

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

DATE: OCTOBER 15, 2014

CASE NO.: 7/16/2014-6 (CONTINUED)

APPLICANT: M + M A SMITH PROPERTIES, LP
31 NASHUA ROAD
LONDONDERRY, NH 03053

LOCATION: 31 NASHUA ROAD, 7-73-2, C-I

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

REQUEST: VARIANCE TO ALLOW PAVEMENT TO ENCROACH INTO THE GREEN SPACE
AREAS AS RESTRICTED BY SECTION 2.4.3.2.1

PRESENTATION: Case No. 7/16/2014-6 was read into the record. The 16 previous cases associated with this map and lot were previously read in with the prior case [Case No. 7/16/2014-5]. The Clerk also referred back to Exhibit "B," a letter of support from Londonderry Hampton, LLC from the previous case [Case No. 7/16/2014-5].

MORGAN HOLLIS: Mr. Chairman, I just ask that all the testimony I just made about this case [Case No. 7/16/2014-5] be brought forward. It was intended to cover both variance applications.

JIM SMITH: Okay, just before we get to that. Normally, we read the cases again. It's such a lengthy list, it's the same list.

JACKIE BENARD: It's exactly the same list as what was previously read.

JIM SMITH: So, if no one objects, we will waive reading that.

JACKIE BENARD: I do not object.

JIM SMITH: Okay. Is there any letters?

45 JACKIE BENARD: There are no letters. Actually, there is...it's the same exact letter as previous letter read
46 concerning the traffic from Londonderry Hampton, LLC.

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48 JIM SMITH: Which I really thing is a Planning issue but...now it's up to you.

49
50 MORGAN HOLLIS: Thank you, Mr. Chairman. For the record, Morgan Hollis attorney from Gottesman & Hollis,
51 39 East Pearl Street in Nashua. In the spirit of moving things along, I've just asked that the record reflect that
52 all of the testimony for the first (1st) case [Case No. 7/16/2014-5], I would present identical testimony for the
53 second (2nd) case [See minutes of Case No. 7/16/2014-5], so I really have nothing new to offer. I think I have
54 made the case for both arguments at the same time - both applications at the same time. It didn't make sense
55 to try to explain them separately.

56
57 JIM SMITH: Okay, the only thing I would like you to do is to point out exactly what the encroachments are.

58
59 MORGAN HOLLIS: Yes, the encroachments on this one, the first case [Case No. 7/16/2014-5] was the retaining
60 wall. The second case are the encroachments which are if you turn to the last page in your handout shown on
61 the [Indistinct]. The encroachments are in the front yard on Nashua Road, as we discussed. We're going to
62 end up with an encroachment which would end up only having eleven (11) feet where we need thirty (30)
63 feet.

64
65 JIM SMITH: Okay, that's only for part of it, right?

66
67 MORGAN HOLLIS: That's in the very front here.

68
69 JIM SMITH: Okay.

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71 MORGAN HOLLIS: It'll be, as you can see in the corner some parts of it right at the very corner there there is
72 adequate, but right along the front there's inadequate green space. Same thing on Palmer Drive there are
73 portions of it which have green area which nearly reach the thirty (30) foot landscape, but towards the rear
74 get very narrow in the eight (8) foot area, so we've asked for a variance to allow as designed here for as little
75 as eight (8) feet. Then because the rest of it is pavement the green is what is green. It should be all green
76 from the dotted in, but we're showing what we are proposing. The rest would be pavement and
77 improvement. To the rear we have encroachments fifteen (15) feet as required and we're going to essentially
78 have nine (9) feet available. To the Hampton Drive, we have thirty (30) feet required and we're going to
79 provide in areas thirty (30) feet, but in other areas only eighteen (18) feet four (4) inches, so we need a
80 variance from that requirement. So those are all four (4) sides encroach. As I indicated in my earlier
81 testimony, they currently encroach, and they encroach to a greater degree. This plan is very hard to tell, but
82 there are areas out there - I'm just going to point with my finger up where it says loading on the plan, there's
83 pavement all up in there now and that's going to be removed and that will be green. To the front, the area
84 right near the entry way there's currently pavement in the corner and that's going to be removed. Again, on
85 the rear side, or Southerly side there's pavement where the driveway is wider and that's going to be removed
86 and some green replaced. When you go over onto Palmer Drive the driveway is going to be narrowed so
87 pavement encroaches now will be removed. Also, some of the area which is currently paved out in there will
88 be modified, so some of that swale will be increased in certain areas, so they'll be additional green space. For

89 the rear, there's currently a great deal of green space and I do have one other plan I'll hand out [Exhibit "C"],
90 which I think will be useful. This is the existing aerial view with our site plan overlaid so you have a sense of
91 where the green actually is and how it encroaches today, and what we are planning to do with it.

92
93 [Overlapping Comments]

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95 MORGAN HOLLIS: So, I'm happy to answer any questions should there be any, and as I indicated, I have
96 resources here this evening, but I think all of the same arguments with regards to encroachment can be made
97 here as were made in the first case [Case No. 7/16/2014-5]. There's an absolute necessity to have some
98 encroachment in order to use this property in any fashion. As you can see by the latest plan I handed out how
99 much encroaches today. What that site looks like, and what's necessary. The topography to the rear requires
100 some level of encroachment. You've already approved the variance for the retaining wall, but we need a
101 variance to allow some additional paving within that fifteen (15) foot area. On the sides, we've tried to
102 minimize the proposed impact in the buffer, but you obviously need some way around this building and some
103 parking on site. We believe we've minimized it and when we get to the Planning Board, we think this plan will
104 carry one, but there's no way of telling. We at least need to have authority from this Board to encroach
105 before we go to the Planning Board.

106
107 JIM SMITH: Okay, questions from the Board?

108
109 JACKIE BENARD: Will the change in encroachments affect the drainage in any way?

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111 MORGAN HOLLIS: I'll let Mike answer that, and my answer is yes, it'll improve it significantly. Mike can
112 describe it in detail if you'd like, or he can guess echo my opinion.

113
114 MICHAEL LAHAM: Um yeah, so...

115
116 JIM SMITH: You want to identify yourself for the record.

117
118 MICHAEL LAHAM: Yup, yup. Mike Laham with Engineering Alliance. So as he said, this is kind of an interesting
119 site. The drainage patters, if you look on the site plan, whether it's the color one, or the black and white.
120 Obviously, the drainage patters kind of follow along Hampton Drive and Palmer Drive. They go downhill as the
121 road goes downhill. There's vegetated, kind of a naturally vegetated swale along Hampton Drive that's
122 partially within the right-of-way partially within our property. There will really not be much change to that. I
123 mean there's certain invasive species in there and you know and some native trees, so I envision that natural
124 swale is kind of maintain along Hampton Drive there. Now along Palmer Drive there isn't as much of a
125 drainage feature like that. It kind of the water just kind of flows along the flow line of the road on either side
126 downhill and it continues beyond our site, beyond the Applewood site and eventually kind of down toward the
127 Hannaford property and those systems. Our site itself, so basically what we're doing in leveling this off,
128 putting in the retaining wall along the back is we're creating a system where the water is retained on the site
129 more and we have some interesting ways of dealing with that whether it's pervious pavement with some sort
130 of a sub-surface storage within the stone under a pervious pavement not for the whole site but along the rear
131 that would retain a lot of that flow that would have previously flowed down that wooded hillside, and then
132 along the let's see Southerly property line along Palmer Drive, we've got a nice vegetative swale, and in the

133 first section, and then it narrows as it reaches the rear, and that will also provide a good opportunity for
134 infiltration and storage and of course native appropriate landscaping for that type of environment, and of
135 course as part of site plan process we'd be performing pre and post development calculations to ensure that
136 none of the flows would be increased as a result of this development and so that kind of clarifies. Now, so one
137 other interesting point is there is a discharge from the state highway drainage system there that is on our site.
138 None of that will be altered whatsoever. That will maintain the existing conditions there.

139
140 ANNETTE STOLLER: Will it be a deficit to you in any way?

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142 MICHAEL LAHAM: That drainage outfall there?

143
144 ANNETTE STOLLER: State discharge?

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146 MICHAEL LAHAM: No, it's something that is in the rear of the site along Hampton Drive.

147
148 ANNETTE STOLLER: Okay.

149
150 MICHAEL LAHAM: And so we are able to develop the site without impacting that at all.

151
152 JIM SMITH: Any other questions? Anyone have any concerns about the traffic? I don't think that has any real
153 impact on these particular variances.

154
155 MOGAN HOLLIS: I don't think so either, Mr. Chairman. We've had some discussions with the neighbor and
156 like you commented, it's probably a Planning Board issue although he does raise the issue. I think if you look
157 at the plan which I just handed out – the aerial, you can see where the turnaround is that he's referring to for
158 those of you may not have understood his dialog. If you come out of the site and take a right there's a natural
159 turnaround there so it's not like people have to go into Hannaford's to in order to go back up Nashua Road. I
160 think the questions of whether to put a barricade at the end, or a deflector to make it right turn in/right turn
161 out only those are really issues for the Planning Board and probably best reserved there. I don't think it
162 affects any of the five (5) criteria that you are looking at in terms of public health or safety at the moment.
163 Thank you.

164
165 JIM SMITH: Any other comments or questions? Open it up to the public. Anyone in favor, opposition, or
166 questions? Seeing not, I'll bring it back to the applicant if he has any further comments?

167
168 MORGAN HOLLIS: No thank you, Mr. Chair.

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170 JIM SMITH: At that point we'll close the public...does the Board have any other questions?

171
172 **DELIBERATIONS:**

173 [Overlapping Comments]: No

174
175 JIM SMITH: We close the public hearing on this experience. Any comments? Essentially, it's the same
176 situation that we had in the previous case [Case No. 7/16/2014-5].

177

178 JACKIE BENARD: I agree.

179

180 JIM SMITH: Having said that, would someone make a motion?

181

182 JACKIE BENARD: I so move that we accept case 7/16/2014-6 which is M + M A Smith Properties, LP requesting
183 a variance to allow pavement to encroach into the green space areas as restricted by sections 2.4.3.2.1 – 31
184 Nashua Road, 7-73-2 / C-I.

185

186 JIM SMITH: Do we have a second?

187

188 JACKIE BENARD: Second.

189

190 JIM SMITH: Okay, Jim?

191

192 JIM TIRABASSI: Second.

193

194 JIM SMITH: All those in favor?

195

196 ALL: Aye.

197

198 RESULT: THE MOTION TO GRANT CASE NO. 7/16/2014-6 WAS APPROVED, 4-0-0.

199

200 RESPECTFULLY SUBMITTED,

201

202 

203

204 JACKIE BENARD, ACTING CLERK

205

206 TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING & ECONOMIC DEVELOPMENT DEPARTMENT
207 SECRETARY

208

209 **APPROVED JANUARY 21, 2015** WITH A MOTION MADE BY NEIL DUNN, SECONDED BY ANNETTE STOLLER AND
210 APPROVED, 5-0-0.