** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY ANNETTE STOLLER AND
312 APPROVED, 5-0-0.