

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

DATE: JANUARY 16, 2013

CASE NO.: 1/16/2013-2

APPLICANT: JAY L. BARRETT
107 WILEY HILL RD
LONDONDERRY, NH 03053

LOCATION: 107 WILEY HILL ROAD; 5-58-1; AR-I

BOARD MEMBERS PRESENT: JIM SMITH, ACTING CHAIR
LARRY O'SULLIVAN, VOTING MEMBER
JAY HOOLEY, VOTING MEMBER
JAMES TOTTEN, VOTING ALTERNATE
NEIL DUNN, CLERK

REQUEST: VARIANCE TO ALLOW THE KEEPING OF LIVESTOCK ON A PROPERTY WITH LESS THAN TWO ACRES AS REQUIRED BY SECTION 2.3.1.4, AND TO ALLOW A BUILDING AND ENCLOSURE LESS THAN 25 FEET FROM A PROPERTY LINE.

PRESENTATION: Case No. 1/16/2013-2 was read into the record with one previous case listed. Clerk N. Dunn also read Exhibit "A" into the record; a letter in opposition from an abutter.

JAMES SMITH: Who would be presenting?

JILLIAN BARRETT: My name is Jillian Barrett, I live at the house at 107 Wiley Hill Road. Patricia Morris was unable to come tonight, so I am presenting this. As previously said, we're looking for a variance to...for the keeping of one horse on the property with less than two acres and for the location of an enclosure within 25 feet of the property line. Like previously stated, it's not the building of the enclosure. It's already there. It was previously built for other reasons. The variance will not be contrary to the public interest. Granting of this variance would not have an adverse effect to the safety, well-being, or health to the town and its residents. Strict adherence to the BMP NH RSA 431, Best Management Practices, for manure handling for one horse. The spirit of the ordinance is observed. The health, welfare, and safety of the town's residents would not be injured. Adherence to BMP would be observed. There are numerous stables in the neighborhood that house a number of horses on their property. I am seeking the variance to house one horse on 1.6 acres of land. And also we abut 35 acres of conservation land. Substantial justice is done. One horse for personal use with appropriate fencing and shelter, following BMP is substantial justice for all parties, the town and the family. The horse is used in the therapeutic riding for my brother, Jacob, who has cerebral palsy. Relocating the horse would require travel for the son, boarding costs, roughly \$600, give or take, a month, and undue hardship for the family. The value of surrounding properties are not diminished. The keeping of one horse on

46 1.6 acres would in no way diminish the value of surroundings properties. The use of the family property is not
47 a prohibited use, nor does it alter the essential character of the neighborhood. And then five, literal
48 enforcement of the provisions of the ordinance would result in unnecessary hardship; (A.i), the variance would
49 injure the public or private rights of others. The character of the neighborhood would not be diminished. One
50 horse on property at this location based upon abutting conservation land and not in a commercial is not the
51 intent of the ordinance. The proposed use is a reasonable one. The zoning restriction as applied to the
52 property interferes with the reasonable use of the property considering the unique setting of the property
53 abutting conservation land. The property is unique in that it abuts approximately 35 acres of conservation
54 land. The variance we are seeking does not alter the character of the neighborhood. It would be in the hope
55 that the Town of Londonderry can grant this variance so that agriculture is not hindered.

56
57 JAMES SMITH: Okay. Questions from the Board?

58
59 LARRY O'SULLIVAN: How do you respond to the letter [see Exhibit "A"]?

60
61 JAY BARRETT: I'm Jay Barrett of 107 Wiley Hill Road. I had talked to Richard and all the neighbors and they
62 stated there was no problem. And then I saw Richard...I mean Brandon going down the road, and he's like...
63 Mr...Richard Campbell? Is that correct? The building/zoning enforcement guy right here, stopped by his
64 house and hand delivered a letter to him. And he's like, "Yeah, he's asking me if I have a permit or my building
65 out back," and he's like he was kind of intimidating him. So after that, I guess he didn't, you know, this letter
66 comes about, but before that, he had no problem. You actually hand delivered the letter which was supposed
67 to be delivered by certified mail. So I was kind of confused why that happened.

68
69 JILLIAN BARRETT: We were surprised by the letter 'cause, like he said previously, we had asked all the
70 neighbors and we have yet to have a problem with them.

71
72 JAY BARRETT: Yeah. That really shocked me that he hand delivered the letter when I thought it was supposed
73 to be certified delivered. So I'm kind of really confused why he did that.

74
75 LARRY O'SULLIVAN: I don't see what that has to do with anything here. What our concern is...

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77 JAY BARRETT: Well he was fine before Richard went and talked to him, so...

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79 LARRY O'SULLIVAN: Our concern is that everybody gets informed of a request for a variance [indistinct]
80 abutter.

81
82 JAY BARRETT: I didn't think it was his job to go interview the neighbors.

83
84 LARRY O'SULLIVAN: How we do it is...

85
86 JAY BARRETT: Okay.

87
88 LARRY O'SULLIVAN: ...not the point of the [indistinct].

89
90 JAY BARRETT: Well, again, I'm shocked by the letter 'cause before he spoke with Richard, everything was fine.

91
92 LARRY O'SULLIVAN: Okay, how do you address it?
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94 JAY BARRETT: I just did.
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96 LARRY O'SULLIVAN: The letter. I'm sorry, his letter.
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98 JAY BARRETT: Oh...
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100 JILLIAN BARRETT: With the manure, which I see...which we believe was the main problem that he has.
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102 LARRY O'SULLIVAN: Mm-hmm.
103
104 JILLIAN BARRETT: We have been coming up with new ways, 'cause I go to school for animal science, and found
105 new ways of how to...of what to do with manure and what not, so part of it is gonna be used for...well, has
106 been and more so gonna be used for...given to people for their gardens and compost and I can...we can
107 definitely make arrangements to have the manure removed to local people that I know that will use it so that
108 the manure at the property wouldn't be a problem.
109
110 JAMES SMITH: Okay, just to clarify one thing. Jaye, what's your record on the certifications?
111
112 JAYE TROTTIER: I have the receipt that the certified letter was delivered by the Post Office, and Elisabeth
113 Burns signed for it, to 4 Berlang Road.
114
115 JAMES SMITH: So this, the person in question was notified by certified mail.
116
117 JAY BARRETT: Yeah, but he was also delivered...hand delivered a letter from Richard, which struck me odd.
118 I'm like, why would he go over there and specifically talk to him about the situation? You know, he was fine
119 before Richard went over there so I don't know what happened after the fact, but I'm kind of confused.
120
121 JAMES SMITH: Why don't we continue with our questions of you, then we'll try to clarify this point in a few
122 minutes.
123
124 JILLIAN BARRETT: But, yes, we can make arrangements to have the manure removed, which would basically
125 diminish, if not completely get rid of that problem.
126
127 NEIL DUNN: Mr. Chairman, if I may?
128
129 JAMES SMITH: Yeah.
130
131 NEIL DUNN: You talked to abutting 35 acres of the conservation land. It looks like you have a very small
132 abutment. Do you know how long that piece is that does abut to you?
133

134 JILLIAN BARRETT: I don't have the exact length of that or measurement of that section. I believe you guys also
135 have the...it looks like a GIS map. Yeah, it just looks like a little corner, but I mean, it actually seems to be a lot
136 bigger once you're there and you can see the area that goes out in the back end of our yard.
137
138 LARRY O'SULLIVAN: So do we have a nonconforming use on this land right now, Richard?
139
140 RICHARD CANUEL: Such as...?
141
142 LARRY O'SULLIVAN: A building too close to the property line.
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144 RICHARD CANUEL: Well, that's...
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146 LARRY O'SULLIVAN: A structure. Is it there now?
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148 RICHARD CANUEL: The structure that's close to the property line that is housing animals becomes an issue.
149 Although it meets the setback requirements for structures, it doesn't meet the required setback of 25 feet for
150 structures that house livestock.
151
152 JILLIAN BARRETT: When this first came about, in the...I think that's the blue shed that's in question right now.
153 That's no longer housing any animals. The only structure that houses animals is the stall that was built for her.
154 There was chickens in the shed, but no longer.
155
156 JAY BARRETT: Actually, where she is is about 50 feet off the road.
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158 JILLIAN BARRETT: Yeah, the shed that had animals no longer has them. They stopped laying eggs.
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160 LARRY O'SULLIVAN: So is the shed still there?
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162 JILLIAN BARRETT: The shed is there, yes.
163
164 JAY BARRETT: It just has hay in it.
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166 LARRY O'SULLIVAN: Where does the horse stay now?
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168 JILLIAN BARRETT: I think it's about 50 feet in now. It was built definitely more than 25 feet away from the
169 property line. It's at the end of our...the inward side of our driveway. I don't have a picture of that, but it's
170 right at the base of our driveway. Not the part that's right next to the road.
171
172 LARRY O'SULLIVAN: There's two driveways, right? On this property?
173
174 NEIL DUNN: No, that's a road and a driveway.
175
176 LARRY O'SULLIVAN: Are there two driveways?
177

178 JILLIAN BARRETT: No, there's actually just one, but one of the ends of the driveway is maybe five feet off the
179 road, so it seems to be like there's two.
180
181 LARRY O'SULLIVAN: There are cars parked on both, that I've seen, on both ends of the building.
182
183 JILLIAN BARRETT: Oh, in front of the garage. Yes. That's where the garage is. It's not exactly in the driveway.
184
185 LARRY O'SULLIVAN: Okay, so as I look at the house, there's a driveway to the right...
186
187 JILLIAN BARRETT: Mm-hmm.
188
189 LARRY O'SULLIVAN: And there's...
190
191 JILLIAN BARRETT: A dirt thing.
192
193 LARRY O'SULLIVAN: Yeah.
194
195 JILLIAN BARRETT: The dirt thing, at the...
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197 LARRY O'SULLIVAN: That's where cars are parked, though.
198
199 JILLIAN BARRETT: I'm having trouble picturing what you're...what you're seeing.
200
201 JAY BARRETT: In the GIS. The house was built in 1962 and there was a garage that was presently there. When
202 Berlang was built, I sold...unfortunately I sold the land. I wish I didn't, obviously, now. But there's a driveway
203 on Berlang that was put in.
204
205 JILLIAN BARRETT: Yeah, the structure is on the side of the house where Berlang is.
206
207 JAY BARRETT: Yes.
208
209 JILLIAN BARRETT: At that base, over by the ramp, at the side end of the house.
210
211 JAY HOOLEY: What is the total acreage?
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213 JILLIAN BARRETT: One point six (1.6).
214
215 JAY BARRETT: And across the street, there's land that was Charlie George and Dorothy George. That's all
216 conservation land, too. So...
217
218 LARRY O'SULLIVAN: Do you get to use any of that, though, for the horse? Can you?
219
220 JAY BARRETT: Well, it's owned by the Town. I pay taxes on it. Can I ride on it?
221
222 LARRY O'SULLIVAN: I don't know.

223

224 JAY BARRETT: In the back property?

225

226 LARRY O'SULLIVAN: I'm asking. That's why I'm...I'm seriously asking [indistinct] ride on it?

227

228 JILLIAN BARRETT: We...we...

229

230 JAY BARRETT: I would. I just haven't yet.

231

232 JILLIAN BARRETT: Yeah, we haven't used it. It's thick.

233

234 JAY BARRETT: I go back on Pico's and ride back there and go through...there is a trail to go through down to
235 the pond, you know, so...

236

237 JILLIAN BARRETT: Yup. There are trails and also, there's other people who own horses that he's run in with at
238 the apple orchards, where lots of people go and ride their horses around there. But there is a trail that we are
239 currently working on that used to be there forever.

240

241 JAY BARRETT: Most of the faces I see in Londonderry are pretty happy to see a horse going down the road,
242 you know? It keeps with the country setting. I remember that road when it was a dirt road. When Freddy
243 Pico and my uncle, you know, it's just you'd have to pull over to one side, you know? There was probably
244 three houses on that whole street. I mean, I've been going out there since I was like three years old, so, I
245 should be an elder by now of the...Londonderry.

246

247 LARRY O'SULLIVAN: We have openings on this Board.

248

249 JAY BARRETT: Yeah, I wanted to sit in and vote on this one...

250

251 JILLIAN BARRETT: I don't think you can vote on your own.

252

253 JAY BARRETT: [indistinct] work though, would it? Sign me in. Let's get this over with.

254

255 JAMES SMITH: Okay, any other questions? Comments?

256

257 JAMES TOTTEN: I apologize, but I'm still not clear where the horse is residing.

258

259 LARRY O'SULLIVAN: We don't have a picture of it and they didn't give us any, supply with a drawing or a
260 picture of [indistinct], so...

261

262 JAMES TOTTEN: But the...well, so we're just looking at an older...the GIS photo?

263

264 JILLIAN BARRETT: Yeah, that picture is...I believe is really old. We don't have a pool there anymore, where the
265 picture that's on the Google satellites. There's the house and now there's Berlang Road and then there's our
266 driveway that attaches to Berlang. It's on the driveway that is closest to the back side of the house.

267
268 JAMES TOTTEN: So it's towards the back of the lot, further down Berlang Road. Further away from Wiley Hill.
269
270 JILLIAN BARRETT: No, it's...I'm sorry. I'm having trouble. It's...
271
272 JAY BARRETT: Between the house and Berlang.
273
274 JILLIAN BARRETT: Yeah.
275
276 JAY BARRETT: Almost to the middle. The...where the horse...it's a run-in stall that she goes in.
277
278 JILLIAN BARRETT: It's closer to the back of Berlang, versus our...Wiley Hill.
279
280 JAMES TOTTEN: And it's within 25 feet of Berlang.
281
282 JAY BARRETT: Absolutely. It's about....it's about 50.
283
284 JILLIAN BARRETT: It's 50n feet away from the road, roughly.
285
286 JAY BARRETT: The hay is kept in the other shed.
287
288 JILLIAN BARRETT: There's no more animals in the shed that was too close to the road.
289
290 JAMES SMITH: Okay.
291
292 JAY HOOLEY: If I could just ask you to clarify the...on the hardship portion of this, the uniqueness of this
293 property distinguishing it from other properties in the area.
294
295 JAY BARRETT: I feel the abutting of the conservation land.
296
297 JAY HOOLEY: How many of your neighbors abut conservation land?
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299 JAY BARRETT: Sorry?
300
301 JAY HOOLEY: How many of your neighbors abut conservation land?
302
303 JAY BARRETT: I'm not sure.
304
305 JILLIAN BARRETT: Everyone...
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307 JAY BARRETT: Everyone on Berlang, I would say.
308
309 JILLIAN BARRETT: Three, five, seven, and twelve on Berlang. And 105.
310
311 JAY HOOLEY: So, in what manner would that distinguish your home from the others in the area?

312

313 JAY BARRETT: I just think it's a plus because I'm short the acreage. I have conservation land. It's not like I'm
314 in the middle of a condo development, you know, in...you know, I have, you know, it's more country setting to
315 me and again, you know, I'm not in a condo development. I don't see where the problem is here.

316

317 JILLIAN BARRETT: The smell.

318

319 JAY BARRETT: I was kind of shocked when I got the letter, to be honest with you because of that fact.

320

321 JAMES SMITH: What were you doing with the manure this past summer?

322

323 JILLIAN BARRETT: This past summer...

324

325 JAY BARRETT: We were spreading it.

326

327 JILLIAN BARRETT: Yeah. For the backyard.

328

329 JAY BARRETT: She goes to UNH, so she does, you know, she studies there, so she knows how to handle the
330 manure if we needed to take care of that. If it's a problem. I don't want my neighbors to be put out from the
331 smell. You know, I didn't...this is the first I heard of it, actually.

332

333 JILLIAN BARRETT: We didn't know that was...

334

335 JAMES SMITH: What kind of an enclosure do you have for the horse?

336

337 JILLIAN BARRETT: For the horse? She's in a...well, technically, it's four sided, but 'cause the side that she goes
338 in and out, it's almost like a door that she has. She can go in and out, but we can put a door in, so it's a four
339 sided run-in stall. So it meets the housing requirement for horse but it's made out of steel siding.

340

341 JAMES SMITH: Okay, I think what I was trying to get at was do you have any kind of a pasture-type area?

342

343 JILLIAN BARRETT: Yes.

344

345 JAY BARRETT: Yes.

346

347 JILLIAN BARRETT: She gets the whole...she's in a three post wood paddock, which is her usual dwelling area.
348 And then, like in the letter, said we do have an un-electrified electric fence basically framing the whole rest of
349 our yard for her. So she has grass up to her knees in the summer and...I think we got her late in the summer,
350 so we weren't really apt to find ways to remove the manure. But it definitely can be done.

351

352 JAMES SMITH: Okay, I think what I'm trying to get is, do you have an electric fence around the entire
353 perimeter of your property?

354

355 JILLIAN BARRETT: The bottom half of the yard where it goes...the side of the yard that basically goes along
356 Berlang and then up around the hind end of our property and up next to 105 Wiley Hill and then to our house.

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JAY BARRETT: She has a wooden fence that she has an area that she stays in 90 percent of the time, but we have a paddock out back that we just have to hook up the...it's been all...the posts have been set and it's big pasture for her to run around and eat the grass out there. So, you know, she is in a safe enclosure. She was in the outer one and she got out of it once. Once or twice. Twice, I'm sorry. That was right.

JILLIAN BARRETT: Both garage doors ended up being opened and she was clever enough to walk through. Ninety percent of the time, standard bred, which is what she is, if they have grass, they're pretty much not apt to go anywhere.

JAMES SMITH: Neil?

NEIL DUNN: This variance request, it's also talking to allow the building enclosure less than 25 feet from a property line.

JAY BARRETT: Yes.

NEIL DUNN: Which you're saying you're not using now for livestock.

JILLIAN BARRETT: Right. It's...

NEIL DUNN: But if we approve this, then you could use that building for livestock. You're still maintaining...

JAY BARRETT: We don't need to. The hay is in that one. The livestock isn't in it. It's...

NEIL DUNN: Is that correct, Richard? So if they don't have livestock, then they're setback is fine, but if they do, then the setback is not correct.

RICHARD CANUEL: The 25 foot setback would apply.

NEIL DUNN: But that is part of this variance, is what I'm pointing out.

JAY BARRETT: I don't...he put it in there and I was like, "what's that all about?" And I guess he didn't realize...

JILLIAN BARRETT: At the time, we did have animals.

JAY BARRETT: ...that the chickens were gone. You know?

JILLIAN BARRETT: Yes.

JAY BARRETT: So...

JILLIAN BARRETT: At the time when this was written, Patricia...when it was being all written up and whatnot, there were chickens in there and the chickens just weren't really...

401
402 JAY BARRETT: Producing.
403
404 JAMES SMITH: Okay. I think what I'm getting...you're not using the building to house animals...
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406 JILLIAN BARRETT: And we don't plan to.
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408 JAMES SMITH: And you don't plan to.
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410 JILLIAN BARRETT: Correct.
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412 JAMES SMITH: Do you wanna withdraw that portion of the...
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414 JAY BARRETT: Yes.
415
416 JILLIAN BARRETT: Yes.
417
418 JAMES SMITH: ...of the variance?
419
420 JAY BARRETT: absolutely
421
422 JILLIAN BARRETT: Yes. Completely.
423
424 NEIL DUNN: And can we just scratch that by virtue of the record here tonight, Richard?
425
426 RICHARD CANUEL: Well, you can make that as part of the condition if you choose to grant the variance, is that
427 that structure will not be used to house livestock.
428
429 JAMES SMITH: Yeah.
430
431 LARRY O'SULLIVAN: Covers it.
432
433 NEIL DUNN: Oh, okay. I just...
434
435 RICHARD CANUEL: Basically.
436
437 NEIL DUNN: ...because it is a two part thing, again, though.
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439 JILLIAN BARRETT: Yeah. That was the mistake at the time when this was all...
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441 JAMES SMITH: Okay, we're just trying to...
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443 JILLIAN BARRETT: Yeah.
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445 JAMES SMITH: ...clarify everything and try to make...

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LARRY O'SULLIVAN: So Miss Barrett, you mentioned that there were several of your neighbors who have horses.

JILLIAN BARRETT: Well, not our neighbors. In the neighborhood. Just....Pillsbury, there's...or actually on High Range, there's a family that has a lot of...or three horses, which is right at the end of Wiley Hill, that section of High Range. They own some. There's, I believe it's called Beede Farm on Pillsbury, but none of our actual abutting neighbors, no.

LARRY O'SULLIVAN: You understand why this is unique for us?

JILLIAN BARRETT: Yes, because we do have...

LARRY O'SULLIVAN: Because you have less than what we require...

JILLIAN BARRETT: Yes.

LARRY O'SULLIVAN: In the way of four tenths of an acre less.

JILLIAN BARRETT: Yes.

LARRY O'SULLIVAN: And have you tried to address that one at all?

JAY BARRETT: Again, I think I'm in the right setting because of the conservation and just the neighborhood too. I mean, it's not in the middle of a con...you know, I don't know why it's so...you know...that requirement.

JILLIAN BARRETT: I think he's looking to kind of almost not necessarily, but kind of tap into the conservation land.

LARRY O'SULLIVAN: We've had people that have tried to do that, or had requested to do that with high tension towers and the land that's under high tension towers and because that isn't something that you own, we can't give you the right to go on it.

JILLIAN BARRETT: Yeah.

LARRY O'SULLIVAN: Or to use it.

JAY BARRETT: So I can't go on the conservation land behind my house?

LARRY O'SULLIVAN: Not from the Board you won't. You won't get that approval.

JAY BARRETT: So when we...

LARRY O'SULLIVAN: You can get that from the Conservation Commission.

491 JAY BARRETT: So I helped pay for it, I can't go on it?
492
493 LARRY O'SULLIVAN: You can get that from the Conservation Commission.
494
495 JAY BARRETT: So I have to actually...
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497 LARRY O'SULLIVAN: Request it.
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499 JAY BARRETT: Are you serious?
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501 JILLIAN BARRETT: And then...
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503 LARRY O'SULLIVAN: As far as I know.
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505 JAY BARRETT: Well...
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507 JILLIAN BARRETT: Also, because the horse...
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509 LARRY O'SULLIVAN: [Indistinct]?
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511 JAY BARRETT: [Indistinct] getting pretty complicated, isn't it? We used to, when we were kids, we used to be
512 able to go do things and, you know, travel on the power lines and stuff like that. Now you can't do much.
513
514 JILLIAN BARRETT: And then also, because the horse is for therapeutic reasons, which was moving her away
515 from the property would make it more difficult out of...'cause one kid in high school, one kid in college, single
516 dad working, it's...there's not much of a convenience factor with being able to bring my son to a place to get
517 therapeutic riding for cerebral palsy. That's a tremendous cost on...just for the lessons in general if we were to
518 have to do...move her.
519
520 JAMES SMITH: Okay, the person...whose the parent of the handicapped child? Okay.
521
522 JILLIAN BARRETT: He's my brother.
523
524 JAMES SMITH: Okay, I just...it's getting a little confusing here. I think what we're trying to point out is even
525 though there's conservation land in the neighborhood, it's not your property per se.
526
527 JILLIAN BARRETT: It's not ours and we are under the two acres.
528
529 JAMES SMITH: So it can't count towards your...
530
531 JILLIAN BARRETT: Yes.
532
533 JAMES SMITH: ...lack of the two acres. I know we've had other cases where people have made similar
534 arguments because they were adjacent to a large track of land that belonged to some other third party and

535 claimed it wasn't being used for whatever, and it really doesn't meet the intent of what the ordinance says,
536 which says to have that type of animal, you need two acres.

537
538 JILLIAN BARRETT: Mm-hmm.

539
540 JAY BARRETT: Well...

541
542 JAMES SMITH: We understand what you're saying...

543
544 JILLIAN BARRETT: Yeah.

545
546 JAMES SMITH: And you may be able to use it to some extent with the proper authorities, it's still not your
547 land. So that's why we can't really count it.

548
549 JILLIAN BARRETT: Yeah, I...we understand that it's...Question-wise, is it two acres because of the lack of...or
550 looking for the care of the horse? Or is it because...with the horse, she has, personally, even in her wood
551 paddock that she's in 90 percent of the time, she has more room than most boarding horses. Or then for
552 when we let her out in the rest of the portion of the yard, she has a phenomenal amount of room compared
553 to most boarding horses and grass up to her knees. That's to...I think that's the main point. We're looking for
554 the variance to allow us to keep her in the under two acres. That's basically...

555
556 LARRY O'SULLIVAN: Mm-hmm

557
558 JILLIAN BARRETT: ...what we're looking for.

559
560 JAY BARRETT: I don't think...

561
562 JILLIAN BARRETT: For personal reason and for the...my handicapped brother.

563
564 JAY BARRETT: I don't think the State requires two acres, but...

565
566 JILLIAN BARRETT: The Town does.

567
568 JAY BARRETT: ...the towns do, right? The State's more...

569
570 JAMES SMITH: This particular town does.

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572 JAY BARRETT: I know, but the states are more lenient with this.

573
574 JAMES SMITH: Each town has its own unique regulations and so forth.

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576 JAY BARRETT: Yeah.

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578 JAMES SMITH: I believe if you looked at the zoning regulations, this two acre requirement's been there from
579 day one.

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JAY BARRETT: Well, this would be a good time for Londonderry to change it.

JAMES SMITH: That is always an option. You can try to change...

JAY BARRETT: I mean, downtown Boston has horses, probably in a smaller area. [Indistinct].

JAMES SMITH: Well, again, you're talking about a different...

LARRY O'SULLIVAN: You didn't want to live in downtown Boston. [Indistinct] Londonderry.

JILLIAN BARRETT: But we're in Londonderry.

JAY BARRETT: [Indistinct] are stranger today, letting...

JAMES SMITH: Well, it's not up to us to change it.

JAY BARRETT: Swear me in, I'll get up there and we'll do a motion on it.

LARRY O'SULLIVAN: One of the things that we to take into consideration with any of the livestock issues, and we've had a bunch of them, is the sights and smells and sounds, right?

JILLIAN BARRETT: Yes, and that's understandable.

LARRY O'SULLIVAN: And...

JILLIAN BARRETT: If you're not used to it and you come from Boston to Londonderry...

LARRY O'SULLIVAN: And the requirement...

JILLIAN BARRETT: ...it's like "Woah."

LARRY O'SULLIVAN: The requirement for two acres is very specific because you have the health of the animals and then you have the health and wellbeing of your neighbors. That's why it was put in place. So the spirit of our ordinance is...

JILLIAN BARRETT: Mm-hmm.

LARRY O'SULLIVAN: ...so that we're protecting your neighbors and protecting the animals.

JAY BARRETT: Yeah.

LARRY O'SULLIVAN: Safety...

JILLIAN BARRETT: And the smell is becoming a bother to them, which is...

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LARRY O'SULLIVAN: Safety...

JAY BARRETT: Safety?

LARRY O'SULLIVAN: Yeah.

JILLIAN BARRETT: With her getting out, yeah.

JAY BARRETT: Safety, okay.

JILLIAN BARRETT: And some people, I understand the safety because with...if a horse, and someone doesn't know what to do and they go running around, especially with the children, and with how...we've fixed the fence. We've closed the garage, obviously, 'cause that was a "oops" from one of...someone who came by the house. But I mean, it's understood, the safety, and we can fix...we can do our very best to try to fix the smell, which is, I think, the main problem that the neighbor was having. I've heard from the neighbors that they....when...one time when I was just walking down the driveway, they like staying at their bus stop and seeing her grazing, so...I mean, not many people know, frankly, agriculture anymore and it's just getting harder, especially with stuff selling and going.

JAMES SMITH: Okay.

JAY BARRETT: I've heard more positive things from the neighbors. This is the first I've heard from anybody. And, again, that was after a visit from Richard.

JAMES SMITH: Well, I mean...

JILLIAN BARRETT: [Indistinct] that point.

JAMES SMITH: ...let's get off that point. Let...we're not...you know, we're not trying to be adversaries in this. We're just trying to look at what is information that has been submitted and that's where we are. Is there any other questions from the Board? Okay, do we have anyone here that's in support of this application?

[No response]

JAMES SMITH: Anyone here in opposition or who has questions concerning this case. Would you want to approach one of the microphones and identify yourself?

MIKE CARROLL: Sure.

JAMES SMITH: Name and address.

MIKE CARROLL: Sure, I'm Mike Carroll from 6 Berlang Road.

JAMES SMITH: Well, okay, get on one of the mics.

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MIKE CARROLL: Okay. I'm Mike Carroll from 6 Berlang Road, next door to 4 who wrote in the letter, Brendan. I honestly have no problem with the horse whatsoever. The only concern is safety, truthfully, because we've seen the horse get out a few times, and the smell. Those are the only things, too, so I have concerns with those two issues. Love the horse. It's beautiful, actually. It's a beautiful horse.

JAY BARRETT: Thank you.

MIKE CARROLL: So...

JILLIAN BARRETT: What would you like to see? Can I ask a question?

LARRY O'SULLIVAN: No.

JILLIAN BARRETT: Okay.

LARRY O'SULLIVAN: You can ask him a question.

JILLIAN BARRETT: What would, like, safety-wise, if we can...I mean, obviously, we fix the garage problem, which was how she got out before. What would be needed to be done safety-wise?

JAMES SMITH: Well, personally, I would say we need to have a secure enclosure.

JILLIAN BARRETT: Mm-hmm.

JAMES SMITH: How you accomplish that is not up to us.

JILLIAN BARRETT: Mm-hmm.

JAMES SMITH: I get the impression, it sounds like you have an electric fence, but then I also get the impression that that wasn't complete.

JILLIAN BARRETT: It's just not electrified because, I mean, people coming up and touching it, it's more of a danger and with a horse, nine out of ten times, there is that one time out of the ten, but they're not usually up to try to go through a wire that they can see. It's not electrified because of a child coming up, because I know we've had the neighbor, that doesn't live there anymore, but going up and they'd feed carrots to the horse, so we don't want to electrify for almost that reason.

JAMES SMITH: So what you're suggesting is, you have a wire around the area the horse is gonna be in?

JILLIAN BARRETT: Yes.

JAMES SMITH: Which is not electrified?

714 JAY BARRETT: We could enclose the whole thing with fence, instead of the electric fence. I could enclose the
715 whole area that she runs in the paddock. I have no problem doing that. So that would get rid of the threat of
716 anybody getting hurt. A danger
717
718 MIKE CARROLL: Oh, absolutely. Yeah, that would be...
719
720 JAY BARRETT: And I don't have a problem with that at all. And that you put the...
721
722 JAMES SMITH: I know from my own experience, electric fences, if you have them, you have to have signs
723 along the fence...
724
725 JAY BARRETT: Correct.
726
727 JAMES SMITH: ...of a certain interval identifying it as...
728
729 JILLIAN BARRETT: That they're saying "electrified."
730
731 JAMES SMITH: ...what it is.
732
733 JAY BARRETT: If we're allowed to keep...
734
735 JAMES SMITH: Having made contact with one, I know it's not a solid shock. It tends to...
736
737 JILLIAN BARRETT: Pulsate.
738
739 JAMES SMITH: ...pulsate and it knocks you off more than anything.
740
741 JAY HOOLEY: You're supposed to let go eventually.
742
743 JAMES SMITH: Yeah. I was under it, actually. Trying to crawl under it and I got my back. It was an interesting
744 experience.
745
746 JILLIAN BARRETT: Yeah, I've had those as well.
747
748 JAY BARRETT: Could we keep going with the story?
749
750 JAMES SMITH: What?
751
752 JAY BARRETT: I just wanted to hear the rest of the story.
753
754 JAMES SMITH: Well, I just...but anyways, electric fences are an acceptable way of doing it and I think, given
755 the fact that the animal has escaped at least a couple of times, either one, because of...how would you say it?
756 Carelessness?
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758 JILLIAN BARRETT: Yeah.

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JAMES SMITH: And I'm not sure what happened on the other occasion, but again, you are in close proximity to other homes along in that area. I'm not sure what the ages are. I would imagine there are probably...

JILLIAN BARRETT: They're pretty young.

JAY BARRETT: Yeah.

JAMES SMITH: ...some young families, because that's a relatively new development. Was it about seven years ago maybe now? Six, seven years?

JILLIAN BARRETT: I think it's still [indistinct] working on it, too.

MIKE CARROLL: Yeah.

JAMES SMITH: Yeah.

MIKE CARROLL: It's what, '07 I think it went in...'06?

JILLIAN BARRETT: Sounds right.

JAY BARRETT: I wish I didn't sell it.

LARRY O'SULLIVAN: So this is a two-family house?

JILLIAN BARRETT: Yes.

JAMES SMITH: Yeah, it's an odd house. I know it is. Any other comments, questions? At that point, I would call the...close the hearing and we'll take this under advisement at this point. Just to clarify the point, Richard, do you have any idea what he's alluding to about...?

RICHARD CANUEL: Regarding...?

JAMES SMITH: The so-called letter that he claims that you delivered?

RICHARD CANUEL: No, I don't.

JAMES SMITH: Okay.

RICHARD CANUEL: Yeah, no I don't.

JAMES SMITH: Okay.

JAY BARRETT: Well, I...

804 JAMES SMITH: Okay, I'm just saying...
805
806 JAY BARRETT: Yeah.
807
808 JAMES SMITH: That we're gonna leave it at that.
809
810 JAY BARRETT: Okay.
811
812 JAMES SMITH: Okay. Let's take it under...we're taking this under advisement. The hearing is closed and it's
813 open to the Board for discussion.
814
815 DELIBERATIONS:
816
817 JAMES SMITH: Neil? Larry?
818
819 LARRY O'SULLIVAN: Are you ready for some...?
820
821 NEIL DUNN: Well, I think what was brought up...someone brought up the fact, Jim, you might have been it,
822 that we've had very similar cases where people have had, you know, acre and a half with a horse, with...
823
824 LARRY O'SULLIVAN: Goats.
825
826 NEIL DUNN: No, it was with a horse and the people had a special needs child. It was very therapeutic. But
827 again, and that was the one that had the large property behind it that I...
828
829 JAMES SMITH: Wasn't that on Ash Street?
830
831 NEIL DUNN: And I think they ended up letting...the owner of the large property might have ended up letting
832 the horse stay there or something, but because of the odors, which is strictly spelled out in the livestock
833 portion of that ordinance, there was concerns. You know, if nobody had said there was odor issues, then I
834 would feel a lot more comfortable. But because they do, then that is something we have to look at, is for the
835 neighbors and their concerns. It's a terrible...I hate these cases because you feel...you don't win either way,
836 you know?
837
838 JAMES TOTTEN: Well that...
839
840 NEIL DUNN: But virtue of the ordinance, it talks about noise and smell and I'm still having issues with that.
841
842 LARRY O'SULLIVAN: The problem is that that smell diminishes the value of their property.
843
844 NEIL DUNN: Well, and plus it's specifically addressed.
845
846 LARRY O'SULLIVAN: Right, so how do you deal with that? I don't know another way to deal with that. I don't
847 know what they can do about it and what the additional point four acres does for that, I'm not quite sure, but

848 the ordinance states that it's two acres and that is probably one of the key reasons, because you don't wanna
849 be affecting your neighbors and their property values.

850

851 JAY BARRETT: And like you said, that point four doesn't do much.

852

853 JAMES SMITH: No...

854

855 JILLIAN BARRETT: You can't talk now.

856

857 JAMES TOTTEN: What I'm hearing are neighbors that are willing to work with them, right? To address the
858 odor and safety concerns, right?

859

860 LARRY O'SULLIVAN: Did you read the letter? Read the letter.

861

862 JAMES TOTTEN: Yes, I read the letter.

863

864 LARRY O'SULLIVAN: Okay...okay.

865

866 JAMES SMITH: I mean, what you're suggesting is, we got some other neighbors which are willing to do it, we
867 got this one letter from one neighbor which is...

868

869 JAMES TOTTEN: He's concerned about the...

870

871 JAMES SMITH: ...is concerned about it.

872

873 JAMES TOTTEN: Right.

874

875 JAMES SMITH: So we got...

876

877 JAMES TOTTEN: But also had some positive things to say.

878

879 JAMES SMITH: Right.

880

881 JAMES TOTTEN: About the horse and the keeping of the horse, right? It's...

882

883 MIKE CARROLL: Truthfully, he is closer than I am, so he may [indistinct].

884

885 JAMES TOTTEN: I don't have the answers as to what fixes the odor problems, right? You can talk about fences
886 for the safety and the enclosure.

887

888 JAMES SMITH: Well, she mentioned what is known as the Best Management Practices which are guidelines, I
889 believe, put out by the State under the agriculture laws and so forth. And if you follow those, hopefully you
890 would be limiting the potential odors. Now, I'm not familiar with what they consist of and total, but I'm sure
891 that's what the object of it...anyone who has had experience with manure knows there's a certain odor that
892 goes with that. And it's just part of the nature of the beast.

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JAMES TOTTEN: It just strikes me as an opportunity for the applicant and the neighbors to come together with something more substantial to address those concerns. And I know that doesn't answer our...what's in front of us right now.

LARRY O'SULLIVAN: So are you looking for a continuance of this meeting, James? Because that's something that you could request...that we can request the applicant for. I think it would also help to, instead of having what I think is a very confusing for us is where the paddock is now, where the building is now. The things that we have, the overheads, are five years old probably.

JAMES SMITH: Yeah.

LARRY O'SULLIVAN: And if they just put them up, or they've been installed within the last four years, we wouldn't know it because we can't tell. And frankly, I didn't drive by. I haven't by here since the summer, right? That particular piece of property.

JAMES TOTTEN: Right.

LARRY O'SULLIVAN: This house.

JAMES TOTTEN: But even as to the specifics as to what would be done for an enclosure...

LARRY O'SULLIVAN: We'd like to see that, too.

JAMES TOTTEN: ...what would be done to address the...

LARRY O'SULLIVAN: You'd like to see that? Right.

JAMES TOTTEN: ...odor concerns of the neighbors.

LARRY O'SULLIVAN: You'd like to see that addressed, correct? Okay, so what you're suggesting then is that we give the applicant the opportunity to address those issues. Add to those, right?

NEIL DUNN: Do we have any...how do we decide what is secure fencing?

JAMES SMITH: In other words, what he's looking for...

NEIL DUNN: We don't have any mandate in our ordinance to address that, do we? I mean, we only say, yeah, that child care, you need a fence, which is in the ordinance, or we could require a fence but, are we gonna rule on what's a secure fence and that's a proper paddock and then are we gonna rule on, what, we send somebody by in three months to do a smell test? I'm not trying...it sounds silly, but...

JAMES TOTTEN: I know...

JAMES SMITH: No, no...

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NEIL DUNN: ...we're getting away from...I don't know if we have any control over that, I guess, or...

JAMES SMITH: I think, Neil, what Larry is suggesting, given the information that we have, you know, as far as the overhead, I mean these aerial shots, those are somewhat dated. Going by the testimony that we received, it was, at best, vague, to me anyways, as to exactly how the property is laid out, where they're proposing to keep the animal, what is fenced in, what isn't fenced in and so forth. So I think what Larry is suggesting, to give them an opportunity to come up with a plan of the property showing exactly these features so that we have a better idea of what we're talking about. And I think that's within our purview to at least ask for that information, which, is at best, given to us in a very vague format tonight.

LARRY O'SULLIVAN: So you need additional information, you're saying?

JAMES SMITH: Yeah.

NEIL DUNN: My bigger concern would be with the smell. I mean, I...we all...my bigger concern's with the smell and how that's managed because that's what we're talking, in 2.3.1.4.

JAMES SMITH: Okay, again on that same point, they've alluded to the Best Management Practices. Maybe we could ask them to give us a more detailed plan on how they intend to conform with those practices and so forth so that we have a better idea of what they're proposing to do and how they're gonna handle those issues. Anyone else have any comments? Questions?

JAY HOOLEY: Taking at face value that that was brought to us, what is the special condition of this property distinguishing it from other properties in the area?

JAMES SMITH: What was their argument?

JAY HOOLEY: It abuts conservation land.

JAMES TOTTEN: The conservation land.

LARRY O'SULLIVAN: That doesn't make it unique. I think it's the combination of the corner, the corner, the corner lot, that is, the conservation land, the two-family house that is permitted. There's nothing...

JAY HOOLEY: What makes this property different than any other less than two acre parcel in this part of town? In other words, should we put a horse at 105?

JAY BARRETT: They wouldn't mind. I asked them.

JAY HOOLEY: Well, but in other...

JAMES SMITH: Well, let's not...

982 JAY HOOLEY: 101, 99, 97, 3, 5, and 7 Berlang; all less than two acres, all about the same conservation land. And
983 opposite, going up the even side of Tanager, starting at 6.
984
985 LARRY O'SULLIVAN: I see you looking at me, but I have a real problem with it as well, meeting several of the
986 criteria, so...Wanna go through them step by step?
987
988 JAY HOOLEY: Well, I think we should do that before we seek a whole lot of other data.
989
990 JAMES SMITH: Yeah.
991
992 JAY HOOLEY: You know? And create work and possibly, false hope.
993
994 LARRY O'SULLIVAN: Well, we know that the horse hasn't been there very long. They got her late in the
995 summer. And the letter is referring to the smells and then the property values or the potential buyers who
996 said that they didn't want to have to deal with the smells and then wouldn't buy somebody else's house. To
997 me, that...you know, if it was a two acre parcel, would they have the same issue?
998
999 NEIL DUNN: They wouldn't be here.
000
001 LARRY O'SULLIVAN: Well, they wouldn't be here, right.
002
003 JAY HOOLEY: They wouldn't be here for a variance, but I think...
004
005 LARRY O'SULLIVAN: And we wouldn't have heard about it in the letter, so, anyway, the things that we have as
006 acceptable...
007
008 JAY HOOLEY: I think separately, they might have a code enforcement issue of not complying with the livestock
009 portion of the ordinance by creating the odor nuisance, but that's a whole separate...
010
011 LARRY O'SULLIVAN: Do we have an animal control officer now?
012
013 RICHARD CANUEL: The Police Department does have a part time animal control officer, yes.
014
015 NEIL DUNN: Well, if you wanted to step through them, Jim, I guess my thought, the public interest part and
016 maybe this talks to what Larry was looking for, for the security of the animal, the horse, to get out and
017 whether you'd call brown spots on a lawn damage, I mean, it's damage. So I guess I have a better idea where
018 you're going with that, Larry. I'm just not sure I'm a good judge of what's a secure fence. So I guess, if we
019 looked at number, granting would or would not be contrary to the public interest, based on the history and
020 what's been going on...and the smells, I don't know. Does smell go there or the spirit of the ordinance and
021 going back to that 2.3.1.4 reference? I'm not sure one is complied with with the public interest if the horse is
022 getting out, so maybe Larry's point is valid there. The spirit of the ordinance, I think, 2.3.1.4 talks to the smell.
023 And the property...25 feet from the property line with the building, which is on the application, even though
024 we could say you can't have livestock, so it actually wouldn't even apply, but...so I'm not sure two is there.
025 Substantial justice...what was said on that? I'd waiver on that one, but then five, owing to the special...oh,

026 excuse me, four, property values, we've had someone speak to people moving and looking at buying, thinking
027 that it would diminish property values.
028
029 LARRY O'SULLIVAN: People who won't buy because...
030
031 NEIL DUNN: Right, and therefore, diminishing...would be viewed to be diminishing, so...And then five, the
032 unique...fair relationship in subpart A...the reasonable in subpart A, if not, then B, the property hardship. I
033 don't think B applies. Their abuttal to the conservation land is common in that area and theirs is much smaller
034 than any of their neighbors.
035
036 JAMES SMITH: I'd like to ask Richard a question. How long ago was this piece of property subdivided? Do you
037 have any idea?
038
039 RICHARD CANUEL: It's been subdivided a few times. I think recently, it was subdivided when that Berlang
040 development was approved as a subdivision.
041
042 JAMES SMITH: So at that point, it was in excess of two acres.
043
044 RICHARD CANUEL: Yes. Yeah.
045
046 JAMES SMITH: Okay, the point I was looking at at that point, the lot had been larger, which would have met
047 the requirements for this use. It was subdivided and the piece that was left was reduced to 1.6 acres and
048 whoever did it at that point must have hopefully understood what they were doing, realizing it would drop it
049 below this two acre minimum.
050
051 NEIL DUNN: And that was the applicant.
052
053 JAMES SMITH: Right. So it was basically a self-created problem as far as the ability to have animals on this
054 piece of property. Okay, any further thoughts?
055
056 LARRY O'SULLIVAN: "At no time shall a public nuisance be created as to sight, sound, smell, or any other
057 action which would interfere with nearby property owner's rights." Until we call a horse a domestic pet or the
058 goats that we've had or the geese, the goats, the ducks, what else have we had? A horse? Yeah, we've had a
059 horse before. Until the, you know, the...
060
061 JAMES SMITH: The one I had a tough one was with a miniature horse. What is a miniature horse?
062
063 LARRY O'SULLIVAN: Oh, right.
064
065 JAMES SMITH: Is that a pet or a...?
066
067 LARRY O'SULLIVAN: Unless you can bring it into the house.
068
069 JAMES SMITH: Okay. I would accept a motion at this point.
070

071 LARRY O'SULLIVAN: Okay, so the flavor of the Board. Neil just went through the multiple points, the six,
072 seven points, right? A and B in both on five, right? One and two. And where did you feel confident that they
073 met the variance requirements?

074
075 NEIL DUNN: The justice thing.

076
077 LARRY O'SULLIVAN: Substantial justice?

078
079 NEIL DUNN: In a case like this, you always look at the substantial justice, but then when you look, it's not
080 proving one right, it's proving five right.

081
082 LARRY O'SULLIVAN: Well, what do other people do? We have...

083
084 NEIL DUNN: They were denied and I think it turned out they...

085
086 LARRY O'SULLIVAN: There are stables in this area that have handicapped people coming through regularly,
087 whether that be consistently and regularly or just available. It happens. But we have...we also have
088 alternatives, and it's not really us that should be making any alternatives. I think we counted the number of
089 stables within a mile and came up with half a dozen at least. I think maybe a few more than that. They're in
090 the phone book. So, that would be my suggestion. But in the meantime, because of the nuisance that it...we
091 cannot approve something that can be injurious to the public or the neighborhoods. Neighbors. And that's
092 what this would be doing. And we do have somebody who said it and somebody else who's concerned about
093 it in a letter, so I don't think there's, you know, much else you can do about that.

094
095 NEIL DUNN: The applicant, in item three, substantial justice, did speak about relocating the horse and
096 boarding it at a cost of \$600 a month and that was an undue hardship. But...

097
098 LARRY O'SULLIVAN: Six hun...?

099
100 NEIL DUNN: I know. I'm just saying, that's for three. I mean, these cases...[indistinct].

101
102 LARRY O'SULLIVAN: Okay, so are you gonna make the motion? Or do you have anything you wanna add?

103
104 JAY HOOLEY: No, it was...

105
106 JAMES TOTTEN: No, I think we've...we've all, you know, diligently tried to come up with an alternative, but
107 when you take it to the five points of law, it's difficult to justify.

108
109 LARRY O'SULLIVAN: That's all we have. The five points.

110
111 JAY HOOLEY: In that case, Mr. Chairman, I'll make a motion to deny case number 1/16/2013-2, Jay L. Barrett,
112 in that the applicant has failed to establish meeting the five points of law, specifically not establishing any
113 special conditions of the property distinguishing it from other properties in the area.

114
115 JAMES SMITH: Okay, do I have a second?

116
117 JAMES TOTTEN: Second.
118
119 JAMES SMITH: I have a second.
120
121 LARRY O'SULLIVAN: No discussion?
122
123 JAMES SMITH: Any discussion?
124
125 LARRY O'SULLIVAN: What I'd like to discuss is that is a major one, but at the same time, it isn't the only one.
126
127 JAMES SMITH: And what's that?
128
129 LARRY O'SULLIVAN: That you should be including with the motion.
130
131 JAY HOOLEY: I'll amend my motion to include contrary to the public interest due to reports of odor and
132 reports of potentially values of the surrounding homes.
133
134 JAMES TOTTEN: I second.
135
136 JAMES SMITH: Okay, we have an amendment to the motion...motion and amended motion.
137
138 LARRY O'SULLIVAN: Well, we're talking about the amended motion now, right?
139
140 JAMES SMITH: Right.
141
142 JAY HOOLEY: Yup.
143
144 JAMES SMITH: All those in favor?
145
146 LARRY O'SULLIVAN: Aye.
147
148 NEIL DUNN: Aye.
149
150 JAY HOOLEY: Aye.
151
152 JAMES TOTTEN: Aye.
153
154 JAMES SMITH: Aye. Opposition? No.
155
156 RESULT: THE MOTION TO DENY CASE NO. 1/16/2013-2 WAS APPROVED, 5-0-0.
157
158 A brief discussion then ensued about the Board's suggestions to the Senior Building Inspector regarding the
159 length of the time the applicant might be given to relocate the horse, considering the odor would not be an

160 immediate issue during the winter. R. Canuel said he was amenable to postponing enforcement of the
161 ordinance until after winter, when warmer weather would cause the odor to become a nuisance.
162

163 RESPECTFULLY SUBMITTED.
164

165 
166

167
168 NEIL DUNN, CLERK

169 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY
170

171 **APPROVED FEBRUARY 20, 2013** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JAY HOOLEY
172 AND APPROVED 4-0-0.