

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

DATE: MARCH 21, 2012

CASE NO.: 3/21/2012-2

APPLICANT: VIGEANT FAMILY PROPERTIES LLC
& LEONARD A VIGEANT REVOCABLE TRUST (LEONARD A AND JANE M
VIGEANT, TRUSTEES)
10 LILAC CT
LITCHFIELD, NH 03052

LOCATION: 296 & 300 NASHUA ROAD; 2-25 & 2-26; C-II, WITHIN THE ROUTE 102
PERFORMANCE OVERLAY DISTRICT

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

ALSO PRESENT: RICHARD CANUEL, SENIOR BUILDING INSPECTOR/ZONING OFFICER

REQUEST: VARIANCE TO ALLOW A COMMERCIAL DOG KENNEL USE IN THE C-II ZONE
WHERE OTHERWISE NOT LISTED AS A PERMITTED USE IN SECTION 2.2,
TABLE OF USES; AND TO ALLOW LIVING SPACE ON THE SAME PROPERTY
AS A MIXED RESIDENTIAL/COMMERCIAL USE.

PRESENTATION: Case No. 3/21/2012-2 was read into the record with no previous cases listed. The clerk also read Exhibits “A,” “B,” and “C” into the record; two letters in support of the request and one in opposition.

JIM SMITH: Who will be presenting?

STEVE CLARK: Good evening, members of the Board, Jaye, my name’s attorney Steve Clark, I’m with Forman, Corcoran, and Clark and Associates here in Londonderry. I’m presenting tonight on behalf of the property owner as well as New England Kennels. To my right is Jeremy Soucy and behind me is his father and his mother who...this will be a family business. They’re proposing to develop the site as a commercial kennel that would provide day care as well as long term stay for dogs as well as cats. The reason we’re here before you tonight is for a use variance. Presently, in this zone as well as throughout the entire town of Londonderry, there’s no provision in the ordinance for this type of use. Therefore, we’re seeking the variance to allow this use. There are unique characteristics about the property. Just to describe it in general, it’s located almost directly across from the entrance to the flea market. To the east is approximately a four hundred (400) foot wide right of way or utility easement for the overhead utility wires. Heading in a westerly direction, directly

46 abutting it on the frontage to Route 102 are two (2) commercial lots owned by the abutter that proposed the
47 letter in your file for tonight. And then behind that, I guess he also owns a lot that may be subject to a
48 development for a fifty five and older community in the future that may come before the Planning Board. The
49 use...we also intend, as part of this use, is that there would be an on-site person twenty four hours, seven days
50 a week, that would reside there as an accessory to the commercial kennel. That would be on the second floor
51 area. You have a complete set of the conceptual plans that were submitted with the application. They would
52 provide for an area on the second floor. In the immediate future, once it's developed, it would be managed by
53 Jeremy, but should it be very successful, it might be another employee of the business but it would be related
54 to the business. It wouldn't be used as some...not a residential use not related to the business. It's for the on-
55 site manager. With regard to the application itself, we're seeking a variance, a use variance to allow a kennel
56 for boarding, grooming, and day care of dogs and cats with accessory store for supplies related to the kennel.
57 Also to allow a mixed commercial/residential use for a person who's an owner or employee of the kennel to
58 reside at the kennel as an on-site caretaker for the kennel. The variance will not be contrary to the public
59 interest in that the intended use supports the objective of the district. The commercial district is intended by
60 the very language of the ordinance "to provide access areas of commercial development to include retail
61 business, service oriented businesses." Further, within the C-II district itself, primarily it is intended to develop
62 business areas designed to serve the motoring public. We believe this type of use serves the motoring public.
63 It allows those who may need to attend their jobs, can't take care...don't have somebody home to take care of
64 the dog or going away on vacations a quick and easy access point off of Route 102 to drop off their animals
65 and then move along to wherever they're going for the day or the weekend or for vacation. The intended use
66 would further the objective of the zone by allowing the motoring public a convenient location to drop off their
67 pet for the day or overnight to be cared for while the owner work or is away. The property, once developed,
68 will contain enclosed structures for the use in well constructed buildings with peaked roofs. We believe the
69 spirit of the ordinance is observed because the use furthers the C-II district objective of serving the motoring
70 public. The use will allow day and overnight stay for family's pets so the owner can work or travel. The spirit
71 of the ordinance is observed when the use meets the district's objective. Substantial justice is done because
72 the particular use meets the district's objective and the land is particularly suited for such a use, given its
73 location on Route 102, for easy access in and out by the motoring public. Further, the land has other limiting
74 conditions. As I mentioned earlier, it's in close proximity to overhead electrical wires where other uses going
75 in there may not want to utilize that type of property for aesthetic reasons, and substantial wetlands to the
76 rear of the lot. That makes other uses allowed in the zone less desirable. The commercial kennel is a use well
77 settled for a lot that has these physical limitations. Substantial justice will be done because it will allow a
78 reasonable use of the land that carries out the district's objectives where such a use is not zoned anywhere in
79 the community. We disagree with the abutter's contention that the values of surrounding properties would
80 be diminished. We don't believe they will be diminished as a use of a commercial kennel 'cause it would be an
81 attractive development for the site. If I could just pause on that moment for a second, this is just a conceptual
82 that my client's had done when they developed the concept of wanting to do this type of a facility and as you
83 can see, it's a permanent structure. And you have a layout of the plans in your application. But this is kind of
84 an overview that I'd just like to point out to the Board. Here you have the entrance way, back here would be
85 what we call the runs for the kennels for the dogs. There'd be a little bit of outside area here during the day.
86 The dogs would then be housed inside...what time, Jeremy, do the dogs...?
87

88 JEREMY SOUCY: Five thirty (5:30).
89

90 STEVE CLARK: Five thirty (5:30) at night, the dogs would be inside, enclosed. It wouldn't be an open air
91 facility. They would have outside rooms here for the day care, the ones that are just dropping off and picking
92 up, and then there would be inside areas for the day care. In here, there would be grooming, a grooming
93 area. There will be small retail area on the first floor for accessory pet supplies that people may want to
94 purchase at the facility. It's not a standalone retail facility. On the second floor, as I indicated to you in your
95 diagrams, I think it's (A.2), it shows an executive office. That is the area where Jeremy will reside and also run
96 the business from. And I think you'll find that it will be a well landscaped area, though you're voting on the
97 use issue. The next step, should you grant this, it would go the Planning Board. I took the time, before
98 tonight's meeting, to go over to...what's the name of the...?
99

100 JEREMY SOUCY: The Barking Dog.
101

102 STEVE CLARK: The Barking Dog over in Derry. I was at the John Deere facility right next door, less than twenty
103 five (25) feet from it. I was there for about a half an hour. I didn't hear any dogs. I heard more traffic noise
104 from Route 28 than I did from the facility. I actually heard...the water from the sprinkler hose was louder than
105 any of the dogs that I heard on the site that day. The abutter in this particular case that is objecting for the
106 future development is located to this area here. Just to orient to you, this would be Nashua Road, this would
107 be the overhead power lines over here. The flea market on this side of Route 102, and then in the back corner
108 here, there'd be the proposed fifty five and older development. And the fifty five and older development, you
109 have to access through two (2) commercial lots that they abutter was able to get a variance from you a couple
110 of months ago on, but there is approximately a hundred (100) feet from this structure to the property line and
111 I believe there's another thirty (30) to fifty (50) feet that will be required as a part of that type of development
112 between their property line and the closest structure, so you're talking about a hundred and fifty (150) feet.
113 Couple that with the natural vegetation, I don't think that there'll be much impact to that abutting property or
114 whatsoever. It'll sit approximately two hundred (200) feet back from the road. It won't be right up against
115 the road. But if you've been on Route 102, been in that area, the traffic noise alone probably's gonna be
116 louder than what you're gonna have from some dogs that are in the facility. I believe I was substantial justice.
117 Substantial justice will be done because it will allow a reasonable use of the land that carries out the district
118 objective where such a use is not a zone allowed in the community. The values of surrounding properties are
119 not diminished. We've submitted into the file a letter from Judy Tinkham of Tinkham Realty and also a letter
120 from Martinelli Travel. Judy Tinkham goes to surrounding property values. She's been a long time developer
121 and realtor in the area with regard to commercial and residential development. It's her position that this
122 would not have a negative impact on surrounding property values. The use will be an attractive development
123 for the site, as evidenced by her letter. The use, in their opinion, does not diminish property values. Further,
124 the property is situated away from residential neighborhoods. As I pointed out, the only real residential
125 neighborhood is that potential fifty five and older that may be coming down the road with the Planning Board.
126 The power lines to the east are approximately four hundred (400) feet in width. To the north, there is a large
127 wetland. To that rear of the property, I'm not sure if I pointed it out to you, but there is a substantial wetland.
128 So that will also be natural buffer. With regard to literal enforcement of the ordinance, the unnecessary
129 hardship, no fair and substantial relationship between the general purposed of the ordinance and the specific
130 restriction, e.g. dog kennel is not a permitted use, because the use furthers the specific objective of the
131 district. The general public purposes of the zoning ordinance is to allow uses that further the objective of the
132 zone. The restriction does not further the purpose of the zone but hinders it. The restriction prevents a
133 compatible use that furthers the objective of the district by creating an unnecessary hardship. As to (ii), the
134 use is reasonable. It provides for a service for the motoring public. It's compatible with the existing uses, e.g.

135 the flea market directly across the street, and provides an ideal location for land with physical limitations, i.e.
136 the wetlands and the overhead wires. The use will provide a necessary service for the neighborhood and the
137 community which a variance will not allow...will allow a reasonable use thereof. As I stated before, we've
138 submitted several letters in support of this. We've had some positive comments from each of the individuals
139 that we've interacted with. We did take a proactive stance prior to tonight's meeting. We did meet with the
140 abutters. I did not attend that meeting. I believe the two gentlemen behind me are there and met with the
141 Soucys'. They'll make their comments, I won't speak for them. But we believe that this will be positive for
142 both that area, for the community, a service that is badly needed and we'd ask that you vote in favor of this
143 variance.

144
145 JIM SMITH: Okay. Any member of the Board have questions? Go ahead, Larry.

146
147 LARRY O'SULLIVAN: Okay, we have nearby high tension towers or electric wires? Do they run across your lot?

148
149 STEVE CLARK: No, they directly abut it.

150
151 LARRY O'SULLIVAN: Okay, so they're along which edge? I have an overhead map right now that doesn't show
152 me where they are. So are we on...I can see where Nashua Road is, I see the outline of your lot with the
153 cutout little rectangle...

154
155 STEVE CLARK: yup.

156
157 LARRY O'SULLIVAN: Is it the north side, the south...?

158
159 STEVE CLARK: If you're standing on Route 102, looking at the lot...

160
161 LARRY O'SULLIVAN: Yeah.

162
163 STEVE CLARK: ...then on the right side, abutting the lot is the four hundred (400) foot wide overhead utility
164 wires. It abuts right up against the lot.

165
166 LARRY O'SULLIVAN: So it borders the lot?

167
168 STEVE CLARK: It borders the lot.

169
170 LARRY O'SULLIVAN: Okay, so there's no other use for that land, or south on the Hudson side?

171
172 STEVE CLARK: That's correct.

173
174 LARRY O'SULLIVAN: Okay.

175
176 STEVE CLARK: That would be on the Londonderry side.

177
178 LARRY O'SULLIVAN: Okay, gotcha. Thank you.

180 JIM SMITH: Okay. In looking at this map, we've got a small area which is in red, then enclosed by a larger area
181 in red. Now, is the smaller one the lot in question that you're talking about on this map?
182

183 STEVE CLARK: There's an existing building that's on the lot that will be torn down. The two...they're
184 purchasing both of the lots and the facility will use up both of the lots. It's an approximately fifteen point five
185 (15.5) parcel.
186

187 JIM SMITH: Okay. Now when you say it's on the adjacent lot, are we talking of the larger of the two lots
188 where the electrical right of way is?
189

190 STEVE CLARK: It's...Jim, I don't have a copy of that colored map in front of me. All I can say to you is that the
191 lot, as you're standing on Route 102, looking into the lot, the power lines are to the right or east. They directly
192 run along that bound, the eastern boundary line of the larger lot.
193

194 LARRY O'SULLIVAN: We can't pick up these monitors to show them what we've got in the way of a picture
195 because that would be reversed of what I see here.
196

197 NEIL DUNN: It's in the file?
198

199 LARRY O'SULLIVAN: So if we can continue on a little bit, so what we're really talking about is not a lot with a
200 section cut out.
201

202 STEVE CLARK: Nope.
203

204 LARRY O'SULLIVAN: We're talking about a lot that is complete and the square, the red square that I see, that
205 we have marked as boundaries or property lines, inside is going to be combined. So you're going to be
206 combining the small lot with the large lot.
207

208 STEVE CLARK: That's correct.
209

210 LARRY O'SULLIVAN: Okay. Thank you.
211

212 STEVE CLARK: Both lots are subject to this application.
213

214 JIM SMITH: So we got lot 2-25 and 2-26. According to the [indistinct].
215

216 NEIL DUNN: It doesn't really show that it's under or adjacent. I don't know if you guys wanted to look
217 through them or no? You know, it's not highlighted anywhere as power lines, but they do run adjacent to it. If
218 I may, Mr. Chairman, ask Jim a question?
219

220 JIM SMITH: Sure, go ahead.
221

222 NEIL DUNN: So if someone wanted to put up a dog kennel...
223

224 LARRY O'SULLIVAN: No, Rich. You were gonna ask Rich a question.

225
226 NEIL DUNN: I'm...What did I say, Jim? Ask Jim a question? Man, I'm going way back. I'm sorry, Rich.

227
228 RICHARD CANUEL: Okay.

229
230 NEIL DUNN: If someone wanted to put up a dog kennel, we don't have a legal place to put that?

231
232 RICHARD CANUEL: Well, that's part of the problem. I mean presently in our ordinance, there's no provision
233 that addresses commercial kennels as a permitted use. As the Board knows, looking at our table of uses, if it is
234 not listed as a permitted use in any of those zones, it is considered as a non-permitted use. So that's primarily
235 the requirements for the variance.

236
237 LARRY O'SULLIVAN: As opposed to a special exception, Richard, for the property?

238
239 RICHARD CANUEL: Well, there would have to be specific provisions in the ordinance for a special exception, in
240 order for that to fall under that criteria, so...we don't have any provisions for special exceptions for kennels
241 either.

242
243 LARRY O'SULLIVAN: Well, this is...winds up being, in effect, a home occupation because of the residence in
244 this zone.

245
246 RICHARD CANUEL: Well, see, that's another issue.

247
248 LARRY O'SULLIVAN: And we don't allow home occupations in this zone.

249
250 RICHARD CANUEL: Yeah, you know, the only place where kennels are referenced in our ordinance is in the
251 section addressing the keeping of livestock in the Agricultural/Residential zone. Even our definition for
252 kennels is very broad and limited. It's "where does this fit in?" If we're looking to do this as a commercial
253 venture and you see the plans and the magnitude of this project, it's not likely that you would put something
254 like this in the Agricultural/Residential zone. It just would not fit. Then again, you know, myself looking at the
255 ordinance is where would I place this? What criteria of use would this best fit? The best thing I can come up
256 with is a service establishment because they're not necessarily selling a product, they're providing a service.
257 And if we look at the other uses in the Commercial-II zoning district that are similar to what we call
258 customarily service establishments, it's those establishments that provide a service; barbershop, beauty salon,
259 dry cleaners, things of that nature. So again, it's a broad stretch for me to say that we can call this a service
260 establishment and it's permitted in the Commercial-II zoning district and have it in an area where we have
261 those types of uses. It just doesn't fit. So really, it doesn't fit anywhere in our ordinance, so if we look at it
262 from the perspective of this particular use as a commercial kennel, then by our ordinance, we are restricting
263 that type of use out of our town altogether.

264
265 LARRY O'SULLIVAN: And we can't do that.

266
267 RICHARD CANUEL: Yeah, that's...yeah, we're...yeah, that's an issue altogether but...
268

269 LARRY O'SULLIVAN: Well, we wouldn't allow a group child care in this zone and we wouldn't allow a home
270 occupation in the zone, and we don't allow any outdoor storage in this zone at all.
271
272 RICHARD CANUEL: Yup.
273
274 LARRY O'SULLIVAN: But this occupation...
275
276 RICHARD CANUEL: However...
277
278 LARRY O'SULLIVAN: ...and this residence. I mean, this is three different areas of our Master Plan...
279
280 RICHARD CANUEL: Mm-hmm.
281
282 LARRY O'SULLIVAN: ...and our ordinances...
283
284 RICHARD CANUEL: Yup.
285
286 LARRY O'SULLIVAN: ...where this is in complete conflict with.
287
288 RICHARD CANUEL: Sure. Well, however, this is also subject to the Route 102 Overlay District.
289
290 LARRY O'SULLIVAN: POD, right.
291
292 RICHARD CANUEL: And the Overlay District does allow day care facilities as part of that. And that requires the
293 Planning Board to review, you know, conditional use permits to allow those type of uses, so, you know, there
294 is a stretch there.
295
296 NEIL DUNN: So you're saying it's a doggy day care.
297
298 LARRY O'SULLIVAN: It's not, because it's overnight and there's no hotel. Are there hotels allowed here?
299
300 [overlapping comments]
301
302 NEIL DUNN: Yeah, hotels, excavation...this is...we allow excavation, including temporary and permanent
303 manufacturing plants. So someone could go in there and crush rocks all day long.
304
305 RICHARD CANUEL: Absolutely. As a permitted use.
306
307 NEIL DUNN: So my follow up question is, being...I don't wanna say it's a twenty four hour business, but maybe
308 it is because they really have staff on duty twenty four hours. Are we looking at this as a twenty four hour
309 business with maybe a crash pad...are the residential aspect. I'm trying to get a better handle on that from
310 you. There's nothing that would not let them go twenty four hours if they want to, right?
311
312 RICHARD CANUEL: No, of course not. No.
313

314 NEIL DUNN: So then they could have a staff in the building twenty four hours. Where do you see us going if
315 we say, "Yes, it's a residence too" at the same time?
316

317 RICHARD CANUEL: I can't see where we could call this a residence. Number one, because we're in the
318 Commercial-II zone, which doesn't allow residences. Again, you know, that's the second part of the variance.
319 So, again, that's a stretch. And try to define this use and place it somewhere in our ordinance. And yeah, they
320 could certainly operate twenty four (24) hours and that's certainly the nature of the business, too.
321

322 NEIL DUNN: I mean, 'cause someone's there to keep an eye on the critters and everything else, so...
323

324 RICHARD CANUEL: Sure.
325

326 NEIL DUNN: I guess I'm just trying to get a handle because they're also looking for as a mixed
327 residential/commercial, which, that one I'm not as comfortable with as that they could have somebody there
328 twenty four hours doing their job and they can still have kitchens and...
329

330 RICHARD CANUEL: Exactly.
331

332 NEIL DUNN: ...everything that makes...would allow somebody to be there.
333

334 LARRY O'SULLIVAN: Do we have any special requirements for a residence in a commercial area regarding wells
335 and septic and, you know, ground cover and buffers and the rest of that? Or is that a...this is...
336

337 RICHARD CANUEL: Well, yeah, all of those things would apply on, you know, a case by case basis, you know,
338 based on the development, I would say. The issue with, you know, describing this as a residence, again, we've
339 got the issue of it being mixed use residential/commercial, which we do allow in our ordinance. But it's only
340 allowed in two (2) districts in the ordinance, the Commercial -IV zone and the Mixed Use Commercial zone.
341 So, again, you know, because listed as a mixed residential use as being allowed in the Commercial-II zoning
342 district, it's not, so again, that's, like I say, that's the second part of the variance. And it's understandable that
343 this facility could operate for twenty four hours and you would have personnel there on a twenty four hour
344 basis. Maybe they're not sleeping there, but they're there on a twenty four hour basis as caretakers, you
345 know, for those animals that are there on site, so, theoretically, you could, you know, have people there all
346 hours of the day and night.
347

348 LARRY O'SULLIVAN: Theoretically, we could have something as busy as the Elliot and as lit up as the Elliot and
349 as, you know, intrusive as the Elliot in town, so, as far as I'm concerned, this is potentially a huge business.
350

351 NEIL DUNN: Richard, it does say under C-II, if I look down at dwelling, single family, it says C3. So that's a
352 conditional use?
353

354 RICHARD CANUEL: That's conditional use permit for workforce housing.
355

356 LARRY O'SULLIVAN: Yeah.
357

358 NEIL DUNN: Well, it doesn't...I didn't know where the "3" was saying workforce housing. So, is it workforce
359 housing only?

360 RICHARD CANUEL: That's right.

361
362
363 NEIL DUNN: So, would this fall under that? Workforce housing for this [indistinct] thing?

364
365 RICHARD CANUEL: Oh, no. That's an even bigger stretch.

366
367 LARRY O'SULLIVAN: Well, I think the applicant addressed a lot of the concerns that I'd have regarding the
368 requirements of the...the standard requirements. But this is, you know, the outdoor storage is gonna be a
369 major thing as far as I'm concerned. I don't mean to be...we're not discussing this. I'm not discussing this right
370 now. I need that to be addressed, is really what I'm saying. You have outdoor storage that is not allowed in
371 the area. That is part of our requirement. If you're gonna have dogs or cats outside until 5:30...from what
372 time, by the way, in the morning, until what time at night?

373
374 STEVE CLARK: They would drop off as early as 6:30 and typically they would pick up between 5:30 and 6:00.
375 The operation...the full operation would open at 7:00. It would essentially be closed by 6:00 PM, but there
376 would still be a provision by 6:30 for people caught in traffic to pick up their animal. But...

377
378 LARRY O'SULLIVAN: Okay, but my concern right now isn't so much the indoor storage of the animals. It's
379 gonna be the outdoor storage of the animals. What we have to think about is the sounds that the neighbors
380 are going to be [indistinct]. My concern is going to be outside the operation closing time, 7:00 or what have
381 you. You seem to have that covered. You're gonna have them indoors someplace.

382
383 STEVE CLARK: Correct.

384
385 LARRY O'SULLIVAN: Prior to that time, day long, I mean I only bring this up because I happen to be subject to
386 three (3) dogs in my neighborhood that bark constantly all day and that's three (3) dogs and that's over
387 probably forty (40) acres or thirty five (35) acres anyway. And I can tell you that they're obtrusive. But at the
388 same time, you seem to have, in my opinion, the idea of moving this someplace where it's well enough out of
389 the way where you don't have too many people surrounding it, on a large enough piece of property that you
390 can perhaps keep it, you know, under control and with proper Planning Board issues that you'd have to cover
391 regarding noise under control. The issue's still going to be you store stuff outside and whether that be dogs
392 for twelve (12) hours or ten (10) hours or whatever it happens to be, it's storage outside. That needs to be
393 addressed. You need to address that here.

394
395 STEVE CLARK: Okay.

396
397 LARRY O'SULLIVAN: The issues about home occupation. We don't allow it in the zone. Richard has said that.
398 When you're addressing for me to have me get a better handle on the way you'd like to be able to mix the
399 business part and the home part here, who's going to be living there, what are the requirements? I see
400 there's all kinds of drawings here that are potential as well. What in the way of a home are you building here?
401 Or residence, let's say, are you building here?

403 STEVE CLARK: Yeah, I'd like to define it differently...

404
405 LARRY O'SULLIVAN: Please.

406
407 STEVE CLARK: ...than a home or a residence. It's going to be a residential use accessory to the primary
408 business which would be the commercial kennel. It would be a caretaker and we have no objection to you
409 placing a condition on the variance that restricts that. It would be limited to the small area up on the second
410 floor that would also be used as the office. There would be a shower located in there, a small kitchenette
411 area, and it would be only used by the manager/owner and/or employee of the facility. It's not intended to be
412 a large apartment or a condominium associated with the building. It'll be a small area so that you have on-site
413 control by an employee or an owner, in this case, it'll be the owner in the short run, to take care of any issues
414 with the dogs, the barking, so on and so forth, should there be some reason that that occurs after hours.
415 You're right, I guess they could have somebody on the site twenty four/seven like a security guard would be
416 and not sleep there, but these types of facilities typically have a small area for this type of use and that's why
417 we're asking it as accessory to the primary business. With regard to the buffering, there's a natural buffer
418 that's around and Vice Chair, you had asked me about the power lines, I believe. I looked at a tax map that I
419 have in my file and the power lines do cross a portion of the eastern boundary of the property. If you...

420
421 JIM SMITH: That's what I thought, from looking at it myself.

422
423 STEVE CLARK: Yeah, so it does bisect the lot itself.

424
425 JIM SMITH: The point I was trying to get to; that impacts the uniqueness of the lot...

426
427 STEVE CLARK: Correct.

428
429 JIM SMITH: ...to actually have an easement on the land that you have power lines on it, so...

430
431 STEVE CLARK: That's right. It's approximate four hundred (400) foot wide area. All of it's not entirely on
432 there, but most of it is on that eastern back corner of the lot. With regard to the runs...

433
434 JIM SMITH: Before you get onto that point, could we better define the living area as a one room efficiency
435 apartment?

436
437 JAY HOOLEY: If I might, Mr...

438
439 LARRY O'SULLIVAN: Would that work?

440
441 JAY HOOLEY: I'm trying to quest...if I could get, maybe...my mind is going in the same direction. Are you
442 looking to make somebody's primary residence here or is this a sleeping accommodation for the overnight
443 manager who happens to be on site? In other words, would this be different people? Are you making an
444 accommodation for the overnight manager, or are you trying to set up a legitimate primary residence for an
445 individual occupant?

447 STEVE CLARK: In the short run, it will be the residence of the owner. And that would be Jeremy. Down the
448 road, there's a possibility as they grow or expand, this becomes profitable, then it would...maybe an employee
449 and they rotate around. But in the short run, it's going to be Jeremy who would be on site, in charge of the
450 business, managing the business and he'll be the one...
451
452 JAY HOOLEY: But is that a function of his being the only manager that you've got serving the overnight shift at
453 this time?
454
455 STEVE CLARK: Correct.
456
457 JAY HOOLEY: Okay.
458
459 LARRY O'SULLIVAN: So the relationship between the business and an owner, isn't that what the...that you're
460 driving at? You're saying that that could be anybody...
461
462 JAY HOOLEY: Right. That could...
463
464 LARRY O'SULLIVAN: I see. I see.
465
466 JAY HOOLEY: In other words, not unlike, gee, up the road at the fire station, there's some sleeping
467 accommodations, but it's nobody's primary residence.
468
469 LARRY O'SULLIVAN: Right. And they have a kitchen and they have bathrooms and showers and so forth.
470
471 JAY HOOLEY: And they have a kitchen and they have a shower and they...
472
473 LARRY O'SULLIVAN: Uh-huh.
474
475 JAY HOOLEY: But nobody is primarily living there and there only as their residence.
476
477 LARRY O'SULLIVAN: Alright, so it is definitely an accessory use of the building.
478
479 JAY HOOLEY: Right.
480
481 LARRY O'SULLIVAN: Okay, and the property. Okay.
482
483 NEIL DUNN: Maybe to help clarify, but are you trying to get that for an address for Jeremy or can we...it
484 sounds like if we stroke out...took away the residence component, you can do everything you want without
485 making that statement, without us having to cross that residence line.
486
487 LARRY O'SULLIVAN: Well, that's the whole point, right?
488
489 STEVE CLARK: Well, we want to be forthright with the Board. I mean, in the short run, this is a family owned
490 operation. It's a startup operation. I think they're, as you can see by their conceptual plans, they're gonna do
491 it and do it right. And so they'd wanna have somebody on the site to take care of that.

492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536

NEIL DUNN: Which they can, I guess, is what I'm thinking and that you don't need to declare it as a residence which makes it even more cloudy to me, as opposed to doing it functionally, running it as a business and Jeremy living there. We said he can have that because it's a twenty four hour caretaker kind of parameter and we can get away from that residential...unless you were looking for some kind of benefit for that residential address.

LARRY O'SULLIVAN: I don't understand that, either. I thought we had the right idea with the accessory use.

RICHARD CANUEL: Yeah, if I can just add to that, maybe to help clarify. If you look at our definition for mixed use residential, the intent is to have a residence above a commercial business. The intent...that residence could be an apartment rented to anyone, not necessarily a member of the business owner or the business owner himself. I don't think that's the particular situation here, even though we have the owner residing, you know, on site, I think the intent here is to have a commercial facility there where you have the possibility of someone staying there on site twenty four/seven.

NEIL DUNN: And striking the residential out of this...

RICHARD CANUEL: Yeah, it would make sense to do that.

NEIL DUNN: ...would be your thought. Okay. I mean, I don't...

LARRY O'SULLIVAN: Out of what? Striking it out of...

STEVE CLARK: We don't have any objection to that. I just...when we go to get the building permit and we go get that certificate of occupancy, that the building official who's with us here today, I'm sure it won't be a problem, but if you have another building official looking back at a record and says, "Oh, how do we resolve this conflict? We've got, you know, a shower now, we've got a little kitchen facility," and that's why I think you could handle it as a reasonable condition imposed on the variance that it's a caretaker related to the business. And that's how we get around it and if it ever is changed and becomes an enforcement issue or they have to come back to you to modify the variance.

LARRY O'SULLIVAN: Yeah, we're not talking about a four (4) bedroom, two (2) bath type of thing here.

STEVE CLARK: No.

LARRY O'SULLIVAN: You know, this is...

JAY HOOLEY: Or a rental apartment that is completely separate in operation from the business below. That is not what's occurring here, so, I guess that's...

STEVE CLARK: We have no problem with you imposing a condition that says it's for a caretaker and the person has to be an employee, manager, or owner of the facility.

JIM SMITH: Okay, I'm looking at the floor plan...

537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580

STEVE CLARK: Jim, could I just touch on the...there was a question that you asked me to address...

JIM SMITH: Okay, go ahead.

STEVE CLARK: ...with regard to sound. Now, these will have solid fencing here. How high would the solid fencing on the runs be?

JEREMY SOUCY: Six (6) feet.

STEVE CLARK: Six feet? Six (6) feet in your regulations. So I believe the same will be for the runs here from the day care outside areas. So that, coupled with the natural buffers, it's a fifteen (15) acre lot and as you know, there's no use because the power lines to the east. There will be a couple of commercial developments on the frontage lots owned by the abutter that has filed an objection. You've got the large flea market directly across. So the only potential person impacted is in this back corner over here, is the fifty five and older that may or may not come down the road.

LARRY O'SULLIVAN: Mm-hmm.

STEVE CLARK: And I think there'd be much from the traffic of Route 102 as there will be from here, from the property.

LARRY O'SULLIVAN: Did you answer my question about what time in the morning the dogs will wind up coming out? Was that seven o'clock, before the actual business opens?

JEREMY SOUCY: Yes. Well, 6:30 is early drop off.

LARRY O'SULLIVAN: Yeah.

JEREMY SOUCY: And then seven o'clock, there could potentially dogs outside.

JIM SMITH: Okay, in looking at the floor plan, it shows an area called, identifies "executive office." In the center is a kitchen area, I believe, and off the executive offices, the bathroom with the shower and toilet and so forth. On the opposite side, there's another area identified as "storage." Now, it appear to me from the plan, it looks like there's closets in the front part of that storage area, and there's also a closet in the side wall of the executive office, which kind of leads me to believe that both of those two rooms could potentially be used as bedrooms. Is there any way of defining that or limiting that?

STEVE CLARK: It's not our intent to make those into bedrooms, but I guess you could impose a condition, or the Planning Board will impose a condition when we submit the actual plans for this. This is conceptual in nature.

JIM SMITH: Yeah.

581 STEVE CLARK: It's intended to be so that if we don't get a variance here, you know, they would like to still do
582 this business, so...and proceed, but as we refine and define the plans going forward through the site plan
583 review process, these areas are more detailed.

584
585 JIM SMITH: Richard? Do we still have the seven hundred and fifty (750) square foot limit on accessory
586 apartments?

587
588 RICHARD CANUEL: We do, but accessory apartments, again, apply only to single family residences in the AR-I
589 zone.

590
591 JIM SMITH: I was just kind of going with the idea to limit the living area to that square footage.

592
593 RICHARD CANUEL: Well, let me just add...that was one of the reasons for having this second variance, was to
594 help define the different...to differentiate between the mixed use commercial and whether this really was a
595 true residence. I mean, you look at the second floor plan and it doesn't look a residence. You look at that
596 floor plan layout. I mean, it really...I mean, although there can be living quarters there, it really doesn't seem
597 to lend itself to the typical...

598
599 LARRY O'SULLIVAN: It's offices. Yeah.

600
601 RICHARD CANUEL: ...residential floor plan, simply because, you know, the applicant stated that they were
602 going to have a residence there or someone living there, you know, rather than make it an enforcement issue
603 at some point in the future, it was best to bring that application right here to the Board and let them make a
604 decision on that, so...

605
606 STEVE CLARK: If it helps to address your concern, Jim, if you wanted to say that it would be restricted to, as
607 we said before, the employee/owner/manager and the living area could not have more than one (1) sleeping
608 area on that floor, I think that handles it so that you don't have a scenario down the road where they turn it
609 into a larger living area that raises your residential concern.

610
611 JIM SMITH: Okay, the reason I raised the seven hundred and fifty (750) square footage, I know from
612 experience, that's a reasonable size for a one bedroom apartment.

613
614 LARRY O'SULLIVAN: We use it elsewhere throughout the districts.

615
616 JIM SMITH: Yeah. And use another application. So I'm not sure what the total square footage of that second
617 floor is. I would suggest it's probably more than the seven hundred and fifty (750) square feet.

618
619 NEIL DUNN: Well, but then if a real component of that is an executive office, then are you imposing
620 something on them there that's...

621
622 JIM SMITH: No, I'm just...

623
624 NEIL DUNN: Yeah, no, I know, I'm just throwing out that because...

626 JIM SMITH: Yeah.
627
628 NEIL DUNN: ...a component of it is truly an office, a working office where they...a kind of like the one (1)
629 sleeping...
630
631 JAY HOOLEY: The single...
632
633 LARRY O'SULLIVAN: Use that as a restriction instead?
634
635 JIM SMITH: Yup.
636
637 LARRY O'SULLIVAN: That makes sense.
638
639 JIM SMITH: Yeah.
640
641 JAY HOOLEY: Okay, that works.
642
643 LARRY O'SULLIVAN: You don't need to do both.
644
645 JIM SMITH: You see what I'm looking at. Closet, closet...
646
647 JAY HOOLEY: Right. You see this is open.
648
649 JIM SMITH: ...closet. When the...
650
651 JAY HOOLEY: Right.
652
653 JIM SMITH: [indistinct].
654
655 LARRY O'SULLIVAN: So the restriction would be to one (1) sleeping area?
656
657 JIM SMITH: Yeah. If we grant it.
658
659 LARRY O'SULLIVAN: Yup.
660
661 JIM SMITH: Okay, any other questions from the Board? If not, we'll open it up to the public for anyone who is
662 in support. Would you approach a microphone and identify yourself...if you wish to speak?
663
664 TONY MESITI: We wish to speak, but not in support.
665
666 JIM SMITH: Okay. Since we don't have any in that category, anyone who is either...has questions or in
667 opposition? You have the opportunity to speak at this point. You can use the mics over here. I believe they
668 work.
669

670 JOHN KALANTZAKOS: Hi, my name's John Kalantzakos. I'm representing Mesiti Development. This is Tony
671 Mesiti. The applicants have been discussing our fifty five and over project like it's only a potential possibility in
672 the future. We're well down the road and have spent about three hundred thousand (300,000) dollars so far
673 to develop a ninety four (94) unit retirement community and we actually did meet with the applicants and we
674 wanted to give this a chance because if it's not gonna impact us, we don't wanna stand in somebody's way,
675 but we were referred over to the Barking Dog in Derry and we drove over there and I know counsel for the
676 applicant has said he didn't hear anything, but when we drove over there, we sat there and to tell you the
677 truth, we were horrified with the noise of the outdoor dogs. So with a retirement community being next to a
678 dog kennel, it would be better if it wasn't a retirement community because these people are home all day
679 long. So they're gonna be there listening to dog barking pretty much from 6:30 AM to 5:30 PM 'til the dogs go
680 in. Now we own the Nevins as well, so we're very familiar with retirement communities. We've sold a
681 hundred and twenty (120) customers in town at the Nevins and at Sugarplum Hill and we know the clientele
682 well. So we feel like, as far as a variance goes, you do have to prove that you can meet the five points and I
683 think the one about diminishing property values that are abutting the property, I don't know how that could
684 be proven because we're seriously considering now following through with this project because selling homes
685 to retirees with dogs barking all day will significantly impact our ability to sell and will impact the property
686 owner, HSL, and what value he's gonna get for the sale of this land. So we did really look at this use and I
687 don't see how it's in the public interest because I think there's a Master Plan in town and even though in C-II,
688 you know, it's a commercial zone, you've already started with this fifty five and over plan, we've already been
689 in front of the Town several times and it's happening, so it's not just your typical C-II zone where there's just
690 businesses there, there's gonna be a bunch of people living there. So I don't see how this could be in the
691 public interest 'cause if we went through with it, there would be complaints to us, there'll be people down at
692 Town Hall complaining. So when the dogs are outside, it's a big problem. It's a lot of noise, it's constant
693 barking. We're also bringing town water all the way up from Hudson. We're investing seven hundred
694 thousand (700,000) dollars to bring town water up to this development and then Pennichuck is extending it to
695 Avery Estates, so that's gonna benefit everybody along that water line. So if this doesn't happen, that's not in
696 the public interest either. I know Judy Tinkham sent a letter in, but she's one of the ones selling the property.
697 I just don't know how this can be proven that it's not gonna diminish the value of this property and not gonna
698 be in the...it's definitely...it's gonna be hard to prove that the public interest is served on this. I just don't even
699 know how this really would have a chance, but...Do you wanna add anything, Tony?

700
701 TONY MESITI: Yes. My name is Tony...

702
703 JIM SMITH: Do you wanna approach one of the mics? Thank you.

704
705 TONY MESITI: My name is Tony Mesiti and I'm the owner of the Nevins community and we went to great
706 lengths before we decided to build the Nevins community to check the surrounding area to make sure that it's
707 not an encumbrance on our residents living there. We did the same thing in this property that we looked in
708 and down the road, we wanted to stay in Londonderry. We looked at it in depth. We looked at the
709 surrounding areas and we saw what was in the surrounding areas and we also checked next door that was a
710 residential home and we looked in there to see if there was any possibility of any kind of kennels or anything
711 like that being put into that area and there was nothing that was approved for that kind of zone, in that zone.
712 Therefore, we worked very hard, diligently when we went in front of the Town before we decided to take this
713 land under agreement and we spent an enormous amount of money already. It would be really detrimental to
714 use and would stop us right on our tracks to go any further to develop this property and we'd lose a significant

715 amount of money. So please take this under serious consideration 'cause it can be a real problem for us in the
716 future. Thank you.

717
718 JIM SMITH: Okay. Anyone else? Questions or opposition? Okay, I'll give it back to you if you want any
719 rebuttal.

720
721 STEVE CLARK: Just one comment. In no way did I mean to disrespect the abutters by suggesting that it was a
722 potential down the road, only that it's in the stages...the early stages, notwithstanding how much money
723 they've spent on this, and that they have a long road ahead of them. That's all I meant by "potential down the
724 road." I think we've explained to you the size of the lot, the natural buffers, what we'll do on the site itself to
725 curb and control noise and sound. The Planning Board will have its input and the abutters will also have a
726 right to give input at that time and if additional buffering is required, then we'll address that through the site
727 plan review process. That's all I can say with regard to the abutters. I hope their project goes through. Quite
728 frankly, fifty five and older have a lot of pets and we'd hope that they would utilize this facility but that's as
729 the case may be and I understand their objection.

730
731 LARRY O'SULLIVAN: I have to come back with you then to the...I know this is just conceptual that you came in
732 front of us with in the way of the placement and where do you suspect this will be fitting best on the lot, given
733 the fact that you have wetlands in one area, high tension towers or electric wires in another area, where do
734 you foresee it fitting on the lot?

735
736 STEVE CLARK: Well, it's intended to be back from the road and away from the rear of the lot because of the
737 wetlands buffers. It's a fifteen (15) acre parcel, but it's approximately...it would be approximately two
738 hundred (200) feet back from the road and hopefully in the center of the lot. So, as I indicated, the best
739 indicator for distance that I gave to you is it'll be at least a hundred (100) feet from that property line and then
740 they have their own buffer setback requirement.

741
742 JIM SMITH: Any other comments? Questions?

743
744 JOHN KALANTZAKOS: Can I just answer that proximity?

745
746 JIM SMITH: Yeah. Go ahead.

747
748 JOHN KALANTZAKOS: So, in that portion of the property, it really is gonna abut right where we houses, a
749 clubhouse. There's not a lot of vegetation. We're not talking about a hundred (100) feet or a hundred and
750 fifty (150) feet of trees. We're talking about basically open field right now and, you know, if you're gonna
751 plant something, you're not gonna plant, you know, fifty (50) foot tall trees to buffer that, so there isn't a
752 natural vegetation there that would, you know, lessen the noise that's coming over. If it was at the front of
753 the property, we would have been okay with it because that's right off 102, kind of on the commercial side,
754 and we're up towards the top. So I just think there's no barrier there that is gonna handle this outside noise of
755 the pets. If it was all inside, we really wouldn't have a problem with it.

756
757 JIM SMITH: My only...I have to make this comment kind of carefully; I have brought an animal over to that
758 particular Barking Dogs facility that you've both been referencing. And on a personal note, I can't remember

759 any excessive noise when I brought my animals there. I'm not saying that's how it is all the time, but from my
760 experience, I just don't remember a high level of noise. But that's my observation.

761
762 JOHN KALANTZAKOS: I think it's time-of-day driven and if you're out when there's dogs in the pen and they're
763 circulating around, you're gonna hear a lot of noise.

764
765 JIM SMITH: That could very well be. But I'm just saying, when I dropped off or picked up my animals, I did not
766 hear a significant amount of noise. But that's my observation.

767
768 JOHN KALANTZAKOS: Can I ask one more question?

769
770 JIM SMITH: Sure.

771
772 JOHN KALANTZAKOS: So, if it was just C-II, I understand it's not a permitted use 'cause it's not listed and if it
773 was a commercial zone and they're going in and it's part of the Master Plan where you don't have parcels in
774 conflict, it seems like, okay, this might be something that you can grant a variance and say you're not really
775 gonna impact this auto body shop or whatever other businesses are in the area, but there's gonna be two
776 hundred (200) retired people here. So it just seems like the mixing of uses is just gonna be a problem.

777
778 JIM SMITH: Sure. Neil.

779
780 NEIL DUNN: If I may speak to that, if we're gonna go onto permitted uses, you think an excavating, rock
781 crushing plant would be quieter? Those are some of the things that are permitted.

782
783 JOHN KALANTZAKOS: Right...

784
785 NEIL DUNN: A drive-in theater, a hotel. So only to be fair, I understand where you're coming from, but to be
786 fair, it's not like...you have to look at what could go there that maybe could be worse in a legitimate...if you're
787 saying you considered all the things, well those are some of your potential...and that's what we have to look
788 at. Well, you know, what is permitted and is this far out of line with it?

789
790 JOHN KALANTZAKOS: Yeah, we have read...

791
792 NEIL DUNN: Just for a comment, I guess was my point.

793
794 JOHN KALANTZAKOS: We have read all the permitted uses and at least we understand what could go there
795 and we're okay with that and we know something in the permitted use, you know, came across and it was
796 sold, we would have no say in it. We know what the permitted uses are.

797
798 JIM SMITH: I think also, we're kind of faced with the fact that we really don't have this particular use listed as
799 a permitted use in any industrial or commercial zone. So that's kind of...puts us in a very awkward position as
800 far as that part of it goes. Trying to address...and one of the problems with zoning in general is the...I've given
801 this before; you can write zoning in two manners, permissive and restrictive. The permissive is you list those
802 things which are prohibited. We kind of mix them and the restrictive is you only list those which are permitted

803 and we're kind of stuck in that situation. We're in the restrictive, so trying to find an appropriate zone for
804 something like this...

805
806 JOHN KALANTZAKOS: Now, I do think in the zoning, like if you're in a commercial area and it's all commercial,
807 or there wasn't already something coming in that's residential in nature, those, I think, would be, you know,
808 you don't have to probably be by the letter of the law of what's allowed 'cause you gotta find a spot
809 somewhere, but I guess our big thing is, there's gonna be a whole residential neighborhood right here and it
810 just doesn't fit together.

811
812 JIM SMITH: Any other comments? Questions? Rebuttal?

813
814 STEVE CLARK: The only comment I would say is that the abutter who owns the property, when he came
815 before you and got variances, he retained two (2) frontage lots that are two (2) commercial lots and that the
816 access road to this development goes right between those two (2) commercial lots. And those two (2)
817 commercial lots could have that rock quarrying facility, subject to the limitations of the size of the lot. So I
818 think with the representations we made to you that we will look...handle with regard to the solid fencing, the
819 on-site manager, buffering requirements, the distance that we've adequately presented to you on each of the
820 five points and again, where the ordinance doesn't allow this use whatsoever, it's restrictive and I don't need
821 to tell you your role. You act as the relief valve to the zoning ordinance and we ask that you grant the
822 variance.

823
824 JIM SMITH: Okay. Jay?

825
826 JAY HOOLEY: I mean, where it's been brought up and the abutting issue, Richard, the underlying zoning of
827 that development that's being referenced is...

828
829 RICHARD CANUEL: Same zoning district, Commercial-II.

830
831 JAY HOOLEY: So...

832
833 RICHARD CANUEL: One-o-two (102) Overlay District as well.

834
835 JAY HOOLEY: I have to observe that we put the residential occupancy into the commercial zone, not the other
836 way around. It's not like we're bringing commercial zone to a residential area. You opted to develop a
837 residential community in a commercial zone.

838
839 JOHN KALANTZAKOS: Right, but it was already [indistinct] established and this is a use that's coming
840 afterwards.

841
842 LARRY O'SULLIVAN: But it doesn't change the zoning.

843
844 JAY HOOLEY: It doesn't change the zoning.

845
846 JOHN KALANTZAKOS: I mean, would staff weigh in on that? 'Cause in conversations with staff, there is a
847 Master Plan in town about having proper businesses abut each other and I think you do have to prove that

848 you met all the points to get a variance and I think this is gonna diminish the property value of, you know, HSL
849 Realty and their parcel of land. I don't think there's any denying.

850
851 RICHARD CANUEL: Can I make a suggestion to the Board and, you know...

852
853 JIM SMITH: Sure.

854
855 RICHARD CANUEL: ...you guys make the decision whether to follow through with this or not. It appears, you
856 know, being a unique use, of course, because we don't have this identified anywhere in our ordinance, plus
857 the fact that we're not hearing any factual information here. We're hearing that property values are gonna be
858 affected, whether it's positive or negative, without any necessarily factual evidence. We don't necessarily
859 have any factual evidence to the noise level that's actually generated, except for hearsay in the testimony that
860 we've heard thus far. It may be reasonable for the Board to table this and ask the applicant to come back with
861 some factual evidence. We have a similar use in Derry that's been there for a considerable time. Find out
862 some evidence from the abutting property owners and the abutting property values and see what has actually
863 happened there. Look at the assessed values. Have they decreased since this facility was installed there? Are
864 there noise complaints? Let's investigate that information from that community and see if there were noise
865 complaints generated by this use and bring that evidence back to the Board and let the Board make a decision
866 based on facts rather than just conjecture.

867
868 LARRY O'SULLIVAN: That seems like a reasonable suggestion.

869
870 JIM SMITH: I totally agree with that concept. Is the applicant willing to go along with that?

871
872 LARRY O'SULLIVAN: What we're looking for specifically, Richard, would be assessment records over the past
873 several years? Because they're easily accessible, right? You can get...

874
875 RICHARD CANUEL: Yeah, I don't even think it needs to be the past several years. I think it's just enough to
876 show that is there evidence that property values have gone down since that facility was built.

877
878 LARRY O'SULLIVAN: Is there evidence, right, or not, yeah. And the other half of that would be...

879
880 JAY HOOLEY: Disproportionately to overall. I'm gonna assume...

881
882 RICHARD CANUEL: Well, yeah, yeah...

883
884 [overlapping comments]

885
886 RICHARD CANUEL: No, I'm talking about in that neighborhood of course, sure.

887
888 LARRY O'SULLIVAN: Well, commercial hasn't dropped as much as...but anyway, the net of it's still gonna be is
889 there a drop. Then the other thing would be the number of complaints. Do you happen to know who the
890 Building Inspector/Animal Control Officer/...what else do you do?

892 RICHARD CANUEL: I certainly do. I certainly do. But that's not for me to do. The burden is on the applicant,
893 so I can't do that for them.
894
895 LARRY O'SULLIVAN: But there is somebody over there is my point.
896
897 RICHARD CANUEL: Oh, there certainly is.
898
899 LARRY O'SULLIVAN: You know, they haven't cut those positions like, you know...
900
901 RICHARD CANUEL: Yup.
902
903 LARRY O'SULLIVAN: ...willy nilly like some other towns [indistinct].
904
905 RICHARD CANUEL: And of course there is a police department there, so...And they're usually the ones that get
906 the noise complaints.
907
908 LARRY O'SULLIVAN: So it's easy enough to find out.
909
910 RICHARD CANUEL: I would think so, yes.
911
912 LARRY O'SULLIVAN: Okay. So that doesn't seem like it's much of a burden. The other part of this is gonna be
913 we have...our next meeting is April 13th, 18th?
914
915 JAYE TROTTIER: I think it's the 21st.
916
917 LARRY O'SULLIVAN: The 21st? Time frame wise...
918
919 JIM SMITH: Yeah, [indistinct].
920
921 LARRY O'SULLIVAN: Do you have any issues with that or the time frame wise?
922
923 STEVE CLARK: Well, we were hoping for a decision tonight, but certainly we don't want an adverse decision.
924
925 LARRY O'SULLIVAN: So far, it appears that you'd have a mixed, anyway, and there's only four (4) of us.
926
927 STEVE CLARK: Correct.
928
929 LARRY O'SULLIVAN: So the significance to me would be perhaps in your best interest to...are you already on
930 the Planning Board schedule, by the way?
931
932 STEVE CLARK: We are not.
933
934 LARRY O'SULLIVAN: You're not. Okay, so you've got that time frame to deal with too, then, so...
935
936 STEVE CLARK: We wouldn't apply there until we know that we have the...

937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981

LARRY O'SULLIVAN: April 18th? Would you be willing to accept...?

STEVE CLARK: And so I understand your request, I will investigate through the Assessing Department and the...they have a full time Building and Code Enforcement office, I will investigate any complaints to that and if there's any evidence submitted back to you in that regard.

LARRY O'SULLIVAN: That good, Rich...?

JIM SMITH: Also check in with the Police Department, too.

RICHARD CANUEL: You know, any type of evidence. You know, I'm saying rather than just having, you know, statements...

LARRY O'SULLIVAN: His saying...yeah, okay. Gotcha.

RICHARD CANUEL: ...you know, being made, that the Board at least has something factual. You know, whether they decide to vote positive or negative, at least you have some factual evidence to go...

JIM SMITH: One other suggestion is maybe take some DB noise level readings along the perimeter of that piece of property?

LARRY O'SULLIVAN: The one in Derry, you're talking about?

JIM SMITH: Yeah.

STEVE CLARK: Well, the only concern I have with that is that facility sits right up at the road, within whatever the minimum setback is on Derry's frontage. This...so if you take decibel levels where you don't know exactly where this is gonna be on the site, it's gonna be difficult to show as evidence because it could vary from the actual. That's why I think maybe if we provide you with what's in their public record as a basis. I mean, I have on my phone, we all have smart phones now and I have on my phone the video of where I was sitting on the John Deere property next to it. I don't have a means of transferring that here tonight. But I made that representation to you that I was there. I was there today. The dogs, the day care open area that we talked about for this facility, it was in that area that's at the front of their building on the side, and I was on the side that it would be the open area for this facility, the difference being we would have solid fence. They have a typical metal...

LARRY O'SULLIVAN: Chain link.

STEVE CLARK: ...chain link fence. And as I represented to you, the traffic noise from the road was louder than any of the dogs. I won't say there was not a single dog barking. There was a low dog bark once or twice. That was it in that five (5) or ten (10) minute period. The dogs were all...there was probably ten (10) to twelve (12) dogs, at least, out in that penned area and the person was out there watering. That's what I told you, that she had a garden hose and the garden hose was louder than any of the dogs.

0982 LARRY O'SULLIVAN: Well, Carl, I think the issue's going to be...all of us are going to be, at least I'm of the
0983 impression that we're gonna have to get some evidence, some additional information, anyway, in the way of
0984 evidence for next month.

0985
0986 STEVE CLARK: Sure. And that's why I think providing you with what is available in the Town's files...I mean, I
0987 think you could probably go to another community and it could be just the opposite, depending on how that
0988 facility is run. Standing and looking at it, it looks like the way it's going to be somewhat similar design to this,
0989 except that you're gonna have solid fencing...

0990
0991 LARRY O'SULLIVAN: The one in Candia? Have you been to the one in Candia?

0992
0993 STEVE CLARK: I have not.

0994
0995 JIM SMITH: Is that the one down on 102?

0996
0997 LARRY O'SULLIVAN: Right off of 102.

0998
0999 JIM SMITH: So there's another potential that you could look at.

0000
0001 JOHN KALANTZAKOS: Is it possible to have a kennel without an outdoor portion where you have an indoor
0002 enclosed where they can run around? Or is it you have to have outside? 'Cause that's the part we have the
0003 problem with.

0004
0005 LARRY O'SULLIVAN: Expense...

0006
0007 JOHN KALANTZAKOS: Why can't it be enclosed in a bigger area where they can run on...?

0008
0009 LARRY O'SULLIVAN: They can play soccer indoors.

0010
0011 JOHN KALANTZAKOS: What's that?

0012
0013 LARRY O'SULLIVAN: We have a place near the airport. Oh, wait a minute. They play soccer indoors.

0014
0015 JIM SMITH: Okay, that's another possibility. Maybe if you go back, you've got conceptual plans, maybe you
0016 could come up with a slightly different layout where you had, say, the kennels on the outside, the run in the
0017 middle or whatever other possibilities that you...I mean, you don't have to have formal drawings, just
0018 something to...if there's any other configurations you might be able to come up with.

0019
0020 LARRY O'SULLIVAN: Okay, so the continuance...

0021
0022 STEVE CLARK: My concern with that, though, when you vote, and I heard it earlier tonight, you vote "as
0023 presented" and our presentation is as to the use and not to the plans themselves, because the Planning Board
0024 is going to have their say in that. Our goal is to represent to you that we're gonna do everything we can to try
0025 and reduce the noise to that one...not to that...just that one, but it's the residential abutter to the northwest
0026 corner that has concern.

027
028 LARRY O'SULLIVAN: But that's typically what we do when we know there's gonna be a Planning involvement is
029 "subject to Planning Board approval."
030
031 STEVE CLARK: Sure.
032
033 LARRY O'SULLIVAN: Right?
034
035 STEVE CLARK: That's acceptable. I just wanted to be...
036
037 LARRY O'SULLIVAN: That is always our [indistinct].
038
039 STEVE CLARK: When Jim made the suggestion about redesigning...
040
041 JIM SMITH: Okay, just to clarify everything, what we're looking for is evidence as to noise and what else?
042 That's really, the noise issue is the big thing.
043
044 JAY HOOLEY: And any formal complaints
045
046 NEIL DUNN: And values.
047
048 JIM SMITH: Formal complaints.
049
050 RICHARD CANUEL: And the property value issue.
051
052 JIM SMITH: And the property value. If you bring back information along that line, I think that's what we're
053 looking for. At this point, I'd entertain a motion to continue.
054
055 NEIL DUNN: If I may make one point, I would think there'd be some general reference information or you
056 might be able to get some of those permitted uses as thresholds that might be beneficial.
057
058 LARRY O'SULLIVAN: What would you mean by that, Neil?
059
060 NEIL DUNN: Well, if there's design standards for drive-in theaters, what's the dB of a drive-in theater from so
061 many feet or a rock crushing plant and then we know whether this falls within or outside of what would be a
062 permitted use. A noise level in a permitted use. So if a rock crushing plant is 90 dB and they're below that,
063 then they're within that same noise threshold as a permitted use...
064
065 LARRY O'SULLIVAN: Something that is permitted in the...
066
067 NEIL DUNN: ...would be my thought that might be beneficial.
068
069 JIM SMITH: Yeah. Richard, don't we have some dB or noise level standards?
070

071 RICHARD CANUEL: We have some provisions governing, you know, excavations sites and things like that for
072 the commercial taking of earth and whatnot, but I don't think there's necessarily a specific decibel limitation
073 on that. That's what I'm trying to look up right now.
074
075 NEIL DUNN: I was just offering that as anything to support that you're falling within a permitted use would
076 seem to support...I'm sorry, Jim. I think you were entertaining something.
077
078 JIM SMITH: Well...
079
080 LARRY O'SULLIVAN: He's gonna take a motion to...
081
082 JIM SMITH: Well, just...
083
084 NEIL DUNN: Yeah, let...
085
086 JIM SMITH: Just...
087
088 NEIL DUNN: Okay.
089
090 JIM SMITH: ...one moment. We'll give Richard a chance to see if he finds anything.
091
092 RICHARD CANUEL: Oh yeah, put the pressure on me. Thank you. [Pause]. Okay, Section 3.1.2.7.17 of our
093 operational standards for excavation sites says that "Noise shall not exceed a maximum level of 75 decibels."
094 And I'm assuming that would be measure at the property line.
095
096 JIM SMITH: Yeah.
097
098 NEIL DUNN: It's not weighted or anything, that's just a maximum at any point?
099
100 RICHARD CANUEL: That's, yeah, that's just a maximum.
101
102 LARRY O'SULLIVAN: I think we had one for the power plant, too.
103
104 NEIL DUNN: That's during construction, Richard?
105
106 RICHARD CANUEL: Excuse me?
107
108 NEIL DUNN: That's during construction and...?
109
110 RICHARD CANUEL: That's during operation. Those are the operational standards for, you know, excavation
111 sites.
112
113 NEIL DUNN: Okay. Thank you.
114
115 JIM SMITH: Okay. I will entertain a motion to continue.

116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160

LARRY O'SULLIVAN: And if Jay's back...I make a motion to continue to our April regularly scheduled meeting, case...

JIM SMITH: The April 18.

LARRY O'SULLIVAN: April...is it 18, Jaye? April 18th meeting. Case number...

JIM SMITH: Do I have a second?

LARRY O'SULLIVAN: ...3/21/2012-2.

NEIL DUNN: I'll second it.

JIM SMITH: Second. All in favor?

LARRY O'SULLIVAN: Aye.

NEIL DUNN: Aye.

JAY HOOLEY: Aye.

JIM SMITH: Aye. So we're continuing this until the April 18th meeting.

STEVE CLARK: Appreciate your time tonight. Thank you.

JEREMY SOUCY: Thank you.

JIM SMITH: There won't be any additional notifications other than what's been made.

RESULT: THE MOTION TO CONTINUE CASE NO. 3/21/2012-2 TO THE APRIL 18, 2012 MEETING WAS APPROVED, 4-0-0.

RESPECTFULLY SUBMITTED,



NEIL DUNN, CLERK

TYPED AND TRANSCRIBED BY JAYE A TROTTIER, SECRETARY

APPROVED APRIL 18, 2011 WITH A MOTION MADE BY LARRY O'SULLIVAN, SECONDED BY JAMES SMITH AND APPROVED 4-0-1 WITH MATT NEUMAN ABSTAINING AS HE HAD NOT ATTENDED THE MEETING.