

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

DATE: OCTOBER 15, 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, CHAIR  
JIM TIRABASSI, VOTING MEMBER  
ANNETTE STOLLER, VOTING ALTERNATE  
JACKIE BENARD, ACTING 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. The Acting  
Clerk also read Exhibit "A" into the record.

RICHARD CANUEL: Mr. Chairman, if I could just interject, being that there's a request for the applicant to  
continue the hearing, it's unnecessary to read any of the other letters into the record, because the record  
should be the public hearing itself. So all the Board needs to do is vote on whether to grant the continuance.

JIM SMITH: Okay, we'll entertain a motion.

UNIDENTIFIED AUDIENCE MEMBER: Before that motion goes in, can I say something?

JIM SMITH: No.

UNIDENTIFIED AUDIENCE MEMBER: What do you mean no?

JIM SMITH: No, this is strictly something the Board has to...we're not going to get into an argument...

[Overlapping comments]

JIM SMITH: This is not a public hearing at this point. We are just starting the procedure.

44 UNIDENTIFIED AUDIENCE MEMBER: I just have a question about that letter? It's a request, you don't have to  
45 grant that request right? Three months goes by and a lawyer first it's vacation then it's not enough Board  
46 members now it's...medical, making a mockery. Forget about the people who live here by the law. How  
47 about mine/me...?  
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49 JIM SMITH: Okay, someone want to make a motion?  
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51 UNIDENTIFIED AUDIENCE MEMBER: I make a motion you go through with it and hear all the evidence.  
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53 JACKIE BENARD: Mr. Chairman, there's also other letters requesting where it has been requesting that we  
54 continue with from August from September, so we have other letters in here for...  
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56 JIM SMITH: Yeah, I know that.  
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58 JACKIE BENARD: Okay.  
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60 JIM SMITH: It's gone from one...  
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62 JACKIE BENARD: Okay.  
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64 ANNETTE STOLLER: Mr. Chair, I believe we have the ability if we grant the continuance to state that it possibly  
65 is the last continuance will be granted. I know on the Planning Board that's the way it's granted.  
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67 JACKIE BENARD: Richard, are continuances do you know allowed perpetually indefinitely? Can it be  
68 postponed continuously?  
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70 RICHARD CANUEL: Well it's really discretion of the Board. I mean there are no statutory provisions that guide  
71 the Board on whether to grant or deny continuances. If the Board feels that the applicant's request is  
72 reasonable considering the fact that he is represented by Council and his Council is not available, it may be a  
73 wise vote to allow the continuance, but that is strictly the Board's decision.  
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75 JIM SMITH: Do you know if he's a sole attorney operating by himself, or does he have...?  
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77 RICHARD CANUEL: I do not know.  
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79 [Indistinct]  
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81 JIM SMITH: Okay, what I would like to suggest is in the continuance would be that if this attorney isn't  
82 available that one of his associates appear at the next meeting. I don't know if you require that or not, but...  
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84 ANNETTE STOLLER: Well that was close to my question. The attorney or the applicant.  
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86 JIM SMITH: Well. Do you want to entertain a motion one way or the other?  
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88 ANNETTE STOLLER: I don't know if this is right, I'd like to entertain a conditional continuance on the condition  
89 that no more continuances for any reason be granted, and I don't know if we can do that, so I give it to you.

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91 JIM SMITH: I don't believe that we can.

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93 RICHARD CANUEL: As I said, the applicant has that right to a...

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95 [New CD inserted by technician]

96  
97 RICHARD CANUEL: And if the request is reasonable so that the applicant can come back month after month  
98 and request a continuance [overlapping comment] if like I say if the Board feels that those reasons are  
99 justifiable then they can certainly grant the continuance, but that is purely discretionable.

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101 JIM TIRABASSI: So each continuance stands on its own merit, you can't limit, it's either a Yay, or nay?

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103 RICHARD CANUEL: Absolutely, that's correct.

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105 JIM TIRABASSI: It's a non-conditional?

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107 ANNETTE STOLLER: And if I understand how the process works, if a continuance is denied and the applicant  
108 wants to go forward, he has to refile and start from to the beginning correct?

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110 RICHARD CANUEL: He does not, no, nope the case continues.

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112 ANNETTE STOLLER: Even if we deny the continuance?

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114 RICHARD CANUEL: If you deny the continuance, the applicant should be present to testify. I'm not sure that  
115 the applicant is even here, so?

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117 ANNETTE STOLLER: Is the applicant here, or the applicant's attorney?

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119 [Overlapping comments]

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121 JIM TIRABASSI: So based on that, if we rejected the continuance and we proceeded with both sides being  
122 there's only one (1) side present to make the presentation, and we come to an agreement based on that. Is  
123 that binding?

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125 RICHARD CANUEL: Well that's part of the problem; the applicant needs to be here to testify on his own  
126 behalf, um...

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128 JACKIE BENARD: Robert Casey is not here?

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130 RICHARD CANUEL: No, he's not here, neither is his legal counsel.

132 JIM TIRABASSI: In essence somebody can dodge it in forever [overlapping comments] and never show up?

133  
134 RICHARD CANUEL: Well, as you said, each request for a continuance stands on its own merits, so like I say, it  
135 could come back to this Board month after month as it has up to this point and providing the Board considers  
136 a request reasonable they can grant the continuance.

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138 JIM TIRABASSI: But in essence, but what you're saying is if there's nobody here to represent the defense, it's  
139 basically the same thing as asking for a continuation, and because they're not here to represent themselves.

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141 RICHARD CANUEL: That's true.

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143 ANNETTE STOLLER: So it cancels itself out?

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145 [Overlapping comments/laughter]

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147 RICHARD CANUEL: The applicant always has to have right of appeal. The applicant has to have that right to  
148 testify on their own behalf, or have counsel testify on their behalf, so you have to give the applicant that  
149 opportunity.

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151 ANNETTE STOLLER: I think the point I'm hearing amongst my fellow and sister Board members is that the  
152 applicant has been given several opportunities, and except in one case, if I'm understanding it, it has been  
153 postponed or continued on his volition not on the Boards; however, I'll will caution and say that I have sat on  
154 other Boards where continuances can go on for almost a year. They weren't Zoning Boards.

155  
156 JIM SMITH: Okay, I think what I would like to suggest is we give a continuance with the comment that we do it  
157 reluctantly, and with the request that if this attorney can't appear that one of his associates appear in  
158 his...[overlapping comments], but we can make the comment, but...

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160 JACKIE BENARD: Correct.

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162 ANNETTE STOLLER: Excuse me, what happens if we table it rather than continue it?

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164 RICHARD CANUEL: There's only one option it's continue [overlapping comments] the hearing. Otherwise,  
165 you're denying the applicant his due process, and that would not put the Board in a good position.

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167 [Overlapping comments]

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169 JIM SMITH: Would you like to make a motion?

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171 JACKIE BENARD: I'd like to make a motion Mr. Chairman for a continuance for case number 8/20/2014-2.

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173 JIM SMITH: Do I have a second?

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175 ANNETTE STOLLER: Second.

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JIM SMITH: All those in favor?

ANNETTE STOLLER: Aye.

JACKIE BENARD: Aye.

JIM SMITH: Are you in favor?

ANNETTE STOLLER: I said second.

JIM SMITH: I mean, we asking for a vote.

ANNETTE STOLLER: Oh, yes.

JIM SMITH: Yes, and you?

JIM TIRABASSI: No.

JIM SMITH: Okay, it continues, granted 3-1.

RICHARD CANUEL: It would be beneficial if you make the announcement of when the continuance will be granted til.

JIM SMITH: Okay, [overlapping comments]. Do we have a date for the next meeting?

ANNETTE STOLLER: I think its November 19, 2014.

JIM TIRABASSI: Yes.

[Overlapping Comments/Indistinct]

JIM SMITH: Say that again.

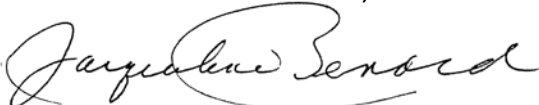
KIRBY WADE: November 19.

JACKIE BENARD: Okay.

JIM SMITH: Okay, it'll be continued until November 19.

RESULT: THE MOTION TO CONTINUE CASE NO. 8/20/2014-2 TO NOVEMBER 19, 2014 WAS APPROVED, 3-1-0.

RESPECTFULLY SUBMITTED,



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JACKIE BENARD, ACTING CLERK

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

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