

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

DATE: JANUARY 11, 2013

CASE NOS.: 10/17/2012-2, 3, AND 4; MOTION TO REHEAR (CONTINUED)

APPLICANT: ALFRED WALLACE, HENRY WALLACE, AND HAROLD WALLACE
62 PERKINS ROAD
LONDONDERRY, NH 03053-2416

VAN STEENSBURG ONE FAMILY TRUST,
LEO AND MELANIE VAN STEENSBURG, TRUSTEES
48 PERKINS ROAD
LONDONDERRY, NH 03053-2416

LOCATION: 62 PERKINS ROAD; 16-3; AR-I (WALLACE) AND
48 PERKINS ROAD; 16-1; AR-I (VAN STEENSBURG)

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

REQUEST: TO GRANT A REHEARING OF CASE NOS. 10/17/2012-2, 3, AND 4;

CASE NO. 10/17/2012-2: VARIANCE TO ALLOW PROJECT PHASING TO EXCEED THE MAXIMUM NUMBER OF DWELLING UNITS LIMITED BY SECTION 1.3.3.3, AND TO PROVIDE RELIEF FROM BUILDING PERMIT RESTRICTIONS UNDER SECTION 1.4.7.2.

CASE NO. 10/17/2012-3: VARIANCE TO ALLOW A REDUCTION IN THE NUMBER OF WORKFORCE HOUSING UNITS FROM 75% AS REQUIRED BY SECTION 2.3.3.7.1.1.4 TO 50%.

CASE NO. 10/17/2012-4: VARIANCE TO ALLOW 24 DWELLING UNITS IN A MULTI-FAMILY BUILDING WHERE A MAXIMUM OF 16 UNITS IS PERMITTED BY SECTION 2.3.3.7.3.1.2, AND A VARIANCE FROM THE DIMENSIONAL RELIEF CRITERIA OF SECTION 2.3.3.7.4.5 AND THE ADDITIONAL CRITERIA OF SECTION 2.3.3.7.4.6.

PRESENTATION:

46 JAMES SMITH: This particular meeting is simply a hearing...it's not a hearing, it's a public meeting to discuss an
47 application for a rehearing of some preceding cases. Because of that, we will not be taking any public input.
48 It's simply a review of what has been submitted and a discussion of the Board members as to whether or not a
49 rehearing is justified by what has been submitted. So that this point, I'd ask Neil to read into the record, just
50 to review it, exactly what we're discussing tonight.

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52 Clerk N. Dunn read Case Nos. 10/17/2012-2, 3 and 4 into the record.

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54 LARRY O'SULLIVAN: There are six different items there.

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56 JAMES SMITH: Okay.

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58 LARRY O'SULLIVAN: Right? Does everybody have the same count that I do? We've the first one, to allow the
59 project phasing to exceed and provide relief from building permit restrictions under that section. Then we
60 have variance to allow a reduction in the number of workforce housing units from 75 to 50. That's the third
61 one. Then we have the fourth one; request a variance to allow 24 dwelling units in a multi-family building
62 where a maximum is 16. The fifth one is a variance from dimensional relief criteria of Section 2.3.3.7.4.5. and
63 the additional criteria of Section 2.3.3.7.4.6. So does everybody have the same count that I do?

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65 NEIL DUNN: Yup.

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67 LARRY O'SULLIVAN: Okay.

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69 JAMES SMITH: Okay. I presume everybody has a chance to review the Attorney's memorandum?

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71 LARRY O'SULLIVAN: The 101 points and the memorandum? Do we need to have discussion on that?

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73 JAMES SMITH: Well, does anyone have anything they would like to say in regards to either the motion for
74 rehearing or the Attorney's memorandum or anything else.

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76 LARRY O'SULLIVAN: There are things that are related to in the application and the 101 different reasons for
77 appeal. A good portion of that has to do with the economics involved. There are six different items that have
78 economics that are involved. One of the things that the application had requested was that all of the criteria
79 were required in order for it to become affordable, to be profitable, and that anyone would want to do it.
80 Otherwise, there wouldn't be any need or any building going on there. Therefore, they wanted larger
81 buildings with more apartments/units in each one of them. The numbers stayed the same, 240, whether we
82 divided it over, whether 16 or 15, 16's or however we were gonna look at that...they wanted to. That's what
83 we allow in the town but because they wanted to exceed that and reduce the number of buildings, they still
84 wind up with the 240, right? So one way or the other, there's potential for there to be 240 units there, so
85 everybody needs to understand that that piece of property can sustain, in our own ordinances, 240 units.
86 Okay? Do we...?

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88 JAMES SMITH: Actually, 260 of them.

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90 LARRY O'SULLIVAN: Well, okay, because of the extra six acres or something...?

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92 JAMES SMITH: Yeah, whatever total...

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94 LARRY O'SULLIVAN: Right. Okay. Anyway, so that's one thing. All this has to do with economics, as far as I'm
95 concerned, because they have this thing in our RSAs that say there's a "builder's relief," or a "developer's
96 relief" that they can just go to court and say, 'Well, we can't afford to do this any other way,' and have the
97 court just, you know, in effect, stamp it, saying yeah, they overrule the ZBA. I wanna see the information from
98 an independent project review organization, whether that be an assessor or appraiser or somebody's who
99 independent, to provide this Board with the information regarding the profitability if it's 240 versus...240 units
100 spread over 16 versus 24, and the financing of five years versus three years and how that would impact the
101 affordability of this, and/or the profitability of it. And the 75 to 50 percent reduction that's being requested to
102 meet the workforce housing objectives. If those things can each be quantified to dollars, and I mean so that
103 we get an idea...they already provided us with their expectations and their estimates for what each of these
104 are gonna cost and they didn't give it to us over three years versus five years in sufficient information that I
105 can understand. So that's what I'd like to be able to get out of it. And I'd like to, I think, the ZBA, now I see
106 not just the Planning Board has then opportunity to request that, I'd like to request it. And I'd like the
107 opportunity to review it so it doesn't necessarily have to get here at a meeting. We can get that any time and
108 it can be dispersed if it's electronic, right Jaye?

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110 JAYE TROTTIER: Mm-hmm.

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112 LARRY O'SULLIVAN: I mean, so that we could review it. So we don't sit here reading whatever this appraisal
113 happens to be. Because it can be done. That's what appraisers do. They'll give you what if's and give you...if
114 we give them the information that the applicant has provided us and we say, okay, what we'd like to see is the
115 cost benefit analysis of the two possibilities. The way we'd like to see it done as a town, versus the way that
116 it's projected by the developer, and see if it's something that's doable. Right now, it appears to me
117 information coming from the applicant, that it makes no sense for us to be doing 16 units in a building or two
118 limit to 16 because it becomes unaffordable. Why do we have that? Where's our Planning Board? You know,
119 why did they say 16's the number that we need to deal with? Right? I'd like to get somebody from the
120 Planning Board to describe that for us because I don't see it in our ordinances, I just hear the fact. But
121 anyway, I'd also like to see some assistance from staff. This is one of the most complicated cases that
122 we...that I've been in in 13 years now, I think it is. And the cell tower was nowhere near as complicated as
123 this.

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125 JAMES SMITH: Okay. The gist of what you're saying leads me to believe that you are looking for a rehearing.

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127 LARRY O'SULLIVAN: I'd like to make the motion after everybody else has their opportunity to put their two
128 cents in.

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130 JAMES SMITH: Okay. Okay. Neil?

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132 NEIL DUNN: Yes, Mr. Chairman. Based on what the rehearing submittal was, with all the 101 points, I don't
133 know that I necessarily agree by any means with all 101 points, but there was mention of additional
134 information they wanted to provide. I think we had spoke about the financial viability and that when we
135 looked at the records, they seem to have the same return and there was some statements from the applicant

136 that 'Well it wasn't quite what it was meant to be,' so I guess we should give them the opportunity to do that.
137 But to Larry's point, I think we are allowed to retain a consultant relative to RSA 676:5, section IV and V at the
138 applicant's expense and do get some way to evaluate that. And along with this new evidence, I'm hoping...we
139 asked about tax incentives and State incentives and they weren't gonna use any of those and I think that
140 speaks to the viability, economically, of the project. And I think what I was looking at is they could have gotten
141 up to \$21,000 per unit through some kind of different things. And again, I'm not clear on the final number and
142 it decreases with the number of units they apply for. So those are things that would impact the economic
143 viability, so maybe they could address that if we come back to it. Other things we spoke about were the
144 property values. I know there was a quick discussion. Some of the residents or neighbors thought their
145 current residential properties would be worth less and I think that needs to maybe be addressed more clearly
146 by the applicant, so I would be willing to...for a rehearing.

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148 JAMES SMITH: Okay. I'd like to throw something in on that point. One of the things that I think, in looking at
149 this case, I don't think we really dwelled on it too much. In order for this type of a project to go forward, the
150 Planning Board has to review it and look at all those issues that you're talking about as far as impact to the
151 neighborhood and all those other things in order to grant a Conditional Use Permit. So I think what we have
152 to do as a Board, presume, when we look at these variances, that they're going to satisfy that with the
153 Planning Board when we look at those variances. And leave it to the Planning Board to decide whether or not
154 to grant that Conditional Use Permit. Because if they don't grant it, we could give all the variances we want in
155 the world, and it's still not gonna happen.

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157 NEIL DUNN: Yeah, but by law, we're required to evaluate that as one of the five criteria.

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159 JAMES SMITH: Well...

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161 NEIL DUNN: So, I mean, they might be looking at it...I don't think they have a mandate on the property values
162 as we do for a zoning variance because that could impact it more grossly, perhaps, than normal development
163 in an area that doesn't need a zoning change.

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165 LARRY O'SULLIVAN: Let's not argue the case...

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167 NEIL DUNN: Well, no, I'm just bringing up...

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169 JAMES SMITH: I was just throwing that out just to...

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171 LARRY O'SULLIVAN: ...just a motion to rehear, okay?

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173 NEIL DUNN: Yup.

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175 JAMES SMITH: Okay.

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177 LARRY O'SULLIVAN: If you don't mind.

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179 JAMES SMITH: Anything else?

181 NEIL DUNN: I'm good.
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183 JAMES SMITH: James? Jay?
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185 JAMES TOTTEN: No, I'm good.
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187 JAMES SMITH: Okay.
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189 JAY HOOLEY: Out of the 101, as I read it, you need to find one that you think holds weight as far as
190 information significantly different than offered at the presentation or information that was presented before
191 which bears significant weight and support. If you found one...
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193 LARRY O'SULLIVAN: That's sufficient, yeah.
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195 JAY HOOLEY: That's sufficient.
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197 LARRY O'SULLIVAN: Well, that's one of things that I think we made an error in our...when we were having our
198 discussions about, we stopped after we had the first two that we said didn't meet this criteria, didn't meet this
199 criteria and then said well, that ought to be enough. You know, frankly, we didn't go through all the criteria,
200 so we need to do that for each of the cases. And I'd also like to suggest, Mr. Chair, that you ask the applicant
201 to make their presentations individually so that we have three...actually, there are six cases here. There are
202 six and's...I'm sorry, three and's that have to be met as well as the three variances. Okay? So there's
203 subsections of those variances and we wanna make sure that we properly address each of them, so...
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205 JAMES SMITH: Okay, that would be brought out in any future hearing.
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207 LARRY O'SULLIVAN: Well, I'm gonna request that the applicant provide them in three separate, you know,
208 that...
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210 JAMES SMITH: Okay. Everybody has had an opportunity...
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212 LARRY O'SULLIVAN: We're all thinking the same thing.
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214 JAMES SMITH: Yeah.
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216 LARRY O'SULLIVAN: There are points that need to be made, information that needs to be gathered.
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218 JAMES SMITH: Okay.
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220 LARRY O'SULLIVAN: So, Mr. Chair, I'd like to make a motion to approve the request for rehearing case
221 numbers 10/17/2012-1, 3, and 4.
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223 JAMES SMITH: Do I have a second?
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225 JAY HOOLEY: Second.

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JAMES SMITH: I have a second from Jay. All those in favor?

NEIL DUNN: Aye.

JAMES SMITH: Aye.

JAY HOOLEY: Aye.

JAMES TOTTEN: Aye.

LARRY O'SULLIVAN: Aye.

RESULT: THE MOTION TO REHEAR CASES 10/17/2012-2, 3 AND 4 WAS APPROVED, 5-0-0.

JAY HOOLEY: Mr. Chairman, do we need a motion, is it something that is simply consensus, if, as mentioned before, the ZBA is going to believe it necessary to retain a consultant at the applicant's expense pursuant to RSA 676:5, IV and V? Or is that something that we'll bring up at the next meeting?

LARRY O'SULLIVAN: How do we have to let the applicant know that that's what we want?

JAMES SMITH: I think unofficially, they probably are aware of it now.

LARRY O'SULLIVAN: Okay, so they need a letter.

JAMES SMITH: So I think officially, we'll probably, going by what has happened with the cell tower, we'll probably have to open up the hearing, listen to what the evidence says, then make the statement that we wanna have what you're requesting, adjourn the meeting and then go to another...

LARRY O'SULLIVAN: Why? We're discussing this right here, right now.

JAMES SMITH: Well, I mean, we're only discussing the motion to rehear.

NEIL DUNN: Right.

LARRY O'SULLIVAN: Yeah.

NEIL DUNN: Well, you have to let the...if I may, Larry, the abutters should have a chance to present information, too, so...

LARRY O'SULLIVAN: Of course.

NEIL DUNN: If they're not here to see this, then there's no way for them to know until the next true hearing.

LARRY O'SULLIVAN: I'm not saying have a hearing at any time or any place without...

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NEIL DUNN: No, right, but I mean...

LARRY O'SULLIVAN: ...you know, being in public. The only thing that I'm looking for out of this is this document. An appraisal. And it doesn't necessarily have to be at a meeting that we receive it. We can get it through the mail, email, however.

JAMES SMITH: Yeah, but I think...

LARRY O'SULLIVAN: What difference does it make where it comes from?

JAMES SMITH: I think part of what...we have to be careful about it. When we go to the next hearing, we're essentially starting from scratch.

LARRY O'SULLIVAN: Bingo.

JAMES SMITH: Right. So we have to approach it as a brand new hearing and if we have any specific things that aren't presented at that hearing that we're looking for, we then have to ask for it.

NEIL DUNN: Mm-hmm.

JAMES SMITH: The only thing we're...

LARRY O'SULLIVAN: I, for one, don't wanna see this drag on.

JAMES SMITH: I don't think there's any way that we can avoid it to some extent.

LARRY O'SULLIVAN: I think we ought to write the letter, send the letter asking that the presentation be made in three different, separate, complete issues. Because they are. They're three different sections of our ordinances, they're three different RSAs or other ordinances that are involved, so...

JAMES SMITH: Well, okay, let's back up a step. When we had the first hearing, we read the three different cases in. The gentleman who was presenting it asked us if we wanted to hear it, the general information, we have a choice at that point to say yes or no. So if the consensus of the Board is we wanna hear each one separately, at that point, we tell them they're gonna be separate and he's gonna have to present them individually.

LARRY O'SULLIVAN: Fine.

JAMES SMITH: So I don't think there's any...

LARRY O'SULLIVAN: That's not the issue. My issue isn't with that whatsoever.

JAMES SMITH: Yeah.

316 LARRY O'SULLIVAN: My issue is that we have the information before the meeting that we can review so it
317 doesn't drag on forever. That's all. It's not that we're gonna discuss it amongst ourselves. It's that we have it.
318 It's an independent from us. We're hiring this person, this organization, this company.
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320 JAMES SMITH: I wish we had...

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322 LARRY O'SULLIVAN: Staff? Speaking of which, thanks very much. Motion to adjourn.
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324 NEIL DUNN: Well, hold on, we haven't done our count yet.
325

326 JAMES SMITH: No, no, no, you've got to...wait a minute. We have to voted...the papers, and get that part out.
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328 (Members turn in their voting sheets to the Clerk who read the result into the record).
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330 J. Smith entertained a motion to adjourn. N. Dunn so moved. J. Totten seconded. The motion was approved,
331 5-0-0.
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333 The meeting adjourned at approximately 7:25 PM.
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335 RESPECTFULLY SUBMITTED.
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340 NEIL DUNN, CLERK

341 TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY
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343 **APPROVED FEBRUARY 20, 2013** WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JAY HOOLEY
344 AND APPROVED 4-0-0.