

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

DATE: DECEMBER 17, 2014

CASE NO.: 8/20/2014-2 (CONTINUED)

APPLICANT: ROBERT CASEY  
26 PINE STREET  
LONDONDERRY, NH 03053

LOCATION: 26 PINE STREET; 3-70, AR-I

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

REQUEST: RELIEF OF ADMINISTRATIVE DECISION IN ACCORDANCE WITH THE  
PROVISIONS OF RSA 676:5.

PRESENTATION: Case No. 8/20/2014-2 was read into the record with one previous case listed.

NEIL DUNN: If I may before we go further. I know that you're probably about to recuse yourself but what we're here for on this case is a relief of administrative decision, and I guess maybe if we heard from Richard. My understanding if we look at the powers of the Zoning Board Adjustment for relief of administrative decision. We're really looking to see if Richard misinterpreted something. We're not here to decide, we're not here to enforce an ordinance or a portion of the ordinance. So I'm a little bit confused Richard maybe before we get going. It seems to me what is really needed here is a variance. Your decision, and again I'm not quite sure how it all transpired. It was in regards to something, so can you explain how this all started? How did you made a decision with the decisions referenced.

RICHARD CANUEL: Okay, without going in to too much detail because it should be the applicant that has the opportunity to bring this case to the Board, but under the process of an appeal for an administrative decision. It's much different than how the Board would precede for a variance or a special exception. Basically, the Board acts as the official for whom the appeal is taken, and the Board must make a literal interpretation of the ordinance just as I would base on the facts that are presented to the Board. Like I said without going into too much detail on how I got to this process, we should probably allow the applicant to plea his case first.

NEIL DUNN: I guess to me, I'm afraid what do us have one, two, three, four, five...

45 [Overlapping comments]

46  
47 NEIL DUNN: No we won't. Because, alright, I guess we'll let them go forward. It just seems crazy to me that  
48 we are really here to decide if your decision is right, and it sounds to me what we really need is a variance, so  
49 it seems like it's two (2) different topics, and maybe it's dragging out longer than it has to as far as this  
50 individual case.

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52 RICHARD CANUEL: That's correct, and like I say, the Board acting as the official Zoning officer, Code  
53 Enforcement officer, if you will. You're viewing the facts of the case and making a decision on whether to  
54 agree with the officials' decision, disagree with that decision, or make a decision that the Board feels ought to  
55 have been made. If the Board feels that a variance will be appropriate to allow the use then the Board can so  
56 direct the applicant to go through that process.

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58 JIM SMITH: Okay, I have a particular problem with this particular case given my experiences working as  
59 building inspector and zoning officer in the past, so I don't feel that I'm in a position that I can hear this case  
60 with a completely open mind, so what I am is recusing myself from this particular case. The problem with that  
61 it drops us down to four (4) members because...

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63 BILL BERNADINO: I have to recuse myself also.

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65 JIM SMITH: Because he's the neighbor.

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67 BILL BERNADINO: I'm an abutter.

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69 JIM SMITH: So rather than get up and walk away...Neil is going to be Acting Chairman at this point, and why  
70 don't you let them do whatever it is they have got to do.

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72 NEIL DUNN: Alright, would the applicant care however to speak the applicant?

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74 BRUCE MARSHALL: So we would like to continue 'til we have a full panel.

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76 NEIL DUNN: I would like to if we may get some more background information because I really, it seems to me  
77 that this is a zoning, without knowing what's transpired, and we don't have a lot of information except for  
78 basically we need to decide if his decision was right or wrong, and that's totally different from what appears to  
79 me to be a true zoning issue, so I mean, we could do this forever if you want. To me, I'd like to get it resolved  
80 and get you in the right spot, but I guess it is your choice; we only have four (4) people.

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82 BRUCE MARSHALL: We'd like to get it resolved also, my client doesn't appreciate having to pay for me to  
83 come down her, but we'd like our full panel that we feel we have the right to because you are talking about  
84 my clients livelihood and a lot of expense to him and we agree with Chairman Smith that he should recuse  
85 himself because he has stated opinion publicly in this prior positions with the Town, so we think that's proper,  
86 but we don't think it's out of the ordinary for us to want a full panel on something that's so important like  
87 money.

89 NEIL DUNN: No, no and I don't mean to imply that that's what I'm saying is my thought looking at it and what  
90 we are really looking at is an appeal of an administrative decision. I don't think that necessarily clears from  
91 what might be required down the road, so you're fine, if that's your choice. I was trying to help you get past  
92 one step to maybe what might turn out to be the next step. I don't know.

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94 BRUCE MARSHALL: Well and maybe it'll help you understand a little better, we feel...

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96 JIM SMTIH: Do you want to get on a mic?

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98 BRUCE MARSHALL: Oh, I'm sorry. I thought you could hear me, I apologize.

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100 NEIL DUNN: I'm sorry, you should state your name.

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102 BRUCE MARSHALL: Attorney Bruce Marshall from the law firm in Concord at the D'amante Couser Pellerin &  
103 Associations, P.A. I understand how you are looking at it, I've served on Planning Boards for a long time in my  
104 home town, and have represented them, so I've done quite a bit of this, but we have an administrative  
105 decision that we feel is wrong number one, but number two, you're conversation about maybe we just need  
106 to go to a variance, or this or that to address the issue, we don't feel based on the record that we have to. We  
107 feel the Town has already made prior decisions, and really the Town to stop from doing anything, but we want  
108 full panel to decide that to present out case is what we are asking for.

109  
110 NEIL DUNN: Okay, again, I'm bringing it up because all we have is a relief of administrative decision, and based  
111 on statutes and ordinances all we can say is whether he's right or wrong or if he misinterpreted something, so  
112 to me, I guess I was trying to get some clarity, and I appreciate that as anybody based on the fact that we only  
113 have four (4) people, we continue to case to January 21, 2015.

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115 NEIL DUNN: Everyone here agree on the Board? Do we need a motion to continue the case to January 21,  
116 2015, or do we just...?

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118 RICHARD CANUEL: Just a consensus from you would be adequate.

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120 NEIL DUNN: Any other thoughts up here?

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122 ANNETTE STOLLER: Well it's okay by me, but are we going to keep running into the same thing here?

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124 NEIL DUNN: Not if James's here. The other Jim.

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126 JACKIE BERNARD: I wish I had more information so that we could get passed this because I feel that it's  
127 everyone's time is so precious, you know we all volunteer up here that they're a lot of people come each and  
128 every time away from their families, it's the holiday's that you know, if you would take the suggestion maybe  
129 you know it would help. I just was hoping that more information would be here because we have so little.

130  
131 BRUCE MARSHALL: I understand where you're coming from in my client brings in this whole side of I think  
132 here is from the client, and the worst case he's paying for me to be here, and it's no cheap, and like I said I

133 volunteer up in Bow, and all the Boards. I understand, but its important issue for my client we are talking  
134 about his livelihood, his home and that he's had there since 1986. Especially, on the very first meeting, I read  
135 those draft minutes where Mr. Smith didn't recuse himself, conducted a conversation, and allowed the  
136 neighbor that is now a member of the Zoning Board to really bad mouth me and say I lied to the Board about  
137 having a conflict and that I was going to have another one be in Florida, and that's in the minutes, so we have  
138 some issues, and we want to make sure, we have a full Board that's going to hear us because that's what's  
139 transpired so far. So we'd ask that we get put on the schedule and get a full panel. We'd appreciate that.  
140 Thank you.

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142 NEIL DUNN: Case 8/20/2014-2 continued to January 21, 2014.

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144 RESULT: Case 8/20/2014-2 continued to January 21, 2014.

145  
146 RESPECTFULLY SUBMITTED,

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150 DAVID PAQUETTE, CLERK

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152 TYPED AND TRANSCRIBED BY NICOLE DOOLAN, PLANNING & ECONOMIC DEVELOPMENT SECRETARY.

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