

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

DATE: MARCH 19, 2014

CASE NO.: 3/19/2014-1

APPLICANT: NEW ENGLAND INDUSTRIAL PROPERTIES, INC.
12 LEXINGTON STREET
LEWISTON, ME 04240

LOCATION: 3 GARDEN LANE; 10-54; C-II

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

REQUEST: VARIANCE TO ALLOW A SUBDIVISION TO CREATE TWO LOTS IN THE C-II
ZONE WITHOUT FULL PERIMETER GREEN SPACE AS REQUIRED BY
SECTION 2.4.3.2.1.

PRESENTATION: Case No. 3/19/2014-1 was read into the record with four previous cases listed.

JIM SMITH: Who will be presenting...

TONY BASSO: For the record my name is Tony Basso and I'm with Keach-Nordstrom...I'm an engineer in...Bedford, New Hampshire...I will be presenting...

ANDY SULLIVAN: ...And...Andy...

TONY BASSO: And Andy Sullivan.

ANDY SULLIVAN: Attorney.

TONY BASSO: So, again I'm Tony Basso.

JIM SMITH: Sorry to interrupt but can anybody see that?

JACKI SMITH: No.

TONY BASSO: Hmm....

NEIL DUNN: I think we do have it in our handouts though....

39 JIM SMITH: Oh....

40 TONY BASSO: Yeah there's a...with it there was an 11x17 in your package.....so...just quickly tonight I'm filling
41 in for Steve Keach, my business partner who is in the Caribbean so...please bar with me I have to read a little
42 bit here and there cause...

43 SIM SMITH: Ok...

44 TONY BASSO: I didn't write this so....but...I am familiar with it. The....the case before you here tonight is....is for
45 the...the green pace between lines where there's a piece of land on Garden Drive...Garden Lane...it's Map 10
46 Lot 54, it's currently a 2.59 acre tract of land that is fully developed. It has....a car was on the....the western
47 side of it and it has a VIP auto parts...and....the purpose...of what we are trying to do here...we want to...this is
48 currently one lot...2.59 acres like I said...we would like to make it two lots...a 1 acre lot exactly...for the car
49 wash and then the remainder of 1.59 for the VIP...and the idea of doing this is for financing person. There is a
50 buyer for the car wash and the car wash is a number of years old. There's an extensive description in the
51 handout...I don't know if you got to read it...I'm going to paraphrase a little bit...my...business partner is very
52 wordy....and basically what is going on here is...in ninety...in nineteen-ninety-nine the VIP was permitted and
53 constructed.....and then later in 2005 the...the twenty three hundred seventy six sq. foot car wash was
54 permitted and constructed....and...now at this point if there is a purchaser for the car wash which currently sits
55 on...it's a leased property...it's in need of...it's...it was like I said done in 2005 so it's approximately 9 years old
56 and it's time to put some money into that...it's time to...redo the equipment inside and there's a substantial
57 investment....and so when this purchaser was looking at it...in order to get this done now a days under
58 financing terms that exist out there it really needs to have a fee simple ownership of the land so...we are
59 here....we want to put this lot line in and...essentially what happens is when you put a lot line in you are
60 required to have a fifteen foot green stripe on each side of the lot line if you...when you're creating two lots.
61 So in the case of undeveloped lots that green strip would essentially separate the two uses....in this case....the
62 lots already developed and it actually...it...it doesn't make sense to put a green stripe. It's good planning to
63 have one driveway for these uses, to have shared...they don't need separate driveways...they don't need to be
64 separate sites....it's.....it's really...there's...there's a lot of...shared stuff going on here people can use the site as
65 one...go for one thing and go to the other place...with it being contiguous without a big separation where
66 someone would have to actually leave almost the site and go back into the other one if they wanted to use it.
67 So from a planning perspective....this...actually is a good way to go where you're limiting curbs...curb cuts and
68 promoting....continuity between sites so that way people can go from one to the other without having to go
69 back onto the public road. So...from a planning perspective it...it's actually a good way to
70 go....so....unfortunately though it's contrary to...one of the requirements of the ordinance so...we are looking
71 for that variance...where a green stripe would be required up that lot line but....keeping in mind that prom the
72 perspective of what you would see on the ground, it's there today we are not changing anything...it's a line
73 that will show up on the tax maps essentially and the properties would be separated....you know...but there
74 will be no sensitive change on site....you're not going to see...you know it's no different than how is exists
75 today....so....I think from that perspective on....it's good planning to leave it like this for the shared use and

76 also...it...its really....like I said there will be no visible difference so....and now a days with the financing
77 requirements starting actually...I've been doing these very often lately...this is come up...I just was in Hudson
78 about two months ago with the same exact kind of case because this is becoming a bigger deal now a day. It
79 use to be easier to get these things done and it's not anymore so....so that's why we are here.....having never
80 presented here before....I have all the criteria, the five points. Do you want me to read the verbatim...?

81 JIM SMITH: Yes...

82 TONY BASSO: Do you what me to paraphrase...do you want me to...there's many, many words here I can
83 shorten them and you have it for the record...or...however you want me to handle it...

84 ANDY SULLIVAN: I'll do it.

85 TONY BASSO: Even better I will let the attorney do it.

86 ANDY SULLIVAN:....to quickly go through these, the five variances...not contrary to public, if you saw in your
87 hand out....the...the factors...not being contract to public interest....coincide really with the spirit of the
88 Ordinance as well. As was just pointed out there's no visible...because the last...is going to stay the
89 same.....there will be crossed easement to allow the legal aspect of the....going back and forth on the
90 same...but other than that, physically the layout is going to be the same...so there's going to be no visible
91 traffic changes...in the property...consequently it's going to stay with the essential character neighborhood, it
92 already is the essential character of the neighborhood. There will be no violation of basic zoning consequently
93 because there is no threat to public safety because everything is the same, as proven last time, the same thing
94 so it will not be contrary to the public interest and it will be in the spirit of the Ordinance because it will keep
95 the character of the neighborhood the same...it will not...impinge on any public safety aspect.

96 TONY BASSO: And in regard to the spirit of the Ordinance, I mean obviously the spirit of the ordinance is to
97 promote good planning and good planning would be to share an access and to, on a commercial use like this,
98 share the site completely so you don't have people going here, leaving and then coming back in off of a public
99 road, it....it actually....this makes sense from a good planning perspective and so it's in the spirit of the
100 Ordinance for that reason. Sorry.

101 ANDY SULLIVAN: No exactly, because of that...what Tony just said...it's going to effect a guarantee in the
102 future remain consistent because that curb cut is going to stay the same we are not going to break it off and
103 that promotes the public interest. Substantial justice will be done...we are creating a situation where it will
104 enable more dollars to be put back into the system for...for....for taxes, there will be a new lot....and...it
105 doesn't...it doesn't hurt anymore...it doesn't...the applicant can achieve its purpose at the same time there's
106 no detriment to the Town there's no detriment to the neighbors, there's no detriment to the neighborhood.
107 The....surrounding property values won't be diminished...if anything it will go up...it's one lot now with two
108 uses with two lots...there's going to be a slight increase...in my opinion...in the value of both lots. It certainly
109 won't diminish the values of the surrounding neighborhoods because for all practical purposes the use and the
110 access etc. are the same....it is unnecessary...if it's not granted it will create an unnecessary hardship....we are

111 creating some...we are asking for a waiver of an area variance.....it's a dimensional requirement to green space
112 a certain...certain distance...this is a dimensional requirement. As the packet points out and I'm sure you all
113 know, these days we have an area variance and its permit use, is deemed to be reasonable use. If it is
114 consistent with the character of the neighborhood, which it is, than....if the only way to allow the reasonable
115 use is by an area variance....and if it is denied it becomes unnecessary hardship, that is our unnecessary
116 hardship, we just need this slight...dimensional waiver of this green space to allow this....if it's not that is the
117 unnecessary hardship. It's a reasonable use, it's a reasonable objective, we submit it to you.

118 JIMSMITH: Ok...is that your comp....

119 ANDY SULLIVAN: Yes.

120 JIM SMITH: Ok, questions from the board....

121 NEIL DUNN: The...easement would be a formal easement on both property....deed or maps or whatever...

122 ANDY SULLIVAN: We recorded cross easement so each side can go back and forth; in effect it allows this
123 current flow to remain.

124 NEIL DUNN: But that would be on the deed that the Rockingham County...

125 ANDY SULLIVAN: That's correct...

126 NEIL DUNN: Deeds...

127 ANDY SULLIVAN: That's correct...we've actually...prepared those deeds and they have been submitted to
128 Londonderry for their review as well for the Planning Board process. Any other questions....obviously this has
129 to go to the Planning Board for the...

130 JIM SMITH: Will they need a corrected site plan....or updated site plan...

131 ANDY SULLIVAN: Correct....

132 RICHARD CANUEL: Oh absolutely...certainly they would....

133 JIM SMITH: So they will have to go through that process as well....seeing no questions...other
134 questions...anyone in support of this variance...anyone in....objection to it or have questions....seeing none I'll
135 bring it back, any further comments from the applicants...ok at this point we will close the Public Hearing and
136 we will go into deliberation on this case.

137 DAVID PAQUETTE: My only question is...is the easement formalized?

138 JIM SMITH: I think the real hardship is the financial restrictions...

139 DAVID PAQUETTE: Yeah...

140 JIM SMITH: Restrictions of the lenders...

141 JACKI BERNARD: Mmmm...because this is going to be an improvement to the area...

142 JIM SMITH: Well...it really doesn't affect it....nothing's really changing

143 KACKIE BERNARD: No....nope

144 DAVID PAQUETTE: I agree

145 JIM SMITH: Well, if no one has any other comments....Neil....

146 NEIL DUNN: I guess all I would comment on is covering the five points he...he did cover them...the fact that it
147 would not be contrary to public interest it is an existing condition...my...to David's point...my biggest concern is
148 that formally on the deeds the shared driveway access...and the spirit of the ordinance would be observed
149 because again...it's an existing condition. It has a little bit of a hard ship....just...substantial justice I don't think
150 there will be any diminishing of values so I think all the five points were hit so I am good with it.

151 JIM SMITH: Ok...I'll accept a motion...

152 JACKIE BERNARD: I second it...

153 JIM SMITH: No I mean...I'll accept a motion...someone has to make a motion.

154 NEIL DUNN: Mr. Chairman....[laughter]...I would like to make a motion to grant case 3/19/2014-1 based on the
155 fact that the five points of laws....five rules of law are met and that there will be....registered it in the deeds
156 that there's a joint access as discussed.

157 JIM SMITH: Hmm...who would like to second?

158 JACKIE BERNARD: I will second.

159 JIM SMITH: Jackie seconds...all those in favor...aye.

160 NIEL DUNNL: Aye.

161 JACKI BERNARD: Aye.

162 DAVID PAQUETTE: Aye.

163 ANDY SULLIVAN: Thank you.

164 TONY BASSO: Thank you.

165 RESULT: THE MOTION TO GRANT CASE NO. 3/19/2014-1 WITH RESTRICITONS WAS APPROVED, 4-0-0.
166
167 RESPECTFULLY SUBMITTED,



168
169 NEIL DUNN, CLERK

170
171 TYPED AND TRANSCRIBED BY KIRBY WADE, EXECUTIVE ASSISTANT

172
173 **APPROVED AS AMENDED* APRIL 16, 2014** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY DAVID
174 PAQUETTE AND APPROVED 4-0-1 WITH JIM TIRABASSI ABSTAINING AS HE DID NOT ATTEND THE MEETING.

175
176 *Amendment suggested by Jim Smith; lines 127 through 129 were originally attributed to Jim Smith but were
177 corrected to indicate they were spoken by the applicant's attorney.